

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

VOLUME 1 OF 2

November 4, 2022



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

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PURPOSE OF THE TWENTY-NINTH REPORT	3
SCOPE AND TERMS OF REFERENCE	4
GENERAL UPDATE	5
BROOKDALE PROJECT AND SETTLEMENT AGREEMENT	10
PROPOSED BROOKDALE PROJECT DISTRIBUTIONS OF REALIZED PROPERTY	32
APPROVAL OF PROPOSED SETTLEMENT AND DISTRIBUTIONS OF REALIZED PROPERTY IN RESPECT OF THE EDEN PROJECT	41
OTHER PROJECTS	50
Charlotte Adelaide Project.....	50
Highlands of York Region Project.....	52
6th and 10th Project.....	53
Rutherford Project.....	55
King Square Project	55
Humberstone Project	56
South Shore Project.....	57
GENERAL DEVELOPMENTS RELATED TO THE BDMC PROCEEDINGS	58
Class Action Proceedings	58
FUNDING OF THESE PROCEEDINGS AND CASH FLOW PROJECTION.....	60
APPROVAL OF THE TRUSTEE'S REPORT, ACTIVITIES AND FEES.....	64
REPRESENTATIVE COUNSEL.....	68
CONCLUSION AND RECOMMENDATION	69

INDEX OF APPENDICES

Appendix 1	Appointment Order dated April 20, 2018
Appendix 2	January 2022 Omnibus Order dated January 31, 2022
Appendix 3	Twenty-Eighth Report (without appendices)
Appendix 4	Project Analysis Summary dated November 4, 2022
Appendix 5	Brookdale Original Loan Agreement and related documentation
Appendix 6	Charge for Brookdale Original Loan
Appendix 7	Brookdale Mezzanine Loan Agreement and related documentation
Appendix 8	Charge for Brookdale Mezzanine Loan
Appendix 9	Parcel Register for Project Lands
Appendix 10	Computershare Indenture
Appendix 11	Computershare Original Statement of Claim
Appendix 12	Computershare Fresh as Amended Statement of Claim
Appendix 13	BDMC Statement of Defence
Appendix 14	Brookdale Settlement Agreement
Appendix 15	List of Claimed Fortress Advances
Appendix 16	Co-Tenancy Agreement and related documentation
Appendix 17	Interlender Agreement
Appendix 18	Sample Eden Loan Agreement
Appendix 19	Eden Settlement Agreement
Appendix 20	Highlands Investor Notices sent to Investors since the Twenty-Seventh Report (without appendices)
Appendix 21	Variance Analysis for the Project Period
Appendix 22	Cash Flow Projection
Appendix 23	Manzoor Affidavit
Appendix 24	De Lellis Affidavit

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TWENTY-NINTH REPORT OF THE TRUSTEE
(COMPREHENSIVE UPDATE)

November 4, 2022

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**”).¹

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-eight reports to the 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 January 18, 2022, the Trustee submitted its twenty-seventh report in these proceedings (“**Twenty-Seventh Report**”), which provided, among other things, a comprehensive update on the Trustee’s activities and support for the Trustee’s request for the January 2022 Omnibus Order. A copy of the January 2022 Omnibus Order dated January 31, 2022 is attached as **Appendix “2”**.
4. This report (“**Report**” or “**Twenty-Ninth Report**”) is the latest comprehensive update on the Trustee’s activities undertaken since the Twenty-Seventh Report. Capitalized terms

¹ All capitalized terms not otherwise defined herein have the meaning as set out in the Realized Property Order.

not otherwise defined in this Report have the meanings ascribed to them in the Twenty-Seventh 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-NINTH REPORT

6. The Trustee is filing this Twenty-Ninth 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-Seventh Report.
7. In addition to the project updates and other information provided to the Court and stakeholders, this Twenty-Ninth Report is being delivered in support of the Trustee's request for the following Orders that would, among other things, approve:
 - (a) the Brookdale Settlement Agreement and the distribution to the Brookdale Investors, in accordance with the Pari Passu Approach (described below), of the Realized Property to be received by the Trustee in respect of the Brookdale Project ("**Brookdale Settlement and Distribution Order**");
 - (b) the Eden Settlement Agreement and the distribution to the Eden Investors of the Realized Property to be received by the Trustee in respect of the Eden Project ("**Eden Resolution and Distribution Order**"); and
 - (c) the (i) twenty-eighth report to Court dated March 21, 2022 ("**Twenty-Eighth Report**") and this Twenty-Ninth 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 January 1, 2022, to October 15, 2022, as more fully described herein and in the fee affidavits attached hereto ("**November 2022 Omnibus Order**").

All capitalized terms used above and not otherwise defined are defined later in this Report. A copy of the Twenty-Eighth Report is attached as **Appendix "3"**.

8. Barring any issues and/or restrictions caused by the current or 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, or such other date as the Trustee determines is reasonable given activity levels in the various remaining project-specific developments. However, the Trustee also anticipates that it may be necessary to attend before the Court during the next interim period prior to the Trustee's delivery of its next comprehensive update regarding these proceedings 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-Ninth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Olympia Trust Company ("**Olympia**"), Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), the mortgage brokerage who assumed the mortgage brokerage duties of BDMC, Vanguard Law Group LLP ("**Vanguard**"), 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-Ninth 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-Ninth Report may vary from the projections and information used to prepare this Twenty-Ninth 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-Ninth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

11. This Twenty-Ninth 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-Ninth 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, 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-Ninth Report, there are BDMC loans or other matters outstanding in respect of 9² remaining Fortress-affiliated projects, of which two relate to projects for which the Trustee is seeking approval and distribution orders, as discussed further in this Report. Each of the remaining BDMC loans has now matured and is in default.
15. The BDMC loans and related projects have generally been 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 advanced to the projects; (c) borrowers' difficulties obtaining sufficient financing to continue developing the projects (at times due to the failure to achieve

² As detailed in the thirteenth report to Court dated November 22, 2019, the QEWN Project is no longer administered by BDMC and is therefore not included in these figures.

development milestones/approvals and/or BDMC’s affiliation with Fortress); (d) various other project delays; (e) enforcement actions from priority secured creditors and related contractual standstill agreements; 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 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 increase potential recoveries by, among other things, negotiating 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. The Trustee has and continues to consider the unique circumstances of each project to seek to achieve the best recoveries possible for Investors.

17. As a result of the Trustee’s continued efforts, and should the requested Orders be granted, to date the Trustee will have recovered, in aggregate, approximately \$175 million in Realized Property (prior to accounting for the Administrative Holdback, as described below) 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 \$15.8 million since the date of the Twenty-Seventh Report. The following table summarizes the Realized Property to date:

Project	Type of Transaction	Status of Realization³	Payout to Date (\$)
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
Kemp	Power of Sale	Complete	2,176,162

³ 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.

Project	Type of Transaction	Status of Realization ³	Payout to Date (\$)
Nobleton North	Settlement	Complete	14,450,000
Humberstone	Settlement	In Progress	1,750,000
CHAT	Sale	In Progress	5,692,031
Dunsire	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
Whitby	Sale by Borrower	Complete	12,898,875
Wellington	Settlement	Complete	6,316,800
Bowmanville	Receivership	Complete	576,614
Nobleton South	Power of Sale	Complete	2,390,316
Jasper	Sale by Borrower	Complete	856,288
North	Sale by Borrower	Complete	1,522,547
Castlemore	Settlement	Complete	9,875,358
South Shore	Power of Sale	In Progress ⁴	1,760,462
Sub Total			\$159,446,201
<u>Realized Property to be Received</u>			
Brookdale	Receivership	Complete	13,591,068 ⁵
Eden	Settlement	Complete	2,225,000
Sub Total			\$15,816,068
Total			\$175,262,269

18. 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

⁴ The sale of the property that was the subject of the South Shore Project has been completed; however, as detailed below, the Trustee has commenced litigation against the first-priority mortgagee, Diversified Capital Inc., seeking to recover amounts related to how the power of sale proceeding was carried out by Diversified and the fees and interest taken by Diversified as a result of same.

⁵ In accordance with the Brookdale Settlement Agreement, the Brookdale Investors will receive the total amount held in trust by the Accountant (defined herein) less the \$4.1M which is payable to Computershare in respect of the Computershare Settlement Amount, as defined below. The Brookdale Realized Property included in the chart represents the estimated proceeds payable to the Trustee, on behalf of BDMC, if the proposed relief being sought by the Trustee is granted, based on the Statement of Account received from the Accountant as of October 20, 2022. The actual Realized Property may vary slightly depending on the additional interest accrued and fees incurred by the Accountant between October 20, 2022 and the date of closing.

paid interest), the Trustee has also been presented with, received Court approval for, and has implemented transactions that have resulted in recoveries well below 100% of principal. 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 to the Investors, and, following its review, has negotiated for the best possible recoveries for the Investors in those circumstances.

19. To date, the Trustee has made distributions in respect of 25 projects and is seeking Court approval to distribute the Realized Property to be received in respect of the Brookdale and Eden Projects. As set out in the Project Analysis Summary (described below), there are 13 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. In such circumstances, the priority mortgagees have also generally suffered 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).
20. 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 wherever possible.
21. The Trustee also continues to prioritize its communications with Investors. The Trustee provides updates to Investors as material project developments occur and responds to Investor inquiries on a regular basis. In addition, the Trustee continues to meet and correspond regularly with Representative Counsel to discuss its activities and refine its strategies. The Trustee is of the view that such correspondence with, and feedback from, Investors and Representative Counsel has assisted the Trustee with its activities throughout these proceedings.
22. Although the administration of the loans for the majority of the projects has been completed, it remains unknown how long it will take to complete the administration of the remaining BDMC loans as each remaining loan continues to be challenged by at least one of the following circumstances: (i) considerable quantum of priority debt; (ii) significant

inventory units remaining for sale; and/or (iii) material estate issues, including complex and ongoing litigation. 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.

23. 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 November 4, 2022 is attached as **Appendix "4"** 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.
24. The following sections of this Report provide information specific to the projects for which orders are being sought and updates with respect to the other remaining projects. In particular:
 - (a) paragraphs 26 to 146 provide the facts and evidence in support of the Brookdale Settlement and Distribution Order, in particular:
 - (i) paragraphs 30 to 61 provide an overview of the Brookdale Loans and background related to the Brookdale Project and related litigation;
 - (ii) paragraphs 62 to 74 set out the history of the Computershare Claim, an outline of the Brookdale Settlement Agreement and the Trustee's recommendation to Court for approval of the Brookdale Settlement Agreement;
 - (iii) paragraphs 75 to 105 set out the Trustee's analysis of and recommendations regarding the Fortress Claim and the Fernbrook Claim;

- (iv) paragraphs 106 to 133 set out the Trustee's analysis of the relative priorities of the Brookdale Mortgages; and
 - (v) paragraphs 134 to 146 set out the possible approaches to distribution of the Trustee Settlement Amount between the Brookdale Mortgages and the Trustee's recommendation regarding the same;
- (b) paragraphs 147 to 180 provide the facts and evidence in support of the order being sought with respect to the Eden Project and the proposed distribution of Realized Property from that project and, in particular:
- (i) paragraphs 147 to 159 provide a description of the Eden Loan and certain background to the Eden Project;
 - (ii) paragraphs 160 to 171 describe the Eden Bankruptcy Order and Eden Project Litigation; and
 - (iii) paragraphs 172 to 180 describe the background to and terms of the Eden Settlement Agreement and the Trustee's recommendation regarding the same;
- (c) paragraphs 181 to 217 describe certain other project-specific developments; and
- (d) paragraphs 218 to 224 provide an update on certain Class Actions related to Fortress projects.
25. An update on the funding of these proceedings and the Trustee's cash flow projections is provided in paragraphs 225 to 233, and the Trustee's fees and activities are described in paragraphs 234 to 242. The fees of the Trustee's counsel, Osler, Hoskin & Harcourt LLP ("**Osler**") as described in paragraphs 243 to 246.

BROOKDALE PROJECT AND SETTLEMENT AGREEMENT

26. The Brookdale Project is a real estate project consisting of a residential building in Toronto, Ontario located at 1678-1704 Avenue Road, 375-377 Fairlawn Avenue and 412-416 Brookdale Avenue ("**Project Lands**"), developed by Fortress Brookdale Inc. ("**Brookdale Borrower**"), with two syndicated mortgage loans administered by BDMC with combined principal debt totaling more than \$25.3 million. The Trustee understands that the

Brookdale Borrower took control of the Brookdale Project when it acquired title to the Project Lands from Mady Avenue Road Ltd. ("**Mady Avenue**") in or around February 2015.

27. This section of this Twenty-Ninth Report is in support of the Trustee's request for the Brookdale Settlement and Distribution Order that, among other things:
- (a) Approves the Brookdale Settlement Agreement;
 - (b) Authorizes and directs the Accountant of the Ontario Superior Court of Justice (the "**Accountant**") to distribute the Computershare Settlement Amount to Computershare, on behalf of the Bondholders, and the Trustee Settlement Amount to the Trustee, on behalf of BDMC; and
 - (c) Directs the Trustee to make a distribution of the Trustee Settlement Amount, net of the 15% administrative holdback required in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Order ("**Administrative Holdback**"), solely to the syndicated mortgage lenders who advanced funds to the Brookdale Project pursuant to the Brookdale Loan Agreements following the Pari Passu Approach.
28. In support of the Trustee's request for the Brookdale Settlement and Distribution Order, this section of this Twenty-Ninth Report includes the following:
- (a) Details of the Brookdale Loan Agreements;
 - (b) An overview of the Trustee's work on behalf of the Brookdale Investors;
 - (c) An overview of the Brookdale Sale Transaction previously approved by the Court;
 - (d) An overview of the Brookdale Settlement Agreement and the events leading thereto;
 - (e) Information that supports the Trustee's recommendation that no distribution should be made from the Residual Proceeds to Fortress in respect of the Fortress Claim;
 - (f) Information that supports the Trustee's recommendation that no distribution should be made from the Residual Proceeds to Fernbrook in respect of the Fernbrook Claim;

- (g) A description of the factors identified by the Trustee related to the relative priorities of the Brookdale Mortgages;
 - (h) A description of the Priorities Approach, the Pari Passu Approach and the corresponding recoveries to the Brookdale Original Investors and the Brookdale Mezzanine Investors that result from the proposed distribution methodologies; and
 - (i) Information that supports the Trustee's recommendation that the Trustee Settlement Amount should be distributed as "Realized Property" (i) solely to the Brookdale Investors and (ii) in accordance with the Pari Passu Approach;
29. All capitalized terms used in this introduction and not otherwise defined are defined later in this Report.

Background

Brookdale Original Loan

30. BDMC, as trustee on behalf of certain Investors, including individual Investors who have self-directed accounts with Olympia (collectively, the "**Olympia Investors**"), entered into a loan agreement with the Brookdale Borrower dated May 27, 2015 (as amended, the "**Brookdale Original Loan Agreement**").
31. The Brookdale Original Loan Agreement provided for an aggregate syndicated mortgage loan of up to \$16.6 million, which amount was subsequently amended and increased to \$21.8 million (as amended, the "**Brookdale Original Loan**").
32. On July 23, 2015, the Brookdale Borrower granted a mortgage in the amount of \$10.3 million (as amended, the "**Brookdale Original Mortgage**") that (i) Olympia held in trust for the Olympia Investors and (ii) BDMC held in trust for the remaining Investors. The original charge was subsequently amended by further registrations, each increasing the principal amount to a final total of \$21.8 million.
33. There are 404 Investors who advanced funds totalling approximately \$20.7 million, pursuant to the Brookdale Original Loan (collectively, the "**Brookdale Original Investors**").
34. The Brookdale Original Loan was advanced in 26 tranches, between July 23, 2015, and August 2, 2017.

35. According to BDMC's records, as of October 15, 2022, the total amount owing to the Brookdale Original Investors was approximately \$32.9 million (approximately \$20.7 million in principal and approximately \$12.2 million of accrued interest). The interest *per diem* on the Brookdale Original Loan is \$5,106, which continues to accrue.
36. A copy of the Brookdale Original Loan Agreement, a sample Form 9D disclosure form, and a sample Participation and Servicing Agreement ("**Brookdale Original Loan PASA**") with private information redacted are collectively attached as **Appendix "5"**. Copies of the charges for the Brookdale Original Loan (without schedules) are attached as **Appendix "6"**.

Brookdale Mezzanine Loan

37. BDMC, as trustee of certain Investors, including Investors with self-directed accounts with Computershare Trust Company of Canada (the "**Computershare Investors**")⁶, also entered into a loan agreement with the Brookdale Borrower, dated July 10, 2017 (as amended, the "**Brookdale Mezzanine Loan Agreement**" and, together with the Brookdale Original Loan Agreement, the "**Brookdale Loan Agreements**").
38. The Brookdale Mezzanine Loan Agreement provided for an aggregate syndicated mortgage loan of up to \$15 million (the "**Brookdale Mezzanine Loan**" and together with the Brookdale Original Loan, the "**Brookdale Loans**").
39. The Brookdale Mezzanine Loan Agreement was amended on October 2, 2017 (the "**Brookdale Mezzanine Loan Amending Agreement**") to, among other things, amend the definition of "Permitted Encumbrances" (as described in more detail below), change the purpose of the loan, and to incorporate certain provisions relating to the prepayment and repayment of principal.
40. On October 17, 2017, the Brookdale Borrower granted a mortgage in the amount of \$4.8 million, (as amended, the "**Brookdale Mezzanine Mortgage**" and together with the Brookdale Original Mortgage, the "**Brookdale Mortgages**") that (i) Computershare held in trust for the Computershare Investors and (ii) BDMC held in trust for the Investors who

⁶ On December 31, 2021, Olympia acquired a book of business from Computershare, which included the self-directed accounts previously held at Computershare.

are not Computershare Investors. BDMC acts as the administrator of the Brookdale Mezzanine Loan on behalf of all Investors (including the Computershare Investors).

41. There are 87 Investors who advanced funds totaling approximately \$4.6 million pursuant to the Brookdale Mezzanine Loan (collectively, the “**Brookdale Mezzanine Investors**” and together with the Brookdale Original Investors, the “**Brookdale Investors**”).
42. The Brookdale Mezzanine Loan was advanced in 9 tranches, between October 17, 2017, and January 17, 2018.
43. According to BDMC’s records, as of October 15, 2022, the total amount owing to the Brookdale Mezzanine Investors was approximately \$6.4 million (approximately \$4.6 million in principal and approximately \$1.8 million of accrued interest). The interest *per diem* on the Brookdale Mezzanine Loan is \$1,013, which continues to accrue.
44. A copy of the Brookdale Mezzanine Loan Agreement, the Brookdale Mezzanine Loan Amending Agreement, a sample Form 9D disclosure form, and a sample Participation and Servicing Agreement with private information redacted are collectively attached as **Appendix “7”**. Copies of the charges for the Brookdale Mezzanine Loan (without schedules) are attached as **Appendix “8”**.

Prior Mortgages Formerly on Title to the Brookdale Project

45. In 2018, the Brookdale Project became subject to a Notice of Sale under Mortgage (“**Notice of Sale**”) proceeding brought by Firm Capital Mortgage Fund Inc. (“**Firm Capital**”) in respect of its 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 conducted a sale process for the Brookdale Project, and, on October 18, 2018, the Court approved the sale of the Project Lands (“**Brookdale Sale Transaction**”).
46. The Brookdale Sale 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 approximately \$26.9 million (the “**Brookdale Sale Transaction Proceeds**”), which amount was paid into Court pending resolution of various competing claims regarding the priority of distribution of the proceeds.

47. At the time of the Brookdale Sale Transaction, the Brookdale Mezzanine Mortgage and Brookdale Original Mortgage were the fourth and fifth ranking mortgages, respectively, registered on title to the Project Lands.
48. The other mortgages registered on title at the time of the Brookdale Sale Transaction were:
 - (a) Firm Capital, which held a first ranking charge, registered on title on June 7, 2017 in the amount of \$18.5 million;
 - (b) Quincy Investments Limited, 969592 Ontario Limited, 969593 Ontario Limited, 2307271 Ontario Inc., Sasso Auto Consulting Inc., Angelo Grossi, David Mark Doubilet, Gus Stamatiou, Robert di Matteo, and Tonino Amenda (together, "**Quincy**"), which held a second ranking charge, registered on title on November 13, 2015 in the amount of \$5.33 million; and
 - (c) Jaekel Capital Inc. (formerly RW Fortress Inc.) ("**Jaekel**"), which held a third ranking charge, registered on title on May 28, 2015 in the amount of \$6,600,000.
49. These mortgages were amended, transferred, and postponed by various registrations and all mortgages on title to the Brookdale Lands were vested off title as part of the Brookdale Sale Transaction. Firm Capital was paid in full and the remaining mortgagees' interests were transferred to the Brookdale Sale Transaction Proceeds. Copies of the parcel registers for the Project Lands are attached as **Appendix "9"**.
50. Following the payment of the Brookdale Sale Transaction Proceeds into Court, there were further disputes as to the entitlement and priority to those proceeds, as described further below.
51. In partial resolution of these disputes, a further Order was granted by the Court on March 21, 2019 approving the payment of approximately \$5.9 million to Quincy, as second ranking mortgagee, and approximately \$580,000 to Jaekel, as third ranking mortgagee, from the Brookdale Sale Transaction Proceeds held in Court. The payment and priority of these mortgages was not contested and their payment prevented further interest from accruing on these loans, to the benefit of the Brookdale Investors. After the repayment, approximately \$20.4 million remained with the Court ("**Net Proceeds**").

Trustee's Actions to Protect Interests of Brookdale Investors

52. The Trustee has played an active role in dealing with contested litigation and other competing claims to, the Net Proceeds in order to protect the interests of the Brookdale Investors. The Trustee has participated in contested Court proceedings, numerous case conferences, settlement negotiations 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. However, the Trustee's efforts have resulted in significant benefit to the Brookdale Investors, by preserving the Brookdale Investors' rights in respect of the Net Proceeds, maximizing the amount of proceeds available to the Brookdale Investors and providing the Brookdale Investors with a more timely recovery than would otherwise be the case.
53. The contested litigation and competing claims that the Trustee has addressed on behalf of the Brookdale Investors, are:
- (a) certain construction lien claims, that asserted priority to a portion of the Net Proceeds, in the aggregate amount of approximately \$8.7 million ("**Construction Lien Proceedings**")
 - (b) proceedings ("**Computershare Proceedings**") brought by Computershare Trust Company of Canada ("**Computershare**"), in its capacity as the trustee pursuant to a trust indenture dated November 26, 2013 ("**Indenture**"), under which it claimed approximately \$9 million plus interest and costs ("**Computershare Claim**");
 - (c) the unsecured claim asserted by Fortress on behalf of itself, the Brookdale Borrower and related entities, in the amount of approximately \$1.5 million ("**Fortress Claim**") for funds which it claims they paid to support the carrying costs of the Brookdale Project; and
 - (d) the unsecured claim asserted by Fernbrook Homes (Brookdale) Limited ("**Fernbrook**"), in the amount of approximately \$2.9 million ("**Fernbrook Claim**") for amounts which it claims it is owed with respect to development management fees, construction management fees and other costs.
54. The Trustee's efforts to address these claims, which were or are seeking payment in priority to the Brookdale Mortgages, are described in more detail below.

Construction Lien Proceedings

55. The Construction Lien Proceedings were commenced in early 2018 by contractors and suppliers to the Brookdale Project who had registered fourteen construction liens against the Project Lands.
56. Beginning in 2019, the Trustee and its counsel devoted considerable time and effort to resolve the Construction Lien Proceedings. Multiple case conferences, onerous documentary production requests and a mediation between the Trustee and the lien claimants, while productive, did not immediately result in a resolution of the lien claims. However, the Trustee and its counsel continued extensive negotiations and ultimately reached a settlement with carriage counsel to the lien claimants.
57. 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 approximately \$4.6 million ("**Lien Claim Settlement**") from the Net Proceeds in full and final satisfaction of all lien claims and costs.
58. The remaining Net Proceeds, in the amount of approximately \$17.7 million, are being held by the Accountant ("**Residual Proceeds**").

Remaining Claims

59. The Trustee has continued to address the following claims to the Residual Proceeds, which are seeking payment in priority to the Brookdale Mortgages:
 - (a) the Computershare Proceedings;
 - (b) the Fortress Claim; and
 - (c) the Fernbrook Claim.
60. It is the Trustee's view that the Computershare Proceedings should be settled pursuant to the Brookdale Settlement Agreement, and a distribution of the remaining Residual Proceeds (following the payment of the Computershare Settlement Amount), should be made solely to the Trustee on behalf of BDMC.
61. The Trustee has reviewed the Fortress Claim and the Fernbrook Claim and has determined that no distribution should be made in respect of such claims, each as more particularly described below.

