

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

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

(JUNE 2021 COMPREHENSIVE UPDATE)

May 21, 2021

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

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

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

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

TO: SERVICE LIST

Ontario
**SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

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 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**

SERVICE LIST

(As of May 21, 2021)

<p>TO: OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8</p>	<p>AND</p>	<p>TO: FAAN MORTGAGE ADMINISTRATORS INC. 20 Adelaide Street East Suite 920 Toronto, ON M5C 2T6</p>
--	------------	---

Michael De Lellis
 Tel. +1.416.862.5997

Jeremy Dacks
 Tel. +1.416.862.4923

Mary Paterson
 Tel. +1.416.862.4924

Martino Calvaruso
 Tel. +1.416.862.6665

Justine Erickson
 Tel. +1.416.862.4208

mdelellis@osler.com

jdacks@osler.com

mpaterson@osler.com

mcalvaruso@osler.com

jerickson@osler.com

Naveed Manzoor
 Tel. +1.416.258.6415

Daniel Sobel
 Tel. +1.647.272.8383

Lana Bezner
 Tel. +1.416.966.7646

Shelby Draper
 Tel. +1.416.471.0969

naveed@faanmortgageadmin.com

daniel@faanmortgageadmin.com

lane@faanmortgageadmin.com

shelby@faanmortgageadmin.com

naomi@faanmortgageadmin.com

Trustee

Counsel for the Trustee

AND **AIRD & BERLIS LLP**
 TO: Brookfield Place
 181 Bay Street, Suite 1800
 Toronto, ON M5J 2T9

Steven L. Graff
 Tel. +1.416.865.7726
Ian Aversa
 Tel. +1.416.865.3082
Miranda Spence
 Tel. +416.865.6414

sgraff@airdberlis.com
iaversa@airdberlis.com
mspence@airdberlis.com

Counsel for the Superintendent of Financial
 Services

AND **HER MAJESTY THE QUEEN IN**
 TO: **RIGHT OF THE PROVINCE OF**
ONTARIO AS REPRESENTED BY
THE MINISTER OF FINANCE
 P.O. Box 620
 33 King Street West, 6th Floor
 Oshawa, ON L1H 8E9

Steven Groeneveld
Leslie Crawford
 Fax: +1.905.436.4510

steven.groeneveld@ontario.ca
leslie.crawford@ontario.ca

AND **FINANCIAL SERVICES**
 TO: **REGULATORY AUTHORITY OF**
ONTARIO (“FSRA”)
 25 Sheppard Avenue West, Suite 100
 Toronto, ON
 M2N 6S6

Troy Harrison
Sylvia Ezeard
 Fax: +1.416.590.7070

troy.harrison@fsrao.ca
sylvia.ezeard@fsrao.ca

AND **CHAITONS LLP**
 TO: 5000 Yonge Street, 10th Floor
 Toronto, Ontario M2N 7E9

Harvey Chaiton
 Tel. +1.416.218.1129
George Benchetrit
 Tel. +1.416.218.1141

harvey@chaitons.com
george@chaitons.com

Court-Appointed Representative Counsel for
 Investors

AND **NORTON ROSE FULBRIGHT CANADA**
 TO: **LLP**
 Royal Bank Plaza, South Tower
 200 Bay Street, Suite 3800, P.O. Box 84
 Toronto, Ontario M5J 2Z4

Jennifer Teskey
 Tel: +1.416.216.2303
Jeremy Devereux
 Tel: +1.416.216.4073

Fax: +1.416.216.3930

Jennifer.teskey@nortonrosefulbright.com
Jeremy.devereux@nortonrosefulbright.com

AND **CANADIAN DEVELOPMENT CAPITAL**
 TO: **& MORTGAGE SERVICES INC.**
(“CDCM”)
 25 Brodie Drive, Unit 7
 Richmond Hill, ON
 L4B 3K7

Julie Galati

jgalati@cdcminc.ca

AND **ROBINS APPLEBY LLP**
 TO: 120 Adelaide Street West
 Suite 2600
 Toronto, ON M5H 1T1

David Taub

Tel. +1.416.360.3354

John Fox

Tel. +1.416.360.3349

dtaub@robapp.com

jfox@robapp.com

Counsel to Fortress Real Developments
 Inc.

AND **BLANEY MCMURTRY LLP**
 TO: 2 Queen Street East, Suite 1500
 Toronto, Ontario M5C 3G5

David Ullmann

Tel. +1.416.596.4289

dullmann@blaney.com

AND **NOBLETON SOUTH HOLDINGS INC.**
 TO: 56 The Esplanade, Suite 206
 Toronto, Ontario M5E 1A7

Domenic Fazari

dfazari@cityzen.ca

Borrower

AND **BROOKHILL HOLDINGS INC.**
 TO: 56 The Esplanade, Suite 206
 Toronto, ON M5E 1A7

Giuseppe Valela

jvalela@tercot.com

Borrower for Bowmanville

AND **FORTRESS REAL DEVELOPMENTS
 INC.**
 TO: 25 Brodie Drive, Unit 1
 Richmond Hill, ON L4B 3K7

vince@fortressrdi.com

jawad@fortressrdi.com

AND **PAUL BATES BARRISTER**
 TO: 100 Lombard St., Suite 302
 Toronto, ON M5C 1M3

Paul Bates

pbates@batesbarristers.com

AND **NOBLETON NORTH HOLDING INC.**
 TO: 368 Four Valley Drive
 Concord, Ontario L4K 5Z1

Giuseppe Valela

jvalela@tercot.com

Borrower

AND **SOUTH WEST QUEENSVILLE
 HOLDINGS INC.**
 TO: 56 The Esplanade, Suite 206
 Toronto, Ontario M5E 1A7

Giuseppe Valela

jvalela@tercot.com

Borrower for Highlands of York

AND **OWENS WRIGHT**
TO: 20 Holly Street, Suite 300
Toronto, Ontario M4S 3B1

David Forgione

dforgione@owenswright.com

Counsel to numerous Borrowers

AND **WELLINGTON HOUSE INC.**
TO: 778 King Street West
Toronto, Ontario M5V 1N6

Brad Lamb

nate@lambdevcorp.com

Borrower

AND **O'CONNOR MACLEOD HANNA LLP**
TO: 700 Kerr Street
Oakville, ON L6K 3W5

Orie Niedzviecki

niedzviecki@omh.ca

Counsel to JW Roberts Enterprises Inc.

AND **FDS BROKER SERVICES INC.**
TO: 160 Traders Blvd, Suite 202
Mississauga, ON L4Z 3K7

Zafar Khawaja

zafar@fdsbroker.com

AND **ROYAL CANADIAN MOUNTED
POLICE**
Integrated Market Enforcement Team
20 Queen Street West, 15th Floor
Toronto, ON M5H 3R3

Jason Wong

jason.wong@rcmp-grc.gc.ca

AND **MILLER THOMSON LLP**
TO: 40 King Street West, Suite 5800
Toronto, ON M5H 3S1

Craig Mills

cmills@millerthomson.com

Counsel to Brookhill Holdings Inc.

AND **GOLDMAN, SLOAN, NASH & HARBER
LLP**
TO: 480 University Avenue, Suite 1600
Toronto, ON M5G 1V2

David Nakelsky

davidn@gsnh.com

Counsel to Wellington House Inc.

AND **FFM CAPITAL INC.**
TO: 35 Siltan Road
Woodbridge, ON L4L 7Z8

Tony Mazzoli

Krish Kochhar

tmazzoli@ffmcapital.com

kkochhar@ffmcapital.com

AND **ROSEN GOLDBERG INC.**
TO: 5255 Yonge Street, Suite 804
Toronto, ON, M2N 6P4

Info@rosengoldberg.com

Trustee to FDS Broker Services Inc.

AND **TSUNAMI TECHNOLOGY GROUP INC.**
TO: 215 Traders Blvd. East, Suite 16
Mississauga, ON L4Z 3K5

Don Tanner

dontanner@technology.ca

AND **COMPUTERSHARE TRUST**
 TO: **COMPANY OF CANADA**
 100 University Avenue
 12th Floor, South Tower
 Toronto, ON M5J 2Y1

Robert Armstrong
Amanda Yu

Robert.Armstrong@computershare.com
Amanda.Yu@computershare.com
PCSmortgages@computershare.com

AND **OLYMPIA TRUST COMPANY**
 TO: 200, 125-9 Avenue SE
 Calgary, AB T2G 0P6

Jonathan Bahnuik
Johnny Luong

BahnuikJ@olympiustrust.com
LuongJ@olympiustrust.com

AND **DUNSIRE (LANDSDOWN) INC.**
 TO: 203A-465 Phillip Street
 Waterloo, Ontario N2L 6C7

Shawn Keeper

shawn.keeper@dunsire.com

Borrower

AND **RSM CANADA LIMITED**
 TO: 11 King Street West
 Suite 700, PO Box 27
 Toronto, Ontario M5H 4C7

Jeffrey Berger

Jeff.berger@rsmcanada.com

Court-appointed Receiver of Dunsire
 (Landsdown) Inc.

AND **LAMB BAUHAUS INC.**
 TO: 778 King Street West
 Toronto, ON M5V 1N6

Brad Lamb

nate@lambdevcorp.com

Borrower

AND **BEL CALGARY INC.**
 TO: 778 King Street West
 Toronto, ON M5V 1N6

Brad Lamb

nate@lambdevcorp.com

Borrower

AND **SUNRISE ACQUISITIONS (BOND**
 TO: **HEAD) INC.**
 50 West Wilmot Street, Suite 100
 Richmond Hill, ON L4B 1M5

Sajjad Hussain

shussain@sunrisehomes.ca

Borrower

AND **BRAESTONE DEVELOPMENT**
 TO: **CORPORATION**
 85 Bayfield Street, Suite 500
 Barrie, ON L4M 3A7

J. David Bunston
James Massey

dbunston@georgianinternational.com

Borrower

AND **FORTRESS BROOKDALE INC.**
TO: 1 – 25 Brodie Drive
Richmond Hill, ON L4B 3K7

Jawad Rathore
Vincenzo Petrozza

jawad@fortressrdi.com
vince@fortressrdi.com

Borrower

AND **RSM CANADA LIMITED**
TO: 11 King Street West, Suite 700
Toronto, ON M5H 4C7

Arif Dhanani
arif.dhanani@rsmcanada.com

Private Receiver of Brookdale

AND **MEYER, WASSENAAR & BANACH
LLP**
TO: Royal Bank Bldg. 301-5001 Yonge St.
North York, Ontario M2N 6P6

Joseph Fried
jfried@mwb.ca

Counsel to Private Receiver of Brookdale
Project

AND **EMERALD CASTLE DEVELOPMENTS
INC.**
TO: 361 Connie Crescent, Suite 200
Concord, ON L4K 5R2

Desi Auciello
ramsey@cachetdevelopments.com

Borrower

AND **AVERTON (RUTHERFORD) INC.**
TO: 101 Riele Drive, Suite 310
St. Alberta, Alberta T8N 3X4

Paul Lanni
planni@averton.ca

Borrower

AND **CARLYLE COMMUNITIES
(CRESTVIEW) INC.**
TO: 20 Rivermede Road, Suite 204
Concord, ON

Naram Mansour
naram.mansour@carlylecommunities.com

Borrower

AND **LAMB EDMONTON CORP.**
TO: 778 King Street West
Toronto, ON M5V 1N6

Brad Lamb
nate@lambdevcorp.com

Borrower

AND **AVERTON HOMES (PRESCOTT) INC.**
TO: 101 Riele Drive, Suite 310
St. Alberta, AB T8N 3X4

Paul Lanni
planni@averton.ca

Borrower

AND **THE HARLOWE INC.**
TO: 778 King Street West
Toronto, ON M5V 1N6

Brad Lamb

nate@lambdevcorp.com

Borrower

AND **THICKSON ROAD 407, WHITBY LIMITED**
TO: 9000 Keele Street, Unit 4
Concord, Ontario L4K 0B3

Mario Bottero

mario@rosewatergroup.com

Borrower

AND **2309918 ONTARIO INC.**
TO: 30 Wertheim Court, Unit 3, Building A,
Richmond Hill, Ontario L4B 1B9

Dino Sciavilla

sales@pacedev.ca

Eden Borrower

AND **2301132 ONTARIO INC.**
TO: 11025 Lakeridge Road
Port Perry, Ontario L9L 1V7

Brian Tilley

catalinadevelopments@gmail.com

Borrower

AND **GOLDMAN SLOAN NASH & HARBER LLP**
TO: 480 University Avenue Suite 1600
Toronto, ON M5G 1V2

Robert Jackson

Jackson@gsnh.com

Counsel to The Harlowe Inc.

AND **HARRIS, SHEAFFER LLP**
TO: 4100 Yonge Street, Suite 610
Toronto, ON M2P 2B5

Raz Nicolae

rnicolae@harris-sheaffer.com

Counsel to Whitby Borrower

AND **DAVID CHONG**
TO: 1370 Don Mills Road
Don Mills, ON M3B 3N7

David Chong

Tel. +1.416.510.2233

David@davidchong.ca

Counsel to 2309918 Ontario Inc.

AND **2309840 ONTARIO INC.**
TO: 11025 Lakeridge Road
Port Perry, Ontario L9L 1V7

Brian Tilley

catalinadevelopments@gmail.com

Borrower

AND **DLA PIPER**
 TO: 1 First Canadian Place
 100 King Street West, Suite 6000
 Toronto, ON M5X 1E2

Edmund Lamek
Edmond.lamек@dlapiper.com

Danny Nunes
danny.nunes@dlapiper.com

Counsel to 2301132 Ontario Inc. and
 2309840 Ontario Inc.

AND **BENNETT JONES LLP**
 TO: 1 First Canadian Place
 100 King Street West, Suite 3400
 Toronto, ON M5X 1A4

Sean Zweig
zweigs@bennettjones.com

Counsel to Georgetown Proposal Trustee

AND **BEL-EDMONTON INC.**
 TO: 778 King Street West
 Toronto, Ontario M5V 1N6

Brad Lamb
nate@lambdevcorp.com

Borrower
 AND **KINGRIDGE DEVELOPMENT
 CORPORATION**
 TO: 235 Speers Road
 Oakville, Ontario L6K 2E8

Daniel Marion
dan@kingridgedevelopments.ca

Borrower

AND **KSV KOFMAN INC.**
 TO: 150 King Street Westm Suite 2308
 Toronto, ON M5H 1J9

Bobby Kofman
bkofman@ksvadvisory.com

Jonathan Joffe
jjoffe@ksvadvisory.com

Proposal Trustee for Georgetown Borrower

AND **WORTHINGTON HOMES
 (HUMBERTON) INC.**
 TO: 164 Nelson Street
 Oakville, Ontario L6L 3J2

Daniel Marion
dan@kingridgedevelopments.ca

Borrower

AND **KING SQUARE LTD.**
 TO: 50 Acadia Avenue, Suite 310
 Markham, Ontario L3R 0B3

Wen Yi Wang
oswin@kingsquare.ca

Borrower
 AND **WORTHINGTON HOMES
 (HUMBERTON) INC.**
 TO: 164 Nelson Street
 Oakville, Ontario L6L 3J2

Daniel Marion
dan@kingridgedevelopments.ca

Borrower

AND **DUNSIRE (1041 LAKESHORE) INC.**
 TO: 203A-465 Phillip Street
 Waterloo, Ontario N2L 6C7

Shawn Keeper

shawn.keeper@dunsire.com

Borrower
 AND **KINGRIDGE (OAKVILLE EAST) INC.**
 TO: 1660 North Service Road East, Suite 109B
 Oakville, Ontario N6H 7G3

Daniel Marion

dan@kingridgedevelopments.ca

Borrower

AND **2382917 ONTARIO INC.**
 TO: 500 Hanlon Creek Blvd
 Guelph, Ontario N1C 0A1

Lee Piccolo
Ryan Scott

info@fusionhomes.com
rscott@fusionhomes.com

Borrower

AND **LAMB CALGARY INC.**
 TO: 778 King Street West
 Toronto, Ontario M5V 1N6

Brad Lamb

nate@lambdevcorp.com

Borrower

AND **DUNSIRE (1407 LAKESHORE) INC.**
 TO: 203A-465 Phillip Street
 Waterloo, Ontario N2L 6C7

Shawn Keeper

shawn.keeper@dunsire.com

Borrower
 AND **L RICHMOND CORP.**
 TO: 778 King Street West
 Toronto, Ontario M5V 1N6

Brad Lamb

nate@lambdevcorp.com

Borrower

AND **MILLER THOMSON LLP**
 TO: 40 King Street West, Suite 5800
 Toronto, ON M5H 3S1

Kyle Hampson

khampson@millerthomson.com

Counsel to 2382917 Ontario Inc

AND **TORKIN MANES LLP**
 TO: 151 Yonge Street, Suite 1500
 Toronto, ON M5C 2W7

Michael Tamblyn

Tel. +1.416.777.5366

mtamblyn@torkinmanes.com

AND **SMYGINE (LAKEEAST) INC.**
 TO: 6021 Yonge Street, Suite 229
 Toronto, Ontario M2M 3W2

Mike Petrovski

mike@enginedevelopments.ca

Borrower

AND **TENENBAUM & SOLOMON LLP**
 TO: 7181 Woodbine Avenue
 Markham, ON L3R 1A3

Samantha Solomon

samantha@tsklaw.ca

Counsel to Borrower to Halo and Smygine

AND **UNION WATERFRONT INC.**
 TO: 1-25 Brodie Drive
 Richmond Hill, Ontario L4B 3K7

Vincenzo Petrozza

vince@fortressrdi.com

Borrower

AND **HALO TOWNHOMES INC.**
 TO: 229-6021 Yonge Street
 Toronto, Ontario M2M 3W2

Mike Petrovski

Sayf Hassan

Konstantine Simionopoulos

mike@enginedevelopments.ca

Borrower

AND **AMADON-WESTWATER PROJECTS LTD.**
 TO: 426B William Street
 Victoria, British Columbia V9A 3Y9

Max Tomaszewski

mtomaszewski@amadongroup.com

Borrower

AND **MSI SPERGEL**
 TO: msi Spergel Inc.
 21 King Street West, Suite 1602
 Hamilton, Ontario, L8P 4W7

tpringle@spergel.ca

Court Appointed Receiver of Union Waterfront

AND **MSTW PROFESSIONAL CORPORATION**
 TO: 20 Adelaide St. E., Ste. 1301
 Toronto, ON M5C 2T6

Mitchell Wine

Tel: +1.416.477.5524

Fax: +1.416.777.2050

mwine@MSTWLaw.com

WADDELL PHILLIPS PROFESSIONAL CORPORATION
 36 Toronto St., Suite 1120
 Toronto, ON M5C 2C5

Margaret Waddell

Tel: +1.416.477.6979

Fax: +1.416.477.1657

marg@waddellphillips.ca

Counsel for certain proposed representative plaintiffs in class action proceedings against BDMC and other parties

AND **WESTGATE PROPERTIES LTD.**
 TO: 1 – 25 Brodie Drive
 Richmond Hill, ON L4B 3K7

Jawad Rathore
Vincenzo Petrozza

jawad@fortressrdi.com
vince@fortressrdi.com

Borrower

AND **FORTRESS COLLIER CENTRE LTD.**
 TO: 1 – 25 Brodie Drive
 Richmond Hill, ON L4B 3K7

Jawad Rathore
Vincenzo Petrozza

jawad@fortressrdi.com
vince@fortressrdi.com

Borrower

AND **MCAP INC.**
 TO: 400-200 King Street West
 Toronto, ON M5H 3T4

Mark Adams

Mark.Adams@mcap.com

Philip Frank

Philip.Frank@mcap.com

Bruno Iacovetta

Bruno.Iacovetta@mcap.com

AND **FORTRESS CHARLOTTE 2014 INC.**
 TO: 1 – 25 Brodie Drive
 Richmond Hill, ON L4B 3K7

Jawad Rathore

jawad@fortressrdi.com

Borrower

AND **FORTRESS CARLYLE PETER STREET INC.**
 TO: 20 Rivermede Road, Suite 204
 Concord, Ontario L4K 3N3

Naram Mansour
Jawad Rathore

jawad@fortressrdi.com

Borrower

AND **6566074 MANITOBA LTD.**
 TO: 1-25 Brodie Drive
 Richmond Hill, Ontario L4B 3K7

Jawad Rathore
Vincenzo Petrozza

jawad@fortressrdi.com
vince@fortressrdi.com

Borrower

AND **FORTRESS KEMPENFELTBAY DEVELOPMENTS INC.**
 TO: 1-25 Brodie Drive
 Richmond Hill, Ontario L4B 3K7

Jawad Rathore
Vincenzo Petrozza

jawad@fortressrdi.com
vince@fortressrdi.com

Borrower

AND **OLD MARKET LANE INC.**
 TO: 1-25 Brodie Drive
 Richmond Hill, Ontario L4B 3K7

Vincenzo Petrozza

vince@fortressrdi.com

Borrower

AND **FORTRESS TRIPLE CREEK INC.**
 TO: 1-25 Brodie Drive
 Richmond Hill, Ontario L4B 3K7

Vincenzo Petrozza

vince@fortressrdi.com

Borrower

AND **2221563 ONTARIO INC.**
 TO: 1-25 Brodie Drive
 Richmond Hill, Ontario L4B 3K7

Vincenzo Petrozza

vince@fortressrdi.com

Borrower

AND **2283020 ONTARIO INC. FORTRESS PORT PLACE (2014) INC.**
 TO: 1 – 25 Brodie Drive
 Richmond Hill, ON L4B 3K7

Jawad Rathore
Vincenzo Petrozza

jawad@fortressrdi.com
vince@fortressrdi.com

Borrower

AND **SOBLE, RICKARDS & ASSOCIATES**
 TO: 1660 North Service Rd. E, Suite 117
 Oakville, Ontario L6H 7G3

David O. Rickards
 Tel: 416.842.9002

drickards@soblerickards.ca

Counsel to Kingridge (Speers) Inc.

AND **WEIRFOULDS LLP**
 TO: 4100 – 66 Wellington Street West, PO Box 35
 TD Bank Tower
 Toronto, Ontario M5K 1B7

Philip Cho
 Tel : 416.619.6296

pcho@weirfoulds.com

Counsel to Sorrenti Law Professional Corporation

AND **SORRENTI LAW PROFESSIONAL CORPORATION**
 TO: 3300 Hwy 7 W
 Vaughan, ON L4K 4M3

Derek Sorrenti
 Tel: 905.264.6414

Derek.sorrenti@sorrentilaw.com
Derek.sorrenti@dslaw.ca

AND **NORTH COVE ADVISORS INC.**
 TO: **Ben Rabidoux**
 Tel: 519.477.5211

Ben@northcove.net

AND **MILLER THOMSON LLP**
 TO: 3000, 700 - 9th Avenue SW
 Calgary, Alberta T2P 3V4

Joshua I. Selby
 Tel: +1.403.298.2406
 Fax: +1.403.262.0007

jiselby@millerthomson.com

Counsel to Lamb Calgary Inc.

AND **GRANT THORNTON LLP**
 TO: 200 King Street West, Suite 2000,
 Toronto, ON M5H 3T4

Jacqueline Maarse
 Tel: +1.416.369.7013
 Fax: +1.416.360.4944

Jacqueline.Maarse@ca.gt.com

AND **THORNTON GROUT FINNIGAN LLP**
 TO: 100 Wellington Street West, Suite 3200
 Toronto-Dominion Centre (West Tower)
 Toronto, Ontario M5K 1K7

D. J. Miller
 Tel: 416.304.1616

DJMiller@tgf.ca

Counsel to Firm Capital

AND **MILLER THOMSON LLP**
 TO: 40 King Street West, Suite 5800
 Toronto, ON M5H 3S1

Paul Guaragna
Asim Iqbal

pguaragna@millerthomson.com
aiqbal@millerthomson.com

Counsel to Fernbrook Homes (Brookdale) Limited

AND **BLAKE, CASSELS & GRAYDON LLP**
 TO: 199 Bay Street, Suite 4000
 Toronto, Ontario
 M5L 1A9

Ryan Morris
 Tel: +1.416.863.2176
 Fax: +1.416.863.2653

ryan.morris@blakes.com

Lawyer for Olympia Trust Company

AND **DARRYL LEVITT LAW**
 TO: Deloitte Building
 100-400 Applewood Crescent
 Vaughan, ON L4K 0C3

Darryl Levitt
 Reception: +1.905.482.0622
 Fax: +1.833.645.9428

darryl@darryllevitt.com

AND **KALLOGHLIAN MYERS LLP**
 TO: 250 Yonge Street, Suite 2201
 Toronto, Ontario
 M5B 2L7

Serge Kalloghlian
 Tel: +1.647.812.5615

Garth Myers
 Tel: +1.647.969.4472

A.J. Freedman
 Tel: +1.647.968.9560

serge@kalloghlianmyers.com
garth@kalloghlianmyers.com
aj@kalloghlianmyers.com

Counsel to the Plaintiffs in Court File No.
 CV-20-00643584-00CP and Court File No.
 CV-20-00643593-00CP

AND **BRAD LAMB**
 TO: 778 King Street West
 Toronto, ON M5V 1N6

brad@lambdevcorp.com

AND **GROIA & COMPANY**
 TO: **PROFESSIONAL CORPORATION**
 1100 - 365 Bay Street,
 Toronto, ON
 M5H 2V1

Bonnie Roberts Jones
 Tel: +1.416.203-4476
 Fax: +1.416.203.9231

brjones@groiaco.com

Counsel for certain Investors

AND **MILLER THOMSON LLP**
 TO: 40 King Street West
 Suite 5800
 Toronto, ON
 M5H 3S1

Kevin D. Sherkin
 Tel: +1.416.597.6028

ksherkin@millerthomson.com

Counsel for certain Investors

AND **BJL PROPERTIES INC.**
 TO: 778 King Street West
 Toronto, ON M5V 1N6

Brad Lamb
brad@lambdevcorp.com

Ryan Spencer
ryan@bradjlambrealty.com

Email List:

mdelellis@osler.com; jdacks@osler.com; mpaterson@osler.com; jerickson@osler.com;
mcalvaruso@osler.com; sstidwill@osler.com; naveed@faanmortgageadmin.com;
daniel@faanmortgageadmin.com; lane@faanmortgageadmin.com; shelby@faanmortgageadmin.com;
naomi@faanmortgageadmin.com; sgraff@airdberlis.com; iaversa@airdberlis.com;
mspence@airdberlis.com; Jennifer.teskey@nortonrosefulbright.com;
Jeremy.devereux@nortonrosefulbright.com; dtaub@robapp.com; jfox@robapp.com;
dullmann@blaney.com; harvey@chaitons.com; george@chaitons.com; troy.harrison@fsrao.ca;
sylvia.ezeard@fsrao.ca; steven.groeneveld@ontario.ca; leslie.crawford@ontario.ca;
vince@fortressrdi.com; jawad@fortressrdi.com; BahnuikJ@olympiatrust.com;
LuongJ@olympiatrust.com; sales@pacedev.ca; dfazari@cityzen.ca; catalinadevelopments@gmail.com;
jvalela@tercot.com; dan@kingridgedevelopments.ca; nate@lambdevcorp.com;
jessica@lambdevcorp.com; brad@lambdevcorp.com; oswin@kingsquare.ca;
mike@enginedevelopments.ca; shawn.keeper@dunsire.com; planni@averton.ca;
info@fusionhomes.com; mtomaszewski@amadongroup.com; mario@rosewatergroup.com;
naram.mansour@carlylecommunities.com; ramsey@cachetdevelopments.com;
shussain@sunrisehomes.ca; dbunston@georgianinternational.com;
pgoldfischer@solotexcporation.com; pbates@batesbarristers.com; Jeff.berger@rsmcanada.com;
tmazzoli@ffmcapital.com; kkochhar@ffmcapital.com; zafar@fdsbroker.com;
cmills@millerthomson.com; davidn@gsnh.com; niedzviecki@omh.ca; mwine@MSTWLaw.com;
marg@waddellphillips.ca; David@davidchong.ca; mtamblyn@torkinmanes.com;
Mark.Adams@mcap.com; Philip.Frank@mcap.com; Bruno.Iacovetta@mcap.com; jgalati@cdcminc.ca;
tpringle@spergel.ca; arif.dhanani@rsmcanada.com; danny.nunes@dlapiper.com;
Edmond.lamek@dlapiper.com; jjoffe@ksvadvisory.com; bkofman@ksvadvisory.com;
zweigs@bennettjones.com; samantha@tsklaw.ca; jfried@mwb.ca; khampson@millerthomson.com;
Jackson@gsnh.com; micolae@harris-sheaffer.com; Robert.Armstrong@computershare.com;
Info@rosengoldberg.com; dforgione@owenswright.com; jason.wong@rcmp-grc.gc.ca;
drickards@soblerickards.ca; pcho@weirfoulds.com; Derek.sorrenti@sorrentilaw.com;
Derek.sorrenti@dslaw.ca; DJMiller@tgf.ca; Ben@northcove.net; wf@friedmans.ca; pfesharaki@tgf.ca;
lmargulies@robapp.com; nmusclow@lso.ca; HJankovi@lso.ca; gmurdoch@sorbaralaw.com;
aiqbal@millerthomson.com; pguaragna@millerthomson.com; rscott@fusionhomes.com;
jiselby@millerthomson.com; Jacqueline.Maarse@ca.gt.com; darryl@darryllevitt.com;
serge@kalloghlianmyers.com; aj@kalloghlianmyers.com; garth@kalloghlianmyers.com;
ryan.morris@blakes.com; ksherkim@millerthomson.com; Amanda.Yu@computershare.com;
PCSmortgages@computershare.com; ryan@bradjlambrealty.com; brjones@groiaco.com

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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 June 2021 Omnibus Order, North and Jasper House Residual Proceeds
Settlement Approval and Distribution Order, and Castlemore Resolution 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 June 7, 2021 at 11:00 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 “June 2021 Omnibus Order”) substantially in the form attached at Tab 3 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-Sixth Report of the Trustee dated May 21, 2021 (the “**Twenty-Sixth Report**”) and dispensing with service on any person other than those served;
 - (b) authorizing the Trustee to effect the following distributions of Realized Property *pro rata* to the applicable Investors entitled to such funds, in accordance with the Realized Property Order, as amended (as such terms are defined below):
 - (i) distribution(s) to Whitby Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Whitby Project;
 - (ii) distribution(s) to Nobleton South Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Nobleton South Project; and
 - (iii) distribution(s) to Bowmanville Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Bowmanville Project;
 - (c) approving the Twenty-Fifth Report (as defined below) and the Twenty-Sixth Report, and all of the actions, conduct and activities of the Trustee as set out therein;
 - (d) approving the fees and disbursements of the Trustee and its counsel for the period from October 1, 2020 to April 30, 2021, as set out in the Twenty-Sixth Report, the affidavit of Naveed Manzoor sworn May 21, 2021 and attached as Appendix “24” to the Twenty-Sixth Report (the “**Manzoor Affidavit**”), and the affidavit of Michael De Lellis sworn May 20, 2021 and attached as Appendix “25” to the Twenty-Sixth Report (the “**De Lellis Affidavit**” and together with the Manzoor Affidavit, the “**Fee Affidavits**”); and
 - (e) sealing certain exhibits to the Fee Affidavits; and
2. An Order (“**North and Jasper House Residual Proceeds Settlement Approval and Distribution Order**”) substantially in the form attached at Tab 4 to the Motion Record, approving

the Related Party Claim Settlement Agreements and Inter-Project Allocation in respect of the North Project and the Jasper House Project, the distribution of 85% of the Realized Property to be received by the Trustee in respect of the North Project and the Jasper House Project to the respective Investors entitled to such Realized Property, and the BJJ Distribution;

3. An Order (“**Castlemore Resolution Order**”) substantially in the form attached at Tab 5 to the Motion Record, approving the Castlemore Settlement Agreement and the distribution of 85% of the Realized Property to be received by the Trustee in respect of the Castlemore Project to the Castlemore Investors; and

4. 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-Sixth 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, 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, as amended by previous Orders of this Court, 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-five 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 the Orders sought by the Trustee. Notably, on November 16, 2020, the Trustee submitted its twenty-fourth report in these proceedings (“**Twenty-Fourth Report**”), which provided a comprehensive update on the Trustee’s activities and a status update for each project;

Need for the June 2021 Omnibus Order

6. Concurrently with the filing of this Notice of Motion, the Trustee is filing the Twenty-Sixth 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 Twenty-Fourth Report;

7. Since the Twenty-Fourth Report, the Trustee has continued to actively engage with borrowers, priority mortgagees, potential purchasers and other stakeholders with respect to the remaining projects in an effort to protect the Investors' loan and security positions and to maximize potential recoveries for Investors wherever possible;

8. At the time of the Trustee's appointment, there was approximately \$560 million invested through BDMC by over 11,000 individual Investors in 45 separate Fortress-affiliated real estate development projects. As at the date of this Twenty-Sixth Report, there are BDMC loans outstanding in respect of 18 remaining projects, of which 6 relate to projects for which the Trustee is seeking distribution orders. Each remaining BDMC loan has now matured and is in default;

9. As a result of the Trustee's continued efforts, the Trustee has recovered approximately \$143 million in Realized Property for the benefit of the Investors, including approximately \$20 million since the date of the Twenty-Fourth Report. In addition, the Trustee anticipates receiving a further aggregate amount of approximately \$12 million in respect of the North Project, the Jasper House Project, and the Castlemore Project should this Court grant the North and Jasper House Residual Proceeds Settlement Approval and Distribution Order and the Castlemore Resolution Order, thereby increasing the amount recovered for the benefit of Investors since the date of the Twenty-Fourth Report to approximately \$32 million;

10. To assist Investors in understanding the status of their particular investments, the Trustee has updated a chart that describes, to the best of the Trustee's knowledge, the capital structure and status of each project ("**Project Analysis Summary**"). A copy of the updated Project Analysis Summary as of May 21, 2021 is attached to the Twenty-Sixth Report as Appendix "3" and will be posted on the Trustee's website;

11. The Trustee continues to prioritize communications with Investors. The Trustee provides project-specific notices (including 22 delivered, or being delivered, since the date of the Twenty-Fourth Report), engages with Investors and considers Investor feedback wherever possible and appropriate in the discharge of its mandate;

12. The Trustee continues to engage in the activities described in the Twenty-Sixth 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;

Proposed Distributions of Realized Property

13. Certain sale transactions have been completed since the date of the Twenty-Fourth Report pursuant to which the Trustee or its counsel is holding Realized Property. As part of the June 2021 Omnibus Order, the Trustee is seeking the following Orders to authorize the distribution of 85% of such Realized Property *pro rata* to all applicable Investors entitled to such funds, in accordance with the Realized Property Order, as amended:

- (a) The Whitby Distribution Order, which authorizes the Trustee to distribute 85% of the residual net proceeds received from the closing of the Whitby Project sale transaction. The Whitby Property was sold by the borrower in early 2021 for \$28 million. The Whitby Project had over \$14.7 million in principal of second ranking syndicated mortgage loan debt administered by BDMC. After repayment of the priority mortgage, commissions and other closing costs, the net proceeds available for distribution by the Trustee are approximately \$12.9 million, which represents a recovery on principal of approximately 88%, or 101% when accounting for previously paid interest of approximately \$2 million;
- (b) The Nobleton South Distribution Order, which authorizes the Trustee to distribute 85% of the residual net proceeds received from the sale of the Nobleton South Project by the Priority Mortgagees in accordance with their Notice of Sale under Mortgage issued on March 3, 2020. The sale transaction closed on March 23, 2021 for a purchase price of \$6 million. The Nobleton South Project had over \$7.7 million in principal of second ranking syndicated mortgage loan debt administered by BDMC. After payment of the balance owing to the Priority Mortgagees, the Transaction Fee, and other closing costs, the net proceeds available for distribution by the Trustee are approximately \$2.4 million, which represents a recovery on principal of approximately 31%, or 45% when accounting for previously paid interest of approximately \$1.1 million; and

