

*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**

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

**(NOVEMBER 2020 COMPREHENSIVE UPDATE)**

**PART 1 of 3**

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November 16, 2020

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# **TAB 1**

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**

**NOTICE OF MOTION  
(Motion for November 2020 Omnibus Order)**

FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, “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) on November 27, 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 (the “November 2020 Omnibus 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, the Motion Record, and the Twenty-Fourth Report of the Trustee dated November 16, 2020 (the “**Twenty-Fourth Report**”) and dispensing with service on any person other than those served;
  - (b) approving the Fourteenth Report, the Fifteenth Report, the Sixteenth Report, the Eighteenth Report, the Twenty-Second Report (each as defined below) and the Twenty-Fourth Report, and all of the actions, conduct and activities of the Trustee as set out therein;
  - (c) approving the fees and disbursements of the Trustee and its counsel for the period from October 1, 2019 to September 30, 2020, as set out in the Twenty-Fourth Report, the affidavit of Naveed Manzoor sworn November 16, 2020 and attached as Appendix 23 to the Twenty-Fourth Report (the “**Manzoor Affidavit**”), and the affidavit of Michael De Lellis sworn November 12, 2020 and attached as Appendix 24 to the Twenty-Fourth Report (the “**De Lellis Affidavit**” and together with the Manzoor Affidavit, the “**Fee Affidavits**”); and
  - (d) sealing certain exhibits to the Fee Affidavits; 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 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. Capitalized terms used but not defined herein have the meanings given in the Twenty-Fourth Report;

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 (often third-ranking or lower priority charges) registered on title to the applicable real property (the "**Investors**");

3. 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 Order made by the Court in these proceedings dated June 26, 2018;

4. The Realized Property Order was amended by the Braestone Settlement Approval Order dated November 28, 2018 and the Harlowe Settlement Approval Order dated December 20, 2018. The Realized Property Order, as amended, requires the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors;

5. The Trustee has, in total, delivered twenty-three reports to Court detailing, among other things, the Trustee's activities during these proceedings, providing updates to stakeholders on various projects and providing information in support of Orders sought by the Trustee. Notably,

on November 22, 2019, the Trustee submitted its thirteenth report in these proceedings (“**Thirteenth Report**”), which provided a comprehensive update on the Trustee’s activities and a status update for each project;

#### **Need for the November 2020 Omnibus Order**

6. Concurrently with the filing of this Notice of Motion, the Trustee is filing the Twenty-Fourth Report, which provides the Court, Investors and other stakeholders with a comprehensive update regarding BDMC, its business and affairs and information regarding the Trustee’s activities since the date of the Thirteenth Report;

7. Since the Thirteenth Report, the Trustee has continued to actively engage with borrowers, priority mortgagees, potential purchasers, potential assignees of indebtedness held by BDMC and other stakeholders with respect to the Fortress-affiliated projects in order to protect the Investors’ loan and security positions and to maximize potential recoveries wherever possible. The Trustee continues to monitor the development status of each remaining project, to proactively take steps, where appropriate, to negotiate potential transactions involving borrowers or other stakeholders in an effort to generate or improve recoveries for Investors, to respond to potential or actual enforcement actions and to participate in sale processes with respect to certain projects. The Trustee also negotiates postponements to new or replacement financing arrangements and provides partial discharges of BDMC’s security where such actions are considered necessary and in the best interests of the Investors to allow for the continued development of certain projects;

8. The Trustee continues to encounter complex, difficult and changing circumstances on many of the BDMC loans and the Fortress-affiliated real estate development projects. These projects are often distressed and underfunded, and, on each and every project there have been competing claims to entitlements and other challenges that could reduce the amounts available to repay the BDMC loans;

9. The BDMC loan documentation generally contains highly restrictive terms that arguably dictate the Investors’ priority of recoveries and set out requirements to postpone to new financing or provide discharges without repayment. BDMC also often signed additional documentation on behalf of Investors that materially impacted their rights without their knowledge or consent;

10. The Trustee continues to develop creative, unique and project-specific solutions to monetize assets and realize recoveries for Investors, despite the restrictive and often incomplete loan documentation and the challenges and impediments consistently raised by Fortress and other stakeholders on each project. The Trustee actively engages with borrowers and other parties that may have an interest in the relevant properties with respect to settlement, assignment or other monetization opportunities that would provide recoveries and certainty for Investors. While the Trustee actively encourages mutually beneficial transactions, it has also been required to remain vigilant in aggressively defending the interests of the Investors from positions being taken by Fortress and other parties that could further crystallize catastrophic Investor losses;

11. To date, the Trustee has recovered approximately \$123.2 million in Realized Property for the benefit of the Investors by way of settlement and other transactions, including \$59.8 million since the date of the Thirteenth Report;

12. Since the filing of the Thirteenth Report, the Trustee has filed nine project-specific Court reports which mainly relate to arrangements entered into by the Trustee to maximize and fairly distribute recoveries to Investors. The Trustee has also filed a tenth report seeking an Order authorizing it to disseminate copies of certain tax opinions in the Trustee's possession, subject to certain restrictions, to address requests from Investors for copies of such opinions;

13. The Trustee continues to provide numerous project-specific notices (including 47 delivered since the date of the Thirteenth Report), engage with both individual Investors and groups of Investors and consider Investor feedback in the discharge of its mandate;

14. To assist Investors in understanding the status of their particular syndicated mortgage loan, the Trustee has created a chart on its website which provides, to the best of the Trustee's knowledge, the capital structure and development status of each project and other project-specific information ("**Project Analysis Summary**"). A copy of the updated Project Analysis Summary as of November 12, 2020 is attached to the Twenty-Fourth Report as Appendix 3;

15. The Trustee continues to engage in the activities described in the Twenty-Fourth Report to fulfill its mandate to protect the interests of the Investors and enhance the prospects that the Investors will recover some or all of the amounts they advanced through BDMC;

*Approval of Reports, Trustee's Activities, and Trustee's and its Counsel's Fees and Disbursements*

16. As part of the November 2020 Omnibus Order, the Trustee seeks this Court's approval of its fourteenth report dated January 23, 2020 ("**Fourteenth Report**"), fifteenth report dated February 24, 2020 ("**Fifteenth Report**"), sixteenth report dated March 10, 2020 ("**Sixteenth Report**"), eighteenth report dated August 19, 2020 ("**Eighteenth Report**"), twenty-second report dated October 7, 2020 ("**Twenty-Second Report**") and the Twenty-Fourth Report, and all of the actions, conduct and activities of the Trustee as set out therein, including the Trustee's and its counsel's fees and disbursements, as more fully set out in the Manzoor Affidavit (including confidential exhibit "D" thereto (the "**Confidential Manzoor Exhibit**")) and the De Lellis Affidavit (including confidential exhibit "D" thereto (the "**Confidential De Lellis Exhibit**"));

*Sealing Order*

17. The following two-part test applies when determining whether a sealing order should be granted:

- (a) Is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?
- (b) Do the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?<sup>1</sup>;

18. The Confidential Manzoor Exhibit and the Confidential De Lellis Exhibit filed in connection with this motion contain confidential, privileged and commercially sensitive information regarding the projects and BDMC generally which, if made public, would be

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<sup>1</sup> *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53.



materially prejudicial to the Trustee and BDMC and could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings;

19. There are no reasonable measures available to protect this information as an alternative to an Order sealing this information from the public record. However, to mitigate any detrimental consequences of the sealing Order and to promote a fair and open proceeding, the Manzoor Affidavit and the De Lellis Affidavit contain detailed summaries of the activities of the Trustee and its counsel that are more fully reported in the Confidential Manzoor Exhibit and the Confidential De Lellis Exhibit, as well as detailed information regarding the fees incurred to date; and

20. The salutary effects of a sealing Order outweigh the deleterious effects, as the sealing Order would protect the interests of the Investors and their potential recoveries in these proceedings, while the deleterious effects are minimized by the inclusion of detailed summaries of the Trustee's and its counsel's activities in the Manzoor Affidavit and the De Lellis Affidavit;

### **General**

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

22. 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;

23. Sections 101, 106 and 137 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;

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

25. 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-Fourth Report and the appendices thereto;

2. The Fourteenth Report, Fifteenth Report, Sixteenth Report, Eighteenth Report and the Twenty-Second Report and all the appendices attached thereto, all as previously filed with the Court; and
3. Such further and other evidence as counsel may advise and this Court may permit.

November 16, 2020

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in its capacity as Court-appointed Trustee

**TO: SERVICE LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

Applicant

Respondent

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

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

**Proceedings commenced at Toronto**

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**NOTICE OF MOTION**  
**(Motion for November 2020 Omnibus Order)**

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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-FOURTH REPORT OF THE TRUSTEE  
(COMPREHENSIVE UPDATE)**

**November 16, 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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**TWENTY-FOURTH REPORT OF THE TRUSTEE  
(COMPREHENSIVE UPDATE)**

**November 16, 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. (“**FAAN Mortgage**”) 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 (collectively, the “**Property**”). 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 (“**MBLAA**”), 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 Order made by the Court in these proceedings on June 26, 2018 (“**Interim Stabilization Order**”).

The Realized Property Order was amended by the Braestone Settlement Approval Order dated November 28, 2018 and the Harlowe Settlement Approval Order dated December 20, 2018. The Realized Property Order, as amended, requires the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors.

3. The Trustee has, in total, delivered twenty-three reports to Court (collectively, the “**Reports**”) detailing the Trustee’s activities during these proceedings, providing updates to stakeholders on various projects and providing information in support of Orders sought by the Trustee. Notably, on November 22, 2019, the Trustee submitted its thirteenth report in these proceedings (“**Thirteenth Report**”), which provided, among other things, a comprehensive update on the Trustee’s activities, a status update for each project, and support for the Trustee’s request for the December 2019 Omnibus Order. A copy of the

December 2019 Omnibus Order granted by the Court dated December 2, 2019 is attached as **Appendix “2”**.

4. This report (“**Report**” or “**Twenty-Fourth Report**”) is the latest comprehensive update on the Trustee’s activities undertaken since the Thirteenth Report. Capitalized terms not otherwise defined in this Twenty-Fourth Report have the meanings ascribed to them in the Thirteenth Report or other previous Reports of the Trustee, as applicable.
5. 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](http://www.faanmortgageadmin.com) (“**Trustee’s Website**”). The Trustee intends to maintain the Trustee’s Website for the duration of these proceedings.

#### **PURPOSE OF THE TWENTY-FOURTH REPORT**

6. In the Thirteenth Report, the Trustee advised of its intention to report back to the Court in approximately six months with a further comprehensive update regarding these proceedings. As a result of the restrictions in 2020 due to the COVID-19 pandemic, the Trustee determined that it would be appropriate and in the best interests of the Investors to delay the comprehensive update and to focus on realization and distribution efforts relating to the BDMC loans under its mandate. At the same time, the Trustee continued to send out numerous project-specific Investor notices and updates when material events occurred in relation to a specific project, in addition to providing project-specific reports when the Trustee determined it was necessary to seek Court approval regarding various realization and distribution efforts or other specified relief regarding the administration of these proceedings. Since the filing of the Thirteenth Report, the Trustee has filed 10 Court reports and distributed 47 project-specific Investor notices (179 investor notices have been distributed since the Trustee’s appointment). The Trustee is now filing this Twenty-Fourth Report to provide the Court, Investors, borrowers, brokers and other stakeholders with a comprehensive update regarding BDMC, its business and affairs and information regarding the Trustee’s activities since the date of the Thirteenth Report.
7. In addition to the project updates and other information provided to the Court and other stakeholders, this Twenty-Fourth Report is being delivered in support of the Trustee’s request for an Order (“**November 2020 Omnibus Order**”) approving: (i) the Fourteenth Report, Fifteenth Report, Sixteenth Report, Eighteenth Report, Twenty-Second Report

and this Twenty-Fourth Report (“**Approval Reports**”), (ii) the Trustee’s activities described therein, and (iii) the Trustee’s fees and disbursements, including the fees and disbursements of its counsel, for the period from October 1, 2019 to September 30, 2020, as more fully described herein and in the fee affidavits attached hereto.

8. Barring any issues and/or restrictions caused by the recent resurgence in the COVID-19 pandemic, the Trustee intends to report to the Court approximately every six months with a further comprehensive update regarding these proceedings. However, the Trustee also anticipates that it will likely be necessary to attend before the Court during the next six month period to seek relief or advice and directions from the Court regarding project-specific developments, which may include, among other things, the approval of further settlement, assignment or distribution arrangements for certain BDMC loans, or other general file administration matters.

#### **SCOPE AND TERMS OF REFERENCE**

9. In preparing this Twenty-Fourth 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 mortgage brokerage who assumed the mortgage brokerage duties of BDMC, 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 and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM, Fortress 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-Fourth 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-Fourth Report may vary from the projections and information used to prepare this Twenty-Fourth 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-Fourth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

11. This Twenty-Fourth Report has been prepared for the use of this Court and BDMC's stakeholders as general information relating to BDMC and to assist the Court with respect to the Trustee's request for the proposed November 2020 Omnibus Order. Accordingly, the reader is cautioned that this Twenty-Fourth Report may not be appropriate for any other purpose.
12. All references to dollars are in Canadian currency unless otherwise noted.

#### **GENERAL UPDATE**

13. The Trustee has continued to actively engage with borrowers, priority mortgagees, potential purchasers, potential assignees of indebtedness held by BDMC and other stakeholders with respect to the Fortress-affiliated projects, in order to protect the Investors' loan and security positions and to maximize potential recoveries wherever possible. The Trustee continues to monitor the development status of each remaining project, to proactively take steps, where appropriate, to negotiate potential transactions involving borrowers or other stakeholders in an effort to generate or improve recoveries for Investors, to respond to potential or actual enforcement actions, and to participate in sale processes with respect to certain projects. The Trustee also negotiates postponements to new or replacement financing arrangements and provides partial discharges of BDMC's security where such actions are considered necessary and in the best interests of the Investors to allow for the continued development of certain projects.
14. The Trustee continues to encounter complex, difficult, and changing circumstances on many of the BDMC loans and the Fortress-affiliated real estate development projects. As

described in previous Reports, these projects are often distressed and underfunded, and certain projects continue to be subject to enforcement actions from senior lenders. The BDMC loans were often fourth or fifth ranking loans that ranked below tens of millions of dollars of priority financing. The majority of the remaining BDMC loans have now matured or are otherwise in default, but they are often subject to standstill agreements with senior lenders that prevent the Trustee, on behalf of BDMC, from taking independent enforcement actions. On each and every project, there have been competing claims to entitlements and other challenges that could reduce the amounts available to repay the BDMC loans.

15. The BDMC loan documentation generally contains highly restrictive terms that arguably dictate the Investors' priority of recoveries and set out requirements to postpone to new financing or provide discharges without repayment. Such documentation is often missing relevant schedules, contains internally inconsistent provisions, and uses defined terms that are not appropriately defined therein. The Trustee also notes that BDMC had often signed additional documentation on behalf of Investors that materially impacted their rights without their knowledge or consent, based on certain deemed consent provisions or other signing authority granted by Investors when they first made their investments.
16. Many BDMC loans reference development consulting agreements or similar documentation that purport to govern certain terms of the loans, despite BDMC not being a party to such agreements and no evidence being provided to the Trustee that such documentation was given to Investors at the time of their investments. These documents often provided that approximately 35% of the BDMC loan advances would be paid to Fortress and its affiliates, including the Fortress-related brokers, as payment of their fees prior to any amounts being advanced to the project borrower for use in developing the project. In some cases, another portion of the funds advanced by Investors was retained by BDMC to pay interest owing to those same Investors as an "interest reserve", further reducing amounts available to the project.
17. The Trustee notes that senior lenders typically require borrowers to fund similar interest reserves for their priority loans to ensure that the loans are kept in good standing throughout the term of the loan. Borrowers have, in certain cases, asked the Trustee to postpone to additional financing to replace a maturing priority loan, which replacement financing is often in a larger amount than the original loan to provide for an interest reserve

on the new loan. Although these arrangements allow the project to continue without a loan default for a further period, in many cases such arrangements do not provide meaningful or any additional funds to advance the development of the project. Accordingly, the Trustee reviews and discusses the specific circumstances with the respective borrowers to determine whether it is appropriate and beneficial to Investors to agree to postpone to such financing. In some circumstances, the Trustee may further postpone and standstill to such financing to prevent immediate enforcement actions from being taken by priority lenders, in an effort to allow for the project to continue and/or to be sold and to increase the likelihood of improved future recoveries. The Trustee notes, however, that these requests have decreased over the course of these proceedings as, in many cases, senior lenders are no longer willing to provide replacement financing while the BDMC charges remain registered on title, and many of the projects are no longer in an active state of development.

18. Throughout this proceeding, the Trustee has also encountered significant difficulty obtaining copies of all relevant documents relating to certain projects. In many cases, the Trustee has had to make numerous specific requests for disclosure of documentation from Fortress or its representatives due to the disordered and incomplete state of BDMC's books and records. The additional documentation often has a material effect on the relevant BDMC loans. In addition, in certain cases, the Trustee has encountered difficulty obtaining information from other parties, including project borrowers, despite the requirement to provide such information pursuant to the terms of the loan documentation and the Appointment Order. In certain circumstances, the Trustee has had to request and obtain production orders from the Court compelling the production of relevant documents.
19. The Trustee has, and continues to, consider the unique circumstances of each project to attempt to develop and implement creative and project-specific solutions to monetize assets and realize recoveries for Investors, despite the restrictive and often incomplete loan documentation and the challenges and impediments consistently raised by Fortress and other stakeholders on each project. Similarly, while the Trustee actively encourages and continues to remain available to discuss potential mutually beneficial transactions with BDMC's borrowers and priority lenders, it has also been required to remain vigilant in aggressively defending the interests of the Investors from positions being taken by other parties that could further crystallize catastrophic Investor losses. In certain of these

instances, the Trustee has been forced to engage in time consuming contested litigation to protect the Investors' rights.

20. The Trustee actively engages with borrowers and other parties that may have an interest in the relevant properties with respect to settlement, assignment or other monetization opportunities that would provide recoveries and certainty for Investors. As a result of the Trustee's continued efforts, to date the Trustee has completed transactions resulting in Realized Property on behalf of the Investors in the cumulative amount of approximately \$123.2 million (including \$59.8 million since the date of the Thirteenth Report). Although several of the transactions have provided recoveries in excess of 100% of the principal amount (after taking into account previously paid interest) owing to Investors, the Trustee has also been presented with and implemented transactions that resulted in recoveries well below 100%. In these instances, the Trustee has often been advised that such transactions are the only viable option to allow for any recovery at all to the Investors, and, following its review, negotiates for the best possible recoveries for the Investors in the circumstances.
21. Despite facing challenges testing these assertions given the Trustee does not control the sale or refinancing processes conducted by the borrowers, the Trustee has developed creative strategies to work with the relevant stakeholders to obtain as much information as possible and participate directly in such sale or refinancing processes. The Trustee also seeks to improve Investor recoveries whenever possible by way of professional fee reimbursements from borrowers or other parties and to date has recovered approximately \$775,000 on account of such fee reimbursements.
22. The Trustee has filed nine project-specific reports with the Court since the Thirteenth Report mainly relating to arrangements entered into by the Trustee in an effort to maximize and fairly distribute recoveries to Investors. The Trustee has also filed a tenth report seeking approval of an Order ("**Tax Opinions Order**") authorizing it to disseminate copies of tax opinions in the Trustee's possession subject to certain specific restrictions, in order to address requests from Investors received over the past year. The Tax Opinions Order is described in greater detail later in this Report.
23. The Trustee has now made distributions in respect of 17 projects and has identified 10 projects where no recoveries were possible due to the failure of the relevant real estate



development projects and a lack of funds to make any payment toward the BDMC secured debt on those projects. Despite full or partial losses on certain projects due to such failures by project borrowers, the Trustee has attempted to maximize recoveries for Investors whenever possible and to provide certainty and closure to such Investors with respect to their investments, which were often outstanding for much longer than originally anticipated. There are BDMC loans outstanding in respect of 17<sup>1</sup> remaining Fortress-affiliated projects, for which the Trustee continues to proactively seek to take action, as appropriate, to protect Investors' interests and potential recoveries.

24. It remains the Trustee's view that it will likely take several years to complete the administration of the remaining loans due to the early development stages, complex capital structures, significant inventory units remaining for sale and material estate issues that often arise on such projects. As well, certain of the transactions entered into by the Trustee may result in additional Realized Property that is contingent on future events. Further recommendations and long-term strategies for projects are continuing to be developed by the Trustee and deployed on a case-by-case basis, including strategies to enhance opportunities for repayment or improve recoveries in circumstances where the long-term viability of the project or the Investors' economic recovery is uncertain.
25. Approximately \$560 million was invested through BDMC in 45 separate Fortress-affiliated projects by over 11,000 individual Investors. The Trustee recognizes the hardship experienced by the Investors in connection with their investments in Fortress-affiliated projects and understands that many of the Investors have suffered and will continue to suffer a devastating financial impact from such investments, collectively reaching hundreds of millions of dollars. This hardship continues to inform the Trustee's evaluation of potential monetization transactions for the benefit of Investors.
26. The Trustee continues to prioritize the dissemination of information to Investors and dedicates significant resources to respond to Investor inquiries, to meet with individual Investors and groups of Investors (prior to the commencement of the COVID-19 pandemic) and to request Investor feedback in the discharge of its mandate, wherever possible and appropriate. In addition, the Trustee meets and corresponds regularly with

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<sup>1</sup> The QEWN Project discussed later in this Report is no longer administered by BDMC and is therefore not included in these figures.

Representative Counsel to discuss its activities and refine its strategies. The Trustee believes that such correspondence with, and feedback from, Investors and Representative Counsel has been beneficial to the conduct of these proceedings.

27. To assist Investors in understanding the status of their particular syndicated mortgage loan, the Trustee has also created a chart on its website which provides, to the best of the Trustee's knowledge, the capital structure, the development status of each project and other project-specific information ("**Project Analysis Summary**"). The updated Project Analysis Summary as of November 12, 2020 is attached as **Appendix "3"** and will also be posted on the Trustee's Website. While the Project Analysis Summary contains particularized information with respect to each project, the Trustee cautions that it is only intended to summarize certain aspects of the Trustee's analysis and understanding with respect to each project as of a specific date. The Trustee continues to refine its analysis as required based on new developments and information, which can at times have a significant impact on the Trustee's review and related recommendations. The Trustee notes that certain confidential information has been excluded from the Project Analysis Summary.
28. The Trustee continues to believe that this Court-supervised process provides Investors with enhanced protections and better opportunities to obtain recoveries in light of the challenging circumstances surrounding Fortress and BDMC.
29. Brief updates and information specific to certain projects that have been the subject of significant developments since the delivery of the Thirteenth Report are detailed in the following sections of this Report. In particular:
  - (a) paragraphs 31 to 61 describe projects where the Trustee has or may have generated Realized Property over the course of the past year;
  - (b) paragraphs 62 to 77 describe certain sale processes conducted through enforcement proceedings that are ongoing or have been completed with no recoveries available for Investors;
  - (c) paragraphs 78 to 85 describe certain ongoing sale processes being conducted by project borrowers outside of enforcement proceedings;
  - (d) paragraphs 86 to 109 describe certain other material project developments; and

(e) paragraphs 110 to 126 provide certain other general updates related to these proceedings.