The Computershare Proceedings

Background

62. Computershare, as trustee, was a party to the Indenture, between Brookdale Realty Corporation, as issuer (the “**Issuer**”), and Mady Avenue, as guarantor (the “**Guarantor**”). Pursuant to the Indenture, the Issuer issued, and the holders (collectively, the “**Bondholders**”) subscribed for, bonds (the “**Bonds**”) in the total principal amount of approximately \$9 million. The Trustee understands that, as of October 15, 2022, the total amount claimed by the Bondholders is approximately \$14 million (comprised of approximately \$9 million of principal and approximately \$5 million of accrued interest). A copy of the Indenture is attached as **Appendix “10”**.
63. Pursuant to the Indenture, the Bonds were issued to finance the development of the Brookdale Project and were to be secured by, among other things, a general security agreement and a mortgage on the Brookdale Project (together, the “**Computershare Security**”) to be granted by the Guarantor. The Computershare Security was to be delivered and registered by the Guarantor on or before October 31, 2015. The Computershare Security was never registered on title to the Brookdale Project.
64. Computershare issued its original statement of claim on October 31, 2017 (“**Original Statement of Claim**”). Computershare asserts, among other things, that, due to the failure of the Guarantor to register the Computershare Security on title to the Project Lands, Computershare held an equitable mortgage over the Project Lands, which ranks in priority to the Brookdale Mortgages. Computershare further asserts that Computershare, on behalf of the Bondholders, is therefore entitled to priority payment for the amounts it claims from the Residual Proceeds. A copy of the Original Statement of Claim is attached as **Appendix “11”**.
65. Following the settlement of the Construction Lien Proceedings, the Trustee requested that Computershare deliver an Amended Statement of Claim in light of the many developments that had occurred with respect to the Brookdale Project subsequent to the filing of the Original Statement of Claim.
66. On January 14, 2022, the Court granted an Order authorizing the issuance of Computershare’s amended claim. The Trustee understands that this motion was necessary as Fortress did not consent to the amendment. Computershare filed its amended claim on January 18, 2022 (“**Fresh as Amended Statement of Claim**”), the

amendments to which largely consisted of deletions and did not add any new parties nor assert any new causes of action. A copy of the Fresh as Amended Statement of Claim is attached as **Appendix “12”**.

67. On January 27, 2022, the Trustee filed a statement of defence on behalf of BDMC (“**Statement of Defence**”). A copy of the Statement of Defence is attached as **Appendix “13”**.
68. As detailed in the Statement of Defence, the Trustee, among other things, denies that Computershare and/or the Bondholders held an equitable mortgage over the Project Lands and, in the event that Computershare and/or the Bondholders are to be found to have held such an equitable mortgage, further denies that such equitable mortgage would have ranked in priority to the Brookdale Mortgages. The Trustee also denies that Computershare is entitled to priority payment from the Residual Proceeds on account of the Computershare Claim.

Brookdale Settlement Agreement

69. Since filing the Statement of Defence, the Trustee, its counsel, Computershare and Computershare’s counsel have engaged in extensive and lengthy settlement negotiations regarding the Computershare Claim and have reached a settlement in the Computershare Proceedings (“**Brookdale Settlement Agreement**”).
70. The Brookdale Settlement Agreement reflects the Trustee’s view that the most equitable method to distribute the Residual Proceeds as between the Bondholders and the Brookdale Investors is on a *pari passu* basis while also taking into account the costs incurred in these BDMC proceedings to deal with all the Brookdale matters, including the Construction Lien Proceedings, the Computershare Proceedings, the Fortress Claim and the Fernbrook Claim.
71. The parties to the Brookdale Settlement Agreement are Computershare, the Trustee (on behalf of BDMC) and Olympia. The Brookdale Settlement Agreement contemplates, among other things, that:
 - (a) The Trustee will seek, and Computershare will support, an order from the Court, among other things, authorizing and directing the Accountant to distribute \$4.1 million of the Residual Proceeds to Computershare’s counsel in trust for the Bondholders (“**Computershare Settlement Amount**”) and to distribute the

remaining Residual Proceeds, amounting to approximately \$13.6 million, to the Trustee, on behalf of BDMC (“**Trustee Settlement Amount**”);

- (b) Computershare and the Trustee shall use commercially reasonable efforts to have the Computershare Proceedings dismissed in their entirety, on a with prejudice and without costs basis, by no later than ten days following the date that the Court issues the Brookdale Settlement and Distribution Order; and
- (c) On the Closing Date, as such term is defined in the Brookdale Settlement Agreement, Computershare, on behalf of itself and the Bondholders, shall release the Trustee, BDMC, the Investors and Olympia and the Trustee, on behalf of BDMC, and Olympia, shall release Computershare and the Bondholders from any and all claims that such parties may have now or in the future against one another arising out of the matters raised, or which might have been raised, in respect of the Brookdale Project, the Project Lands, the Residual Proceeds and any right or entitlement or payment therefrom, the Brookdale Mortgages and the loans made and security granted in connection therewith, the Indenture, the Bonds, the Computershare Security and the Computershare Claim, and any transactions thereunder and hereunder.

A copy of the Brookdale Settlement Agreement is attached as **Appendix “14”**.

Trustee’s Analysis and Recommendation

72. The Trustee Settlement Amount results in a return of approximately 54% of the outstanding principal balance of the Brookdale Loans calculated as follows:

Brookdale Original Loan principal balance	20,706,000
Brookdale Mezzanine Loan principal balance	4,622,900
Total combined principal outstanding (A)	<u>25,328,900</u>
Trustee Settlement Payment (B)	13,591,068
Recovery on principal (B/A)	<u>54%</u>

73. The Trustee, with the support of Representative Counsel, has determined that the Brookdale Settlement Agreement is, given the circumstances, in the best interest of the Brookdale Investors for the following reasons, among others:

- (a) it avoids continued prolonged, uncertain and costly litigation in the Computershare Proceedings;
- (b) the Trustee Settlement Amount results in a recovery of approximately 54% of the outstanding principal balance of the Brookdale Loans;
- (c) it allows the Trustee to monetize the investments of the Brookdale Investors who have endured a significant delay in the recovery of their loans given that four years have passed since the completion of the Brookdale Sale Transaction and more than two years have passed since the resolution of the Construction Lien Proceedings; and
- (d) absent a settlement, there is no immediate prospect of a recovery without incurring further significant professional fees, and there is a risk that the litigation could result in a less favourable outcome for the Brookdale Investors, including the possibility that the full amount of the Bondholders' claim (inclusive of its interest) may be found to rank in priority to the Brookdale Loans.

74. The Brookdale Settlement Agreement is conditional on Court approval.

Fortress Claim and Fernbrook Claim

The Fortress Claim

75. The Fortress Claim in the amount of approximately \$1.5 million relates to various costs purportedly paid by Fortress and the Brookdale Borrower in respect of the Brookdale Project at a time when, it asserts, the Brookdale Investors failed to advance required funds.⁷ A summary of the amounts claimed to have been advanced by Fortress and the Brookdale Borrower, and the alleged purpose of such funds, is attached as **Appendix "15"**. It is Fortress' position that the Fortress Claim should be paid in priority to the Brookdale Mortgages.
76. The Trustee has previously communicated to Fortress that it disagrees with its position. Following discussions in February, 2019 between counsel to Fortress and counsel to the Trustee, the parties came to an agreement that, among other things, should the Trustee

⁷ The Trustee assumes that Fortress is claiming on behalf of all related entities, including the Brookdale Borrower, and Fortress Avenue. Any references to "Fortress" in this section include all related entities, including the Brookdale Borrower and Fortress Avenue (as defined below).

receive any of the proceeds from the Brookdale Sale Transaction it will hold back and not distribute approximately \$1.5 million (the “**Contested Proceeds**”) pending a consensual resolution of the Fortress Claim between the Trustee and Fortress or a determination by the Court with respect to entitlement to the Contested Proceeds. As discussed further below, the Trustee is now seeking an order, on notice to Fortress, that the Trustee Settlement Amount, which includes the Contested Proceeds, be distributed solely to the Brookdale Investors and such distribution should be made notwithstanding the Fortress Claim.

77. Although Fortress has not provided the Trustee with a full description of the basis for the Fortress Claim, the Trustee believes that Fortress may be asserting a priority over the Brookdale Mortgages on the basis of the “Waterfall” and/or the replacement lender provisions in the Brookdale Loan Agreements, each of which is more particularly described below.

The Fernbrook Claim

78. The Trustee has been advised that Fernbrook is reserving its rights in respect of the Fernbrook Claim in the amount of approximately \$2.8 million, which relates to the following:
- (a) unpaid fees for development management services in the amount of approximately \$1.3 million; and
 - (b) unpaid construction management fees, site labour and salaries in the amount of approximately \$1.5 million.
79. The amounts claimed by Fernbrook relate to services and materials supplied to the Brookdale Project by Dominus Construction (2005) Corporation (“**Dominus**”), the construction arm of Fernbrook and project manager on the Brookdale Project. The Project Management Agreement specifies that Dominus, as manager for the Brookdale Project, is to receive, as its sole compensation:⁸
- (a) the sum equal to 1.75% of the Total Sales Proceeds received by the Brookdale Borrower for the Brookdale Project (“**Development Management Fee**”); and

⁸ Capitalized terms used in this paragraph and not already defined are as defined in the Project Management Agreement.

(b) a sum equal to 3% of the costs for Construction-Building for the Brookdale Project, as determined in accordance with construction cost reports prepared by Altus Helyar Cost Consulting, or such other Quantity Surveyors approved by the Management Committee and the Corporation lender ("**Construction Management Fee**").

80. Although Fernbrook has not provided the Trustee with a full description of the basis for the Fernbrook Claim, the Trustee believes that Fernbrook is reserving its rights with respect to asserting a priority over the Brookdale Investors on the basis that the amounts making up the Fernbrook Claim are, in part, the development and construction management fees prescribed under the Project Management Agreement between Fortress Brookdale 2014 Inc. and Dominus ("**Project Management Agreement**") and are entitled to priority under the "Waterfall" provisions in the Brookdale Loan Agreements.

Analysis of the Fortress Claim and the Fernbrook Claim

81. The Trustee has reviewed the Fortress Claim and the Fernbrook Claim and has determined that no payment on account of such claims should be made in priority to the Brookdale Loans because:

- (a) the contractual "Waterfall" provisions in the applicable documentation do not apply in the present circumstances as the Trustee Settlement Amount is not a "Cash Surplus" as defined in the Co-Tenancy Agreement (defined below);
- (b) it would be inequitable and inappropriate to the Brookdale Investors to have the Trustee Settlement Amount be subject to the priority distribution as set out in the Waterfall given the lack of clear, consistent or sufficient information provided to the Brookdale Investors in respect of the Waterfall outlined in the Co-Tenancy Agreement; and
- (c) such priority payment is not consistent with the proper application of priorities under applicable law as the Brookdale Investors have secured claims against the Trustee Settlement Amount in priority to the Fortress Claim and Fernbrook Claim, both of which, if valid, are unsecured claims.

82. The above factors supporting the Trustee's determination that Fortress and Fernbrook should not be entitled to receive payment from the Trustee Settlement Amount in priority to any payment to be provided in respect of the Brookdale Mortgages apply to both the

Fortress Claim and the Fernbrook Claim (collectively, the “**General Factors**”). In addition, there are also factors specific to each of the Fortress Claim (collectively, the “**Fortress Specific Factors**”) and the Fernbrook Claim (collectively, the “**Fernbrook Specific Factors**”) that further support the Trustee’s determination. Each of the General Factors, Fortress Specific Factors and Fernbrook Specific Factors are more particularly described below.

Detailed Analysis of the General Factors

Description of the “Waterfall”

83. Based on the Trustee’s review of the Fortress Claim and the Fernbrook Claim, it appears that the claims purport to be claims in priority to the Brookdale Mortgages based, in part, on the priority of distributions as set out in a contractual payment waterfall provision (the “**Waterfall**”) regarding revenue earned from the completion of the Brookdale Project.
84. The Waterfall is set out in a Co-Tenancy Agreement, dated May 25, 2015, between Fernbrook, Fortress Avenue Road (2015) Inc. (“**Fortress Avenue**” and together with Fernbrook, the “**Co-Tenancy**”), the Brookdale Borrower and Dominus, and amended by an Amending Co-Tenancy Agreement dated as of May 29, 2015 (as amended, the “**Co-Tenancy Agreement**”) which, among other things, sets out the priority of distributions from revenue of the Brookdale Project. BDMC is not a party to the Co-Tenancy Agreement. Copies of the Co-Tenancy Agreement, which attaches the Project Management Agreement, and Amending Co-Tenancy Agreement are attached as **Appendix “16”**.
85. Under the terms of the Co-Tenancy Agreement, the Brookdale Borrower held title to the Project Lands and all other property, assets and rights of the Co-Tenancy as bare trustee for the Co-Tenancy.
86. The Brookdale Loan Agreements purport to incorporate the Waterfall and provide that the repayment of the loan and discharge of the security shall be in accordance with the terms of the Co-Tenancy Agreement.

87. Under the Waterfall, revenue from the Brookdale Project, save for certain reserves (“**Cash Surplus**”), is to be distributed as follows:⁹
- (a) Construction loans will be paid in full;
 - (b) Unpaid Project Costs, that were previously approved in the Project Budget, will be paid in full, including certain construction and development management fees and including any Excess Loans;
 - (c) Unpaid fees owing under the Project Management Agreement will be paid in full;
 - (d) Repayment of any Fernbrook Excess Loans plus default interest will be paid in full;
 - (e) Repayment of Existing Mortgages and any Further Charges up to the Maximum Land Mortgages Amount of \$18.7 million will be paid in full;
 - (f) Repayment of Related Party Mortgages or equity advances by Fortress Avenue to the extent such mortgages or advances are approved Project Costs (and only to the extent that such amount constitute principal repayment and not interest, fees or Priority Advance Distributions); and
 - (g) The remaining amount is split between Fortress Avenue, Fernbrook and the Brookdale Borrower as profit.
88. “Related Party Mortgage” is defined in the Co-Tenancy Agreement as including any charge on the Project Lands securing a loan from a syndicated lender arranged by Fortress. The Trustee believes that the Brookdale Mortgages are Related Party Mortgages.
89. As set out in the Co-Tenancy Agreement and the Brookdale Loan Agreements, the Brookdale Loans would be repaid sixth (for principal) and seventh in priority (for interest) pursuant to the Waterfall.

Contractual Analysis

90. As previously discussed, the Brookdale Sale Transaction Proceeds were paid into Court following a statutory power of sale process completed by Firm Capital due to the

⁹ All capitalized terms used in this section and not otherwise defined herein have the meaning set out in the Co-Tenancy Agreement.

competing claims to priority to such proceeds. Therefore, the Brookdale Sale Transaction Proceeds (and the Residual Proceeds that remain following the court-approved payments to two priority mortgagees and construction lien claimants) were never received by the Co-Tenancy parties, definitely did not “[arise] from the receipt of any Project revenue”, and do not constitute a Cash Surplus, as set forth in the Co-Tenancy Agreement. Accordingly, the Trustee Settlement Amount, which is the agreed upon settlement portion of the Residual Proceeds to be paid to the Trustee, is not captured by the definition of Cash Surplus or the scope of the Co-Tenancy Agreement. Accordingly, the Waterfall does not apply to the Trustee Settlement Amount.

Equitable Analysis

91. The Trustee also believes that it would be inequitable to distribute the Trustee Settlement Amount pursuant to the terms of the Waterfall, because the Brookdale Investors were not provided with clear, consistent or sufficient information about the Co-Tenancy Agreement, and in particular with respect to the Waterfall contained therein, at the time of entering into the Brookdale Loan Agreements or during the term of the Brookdale Loans.
92. The Brookdale Original Loan Agreement and the Brookdale Mezzanine Loan Amending Agreement refer to specific sections of the Co-Tenancy Agreement and each reproduce those sections in a schedule. However, the reproductions are not exact copies of the relevant sections and fail to include certain parts of those sections and certain defined terms, which are necessary to understand the “Distribution Waterfall”. Further, the Trustee has been unable to confirm that the Brookdale Mezzanine Investors were provided with a copy of the Brookdale Mezzanine Loan Amending Agreement which is the only document that purported to disclose the Waterfall to the Brookdale Mezzanine Investors.
93. There are also certain discrepancies between defined terms in the Brookdale Loan Agreements and the Co-Tenancy Agreement. For example, Section 7(e) of the Brookdale Original Loan Agreement states that “Existing Mortgages” shall include the charge under the Brookdale Original Mortgage but the Co-Tenancy Agreement provides that the Brookdale Original Mortgage would be considered a “Related Party Mortgage”.
94. The Trustee has reviewed the books and records of BDMC and it does not appear that the Brookdale Investors received a copy of the Co-Tenancy Agreement when they made their original investment decisions. Similarly, the Trustee does not believe that the

Brookdale Investors were provided with an explanation of the flow of proceeds from the Brookdale Project to repay their loan and interest.

95. It is the Trustee's view that it would be unfair and inequitable to subject the Brookdale Investors to the terms of the Co-Tenancy Agreement given the lack of clear, consistent or sufficient information provided to them, at the time they advanced their loans pursuant to the Brookdale Loan Agreements or during the pendency of the loans, in particular in respect of the Waterfall outlined in the Co-Tenancy Agreement and referenced and partially reproduced in the Brookdale Loan Agreements.
96. Given these considerations, the Trustee believes that it would be inappropriate and inequitable to rely on the Waterfall to determine the priority to the Trustee Settlement Amount. The Trustee has shared its analysis with Representative Counsel who supports the Trustee's position.

Applicable Law

97. The Brookdale Mortgages secure the Brookdale Loans and the associated schedules accompanying the registered charges for each mortgage provide, among other things, that if any mortgage on the Project Lands becomes enforceable and the person or persons entitled to the benefit thereof takes steps to enforce such charge, and such steps are not remedied within 15 days after the commencement thereof, the principal sum together with all accrued and unpaid interest and other monies secured by the Brookdale Mortgages shall, at the option of the Trustee on behalf of BDMC (as chargee), immediately become due. Firm Capital enforced its mortgage, initiated the power of sale process, obtained a Court order deleting the Brookdale Mortgages (including the terms of the schedules to the charges) from title to the Project Lands. Therefore, the Trustee, on behalf of the Brookdale Investors, has a secured interest in the proceeds from the Brookdale Sale Transaction (including in the remaining Residual Proceeds) for the full amount secured by the Brookdale Mortgages (being an amount significantly greater than the Residual Proceeds) in priority to all unsecured claims, including the Fortress Claim and the Fernbrook Claim, if any.

Detailed Analysis of the Specific Factors

The Fortress Specific Factors

98. Further to the General Factors described above, even if the Waterfall applied, which the Trustee disagrees with, the Trustee is of the view that Fortress should not be entitled to payment from the Trustee Settlement Amount in priority to BDMC, on behalf of the Brookdale Investors, as the Trustee has not been provided with any documentation showing that the funds advanced by Fortress were included in a valid Project Budget or otherwise approved by the Co-Tenancy. As a result, such funds (i) cannot be treated as unpaid Project Costs (as defined in the Waterfall) such that they would receive priority over the Brookdale Mortgages, nor (ii) can they be treated as unpaid equity advances for approved project costs such that they would be paid *pari passu* with the principal amount of the Brookdale Mortgages;
99. Alternatively, should Fortress claim that the funds were advanced pursuant to the replacement lender clause in the Brookdale Loan Agreements, the Trustee is of the view that their advances do not constitute replacement lender financing, because
- (i) The amounts advanced are not a loan. Fortress has not provided any loan documentation dated as of the time the advances were made;
 - (ii) There is no documentation showing that BDMC failed to fund the full amounts of the Brookdale Loans as and when required per the schedules in the Project Budget approved by BDMC, which is required in order to trigger the replacement lender clauses in the Brookdale Loan Agreements; and
 - (iii) Fortress did not take or register security in respect of any such replacement financing.
100. The Trustee is of the view that it would also be inequitable for Fortress to receive any further funds in respect of the Brookdale Project for the following reasons:
- (a) The Brookdale Project, owned by a borrower related to Fortress, failed and as a result of such failure, the Brookdale Investors will only receive a partial recovery on the principal balance of their loans, being approximately 54% (prior to deducting the Administrative Holdback) if the Court grants the Brookdale Settlement and

Distribution Order. Should the Fortress Claim of approximately \$1.5 million be paid in full from the Trustee Settlement Amount¹⁰, the return on principal to the Brookdale Investors will be reduced by 6% to approximately 48% (prior to deducting the Administrative Holdback);

- (b) As detailed in previous Reports, significant portions of the sums advanced by Investors in BDMC real estate development projects were used to pay various fees and charges in connection with the loans. The fees and charges that were paid in most cases represented an aggregate amount of approximately 35% of the principal advanced by Investors under the applicable syndicated mortgage loan. Typically, 50% of those fees were paid to Fortress or to a Fortress related entity. The remaining fees were usually paid to Fortress related brokers and to BDMC (or its predecessors) in its capacity as broker and/or administrator.
- (c) With respect to the Brookdale Original Loan, based on BDMC's records, approximately 35.5% (approximately \$7.3 million) of the Brookdale Original Loan was used for the payment of fees and was distributed as follows:
 - (i) approximately \$3.1 million to Fortress, as consultant and for setup fees;
 - (ii) approximately \$3.2 million as referral fees to the Fortress-related brokers;
 - (iii) approximately \$621,000 as a broker fee to BDMC in its capacity as mortgage broker (i.e., not as mortgage administrator), 90% of which was then paid to Paza Service Corp. ("**Paza**"), an entity owned by one of the principals of Fortress, Vince Petrozza;
 - (iv) approximately \$83,000 to BDMC in respect of administration fees;
 - (v) approximately \$131,000 to Olympia in respect of annual fees payable by Fortress;
 - (vi) approximately \$93,000 to BDMC in respect of independent legal advice fees payable by Fortress and paid to Fortress-selected lawyers; and

¹⁰ This does not include any deduction due to the Fernbrook Claim, which would further deplete recoveries.

- (vii) approximately \$99,000 to BDMC in respect of legal fees paid on behalf of Fortress.

Based on BDMC's records, the remaining 64.5% (being approximately \$13.4 million) was paid to or on behalf of the Brookdale Borrower.

- (d) With respect to the Brookdale Mezzanine Loan, based on BDMC's records, approximately 35% (approximately \$1.6 million) of the Brookdale Mezzanine Loan was used for the payment of fees and was distributed as follows:

- (i) approximately \$573,000 to Fortress, as consultant and for setup fees;
- (ii) approximately \$747,000 as referral fees to the Fortress-related brokers;
- (iii) approximately \$144,000 as a broker fee to BDMC in its capacity as mortgage broker (i.e., not as mortgage administrator), 90% of which was then paid to Paza;
- (iv) approximately \$46,000 to BDMC in respect of administration fees;
- (v) approximately \$48,000 to Computershare in respect of annual fees payable by Fortress;
- (vi) approximately \$33,000 to BDMC in respect of independent legal advice fees payable by Fortress and paid to Fortress-selected lawyers; and
- (vii) approximately \$29,000 to BDMC in respect of lender and legal fees paid on behalf of Fortress.

Based on BDMC's records, the remaining 65% (being approximately \$3 million) was paid to or on behalf of the Brookdale Borrower.

- 101. Accordingly, based on the BDMC records, at least approximately \$3.7 million from the combined principal amounts of the Brookdale Loans has already been directly paid to Fortress in respect of a failed project that is resulting in significant losses being incurred by BDMC as a secured creditor.
- 102. Therefore, given: (i) the significant amounts already paid to Fortress, and entities related to Fortress, including those owned and operated by the same principals as the Brookdale Borrower, (ii) the significant loss experienced by the Brookdale Investors (resulting in a

maximum possible return of principal of 54% before deducting the Administrative Holdback); and (iii) the legal arguments set out above, the Trustee does not agree that a further payment to Fortress is justifiable or equitable in the circumstances. In the Trustee's view, any such payment would provide Fortress with a further windfall to the direct detriment of the Brookdale Investors in a circumstance where the Brookdale Investors are suffering a significant loss and the Brookdale Borrower, an entity related to Fortress, defaulted under its mortgage with Firm Capital and failed to bring such mortgage into good standing.

103. The Trustee has shared its analysis of the Fortress Claim with Representative Counsel who supports the Trustee's position.

The Fernbrook Specific Factors

104. Further to the General Factors described above, even if the Waterfall applied, which the Trustee disagrees with, it is also the Trustee's view that Fernbrook should not be entitled to payment from the Trustee Settlement Amount in priority to BDMC, in trust for the Brookdale Investors, for the following reasons:

- (a) in respect of the portion of the Fernbrook Claim attributable to the Development Management Fee, the Trustee's position is that the Brookdale Sale Transaction Proceeds were paid into Court pursuant to a statutory power of sale process and are not captured by the definition of "Total Sale Proceeds" or the scope of the Project Management Agreement. Accordingly, the proceeds were not received by the Brookdale Borrower and do not constitute Total Sale Proceeds as set forth in the Project Management Agreement. Therefore, as there are no Total Sales Proceeds, there can be no Development Management Fee owing;
- (b) in respect of the portion of the Fernbrook Claim attributable to the Construction Management Fee, the Trustee has not been provided with any construction cost reports in support of such claim as required in the Project Management Agreement; and
- (c) in respect of the portion of the Fernbrook Claim attributable to site labor and salaries, the Trustee has not been provided with any evidence in support of such claims.

105. The Trustee has shared its analysis of the Fernbook Claim with Representative Counsel who supports the Trustee's position.

PROPOSED BROOKDALE PROJECT DISTRIBUTIONS OF REALIZED PROPERTY

Relative Priorities of the Brookdale Mezzanine Loan and the Brookdale Original Loan

Overview

106. As further described herein, the Trustee has considered and reviewed the relative priorities between the Brookdale Mezzanine Investors and the Brookdale Original Investors and their respective potential priority entitlements to the Trustee Settlement Amount. Based on the analysis set out below, the Trustee seeks the proposed Brookdale Settlement and Distribution Order, which provides that the Trustee Settlement Amount be distributed as Realized Property on a *pari passu* basis to all Brookdale Investors and *pro rata* to the Brookdale Investors entitled to receive such funds, in accordance with the Realized Property Order, as amended.
107. It is the Trustee's view that a *pari passu* distribution would provide the fairest and most equitable result for all Brookdale Investors in the circumstances. This view is based on the Trustee's review of the available documentation and the effect of such documentation on the Brookdale Investors, in particular the Brookdale Original Investors, and the lack of consent to, or sufficient disclosure of, the subordination of the Brookdale Original Loan to the Brookdale Mezzanine Loan.

Review of Relevant Documentation

108. The following paragraphs summarize the Trustee's analysis regarding the two groups of Brookdale Investors, the priorities of their respective mortgages in light of the documentation, disclosures and communications made to such Investors, and the Trustee's view regarding the effects of such documentation.

