



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE 14<sup>TH</sup>

JUSTICE MCEWEN

)

DAY OF NOVEMBER, 2022

)

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**

**BROOKDALE SETTLEMENT ORDER**

**THIS MOTION**, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the "**Trustee**"), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. ("**BDMC**") pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) approving and ratifying the Settlement Agreement and Mutual Release attached to the Trustee's

Twenty-Ninth Report as Appendix 14 (the “**Brookdale Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and Computershare Trust Company of Canada, in its capacity as trustee under that certain trust indenture dated November 26, 2013 (“**Computershare**”); (ii) authorizing and directing the Accountant of the Superior Court of Justice (the “**Accountant**”) to distribute from the account (the “**Account**”) set up to the credit of Court File No. CV-18-596204-00CL pursuant to the Order of the Honourable Justice McEwen made in the proceedings with Court File No. CV-18-593304 (Account No: 561131), the amounts to Computershare and the Trustee as set forth herein; (iii) deeming the Trustee Settlement Amount to be Realized Property (each as defined herein); and (iv) granting related relief, 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-Ninth Report of the Trustee dated November 4, 2022 (the “**Twenty-Ninth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to Computershare, 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 Blair McRadu sworn November 9, 2022, filed;

#### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Ninth 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-Ninth Report or the Brookdale Settlement Agreement, as applicable.

#### **BROOKDALE SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (a) the Brookdale Settlement Agreement be and is hereby approved in its entirety and the Trustee is hereby authorized and empowered to enter into the Brookdale Settlement Agreement, *nunc pro tunc*, with such minor amendments as the Trustee and

the other parties thereto may agree upon; and (b) the Trustee is hereby authorized and directed to comply with all of its obligations under the Brookdale Settlement Agreement.

4. **THIS COURT ORDERS** that, upon the delivery by the Trustee of the certificate, substantially in the form attached as Schedule “A” hereto (the “**Trustee’s Funding Certificate**”), to the Accountant, the Accountant shall be and is hereby authorized and directed to, as soon as reasonably practicable, distribute from the cash amount held in the Account (the “**Account Funds**”):

- (a) the amount of C\$4,100,000 to counsel for Computershare, DLA Piper (Canada) LLP, in trust, for the Bondholders (the “**Computershare Settlement Amount**”); and
- (b) the balance of the amount in the Account after payment of the amount referred to in paragraph 4(a) above, to the Trustee (the “**Trustee Settlement Amount**”).

5. **THIS COURT ORDERS** that, upon the delivery by the Trustee of the certificate, substantially in the form attached as Schedule “B” hereto (the “**Trustee’s Closing Certificate**”), to Computershare, the Trustee Settlement Amount (the “**Brookdale Realized Property**”) is and shall be deemed to be “Realized Property” as defined in the Order of this Court dated June 26, 2018 made in these proceedings (as amended, the “**Interim Stabilization Order**”), and that the rights and claims of (a) the individual investors (the “**Brookdale Original Investors**”) under and in respect of the Loan Agreement dated May 27, 2015, between BDMC (formerly Centro Mortgage Inc.), in trust, and Fortress Brookdale Inc. (the “**Brookdale Borrower**”) (as amended and/or supplemented) and all security and documentation delivered in connection therewith; and (b) the individual investors (the “**Brookdale Mezzanine Investors**”, and together with the Brookdale Original Investors, the “**Brookdale Investors**”) under and in respect of the Loan Agreement dated July 10, 2017, between BDMC, in trust, and the Brookdale Borrower (as amended and/or supplemented) and all security and documentation delivered in connection therewith, shall attach to the Brookdale Realized Property and shall have the same nature and priority as they had prior to the consummation of the Brookdale Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order, subject to the terms of this Order, with such Brookdale Realized Property to be distributed to the Brookdale Investors pursuant to further Order of the Court.



6. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with this Court a copy of the Trustee's Funding Certificate and the Trustee's Closing Certificate, as soon as practicable following delivery thereof to the Accountant and Computershare, respectively.