30. The funding of these proceedings and cash flow projections are described in paragraphs 127 to 137, and the Trustee's fees and activities are described in paragraphs 138 to 152. Where applicable, the Trustee has attached copies of the relevant Investor notices (without appendices) to provide additional information for Investors and this Court in a streamlined and concise manner.

### **REALIZED PROPERTY GENERATED BY THE TRUSTEE**

31. As described above, the majority of the BDMC loans are in some form of distress due to, among other things, significant fees taken directly from initial loan advances, difficulties obtaining financing to advance projects (at times due to not having achieved development milestones or approvals and/or due to BDMC's affiliation with Fortress), project delays and issues relating to the use of funds advanced to the projects. Further, Fortress and other stakeholders continue to take aggressive positions against the Trustee and the interests of the Investors. Despite these challenging and difficult circumstances, the Trustee has recovered approximately \$123.2 million in Realized Property for the benefit of the Investors by way of settlement and/or assignment transactions, sales through enforcement proceedings and sales by project borrowers. The following table summarizes these transactions:

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<b>Project</b>	<b>Type of Transaction</b>	<b>Status of Realization<sup>2</sup></b>	<b>Payout Amount to Date (\$)</b>
<b>Braestone</b>	Settlement	Complete	10,000,000
<b>Harlowe</b>	Settlement	Complete	15,562,896
<b>Speers</b>	Settlement	Complete	1,950,000
<b>James</b>	Settlement	Complete	4,842,541
<b>Crestview</b>	Settlement	Complete	4,475,000
<b>Kemp<sup>3</sup></b>	Power of Sale	Complete	2,176,162
<b>Nobleton North</b>	Settlement	Complete	14,450,000
<b>Humberstone</b>	Settlement	In Progress	1,750,000
<b>CHAT</b>	Sale	In Progress	5,692,031
<b>Dunsire</b>	Receivership	In Progress	450,000
<b>Solterra<sup>4</sup></b>	Phase 3 Completion	Complete	2,383,758
<b>Bauhaus</b>	Settlement	Complete	6,734,798
<b>Danforth</b>	Settlement	Complete	7,000,000
<b>Solterra</b>	Phase 4 Settlement	Complete	16,171,969
<b>Peter Richmond</b>	Assignment	Complete	26,250,000
<b>Old Market Lane</b>	Power of Sale	Complete	1,570,967
<b>Orchard</b>	Sale by Borrower	Complete	1,754,122
<b>Total</b>			<b>\$123,214,244</b>

### **Realized Property from Settlement and Assignment Transactions**

32. As outlined in the chart above, since the commencement of these proceedings, one assignment agreement and ten settlement agreements have been negotiated by the Trustee and approved by the Court. The Trustee presented these assignment and settlement transactions to Investors and has received overwhelmingly positive responses to the transactions completed to date. Each of the assignment and settlement transactions has been described in detail in previous Reports of the Trustee.
33. The Trustee continues to engage in discussions with stakeholders regarding potential opportunities for the marketing, conveyance, transfer, assignment, sale and/or settlement of BDMC's interests in projects where the Trustee determines that a transaction may be

<sup>2</sup> For the projects noted to be "In Progress", Investors may receive further recoveries; however, the Trustee cautions that the availability and timing of any such further recoveries remains uncertain.

<sup>3</sup> The Realized Property for the Kemp Project includes \$700,000 that is being held by the Trustee pending resolution of the Fortress claim, which is discussed further at paragraph 109.

<sup>4</sup> The Solterra Realized Property reported in the Thirteenth Report was approximately \$300,000 lower than the figure stated in the chart above, as it did not include the proceeds of sale from the final Phase 3 property closing, which took place in January 2020.

in the best interests of the Investors. The Trustee has, in many circumstances, been able to create competitive tension among stakeholders that has increased the returns for the Investors. The Trustee evaluates each opportunity based on the specific factors applicable to each project, including the appraised values, the likelihood of successful completion, anticipated or existing delays in development and saleability of units, and the ability of the borrower to repay its debts.

34. The following paragraphs briefly summarize the assignment and settlement transactions completed since the date of the Thirteenth Report.

### **Bauhaus**

35. As described in greater detail in the Trustee's fifteenth report to Court dated February 24, 2020 ("**Fifteenth Report**"), BDMC provided a syndicated mortgage loan ("**Bauhaus Loan**") to Lamb Bauhaus Inc. ("**Bauhaus Borrower**") which was secured by a charge on real property located at 284 King St. E., Toronto, Ontario ("**Bauhaus Project**").
36. In December 2019, without consulting the Trustee or Representative Counsel, the Bauhaus Borrower sent a vote, solicitation and feedback request directly to the Bauhaus Investors, which solicited the feedback of the Bauhaus Investors with respect to a \$2.2 million settlement offer. This settlement offer would have represented a recovery to the Bauhaus Investors of approximately 39% of principal ("**Original Offer**"). In response to the Original Offer, the Trustee sent a notice to the Bauhaus Investors outlining the Trustee's view that the Original Offer was neither fair nor reasonable in the circumstances and advised both the Bauhaus Investors and the Bauhaus Borrower that it would not be acting upon any votes from the Bauhaus Investors in response to the Original Offer.
37. In January 2020, the Local Planning Appeal Tribunal released its decision with respect to the Bauhaus Borrower's application for a zoning by-law amendment and site plan approval and ruled in favour of the Bauhaus Borrower, thereby crystallizing the saleable gross floor area for the project, eliminating the existing development uncertainty and reducing the timeline to completion of the Bauhaus Project by at least 12 months. As a result, the Trustee reengaged in negotiations with the Bauhaus Borrower regarding the payment of the amounts due to BDMC. The Bauhaus Borrower ultimately presented a revised offer to the Trustee in the amount of \$6,734,798 (approximately \$4.5 million, or 205%, more than the Original Offer) in full satisfaction of the amounts due under the Bauhaus Loan, which

represented 100% of the outstanding principal and accrued interest through to the effective date of the transaction ("**Bauhaus Final Offer**"). After soliciting feedback from the Bauhaus Investors, the Trustee entered into a settlement agreement with the Bauhaus Borrower, and the transaction was approved by the Court on February 28, 2020. A copy of the notices sent to the Bauhaus Investors seeking feedback on the Bauhaus Final Offer and detailing the outcome of the Investor solicitation process are attached as **Appendix "4"**.

### **Danforth**

38. As described in greater detail in the Trustee's sixteenth report to Court dated March 10, 2020 ("**Sixteenth Report**"), BDMC provided a syndicated mortgage loan ("**Danforth Loan**") to 1177 Danforth Avenue Ltd. ("**Danforth Borrower**"), which was secured by a charge on real property located at 1177 Danforth Avenue, Toronto, Ontario.
39. After extensive negotiations between the Danforth Borrower and the Trustee, the Danforth Borrower presented the Trustee with an offer in amount of \$7 million ("**Danforth Offer**") in full satisfaction of amounts due to BDMC under the Danforth Loan. The total principal outstanding on the Danforth Loan was approximately \$7.2 million. The Danforth Offer reflected a return of approximately 97% of the outstanding principal balance or a return of 106% of the outstanding principal, when previously paid interest was taken into account. After soliciting feedback from the Danforth Investors, the Trustee entered into a settlement agreement with the Danforth Borrower, and the transaction was approved by the Court on March 16, 2020. A copy of the notices sent to the Danforth Investors seeking feedback on the Danforth Offer and detailing the outcome of the Investor solicitation process are attached as **Appendix "5"**.

### **Solterra**

40. As described in greater detail in the Trustee's eighteenth report to Court dated August 19, 2020 ("**Eighteenth Report**"), BDMC provided a syndicated mortgage loan ("**Solterra Loan**") to 2382317 Ontario Inc. ("**Solterra Borrower**"), which was secured by a charge on real property located at MacAlister Blvd., Guelph, Ontario ("**Solterra Project**").
41. The Solterra Loan was advanced for the development of Phase 3 and Phase 4 of the Solterra Project. Phase 3 was completed in late 2019 and construction of Phase 4 remains ongoing. Proceeds from the sale of the Phase 3 homes were sufficient to repay in full the

first priority mortgagee registered on title to the Phase 3 lands, and the Trustee was able to negotiate an early partial repayment of the Solterra Loan in the amount of \$2,383,758 from the Phase 3 proceeds (“**Phase 3 Repayment**”).

42. Subsequent to the Phase 3 Repayment and following additional negotiations with the Solterra Borrower, the Solterra Borrower provided the Trustee with an offer to settle the remaining portion of the Solterra Loan for an aggregate amount of \$16,171,969 (“**Solterra Offer**”) in full satisfaction of amounts due to BDMC. The Solterra Offer, when combined with the Phase 3 Repayment, reflected a return of approximately 114% of the total principal balance owing under the Solterra Loan. After soliciting feedback from the Solterra Investors, the Trustee entered into a settlement agreement with the Solterra Borrower, and the transaction was approved by the Court on August 27, 2020. Copies of the notices sent to the Solterra Investors seeking feedback on the Solterra Offer and detailing the outcome of the Investor solicitation process are attached as **Appendix “6”**.

#### **Peter Richmond**

43. The Peter Richmond Project is a real estate development project located in downtown Toronto, Ontario comprised of multiple parcels of land (“**Land Assembly**”) that had syndicated mortgage loans in the principal amounts of approximately \$27.4 million (“**PRLA SML Loan**”) and \$4.5 million (“**LH2 Loan**”), in third and fourth ranking positions, respectively (the PRLA SML Loan and the LH2 Loan, jointly, the “**Peter Richmond Loans**”). The mortgage in respect of the LH2 Loan was only registered on title to 122-124 Peter Street, one of the parcels comprising the Land Assembly, while the mortgage in respect of the PRLA SML Loan was registered on all parcels comprising the Land Assembly.
44. As described in greater detail in the Trustee’s fourteenth report to Court dated January 23, 2020 (“**Fourteenth Report**”), and in the notice sent by the Trustee to the Peter Richmond Investors, which is attached as **Appendix “7”**, the Trustee undertook a focused solicitation process regarding a potential transaction involving the Peter Richmond Loans. As a result of this solicitation process, the Trustee determined that it was in the best interests of the Peter Richmond Investors to seek Court approval for the assignment of the indebtedness owed by the Peter Richmond borrower to BDMC in respect of the Peter Richmond Loans and related security in exchange for a cash payment of \$26.25 million

(“**Peter Richmond Realized Property**”). On January 30, 2020, the Court granted an Order approving the transaction.

45. Given the complexities surrounding the priority issues with respect to the Peter Richmond Loans, on October 15, 2020, the Trustee returned to Court and obtained Court approval to distribute the Peter Richmond Realized Property: (i) on a *pari passu* basis to all Peter Richmond Investors with respect to the portion of the Peter Richmond Realized Property allocable to 122-124 Peter Street; and (ii) solely to the PRLA SML Loan Investors with respect to the portion of the Peter Richmond Realized Property allocable to the remaining parcels of land in the Land Assembly. Details regarding the Trustee’s analysis and conclusions regarding the priority issues are described in detail in the Trustee’s Twenty-First Report dated October 2, 2020. The notices sent by the Trustee to the Peter Richmond Investors regarding the assignment transaction and the proposed distribution are attached as **Appendix “7”**.

#### **Realized Property from Sale Transactions**

46. As a result of the Trustee’s efforts in monitoring the development of each project and participating in sale and enforcement processes initiated by borrowers or senior lenders, since the date of the Thirteenth Report the Trustee has also obtained Realized Property from the sale of the following real estate development projects (both inside and outside of enforcement proceedings). In these cases, the Trustee negotiates to provide for the highest recovery possible for Investors in the circumstances. As discussed below, in certain circumstances, the Trustee continues to face competing claims to such recoveries, thereby making the outcome in those cases uncertain until such claims are resolved.

#### **Old Market Lane**

47. The Old Market Lane Project (“**OML Project**”) is a real estate development project in Woodbridge, Ontario that had three separate syndicated mortgage loans administered by BDMC in the principal amounts of approximately \$3.8 million, \$3.1 million and \$6.4 million (“**OML Loans**”).
48. On September 25, 2019, 5019203 Ontario Ltd. (“**5019 Ontario**”), the first priority mortgagee, commenced a notice of sale under mortgage proceeding (“**Notice of Sale**”) that would have allowed it to sell the property after November 15, 2019 if its mortgage was not repaid by the OML borrower prior to that date.



49. As described in greater detail in the Trustee's Twentieth Report to Court dated October 2, 2020 ("**Twentieth Report**"), the Trustee was independently presented with a proposed sale transaction for the OML Project prior to the commencement of the first mortgagee's sale process. The Trustee advised 5019 Ontario's counsel of the proposed offer, which was in excess of the appraisal previously commissioned by the Trustee and two appraisals commissioned by 5019 Ontario. 5019 Ontario ultimately entered into a transaction with this purchaser instead of pursuing its sale process, which resulted in residual proceeds of approximately \$1.57 million being distributed to BDMC in respect of the OML Loans ("**OML Residual Proceeds**") after payment of the 5019 Ontario mortgage and other closing costs. The Trustee's involvement in the sale process resulted in a transaction in excess of the appraised value and significant savings to the OML Investors due to the lack of real estate commissions and additional interest that would have accrued on the first priority mortgage over the duration of a sales process.
50. Given the complexities surrounding the priority issues with respect to the OML Loans, on October 15, 2020, the Trustee sought and obtained Court approval to distribute the OML Residual Proceeds on a *pari passu* basis to all OML Investors. The priority issues are described in detail in the Twentieth Report. The Twentieth Report also described the Trustee's recommendation to exclude Fortress from any distributions of the OML Residual Proceeds on the basis of certain minutes of settlement entered into by the Fortress-related borrower in respect of one of the OML Loans. At the October 15, 2020 hearing for approval of the Trustee's proposed distribution methodology, Fortress asserted a right to receive distributions in respect of the amounts contemplated by the minutes of settlement despite not serving any materials providing its basis for such claim. The Court denied Fortress' entitlement to any distributions from the OML Residual Proceeds to the direct benefit of the OML Investors.
51. Copies of the notices sent by the Trustee to the OML Investors regarding the outcome of the sale transaction and proposed distribution methodology for the OML Residual Proceeds are attached as **Appendix "8"**.

#### **North, Jasper House and Orchard**

52. The North, Jasper House and Orchard Projects are three separate proposed high-rise real estate development projects located in Alberta that were controlled by entities related to

the same principal owner. In each case, the owner of each project (i.e., the borrower under each of the respective BDMC loans) determined that it was unable to continue with the development of the project and listed the relevant property for sale with commercial real estate brokers (“**Listing Agents**”). All three projects were sold and each of the sale transactions has now closed<sup>5</sup>.

53. The North and Jasper House Projects, located in Edmonton, Alberta, with over \$8.2 million and \$8.3 million of principal outstanding, respectively, of second ranking syndicated mortgage loan debt administered by BDMC were listed for sale at \$8.25 million and \$7.8 million, respectively (jointly, the “**Edmonton Properties**”). The Edmonton Properties were listed for sale in or around November 2019 with no offer deadlines.
54. The Orchard Project is located in Calgary, Alberta and had over \$14.2 million and \$1.55 million of principal outstanding of third and fourth ranking syndicated mortgage loan debt administered by BDMC. The Orchard Project was listed for sale in or around January 2020, with no list price and an offer deadline of March 18, 2020.
55. The Trustee engaged in discussions with each of the respective Listing Agents and understood that each of the properties received continuous exposure during their marketing periods but only received limited interest. Specifically, each of the Listing Agents advised that there was significant market uncertainty in Alberta as a result of, among other things, the COVID-19 pandemic and the continued suppression of oil prices.
56. The Edmonton Properties both sold below their respective list prices and all three properties sold below the Trustee’s “as-is” appraisal for the properties. However, given that the sales were conducted outside of enforcement proceedings, the Trustee considered whether to grant a discharge of BDMC’s mortgages in connection with the sales (which was a condition precedent to the completion of each sale so that the purchaser could obtain clean title). In light of the modest recoveries potentially available for the BDMC Investors from each of the three sale transactions, the Trustee considered whether there were any alternatives to the sale transactions that could have resulted in a more favourable outcome. After consideration of available alternatives, the Trustee was of the view that the only viable alternative was a long-term hold of the Edmonton Properties and the Orchard property by the project borrowers until such time that the Alberta market

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<sup>5</sup> The Trustee’s counsel is holding the residual proceeds from the North and Jasper House sale transactions in its trust account pending resolution of the Related Party Claims discussed herein, and has not included such proceeds in the chart summarizing the Realized Property generated by the Trustee in paragraph 31 above.

could either support a higher price for a land transaction or until there was sufficient demand to support the development of the proposed condominium projects (or some other design and use of the properties). However, the Trustee understood that the borrowers were unable to raise the additional financing necessary to continue supporting the projects during the interim period, including the servicing of the priority debt. Given that a long-term hold was not a viable option for any of these projects, and the alternative was likely a distressed sale in a power of sale proceeding where there was no certainty of any recovery for Investors, the Trustee concluded that it was appropriate to discharge the BDMC mortgages registered on title to the Edmonton Properties and Orchard property.

### ***North and Jasper House***

57. The agreement of purchase and sale for the North Project included a sale price of \$4.7 million. After payment of the priority mortgage, property taxes, real estate commission and other closing costs, residual proceeds of approximately \$1.6 million were distributed to the Trustee to be held in trust by the Trustee's counsel pending resolution of the related party claims described below. On September 8, 2020, a notice was sent to the North Project Investors regarding the sale transaction, which is attached as **Appendix "9"**.
58. The agreement of purchase and sale for the Jasper House Project included a sale price of approximately \$4.3 million. After payment of the priority mortgage, property taxes, commission and other closing costs, residual proceeds of approximately \$1.8 million were distributed to the Trustee to be held in trust by the Trustee's counsel pending resolution of the related party claims described below. On September 22, 2020, the Trustee sent a notice to the Jasper House Project Investors regarding the sale transaction, a copy of which is attached as **Appendix "10"**.
59. The North and Jasper House borrowers have each provided the Trustee with a summary of amounts that each borrower claims it is owed from the respective sale proceeds, in each case in priority to second ranking syndicated mortgage loan debt administered by BDMC. These claims are comprised of, among other things, amounts advanced by certain companies related to the respective borrower to pay, among other things, certain carrying costs associated with the properties, including costs to service the priority mortgages (together, the "**Related Party Claims**"). The Trustee continues to engage in discussions with the Jasper House and North borrowers regarding the Related Party Claims in an effort to resolve the claims consensually and to avoid the costs that would be incurred and

delays that would ensue should the matter be litigated. In the event that an agreement cannot be reached with the borrowers, the Trustee will consider all of its options, including potentially seeking Court approval of a distribution to the BDMC Investors of the residual proceeds from each of the sale transactions. The North and Jasper House Investors were advised of the Related Party Claims in the notices they were sent regarding the sale transactions involving their respective projects.

60. In addition to the Related Party Claims, there was a further mortgage registered on title to the Jasper House property in third position, behind the BDMC mortgage, in favour of the North Project borrower, in the amount of \$768,650. It appears that the North borrower advanced these funds from the North Project to the Jasper House Project as a loan and such loan was not repaid. The Trustee is in the process of reviewing this transaction and will report back to the North and Jasper House Investors and to the Court upon completion of its review, as it may affect entitlement to the residual proceeds from the Jasper House sale transaction and accordingly the quantum that may be available for distribution to both the North and Jasper House Investors.

### **Orchard**

61. As described in greater detail in the Trustee's Nineteenth Report to Court dated September 15, 2020 ("**Nineteenth Report**"), the Orchard borrower entered into an agreement of purchase and sale in June 2020 for a purchase price of \$7 million. After payment of the priority mortgages, including a loan from a party related to the Orchard borrower, property taxes, commission and other closing costs, approximately \$1.8 million remained for distribution to the Orchard Investors ("**Orchard Residual Proceeds**"). Given the complexities surrounding the priority issues with respect to the two Orchard BDMC loans, the Trustee sought and obtained Court approval on September 22, 2020 to distribute the Orchard Residual Proceeds on a *pari passu* basis to the Orchard Investors. Details regarding the Trustee's analysis and conclusions regarding the priority issues are described in detail in the Nineteenth Report. A copy of the notice sent by the Trustee to the Orchard Investors regarding the outcome of the sale transaction and proposed distribution methodology for the Orchard Residual Proceeds is attached as **Appendix "11"**.

## **SALE PROCESSES CONDUCTED THROUGH ENFORCEMENT PROCEEDINGS**

62. There continue to be several projects subject to enforcement proceedings commenced by senior lenders whose mortgages have gone into default. The Trustee notes that it is possible that the number of properties subject to enforcement proceedings will continue to increase, as project borrowers continue to face challenges (i) achieving development milestones, (ii) selling remaining units in completed projects and (iii) in obtaining replacement financing while the projects remain affiliated with BDMC and Fortress, thereby causing the borrowers to fail to adequately service priority loans.
63. These enforcement proceedings often lead to a sale of the property by way of a formal sale process, which may or may not involve Court proceedings. To the extent possible, the Trustee takes an active role in these proceedings in order to ascertain, and potentially improve, the likelihood of recoveries to the Investors. Despite having limited control over the negotiations and terms of any potential transaction as a subsequent mortgagee, the Trustee requests information with respect to the sale process conducted in order to ensure, to the extent possible, that any process conducted has been commercially reasonable and has considered the duties of the relevant parties and the debt owing to BDMC.
64. Where the Trustee determines that it is likely that senior lenders will suffer a shortfall (often based on the appraisals commissioned by the Trustee and discussions with the Trustee's appraiser and planning consultant) and, as a result, the Investors will not recover any amounts on a project, the Trustee seeks to limit its continued involvement in the proceedings. However, in circumstances where the Trustee is of the view that it may be able to generate or increase returns to Investors, it attempts to facilitate transactions that may not otherwise be available or known to the enforcing party.

### **Ongoing sale processes in enforcement proceedings**

65. Below is a summary of sale processes in enforcement proceedings that have been commenced and/or continued since the date of the Thirteenth Report. Additional Realized Property may be generated from these projects, but the timing and quantum thereof remains unknown.
66. Nobleton South Project: a real estate development project in Nobleton, Ontario ("**Nobleton South Project**") that has over \$7.7 million in principal of second ranking

syndicated mortgage loan debt administered by BDMC. The Nobleton South Project was subject to a Notice of Sale issued by the priority mortgagees in respect of acquisition financing in excess of \$3.4 million that had matured. The Trustee has been actively involved in the Notice of Sale process and has been dealing directly with the priority mortgagees. The Trustee has been advised that the priority mortgagees have entered into an agreement of purchase and sale with respect to the property and the transaction is scheduled to close in December 2020. The purchase price for the property has not been publicly disclosed to protect the value of the property in the event that the transaction with the purchaser is not completed. Once the transaction closes, the Trustee will provide the Nobleton South Investors with information regarding the purchase price and any Investor recovery.