Brookdale Original Loan

109. The Trustee notes the following four points with respect to the Brookdale Original Loan.
110. **First**, based only on the mortgage registrations on title at the time of the Brookdale Sale Transaction, the Brookdale Mezzanine Mortgage ranked in priority to the Brookdale Original Mortgage.

111. The Brookdale Original Loan Agreement and Form 9D disclosure forms signed by the Brookdale Original Investors did contemplate that the Brookdale Original Mortgage could be subordinated under certain conditions.
112. Section 15 of the Brookdale Original Loan Agreement contained language providing for the postponement and subordination of the Brookdale Original Loan, which included:

15. **Postponement and Subordination and Partial Discharge**

The Lender covenants and agrees as follows:

- (a) to postpone and subordinate the Loan Documents in favour of First-Ranking Construction Loan Security and to enter into such standstill agreements as shall be reasonable in the circumstances;
- (b) to postpone and subordinate the Loan Documents in favour of each non-financial encumbrance, as well as any deposit insurer security, if applicable, which is reasonable for a development such as the Project and which individually does not materially adversely affect the market value of the Project and which individually does not materially adversely affect the market value of the Property (including without limitation, encumbrances pertaining to roads, sidewalks, easements, rights-of-way, subdivision agreements and/or condominium agreements, site plan control agreements, development agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licenses, utility easements, Crown patent reservations and restrictive covenants);

...

113. The Trustee notes from its review of a sample of the Form 9D disclosure forms, provided to the Brookdale Original Investors in respect of the Brookdale Original Loan, that in section 19, there are acknowledgements of the investor relating to, among other things, the possible postponement and subordination of the Brookdale Original Mortgage. Those acknowledgements included the following.

"I understand the Charge/Mortgage in which I have an interest is currently a third ranking Charge/Mortgage against the [Project Lands] and the position of the mortgage can change over the duration of the term.

...

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

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

I hereby confirm that I understand and agree that the third charge/mortgage in which I have invested shall be required to postpone and standstill to prior charges/mortgages shall be required to postpone and standstill to prior charges/mortgages to a maximum of \$110,000,000 plus a 10% contingency if required, in priority financing. I understand that priority financing is expected to periodically increase over the term of this charge/mortgage and that such postponements shall be permitted and shall occur on the basis of cost consultant reports prepared on behalf of the borrower.

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

...

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

...

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

[emphasis in original]

114. On October 17, 2017, the Brookdale Borrower, BDMC and Olympia, on behalf of the Brookdale Original Investors, and BDMC on behalf of the Brookdale Mezzanine Investors, executed an interlender agreement (“**Interlender Agreement**”) which subordinated the Brookdale Original Mortgage to the Brookdale Mezzanine Mortgage. A copy of the Interlender Agreement is attached as **Appendix “17”**.
115. Pursuant to the Brookdale Original Loan PASA, BDMC was required to obtain the consent, or deemed consent, of the Brookdale Original Investors for any material amendment, modification, or waiver of any of the terms of the Brookdale Original Loan Agreement, the security documents for the Brookdale Original Loan or any agreements or documents relating thereto.
116. Such consent would be deemed to have been granted if BDMC requested the consent of any Brookdale Original Investor and did not receive that Investor’s written denial within ten days of the delivery of that request.
117. The Trustee has reviewed the books and records of BDMC and cannot find any written consent for the entrance into the Interlender Agreement or the subordination of the Brookdale Original Mortgage from the Brookdale Original Investors, or documentation that

BDMC delivered a request for such consent to the Brookdale Original Investors prior to signing the Interlender Agreement on their behalf.

118. **Second**, the Brookdale Original Investors were informed by investor notice dated November 1, 2017 that BDMC had postponed the Brookdale Original Mortgage to the Brookdale Mezzanine Mortgage. The notice is vague and does not specify the amount to which the Brookdale Original Loan was postponed. It does, however, attach the Interlender Agreement. The notice states, in part:

“Per the standstill, subordinate [sic] and postponement terms and provisions outlined in section 15 (a-f) of the original Loan Agreement, your mortgage in Brookdale has postponed to Building & Development Mortgages Canada Inc. as required.

This allows for the required financing to come into the development in order to successfully move the project forward to reach the next steps and milestones.

Also included with this communication is a copy of the Interlender Agreement signed by all parties allowing the required security for the senior financing to close into the project.”

119. **Third**, the Trustee also notes that the first two tranches of the Brookdale Mezzanine Loan, totaling approximately \$1.4 million, were advanced prior to the date of the aforementioned investor notice, informing the Brookdale Original Investors that they had been postponed to the Brookdale Mezzanine Loan. This means that the Brookdale Original Investors were subordinated by approximately \$1.4 million even before receiving notice of such subordination.
120. **Fourth**, although the Interlender Agreement directly references the Brookdale Mezzanine Loan Agreement, it does not directly reference the Brookdale Original Loan Agreement. It simply provides that BDMC and Olympia as the “Subsequent Encumbrancer” shall postpone all debts owed to them by the Brookdale Borrower to BDMC, as lender under the Brookdale Mezzanine Loan Agreement. This demonstrates the lack of clarity provided to the Brookdale Original Investors regarding the impact of the Interlender Agreement on their rights.
121. Based on the four factors described above and despite the provisions of the Brookdale Original Loan Agreement and Form 9D disclosure providing for postponement under specified circumstances, the steps taken by the Brookdale Borrower and BDMC related to the postponement of the Brookdale Original Loan to the Brookdale Mezzanine Loan did not comply with those provisions. Accordingly, the Trustee’s view is that the Brookdale

Original Investors did not consent and were not given sufficient notice that their mortgage had been postponed by up to \$15 million.

122. In addition, a further issue arises with respect to the Brookdale Original Investors who contributed to the final tranche of the Brookdale Original Loan, which was advanced on August 2, 2017, being five weeks after the Brookdale Borrower entered into the Brookdale Mezzanine Loan Agreement with BDMC.
123. The Trustee is not aware of the existence of any documentation notifying these Brookdale Original Investors who advanced funds in the final tranche that they would be subordinated to the Brookdale Mezzanine Loan and/or giving them an opportunity to advance funds under the Brookdale Mezzanine Loan that would be secured at a higher priority.
124. The Trustee has not also found any documentation explaining why the Brookdale Borrower and BDMC solicited the Brookdale Mezzanine Loan and subordinated the Brookdale Original Loan to the advances made under the Brookdale Mezzanine Loan, rather than increasing the amount available under the Brookdale Original Loan and continuing to solicit further amounts from the Brookdale Original Investors.
125. Specifically, the Trustee has not found any documentation showing that the Brookdale Original Investors were approached and refused to permit a further amendment to the Brookdale Original Loan to increase the amount available under that loan or refused to advance more funds under the Brookdale Original Loan, such that there was a shortfall which would have permitted the subordination of the Brookdale Original Loan under the postponement and subordination provisions of the Brookdale Original Loan Agreement.

Brookdale Mezzanine Loan

126. It is not clear that the Brookdale Mezzanine Investors were aware that the Brookdale Original Mortgage was registered against title to the Project Lands.
127. The Brookdale Mezzanine Loan Agreement contains a representation that the Brookdale Borrower will have good, valid and marketable title to the Brookdale Project, free and clear from all encumbrances except the Permitted Encumbrances (as defined under the Brookdale Mezzanine Loan Agreement).
128. The definition of "Permitted Encumbrances" in the Brookdale Mezzanine Loan Agreement did not include the Brookdale Original Loan. However, this definition was amended in the

Brookdale Mezzanine Loan Amending Agreement dated October 2, 2017 to include a reference to “any other encumbrances shown on the Property parcel register as of the date of this Agreement”.

129. The Trustee believes that the intent of this change was to include the Brookdale Original Loan as a Permitted Encumbrance under the Brookdale Mezzanine Loan Agreement without explicitly including a reference to another BDMC debt on title to the Project Lands.
130. The Trustee also notes that the Form 9D disclosure forms signed by the Brookdale Mezzanine Investors that have been reviewed by the Trustee do not include disclosure of the Brookdale Original Loan.
131. In its review of the books and records of BDMC the Trustee did not find disclosure of the Brookdale Original Loan to the Brookdale Mezzanine Investors.
132. Further, the Trustee has not found anything to show that the Brookdale Mezzanine Investors were provided with a copy of the Brookdale Mezzanine Loan Amending Agreement, such that they would have been put on notice that they should inquire into whether there were any other charges on title to the Project Lands.
133. Accordingly, based on these factors, the Trustee also believes that the Brookdale Mezzanine Investors may not have been aware that there was another BDMC mortgage on title.

Consideration of Available Alternatives

134. Given the circumstances surrounding the Brookdale Loans as outlined above and the related priority considerations, the Trustee considered the fairest and most equitable approach for the distribution of the Trustee Settlement Amount to the Brookdale Investors.
135. The Trustee considered two potential approaches to distribution, as follows:
 - (a) Distributions in accordance with the Brookdale Mortgages as they had been registered on title to the Brookdale Project prior to the completion of the Brookdale Sale Transaction (“**Priorities Approach**”), which approach would result in distributions being made first to the Brookdale Mezzanine Investors until such investors are paid in full (including accrued interest), with any balance then being distributed to the Brookdale Original Investors; or

(b) Distributions on a *pari passu* basis to all Brookdale Investors based on the total principal outstanding under the Brookdale Loans (“**Pari Passu Approach**”).

136. As of October 20, 2022, the Residual Proceeds held by the Accountant were approximately \$17.7 million. Following the payment of the Computershare Settlement Amount, and subject to no distribution being made on account of the Fortress Claim or the Fernbrook Claim, the Trustee Settlement Amount, which is the amount available for distribution to the Brookdale Investors, is approximately \$13.6 million.

137. The following table reflects the recoveries on the Brookdale Loans based on the distribution of the Trustee Settlement Amount using the Priorities Approach:

	Original Loan (\$)	Mezzanine Loan (\$)	Total (\$)
Principal Outstanding (A)	20,706,000	4,622,900	25,328,900
Accrued Interest (B)	12,145,489	1,817,954	13,963,443
Total Outstanding (A+B=C)	32,851,489	6,440,854	39,292,343
Allocation of Trustee Settlement Amount (D)	7,150,214	6,440,854	13,591,068
Shortfall on Loan including accrued interest (C-D)	25,701,275	-	25,701,275
Shortfall on Principal (A-D)	13,555,786	-	13,555,786
Recovery on Principal (D/A)	34.5%	139.3%	53.7%

138. As outlined in the table above, in accordance with the Priorities Approach, the Trustee Settlement Amount would be sufficient to repay the Brookdale Mezzanine Investors in full, including accrued interest. However, the remaining Residual Proceeds would be insufficient to repay the Brookdale Original Investors in full, resulting in a shortfall of approximately \$13.6 million on the principal amount outstanding, being a recovery of 34.5%.

139. The following table reflects the recoveries on the Brookdale Loans in accordance with the Pari Passu Approach.

	Original Loan (\$)	Mezzanine Loan (\$)	Total (\$)
Principal Outstanding (A)	20,706,000	4,622,900	25,328,900
Allocation of Trustee Settlement Amount (B)	11,110,496	2,480,572	13,591,068
Shortfall on Principal (A-B)	9,595,504	2,142,328	11,737,832
Recovery on Principal (B/A)	53.7%	53.7%	53.7%

140. As outlined above, the Pari Passu Approach would result in a recovery of 53.7% on the principal balance outstanding for each of the Brookdale Loans.

Recommendation

141. Based on the foregoing, the Trustee is of the view that the fairest and most equitable result is to distribute the Trustee Settlement Amount on a *pari passu* basis the Brookdale Original Investors and the Brookdale Mezzanine Investors.
142. The Trustee notes the following key considerations in reaching this recommendation:
- (a) the poor state of BDMC's books and records, which affects the Trustee's ability to rely on the written documentation;
 - (b) the lack of clear, consistent or sufficient information provided to the Brookdale Investors, at the time of entering into their loan agreements or during the pendency of their loans, in particular in respect to matters that may have affected or altered the priorities of their mortgages;
 - (c) the Interlender Agreement and the related postponement registered on title to the Project Lands should not be relied upon, given, among other things,
 - (i) there is no evidence that the Brookdale Original Investors refused to further amend the Brookdale Original Loan or advance more funds under that loan, such that there would have been a shortfall that would have permitted the subordination of the Brookdale Original Loan under the postponement and subordination provisions of the Brookdale Original Loan Agreement;

- (ii) it appears the Interlender Agreement was signed to the detriment of the Brookdale Original Investors without their authority, knowledge or consent;
 - (iii) there was insufficient disclosure of the postponements having been registered; and
 - (iv) there would be significant prejudice to the Brookdale Original Investors in the form of a materially lower recovery on principal if the Priorities Approach were to be applied; and
- (d) the Trustee's view that:
- (i) both the Brookdale Original Investors and the Brookdale Mezzanine Investors are innocent parties and are being forced to deal with issues affecting the reliability of their respective documentation and the apparent deficiencies in the disclosure that each investor group received;
 - (ii) the Brookdale Original Investors are innocent parties who were harmed by the actions taken by their administrator on their behalf to postpone and subordinate their security to a new mortgage in favour of other Investors; and
 - (iii) although the Brookdale Mezzanine Investors are also innocent parties who were harmed by the insufficient disclosures regarding the existence of the Brookdale Original Loan, it would not be appropriate in the circumstances for such investors to receive a return of over 139% on principal when equally harmed investors would only receive a return of approximately 34.5% on principal and an actual shortfall on principal of over \$18.5 million in the aggregate.
143. For these reasons, the Trustee is of the view that the strict application of the written documentation available to the Trustee and the application of the priorities as registered on title would be inappropriate and unfair to the Brookdale Original Investors in the circumstances. The Trustee has shared its analysis of the Brookdale Loans with Representative Counsel who supports the Trustee's position.
144. Accordingly, the Trustee is seeking, as part of the proposed Brookdale Settlement and Distribution Order, approval to distribute 85% of the Trustee Settlement Amount (holding

back the 15% Administrative Holdback in accordance with the Realized Property Order as amended) in accordance with the Pari Passu Approach to the Brookdale Investors entitled to such funds.

145. The Trustee notes that this proposed distribution methodology is also consistent with the distribution methodology followed by the Trustee and approved by the Court on the CHAT Project, the OML Project, the Orchard Project, the Peter Richmond Project, and the South Shore Project, each of which had two or more syndicated mortgage loans advanced by Investors, which purported to hold differing security positions on title. In each of these cases, there were also gaps or inconsistencies with the information and/or the dissemination of that information to the respective Investors; accordingly, it was determined in each of those cases that the most equitable and reasonable manner to distribute the funds recovered was on a *pari passu* basis to all of the Investors in the respective projects.

Investor Notice

146. Following service of this Twenty-Ninth Report, the Trustee intends to send a customized notice to the Brookdale Investors to disclose the financial details of the Brookdale Settlement Agreement and to provide information concerning the Court hearing where the Trustee is seeking approval of the Brookdale Settlement Agreement and the distribution to the Brookdale Investors by way of the Pari Passu Approach.

APPROVAL OF PROPOSED SETTLEMENT AND DISTRIBUTIONS OF REALIZED PROPERTY IN RESPECT OF THE EDEN PROJECT

147. The Eden Project is a real estate project located at 230-250 Dew Street in King City, Ontario, developed by 2309918 Ontario Inc. ("**Eden Borrower**"), consisting of 28 residential homes ("**Dwellings**"). Construction of the Eden Project commenced in 2016 and was completed in 2017. All of the Dwellings have been sold and are occupied by third party homeowners.
148. This section of this Twenty-Ninth Report is in support of the Trustee's request for the Eden Resolution and Distribution Order that, among other things:
- (a) approves the Eden Settlement Agreement entered into among the Trustee, Olympia, and the other parties to the Eden Project Litigation;

- (b) orders that the Eden Settlement Payments be made to the Trustee pursuant to and in accordance with the Eden Settlement Agreement; and
- (c) authorizes the Trustee to, upon delivery of the Eden Trustee's Certificate, make a distribution of the Eden Settlement Payments, net of the 15% Administrative Holdback, to the Eden Investors.

The Eden Loan

- 149. According to BDMC's records, as at October 31, 2022, the total amount owing to the Eden Investors in connection with various loan agreements entered into among the Eden Borrower, Vanguard, in trust, and/or Olympia, in trust, and the individual Eden Investors was approximately \$9.1 million (comprised of approximately \$5.9 million in principal and approximately \$3.2 million of accrued interest) ("**Eden Loan**"). Each of the Eden Investors entered into separate loan agreements with the Eden Borrower and Vanguard and/or Olympia, on various dates between February, 2012 and December, 2013 (collectively, the "**Eden Loan Agreements**").
- 150. A sample Eden Loan Agreement with personal information redacted is attached as **Appendix "18"**.
- 151. On March 20, 2012, the Eden Borrower granted a mortgage on the Eden Project in favour of Vanguard for \$3.5 million (which amount was subsequently increased to \$5.92 million) ("**Eden Mortgage**"). The following day, pursuant to a transfer of charge registered on title to the Eden Project, the charge was transferred into the names of both Vanguard and Olympia. The Eden Mortgage was registered against title to each Dwelling in the Eden Project.
- 152. On April 12, 2016, pursuant to a transfer of charge registered on title to the Eden Project, the administration of the Eden Loan was transferred from Vanguard to BDMC.
- 153. There are 129 Investors that advanced funds in respect of the Eden Loan ("**Eden Investors**"). The Eden Investors currently hold a first-ranking charge registered on title to the Dwellings that are the subject of the Eden Project.
- 154. The Eden Borrower made interest payments to the Eden Investors totaling approximately \$1.553 million ("**Previously Paid Interest**") through to March 31, 2017, after which interest began, and continues, to accrue at a *per diem* rate of \$1,319.

Background

155. In July, 2017, prior to the Trustee's appointment, the Trustee understands that a representative of BDMC allegedly advised the Eden Borrower's counsel (at the time), David Chong ("**Chong**"), that in order to facilitate the closing of the individual units in the Eden Project, BDMC and Olympia would execute partial discharges in respect of the Dwellings within 90 days of a unit's closing without payment of amounts owing under the Eden Loan Agreement. In or about April or May 2017, Olympia executed an undertaking which stated that Olympia would execute, without payment of monies, partial discharges as required.
156. The Trustee was advised by Fortress, the development consultant on the Eden Project, on numerous occasions, and as late as June, 2018, that it had been advised by the Eden Borrower that there would be sufficient funds to satisfy the repayment of the Eden Loan in full, at which time the Eden Mortgage was to be discharged.
157. Contrary to those representations, in early July 2018, the Trustee was advised for the first time by PACE Developments Inc. ("**PACE**"), (the developer engaged by the Eden Borrower to develop the Eden Project), that the Eden Borrower suffered a loss on the Eden Project and accordingly there would be no funds available to repay any portion of the Eden Loan. PACE advised that certain cost overruns not previously accounted for in the Eden Borrower's records had absorbed the over \$7 million that was then owing to BDMC in respect of the Eden Loan.
158. In light of the representations made by PACE, the Trustee requested that PACE provide certain financial information related to the Eden Project, which the Trustee utilized to analyze the flow of funds to and from the Eden Borrower. The Trustee's analysis resulted in numerous questions related to the use of funds as the financial information could not adequately explain the significant change in the anticipated recoveries.
159. Accordingly, notwithstanding increasing pressure from the Eden Borrower, PACE and representatives of CDCM, the Trustee refused to discharge the Eden Mortgage from the Dwellings, given that the Eden Loan was never repaid

Bankruptcy Order

160. On September 12, 2018, the Trustee declared all of the obligations under the Eden Loan Agreements due and payable and made a formal demand against the Eden Borrower and

PACE for repayment in full of the Eden Loan. In addition to demanding repayment of the full amount owed to the Eden Investors, the Trustee demanded additional documentation to explain the significant change in the Eden Borrower's financial position over such a short timeframe. As no repayment was made, on October 19, 2018, the Trustee delivered a further demand letter and a Notice of Intention to Enforce a Security to the Eden Borrower under Section 244 of the *Bankruptcy and Insolvency Act* ("**BIA**").

161. While PACE responded to certain of the Trustee's requests for documents, the Trustee was not provided with sufficient information to adequately explain the significant change in the Eden Borrower's financial position. As such, the Trustee determined that further action on behalf of the Eden Investors was warranted.
162. Accordingly, on or about May 1, 2019, the Trustee served an application for a Bankruptcy Order against the Eden Borrower pursuant to section 43(2) of the BIA.
163. Pursuant to an Order of the Court made on June 19, 2019, the Eden Borrower was adjudged bankrupt and Grant Thornton Limited was appointed as bankruptcy trustee ("**GT**"). A representative of the Trustee was appointed as an inspector in the bankruptcy proceedings.
164. Following its appointment, GT conducted an investigation of the Eden Borrower's affairs, including continuing to pursue the information required to complete a use of funds analysis.

Eden Project Litigation

165. On May 8, 2019, purchasers of certain of the Dwellings ("**May 2019 Purchasers**"), commenced a lawsuit against Chong, the Eden Borrower, and certain related individuals (collectively, the "**May 2019 Purchaser Litigation**"). On or about July 24, 2019, and in violation of the stay of proceedings contained in the Appointment Order, the Trustee received a third-party claim issued by Chong ("**Third Party Claim**") naming, among others, FAAN Mortgage, in its capacity as Trustee, and Olympia, as third parties in the May 2019 Purchaser Litigation. The relief sought in the Third Party Claim includes, among other things, a mandatory Order that BDMC and Olympia do all things necessary to discharge the Eden Mortgage, without providing for payment to BDMC or Olympia of the Eden Loan.

166. On August 30, 2019, purchasers of certain additional Dwellings (“**August 2019 Purchasers**”) also commenced litigation against Chong, the Eden Borrower, and certain related individuals (the “**August 2019 Purchaser Litigation**”, together with the May 2019 Purchaser Litigation, the “**Eden Purchaser Litigation**” and, together with the Third-Party Claim, the “**Eden Project Litigation**”).
167. FCT Insurance Company Ltd. and Stewart Title Guaranty Company provided title insurance to the May 2019 Purchasers in respect of their Dwellings and, as title insurers in interest, have the authority to act on behalf of the May 2019 Purchasers in respect of the May 2019 Purchaser Litigation (including the settlement thereof).
168. Chicago Title Insurance Company Canada provided title insurance to the August 2019 Purchasers in respect of their Dwellings and, as title insurer in interest, has the authority to act on behalf of the August 2019 Purchasers in respect of the August 2019 Purchaser Litigation (including the settlement thereof). There are also two individuals who own Dwellings (“**Additional 2019 Purchasers**”) who did not commence any claim. TitlePLUS has provided title insurance to the Additional 2019 Purchasers in respect of their Dwellings and, as title insurer in interest, has the authority to act on behalf of the Additional 2019 Purchasers in settling any dispute relating to the title of these Dwellings.
169. On October 8, 2019, the parties to the Eden Project Litigation attended a chambers appointment before the Court where the Court directed Chong to remove FAAN Mortgage as a party and directed the parties to meet to attempt to resolve the outstanding procedural issues with respect to the Eden Project Litigation. On October 21, 2019, the Trustee received a Notice of Discontinuance, whereby Chong wholly discontinued the Third Party Claim as against FAAN Mortgage, in its capacity as Trustee, without costs and without prejudice to the right of Chong to seek leave of the Court to initiate a third party proceeding against BDMC.
170. In accordance with the Court’s direction, the Trustee and its counsel and counsel to the parties to the Eden Project Litigation met on a without prejudice basis on multiple occasions to attempt to resolve matters related to the Eden Project Litigation. GT’s investigation was also put on hold while the Trustee explored a consensual settlement in respect of the Eden Loan and the Eden Project Litigation.
171. On August 6, 2020, a class action was commenced by an individual plaintiff on his own behalf and on behalf of a proposed class consisting of, among others, a subset of

individual syndicated mortgage lenders in BDMC projects, that invested in a loan through a registered plan account held in trust by Olympia. The relief sought includes, among other things, a claim for damages against Olympia.

Eden Settlement Agreement

172. After extensive negotiations, the parties reached a global resolution and entered into a settlement agreement, a copy of which is attached as **Appendix “19” (“Eden Settlement Agreement”)**. The principal terms of the Eden Settlement Agreement are as follows:

- (a) Payments to the Trustee, on behalf of BDMC and Olympia, totaling \$2.225 million, by the following parties:
 - (i) \$500,000, to be paid by PACE;
 - (ii) \$875,000, to be paid by Chong’s insurer (“**LawPro**”), on behalf of Chong; and
 - (iii) \$850,000 to be paid by one or more title insurers (“**Title Insurers**”) on behalf of the owners of the Dwellings;

(collectively, the “**Eden Settlement Payments**”).

The Eden Settlement Payments are due on or before the later of (a) 60 days from the date of the Eden Settlement Agreement, and (b) 35 days from Court approval of the Eden Settlement Agreement (“**Payment Deadline**”).

- (b) Within 10 days of the Payment Deadline, the parties to the Eden Purchaser Litigation will dismiss their litigation against Chong, the Eden Borrower and certain related individuals.
- (c) The Trustee will use commercially reasonable efforts to seek approval of the Eden Settlement Agreement. The settlement agreement will not be binding on any party until 35 days following the date on which the Eden Resolution and Distribution Order is issued, subject to no appeal of the Eden Resolution and Distribution Order having been brought by then.
- (d) The Trustee shall be required to file a certificate with the Court (“**Eden Trustee’s Certificate**”) upon satisfaction of the following conditions:

- (i) The Eden Resolution and Distribution Order having been granted and the appeal periods in respect of the Eden Resolution and Distribution Order having expired;
- (ii) Each of the Eden Settlement Payments having been received by the Trustee;
- (iii) The Eden Purchaser Litigation having been dismissed; and
- (iv) Receipt of signed acknowledgement from GT acknowledging, among other things, that it is aware of the Eden Settlement Agreement and that the Eden Borrower and its estate has no interest in the Eden Settlement Payments.