- (c) The Bowmanville Distribution Order, which authorizes the Trustee to distribute 85% of the residual net proceeds received from the sale of the Bowmanville Project by the Bowmanville Receiver. Receivership proceedings were commenced on May 5, 2020 in respect of the Bowmanville property upon the application of the first priority mortgagee. The Bowmanville Project had approximately \$5.3 million in principal of third ranking syndicated mortgage loan debt administered by BDMC. The Court-approved sale of the Bowmanville Project closed on November 30, 2020. After repayment of the balances owing to the priority mortgagees, the Bowmanville Receiver's fees and other closing costs, the net proceeds available for distribution by the Trustee are approximately \$577,000, which represents a recovery on principal of approximately 11%. The Trustee is seeking authorization to distribute such proceeds *pro rata* to all Bowmanville Investors, irrespective of whether their documentation granted certain Rescission Rights;

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

14. As part of the June 2021 Omnibus Order, the Trustee seeks this Court's approval of its twenty-fifth report dated February 16, 2021 ("**Twenty-Fifth Report**") and the Twenty-Sixth 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

15. 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?¹;

16. The Confidential Manzoor Exhibit and the Confidential De Lellis Exhibit that will be separately 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 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;

17. 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

18. 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;

Need for the North and Jasper House Residual Proceeds Settlement Approval and Distribution Order

19. The North Project and the Jasper House Project, both of which are located in Edmonton, Alberta, had over \$8.2 million and \$8.3 million of principal outstanding, respectively, of second ranking syndicated mortgage loan debt administered by BDMC. The borrowers under these loans each determined that they were unable to continue with the development of their projects and listed their respective properties for sale. Each sale transaction has now closed and the residual proceeds

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

following payment of the relevant priority mortgage, property taxes, commissions and other costs are approximately \$1.6 million in respect of the North Project and \$1.8 million in respect of the Jasper House Project;

20. Each of the North Borrower and the Jasper House Borrower asserted a claim, on behalf of itself and BJI Properties Inc. (“**BJI**”), an entity related to both borrowers, that it and/or BJI was owed amounts from the residual sale proceeds remaining from the sale transactions in the collective amount of approximately \$2.8 million in priority to BDMC (the “**Related Party Claims**”);

21. After extensive negotiations with the North Borrower, the Jasper House Borrower, and BJI regarding the Related Party Claims and an in-depth review of the amounts comprising the Related Party Claims, the Trustee determined that it would be in the best interests of the North Investors and the Jasper House Investors to resolve the Related Party Claims consensually. The Trustee, with the support of Representative Counsel, negotiated settlement agreements with each borrower and BJI regarding the allocation and distribution of the residual sale proceeds (the “**Related Party Claim Settlement Agreements**”), which contemplate settlements in the amounts of approximately \$473,000 (approximately \$700,000 less than the amount claimed) with respect to the Related Party Claim advanced in connection with the North Project and approximately \$527,000 (approximately \$1.1 million less than the amount claimed) with respect to the Related Party Claim advanced in connection with the Jasper House Project (the “**Related Party Claim Settlement Amounts**”). The Related Party Claim Settlement Agreements, which are conditional upon Court approval, also authorize the Trustee’s counsel to distribute the Related Party Claim Settlement Amounts to BJI (the “**BJI Distribution**”) and the remainder of the residual proceeds to the Trustee (the “**BDMC North and Jasper House Distributions**”) and contain certain mutual releases. Copies of the Related Party Claim Settlement Agreements are attached as Appendix “8” and Appendix “9” to the Twenty-Sixth Report;

22. In addition, there was a mortgage registered on title to the Jasper House Project in third position (i.e., behind the BDMC mortgage) in favour of the North Borrower in the amount of \$768,650 (the “**Inter-Project Loan**”). The Trustee has considered the interests of both the Jasper House Investors and the North Investors with respect to the issue of how the Inter-Project Loan should be treated when distributing the residual proceeds from these transactions to the relevant

Investors. The Trustee, with the support of Representative Counsel, is of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan is for the Jasper House Project to reimburse the North Project for 50% of the Inter-Project Loan amount, or \$384,325 (the “**Inter-Project Allocation**”), such that these additional funds would be available for distribution to the North Investors;

23. As such, the Trustee is seeking the proposed North and Jasper House Residual Proceeds Settlement Approval and Distribution Order to: (i) approve the Related Party Claim Settlement Agreements; (ii) approve the Inter-Project Allocation; (iii) approve the BJI Distribution; and (iv) authorize the distribution of 85% of: (a) \$1,522,547 to the North Investors representing a recovery on principal of approximately 18.6% or 29.4% when accounting for previously paid interest; and (b) \$856,288 to the Jasper House Investors representing a recovery on principal of approximately 10.4% or 18% when accounting for previously paid interest, *pro rata* to each group of Investors entitled to such funds in accordance with the Realized Property Order, as amended;

Need for the Castlemore Resolution Order

24. The Castlemore Project, located in Brampton, Ontario, is subject to approximately \$21.25 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC (“**Castlemore Loan**”) owing by Emerald Castle Developments Inc. (“**Castlemore Borrower**”). The Castlemore Loan matured in late November 2019, and on December 6, 2019, the Castlemore Borrower purported to trigger a clause contained in the Castlemore Loan Agreement (“**End of Term Event Clause**”). On March 2, 2020, the Castlemore Borrower issued a notice of application (the “**Application**”) naming the Trustee as a respondent seeking to enforce the End of Term Clause;

25. At a case conference on September 3, 2020, the Honourable Mr. Justice Hainey ordered on consent of the parties that the issue of the calculation of the amounts owing under the Waterfall clause in the Castlemore Loan Agreement (“**Calculation Dispute**”) be bifurcated from the issue regarding the enforceability of the End of Term Event Clause (“**Interpretation Dispute**”);

26. On February 2, 2021, the Court released a decision in favour of the Castlemore Borrower (the “**Decision**”) in respect of the Interpretation Dispute. The Decision enforced the terms of the Castlemore Loan agreement including the End of Term Event Clause. On March 2, 2021, the

Trustee commenced an appeal in the Court of Appeal for Ontario, seeking an order setting aside the Decision; Representative Counsel commenced a similar appeal (together, the “**Appeals**”). As part of the Calculation Dispute, the Castlemore Borrower submitted evidence in support of an Order that it would only be required to pay \$8,518,271 to the Trustee in accordance with the End of Term Event Clause and other related provisions;

27. Since the filing of the Appeals, the Trustee, its counsel, Representative Counsel, the Castlemore Borrower, and the Castlemore Borrower’s counsel have engaged in settlement negotiations regarding the Calculation Dispute, other unresolved issues in the Application and the Appeals and have reached a global settlement (the “**Castlemore Settlement**”), which contemplates that:

- (a) The Castlemore Borrower will pay \$9,875,358 to the Trustee, on behalf of BDMC (the “**Castlemore Settlement Payment**”) reflecting a recovery of approximately 46.5% of the outstanding principal balance of the Castlemore Loan;
- (b) Within three days of payment, the Castlemore Borrower will abandon the Application;
- (c) Within three days of payment, the Trustee and Representative Counsel will abandon their Appeals;
- (d) If the terms of the Castlemore Settlement are met, the Castlemore Settlement extinguishes all rights and obligations of BDMC under the Castlemore Loan Agreement, related documents and the associated mortgage on the Castlemore property; and
- (e) Although the Castlemore Settlement extinguishes all potential claims by BDMC against the Castlemore Borrower related to the Castlemore Loan Agreement, it does not go further to impose on the Castlemore Investors, who were not party to the Castlemore Loan Agreement, a full and final release of their potential claims;

28. The Trustee, with the support of Representative Counsel, has determined that the Castlemore Settlement is in the best interests of the Castlemore Investors. The Castlemore Settlement is conditional upon Court approval. Accordingly, the Trustee is seeking the Castlemore Resolution Order to approve the Castlemore Settlement and authorize the distribution of 85% of

the Castlemore Settlement Payment *pro rata* to the Castlemore Investors in accordance with the Realized Property Order, as amended. A copy of the Castlemore Settlement is attached as Appendix “13” to the Twenty-Sixth Report;

General

29. The provisions of the MBLAA, including section 37 thereof;
30. 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;
31. Sections 101, 106 and 137 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
32. The inherent and equitable jurisdiction of this Honourable Court; and
33. 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-Sixth Report and the appendices thereto;
2. The Twenty-Fifth Report and the appendices attached thereto, as previously filed with the Court; and
3. Such further and other evidence as counsel may advise and this Court may permit.

May 21, 2021

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

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

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

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

TO: SERVICE LIST

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(Motion for June 2021 Omnibus Order, North and Jasper
House Residual Proceeds Settlement Approval and
Distribution Order, and Castlemore Resolution Order)

OSLER, HOSKIN & HARCOURT LLP

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

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

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

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

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

May 21, 2021



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

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

May 21, 2021

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, 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, 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-five 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 16, 2020, the Trustee submitted its twenty-fourth report in these proceedings (“**Twenty-Fourth Report**”), which provided, among other things, a comprehensive update on the Trustee’s activities and support for the Trustee’s request for the November 2020 Omnibus Order. A copy of the November 2020 Omnibus Order dated November 27, 2020 is attached as **Appendix “2”**.
4. This report (“**Report**” or “**Twenty-Sixth Report**”) is the latest comprehensive update on the Trustee’s activities undertaken since the Twenty-Fourth Report. Capitalized terms not

otherwise defined in this Twenty-Sixth Report have the meanings ascribed to them in the Twenty-Fourth 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 ("**Trustee's Website**"). The Trustee intends to maintain the Trustee's Website for the duration of these proceedings.

PURPOSE OF THE TWENTY-SIXTH REPORT

6. The Trustee is filing this Twenty-Sixth 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 Twenty-Fourth Report.
7. In addition to the project updates and other information provided to the Court and stakeholders, this Twenty-Sixth Report is being delivered in support of the Trustee's request for the following orders that would, among other things, approve:
 - (a) the distribution of the Realized Property received by the Trustee in respect of the Whitby Project ("**Whitby Distribution Order**"), the Nobleton South Project ("**Nobleton South Distribution Order**"), and the Bowmanville Project ("**Bowmanville Distribution Order**");
 - (b) the Related Party Claim Settlement Agreements and Inter-Project Allocation in respect of the North Project and the Jasper House Project, the distribution of the Realized Property to be received by the Trustee in respect of the North Project and the Jasper House Project, and the BJL Distribution ("**North and Jasper House Residual Proceeds Settlement Approval and Distribution Order**");
 - (c) the Castlemore Settlement Agreement and the distribution of the Realized Property to be received by the Trustee in respect of the Castlemore Project ("**Castlemore Resolution Order**"); and
 - (d) the (i) Twenty-Fifth Report and this Twenty-Sixth Report and the activities of the Trustee as described therein and herein; and (ii) the Trustee's fees and disbursements, including the fees and disbursements of its counsel, for the period

from October 1, 2020 to April 30, 2021, as more fully described herein and in the fee affidavits attached hereto (“**June 2021 Omnibus Order**”).

All capitalized terms used above and not otherwise defined are defined later in this Report.

8. Barring any issues and/or restrictions caused by any future resurgence in the COVID-19 pandemic or other unforeseen events, 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 or distribution arrangements for certain BDMC loans, or other general file administration matters.

SCOPE AND TERMS OF REFERENCE

9. In preparing this Twenty-Sixth 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-Sixth 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-Sixth Report may vary from the projections and information used to prepare this Twenty-Sixth 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-Sixth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

11. This Twenty-Sixth 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 Orders. Accordingly, the reader is cautioned that this Twenty-Sixth Report may not be appropriate for any other purpose.
12. All references to dollars are in Canadian currency.

GENERAL UPDATE

13. In accordance with its mandate, the Trustee continues to actively engage with borrowers, priority mortgagees, potential purchasers, and other stakeholders with respect to the remaining projects in an effort to protect the Investors' loan and security positions and to maximize potential recoveries for Investors wherever possible.
14. At the time of the Trustee's appointment, there was approximately \$560 million invested through BDMC by over 11,000 individual Investors in 45 separate Fortress-affiliated real estate development projects. As at the date of this Twenty-Sixth Report, there are BDMC loans outstanding in respect of 18¹ remaining Fortress-affiliated projects, of which six relate to projects for which the Trustee is seeking distribution orders, as discussed further in this Report. Each remaining BDMC loan has now matured and is in default.
15. The BDMC loans and related projects are generally in distress as a result of, among other things: (a) significant fees that were taken directly from the initial loan advances and not given to project borrowers to advance their projects; (b) issues relating to the use of funds

¹ As detailed in the thirteenth report to Court dated November 22, 2019 ("**Thirteenth Report**"), the QEWN Project is no longer administered by BDMC and is therefore not included in these figures.

advanced to the projects; (c) borrowers' difficulties obtaining sufficient financing to continue developing the projects (at times due to the failure to achieve development milestones/approvals and/or BDMC's affiliation with Fortress); (d) various other project delays; (e) enforcement actions from priority secured creditors and contractual standstill agreements with many of such creditors; and (f) aggressive, adverse positions that continue to be taken by Fortress and other stakeholders in attempts to recover proceeds in priority to the Investors and/or crystallize losses to Investors. On each and every project, there have been competing claims to entitlements and other challenges that have and/or could reduce the amounts available to repay the BDMC loans. In certain of these instances, the Trustee has been forced to engage in time consuming contested litigation to advocate on behalf of the Investors.

16. Despite these challenges, the Trustee continues to remain vigilant in aggressively defending the Investors' interests. The Trustee also takes proactive steps and seeks creative solutions, as appropriate, to protect the Investors' interests and potential recoveries by, among other things, negotiating potential transactions and settlements, actively engaging with borrowers regarding the ongoing status of their projects, actively engaging with priority secured creditors, and responding to or participating in potential or existing enforcement proceedings and sale processes (whether initiated by the project borrower or an enforcing creditor). The Trustee has and continues to consider the unique circumstances of each project to seek to achieve the best recoveries for Investors.
17. As a result of the Trustee's continued efforts, the Trustee has recovered, in aggregate, approximately \$143 million in Realized Property for the benefit of the Investors by way of, *inter alia*, settlement and/or assignment transactions, sales through enforcement proceedings and sales by project borrowers, including approximately \$20 million since the Twenty-Fourth Report. In addition, the Trustee anticipates receiving a further aggregate amount of approximately \$12 million in respect of the North Project, the Jasper House Project and the Castlemore Project should the Court grant the North and Jasper House Residual Proceeds Settlement Approval and Distribution Order and the Castlemore Resolution Order, thereby increasing the amount recovered for the benefit of Investors since the date of the Twenty-Fourth Report to approximately \$32 million. The following table summarizes the Realized Property to date as well as amounts that will become Realized Property should the requested orders be granted by the Court:

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Project	Type of Transaction	Status of Realization ²	Payout Amount to Date (\$)
<u>Previously Reported Realized Property</u>			
Braestone	Settlement	Complete	10,000,000
Harlowe	Settlement	Complete	15,562,896
Speers	Settlement	Complete	1,950,000
James	Settlement	Complete	4,842,541
Crestview	Settlement	Complete	4,475,000
Kemp³	Power of Sale	Complete	2,176,162
Nobleton North	Settlement	Complete	14,450,000
Humberstone	Settlement	In Progress	1,750,000
CHAT	Sale	In Progress	5,692,031
Dunsire⁴	Receivership	Complete	484,697
Solterra (Phase 3)	Completion	Complete	2,383,758
Bauhaus	Settlement	Complete	6,734,798
Danforth	Settlement	Complete	7,000,000
Solterra (Phase 4)	Settlement	Complete	16,171,969
Peter Richmond	Assignment	Complete	26,250,000
Old Market Lane	Power of Sale	Complete	1,570,967
Orchard	Sale by Borrower	Complete	1,754,122
Sub Total			\$123,248,941
<u>Realized Property Since the Twenty-Fourth Report</u>			
Whitby	Sale by Borrower	Complete	12,898,875
Wellington	Settlement	In Progress	4,000,000
Bowmanville	Receivership	Complete	576,614
Nobleton South	Power of Sale	Complete	2,390,316
Sub Total			\$19,865,805

² 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.

³ 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.

⁴ The Dunsire Realized Property reported in the Twenty-Fourth Report was approximately \$35,000 lower than the figure in the chart above. A final payment of approximately \$35,000 was received and distributed to Investors in April 2021.

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<u>Realized Property to be Received</u>			
Jasper	Sale by Borrower	Complete	856,288
North	Sale by Borrower	Complete	1,522,547
Castlemore	Settlement	Complete	9,875,358
Sub Total			\$12,254,193
Total			\$155,368,939

18. The Realized Property from the North Project and the Jasper House Project is currently being held in trust by the Trustee's counsel and will be distributed to the Trustee should the Court grant the North and Jasper House Residual Proceeds Settlement Approval and Distribution Order. Pursuant to the Castlemore Settlement Agreement, should the Castlemore Resolution Order be granted and the transaction close, the Realized Property from the Castlemore Project will be paid to the Trustee on or before July 30, 2021.
19. Although several of these transactions have resulted in recoveries in excess of 100% of the principal amount owing to Investors (in certain instances after considering previously paid interest), the Trustee has also been presented with and has 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 in the circumstances to allow for any recovery at all to the Investors, and, following its review, has negotiated for the best possible recoveries for the Investors.
20. As noted above, to date, the Trustee has made distributions in respect of 18 projects and is seeking Court approval to distribute the Realized Property in respect of a further 6 projects. As set out in the Project Analysis Summary, there are 12 projects where no recoveries were possible due to the failure of the relevant project and the lack of sufficient funds to repay any BDMC debt. The Trustee has found that in such circumstances, the priority mortgagees have also suffered significant losses. Despite full or partial losses on certain projects, the Trustee has attempted to maximize recoveries for Investors whenever possible and to provide clarity, certainty and closure to such Investors with respect to their investments (which were often in default and outstanding for much longer than originally anticipated).

21. The Trustee recognizes that many Investors have experienced significant hardship as a result of 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 the Investors.
22. The Trustee also continues to prioritize its communications with Investors. The Trustee provides updates to Investors as material project developments occur, responds to Investor inquiries on a regular basis, and requests Investor feedback wherever possible and appropriate in the discharge of its mandate. In addition, the Trustee continues to meet and correspond regularly with 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 in assisting the Trustee with its activities throughout these proceedings.
23. The Trustee anticipates that it will still likely take several years to complete the administration of the remaining BDMC loans due to the complex capital structures, significant inventory units remaining for sale and material estate issues, including complex litigation, that have arisen on certain projects. As well, certain of the transactions completed by the Trustee may result in additional Realized Property that is contingent on future events. 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.
24. To assist Investors in understanding the status of their particular investments, the Trustee has updated a chart that describes, to the best of the Trustee's knowledge, the capital structure and status of each project ("**Project Analysis Summary**"). The updated Project Analysis Summary as of May 21, 2021 is attached as **Appendix "3"** and will 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 of each project as of a specific date. The Trustee continues to refine its analysis 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.

25. The following sections of this Report provide information specific to the projects for which orders are being sought and updates with respect to certain other projects that have been the subject of significant developments since the delivery of the Twenty-Fourth Report. In particular:
- (a) paragraphs 27 to 86 provide the facts and evidence in support of the orders being sought with respect to specific projects and the related proposed distributions of Realized Property;
 - (b) paragraphs 88 to 135 describe certain other material project-specific developments; and
 - (c) paragraphs 136 to 139 provide certain other general updates related to these proceedings.
26. An update on the funding of these proceedings and the Trustee's cash flow projections is provided in paragraphs 140 to 146, and the Trustee's fees and activities are described in paragraphs 147 to 158. 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.

PROPOSED SETTLEMENTS AND DISTRIBUTIONS OF REALIZED PROPERTY

27. Below is a summary of certain completed sale transactions from which Realized Property remains in the possession of the Trustee or is being held in trust by the Trustee's counsel, and for which the Trustee is seeking the authorization of the Court to distribute *pro rata* to all Investors in the relevant projects in accordance with the Realized Property Order, as amended. The Trustee anticipates that additional Realized Property may be generated from other remaining projects, but the timing and quantum thereof remains unknown.
28. Whitby Project: a real estate development project in Whitby, Ontario ("**Whitby Project**" or "**Whitby Property**") that had over \$14.7 million in principal amount of syndicated mortgage loan debt administered by BDMC ("**Whitby Loan**", and such Investors in the Whitby Loan, the "**Whitby Investors**"). The Whitby Loan was secured by a second ranking charge on

title to the Whitby Property ("**Whitby Mortgage**"). The Whitby Project has not yet been developed and remains subject to certain approvals; however, the borrower obtained a zoning by-law amendment on the Whitby Project in June 2019, which permitted the development of the subject lands.

29. In late 2019, the Whitby borrower advised the Trustee that it had entered into a conditional agreement of purchase and sale with respect to the Whitby Property for a purchase price of \$28 million, which would require a discharge of the Whitby Mortgage as a prerequisite to closing ("**Whitby Conditional Offer**"). The due diligence period, which commenced on October 30, 2019, was originally set to expire on January 30, 2020 but was subsequently extended multiple times at the request of the purchaser. These delays resulted in the Whitby borrower requiring certain additional funding, as described below.
30. There was one mortgage registered on title to the Whitby Property in priority to the Whitby Mortgage, in favour of Downing Street Financial Inc. ("**Downing**"), with an initial principal balance of \$12 million ("**Downing Mortgage**"). In early 2020, the Whitby borrower negotiated additional financing from Downing in the amount of \$650,000. The additional financing was used to remedy certain defaults under the Downing loan and to fund the carrying costs of the Whitby Project through to October 2020 while the Whitby borrower attempted to complete the proposed sale of the Whitby Property. In November 2020, following continued delays with respect to the proposed sale, the Whitby borrower negotiated further financing from Downing in the amount of \$750,000 in order to, among other things, satisfy an interest reserve on the Downing loan through to June 1, 2021, the extended maturity date of the loan (together with the \$650,000, "**Additional Downing Advances**"). The Trustee, on behalf of BDMC, agreed to subordinate and postpone to each of the Additional Downing Advances to provide the Whitby borrower with the additional time it required to complete a sale of the Whitby Property.
31. At the end of April 2020, following extensions to the due diligence period requested by the proposed purchaser, the Trustee recommended that the Whitby borrower continue marketing the Whitby Property to other parties contemporaneously with its pursuit of the Whitby Conditional Offer. As a result, the Whitby borrower retained Jones Lang LaSalle ("**JLL**") as listing agent. The Whitby Property was listed for sale with no list price and no bid deadline. JLL actively marketed the Whitby Property for nine months through various marketing platforms. During the marketing period, JLL corresponded periodically with the

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Trustee and advised that there were several interested parties who had conducted varying levels of due diligence.

32. On January 21, 2021, the Whitby borrower advised the Trustee that the remaining conditions set out in the Whitby Conditional Offer had been waived by the purchaser and the Whitby Conditional Offer could proceed to closing.
33. In late-January 2021, the Trustee was advised by JLL that as a result of the uncertainty in the marketplace stemming from the continued and escalating challenges of the COVID-19 pandemic, all previously interested parties had ceased their due diligence and no other offers were received.
34. Despite the \$28 million purchase price in the Whitby Conditional Offer being significantly higher than the Trustee's "as-is" appraised value for the Whitby Property, the Trustee considered whether there were any alternatives that could provide for a greater recovery to the Investors, given that the sale was conducted outside of an enforcement proceeding and required the Trustee to discharge the Whitby Mortgage for less than a full recovery to Investors. Specifically, the Trustee asked the Whitby borrower whether it would consider holding the Whitby Property until a future date, with less market uncertainty, in order to potentially generate a higher selling price. The Whitby borrower advised that it was not in a position to carry the Whitby Property for an indefinite period of time. Further, the Downing Mortgage was maturing in June 2021 and absent a sale transaction or the ability to obtain replacement financing (which the Whitby borrower advised was not available), the Whitby borrower would be unable to repay the Downing Mortgage at maturity. The Trustee was advised by Downing that should the Whitby borrower default on the Downing Mortgage, Downing would pursue the remedies available to it, which would likely result in a distressed sale of the Whitby Property through an enforcement proceeding that could result in a lower recovery for the Whitby Investors.
35. Accordingly, after having considered: (a) the merits of the proposed sale; (b) the lack of available alternatives; (c) the purchase price as compared to the Trustee's "as-is" appraised value; (d) the extensive marketing process carried out by JLL; and (e) the continued market uncertainty due to the COVID-19 pandemic, the Trustee, with the support of Representative Counsel, determined that it was appropriate to discharge the Whitby Mortgage to facilitate the closing of the transaction.

36. After repayment of the Downing Mortgage, commissions and other closing costs, the net proceeds available for distribution by the Trustee are approximately \$12.9 million, which represents a recovery on principal of approximately 88%, or 101% when accounting for previously paid interest of approximately \$2 million.
37. On April 12, 2021, a notice was sent to the Whitby Investors advising of the closing of the sale transaction and that the Trustee would be seeking the Court's authorization to distribute the Realized Property received in connection with the sale transaction. A copy of this notice is attached as **Appendix "4"**. Accordingly, the Trustee is seeking the Whitby Distribution Order to facilitate the distribution of 85% of the residual proceeds *pro rata* to the Whitby Investors in accordance with the Realized Property Order, as amended.
38. Nobleton South Project: a real estate development project in Nobleton, Ontario ("**Nobleton South Project**") that had over \$7.7 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors ("**Nobleton South Investors**"). The Trustee understands that this property is not within the built boundary, does not have Official Plan approval, and that the timeline for approval remains unknown. In addition, based on discussions with various parties, including the Trustee's planning consultant, the Trustee understands that the Nobleton South Project could be more than 20 years away from being developed.
39. The Nobleton South Project was subject to a Notice of Sale under Mortgage ("**Notice of Sale**") issued on March 3, 2020 by Peter Strezos and Christopher Tsaparis (jointly, the "**Priority Mortgagees**") in respect of financing in excess of \$3.3 million that was in default. As was advised in the Twenty-Fourth Report, the Trustee was actively involved in the Notice of Sale process and dealt directly with the Priority Mortgagees and their counsel in connection with same.
40. Following the issuance of the Notice of Sale, an intermediary known to the Trustee advised that it was aware of a party that was interested in acquiring the Nobleton South Project. An offer to purchase the property in the form of a purchase and sale agreement ("**Nobleton South APS**") was subsequently submitted by the interested party to the Trustee for review. In evaluating the Nobleton South APS, the Trustee considered, among other things, that the purchase price was significantly higher than the "as-is" appraisal previously commissioned by the Trustee. The Trustee proceeded to forward the Nobleton

South APS to the Priority Mortgagees for their consideration. The Trustee was advised by counsel to the Priority Mortgagees that the proposed purchase price was also significantly in excess of their own recently commissioned appraisal.

41. Following their review of the Nobleton South APS and discussions with the Trustee, the Priority Mortgagees determined that they would forego listing the property for sale with a real estate agent in order to avoid losing what was determined to be a very strong offer for the property, which might not have been available at a later date should a marketing process have been commenced. Accordingly, in June 2020, with the support of the Trustee and Representative Counsel, the Priority Mortgagees entered into the Nobleton South APS with the interested party ("**Nobleton South Purchaser**").
42. In connection with the sale of the Nobleton South Project, the Trustee agreed to pay the intermediary a fee equal to 3% of the purchase price (plus HST), which would be earned at closing ("**Transaction Fee**"), for services provided in connection with, among other things, identifying the Nobleton South Purchaser and facilitating its due diligence. The Transaction Fee was in lieu of a commission that otherwise would have been paid had the property been listed and sold by a real estate agent. The Trustee is of the view that the Transaction Fee is reasonable in the circumstances.
43. The sale transaction, which was originally anticipated to close in October 2020, ultimately closed on March 23, 2021 for a purchase price of \$6 million. After payment of the balance owing to the Priority Mortgagees, the Transaction Fee, and other closing costs, the net proceeds available for distribution by the Trustee are approximately \$2.4 million ("**Nobleton South Realized Property**"). The Nobleton South Realized Property represents a recovery on principal of approximately 31%, or 45% when previously paid interest of approximately \$1.1 million is taken into account.
44. The Trustee is seeking authorization from the Court in the proposed Nobleton South Distribution Order to distribute 85% of the Nobleton South Realized Property *pro rata* to the Nobleton South Investors in accordance with the Realized Property Order, as amended. Upon service of this Report, the Trustee intends to send a customized notice to the Nobleton South Investors informing them of the completion of the sale transaction and advising them that the Trustee is seeking the Nobleton South Distribution Order. A copy of the Investor notice that will be sent is attached as **Appendix "5"**.

45. Bowmanville Project: a real estate development project in Bowmanville, Ontario (“**Bowmanville Project**”) that had approximately \$5.3 million in principal amount of third ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors (“**Bowmanville Investors**”). On January 27, 2020, Hillmount Capital Inc. (“**Hillmount**”), the priority mortgagee, issued a demand for repayment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) in respect of its debt of approximately \$4.3 million. On February 21, 2020, Hillmount issued a Notice of Sale, which stated that should the full amount of its debt not be repaid on or before March 28, 2020, it would be in a position to list the Bowmanville property for sale. In addition to the Hillmount debt, there was also a further approximately \$2.2 million of priority debt owing to Jaekel Capital Inc. (“**Jaekel**”), the second mortgagee registered on title to the Bowmanville property.
46. On May 5, 2020, on the application of Hillmount, Ernst & Young Inc. was appointed by the Court as receiver (“**Bowmanville Receiver**”) of the Bowmanville property. The Bowmanville Receiver retained CBRE Land Services Group (“**CBRE**”) to market the Bowmanville property for sale.
47. On November 5, 2020, the Bowmanville Receiver sought and obtained an Order from the Court (“**Bowmanville Sale Approval Order**”) approving an agreement of purchase and sale between the Bowmanville Receiver and Brookhill Durham Holdings Inc., a corporation related to the Bowmanville borrower, for a purchase price of \$8.1 million⁵. The Bowmanville Receiver advised that the purchase price was the highest and best offer received for the Bowmanville property.
48. The Court-approved sale transaction closed on November 30, 2020. After repayment of the balances owing to Hillmount and Jaekel, the Bowmanville Receiver’s fees and other closing costs, the net proceeds available for distribution by the Trustee are approximately \$577,000, which represents a recovery on principal of approximately 11%.
49. Prior to the completion of the Bowmanville sale process, the Trustee was contacted by an Investor (on behalf of himself and his family) and their broker regarding an addendum included in their respective loan agreements, which provided such Investors with a right

⁵ The purchase price was previously subject to a six-month sealing order granted by the Court pursuant to the Bowmanville Sale Approval Order. However, given that the six-month period has now expired, the Trustee has disclosed the purchase price in this Report.

to rescind their respective investments in the Bowmanville Project upon certain criteria not being met following the advance of their respective investments ("**Rescission Rights**"). The Investor, along with certain family members, lent \$140,000 in respect of the Bowmanville Project that was subject to the Recession Rights. Other than the one Investor, who contacted the Trustee on behalf of his and his family's investments, no other Bowmanville Investor with Rescission Rights has contacted the Trustee since the commencement of the sale process for the Bowmanville property.

50. The Trustee understands that Rescission Rights were granted to certain Investors pursuant to BDMC loan documentation on certain real estate development projects, including the Bowmanville Project, in accordance with an agreement entered into between BDMC and the Financial Services Commission of Ontario ("**FSCO**") in or around April 2017. Pursuant to that agreement, Investors that: (a) advanced funds without receiving a new appraisal prepared in accordance with the criteria established by FSCO; and/or (b) advanced funds based on an old form of loan documents, were to receive Rescission Rights that would afford them the right to require the return of their investment from the relevant borrower within 15 days of receipt of the new appraisal and/or the new loan documents. At the time of the Trustee's appointment in April 2018, it appeared that: (a) new loan documents had not been provided and it is unknown whether or not new appraisals had been provided to the Investors in the Bowmanville Project that were granted Recession Rights; and (b) the Bowmanville borrower had already utilized the funds advanced by these Investors.
51. According to BDMC's records, in total there are approximately 690 investments with Rescission Rights (representing investments totaling approximately \$36 million) in connection with 22 real estate development projects. According to BDMC's records, there are 82 Bowmanville Investors with Rescission Rights (representing investments totaling approximately \$4.4 million).
52. Earlier in the BDMC proceedings, the broker who had placed the Bowmanville investment on behalf of the Investor referred to above had contacted the Trustee regarding the Rescission Rights that were provided to Investors on multiple projects claiming that those Investors holding Rescission Rights had priority over the other Investors in the respective BDMC loans. The Trustee understands that this broker had also discussed this issue with Representative Counsel.
53. At the time the broker originally contacted the Trustee, Representative Counsel and the

Trustee's counsel each independently investigated the facts, circumstances and consequences resulting from Investors purporting to trigger their Rescission Rights and each were of the view that the Rescission Rights would not grant these Investors priority over the other Investors in the relevant loans, including the loan in respect of the Bowmanville Project. Furthermore, should the relevant Investors exercise their Rescission Rights, they may lose the right to participate in **any** project recoveries *pro rata* with the other project Investors as they would likely be characterized as an unsecured creditor. As a result, Representative Counsel further advised that should the broker or any individual Investor wish to pursue their Rescission Rights, they would have to retain independent legal counsel for that purpose.

54. The Trustee also notes that the addendum to the loan agreements containing the Rescission Rights includes the following statement: *"Your right to cancel your syndicated mortgage loan is not funded. This means that although you may cancel your loan there may not be funds available to return the loan amount to you if you exercise your right to cancel."* This statement also indicates that the unfunded Rescission Rights would likely leave the Investor with an unsecured claim.
55. In addition, the Trustee reviewed BDMC's records and accounts and confirmed that there were no funds retained in any BDMC accounts from Investors who held Rescission Rights. As such, the Trustee and its counsel reviewed whether any equitable principles existed that would be of benefit to the Rescission Rights holders. No authority was found suggesting that amounts owing upon exercise of Rescission Rights would have any priority over other Investors (or other creditors) in an insolvency or similar context, in particular since such a finding would be contrary to the express wording in the documentation.
56. The Trustee communicated its view of the analysis set out herein to the Bowmanville Investor and broker that had contacted the Trustee on the matter and advised that it would be seeking an Order of the Court authorizing the distribution of the Realized Property obtained from the Bowmanville Project *pro rata* to all Bowmanville Investors whether or not their documentation granted Rescission Rights. The Investor advised the Trustee that he would no longer be pursuing a priority claim to the Bowmanville residual proceeds on behalf of himself or his family.
57. Accordingly, the Trustee is seeking the Bowmanville Distribution Order to authorize the distribution of 85% of the residual proceeds *pro rata* to the Bowmanville Investors in

accordance with the Realized Property Order, as amended, irrespective of whether their particular investment contained Rescission Rights.