67. King Square Project: a three-storey condominium shopping mall development in Markham, Ontario (“**King Square Project**”) with approximately \$8.6 million in principal of third ranking syndicated mortgage loan debt administered by BDMC. The King Square Project was subject to a Notice of Sale dated March 6, 2020 issued by Firm Capital Mortgage Fund Inc. (“**Firm Capital**”). As of November 11, 2020, the amount owing to Firm Capital was approximately \$60.6<sup>6</sup> million inclusive of interest and fees accrued to that date. Firm Capital is working together with the King Square borrower to sell the remaining inventory comprising the King Square Project. In aggregate, approximately 45% of the net saleable area has been sold. The timing and quantum of recoveries, if any, for the King Square Investors remains uncertain and is dependent upon the timing and selling price of the remaining inventory and the status of the amounts owing to Firm Capital, which continue to accrue interest. A notice was sent by the Trustee to the King Square Project Investors on March 25, 2020 advising that Firm Capital had issued a Notice of Sale, a copy of which is attached as **Appendix “12”**. The Trustee continues to engage with Firm Capital to monitor its progress with respect to the sale of the remaining inventory.
68. Bowmanville Project: a real estate development project in Bowmanville, Ontario (“**Bowmanville Project**”) with approximately \$5.3 million in principal of third ranking syndicated mortgage loan debt administered by BDMC. On May 5, 2020, Ernst & Young Inc. (“**EY**”) was appointed as receiver for the Bowmanville Project and retained CBRE

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<sup>6</sup> The Firm Capital indebtedness is inclusive of approximately \$14 million of vendor take back mortgages between Firm Capital and the purchasers of certain units.

Land Services Group to market the property for sale. EY sought and obtained Court approval on November 5, 2020 of an agreement of purchase and sale between the receiver and Brookhill Durham Holdings Inc., a company related to the Bowmanville borrower and the party that submitted the highest and best offer.

69. The purchase price for the property has not been publicly disclosed to protect the value of the property in the event that the transaction with the purchaser fails to close. The Trustee understands that given the quantum of debt in priority to the BDMC debt, the Bowmanville Investors will experience a significant shortfall on their loan. The sale transaction is scheduled to close on November 23, 2020, after which the Trustee will provide the Bowmanville Investors with information regarding the purchase price and any Investor recovery. On October 21, 2020, a notice was sent to the Bowmanville Investors with respect to the EY sale approval motion, a copy of which is attached as **Appendix "13"**.
70. South Shore Project: a real estate development project in Keswick, Ontario ("**South Shore Project**") with over \$20.6 million in principal of second ranking syndicated mortgage loan debt and approximately \$8.6 million in principal of third ranking syndicated mortgage loan debt administered by BDMC. As described in the Thirteenth Report, on January 24, 2019, Diversified Capital Inc. ("**Diversified**") issued a Notice of Sale in respect of its priority debt in excess of \$6.9 million that had matured. The Trustee has engaged in correspondence with Diversified since the commencement of the enforcement proceedings and has sought certain information from Diversified. In October 2019, Diversified advised the Trustee that it was in the process of commencing a formal marketing process, which included retaining a commercial broker to list the property for sale. Thereafter, the Trustee continued to follow up with Diversified requesting updates regarding its efforts to sell the property as it continued not to be listed for sale on the open market. Despite the Trustee's repeated requests, which included a letter to Diversified from the Trustee's counsel on June 5, 2020 ("**Diversified Letter**"), the information requested was not provided. With the exception of limited responses to the Trustee's correspondence after the issuance of the Diversified Letter, Diversified continued to ignore the Trustee's requests for information. Through its own research, the Trustee understands that, on or about October 21, 2020, the property was formally listed for sale with Colliers International on an unpriced basis and with a deadline for offers of November 26, 2020. The Trustee is continuing to attempt to engage in discussions with Diversified to obtain more information regarding the sale process so

that it can evaluate the appropriateness of the sale process and assess BDMC's rights in respect of the South Shore Project.

71. Port Place 2 Project: a real estate development project involving four land parcels (collectively, "**Port Place 2 Lands**") in St. Catharines, Ontario. As described in greater detail in the Trustee's Twenty-Third Report to Court dated October 8, 2020 ("**Twenty-Third Report**"), the first-ranking mortgagees issued a Notice of Sale requiring the full amount of the then outstanding debt under the first mortgage to be paid on or before May 30, 2019. As the May 30, 2019 deadline was not met, a sales and marketing process for the Port Place 2 Lands was commenced. In June 2020, a sale transaction for one of the four parcels was completed. The Trustee understands that the remaining three parcels ("**Remaining Port Place 2 Lands**") are currently subject to sale transactions that have not yet been completed.
72. As described in the Thirteenth Report, there was a priority issue regarding title to the Port Place 2 Lands with respect to financing in the amount of \$1.47 million that was advanced by certain first-ranking mortgagees and registered in third position (i.e., subordinate to the BDMC debt) on title to the Port Place 2 Lands ("**Additional Financing**"). The title insurer claimed that the Additional Financing was always intended to rank in priority to the BDMC debt and contended that the doctrine of equitable subrogation applied in the circumstances. The Trustee reviewed the documentation and legal arguments and considered the likelihood of success at, and anticipated costs of, a contested priority dispute before the Court. The Trustee determined that it would be in the best interests of the Port Place 2 Investors to negotiate a settlement with respect to the Additional Financing, and ultimately agreed that the Additional Financing would rank in priority to the BDMC debt on the Port Place 2 Lands, but only to the extent of certain maximum priority amounts applicable to each parcel of land. The Trustee agreed upon proposed subordination and priority agreements with respect to the BDMC mortgage on the Remaining Port Place 2 Lands and obtained an Order from the Court on October 15, 2020 authorizing the Trustee to enter into such subordination and priority agreements. The priority dispute and resulting postponement are described in detail in the Twenty-Third Report. A copy of the notice sent to the Port Place 2 Investors regarding the completion of the sale transaction and the proposed resolution of the priorities issue is attached as **Appendix "14"**.



**Sales completed in enforcement proceedings that generated no Realized Property**

73. The following sale transactions were completed through enforcement proceedings since the Thirteenth Report and resulted in no recoveries for the BDMC Investors.
74. Lake and East Project: a real estate development project in Oakville, Ontario ("**Lake and East Project**") with approximately \$9.1 million in principal of second ranking syndicated mortgage loan debt administered by BDMC. The Lake and East Project was subject to a Notice of Sale commenced by Toronto Capital Corporation ("**TCC**"), the first priority mortgagee. On December 18, 2019, TCC accepted an offer for the sale of the property from a third party, 2726102 Ontario Inc., at a sale price of \$7 million. As at the closing of the sale transaction, the total owing to TCC was in excess of \$7.5 million. As TCC suffered a shortfall on its priority loan and mortgage, there were no recoveries available for the Lake and East Investors. On July 21, 2020, a notice was sent to the Lake and East Investors with respect to the sale transaction, a copy of which is attached as **Appendix "15"**.
75. Triple Creek Project: a real estate development project in Rocky View County, Alberta ("**Triple Creek Project**") with over \$15.4 million of syndicated mortgage loan debt administered by BDMC. There were two BDMC mortgages registered on title to the Triple Creek Project (jointly, the "**Triple Creek Debt**"), as follows: (i) a fourth ranking mortgage registered in the amount of \$12.9 million representing the original principal advanced by the Triple Creek Investors; and (ii) a fifth ranking mortgage registered in the amount of approximately \$2.5 million which represents the accrued interest on the fourth ranking mortgage through to July 2017, when the Triple Creek Project was acquired by the Triple Creek borrower from the original borrower. The Triple Creek Project is a large block of land near Calgary that is outside of the existing built boundary. The Triple Creek Project was subject to a Notice of Sale initiated by the first priority mortgagee, Romspen Investment Corporation ("**Romspen**"), in May 2018. As at September 3, 2020, the total amount owing to Romspen was approximately \$4.2 million, inclusive of interest. In addition to the Romspen debt, there were two other loans totaling approximately \$4 million registered on title to the property that is the subject of the Triple Creek Project that rank in priority to the Triple Creek Debt.
76. On December 14, 2018, the Court of Queen's Bench of Alberta granted an order permitting the property to be listed for sale for six months, with no offer deadline, at a list price of \$3

million. A report prepared by the listing agent noted that over the course of the six months, with the exception of one verbal offer for \$1.9 million, no offers were received. After the completion of the initial six-month listing, the listing agent continued to market the property on its website until July 2020, during which time it received three verbal offers ranging from \$700,000 to \$1.6 million.

77. Given the lack of interest in the property, Romspen sought and obtained an Order for Foreclosure on October 29, 2020, which resulted in Romspen being granted a new Certificate of Title to the property solely in its name and all subsequent encumbrances, including the BDMC mortgages, being discharged from title to the property, with no recovery for the Triple Creek Project Investors or the second or third ranking loans that are in priority to the Triple Creek Project Investors. The Trustee actively monitored the sale process and engaged with the stakeholders; however, given the amount of priority debt and the lack of interest from potential purchasers, no recoveries were generated from this project. A notice was sent by the Trustee to the Triple Creek Investors on October 21, 2020 advising that Romspen was seeking the Foreclosure Order, a copy of which is attached as **Appendix "16"**.

#### **ONGOING SALE PROCESSES OUTSIDE OF ENFORCEMENT PROCEEDINGS**

78. Since the date of the Thirteenth Report, the Trustee has continued to be approached by project borrowers seeking to sell their projects prior to completion of the development. When properties are sold outside of an enforcement proceeding, the properties are transferred subject to the existing encumbrances, including the BDMC mortgages to the extent they remain unpaid from the proceeds of the transaction. Given that purchasers generally seek to acquire title free and clear of existing encumbrances, the potential purchasers frequently require that the borrowers obtain a discharge of all mortgages on title as a condition precedent to the sale transaction, despite the BDMC Investors suffering a shortfall on their investments as a result of such transaction. Often, the Trustee is informed that without the proposed sale transaction, the property would be sold pursuant to a distressed sale process as the borrower is no longer able to service the priority mortgages. Accordingly, to complete the transaction, the borrower and the purchasers require the prior consent of the Trustee to discharge any BDMC mortgages registered on title.

79. The Trustee evaluates proposed sale transactions, including the proposed distribution of the sale proceeds, to determine if, in the circumstances, it appears to be appropriate and in the best interests of the BDMC Investors to agree to discharge the BDMC mortgage despite a resulting shortfall to the Investors. The Trustee considers, among other things, information regarding the status of the project financing, the sale process conducted, the number of offers received, the stage of the project development, the reason for the proposed sale and the viability of any alternative solutions. Wherever possible, the Trustee seeks to negotiate the terms of the transaction to generate or increase recoveries for Investors, including seeking reduced fees or new security in favour of the BDMC Investors following the sale.
80. Below is a summary of the ongoing sale processes that were commenced by project borrowers outside of formal enforcement proceedings since the date of the Thirteenth Report.
81. Sky City Project: a real estate development project in Winnipeg, Manitoba (“**Sky City Project**”) with five syndicated mortgage loans administered by BDMC registered on title in fourth through eighth position whose principal balances in aggregate total approximately \$32 million (collectively, the “**BDMC Sky City Debt**”). There are three mortgages registered on title to the Sky City Project in priority to the BDMC Sky City Debt that in aggregate total approximately \$9.5 million. In addition, Fortress has claimed that it is entitled to a mortgage in priority to the BDMC Sky City Debt in respect of approximately \$2 million that it claims it advanced to the Sky City borrower, an entity related to Fortress, for certain carrying costs of the property. The Trustee has not agreed to Fortress’ claim to a priority mortgage, and no such mortgage has been registered on title to date.
82. The Trustee was advised that the Sky City borrower was seeking to sell the property and retained CW Stevenson Inc. to list the property for sale on September 15, 2020. The property was listed with no list price and an offer deadline of October 15, 2020. The Trustee has been unable to obtain information directly from the real estate broker regarding the sale process, as the broker has advised the Trustee that the Sky City borrower had instructed the broker that information requests by the Trustee regarding the outcome of the sales process should be directed to it. The Sky City borrower advised that discussions are ongoing with prospective purchasers regarding offers that have been submitted, but despite repeated requests, has provided no information to the Trustee with

respect to the quantum of the offers. Accordingly, it is unknown at this time if a sale transaction will be completed, or whether any such transaction would provide sufficient proceeds to repay any portion of the BDMC Sky City Debt. Should there be funds available beyond the amount required to satisfy the priority mortgages on the Sky City Project, the Trustee will review the claim advanced by Fortress and determine next steps. A notice was sent by the Trustee to the Sky City Investors advising of the sale process on September 23, 2020, a copy of which is attached as **Appendix "17"**.

83. On October 13, 2020, 11615467 Canada Ltd, the third priority mortgagee on title to the Sky City properties, issued a Notice of Sale requiring the payment of the full amount of its outstanding debt of approximately \$1.8 million. The Trustee has been advised by counsel to the third priority mortgagee that, should its debt not be repaid within 30 days of the issuance of the Notice of Sale, the third priority mortgagee intends to seek court approval to list the Sky City properties for sale regardless of the existing sale process being conducted by the borrower.
84. Whitby Project: a real estate development project in Whitby, Ontario ("**Whitby Project**") with over \$14.7 million in principal of second ranking syndicated mortgage loan debt administered by BDMC. There is one priority mortgage registered on title in the amount of approximately \$12.7 million. The Whitby borrower had exhausted the funds advanced by the priority mortgagee in early 2020 and sought additional financing required to continue the development of the Whitby Project. However, the Whitby borrower was not able to obtain such additional financing and was unable to fund the May interest payment owing to the priority mortgagee. In order to remedy this default with the priority mortgagee, the Whitby borrower negotiated additional financing from such mortgagee in the amount of \$650,000, which amount would cover its expenses to October 31, 2020 while the Whitby borrower attempted to complete a sale of the Whitby Project. The Trustee, on behalf of BDMC, agreed to subordinate and postpone to the additional funds in May 2020.
85. The Whitby borrower has retained Jones Lang LaSalle Real Estate Services Inc. ("**JLL**") to sell the property. The property is listed for sale with no list price and no bid deadline. The Trustee understands from discussions with JLL that there are a number of parties interested in the property. The Whitby borrower has also informed the Trustee that it has entered into a conditional agreement of purchase and sale for the Whitby Project, which

would require the discharge of the BDMC mortgage as a prerequisite to closing. The Trustee understands that the prospective purchaser is continuing its due diligence, and such due diligence period has been extended to December 2020. However, as noted above, the additional priority financing only provided sufficient funding through to October 31, 2020. Accordingly, the Trustee understands that the Whitby borrower is in discussions with the first priority mortgagee for additional financing to bridge to the closing of a sale transaction. The Trustee continues to monitor the sale process through discussions with the Whitby borrower and with JLL directly. Notices were sent by the Trustee to the Whitby Investors advising of the financing, the sale process and the conditional agreement of purchase and sale on February 4, 2020 and June 18, 2020, copies of which are attached as **Appendix "18"**.

#### **OTHER MATERIAL PROJECT DEVELOPMENTS**

86. As set out above, in order to provide the BDMC Investors with information on the status of their investments, the Trustee has updated the Project Analysis Summary attached as **Appendix "3"** to this Report and will be posting the updated Project Analysis Summary on the Trustee's Website. In addition to these updates and the updates with respect to the projects described above, the following projects have been the subject of material developments since the date of the Thirteenth Report.

#### **Brookdale**

87. The Brookdale Project is a real estate development project in midtown Toronto that had approximately \$4.6 million in principal of mezzanine syndicated mortgage loan debt and over \$20 million in principal of subordinated syndicated mortgage loan debt administered by BDMC and owed by Fortress Brookdale Inc. ("**Brookdale Borrower**"). These loans had fourth and fifth ranking mortgages, respectively, registered on title to the Brookdale Project.
88. The Brookdale Project was subject to a Notice of Sale proceeding brought by Firm Capital in respect of first priority construction financing that had matured. Firm Capital appointed RSM Canada Limited ("**RSM**") as its private receiver over the assets comprising the Brookdale Project. RSM ran a sales process for the Brookdale Project and, on October 18, 2018, the Court approved the sale of the property. The transaction closed on October 24, 2018. Based on RSM's Court materials, the selling price for the property was

approximately \$50 million and the net proceeds, after costs and repayment of the Firm Capital mortgage, were \$26,945,205, which amount was paid into Court pending resolution of various competing claims regarding the priority of distribution of the proceeds.

89. The Trustee has played an active role in contested litigation dealing with entitlement to the net proceeds in order to protect the interests of the Investors in the Brookdale Project. The Trustee has participated in contested Court proceedings, numerous case conferences and a Court-ordered mediation and has provided hundreds of thousands of documents and other information in the context of this litigation. These proceedings have been complex and time-consuming.
90. On February 13, 2019, a case conference was held to review next steps in the process of resolving 14 construction liens registered against the Brookdale property, pursuant to which approximately \$8.7 million was being claimed, and related priority issues in respect of the distribution of the net proceeds. Following a second case conference, an order was granted by the Court on March 21, 2019 approving the payment of \$5,872,436 to the second ranking mortgagee and \$580,062 to the third ranking mortgagee from the net proceeds, which prevented further interest from accruing on these loans, to the benefit of the Investors. After the repayment of these amounts, approximately \$20.4 million remained with the Court.
91. Following multiple further case conferences, onerous documentary production requests and a mediation between the Trustee and the lien claimants that, while productive, did not immediately result in a resolution of the lien claims, the Trustee and its counsel continued extensive negotiations and ultimately reached a settlement with carriage counsel to the lien claimants. This lien claim settlement was the result of significant efforts by the Trustee and its counsel and represents a significant step toward resolution of the remaining issues preventing distribution of the net proceeds.
92. The lien claim settlement was approved by the Honourable Mr. Justice McEwen pursuant to a consent Order dated August 28, 2020, which provided for, among other things, the payment to the construction lien claimants of \$4,551,903 from the net proceeds held by the Court in full and final satisfaction of all lien claims and costs. Following this payment, there remains approximately \$17 million of proceeds held by the Court.

93. The Trustee is now addressing the remaining claims to the net proceeds that are seeking priority to or otherwise affecting the priority of the BDMC mortgages, being the following:
- (a) a claim by Computershare Trust Company of Canada ("**Computershare**"), in its capacity as the trustee pursuant to a Bond Trust Indenture dated November 26, 2013, under which the Trustee understands approximately \$9 million plus interest and costs is claimed;
  - (b) a claim by the Brookdale Borrower, an entity related to Fortress, for funds which it claims it had injected to support the carrying costs of the Brookdale Project in the amount of approximately \$1.5 million; and
  - (c) a claim by Fernbrook Homes (Brookdale) Limited, who has informed the Trustee that it is currently preserving certain rights with respect to the net proceeds.
94. The Trustee is continuing its efforts to maximize Investor recoveries under both the mezzanine and subordinated syndicated BDMC mortgages and to resolve all remaining matters concerning entitlement to the remaining net proceeds from the Brookdale Project. While the Trustee is hopeful that at least some of the remaining claims can be resolved without further litigation, the Trustee is prepared to take additional steps as necessary. As such, the quantum and timing of any distribution in respect of these loans remains unknown given the outstanding unresolved priority issues. A notice summarizing the current status of the ongoing litigation efforts was sent to Brookdale Investors on October 21, 2020, a copy of which is attached as **Appendix "19"**.

### **Castlemore**

95. As described in greater detail in the Trustee's twelfth report to Court dated October 31, 2019 ("**Twelfth Report**"), BDMC provided a syndicated mortgage loan in a principal amount of approximately \$21.25 million ("**Castlemore Loan**") to Emerald Castle Developments Inc. pursuant to a loan agreement dated August 25, 2014 ("**Castlemore Loan Agreement**"), which is secured by a charge on real property located at 10431 Gore Road, Brampton, Ontario ("**Castlemore Project**").
96. In late 2019, the Castlemore borrower presented the Trustee with an offer to accept a payment of \$9.5 million in full satisfaction of the amounts due under the Castlemore Loan Agreement ("**Castlemore Offer**"). The Trustee presented the Castlemore Offer to the

Castlemore Investors by sending a notice describing the Castlemore Offer and requesting feedback. Although the feedback was generally supportive of the Castlemore Offer, the Trustee also received feedback expressing concerns with respect to the consideration contemplated by the Castlemore Offer. As a result of the Investor feedback, the Trustee reengaged with the Castlemore borrower and negotiated an increase to the consideration contemplated by the Castlemore Offer from \$9.5 million to \$10.45 million (“**Revised Castlemore Offer**”).

97. The Trustee executed the Revised Castlemore Offer and, on October 31, 2019, with the support of Representative Counsel, served its Twelfth Report and motion materials seeking approval of the Revised Castlemore Offer. However, during the period between the service of materials and the proposed hearing, the Trustee and Representative Counsel were contacted by numerous Investors expressing concerns with respect to the Revised Castlemore Offer. In addition, a number of Investors that originally favoured acceptance of the Castlemore Offer reversed their position and advised the Trustee that they were no longer supportive of the Trustee accepting the Castlemore Offer and seeking Court approval of same.
98. The additional Investor feedback received after the filing of the Twelfth Report resulted in a materially lower level of support for the Revised Castlemore Offer and a materially lower level of support when compared to other settlement transactions completed by the Trustee. As such, the Trustee determined that it would not be moving forward with its motion seeking approval of the Revised Castlemore Offer and the Revised Castlemore Offer expired in accordance with its terms.
99. The Castlemore Loan matured in late November 2019. On December 6, 2019, the Castlemore borrower purported to trigger a clause contained in the Castlemore Loan Agreement (“**End of Term Event Clause**”).
100. On March 2, 2020, contrary to the stay of proceedings, the Castlemore borrower issued a notice of application naming the Trustee as a Respondent seeking to enforce the End of Term Event Clause. To efficiently address this procedural irregularity, the Trustee consented in writing to the Castlemore borrower commencing its application, subject to a full reservation of rights, but did not consent to the Castlemore borrower’s purported invocation of the End of Term Event Clause.



101. The Trustee and Representative Counsel have opposed the Castlemore borrower's application to enforce the End of Term Event Clause. The Castlemore borrower advanced the position that, under the End of Term Event Clause, it could pay to BDMC a sum of only approximately \$9.1 million in exchange for a full discharge of BDMC's security on the Castlemore property and of its obligations under the Castlemore Loan Agreement, extinguishment of the debt and a full release from the Castlemore Investors. The application also sought to determine the calculation of amounts owing to the parties pursuant to a waterfall clause in the Castlemore Loan Agreement. The Trustee disagrees with the Castlemore borrower's position and filed the Seventeenth Report and multiple factums in connection with the application. The Trustee and Representative Counsel also cross-examined the principal of the Castlemore borrower.
102. At a case conference on September 3, 2020, the Honourable Mr. Justice Hailey ordered that the issue of the calculation of the amounts owing under the waterfall clause be bifurcated from the issue regarding the enforceability of the End of Term Event Clause. Justice Hailey ordered that the calculation issue be heard at a later date to the extent it is still relevant following the determination of the enforceability of the End of Term Event Clause.
103. On November 3, 2020, the Honourable Madam Justice Dietrich heard the application regarding the enforceability of the End of Term Event Clause and the waterfall clause. The Castlemore borrower made submissions in favour of its position. In response, the Trustee made two main arguments in opposition to the application. First, the Trustee argued that the End of Term Event Clause and waterfall clause are unenforceable under the principle that inadequate notice of an unfair term in an agreement renders that term unenforceable. Second, the Trustee argued that, should the Court find the End of Term Event Clause to be enforceable, the appropriate interpretation of the clause only allows the Castlemore borrower to make a partial payment to the Investors in exchange for a partial release of their security in an amount corresponding to the payment. Representative Counsel explained the lack of disclosure to the Investors regarding the Castlemore borrower's interpretation of the End of Term Event Clause and stressed the significant losses that Investors would suffer if the Castlemore borrower's interpretation of the clause is enforced. Justice Dietrich has reserved her decision on the application. The Trustee will provide a further update to the Castlemore Investors and this Court following her decision.