The date on which the Eden Trustee's Certificate is issued is deemed to be the "**Closing Date**".

- (e) Within 10 days of the Closing Date, the Trustee, on behalf of the Eden Investors, shall discharge the Eden Mortgage from title to the Dwellings.
- (f) The Eden Settlement provides for comprehensive releases between the parties as of the Closing Date.

Trustee's Recommendation

173. The Eden Settlement Payments result in a return of approximately 37% of the outstanding principal balance owing under the Eden Loan or 64% of the outstanding principal when including Previously Paid Interest. The recovery is calculated as follows:

Principal outstanding (A)	\$ 5,937,000
Settlement Payments (B)	\$ 2,225,000
Previously Paid Interest (paid through March 31, 2016)	\$ 1,553,142
Total Payments (C)	\$ <u>3,778,142</u>
Recovery on principal (B/A)	37%
Recovery on principal including Previously Paid Interest (C/A)	64%

174. Prior to and during the negotiation process, the Trustee considered whether there were any other alternatives to the Eden Settlement Agreement that may have resulted in a more favourable outcome for the Eden Investors.

175. Upon review and consideration of the alternatives with its counsel, the Trustee is of the view that the only alternative to the Eden Settlement Agreement would have been to defend against the Third Party Claim and to seek to enforce on the Eden Mortgage in order to gain possession of and ultimately realize on the Dwellings. This alternative, however, had a number of challenges including, among other things:

- (a) The length of time and cost associated with litigating a claim of this nature, which may or may not ultimately result in a better outcome for the Eden Investors;
- (b) Certain aspects of the conduct and/or possible representations made by BDMC representatives prior to the Trustee's appointment caused a level of uncertainty with respect to the outcome of any litigation;
- (c) LawPro, as one of the parties to the litigation and contributors to the Eden Settlement Payments, had a limit on its insurance policy, which was being eroded and would continue to erode with the ongoing costs of the litigation. Further erosion of the policy would result in less funds being available from LawPro to satisfy any future payment or settlement; and

- (d) The owners of the Dwellings would likely argue that they are bona fide purchasers for value, and that they, together with the Eden Investors are each innocent parties in this matter. Given that there are innocent parties on each side of the litigation, the likelihood of the Trustee being able to enforce on the Eden Mortgage and take possession of the Dwellings was also uncertain.
176. After giving careful consideration to the matters noted above, the Trustee also considered the following factors with respect to the merits of the Eden Settlement Agreement: (i) the certainty it creates regarding the amount and timeframe for the partial repayment of the Eden Loan; (ii) the lack of favourable available alternatives, including the uncertainty related to timing and costs that would result from the continuation of the litigation, as outlined above; (iii) the Eden Settlement Agreement allows the Trustee to finally monetize the investments of the Eden Investors who have endured a significant delay in the recovery of their loans given that more than six years have passed since the maturity of the Eden Loan; (iv) the view of GT that the Eden Settlement Agreement was appropriate in the circumstances; and (v) the Eden Settlement Payments result in a principal return of approximately 37% on the Eden Loan, or 64% of the outstanding principal when including Previously Paid Interest.
177. Based on the foregoing, the Trustee and Representative Counsel are of the view that although the Eden Settlement Agreement only provides a partial recovery for the Eden Investors, it offers the greatest opportunity for a meaningful recovery in the circumstances, and there is value in the certainty provided by the Eden Settlement Agreement and crystalizing the outcome of the Eden Loan at this time.
178. If the Eden Resolution and Distribution Order is granted and the settlement closes in accordance with the terms of Eden Settlement Agreement, the Trustee intends to distribute the Eden Settlement Payments (net of the Administrative Holdback) to the Eden Investors following the delivery of the Trustee's Certificate.

Eden Investor Notice

179. Following service of this Twenty-Ninth Report, the Trustee intends to send a customized notice to the Eden Investors to disclose the financial details of the Eden Settlement Agreement and to provide information concerning the Court hearing where the Trustee is seeking approval of the Eden Settlement Agreement and the distribution to the Eden Investors.

Conclusion

180. For the reasons noted above, the Trustee and Representative Counsel are of the view that, in light of the circumstances related to the Eden Loan, the discharge of the Eden Mortgage from the Dwellings by the Trustee and the Eden Resolution and Distribution Order are in the best interest of the Eden Investors. Accordingly, the Trustee recommends that the Court approve the Eden Settlement Agreement and that the proposed Eden Resolution and Distribution Order be granted by the Court, which will result in the Eden Settlement Payments, net of the 15% Administrative Holdback, being distributed to the Eden Investors.

OTHER PROJECTS

Charlotte Adelaide Project

181. The Charlotte Adelaide Project is a real estate development project in downtown Toronto, Ontario ("**CHAT Project**") that involved two different syndicated mortgage loans administered by BDMC, as follows: (i) \$12.3 million of principal owed to the SML Investors, and (ii) 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 Project 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.

182. In addition, the Trustee, the CHAT Purchaser, Go-To Stoney Creek Elfrida LP, Go-To Stoney Creek Elfrida Inc. (collectively, "**Go-To Stoney Creek**"), and its principals, including Mr. Oscar Furtado, among others, also entered into a memorandum of understanding (as amended, "**CHAT MOU**") in respect of the CHAT Transaction. Pursuant to the CHAT MOU, BDMC received payments totaling approximately \$5.7 million (inclusive of applicable penalties), and the opportunity to receive a further payment 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 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 CHAT MOU.

183. In April 2021, despite the development approvals that may have given rise to the payment of the Density Bonus not having been obtained, Mr. Furtado, 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 was of the view that given the recent input it received from the City of Toronto regarding development approvals, the Density Bonus would likely not become payable and, accordingly, Go-To Stoney Creek asked the Trustee to discharge its mortgage in order for it to advance the development of the Alternate Property.
184. Given the potential unrecoverable cost to the BDMC estate of litigating the matter, the Trustee agreed to discharge its security on the Alternate Property in exchange for an equitable mortgage (“**Equitable Mortgage**”) on 355 Adelaide St. W and 46 Charlotte St. (“**Combined Properties**”), being the properties pursuant to which the possible Density Bonus relates. On that basis, on November 8, 2021, the Trustee, Go-To Stoney Creek and Go-To Spadina Adelaide Square Inc. and Go-To Spadina Adelaide Square LP (collectively, “**Go-To Spadina**”), entered into a Security Substitution Agreement and Release (“**CHAT Security Agreement**”) to, among other things, document the release of the mortgage on the Alternate Property, and the terms of the Equitable Mortgage and conditions upon which the Equitable Mortgage could be registered by the Trustee on title of the Combined Properties.
185. On December 10, 2021, pursuant to an application filed by the Ontario Securities Commission under sections 126 and 129 of the *Securities Act* (Ontario), the Court granted an Order appointing KSV Restructuring Inc. as receiver and manager (in such capacity, “**Go-To Receiver**”) of the real property and other assets, undertakings and properties of Go-To Developments Holdings Inc., Go-To Spadina and Go-To Stoney Creek, among other respondents, including the Combined Properties and the Alternate Property.
186. As a result of the receivership proceedings in respect of Go-To Spadina, certain events of default occurred and are continuing under the CHAT MOU and Equitable Mortgage. Pursuant to the terms of the CHAT Security Agreement, on December 17, 2021, the Trustee registered the Equitable Mortgage on title to the Combined Properties.
187. On June 14, 2022, the Go-To Receiver obtained a Court order (as amended) approving the sale of the Combined Properties to Fengate Capital Management Ltd. (or its nominee)

and for the distribution of the proceeds from the sale to two priority mortgagees registered on title. The sale transaction closed on July 8, 2022. Following distribution of these payments, the Trustee understands that the Go-To Receiver is holding the balance in trust. The Trustee also understands that in addition to the Equitable Mortgage, there is another party that held a registered mortgage on title to the Combined Properties in the principal registered amount of \$19.8 million.

188. On June 2, 2022, the Trustee filed a proof of claim in the claims process commenced by the Go-To Receiver in respect of its Equitable Mortgage. On November 1, 2022, the Go-To Receiver delivered to the Trustee a Notice of Revision or Disallowance of Claim disallowing the Trustee's claim in respect of its Equitable Mortgage in full. The Trustee is in the process of reviewing the materials delivered by the Go-To Receiver and determining next steps.

Highlands of York Region Project

189. The Highlands of York Region project is 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: (i) three first ranking vendor take back mortgages ("**VTBs**") (collectively, the "**VTB Mortgages**"), each of which is registered on title to a different HYR Property; and (ii) a second ranking mortgage registered by Jaekel, on title to each of the three HYR Properties.
190. The Trustee's planning consultant has advised that the HYR Project still requires certain development approvals and that submissions to obtain the required development approvals have been significantly delayed due to: (i) a lack of available municipal servicing and uncertainty as to when the servicing will be available; and (ii) challenges with respect to vehicular access to the HYR Properties.
191. As was advised in a notice sent to the HYR Investors on February 17, 2022, on January 18, 2022, the holder of one of the VTB Mortgages ("**VTB Mortgage 1**") delivered a Notice of Sale under Mortgage ("**Notice of Sale**"). Subsequent to the issuance of the Notice of Sale, the Trustee was advised that Jaekel redeemed VTB Mortgage 1, thereby resolving the Notice of Sale proceeding.

192. As was advised in a notice sent to the HYR Investors on June 1, 2022, on April 19, 2022 (“**April 19th Notice**”), Jaekel issued a notice advising that its mortgage had matured and that amounts owing thereunder totaling approximately \$13.3 million were immediately due and payable by the HYR Project borrower (the “**HYR Borrower**”) failing which Jaekel would be in a position to commence enforcement proceedings, which could include, among other things, seeking a judgement of foreclosure under its mortgage. Following receipt of the April 19th Notice, the Trustee and Jaekel agreed that should Jaekel not be repaid by the HYR Borrower, Jaekel would not seek to immediately foreclose under its mortgage and would instead first attempt to sell the property pursuant to a Notice of Sale proceeding.
193. Having not been repaid, Jaekel issued a Notice of Sale on July 11, 2022 with a deadline for repayment of August 22, 2022. As Jaekel was once again not repaid, Jaekel retained a listing agent, and then listed the HYR Properties for sale on September 20, 2022, without a listing price. After marketing the HYR Properties for a period of time, the listing agent set an offer date of October 19, 2022.
194. Jaekel advised the Trustee that it received multiple offers for the HYR Properties but none of the offers were sufficient to repay its debt and the remaining VTB mortgages in full. Jaekel has further advised that it is continuing to discuss a potential sale transaction with the party that submitted the highest and best offer. Should such a transaction be completed it will result in the HYR Loan being discharged from title to the HYR Properties with no recovery for the HYR Investors. Copies of all notices sent to the HYR Investors since the Twenty-Seventh Report are collectively attached as **Appendix “20”**.

6th and 10th Project

195. The 6th & 10th project is a completed 224-unit residential condominium building (“**6th & 10th Project**”) located in Calgary, Alberta with over \$8.8 million in principal syndicated mortgage loan debt administered by BDMC that is registered first on title to the 6th and 10th Property (“**6th & 10th Loan**”, and such Investors in the 6th & 10th Loan, the “**6th & 10th Investors**”). The condominium was registered in 2017 and since the Trustee’s appointment, the 6th and 10th Project borrower (the “**6th & 10th Borrower**”) has been in the process of selling the remaining condominium units. The Trustee understands that all remaining residential units have now been sold.

196. The 6th and 10th Loan is now seven years past its original maturity, which had contemplated an original term ending in 2015. The 6th & 10th Borrower has advised the Trustee that, despite its expectations for the project, it experienced considerable challenges since 2014. According to the 6th and 10th Borrower, these challenges resulted in continued downward pressure on the selling prices for the condominium units and a significantly extended timeline for the sale of such units. This resulted in the 6th & 10th Project being substantially less profitable than had originally been projected.
197. As was discussed in the Twenty-Seventh Report, the 6th & 10th Borrower has advised the Trustee that, although the 6th & 10th Loan remained the only outstanding mortgage debt registered on title to the then remaining units, it was making a claim to the proceeds from such remaining units in priority to the 6th & 10th Loan because it had funded, and continues to fund, certain project costs. The 6th & 10th Borrower has since provided the Trustee with an updated summary of its claim, which, as at October 18, 2022, totaled approximately \$2.7 million (“**Related Party Claim**”). The Trustee understands that the Related Party Claim is comprised of: (i) the initial equity contributed by the 6th & 10th Borrower to the 6th & 10th Project; (ii) guarantee fees for personal guarantees provided by the principal of the 6th & 10th Borrower in respect of an inventory loan; and (iii) amounts advanced by certain companies related to the principal of the 6th & 10th Borrower to pay for, among other things, costs to service the inventory loan, condominium fees and other carrying costs related to the 6th & 10th Project. The 6th & 10th Borrower does not hold a priority mortgage or any charge registered on title to the 6th & 10th Project in respect of the Related Party Claim.
198. The Trustee has not consented to any payment of the Related Party Claim in priority to a payment in respect of the 6th & 10th Loan and continues to be engaged in discussions with the 6th & 10th Borrower with respect to same. In the circumstances, in order to allow for the uninterrupted sale of the remaining residential units after the inventory loan was repaid in full, the Trustee agreed with the 6th & 10th Borrower that the proceeds (net of closing costs) from the sale of the remaining units would be held in escrow by the 6th & 10th Borrower’s counsel until a resolution regarding the Related Party Claim could be reached or upon further order of the Court. On December 8, 2021, the 6th & 10th Borrower, its counsel, the Trustee and Olympia executed an agreement documenting this agreed upon arrangement (“**Escrow Agreement**”).
199. Pursuant to the terms of the Escrow Agreement, there is approximately \$3.7 million being held in escrow, which is insufficient to repay the 6th & 10th Loan in full, regardless of the

outcome of the Related Party Claim. Accordingly, there will be a significant shortfall suffered by the 6th & 10th Investors.

Rutherford Project

200. The Rutherford Project is a real estate development project in Edmonton, Alberta (“**Rutherford Project**”) that is comprised of 136 homes with over \$8.6 million in principal amount of syndicated mortgage loan debt (the “**BDMC Rutherford Mortgage**”) administered by BDMC on behalf of Investors (“**Rutherford Investors**”) that is registered third on title to the Rutherford Project. The BDMC Rutherford Mortgage is now five years past its original maturity, which had contemplated an original term ending in 2017. The Rutherford Project borrower (the “**Rutherford Borrower**”) has advised that the Rutherford Project has and continues to experience significant challenges which include, among other things, escalating supply costs, labour shortages, and an overall softening in demand for higher-end homes in the area. Such challenges have resulted in the significantly protracted timeline for the completion of the Rutherford Project.
201. As at the date of this Report, out of the 136-unit project, 110 units have been sold and 64 units have closed. Since the date of the Twenty-Seventh Report, 46 new units have been sold and 38 of these units are in various stages of construction.
202. As was detailed in the Twenty-Seventh Report, the Rutherford Borrower advised the Trustee that it had been funding certain construction related costs that its lender, the Bank of Nova Scotia (“**BNS**”), the first priority mortgagee, had previously been unwilling to fund. BNS has since agreed to fund those amounts and reimbursed the Rutherford Borrower for those costs. The Rutherford Borrower has further advised that the construction of the new units is being funded from the deposits received in respect of such units.
203. The Trustee continues to monitor the project and engage in discussions with the Rutherford Borrower regarding the completion of the project. The Rutherford Borrower has advised the Trustee that, the timeline to completion and the quantum of any expected recovery to the Rutherford Investors continues to remain unknown.

King Square Project

204. The King Square Project is a three-storey condominium shopping mall development in Markham, Ontario (“**King Square Project**”), with approximately \$8.6 million in principal amount of syndicated mortgage loan debt administered by BDMC on behalf of Investors

(“**King Square Investors**”) that is registered third on title to the King Square Project. As was advised in the Twenty-Seventh Report, the King Square Project was subject to a Notice of Sale proceeding commenced by Firm Capital, the first-priority mortgagee. Since the commencement of the enforcement proceedings, Firm Capital has been working with the King Square Project borrower to sell the remaining inventory comprising the King Square Project. To date, approximately 65% of the net saleable area has been sold.

205. As of October 20, 2022, Firm Capital was owed approximately \$49.9 million inclusive of interest and fees. This amount includes approximately \$9.3 million of VTBs in respect of the sale of certain units which is to be repaid by the purchasers upon maturity of their respective VTBs. Upon repayment of the VTBs, and excluding the sale of any additional units, the Firm Capital indebtedness will be reduced to approximately \$40.6 million.
206. While Firm Capital continues to actively market the remaining inventory for sale, the market for such units continues to be weak and interest continues to accrue on Firm Capital’s outstanding balance. Accordingly, the quantum and timing of recoveries, if any, for the King Square Investors remains uncertain and continues to be dependent on the timing and selling prices of the remaining inventory.

Humberstone Project

207. As described in greater detail in the Trustee’s Tenth Report to Court dated September 4, 2019 (“**Tenth Report**”), the Humberstone Project is a real estate development project in Halton Hills, Ontario that is comprised of 101 townhouse units (“**Humberstone Property**”).
208. On September 11, 2019, the Court granted an order (“**Humberstone Settlement Approval Order**”) approving a settlement agreement (“**Humberstone Settlement Agreement**”) with the Humberstone Project borrower (the “**Humberstone Borrower**”) for the repayment of amounts owing under its loan agreement administered by BDMC on behalf of Investors (“**Humberstone Investors**”). The settlement provided for (i) a first settlement payment of \$1.75 million (“**First Settlement Payment**”) and (ii) at the election of the Humberstone Borrower a second settlement payment of \$600,000, if paid out of the proceeds of the initial advance of construction financing for the Humberstone Project, or \$800,000, if paid out once the Humberstone Borrower completed the sale of the 95th residential unit (“**Residential Sale Completion Date**”) (such payment being the “**Second Settlement Payment**”). The Humberstone Settlement Agreement further contemplated

that the Second Settlement Payment was to be secured by a charge registered on title to the Humberstone Property.

209. The Trustee received and distributed the First Settlement Payment in accordance with the Humberstone Settlement Approval Order and the security in respect of the Second Settlement Payment was delivered and registered.
210. On or about December 2020, the Humberstone Borrower advised the Trustee that it had elected to pay the Second Settlement Payment, in the amount of \$800,000, at the Residential Sale Completion Date, which was expected to occur in late 2022.
211. The Trustee has continued to monitor the development of the Humberstone Project and understands that the Humberstone Borrower now anticipates that the Residential Sale Completion Date will occur in the summer of 2023.
212. The Trustee will be sending a notice to the Humberstone Investors advising of the status of the unit sales and the updated timing for the Second Settlement Payment.

South Shore Project

213. The South Shore Project was a real estate development project in Keswick, Ontario ("**South Shore Project**" or "**South Shore Property**") with three syndicated mortgage loans, which combined have principal debt totaling more than \$29.2 million, and each is administered by BDMC (collectively the "**South Shore Loans**", and such Investors in the South Shore Loans, collectively, the "**South Shore Investors**").
214. On January 24, 2019, Diversified Capital Inc. ("**Diversified**") issued a Notice of Sale in respect of its then outstanding first priority debt of approximately \$6.9 million that was in default. Following a delayed sale process, the South Shore Property was eventually sold on May 13, 2021 for \$13 million ("**South Shore Sale Transaction**"). The South Shore Sale Transaction took place almost two and a half years from the date of issuance of the Notice of Sale. The Trustee had significant concerns with the length of time it took Diversified to commence the sale process, the execution of the sale process itself and the amounts paid to Diversified from the proceeds of the South Shore Sale Transaction.
215. On May 27, 2021, the Trustee received a distribution of approximately \$1.8 million ("**South Shore Proceeds**"), representing the remaining sale proceeds after the payment of commission, legal fees, the approximately \$9.9 million taken by Diversified, the lien

settlement of \$35,000 and the \$610,000 payment into Court in respect of the outstanding lien claim. The Trustee has distributed the South Shore Proceeds to the South Shore Investors, in accordance with the South Shore Distribution Order.

216. The Trustee subsequently commenced litigation against Diversified seeking to recover certain of the amounts paid to Diversified including amounts related to the conduct and length of the power of sale proceeding leading up to the South Shore Sale Transaction and the quantum of the fees and interest taken by Diversified as a result of same. In connection with this litigation, the Trustee filed the Twenty-Eighth Report on March 16, 2022, which provides the history of matters related to the South Shore Project. Diversified filed responding materials on May 25, 2022. The Trustee is in the process of preparing its response to Diversified. The Trustee will continue to update the South Shore Investors as this matter develops.
217. At the time the South Shore Sale Transaction was completed, there were two construction liens registered on title to the South Shore Property, which in aggregate totaled approximately \$643,000. One of the claims was settled for approximately \$35,000 (which claim was originally advanced for approximately \$83,000 and subsequently reduced to \$73,000). The remaining claim was advanced for approximately \$560,000. The Trustee is involved in litigation with the lien claimant regarding the validity of that claim, and entitlement to the approximately \$610,000 paid into Court.

GENERAL DEVELOPMENTS RELATED TO THE BDMC PROCEEDINGS

Class Action Proceedings

218. 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) (“**Sorrenti Proceedings**”).
219. In furtherance of its mandate in these proceedings, the Trustee and its counsel have been involved to the extent necessary 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. The Trustee has attended case management conferences in respect of the Class Actions to ensure that matters related to its mandate under the Appointment Order are properly explained to the Class Action court. The Trustee has also provided information to Class Action counsel in accordance with its obligations to the Court and the investors.

220. In early 2021, the plaintiffs in the Class Actions (the “**Class Action Plaintiffs**”) 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 Class Action 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. On April 22, 2021, a partial lift stay order was granted in each of the Class Actions. The partial lift stay order also lifted the stay imposed by the Appointment Order with respect to the Sorrenti Proceedings on the same terms.
221. On September 14, 2021, the Case Management Judge declined to impose a timetable in respect of the Class Actions, stating that it was premature to do so given the preliminary steps that remained incomplete, such as delivering the remaining Amended Statements of Claim and other pleadings.
222. Since January 18, 2022 (the date of the Twenty-Seventh Report), the following developments in the Class Actions have occurred:
 - (a) The Class Action Plaintiffs obtained orders replacing certain plaintiffs with new individuals to act as representative plaintiff in the particular Class Action.
 - (b) The Class Action Plaintiffs and certain defendants (namely ADI Developments (Link) Inc. and ADI Development Group Inc. (collectively, “**ADI**”)) in the class proceeding related to Sutton consented to an order staying the proceeding as against ADI. The order granted also provides that the Class Action Plaintiffs can bring a motion on 20 days’ notice to lift the stay in respect of claims against ADI

that are not pursued or adjudicated in the existing proceedings involving the Trustee before the Ontario Superior Court of Justice (Commercial List).

- (c) The Class Action Plaintiffs delivered certain of the remaining Amended Statements of Claim in some of the Class Actions.

223. In addition, there have been developments in the outstanding class action initiated by a plaintiff against Olympia in Court File No. CV-20-00643593-00CP (“**Raponi Class Action**”). The Court heard and dismissed the certification motion in the Raponi Class Action. The plaintiff in the Raponi Class Action has served a notice of appeal from that dismissal order.

224. The Trustee will continue to monitor the Class Actions and will provide general updates to the Investors as appropriate.

FUNDING OF THESE PROCEEDINGS AND CASH FLOW PROJECTION

225. 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. 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 \$175 million in Realized Property during these proceedings.

226. As discussed below, portions of the Estate Property, which include the Administrative Holdback, have been disbursed to pay BDMC’s operating expenses and professional fees. As discussed further herein, certain Investors may receive a portion of the remaining Administrative Holdback in the future once a final reconciliation is completed.

Cash receipts and disbursements from January 1, 2022 to July 31, 2022

227. In the Twenty-Seventh Report, the Trustee provided a forecast for the projected receipts and disbursements related to the administration of the BDMC estate for the period January 1, 2022 to July 31, 2022 (“**Projection Period**”). The following chart reflects the variance analysis for the Projection Period:

	Amount (\$000s)		
	Projected	Actual	Variance
Receipts			
Administrative Holdback	-	105	105
Interest	10	17	7
Total receipts	10	122	112
Disbursements			
Operating costs	126	98	28
Appraisals	18	2	16
Professional fees	2,005	1,189	816
Total disbursements	2,149	1,289	860
Net cash flow	(2,139)	(1,167)	972

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

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

Administrative Holdback: The positive variance relates to the distribution of amounts withheld in respect of the Kemp Project, which was authorized pursuant to the January 2022 Omnibus Order. These funds were not included in the Projection Period, as the approval to distribute these funds was uncertain at the time of the Twenty-Seventh Report.

Professional Fees: The positive variance is in part a timing difference, a portion of which was reversed in August and September, 2022, as detailed below. Overall, the administration and required activities during the Projection Period took less time and in turn was less costly than originally forecasted.

229. In addition, the actual receipts and disbursements for August 1, 2022 to September 30, 2022, which is after the Projection Period contemplated in the Twenty-Seventh Report, are summarized below:

	(\$000s)
Receipts	
Collections and other receipts	12
Administrative Holdback	-
Total receipts	12
Disbursements	
Operating costs	8
Appraisals	-
Professional fees	430
Total disbursements	438
Net cash flow	(426)

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

Professional Fees: These amounts relate to a portion of the unpaid fees that were projected to be paid during the Projection Period.

Funds in the Trustee’s Possession

231. A summary of the Estate and Realized Property as at September 30, 2022 is provided in the table below.

Type	Primary Purpose	Amount (\$000s)	
		As at December 31, 2021	As at September 30, 2022
Estate ¹¹	BDMC operating funds	5,505	3,913
Realized	Held pending Investor distributions	2,542	368
		8,047	4,281

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

¹¹ 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 \$25,219 in satisfaction of this obligation.