58. A notice describing the outcome of the sale process conducted by CBRE was sent to the Bowmanville Investors on October 21, 2020. Upon service of this Report, the Trustee intends to send a customized notice to the Bowmanville Investors to advise of the quantum of the residual proceeds and the Trustee's intention to seek the proposed Bowmanville Distribution Order. Copies of the October 21, 2020 notice as well as the notice to be sent are attached as **Appendices "6" and "7"**.
59. North and Jasper House Projects: The North Project and the Jasper House Project, both of which are located in Edmonton, Alberta, had over \$8.2 million and \$8.3 million of principal outstanding, respectively, of second ranking syndicated mortgage loan debt administered by BDMC (the "**North Loan**" and the "**Jasper House Loan**", respectively, and such Investors in the North Loan and the Jasper Loan, respectively, the "**North Investors**" and the "**Jasper House Investors**"). The Trustee understands that the North Project and the Jasper House Project were each controlled by entities with common ownership related to Mr. Brad Lamb. The borrowers under the North Loan ("**North Borrower**") and the Jasper House Loan ("**Jasper House Borrower**") determined that they were unable to continue with the development of their projects and proceeded to list their respective properties for sale with a commercial real estate broker. At the time of the sale and for several years prior, both properties were used as surface parking lots, and the related development projects were years away from completion. As set out in the Twenty-Fourth Report, both projects were sold, and each sale transaction has closed.
60. The residual proceeds remaining from the sale transactions in respect of the North Project and the Jasper House Project were approximately \$1.6 million and \$1.8 million, respectively, following payment of the first ranking mortgage on title to the respective properties, property taxes, commissions and other closing costs. These residual proceeds are currently being held in trust by the Trustee's counsel pending a resolution of the Related Party Claims (defined below).
61. As was advised in the Twenty-Fourth Report, each of the North Borrower and the Jasper House Borrower asserted a claim, on behalf of itself and BJL Properties Inc. ("**BJL**"), an entity related to both borrowers, that it was owed amounts from the residual sale proceeds in priority to BDMC. Specifically, the North Borrower claimed that it and/or BJL was owed approximately \$1.2 million in priority to BDMC, and the Jasper House Borrower claimed

that it and/or BJJ was owed approximately \$1.6 million in priority to BDMC. Each claim is primarily comprised of: (a) the initial equity contributed to the respective project by the respective borrower; (b) guarantee fees; and (c) amounts advanced by BJJ to pay for, among other things, certain carrying costs associated with each property, including costs to service interest owing under their respective priority mortgages and property taxes (collectively, the “**Related Party Claims**”).

62. Following the issuance of the Twenty-Fourth Report, the Trustee continued to engage in discussions with the North Borrower, the Jasper House Borrower and BJJ regarding the Related Party Claims. After extensive negotiations and an in-depth review of the amounts comprising the Related Party Claims, the Trustee determined that it would be in the best interests of the North Investors and the Jasper House Investors to resolve the Related Party Claims consensually, thereby avoiding litigation costs that would be incurred and further delays in distributing the residual sale proceeds should the matter be adjudicated before the Court. Accordingly, with the support of Representative Counsel, the Trustee proceeded to negotiate settlements with each borrower and BJJ regarding the allocation and distribution of the residual sale proceeds. Such negotiations ultimately culminated in settlements in the amounts of approximately \$473,000 (approximately \$700,000 less than the amount claimed) with respect to the Related Party Claim advanced in connection with the North Project and approximately \$527,000 (approximately \$1.1 million less than the amount claimed) with respect to the Related Party Claim advanced in connection with the Jasper House Project (together, the “**Related Party Claim Settlement Amounts**”). In these particular circumstances, the Trustee determined it to be appropriate to agree to the Related Party Claim Settlement Amounts, which are comprised of amounts that the Trustee believes may have otherwise ranked in priority to the North Loan and the Jasper House Loan, as applicable, for payments made to service the priority mortgages and payments in respect of property taxes. Copies of the Settlement and Mutual Release Agreement (North) and Settlement and Mutual Release Agreement (Jasper) (together, the “**Related Party Claim Settlement Agreements**”) are attached as **Appendix “8”** and **Appendix “9”**, respectively.
63. In addition to setting out the Related Party Claim Settlement Amounts, the key terms of the Related Party Claim Settlement Agreements are as follows: (a) each agreement is conditional upon Court approval; (b) the Trustee’s counsel is authorized to distribute the

Related Party Claim Settlement Amounts to BJL ("**BJL Distribution**") and the remainder of the residual proceeds to the Trustee ("**BDMC North and Jasper House Distributions**"); (c) BDMC and the Trustee, on the one hand, and each of the respective borrowers and BJL, on the other hand, grant each other mutual releases for any and all claims that such parties may have now or in the future against one another solely in relation to the applicable Related Party Claim(s) and the residual proceeds; and (d) each of the North Borrower and the Jasper House Borrower acknowledge that the Trustee may further distribute amounts received by it pursuant to the BDMC North and Jasper House Distributions in its sole discretion.

64. In addition, as previously advised in the Twenty-Fourth Report, there was a mortgage registered on title to the Jasper House Project in third position (i.e., behind the BDMC mortgage) in favour of the North Borrower in the amount of \$768,650 ("**Inter-Project Loan**"). The Trustee understands that the North Borrower advanced the full amount of this mortgage from the North Project to the Jasper House Project in October 2014 and that such funds were never repaid. The Trustee further understands that neither the North Investors nor the Jasper House Investors were notified of the Inter-Project Loan prior to the commencement of these proceedings. The Jasper House Borrower advised the Trustee that its intention was always to repay the Inter-Project Loan, however it never had sufficient funds to do so.
65. The Trustee further understands that absent the Inter-Project Loan, the Jasper House Borrower would have likely been required to source alternate financing as there were insufficient funds to support the ongoing carrying costs for the Jasper House Project. Had the Jasper House Borrower been required to secure third party financing, it would have likely been a prerequisite to any such funding that BDMC subordinate and postpone its mortgage in favour of the new lender.
66. The Trustee has considered the interests of both the Jasper House Investors and the North Investors with respect to the issue of how the Inter-Project Loan should be treated when distributing the residual proceeds from these transactions to the relevant Investors. The Jasper House Investors may contend that no adjustment is necessary as, while they were the beneficiary of the Inter-Project Loan, the North Borrower's mortgage is subsequent to the BDMC mortgage previously registered on title. As explained above, this does not account for the fact that had the Jasper House Borrower been required to secure

financing from an arm's length party, such financing would likely have only been provided if the financing was secured in a position in priority to BDMC. Similarly, the North Investors may contend that an adjustment must be made in the full amount of the Inter-Project Loan to compensate them for the transfer of their investment to another project. The Trustee understands both of these positions and has also considered the equities applicable to both sets of Investors who have suffered significant losses from their investments.

67. In light of the reasons noted above, the Trustee, with the support of Representative Counsel, is of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan is for the Jasper House Project to reimburse the North Project for 50% of the Inter-Project Loan amount, or \$384,325 ("**Inter-Project Allocation**"), such that these additional funds would be available for distribution to the North Investors.
68. The following table summarizes the amounts that, subject to Court approval of the Related Party Claim Settlement Agreements and the Inter-Project Allocation, would be available for distribution to the North Investors and the Jasper House Investors before accounting for the Administrative Holdback:

	North	Jasper House
Principal Outstanding (A)	8,188,500	8,260,600
Residual Proceeds (B)	1,611,622	1,767,212
Related Party Claim Settlement Amounts (C)	(473,400)	(526,599)
Inter-Project Allocation (D)	384,325	(384,325)
Recovery on Principal (E=B+C+D)	1,522,547	856,288
Previously Paid Interest (F)	888,439	628,655
Recovery on Principal with Previously Paid Interest (G=E+F)	2,410,986	1,484,943
Recovery on Principal (%) (E/A)	18.6%	10.4%
Recovery on Principal with Previously Paid Interest (%) (G/A)	29.4%	18.0%

69. The Trustee is seeking authorization from the Court in the proposed North and Jasper House Residual Proceeds Settlement Approval and Distribution Order to distribute 85% of: (a) \$1,522,547 to the North Investors; and (b) \$856,288 to the Jasper House Investors,

pro rata to each group of Investors, in accordance with the Realized Property Order, as amended.

70. Upon service of this Report, the Trustee intends to send customized notices to the North Investors and the Jasper House Investors with respect to the Related Party Claim Settlement Agreements and the Inter-Project Allocation. These notices will advise that the Trustee is seeking the proposed North and Jasper House Residual Proceeds Settlement Approval and Distribution Order. Copies of the notices that the Trustee intends to send to the North Investors and the Jasper House Investors are attached as **Appendix "10"** and **Appendix "11"**, respectively.
71. Castlemore Project: a real estate development project in Brampton, Ontario ("**Castlemore Project**") with approximately \$21.25 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC ("**Castlemore Loan**", and such Investors in the Castlemore Loan, the "**Castlemore Investors**") owing by Emerald Castle Developments Inc. ("**Castlemore Borrower**") pursuant to a loan agreement dated August 25, 2014 ("**Castlemore Loan Agreement**"). There is a first priority mortgage registered on the Castlemore property to Cameron Stephens Financial Corporation ("**Cameron Stephens**") in the amount of approximately \$10.5 million. The Cameron Stephens indebtedness is the only known indebtedness on the Castlemore Project that ranks in priority on title to the Castlemore Loan.
72. The Castlemore Project is described in greater detail in the Trustee's twelfth report to Court dated October 31, 2019 ("**Twelfth Report**") and the Trustee's seventeenth report to Court dated March 27, 2020 ("**Seventeenth Report**").
73. 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”).

74. 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 scheduled 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.
75. 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.
76. 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**”). According to the Borrower, pursuant to the End of Term Event Clause, the Borrower had the option of either: (i) paying out the Castlemore Investors in the manner and priority prescribed by the Castlemore Loan Agreement (“**Waterfall**”) subject to certain deductions; or (ii) listing the Castlemore Property for sale with a real estate agent and distributing the proceeds from the sale in accordance with the Waterfall. Under either option, the Castlemore Borrower took the position that the payment made would fully satisfy its obligations under the Castlemore Loan.
77. On March 2, 2020, the Castlemore Borrower issued a notice of application (“**Application**”) naming the Trustee as a respondent seeking to enforce the End of Term Event Clause.
78. 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 the Waterfall.

79. The Trustee and Representative Counsel took steps to oppose the Application. The Trustee filed the Seventeenth Report and multiple factums in connection with the Application. Representative Counsel filed the evidence of one Castlemore Investor as well as a factum in connection with the Application. Both Trustee's counsel and Representative Counsel cross-examined the Castlemore Borrower's representative on evidence filed in the Application.
80. At a case conference on September 3, 2020, the Honourable Mr. Justice Hailey ordered on consent of the parties that the issue of the calculation of the amounts owing under the Waterfall clause ("**Calculation Dispute**") be bifurcated from the issue regarding the enforceability of the End of Term Event Clause ("**Interpretation Dispute**"). Justice Hailey ordered that the Calculation Dispute be heard at a later date to the extent it was still relevant following the determination of the Interpretation Dispute.
81. On November 3, 2020, the Honourable Madam Justice Dietrich heard the Interpretation Dispute ("**November 3 Hearing**"). The Castlemore Borrower made submissions in favour of its position. In response, the Trustee made two main arguments in opposition. First, the Trustee argued that the End of Term Event Clause and Waterfall clause were 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 allowed 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 was enforced.
82. On February 2, 2021, the Court released its decision in respect of the November 3 Hearing, which ruled in favour of the Castlemore Borrower and against the interests of the Castlemore Investors ("**Decision**"). In the Decision, the Court enforced the Castlemore

Loan Agreement, including the End of Term Event Clause, commenting that: *“It is not for the court to rewrite contracts to reflect changed circumstances or more equitable results to accord with a court’s after-the-fact assessment of what is just and equitable.”* A copy of the Decision is attached hereto as **Appendix “12”**.

83. On March 2, 2021, the Trustee commenced an appeal in the Court of Appeal for Ontario in Court File No. C69154 seeking an order setting aside the Decision in order to preserve its rights with respect to the Decision. Representative Counsel commenced a similar appeal (together, the **“Appeals”**).
84. Since filing the Appeals, the Trustee, its counsel, Representative Counsel, the Castlemore Borrower, and the Castlemore Borrower’s counsel have engaged in settlement negotiations regarding the Calculation Dispute, other unresolved issues in the Application and the Appeals and have reached a global settlement (**“Castlemore Settlement”**). The parties to the Castlemore Settlement are the Castlemore Borrower, the Trustee (on behalf of BDMC), Olympia Trust Company (**“Olympia”**), and Representative Counsel (for a limited purpose related to its Appeal only). The Castlemore Settlement contemplates that:
- (a) The Castlemore Borrower will pay \$9,875,358 to the Trustee, on behalf of BDMC (**“Castlemore Settlement Payment”**);
 - (b) Within three days of payment, the Castlemore Borrower will abandon the Application;
 - (c) Within three days of payment, the Trustee and Representative Counsel will abandon their Appeals;
 - (d) If the terms of the Castlemore Settlement are met, the Castlemore Settlement extinguishes all rights and obligations of BDMC under the Castlemore Loan Agreement, related documents and the associated mortgage on the Castlemore property; and
 - (e) Although the Castlemore Settlement extinguishes all potential claims by BDMC against the Castlemore Borrower related to the Castlemore Loan Agreement, it does not go further to impose on the Castlemore Investors, who were not party to the Castlemore Loan Agreement, a full and final release of their potential claims.

A copy of the Castlemore Settlement is attached hereto as **Appendix “13”**.

85. The Trustee, with the support of Representative Counsel, has determined that the Castlemore Settlement is in the best interests of the Castlemore Investors for the following reasons, among others:
- (a) the Decision ruled in favour of the Castlemore Borrower and against the interests of the Castlemore Investors by enforcing the Castlemore Loan Agreement;
 - (b) the Castlemore Settlement avoids prolonged, uncertain and costly litigation in the context of both the Calculation Dispute and the Appeals;
 - (c) the Castlemore Settlement provides certainty regarding the amount and time frame for the repayment of the Castlemore Loan;
 - (d) the Castlemore Settlement Payment of \$9,875,358 reflects a recovery of approximately 46.5% of the \$21.246 million outstanding principal balance of the Castlemore Loan; and
 - (e) if the Calculation Dispute proceeded to a hearing, the Castlemore Borrower was seeking an order that would require it to pay only \$8,518,271, approximately \$1.36 million less than the Castlemore Settlement Payment, and recovery of its additional legal costs in relation to the Calculation Dispute.
86. The Castlemore Settlement is conditional upon Court approval. Accordingly, the Trustee is seeking the Castlemore Resolution Order to approve the Castlemore Settlement and authorize the distribution of 85% of the Castlemore Settlement Payment *pro rata* to the Castlemore Investors in accordance with the Realized Property Order, as amended.
87. Upon service of this Report, the Trustee intends to send a customized notice to the Castlemore Investors to advise that the Trustee is seeking the Castlemore Resolution Order. A copy of the Investor notice that will be sent by the Trustee is attached as **Appendix “14”**. If the Castlemore Settlement is approved, the Trustee expects to receive the Castlemore Settlement Payment on or before July 30, 2021. As soon as is practicable thereafter, the Trustee intends to make a distribution to the Castlemore Investors.

OTHER MATERIAL PROJECT DEVELOPMENTS

88. As set out above, in order to provide the Investors with information on the status of their investments, the Trustee has updated the Project Analysis Summary. In addition to the

updates in the Project Analysis Summary 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 Twenty-Fourth Report.

89. Wellington Project: a real estate development project located in Toronto, Ontario (“**Wellington Project**”) that had approximately \$6.3 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC (“**Wellington Loan**”, and such Investors in the Wellington Loan, the “**Wellington Investors**”).
90. As described in greater detail in the Trustee’s twenty-fifth report to Court dated February 16, 2021 (“**Twenty-Fifth Report**”), following extensive negotiations between the Wellington borrower (an entity related to Mr. Brad Lamb) and the Trustee, the Wellington borrower presented the Trustee with a revised offer to settle the Wellington Loan in the aggregate amount of approximately \$6.3 million (“**Wellington Offer**”), being 100% of the principal balance of the Wellington Loan. The Wellington Offer was primarily comprised of:
- (a) two settlement payments by the Wellington borrower in the aggregate amount of approximately \$6.3 million, payable as follows:
 - i. a lump sum payment of \$4 million (less a deposit previously received by the Trustee’s counsel of \$300,000 (the “**Deposit**”)) upon receipt of Court approval of the settlement agreement (“**First Settlement Payment**”); and
 - ii. a lump sum payment in the amount of approximately \$2.3 million to be paid on or before September 1, 2021 (“**Second Settlement Payment**”); and
 - (b) the receipt by the Trustee of certain security in connection with the Second Settlement Payment including (i) a first ranking charge registered on certain real property, which property is currently owned by Bel-Three Property Management Limited (“**Bel-Three**”), an entity related to the Wellington borrower, and a limited recourse guarantee of Bel-Three, which recourse is limited to such real property; and (ii) a limited personal guarantee from Mr. Lamb in the maximum amount of the Second Settlement Payment and any Second Settlement Payment late fee, plus certain other fees and recoverable expenses and costs.

91. After soliciting feedback from the Wellington Investors, and receiving overwhelmingly positive responses, the Trustee entered into the settlement agreement with the Wellington borrower, and the transaction was approved by the Court on February 23, 2021 (“**Wellington Settlement Approval Order**”). A copy of the notices sent to the Wellington Investors seeking feedback on the Wellington Offer and detailing the outcome of the Investor solicitation process are attached as **Appendices “15”** and **“16”**.
92. Since receiving Court approval of the Wellington Settlement Approval Order, the Trustee has received the First Settlement Payment, and the security in respect of the Second Settlement Payment has been registered. The Trustee has distributed an amount equal to 85% of the First Settlement Payment, *pro rata* to the Wellington Investors entitled to such funds in accordance with the Wellington Settlement Approval Order and the Realized Property Order, as amended.
93. Port Place 2 Project: a real estate development project involving four parcels of land in St. Catharines, Ontario (“**Port Place 2 Lands**”) that had approximately \$2.9 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors (“**Port Place 2 Investors**”).
94. As described in greater detail in the Trustee’s twenty-third report to Court dated October 8, 2020 (“**Twenty-Third Report**”), on April 23, 2019, the first ranking mortgagees, Magnetic Capital Group Inc., Olympia and Canadian Western Trust Company (collectively, 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 by the First Ranking Mortgagees.
95. Further, as more fully described in the Twenty-Third Report, there was a priority dispute regarding title to the Port Place 2 Lands with respect to financing in the amount of \$1.47 million that was advanced by certain of the First Ranking Mortgagees (“**Additional Financing Mortgage**”) and that was registered on title to the Port Place 2 Lands in third position, behind the charge that secured the BDMC debt (“**Priority Claim**”). Following: (a) an extensive review of the legal arguments with respect to the Priority Claim; and (b) negotiations with certain of the First Ranking Mortgagees and counsel for the title insurer, the Trustee, with the support of Representative Counsel, determined that it would not be

prudent to dedicate further resources from the BDMC estate to dispute the Priority Claim given the unlikelihood of success at, and anticipated costs of, a contested priority dispute before the Court. Accordingly, the parties reached an agreement on a form of subordination and priority agreement that was approved by the Court on October 15, 2020 and executed by the Trustee on November 19, 2020.

96. Each of the Port Place 2 Lands have now been sold for a combined selling price of \$2.165 million, as follows: (a) \$665,000 for 12 Lock Street, which sale closed on June 11, 2021; and (b) \$1.5 million allocated equally between 14, 18A and 28 Lakeport Road (the 28 Lakeport Road sale closed on December 21, 2020 and the 14 and 18A Lakeport Road sales closed on March 31, 2021). The distribution of the proceeds from the sale of the Port Place 2 Lands resulted in: (a) the first priority mortgage being repaid in full (including principal and interest then outstanding); and (b) a partial repayment of the Additional Financing Mortgage. Given the shortfall on the Additional Financing Mortgage, there were no proceeds remaining to repay any amounts owing to the Port Place 2 Investors. On April 29, 2021, a notice was sent to the Port Place 2 Investors with respect to the sale transactions and the priority dispute, a copy of which is attached hereto as **Appendix “17”**.
97. South Shore Project: a real estate development project in Keswick, Ontario (“**South Shore Project**”) with over \$20.6 million in principal amount of second ranking syndicated mortgage loan debt and approximately \$8.6 million in principal amount of third ranking syndicated mortgage loan debt, each administered by BDMC (collectively the “**South Shore Loans**”, and such Investors in the South Shore Loans, collectively, the “**South Shore Investors**”). On January 24, 2019, Diversified Capital Inc. (“**Diversified**”) issued a Notice of Sale in respect of its first priority debt of approximately \$6.9 million that was in default. The Trustee contacted Diversified following the issuance of the Notice of Sale seeking information with respect to any proposed sale process.
98. As described in the Twenty-Fourth Report, in late October 2019, after several months of the Trustee following up with Diversified with no response, Diversified advised that it was in the process of obtaining updated appraisals and seeking proposals from commercial real estate agents with the intention of listing the property for sale in the near-term. For several months thereafter, the Trustee continued to follow up with Diversified on the status

of the sale process as, to the best of the Trustee's knowledge, the South Shore Project had not yet been listed for sale. Despite the Trustee's repeated requests for information, very limited information was provided by Diversified. In addition, the Trustee was aware of and had advised Diversified that there were parties interested in acquiring the property and that it understood that Diversified was not responding to or engaging with such parties. By August 2020, the Trustee was advised by a potential purchaser ("**Potential Purchaser**") that it was prepared to submit a formal offer, however, it needed to understand the sale process in order to move forward. Despite Diversified being aware of such interest in the property, no sale process was commenced at that time.

99. Through its own investigation, and without being advised by Diversified, the Trustee discovered that on or about October 21, 2020, almost two years after the issuance of the Notice of Sale and a year after Diversified advised it would be listing the property for sale in the near-term, the South Shore Project was formally listed for sale with Colliers Macaulay Nicolls Inc. ("**Colliers**"). Colliers listed the South Shore property on an unpriced basis and with an initial offer deadline of November 26, 2020 that was later extended to December 16, 2020. Despite several additional follow up requests by the Trustee for information about the sale process and the results of such process, on December 18, 2020, Colliers provided very limited information but advised that, among other things: (a) multiple offers had been received, several of which were competitive, including an offer from the Potential Purchaser; and (b) there likely would not be a second round of offers. The Trustee asked for further information regarding the offers, including the rationale for not considering a second round of offers, but no further material information was provided.
100. Finally, on December 31, 2020, Diversified advised that it had entered into a conditional agreement of purchase and sale for the South Shore Project ("**South Shore Conditional Offer**"); however it refused to disclose the details of such offer, even on a confidential basis, to the Trustee, including the purchase price, the proposed purchaser and the material conditions of the proposed agreement. The Trustee understands that the conditional period of the South Shore Conditional Offer was originally set to expire in early February 2021 but was extended to early March 2021.
101. On March 9, 2021, the Trustee learned that Colliers had notified certain parties that had previously participated in the sale process that the conditions of the South Shore

Conditional Offer were not satisfied or waived by the conditional offeror and that Colliers would be soliciting another round of offers that same week with a deadline for submission of March 12, 2021.

102. After learning of the termination of the South Shore Conditional Offer and the abbreviated process for the submission of a new round of offers, the Trustee again requested that Diversified allow it to consult with respect to the sale process given that BDMC was the fulcrum creditor and that the Trustee is a Court officer. On March 16, 2021, Diversified provided the Trustee with two of the offers received, one of which was from the Potential Purchaser, which Diversified advised were the best offers that it had received, and sought the Trustee's input in respect of same.
103. Diversified ultimately entered into an agreement of purchase and sale with the Potential Purchaser at a purchase price of \$13 million ("**South Shore Purchase Price**"), which transaction closed on May 13, 2021.
104. Prior to the closing of the transaction, the Trustee had repeatedly requested a copy of Diversified's payout statement for several months. No such payout statement was provided. Accordingly, on the date of closing, the Trustee formally requested that Diversified's counsel hold the South Shore Purchase Price in trust until such time as the Trustee has been provided with a meaningful opportunity to review the payout statement.
105. On May 17, 2021, the Trustee received a payout statement from Diversified's counsel which indicated that Diversified was owed approximately \$9.9 million, including approximately \$4.7 million of unpaid interest on \$4.5 million of original principal and approximately \$700,000 in renewal fees and other amounts. The Trustee was also advised by Diversified's counsel that it had paid such amounts to Diversified after closing.
106. The Trustee has reviewed the payout statement and has concerns regarding the amount of interest and fees charged by Diversified given, among other reasons: (a) the extended length of time that elapsed between the Notice of Sale and the date the property was listed for sale; and (b) Diversified's decision to accept a highly conditional offer in respect of a transaction that ultimately was not completed, a decision which further delayed the process solely to the detriment of BDMC. The Trustee is in the process of addressing such concerns with Diversified and considering its rights and remedies in this regard. In addition

to the amounts set out in the payout statement, the Trustee understands from Diversified's counsel that there will be other amounts sought to be paid from the closing proceeds in priority to BDMC.

107. The Trustee is also aware of two construction lien claims made in respect of the South Shore Project, which total approximately \$640,000 and which could affect the amount of Realized Property that is obtained by the Trustee and distributed to the South Shore Investors. The Trustee's counsel is in the process of engaging with counsel to Diversified and counsel to the construction lien claimants with respect to the validity and priority of such claims.
108. Once the Trustee receives the full accounting of the sale proceeds and engages with Diversified regarding its concerns with the payout statement and any other priority amounts claimed, the Trustee will determine next steps and communicate same to the South Shore Investors. Notwithstanding the outstanding issues described above, the South Shore Purchase Price was sufficient to satisfy Diversified's claims and should be sufficient to satisfy any other potential priority claims. The Trustee expects to receive one or more distributions from the net proceeds from the sale transaction.
109. Kemp Project: a real estate development project in Barrie, Ontario ("**Kemp Project**") that had over \$17.2 million of fourth ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors ("**Kemp Investors**") and approximately \$784,000 of accrued interest for which the Kemp Investors had been given a separate fifth ranking mortgage administered by BDMC.
110. As was advised in previous reports, the Kemp Project was the subject of a Notice of Sale issued by Romspen Investment Corporation ("**Romspen**") in respect of its first priority mortgage, which had matured. The net remaining proceeds potentially available to the Kemp Investors from the sale transaction completed by Romspen was approximately \$2.2 million ("**Kemp Residual Proceeds**"). Shortly before the anticipated 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 from the Kemp Residual Proceeds in priority to the Kemp Investors. The Trustee reviewed Fortress' claim and disagreed with the analysis provided by Fortress.

111. 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 light of the Fortress claim (“**Remaining Kemp Proceeds**”) and distributed approximately \$1.5 million to the Kemp Investors. The Trustee continued its discussions with Fortress, as well as with a third party in respect of whom a portion of the Fortress claim related; however, the parties have yet to reach an agreement. Accordingly, the Trustee anticipates bringing a motion before the Court seeking approval to distribute the Remaining Kemp Proceeds to the Kemp Investors notwithstanding the Fortress claim.
112. Charlotte Adelaide Project: a real estate development project in downtown Toronto, Ontario (“**CHAT Project**”) that had two different syndicated mortgage loans administered by BDMC, as follows: (a) \$12.3 million of principal owed to the SML Investors, and (b) approximately \$3.91 million of principal owed to the LH1 Investors (each as defined in the Trustee’s ninth report to this Court dated July 12, 2019). As described in previous Reports, 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 Inc. (“**CHAT Purchaser**”). Despite being presented with an executed agreement, the Trustee negotiated an amended agreement of purchase and sale with the CHAT borrower and the CHAT Purchaser for a higher sale price of \$16.5 million of which approximately \$3.6 million was payable to BDMC.
113. In addition, the Trustee, the CHAT Purchaser, Go-To Stoney Creek Elfrida LP (“**Go-To Stoney Creek**”), its general partner and its principals, among others, also entered into a memorandum of understanding (“**MOU**”) in respect of the CHAT Transaction. Pursuant to the MOU, BDMC received a payment of \$2.095 million (in addition to the approximately \$3.6 million already received), inclusive of applicable penalties, and 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**”). As part of the transaction, Go-To Stoney Creek and its general partner provided the Trustee with security on a property located in Hamilton, Ontario (“**Alternate Property**”), in respect of the Density Bonus and certain other guarantees that were provided to the Trustee pursuant to the MOU.
114. In late 2020, the principal of Go-To Stoney Creek contacted the Trustee regarding, among other things, a postponement it was seeking in order to place additional financing on the Alternate Property. After reviewing the request, the Trustee ultimately agreed to the

postponement of approximately \$10.65 million to be used primarily to refinance the then existing priority loans, to fund the interest reserve related to the new loan, and to provide some additional financing required to continue to fund costs associated with the Alternate Property. Although the new financing was in excess of the maximum financing that the Trustee was required to postpone to pursuant to the terms of the MOU (being \$9.5 million), the Trustee determined that it was appropriate to do so in order to allow for the continued development of the Alternate Property. At the time the postponement was provided, the Trustee also considered the appraisal previously provided for the Alternate Property which showed that, even with the incremental increase in financing, there should be sufficient value in the Alternate Property to support the new financing and the BDMC mortgage registered on title.

115. In April 2021, despite the development approvals that may have given rise to the payment of the Density Bonus not having been obtained, the principal of Go-To Stoney Creek contacted the Trustee to request that it discharge its mortgage on the Alternate Property. Go-To Stoney Creek is of the view that given recent input it received from the City of Toronto regarding development approvals, the Density Bonus will likely not be payable and, accordingly, Go-To Stoney Creek asked the Trustee to discharge its mortgage in order to advance the development of the Alternate Property. The Trustee is in discussions with Go-To Stoney Creek regarding its request and the current status of the arrangements between the parties and will provide a further update to the Court and Investors as appropriate.
116. Brookdale Project: a real estate development project in midtown Toronto, Ontario ("**Brookdale Project**") that had approximately \$4.6 million in principal amount of mezzanine syndicated mortgage loan debt and over \$20 million in principal amount 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.
117. The Brookdale Project was subject to a Notice of Sale proceeding brought by Firm Capital Mortgage Fund Inc. ("**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.

118. 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.
119. As part of this litigation, 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.
120. The Trustee then reached a settlement of 14 construction liens with claims totaling approximately \$8.7 million. 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, the remaining monies were transferred to an account with the Court's accountant to the credit of these BDMC proceedings and there remains approximately \$17.4 million of proceeds held by the Court.
121. The Trustee is now continuing to address 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,

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2013, under which the Trustee understands approximately \$9 million plus interest and costs is being 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.

122. In order to advance the remaining priority claims in an efficient manner, the Trustee has first requested that Computershare deliver an Amended Statement of Claim in light of the many developments that have occurred with respect to the Brookdale Project. The Trustee has not yet received this amended claim.
123. 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, to dispute all remaining competing claims to the net proceeds of sale. As such, the quantum and timing of any distribution in respect of these loans remains unknown given the outstanding unresolved priority issues.
124. Eden Project: a real estate development project in King City, Ontario consisting of 28 residential homes ("**Eden Project**"). The Trustee provided updates in previous Reports regarding the syndicated mortgage loan in the principal amount of \$5,937,000 made to 2309918 Ontario Inc. ("**Eden Borrower**") in connection with the Eden Project. In particular, the Thirteenth Report discussed the following: (a) 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 (b) a bankruptcy Order obtained by the Trustee against the Eden Borrower pursuant to section 43(2) of the BIA ("**BIA Proceedings**").
125. 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-Sixth Report, negotiations on a consensual settlement to resolve matters related to the Eden Project Litigation and the BIA Proceedings remain ongoing.

126. Also as previously reported, in June 2019 the Bankruptcy Order was granted against the Eden Borrower 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 completed the initial phase of the investigation into the affairs of the bankrupt, including through a review of certain financial and other information obtained from the Eden Borrower. GT’s investigation has been temporarily put on hold while the Trustee continues to explore a possible consensual settlement in respect of the Eden Project Litigation.
127. Depending on the outcome of the Eden Project Litigation and the negotiations referred to above, GT may take additional steps against the Eden Borrower and/or other persons of interest.
128. Treehouse Project: a real estate development project located in Toronto, Ontario (“**Treehouse Project**”) that had approximately \$5.4 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors (“**Treehouse Investors**”). The Treehouse Project was subject to a Notice of Sale issued May 22, 2019 by Toronto Capital Corporation (“**TCC**”), the first priority mortgagee. On November 15, 2020, TCC entered into an agreement of purchase and sale for the property with 2791448 Ontario Inc. for a purchase price of \$4.3 million. TCC advised that the \$4.3 million offer was the highest and best offer available to it since the commencement of its marketing efforts in the summer of 2019. As at the closing of the transaction, the total amount owed to TCC was approximately \$6.7 million. As the proceeds from the sale were insufficient to repay TCC’s priority mortgage in full, there were no recoveries available for the Treehouse Investors. On January 18, 2021, a notice was sent to the Treehouse Investors with respect to the sale transaction, a copy of which is attached as **Appendix “18”**.
129. 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**”, and such Investors therein, collectively, the “**Sky City Investors**”). As was advised in the Twenty-Fourth Report, there are three mortgages registered on title to the Sky City Project in priority to the BDMC Sky City Debt that, as of March 25, 2021, in aggregate totaled approximately \$11 million. In addition, Fortress has claimed that it is entitled to a claim/mortgage in priority to the BDMC Sky City Debt in respect of approximately \$2 million that it claims to have advanced to the Sky City borrower, an entity related to Fortress, for certain carrying costs in respect of the Sky City Project. The Trustee has not agreed to Fortress’ claim to a priority claim/mortgage, and to date no such mortgage has been registered on title in priority to the BDMC Sky City Debt.

130. The Sky City borrower listed the property for sale in September 2020 with a deadline for offers of October 15, 2020; however, the borrower’s sale process did not result in a sale transaction.
131. On October 13, 2020, while the Sky City property was listed for sale by the Sky City borrower, 11615467 Canada Ltd. (“**1161 Canada**”), the third priority mortgagee registered on title to the Sky City property, issued a Notice of Sale requiring the full payment of its outstanding debt then owing in the approximate amount of \$1.8 million. Since the Sky City borrower continued to be in default for failure to pay its outstanding debt, on January 25, 2021, the Manitoba district registrar granted an order authorizing and empowering 1161 Canada to sell the Sky City property by public auction (“**Auction**”), private contract or both. On March 25, 2021, 1161 Canada held an Auction, attended by the Trustee, but no offers were received.
132. Given the result of the Auction, 1161 Canada proceeded to retain a commercial real estate broker to list the Sky City property for sale and has advised that the marketing process will commence in June 2021. On April 29, 2021, the Trustee sent a notice to the Sky City Investors advising of the outcome of the Auction and of the upcoming sale process. A copy of the notice is attached as **Appendix “19”**.
133. Prescott Project: a real estate development project in Spruce Grove, Alberta (“**Prescott Project**”) that is comprised of 32 homes with over \$2.4 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC on behalf of

Investors (“**Prescott Investors**”). As was advised in the notice sent to the Prescott Investors on May 19, 2021, despite the Prescott borrower’s expectations, the Prescott Project has experienced significant challenges since late 2014. Such challenges resulted in, among other things, a significantly extended timeline for the completion and sale of the individual homes and downward pressure on the selling prices for such homes. In early 2021, the final units of the Prescott Project were sold, and the net proceeds were used to partially repay the outstanding amounts owing to the priority mortgagee. As the priority mortgagee suffered a shortfall on its mortgage, there were no funds available to repay any amounts owing to the Prescott Investors. A copy of the May 19, 2021 notice is attached as **Appendix “20”**.