**Eden**

104. The Trustee previously provided updates regarding the syndicated mortgage loan made to 2309918 Ontario Inc. in connection with a real estate development project in King City, Ontario consisting of 28 residential homes ("**Eden Project**") in the Second Report, the Seventh Report, and the Thirteenth Report. The Thirteenth Report discusses the following: (i) a third party claim issued by David Chong ("**Chong**"), the Eden borrower's counsel, naming, among others, the Trustee as a third party in a lawsuit commenced by certain purchasers of houses in the Eden Project against Chong, the Eden borrower, and certain related individuals (collectively, the "**Eden Project Litigation**"), and (ii) an application brought by the Trustee for a Bankruptcy Order against the Eden borrower pursuant to section 43(2) of the *Bankruptcy and Insolvency Act (Canada)* ("**BIA**").
105. As previously reported, the Court directed the Trustee, its counsel and counsel to the parties to the Eden Project Litigation to meet on a without prejudice basis to discuss the Eden Project Litigation and a possible global resolution thereof. Representatives of the parties have met on multiple occasions and, as at the date of this Twenty-Fourth Report, negotiations are continuing. The Court also required Chong to discontinue the third party claim against the Trustee. While the Trustee is hopeful a resolution will be achieved, the Trustee will continue to explore all options with respect to this matter.
106. Also as previously reported, the Eden borrower was adjudged bankrupt in June 2019 and Grant Thornton Limited was appointed as bankruptcy trustee ("**GT**") to, among other things, review the affairs of the Eden borrower and determine the nature and scope of any potential recovery efforts. GT has continued the initial phase of the investigation into the affairs of the bankrupt during the pendency of the Eden Project Litigation and related settlement discussions, including through a review of certain financial and other information obtained from the Eden borrower. The Trustee understands that, should the parties fail to reach a global settlement in the Eden Project Litigation, GT may, among other things, further avail itself of the broad statutory investigatory powers given to trustees in bankruptcy under the BIA with a view to commencing legal proceedings under the BIA and any other applicable provincial statutes against the Eden borrower and/or other persons of interest.

### Charlotte Adelaide

107. The Charlotte Adelaide Project ("**CHAT Project**") is a real estate development project in downtown Toronto that had two different syndicated mortgage loans administered by BDMC: approximately \$12.3 million in principal owed to one group of Investors and approximately \$3.91 million in principal owed to another group of Investors. As described in the Thirteenth Report, the CHAT borrower presented an executed agreement of purchase and sale to the Trustee in March 2019 in respect of the sale of the CHAT Project ("**CHAT Transaction**") to Adelaide Square Developments ("**CHAT Purchaser**"). Despite being presented with an executed agreement, the Trustee negotiated with the CHAT borrower and the CHAT Purchaser for an amended agreement of purchase and sale with a higher sale price.
108. In addition, the Trustee, the CHAT Purchaser, Go-To Stoney Creek Elfrida LP, its general partner and its principals also entered into a memorandum of understanding in respect of the CHAT Transaction. Pursuant to this memorandum of understanding, BDMC was given the opportunity to receive a further payment from the CHAT Transaction of up to \$5.2 million based on the achievement by the CHAT Purchaser of certain development milestones ("**Density Bonus**"). The CHAT Purchaser has advised that it is of the view that the Density Bonus is not payable. The Trustee is currently in discussions with the CHAT Purchaser and Go-To Stoney Creek Elfrida LP to understand their position.

### Kemp

109. The Kemp Project is a real estate development project in Barrie, Ontario which had over \$17.2 million of fourth ranking syndicated mortgage loan debt administered by BDMC and approximately \$784,000 of accrued interest for which the Investors had been given a separate fifth ranking mortgage administered by BDMC. As was advised in the Thirteenth Report, the Kemp Project was the subject of a Notice of Sale issued by Romspen in respect of its first priority mortgage, which had matured. The net remaining proceeds available to the Kemp Investors from the sale transaction completed by Romspen was approximately \$2.2 million ("**Kemp Residual Proceeds**"). Shortly before the distribution of the proceeds by Romspen, Fortress, on behalf of itself and the Kemp borrower, submitted a claim to the Kemp Residual Proceeds in the amount of approximately \$572,000. Fortress claimed that it should be paid this amount in priority to the amounts to be paid to the Trustee on behalf of the Kemp Investors. The Trustee reviewed Fortress' claim and disagreed with the analysis provided by Fortress. In order to distribute as much

of the Kemp Residual Proceeds to the Kemp Investors as soon as possible, the Trustee held back \$700,000 in order to deal with the Fortress claim and distributed the remaining proceeds to the Kemp Investors. The Trustee continues to be in discussions with Fortress and others in respect of this claim and will provide further updates to the Kemp Investors and the Court in due course.

## **GENERAL DEVELOPMENTS RELATED TO THE BDMC PROCEEDINGS**

### **FSRA Administrative Penalty**

110. On September 9, 2020, the Financial Services Regulatory Authority of Ontario (“**FSRA**”) issued an enforcement order for administrative penalties against Fortress in the total amount of \$250,000.
111. According to a press release by FSRA dated September 10, 2020, Fortress and its predecessor, Fortress Real Capital Inc., assisted borrowers in connecting to mortgage brokers and administrators between 2009 and 2018, which allowed these brokers to raise over \$900 million in syndicated mortgage loans. The Trustee understands that Fortress has never been licensed under the MBLAA.
112. Under a settlement agreement reached between Fortress and FSRA, Fortress agreed to pay the administrative penalties for contraventions of section 2(2) of the MBLAA, which prohibits the business of dealing in mortgages in Ontario without a brokerage license or exemption from such licensing requirements. FSRA determined that there were twelve contraventions of section 2(2) relating to Fortress providing services to borrowers for the purpose of financing property developments while Fortress was not licensed to do so.
113. Although four mortgage brokerages (including BDMC) that were involved with syndicated mortgage investments for projects developed by Fortress were ordered to pay a combined monetary penalty of \$1.1 million by regulators in 2018, this administrative penalty was the first direct penalty against Fortress. The Trustee also understands that this was the largest administrative penalty FSRA has imposed since it assumed the regulatory duties of the Financial Services Commission of Ontario (the Applicant in this proceeding) in June 2019.

### **Statement of Claim**

114. Prior to the commencement of these proceedings, BDMC and FAAN Mortgage entered

into a management and administration services agreement (“**Services Agreement**”) dated February 7, 2018. Under the Services Agreement, BDMC appointed FAAN Mortgage to, among other things, manage, or cause to be managed, the business of BDMC. In exchange for its services, BDMC agreed to pay FAAN Mortgage a monthly amount, plus additional costs and expenses, including third party legal fees. Under the Services Agreement, BDMC was also required to maintain a reserve fund to pay unpaid invoices of FAAN Mortgage and accumulated interest thereon. BDMC failed to pay any amounts toward such reserve fund as required.

115. As a condition of entering into the Services Agreement, FAAN Mortgage, BDMC, Fortress and certain Fortress owned and/or controlled entities that owned, directly or indirectly, a real estate development project related to these proceedings (collectively, the “**Fortress Indemnitors**”) entered into a contribution and indemnity agreement dated February 7, 2018 (“**Contribution and Indemnity Agreement**”). Under the Contribution and Indemnity Agreement, if BDMC failed to pay any invoice when due under the Services Agreement, the Fortress Indemnitors were required to pay such invoices.
116. From February 7, 2018 to April 20, 2018, FAAN Mortgage performed its obligations under the Services Agreement and submitted invoices for services rendered in accordance therewith.
117. On April 20, 2018, FAAN Mortgage was appointed as the Court-appointed Trustee in these proceedings and the Services Agreement was terminated. In June 2018, FAAN Mortgage delivered a demand letter to BDMC and the Fortress Indemnitors seeking payment of all amounts due and payable under the Services Agreement, which amounts totaled \$495,763.61 (“**Unpaid Debts**”), plus interest. At such time, the amounts were past due and payable immediately.
118. Notwithstanding multiple demand letters sent to the Fortress Indemnitors, the Fortress Indemnitors have failed to make payments towards the Unpaid Debts to FAAN Mortgage, in breach of the terms of the Contribution and Indemnity Agreement.
119. Accordingly, on February 28, 2020, FAAN Mortgage commenced a legal proceeding against the Fortress Indemnitors for damages in the amount of the Unpaid Debts (plus interest and costs) as a result of the breaches of the Contribution and Indemnity Agreement, by the issuance of a statement of claim (“**Statement of Claim**”). The

Statement of Claim was served on the Fortress Indemnitors by mail on October 19, 2020.

### **Tax Opinions Order**

120. On October 15, 2020, the Court heard a joint motion brought by the Trustee and Representative Counsel, and granted the Tax Opinions Order, which allowed for the orderly dissemination of certain Tax Opinions (defined below) in the possession of the Trustee or that otherwise come into the Trustee's possession. A copy of the Tax Opinions Order is attached as **Appendix "20"**.
121. As a result of taking possession of the books and records of BDMC, the Trustee currently has possession of certain opinion letters ("**Tax Opinions**") prepared by professional services firms ("**Tax Opinion Providers**"). The Tax Opinions generally address whether certain syndicated mortgage loans and related charges to be registered on title in connection with the development of various real estate development projects were qualified investments for certain trusts ("**Plans**") under the *Income Tax Act*. The relevant background for and a detailed description of the Tax Opinions Order is set out in the Trustee's Twenty-Second Report dated October 7, 2020.
122. As of October 7, 2020, the Trustee and Representative Counsel had received over 130 requests from Investors, counsel representing Investors ("**Counsel**"), or other advisors for copies of Tax Opinions. The Trustee understands that Investors were generally requesting copies of the Tax Opinions because they were seeking information about their investments in the various real estate development projects and, in light of realized or forecasted losses on certain of the projects, to assess their legal options for recovery of same.
123. The Tax Opinions are addressed to one or more of BDMC, Olympia Trust Company ("**Olympia**"), and Computershare. The Tax Opinions state that they are private and confidential, and certain Tax Opinions state that they are intended for the addressed recipients only and should not be shared with any third parties without the prior written consent of the applicable Tax Opinion Provider. As a result, in June 2020, the Trustee wrote to the Tax Opinion Providers to advise of the quantum of requests received to date and to seek their consent for releasing copies of the Tax Opinions. Subsequently, the Trustee had discussions with the Tax Opinion Providers. It became apparent to the Trustee and Representative Counsel that, in light of the manner that the Tax Opinions came into the Trustee's possession and the number of stakeholders that have a bona fide

interest in the Tax Opinions, the Trustee and Representative Counsel should seek the Tax Opinions Order to deal with this issue on notice to all parties.

124. The Tax Opinions Order sets out clear criteria that any requestor must satisfy to obtain a copy of a Tax Opinion, prohibits the inappropriate use of or dissemination of the Tax Opinions, and provides certain protections for the Trustee, Representative Counsel, and the Tax Opinion Providers. In addition, the Tax Opinions Order provides that the Trustee must notify Olympia and Computershare if it provides a notice naming them and the Tax Opinion Providers if it produces a Tax Opinion prepared by them. The Trustee and Representative Counsel are of the view that the Tax Opinions Order fairly balanced the ability of the Investors to obtain information about their investments in their Plans with the issues raised by the Tax Opinion Providers. Accordingly, the Trustee recommended in the Twenty-Second Report that the proposed Tax Opinions Order be granted by the Court, and the Court granted the order on October 15, 2020.
125. The Tax Opinions Order by its terms also applies in the related proceeding bearing the title of proceedings *Law Society of Ontario v. Derek Sorrenti and Sorrenti Law Corporation* (Court File No.: CV-19-628258-00CL).
126. Since the Court granted the Tax Opinions Order, the Trustee has received requests for Tax Opinions from counsel representing two Investors. The Trustee has provided copies of the requested Tax Opinions and provided the required notices under the Tax Opinions Order. The Trustee understands that Representative Counsel has not received any further requests for Tax Opinions.

#### **FUNDING OF THESE PROCEEDINGS AND CASH FLOW PROJECTION**

127. The activities carried out by the Trustee in these proceedings continue to be complicated and time consuming.
128. As previously reported, BDMC is functionally insolvent and has no sources of revenue. Pursuant to the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order, 15% of all Realized Property continues to be withheld to fund Required Trustee Activities (“**Administrative Holdback**”). The Trustee’s continued use of Estate Property, including the Administrative Holdback, is essential to fund these proceedings and to continue to carry out the Trustee’s mandate in

accordance with the Orders of the Court. As set out above, to date, the Trustee has generated approximately \$123 million in Realized Property during these proceedings.

129. As discussed below, portions of the Estate Property, which includes the Administrative Holdback, have been disbursed to pay BDMC's operating expenses and professional fees. Investors may receive a portion of the remaining Administrative Holdback in the future once a final reconciliation is completed; however, the timing and amount of a future distribution, if any, is unknown at this time.

### **Cash receipts and disbursements from November 16, 2019 to September 30, 2020**

130. In the Thirteenth Report, the Trustee provided a forecast for the projected receipts and disbursements related to the administration of the BDMC estate for the period November 16, 2019 to May 31, 2020 ("**Projection Period**").
131. As noted earlier in this Report, the Trustee delayed its semi-annual comprehensive reporting to the Court due to the COVID-19 pandemic so that it could focus on urgent and time-sensitive matters on behalf of the Investors. As a result, the Projection Period does not cover the full period of time since the Trustee last reported its receipts and disbursements. Accordingly, the following chart reflects the variance analysis for the relevant Projection Period only:

	Amount (\$000s)		
	Projected	Actual	Variance
<b>Receipts</b>			
Collections and other receipts	-	164	164
Administrative Holdback	209	6,443	6,234
Total receipts	209	6,607	6,398
<b>Disbursements</b>			
Operating costs	239	202	37
Appraisals	100	31	69
Professional fees	4,080	3,037	1,043
Total disbursements	4,419	3,270	1,149
Net cash flow	(4,210)	3,337	7,547

The detailed variance analysis for the Projection Period is attached as **Appendix "21"**.

132. The significant variances during the Projection Period are explained as follows:

**Administrative Holdback:** The positive variances relate to amounts withheld in respect



of (i) completed settlement transactions (Danforth and Bauhaus); (ii) the Peter Richmond Realized Property and (iii) the OML Residual Proceeds, which were all unknown at the time of the Thirteenth Report.

**Professional Fees:** The positive variance is a timing difference.

133. In addition, the actual receipts and disbursements for the period following the Projection Period (being from June 1, 2020 to September 30, 2020) are summarized below:

	(\$000s)
<b>Receipts</b>	
Collections and other receipts	194
Administrative Holdback	2,670
Total receipts	2,864
<b>Disbursements</b>	
Operating costs	110
Appraisals	-
Professional fees	3,954
Total disbursements	4,064
Net cash flow	(1,200)

134. The Trustee notes the following with respect to the above chart:

**Administrative Holdback:** relates to amounts withheld with respect to the Orchard Residual Proceeds and the Solterra settlement transaction.

**Professional Fees:** relates to fees accrued prior to July 2020 that were paid between June 2020 and September 2020; and includes the unpaid portion of the fees that were projected to be paid during the Projection Period. In addition to fees related to the typical activities carried out by the Trustee, its counsel and Representative Counsel, a portion of the fees paid during this period related to the significant contested litigation associated with the Brookdale and the Castlemore Projects.

#### **Funds in the Trustee's Possession**

135. A summary of the Estate and Realized Property, as well as funds held in trust pending the resolution of the Related Party Claims, is provided in the table below.

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Type	Primary Purpose	Amount (\$000s)	
		As at Nov 15, 2019	As at Sept 30, 2020
Estate <sup>7</sup>	BDMC operating funds	4,568	6,702
Realized	Held pending Investor distributions	20,780	39,729
Trust funds	Held pending resolution of claims	-	1,612
		<u>25,348</u>	<u>48,043</u>

**Estate Property:** As noted previously, since the issuance of the Interim Stabilization Order, the funds maintained in these accounts have been used to fund BDMC's operating costs and the Required Trustee Activities. Funds withheld in respect of the Administrative Holdback are maintained in these accounts.

**Realized Property:** The funds held as at September 30, 2020 relate primarily to the proceeds received from the Peter Richmond, Solterra, Orchard and OML transactions. Since September 30, 2020, and in accordance with Orders issued by the Court, the Trustee has distributed, or is in the process of distributing, the following amounts:

Project	Realized Property Distributed Since September 30, 2020 (\$000s)
Solterra Phase 4 Settlement	13,746
Old Market Lane	1,335
Orchard	1,491
Peter Richmond (in progress)	22,313
	<u>\$38,885</u>

The balances reflected in the chart above are net of the Administrative Holdback that have been transferred to Estate Property.

There is also \$700,000 remaining in the account related to the Kemp Project. As set out above, the Kemp Project remains subject to a dispute with the Fortress-related borrower regarding its claim against the residual proceeds from the power of sale transaction and, accordingly, these funds continue to be held pending resolution of the claim.

**Trust Funds:** The Trustee's counsel continues to hold the residual proceeds from the North sale transaction in its trust account pending resolution of the Related Party Claims

<sup>7</sup> BDMC is required under the MBLAA to have a certain financial guarantee of \$25,000 available, which may include unimpaired working capital. Included in Estate Property in a separate bank account is \$26,556 in satisfaction of this obligation.

discussed in paragraphs 52 to 60 above. The Jasper House sale transaction closed after the reporting period ended September 30, 2020. Accordingly, those proceeds (approximately \$1.8 million) are not reflected in this balance, although they also continue to be held by the Trustee's counsel in its trust account.

**Projected receipts and disbursements for the period ending May 31, 2021**

136. The Trustee has prepared a monthly cash flow projection ("**Cash Flow Projection**") related to the administration of the BDMC estate for the period October 1, 2020 to May 31, 2021 ("**Cash Flow Period**"), attached hereto as **Appendix "22"**. A summary of the Cash Flow Projection is as follows:

	\$000s
Projected Receipts	47
Projected Disbursements	
Staffing costs	162
Office expenses and IT	24
Insurance	62
Bank charges	4
Other expenses	18
Total Operating Disbursements	270
Appraisals and related consultants	36
Professional fees	3,873
Total disbursements	4,179
Projected cash flow	(4,132)
Opening cash***	6,676
Net cash flow	(4,132)
Projected closing cash	2,544

\*\*\* Opening cash, as at September 30, 2020, is comprised of Estate Property, excluding the term deposit required under the MBLAA.

137. The primary assumptions underlying the Cash Flow Projection are as follows:

**Projected Receipts:** comprised of interest earned on the funds held in the various bank accounts maintained by the Trustee.

The Trustee notes that, similar to previous cash flow projections filed with the Court, the receipts during the Cash Flow Period are projected to be significantly lower than projected expenses, as there remains uncertainty regarding the timing and outcome of potential transactions related to the remaining projects administered by BDMC. Progress has been

made with respect to potential transactions related to certain projects and the Trustee expects to receive additional Realized Property during the Cash Flow Period, a portion of which will be used to offset the projected disbursements. Due to the confidential nature of the ongoing negotiations and similar to previous cash flow projections filed with the Court, the Trustee has not included a forecast for these receipts during the Cash Flow Period.

**Projected Operating Disbursements:** relate primarily to dedicated BDMC contractors and insurance costs. The Trustee notes that the administration of the BDMC estate continues to be run out of FAAN Mortgage's office on a rent-free basis.

**Professional Fees:** reflects the payment of outstanding professional fees through to September 30, 2020, which remain unpaid as at the date of the Twenty-Fourth Report, and estimated professional fees to be paid during the Cash Flow Period.

#### **APPROVAL OF THE TRUSTEE'S REPORTS, ACTIVITIES AND FEES**

138. The Trustee is seeking the approval of the Approval Reports, its activities as set out in the Approval Reports, and its fees and its counsel's fees from October 1, 2019 to September 30, 2020.
139. The Trustee's activities are described at length in the Approval Reports as they relate to the relief being sought in those reports. A summary of the Trustee's activities related to the Approval Reports and other activities carried out by the Trustee since November 15, 2019 are set out herein and below, and included, among other things:
  - (a) communicating with borrowers, Investors, Fortress, lenders and other stakeholders regarding various matters including with respect to the status of these proceedings, the projects and relevant timelines;
  - (b) engaging with Representative Counsel on behalf of the Investors with respect to all aspects of the administration of the BDMC estate, including attending meetings and conference calls on a regular basis;
  - (c) drafting and sending 47 notices to Investors since the issuance of the Thirteenth Report and corresponding with the Trustee's counsel and Representative Counsel regarding same;

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- (d) holding in-person meetings with certain Investors prior to the commencement of the COVID-19 pandemic and responding to a significant number of Investor inquiries;
- (e) posting Court materials on the Trustee's Website;
- (f) continuing its review and monitoring of the projects;
- (g) continuing to engage with stakeholders to obtain information related to the projects;
- (h) corresponding with certain borrowers regarding funds advanced to certain projects and related priority matters;
- (i) requesting information and reviewing reporting provided by certain project borrowers;
- (j) reviewing updated appraisals commissioned by the Trustee;
- (k) engaging with appraisers to obtain updated market information, as necessary;
- (l) continuing to engage with a planning consultant in order to obtain information relating to the development status of various projects;
- (m) continuing to engage and negotiate with borrowers and other stakeholders regarding certain requests for postponements in relation to refinancing transactions;
- (n) attending to partial discharges of BDMC's security interests to facilitate sales of individual units or the development of properties in the ordinary course;
- (o) continuing to engage and negotiate with borrowers and prospective purchasers and other parties, as applicable, regarding various transactions for certain properties, including settlement and/or assignment transactions;
- (p) preparing internal analyses regarding allocation alternatives in respect of sale and assignment transaction proceeds in circumstances when there are multiple BDMC loans;
- (q) continuing to engage and negotiate with borrowers, senior lenders, receivers and other relevant stakeholders regarding enforcement actions commenced by priority lenders;

- (r) corresponding with senior lenders regarding sales processes and the timing and results thereof;
  - (s) corresponding with commercial real estate agents engaged by senior lenders pursuant to enforcement proceedings commenced by those lenders, in order to obtain information relating to the sale processes carried out, including obtaining information related to marketing materials and level of interest in the relevant properties;
  - (t) preparing and serving materials as required in connection with the matters before the Court;
  - (u) preparing ten reports to the Court and attending related hearings before the Court;
  - (v) making distributions in accordance with the various Court orders issued in these proceedings to the Investors entitled to those distributions;
  - (w) reviewing and responding to Court materials relating to BDMC and the various projects;
  - (x) preparing for and participating in multiple contested litigation matters;
  - (y) engaging with Tax Opinion Providers and interested parties regarding the distribution of the Tax Opinions; and
  - (z) attending to other business activities of BDMC and related administrative matters.
140. Investor communications remain an ongoing component of the Trustee's mandate. On average, since the date of the Thirteenth Report, the Trustee receives 8-10 calls a day and 10-15 emails a day, with increased call and email volumes following the issuance of notices, distribution of Realized Property and renewed media attention on the projects, Fortress or the proceedings generally. Investors contact the Trustee to seek general information about the proceedings, the role of the Trustee and Representative Counsel, as well as specific information regarding the projects that are the subject of their investments or payments that they receive from the Trustee. The Trustee endeavours to respond to all inquiries in a timely manner.
141. The Trustee also informs affected Investors by way of notices, sent by email to the majority of Investors, when enforcement action is taken against a project they have invested in or when other material developments occur with respect to their project. Where appropriate,

the Trustee seeks the consent of Investors with respect to actions proposed to be taken by the Trustee, such as settlement proposals.