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 of September 30, 2022 relate primarily to funds to be distributed by the Trustee to certain Investors that: (i) the Trustee has been unable to locate; or (ii) have passed away and the Trustee is waiting for documentation to support where the funds are now to be distributed. The Trustee is continuing to attempt to complete these distributions.

Projected receipts and disbursements for the period ending April 30, 2022

232. The Trustee has prepared a monthly cash flow projection (“**Cash Flow Projection**”) related to the administration of the BDMC estate for the period October 1, 2022 to April 30, 2023 (“**Cash Flow Period**”), which is attached as **Appendix “22”**. A summary of the Cash Flow Projection is as follows:

	\$000s
Projected Receipts	2,425
Projected Disbursements	
Staffing costs	63
Office expenses and IT	20
Insurance	161
Bank charges	3
Other expenses	20
Total Operating Disbursements	267
Appraisals and related consultants	7
Professional fees	950
Total disbursements	1,224
Projected net cash flow	1,201
Opening cash***	3,888
Net cash flow	1,201
Projected closing cash/Estate Property	5,090

*** Opening cash, as of October 1, 2022, is comprised of Estate Property, excluding the term deposit required under the MBLAA.

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

Projected Receipts: The Projected Receipts reflect the Administrative Holdback from: (i) the Trustee Settlement Amount; (ii) Eden Settlement Payments; and (iii) interest earned on the funds held in the various bank accounts maintained by the Trustee.

The Trustee notes that it continues to monitor the remaining BDMC projects with a view to maximizing realizations for the Investors, where possible and accordingly, the Trustee may receive additional Realized Property during the Cash Flow Period. Due to the confidential nature of the Trustee's discussions and negotiations, and similar to the 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: These amounts relate primarily to the cost to renew BDMC's insurance, the dedicated BDMC contractors and IT support 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: These amounts reflect the estimated professional fees to be paid during the Cash Flow Period, including a payment contemplated in November 2022 of the outstanding professional fees through to September 30, 2022, which remain unpaid as at the date of the Twenty-Ninth Report.

Projected Closing Cash: Given the quantum of cash projected to be in the BDMC estate and the Trustee's estimate of the remaining work required to complete the administration of the BDMC estate, it is anticipated that there will be funds remaining once the Trustee's administration is complete. Accordingly, when the Trustee's administration is nearing completion, the Trustee will prepare a detailed analysis of the Administrative Holdback, the BDMC loans that contributed to it and a recommended allocation methodology for the distribution of any remaining funds. The Trustee will seek Court approval, on notice to the Investors, prior to making any distributions from the remaining Administrative Holdback. At this time, the timing and amount of any future distributions remains unknown.

APPROVAL OF THE TRUSTEE'S REPORT, ACTIVITIES AND FEES

234. The Trustee is seeking approval of (i) the Twenty-Eighth Report and this Twenty-Ninth Report and its activities as set out in its Twenty-Eighth Report and this Twenty-Ninth Report; and (ii) and its fees and its counsel's fees from January 1, 2022, to October, 15, 2022.
235. The Trustee's activities are described at length in the Twenty-Eighth Report and this Twenty-Ninth Report as they relate to the specific relief being sought therein and herein.

236. A summary of the Trustee's other general activities carried out since January 14, 2022 (the date of filing of the Twenty-Seventh Report) 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 project specific notices (including the various notices to be sent upon service of this Report) to Investors since the issuance of the Twenty-Seventh 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;
 - (h) corresponding with certain borrowers and other stakeholders regarding, among other things, the status of the projects (including the sale of remaining units);
 - (i) requesting information and reviewing reporting provided by certain project stakeholders;
 - (j) continuing to engage with a planning consultant in order to obtain information relating to the development status of certain projects;
 - (k) attending to partial discharges of BDMC's security interests to facilitate sales of individual units as required pursuant to BDMC's contractual obligations with borrowers and priority lenders to the projects;

- (l) 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;
 - (m) dealing with numerous contested and ongoing complex litigation matters before the Court;
 - (n) making distributions in accordance with the various Court orders issued in these proceedings to the Investors entitled to those distributions;
 - (o) reviewing and preparing Court materials in respect of certain BDMC projects; and
 - (p) attending to other business activities of BDMC and related administrative matters.
237. Investor communications remain an ongoing component of the Trustee's mandate. Overall, the volume of communications has continued to decrease as a result of the significant number of BDMC projects that have now been exited, 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

238. 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.
239. 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.
240. The fees of the Trustee for the period between January 1, 2022 to October 15, 2022, total \$460,658.75 before HST; and HST applicable to such amount totals \$59,885.64, for an aggregate amount of \$520,544.39. Invoices for the fees of the Trustee, including

summaries of the activities of the Trustee for the applicable period, are provided in the affidavit of Naveed Manzoor ("**Manzoor Affidavit**"), attached as **Appendix "23"**.

241. 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.
242. The average hourly rate for the Trustee over the referenced billing period was approximately \$472/hour.

Fees of the Trustee's Counsel

243. The fees (excluding disbursements and HST) of Osler as counsel to the Trustee for the period between January 1, 2022 to October 15, 2022 total \$702,406.28; Osler incurred \$6,328.17 disbursements during the period; and HST applicable to such amounts totals \$92,028.48, for an aggregate amount of \$800,762.93. Invoices for the fees, reimbursable expenses and applicable taxes of Osler, including summaries of Osler's activities in relation thereto, are provided in the affidavit of Michael De Lellis ("**De Lellis Affidavit**"), attached as **Appendix "24"**.
244. 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.
245. The average hourly rate for Osler over the referenced billing period was \$834.81/hour

246. 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

247. 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.

248. The Trustee understands that Representative Counsel continues to receive 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.

249. 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.

250. The Trustee continues to regularly consult with Representative Counsel whenever appropriate, including with respect to strategic decisions and steps being considered by the Trustee.

CONCLUSION AND RECOMMENDATION

251. 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 4th day of November, 2022

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.,
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.,
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**

**APPENDIX 1:
APPOINTMENT ORDER DATED APRIL 20, 2018**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -



BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

APPOINTMENT ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

TRUSTEE'S POWERS

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

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE TRUSTEE

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

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

CONTINUATION OF SERVICES

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

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE TRUSTEE'S LIABILITY

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

TRUSTEE'S ACCOUNTS

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

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

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

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

FUNDING OF THE APPOINTMENT

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

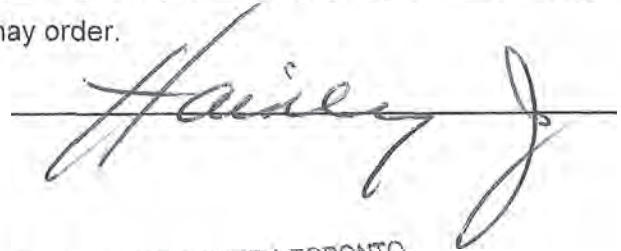
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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

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

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"
TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

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Lawyers for The Superintendent of Financial Services

**APPENDIX 2:
JANUARY 2022 OMNIBUS ORDER DATED JANUARY 31, 2022**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 31ST
)
JUSTICE MCEWEN) DAY OF JANUARY, 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**

JANUARY 2022 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) authorizing the Trustee to make a distribution or distributions to: (a) South Shore Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the South

Shore Project (“**South Shore Realized Property**”), on a *pro rata* basis to the South Shore Investors entitled to such funds as determined in accordance with the Pari Passu Approach, and (b) Kemp Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Kemp Project (“**Kemp Realized Property**”), on a *pro rata* basis to the Kemp Investors entitled to such funds (each as such term is defined in the Twenty-Seventh Report (as defined below)), and in each case, in accordance with the Realized Property Order dated October 30, 2018, as amended, (ii) approving the Trustee’s twenty-seventh report dated January 18, 2022 (the “**Twenty-Seventh Report**”), 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 May 1, 2021 to December 31, 2021; and (iii) 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-Seventh Report, the affidavit of Naveed Manzoor sworn January 18, 2022 and attached as Appendix “34” to the Twenty-Seventh Report (the “**Manzoor Affidavit**”) and the affidavit of Michael De Lellis sworn January 17, 2022 and attached as Appendix “35” to the Twenty-Seventh 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 Chloe Nanfara sworn January 19, 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-Seventh Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order but not defined herein shall have the meanings given to them in the Twenty-Seventh Report.

DISTRIBUTIONS OF REALIZED PROPERTY

3. **THIS COURTS ORDERS** that all proceeds received or receivable by the Trustee in respect of:

- (a) the South Shore Sale Transaction and/or the South Shore Project; and
- (b) the Kemp Sale Transaction and/or the Kemp Project,

respectively, are and shall be deemed to be “Realized Property” as defined in the Order of this Court dated June 26, 2018.

4. **THIS COURT ORDERS** that the Trustee shall be authorized to make the following distributions of Realized Property to the applicable Investors entitled to such funds, whether such Realized Property is received before or after the date of this Order:

- (a) a distribution or distributions to the South Shore Investors in an amount equal to 85% of the South Shore Realized Property on a *pro rata* basis to the applicable South Shore Investors entitled to such funds as determined in accordance with the Pari Passu Approach;
- (b) a distribution or distributions to the Kemp Investors in an amount equal to 85% of the Kemp Realized Property, on a *pro rata* basis to the applicable Kemp Investors entitled to such funds; and

each such distribution to be made in accordance with the Realized Property Order, as amended.

TRUSTEE’S REPORT, ACTIVITIES, FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the Twenty-Seventh Report, and all the actions, conduct and activities of the Trustee as set out in the Twenty-Seventh Report, be and are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Twenty-Seventh 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 May 1, 2021 to December 31, 2021 are approved: fees of \$595,738.40 (plus applicable taxes of \$77,445.99 for an aggregate amount of \$673,184.39), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from May 1, 2021 to December 31, 2021 are approved: fees of \$1,268,856.36 and disbursements of \$4,302.43 (plus applicable taxes of \$165,448.14, for an aggregate amount of \$1,438,606.93).

SEALING

7. **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

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

9. **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.

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

_____ *McE...* _____

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

31 Jan 22

Order to go as per the draft filed and signed. It is unopposed.
Although properly served Fortress, Fong and the Kemp Borrower have not responded.
The proposed pari passu distribution is fair and reasonable and supported by representative counsel.
The fees and activities are approved.
A sealing order shall also go as the Sierra Club criteria have been met.



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

JANUARY 2022 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
of Building & Development Mortgages Canada
Inc.**

**APPENDIX 3:
TWENTY-EIGHTH REPORT (WITHOUT APPENDICES)**

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-EIGHTH REPORT OF THE TRUSTEE

March 21, 2022



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

TABLE OF CONTENTS

INTRODUCTION.....	1
PURPOSE OF THE TWENTY-EIGHTH REPORT	3
SCOPE AND TERMS OF REFERENCE	3
OVERVIEW OF THE SOUTH SHORE PROJECT	4
THE SOUTH SHORE LOANS.....	6
DIVERSIFIED SALE PROCESS	8
DISPUTED AMOUNTS.....	23
CONCLUSION.....	27

INDEX OF APPENDICES

Appendix 1	Appointment Order dated April 20, 2018
Appendix 2	Diversified Notice of Sale
Appendix 3	Parcel Register for South Shore Registry
Appendix 4	Sorrenti Mortgage
Appendix 5	2014 BDMC Mortgage
Appendix 6	2016 BDMC Mortgage
Appendix 7	Notice to South Shore Investors dated February 5, 2019
Appendix 8	October 15, 2019, Email to Diversified
Appendix 9	October 2019 Trustee's internal correspondence regarding its call with Diversified
Appendix 10	Email correspondence from commercial real estate agent
Appendix 11	June 5, 2020, Letter from Osler to Diversified
Appendix 12	September 18, 2020, Email to Diversified
Appendix 13	October 19, 2020 Email to Diversified
Appendix 14	November 9, 2020 Letter from Osler to Diversified and Schneider Ruggiero Spencer Milburn LLP
Appendix 15	November 13, 2020, Letter from Robbins Appleby to Osler
Appendix 16	December 23 rd and 24 th emails to Colliers and Diversified
Appendix 17	December 29 th and December 31 st email exchange with Robbins Appleby
Appendix 18	January 6, 2021, Osler Letter to Robbins Appleby

Appendix 19	January 11, 2021, Robbins Appleby Letter to Osler
Appendix 20	January 14, 2021, Osler Letter to Robbins Appleby
Appendix 21	January 18, 2021, Email from Robbins Appleby to Osler
Appendix 22	March 5, 8, and 9, 2021, Email chain between Robbins Appleby to Osler
Appendix 23	March 13, 2021, Email from Osler to Robbins Appleby
Appendix 24	March 16, 2021, Email from Osler to Robbins Appleby
Appendix 25	May 13, 2021, Letter from Osler to Robbins Appleby
Appendix 26	May 17, 2021, Email from Robbins Appleby to Osler
Appendix 27	May 25, 2021, Accounting Letter from Robbins Appleby
Appendix 28	July 13, 2021, Letter from Osler to Robbins Appleby
Appendix 29	August 26, 2021, Letter from Robbins Appleby to Osler
Appendix 30	October 18, 2021, Letter from Osler to Robbins Appleby
Appendix 31	November 1, 2021, Email from Diversified to Osler
Appendix 32	January 21, 2022, 9:30 Request Form and Notice of Motion
Appendix 33	Diversified Commitment Letter
Appendix 34	Registered Charge
Appendix 35	Standard Charge Terms
Appendix 36	Renewal Letter

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-EIGHTH REPORT OF THE TRUSTEE

March 21, 2022

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 -

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**”).
3. The Realized Property Order, as amended, requires the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors.
4. The Trustee has, in total, delivered twenty-seven 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 January 18, 2022, the Trustee delivered its twenty-seventh report in these proceedings (“**Twenty-Seventh Report**”), which provided, among other things, a comprehensive update on the Trustee’s activities and support for the Trustee’s request for the January 2022 Omnibus Order.
5. Further, as described in the Reports, the Trustee continues to attempt to maximize recoveries for Investors. As part of those efforts and as noted in its Twenty-Seventh Report, the Trustee commenced litigation against Diversified Capital Inc. (“**Diversified**”) seeking to recover certain of the amounts paid to Diversified from the proceeds of the Sale Transaction (defined further herein), in priority to those Investors

that had advanced funds in a real estate development project known as the South Shore Project (“**South Shore Investors**”).

6. Capitalized terms used but not otherwise defined in this twenty-eighth report (“**Report**” or “**Twenty-Eighth Report**”) have meanings ascribed to them in previous Reports. 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 and will be updating it as appropriate.

PURPOSE OF THE TWENTY-EIGHTH REPORT

7. The Trustee is filing this Twenty-Eighth Report in support of the requested relief set out in the Trustee’s Notice of Motion dated January 10, 2022, for an Order that would, among other things, require:
 - a) the immediate payment by Diversified to the Trustee of the Disputed Amounts (defined below);
 - b) the Trustee’s costs on a partial indemnity basis; and
 - c) such relief or other Orders incidental to or related to the relief requested in this Report (“**Diversified Payment Order**”).
8. All capitalized terms used above and not otherwise defined are defined later in this Report.

SCOPE AND TERMS OF REFERENCE

9. In preparing this Twenty-Eighth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Olympia Trust Company (“**Olympia**”), Fortress Real Developments Inc. (“**Fortress**”), Canadian Development Capital & Mortgage Services Inc. (“**CDCM**”), the mortgage brokerage who assumed the mortgage brokerage duties of BDMC, Diversified, Robins Appleby LLP (Diversified’s legal counsel) and Colliers Macaulay Nicolls Inc. (“**Colliers**”) 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, Diversified 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-Eighth 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-Eighth Report may vary from the projections and information used to prepare this Twenty-Eighth 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-Eighth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
11. This Twenty-Eighth Report has been prepared to assist the Court with respect to the Trustee's request for the proposed Diversified Payment Order. Accordingly, the reader is cautioned that this Twenty-Eighth Report may not be appropriate for any other purpose.
12. All references to dollars are in Canadian currency.

OVERVIEW OF THE SOUTH SHORE PROJECT

13. The South Shore Project was a real estate development project in Keswick, Ontario ("**South Shore Project**" or "**South Shore Property**") with three syndicated mortgage loans, which combined have principal debt outstanding totalling more than \$29 million,

and each is administered by BDMC (collectively the “**South Shore Loans**”). In total there are 638 South Shore Investors.

14. The development plan for the South Shore Project was comprised of two phases. Phase one of the development had foundation permits in place and site work had commenced on the South Shore Property, which the Trustee understands was halted in September 2017 due to financing issues.
15. On January 24, 2019, Diversified issued a Notice of Sale under Mortgage (“**Notice of Sale**”) in respect of its then outstanding first priority debt (“**Diversified Mortgage**”) that was in default. Following a delayed sale process, the South Shore Property was eventually sold on May 13, 2021 (“**Sale Transaction**”). The Sale Transaction completed by Diversified took place almost two and a half years from the date of issuance of the Notice of Sale. A copy of the Notice of Sale is attached as **Appendix “2”**.
16. The Trustee and its counsel have been engaging with Diversified and its counsel since the issuance of the Notice of Sale, throughout the sale process and subsequent to the completion of the Sale Transaction, in an effort to address the Trustee’s concerns regarding the actions and inactions taken by Diversified since the issuance of the Notice of Sale, including as it relates to the amounts paid to Diversified from the Sale Transaction proceeds.
17. On May 27, 2021, the Trustee received a distribution of approximately \$1.8 million, representing the remaining sale proceeds after the payment of commission, legal fees, a lien settlement of \$35,000, approximately \$610,000 that has been paid into Court in respect of an outstanding lien claim and approximately \$9.9 million paid to Diversified.
18. Despite the Trustee’s efforts to engage in productive discussions with Diversified throughout this process, there has been no resolution with Diversified; accordingly, the Trustee is seeking the Diversified Payment Order to recover the Disputed Amounts paid to Diversified, including amounts related to the conduct and length of the power of sale proceeding leading up to the Sale Transaction and the quantum of the fees and interest taken by Diversified as a result of same, each discussed and detailed later in this Report.

THE SOUTH SHORE LOANS

19. Immediately prior to the closing of the Sale Transaction, there were three BDMC loans registered on title to the South Shore Property: (i) the Sorrenti Loan, (ii) the 2014 BDMC Loan, and (iii) the 2016 BDMC Loan (each as defined below). A copy of the parcel register for the South Shore Property as of May 20, 2021 is attached as **Appendix “3”**.¹ The following amounts were owing under each of the three South Shore Loans when the Sale Transaction closed:

	Sorrenti	2014 BDMC	2016 BDMC	Total
Number of Investors	208	202 ²	228	638
Principal Outstanding (\$)	8,600,000	10,073,068 ³	10,528,957	29,202,025
Accrued Interest (\$)	5,202,044	3,876,495	2,833,676	11,912,215
Total Outstanding (\$)	13,802,044	13,949,563	13,362,633	41,114,240

19. Of the 638 South Shore Investors, 392 Investors advanced funds from their retirement accounts through either Olympia Trust, B2B Trust Company (“**B2B**”) or the Bank of Nova Scotia Trust Company (“**BNS**” and collectively the “**RRSP Trustees**”) using registered savings vehicles under the Income Tax Act, representing approximately \$15.9 million or 54.6% of the total principal outstanding under the South Shore Loans. A portion of the charges administered by BDMC and registered on title to the South Shore Property was transferred into the name of one or more RRSP Trustees.
20. The following paragraphs describe each of the loans advanced by the South Shore Investors.

¹ The relevant mortgages had yet to be deleted from title as of this date.

² In the Trustee’s Twenty-Seventh Report the number of Investors reported as having invested in the 2014 BDMC Loan was understated as a result of a clerical error.

³ The outstanding principal was reported as \$10,113,068 in the Notice of Motion, served January 10, 2022. Upon completing its procedures in advance of making the South Shore Distribution (defined below) to the South Shore Investors, this amount was revised to reflect the actual amounts determined to be outstanding.

Sorrenti Loan

21. The Trustee understands that the South Shore Project was originally branded as the Crates Landing Project. Commencing in January 2011, 2221563 Ontario Inc. ("**Borrower**") entered into various loan agreements with Derek Sorrenti ("**Sorrenti**"), Olympia, B2B and/or BNS, in each case, in trust for individual Investors ("**Crates Landing Investors**") with a maximum principal balance of \$8.6 million in aggregate (collectively, the "**Sorrenti Loan**").
22. On February 4, 2011, the Borrower granted a mortgage of \$4.8 million (which amount was subsequently increased to \$8.6 million) on title to the South Shore Property in favour of Sorrenti, in trust (which mortgage was subsequently amended to include Olympia, B2B and BNS as trustees for those Crates Landing Investors who made their investments through registered plans). Attached as **Appendix "4"** is a copy of the Sorrenti mortgage.

2014 BDMC Loan

23. On October 21, 2014, the Borrower entered into a loan agreement with Centro Mortgage Inc. ("**Centro**", the prior operating name for BDMC), in trust for certain individual lenders ("**South Shore 2 Investors**"), that provided for an aggregate syndicated mortgage loan of up to \$20 million ("**2014 BDMC Loan**"). The Trustee understands that the project was rebranded from Crates Landing to the South Shore Project after the registration of the 2014 BDMC mortgage. Attached as **Appendix "5"** is a copy of the 2014 BDMC mortgage.
24. On January 14, 2015, the Borrower granted a mortgage of \$3.2 million (which amount was subsequently increased to \$10.7 million) on the South Shore Property in favour of Centro (which mortgage was subsequently amended to include Olympia).

2016 BDMC Loan

25. On April 21, 2016, the Borrower entered into a loan agreement with BDMC, in trust for certain individual lenders ("**South Shore Hybrid Investors**") that provided for an aggregate loan of up to \$10.5 million ("**2016 BDMC Loan**").
26. On July 22, 2016, the Borrower granted a mortgage of \$5.9 million (which amount was subsequently increased to \$11.175 million) on title to the South Shore Property

in favour of BDMC (which mortgage was subsequently amended to include Olympia). Attached as **Appendix “6”** is a copy of the 2016 BDMC mortgage.

South Shore Distribution

27. On January 31, 2022, the Court granted an order (“**January 2022 Omnibus Order**”) approving, among other things, the *pari-passu* distribution to the South Shore Investors, of 85% of the approximately \$1.8 million payment received by the Trustee from the sale of the South Shore Property (“**South Shore Distribution**”), and any further proceeds to be received in connection with the South Shore Project.
28. The \$1.8 million payment represented a recovery of approximately 6% on the original principal balance of approximately \$29 million advanced pursuant to the South Shore Loans to the Borrower.
29. On March 11, 2022, the Trustee made the South Shore Distribution in accordance with the January 2022 Omnibus Order.

DIVERSIFIED SALE PROCESS

30. As noted above, on January 24, 2019, Diversified issued the Notice of Sale.
31. On February 5, 2019, the Trustee sent a notice to the South Shore Investors advising of the Notice of Sale and that the Borrower was seeking a transaction for the sale of the South Shore Property that may allow BDMC to maintain its mortgages on the South Shore Property. A copy of the South Shore Investor notice is attached as **Appendix “7”**.
32. Prior to the issuance of the Notice of Sale, the Trustee had been in discussions with the Borrower regarding the ongoing development of the South Shore Project and options it was considering and working on including a possible transaction for the South Shore Property. Those discussions with the Borrower continued for a period of time after the issuance of the Notice of Sale; however, consistent with the role that the Trustee takes and has taken in enforcement proceedings commenced in respect of BDMC projects, and in particular those where BDMC is the fulcrum creditor, the Trustee reached out to directly to Diversified, as the enforcing creditor.

33. The Trustee's initial correspondence with Diversified regarding the South Shore Property took place on or about March 25, 2019. At that time, the Trustee sought information regarding Diversified's intentions with respect to the South Shore Property, including the anticipated timing for commencement of a sale process and details related to how the process would be conducted. Limited information was provided.
34. On March 29, 2019, the Trustee spoke with Mr. Russ Giannotta (whom the Trustee understands is the principal of Diversified) who advised that there were a "couple" of people looking at the transaction, it was not yet listed for sale, he had sent documents out to six or seven parties that he thought could do a deal and the timeline to a transaction was likely 30 to 45 days. During the call, the Trustee requested information regarding the parties that Mr. Giannotta had contacted and the information that had been provided to them. Mr. Giannotta advised that he would likely be in a position to share further information with the Trustee within approximately two weeks.
35. On April 25, 2019, the Trustee spoke with Mr. Giannotta to obtain an update on the status of the transaction that was discussed at the end of March. During that call Mr. Giannotta again advised that he was "working with a prospect" and that he thought it may give rise to a sale of the South Shore Property. He advised that he was in the process of providing that prospect with information related to their due diligence requests and that the parties had not yet had a discussion regarding value for the South Shore Property. On that call the Trustee requested details regarding all of the parties that had been contacted through Diversified's marketing efforts. Mr. Giannotta advised that he would prepare a summary for the Trustee. The Trustee was never provided with that information.
36. The Trustee continued to follow up with Diversified on a periodic basis through to October 22, 2019. The correspondence during that period took place by telephone and text messages, which was Mr. Giannotta's preferred way of communication.
37. During the limited discussions that the Trustee had with Diversified over that seven-month period, Diversified continually advised that it was attempting to market the property on an informal basis to mitigate the stigma and possible loss in value that can result when a sale process is conducted through an enforcement proceeding. During those discussions Mr. Giannotta advised that he understood that evidence of

a proper process and extensive canvassing of the marketplace would need to be provided to support any sale transaction that may result from those efforts. Despite that acknowledgement and the Trustee's request for information supporting the informal process that was being conducted, no information was provided.