134. Highlands of York Region Project: a real estate development project (“**HYR Project**”) comprised of three parcels of land (collectively, “**HYR Properties**” and each an “**HYR Property**”) located in the Town of East Gwillimbury, Ontario with over \$2.5 million in principal amount of third ranking syndicated mortgage loan debt registered on title to the HYR Properties administered by BDMC (“**HYR Loan**”, and such Investors in the HYR Loan, the “**HYR Investors**”) that is subordinate to: (a) three separate first ranking vendor take back mortgages (“**VTB Mortgages**”), each of which is registered on title to a different HYR Property, in the aggregate amount of approximately \$5 million; and (b) a second ranking mortgage registered by Jaekel on title to each of the three HYR Properties in the amount of approximately \$6.8 million. The Trustee understands that one of the VTB Mortgages matures in November 2021, which the borrower under the HYR Loan (“**HYR Borrower**”) has advised would not be extended, while the other two VTB Mortgages mature in March 2023. The HYR Borrower has also advised that, for the past two years, Jaekel has been making the interest payments in respect of the VTB Mortgages.
135. As was advised in a notice sent to the HYR Investors on March 30, 2021, in early 2021, it came to the Trustee’s attention that the HYR Borrower had retained CBRE to list the HYR Properties for sale. The HYR Properties were listed for sale on January 21, 2021 without a listing price or an offer deadline. Ultimately, after marketing the HYR Properties for a period of time, CBRE set an offer date of April 15, 2021. No offers were received by CBRE on the offer date. The Trustee is continuing to engage with the HYR Borrower regarding its intentions for the HYR Properties given the unsuccessful sale process. On May 18,

2021 the Trustee sent a notice to the HYR Investors informing them of the results of the sale process, a copy of which is attached as **Appendix “21”**.

GENERAL DEVELOPMENTS RELATED TO THE BDMC PROCEEDINGS

Class Action Proceedings

136. BDMC is a named defendant in five proposed class actions commenced in 2016 and 2017 relating to the following real estate development projects that are known as: (a) Kemp; (b) Collier Centre; (c) Orchard; (d) Progress; and (e) Sutton (collectively, the “**Class Actions**”). The Trustee notes that the first three projects noted above are projects subject to the BDMC proceedings and that the Progress and Sutton Projects are being administered by FAAN Mortgage as part of the related trusteeship proceeding bearing the title of proceedings *Law Society of Ontario v. Derek Sorrenti and Sorrenti Law Corporation* (Court File No.: CV-19-628258-00CL).
137. The Trustee and its counsel have been required to spend considerable time in respect of the Class Actions, including interacting with Class Action counsel and BDMC’s class action counsel. The Trustee has reviewed materials filed in the Class Actions and correspondence received from the parties to the Class Actions.
138. The plaintiffs in the Class Actions sought to partially lift the stay of proceedings imposed by the Appointment Order with respect to BDMC, solely to allow the actions to continue to recover any proceeds that may be available under insurance policies issued in favour of BDMC. The Trustee provided its consent to partially lift the stay solely to allow access to any insurance policies in accordance with the terms of draft orders negotiated with the parties, which also provide, among other things, that nothing in the Orders shall: (a) require the Trustee to defend or otherwise participate in the action; (b) permit or otherwise entitle the plaintiffs to recover any amounts held by the Trustee pursuant to the Appointment Order; or (c) affect any person’s rights or entitlements relating to any insurance policies issued in favour of BDMC.
139. Counsel for the Trustee participated in a case conference with respect to the Class Actions on March 30, 2021, before the Honourable Mr. Justice Perell who has carriage of the Class Actions. In advance of the case conference, the Trustee sent an email to the service list in these proceedings to advise of the Trustee’s consent to partially lift the stay. On April

22, 2021, a partial lift stay order was granted in each of the Class Actions. A further case conference was held on April 23, 2021 and the next case conference has yet to be scheduled.

FUNDING OF THESE PROCEEDINGS AND CASH FLOW PROJECTION

140. The activities carried out by the Trustee in these proceedings continue to be complicated and time consuming. As previously reported, BDMC is functionally insolvent and has no sources of revenue. Pursuant to the Realized Property Order, as amended, 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 (and subject to the Court granting the relief sought herein), the Trustee has generated approximately \$155 million in Realized Property during these proceedings.
141. 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 October 1, 2020 to April 30, 2021

142. In the Twenty-Fourth Report, the Trustee provided a forecast for the projected receipts and disbursements related to the administration of the BDMC estate for the period October 1, 2020 to April 30, 2021 (“**Projection Period**”). The following chart reflects the variance analysis for the Projection Period:

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	Amount (\$000s)		
	Projected	Actual	Variance
Receipts			
Collections and other receipts	46	67	21
Administrative Holdback	-	2,985	2,985
Total receipts	46	3,052	3,006
Disbursements			
Operating costs	238	212	26
Appraisals	31	-	31
Professional fees	3,437	3,732	295
Total disbursements	3,706	3,944	238
Net cash flow	(3,660)	(892)	2,768

The detailed variance analysis for the Projection Period is attached as **Appendix "22"**.

143. The Trustee notes the following concerning certain of the variances during the Projection Period:

Administrative Holdback: The positive variances relate to amounts withheld in respect of (i) the First Settlement Payment in respect of the Wellington Project, and (ii) the residual proceeds from the Whitby, Nobleton South, Bowmanville and Dunsire Guelph sale transactions, which were each unknown at the time of the Twenty-Fourth Report.

Professional Fees: The negative variance is due to fees that were incurred in connection with a number of monetization transactions and significant litigation matters that occurred during the Projection Period.

Funds in the Trustee's Possession

144. A summary of the Estate and Realized Property, as well as funds held in trust pending approval of the North and Jasper House Residual Proceeds Settlement Approval and Distribution Order, is provided in the table below.

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Type	Primary Purpose	Amount (\$000s)	
		As at Sept 30, 2020	As at April 30, 2021
Estate ⁶	BDMC operating funds	6,702	5,810
Realized	Held pending Investor distributions	39,729	14,355
Trust funds	Held pending resolution of claims	1,612	3,379
		48,043	23,544

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 April 30, 2021 relate primarily to the net proceeds received from the Whitby, Nobleton South and Bowmanville transactions (net of the Administrative Holdback) and \$700,000 remaining in the account related to the Kemp Project. For clarity, the balance does not include the Realized Property to be received in respect of the Castlemore Settlement.

Trust Funds: The Trustee's counsel is holding the residual proceeds from the North and Jasper House sale transactions in its trust account pending approval of the North and Jasper House Residual Proceeds Settlement Approval and Distribution Order, as described in paragraphs 59 to 70 above.

Projected receipts and disbursements for the period ending November 30, 2021

145. The Trustee has prepared a monthly cash flow projection ("**Cash Flow Projection**") related to the administration of the BDMC estate for the period May 1, 2021 to November 30, 2021 ("**Cash Flow Period**"), which is attached as **Appendix "23"**. A summary of the Cash Flow Projection is as follows:

⁶ 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 \$25,046 in satisfaction of this obligation.

	\$000s
Projected Receipts	2,201
Projected Disbursements	
Staffing costs	141
Office expenses and IT	10
Insurance	60
Bank charges	3
Other expenses	13
Total Operating Disbursements	227
Appraisals and related consultants	18
Professional fees	3,880
Total disbursements	4,125
Projected cash flow	(1,924)
Opening cash***	5,786
Net cash flow	(1,924)
Projected closing cash	3,862

*** Opening cash, as of April 30, 2021, is comprised of Estate Property, excluding the term deposit required under the MBLAA.

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

Projected Receipts: The Projected Receipts reflect the Administrative Holdback from: (i) receipt of the residual proceeds from the North Project and Jasper House Project sale transactions; (ii) the Castlemore Settlement Payment; (iii) the Second Settlement Payment in respect of the Wellington Project and (iv) interest earned on the funds held in the various bank accounts maintained by the Trustee.

The Trustee notes that progress has been made with respect to further realizations 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: The Projected Operating Disbursements relate primarily to costs associated with the dedicated BDMC contractors and insurance-related 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: Professional Fees relate to the payment of certain outstanding professional fees through to April 30, 2021, which remain unpaid as at the date of the Twenty-Sixth Report and estimated professional fees to be paid during the Cash Flow Period.

APPROVAL OF THE TRUSTEE'S REPORTS, ACTIVITIES AND FEES

147. The Trustee is seeking approval of the Twenty-Fifth Report and this Twenty-Sixth Report, its activities as set out in these reports, and its fees and its counsel's fees from October 1, 2020 to April 30, 2021.
148. The Trustee's activities are described at length in the Twenty-Fifth Report and this Report as they relate to the relief being sought in those reports. A summary of the Trustee's activities related to the Twenty-Fifth Report and Twenty-Sixth Report and other activities carried out by the Trustee since November 16, 2020 are set out 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 conference calls on a regular basis;
 - (c) drafting and sending 22 project specific notices (including the various notices to be sent upon service of this Report) to Investors since the issuance of the Twenty-Fourth Report and corresponding with the Trustee's counsel and Representative Counsel regarding same;
 - (d) responding to 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;

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- (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 an appraisal 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, as required pursuant to BDMC's contractual obligations with borrowers and priority lenders to the projects;
- (o) continuing to engage and negotiate with borrowers and prospective purchasers and other parties, as applicable, regarding various transactions for certain properties, including settlement transactions;
- (p) continuing to engage and negotiate with borrowers, senior lenders, receivers and other relevant stakeholders regarding enforcement actions commenced by priority lenders;
- (q) corresponding with senior lenders regarding sales processes and the timing and results thereof;
- (r) 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;
- (s) preparing and serving materials as required in connection with the matters before the Court;

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- (t) making distributions in accordance with the various Court orders issued in these proceedings to the Investors entitled to those distributions;
 - (u) reviewing and responding to Court materials relating to BDMC and the various projects;
 - (v) preparing for and participating in multiple contested litigation matters;
 - (w) engaging with tax opinion providers and interested parties regarding the distribution of the Tax Opinions in accordance with the Court order granted on October 15, 2020; and
 - (x) attending to other business activities of BDMC and related administrative matters.
149. Investor communications remain an ongoing component of the Trustee's mandate. Overall, the volume of communications has decreased as a result of the significant number of BDMC projects that have now been exited. On average, the Trustee receives 5-10 calls a day and approximately 10 emails a day, with increased call and email volumes following the issuance of notices and distribution of Realized Property. Investors now contact the Trustee primarily to seek specific information regarding the projects that are the subject of their investments or payments that they receive from the Trustee. The Trustee endeavors to respond to all inquiries in a timely manner.

Trustee Fees

150. 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.
151. 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 is determined, be allocated to the projects based on appropriate considerations and in accordance with further Court orders.
152. The fees of the Trustee for the period between October 1, 2020 to April 30, 2021, total \$890,110.40 before HST; and HST applicable to such amount totals \$115,714.35, for an aggregate amount of \$1,005,824.75. 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 "24"**.

153. 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 will be 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 during the pendency of these proceedings.
154. The average hourly rate for the Trustee over the referenced billing period was approximately \$432.45/hour.

Fees of the Trustee's Counsel

155. The fees (excluding disbursements and HST) of Osler, Hoskin & Harcourt LLP ("**Osler**") as counsel to the Trustee for the period between October 1, 2020 to April 30, 2021 total \$1,932,560.94; Osler incurred \$8,106.12 disbursements during the period; and HST applicable to such amounts totals \$251,955.66, for an aggregate amount of \$2,192,622.72. 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 "25"**.
156. 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 will be 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 during the pendency of these proceedings.

157. The average hourly rate for Osler over the referenced billing period was \$750.77/hour.
158. 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.

REPRESENTATIVE COUNSEL

159. 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.
160. 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.
161. The Trustee also 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.
162. The Trustee 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

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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

163. The Trustee recommends that the requested Orders 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. Among other things, the Trustee continues to administer the loans made by BDMC on behalf of the investing public and to take steps to maximize potential recoveries for Investors in the unique circumstances of each BDMC loan.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of May, 2021.

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 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

BETWEEN:

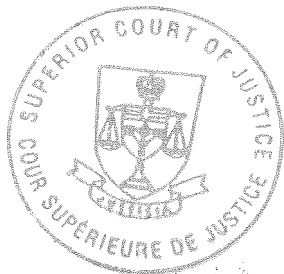
THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent



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

APPOINTMENT ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

TRUSTEE'S POWERS

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

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

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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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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.

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.

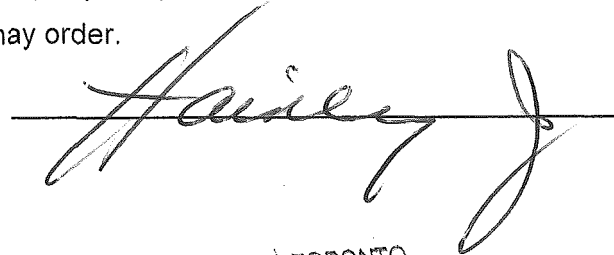
31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"
TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that FAAN Mortgage Administrators Inc., the Trustee (in such capacity, the "**Trustee**") of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), including, without limitation, all of the assets in possession or under the control of the Respondent, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage ("**Investors**"), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 20th day of April, 2018 (the "**Order**") made in an application having Court file number CV-18-596204-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$<*>, being part of the total principal sum of \$<*> which the Trustee is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the <*> day of each month] after the date hereof at a notional rate per annum equal to the rate of <*> per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee

- 2 -

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

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Miranda Spence (LSUC # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

Lawyers for The Superintendent of Financial Services

Appendix 2:
November 2020 Omnibus Order dated November 27, 2020

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

FRIDAY, THE 27TH

JUSTICE HAINEY)

DAY OF NOVEMBER, 2020

BETWEEN:

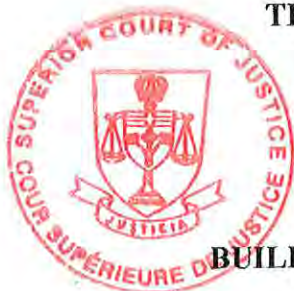
THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent



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

NOVEMBER 2020 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 Trustee's twenty-fourth report dated November 16, 2020 (the "**Twenty-Fourth Report**"), 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**") and twenty-second report dated October 7, 2020 ("**Twenty-Second Report**" and 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 October 1, 2019 to September 30, 2020; and (ii) sealing certain confidential exhibits to the Fee Affidavits (as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-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 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 Ferial Fekri sworn November 19, 2020, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Fourth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

TRUSTEE'S REPORTS, ACTIVITIES, FEES AND DISBURSEMENTS

2. **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.

3. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Twenty-Fourth 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 October 1, 2019 to September 30, 2020 are approved: fees of \$1,497,591.65 (plus applicable taxes of \$194,686.91 for an aggregate amount of \$1,692,278.56), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from October 1, 2019 to September 30, 2020 are approved: fees of \$3,726,011.04 and disbursements of \$64,646.69 (plus applicable taxes of \$492,240.48, for an aggregate amount of \$4,282,898.09).

SEALING

4. **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

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

6. **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.

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

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
NOV 27 2020

A handwritten signature in black ink, appearing to read "Hainey", written over a horizontal line.

PER / PAR: *C.D.*

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

NOVEMBER 2020 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 May 21, 2021

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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: \$1.1M, First National (balance as at May 7, 2021) 2nd: \$8.8M BDMC	December 27, 2014 (extend date June 27, 2015) MATURED.	Completed condominium with 15 unsold units plus one conditional sale. Nine units have sold since the Trustee's Twenty-Fourth 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. was appointed as receiver of the Bowmanville property and retained CBRE Land Services Group ("CBRE") to market the property for sale. On November 5, 2020, the receiver sought and obtained Court approval of an agreement of purchase and sale between the receiver and Brookhill Durham Holdings Inc., a corporation related to the borrower, for a purchase price of \$8.1M. The receiver advised that the purchase price was the highest and best offer received for the property. The sale transaction closed on November 30, 2020. After repayment of the balances owing to the priority mortgagees, the receiver's fees and other closing costs, the net funds available for distribution by the Trustee are approximately \$577,000 ("Bowmanville Residual Proceeds"). On June 7, 2021, the Trustee is seeking Court approval to distribute the Bowmanville Residual Proceeds <i>pro rata</i> to the Bowmanville Investors, net of the Administrative Holdback.
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") PAID OUT 2nd: AG PAID OUT 3rd: Jaekel PAID OUT 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 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 remains 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 May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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 (pari passu with 2429730 Ontario Ltd.) 3rd: \$22M 2429730 Ontario Ltd. (pari passu with BDMC)	November 30, 2019 (extend date November 30, 2021) extension not exercised. MATURED.	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 scheduled 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"). A hearing took place on November 3, 2020, and on February 2, 2021 the Court issued a decision which ruled in favour of the borrower and against the interests of the investors ("Decision"). On March 2, 2021 the Trustee commenced an appeal seeking an order to set aside the Decision. Since filing the appeal, the Trustee, its counsel, Representative Counsel and the borrower have negotiated and reached a global settlement ("Castlemore Settlement"), which contemplates, among other things, a payment of \$9,875,358 by the borrower to the Trustee, on behalf of BDMC. On June 7, 2021 the Trustee is seeking Court approval of the Castlemore Settlement and the distribution of Castlemore Settlement proceeds <i>pro rata</i> to the Castlemore Investors, net of the Administrative Holdback.
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. In connection with the CHAT transaction, (i) the Trustee also negotiated and entered into a memorandum of understanding, pursuant to which BDMC received a further payment of \$2.095M, and 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") and (ii) the Trustee was granted security on a property located in Hamilton, ON ("Alternate Property"), in respect of the Density Bonus and certain other guarantees that were provided. The entity that granted security on the Alternate Property has since advised that it is of the view that given recent input it has received from the City of Toronto regarding development approvals, the Density Bonus will likely not be payable and, accordingly, such entity has requested that the Trustee discharge its mortgage on the Alternate Property. The Trustee is in discussions with such entity regarding its request.	n/a
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 ("Morrison"), 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 ("Takeout Price"). 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

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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
12	Eden (King City)	129	Completed	1st: \$5.9M to BDMC	March 31, 2015 (extend date March 31, 2016) MATURED.	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 ("GT") 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 has been temporarily put on hold while the Trustee continues to explore a possible consensual settlement relating to the ongoing litigation in respect of the Eden Project.
13	Nobleton South	137	Exited	n/a	n/a	n/a	The priority mortgagees issued a Notice of Sale in respect of acquisition financing that had matured. The property was sold for \$6M pursuant to a sale transaction that closed on March 23, 2021. After repayment of the balance owing to the priority mortgagees, payment of a transaction fee and other closing costs, the net funds available for distribution by the Trustee are approximately \$2.4M ("Nobleton South Residual Proceeds"). On June 7, 2021, the Trustee is seeking Court approval to distribute the Nobleton South Residual Proceeds <i>pro rata</i> to the Nobleton South Investors, net of the Administrative Holdback.
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	1st: Listed below per property: \$500K – 19851 2nd Concession Rd. \$2.2M – 19879 2nd Concession Rd. \$2.3M – 19935 2nd Concession Rd. 2nd: \$6M Jaekel Capital Inc. ("Jaekel") 3rd: \$2.5M BDMC	April 15, 2021 MATURED.	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. A resubmission addressing the Town's comments has not 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. In January 2021, the properties were listed for sale by the borrower who retained CBRE to run the sale process. The properties were initially listed without a listing price or a deadline for offers. An offer deadline was subsequently set for April 15, 2021. The Trustee was advised by CBRE that no offers were received on the offer deadline. The Trustee is continuing to engage with the borrower regarding next steps for the properties.	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 May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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
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 (" Second Settlement Payment "). The borrower has elected to pay the Second Settlement Payment in the amount of \$800,000 when it completes the sale of the 95th residential unit out of the total of 101 units, which the borrower has advised is expected to occur in late 2022.	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 mortgage and other closing costs. The borrower asserted a claim on behalf of itself and an affiliate in priority to BDMC in the amount of approximately \$1.6M. After extensive negotiations, the Trustee reached a settlement with the borrower and its affiliate in the amount of approximately \$527,000, which is subject to Court approval (" Related Party Settlement "). The North borrower registered a mortgage on title to the Jasper House Project in third position behind the BDMC loan in the amount of \$768,650 in respect of funds advanced by the North borrower to the Jasper House borrower, which amount was not repaid (" Inter-Project Loan "). The Trustee is of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan is for the Jasper House Project to reimburse the North Project for 50% of the Inter-Project Loan, or \$384,325 (" Inter-Project Allocation "), such that these additional funds would be available for distribution to the North Investors. On June 7, 2021 the Trustee is seeking Court approval of the Related Party Settlement, the Inter-Project Allocation and the distribution of the net remaining proceeds of approximately \$857,000 to the Jasper House Investors, net of the Administrative Holdback.	n/a
18	King Square	176	Completed	1st: \$60.7M Firm* 2nd: \$500K Aviva 3rd: \$8.6M BDMC 4th: \$6M OYSX Inc. 5th: \$7M 2198136 Ontario Ltd. *Includes approximately \$14M of VTB's between Firm and the purchasers of certain units	August 31, 2019 (extend date February 28, 2020) extension was not requested by borrower. MATURED.	Unit sales ongoing. Approximately 47% 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.

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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
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
24	North	152	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 \$4.7M. The sale transaction closed in July 2020 with residual proceeds of approximately \$1.6M after repayment of the first priority mortgage and other closing costs. The borrower asserted a claim on behalf of itself and an affiliate in priority to BDMC in the amount of approximately \$1.2M. After extensive negotiations, the Trustee reached a settlement with the borrower and its affiliate in the amount of approximately \$473,000, which is subject to Court approval (" Related Party Settlement "). The North borrower registered a mortgage on title to the Jasper House Project in third position behind the BDMC loan in the amount of \$768,650 in respect of funds advanced by the North borrower to the Jasper House borrower, which amount was not repaid (" Inter-Project Loan "). The Trustee is of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan is for the Jasper House Project to reimburse the North Project for 50% of the Inter-Project Loan, or \$384,325 (" Inter-Project Allocation "), such that these additional funds would be available for distribution to the North Investors. On June 7, 2021 the Trustee is seeking Court approval of the Related Party Settlement, the Inter-Project Allocation and the distribution of the net remaining proceeds of approximately \$1.5M to the North Investors, net of the Administrative Holdback.	n/a
25	Old Market Lane	241	Exited	n/a	n/a	n/a	On September 25, 2019, the first priority mortgagee, 5019203 Ontario Ltd. (" 5019 Ontario "), 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, net of the Administrative Holdback.
26	Peter Richmond Land Assembly (LH2)	604	Exited	n/a	n/a	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, net of the Administrative Holdback.	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 May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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
27	Port Place 2	67	Exited	n/a	n/a	n/a	The project was subject to a Notice of Sale issued by the first-ranking mortgagees. As the deadline for repayment was not met, a marketing and sale process for the properties was commenced. Each of the properties have now been sold for a combined selling price of \$2.165M. 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 additional financing advanced by certain first-ranking mortgagees secured by a mortgage that was registered in third position (the "Additional Financing Mortgage"). The distribution of the proceeds from the sales resulted in: (a) the first priority mortgage being repaid in full; and (b) a partial repayment of the Additional Financing Mortgage. Given the shortfall on the Additional Financing Mortgage, there were no proceeds remaining to repay any amounts owing to the Port Place 2 Investors.
28	Pivot (Rutherford)	176	Construction	1st: \$9.8M Bank of Nova Scotia ("BNS") 2nd: \$997K (*as at October 29, 2020) Jaekel 3rd: \$8.6M BDMC	July 30, 2017 (extend date July 30, 2018) MATURED.	To date 65 out of the 136 homes have been sold. 60 of those sale transactions have closed. 2 units are complete or nearly complete and no new starts have commenced.	n/a
29	Prescott	53	Exited	n/a	n/a	All homes in the development have been sold and the transactions have closed. The priority mortgagee suffered a shortfall on its mortgage; therefore, there were no funds available to repay any amounts owing to the Prescott Investors.	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 11615467 Canada Ltd. 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. MATURED. Hybrid: August 2019 (term changed in later closings from 2018 to 2019, extend date August 2020) extension not exercised. MATURED. WSL: August 31, 2018 MATURED. BOW: August 31, 2018 MATURED.	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, however, the borrower's sale process did not result in a sale transaction.	On October 13, 2020, 11615467 Canada Ltd ("1161 Canada"), in its capacity as third ranking mortgagee, issued a Notice of Sale requiring the full amount of its outstanding debt of approximately \$1.8M to be paid. As the borrower continued to be in default for failure to repay its outstanding debt, on January 25, 2021, the Manitoba district registrar granted an order authorizing and empowering 1161 Canada to sell the property by public auction, private contract or both. On March 25, 2021, 1161 Canada held a public auction, which was attended by the Trustee. No offers were received at the auction. Given the result of the auction, 1161 Canada has retained a commercial real estate broker to list the property for sale and has advised that the marketing process will commence in June 2021.
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

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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, submitted a claim 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. Thereafter, the Trustee continued its discussions with Fortress, as well as with a third party in respect of whom a portion of the Fortress claim related; however, the parties have yet to reach an agreement. Accordingly, the Trustee anticipates bringing a motion before the Court seeking approval to distribute the remaining Kemp proceeds to the Kemp Investors notwithstanding the Fortress 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, net of the Administrative Holdback.	n/a
38	The South Shore	639	Exited	1st: \$6.895M Diversified Capital Inc. ("Diversified") (as at January 24, 2019) 2nd (pari passu): \$10.5M BDMC SS Hybrid 2nd (pari passu): \$10.1M BDMC SS2 3rd: \$8.6M BDMC Original	n/a	n/a	The project was subject to a Notice of Sale issued by Diversified, the priority mortgagee, in January 2019. Following the issuance of the Notice of Sale, the Trustee contacted Diversified seeking information with respect to any proposed sale process. The Trustee followed up for several months with no response. In addition, the Trustee was aware of and had advised Diversified that there were parties interested in acquiring the property and that it understood that Diversified was not responding to or engaging with such parties. On or about October 21, 2020, almost two years after the issuance of the Notice of Sale, the property was formally listed for sale on an unpriced basis. Diversified ultimately entered into an agreement of purchase and sale at a purchase price of \$13M, which transaction closed on May 13, 2021. Following the closing, the Trustee was advised by Diversified's counsel that it had paid \$9.9M to Diversified in accordance with Diversified's payout statement (which included approx. \$4.7M of unpaid interest on \$4.5M of original principal). The Trustee has reviewed the payout statement and has concerns regarding the amount of interest and fees charged by Diversified given, among other things, the extended length of time between the Notice of Sale and the date the property was listed for sale. The Trustee will be addressing such concerns with Diversified and considering its rights and remedies in this regard. In addition to the amounts in the payout statement, the Trustee understands that there will be other amounts sought to be paid from the proceeds in priority to BDMC. The Trustee is also aware of two construction lien claims, which total approximately \$640,000 and which could affect the amount of residual proceeds remaining for investors. The Trustee is engaging with the lien claimants with respect to the validity and priority of such claims.
39	The Wade (Victoria Medical)	118	Exited	n/a	n/a	n/a	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 May 21, 2021.
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 May 21, 2021
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	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
40	Treehouse (Halo)	115	Exited	n/a	n/a	n/a	On May 22, 2019, the first priority mortgagee issued a Notice of Sale. As its debt was not repaid by the deadline, the first priority mortgagee retained CBRE to market the property for sale. On November 15, 2020, the first priority mortgagee entered into an agreement of purchase and sale for the property for \$4.3M. The transaction closed on November 20, 2020, at which time the first priority mortgagee was owed approximately \$6.7M. As the first priority mortgagee suffered a shortfall on its loan, there were no recoveries available to repay any amounts owing to Treehouse Investors.
41	Triple Creek	280	Exited	n/a	n/a	n/a	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	Exited	n/a	n/a	On February 23, 2021, the Trustee sought and obtained Court approval of a settlement agreement in the amount of approximately \$6.3M in respect of the BDMC debt on the Wellington project. The first settlement payment of \$4M was received and distributed to the Wellington Investors and a second settlement payment of \$2.3M is to be paid by the borrower to the Trustee on or before September 1, 2021. As part of the settlement transaction, the Trustee received certain guarantees and security in connection with the second settlement payment.	n/a
44	Whitby Commercial Park (Rosewater)	257	Exited	n/a	n/a	The borrower entered into a conditional agreement of purchase and sale for the property in late 2019 for a purchase price of \$28M. The transaction closed in March 2021. After repayment of the priority mortgage, commissions and other closing costs, the net proceeds available for distribution by the Trustee are approximately \$12.9M (" Whitby Residual Proceeds "). On June 7, 2021, the Trustee is seeking Court approval to distribute the Whitby Residual Proceeds <i>pro rata</i> to the Whitby investors, net of the Administrative Holdback.	
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, was approximately \$485,000. In September 2019, the Trustee received a preliminary payment of \$450,000 from the receiver, which was distributed to the Dunsire Guelph Investors in September 2020. The final payment from the receiver of approximately \$35,000 was received and distributed to the Dunsire Guelph Investors in April 2021.

Building & Development Mortgages Canada Inc.

Project Analysis Summary as at May 21, 2021 - Notes

(Unaudited)

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 May 21, 2021. 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:
Whitby Project Notice dated April 12, 2021



April 12, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Thickson Road 407 Whitby Limited (“Borrower”) pursuant to the loan agreement dated May 4, 2014 (“Loan Agreement”) on the security of a mortgage on the property located at 5360, 5400 and 5675 Thickson Road North, Whitby, Ontario (“Whitby Project” or the “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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**”) 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 further order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel (“**Representative Counsel**”) to persons who made loans through BDMC. 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 through BDMC to the Borrower in respect of the Whitby Project (“**Whitby SMLs**”) pursuant to the Loan Agreement and the various associated documents, and further to our notice of December 14, 2020 (“**Notice**”).

The purpose of this notice is to advise of the recently completed sale of the Property by the Borrower (“**Sale Transaction**”).

Status of the BDMC Loan

According to BDMC’s records, the total BDMC Loan balance as at March 8, 2021 (being the closing date of the Sale Transaction) was approximately \$19.6 million, comprised of principal of approximately \$14.7 million and accrued interest of approximately \$4.9 million.

In addition to the BDMC Loan, there was a first priority mortgage registered on title to the Property in favour of Downing Street Financial Inc. (“**Downing**”), with an outstanding principal balance of \$13.4 million (“**Downing Mortgage**”). The Downing Mortgage was set to mature on June 1, 2021, and was the only charge registered on title to the Property in priority to the BDMC Loan.

The Due Diligence and Marketing Period

As was previously advised, in late 2019, the Borrower received an offer for the Property and



ultimately entered into a conditional agreement of purchase and sale (“**APS**”) with Send MT Inc. (“**Purchaser**”) at a purchase price of \$28 million (“**Purchase Price**”). The due diligence period, which commenced on October 30, 2019, was originally set to expire on January 30, 2020 but was subsequently extended multiple times at the request of the Purchaser.

Upon notice of the APS, the Trustee performed a preliminary review of the transaction, which included, among other things, a comparison of the Purchase Price to the Trustee’s independent real estate appraisal for the Property and noted that the Purchase Price was significantly greater than the appraised value. Further, in February 2020, after the expiration of the initial due diligence period, the Trustee recommended that in addition to consenting to an extended due diligence period, the Borrower also retain a commercial listing agent to concurrently market the Property. The purpose of concurrently continuing to market the Property was to: (i) ensure that the Purchase Price offered was the highest and best for the Property through a wide canvassing of the market for other prospective purchasers, and (ii) provide for an alternate transaction should the Purchaser not waive its conditions given that the Borrower no longer had sufficient funds to continue to develop the Whitby Project, and the term of the Downing financing that was in place at the time would soon expire. As was previously advised, Downing ultimately agreed to extend the term of its financing to allow for the Purchaser to complete its due diligence.

At the end of April, 2020 the Borrower retained Jones Lang LaSalle (“**JLL**”) as its listing agent. JLL actively marketed the Property for nine months. During that time the Trustee had several discussions with JLL, who advised that there was continuous exposure of the Property through various marketing platforms and that there were a number of parties that had shown significant interest in the Property and were conducting due diligence.

On January 21, 2021 the Borrower advised that the Purchaser had completed its due diligence and waived its conditions. Prior to the Purchaser officially waiving its conditions, the Trustee again contacted JLL who advised that due to the worsening of the COVID 19 pandemic, including the provincial ‘stay-at-home’ order that was in place at the time, and the related uncertainty it was creating, all interested parties had ceased their due diligence and none of the previously interested parties had submitted an offer nor did they have any intention to do so in the near term.

Completion of the Sale Process

Notwithstanding that the Purchase Price pursuant to the Sale Transaction was significantly greater than appraised value, the Trustee considered whether there existed any available alternatives that would provide for a greater recovery to the Whitby SMLs given that the Sale Transaction was not going to result in a full recovery of principal for the Whitby SMLs,

Given the widespread marketing process and the current status of the market, in large part



due to the COVID 19 pandemic, the Trustee discussed with the Borrower the available alternatives including the possibility of holding onto the Property, which may in the future result in the Borrower's ability to realize a higher sale price for the Property. However, the Borrower advised that it could not continue to hold the Property for an indefinite period of time as the Downing Mortgage was maturing in June 2021. Absent a sale transaction or the ability to obtain replacement financing, which the Borrower advised was not available to it, it would be unable to repay the Downing Mortgage at maturity.

The Trustee spoke with Downing regarding the Downing loan, and was advised that should its mortgage go into default it would pursue the remedies available to it under its loan agreement with the Borrower, which would likely result in a distressed sale process through an enforcement proceeding. The Trustee was of the view that should the Property be sold pursuant to an enforcement proceeding, it may result in a lower selling price than the existing Purchase Price.

Accordingly, after having considered: (i) the merits of the Sale Transaction; (ii) the lack of available alternatives; (iii) the Purchase Price as compared to the Trustee's independent real estate appraisal; (iv) the extensive marketing process carried out for the Property; and, (v) the continued market uncertainty due to the COVID-19 pandemic, the Trustee, with the support of Representative Counsel, determined that it was appropriate to consent to the Sale Transaction and to discharge the BDMC mortgage.

Distribution of Proceeds from the Sale Transaction

After repayment of the Downing Mortgage, commissions and other closing costs, the net amount distributed to the Trustee in respect of the BDMC Loan was approximately \$12.8 million ("**Residual Proceeds**"), which represents a recovery on principal of approximately 87%¹ or 101% when previously paid interest of approximately \$2 million is taken into account.

The Trustee intends to seek Court approval of a distribution of the Residual Proceeds received in connection with the Sale Transaction ("**Distribution Hearing**"). The Trustee will notify you when it serves its motion materials in respect of the Distribution Hearing.

¹ The amount to be distributed in connection with the Sale 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. The 87% and the 101% recoveries are calculated without consideration of the Holdback. 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 at this time, our contact information is shown below (if you contact us, please reference the **Whitby Project**).

Email: 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 the **Whitby Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 5:

Nobleton South Project Notice (to be sent upon service of Report)



May 21, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Nobleton South Holdings Inc. in respect of property located at 92 Diana Drive, Nobleton, ON (“Nobleton South Project” or “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 further order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel (“**Representative Counsel**”) to persons who made loans through BDMC. 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 regarding the syndicated mortgage loan made by you and other syndicated mortgage lenders (collectively, the “**Nobleton South SMLs**”) to BDMC in respect of the Nobleton South Project and further to our notice of March 17, 2020 (“**Notice**”).

The purpose of this notice is to advise of the recently completed sale of the Property (“**Sale Transaction**”) and of the motion materials served by the Trustee on May 21, 2021, seeking an Order, among other things:

- a) approving the Distribution Order (defined below); and
- b) approving the Trustee’s activities and its fees and disbursements, including the fees and disbursements of its counsel for the period from October 1, 2020 to April 30, 2021.

The Trustee’s motion is scheduled to be heard via a virtual hearing on June 7, 2021 at 11:00am (“**June 7th Motion**”). To the extent that you would like further information in respect of the June 7th Motion, please contact the Trustee directly at the contact information provided below. Further information with respect to the June 7th Motion is included in a general notice to lenders attached as **Appendix “A”**.