### **Trustee Fees**

142. Pursuant to the terms of the Appointment Order, the Trustee and its legal counsel shall be paid their reasonable fees and disbursements and shall pass their accounts from time to time.
143. The Trustee and its legal counsel are tracking their time by project. For certain tasks that affect all Investors, including general notices and the preparation of general reports to Court and the related Court materials, the time will be charged to a general account that will, at a later date once the totality of realizations are determined, be allocated to the projects based on appropriate considerations and in accordance with further Court orders.
144. The fees of the Trustee for the period between October 1, 2019 to September 30, 2020, total \$ 1,497,591.65 before HST; and HST applicable to such amount totals \$ 194,686.91, for an aggregate amount of \$1,692,278.56. Invoices for the fees of the Trustee, including summaries of the activities of the Trustee for the applicable period, are provided in the affidavit of Naveed Manzoor ("**Manzoor Affidavit**"), attached as **Appendix "23"**.
145. Detailed docket information in respect of the fees and disbursements of the Trustee for this period will be included in the confidential exhibit to the Manzoor Affidavit that is being filed separately with the Court ("**Confidential Manzoor Exhibit**"). The Trustee is seeking a sealing order with respect to the Confidential Manzoor Exhibit due to the fact that the information contained in the Trustee's detailed invoices includes privileged and commercially sensitive information regarding the projects and BDMC generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings. The Court has granted similar relief in these proceedings in the Orders dated November 28, 2018, May 23, 2019 and December 2, 2019.
146. The average hourly rate for the Trustee over the referenced billing period was approximately \$459.62/hour.

### **Fees of the Trustee's Counsel**

147. The fees (excluding disbursements and HST) of Osler, Hoskin & Harcourt LLP ("**Osler**") as counsel to the Trustee for the period between October 1, 2019 to September 30, 2020 total \$3,726,011.04; Osler incurred \$64,646.69 disbursements during the period; and HST applicable to such amounts totals \$492,240.48, for an aggregate amount of \$4,282,898.09. Invoices for the fees, reimbursable expenses and applicable taxes of Osler, including summaries of Osler's activities in relation thereto, are provided in the affidavit of Michael De Lellis ("**De Lellis Affidavit**"), attached as **Appendix "24"**.
148. Full accounts in respect of the fees and disbursements of Osler for this period will be included in the confidential exhibit to the De Lellis Affidavit that is being separately filed with the Court ("**Confidential De Lellis Exhibit**"). The Trustee is seeking a sealing order with respect to the Confidential De Lellis Exhibit due to the fact that the information contained in Osler's detailed invoices includes privileged and commercially sensitive information regarding the projects and BDMC generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings. The Court has granted similar relief in these proceedings in the Orders dated November 28, 2018, May 23, 2019 and December 2, 2019.
149. The average hourly rate for Osler over the referenced billing period was \$723.22/hour.
150. The Trustee is of the view that the hourly rates charged by Osler are consistent with the rates charged by major law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.

### **Fee Recoveries**

151. Since the date of the Appointment Order, the Trustee and its counsel have recovered approximately \$775,000 on account of professional fee reimbursements in connection with postponements, refinancings and other significant transactions. The Trustee has succeeded in negotiating these fee recoveries on a case by case basis and continues to seek to recover fees where possible and when appropriate.
152. As further detailed in the Thirteenth Report, as part of the Court approved transfer of the administration of the QEWN Project to a new administrator ("**QEWN Transfer**"), an



agreement was reached between the Trustee and the QEWN Project Investors to compensate the BDMC estate for costs incurred directly with respect to the QEWN Project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate (“**QEWN Fee Recovery**”). The total fee recoveries of \$775,000 include the QEWN Fee Recovery of \$100,000 collected upon the QEWN Transfer.

## **REPRESENTATIVE COUNSEL**

153. Pursuant to the Interim Stabilization Order, Chaitons LLP was appointed as representative counsel to, among other things and subject to the terms of that Order, represent the common interests of the Investors who participate in mortgages administered by BDMC, including the common interests of Investors in any particular syndicated mortgage loan.
154. The Trustee understands that Representative Counsel continues to receive a significant number of calls and written correspondence from Investors with respect to the status of their investments. Representative Counsel responds in a timely manner to such communications to the extent that they pertain to legal issues covered by Representative Counsel’s mandate.
155. The Trustee understands that Representative Counsel continues to provide guidance to Investors with respect to their rights and remedies and potential sources of recovery other than against the borrowers under the various BDMC loans, while urging Investors to individually seek independent legal advice with respect to any causes of action that they may wish to pursue. Representative Counsel has shared information with other law firms on a confidential basis to assist such firms in determining whether to commence class action litigation or pursue other litigation alternatives, and has been actively involved in the negotiation and finalization of the Tax Opinions Order, which is intended to assist Investors in understanding their legal rights.
156. The Trustee also continues to regularly consult with Representative Counsel whenever appropriate, including with respect to (i) requests for Investor feedback regarding certain postponements and sale transactions; (ii) enforcement steps taken by senior lenders or by the Trustee; (iii) sale processes commenced by borrowers; (iv) other potential sources of recovery on projects, including the Trustee’s review of any sources and uses of funds received from borrowers; (v) contested litigation such as the Castlemore Project litigation described above where Representative Counsel took an active role on behalf of the

Investors; and (vi) strategic decisions and steps being considered by the Trustee. Representative Counsel has also attended certain meetings with the Trustee and Investors and has taken active roles on certain projects that are subject to litigation or enforcement proceedings in a manner that ensures a non-duplication of efforts.

## **CONCLUSION AND RECOMMENDATION**

157. The Trustee recommends that the November 2020 Omnibus Order be granted by the Court. The Trustee continues to work and engage with multiple stakeholders to fulfill its mandate to protect the interests of the Investors and enhance the prospects that the Investors will recover some or all of the amounts they advanced through BDMC. Among other things, the Trustee continues to administer the loans made by BDMC on behalf of the investing public and to make prudent decisions that are in the best interests of the Investors in the circumstances with respect to the administration and enforcement of the relevant loans.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of November, 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<sup>TH</sup> DAY  
JUSTICE HAINEY ) OF APRIL, 2018

BETWEEN:

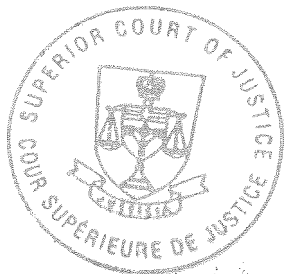
**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**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

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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

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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

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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,



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.

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or CDCM

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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

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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](http://www.faanmortgageadmin.com).

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

#### **GENERAL**

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

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

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

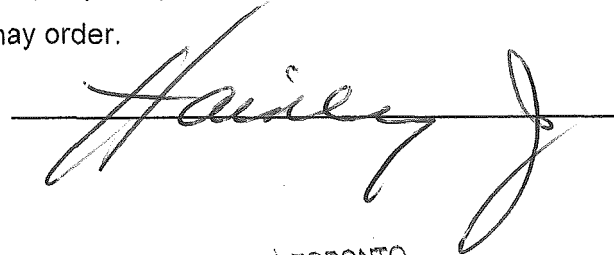
31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals,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



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

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

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



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

APR 20 2018

PER / PAR:



**SCHEDULE "A"**  
**TRUSTEE CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that FAAN Mortgage Administrators Inc., the Trustee (in such capacity, the "**Trustee**") of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), including, without limitation, all of the assets in possession or under the control of the Respondent, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage ("**Investors**"), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 20<sup>th</sup> 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:**  
**Omnibus Order dated December 2, 2019**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE 2<sup>ND</sup>

JUSTICE HAINEY

)

DAY OF DECEMBER, 2019

)



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**

**DECEMBER 2019 OMNIBUS ORDER**

**THIS MOTION**, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”) pursuant to an Order of this Court made on April 20, 2018 (“**Appointment Order**”) 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)

approving the QEWN Administration Settlement (as defined in the Trustee's thirteenth report dated November 22, 2019 (the "**Thirteenth Report**")); (ii) approving the Trustee's eighth report dated May 17, 2019, ninth report dated July 30, 2019, tenth report dated September 4, 2019, eleventh report dated October 31, 2019, twelfth report dated October 31, 2019 and Thirteenth Report (collectively, the "**Trustee's Reports**"), as well as the Trustee's activities described therein, and the Trustee's fees and disbursements, including the fees and disbursements of its counsel, for the period from April 1, 2019 to September 30, 2019; and (iii) sealing certain confidential exhibits to the Fee Affidavits (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario;

**ON READING** the Thirteenth Report, the affidavit of Naveed Manzoor sworn November 22, 2019 and attached as Appendix "9" to the Thirteenth Report (the "**Manzoor Affidavit**") and the affidavit of Michael De Lellis sworn November 22, 2019 and attached as Appendix "10" to the Thirteenth Report (the "**De Lellis Affidavit**" and, together with the Manzoor Affidavit, the "**Fee Affidavits**"), 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 Justine Erickson sworn November 22, 2019, filed;

#### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Thirteenth 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 in this Order but not defined herein shall have the meanings given to them in the Thirteenth Report.

#### **QEWN ADMINISTRATION SETTLEMENT**

3. **THIS COURT ORDERS** that the QEWN Administration Settlement be and is hereby approved and shall be effective upon the delivery of a Trustee's certificate to counsel for the QEWN Investors substantially in the form attached as Schedule "A" hereto (the "**Trustee's**

**Certificate**”) confirming that the conditions precedent set out therein have been satisfied in the Trustee’s sole discretion.

4. **THIS COURT ORDERS** that, upon the delivery of the Trustee’s Certificate to counsel for the QEWN Investors, the Trustee, BDMC, Olympia Trust Company, Representative Counsel and each of their respective affiliates, employees, officers, directors, partners, representatives, counsel and agents, and each of their respective successors and assigns (collectively, “**Releasees**”) shall be hereby released, discharged and acquitted from any and all actual or potential claims, demands, rights, complaints, liabilities, damages, losses, actions, applications, suits, and causes of action, whether in law, equity, or contract, whether known or unknown, liquidated or unliquidated, contingent or otherwise, howsoever arising of every nature and kind whatsoever, that any of the QEWN Investors or anyone acting of their behalf, 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 QEWN Project, these proceedings, the QEWN Administration Settlement or any transactions hereunder or related thereto.

5. **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.

#### **TRUSTEE’S REPORTS, ACTIVITIES, FEES AND DISBURSEMENTS**

6. **THIS COURT ORDERS** that each of the Trustee’s Reports and all the actions, conduct and activities of the Trustee as set out in each of the Trustee’s Reports, be and are hereby approved.

7. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Thirteenth Report and the Fee Affidavits, be and are hereby approved, as follows:

- (a) the following fees and disbursements of the Trustee for the period from April 1, 2019 to September 30, 2019 are approved: fees of \$947,426 (plus applicable taxes of \$123,165 for an aggregate amount of \$1,070,591), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from April 1, 2019 to September 30, 2019 are approved:



fees of \$1,895,036.43 and disbursements of \$15,420.50 (plus applicable taxes of \$248,104.19 for an aggregate amount of \$2,158,561.12).

## **SEALING**

8. **THIS COURT ORDERS** that Exhibit “D” of the Manzoor Affidavit and Exhibit “D” of the De Lellis Affidavit 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.

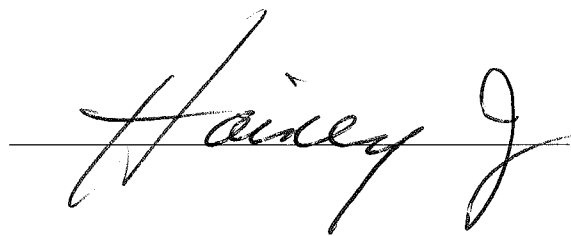
## **GENERAL**

9. **THIS COURT ORDERS** that, without limiting the releases contained in paragraph 4 of the Order, the Trustee and its affiliates, partners, employees, counsel and agents shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing any of their duties in carrying out the provisions of this Order, including in connection with the QEWN Project and the QEWN Administration Settlement, except to the extent that such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Trustee, as determined by this Court.

10. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories of Canada.

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

12. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

A handwritten signature in cursive script, reading "Hainey J.", is written over a horizontal line.

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

DEC 02 2019

PER / PAR: *RW*

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  
(QEWN Administration Settlement)

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 (in such capacity, 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 December 2, 2019 (the "**December 2019 Omnibus Order**"), the Court, among other things, approved the QEWN Administration Settlement (as defined in the Thirteenth Report of the Trustee dated November 22, 2019 (the "**Thirteenth Report**")) and ordered that it be effective upon the delivery by the Trustee to counsel for the QEWN Investors (as defined in the Thirteenth Report) of a certificate confirming, among other things, that: (a) the Proposed Administrator has provided a letter to the Trustee

acknowledging its acceptance of the administration duties being assumed under the loan and security documents related to the QEWN Project, (b) each QEWN Investor has acknowledged and agreed, after having each received independent legal advice (i) that it is their individual desire to have the Proposed Administrator appointed after being informed of the impact of the QEWN Administration Settlement, which includes no longer having the benefits of Court supervision, Representative Counsel and a licensed mortgage administrator to oversee the administration of their loan and security, and (ii) the Trustee, its counsel and Representative Counsel shall receive a court-ordered release in connection with all matters relating to the QEWN Project as part of the QEWN Administration Settlement, (c) consent of the QEWN Project borrower to the appointment of the Proposed Administrator has been obtained; and (d) an agreement has been reached between the Trustee and the QEWN Investors to compensate the BDMC estate for costs incurred directly with respect to the QEWN Project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the December 2019 Omnibus Order or the Thirteenth Report, as applicable.

THE TRUSTEE CERTIFIES the following:

- (a) The Trustee has received a letter provided by the Proposed Administrator acknowledging its acceptance of the administration duties being assumed under the loan and security documents related to the QEWN Project, which is in a form acceptable to the Trustee;
- (b) each QEWN Investor has acknowledged and agreed, after having each received independent legal advice:
  - (i) that it is their individual desire to have the Proposed Administrator appointed after being informed of the impact of the QEWN Administration Settlement, which includes no longer having the benefits of Court supervision, Representative Counsel and a licensed mortgage administrator to oversee the administration of their loan and security relating to the QEWN Project, and
  - (ii) that the Trustee, its counsel and Representative Counsel shall receive a Court-ordered release in connection with all matters relating to the QEWN Project as part of the QEWN Administration Settlement;
- (c) consent of the QEWN Project borrower to the appointment of the Proposed Administrator has been obtained; and

- (d) an agreement satisfactory to the Trustee has been reached between the Trustee and the QEWN Investors to compensate the BDMC estate for costs incurred directly with respect to the QEWN Project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate.

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:

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)

Proceeding commenced at Toronto

**DECEMBER 2019 OMNIBUS ORDER**

**OSLER, HOSKIN & HARCOURT LLP**  
1 First Canadian Place, P.O. Box 50  
Toronto, ON M5X 1B8  
Phone: 416-362-2111  
Fax: 416-862-6666

**Michael De Lellis** (LSO# 48038U)  
**Jeremy Dacks** (LSO# 41851R)

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

**Appendix 3:**  
**Project Analysis Summary dated November 12, 2020**

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 12, 2020. The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.  
Summary of Project Status as at November 12, 2020  
(Unaudited)

<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
1	6th and Tenth	207	Completed	1st: \$4.8M, First National (balance as at November 2020) 2nd: \$8.8M BDMC	December 27, 2014 (extend date June 27, 2015) <b>MATURED.</b>	Completed condominium with 24 unsold units plus one conditional sale. Eight units have sold since the Trustee's Thirteenth Report.	n/a
2	Bauhaus	110	Exited	n/a	n/a	On February 28, 2020, the Trustee sought and obtained Court approval of a settlement agreement in the amount of approximately \$6.73M in respect of the BDMC debt on the Bauhaus project.	n/a
3	Bowmanville	103	Exited	n/a	n/a	n/a	On February 21, 2020, Hillmount Capital Inc. issued a s. 244 notice and a Notice of Sale Under Mortgage ("Notice of Sale"). On May 5, 2020, Ernst & Young Inc. ("EY") was appointed as receiver and retained CBRE Land Services Group to market the property for sale. On November 5, 2020, EY sought and obtained Court approval of an agreement of purchase and sale between the receiver and Brookhill Durham Holdings Inc., a company related to the borrower and the party that submitted the highest and best offer. The purchase price for the property has not been publicly disclosed to protect the value of the property in the event that the transaction with the purchaser fails to close. The Trustee understands that given the quantum of debt in priority to the BDMC debt, the Bowmanville Investors will experience a significant shortfall on their loan. The sale transaction is scheduled to close on November 23, 2020, after which the Trustee will provide Investors with information regarding the purchase price and any Investor recovery.
4	Bradford Bond Head	186	Exited	n/a	n/a	n/a	Sugarcrest Developments, the first priority lender, issued a s. 244 Notice and a Notice of Sale. On July 23, 2019, Quincy, the second priority mortgagee, obtained an order of the Court appointing Rosen Goldenberg Inc. as receiver over the property. The receiver ran a sale process for the property and sought and obtained Court approval for an agreement of purchase and sale ("Bond Head Sale"). The Bond Head Sale resulted in the second mortgagee suffering a shortfall under its charge and as such there were no recoveries available for BDMC in respect of its fifth ranking mortgage. Accordingly there were no funds available for distribution for the Bradford Bond Head Investors.
5	Braestone	250	Exited	n/a	n/a	On November 28, 2018, the Trustee sought and obtained court approval of a settlement agreement in the amount of \$10M in respect of the BDMC debt on the Braestone project.	n/a
6	Brookdale	491	Exited	1st: Firm Capital Corporation ("Firm") <b>PAID OUT</b> 2nd: AG <b>PAID OUT</b> 3rd: Jaekel <b>PAID OUT</b> 4th: \$4.6M BDMC Mezz 5th: \$20.7M BDMC Original	n/a	n/a	Sale of the property approved on October 18, 2018 pursuant to Court order. Sale transaction closed on October 24, 2018 for a purchase price of approximately \$50M. After repayment of amounts owing to the first, second and third mortgagees, approximately \$20.4M remained. Since 2019, the Trustee has been involved in complex litigation involving construction liens, which claims totaled approximately \$8.7M in aggregate. On August 28, 2020, a Court order was granted authorizing a settlement with the lien claimants for approximately \$4.5M. After paying the lien claimant settlement amounts, approximately \$17M continues to be held in trust by the Court ("Brookdale Proceeds"). There are three remaining claims to the Brookdale Proceeds that are seeking priority to or otherwise affecting the priority of the BDMC mortgages, being a claim from certain bondholders (under which approximately \$9M plus interest and costs is claimed), the Fortress-related borrower (under which approximately \$1.5M is claimed) and Fernbook Homes (Brookdale) Limited. The quantum and timing of any distribution to the Brookdale Investors remain unknown given these outstanding unresolved priority issues.



Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 12, 2020.  
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.  
Summary of Project Status as at November 12, 2020  
(Unaudited)

<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
7	Capital Pointe	728	Exited	n/a	n/a	n/a	KEB Hana Bank of Canada ("KEB"), the first priority lender, commenced a Claim in Mortgage Action. On March 4, 2019, an order was granted permitting the property to be listed for sale through a commercial realtor. On May 12, 2020, an order was granted approving a sale of the property to Magnetic Capital Group Inc. As KEB suffered a shortfall on its loan, there were insufficient proceeds to make any distribution to any of the subordinate loans registered on title including the BDMC mortgages.
8	Castlemore (Cachet)	453	Development	1st: \$10.5 M Cameron Stephens 2nd: \$21.2M BDMC 3rd: \$22M 2429730 Ontario Ltd	September 30, 2019 (extend date September 30, 2021) extension not exercised. <b>MATURED.</b>	Development approvals needed. The Block Plan application to amend the Official Plan was approved by the Local Planning Appeal Tribunal ("LPAT") on October 6, 2020. Draft Plan of Subdivision can now be submitted.	In late 2019, the Trustee received a settlement offer from the borrower for \$9.5M ("Offer"), which was subsequently increased to \$10.45M ("Revised Offer"). Initially, Investor feedback was generally supportive of the Offer. Following additional negotiations, the Trustee served a motion seeking approval of the Revised Offer. However, during the period between the service of materials and the proposed hearing, the Trustee and Representative Counsel received additional Investor feedback that resulted in a materially lower level of support for the Revised Offer. As a result, the Trustee determined that it would not be moving forward with the Revised Offer which expired in accordance with its terms. On March 2, 2020, the borrower initiated legal proceedings seeking to enforce a clause in the BDMC loan agreement ("End of Term Event Clause"). The borrower advanced a position that, under the End of Term Event Clause, it could pay approximately \$9.1M in exchange for a full discharge of BDMC's debt and security and a full release from the Castlemore Investors. The Trustee and Representative Counsel disagree with the borrower's position and opposed the application. A hearing on the application took place on November 3, 2020, and the decision is currently under reserve.
9	Charlotte Adelaide Tower [CHAT/LH1]	301	Exited	n/a	n/a	The borrower entered into an agreement of purchase and sale for the property that was the subject of the CHAT Project for an initial cash purchase price of \$16.5M, which resulted in net proceeds of \$3.6M paid to the Trustee, on behalf of BDMC, on closing. Additional payments totaling \$1.95M have since been paid by the CHAT purchaser. The Trustee also negotiated and entered into a memorandum of understanding in connection with the CHAT Transaction, pursuant to which BDMC was given the opportunity to receive a further payment of up to \$5.2M based on the achievement by the CHAT purchaser of certain development milestones ("Density Bonus"). The CHAT purchaser has advised that it is of the view that the Density Bonus is not payable. The Trustee is currently in discussions with the CHAT purchaser to understand its position.	n/a

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Building & Development Mortgages Canada Inc.  
Summary of Project Status as at November 12, 2020  
(Unaudited)

<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
10	Collier Center	949	Exited	n/a	n/a	n/a	The property was listed for sale in July 2018. On or around the beginning of May 2019, Morrison Financial Mortgage Corporation, the first priority mortgagee (" <b>Morrison</b> "), advised the Trustee that no formal offers for the property had been received and that it proposed to transfer the property to a related company for an amount equal to the highest informal offer it received. On May 8, 2019, Morrison transferred the property to Morrison Financial Realty Corporation for a price of \$18.457M (" <b>Takeout Price</b> "). Given that the Takeout Price was substantially less than the amount owed to Morrison, Morrison did not recover the full amount of its indebtedness and there were no recoveries available for distribution to the subsequent mortgagees, including BDMC.
11	Crestview Commons (Manors of Mineola)	166	Exited	n/a	n/a	On May 23, 2019, the Trustee sought and obtained court approval of a settlement agreement in the amount of \$4.475M respect of the BDMC debt on the Crestview project.	n/a
12	Eden (King City)	129	Completed	<b>1st: \$5.9M to BDMC</b>	March 31, 2015 (extend date March 31, 2016) <b>MATURED.</b>	Construction of the homes has been completed and the homes have been sold. The BDMC mortgage remains registered on title.	Following the sale of the homes, the borrower advised that there would be no recovery to investors on the project due to cost overruns. Based on available information, the Trustee completed a preliminary review of the sources and uses of funds for the project. The analysis identified several areas requiring further investigation. On June 19, 2019, the Trustee sought and obtained a Bankruptcy Order in respect of the borrower, and Grant Thornton (" <b>GT</b> ") was appointed as bankruptcy trustee. A representative of the Trustee was appointed as an inspector in the bankrupt estate. GT's investigation into the affairs of the bankrupt entity is ongoing.  The Trustee is also involved in negotiations relating to ongoing litigation in respect of the Eden Project.
13	Nobleton South	137	Development	<b>1st: \$3.21M VTB</b> <b>2nd: \$7.7M BDMC</b>	March 11, 2020 (extend date March 11, 2022) extension was not requested by borrower. <b>MATURED.</b>	Development approvals needed. Property is not in the built boundary and does not have Official Plan Approval. Formal planning applications to the municipality can not be submitted until Official Plan Approval is obtained. Timeframe for approval continues to be unknown.	The priority mortgagees issued a Notice of Sale in respect of acquisition financing that had matured. The Trustee has been advised that the priority mortgagees have entered into an agreement of purchase and sale with respect to the property and the transaction is scheduled to close in December 2020. The purchase price for the property has not been publicly disclosed to protect the value of the property in the event that the transaction with the purchaser is not completed.