38. On October 15, 2019, after attempting to reach Diversified and having multiple voicemails and text messages go unanswered, the Trustee followed up by email at the last known email address for Diversified, but the email bounced back. A copy of the October 15, 2019, email and the notice of being undeliverable is attached as **Appendix "8"**.
39. Finally, in late October 2019 the Trustee spoke with Mr. Giannotta, who advised that he was in the process of obtaining appraisals and seeking proposals from commercial real estate agents, and that he intended to list the South Shore Property in the near term with a 45-day deadline for offers. Attached as **Appendix "9"** is the Trustee's internal correspondence regarding the October 2019 call with Diversified.
40. Despite Mr. Giannotta's assertions that a sale process would be commenced in the near term, a process was not commenced at that time.
41. On January 22, 2020, the Trustee was contacted by a commercial real estate agent, acting on behalf of one of the agent's clients, whom the agent described as "a reputable developer". The agent advised that it had been attempting to contact Diversified since December 1, 2019, regarding its client's interest in purchasing the South Shore Property, with no response. The agent reached out to the Trustee looking for assistance with its client's efforts to purchase the South Shore Property. The Trustee attempted to contact Diversified again at that time with no response. A copy of the January 22, 2020 email is attached as **Appendix "10"**.
42. Also in January 2020, the Trustee was contacted by a developer in the BDMC portfolio who expressed an interest in acquiring the South Shore Property. Both the Trustee and the developer attempted to contact Mr. Giannotta on multiple occasions regarding that developer's interest in the South Shore Property. The developer advised that it had also contacted Diversified's legal counsel in March, 2020 and was advised in April, 2020 that Diversified would only consider a repayment in full of all amounts outstanding under its mortgage in exchange for an assignment of the Diversified mortgage.

43. Based on Diversified's response to that developer, it appeared that Diversified had no interest or intention of commencing a sale process nor did it appear that Diversified was carrying out an informal sale and marketing process for the South Shore Property as Mr. Giannotta had previously communicated to the Trustee.
44. On June 5, 2020, the Trustee's counsel wrote to Diversified to formally request an update with respect to the status of Diversified's efforts to sell the South Shore Property, including but not limited to: (i) the details of any sale process conducted for the South Shore Property; (ii) the listing details for the South Shore Property; (iii) the proposed timeline for the sale of the South Shore Property; (iv) a list of potentially interested parties; and (v) details regarding any purchase offers that Diversified has received for the South Shore Property to date. The letter requested that Diversified provide a response as quickly as possible and in any event within 30 days of the letter ("**June 5th Letter**"). A copy of the June 5th Letter is attached as **Appendix "11"**.
45. On June 19, 2020, the Trustee spoke with Jawad Rathore and Vince Petrozza, the principals of Fortress, in their capacity as representatives of the Borrower on the South Shore Project. They advised that they had last spoken to Mr. Giannotta in March 2020 at which time Mr. Giannotta had advised that he would soon be marketing the South Shore Property. According to Mr. Rathore and Mr. Petrozza, after that discussion Mr. Giannotta also stopped responding to their correspondence.
46. Finally, on July 6, 2020, after approximately 8 months of no response or correspondence from Diversified, the Trustee was contacted by Mr. Giannotta to set up a call to discuss the information that had been requested by the Trustee's counsel in the June 5th Letter.
47. The Trustee had four phone calls with Mr. Giannotta between July 7, 2020, and September 17, 2020, requesting the same information that was set out in the June 5th Letter.
48. During each of those calls the information provided was the same. Mr. Giannotta continued to advise that he was finalizing the appraisal and that he was in the process of selecting a real estate agent to formally list the South Shore Property for sale.
49. Around August 2020, the Trustee was advised by a potential purchaser that it was interested in and prepared to submit a formal offer for the South Shore Property;

- 12 -

however, it needed to understand the sale process in order to move forward as the potential purchaser was concerned that it would be wasting its time dealing directly with Diversified. Despite Diversified being aware of such interest in the South Shore Property, no sale process was commenced at that time.

50. On September 18, 2020, the Trustee followed up with Diversified by email⁴ again requesting that information requested in the June 5th Letter be provided to it by September 21, 2020. No response was received. A copy of the September 18th email is attached as **Appendix “12”**.
51. On October 19, 2020, the Trustee followed up with Diversified by email once again looking for an update on the status of the sale process and advising that the Trustee would be instructing its counsel to take next steps given Diversified’s lack of action and responsiveness since the Notice of Sale was issued. A copy of the October 19 email is attached as **Appendix “13”**.
52. On October 21, 2020, the Trustee learned through an unrelated third party that the South Shore Property had been listed for sale by Colliers and offers were due on November 26, 2020. Diversified did not provide the Trustee with a copy of the listing nor any explanation for why such a short timeline was chosen.
53. On November 2, 2020, the Trustee had a very brief call with the Colliers agent managing the listing, who advised that he could not provide the Trustee with any information at that time as he needed to check with Diversified to find out if he could speak to the Trustee about the process. He also stated that it was his understanding that Mr. Giannotta had spoken to the Trustee about the sale process, which the Trustee advised was not the case.
54. Following the call on November 2, the Trustee emailed the Colliers agent to provide a copy of the Appointment Order and requested a response from the agent as soon as possible given the tight timeline for offers. On the same date the Colliers agent responded advising that he would get back to the Trustee. On November 6, 2020, the Trustee followed up with Colliers by email as no response had been received.
55. On November 9, 2020, Osler wrote to Diversified and Schneider Ruggiero Spencer Milburn LLP, whom the Trustee understood was representing Diversified. The letter

⁴ The Trustee now had Diversified’s correct email address.

detailed the history of correspondence between the Trustee and Diversified and requested specific information related to the recently commenced sale process. The letter also stated that the Trustee would be willing to execute a confidentiality agreement and it attached a markup of the Colliers confidentiality agreement to the letter. A copy of the November 9th letter is attached as **Appendix “14”**.

56. On November 13, 2020, Robins Appleby LLP (“**Robins Appleby**”), in its capacity as Diversified’s legal counsel, sent a letter to Osler in response to the November 9 letter advising that given BDMC’s role as a subsequent mortgagee and in accordance with Diversified’s rights under its mortgage to sell the South Shore Property under its power of sale, Diversified was not required to provide any information to the Trustee regarding the sale process. The letter further stated that the Trustee could redeem the Diversified Mortgage should it wish to take over the sale process (which Diversified knew or should have known that given the Trustee’s role in the BDMC proceedings was not a feasible option). A copy of the November 13th letter is attached as **Appendix “15”**.
57. On November 23, 2020, the Trustee emailed Colliers to inquire as to whether the deadline had been extended and was advised that the new deadline for offers was December 16, 2020.
58. On November 26, 2020, the Trustee emailed Colliers requesting high level information regarding the sale process, including the reasons for the extension of the offer deadline, and advising that the Trustee was also working to generate interest in the South Shore Property and was directing interested parties to Colliers.
59. On November 27, 2020, Colliers confirmed that the deadline had been extended to December 16, 2020, because new information had been added to the data room. The Colliers agent also advised that he would be happy to speak with the Trustee regarding the process if Diversified would agree to allow Colliers to release the information to Trustee.
60. On November 30, 2020, the Trustee emailed Colliers to request the form of offer that was provided in the data room and to confirm that the form of offer was in fact available in the data room.

- 14 -

61. Colliers advised that it could not provide any information to the Trustee until the Trustee executed a confidentiality agreement. The Trustee responded advising that it would look into executing a confidentiality agreement. Given that the form of confidentiality agreement previously provided by Diversified was; (i) not consistent with the Trustee's mandate, but rather was geared towards potential purchasers; and (ii) Diversified's prior unwillingness to provide the Trustee with comments on the confidentiality agreement markup previously provided to Diversified by the Trustee, the Trustee was ultimately unable to execute a confidentiality agreement. As a result, Collier's did not provide the Trustee with the requested information.
62. On December 7, 2020, the Trustee followed up with Colliers again regarding the form of offer as one of the interested parties advised the Trustee that it still had not received it and wanted to begin to prepare its offer. The Trustee did not receive a response to this email.
63. On December 16, 2020, being the extended offer deadline, an unrelated third party asked the Trustee to forward an offer to Colliers on its behalf. The request was made because of confidentiality concerns that this prospective purchaser had with other parties potentially knowing that it was submitting an offer to purchase the South Shore Property. It was concerned that Diversified or other parties knowing who the purchaser was might prejudice its offer from being considered. Although the Trustee is unrelated to this party, it had knowledge of the party and its financial ability to complete a transaction which is why the Trustee agreed to simply forward the offer on that party's behalf.
64. On December 18, 2020, the Trustee spoke with the Colliers agent who provided the Trustee with some limited information regarding the sale process. He advised the following:
 - a) seven offers had been received, three of which were received after the offer deadline, and that it was their intention to consider all offers;
 - b) three or four of the offers were financially competitive;
 - c) it was unlikely that there would be a second round, as one of the offers was significantly better than the others; and

- 15 -

- d) Colliers had some concerns regarding the third-party offer forwarded by the Trustee as little was known about that party. The Trustee advised that it could set up a call with the prospective purchaser to have it provide Colliers with additional information.
64. The Trustee asked for information regarding the other offers that had been submitted and attempted to understand why a second round of offers for the three or four financially competitive offers would not be held. It was the Trustee's view that a second round would only further assist to maximize recoveries, of which BDMC would be the sole beneficiary.
65. Given that the Trustee had knowledge of the offer price submitted by the party on behalf of whom the Trustee forwarded the offer, it was clear that BDMC was the fulcrum creditor.
66. Following the Trustee's call with Colliers on December 18, 2020, the Trustee sent a follow up email to Colliers again asking to be involved in the strategy to maximize the value on the sale of the South Shore Property, including the possibility of having a second round of offers given the results to date.
67. Further, on December 18, 2020, the Trustee was made aware that counsel to the third-party purchaser emailed Colliers directly to attempt to provide any additional information that may be required to move forward with its client's offer.
68. On December 23, 2020, Colliers emailed the Trustee to advise that it would not be moving forward with the third-party offer forwarded by the Trustee.
69. On December 23, 2020, the Trustee emailed Diversified and Colliers:
- a) clarifying, again, that the Trustee has no relationship to the party on behalf of whom it forwarded the offer;
 - b) stating that it had attempted to work together with Diversified and Colliers in good faith since the beginning of the sale process in an effort to maximize recoveries;
 - c) noting its surprise that Colliers had not acknowledged or responded to the communications from counsel to the third-party purchaser;
 - d) stating its concerns with the sale process and its disappointment that a second round of bidding was not conducted, in particular because the Trustee was aware

- 16 -

of one offer that would have seen funds being available to satisfy a portion of the amounts owing to BDMC, and the Trustee's belief that a second round of bidding could have resulted in an increased offer from that party;

- e) stating its assumption that that the offer that was being accepted by Diversified had to be superior, to the offer that was forwarded by the Trustee; and
 - f) requesting an update by 5pm (on December 23, 2021), regarding the status of the process, the quantum of each offer received, including the one that Diversified was currently working with, communications with the bidders and anticipated timing for acceptance of an offer.
70. On December 24, 2020, after receiving no response to the December 23, 2020 email, the Trustee again wrote to Diversified and Colliers, and requested a payout statement with respect to Diversified's mortgage. No response was received to that email. A copy of the December 23rd and 24th emails chain is attached as **Appendix "16"**.
71. On December 29, 2020, Osler wrote to Robins Appleby expressing the Trustee's concerns with the sale process and the lack of information that had been provided to the Trustee. Osler requested that Robins Appleby speak with Diversified about providing the requested information to the Trustee, as well as a payout statement so that the Trustee could consider all its options.
72. On December 31, 2020, Robins Appleby responded to Osler's email advising that Diversified had entered into a conditional agreement with a prospective purchaser ("**Conditional Offer**") and restating its position that once the sale was complete it would provide the Trustee with an accounting of the transaction, and again stating that they would not be providing any information at that time. A copy of the December 29 and December 31 email exchange is attached as **Appendix "17"**.
73. On January 6, 2021, Osler sent a letter to Robins Appleby with background regarding the South Shore Loans and the previous correspondence among the parties and again requesting information about the sale and offer acceptance process, and specifically requesting the following information:
- a) copies of all offers received, including the Conditional Offer;
 - b) a copy of the agreement of purchase and sale entered into by Diversified; and

- 17 -

- c) information related to the assessment and selection process undertaken to determine the successful bidder and select the winning bid.
74. The letter also stated that if information was not provided to the Trustee by 5pm on January 8, 2021, the Trustee would be seeking an appointment with the Court to schedule an urgent motion in the BDMC proceedings to compel Diversified to provide the information. A copy of the January 6th letter is attached as **Appendix "18"**.
75. On January 7, 2021, Robins Appleby responded advising that it would not be able to meet the Trustee's deadline but that it would provide a meaningful response the following week.
76. On January 11, 2021, Robins Appleby sent a letter to Osler again stating that the Trustee is not entitled to any information but in any event advising the following:
- a) the Conditional Offer was still in the conditional period and was for an amount that significantly exceeded any other bid received, however, should Diversified be unable to complete a sale it would have to return to market and therefore was unwilling to provide details of the various offers received;
 - b) the Conditional Offer was from an arms-length party with an established reputation. The original conditional period was 30 days from January 4, 2021 (to be extended by agreement of the parties), with the closing to take place 30 days from the expiry of the conditional period;
 - c) the marketing process was run by Colliers from October 21, 2020 to December 16, 2020, and was marketed through Colliers database of over 4,200 parties, MLS, and various social media platforms; and
 - d) upon receipt of bids, each offer was analyzed and on the advice of Colliers the Conditional Offer was entered into by Diversified.
- A copy of the January 11th letter is attached as **Appendix "19"**.
77. On January 14, 2021, Osler sent a letter to Robins Appleby:
- a) clarifying the record again to state that the Trustee is not aligned with any party that participated in the sale process, including the party on behalf of whom it forwarded the offer;

- 18 -

- b) raising concerns over Robins Appleby's comments in the January 11, 2021 letter that Diversified may need to return to market to sell the property should the Conditional Offer not be completed;
- c) disagreeing with the conclusion made by Robins Appleby that the Trustee is not entitled to, nor should it be provided with the information that it has been requesting throughout the sale process; and
- d) asking for confirmation of the following based on information provided in the January 11th letter:
 - i. that the purchase price for the Conditional Offer was significantly greater than the price of the other offer known to the Trustee;
 - ii. a meaningful deposit had been received;
 - iii. the closing date could be extended one time for a further 30-day period upon mutual agreement between the purchaser and the Diversified; and
 - iv. stating that unless it were to hear otherwise the Trustee would assume its understanding on the above points was correct. Osler again requested delivery of the agreement of purchase and sale for the Conditional Offer and the Diversified payout statement that had not yet been provided.

A copy of the January 14th letter is attached as **Appendix "20"**.

78. On January 18, 2021, Robins Appleby sent an email providing the following responses:
- (a) Diversified considered the offer that was forwarded by the Trustee on behalf a purchaser;
 - (b) The Conditional Offer that was accepted provided a meaningful deposit, that would be refundable in the event that the conditions were not waived;
 - (c) Diversified would only provide the Trustee with a copy of the conditional agreement of purchase and sale after conditions were waived and the agreement was firm; and
 - (d) Diversified was unable to prepare a payout statement because information required to do so was at the Diversified office and due to the Covid-19 stay-at-home order that information could not be accessed, and that if the Trustee wanted

the information, it should take the loan information provided in the Notice of Sale and roll forward the interest calculation.

A copy of the January 18th email is attached as **Appendix “21”**.

79. On February 1, 2021, Osler followed up with Robins Appleby regarding the expiration of the due diligence period. Robins Appleby advised that the due diligence period had been extended to March 5, 2021.
80. On March 1, 2021, Osler followed up regarding the expiration of the extended diligence period. On March 3, 2020, Robins Appleby advised that Diversified was working on completing a deal with the prospective purchaser and an update would be provided at the end of the week.
81. On March 5 and 8, 2021, Osler followed up again with Robins Appleby regarding the status of the Conditional Offer and on March 9, 2021, Robins Appleby advised that Diversified and the prospective purchaser who had submitted the Conditional Offer, had not agreed upon terms, therefore Colliers would be going back to the market to have all parties, including the party that had submitted the Conditional Offer, submit final offers for the South Shore Property. A copy of the email chain between Osler and Robins Appleby, including the March 5, 8 and 9 emails, is attached as **Appendix “22”**.
82. The Trustee was advised that on March 9, 2021, Colliers notified parties that had previously participated in the sale process that the conditional offer was not completed, and that Colliers would be accepting best and final offers for the South Shore Property on March 12, 2021 (*just three days later*).
83. On March 13, 2021, Osler emailed Robins Appleby to request that copies of all offers submitted to Colliers on March 12, 2021 be provided to the Trustee immediately. Osler further stated that (i) given the length of time that had passed since Diversified initiated the sale process; (ii) the failure of Diversified to close a transaction that it accepted without consulting with the Trustee, who is clearly the fulcrum creditor; and (iii) combined with the interest that Diversified was continuing to accrue, the Trustee required the ability to review the offers submitted. Osler further advised that should the information not be provided, the Trustee would be in contact with Robins Appleby regarding a potential Court attendance, and in that regard also requested that Robins Appleby advise as to availability

for a 9:30am Court attendance should it be required. A copy of the March 13, 2021 email exchange, is attached as **Appendix “23”**.

84. The 9:30 Court attendance was ultimately scheduled for March 17, 2021.
85. Finally, in the evening of March 16, 2021, after further discussions between Osler and Robins Appleby, Robins Appleby provided the Trustee with copies of the two highest offers (one of which had a 30-day conditional period) received by Diversified on March 12, 2021, both of which were open until the following day, March 17, 2021, at 6pm. In the email Robins Appleby asked if the Trustee had a preference between the two offers, noting however that despite the Trustee’s feedback, Diversified retained the right to select the offer it determined to be most appropriate in the circumstances.
86. Later that evening the Trustee provided its feedback to Robins Appleby, advising that its preference was to proceed with the unconditional offer (*which was the same unconditional offer submitted to Diversified on the offer deadline or approximately three months earlier*). A copy of the March 16 email exchange is attached as **Appendix “24”**.
87. Had the Trustee been consulted by Diversified prior to the acceptance of the Conditional Offer, the Trustee would have recommended that a non-conditional offer be chosen, given the significant closing risks of the Conditional Offer.
88. Ultimately Diversified proceeded with the unconditional offer at a purchase price of \$13 million (“**Sale Proceeds**”) and the March 17, 2021 Court appearance was cancelled as the immediate matter had been resolved.
89. Prior to the closing of the sale transaction, the Trustee and its counsel on numerous occasions requested a copy of the Diversified payout statement, including during a telephone conversation on May 10, 2021. Notwithstanding the numerous requests the payout statement was not provided.
90. The sale transaction closed on May 13, 2021.
91. On May 13, 2021, Osler wrote to Robins Appleby stating, among other things, that the Trustee required that Robins Appleby hold the Sale Proceeds in trust pending the Trustee being provided with Diversified’s payout statement and an opportunity to review same prior to any distribution of the Sale Proceeds. A copy of the May 13, 2021 letter is attached as **Appendix “25”**.

92. On May 17, 2021, Robins Appleby sent an email in response to the May 13 letter, providing among other things, a payout statement as at May 14, 2021, and advising that given there is no obligation for Diversified to obtain the Trustee's consent prior to being paid the funds owing under its mortgage, Diversified had been paid the amounts set out in the payout statement, which totaled approximately \$9.9 million and was comprised of: (i) a return of principal of \$4.5 million; (ii) unpaid interest of \$4.7 million (on \$4.5 million of original principal); and (iii) approximately \$700,000 in renewal fees and other amounts. A copy of the May 17th email and related payout statement is attached as **Appendix "26"**.
93. On May 27, 2021, the Trustee, on behalf of BDMC, received a distribution of \$1,760,479.25 from the Sale Proceeds ("**BDMC Distribution**"), which represents a return on the outstanding principal amount of the aggregate amount of the South Shore Loans of only approximately 6.0% (or approximately 4.3% of outstanding principal together with unpaid interest). The following chart provides a summary of the amounts distributed from the Sale Proceeds:

	Distribution
Sale Proceeds	13,008,416 ⁵
Distribution to Diversified	9,931,694
Distribution to BDMC	1,760,479
Payment into Court for Outstanding Lien Claim	609,983
Settlement of Sunbelt Lien Claim	35,000
Commission, property tax arrears and other closing costs	671,260
Total	\$13,008,416

94. On May 25, 2021, Robins Appleby followed up with a further letter providing additional details and certain supporting documentation regarding the amounts set out in the payout statement previously provided ("**Accounting Letter**"). A copy of the Accounting Letter is attached as **Appendix "27"**.

⁵ Based on the statement of adjustments the total proceeds paid by the Purchaser was \$1,3008,416.35, inclusive of a property tax reimbursement.

95. On July 13, 2021, Osler wrote to Robins Appleby and among other things, again set out the Trustee's concerns regarding Diversified's conduct throughout the Notice of Sale proceedings and in particular as it related to significant interest amounts paid to Diversified, which were in the Trustee's view the result of the unwarranted delays related to the commencement of the sale process and the selection of the Conditional Offer. The letter further set out additional information required by the Trustee to complete its review of the items detailed in the Accounting Letter. A copy of the July 13, 2021, letter is attached as **Appendix "28"**.
96. On August 26, 2021, Robins Appleby sent a letter in response to Osler's July 13 letter, which denied the allegations made by the Trustee and provided certain of the additional information requested by the Trustee to complete its review of the items detailed in the Accounting Letter. A copy of the August 26, 2021 letter is attached as **Appendix "29"**.
97. On October 18, 2021, Osler sent a letter to Robins Appleby regarding certain amounts paid to Diversified from the Sale Proceeds, and in particular the amounts related to: (i) the calculation of interest and the amount of interest charged as a result of the unwarranted delays related to the commencement of the sale process and completion of a sale transaction; (ii) improperly charged interest due to monthly compounding; (iii) renewal fees; and (iv) certain administrative expense claimed by Diversified, which in aggregate total \$2,872,151 ("**Disputed Amounts**") and are summarized in the chart below:

	Disputed Amounts
Improperly Charged Interest due to Unwarranted Delay	1,870,000
Improperly Charged Interest due to Monthly Compounding	560,523
Improperly Charged Renewal Fees	409,237
Improperly Charged Administrative Fees	32,391
Total	\$2,872,151

A copy of the October 18th letter is attached as **Appendix "30"**.

97. On November 1, 2021, Robins Appleby sent an e-mail response to Osler's October 18 letter in which it continued to deny the validity of the Disputed Amounts. Furthermore, Robins Appleby took the position that the proposed motion by the Trustee in respect of the Disputed Amounts is a matter that should be heard on the regular civil list and is not

one that should be before the Commercial List. A copy of the November 1st email is attached as **Appendix “31”**.

98. Given the inability of Trustee and Diversified to come to an agreement with respect to the Disputed Amounts, on January 10, 2022, the Trustee served its 9:30 request form and a Notice of Motion and proposed timetable. A copy of the 9:30 request form and the Notice of Motion is attached as **Appendix “32”**.

DISPUTED AMOUNTS

99. The Trustee’s position is that each of the Disputed Amounts were improperly paid by Diversified to itself from the Sale Proceeds. Each of these amounts is discussed further below.

Improperly Charged Interest Due to Unwarranted Delay

100. As set out in detail above, Diversified’s process to sell the Property was unreasonably lengthy, and as a result, was detrimental to and disregarded the interests of the South Shore Investors.
101. Based on the Trustee’s experience in sale transactions for land similar to the South Shore Property, six months is a more than sufficient period of time to conduct and complete a sale process of this nature. Moreover, Diversified’s own process for the South Shore Project from the listing date through to the completion of the Sale Transaction was approximately six months (inclusive of the additional delay resulting from the acceptance of the Conditional Offer).
102. Diversified claimed (and ultimately paid itself from the Sale Proceeds) interest totaling approximately \$4.7 million, of which at least approximately \$1.87 million resulted from unwarranted delays. These unwarranted delays unnecessarily extended the sale process by an additional 22-months, being the period of time commencing six months after the issuance of the Notice of Sale and ending upon the completion of the Sale Transaction. The additional \$1.87 million of improperly charged interest paid to Diversified was in excess of the total amount paid to the South Shore Investors.

Improperly Charged Interest

103. Based on the commitment letter between the Borrower and Diversified dated October 2, 2014 (“**Commitment Letter**”), the interest on the Diversified loan was to be charged at 12% per annum, paid monthly. There is no provision regarding the method pursuant to which interest would be calculated should it not be paid in accordance with the payment terms set out in the Commitment Letter. A copy of the Commitment Letter is attached as **Appendix “33”**.
104. The charge registered on title as YR2209128 on October 30, 2014 (“**Diversified Registered Charge**”) does not state any interest calculation or compounding period that would apply in the circumstances, as is seen in the following excerpt from that charge, but does state that the interest period is annual, as opposed to monthly.

Provisions			
<i>Principal</i>	\$4,500,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>			
<i>Balance Due Date</i>	2015/11/01		
<i>Interest Rate</i>	12% pr annum		

A copy of the Diversified Registered Charge is attached as **Appendix “34”**.

105. The Diversified Registered Charge incorporates Standard Charge Terms 200033 (the “**Standard Charge Terms**”). Section 6 of the Standard Charge Terms reads:

In case default shall be made in payment of any sum to become due for interest at the time provided for payment in the Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, and both before and after default and judgement, shall bear interest at the rate provided for in the Charge. In case the interest and compound interest are not paid within the interest calculation period provided in the Charge from the time of default a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the land.

A copy of the Standard Charge Terms is attached as **Appendix “35”**.