The Trustee’s motion materials in support of the June 7th Motion, including its twenty-sixth report to Court, are available on the Trustee’s website at <http://faanmortgageadmin.com>.



Development Status of the Property

The Trustee understands that the Property is not located within the built boundary, does not have Official Plan approval, and that the timeline for such approval remains unknown. In addition, based on discussions with various parties, including the Trustee's planning consultant, the Trustee understands that the Nobleton South Project could be more than 20 years away from being developed.

Status of the BDMC Loan

According to BDMC's records, the total BDMC Loan balance as of March 23, 2021 (being the closing date of the Sale Transaction) was approximately \$9.9 million, comprised of a principal balance of approximately \$7.7 million and accrued interest of approximately \$2.2 million.

Prior to completion of the Sale Transaction, in addition to the BDMC Loan, there was a first priority vendor take back mortgage registered on title to the Property in favour of Peter Strezos and Christopher Tsaparis (jointly, the "**First Priority Mortgagees**") in respect of financing with an outstanding principal balance in excess of \$3.3 million ("**First Priority Mortgage**"). The First Priority Mortgage was the only charge registered on title to the Property in priority to the mortgage securing the BDMC Loan.

Sale Transaction

As was advised in the Notice, on March 3, 2020, the First Priority Mortgagees issued a Notice of Sale under Mortgage ("**Notice of Sale**"). Pursuant to the Notice of Sale, the First Priority Mortgagees took the position that unless the full amount of their outstanding debt totaling \$3,351,537 (including interest through to March 3, 2020) was paid on or before April 14, 2020, the First Priority Mortgagees would sell the Property. A copy of the Notice of Sale was previously provided to you.

Following the issuance of the Notice of Sale, an intermediary that was known to the Trustee advised that it was aware of a party that was interested in acquiring the Property and an offer to purchase in the form of an agreement of purchase and sale ("**APS**") was submitted by the interested party to the Trustee for its review. In evaluating the APS, the Trustee considered, among other things, that the purchase price was significantly higher than the "as-is" appraisal previously commissioned by the Trustee. The Trustee proceeded to forward the APS to the First Priority Mortgagees for their consideration. The Trustee was advised by counsel to the First Priority Mortgagees that the proposed purchase price was also significantly in excess of their own recently commissioned appraisal.



Following their review of the APS and discussions with the Trustee, the First Priority Mortgagees determined that they would forego listing the Property for sale with a real estate agent in order to avoid losing what was determined to be a very strong offer for the Property, which might not have been available at a later date should a marketing process have been commenced. Accordingly, in June 2020, with the support of the Trustee and Representative Counsel, the First Priority Mortgagees entered into the APS with the interested party (“**Purchaser**”). In connection with the sale of the Property, the Trustee agreed to pay the intermediary a fee equal to 3% of the purchase price (plus HST), which would be earned at closing (“**Transaction Fee**”), for services provided in connection with, among other things, identifying the Purchaser and facilitating its due diligence. The Transaction Fee was in lieu of a commission that otherwise would have been paid had the Property been sold by a real estate agent. The Trustee is of the view that the Transaction Fee is reasonable in the circumstances.

The Sale Transaction, which was originally anticipated to close in October 2020, ultimately closed on March 23, 2021 for a purchase price of \$6 million. The sale proceeds were distributed as follows:

- (a) Approximately \$3.3 million to the First Priority Mortgagees;
- (b) Approximately \$51,000 on account of closing costs; and
- (c) Approximately \$2.6 million to the Trustee, from which the Trustee paid the Transaction Fee to the intermediary.

The net proceeds available for distribution by the Trustee to the Nobleton South SMLs, are approximately \$2.4 million (“**Nobleton South Residual Proceeds**”), which represents a recovery on principal of approximately 31%, or 45% when accounting for previously paid interest of approximately \$1.1 million.

Court Approval and Distribution

The Trustee is seeking authorization from the Court to distribute 85% of the Nobleton South Residual Proceeds *pro rata* to the Nobleton South SMLs in accordance with the Court orders previously granted in these proceedings (“**Distribution Order**”).

Should the Distribution Order be granted at the June 7th Motion, the Trustee will distribute to you your *pro rata* share of the Nobleton South Residual Proceeds as soon as practicable thereafter. All distributions will be net of an administrative holdback of 15% (“**Administrative Holdback**”) in accordance with Court orders previously issued in these proceedings. The Nobleton South SMLs may receive a portion of the Administrative Holdback in the future; however, the timing and amount, if any, is unknown at this time.



Should you have any questions at this time, our contact information is shown below (if you contact us, please reference **Nobleton South Project**).

Email: 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 **Nobleton South Project**):

Email: BDMC@chaitons.com

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 6:
Bowmanville Project Notice dated October 21, 2020



October 21, 2020

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Debt”) made to Brookhill Holdings Inc. (“Borrower”) in respect of properties located at 2499 Nash Road Bowmanville, ON (“Bowmanville Project” or “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 Bowmanville Project and further to our notice dated May 8, 2020 (“**Notice**”).

As was advised in the Notice, on April 28, 2020 the Trustee was served with materials in respect of a motion brought by Hillmount Capital Inc. (“**Hillmount**”) seeking the Court appointment of a receiver for the Bowmanville Project. On May 5, 2020, an order of the Court was granted appointing Ernst & Young Inc. as the receiver of the Property (“**Receiver**”).

On October 14, 2020, the Receiver served materials in connection with its motion originally scheduled to be heard via a virtual hearing on October 21, 2020, seeking, among other things, Court approval for (i) the agreement of purchase and sale dated September 17, 2020 (“**Sale Transaction**”) between the Receiver and Brookhill Durham Holdings Inc., a company related to the Borrower (“**Purchaser**”), and (ii) the distribution of proceeds from the Sale Transaction. Due to a delay with the Court, the virtual hearing has since been postponed to a future date and time which has yet to be determined.

Motion materials in respect of the Receiver’s motion including, among other things, the Receiver’s first report to Court dated October 14, 2020 (“**Report**”) are available on the Receiver’s website at <https://documentcentre.ey.com/#/detail-engmt?eid=374>.

In its Report, filed together with its application, the Receiver provided the following details regarding the sale process:

- i) CBRE Land Services Group (“**CBRE**”) was retained to list the Property for sale with



- an offer submission deadline of August 19, 2020 (“**Bid Deadline**”);
- ii) CBRE received multiple offers for the Property on the Bid Deadline and set August 28, 2020 as the deadline for the second round of offers;
 - iii) One offer was materially higher than the other offers, however it was subject to due diligence and was ultimately withdrawn on August 31, 2020; and
 - iv) The offer from the Purchaser was the highest and best offer received by CBRE.

The Purchase price for the Property has not been publicly disclosed to protect the value of the Property if the transaction with the Purchaser fails to close for any reason. The purchase price and other documents including a summary of the offers received by the Receiver and the appraisal obtained by the Receiver were provided to the Court on a confidential basis.

Key terms of the Sale Agreement and draft approval and vesting order include:

- i) Receiver to obtain a vesting order, vesting in the Purchaser the Borrower’s right, title and interest, if any, to the Property;
- ii) Closing date of November 23, 2020;
- iii) Proceeds from the transaction are proposed to be distributed by the Receiver as follows:
 - a. To pay Hillmount \$147,652.46 in repayment of the Receiver’s borrowings to carry the Property during the receivership period, including to fund the professional fees of the Receiver, its counsel as well as other professional advisors;
 - b. To pay all amounts owing to Hillmount under its mortgage, which amounts total approximately \$4.76¹ million;
 - c. To pay all amounts owing to Jaekel Inc., the second priority mortgagee, which amounts total approximately \$2.2² million;

¹ The amount to be paid to Hillmount as set out in the Report is \$4.82 million. The Trustee was able to negotiate with Hillmount a reduction of \$53,712.50 in respect of certain fees and as such the total amount owing to Hillmount is now approximately \$4.76 million.

² The amount to be paid to Jaekel Inc. as set out in the Report is \$2.3 million. The Trustee was able to negotiate with Jaekel Inc. a reduction of \$60,000 in respect of certain fees and as such the total amount owing to Jaekel Inc. is now approximately \$2.2 million.



- d. To pay the remaining costs associated with the receivership proceedings; and
- e. To pay the remaining sale proceeds to the Trustee in respect of the BDMC Debt.

In addition to the remaining sale proceeds, the Receiver shall also pay to the Trustee any additional funds that may come into its possession with respect to the Bowmanville Project, subject to a review by the Receiver of BDMC's security.

Given the quantum of debt in priority to the BDMC Debt and the Trustee's discussions with the Receiver, the Trustee understands that the Bowmanville Project syndicated mortgage lenders will experience a significant shortfall on their loan. Once the transaction has closed, the Trustee will provide a notice with the financial details of the Sale Transaction, including the sale price, and information in respect of the ultimate distribution by the Trustee to the Bowmanville Project syndicated mortgage lenders.

Should you have any questions at this time, our contact information is shown below (if you contact us, please use the subject line **Bowmanville Project**).

Email: 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 use the subject line **Bowmanville Project**):

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 7:

Bowmanville Project Notice (to be sent upon service of Report)



May 21, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Brookhill Holdings Inc. (“Borrower”) in respect of properties located at 2499 Nash Road Bowmanville, ON (“Bowmanville Project” or the “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 further order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel (“**Representative Counsel**”) to persons who made loans through BDMC. 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 syndicated mortgage lenders (collectively, the “**Bowmanville SMLs**”) to BDMC in respect of the Bowmanville Project and further to our notice of January 12, 2021 (“**Notice**”).

The purpose of this notice is to advise you of the motion materials served by the Trustee on May 21, 2021, seeking an Order, among other things:

- a) authorizing the Trustee to distribute 85% of the net proceeds from the sale of the Property (“**Sale Transaction**”) *pro rata* to the Bowmanville SMLs (“**Bowmanville Distribution Order**”); and
- b) approving the Trustee’s activities and its fees and disbursements, including the fees and disbursements of its counsel, for the period from October 1, 2020 to April 30, 2021.

The Trustee’s motion is scheduled to be heard via a virtual hearing on June 7, 2021 at 11:00am (“**June 7th Motion**”). To the extent that you would like further information in respect of the June 7th Motion, please contact the Trustee directly at the contact information provided below. Further information with respect to the June 7th Motion is included in a general notice to lenders attached as **Appendix “A”**.



The Trustee's motion materials in support of the June 7th Motion, including its twenty-sixth report to Court ("**Twenty-Sixth Report**"), are available on the Trustee's website at <http://faanmortgageadmin.com>.

Sale Transaction

As was advised in the Notice, on May 5, 2020, on the application of Hillmount Capital Inc., the first priority mortgagee, Ernst & Young Inc. was appointed by the Court as the receiver of the Property ("**Receiver**").

On November 5, 2020, an order was granted by the Court approving the sale of the Property pursuant to the Sale Transaction ("**Sale Approval Order**") to Brookhill Durham Holdings Inc., a company related to the Borrower, for a purchase price of \$8.1 million¹. The Sale Transaction closed on November 30, 2020.

Given the quantum of debt in priority to the BDMC Loan and the costs associated with the receivership proceedings, the Bowmanville SMLs will not be repaid in full from the net proceeds of the Sale Transaction. As was advised in the Notice, in December, 2020 the Receiver made a preliminary distribution to the Trustee in the amount of \$300,000. In April, 2021 the Trustee received the final distribution of residual proceeds from the Receiver, which, together with the preliminary distribution, totals approximately \$577,000 ("**Bowmanville Residual Proceeds**"). The Bowmanville Residual Proceeds represent a recovery on principal of approximately 11%.

Rescission Rights

The Trustee understands that certain Bowmanville SMLs have an addendum included in their respective loan agreements that provides such Bowmanville SMLs with a right to rescind their respective investments in the Bowmanville Project under certain conditions as set out in the addendum ("**Rescission Rights**").

Earlier in the BDMC proceedings, Representative Counsel and the Trustee's counsel had each independently investigated the facts, circumstances and consequences resulting from individual investors ("**SMLs**") purporting to trigger their Rescission Rights on any project. Both Representative Counsel and the Trustee's counsel were of the view that the Rescission Rights would not grant those SMLs priority in any particular project over other SMLs in the same loan who were not granted such Rescission Rights. Further, should the relevant SMLs exercise their Rescission Rights, they may lose the right to participate in any project

¹ The purchase price was previously subject to a six-month sealing order granted by the Court pursuant to the Sale Approval Order. However, given that the six-month period has now expired, the Trustee has disclosed the purchase price disclosed in this notice.



recoveries *pro rata* with the other project SMLs, as their investments would likely be characterized as unsecured debt. A more fulsome discussion of the Rescission Rights analysis is provided in the Twenty-Sixth Report.

Based on this analysis, and following discussions with a Bowmanville SML who had contacted the Trustee regarding its Rescission Right, the Trustee is seeking the Bowmanville Distribution Order to authorize the distribution of 85% of the residual proceeds *pro rata* to all Bowmanville Investors, irrespective of whether their particular investment contained Rescission Rights.

Court Approval and Distribution

Should the Bowmanville Distribution Order be granted at the June 7th Motion, the Trustee intends to distribute to you your *pro rata* share of the Bowmanville Residual Proceeds as soon as practicable thereafter. All distributions will be net of an administrative holdback of 15% (“**Administrative Holdback**”) pursuant to Court orders previously granted in these proceedings. The Bowmanville SMLs may receive a portion of the Administrative Holdback in the future; however, the timing and amount, if any, is unknown at this time.

Should you have any questions at this time, our contact information is shown below (if you contact us, please reference **Bowmanville Project**).

Email: 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 **Bowmanville Project**):

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 8:
Settlement and Mutual Release Agreement (North)

SETTLEMENT AND MUTUAL RELEASE AGREEMENT (NORTH)

This agreement (“**Agreement**”) made as of May 12, 2021,

B E T W E E N:

**FAAN MORTGAGE ADMINISTRATORS INC., solely in its
capacity as court-appointed trustee of Building & Development
Mortgages Canada Inc. and in no other capacity**

(hereinafter, the “**Trustee**”)

- and -

BJL PROPERTIES INC.

(hereinafter, “**BJL**”)

- and -

LAMB EDMONTON CORP.

(hereinafter, the “**Borrower**”)

WHEREAS on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as Trustee of the assets, properties and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an Order (“**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the syndicated mortgage loans previously entered into by BDMC (the “**BDMC Proceedings**”);

WHEREAS, prior to the filing of Articles of Amendment on December 3, 2015, BDMC’s legal name was Centro Mortgages Inc.;

- 2 -

WHEREAS Centro Mortgages Inc., in trust, entered into a loan agreement dated April 23, 2014 with the Borrower pursuant to which a loan in the principal amount of approximately \$8.2 million was made to the Borrower (the “**BDMC Loan**”);

WHEREAS the BDMC Loan was secured by a mortgage (the “**BDMC Mortgage**”) registered on title to certain real property previously owned by the Borrower located in Edmonton, Alberta municipally known as 10305-21 106th Street NW, Edmonton, Alberta (Plan B2, Block 5, Lot 153-156, Edmonton, Alberta) (the “**Property**”);

WHEREAS the Borrower executed an agreement of purchase and sale with respect to a sale of the Property to a third party purchaser at a purchase price of \$4.7 million, which closed on or around July 10, 2020 (the “**Transaction**”), and, in connection with the Transaction, the Trustee agreed to discharge the BDMC Mortgage from title to the Property;

WHEREAS after payment of amounts owing to the priority mortgagee registered on title to the Property, property taxes, sale commissions and certain other closing costs, residual proceeds from the Transaction of \$1,611,620 (the “**Residual Proceeds**”) were distributed to Osler, Hoskin & Harcourt LLP (“**Osler**”), the Trustee’s counsel, to be held in trust pending a resolution of the Related Party Claim (as defined below);

WHEREAS the Borrower provided the Trustee with a summary of amounts totalling approximately \$1.2 million that it believes should be paid to it or B JL from the Residual Proceeds in priority to repayment of the BDMC Loan (the “**Related Party Claim**”);

AND WHEREAS the Trustee, B JL, and the Borrower (collectively, the “**Parties**” and each a “**Party**”) wish to compromise and settle between themselves, without any admission whatsoever as to the veracity of any facts that have been asserted by any Party, all claims or potential claims and disputes between them as of the date of this Agreement relating to the Residual Proceeds and the Related Party Claim (collectively, the “**Disputed Matters**”);

NOW THEREFORE in consideration of the undertakings, covenants and releases set forth herein, the sufficiency of which consideration is hereby irrevocably acknowledged by each of the Parties, the Parties covenant and agree as follows:

– 3 –

1. Each Party represents and warrants to the others that, to the best of its knowledge, the recitals to this Agreement are accurate.
2. The Parties agree that the Residual Proceeds shall be allocated and distributed as follows (the “Distributions”):
 - (a) \$1,138,221.30 to the Trustee, on behalf of BDMC, in partial satisfaction of the obligations owing by the Borrower under the BDMC Loan; and
 - (b) \$473,400.70 to BJL, in connection with the Related Party Claim.
3. The Trustee and BJL hereby irrevocably authorize and direct Osler to transfer the amounts contemplated by paragraphs 2(a) and 2(b) above to their respective accounts set forth on Schedules “A” and “B” hereto. This Agreement constitutes Osler’s good and sufficient authority for making the Distributions. The Parties agree that none of Osler, its partners, its employees, or its agents shall be liable, responsible or accountable for any loss or damage whatsoever to any Party in connection with the Distributions, the Residual Proceeds and the Disputed Matters.
4. The Borrower hereby acknowledges and confirms that the Trustee may further distribute the amounts distributed to it pursuant to paragraph 2(a) hereof as the Trustee sees fit, in its sole discretion.
5. Effective upon completion of the Distributions:
 - (a) BDMC and the Trustee hereby forever release and discharge BJL and the Borrower from any and all actions, causes of action, claims, complaints, demands for payment or other similar processes, and potential actions, causes of action, claims, complaints, demands for payment or other similar processes, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in relation to the Disputed Matters; and
 - (b) BJL and the Borrower hereby forever release and discharge BDMC and the Trustee from any and all actions, causes of action, claims, complaints, demands for payment or other similar processes, and potential actions, causes of action,

claims, complaints, demands for payment or other similar processes, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in relation to the Disputed Matters.

6. The Parties each agree not to make any claims or take any proceedings against any other corporation or person who might, in connection with the matters which are released and discharged above, claim over against the opposite Party or Parties to the releases herein, or who might claim contribution or indemnity under any statutory provision or otherwise from any Party or Parties discharged by the releases herein, or who might seek declaratory relief in a third party proceeding against any Party or Parties discharged by the releases herein.

7. In the event that any Party should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against any of the releases in connection with the matters which are released and discharged above, this Agreement may be raised as a complete bar to any such demand, action, claim, proceeding or step in a proceeding.

8. Nothing in the releases contained in the foregoing paragraphs shall be construed to release any Party from its obligations under this Agreement.

9. The Parties undertake and agree that this Agreement shall be treated as confidential and that no information relating in any way to the terms hereof shall be disclosed by the Parties or their officers, directors or employees, as applicable, to any person, organization, agency or body corporate, whether public or private, except as, and only to the extent that, such disclosure is (i) required by law, (ii) necessary to enforce this Agreement, or (iii) consistent with paragraph 10 below.

10. The Parties acknowledge and agree that the Trustee shall be entitled to describe and/or disclose this Agreement to the extent the Trustee decides is necessary or desirable, in the Trustee's sole discretion, (i) to Chaitons LLP, in its capacity as Representative Counsel in the BDMC Proceedings, and/or (ii) to Investors (as defined in the Appointment Order) and the Court in connection with the BDMC Proceedings, including in any report to Court and any other

– 5 –

materials prepared by the Trustee in connection with a motion before the Court seeking an Order approving this Agreement (“**Court Approval**”).

11. The Parties agree that this Agreement shall be binding upon acceptance of this Agreement, save and except for paragraphs 2, 3, 4, 5, 6 and 7 hereof, which shall be conditional upon Court Approval. The Trustee shall use commercially reasonable efforts to seek Court Approval.

12. Each Party represents and warrants that:

- (a) it has not assigned to any person or corporation any of its actions, causes of action, claims, complaints, demands for payment, or other similar processes, or its potential actions, causes of action, claims, complaints, demands for payment, or other similar processes, whether at law or in equity, as released above; and
- (b) the execution, delivery and performance of this Agreement by it:
 - (i) are within its corporate or similar power, as applicable;
 - (ii) have been duly authorized by all necessary corporate or similar action, as applicable; and
 - (iii) do not (A) contravene its certificate of incorporation, articles, by-laws, membership agreement, or other constating documents, as applicable, or (B) violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to it.

13. Each Party hereby warrants that the terms of this Agreement are fully understood by it and that this Agreement is made and the releases herein are given voluntarily, after receiving independent legal advice, for the purpose of making a full and final compromise, adjustment and settlement of the aforesaid claims and issues.

14. This Agreement constitutes the entire Agreement between the Parties in respect of the subject matter hereof and supersedes all prior negotiations and understandings in respect of the subject matter hereof. Each of the Parties agrees and confirms that it has not been induced to

– 6 –

enter into this Agreement by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition or agreement expressed, implied or collateral affecting this agreement or which will amend or alter this Agreement.

15. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by all Parties. No Party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the Parties.

16. This Agreement may be executed by the Parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be delivered by facsimile, PDF, electronic mail, or other electronic means.


17. This Agreement shall be governed by the laws of Ontario and the laws of Canada applicable therein, without reference to conflict of laws rules. Any dispute arising from or relating to this Agreement shall be decided by the Court and the Parties attorn to the exclusive jurisdiction of the Court for this purpose.

18. This Agreement shall enure to the benefit of the Parties and their respective successors, assigns, heirs, and representatives and be binding upon the Parties and their respective successors, assigns, heirs and representatives.

[Signature page follows]

IN WITNESS WHEREOF the undersigned have executed this Agreement by proper signing officers under seal as of the date set forth above.

FAAN MORTGAGE ADMINISTRATORS INC., solely in its capacity as court-appointed trustee of Building & Development Mortgages Canada Inc. and in no other capacity

By: 
Name: Lana Bezner
Title: Managing Director

I have authority to bind the corporation.

BJL PROPERTIES INC.

By: _____
Name:
Title:

I have authority to bind the corporation.

LAMB EDMONTON CORP

By: _____
Name:
Title:

I have authority to bind the corporation.

SCHEDULE "A"**Trustee's Account Details**Beneficiary Bank Information (Canadian Currency):

Name: Toronto Dominion Bank

Street: 9200 Weston Rd

City: Woodbridge

Prov: Ontario

Country: Canada

Postal Code: L4H 2P8

Institution ID = 004

Branch Transit = 18982

Account = 1898 5027455

Swift Number = TDOMCATTOR

Beneficiary Information:

Name: Building & Development Mortgages Canada Inc. (Or optional: BDMC)

Street: 920 – 20 Adelaide Street East

City: Toronto

Province: Ontario

Country: Canada

Postal Code: M5C 2T6

SCHEDULE "B"

BJL's Account Details

(see attached)

Appendix 9:
Settlement and Mutual Release Agreement (Jasper House)

SETTLEMENT AND MUTUAL RELEASE AGREEMENT (JASPER)

This agreement (“**Agreement**”) made as of May 12, 2021,

B E T W E E N:

**FAAN MORTGAGE ADMINISTRATORS INC., solely in its
capacity as court-appointed trustee of Building & Development
Mortgages Canada Inc. and in no other capacity**

(hereinafter, the “**Trustee**”)

- and -

BJL PROPERTIES INC.

(hereinafter, “**BJL**”)

- and -

BEL-EDMONTON INC.

(hereinafter, the “**Borrower**”)

WHEREAS on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as Trustee of the assets, properties and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an Order (“**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the syndicated mortgage loans previously entered into by BDMC (the “**BDMC Proceedings**”);

WHEREAS, prior to the filing of Articles of Amendment on December 3, 2015, BDMC’s legal name was Centro Mortgages Inc.;

– 2 –

WHEREAS Centro Mortgages Inc., in trust, entered into a loan agreement dated April 17, 2014 with the Borrower pursuant to which a loan in the principal amount of \$8,259,600 was made to the Borrower (the “**BDMC Loan**”);

WHEREAS the BDMC Loan was secured by a mortgage (the “**BDMC Mortgage**”) registered on title to certain real property previously owned by the Borrower located in Edmonton, Alberta municipally known as 10160-68 106th Street NW, Edmonton, Alberta (Plan B2, Block 6, Lot 185-187, Edmonton, Alberta) (the “**Property**”);

WHEREAS the Borrower executed an agreement of purchase and sale with respect to a sale of the Property to a third party purchaser at a purchase price of approximately \$4.3 million, which closed on or around October 27, 2020 (the “**Transaction**”), and, in connection with the Transaction, the Trustee agreed to discharge the BDMC Mortgage from title to the Property;

WHEREAS after payment of amounts owing to the priority mortgage registered on title to the Property, property taxes, sale commissions and certain other closing costs, residual proceeds from the Transaction of \$1,767,212 (the “**Residual Proceeds**”) were distributed to Osler, Hoskin & Harcourt LLP (“**Osler**”), the Trustee’s counsel, to be held in trust pending a resolution of the Related Party Claim (as defined below);

WHEREAS the Borrower provided the Trustee with a summary of amounts totalling approximately \$1.6 million that it believes should be paid to it or BIL from the Residual Proceeds in priority to repayment of the BDMC Loan (the “**Related Party Claim**”);

AND WHEREAS the Trustee, BIL, and the Borrower (collectively, the “**Parties**” and each a “**Party**”) wish to compromise and settle between themselves, without any admission whatsoever as to the veracity of any facts that have been asserted by any Party, all claims or potential claims and disputes between them as of the date of this Agreement relating to the Residual Proceeds and the Related Party Claim (collectively, the “**Disputed Matters**”);

NOW THEREFORE in consideration of the undertakings, covenants and releases set forth herein, the sufficiency of which consideration is hereby irrevocably acknowledged by each of the Parties, the Parties covenant and agree as follows:

– 3 –

1. Each Party represents and warrants to the others that, to the best of its knowledge, the recitals to this Agreement are accurate.

2. The Parties agree that the Residual Proceeds shall be allocated and distributed as follows (the “Distributions”):

(a) \$1,240,612.57 to the Trustee, on behalf of BDMC, in partial satisfaction of the obligations owing by the Borrower under the BDMC Loan; and

(b) \$526,599.30 to B.J.L., in connection with the Related Party Claim.

3. The Trustee and B.J.L. hereby irrevocably authorize and direct Osler to transfer the amounts contemplated by paragraphs 2(a) and 2(b) above to their respective accounts set forth on Schedules “A” and “B” hereto. This Agreement constitutes Osler’s good and sufficient authority for making the Distributions. The Parties agree that none of Osler, its partners, its employees, or its agents shall be liable, responsible or accountable for any loss or damage whatsoever to any Party in connection with the Distributions, the Residual Proceeds and the Disputed Matters.

4. The Borrower hereby acknowledges and confirms that the Trustee may further distribute the amounts distributed to it pursuant to paragraph 2(a) hereof as the Trustee sees fit, in its sole discretion.

5. Effective upon completion of the Distributions:

(a) BDMC and the Trustee hereby forever release and discharge B.J.L. and the Borrower from any and all actions, causes of action, claims, complaints, demands for payment or other similar processes, and potential actions, causes of action, claims, complaints, demands for payment or other similar processes, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in relation to the Disputed Matters; and

(b) B.J.L. and the Borrower hereby forever release and discharge BDMC and the Trustee from any and all actions, causes of action, claims, complaints, demands for payment or other similar processes, and potential actions, causes of action,

– 4 –

claims, complaints, demands for payment or other similar processes, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in relation to the Disputed Matters.

6. The Parties each agree not to make any claims or take any proceedings against any other corporation or person who might, in connection with the matters which are released and discharged above, claim over against the opposite Party or Parties to the releases herein, or who might claim contribution or indemnity under any statutory provision or otherwise from any Party or Parties discharged by the releases herein, or who might seek declaratory relief in a third party proceeding against any Party or Parties discharged by the releases herein.

7. In the event that any Party should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against any of the releasees in connection with the matters which are released and discharged above, this Agreement may be raised as a complete bar to any such demand, action, claim, proceeding or step in a proceeding.

8. Nothing in the releases contained in the foregoing paragraphs shall be construed to release any Party from its obligations under this Agreement.

9. The Parties undertake and agree that this Agreement shall be treated as confidential and that no information relating in any way to the terms hereof shall be disclosed by the Parties or their officers, directors or employees, as applicable, to any person, organization, agency or body corporate, whether public or private, except as, and only to the extent that, such disclosure is (i) required by law, (ii) necessary to enforce this Agreement, or (iii) consistent with paragraph 10 below.

10. The Parties acknowledge and agree that the Trustee shall be entitled to describe and/or disclose this Agreement to the extent the Trustee decides is necessary or desirable, in the Trustee's sole discretion, (i) to Chaitons LLP, in its capacity as Representative Counsel in the BDMC Proceedings, and/or (ii) to Investors (as defined in the Appointment Order) and the Court in connection with the BDMC Proceedings, including in any report to Court and any other

materials prepared by the Trustee in connection with a motion before the Court seeking an Order approving this Agreement (“**Court Approval**”).

11. The Parties agree that this Agreement shall be binding upon acceptance of this Agreement, save and except for paragraphs 2, 3, 4, 5, 6 and 7 hereof, which shall be conditional upon Court Approval. The Trustee shall use commercially reasonable efforts to seek Court Approval.

12. Each Party represents and warrants that:

- (a) it has not assigned to any person or corporation any of its actions, causes of action, claims, complaints, demands for payment, or other similar processes, or its potential actions, causes of action, claims, complaints, demands for payment, or other similar processes, whether at law or in equity, as released above; and
- (b) the execution, delivery and performance of this Agreement by it:
 - (i) are within its corporate or similar power, as applicable;
 - (ii) have been duly authorized by all necessary corporate or similar action, as applicable; and
 - (iii) do not (A) contravene its certificate of incorporation, articles, by-laws, membership agreement, or other constituting documents, as applicable, or (B) violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to it.

13. Each Party hereby warrants that the terms of this Agreement are fully understood by it and that this Agreement is made and the releases herein are given voluntarily, after receiving independent legal advice, for the purpose of making a full and final compromise, adjustment and settlement of the aforesaid claims and issues.

14. This Agreement constitutes the entire Agreement between the Parties in respect of the subject matter hereof and supersedes all prior negotiations and understandings in respect of the subject matter hereof. Each of the Parties agrees and confirms that it has not been induced to

- 6 -

enter into this Agreement by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition or agreement expressed, implied or collateral affecting this agreement or which will amend or alter this Agreement.

15. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by all Parties. No Party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the Parties.

16. This Agreement may be executed by the Parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be delivered by facsimile, PDF, electronic mail, or other electronic means.

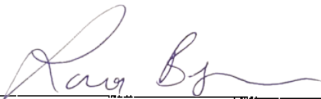
17. This Agreement shall be governed by the laws of Ontario and the laws of Canada applicable therein, without reference to conflict of laws rules. Any dispute arising from or relating to this Agreement shall be decided by the Court and the Parties attorn to the exclusive jurisdiction of the Court for this purpose.

18. This Agreement shall enure to the benefit of the Parties and their respective successors, assigns, heirs, and representatives and be binding upon the Parties and their respective successors, assigns, heirs and representatives.

[Signature page follows]

IN WITNESS WHEREOF the undersigned have executed this Agreement by proper signing officers under seal as of the date set forth above.

FAAN MORTGAGE ADMINISTRATORS INC., solely in its capacity as court-appointed trustee of Building & Development Mortgages Canada Inc. and in no other capacity

By: 
Name: **Lana Bezner**
Title: **Managing Director**

I have authority to bind the corporation.

BJL PROPERTIES INC.

By: _____
Name:
Title:

I have authority to bind the corporation.

BEL-EDMONTON INC.

By: _____
Name:
Title:

I have authority to bind the corporation.

SCHEDULE "A"**Trustee's Account Details**Beneficiary Bank Information (Canadian Currency):

Name: Toronto Dominion Bank

Street: 9200 Weston Rd

City: Woodbridge

Prov: Ontario

Country: Canada

Postal Code: L4H 2P8

Institution ID = 004

Branch Transit = 18982

Account = 1898 5027455

Swift Number = TDOMCATTTOR

Beneficiary Information:

Name: Building & Development Mortgages Canada Inc. (Or optional: BDMC)

Street: 920 – 20 Adelaide Street East

City: Toronto

Province: Ontario

Country: Canada

Postal Code: M5C 2T6

SCHEDULE "B"

BJL's Account Details

(see attached)

October 9, 2020

HOW TO PAY

At Scotiabank

This form specifies the information the remitter must provide when sending Payment Transfers (wire payments) that are destined for Canada.

Please find below the payment details required for you to transfer funds to

Beneficiary Bank Information																									
Beneficiary Bank Name:	The Bank of Nova Scotia																								
SWIFT Code/BIC:	NOSCCATT																								
Canadian Clearing Code:	CC0002 37812																								
Beneficiary Bank Address:	<table border="0"> <tr> <td>ADDRESS</td> <td></td> <td></td> <td></td> </tr> <tr> <td>720 KING ST. WEST</td> <td></td> <td></td> <td></td> </tr> <tr> <td>CITY</td> <td></td> <td>PROVINCE</td> <td>POSTAL CODE</td> </tr> <tr> <td>TORONTO</td> <td></td> <td>ON</td> <td>M5V 3T3</td> </tr> <tr> <td>COUNTRY</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Canada</td> <td></td> <td></td> <td></td> </tr> </table>	ADDRESS				720 KING ST. WEST				CITY		PROVINCE	POSTAL CODE	TORONTO		ON	M5V 3T3	COUNTRY				Canada			
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Canada																									
Beneficiary Customer Information																									
Beneficiary Account Number:	47696 30000000 1029711																								
Beneficiary Account Name:	448 WYNDALE STREET TORONTO B72 Properties Inc																								
If deposited in a Euro account please tick	<input type="checkbox"/> Euro Account* * Do not convert																								
Beneficiary Address:	<table border="0"> <tr> <td>ADDRESS</td> <td></td> <td></td> <td></td> </tr> <tr> <td>778 KING STREET WEST</td> <td></td> <td></td> <td></td> </tr> <tr> <td>CITY</td> <td></td> <td>PROVINCE</td> <td>POSTAL CODE</td> </tr> <tr> <td>TORONTO</td> <td></td> <td>ON</td> <td>M5V 1N6</td> </tr> <tr> <td>COUNTRY</td> <td></td> <td></td> <td></td> </tr> <tr> <td>CANADA</td> <td></td> <td></td> <td></td> </tr> </table>	ADDRESS				778 KING STREET WEST				CITY		PROVINCE	POSTAL CODE	TORONTO		ON	M5V 1N6	COUNTRY				CANADA			
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COUNTRY																									
CANADA																									
Ordering Customer (Remitter) Required Information																									
The full legal name, address and account number or other reference number, if any, of the Ordering Customer (Remitter) is required. This is as per Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act and in accordance with the Financial Action Task Force Special Recommendation VII.																									

BJL PROPERTIES INC.
778 KING ST. W.
TORONTO, ON M5V 1N6

THE BANK OF NOVA SCOTIA
www.scotiabank.com/businessservices 1-888-865-1234
www.banquescotia.com/servicesauxonlrepylces

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PAY
TO THE
ORDER
OF

Handwritten signature

\$

BJL PROPERTIES INC.

PER _____

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BJL PROPERTIES INC.

004376

BJL PROPERTIES INC.