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Building & Development Mortgages Canada Inc.  
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<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
14	Glens of Halton Hills (Georgetown, GHH)	306	Exited	n/a	n/a	n/a	Notice of Intention ("NOI") to make a proposal was filed by the borrower in August 2018. Multiple lenders sought to enforce prior to the NOI filing. A sale and marketing process was undertaken by the Proposal Trustee. Proceeds from the transaction were used to, among other things, repay the first priority mortgagees on the project. As there was a shortfall in the amounts owing to the second ranking mortgagee, there were no recoveries available for distribution to BDMC. On February 5, 2019, the borrower was deemed bankrupt. The Trustee undertook a preliminary review of the sources and uses of funds on the project, which was provided to the bankruptcy trustee ("KSV"). Following the results of KSV's review, the Trustee concluded that KSV would have to incur significant additional time to further investigate the use of funds advanced by the Georgetown Investors, and there was no clear road to action or any recoveries without incurring significant additional costs. There are no funds remaining in the bankruptcy estate for KSV to continue any further investigation. Even if KSV successfully challenged certain transactions, any funds recovered would be used to satisfy fees and the shortfall to the second mortgagee before any funds could be made available for distribution to Georgetown Investors.
15	Highlands of York Region (East Gwillimbury)	59	Development	<b>1st:</b> Listed below per property: \$500K – 19851 2nd Concession Rd. \$2.2M – 19879 2nd Concession Rd. \$2.3M – 19935 2nd Concession Rd. <b>2nd:</b> \$6M RW Fortress Inc. <b>3rd:</b> \$2.5M BDMC	April 15, 2021 (extend date April 15, 2022 / April 15, 2023).	Development approvals needed. The Draft Plan of Subdivision and Zoning By-Law applications were submitted to the Town of East Gwillimbury in June 2018. A notice of complete application has been received and a Public Planning Meeting has been held. Comments from the Town were sent to the borrower in the fall of 2018. No resubmission addressing the Town's comments have been submitted to date. The Trustee understands that the resubmission has been delayed for two reasons: (i) servicing; and (ii) the Region of York not permitting access of the proposed development from 2nd Concession road, which means the road access will need to come through the subdivision to the north of the properties. As the configuration from this subdivision is not final it is difficult for the borrower to plan its development at this time.	n/a
16	Humberstone	94	Exited	n/a	n/a	On September 11, 2019, the Trustee sought and obtained Court approval of a settlement agreement in respect of the BDMC debt on the Humberstone project. The first settlement payout was \$1.75M and a possible future second settlement payment ranges from \$600,000 to \$800,000.	n/a
17	Jasper House	163	Exited	n/a	n/a	Property was listed for sale by the borrower. The borrower received an offer and ultimately executed an agreement of purchase and sale with the purchaser at a sale price of approximately \$4.3M. The sale transaction closed in October 2020 with residual proceeds of approximately \$1.8M after repayment of the first priority mortgagee and other closing costs. The borrower has provided the Trustee with a summary of amounts it claims are owed from the sale proceeds in priority to the BDMC loan. The claim is comprised of, among other things, amounts advanced by certain companies related to the borrower to pay, among other things, certain carrying costs associated with the property. The Trustee continues to engage in discussions with the borrower regarding its claim.  There was a mortgage in third position behind the BDMC loan in the amount of \$768,650, in favour of the North Project borrower. It appears that the North borrower advanced these funds from the North Project to the Jasper House Project as a loan and such loan was not repaid. The Trustee is in the process of reviewing this transaction and will report back upon completion of its review, as it may affect entitlement to the residual proceeds from the transaction.	n/a

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Building & Development Mortgages Canada Inc.  
Summary of Project Status as at November 12, 2020  
(Unaudited)

<b>LEGEND:</b>	<p><b>Development</b> Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.</p> <p><b>Pre-construction</b> Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.</p> <p><b>Construction</b> Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.</p> <p><b>Completed</b> Construction is complete, units remain unsold.</p> <p><b>Exited</b> All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.</p>
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NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
18	King Square	176	Completed	<p>1st: \$60.6M Firm*</p> <p>2nd: \$500K Aviva</p> <p>3rd: <b>\$8.6M BDMC</b></p> <p>4th: \$6M OYSX Inc.</p> <p>5th: \$7M 2198136 Ontario Ltd.</p> <p>*Includes approximately \$14M of VTB's between Firm and the purchasers of certain units</p>	August 31, 2019 (extend date February 28, 2020) extension was not requested by borrower. <b>MATURED.</b>	Unit sales ongoing. Approximately 45% of the net saleable area has been sold.	On March 6, 2020, Firm, the first priority mortgagee, issued a Notice of Sale. Firm is working together with the King Square borrower to sell the remaining inventory comprising the King Square Project. The timing and quantum of recoveries, if any, for the King Square Investors remains uncertain and is dependent on the timing and selling price of the remaining inventory and the status of the amounts owing to Firm, which continue to accrue interest.
19	Kingridge Square (Speers)	45	Exited	n/a	n/a	On January 29, 2019, the Trustee sought and obtained approval of a settlement agreement of \$1.95M in respect of the BDMC debt on the Speers project.	n/a
20	Lake & East	154	Exited	n/a	n/a	n/a	On May 22, 2019, Toronto Capital Corporation ("TCC") issued a Notice of Sale. As its debt was not repaid, TCC retained CBRE to market the property for sale. On December 18, 2019, TCC accepted an offer of \$7M for the properties. The transaction closed in May 2020, at which time the total amount due to TCC was in excess of \$7.5M. As TCC suffered a shortfall on its priority loan and mortgage, there were no recoveries available to repay any amounts owing to the Investors.
21	Mississauga Meadows 1 ("MM1")	130	Exited	n/a	n/a	n/a	The project was subject to both a 244 Notice and a Notice of Sale issued by Firm, the priority lender. A sale process was undertaken by Firm and an offer was accepted for both MM1 and MM2 which closed July 3, 2019. The purchase price resulted in a shortfall to the second priority mortgagee and no recovery to the MM1 Investors.
22	Mississauga Meadows 2 ("MM2")	82	Exited	n/a	n/a	n/a	The project was subject to both a 244 Notice and a Notice of Sale issued by Firm, the priority lender. A sale process was undertaken by Firm and an offer was accepted for both MM1 and MM2 which closed on July 3, 2019. The purchase price resulted in a shortfall to the second priority mortgagee and no recovery to the MM2 Investors.
23	Estates of Nobleton (Nobleton North)	353	Exited	n/a	n/a	On November 5, 2019, the Trustee obtained Court approval of a settlement agreement in the net amount of \$14.45M in respect of the BDMC debt on the Nobleton North project.	n/a

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Building & Development Mortgages Canada Inc.  
Summary of Project Status as at November 12, 2020  
(Unaudited)

<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
24	North	152	Exited	n/a	n/a	<p>Property was listed for sale by the borrower. The borrower received an offer and ultimately executed an agreement of purchase and sale with the purchaser at a sale price of approximately \$4.7M. The sale transaction closed in June 2020 with residual proceeds of approximately \$1.6M. The borrower has provided the Trustee with a summary of amounts it claims are owed from the sale proceeds in priority to the BDMC loan. The claim is comprised of, among other things, amounts advanced by certain companies related to the borrower to pay, among other things, certain carrying costs associated with the property. The Trustee continues to engage in discussions with the borrower regarding its claim.</p> <p>The North borrower registered a mortgage on the Jasper House Project in third position behind the BDMC loan in the amount of \$768,650. It appears that the North borrower advanced these funds from the North Project to the Jasper House Project as a loan and such loan was not repaid. The Trustee is in the process of reviewing this transaction and will report back upon completion of its review, as it may affect entitlement to the residual proceeds from the transaction.</p>	
25	Old Market Lane	241	Exited	n/a	n/a	n/a	<p>On September 25, 2019, the first priority mortgagee, 5019203 Ontario Ltd. ("<b>5019 Ontario</b>"), issued a Notice of Sale. As the full amount of the outstanding debt was not repaid in time, 5019 Ontario was in a position to list the properties for sale. The Trustee was independently presented with a proposed sale transaction prior to the commencement of 5019 Ontario's sale process, which offer was in excess of the appraisal previously commissioned by the Trustee and two appraisals commissioned by 5019 Ontario. 5019 Ontario ultimately entered into a transaction with this purchaser instead of pursuing its sale process, which resulted in residual proceeds of approximately \$1.57M being distributed to the Trustee, on behalf of BDMC, after payment of the 5019 Ontario mortgage and other closing costs. On October 15, 2020, the Trustee sought and obtained Court approval to distribute the residual proceeds on a <i>pari-passu</i> basis to all OML Investors.</p>
26	Peter Richmond Land Assembly (LH2)	604	Exited	n/a	n/a	<p>The Trustee undertook a focused solicitation process with respect to a potential transaction in respect of the BDMC debt on the Peter Richmond project. As a result of this solicitation process, on January 30, 2020, the Trustee obtained Court approval for the assignment of the BDMC debt and security relating to the Peter Richmond project in exchange for a cash payment of \$26.25M. On October 15, 2020, the Trustee obtained Court approval for a method to distribute the proceeds from the assignment transaction to the Peter Richmond Investors.</p>	n/a
27	Port Place 2	67	Development	<p>1st: \$285K Magnetic Capital Group ("Magnetic") 2nd: \$2.9M BDMC 3rd: \$1.47M Magnetic</p>	January 30 2017 (extend date January 30, 2018) <b>MATURED.</b>	<p>Property consists of 4 separate 2 storey retail properties.</p>	<p>The project is subject to a Notice of Sale issued by the first-ranking mortgagees. As the deadline was not met, a marketing and sale process for the Port Place 2 properties was commenced. In June 2020, a sale transaction for one of the four parcels was completed. The Trustee understands that the remaining three parcels are currently subject to sale transactions that have not yet been completed.</p> <p>On October 15, 2020, the Court granted an order authorizing the Trustee to enter into subordination and priority agreements that would subordinate BDMC's second priority mortgage to certain limited portions of additional financing advanced by certain first-ranking mortgagees secured by a mortgage currently registered in third position.</p>

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<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
28	Pivot (Rutherford)	176	Construction	1st: \$9.8M Bank of Nova Scotia ("BNS") 2nd: \$997K (*as at October 29, 2020) Jaekel Capital Inc. 3rd: \$8.6M BDMC	July 30, 2017 (extend date July 30, 2018) <b>MATURED.</b>	To date 61 out of the 136 homes have been sold. 54 of those sale transactions have closed. 10 more are complete or nearly complete and no new starts have commenced.	n/a
29	Prescott	53	Construction	1st: \$0 BNS * 2nd: \$2.65M 1984125 Alberta Ltd 3rd: \$2.4M BDMC *BNS will fund the buildout of the 2 remaining properties	July 10, 2016 (extend date July 10, 2017) <b>MATURED.</b>	To date 30 out of the 32 homes in the development have been sold and all 30 homes have closed. Construction of the 2 remaining units will commence in the near term. The borrower has advised that the second priority lender will likely experience a shortfall on its loan and, if that is the case, there will be no funds remaining for the Prescott Investors from the development.	n/a
30	QEWN – Oakville East	12	n/a	n/a	n/a	n/a	The BDMC debt and security on the QEWN project was transferred to a new administrator in June 2020, in accordance with the Court-approved QEWN Administration Settlement. As part of the transfer, an agreement was reached to compensate the BDMC estate for costs incurred directly with respect to the QEWN project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate.
31	Sky City Winnipeg	649	Pre-construction	1st: \$5M 11615467 Canada Ltd. 2nd: \$2.5M JYR 3rd: \$1.8M 11615467 Canada Ltd 4th: \$24.9 BDMC Original 5th: \$3.5 BDMC Hybrid 6th: \$1.3M BDMC WSL 7th: \$2M BDMC BOW 8th: \$586K Overflow	Original: August 2019 (term changed in later closings from 2018 to 2019, extend date August 2020) extension not exercised. <b>MATURED.</b> Hybrid: August 2019 (term changed in later closings from 2018 to 2019, extend date August 2020) extension not exercised. <b>MATURED.</b> WSL: August 31, 2018 <b>MATURED.</b> BOW: August 31, 2018 <b>MATURED.</b>	As the project was significantly behind schedule, deposits were returned to condo buyers. The site is currently being used as a surface parking lot, the income of which is used to service a portion of the priority debt. The borrower retained CW Stevenson Inc. to list the property for sale and on September 15, 2020 it was listed with no list price and a deadline for offers of October 15, 2020. The Trustee has followed up with the borrower who has advised that there are ongoing discussions with prospective purchasers regarding offers that have been submitted, however, no additional details have been provided.	On October 13, 2020, 11615467 Canada Ltd, the third priority mortgagee, issued a Notice of Sale requiring the full amount of its outstanding debt of approximately \$1.8M to be paid. The Trustee has been advised by counsel to the third priority mortgagee that, should its debt not be repaid within 30 days of the issuance of the Notice of Sale, the third priority mortgagee intends to seek court approval to list the Sky City property for sale regardless of the existing sale process being conducted by the borrower.
32	Solterra (Fusion)	362	Exited	n/a	n/a	On August 27, 2020, the Trustee sought and obtained approval of a settlement agreement in the amount of approximately \$16.2M in respect of the BDMC debt on the Solterra (Fusion) project. The settlement payment was in addition to the approximately \$2.4M paid to the Trustee, on behalf of BDMC, in respect of the completion of Phase 3 of the development.	n/a

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<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
33	The Greenwood (Danforth)	162	Exited	n/a	n/a	On March 16, 2020, the Trustee sought and obtained approval of a settlement agreement in the amount of \$7M in respect of the BDMC debt on the Greenwood (Danforth) project.	n/a
34	The Harlowe	303	Exited	n/a	n/a	On December 20, 2018, the Trustee sought and obtained approval of a settlement agreement in the amount of approximately \$15.6M in respect of the BDMC debt on the Harlowe project.	n/a
35	The Woodsworth (formerly The James)	130	Exited	n/a	n/a	On April 26, 2019, the Trustee sought and obtained approval of a settlement agreement in the amount of approximately \$4.8M in respect of the BDMC debt on the James project.	n/a
36	The Kemp	360	Exited	n/a	n/a	n/a	Romspen, the first priority mortgagee, issued a Notice of Sale in respect of its first priority mortgage which had matured. On June 27, 2019, Romspen accepted an offer for the sale of the properties. The transaction closed on September 10, 2019. After repayment of amounts owing to the first, second and third priority mortgagees, approximately \$2.2M remained as residual proceeds. Counsel to Fortress, on behalf of itself and the borrower, has submitted a claim to the residual proceeds of approximately \$572,000 in priority to the amounts to be paid to the Trustee on behalf of the Kemp Investors. The Trustee reviewed Fortress' claim and disagreed with the analysis provided by Fortress. In December 2019, the Trustee distributed \$1.5M of the \$2.2M of remaining proceeds, with \$700,000 held back pending resolution of the Fortress claim. The Trustee remains in discussion with Fortress and others in respect of this claim.
37	The Orchard	382	Exited	n/a	n/a	Property was listed for sale by the borrower. In June 2020, the borrower entered into an agreement of purchase and sale at a sale price of \$7M. After payment of the priority mortgages, including a loan from a party related to the Orchard borrower, property taxes, commission and other closing costs, approximately \$1.8M remained for distribution to the Orchard Investors. On September 22, 2020, the Trustee sought and obtained Court approval to distribute the residual proceeds on a <i>pari-passu</i> basis to the Orchard Investors.	n/a
38	The South Shore	639	Construction	<b>1st:</b> \$6.895M Diversified Capital Inc. ("Diversified") (as at January 24, 2019) <b>2nd (pari passu):</b> \$10.5M BDMC <b>SS Hybrid</b> <b>2nd (pari passu):</b> \$10.1M BDMC <b>SS2</b> <b>3rd:</b> \$8.6M BDMC Original	<b>Hybrid:</b> April 21, 2018 (extend date April 21, 2019) <b>MATURED.</b> <b>SS2:</b> July 21, 2016 (extend date July 21, 2017) <b>MATURED.</b> <b>Original:</b> January 21, 2014, amending agreement to July 21, 2017 <b>MATURED.</b>	This project is composed of two sites. Phase 1 comprises two mid-rise condominium apartment buildings. The borrower completed servicing and grading, installation of support piles and poured foundation. The foundation work began in 2017 but did not move forward due to a lack of financing. The borrower did not have sufficient pre-sales to obtain construction financing. The concept for Phase 2 is a 140-unit hotel, conference centre and spa as well as a small live/work building.	The project is subject to a Notice of Sale issued by Diversified, the priority mortgagee. In October 2019, Diversified advised the Trustee that it was in the process of commencing a formal marketing process, which included retaining a commercial broker to list the property for sale. Since then, the Trustee continued to follow up with Diversified regarding its efforts to sell the property as it continued not to be listed for sale. With the exception of limited responses to the Trustee's correspondence after the issuance of a letter from the Trustee's counsel on June 5, 2020, Diversified continued to ignore the Trustee's requests for information. Through its own research, the Trustee understands that, on or about October 21, 2020, the property was formally listed for sale with Colliers International on an unpriced basis and with a deadline for offers of November 26, 2020. The Trustee is continuing to attempt to engage in discussions with Diversified to obtain more information regarding the sale process.

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(Unaudited)

<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
39	The Wade (Victoria Medical)	118	Exited	n/a	n/a	n/a	n/a
40	Treehouse (Halo)	115	Development	<b>1st:</b> \$3.7M TCC (as at May 22, 2019) <b>2nd:</b> \$5.4M BDMC	November 30, 2021	The units comprising the project were originally sold in March 2015, however the borrower cancelled the sales in June/July 2017, with the intention of reselling them in the future. The site is fully zoned and the project was nearing the point of site plan approval.	On May 22, 2019, TCC issued a Notice of Sale. As its debt was not repaid by the deadline, TCC retained CBRE to market the property for sale. Offers were due September 25, 2019. Multiple offers were received, however, the Trustee understands that none of the offers received were sufficient to repay TCC in full and, accordingly, TCC has continued to market the property.
41	Triple Creek	280	Exited	n/a	n/a	The property is a long term holding property located within Rocky View County. The property currently is classified as 'Ranch and Farmland District' which permits agricultural uses and the borrower was unsuccessful in having the parcel re-designated to allow for residential development. Site is approximately 5 km from the existing built boundary. The property's future development is dependent on the subject lands being identified as an area for growth/development by the Calgary Growth Management Board.	A Notice of Sale was issued by first priority lender, Romspen, and other enforcement actions were taken by the second priority lender. On December 14, 2018, an order was granted permitting the property to be listed for sale through a commercial realtor. The list price for the property was \$3M. A report prepared by the listing agent noted that over the course of the six-month sale process, with the exception of one verbal offer for \$1.9M, no offers were received. After the completion of the initial six-month listing, the listing agent continued to market the property on its website until July 2020, during which time it received three verbal offers ranging from \$700,000 to \$1.6M. Given the lack of interest in the property, Romspen sought and obtained an Order for Foreclosure on October 29, 2020, which resulted in Romspen being granted a new Certificate of Title to the property solely in its name and all subsequent encumbrances, including the BDMC mortgages, being discharged from title to the property, with no recovery for the Triple Creek Investors or the second or third priority mortgagees.
42	Union Waterfront	353	Exited	n/a	n/a	n/a	A receiver was appointed August 3, 2018 and a sale process was completed. Sale of the properties was approved on February 15, 2019 pursuant to a Court order. As there was a shortfall in amounts owing to the first priority mortgagee, no recoveries were available for distribution to BDMC.
43	Wellington House	139	Development	<b>1st:</b> \$6.7M (charge \$8M) Cameron Stephens Financial Corporation <b>2nd:</b> \$6.3M BDMC	May 1, 2020 (extend date May 1, 2021) extension not exercised <b>MATURED.</b>	Development approvals needed. The borrower advised purchasers that in order to achieve an approvable design it altered the design of the project together with certain floorplate alterations. Deposits were returned to purchasers. The Zoning By-law Amendment was appealed to the LPAT and a hearing took place on October 29, 2018. On February 4, 2020, a decision was released by the LPAT whereby the borrower's appeal was dismissed and the requested amendment was not approved. Based on discussions with the borrower, the Trustee understands that the failure to obtain the amendment has delayed the project as the borrower will need to re-submit a revised application to the LPAT at a reduced density.	n/a



Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 12, 2020.  
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.  
Summary of Project Status as at November 12, 2020  
(Unaudited)

<b>LEGEND:</b>	<b>Development</b>	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	<b>Pre-construction</b>	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	<b>Construction</b>	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	<b>Completed</b>	Construction is complete, units remain unsold.
	<b>Exited</b>	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (See Note 2)	Project	Enforcement Proceeding
44	Whitby Commercial Park (Rosewater)	257	Development	1st: \$12.7M Downing Street Financial Inc. 2nd: \$14.7M BDMC	December 31, 2019 (three 6-month extensions at the discretion of the Trustee to an outside date of June 30, 2021)	<p>Development approvals needed. The Secondary Plan was approved by Whitby Council and adopted by the Region of Durham. An appeal to the secondary plan related to a District Park designation north of the subject lands was filed. Since the issue is isolated to a specific property, the appeal was scoped to allow the approval of the secondary plan to proceed. On June 24, 2019, Whitby Council approved a Zoning By-law Amendment on the subject lands to 'Prestige Industrial' and 'Greenbelt' which permits the development of the subject lands.</p> <p>The borrower is seeking to sell the property. The property is listed for sale with no list price and no bid deadline. The borrower has informed the Trustee that it has entered into a conditional agreement of purchase and sale for the property. The due diligence period has been extended to December 2020. The Trustee also understands that there are a number of parties interested in the property.</p> <p>The borrower exhausted the funds advanced by the priority mortgagee in early 2020 but was able to obtain bridge financing from the priority mortgagee to fund expenses through to October 31, 2020 while the borrower attempted to complete a sale of the project. The Trustee understands that these funds have now been exhausted and the borrower is in discussions with the priority mortgagee for additional financing to bridge to the closing of a sale transaction.</p>	
45	White Cedar Estates (Dunsire Guelph)	42	Exited	n/a	n/a	n/a	Property was sold through a Court-appointed receivership. The net proceeds remaining from the sale of the project after collection of ancillary receipts and payment of, among other things, the debt in priority to BDMC and professional fees is approximately \$490,000. In September 2019 the Trustee received a preliminary payment of \$450,000 ("Preliminary Payment") from the receiver. The Trustee was advised at the time that a second and final payment was expected to be paid to the Trustee in the near term ("Final Payment") once it receives a nominal HST refund from the CRA. The Trustee understands that, due to COVID-19, there have been significant delays with the processing of refunds by the CRA. Given the prolonged period of time since the Trustee's receipt of the Preliminary Payment and the continued uncertainty as to the timing of receipt of any Final Payment, the Trustee made an interim distribution to the Dunsire Guelph Investors in September 2020. Following receipt of any Final Payment, which the Trustee expects to be nominal, the Trustee would then be in a position to make a second distribution to Dunsire Guelph Investors.