106. A calculation period is not synonymous with a payment period.

107. As set out in the August 26, 2021 letter, Diversified asserts that section 6 of the Standard Charge Terms provides for default interest to be calculated on a monthly compounding basis.
108. It is the Trustee's position that the correct interest calculation or compounding period is the annual period referenced in the interest rate provision of the Diversified Registered Charge.
109. The Trustee has calculated the incremental amount of interest charged by Diversified and improperly deducted from the Sale Proceeds due to the use of an improper compounding period (i.e., monthly vs. annually) to be \$560,523.

Renewal Fees

110. Diversified has claimed and deducted from the Sale Proceeds \$409,237 in respect of renewal fees ("**Renewal Fees**").
111. Diversified claims the Renewal Fees based on a renewal letter dated July 27, 2015 between the Borrower and Diversified ("**Renewal Letter**"). A copy of the Renewal Letter is attached as **Appendix "36"**.
112. The Renewal Letter provides that an automatic renewal of the Diversified Mortgage would occur on the maturity date of the initial term and any renewal term, in exchange for fees equal to 3% of the principal amount of the loan for the first renewal term and 1.5% for each subsequent renewal term thereafter.
113. The Renewal Letter, however, stated that the automatic renewals would only occur "provided the Borrower is then not in default of any of the terms and conditions of the Loan".
114. The Borrower was in default under the Diversified Mortgage as of September 2015, when it missed its scheduled monthly interest payment, and remained in default thereafter. Notwithstanding such default, Diversified renewed the Diversified Mortgage in November 2015, November 2016, November 2017 and November 2018, charging the collective Renewal Fees.
115. It is the Trustee's position that the Renewal Fees were charged when the mortgage was in default and are therefore not properly chargeable under the Renewal Letter. As such it is the Trustee's view that the Renewal Fees, in addition to not being chargeable in the

circumstances, are a disguised penalty, which is a violation of the Interest Act, R.S.C. 1985, c. I 15.

116. Further, the Renewal Letter was not registered on title to the Property, nor is there reference to renewal fees in the Diversified Registered Charge. It is also the Trustee's position that Diversified cannot maintain a priority over a subsequent encumbrancer in connection with amendments to its mortgage where such amendments are not known to the subsequent encumbrancer when making its loan.
117. Accordingly, it is the Trustee's position that the Renewal Fees were improperly deducted by Diversified from the Sale Proceeds.

Improperly Charged Administrative Fees

118. Diversified has claimed and deducted from the Sale Proceeds \$32,391 in respect of certain "Sale Administration and Property Management" charges ("**Management Fees**").
119. The Management Fees are in respect of fees paid to "Diversified Realty Advisors Inc." for "management and administration services" rendered in connection with the Property. The Trustee takes the position that the Management Fees are not commercially reasonable nor were they necessary in the circumstances for the following reasons:
- a) the Diversified Realty Advisors Inc. invoice ("**Diversified Realty Invoice**") contained inadequate and incomplete particulars regarding the identity of the timekeeper, their hourly rate, and the time spent on any particular task;
 - b) the Diversified Realty Invoice includes, among other things, entries related directly to Diversified's obstruction of the Trustee's efforts to fulfill its Court-ordered mandate and/or to pursuing, against the Trustee's advice, the Conditional Offer that was ultimately not completed; and
 - c) Diversified engaged a "Nick J. Circosta" to perform property management type services, which included, among other things, facilitating due diligence, visiting the site, and attending to repairs at the Property. Mr. Circosta's fees were also paid out of the Sale Proceeds and the fees paid in respect of the Diversified Realty Invoice. are duplicative of the fees paid to Mr. Circosta.

120. It is the Trustee's position that the Administrative Fees were unnecessary and are not commercially reasonable and should not have been paid to Diversified from the Sale Proceeds.

CONCLUSION

121. The Trustee acknowledges that in all circumstances the South Shore Investors would have experienced a catastrophic loss on their investment given the market value of undeveloped South Shore Property. However, had Diversified not acted with a complete disregard for the legitimate interests of BDMC as a subsequent mortgagee, the outcome would have been less severe. Had the Disputed Amounts been paid to the BDMC instead of to Diversified, BDMC, on behalf of the South Shore Investors, would have recovered approximately 15.8% of the outstanding principal of the South Shore Loans compared to the 6% that has been recovered as a result of those amounts having been paid to Diversified. Should the Diversified Payment Order be granted by the Court the total return of principal to the South Shore Investors will more than double.
122. Diversified as a priority mortgagee owed BDMC as a subsequent encumbrancer a fiduciary duty in respect of any surplus obtained following a sale. It is the Trustee's view that the surplus paid thus far to the Trustee has been wrongfully reduced as a result of the breach of duty Diversified owes to BDMC, the wrongfully claimed Renewal Fees, the improper compounding of interest and the improperly charged Management Fees, which together total approximately \$2.87 million. Accordingly, the Trustee requests that the Diversified Payment Order be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of March, 2022

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 4:
PROJECT ANALYSIS SUMMARY DATED NOVEMBER 4, 2022**

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
1	6th and 10th	207	Exited	1st: \$8.8M BDMC	December 27, 2014 (extend date June 27, 2015) MATURED.	Completed 224-unit residential condominium building. All remaining residential units have been sold. The 6th & 10th borrower has advised the Trustee that it is making a claim to the proceeds from the remaining units in priority to the BDMC debt for certain project related costs it has funded and continues to fund. The 6th & 10th borrower provided the Trustee with a summary of its claim, which, as at October 18, 2022, totaled approximately \$2.7 million (" Related Party Claim "). The Trustee has not consented to any payment of the Related Party Claim in priority to BDMC and continues to be engaged in discussions with the 6th & 10th borrower with respect to same. In order to allow for the uninterrupted sale of the remaining units after the inventory loan was repaid in full, the Trustee has agreed with the 6th & 10th borrower that the proceeds (net of closing costs) from the sale of the remaining units will be held in escrow by the borrower's counsel until a resolution regarding the Related Party Claim is reached or upon further order of the Court. There is currently approximately \$3.7M being held by the borrower's counsel in escrow (" Escrow Funds ") which is insufficient to repay the 6th and 10th loan in full, regardless of the outcome of the Related Party Claim. Accordingly there will be a significant shortfall suffered by the Investors in the 6th and 10th project.	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 were approximately \$577,000 (" Bowmanville Residual Proceeds "). On June 7, 2021, the Trustee sought and obtained 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

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
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	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 \$17.7M continues to be held by the Court (" Brookdale Residual 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: (i) a claim from certain bondholders (" Bondholders ") under which approximately \$9M plus interest is claimed (" Computershare Proceedings "), (ii) a claim from the Fortress-related borrower under which approximately \$1.5M is claimed (" Fortress Claim ") and (iii) a claim from Fernbrook Homes (Brookdale) Limited who has informed the Trustee that it is currently preserving certain claims with respect to the Brookdale Residual Proceeds with a total value of \$2.8M (" Fernbrook Claim "). It is the Trustee's view that the Computershare Proceedings should be settled pursuant to the Brookdale Settlement Agreement which includes a distribution from the Brookdale Residual Proceeds payable as follows: \$4.1M to the Bondholders and the remaining balance of approximately \$13.5M (" Trustee Settlement Amount ") to the Trustee on behalf of the Brookdale Investors. The Trustee has reviewed the Fortress Claim and the Fernbrook Claim and has determined that no distribution should be made in respect of such claims. On November 14, 2022, the Trustee is seeking the approval of the Court for the Brookdale Settlement Agreement and the distribution of the Trustee Settlement Amount to the Brookdale Investors on a <i>pari-passu</i> basis, net of the Administrative Holdback, notwithstanding the Fortress Claim and the Fernbrook Claim.
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	Exited	n/a	n/a	n/a	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. Subsequent to the filing of the appeal, the Trustee, its counsel, Representative Counsel and the borrower reached a global settlement (" Castlemore Settlement "), which included, 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 obtained 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.

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
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 advised that it is of the view that given input it received from the City of Toronto regarding development approvals, the Density Bonus will likely not be payable and, accordingly, such entity requested that the Trustee discharge its mortgage on the Alternate Property. Following discussions with such entity, the Trustee ultimately agreed to discharge its mortgage in exchange for an equitable mortgage on 355 Adelaide St. W. and 46 Charlotte St. ("Combined Properties"), being the properties pursuant to which the possible Density Bonus relates.	On December 10, 2021, the Ontario Securities Commission obtained an order appointing a receiver ("Go-To Receiver") over the entity that agreed to the equitable mortgage, among others, which resulted in a default occurring under the applicable agreements. As a result, the Trustee has registered the equitable mortgage on title to the Combined Properties in the amount of \$5.2 million. On June 14, 2022, the Go-To Receiver obtained a court order approving the sale of the Combined Properties and for the distribution of the proceeds from the sale to two priority mortgages registered on title. Following distribution of these payments, the Trustee understands that the Go-To Receiver is holding the balance-in trust. The Trustee understands that in addition to the equitable mortgage, there is another party that held a registered mortgage on the Combined Properties in the principal registered amount of \$19.8 million. On June 2, 2022, the Trustee filed a proof of claim in the claims process commenced by the Go-To Receiver, in respect of its Equitable Mortgage. On November 1, 2022, the Go-To Receiver delivered to the Trustee a Notice of Revision or Disallowance of Claim disallowing the Trustee's claim in respect of its Equitable Mortgage in full. The Trustee is in the process of reviewing the materials delivered by the Go-To Receiver and determining next steps.
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 in respect of the BDMC debt on the Crestview project.	n/a
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 was appointed as bankruptcy trustee. There is certain ongoing litigation involving the Eden Project ("Eden Project Litigation"). After extensive negotiations a global resolution was reached following which the parties to the Eden Project Litigation entered into a settlement ("Eden Settlement Agreement"). The Eden Settlement Agreement includes, among other things, payments to the Trustee on behalf of the Eden Investors totaling \$2.225M ("Eden Settlement Payments") and releases granted to the various parties. On November 14, 2022, the Trustee is seeking the approval of the Court for the Eden Settlement Agreement and the distribution of the Eden Settlement Payments to the Eden Investors, net of the Administrative Holdback.
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 were approximately \$2.4M ("Nobleton South Residual Proceeds"). On June 7, 2021, the Trustee sought and obtained Court approval to distribute the Nobleton South Residual Proceeds pro rata to the Nobleton South Investors, net of the Administrative Holdback.

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
14	Glens of Halton Hills (Georgetown, GHH)	306	Exited	n/a	n/a	n/a	Notice of Intention ("NOI") to make a proposal was filed by the borrower in August 2018. Multiple lenders sought to enforce prior to the NOI filing. A sale and marketing process was undertaken by the Proposal Trustee. Proceeds from the transaction were used to, among other things, repay the first priority mortgagees on the project. As there was a shortfall in the amounts owing to the second ranking mortgagee, there were no recoveries available for distribution to BDMC. On February 5, 2019, the borrower was deemed bankrupt. The Trustee undertook a preliminary review of the sources and uses of funds on the project, which was provided to the bankruptcy trustee ("KSV"). Following the results of KSV's review, the Trustee concluded that KSV would have to incur significant additional time to further investigate the use of funds advanced by the Georgetown Investors, and there was no clear road to action or any recoveries without incurring significant additional costs. There are no funds remaining in the bankruptcy estate for KSV to continue any further investigation. Even if KSV successfully challenged certain transactions, any funds recovered would be used to satisfy fees and the shortfall to the second mortgagee before any funds could be made available for distribution to Georgetown Investors.
15	Highlands of York Region (East Gwillimbury) ("HYR")	59	Development	1st: Listed below per property: \$500K – 19851 2nd Concession Rd. \$2.2M – 19879 2nd Concession Rd. \$2.3M – 19935 2nd Concession Rd. ("VTB 1") 2nd: \$6.5M principal plus accrued interest of \$5M* Jaekel Capital Inc. ("Jaekel") (*as at July 11, 2022) 3rd: \$2.5M BDMC	April 15, 2021 MATURED.	Comprised of three parcels of land ("HYR Properties") with: (i) three separate first ranking vendor take back mortgages, each of which is registered on title to a different parcel; and (ii) a second ranking mortgage registered to Jaekel on title to each of the three parcels, each in priority to the BDMC debt. 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. The Trustee understands that a resubmission addressing the Town's comments has not been submitted to date and that the resubmission was delayed for two reasons: (i) servicing; and (ii) the Region of York not permitting access to 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. No offers were received on the offer deadline. The borrower has advised the Trustee that there are no funds available to continue with the development of the project.	On January 18, 2022, the holder of one of the VTB Mortgages ("VTB 1") delivered a Notice of Sale. Subsequent to the issuance of the Notice of Sale, the Trustee was advised that Jaekel redeemed VTB 1, thereby resolving the Notice of Sale proceeding. On July 11, 2022, Jaekel issued a Notice of Sale, with a deadline for repayment of August 22, 2022. As Jaekel was not repaid, Jaekel retained a listing agent, and then listed the HYR Properties for sale on September 20, 2022, without a listing price. After marketing the HYR Properties for a period of time, the listing agent set an offer date of October 19, 2022. Jaekel advised the Trustee that it received multiple offers for the HYR Properties but none of the offers were sufficient to satisfy its debt and the remaining VTB mortgages in full. Jaekel has further advised that it is continuing to discuss a potential sale transaction with the party that submitted the highest and best offer. Should such a transaction be completed it will result in the BDMC debt being discharge from title to the HYR Properties with no recovery for the HYR Investors.
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 settlement agreement contemplated a first settlement payment in the amount of \$1.75M, which has been paid, and a possible future second settlement payment ranging 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. The borrower has advised that it now anticipates that the Second Settlement Payment is expected to be paid in the summer of 2023.	n/a

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The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
17	Jasper House	163	Exited	n/a	n/a	<p>Property was listed for sale by the borrower and was sold for 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, subject to Court approval ("Related Party Settlement").</p> <p>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 was of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan was 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 those additional funds would be available for distribution to the North Investors.</p> <p>On June 7, 2021 the Court approved 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.</p>	n/a
18	King Square	176	Completed	<p>1st: \$49.9M Firm* 2nd: \$500K Aviva 3rd: \$8.6M BDMC 4th: \$6M OYSX Inc. 5th: \$7M 2198136 Ontario Ltd.</p> <p>*Includes approximately \$9.3M of VTBs between Firm and the purchasers of certain units which, upon maturity, will be paid by the purchasers and will reduce the amount owing to Firm.</p>	August 31, 2019 (extend date February 28, 2020) extension was not requested by borrower. MATURED.	Unit sales are ongoing. Since the commencement of the enforcement proceeding by Firm, approximately 65% 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 prices of the remaining inventory and on the status of the amounts owing to Firm, which amounts continue to accrue interest.
19	Kingridge Square (Speers)	45	Exited	n/a	n/a	On January 29, 2019, the Trustee sought and obtained approval of a settlement agreement of \$1.95M in respect of the BDMC debt on the Speers project.	n/a
20	Lake & East	154	Exited	n/a	n/a	n/a	On May 22, 2019, Toronto Capital Corporation (" TCC ") issued a Notice of Sale. As its debt was not repaid, TCC retained CBRE to market the property for sale. On December 18, 2019, TCC accepted an offer of \$7M for the properties. The transaction closed in May 2020, at which time the total amount due to TCC was in excess of \$7.5M. As TCC suffered a shortfall on its priority loan and mortgage, there were no recoveries available to repay any amounts owing to the Investors.
21	Mississauga Meadows 1 (" MM1 ")	130	Exited	n/a	n/a	n/a	The project was subject to both a 244 Notice and a Notice of Sale issued by Firm, the priority lender. A sale process was undertaken by Firm and an offer was accepted for both MM1 and MM2 which closed July 3, 2019. The purchase price resulted in a shortfall to the second priority mortgagee and no recovery to the MM1 Investors.
22	Mississauga Meadows 2 (" MM2 ")	82	Exited	n/a	n/a	n/a	The project was subject to both a 244 Notice and a Notice of Sale issued by Firm, the priority lender. A sale process was undertaken by Firm and an offer was accepted for both MM1 and MM2 which closed on July 3, 2019. The purchase price resulted in a shortfall to the second priority mortgagee and no recovery to the MM2 Investors.
23	Estates of Nobleton (Nobleton North)	353	Exited	n/a	n/a	On November 5, 2019, the Trustee obtained Court approval of a settlement agreement in the net amount of \$14.45M in respect of the BDMC debt on the Nobleton North project.	n/a

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
24	North	152	Exited	n/a	n/a	<p>Property was listed for sale by the borrower and was sold for 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, subject to Court approval ("Related Party Settlement").</p> <p>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 was of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan was 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 those additional funds would be available for distribution to the North Investors.</p> <p>On June 7, 2021 the Court approved 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.</p>	n/a
25	Old Market Lane	241	Exited	n/a	n/a	n/a	<p>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.</p>
26	Peter Richmond Land Assembly (LH2)	604	Exited	n/a	n/a	<p>The Trustee undertook a focused solicitation process with respect to a potential transaction in respect of the BDMC debt on the Peter Richmond project. As a result of this solicitation process, on January 30, 2020, the Trustee obtained Court approval for the assignment of the BDMC debt and security relating to the Peter Richmond project in exchange for a cash payment of \$26.25M. On October 15, 2020, the Trustee obtained Court approval for a method to distribute the proceeds from the assignment transaction to the Peter Richmond Investors, net of the Administrative Holdback.</p>	n/a
27	Port Place 2	67	Exited	n/a	n/a	n/a	<p>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 sold for a combined selling price of \$2.165M.</p> <p>On October 15, 2020, the Court granted an order authorizing the Trustee to enter into subordination and priority agreements that would subordinate BDMC's second priority mortgage to certain 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.</p>

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
28	Pivot (Rutherford)	176	Construction	1st: \$10.7M Bank of Nova Scotia (per the Borrower) 2nd: \$695K ("plus accrued interest of \$557K as at Sept 29, 2022) Jaekel 3rd: \$8.6M BDMC	July 30, 2017 (extend date July 30, 2018) MATURED.	To date 110 out of the 136 homes have been sold. 64 of those sale transactions have closed and construction has commenced on 38 new units. At this time, the timeline to completion and the quantum of any expected recovery to the Rutherford Investors remains unknown.	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	Exited	n/a	n/a	As the project was significantly behind schedule, deposits were returned to condo buyers. The site was being used as a surface parking lot, the income of which was used to service a portion of the priority debt.	On October 13, 2020, 11615467 Canada Ltd (" 1161 Canada "), the priority mortgagee, issued a Notice of Sale requiring the full amount of its outstanding debt 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. At that time the total amount owing to 1161 Canada was approximately \$11.1M. Given the result of the auction, 1161 Canada retained a commercial real estate broker to list the property for sale, which resulted in the sale of the property for a price that was less than the amount required to satisfy the 1161 Canada priority debt in full. Accordingly, there were no proceeds from the transaction available to repay any portion of the BDMC debt on the Sky City Project. In order to effect the transaction, a notice of application for an order of foreclosure was made by 1161 Canada on November 1, 2021 requiring the mortgagor or any other party with an interest in the Sky City property to redeem the mortgages from 1161 Canada within one month. As no party redeemed the mortgages within the requisite time, the District Registrar issued a final order of foreclosure and title was transferred to 1161 Canada free and clear of all subsequent encumbrances, including the charges securing the BDMC debt. After title to the property was transferred to 1161 Canada, 1161 Canada sold the property to the purchaser.
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
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

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
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 residual proceeds of approximately \$572,000 in priority to the amounts to be paid to the Trustee on behalf of the Kemp Investors. The Trustee reviewed Fortress' claim and disagreed with the analysis provided by Fortress. In December 2019, the Trustee distributed \$1.5M of the \$2.2M of remaining proceeds, with \$700,000 held back (" Kemp Holdback ") 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 did not reach an agreement. On January 31, 2022, the Trustee sought and obtained the approval of the Court to distribute the Kemp Holdback to the Kemp Investors, notwithstanding the asserted claims by Fortress and such third party and net of the Administrative Holdback.
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	530	Exited	n/a	n/a	n/a	The project was subject to a Notice of Sale issued by Diversified, the priority mortgagee, in January 2019. Almost two years after the issuance of the Notice of Sale, the property was listed for sale and ultimately sold for \$13M, which transaction closed on May 13, 2021. Following the closing, the Trustee was advised that \$9.9M had been paid to Diversified, which included approx. \$4.7M of unpaid interest on \$4.5M of original principal. The Trustee had concerns regarding the amounts paid to Diversified given, among other things, the lengthy delay in the sale process. As these concerns have not been adequately resolved with Diversified, the Trustee commenced litigation against Diversified seeking to recover certain of the amounts paid to Diversified. There is also one remaining construction lien claim advanced for approximately \$560,000 that could affect the amount of residual proceeds available for Investors from the sale transaction. The Trustee is continuing to engage with the lien claimant with respect to the validity and priority of such claim. Approximately \$610,000 has been paid into Court pending resolution of this claim. On January 31, 2022, the Trustee sought and obtained Court approval to distribute the approximately \$1.8M of residual proceeds received upon the closing of the sale transaction on a <i>pari passu</i> basis to all South Shore Investors, net of the Administrative Holdback.
39	The Wade (Victoria Medical)	118	Exited	n/a	n/a	n/a	n/a
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.

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of November 3, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **November 3, 2022**
(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	Project	Enforcement Proceeding
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 settlement contemplated a first settlement payment of \$4M, which was received in March 2020, and a second settlement payment of \$2.3 million, which was received in July 2021. The settlement proceeds, net of the Administrative Holdback, have each been distributed <i>pro rata</i> to the Wellington Investors.	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 were approximately \$12.9M (" Whitby Residual Proceeds "). On June 7, 2021, the Trustee sought and obtained 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 November 3, 2022 - 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 November 3, 2022. 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.

**APPENDIX 5:
BROOKDALE ORIGINAL LOAN AGREEMENT AND RELATED
DOCUMENTATION**

LOAN AGREEMENT

THIS AGREEMENT made as of the 27th day of May, 2015,

B E T W E E N:

CENTRO MORTGAGE INC., in Trust

(called the "**Lender**")

- and -

FORTRESS BROOKDALE INC.

(called the "**Borrower**")

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

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

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

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

1. **Defined Terms**

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

- (a) "**Agreement**" means this agreement and all amendments thereof;
- (b) "**Borrower**" means Fortress Brookdale Inc. and its successors and permitted assigns;
- (c) "**Bridge Lender**" shall have the meaning attributed thereto in Section 3(c);
- (d) "**Bridge Loan**" shall have the meaning attributed thereto in Section 3(c);
- (e) "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (f) "**Conditions Precedent**" shall have the meaning attributed thereto in Section 11 hereof;

- (g) "**Co-Tenancy Agreement**" between Fortress Avenue Road (2015) Inc., Fernbrook Homes (Brookdale) Limited, Fortress Brookdale Inc. and Dominus Construction (2005) Corporation dated May 25, 2015;
- (h) "**Default**" means an event or condition, the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default;
- (i) "**Development Fees**" means any and all development management fees or construction management fees payable by the Borrower or any related parties in connection with the Project;
- (j) "**Event of Default**" shall have the meaning attributed thereto in Section 16 hereof;
- (k) "**First-Ranking Construction Loan**" means collectively, one or more secured Project construction loans, in favour of arm's-length lender(s), in an aggregate principal amount not to exceed \$110,000,000.00 (plus a 10% contingency) ranking *pari passu* or with stated priority between them (in the case of multiple loans), with usual cost-to-complete advances and related security/documentation;
- (l) "**First-Ranking Construction Loan Security**" means the security to be provided to the Senior Lender to service the First-Ranking Construction Loan;
- (m) "**Hazardous Substances**" means all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to environmental laws and shall include "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to and/or contemplated in environmental laws, but exclude all cleaning and related products used in the usual operation and maintenance of property;
- (n) "**Lender**" means Centro Mortgage Inc., in trust, for and on behalf of certain persons/entities, and their respective successors and assigns;
- (o) "**Lender Charge**" shall have the meaning attributed thereto in Section 10(a);
- (p) "**Loan**" shall have the meaning attributed thereto in Section 3 hereof;
- (q) "**Loan Documents**" means this Agreement, the Security, all other documentation delivered in connection with the Loan and all amendments thereof;
- (r) "**Maturity Date**" shall have the meaning attributed thereto in Section 4 hereof;
- (s) "**Net Equity**" means a portion of the principal amount of the Loan advanced to the Borrower, from time to time, excluding: (1) all other accrued interest; and (2) the amounts raised and paid out on account of interest payments, all fees paid by the

Borrower to Fortress under the Development Consultant Agreement as Development Consultant Fees / Costs, as defined therein;

- (t) **“Notice”** shall have the meaning attributed thereto in Subsection 18(b) hereof;
- (u) **“Permitted Encumbrances”** means the First-Ranking Construction Loan Security, a second mortgage of \$6,600,000.00 (to be reduced to \$4,000,000.00 from proceeds of the Loan) in favour of RW Fortress Inc., a mortgage to secure any insurer providing bonding to the Tarion Warranty Corporation or providing excess deposit insurance to purchasers of condo units and such non-financial encumbrances as shall be reasonable for a development, a fourth ranking charge in favour of prior unsecured bond holders who provided equity financing to the Project, fully subordinate to the Security and the First Ranking Construction Loan and as such the Project (including, without limitation, encumbrances pertaining to easements, rights-of-way, subdivision agreements, condominium development or related agreements, site plan control agreements, Development Consultant Agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants);
- (v) **“Pledge of Shares”** shall have the meaning attributed thereto in Section 10(g) hereof;
- (w) **“Project”** means residential condominium development to be constructed on the Property, comprised of the lands located on the Property and any adjacent lands to the current or future parcels;
- (x) **“Project Budget”** means the Project budget attached hereto as Schedule “B”;
- (y) **“Project Cost Consultant”** means an arm’s-length cost consultant approved by the Lender, acting reasonably;
- (z) **“Property”** means the lands municipally and legally described in Schedule “A” attached hereto, together with all personal, intellectual and other property and all contracts relating thereto or associated therewith;
- (aa) **“Security”** shall have the meaning attributed thereto in Section 10 hereof;
- (bb) **“Senior Lender(s)”** means the arm’s length recognized financial institution providing the First-Ranking Construction Loan for the Project and receiving the First-Ranking Construction Loan Security, all as approved by the Lender, acting reasonably;
- (cc) **“Substantial Completion”** shall have the meaning attributed thereto pursuant to the *Construction Lien Act* (Ontario);
- (dd) **“Term”** shall have the meaning attributed thereto in Section 4 hereof; and

- (ee) "**Waterfall**" has the meaning attributed thereto under Section 5 of the Development Consultant Agreement.