004376

SECURITY FEATURES INCLUDED - SEE REVERSE
A
S0007

Appendix 10:
North Project Notice (to be sent upon service of Report)



May 21, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Lamb Edmonton Corp. (“North Borrower”) pursuant to the loan agreement dated April 23, 2014 in respect of property located at 10305-21 106th Street NW, Edmonton, AB, Plan B2, Block 5, LOT 153-156 (“North Project” or “North Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 further order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel (“**Representative Counsel**”) to persons who made loans through BDMC. 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 regarding the syndicated mortgage loan made by you and other syndicated mortgage lenders (collectively, the “**North SMLs**”) to BDMC in respect of the North Project.

The purpose of this notice is to advise of the motion materials served by the Trustee on May 21, 2021, seeking an Order, among other things:

- a) approving the Related Party Claim Settlement Agreement and the Inter-Project Allocation (both as defined below); and
- b) approving the Trustee’s activities and its fees and disbursements, including the fees and disbursements of its counsel for the period from October 1, 2020 to April 30, 2021.

The Trustee’s motion is scheduled to be heard via a virtual hearing on June 7, 2021 at 11:00am (“**June 7th Motion**”). To the extent that you would like further information in respect of the June 7th Motion, please contact the Trustee directly at the contact information provided below. Further information with respect to the June 7th Motion is included in a general notice to lenders attached as **Appendix “A”**.

The Trustee’s motion materials in support of the June 7th Motion, including its twenty-sixth report to Court, are available on the Trustee’s website at <http://faanmortgageadmin.com>.



Related Party Claim

As was advised in the Trustee's notice dated September 8, 2020 ("**Notice**"), the North Project was sold to a third-party purchaser for a purchase price of approximately \$4.7 million ("**North Sale Transaction**"). The North Sale Transaction closed on or around July 10, 2020 and the residual proceeds, following payment of the first ranking mortgage, property taxes, commissions, and other closing costs, were \$1,611,622 ("**North Residual Proceeds**"). The North Residual Proceeds are currently being held in trust by the Trustee's counsel pending resolution of a priority claim advanced by the North Borrower, on behalf of itself and BJL Properties Inc. ("**BJL**"), an entity related to the North Borrower, in the amount of approximately \$1.2 million ("**Related Party Claim**").

The North Borrower, on behalf of itself and BJL, asserted that the Related Party Claim ranked in priority to the BDMC Loan. The Related Party Claim is primarily comprised of: (a) the initial equity contributed to the North Project by the North Borrower; (b) guarantee fees; and (c) amounts advanced by BJL to pay for, among other things, certain carrying costs associated with the North Property, including costs to service the priority mortgages and property taxes.

The Trustee has been engaged in ongoing discussions with the North Borrower and BJL regarding the Related Party Claim. After extensive negotiations and an in-depth review of the amounts comprising the Related Party Claim, the Trustee determined that it was in the best interests of the North SMLs to resolve the matter consensually, thereby avoiding litigation costs that would be incurred and further delays in distributing the North Residual Proceeds should the matter be adjudicated before the Court. Accordingly, with the support of Representative Counsel, the Trustee proceeded to negotiate a settlement with the North Borrower and BJL regarding the allocation and distribution of the North Residual Proceeds. These negotiations culminated in a settlement in the amount of approximately \$473,000 ("**Related Party Settlement Amount**") in respect of the Related Party Claim, which is approximately \$700,000 less than the amount claimed with respect to the Related Party Claim.

In these particular circumstances, the Trustee determined it to be appropriate to agree to the Related Party Settlement Amount, which is comprised of amounts that the Trustee believes may have otherwise ranked in priority to the BDMC Loan for payments made to service the priority mortgage and payments in respect of property taxes.

In addition to setting out the Related Party Settlement Amount, the key terms of the agreement negotiated between the North Borrower, BJL and the Trustee ("**Related Party Claim Settlement Agreement**") are as follows: (a) the agreement is conditional upon Court approval; (b) the Trustee's counsel is authorized to distribute the Related Party Settlement Amount to BJL and the remainder of the North Residual Proceeds to the Trustee ("**North**



Distribution"); (c) BDMC and the Trustee, on the one hand, and the North Borrower and BJL, on the other hand, grant each other mutual releases for any and all claims that such parties may have now or in the future against one another solely in relation to the Related Party Claim and the North Residual Proceeds; and (d) the North Borrower acknowledges that the Trustee may further distribute amounts received by it pursuant to the North Distribution in its sole discretion.

Inter-Project Loan and Allocation

As previously detailed in the Trustee's twenty-fourth report to Court dated November 16, 2020, there was a mortgage in the amount of \$768,650 ("**Inter-Project Loan**") registered in third position in favour of the North Borrower on title to another project in the BDMC portfolio ("**Jasper Project**"). The borrower in respect of the Jasper Project ("**Jasper Borrower**") is related to the North Borrower and to BJL.

The Jasper Project was sold to a third-party purchaser for a purchase price of \$4.3 million ("**Jasper Sale Transaction**"). The Jasper Sale Transaction closed on or around October 27, 2020 and following payment of the first ranking mortgage, property taxes, commissions, and other closing costs, there were residual proceeds of approximately \$1.77 million ("**Jasper Residual Proceeds**"). Similar to the North Residual Proceeds, the Jasper Residual Proceeds are being held in trust by the Trustee's counsel pending the resolution of a related party claim advanced by the Jasper Borrower on behalf of itself and BJL.

The Trustee understands that the North Borrower advanced the full amount of the Inter-Project Loan to the Jasper Borrower in October 2014 and the loan was never repaid. The Trustee further understands that neither the North SMLs nor the syndicated mortgage lenders who advanced funds to the Jasper Project ("**Jasper SMLs**") were notified of the Inter-Project Loan prior to the commencement of these proceedings. The North Borrower advised the Trustee that its intention was always to repay the Inter-Project Loan, however, it never had sufficient funds to do so.

The Trustee further understands that absent the Inter-Project Loan, the Jasper Borrower would have likely been required to source alternate financing as there were insufficient funds to support the ongoing carrying costs for the Jasper Project. Had the Jasper Borrower been required to secure such third-party financing, it would have likely been a prerequisite to any such funding that BDMC subordinate and postpone its mortgage previously registered on title to the Jasper Project in favour of the new lender.

The Trustee has considered the interests of both the Jasper SMLs and the North SMLs with respect to the issue of how the Inter-Project Loan should be treated when distributing the Jasper Residual Proceeds and the North Residual Proceeds. The Jasper SMLs may contend that no adjustment is necessary as, while they were the beneficiary of the Inter-Project Loan,



the North Borrower's mortgage is subsequent to the BDMC mortgage previously registered on title. As explained above, this does not account for the fact that had the Jasper Borrower been required to secure financing from an arm's length party, the full amount of such financing would likely have only been provided if the financing was secured in a position in priority to the BDMC loan previously registered on title to the Jasper Project. Similarly, the North SMLs may contend that an adjustment must be made in the full amount of the Inter-Project Loan to compensate them for the transfer of their investment to another project. The Trustee understands both of these positions and has also considered the equities applicable to both sets of syndicated mortgage lenders who have suffered significant losses from their investments.

In light of the reasons noted above, the Trustee, with the support of Representative Counsel, is of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan is for there to be a reimbursement of 50% of the Inter-Project Loan amount, or \$384,325 ("**Inter-Project Allocation**"), such that these additional funds would be available for distribution to the North SMLs and deducted from the funds available for distribution to the Jasper SMLs.

The following table summarizes the amount that, subject to Court approval of the Related Party Claim Settlement Agreement and the Inter-Project Allocation, would be available for distribution to the North SMLs before accounting for the Administrative Holdback (as defined below):

	<u>Amount</u>
Principal Outstanding (A)	8,188,500
North Residual Proceeds (B)	1,611,622
Related Party Settlement Amount (C)	(473,400)
Inter-Project Allocation (D)	384,325
Recovery on Principal (E=B+C+D) (" Realized Property ")	1,522,547
Previously Paid Interest (F)	888,439
Recovery on Principal with Previously Paid Interest (G=E+F)	<u>2,410,986</u>
Recovery on Principal (%) (E/A)	18.6%
Recovery on Principal with Previously Paid Interest (%) (G/A)	29.4%



Court Approval and Distribution

For the reasons noted above, as part of the June 7th Motion, the Trustee will be seeking an order from the Court, approving, among other things: (i) the Related Party Claim Settlement Agreement; (ii) the Inter-Project Allocation; and (iii) the distribution of 85% of the Realized Property to be received *pro rata* to the North SMLs in accordance with the Court orders previously granted in these proceedings.

Should the Court grant such relief as part of the June 7th Motion, the Trustee will distribute to you your *pro rata* share of the Realized Property as soon as practicable thereafter. All distributions will be net of an administrative holdback of 15% (“**Administrative Holdback**”) in accordance with Court orders previously issued in these proceedings. The Jasper SMLs may receive a portion of the Administrative Holdback 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 **North Project**).

Email: 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 **North Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 11:
Jasper House Project Notice (to be sent upon service of Report)



May 21, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Bel-Edmonton Inc. (“Jasper Borrower”) pursuant to the loan agreement dated April 17, 2014 in respect of property located at 10160-68 106th Street NW, Edmonton, Alberta, Plan B2, Block 6, LOT 185-187 (“Jasper Project” or “Jasper Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 further order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel (“**Representative Counsel**”) to persons who made loans through BDMC. 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 regarding the syndicated mortgage loan made by you and other syndicated mortgage lenders (collectively, the “**Jasper SMLs**”) to BDMC in respect of the Jasper Project.

The purpose of this notice is to advise of the motion materials served by the Trustee on May 21, 2021, seeking an Order, among other things:

- a) approving the Related Party Claim Settlement Agreement and the Inter-Project Allocation (both as defined below); and
- b) approving the Trustee’s activities and its fees and disbursements, including the fees and disbursements of its counsel for the period from October 1, 2020 to April 30, 2021.

The Trustee’s motion is scheduled to be heard via a virtual hearing on June 7, 2021 at 11:00am (“**June 7th Motion**”). To the extent that you would like further information in respect of the June 7th Motion, please contact the Trustee directly at the contact information provided below. Further information with respect to the June 7th Motion is included in a general notice to lenders attached as **Appendix “A”**.

The Trustee’s motion materials in support of the June 7th Motion, including its twenty-sixth



report to Court, are available on the Trustee's website at <http://faanmortgageadmin.com>.

Related Party Claim

As was advised in the Trustee's notice dated November 19, 2020 ("**Notice**"), the Jasper Project was sold to a third-party purchaser for a purchase price of approximately \$4.3 million ("**Jasper Sale Transaction**"). The Jasper Sale Transaction closed on or around October 27, 2020 and the residual proceeds, following payment of the first ranking mortgage, property taxes, commissions, and other closing costs, were \$1,767,212 ("**Jasper Residual Proceeds**"). The Jasper Residual Proceeds are currently being held in trust by the Trustee's counsel pending resolution of a priority claim advanced by the Jasper Borrower, on behalf of itself and BJI Properties Inc. ("**BJI**"), an entity related to the Jasper Borrower, in the amount of approximately \$1.6 million ("**Related Party Claim**").

The Jasper Borrower, on behalf of itself and BJI, asserted that the Related Party Claim ranked in priority to the BDMC Loan. The Related Party Claim is primarily comprised of: (a) the initial equity contributed to the Jasper Project by the Jasper Borrower; (b) guarantee fees; and (c) amounts advanced by BJI to pay for, among other things, certain carrying costs associated with the Jasper Property, including costs to service the priority mortgages and property taxes.

The Trustee has been engaged in ongoing discussions with the Jasper Borrower and BJI regarding the Related Party Claim. After extensive negotiations and an in-depth review of the amounts comprising the Related Party Claim, the Trustee determined that it was in the best interests of the Jasper SMLs to resolve the matter consensually, thereby avoiding litigation costs that would be incurred and further delays in distributing the Jasper Residual Proceeds should the matter be adjudicated before the Court. Accordingly, with the support of Representative Counsel, the Trustee proceeded to negotiate a settlement with the Jasper Borrower and BJI regarding the allocation and distribution of the Jasper Residual Proceeds. These negotiations culminated in a settlement in the amount of approximately \$527,000 ("**Related Party Settlement Amount**") in respect of the Related Party Claim, which is approximately \$1.1 million less than the amount claimed with respect to the Related Party Claim.

In these particular circumstances, the Trustee determined it to be appropriate to agree to the Related Party Settlement Amount, which is comprised of amounts that the Trustee believes may have otherwise ranked in priority to the BDMC Loan for payments made to service the priority mortgage and payments in respect of property taxes.

In addition to setting out the Related Party Settlement Amount, the key terms of the agreement negotiated between the Jasper Borrower, BJI and the Trustee ("**Related Party**



Claim Settlement Agreement”) are as follows: (a) the agreement is conditional upon Court approval; (b) the Trustee’s counsel is authorized to distribute the Related Party Settlement Amount to BJL and the remainder of the Jasper Residual Proceeds to the Trustee (“**Jasper Distribution**”); (c) BDMC and the Trustee, on the one hand, and the Jasper Borrower and BJL, on the other hand, grant each other mutual releases for any and all claims that such parties may have now or in the future against one another solely in relation to the Related Party Claim and the Jasper Residual Proceeds; and (d) the Jasper Borrower acknowledges that the Trustee may further distribute amounts received by it pursuant to the Jasper Distribution in its sole discretion.

Inter-Project Loan and Allocation

Also as advised in the Notice, there was a mortgage registered on title to the Jasper Property in third position in the amount of \$768,650 (“**Inter-Project Loan**”). The Inter-Project Loan was registered in favour of a borrower on another project in the BDMC portfolio (“**North Project**”) (“**North Borrower**”). The North Borrower is related to the Jasper Borrower and to BJL.

The North Project was sold to a third-party purchaser for a purchase price of \$4.7 million (“**North Sale Transaction**”). The North Sale Transaction closed on or around July 10, 2020 and following payment of the first ranking mortgage, property taxes, commissions, and other closing costs, there were residual proceeds of approximately \$1.6 million (“**North Residual Proceeds**”). Similar to the Jasper Residual Proceeds, the North Residual Proceeds are being held in trust by the Trustee’s counsel pending the resolution of a related party claim advanced by the North Borrower on behalf of itself and BJL.

The Trustee understands that the North Borrower advanced the full amount of the Inter-Project Loan to the Jasper Borrower in October 2014 and the loan was never repaid. The Trustee further understands that neither the syndicated mortgage lenders who advanced funds to the North Project (“**North SMLs**”) nor the Jasper SMLs were notified of the Inter-Project Loan prior to the commencement of these proceedings. The Jasper Borrower advised the Trustee that its intention was always to repay the Inter-Project Loan, however, it never had sufficient funds to do so.

The Trustee further understands that absent the Inter-Project Loan, the Jasper Borrower would have likely been required to source alternate financing as there were insufficient funds to support the ongoing carrying costs for the Jasper Project. Had the Jasper Borrower been required to secure such third-party financing, it would have likely been a prerequisite to any such funding that BDMC subordinate and postpone its mortgage in favour of the new lender.



The Trustee has considered the interests of both the Jasper SMLs and the North SMLs with respect to the issue of how the Inter-Project Loan should be treated when distributing the Jasper Residual Proceeds and the North Residual Proceeds. The Jasper SMLs may contend that no adjustment is necessary as, while they were the beneficiary of the Inter-Project Loan, the North Borrower's mortgage is subsequent to the BDMC mortgage previously registered on title. As explained above, this does not account for the fact that had the Jasper Borrower been required to secure financing from an arm's length party, the full amount of such financing would likely have only been provided if the financing was secured in a position in priority to the BDMC Loan. Similarly, the North SMLs may contend that an adjustment must be made in the full amount of the Inter-Project Loan to compensate them for the transfer of their investment to another project. The Trustee understands both of these positions and has also considered the equities applicable to both sets of syndicated mortgage lenders who have suffered significant losses from their investments.

In light of the reasons noted above, the Trustee, with the support of Representative Counsel, is of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan is for there to be a reimbursement of 50% of the Inter-Project Loan amount, or \$384,325 ("**Inter-Project Allocation**"), such that these additional funds would be available for distribution to the North SMLs and deducted from the funds available for distribution to the Jasper SMLs.

The following table summarizes the amount that, subject to Court approval of the Related Party Claim Settlement Agreement and the Inter-Project Allocation, would be available for distribution to the Jasper SMLs before accounting for the Administrative Holdback (as defined below):

	Amount
Principal Outstanding (A)	8,260,000
Jasper Residual Proceeds (B)	1,767,212
Related Party Settlement Amount (C)	(526,599)
Inter-Project Allocation (D)	(384,325)
Recovery on Principal (E=B+C+D) (" Realized Property ")	856,288
Previously Paid Interest (F)	628,655
Recovery on Principal with Previously Paid Interest (G=E+F)	1,484,943
Recovery on Principal (%) (E/A)	10.4%
Recovery on Principal with Previously Paid Interest (%) (G/A)	18.0%



Court Approval and Distribution

For the reasons noted above, as part of the June 7th Motion, the Trustee will be seeking an order from the Court, approving, among other things: (i) the Related Party Claim Settlement Agreement; (ii) the Inter-Project Allocation; and (iii) the distribution of 85% of the Realized Property to be received *pro rata* to the Jasper SMLs in accordance with the Court orders previously granted in these proceedings.

Should the Court grant such relief as part of the June 7th Motion, the Trustee will distribute to you your *pro rata* share of the Realized Property as soon as practicable thereafter. All distributions will be net of an administrative holdback of 15% (“**Administrative Holdback**”) in accordance with Court orders previously issued in these proceedings. The Jasper SMLs may receive a portion of the Administrative Holdback 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 **Jasper Project**).

Email: 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 **Jasper Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 12:
Castlemore Decision dated February 2, 2021

CITATION: Emerald Castle v. FAAN Mortgage, 2021 ONSC 815
COURT FILE NO.: CV-20-00637238-00CL
DATE: 20210202

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
EMERALD CASTLE DEVELOPMENTS	)	<i>William Friedman, Stephen Nadler and Judy</i>
INC.	)	<i>Hamilton, for the Applicant</i>
)	
Applicant)	
)	
– and –)	
)	
FAAN MORTGAGE ADMINISTRATORS	)	<i>Michael De Lellis, Jeremy Dacks and Mary</i>
INC., in its capacity as the Court-Appointed	)	<i>Paterson, for the Respondent FAAN Mortgage</i>
Trustee of BUILDING & DEVELOPMENT	)	<i>Administrators Inc., in its capacity as the Court-</i>
MORTGAGES CANADA INC. formerly	)	<i>Appointed Trustee of Building & Development</i>
known as CENTRO MORTGAGE INC.,	)	<i>Mortgages Canada Inc. formerly known as</i>
and OLYMPIA TRUST COMPANY	)	<i>Centro Mortgages Inc.</i>
)	
Respondents)	
)	
)	
	)	<i>George Benchetrit and Sanea Tanvir, Court-</i>
	)	<i>Appointed Representative Counsel for 453</i>
	)	<i>individual investors</i>
)	
	)	HEARD: November 3, 2020
)	
)	
)	

REASONS FOR DECISION

DIETRICH J.

Overview

[1] In 2014, the applicant, Emerald Castle Developments Inc. (“Emerald”), a land developer, was looking to finance the development of a 48-acre parcel of land in the City of Brampton, Ontario (the “Brampton Property”).

[2] On August 25, 2014, Emerald entered into a loan agreement with the respondent Centro Mortgages Inc., now known as Building & Development Mortgages Canada Inc. (“BDMC”), a mortgage broker and administrator (the “Loan Agreement”).

[3] On the same day, Emerald entered into a Development Consulting Agreement (the “DCA”) with Fortress Real Developments Inc. (“Fortress”). Fortress is a development consultant company, which partnered with Emerald, and was involved in raising initial financing for the Brampton Property development project. Fortress approached BDMC to raise such financing.

[4] BDMC raised funds from 453 individual investors (the “Investors”) after it negotiated and executed the Loan Agreement. BDMC used these funds to make a syndicated mortgage loan to Emerald in the principal amount of \$21,246,153.85 for a five-year term.

[5] The respondent Olympia Trust Company, which funded a significant portion of the loan, did not appear at this hearing.

[6] BDMC secured the loan by a charge on the Brampton Property and a general security agreement over the personal property and undertaking of Emerald respecting the development of the Brampton Property.

[7] At the end of the five-year term, the “End of Term Event” provision of the Loan Agreement permitted Emerald to discharge BDMC’s mortgage and other security by deeming a sale of all vacant lands at the Brampton Property at that time, at a price to be established through appraisals, and by applying the deemed sale proceeds according to a specific formula set out in the “Waterfall” provision of the Loan Agreement.

[8] Relying on the End of Term Event and Waterfall provisions in the Loan Agreement, Emerald calculated that \$9,124,574 was due to BDMC. BDMC’s assets are now being managed by FAAN Mortgage Administrators Inc. (“FAAN”), which was appointed by this court as trustee in 2018 (the “Trustee”). In addition, Emerald asserted that in exchange for that payment, it was entitled to a full discharge of the security granted.

[9] BDMC asserts that the End of Term Event provision of the Loan Agreement is not enforceable because it is manifestly unfair and was not adequately disclosed to the Investors. Alternatively, it asserts that if the provision is enforceable, Emerald is only entitled to a partial release of the security granted in the amount of the partial payment.

[10] For the reasons that follow, I find that Emerald is permitted to rely on the End of Term Event provision to pay the amount owing pursuant to the End of Term Event and Waterfall provisions; and it is entitled to a full discharge of the security granted to BDMC.

Issues

[11] There are two issues in this matter:

1. Is the End of Term Event provision in the Loan Agreement unenforceable because it is manifestly unfair and because the Investors did not have adequate disclosure of the provision?
2. If the End of Term Event provision is enforceable, can a partial payment of the loan be made in exchange for an equivalent partial discharge of the BDMC's security?

Background Facts

[12] In addition to the Loan Agreement and the DCA, both of which included the End of Term Event and Waterfall provisions, there were two other agreements related to the loan. They were: a) a letter of indemnity dated August 25, 2014 from BDMC to Emerald; and b) a letter from Fortress, of even date, confirming the use of \$810,000 of the loan to fund a \$200,000 payment to unidentified third parties; a \$225,000 fee to Emerald as a consulting fee; a \$375,000 payment to Fortress as an additional placement fee; and \$10,000 as a donation to a charity selected by BDMC.

[13] The Loan Agreement includes the following key provisions:

- (a) the loan proceeds were to provide funding: (i) to pay the Borrower the sum of \$12 million being 50% of the agreed-upon Borrower's equity in the Brampton Property; (ii) to pay for the Borrower's soft or hard costs to be incurred up to \$1 million; and (iii) to pay for 100% of the fees/costs payable to the Development Consultant, Fortress under the DCA;
- (b) the loan would be advanced in instalments, with the Lender being required to fund the entire loan within 11 months following execution of the Loan Agreement;
- (c) the maturity date would occur on the expiry of a term of five years commencing on the date of the first advance of the loan;
- (d) interest at the rate of 8% per annum would accrue and be capitalized, and be repayable on the maturity date only in accordance with, and subject to the Waterfall and the End of Term Event provisions; (emphasis added)
- (e) the loan principal and all accrued interest would become due and payable on the maturity date in the manner and priority set forth in the Waterfall and End of Term Event provisions; (emphasis added)
- (f) the Waterfall provision (section 7.2.A) details the manner and priority in which available cash flow is to be paid out, which includes (in part) the following order of distribution: i) repayment of principal and interest under the existing first mortgage of \$8,150,000 or any refinancing thereof, and under any project construction loans; ii) payment to the Borrower of unpaid project management fees and a guarantee fee of 2.5%; iii) the sum of \$13 million to each of the Lender and the Borrower, on a *pro rata* basis, on account of: in the case of the Lender, the portion of the loan principal that excludes the amount of Fortress' fees/costs; and in the case of the Borrower, the Borrower's remaining Borrower's equity; iv) payment to the Lender and the Borrower, on *pro rata* basis, of

the 8% accrued interest to the Lender and an 8% annual return on the Borrower's equity to the Borrower; v) any remaining cash flow to be distributed *pro rata* to Fortress and to the Borrower, and from the amount to be distributed to Fortress there shall be deducted and paid to the Lender any remaining amount owing on the loan;

- (g) as part of the security that the Lender is to receive for the loan, the Borrower is to provide the Lender with a mortgage on the Brampton Property for the principal sum of \$22 million, which mortgage shall rank *pari passu* with the Borrower's *pari passu* mortgage for the same principal amount securing repayment of the Borrower's equity (the "Emerald *Pari Passu* Mortgage"), and both mortgages are entitled to distribution per the Waterfall; (emphasis added)
- (h) per the End of Term Event (section 14), in the event the loan is not repaid by the maturity date, and despite any provisions of the Security, the Lender shall only be permitted to exercise its rights under the security in the event that the Borrower does not adhere to the following procedure: each party shall obtain its own appraisal of any portions of the project not under construction for either servicing or house construction ("Vacant Lands"), failing which the appraisal obtained by the one party shall govern as to the value, and where both appraisals are obtained within the 60 days, then the average of the two appraisals will apply. The Borrower shall then have the option to obtain a partial discharge of the Security as against the Vacant Lands upon payment of the appraised value less specified deductions pursuant to the Waterfall in section 7.2 (the "paydown"). Upon payment of the paydown in accordance with the Waterfall, the Lender shall provide partial discharges of all of its security in respect of the Vacant Lands, and the same shall no longer be security for the loan. In the event the Borrower does not exercise the foregoing option to obtain the discharges, the lands shall be listed for sale with a reputable commercial real estate agent; (emphasis added)
- (i) in the event there is a shortfall once all the project lands have been sold and the Lender's rights under the End of Term Event provision have been fully exercised, the Lender agrees to waive its rights to repayment of any remaining amount owing on the loan and provide a release of the Borrower and a discharge of all remaining security; (emphasis added)
- (j) the Waterfall spells out how funds are to be paid to either the Borrower or the Lender and/or Fortress as and when received from the sale of the project in whole or in part; (emphasis added)
- (k) the Loan Agreement and related documents constitute the entire agreement between the parties; and (emphasis added)
- (l) time shall be of the essence.

[14] Individual Investors entered into an Investor Participation and Servicing Agreement with BDMC under which Investors provided cash to BDMC to be loaned to Emerald.

[15] As provided for in the Loan Agreement, each of Emerald and BDMC had a *pari passu* mortgage. Each such mortgage secured the same principal sum, each ranked *pari passu* with each other, and each would be entitled to a distribution under the Waterfall provision.

[16] The BDMC mortgage was registered on title to the Brampton Property on November 24, 2014 and secured the sum of \$10 million. As further advances were made, the principal secured was increased and by June 2015, amounted to \$21,246,154. The mortgage is currently registered to BDMC and Olympia Trust Company.

[17] The Emerald *pari passu* mortgage was registered on title to the Brampton Property on November 25, 2014 securing the principal sum of \$22,000,000 in respect of its owners'/borrower's equity in the project.

[18] BDMC lent the first tranche of the loan on November 24, 2014. The maturity date was, therefore, November 24, 2019.

[19] Of the \$21.5 million funded by investors, approximately 35% was paid to various parties, mostly related to Fortress, as fees.

[20] The remaining 65% was paid to Emerald. Of that amount, \$12 million was paid to the owners of Emerald to repatriate their equity and create the Emerald *Pari Passu* Mortgage. Emerald also paid \$1.38 million to one of its owners as project management fees.

[21] As the maturity date approached, FAAN, the Trustee of BDMC, entered into settlement discussions with Emerald. A year earlier, the Trustee had requested and received a Waterfall calculation. Emerald made an offer to pay \$9,500,000 in full and final satisfaction of all of its liabilities under the Loan Agreement as an alternative to a repayment of the loan in accordance with the End of Term Event process. On October 21, 2019, the parties entered into a settlement agreement whereby Emerald would pay the Trustee \$9,500,000. By October 31, 2019, the parties agreed to increase the settlement amount to \$10,450,000.

[22] The Trustee brought a motion to approve the settlement and filed with the court its Twelfth Report of the Trustee. In the Twelfth Report, it outlines the reasons why it and Representative Counsel for the Investors were recommending the settlement, including its view that a 45% recovery on the outstanding principal was reasonable.

[23] In the Twelfth Report the Trustee states:

Among other things, the End of Term Event Clause precludes BDMC, in its capacity as lender to the Castlemore Project, from exercising its rights under its Security (as defined in the Castlemore Loan Agreement), provided that certain procedural steps are followed by the Castlemore Borrower. These steps include, among other things, obtaining updated appraisals for the Property ("Updated Appraisals"). After obtaining Updated Appraisals, the Castlemore Borrower then has the option of either (i) paying out the

Castlemore Individual Lenders in the manner and priority described by the Loan Agreement (“End of Term Process”) using the average value of the Updated Appraisals for distribution purposes, subject to certain deductions; or (ii) listing the Property for sale with a reputable commercial real estate agent and then distributing the proceeds from the sale in accordance with the End of Term Process.

[24] Ultimately, based on additional Investor feedback, the Trustee did not proceed with the motion. The settlement agreement expired and on December 6, 2019, Emerald notified the Trustee of its intention to proceed to apply the End of Term Event provision of the Loan Agreement.

[25] Pursuant to the Loan Agreement, each of Emerald and the Trustee was then required, within 60 days of the maturity date, to obtain an appraisal of the Brampton Property, which remained Vacant Lands for the purposes of the Loan Agreement. Owing to ongoing planning appeals, Emerald had been unable to proceed with the development prior to the maturity date. Both Emerald’s expert and the Trustee’s expert agree that the development will not likely be completed until 2025.

[26] On January 7, 2020, Emerald obtained an appraisal from CBRE. It provided the appraisal to the Trustee together with a Waterfall calculation showing \$9,124,574 due to the Trustee on behalf of BDMC/Olympia Trust in accordance with the End of Term Event and Waterfall provisions.

[27] Though outside the 60-day requirement for obtaining an appraisal, the Trustee also provided an appraisal of the Brampton Property that it obtained from Jones Lange LaSalle Real Estate Services. On delivery of the appraisal, the Trustee took the position that it did not attorn or agree to the End of Term Event process.

[28] In March 2020, in the Trustee’s Nineteenth Report to the court, the Trustee took the position that Emerald was not entitled to exercise the End of Term Event in the Loan Agreement. The Trustee gave no explanation for its change in position and Representative Counsel’s change in position from the positions they took in the Trustee’s Twelfth Report.

[29] On March 2, 2020, Emerald brought this application, contrary to the stay of proceedings. The Trustee consented to Emerald commencing this application while reserving its rights.

Positions of the Parties

[30] Emerald asserts that the Loan Agreement was negotiated for nearly a year between arm’s length commercial parties, each of which was represented by senior commercial legal counsel throughout the negotiations. The Loan Agreement should, therefore, be enforced.

[31] Further, Emerald asserts that there were no Investors at the time the Loan Agreement was being negotiated. The Investors made their investments in the syndicated mortgage after the Loan Agreement had been finalized. The Trustee only became involved some three and a half years after the Loan Agreement had been negotiated.

[32] The Trustee asserts that despite the fact that Emerald owes nearly \$30 million to the investors in the syndicated mortgage, Emerald seeks to rely on the End of Term Event provision to pay only \$9.1 million and escape all obligations under the Loan Agreement. If Emerald's application is granted, the result could be an extinguishment of the debt, a full discharge of the security, a full release from BDMC and the Investors, and the ability to develop the Brampton Property for its sole benefit and profit. The Trustee asserts that Emerald should not be entitled to enforce the End of Term Event provision because Emerald was wilfully blind to the manifest unfairness and poor disclosure to the Investors.

[33] Alternatively, the Trustee asserts that if the End of Term Event provision is enforceable, the provision permits Emerald to make a partial payment of the loan in exchange for a partial release of the security granted equivalent to the partial payment. It further asserts that the End of Term provision, on its face, does not permit Emerald to make a partial payment on the loan, keep the Brampton Property, and walk away from its remaining debt obligations.

Analysis

Is the End of Term Event provision unenforceable?

[34] The Trustee and Representative Counsel argue that Emerald's interpretation of the End of Term Event provision is manifestly unfair. They submit that Emerald did not ensure that the Investors were adequately notified of the End of Term Event provision or of Emerald's interpretation of that provision and the Waterfall provision. Accordingly, they argue that this lack of proper disclosure renders the provision unenforceable.

[35] For the reasons that follow, I do not find that the End of Term Event provision is manifestly unfair, or that there was inadequate disclosure by Emerald that should render the End of Term Event provision unenforceable.

[36] In support of their position, the Trustee and Representative Counsel rely on the decision of the Court of Appeal for Ontario in *MacQuarie Equipment Finance Ltd. v. 2326695 Ontario Ltd. (Durham Drug Store)*, 2020 ONCA 139. In that decision, the Court of Appeal held that inadequate notice of a particularly unfair term may render that term unenforceable.

[37] In *MacQuarie*, a pharmacy owner entered into a contract with a telemedicine provider. She was then presented with a second contract that, unbeknownst to her, was with a medical equipment lessor. The termination provisions in the two contracts were different from each other and she did not review the second contract, nor was she notified about the difference in the termination provisions. Enforcing the termination provision under the second contract would have meant that the pharmacy owner would have had to continue to make payments for equipment even if other parties defaulted in providing telemedicine services, which would render the equipment useless. The Court of Appeal held that the lack of disclosure was so unfair that it rendered the termination clause unenforceable. The Court of Appeal made this determination even though the clause was commonplace and not, on its face, harsh or oppressive; and the lessor seeking to enforce it had no intention to mislead the pharmacy owner: paras. 37-38.

[38] The Trustee and Representative Counsel submit that even if Emerald did not intend to mislead the Investors, it could not have reasonably believed that investors would have agreed to loan over \$21,000,000 in exchange for security worth less than \$10,000,000. Further, they argue that the investors in the syndicated mortgage were repeatedly told that their investment was fully secured on the Brampton Property. They submit that the Investors were not told that the “benchmark of value” of \$32 million for the Brampton Property was not directly linked to the fair market value of the property but rather was based on the number acceptable to Emerald, or that the benchmark of value was intended to be diluted by a *pari passu* mortgage obtained by Emerald’s owners to secure their equity in the project.

[39] The Trustee argues that, like in *MacQuarie*, the promotional materials provided to the Investors did not clearly disclose the nature of the security, but rather assured the Investors of the priority of their security. The Trustee further argues that the Investors were not notified of the End of Term Event provision or Emerald’s interpretation of it, which is onerous and conflicts with the assurances the Investors received.

[40] Representative Counsel argues that it was not disclosed to the Investors that Emerald would place a mortgage on the Brampton Property that would rank *pari passu* with the second ranking mortgage in favour of BDMC, thereby depriving the Investors of much of the collateral for their loan.

[41] Representative Counsel also argues that the DCA, which set out Fortress’ compensation in the form of fees and distribution of profits was never provided to the Investors and its terms were not disclosed to them.

[42] The Trustee and Representative Counsel argue that Emerald, in the DCA, negotiated for the right to pre-approve all marketing and advertising materials for the Brampton Property project. However, it now seeks to distance itself from those materials that induced investors to invest and it did not conduct any oversight on Fortress or its representations to the Investors.

[43] The evidence in support of what the Investors were told is contained in the affidavit of Dr. Michael Pizzuto, one of the 453 Investors. He attests that he was given promotional materials that stated that if Emerald defaulted on the loan and could not repay on the maturity date, Emerald would find a solution that could include a payment to investors for an extension, or refinancing to buyout the investors, or a sale of the Brampton Property to recover the investor monies. The Trustee and Representative Counsel assert that the Investors were not notified of Emerald’s interpretation that if the loan was not repaid by the maturity date, the investors would lose most of their investment, the debt would be extinguished, they would lose their security, Emerald would be released from its obligations, and would be entitled to keep the Brampton Property.