Building & Development Mortgages Canada Inc.

**Project Analysis Summary as at November 12, 2020 - Notes**

(Unaudited)

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**Note 1:** The Trustee cautions that the Project Analysis Summary is only intended to summarize the results of certain aspects of the Trustee's analysis to November 12, 2020. The Trustee continues to refine its analysis on each project as well as to respond to new developments and information. New developments and new information can at times have a significant impact on the Trustee's review for that project and its related recommendations. Further, certain confidential information has been excluded from the Project Analysis Summary.

**Note 2:** Capital stack contains information provided to the Trustee at different points in time by various sources regarding the amounts advanced under the various registered charges. The registered charges may be different than the amount due. Actual balances may vary and those variances may be material. The capital stack information is provided for reference only and the Trustee or any other party may dispute the quantum and/or priority of any mortgage. Other encumbrances may exist that have not been registered on title.

**Note 3:** The Trustee has identified that the loan agreements on certain projects reflect maturity dates that vary depending on when the Investor entered into its agreement with BDMC. In some cases, Investors that advanced funds in a later tranche have loan agreements that reflect maturity dates that are later than the maturity dates reflected in the loan agreements of Investors that advanced funds earlier. As such, an individual Investor's loan maturity date may differ from the dates herein. The Trustee has not reviewed each Investor's individual closing package, and, accordingly, cannot confirm how many projects might be affected by varying maturity dates within a loan.

**Appendix 4:**  
**Bauhaus Notices dated February 14, 2020 and February 25, 2020**



February 14, 2020

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Lamb Bauhaus Inc. (the “Borrower”) pursuant to the loan agreement dated August 15, 2016 (“Loan Agreement”) regarding the property located at 284 King St. E., Toronto, ON (“Bauhaus Project” or the “Property”)**

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**Request for approval regarding the Syndicated Mortgage Loan to Lamb Bauhaus Inc.**

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

We are writing to you in our capacity as Trustee regarding the Bauhaus Project and further to: (i) the December 20, 2020 vote solicitation and feedback request that you may have received from Mr. Lamb, signed on behalf of the Borrower, (“**Borrower Notice**”); and (ii) the December 23, 2020 notice sent to you by the Trustee in response to the Borrower Notice (“**Trustee’s Notice**”).

**Current Status of the BDMC Loan**

As was advised in the Trustee’s Notice, pursuant to the BDMC Loan, the total amount owing to the syndicated mortgage lenders that advanced funds through BDMC in respect of the Bauhaus Project (“**Bauhaus SMLs**”) is approximately \$6.6 million, which reflects a principal balance of approximately \$5.6 million and accrued interest of approximately \$1 million (as at December 31, 2019)<sup>1</sup>. The BDMC Loan has a second ranking mortgage registered against title to the Property and matures on September 15, 2021 (“**Maturity Date**”).

In addition to the BDMC Loan, there is a first priority mortgage registered on title to the Property in favour of Firm Capital Corporation (“**Firm**”) in the amount of approximately \$10 million. The Firm mortgage is the only known charge registered on title to the Property in priority to the BDMC Loan.

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<sup>1</sup> Per diem interest since December 31, 2019 is \$1,236.52



### **The Borrower Notice**

The Borrower Notice, which was sent without consulting the Trustee or Representative Counsel, solicited the feedback of the Bauhaus SMLs in respect of a \$2.2 million settlement offer submitted by the Borrower to the Trustee (“**Original Offer**”). The Original Offer reflected a recovery of approximately 39% of the outstanding principal balance of the BDMC Loan (and no payment of any accrued interest).

The Trustee’s view, which was outlined in the Trustee’s Notice, was that the Original Offer was not fair or reasonable in the circumstances or in the best interests of the Bauhaus SMLs. The Original Offer allowed the Borrower to continue to maintain control of the Bauhaus Project, and ultimately be the beneficiary of any profits from its development, while causing the Bauhaus SMLs to crystallize a significant loss. The Trustee also advised that it would not be acting upon any votes from the Bauhaus SMLs made in response to the Borrower Notice.

### **Development Approvals**

The Borrower is proposing a 30-storey mixed use building containing 205 residential units and 177 square meters of grade-related commercial uses on King Street East in downtown Toronto, Ontario.

The Borrower’s Notice advised that in September 2019, the Borrower attended a 10-day municipal hearing before the Local Planning Appeal Tribunal (“**LPAT**”) for both a zoning by-law amendment and site plan approval, which would be required to develop the Bauhaus Project as proposed, and further noted that a decision from the LPAT was not expected to be released until 2021. The Borrower’s Notice cited the delay in obtaining development approvals as one of the factors ‘crippling’ the Bauhaus Project and one of the reasons it was offering only a limited repayment of principal at that time.

On January 3, 2020, the LPAT released its decision and ruled in favour of the Borrower’s application. The favourable LPAT decision allows the Borrower to proceed with the Bauhaus Project as proposed, thereby crystalizing the saleable gross floor area, eliminating the existing development uncertainty and reducing the timeline to project completion by at least 12 months.

### **The Final Offer**

Given the above and following further discussions between the Borrower and the Trustee, the Borrower has presented the Trustee with a revised offer to settle the BDMC Loan. The revised offer provides for payment by the Borrower of approximately \$6.735 million (“**Final Offer**”), or approximately \$4.5 million more than the Original Offer. The Final Offer reflects a recovery of 100% of the outstanding principal balance of the BDMC Loan (\$5.6 million) and 100% of accrued interest through to February 28, 2020 (\$1.1 million), which date is the



Borrower's anticipated closing date should the Final Offer be accepted by the Bauhaus SMLs and approved by the Court.

The Final Offer is conditional upon Court approval and a release of all future obligations of the Borrower with respect to the Loan Agreement and the BDMC Loan. In the event that the Borrower fails to pay any portion of the Final Offer within two weeks of Court approval of a definitive settlement agreement in respect of the Final Offer, to be executed by the Trustee, Olympia Trust Company, Computershare Trust Company of Canada and the Borrower ("**Settlement Agreement**"), the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 5% of the Final Offer. In addition, should the actual closing date occur after February 28, 2020, the Borrower has agreed to pay to the Trustee, on behalf of BDMC, the full amount of the total accrued interest, calculated at a rate of \$1,236.52 per day, for each day following the anticipated closing date until the actual closing date.

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

The Final Offer reflects the following recovery with respect to the BDMC Loan:

Principal outstanding (A)	\$5,641,600
Interest owing to February 28, 2020 (B)	\$1,093,198
Total proposed payments (C = A+B)	<u>\$6,734,798</u>
Proposed principal repayment per the Final Offer	\$5,641,600
Total recovery on principal outstanding	100%
Proposed Interest Payment per Final Offer	\$1,093,198
Total recovery on accrued interest	100%
Overall recovery on principal (C/A) <sup>2</sup>	<u>119%</u>

A copy of the Final Offer and Settlement Agreement executed by the Borrower is attached hereto as Schedule "A".

The amount distributed to the Bauhaus SMLs from the Final Offer will be net of an administrative holdback of 15% ("**Holdback**") to be retained by the Trustee in accordance

<sup>2</sup> Please note that this figure represents the overall recovery on the outstanding BDMC Loan principal balance of \$5,641,600. Individual realizations will vary by Bauhaus SML depending on when each syndicated mortgage lender advanced funds to the Bauhaus Project.



with the Court orders issued in these proceedings. The Bauhaus SMLs may receive a portion of the Holdback in the future; however, the timing and amount, if any, is unknown at this time.

### **Assessment of the Final Offer and Recommendation**

For the reasons set out below, the Trustee recommends accepting the Final Offer in full satisfaction of all amounts due or that may become owing to you under the Loan Agreement and is requesting your feedback in advance of accepting the Final Offer.

Acceptance of the Final Offer by the Trustee would result in the Bauhaus SMLs foregoing potential interest payments of approximately \$700,000, which would otherwise continue to accrue should the BDMC Loan remain outstanding until the Maturity Date and then be paid on that date.

The following considerations were taken into account by the Trustee in completing its assessment of the Final Offer:

- The Final Offer provides for a recovery of 100% of the principal and 100% of the interest owed in respect of the BDMC Loan to February 28, 2020;
- The Final Offer provides for a good faith deposit of \$200,000 (“**Deposit**”) to be held in trust by the Trustee’s counsel, pending the outcome of this voting request and obtaining Court approval of the Final Offer. The Deposit shall be non-refundable to the Borrower in the event of a default under the Settlement Agreement by the Borrower.
- The Borrower has also provided a commitment letter (“**Commitment Letter**”) from its lender confirming that the Borrower will be able to fund the Final Offer less the Deposit upon closing of the settlement transaction. The Commitment Letter contains certain conditions which the Borrower has advised will be satisfied prior to the closing of the settlement transaction;
- The Final Offer provides for an early exit for the Bauhaus SMLs; and
- The Final Offer provides certainty regarding the amount and time frame for the repayment of the BDMC Loan.

Given the above considerations, the choice before the Bauhaus SMLs is as follows:

- 1) Accept the Final Offer and the Settlement Agreement, which includes a release by BDMC, the Trustee and the Bauhaus SMLs with respect to all rights and obligations under the Loan Agreement and related documents; or



- 2) Not accept the Final Offer and the Settlement Agreement in which case the outcome is not known at this time. The BDMC Loan would still be outstanding (and in term) and the Trustee would have to reengage with the Borrower to determine next steps.

### **Next Steps**

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

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

**If you have any objections to the acceptance of the Final Offer described herein, you should return the instruction letter to us by mail, email, or fax, within ten (10) days. If you agree with the Trustee's recommendation to accept the Final Offer, please also return the instruction letter to us by mail, email, or fax, within ten (10) days to indicate your agreement.**

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

A prompt response is required in the circumstances.

*(Intentionally left blank – please see next page.)*





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

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)

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

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

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)

Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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



February 25, 2020

Dear Lender:

**Re: Re: Syndicated Mortgage Loan made to Lamb Bauhaus Inc. (the “Borrower”) pursuant to the loan agreement dated August 15, 2016 (“Loan Agreement”) regarding the property located at 284 King St. E., Toronto, ON (“Bauhaus Project”)**

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

We are writing to you in our capacity as Trustee regarding the Loan made to the Borrower (“**BDMC Loan**”) and with respect to motion materials served by the Trustee on February 24, 2020 in connection with a motion for the approval of the Bauhaus Offer (defined below) which is scheduled to be heard by the Court on **February 28, 2020 at 9 a.m.**

The Trustee’s motion materials, including its fifteenth report to Court (“**Fifteenth Report**”), are available on the Trustee’s website: <http://faanmortgageadmin.com>. If you do not have computer access, please call the Trustee at the contact number provided below and the Trustee will make alternate arrangements.

### **Settlement Approval Motion regarding the BDMC Loan**

The Borrower presented the Trustee with an offer for repayment of amounts owing under the Loan Agreement in the amount of \$6,734,798 (“**Bauhaus Offer**”). The Bauhaus Offer represents a repayment of 100% of the outstanding principal balance of the BDMC Loan (\$5,641,600) and 100% of accrued interest through to February 28, 2020 (\$1,093,198). On February 14, 2020, the Trustee sent a notice, which presented the Bauhaus Offer to the syndicated mortgage lenders that advanced funds for the BDMC Loan (“**Bauhaus SMLs**”), and requested feedback from the Bauhaus SMLs in advance of accepting the Bauhaus Offer (“**Bauhaus Feedback Request**”).

As of February 24 2020, in response to the Bauhaus Feedback Request, 69 Bauhaus SMLs voted, representing approximately 65% of the value and approximately 63% in number of the total Bauhaus SMLs. Of those Bauhaus SMLs that voted, 100% voted in favour of the Trustee accepting the Bauhaus Offer.



Following receipt of such feedback from the Bauhaus SMLs and correspondence with Representative Counsel, the Trustee accepted the Bauhaus Offer, subject to approval of the Court. Accordingly, the Trustee is seeking an Order from the Court approving, among other things, the Trustee entering into and ratifying the execution of the settlement agreement in connection with the Bauhaus Offer ("**Settlement Agreement**").

The Fifteenth Report provides information regarding the relevant background to the Bauhaus Offer, the details of the Settlement Agreement, and information that supports the Trustee's recommendation that the Bauhaus Offer and Settlement Agreement be approved by the Court.

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

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

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

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

**Appendix 5:**  
**Danforth Notices dated February 27, 2020 and March 11, 2020**



February 27, 2020

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to 1177 Danforth Avenue Ltd. (the “Borrower”) pursuant to the loan agreement dated October 8, 2014 (“Loan Agreement”) regarding the property located at 1177 Danforth Avenue, Toronto, ON (“Danforth Project” or the “Property”)**

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**Request for approval regarding the Syndicated Mortgage Loan to 1177 Danforth Avenue Ltd.**

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

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you to the Borrower in respect of the Danforth Project (“Danforth SMLs”) pursuant to the Loan Agreement and the various associated documents, and further to our notice dated August 2, 2018.

**Current Status of the BDMC Loan**

Pursuant to the BDMC Loan, the total amount owing to the Danforth SMLs is approximately \$8.9 million, which reflects a principal balance of approximately \$7.2 million and accrued interest of approximately \$1.7 million (as at January 31, 2020)<sup>1</sup>. The BDMC Loan matured on December 7, 2018.

In addition to the BDMC Loan, there is a first priority mortgage registered on title to the Property in favour of Cameron Stephens Financial Corporation (“Cameron Stephens”) in the amount of approximately \$34.2 million. The Trustee is advised that Cameron Stephens is currently owed approximately \$11.9 million under this mortgage. There is also a second priority mortgage registered on title in favour of Aviva Insurance Company (“Aviva”) in the amount of \$10 million which the Trustee understands secures sales deposits received and

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<sup>1</sup> Per diem interest since January 31, 2020 is \$1,582.97



used by the Borrower in the construction of the Danforth Project. The mortgages registered to Cameron Stephens and Aviva are the only known charges that are registered on title to the Property in priority to the BDMC Loan.

### **Status of the Development**

The Danforth Project is a 9-storey residential building containing 92 units and approximately 720 square meters of grade-related commercial space. Construction of the Danforth Project remains ongoing. All residential units have been sold and the larger of the two commercial units is subject to a long-term lease.

The Borrower has provided an estimated timeline of approximately 20 months to completion of the Danforth Project, as follows: (i) construction to be completed in approximately 14 months and (ii) condominium registration to take place in early Fall of 2021.

### **The Offer**

The Borrower has presented the Trustee with an offer to settle the BDMC Loan ("**Offer**"). The Offer was extensively negotiated by the Trustee and provides for payment by the Borrower of \$7,000,000 ("**Offer Price**") reflecting a recovery of 97% of the outstanding principal balance of the BDMC Loan or 106%<sup>2</sup> of the outstanding principal balance of the BDMC Loan when previously paid interest of \$653,527 is accounted for ("**Paid Interest**"), calculated as follows:

Principal outstanding (A)	\$7,222,300
Loan repayment (B)	\$7,000,000
Paid Interest	\$653,527
Total payments (C)	<u>\$7,653,527</u>
% Recovery on principal (B/A)	97%
% Recovery on principal including Paid Interest (C/A)	<u>106%</u>

The Offer is conditional upon Court approval of a settlement agreement to be executed by the Trustee, Olympia Trust Company, and the Borrower ("**Settlement Agreement**"), and a release of all future obligations of the Borrower with respect to the Loan Agreement and the BDMC Loan. If approved, payment is expected to be made by the Borrower to the Trustee shortly following Court approval. In the event that the Borrower fails to pay any portion of

<sup>2</sup> Please note that this figure represents the overall recovery on the outstanding BDMC principal balance of \$7,222,300. Individual realizations will vary by Danforth SML depending on when each syndicated mortgage lender advanced funds to the Danforth Project.



the Offer Price within thirty days of Court approval, the Borrower shall also be required to pay a late payment fee to the Trustee, on behalf of BDMC, in the amount of 10% of the Offer Price less the deposit (as discussed below).

The Offer also includes the extinguishment of all further rights and obligations of BDMC and the Danforth SMLs under the Loan Agreement, related documents and the associated mortgage on the Property.

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

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

### **Assessment of the Offer**

The Borrower ceased making interest payments required under the Loan Agreement on December 30, 2016. The Borrower advised that it will not resume making interest payments and that interest will continue to accrue through to completion of the Danforth Project (i.e. when the BDMC Loan would otherwise be repaid).

Acceptance of the Offer by the Trustee would result in the Danforth SMLs foregoing the remaining principal and accrued interest, which would otherwise be due on the BDMC Loan. In addition, the Trustee notes that the Danforth SMLs may be entitled to payment of a deferred lender fee pursuant to the Loan Agreement which would become payable upon the achievement of certain financial milestones. Based on the current unaudited financial projections for the Danforth Project provided by the Borrower, it is unclear whether a Deferred Lender fee would become payable to the Danforth SMLs in the future. The following is a summary of the estimated foregone recoveries to Danforth SMLs if the Offer is accepted:

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Remaining principal balance	\$222,300
Accrued interest (December 31, 2016 to January 31, 2020) <sup>3</sup>	<u>\$1,730,920</u>
Total foregone recoveries	<u>\$1,953,220</u>

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The Trustee has analyzed the Borrower's projections to complete the Danforth Project and the resulting projected outcome for the Danforth SMLs should the Offer not be accepted and the BDMC Loan remain on title through to project completion (being in or around Fall 2021). This analysis indicates that the present value of the expected outcome at the end of the Danforth Project would likely result in recoveries to the Danforth SMLs that are comparable

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<sup>3</sup> Interest continues to accrue at a per diem rate of \$1,582.97.



to the Offer Price of \$7 million today. Should the Danforth Project be fully monetized after Fall 2021, the present value of the recovery to the Danforth SMLs may be less than the \$7 million Offer Price being presented to the Danforth SMLs today.

### **Recommendation**

The Trustee recommends accepting the Offer in full satisfaction of all amounts due or that may become due to the Danforth SMLs under the Loan Agreement and is requesting your feedback in advance of accepting the Offer.

The following considerations were taken into account by the Trustee in completing its assessment of the Offer:

- The Trustee consulted with a planning consultant with respect to the Borrower's timeline of 20 months to project completion. Although the Trustee's planning consultant felt that 17 months was a more likely timeline to project completion, that view does not change the Trustee's recommendation in favour of accepting the Offer;
- Although the residential units in the Danforth Project are sold out, the Borrower has advised that certain risks remain which could impact both the project profitability and further extend the time frame for repayment of the BDMC Loan including: (i) construction delays; (ii) delays in registration of the condominium; (iii) cost overruns in excess of the contingency built into the budget; and (iv) difficulty in monetizing the commercial space;
- The Borrower has provided a good faith deposit of \$700,000 ("**Deposit**") to the Trustee, to be held in trust pending: (i) the acceptance by the Trustee of the Offer, and (ii) the Trustee obtaining Court approval of the Settlement Agreement;
- The Borrower has provided written confirmation of financing from its lender confirming that the Borrower will be able to fund the Offer Price less the Deposit upon closing of the settlement transaction;
- The Offer provides certainty regarding the amount and time frame for the repayment of the BDMC Loan;
- Based on an analysis of the Borrower's projections, the Trustee expects that the present value of the expected future recoveries would be similar to the recoveries available under the Offer today. Should there be any delay in the completion of the Danforth Project, or if the Borrower is unable to meet its financial projections, the present value of future recoveries may be lower than the Offer Price;





- There is debt of approximately \$11.9 million that ranks in priority to the BDMC Loan that would need to be repaid in advance of the BDMC Loan; and
- The Offer provides for a return on principal of 97% and 106% when taking Paid Interest into account.

Given the above considerations, the choice before the Danforth SMLs is as follows:

- 1) Accept the Offer and the Settlement Agreement, which includes a release of BDMC, the Trustee and the Danforth SMLs with respect to all rights and obligations under the Loan Agreement and related documents; or
- 2) Not accept the Offer and the Settlement Agreement, in which case the timing and amount of any repayment of the BDMC Loan is not known at this time. The BDMC Loan would remain outstanding and the quantum to be paid to the Danforth SMLs would be based on the ultimate profitability of the Danforth Project upon project completion.

### **Next Steps**

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

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

**If you have any objections to the acceptance of the Offer described herein, you should return the instruction letter to us by mail, email, or fax, within ten (10) days. If you agree with the Trustee's recommendation to accept the Offer, please also return the instruction letter to us by mail, email, or fax, within ten (10) days to indicate your agreement.**

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

A prompt response is required in the circumstances.



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

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel by phone or email, please reference **Danforth Project**).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)

Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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



March 11, 2020

Dear Lender:

**Re: Syndicated Mortgage Loan made to 1177 Danforth Avenue Ltd. (the “Borrower”) pursuant to the loan agreement dated October 8, 2014 (“Loan Agreement”) regarding the property located at 1177 Danforth Avenue, Toronto, ON (“Danforth Project”)**

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

We are writing to you in our capacity as Trustee regarding the Loan made to the Borrower (“**BDMC Loan**”) and with respect to motion materials served by the Trustee on March 10, 2020 in connection with a motion for the approval of the Danforth Offer (defined below) which is scheduled to be heard by the Court on **March 17, 2020**.