#### **REALIZED PROPERTY**

7. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Trustee's delivery of the Trustee's Closing Certificate to Computershare, the Trustee shall deposit the Brookdale Realized Property into an interest-bearing account, in trust for the Brookdale Investors.

#### **DISMISSAL AND DISCHARGE**

8. **THIS COURT ORDERS** that, upon the delivery of the Trustee's Closing Certificate to Computershare, the action styled *Computershare Trust Company of Canada v. Fortress Brookdale Inc. et al.*, Ontario Superior Court of Justice Court File No. CV-17-585584-00CL (the "**Computershare Action**") shall be dismissed in its entirety on a with prejudice and without costs basis.

9. **THIS COURT ORDERS** that, upon the dismissal of the Computershare Action as set out in paragraph 8, Computershare shall be, and shall deemed to be, discharged of all of its obligations under the Indenture.

#### **AID AND RECOGNITION OF FOREIGN COURTS**

10. **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.

11. **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.

A handwritten signature in blue ink, appearing to be "McIntosh", is written over a horizontal line.

**Schedule “A” – Form of Trustee’s Funding Certificate**

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**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 FUNDING CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).
- B. Pursuant to an Order of the Court made on ●, 2022 (the “**Brookdale Settlement Order**”), the Court approved the Settlement Agreement and Mutual Release attached as Appendix “14” to the Trustee’s Twenty-Ninth Report to Court, dated November 4, 2022 (the “**Brookdale Settlement Agreement**”) among the Trustee, Olympia Trust Company, and Computershare Trust Company of Canada, in its capacity as trustee under that certain trust indenture dated November 26, 2013 (“**Computershare**”).
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Brookdale Settlement Order or the Brookdale Settlement Agreement, as applicable.

**THE TRUSTEE CERTIFIES** the following:

1. The “Conditions to Funding” set out in paragraph [8] the Brookdale Settlement Agreement have been satisfied or waived by the Trustee and Computershare, as applicable, in accordance with the terms of the Brookdale Settlement Agreement.
2. In accordance with the terms of the Brookdale Settlement Order, the Accountant is authorized and directed to distribute: (a) the Computershare Settlement Amount to counsel to Computershare, DLA Piper (Canada) LLP, in trust; and (b) the Trustee Settlement Amount to the Trustee.

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

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

Per: \_\_\_\_\_

Name:

Title:



**Schedule “B” – Form of Trustee’s Closing Certificate**

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SUPERIOR COURT OF JUSTICE  
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**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

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c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43***

**TRUSTEE’S CLOSING CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).

B. Pursuant to an Order of the Court made on ●, 2022 (the “**Brookdale Settlement Order**”), the Court approved the Settlement Agreement and Mutual Release attached as Appendix “14” to the Trustee’s Twenty-Ninth Report to Court (the “**Brookdale Settlement Agreement**”) among the Trustee, Olympia Trust Company, and Computershare Trust Company of Canada, in its capacity as trustee under that certain trust indenture dated November 26, 2013 (“**Computershare**”).

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Brookdale Settlement Order or the Brookdale Settlement Agreement, as applicable.



**THE TRUSTEE CERTIFIES** the following:

1. The “Conditions to Closing” set out in paragraph [11] the Brookdale Settlement Agreement have been satisfied or waived by the Trustee and Computershare, as applicable, in accordance with the terms of the Brookdale Settlement Agreement, and the Trustee has received (a) the Trustee Settlement Amount from the Accountant; and (b) written confirmation from Computershare that Computershare has received the Computershare Settlement Amount from the Accountant or confirmation from the Accountant that the Computershare Settlement Amount has been distributed to Computershare in accordance with paragraph [12] of the Brookdale Settlement Agreement.
2. The settlement contemplated by the Brookdale Settlement Agreement has been completed to the satisfaction of the Trustee.

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

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

Per: \_\_\_\_\_  
Name:  
Title:

- and -

Respondent

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

## Proceedings commenced at Toronto

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