[44] The Trustee and Representative Counsel further assert that, like the pharmacy owner in *MacQuarie*, the onerous provision was not brought to Dr. Pizzuto’s attention; he did not have the opportunity to receive independent legal advice; and he did not have the opportunity to carefully read the documents provided to him. Dr. Pizzuto also attests that he did not receive independent

legal advice about the Waterfall provision and that it was not explained to him that this provision could effect Emerald's obligation to repay the principal and interest owing under the loan.

[45] I find that the facts of this case can be readily distinguished from those in the *MacQuarie* case. In *MacQuarie*, the two contracts contained inconsistent termination provisions: one allowed the pharmacy owner to terminate the lease if the supplier defaulted, whereas the other did not. When the pharmacy owner discovered that the supplier had acted fraudulently, she tried to terminate both contracts, but the finance company sought to enforce the second contract in reliance on the "no cancellation" provision. The Court of Appeal found that "in the highly unusual circumstances of this case", the pharmacy owner could terminate the second contract because she had signed the contract in a hurried manner, without having been told it was a different contract than the one previously sent to her, she had had no opportunity to negotiate the terms, and had had no legal advice. Further, she had never been provided with a copy of the second signed contract, which was printed on two tightly-packed pages with extremely small font making it difficult to read: *MacQuarie*, at paras. 38 and 41. By contrast, according to Dr. Pizzuto's own evidence, he did not make his investment in a hurried manner and he received some legal advice over the phone (albeit from a Fortress lawyer). There is no evidence to suggest that he was denied an opportunity to seek further legal advice or that he did not receive copies of all agreements he signed or that those agreements were in small print or difficult to read.

[46] In fact, Dr. Pizzuto received many documents relating to his investment. Apart from the Loan Agreement, Dr. Pizzuto would have received documents indicating how the loan proceeds of \$21,256,153 would be applied. Specifically, the Project Fact Sheet disclosed the repayment of 50% of the Borrower's equity; the payment toward the Borrower's project costs; and the payment of the Development Consultant's fees. The Project Fact Sheet also described the distribution of revenue in accordance with the Waterfall provision, including principal equity advances *pari passu*, with a direction to refer to the Loan Agreement for "in-depth details."

[47] While Emerald admits that Dr. Pizzuto may not have been provided a copy of the DCA, it submits that it was not hidden from him. I agree. There are several references to it in the Loan Agreement and in an Acknowledgement that Dr. Pizzuto signed. The Investors or their advisors could have easily requested a copy. Dr. Pizzuto was also provided with a document summarizing the Waterfall provision.

[48] Dr. Pizzuto's own evidence includes copies of documents that he received that warned him that "Investments in syndicated mortgages are speculative and involve a high degree of risk" and "The development of a project may not be completed within the anticipated time frame, or at all, which in turn could delay payment to participants or put payment at risk."

[49] In my view, the disclosure that Dr. Pizzuto received is not in any way comparable to the disclosure that the pharmacy owner in the *MacQuarie* case received. The mechanics of the End of Term Event provision and the Waterfall provision were clearly set out in the documents provided to Mr. Pizzuto. If his consultation with the Fortress lawyer left him with additional questions, he could have sought additional legal advice before entering into his investment agreement with mortgage broker FFI Capital Inc.

[50] The End of Term Event and Waterfall type provisions were not unique to the Loan Agreement with Emerald. In the Trustee's First Report to the court, the Trustee made the following general comments about the 44 Centro/BDMC syndicated mortgage loan projects over which it was appointed as Trustee:

...significant portions of the sums advanced by Investors through BDMC were used to pay 'development consultant fees'. The development consultant fees were in an amount that generally appears to be equal to approximately 35% of the principal amount advanced under the applicable BDMC syndicated mortgage loan. A portion of this fee (approximately 50%) would be paid to the Investors' brokers...

...Moreover, many Investors agreed to terms that permit repayment 'waterfalls' that, at least in some instances, appear to permit owners of the real estate (including the borrowers and owners of the borrowers) to recover some of the amounts they invested in the developments in priority to the amounts loaned by the Investors." (emphasis added)

[51] BDMC negotiated and entered into the Loan Agreement with Emerald after negotiations that spanned many months, with the assistance from senior legal counsel experienced in commercial matters. It agreed to the terms of the Loan Agreement, including the End of Term Event and Waterfall provisions. At no point following the execution of the Loan Agreement did BDMC attempt to renegotiate the terms. BDMC was aware of Emerald's *Pari Passu* Mortgage, which is described in clear terms in section 8 of the Loan Agreement.

[52] It is uncontradicted that there were no investors for the nearly full year while the Loan Agreement was being negotiated or at the time it was executed. Centro/BDMC, Fortress and Olympia Trust began raising their funds sometime thereafter. They would have done so with the knowledge of the terms of the Loan Agreement.

[53] Dr. Pizzuto attested that he made his investment decision based on discussions with a representative of FFM Capital Inc. and its representative Mr. Mazzoli with whom he had invested previously. Dr. Pizzuto's allegations of misrepresentation, as set out in his affidavit, are directed at FFM Capital Inc., and to a lesser extent, Fortress. There is no evidence to suggest that he ever met or communicated with Emerald. Further, any alleged misrepresentation to Dr. Pizzuto was made after the Loan Agreement had been executed. Dr. Pizzuto entered into his investment transaction with Centro/BDMC on November 25, 2014, which was three months after the Loan Agreement had been executed and the day after the first advance had been made to Emerald.

[54] There is no evidence to suggest that Emerald had any knowledge of, or involvement with, how or from whom Centro/BDMC, Fortress and Olympia Trust were raising their funds for the loan.

[55] Desi Auciello, on behalf of Emerald, attested that Emerald had no knowledge of any of the communications, representations or dealings that Centro/BDMC, Olympia Trust, their mortgage brokers, or Fortress had with any of their investors; nor did Emerald communicate with those investors or know who they were. On examination, he did concede that it was Fortress' business model to go to the public to raise funds and that it was possible that salespersons may be involved in the process.

[56] Mr. Auciello attested that Emerald had no knowledge of the agreements between these entities and their respective investors. Further, his evidence is that Emerald had no involvement in how Centro/BDMC/Fortress dealt with their fees, commissions to brokers or the return to their respective investors.

[57] I agree with Emerald's submission that the failure of the brokers and advisors, like FFM Capital Inc., and possibly Fortress, to properly explain the investment opportunity to Dr. Pizzuto and other investors cannot ground a finding that two key provisions of the Loan Agreement negotiated and agreed to between Emerald and BDMC, being the End of Term Event provision and the Waterfall provision, are unenforceable.

[58] In interpreting the terms of a contract, the court looks to the language used by the parties and gives effect to their written agreement. It is not for the court to re-write the terms or create terms that are not contained in the contract. The court must look to the four corners of the document to ascertain the intention of the parties: *General Refractories Co. of Canada v. Venturedyne Ltd.*, [2002] O.J. No. 54, at para. 56.

[59] The parties to the Loan Agreement were Emerald and BDMC, in trust. There were no investors at the time it was negotiated and executed. Emerald did not contract with any of Centro/BDMC's or Olympia Trust's investors and, therefore, cannot be said to owe them a duty of care. BDMC entered into the contract as trustee. It was incumbent on BDMC, as a fiduciary, to act in the best interests of those whose beneficial interests it was representing. Under the Loan Agreement, Emerald's obligations, including its obligation to make a payment, are to the Lender (Centro/BDMC), not the Investors.

[60] The quantum of that payment is calculated in accordance with the End of Term Event and Waterfall provisions.

[61] I do not find that it is unfair that arm's length commercial parties, who specifically negotiated and agreed that any repayment of the loan would be in accordance with the Waterfall provision, and who further agreed to a mechanism that would terminate the loan at the end of its term through appraisals, or a listing and sale of the Brampton Property, with the revenue flowing through the Waterfall, should be held to their bargain.

[62] It is not for the court to rewrite contracts to reflect changed circumstances or more equitable results to accord with a court's after-the-fact assessment of what is just and equitable. This is especially so when dealing with commercial agreements negotiated at arm's length by sophisticated parties: *Adamson v. Steed*, 2008 ONCA 375, at para. 4; *J.S.M. Corporation (Ontario) Ltd. v. The Brick Furniture Warehouse Ltd.*, 2008 ONCA 183, at para. 60.

[63] I find that the Trustee and Representative Counsel have not shown the manifest unfairness and inadequate disclosure by Emerald that would be required to render the End of Term Event and Waterfall provisions unenforceable.

Does the End of Term Event provision permit Emerald to make a partial payment of the amount owing and receive, in exchange, an equivalent partial release of the security?

[64] The Trustee asserts that the End of Term Event provision only precludes the Lender BDMC/Trustee from enforcing its security and does not result in the discharge of its security.

[65] I do not agree with this interpretation of the provision. The End of Term Event provision precludes the Lender/Trustee from exercising its rights under its security and also, at clause 14(i)(B)(I) of the Loan Agreement, expressly gives the Borrower/Emerald the right to obtain a discharge of the Lender's Security as against the Vacant Lands. The End of Term Event does not contemplate a "partial payment" by the Borrower. The payment contemplated is a payment pursuant to the formula: the appraised value of the Brampton Property, less specific deductions, which amount is then applied to the Waterfall provision to determine the payment to the Lender to obtain a discharge of the security as against the Vacant Lands.

[66] The reference to "partial discharge" in section 14(B)(II) of the Loan Agreement must be read in context. Section 14 is prefaced with "notwithstanding the provisions of the Security", and clause (B)(II) states that "the Lender shall provide *partial discharges* of *all* of its Security *in respect of such Vacant Lands* and [the same] shall no longer form part of the Security held by the Lender for the Loan." The Security in question is "all" of the security in respect of the Vacant Lands. On the maturity date, there were only Vacant Lands comprising the Brampton Property. A partial discharge would occur in a situation in which there were Vacant Lands and lands that were not Vacant Lands, i.e. lands that were being developed. The provision does not make any reference to a discharge of security in an amount equivalent to the payment made. Section 14(E) of the Loan Agreement confirms that any partial discharge refers to "Vacant Lands" as opposed to "Servicing or House Construction Lands."

[67] This End of Term Event provision, in combination with the Waterfall provision, provides Emerald with a termination mechanism by which it can obtain a discharge of the security on all the Vacant Lands by deeming a sale of those lands with the sale price to be established through appraisals.

[68] I observe that the Trustee took no issue with the interpretation of these terms in its Twelfth Report to the court or on its motion to approve the settlement, which had the support of Representative Counsel.

[69] Again, I note that it is not for the court to re-write the terms of a contract or add terms that are not contained in the contract: *General Refractories*, at para. 56.

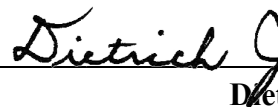
[70] The standard for implying a term into a contract is very high. The Court will not rewrite contracts to reflect changed circumstances or more equitable results: *Adamson*, at para. 4.

Disposition

[71] I declare that the End of Term Event and Waterfall provisions in the Loan Agreement entitle the applicant, Emerald Castle Developments Inc., to the orders and relief sought in its application, respecting the Loan Agreement, provided that any dispute concerning the calculation of the payout by the applicant to the Trustee on behalf of BDMC pursuant to the End of Term Event provision and the Waterfall provision shall be the subject of a separate hearing by this court, if required. No order shall issue until the calculation of the payout is resolved.

Costs

[72] The parties are strongly encouraged to agree on the matter of costs. If they are unable to do so, they may make written submissions on costs. Those submissions shall not exceed three pages in length (not including a bill of costs or costs outline and any offer to settle). The applicant shall make its submissions by February 16, 2021 and the Trustee and Representative Counsel shall make their submissions by March 2, 2021.



Dietrich J.

Released: February 2, 2021

CITATION: Emerald Castle v. FAAN, 2021 ONSC 815
COURT FILE NO.: CV-20-00637238-00CL
DATE: 20210202

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

EMERALD CASTLE DEVELOPMENTS INC.

Applicant

– and –

FAAN MORTGAGE ADMINISTRATORS INC., in its
capacity as the Court-Appointed Trustee of BUILDING
& DEVELOPMENT MORTGAGES CANADA INC.
formerly known as CENTRO MORTGAGE INC., and
OLYMPIA TRUST COMPANY

Respondents

REASONS FOR DECISION

Dietrich J.

Released: February 2, 2021

Appendix 13:
Castlemore Settlement Agreement dated May 20, 2021

SETTLEMENT AGREEMENT AND MUTUAL RELEASE
(dated as of May 20, 2021)
(the “Settlement Agreement”)

B E T W E E N:

EMERALD CASTLE DEVELOPMENTS INC.

- and -

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

- and -

OLYMPIA TRUST COMPANY

WHEREAS Emerald Castle Developments Inc. (the “**Borrower**”) is the borrower under a Loan Agreement dated August 25, 2014 (the “**Loan Agreement**”) with Centro Mortgage Inc. (now Building & Development Mortgages Canada Inc.), in trust (“**BDMC**”), as lender, for a non-revolving loan in the principal amount of \$21,246,153.85 (the “**Loan**”);

AND WHEREAS the Loan was funded by BDMC pursuant to the Loan Agreement;

AND WHEREAS the Borrower and BDMC entered into the Loan Agreement in connection with a low-rise residential development project to be constructed at 10431 Gore Road, Brampton, Ontario, legally described in Schedule “A” hereto (the “**Property**”, and such development, the “**Project**”);

AND WHEREAS individual lenders made syndicated mortgage loans to BDMC in connection with the Project (the “**Individual SMLs**”);

AND WHEREAS Olympia Trust Company (“**Olympia**”) acts as trustee for a subset of the Individual SMLs and received an assignment of the Lender’s Mortgage/Charge, defined below;

AND WHEREAS in connection with and as security for payment of the Loan and performance of other obligations set out in the Loan Agreement (the “**Obligations**”), BDMC and Olympia were granted a charge on title to the Property, which is described in Schedule “B” hereto, in the initial principal amount of \$10,000,000, which charge was subsequently increased to \$21,246,154 (the “**Lender’s Mortgage/Charge**”);

AND WHEREAS on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee of the assets, properties and undertakings of BDMC (in such capacity, the “**Trustee**”) pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC, and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to BDMC;

AND WHEREAS on June 26, 2018, Chaitons LLP was appointed as the Court-appointed representative counsel for the Individual SMLs pursuant to an order of the Court (the “**Representative Counsel**”);

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

AND WHEREAS the Borrower commenced an application in the Ontario Superior Court of Justice (Commercial List) in Court File No. CV-20-00637238-00CL (the “**Application**”) in which the Borrower sought, amongst other things: (i) an order releasing all security interests held by the Trustee on behalf of BDMC and Olympia in respect of the Loan Agreement upon payment of the amount of \$9,124,574 (the “**Discharge of Security Order**”); (ii) a declaration that \$9,124,574 represents all of the monetary obligation owed by the Borrower to the Trustee on behalf of BDMC and Olympia under the Loan Agreement (the “**Monetary Obligation Order**”); (iii) an order releasing, waiving, extinguishing, expunging and discharging the Obligations to the Trustee on behalf of BDMC and to Olympia (the “**Extinguishment of Debt Order**”); and (iv) a declaration that upon payment of \$9,124,574 that BDMC, BDMC’s successors and assigns, the Individual SMLs, Olympia, and Olympia’s successors and assigns shall be deemed to have released the Borrower from all Obligations and security provided in connection with the Loan Agreement (the “**Release Order**”);

AND WHEREAS the Application was bifurcated on consent of the parties into: (i) the Interpretation Dispute related to the interpretation of the Loan Agreement; and (ii) the Calculation Dispute regarding the calculation of the payment owing by the Borrower pursuant to the Loan Agreement (as both Disputes were defined in the order bifurcating the Application);

AND WHEREAS the Interpretation Dispute was heard by Justice Dietrich on November 3, 2020, and Justice Dietrich issued her Reasons for Decision on February 2, 2021 (the “**Reasons**”);

AND WHEREAS in the Reasons, Justice Dietrich declared that the Loan Agreement entitled the Borrower to the orders and relief sought in its Application, with the Calculation Dispute to be the subject of a separate hearing, if required, and that no order would issue until the Calculation Dispute was resolved;

AND WHEREAS the Trustee and the Representative Counsel commenced separate appeals in the Court of Appeal for Ontario in Court File Nos. C69154 and C69152 (the “**Appeals**”) seeking an order setting aside Justice Dietrich’s decision and granting judgment in favour of the respondents to the Application;

AND WHEREAS the Trustee determined that it is in the best interests of the Individual SMLs to enter into this Settlement Agreement;

AND WHEREAS the parties to this Settlement Agreement wish to compromise and settle between themselves the remaining issues in respect of the Application, the Appeals, the Loan Agreement and the Lender’s Mortgage/Charge;

NOW THEREFORE in consideration of the payment of Cdn. \$9,875,358 by the Borrower to the Trustee, the abandonment of the Application, the abandonment of the Appeals, and the covenants, agreements and releases set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Each party represents and warrants to the others that to the best of its knowledge, the recitals to this Settlement Agreement are accurate.
2. The Trustee shall use commercially reasonable efforts to seek approval of the Settlement Agreement by way of court order issued substantially in the form set out in Schedule “C” hereto (the “**Order**”). The parties hereto agree that, except for the immediately preceding sentence, this Settlement Agreement shall not be binding on any party until 35 days following the date on which the Order is issued, subject to no appeal of the Order having been brought by then and the Trustee confirming the same to the Borrower in writing (the “**Effective Date**”).
3. On or before the later of July 30, 2021 and the Effective Date (the “**Payment Date**”), the Borrower hereby agrees to pay to the Trustee, on behalf of BDMC and Olympia, by wire transfer an amount equal to \$9,875,358 (the “**Settlement Payment**”). The Borrower agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Settlement Payment.
4. The Borrower shall, on or within three business days after receipt of the Settlement Payment by the Trustee, abandon the Application without costs. By executing this Settlement Agreement, the Trustee and Olympia authorize the Borrower’s lawyers to execute a consent to the abandonment, but such authorization is not effective until the Effective Date.
5. The Trustee and the Representative Counsel shall, on or within three business days after receipt of the Settlement Payment by the Trustee, abandon the Appeals without costs. By executing this Settlement Agreement, the Borrower and Olympia authorize the Trustee’s lawyers and the Representative Counsel to execute consents to the abandonments, but such authorization is not effective until the Effective Date.
6. The Trustee shall be required to issue a certificate to the Borrower in the form attached to the Order (the “**Trustee’s Certificate**”) and file the Trustee’s Certificate with the Court promptly upon the satisfaction of the following conditions precedent (which conditions may be waived by the Trustee in its sole discretion):
 - (a) the Order has been granted by the Court and either no material objections (in the sole opinion of the Trustee) were raised by any person at the motion for the Order or the appeal periods in respect of the Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
 - (b) the Borrower has paid the Settlement Payment to the Trustee;
 - (c) the Borrower has abandoned the Application; and
 - (d) the Borrower has certified that all of the representations and warranties contained in paragraph 14 of this Settlement Agreement continue to be true as of the Closing Date.

The date on which the Trustee’s Certificate is issued to the Borrower is hereinafter referred to as the “**Closing Date**”.

7. If an appeal of the Order is brought, (i) the Trustee shall promptly inform the Borrower of the same and shall provide a copy of any appeal materials to the Borrower; and (ii) the Effective

Date shall be deemed to be three business days after the Trustee provides written notice that the condition in subparagraph 6(a) has been satisfied. Notwithstanding anything to the contrary herein, if the Closing Date is delayed solely due to the condition in subparagraph 6(a) above not being satisfied, which the parties acknowledge would result in the Borrower not satisfying the conditions in subparagraphs 6(b),(c) and (d) above, the Trustee shall promptly notify the Borrower in writing of the same and, no earlier than 90 days following the date of service of any Notice of Appeal on the Trustee, and provided that the Trustee's Certificate has still not been issued to the Borrower, the Borrower shall be entitled to terminate this Settlement Agreement in its sole and absolute discretion by providing written notice of the termination to the signatories of this Settlement Agreement.

8. As of the Closing Date, the Borrower (on behalf of itself, its Affiliates (as defined below), and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) hereby forever releases and discharges the Trustee, BDMC, Olympia and the Representative Counsel (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Loan, the Loan Agreement, the Loan Documents (as defined in the Loan Agreement), any and all security provided in respect of the Loan (the "Security"), the Application or the Appeals (the "**Released Matters**"). For greater clarity throughout this Settlement Agreement, "Affiliates" (as such term is defined in the Ontario *Business Corporations Act* (Ontario)) does not include Fortress Real Developments Inc. or any of its Affiliates.

9. As of the Closing Date, the Trustee, on behalf of BDMC, hereby forever releases and discharges the Borrower, its Affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns, from the Released Matters.

10. As of the Closing Date, Olympia hereby forever releases and discharges the Borrower, its Affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns, from the Released Matters.

11. The parties to this Settlement Agreement agree not to make any claims or take any proceedings in connection with the Released Matters against any corporation or person who might claim contribution, indemnity or any other relief against the opposite party to this release under the provisions of any statute or otherwise except for claims or proceedings only in respect of such corporation's or person's several liability (i.e., not caused or contributed to by the opposite party to this release).

12. In the event that any party to this Settlement Agreement should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against any party it has released in connection with the matters which are released and discharged above, this Settlement Agreement may be raised as a complete bar to any such demand, action, claim or proceeding.

13. Nothing in the releases contained in the foregoing paragraphs shall be construed to release any party from its obligations under this Settlement Agreement.

14. The Borrower hereby represents and warrants to the other parties hereto that, as of the date hereof:
- (a) It has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Settlement Agreement, all of which have been duly authorized by all proper and necessary corporate action and it has duly executed and delivered this Settlement Agreement.
 - (b) The execution of this Settlement Agreement will not violate or conflict with its organizational documents, any mortgage or other documentation it is party to relating to the Project or the Property, or any law, regulation or order or require any consent or approval that has not been obtained.
 - (c) This Settlement Agreement is a legal, valid, and binding obligation of the Borrower, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by equitable principles.
15. As of the Closing Date:
- (a) the Borrower, the Trustee, on behalf of BDMC and Olympia acknowledge and agree that they shall have no further rights or obligations in connection with the Obligations, the Loan Agreement, the Lender's Mortgage/Charge and the Security, and the Loan Agreement shall have no further force or effect;
 - (b) the Borrower shall be permitted to cause any and all security held by BDMC and/or Olympia to secure the Obligations to be discharged, including the discharge of the Lender's Mortgage/Charge from title to the Property, and the Trustee and Olympia shall promptly execute any documents and acknowledgements reasonably required to accomplish the same; and
 - (c) the Borrower shall be permitted to release any interest the Trustee, on behalf of BDMC, and Olympia may have in any insurance policy(ies) relating to the Property; provided, however, that the releases, discharges, and other matters described in this paragraph 15 shall not in any way affect the Borrower's obligations herein.
16. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.
17. The parties agree that the terms of this Settlement Agreement shall be disclosed to the Individual SMLs under the Loan and the Settlement Agreement shall be included in the motion materials for approval of the Settlement Agreement.
18. Each party confirms it has received independent legal advice relating to this Settlement Agreement, and that it has voluntarily entered into this Settlement Agreement with the benefit of such advice for the purpose of making a full and final settlement of amounts outstanding under the Loan through this Settlement Agreement.

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

20. Nothing herein shall be deemed to be an admission of liability on the part of any of the parties hereto. Nothing herein shall be deemed to be an admission by the parties to this Agreement of the truth or accuracy of any facts asserted in the Application by the opposite party.

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

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

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

**EMERALD CASTLE DEVELOPMENTS
INC.**

By: 
Name: Desi Auciello
Title: President

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

By: _____
Name:
Title:

- 6 -

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

20. Nothing herein shall be deemed to be an admission of liability on the part of any of the parties hereto. Nothing herein shall be deemed to be an admission by the parties to this Agreement of the truth or accuracy of any facts asserted in the Application by the opposite party.

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

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

**EMERALD CASTLE DEVELOPMENTS
INC.**

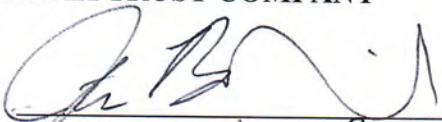
By: _____
Name:
Title:

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

By: Naveed Manzoor
Name: Naveed Z. Manzoor
Title: Managing Director

- 7 -

OLYMPIA TRUST COMPANY

By: 
Name: Jonathan Bahnuik
Title: General Counsel,

THE FOLLOWING SIGNATURE IS REQUIRED TO CONFIRM THE REPRESENTATIVE COUNSEL'S OBLIGATION TO ABANDON ITS APPEAL AS SET OUT IN PARAGRAPH 5 ABOVE:

CHAITONS LLP

By: _____
Name:

OLYMPIA TRUST COMPANY

By: _____
Name:
Title:

THE FOLLOWING SIGNATURE IS REQUIRED TO CONFIRM THE REPRESENTATIVE COUNSEL'S OBLIGATION TO ABANDON ITS APPEAL AS SET OUT IN PARAGRAPH 5 ABOVE:

CHAITONS LLP

By:  _____
Name: *G. Benchetrit*

SCHEDULE "A"**Legal Description of Property**

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

PIN 14214-0172 (LT)

SCHEDULE "B"**Charge**

Registration No. PR2635749 against PIN 14214-0172 (LT), as assigned by Transfers of Charge registered as Instrument Nos. PR2635935, PR2643562, PR2649282, PR2655922, PR2663874, PR2669392, PR2677597, PR2679961, PR2685148, PR2697841, PR2704712, PR2725426, PR2734917, PR2757132, PR2775180, PR2799739, PR2811152, and PR2923347, as amended by notices registered as Instrument Nos. PR2668022, PR2679352, and PR2725417, as postponed by Instrument No. PR3088494.

SCHEDULE “C”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 7th
JUSTICE HAINEY) DAY OF JUNE, 2021

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**

**ORDER
(Castlemore Resolution)**

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

2006, c. 29, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) approving and ratifying the Settlement Agreement dated as of May ●, 2021 (the “**Castlemore Settlement Agreement**”) among Emerald Castle Developments Inc. (the “**Borrower**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering the Borrower to pay the Settlement Payment to the Trustee pursuant to the Castlemore Settlement Agreement; and (iii) authorizing the Trustee to, upon the delivery to the Borrower of a copy of the Trustee’s Certificate (as defined below), make a distribution of Castlemore Realized Property (as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-Sixth Report of the Trustee dated May ●, 2021 (the “**Twenty-Sixth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the Borrower and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of ● sworn May ●, 2021, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Sixth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Twenty-Sixth Report or the Castlemore Settlement Agreement, as applicable.

APPROVAL OF THE CASTLEMORE SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Castlemore Settlement Agreement be and is hereby approved in its entirety; (ii) the Borrower is hereby directed to pay the Settlement Payment in the amount of \$9,875,358 to the Trustee, on behalf of BDMC, on or before the Payment Date, in accordance with the terms of the Castlemore Settlement Agreement; and (iii) the execution of the Castlemore Settlement Agreement by the Trustee and OTC is hereby ratified and approved, and

the Trustee and OTC are hereby authorized and directed to comply with all of their obligations under the Castlemore Settlement Agreement.

4. **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 to the Borrower.

5. **THIS COURT ORDERS** that, only as contemplated by the Castlemore Settlement Agreement, upon the registration in the Land Registry Office for Toronto (#66) of an Application to Register an Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") the Lender's Mortgage/Charge listed in Schedule "C" hereto.

REALIZED PROPERTY

6. **THIS COURT ORDERS AND DECLARES** that only upon the delivery of the Trustee's Certificate to the Borrower, the Settlement Payment (the "**Castlemore Realized Property**") is and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that rights and claims of the individual lenders under syndicated mortgage loans to BDMC (the "**Individual SMLs**") in respect of the Loan Agreement and related security shall attach to the Castlemore Realized Property and shall have the same nature and priority as they had prior to the consummation of the Castlemore Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

7. **THIS COURT ORDERS** that, as soon as is practicable, the Trustee shall make a distribution to the Castlemore Individual SMLs in an amount equal to 85% of the Castlemore Realized Property, *pro rata* to the Castlemore Individual SMLs entitled to such funds, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

AID AND RECOGNITION OF FOREIGN COURTS

8. **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.

9. **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.

Schedule “A” – Form of Trustee’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

TRUSTEE’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Haaney of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).
- B. Pursuant to an Order of the Court made on June 7, 2021 (the “**Castlemore Resolution Order**”), the Court approved and ratified the Settlement Agreement and Mutual Release dated as of May ●, 2021 (the “**Castlemore Settlement Agreement**”) among Emerald Castle Developments Inc. (the “**Borrower**”), the Trustee and Olympia Trust Company (“**OTC**”).
- C. Pursuant to the Castlemore Settlement Agreement, the releases contemplated therein are not effective until the Trustee issues the Trustee’s Certificate to the Borrower.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Castlemore Resolution Order.

THE TRUSTEE CERTIFIES the following:

1. The Castlemore Resolution Order has been granted by the Court and either no material objections (in the sole opinion of the Trustee) were raised by any person at the motion for the Castlemore Resolution Order or the appeal periods in respect of the Castlemore Resolution Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
2. The Borrower has paid, and the Trustee has received, the Settlement Payment pursuant to the Castlemore Settlement Agreement;
3. The Borrower has abandoned the Application; and
4. The Borrower has certified that all of the representations and warranties contained in paragraph 14 of the Castlemore Settlement Agreement continue to be true as of the Closing Date.

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

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

Per: _____

Name:

Title:

Schedule "B" – Real Property

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

PIN 14214-0172 (LT)

Schedule “C” – Lender’s Mortgage/Charge

Registration No. PR2635749 against PIN 14214-0172 (LT), as assigned by Transfers of Charge registered as Instrument Nos. PR2635935, PR2643562, PR2649282, PR2655922, PR2663874, PR2669392, PR2677597, PR2679961, PR2685148, PR2697841, PR2704712, PR2725426, PR2734917, PR2757132, PR2775180, PR2799739, PR2811152, and PR2923347, as amended by notices registered as Instrument Nos. PR2668022, PR2679352, and PR2725417, as postponed by Instrument No. PR3088494.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA
INC.**

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

CASTLEMORE RESOLUTION ORDER

OSLER, HOSKIN & HARCOURT LLP

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

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

Tel: (416) 362-2111

Fax: (416) 862-6666

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

Appendix 14:

Castlemore Project Notice (to be sent upon service of Report)

May 21, 2021

Dear Lender:

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

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 further order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel (“**Representative Counsel**”) to persons who made loans through BDMC. 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 regarding the syndicated mortgage loan made by you and other syndicated mortgage lenders (collectively, the “**Castlemore SMLs**”) to BDMC in respect of the Castlemore Project. On May 21, 2021, the Trustee served motion materials seeking an order, among other things:

- a) approving the Settlement (as defined below); and
- b) approving the Trustee’s activities and its fees and disbursements, including the fees and disbursements of its counsel for the period from October 1, 2020 to April 30, 2021.

This notice is further to various notices sent to you in respect of these proceedings including notices sent to you on November 29, 2019, March 6, 2020, and February 4, 2021.

As was advised in the notice dated November 29, 2019, the Trustee had presented to the Castlemore SMLs a settlement offer from the Borrower that was subsequently increased (“**Revised Offer**”). Initially, the Castlemore SMLs were generally supportive of the Trustee accepting the Revised Offer. The Trustee therefore executed the Revised Offer and brought a motion seeking approval of same.

After the Trustee brought the motion, the Trustee received additional feedback demonstrating materially lower support for the Revised Offer. As a result, the Trustee determined that it would not be moving forward with the motion seeking approval of the Revised Offer.

The Trustee also advised that the Borrower had not yet formally notified the Trustee that it had taken any steps pursuant to a clause in the Loan Agreement that the Borrower suggested precluded BDMC, in its capacity as lender to the Castlemore Project, from exercising its rights under its Security (as defined in the Loan Agreement) ("**End of Term Event Clause**"), provided that certain procedural steps were followed by the Borrower. Pursuant to the End of Term Event Clause, the Borrower had the option to pay out the Castlemore SMLs in the manner and priority prescribed by the Loan Agreement (the "**Waterfall**") subject to certain deductions.

As was advised in the notice dated March 6, 2020, on March 2, 2020, the Borrower initiated legal proceedings seeking an order that would, among other things, allow the Borrower to satisfy the debt owing under the Loan Agreement upon payment of approximately \$9.1 million to the Trustee, on behalf of BDMC ("**Borrower's Application**"). The Borrower also sought an order that upon payment of approximately \$9.1 million, it would be entitled to a full and final release from BDMC as well as the Castlemore SMLs. The Borrower's Application relied on the End of Term Event Clause and the Waterfall.

The Trustee and Representative Counsel took steps to oppose the Borrower's Application. The Borrower's Application was bifurcated on consent of the parties into two stages: (i) a dispute related to the interpretation of the Loan Agreement ("**Interpretation Dispute**"); and (ii) a dispute related to the calculation of the payment owing by the Borrower pursuant to the Loan Agreement and the Waterfall ("**Calculation Dispute**").

The first stage of the Borrower's Application, being the Interpretation Dispute, was heard via a virtual hearing on November 3, 2020 ("**November 3 Hearing**"), where the Trustee, its counsel and Representative Counsel were in attendance to represent the interests of BDMC and the Castlemore SMLs.

As was advised in the notice dated February 4, 2021, on February 2, 2021, the Court released its decision in respect of the November 3 Hearing regarding the Interpretation Dispute, which ruled in favour of the Borrower and against the interests of the Castlemore SMLs ("**Decision**"). In the Decision, the Court enforced the Loan Agreement, including the End of Term Event Clause, commenting that: *"It is not for the court to rewrite contracts to reflect changed circumstances or more equitable results to accord with a court's after-the-fact assessment of what is just and equitable."* A copy of the Decision is available on the Trustee's website in a section dedicated to the Castlemore Project at: <http://www.faanmortgageadmin.com>.

On March 2, 2021, the Trustee commenced an appeal in the Court of Appeal for Ontario in Court File No. C69154 ("**Appeal**") seeking an order setting aside all aspects of the Decision, including the paragraph that potentially imposed on the Castlemore SMLs a full and final release of the Borrower. Representative Counsel commenced a similar appeal.

After the Appeal was filed, the Borrower started the process associated with the second stage

of the Borrower's Application, namely the Calculation Dispute. The Borrower filed additional evidence, including filing a revised Waterfall calculation asking the Court to find that the Borrower was required to pay only \$8,518,271 pursuant to the End of Term Event Clause and Waterfall clauses.

Since filing the Appeal, the Trustee, its counsel, Representative Counsel, the Borrower, and the Borrower's Counsel have engaged in settlement negotiations regarding the Calculation Dispute, other unresolved issues in the Borrower's Application and the Appeal. The parties have now reached a settlement ("**Settlement**") which contemplates, the following:

- The Borrower will pay \$9,875,358 to the Trustee, on behalf of BDMC ("**Settlement Payment**").
- Within three days of payment, the Borrower will discontinue the Borrower's Application.
- Within three days of payment, the Trustee and Representative Counsel will discontinue their Appeals.
- If the terms of the Settlement are met, the Settlement extinguishes all rights and obligations of BDMC under the Loan Agreement, related documents and the associated mortgage on the Castlemore Property.
- Although the Settlement extinguishes all potential claims by BDMC against the Borrower related to the Loan Agreement, it does not go further to impose on the Castlemore SMLs, who were not party to the Loan Agreement, a full and final release of their potential claims.