The Trustee’s motion materials, including its sixteenth report to Court (“**Sixteenth Report**”), are available on the Trustee’s website: <http://faanmortgageadmin.com>. If you do not have computer access, please call the Trustee at the contact number provided below and the Trustee will make alternate arrangements.

### **Settlement Approval Motion regarding the BDMC Loan**

The Borrower presented the Trustee with an offer for repayment of amounts owing under the Loan Agreement in the amount of \$7,000,000 (“**Danforth Offer**”). The Danforth Offer represents a repayment of 97% of the outstanding principal balance of the BDMC Loan and 106% when previously paid interest is taken into account. On February 27, 2020, the Trustee sent a notice presenting the Danforth Offer to the syndicated mortgage lenders that advanced funds for the BDMC Loan (“**Danforth SMLs**”), and requested feedback from the Danforth SMLs in advance of accepting the Danforth Offer (“**Danforth Feedback Request**”).

As of March 10, 2020, in response to the Danforth Feedback Request, 104 Danforth SMLs representing approximately 64.7% of the value and approximately 64.2% in number of the total Danforth SMLs submitted a vote. Of the Danforth SMLs who responded, 100 voted in favour of the Trustee accepting the Danforth Offer, representing 96.2% in number and 95.6% in value.



Following receipt of such feedback from the Danforth SMLs and correspondence with Representative Counsel, the Trustee accepted the Danforth Offer, subject to approval of the Court. Accordingly, the Trustee is seeking an Order from the Court approving, among other things, the Trustee entering into and ratifying the execution of the settlement agreement executed in connection with the Danforth Offer.

The Sixteenth Report provides information regarding the relevant background to the Danforth Offer, the details of the settlement agreement executed in connection with the Danforth Offer, and information that supports the Trustee's recommendation that the Danforth Offer and settlement agreement be approved by the Court.

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

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, its contact information is below (if you contact Representative Counsel by phone or email, please reference **Danforth Project**).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

**Appendix 6:**  
**Solterra Notices dated July 24, 2020 and August 20, 2020**



July 24, 2020

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to 2382917 Ontario Inc. (the “Borrower”) regarding the property located at MacAlister Blvd, Guelph, ON (“Solterra Project” or the “Property”)**

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**Request for approval regarding the Syndicated Mortgage Loan to 2382917 Ontario Inc.**

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

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you and other lenders (“**Solterra SMLs**”) to the Borrower in respect of the Solterra Project (also known as the Fusion Project) pursuant to the Loan Agreement (as defined below) and the various related and ancillary documents, and further to our notice dated January 31, 2020.

**Current Status of the BDMC Loan**

The Borrower and Centro Mortgage Inc. (now known as BDMC) are each in possession of a loan agreement dated February 20, 2015 (“**Loan Agreement**”) entered into between the Borrower and BDMC pursuant to which a loan from BDMC to the Borrower was authorized but which provide for certain different terms and conditions relating to such loan. The Borrower and BDMC each believe that the agreement in their respective possession contains the terms and conditions governing the loan pursuant to which the total funded amount of \$16,333,890 was advanced by BDMC for Phase 3 and Phase 4 of the Solterra Project.

As you are aware from the Trustee’s previous notice, proceeds from the Phase 3 home sales were sufficient to repay in full the first priority lender registered on title to Phase 3 of the



Property, and, accordingly, the Trustee was able to negotiate an early partial repayment of the second priority BDMC Loan from the proceeds of the Phase 3 sales. By January 2020, the Trustee had received \$2,383,758 from the Phase 3 home sales and distributed same to the Solterra SMLs (“**Phase 3 Repayment**”) net of an administrative holdback of 15% (“**Holdback**”).

Pursuant to the BDMC Loan, the total remaining amount owing to the Solterra SMLs is approximately \$20.4 million, which reflects a principal balance, net of the Phase 3 Repayment, of approximately \$14 million and accrued interest of approximately \$6.4 million (as at June 30, 2020)<sup>1</sup>. The BDMC Loan, has a second ranking mortgage registered on title to Phase 4 of the Property.

In addition to the BDMC Loan, there is a first priority mortgage registered on title to Phase 4 of the Property in favour of Toronto Dominion Bank of Canada (“**TD**”) in the amount of \$27 million. The Borrower advised that while currently there are no amounts owing to TD in respect of this mortgage, the balance will fluctuate as further construction draws are required to construct the Phase 4 homes. The mortgage registered to TD is the only known charge that is registered on title to Phase 4 of the Property in priority to the BDMC Loan.

### **Status of the Development**

Construction of Phase 4 is ongoing. Phase 4 consists of 193 units including 58 semi-detached homes and 135 single detached homes. As of June, 2020, the sale of 82 units had been completed, 41 units had been sold (transactions pending) and 70 units remained unsold.

The Borrower estimates that the Solterra Project will be fully completed in 2028, 7 years beyond when it was originally contemplated to be completed.

### **The Offer**

The Borrower has presented the Trustee with an offer (the “**Offer**”) to settle the remaining balance owing pursuant to the BDMC Loan. The Offer, which was extensively negotiated by the Trustee, provides for payment by the Borrower of \$16,171,969 (“**Offer Price**”). The Offer Price, together with the Phase 3 Repayment, reflect a recovery of approximately 114% of the original principal balance of the BDMC Loan, calculated as follows:

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<sup>1</sup> Per diem interest following June 30, 2020 is \$3,585.30.




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Original Principal (A)	\$16,333,890
Interest owing to June 30, 2020 (B)	6,440,135
Total Original Principal & Accrued Interest (as at June 30, 2020) (C = A+B)	<u>\$22,774,025</u>
Phase 3 Repayment (D)	\$2,383,758
Proposed payment per the Offer (E)	\$16,171,969
Total payments (F = D+E)	<u>\$18,555,727</u>
Overall recovery on principal (F/A)	<u>114%</u>

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The Offer is conditional upon Court approval of a settlement agreement (“**Settlement Agreement**”) to be executed by the Trustee and Olympia Trust Company, and which has been executed by the Borrower, and a release of all future obligations of the Borrower with respect to the Loan Agreement and the BDMC Loan. If approved, payment is expected to be made by the Borrower to the Trustee shortly following Court approval. In the event that the Borrower fails to pay any portion of the Offer Price within 30 days of Court approval, the Borrower shall also be required to pay a late payment fee to the Trustee, on behalf of BDMC, in the amount of 5% of the Offer Price less the Deposit (as defined below).

The Offer also includes the extinguishment of all further rights and obligations of BDMC and the Solterra SMLs under the Loan Agreement, related and ancillary documents and the associated mortgage on the Property.

Copies of the Offer and Settlement Agreement are attached hereto as Schedule “A”.

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

### **Assessment of the Offer and Recommendation**

Acceptance of the Offer by the Trustee would result in the Solterra SMLs foregoing the remaining accrued interest, which would otherwise be due on the BDMC Loan.






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Total Original Principal & Accrued Interest (as at June 30, 2020)	\$22,774,025
Phase 3 Repayment	(\$2,383,758)
Offer Price	<u>(\$16,171,969)</u>
Total potential foregone recoveries (as at June 30, 2020 <sup>2</sup> )	<u>\$4,218,298</u>

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The Trustee recommends accepting the Offer in full satisfaction of all amounts due or that may become due to the Solterra SMLs under the Loan Agreement and is requesting your feedback in advance of accepting the Offer.

The following considerations were taken into account by the Trustee in completing its assessment of the Offer:

- The Offer, together with the Phase 3 Repayment, provides for a return on principal of 114%;
- The Borrower has advised that in the current economic climate and in light of the COVID-19 pandemic, there are certain risks that could impact the project profitability and further extend the time frame for repayment of the BDMC Loan including: (i) possible future work stoppages mandated by the provincial government causing unplanned construction delays; (ii) price deflation; and (iii) a protracted time frame to sell the remaining Phase 4 units;
- The Borrower has provided a good faith deposit of \$1,617,197 ("**Deposit**") to the Trustee to be held in trust, pending the outcome of this voting request and obtaining Court approval of the Offer. If the settlement transaction does not close by September 30, 2020 due to a failure of the Borrower to comply with its obligations under the Offer, the deposit shall be retained by the Trustee, on behalf of BDMC. The Borrower has also provided a commitment letter from its lender confirming that the Borrower will be able to fund the Offer Price less the Deposit; and
- The Offer provides certainty regarding the amount and time frame for repayment of the BDMC Loan.

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<sup>2</sup> Following June 30, 2020, interest will continue to accrue at a per diem rate of \$3,585.30.



Given the above considerations, the choice before the Solterra SMLs is as follows:

- 1) Accept the Offer and the Settlement Agreement, which includes a release from BDMC, the Trustee and the Solterra SMLs with respect to all rights and obligations under the Loan Agreement and related documents; or
- 2) Not accept the Offer and the Settlement Agreement, in which case the timing and amount of any repayment of the BDMC Loan is not known at this time. The BDMC Loan would remain outstanding, and the ultimate recovery for the Solterra SMLs would be based on the ultimate profitability of the Solterra Project upon project completion.

### **Next Steps**

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

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

**If you have any objections to the acceptance of the Offer described herein, you should return the instruction letter to us by mail, email, or fax, within ten (10) days. If you agree with the Trustee's recommendation to accept the Offer, please also return the instruction letter to us by mail, email, or fax, within ten (10) days to indicate your agreement.**

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

A prompt response is required in the circumstances.



Should you have any questions of the Trustee, our contact information is shown below (if you contact us, please reference **Solterra Project**).

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Solterra Project**).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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



August 20, 2020

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to 2382917 Ontario Inc. (the “Borrower”) regarding the property located at MacAlister Blvd, Guelph, ON**

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

We are writing to you in our capacity as Trustee regarding the BDMC Loan made to the Borrower and with respect to motion materials served by the Trustee on August 19, 2020 in connection with a motion for the approval of the Solterra Offer (defined below) which is scheduled to be heard via a virtual hearing on **August 27, 2020 at 1:00pm (“August 27 Motion”)**. To the extent that you would like further information in respect of the August 27 Motion please contact the Trustee directly.

The Trustee’s motion materials, including its eighteenth report to Court (“**Eighteenth Report**”), are available on the Trustee’s website: <http://faanmortgageadmin.com>. If you do not have computer access, please call the Trustee at the contact number provided below and the Trustee will make alternate arrangements.

**Settlement Approval Motion regarding the BDMC Loan**

The Borrower presented the Trustee with an offer for repayment of amounts owing under the loan agreement in the amount of \$16,171,969 (“**Solterra Offer**”). The Solterra Offer represents a repayment of 114% of the principal balance advanced under the BDMC Loan. On Jul 24, 2020, the Trustee sent a notice, which presented the Solterra Offer to the syndicated mortgage lenders that advanced funds for the BDMC Loan (“**Solterra SMLs**”), and requested feedback from the Solterra SMLs in advance of accepting the Solterra Offer (“**Solterra Feedback Request**”).

As of August 18, 2020, in response to the Solterra Feedback Request, 224 Solterra SMLs



representing approximately 64.6% of the value of the BDMC Loan and approximately 61.9% in number of the total Solterra SMLs submitted a vote. Of those who voted, 216 Solterra SMLs representing 96% in value and 96.4% in number of such loans voting, voted in favour of the Trustee accepting the Solterra Offer.

Following receipt of such feedback from the Solterra SMLs and correspondence with Representative Counsel, the Trustee accepted the Solterra Offer, subject to approval of the Court. Accordingly, the Trustee is seeking an Order from the Court approving, among other things, the Trustee entering into and ratifying the execution of the settlement agreement executed in connection with the Solterra Offer.

The Eighteenth Report provides information regarding the relevant background to the Solterra Offer, the details of the settlement agreement executed in connection with the Solterra Offer, and information that supports the Trustee's recommendation that the Solterra Offer and settlement agreement be approved by the Court.

Should you have any questions of the Trustee, our contact information is shown below (if you are contact us, please reference **Solterra Project**).

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Solterra Project**).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

**Appendix 7:**

**Peter Richmond Notices dated January 17, 2020, January 24, 2020, March 24, 2020, and October 2, 2020**



January 17, 2020

Dear Lender:

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

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

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

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

### **Background**

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

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



The Borrower made interest payments on the PRLA Loan of approximately \$2.9 million through to July, 2017 (“**PRLA Paid Interest**”) after which interest began, and continues, to accrue<sup>1</sup>.

The syndicated mortgage lenders that advanced funds in respect of the LH2 Loan (the “**LH2 SMLs**”) are owed, as at December 31, 2019, approximately \$5.8 million (comprised of approximately \$4.5 million in principal and approximately \$1.3 million in accrued interest). The Borrower made interest payments on the LH2 Loan of approximately \$1.1 million through to May, 2017 (“**LH2 Paid Interest**”) after which interest began, and continues, to accrue<sup>2</sup>. It should be noted that: (i) the LH2 SMLs only have a charge registered on title against the properties located at 122-124 Peter Street (i.e. not against all of the Properties) and (ii) the charge registered on title to 122-124 Peter Street in favour of the LH2 SMLs ranks subordinate to the charge registered on title to those properties in favour of the PRLA SMLs.

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

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

Property	Mortgagee	Amount Owing
122-124 Peter Street	Wenvor Technologies Inc.	\$5,754,392
126 Peter Street (“ <b>126 Peter</b> ”)	Toopbin Management Ltd. (“ <b>Toopbin</b> ”)	\$2,143,530
128 Peter Street (“ <b>128 Peter</b> ”)	Windsor Capital Corporation (“ <b>Windsor</b> ”)	\$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 <sup>3</sup>	\$4,161,488
		\$22,730,341

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

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

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





## **Overview of the Current Status of the Peter Richmond Project**

### ***120 Peter Street***

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

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

### ***Status of Development Approvals***

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

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

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

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



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

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

### **Status of Enforcement Actions**

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

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

### **Solicitation Process and Offers Received**

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

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



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

### Next Steps

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

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

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

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



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

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

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

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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



January 24, 2020

Dear Lender:

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

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

### **Assignment Approval Motion**

We are writing to you in our capacity as Trustee regarding motion materials served by the Trustee on January 23, 2020 in connection with a motion for the approval of an Assignment Offer (defined below) relating to the Peter Richmond Loans (as defined below) in respect of the Peter Richmond Project, which is scheduled to be heard by the Court on January 30, 2020 (“**Hearing**”). This notice is further to our notice of January 17, 2020 (“**Notice**”).

The Trustee’s motion materials, including its fourteenth report to Court (“**Fourteenth Report**”), are available on the Trustee’s website: <http://faanmortgageadmin.com>. If you do not have computer access, please call the Trustee at the contact number provided below and the Trustee will make alternative arrangements.

The Trustee is seeking Court approval for the assignment of the right, title and interest in and to the indebtedness owed by the Borrower to BDMC pursuant to two separate loan facilities: (i) a loan agreement dated November 3, 2014 (“**PRLA Loan**”); and (ii) a syndicated mortgage loan advanced to The Julian Cole Development Corporation pursuant to various loan agreements that have been assumed by the Borrower, (collectively, the “**LH2 Loan**”) (and together with the PRLA Loan, the “**Peter Richmond Loans**”), to Carlyle Communities Inc. in exchange for a cash payment (“**Assignment Offer**”).

As set out in the Notice and the Fourteenth Report, the Trustee undertook a focused solicitation process with respect to the Peter Richmond Loans and received multiple offers on the offer deadline. Following its review of the offers, including consideration of the offer



price, terms of the relevant offer documentation, and ability of the offeror to close a transaction, the Trustee has determined, and Representative Counsel has agreed, that the Assignment Offer provides the best executable transaction of the offers received and provides the best outcome for the individual lenders who advanced funds under the Peter Richmond Loans (“**Peter Richmond Individual Lenders**”), in the circumstances.

The Fourteenth Report provides additional information regarding the Peter Richmond Project and details of the Assignment Offer.

Among other things, given the complexities of both the documentation governing the PRLA Loan and the LH2 Loan and the title to the Properties, if a Court order is granted approving the Assignment Offer, the Trustee intends to return to Court to determine the appropriate distribution of the proceeds of the Assignment Offer to the Peter Richmond Individual Lenders.

### **Next Steps**

The Trustee will provide a further update after the Hearing. **At this time there is no action required by the Peter Richmond Individual Lenders.**

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

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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



March 24, 2020

Dear Lender:

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

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

We are writing to you in our capacity as Trustee and further to our notices of January 17 and January 24, 2020 (“**Notices**”).

### **Background**

Pursuant to the January 24 Notice, you were advised that the Trustee served motion materials on January 23, 2020 in connection with its motion for approval of the assignment to Carlyle Communities Inc. (“**Assignee**”) of the right, title and interest in and to the indebtedness owed by the Borrower to BDMC pursuant to two separate loan facilities: (i) a loan agreement dated November 3, 2014 (“**PRLA Loan**”); and (ii) a syndicated mortgage loan advanced to the Julian Cole Development Corporation pursuant to various loan agreements that have been assumed by the Borrower (collectively, the “**LH2 Loan**”, and together with the PRLA Loan, the “**Peter Richmond Loans**”) in exchange for a cash payment (“**Assignment Transaction**”). On January 30, 2020, the Court granted an order approving the Assignment Transaction, which, among other things, included an assignment price of \$26.25 million (“**Assignment Price**”). The Assignee paid, and the Trustee received, the Assignment Price on February 12, 2020. The Assignment Transaction closed on that date (“**Closing Date**”).



## **Loan Details and Overall Recovery**

The syndicated mortgage lenders that advanced funds to the Borrower in respect of the PRLA Loan (“**PRLA SMLs**”) were owed, as at the Closing Date, approximately \$33.1 million (comprised of approximately \$27.4 million in principal and approximately \$5.7 million in accrued interest). The Borrower made interest payments on the PRLA Loan of approximately \$2.9 million through to July 2017, after which interest began to accrue.

The syndicated mortgage lenders that advanced funds in respect of the LH2 Loan (“**LH2 SMLs**”, and together with the PRLA SMLs, the “**Peter Richmond SMLs**”) were owed, as at the Closing Date, approximately \$5.5 million (comprised of approximately \$4.5 million in principal and approximately \$1 million in accrued interest). The Borrower made interest payments on the LH2 Loan of approximately \$1.1 million through to May 2017, after which interest began to accrue.

The Assignment Transaction results in a very substantial recovery on the combined principal owing to the Peter Richmond SMLs in respect of the Peter Richmond Loans. On an aggregate basis, the Assignment Price provides for a recovery of 82% of principal across the Peter Richmond Loans and, when previously paid interest is taken into account, a recovery of 94% on principal. However, individual recoveries may vary, in some cases significantly, depending on a number of factors. In particular, as described in the January 17 Notice, the LH2 SMLs only had a charge registered on title against the properties located at 122-124 Peter Street (i.e., not against all of the Properties), which charge ranked subordinate to the charge registered on title to those properties in favour of the PRLA SMLs.

## **Next Steps**

Given, among other things, the complexities of both the documentation governing the PRLA Loan and the LH2 Loan and the respective charges on title to the Properties, the Trustee intends to return to Court in the near term (“**Distribution Hearing**”) to seek approval of a proposed allocation methodology amongst the PRLA SMLs and the LH2 SMLs of the proceeds received in connection with the Assignment Transaction<sup>1</sup>. The Trustee will notify you when it serves its motion materials in respect of the Distribution Hearing.

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<sup>1</sup> The amount to be distributed in connection with the Assignment Transaction will be net of an administrative holdback of 15% (“Holdback”) to be retained by the Trustee in accordance with Court Orders issued in these proceedings. A portion of the Holdback may be paid in the future; however, the timing and amount, if any, is unknown at this time.





Should you have any questions of the Trustee, our contact information is shown below (if you contact us, please reference **Peter Richmond Project**).

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Peter Richmond Project**).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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



October 2, 2020

Dear Lender:

**Re: Syndicated Mortgage Loan (“PRLA Loan”) made to Fortress Carlyle Peter St. Inc. (the “Borrower”) in respect of properties located at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario and a syndicated mortgage loan made to Julian Cole Development Corporation in respect of the property located at 122-124 Peter Street pursuant to various loan agreements that have been assumed by the Borrower (collectively, the “LH2 Loan” and together with the PRLA Loan, the “Peter Richmond Loans”)**

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

We are writing to you in our capacity as Trustee and further to our notice of March 24, 2020.

The purpose of this notice is to provide information regarding the proposed distribution of 85% of the \$26.25 million (“**Realized Property**”) received by the Trustee in connection with the assignment transaction in respect of the Peter Richmond Loans (“**PRLA Assignment Transaction**”). The Trustee intends to attend at Court to seek an Order (“**Peter Richmond Distribution Order**”) to distribute the Realized Property to the syndicated mortgage lenders who advanced monies pursuant to the PRLA Loan (“**PRLA SML Lenders**”) and syndicated mortgage lenders who advanced monies pursuant to the LH2 Loan (“**LH2 Lenders**”): (i) on a *pari-passu* basis with respect to the portion of the Realized Property allocated to 122-124 Peter Street, and (ii) solely to the PRLA SML Lenders with respect to the remaining portion of the Realized Property.

The Peter Richmond approval motion is scheduled to be heard via a virtual hearing on **October 15, 2020 at 10:00am** (“**Peter Richmond Distribution Motion**”). To the extent that you would like further information on the Peter Richmond Distribution Motion please contact the Trustee directly at the contact number provided below.



The Trustee's motion materials filed in support of the Trustee's request for the Peter Richmond Distribution Order, including its twenty-first report to Court ("**Twenty-First Report**"), are available on the Trustee's website: <http://faanmortgageadmin.com>. The Twenty-First Report describes the following matters:

- (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 Realized Property should be distributed: (i) to the PRLA SML Lenders and the LH2 Lenders using the Pari Passu Approach and Square Footage Methodology (each as described in the Twenty-First Report); 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. All distributions will be net of the Court approved administrative holdback (15%) ("**Administrative Holdback**"); and
- (d) A description of the Square Footage Methodology, the Pari Passu Approach and the corresponding recoveries to the: (i) PRLA SML Lenders of approximately \$23.24 million (or approximately 85% on a principal balance of \$27.4 million and 95% when previously paid interest is taken into account), and (ii) LH2 Lenders of approximately \$3 million (or approximately 66% on a principal balance of \$4.5 million and 88% when previously paid interest is taken into account).

### **Next Steps**

At this time, you should review this notice and the associated Court materials carefully including the Twenty-First Report available on the Trustee's website, and, if desired, arrange to obtain independent legal advice regarding these matters. You can also consult Representative Counsel whose contact information is provided below.

Should the Peter Richmond Distribution Motion be successful, the Trustee will distribute the Realized Property, net of the Administrative Holdback, to the PRLA SML Lenders and the LH2 Lenders as outlined above as soon as practicable following Court approval.

Should you have any questions, our contact information is shown below (if you contact us, please reference **Peter Richmond Project**).

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**



Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Peter Richmond Project**).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

Applicant

Respondent

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

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

**Proceedings commenced at Toronto**

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

**(November 2020 Comprehensive Update)**

**(Part 1 of 3)**

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**OSLER, HOSKIN & HARCOURT LLP**

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

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