The Trustee has determined that the Settlement is in the best interests of the Castlemore SMLs for the following reasons, among others:

- The Decision ruled in favour of the Borrower and against the interests of the Castlemore SMLs by enforcing the Loan Agreement.
- The Settlement avoids prolonged, uncertain and costly litigation in the context of both the Calculation Dispute and the Appeal.
- The Settlement provides certainty regarding the amount and time frame for the repayment of the Loan.
- The Settlement Payment of \$9,875,358 reflects a recovery of approximately 46.5% of the \$21.246 million outstanding principal balance of the Loan.
- If the Calculation Dispute proceeded to a hearing, as noted above, the Borrower was seeking an order that would require it to pay only \$8,518,271, approximately \$1.36

million less than the Settlement Payment, and recovery of its additional legal costs in relation to the Calculation Dispute.

The Settlement is conditional upon Court approval. The Trustee has scheduled a hearing for June 7, 2021, at which the Trustee, with the support of Representative Counsel, will seek the Court's approval of the Settlement.

If the Settlement is approved, the Trustee expects to receive the Settlement Payment on or before July 30, 2021. As soon as is practicable thereafter, the Trustee will make a distribution to the Castlemore SMLs. The amount distributed to the Castlemore SMLs from the Settlement Amount will be net of an administrative holdback of 15% ("**Holdback**") to be retained by the Trustee in accordance with the Court orders issued in these proceedings. The Castlemore SMLs may receive a portion of the Holdback in the future; however, the timing and amount, if any, is unknown at this time.

Next Steps

At this time, you should review this notice carefully and consider obtaining independent legal advice regarding these matters. You should also carefully review the Trustee's motion materials, including the Trustee's Twenty-Sixth Report, which was served May 21, 2021 in connection with the June 7, 2021 hearing, at which the Trustee will seek the Court's approval for the Settlement, along with certain other approvals detailed in a separate notice attached as Appendix "A". The Trustee's Twenty-Sixth Report and the motion materials are available on the Trustee's website.

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

Email: 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 **Castlemore Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 15:
Wellington Project Notice dated January 28, 2021



January 28, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Wellington House Inc. (“Borrower”) pursuant to the loan agreement dated April 15, 2016 (“Loan Agreement”) regarding the property located at 422-424 Wellington Street West, Toronto, ON (“Wellington Project” or the “Property”)

Request for approval regarding the Syndicated Mortgage Loan to the Borrower

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (the “**Trustee**”) over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an order (“**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended. By further 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 Wellington Project and further to the following notices: (i) the December 20, 2019 vote solicitation and feedback request that you may have received from Brad J. Lamb, signed on behalf of the Borrower (“**Borrower Notice**”); (ii) the December 24, 2019 notice sent to you by the Trustee in response to the Borrower Notice (“**Trustee’s Response**”); and (iii) the March 26, 2020 notice sent to you by the Trustee (“**March Notice**”).

Current Status of the BDMC Loan

Pursuant to the terms of the Loan Agreement, the total amount owing to the Wellington Project syndicated mortgage lenders that advanced funds through BDMC (“**Wellington SMLs**”) in respect of the BDMC Loan is approximately \$8.2 million, which includes a principal balance of approximately \$6.3 million and accrued interest of approximately \$1.9 million (as at December 31, 2020)¹. The BDMC Loan is secured by a second ranking mortgage that is registered on title to the Property. The BDMC Loan matured on May 1, 2020 and, accordingly, is now in default.

In addition to the BDMC Loan, there is a first priority mortgage registered on title to the

¹ Per diem interest since December 31, 2020 is \$1,384.50.



Property in favour of Cameron Stephens Financial (“**Cameron Stephens**”), which the Trustee understands secures an outstanding amount of approximately \$6.7 million. The Cameron Stephens mortgage is the only known charge registered on title to the Property in priority to the BDMC Loan.

The Borrower Notice and Trustee’s Response

The Borrower Notice, which was sent without consulting the Trustee or Representative Counsel, solicited feedback from the Wellington SMLs in connection with a \$2.4 million settlement offer previously submitted by the Borrower to the Trustee (“**Preliminary Offer**”). The Preliminary Offer represented a recovery of approximately 38% of the outstanding principal balance on the BDMC Loan.

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

Status of the Wellington Project

As the Trustee previously advised in the March Notice, the Borrower revised the design of the Wellington Project, including reducing the number of levels from 23 to 17 together with certain floor plate alterations in an effort to achieve a design that the City of Toronto (“**City**”) would approve. The City did not make a decision on the revised zoning by-law amendment (“**Amendment**”) within the required time frame, and therefore, the Borrower applied to the Local Planning Appeal Tribunal (“**LPAT**”) with respect to its proposal. The LPAT held a hearing on the Amendment from October 29, 2018 to November 8, 2018.

On February 4, 2020, a decision was released by the LPAT, dismissing the Borrower’s application and denying the requested Amendment (“**Decision**”). Based on discussions with the Borrower and a review of the Decision, the Trustee understands that the failure to obtain the Amendment has further delayed the Wellington Project, as the Borrower will need to resubmit a further revised application to the LPAT at a reduced density.

Given the lack of approvals, the Borrower has advised that the estimated timeline to completion of the Wellington Project is likely a further 6 to 7 years.

The Settlement Agreement

Notwithstanding the Decision and the extended timeline to project completion, the Trustee



continued to engage with the Borrower regarding a potential settlement with respect to the BDMC Loan.

After extensive negotiations, the Borrower presented the Trustee with a revised offer to settle the BDMC Loan, which was documented in a settlement agreement (“**Settlement Agreement**”). The key terms of the Settlement Agreement are as follows:

- (i) Two settlement payments in the aggregate amount of approximately \$6.3 million comprised of the following:
 - a. a lump sum payment by the Borrower of \$4 million (less the deposit paid²), upon receipt of Court approval of the Settlement Agreement (“**First Settlement Payment**”); and
 - b. a second lump sum payment by the Borrower on or before September 1, 2021 in the amount of approximately \$2.317 million (“**Second Settlement Payment**” and together with the First Settlement Payment, the “**Settlement Payments**”);

The Settlement Payments represent a recovery of 100% of the outstanding principal balance of the BDMC Loan calculated as follows:

Principal outstanding (A)	\$6,316,800
First Settlement Payment (B)	\$4,000,000
Second Settlement Payment (C)	\$2,316,800
Total Settlement Payments (D = B+C)	<u>\$6,316,800</u>
Total recovery on principal (D/A)	<u>100%</u>

- (ii) The Settlement Agreement 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;
- (iii) Should the Borrower fail to pay any portion of the First Settlement Payment within two weeks of Court approval of the Settlement Agreement, the Borrower shall pay a late payment fee of 5% of the amount of the First Settlement Payment less the Deposit;

² The Trustee’s counsel received a deposit of \$300,000 on January 22, 2021 (“**Deposit**”)



- (iv) Should the Borrower fail to pay any portion of the Second Settlement Payment within two weeks of September 1, 2021, the Borrower shall pay a late payment fee of 5% of the amount of the Second Settlement Payment ("**Second Late Payment Fee**");
- (v) The Trustee shall receive the following security ("**Security**") in connection with the Second Settlement Payment:
 - a) A first ranking charge in the principal amount of \$2.5 million registered on title to certain real property located in the Township of Adjala-Tosorontio (Alliston), Ontario ("**Farm Property**"), which Farm Property is currently owned by Bel-Three Property Management Limited ("**Bel-Three**"), an entity related to the Borrower and a limited recourse guarantee of Bel-Three, which recourse shall be limited to the Farm Property; and
 - b) A limited personal guarantee from Brad J. Lamb (together with Bel-Three, "**Guarantors**") in the maximum principal amount of the Second Settlement Payment and the Second Late Payment Fee plus all recoverable costs and expenses.
- (vi) All further rights and obligations of BDMC and the Wellington SMLs under the Loan Agreement, related documents and the associated mortgage on the Property shall be extinguished.

A copy of the Settlement Agreement executed by the Borrower is attached to this feedback request notice as Schedule "A".

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

Assessment of the Settlement Agreement and Recommendation

Acceptance of the Settlement Agreement by the Trustee would result in BDMC, on behalf of the Wellington SMLs, foregoing potential interest payments of approximately \$1.9 million as at December 31, 2020, which would otherwise continue to accrue³ should the BDMC Loan remain outstanding.

³ Interest continues to accrue at a per diem rate of \$1,384.50.



For the reasons set out below, the Trustee recommends acceptance of the Settlement Agreement 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 Settlement Agreement.

The following factors were considered by the Trustee in completing its assessment of the Settlement Agreement:

- The Borrower has advised that there is an anticipated timeline of approximately 6 to 7 years to complete the Wellington Project;
- The Trustee's planning consultant has advised that the Borrower's timeline to project completion is reasonable;
- The potential implications of the COVID-19 pandemic, which has resulted in a softening in demand for downtown Toronto condominium units in the near term and created uncertainty regarding the long-term impact of the pandemic on the downtown Toronto condominium market;
- The Settlement Payments represent a recovery of 100% of the principal balance owing in respect of the BDMC Loan;
- The Borrower has provided a good faith Deposit, which represents 7.5% of the First Settlement Payment. The Deposit is being held by the Trustee's counsel in trust pending the outcome of this voting request and Court approval of the Settlement Agreement. The Deposit shall be non-refundable to the Borrower in the event of default by the Borrower under the Settlement Agreement;
- The Borrower has executed a financing commitment letter ("**Commitment Letter**") with Cameron Stephens that contemplates a contribution of \$3.15 million from such financing to the First Settlement Payment, with the balance of the First Settlement Payment to be funded separately by the Borrower. The Borrower has provided the Trustee with a copy of the Commitment Letter. The Trustee notes that the Commitment Letter contains certain conditions that the Borrower has advised that it will be able to satisfy;
- The Borrower and the Guarantors have agreed to deliver the Security in respect of the Second Settlement Payment; and
- The certainty that will be achieved regarding the amount and time frame for the repayment of the BDMC Loan.



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

- 1) Accept the Settlement Agreement, which includes a release by BDMC, the Trustee and the Wellington SMLs with respect to all rights and obligations under the Loan Agreement and related documents; or
- 2) Not accept the Settlement Agreement.

Should the Settlement Agreement not be accepted, the outcome of the Wellington Project and the likelihood of realizing a recovery greater than or equal to the Settlement Payments is not known at this time. The Trustee would have to reengage with the Borrower to determine next steps, which may include having the BDMC Loan remain outstanding until such time that the Wellington Project is completed. There can be no guarantee that the principal amount of the BDMC Loan would be repaid in full or in part at that time.

Next Steps

At this time, you should review this notice and the Settlement Agreement 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 Settlement Agreement in full satisfaction of your investment under the BDMC Loan.

If you have any objections to the acceptance of the Settlement Agreement described herein, you should return the instruction letter to us by mail, email, or fax, by February 8, 2021. If you agree with the Trustee's recommendation to accept the Settlement Agreement, please also return the instruction letter to us by mail, email, or fax, by February 8, 2021 to indicate your agreement.

After February 8, 2021, the Trustee, in consultation with Representative Counsel, will decide whether to accept the Settlement Agreement by an exercise of the discretion granted to the Trustee under the Appointment Order. Any acceptance by the Trustee of the Settlement Agreement would not be binding on the Trustee or the Wellington SMLs until the Settlement Agreement is approved by the Court. In the event that the Trustee accepts the Settlement Agreement, information regarding the Court hearing, including where you can find a copy of the Court materials, will be provided to 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 **Wellington Project**).

Email: 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 **Wellington Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 16:
Wellington Project Notice dated February 17, 2021



February 17, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Wellington House Inc. (“Borrower”) pursuant to the loan agreement dated April 15, 2016 (“Loan Agreement”) regarding the property located at 422-424 Wellington Street West, Toronto, ON

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (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**”) 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 further 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 and with respect to motion materials served by the Trustee on February 16, 2021 in connection with a motion for the approval of the Wellington Offer (defined below), which is scheduled to be heard via a virtual hearing on **February 23, 2021 at 10:00am** (“**February 23 Motion**”). To the extent that you would like further information in respect of the February 23 Motion, please contact the Trustee directly.

The Trustee’s motion materials, including its twenty-fifth report to Court (“**Twenty-Fifth Report**”), are available on the Trustee’s website at <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 to provide you with the information.

Settlement Approval Motion regarding the BDMC Loan

As you are aware, the Borrower presented the Trustee with a settlement offer with respect to amounts owing under the Loan Agreement that included an upfront first settlement payment of \$4,000,000, and a second settlement payment of \$2,316,800, to be paid on or before September 1, 2021, in full satisfaction of the obligations owing under the BDMC Loan, including the outstanding principal balance of \$6,316,800 that was advanced (“**Wellington Offer**”). On January 28, 2021 the Trustee sent a notice to the syndicated mortgage lenders that advanced funds to the Borrower through BDMC (“**Wellington SMLs**”), which presented



the Wellington Offer and requested feedback from the Wellington SMLs in advance of accepting the Wellington Offer (“**Wellington Feedback Request**”).

As of February 16, 2021, in response to the Wellington Feedback Request, 89 Wellington SMLs representing approximately 63.63% of the value and approximately 64.03% in number of the total Wellington SMLs had submitted a vote. 88 of those Wellington SMLs, representing 98.9% in number and 98.5% in value of such loans voting, voted in favour of the Trustee accepting the Wellington Offer.

Following receipt and consideration of such feedback from the Wellington SMLs and correspondence with Representative Counsel, the Trustee accepted the Wellington 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 Wellington Offer.

The Twenty-Fifth Report provides information regarding the relevant background to the Wellington Offer, the details of the settlement agreement executed in connection with the Wellington Offer, and information that supports the Trustee’s recommendation that the Wellington Offer and settlement agreement be approved by the Court.

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

Email: 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 **Wellington Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 17:
Port Place 2 Project Notice dated April 29, 2021



April 29, 2021

Dear Lender:

Re: Syndicated Mortgage Loan made to 2283020 Ontario Inc., subsequently acquired by Fortress Port Place (2014) Inc. (“Borrower”) pursuant to the loan agreement dated December 1, 2013 in respect of properties located at 14, 18A and 28 Lakeport Road & 12 Lock Street, St. Catharines, ON (“Port Place 2 Project” or “Properties”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”) was appointed as trustee (“**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 as Trustee and of Chaitons LLP as Representative Counsel.

We are writing to you in our capacity as Trustee regarding the Port Place 2 Project and further to the Trustee’s notice sent to you on May 31, 2019 (“**Notice**”) and to the Trustee’s twenty-third report to Court dated October 8, 2020 (“**Twenty-Third Report**”).

Overview of the Project

As you are aware, the Port Place 2 Project was intended to be a real estate development comprised of four neighbouring 2-storey commercial properties in St. Catharines, Ontario. The Port Place 2 Project had three mortgages registered on title as follows: (i) a first priority charge in respect of a loan from Magnetic Capital Group Inc. (“**Magnetic**”), Olympia Trust Company and Canadian Western Trust Company (“**CWT**”) (collectively referred to as the “**Priority Secured Creditors**”) securing the principal amount of \$700,000 (“**Initial Mortgage**”); (ii) a charge (“**Additional Mortgage**”) in respect of a loan from Magnetic and CWT securing the principal amount of \$1.47 million (“**Additional Financing**”); and (iii) a charge in respect of over \$2.9 million of syndicated mortgage loan debt administered by BDMC (“**BDMC Debt**”). As further detailed below, the priority of the charge securing the BDMC Debt relative to the charge securing the Additional Mortgage was disputed by Magnetic, CWT and the title insurer of the Properties. Such dispute ultimately resulted in the Trustee agreeing, following Court approval thereof, to subordinate the charge securing the BDMC Debt to the charge securing the Additional Mortgage.



Notice of Sale

As was advised in the Notice and in the Twenty-Third Report, on April 23, 2019, the Priority Secured Creditors issued a notice under section 244 of the *Bankruptcy and Insolvency Act* and a corresponding notice of sale under section 21 of the Farm Debt Mediation Act (together the “**Notice of Sale**”). The Priority Secured Creditors took the position that the Borrower was in default under the Initial Mortgage and unless the full amount of the outstanding debt totaling \$736,196 (including interest and fees as of April 23, 2019) was paid on or before May 30, 2019, the Priority Secured Creditors would be able to list the Properties for sale. A copy of the Notice of Sale was previously provided to you.

Since the May 30, 2019, deadline was not met, the Priority Secured Creditors were able to commence a sale and marketing process for the Properties (“**Sale Process**”).

Additional Mortgage

As detailed in the Twenty-Third Report, the Trustee was advised by Magnetic and counsel for its title insurer on the Properties, that Magnetic and CWT advanced the Additional Financing prior to the Trustee’s appointment, but following FAAN Mortgage assuming its role as manager of the administration business of BDMC. FAAN Mortgage was not aware of, nor involved with, the Additional Financing transaction. The Additional Mortgage was initially registered on title to the Properties in third position, behind the charge that secured the BDMC Debt (which at the time of the Trustee’s appointment was registered on title to the Properties in second position). However, Magnetic, CWT and the title insurer disputed the ranking of BDMC’s second priority mortgage on the Properties on the basis; (i) that the charge securing the Additional Mortgage was always intended to rank in priority to the charge securing the BDMC Debt; and (ii) as a result of the application of the doctrine of equitable subrogation given the use of the proceeds of the Additional Financing.

In response to this position, the Trustee, with the assistance of its legal counsel, conducted a review of the legal arguments with respect to the priority of the Additional Mortgage. Following this review and extensive negotiations with Magnetic and counsel for the title insurer, the Trustee, with the support of Representative Counsel, determined that it was not prudent to dedicate further funding from the BDMC estate to dispute the priority claim of Magnetic and CWT given the unlikelihood of success at, and anticipated costs of, a contested dispute before the Court. Accordingly, the parties reached an agreement in principle on a form of subordination and priority agreement for the Properties in the Fall of 2019 and the Trustee received Court approval of same on October 15, 2020. The Trustee proceeded to execute such agreements on November 19, 2020, thereby subordinating BDMC’s second priority mortgage to the Additional Mortgage.



Sale of the Properties

Each of the Properties has now been sold pursuant to the Sale Process and the charge securing the BDMC Debt has been vested off title by operation of law. The following table is a summary of the significant terms of each sale followed by details regarding the Sale Process.

	12 Lock Street	28 Lakeport Road	14 and 18A Lakeport Road	Total
Closing Date	Jun 11, 2020	December 21, 2021	March 31, 2021	-
Purchase Price	\$665,000	\$500,000	\$1,000,000	\$2,165,000
Purchase Price Allocation				
Initial Mortgage	\$414,000	\$383,000	-	\$797,000
Additional Mortgage	-	-	\$852,000	\$852,000
Sub Total	\$414,000	\$383,000	\$852,000	1,649,000
Property tax and water	\$47,000	\$53,000	\$99,000	\$199,000
Closing and Other Costs	\$204,000	\$64,000	\$49,000	\$317,000
Total	\$665,000	\$500,000	\$1,000,000	\$2,165,000

12 Lock Street (“12 Lock”)

As detailed in the Twenty-Third Report, in September 2019, following the Notice of Sale, the Priority Secured Creditors received an Agreement of Purchase and Sale (“**12 Lock APS**”) from The Lock Inc.¹ for 12 Lock. The \$665,000 purchase price is in excess of the value attributed to 12 Lock in the independent appraisal commissioned by the Trustee and, as advised by Magnetic, in the appraisal commissioned by the Priority Secured Creditors. The Trustee understands that the 12 Lock APS was the only formal offer received for that property and was accepted by the Priority Secured Creditors. Magnetic has advised the Trustee that The Lock Inc. is not related to the Borrower or to any of the Priority Secured Creditors. Upon the closing of the 12 Lock APS, the Priority Secured Creditors received \$414,000 in respect of the Initial Mortgage.

Among other things, the Closing and Other Costs of \$204,000 (referred to in the chart above) include the reimbursement of approximately \$55,000 to the Priority Secured Creditors in

¹ The APS was originally from 1970065 Ontario Inc., in Trust for a company to be formed. The Trustee understands that The Lock Inc. was the company that was subsequently formed to purchase 12 Lock.



respect of various carrying costs for the Properties and a default administration fee of \$108,500 in accordance with the mortgage commitment agreement between the Priority Secured Creditors and the Borrower.

Sale of 14, 18A and 28 Lakeport Road (collectively the “Remaining Properties”)

On or about March 3, 2020, the Priority Secured Creditors retained Re/Max Niagara Realty Ltd. as listing agent (“**Listing Agent**”) for the Remaining Properties. The Listing Agent proceeded to list the Remaining Properties for sale on the multiple listing service (MLS) website for the following sale prices: (i) \$599,999 for 14 Lakeport Road; (ii) \$799,999 for 18A Lakeport Road; and (iii) \$699,999 for 28 Lakeport Road. There was no deadline for offers.

In August 2020, the Priority Secured Creditors received an Agreement of Purchase and Sale (“**Remaining Properties’ APS**”) from Craig Hatch, and Raiana and Cameron Schwenker (“**Purchasers**”) for the Remaining Properties for a collective purchase price of \$1.5 million (“**Purchase Price**”) with a value of \$500,000 attributed to each property. The Trustee understands that the Remaining Properties’ APS was the highest and best offer received. Despite the Purchase Price being less than the combined listing prices, it is in excess of the independent appraisal commissioned by the Trustee and, as advised by Magnetic, in excess of the appraisal commissioned by the Priority Secured Creditors. The Trustee has also been advised by Magnetic that the Purchasers are not related to the Borrower or to any of the Priority Secured Creditors. Upon closing of the Remaining Properties’ APS, approximately \$383,000 and \$852,000 were distributed in respect of the Initial Mortgage and Additional Mortgage, respectively, plus amounts to satisfy fees and other closing costs. Such distributions paid off the Initial Mortgage in full (including interest and principal then outstanding) and left a shortfall of approximately \$618,000 in respect of the outstanding principal on the Additional Mortgage.

Unfortunately, given the shortfall suffered on the Additional Mortgage, there were no proceeds remaining to repay any amounts owing in respect of the BDMC Debt.

As applicable, the Trustee recommends that you seek advice from your tax professional to determine how to account for the loss on your investment in the Port Place 2 Project.



Should you have any questions of the Trustee, our contact information is shown below (if you contact us, please reference **Port Place 2 Project**).

Email: 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 **Port Place 2 Project**).

Email: BDMC@chaitons.com

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 18:
Treehouse Project Notice dated January 18, 2021



January 18, 2021

Dear Lender:

Re: Syndicated Mortgage Loan made to Halo Townhomes Inc. (“Borrower”) pursuant to the loan agreement dated May 12, 2014 on the property located at 2535 Gerrard St. East, Toronto, Ontario (“Treehouse Project” or “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 Treehouse Project and further to our notice dated June 7, 2019 (“**Notice**”).

Enforcement Proceedings

As was advised in the Notice, on May 22, 2019, Toronto Capital Corporation (“**TCC**”), the first priority mortgagee on the Property, issued a Notice of Sale Under Mortgage (“**Notice of Sale**”). TCC took the position that the Borrower was in default under its mortgage and unless the full amount of the outstanding debt was paid on or before July 8, 2019, TCC would list the Property for sale. A copy of the Notice of Sale was previously provided to you.

As the July 8, 2019 deadline was not met, TCC retained CBRE Limited (“**CBRE**”) to list the Property for sale. Marketing of the Property commenced on August 15, 2019 with an offer deadline of September 25, 2019. CBRE received multiple offers on the offer deadline, however, none of the offers were sufficient to repay TCC in full. Accordingly, TCC continued to market the Property for sale, entering into discussions with various parties as well as other conditional offers of purchase and sale in an effort to maximize the realization on the Property. The Trustee sought and obtained updates from TCC on its efforts throughout the marketing process.

On November 15, 2020, TCC entered into an agreement of purchase and sale with 2791448 Ontario Inc.¹ (“**Purchaser**”) for the Property (“**Sale Transaction**”), which TCC advised was

¹ Counsel to TCC has advised that the Purchaser is not related to the Borrower or to TCC.



the highest and best offer available to it since the commencement of its marketing efforts. The Sale Transaction closed on November 20, 2020.

The key economic terms of the Sale Transaction are as follows:

- a) Purchase price of \$4.3 million; and
- b) Proceeds were distributed as follows:
 - a. Approximately \$128,000 for property tax arrears; and
 - b. The remaining proceeds, net of legal fees, to TCC, whose outstanding loan balance was approximately \$6.7 million (inclusive of principal, interest and other fees) at the time of closing.

As you are aware, BDMC is the second ranking mortgagee registered on title to the Property. As TCC, the priority mortgagee, has suffered a shortfall on its loan, unfortunately, there are no recoveries available to repay any amounts owing to the syndicated mortgage lenders who, through BDMC, advanced funds to the Treehouse Project.

As applicable, the Trustee recommends that you seek advice from your tax professional to determine how to account for the loss on your investment in the Treehouse Project.

Should you have any questions or if you would like to provide your feedback to the Trustee, our contact information is shown below (if you contact us, please reference **Treehouse Project**).

Email: 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 **Treehouse Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 19:
Sky City Project Notice dated April 29, 2021

April 29, 2021

Dear Lender:

Re: Syndicated Mortgage Loans made to or assumed by 6566074 Manitoba Ltd. (“Borrower”) in respect of property located at 245 Graham Avenue, Winnipeg, MB (“Sky City Project” or “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 Sky City Project and further to our notice dated March 23, 2021 (“**Notice**”).

As was advised in the Notice, there are multiple syndicated mortgage loans administered by BDMC registered on title to the Property in fourth through eighth positions, whose principal balances in aggregate total approximately \$32 million (“**BDMC Debt**”). There are three mortgages registered on title to the Sky City Project in priority to the BDMC Debt that were either originally registered in the name of 11615467 Canada Ltd. (“**1161 Canada**”) or subsequently transferred to 1161 Canada. In addition, Fortress Real Development Inc. (“**Fortress**”) has claimed that it is entitled to a payment in priority to the BDMC Debt in respect of approximately \$2 million that it claims it advanced to the Borrower, an entity related to Fortress, for certain carrying costs of the Property.

Auction Update

As was further advised in the Notice, on October 13, 2020, 1161 Canada in its capacity as third ranking mortgagee, issued a Notice of Exercising Power of Sale demanding payment in full of the outstanding debt in respect of its third priority mortgage of approximately \$1.8 million (including accrued interest through to September 18, 2020).

As the Borrower continued to be in default for failure to repay its outstanding debt on January 25, 2021, the Manitoba district registrar granted an order authorizing and empowering 1161 Canada to sell the Property by public auction, private contract or both. A public auction (“**Auction**”) for the sale of the Property, which was attended by the Trustee,

was held on March 25, 2021 by way of teleconference. No bids for the Property were received at the Auction.

Next Steps

Following the Auction, the Trustee followed up with legal counsel to 1161 Canada and was advised that 1161 Canada has retained a commercial real estate broker and is planning to list the Property for sale in June, 2021.

Legal counsel to 1161 Canada further advised that the total amount owing on account of the first, second and third mortgages as of the Auction date was approximately \$11.1 million (“**Priority Debt**”). In order for any proceeds to become available to repay any portion of the BDMC Debt, the Property will have to be sold at a price higher than the amount required to satisfy the Priority Debt, plus outstanding property taxes and other fees. Accordingly, you may not recover the sums that you advanced to the Borrower.

We will keep you informed of the developments related to these matters as more information becomes available.

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

Email: 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 **Sky City Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 20:
Prescott Project Notice dated May 19, 2021



May 19, 2021

Dear Lender:

Re: Syndicated Mortgage Loan made to Averton Homes (Prescott) Inc. (“Borrower”) pursuant to the loan agreement dated June 17, 2014 in respect of properties located at Prescott Close & Prescott Boulevard, Spruce Grove, AB (“Prescott Project”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (“**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 further 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 Prescott Project, and further to our notice dated November 30, 2020 (“**Notice**”).

The Prescott Project is a real estate development project comprised of 32 homes, with over \$2.4 million of second ranking syndicated mortgage loan debt administered by BDMC.

Final Project Update

As was detailed in the Notice, despite the Borrower’s expectations for the development of the Prescott Project, the Borrower advised that it experienced considerable challenges since late 2014. Such challenges were primarily a result of a significant drop in oil prices and a prolonged and continuing weakening of the Alberta real estate market that was exasperated by the COVID-19 pandemic. As these economic conditions (with the exception of COVID-19) persisted throughout the life of the development, they resulted in (i) continued downward pressure on the unit selling prices, and (ii) a significantly extended timeline for the construction and sale of such units.

The final two units in the Prescott Project have now been sold and, as previously advised, the proceeds were insufficient to repay the priority mortgagee in full. Unfortunately, since the



priority mortgagee suffered a shortfall on its loan, there are no recoveries available to repay any amounts owing to the syndicated mortgage lenders who advanced funds to BDMC in respect of the Prescott Project.

As applicable, the Trustee recommends that you seek advice from your tax professional to determine how to account for the loss on your investment in the Prescott Project.

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

Email: 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 **Prescott Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 21:
HYR Project Notice dated May 18, 2021



May 18, 2021

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to South West Queensville Holdings Inc. (“Borrower”) pursuant to the loan agreement dated March 16, 2016 regarding the property located at 19935 2nd Concession, 19851 2nd Concession and 19879 2nd Concession, Queensville, ON (collectively the “HYR Project” or the “Properties” and each a “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (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 further 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 HYR Project and further to our notice dated March 30, 2021 (“Notice”). The purpose of this notice is to provide you with an update on the sale process that was commenced for the Properties.

The BDMC Loan

The HYR Project has over \$2.5 million of BDMC syndicated mortgage loan debt that ranks in third position on title to the Properties. The BDMC Loan is subordinate to: (i) three separate first ranking vendor take back mortgages, each of which is registered on title to a different Property, in the aggregate amount of approximately \$5 million (collectively, the “VTB Mortgages”); and (ii) a second ranking mortgage registered in favour of Jaekel Inc. (“Jaekel”) on title to all three Properties in the amount of approximately \$6.8 million.

The Trustee has been advised by the Borrower that one of the VTB Mortgages matures in November 2021, and that the VTB mortgagee is unwilling to extend its mortgage, while the other two VTB Mortgages mature in March 2023. The Borrower has further advised that: (i) Jaekel has been making interest payments in respect of the three VTB Mortgages for the past two years; and (ii) it does not know if or for how long Jaekel intends to continue making such interest payments.



The Sale Process

As was advised in the Notice, in early 2021, it came to the Trustee's attention that the Borrower had retained CBRE Land Services group ("CBRE") to list and market the Properties for sale. The Properties were listed for sale on January 21, 2021 without a listing price or an offer deadline. The Trustee understands that after marketing the Properties for a period of time and failing to receive any offers, CBRE ultimately set an offer date of April 15, 2021.

The Trustee followed up with the Borrower and CBRE after the April 15, 2021 deadline and was advised that no offers were received for the Properties. The Trustee is continuing to engage with the Borrower regarding its intentions for the Properties given the unsuccessful sale process and will keep you informed of the developments related to the HYR Project.

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

Email: 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 **HYR Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 22:
Variance Analysis for the Period Ending April 30, 2021

Building Development & Mortgages Canada Inc.

Variance Analysis for the Period October 1, 2020 to April 30, 2021 ("Projection Period")

(Unaudited; \$C)

	Note	Projected	Actual	Variance
Administrative holdback	1	-	2,985,091	2,985,091
Collections and other receipts	2	45,661	67,007	21,347
Total receipts		45,661	3,052,099	3,006,438
Staff		141,380	108,942	32,438
IT fees		17,061	16,443	618
Office expenses		5,250	4,932	318
Insurance		54,600	67,762	(13,162)
Other		15,900	10,998	4,902
Interest & bank charges		3,500	2,648	852
Operating costs		237,691	211,726	25,965
Appraisals and related consultants		31,500	-	31,500
Professional fees	3	3,437,314	3,732,297	(294,983)
Total disbursements		3,706,505	3,944,023	(237,518)
Net cash inflow (outflow)		(3,660,844)	(891,924)	2,768,920

Notes

1. The positive variance relates to the Administrative Holdback retained during the period from: (i) Wellington first settlement payment and (ii) the residual proceeds from Whitby, Bowmanville, Dunsire Guelph and Nobleton South sale transactions. These amounts were not anticipated to be collected in the Projection Period.
2. Represents interest earned during the period on the various accounts maintained by the Trustee and a reimbursement of funds to the estate in respect of bank drafts issued by BDMC in 2017 (prior to the appointment of the Trustee), in respect of certain expense that were never cashed.
3. The negative variance is due to fees that were incurred in connection with a number of monetization transactions and significant litigation matters that occurred during the Projection Period.

Appendix 23:
Cash Flow Projection for the Period Ending November 30, 2021

Building Development & Mortgages Canada Inc.

Cash Flow Projection for the Period Ending November 30, 2021

(Unaudited; \$C)

	Note	May	Jun	Jul	Aug	Sep	Oct	Nov	Total
Administrative holdback	1	-	356,825	1,481,308	-	347,520	-	-	2,185,653
Interest	2	5,402	1,773	1,459	1,797	1,640	1,600	1,443	15,113
Total receipts		5,402	358,598	1,482,767	1,797	349,160	1,600	1,443	2,200,766
Staff	3	20,197	20,197	20,197	20,197	20,197	20,197	20,197	141,380
IT fees		1,113	766	766	766	766	766	766	5,709
Office expenses		750	750	750	750	750	750	750	5,250
Insurance		8,557	8,557	8,557	8,557	8,557	8,557	8,557	59,899
Other		3,260	2,300	1,000	2,300	1,000	2,300	1,000	13,160
Interest & bank charges		500	500	500	500	500	500	500	3,500
Operating costs		34,377	33,070	31,770	33,070	31,770	33,070	31,770	228,898
Appraisals and related consultants	4	2,500	2,500	2,500	2,500	2,500	2,500	2,500	17,500
Professional fees	5	436,000	1,264,136	436,000	436,000	436,000	436,000	436,000	3,880,136
Total disbursements		472,877	1,299,707	470,270	471,570	470,270	471,570	470,270	4,126,534
Opening cash	6	5,786,007	5,318,531	4,377,423	5,389,920	4,920,146	4,799,036	4,329,066	5,786,007
Net cash inflow (outflow)		(467,476)	(941,109)	1,012,497	(469,773)	(121,110)	(469,970)	(468,827)	(1,925,768)
Closing cash		5,318,531	4,377,423	5,389,920	4,920,146	4,799,036	4,329,066	3,860,239	3,860,239

Notes

- The Administrative Holdback is composed of: (i) the residual proceeds from the North and Jasper House Project sale transactions forecast to be received after Court approval in June, 2021; (ii) the Castlemore Settlement Payment which is forecast to be received in July, 2021; and (iii) the Second Settlement Payment in respect of the Wellington Project which is forecast to be received in September, 2021. Similar to previous cash flow projections filed with the Court, the receipts during the Cash Flow Period are projected to be significantly lower than the projected expenses. Notwithstanding this, the Trustee notes that progress has been made with respect to realizations on 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 expenses. 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.
- Represents estimated interest to be earned on Estate Property and Realized Property maintained by the Trustee during the Cash Flow Period. When significant cash balances accrue in the various accounts, the Trustee arranges for short term GIC's in order to generate additional interest, which subsequently forms part of the Estate Property used to offset costs associated with the administration of the estate.
- Represents gross BDMC contractor costs.
- Fees are estimates for consulting services provided by the appraisal firms and a planning consultant.
- Represents the payment of fees (including HST) to the Trustee, its legal counsel and Representative Counsel. These payments do not reflect all amounts that may become due and owing to the professionals throughout the cash flow period.
- Opening cash flow is comprised of Estate Property, excluding the term deposit required under the MBLAA.