2. **Schedules**

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

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

3. **Loan**

- (a) The Lender hereby establishes a non-revolving loan (the "**Loan**") in favour of the Borrower in an amount not exceeding \$16,600,000.00 to provide funding for the Borrower's costs related to the acquisition of the Property, as set out in Schedule "B" attached hereto (the "**Project Budget**") including, without limitation, funding to pay down the RW Fortress Inc. second mortgage, other reasonable closing costs of the Purchase Agreement and reasonable soft costs incurred or to be incurred prior to construction financing and to provide for any shortfall in required equity (as determined by the Senior Lender in its sole, absolute and unfettered discretion) prior to the first advance of the First-Ranking Construction Loan, all as set out in the Project Budget, but specifically excluding Development Fees which must be funded by the Senior Lender;
- (b) If, for any reason whatsoever and notwithstanding any other provision hereof, the Lender is unable to fund the full Loan for the Project, as and when required, as per the Schedule shown in the Project Budget as approved by the Lender, as amended from time to time, with consent of both the Lender and Borrower within ninety (90) days of being required to do so, then the security for the Loan funded shall be postponed and subordinated in favour of any and all security required by a lender providing the loan for the shortfall (the "**Replacement Lender**") and shall be postponed and subordinated in favour of the Security held by the Replacement Lender for advances to the Project. Either the Lender or the Borrower shall have the right to obtain a Replacement Lender on the best commercial terms available; and
- (c) Notwithstanding any other provision hereof, in the event that, for any reason whatsoever, less than the principal amount of the Loan is arranged for ultimate advance to the Borrower, as and when required as set out herein, then the Lender may, in its sole, absolute and unfettered discretion, agree to arrange a financing of the shortfall through an additional loan ("**Bridge Loan**") from a third party lender ("**Bridge Lender**"). The Bridge Loan shall rank in priority to the Loan and the Loan Documents and rank behind the First-Ranking Construction Loan Security (if applicable), and the Borrower and Lender agree to execute and deliver all reasonable documentation to provide required Security and related documents to the Bridge Lender as it may reasonably require to secure the Bridge Loan, and reflect such priority/ranking. The Bridge Loan shall provide for usual cost-to-

complete advances and be secured by all usual security/documentation similar to the Security herein.

4. **Term**

- (a) Two (2) years, commencing on the date of first advance and ending on the final day of such period (the “**Maturity Date**”). At the Borrower’s option (to be exercised in writing not less than three (3) months prior to the Maturity Date), the Borrower may extend the Maturity Date for 12 additional months.

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

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

5. **Interest Rate**

Nine Percent (9%) per annum.

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

6. **Interest Payment**

Calculated annually, not in advance and accrued added to the principal amounts of the Loan advanced and accrued until maturity when interest shall be payable, subject to Section 7(d).

7. **Prepayment/Repayment of Principal**

- (a) The Borrower may prepay the Loan, in whole but not in part, upon two (2) Business Days’ prior written notice to the Lender and without bonus, but the obligations to pay the Deferred Lender Fee and any payments to Fortress under the Development Consultant Agreement shall continue;
- (b) The outstanding Loan principal together with accrued interest owing and all other amounts due and owing, if any, pursuant to the Loan Documents shall become wholly due and payable on the earlier of Maturity Date or the occurrence of an unremedied Event of Default;
- (c) In the event that the Senior Lender requires less equity that has already been advanced by the Lender, or to the extent the Project is refinanced, to the extent that such equity can be repatriated to the Borrower, same shall be paid to the Lender to pay down the Loan or at the option of the Lender, held in a separate trust account

and pledged to the Lender to secure and be used to fund Interest Reserves and interest payments;

- (d) Repayment of the Loan and discharge of the Security shall be subject to and in accordance with the provisions of Sections 3.3 and 4.2 of the Co-Tenancy Agreement, copies of which are attached hereto as Schedule "C".
- (e) It is acknowledged that the term "Existing Mortgages" and "Further Charges" shall include the Lender Charge;
- (f) The Lender further acknowledges that recovery of the balance of the Loan after distributions on account of the Further Charges including the Lender Charge, shall be made from available Cash Surplus pursuant to distributions to the Borrower under the Co-Tenancy Agreement in accordance with Section 4.2 of the Co-Tenancy Agreement;
- (g) The Lender further acknowledges that pursuant to Sections 3.3 and 4.2 of the Co-Tenancy Agreement, after distributions of Cash Flow are made in accordance with the provisions of Section 4.2 of the Co-Tenancy Agreement, to the extent there remain any monies owing under the Lender Charge, same shall be written off and a discharge of any remaining discharge of the Lender's Security shall be provided without further payment; and
- (h) The Lender further acknowledges and agrees to execute all documentation, postponements, partial discharges, consents, etc., as may be required pursuant to the provisions of Sections 3.3 and 4.2 of the Co-Tenancy Agreement in order to complete the registration of the Project as a condominium and to complete the transfers of the units once the Project has been completed and sold.

8. Security

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

- (a) Property mortgage executed by the Borrower in the principal amount of \$16,600,000.00 ("**Lender Charge**");
- (b) if the Property beneficial owner is not the Borrower, then a direction, acknowledgement and security agreement executed by the beneficial owner, Borrower and Lender, including confirmation of a second/third-ranking charge of the beneficial owner's interest in the Property and a direction by the beneficial owner to the Borrower to execute the Loan Documents to which the Borrower is a party, such direction to be duly acknowledged by the Borrower;
- (c) a general security agreement executed by the Borrower charging the personal property and undertaking of the Borrower, present and future, used in connection with the Property including, without limitation, all accounts, equipment, goods,

inventory, chattel paper, documents of title, intangibles, securities and proceeds therefrom;

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

9. **Deliveries to Lender**

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

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

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

10. **Conditions Precedent to Advance**

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

- (a) the Security, duly registered and perfected (as the case may be) together with all other documentation relating to the Loan, the Property, the Project and the Borrower required by the Lender, acting reasonably;
- (b) title insurance from a title insurance company approved by the Lender, acting reasonably;
- (c) an opinion from Borrower's counsel confirming the subsistence, power and authority of the Borrower, the due authorization, execution, delivery and enforceability (subject to customary assumptions and qualifications) of the Loan Documents and such other matters as the Lender shall reasonably require;
- (d) a mortgage statement from a Permitted Encumbrance mortgagee(s) confirming that the relevant mortgage loan is in good standing and the terms thereof;
- (e) certificate from the Borrower certifying no Event of Default or default, the truth of all representations and warranties, the satisfaction of all conditions and compliance with all covenants set out in the Loan Documents;
- (f) an opinion of value indicating completed Project value of not less than \$35,200,000.00 (received May 27, 2015);
- (g) satisfactory environmental report, geotechnical report, mechanical engineering report, structural engineering report and zoning report, prepared by the appropriate professionals (with reliance letters in favour of the Lender);
- (h) confirmation that realty taxes have been paid to the relevant date;
- (i) satisfactory financial statements in respect of the Borrower (waived – new entity) and a satisfactory summary of Borrower share ownership;
- (j) satisfactory Project Budget, duly approved by the Lender;
- (k) satisfactory insurance coverage for the Project, duly approved by the Lender's insurance consultant (if any) and the Lender;

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

11. **Reporting & Default Mechanisms**

13.1 **Reporting Mechanisms**

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

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

12. **Representations and Warranties**

The Borrower represents and warrants as follows:

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

availability of equitable remedies which are only available in the discretion of the court from which they are sought;

- (f) the Security granted by the Borrower constitutes an assignment, a fixed and specific mortgage and charge, a floating charge and security on its undertaking, property and assets purported to be assigned, mortgaged, charged or subjected to the Security thereby and ranks in priority to all other security interests upon such undertaking, property and assets other than Permitted Encumbrances;
- (g) subject to any limitations stated therein, all financial statements which were furnished to the Lender hereunder, fairly present the financial condition of the relevant party as at the date thereof, and no material adverse change has occurred since the date of such delivery;
- (h) no event has occurred and is continuing, and no circumstance exists which has not been waived, which:
 - (i) constitutes a default or Event of Default; or
 - (ii) constitutes a default or event of default under any Permitted Encumbrance which may materially adversely affect the value of the Property or impair the validity or enforceability of the Security.
- (i) the Borrower is not in violation of any terms of its constating documents or, in any material respect, of any applicable law (including, without limitation, all building, zoning, planning, development, construction, construction lien, environmental and occupation laws);
- (j) the Borrower owns all intellectual property used and/or to be used in connection with the Project, free from all encumbrances;
- (k) the Borrower is solvent and will not become insolvent after giving effect to the transactions contemplated in this Agreement;
- (l)
 - (i) each material Project agreement is in full force and effect and has not been modified or supplemented;
 - (ii) the Borrower is not in default under any material Project agreement, and to the knowledge of the Borrower, no other party to any such material Project agreement is in default of any material obligation thereunder; and in each such case, no event has occurred which, with the giving of notice or the lapse of time, or both, would constitute such a default; and
 - (iii) no notice or other written or oral communication has been provided by or to the Borrower to or from any party under any material Project agreement which alleges that, as of the date hereof, either a default exists or with the passage of time will exist under the provisions of such material Project agreement.

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

13. **Covenants**

The Borrower covenants and agrees as follows:

- (a) to defend its right, title and interest in the Property for the benefit of the Lender against all claims and demands whatsoever of all persons/entities, other than holders of Permitted Encumbrances;
- (b) not to create or suffer to exist any encumbrance of any nature (whether prior to, *pari passu* with or subordinate to the Security) upon the Property or any part thereof other than Permitted Encumbrances;
- (c) to preserve, repair and keep in good order, condition and repair or cause to be preserved, repaired and kept in good order, condition and repair the Property and all appurtenances thereto and all properties and assets used in connection with the

Property, to the standard of a prudent owner of similar property, and the Borrower shall carry on and conduct, or cause to be carried on and conducted, the operation of the Property in a prudent manner so as to preserve and protect the Property; the Borrower shall keep the Property in good condition and order, or shall cause the Property to be put and kept in good condition and order, and shall promptly make, or cause to be made, all needed repairs and replacements thereto, including such repairs and replacements to implement the recommendations which a prudent owner of a property similar to the Property would deem appropriate or necessary from time to time; the Borrower shall at any and all reasonable times, upon the prior written request of the Lender, permit the Lender to inspect the Property or any part thereof during normal business hours;

- (d) to carry on or cause to be carried on and conduct or cause to be conducted the operation of the Property in a prudent manner so as not to materially impair the value of the Property or the use of the Property for the purpose for which it is held;
- (e) to duly and punctually pay, or cause to be paid, to the Lender the principal of and interest accrued on the Loan, any premium of the Loan and all other amounts owing in respect of the Loan on the dates, at the places, in the monies, and in the manner mentioned herein and in the Loan, in strict conformity therewith, and shall faithfully observe and perform all the conditions, covenants and requirements of all Loan Documents;
- (f) to pay or cause to be paid, on or before the due date thereof, all taxes, rates, levies, duties and assessments, general and special, ordinary and extraordinary, of every nature and kind whatsoever, including local improvement taxes which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower or any other person on account thereof, and shall from time to time as the same are paid, at the written request of the Lender produce for inspection by the Lender, satisfactory evidence that all such taxes have been paid when due (together with such further supporting information or documentation reasonably required by the Lender);
- (g) the Lender shall be entitled to register or file or cause to be registered or filed the Security (or a notice or financing statement in respect hereof) without delay at every public office of record in the Province of Ontario and in any other jurisdiction where the Borrower is "located" for the purposes of perfecting a security interest pursuant to the *Personal Property Security Act* (Ontario), in each case, where the registration or filing thereof is, in the opinion of the Lender, required to preserve, perfect and/or protect the security hereby or thereby created; and the Lender shall be entitled to renew or cause to be renewed any such registrations or filings as may be necessary from time to time to so preserve, perfect and/or protect the security hereby or thereby created;
- (h) the Borrower shall fully and effectively maintain and keep the Security or cause the Security to be maintained and kept as valid and effective security at all times while the Loan is outstanding and shall not permit or suffer the registration of any lien whatsoever, whether of workmen, builders, contractors, engineers, architects or

suppliers of material, upon or in respect of any of the Property, which would rank subsequent to, *pari passu* with or prior to the security of the Security other than Permitted Encumbrances;

- (i) the Borrower shall cooperate fully with the Lender with respect to any proceedings before any court, board or other public authority which may in any way materially and adversely affect the rights of the Lender hereunder or any rights obtained by it under any of the Loan Documents and, in connection therewith, shall keep the Lender fully advised of the status of all such proceedings and shall allow the Lender and its counsel at its election to attend meetings in respect of such proceedings; the Borrower shall cooperate with the Lender in obtaining for the Lender the benefits of any insurance proceeds lawfully or equitably payable in connection with the Property to the extent that the Lender is entitled to the same under the terms of the Loan Documents, and the Lender shall be reimbursed for any actual out-of-pocket expenses incurred in connection therewith (including, without limitation, legal fees and disbursements, and the payment by the Borrower of the expense of an appraisal on behalf of the Lender in case of a fire or other casualty affecting the Property or any part thereof) out of such insurance proceeds;
- (j) the Borrower shall cause the Property to be used only for Project purposes and for no other purpose, and the Borrower will do, observe and perform or cause to be done, observed and performed, in all material respects, all of its obligations and all matters and things necessary or expedient to be done, observed or performed under or by virtue of all applicable laws;
- (k) the Borrower shall do, observe and perform, or cause to be done, observed and performed, in all material respects, all of the obligations and things necessary or expedient to be done, observed or performed by the Borrower under or by virtue of all Permitted Encumbrances and material Project agreements; for greater certainty, this covenant regarding Permitted Encumbrances applies to all prior-ranking financial encumbrances which are Permitted Encumbrances;
- (l) if the Borrower shall fail to perform any covenant on its part contained in this Agreement the Lender may, after giving concurrent notice to the Borrower, itself perform (but shall not be obliged to perform), any of such covenants provided no payment or expenditure of funds is required in connection therewith, or, if a default has occurred, and if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds, or with money borrowed by or advanced to it for such purpose; all sums so expended or advanced shall be payable by the Borrower together with interest thereon which shall accrue, until paid, at the interest rate applicable to the Loan from the date of such expenditure or advance until repayment but no such performance or payment shall be deemed to relieve the Borrower from any default hereunder;
- (m) the Borrower shall encumber or cause to be encumbered in favour of the Lender, as part of the Security, all additional improvements, licenses, easements and rights of way which, in any way or manner, it shall hereafter acquire in connection with the Property, and the Borrower shall make or cause to be made all requisite

registrations required by this Agreement with respect thereto; any and all times the Borrower will do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all and every such further acts, deeds and assurances in law as the Lender shall reasonably require, for the purpose of giving the Lender a valid encumbrance of the nature herein specified upon all such property (subject only to Permitted Encumbrances) for the better encumbering unto the Lender all and singular the lands and premises, and property encumbered under the Security, or intended so to be or which the Borrower may hereafter become bound to encumber or cause to be encumbered in favour of the Lender;

- (n) so long as the Loan or any portion thereof remains outstanding the Borrower shall not cancel or materially amend any material Project agreements without the Lender's consent;
- (o) the Borrower shall give prompt notice to the Lender upon the occurrence of any default or any Event of Default or any event, circumstance or matter which may reasonably be expected to have a material adverse effect on the financial condition of the Borrower and/or the Property; the Borrower shall not create, assume, incur or suffer to exist any security interest in or upon any of its undertakings, properties, rights or assets secured by the Security except for Permitted Encumbrances;
- (p) upon two (2) Business Days' prior written notice or at any time in an emergency as reasonably determined by the Lender, the Borrower shall permit the Lender to have reasonable access at all reasonable times and from time to time, to the Property and to all related records (including records pertaining to the Borrower), and shall permit the Lender, acting reasonably, to make copies of and abstracts from such records;
- (q) the Borrower shall give to the Lender prompt written notice of any material adverse change in the condition of the business, financial or otherwise, of the Borrower;
- (r) the Borrower shall give to the Lender prompt written notice of all actions, suits, litigation or other proceeding commenced or threatened against the Borrower and/or in respect of the Property;
- (s) the Borrower shall obtain and maintain during the Term the following Property insurance coverage:
 - (i) prior to commencing construction, all risk builder's insurance with extended coverage for all other risks and perils in, representing an amount equal to 100% of the gross replacement cost of all buildings located on the Property, without deduction for foundations or footings; the proceeds payable under such policy shall be payable to the Lender as mortgage creditor, pursuant to a standard mortgage clause approved by the Insurance Bureau of Canada;
 - (ii) if applicable and prior to commencement of construction, broad form boiler insurance with coverage on all electrical equipment, mechanical equipment and pressure vessels; such policy shall contain a standard mortgage clause

approved by the Canadian Boiler and Machinery Underwriters Association, or an equivalent clause, with proceeds payable thereunder to the Lender as mortgage creditor;

- (iii) general liability insurance covering damages in an amount of not less than \$5,000,000.00 per occurrence; and
- (iv) such other insurance as shall be requested by the Lender, acting reasonably.
- (t) the Borrower shall deliver to the Lender, within one hundred and twenty (120) days following the Borrower's fiscal year, unaudited financial statements in respect of the Property and unaudited financial statements in respect of the Borrower, prepared internally by a qualified person in accordance with generally accepted accounting principles, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information; in addition to the above financial statements, the Borrower covenants to provide to the Lender, from time to time, upon request, any further financial information then still undisclosed and reasonably required, pertaining to the Property and/or the Borrower; the Lender reserves the right to disclose to third parties any financial information concerning the Property and/or the Borrower, provided that such third parties shall be limited to potential assignees of part or all of the Loan, the Lender's auditors, the Lender's solicitors, the Lender's bankers, the Lender's other advisors and persons to whom such information is ordinarily disclosed in a mortgage securitization or mortgage syndication;
- (u) the Borrower covenants to develop and construct and/or cause the development and construction of the Property in accordance with the delivered plans and specifications using only new materials and not Hazardous Substances, without defect in construction, installation and/or materials;
- (v) the Borrower covenants not to materially amend the delivered plans and specifications or fail to construct in accordance with the delivered plans and specifications without the Lender's prior written consent, which consent shall not be unreasonably withheld; and
- (w) the Borrower shall not sell, transfer, lease, license or otherwise convey an interest in the Property or any part thereof, save and except as contemplated for the staging and completion of the Project or to an entity approved by the Lender, in its sole, absolute and unfettered discretion.

14. **Events of Default**

Events of Default (“**Events of Default**”) shall be as follows:

- (a) if the Borrower fails to pay interest, principal or other amount owing hereunder on a due date during the Term and such default remains outstanding for ten (10) days; or
- (b) if the Borrower fails to pay all principal on the Maturity Date, subject to the provisions of Section 8 hereof; or
- (c) if the Borrower fails to pay, or cause to be paid, taxes, rates, levies, duties, public utility charges and assessments, general and special, ordinary and extraordinary, of any nature or kind whatsoever, including local improvement taxes, which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower, on account thereof and any such default shall continue either for a period of five (5) Business Days after written notice to the Borrower from the Lender or for such shorter period as would, if continued, render the Property, or any part thereof, liable to forfeiture or sale; or
- (d) if the Borrower creates, permits or suffers to exist, any encumbrance against the Property or any part thereof, other than Permitted Encumbrances and, in the case of encumbrances which have not been created by the Borrower, the same continue to exist for a period of ten (10) days after written notice thereof has been given to the Borrower by the Lender or for such shorter period as would, if continued, render the Property or any part thereof, liable to forfeiture or sale; or
- (e) if any representation or warranty in any of the Loan Documents or any financial statements delivered pursuant thereto, is (or, at the time it was given or repeated, was) false or erroneous in any material respect and such false or erroneous condition shall continue for a period of ten (10) days following the Borrower’s receipt of written notice thereof from the Lender; or
- (f) if the Borrower shall fail to comply with any covenant/agreement in any of the Loan Documents and such non-compliance shall continue for a period of ten (10) days following the Borrower’s receipt of written notice thereof from the Lender, or such longer cure period as may be reasonable in the circumstances, provided the Borrower takes diligent and commercially reasonable steps to cure such default as soon as possible; or
- (g) if any material provision in the Loan Documents shall for any reason cease to be valid, binding and enforceable in accordance with its terms or the Borrower shall so assert in writing; or any security interest created under any of the Loan Documents shall cease to be a valid and perfected security interest having the priority in any of the collateral purported to be covered thereby; or
- (h) if the Borrower does, or fails to do, anything which would entitle an insurer to cancel or not renew a policy of insurance on the Property required hereunder which

is not rectified within fifteen (15) days following the Borrower becoming aware of such entitlement to cancel or not renew, and in any event not later than ten (10) days prior to the termination or expiry of such policy, or if any policy of insurance is cancelled, expires or terminates and is not replaced in accordance with the requirements of this Agreement; or

- (i) if all or any material part of the Property is expropriated; or
- (j) if one or more final judgments for the payment of money (which is not covered by insurance) shall be rendered against the Borrower; or
- (k) if any writ, attachment, execution, enforcement, sequestration, extent, distress or any other similar process shall become enforceable against the Borrower, or if a distress or any analogous process is levied against any properties or assets of the Borrower; or
- (l) if the Borrower shall suspend or cease or threaten to suspend or cease its business; or
- (m) if the Borrower shall breach any law which results in a notice or control order or cancellation of any license or certificate or approval that results in any material disruption of the business at the Property or that could reasonably be expected to have a material adverse effect on the Security, the repayment of the Loan, the Lender's rights under the Loan Documents, the Property or the business operations, prospect or condition of the Borrower (financial or otherwise); or
- (n) if any environmental order is issued by any public authority against the Property and such environmental order has not been satisfied or discharged within the shorter of time allowed for in such environmental order and within thirty (30) days after the date such environmental order was received by the Borrower; or
- (o) if the Borrower shall admit its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency or if an order shall be made or an effective resolution passed for the winding up of such entity or if such entity shall make an assignment for the benefit of its creditors or if a receiver or a liquidator or a trustee in bankruptcy of such entity shall be appointed or if such entity shall make a proposal to its creditors under a bankruptcy act including, without limitation, the *Companies' Creditors Arrangement Act* (Canada); or
- (p) if any proceeding is instituted for the winding up of the Borrower or a petition in bankruptcy be presented against such entity under a bankruptcy act and if in either case such proceeding or petition shall not have been dismissed or withdrawn within twenty (20) days of the commencement of the proceeding or petition; or
- (q) if ownership control of the Borrower shall be transferred without the Lender's approval, which approval may be withheld in the Lender's sole, absolute and unfettered discretion; or

- (r) if the Borrower shall sell, transfer, lease, license or otherwise convey an interest in the Property or any part thereof in contravention of Subsection 15(x) hereof, or if the Borrower shall mortgage or otherwise encumber an interest in the Property or any part thereof in contravention of this Agreement, then the Lender may, in its sole, absolute and unfettered discretion, demand immediate repayment of the Loan principal in full together with all accrued interest and all other amounts due hereunder; or
- (s) if the Borrower is in default of any Permitted Encumbrance for more than fifteen (15) days after receiving written notice of such default; or
- (t) in the event that the Lender determines in its sole discretion and in conjunction with the consultations with the Project Cost Consultant, if any, that the Borrower is substantially in default of meeting the Project development and construction schedule including, inter alia, development approvals, servicing and sale of units, or if there are substantial cost overruns occurring (excluding causes beyond the reasonable control of the Borrower or its construction manager).

15. **Postponement and Subordination and Partial Discharge**

The Lender covenants and agrees as follows:

- (a) to postpone and subordinate the Loan Documents in favour of First-Ranking Construction Loan Security and to enter into such standstill agreements as shall be reasonable in the circumstances;
- (b) to postpone and subordinate the Loan Documents in favour of each non-financial encumbrance, as well as any deposit insurer security, if applicable, which is reasonable for a development such as the Project and which individually does not materially adversely affect the market value of the Property (including, without limitation, encumbrances pertaining to roads, sidewalks, easements, rights-of-way, subdivision agreements and/or condominium agreements, site plan control agreements, development agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants);
- (c) to discharge the Loan Documents in respect of any part of the Property which is not material to the Project and/or the market value of the Property or which is required by any governmental authority, without requirement for payment or prepayment of any part of the Loan;
- (d) if applicable, to provide partial discharges of the Loan Documents in respect of all Project unit sales to third parties and in respect of all Project sales to third parties, without compensation, provided that the full proceeds thereof shall be used immediately to first pay down the First-Ranking Construction Loan Security and then to pay down other Project trade creditors;

- (e) if applicable, to enter into a non-disturbance agreement, upon request, with any Project; such non-disturbance agreement shall provide for the tenant's postponement and subordination of its lease in favour of the Loan Documents and the tenant's agreement to attorn to the Lender and its successors and assigns upon an Event of Default; and
- (f) The investor hereby agrees that in the event there is an early repayment of the Loan by the Borrower (excluding receipts from enforcement or sale of Project units) ("**Early Repayment**"), same shall be paid to investors in the Loan in the order of priority of advance by the applicable tranche in the original Loan, and then pari passu amongst the investors who had their share of the Loan funded within the same loan tranche.

16. **General**

- (a) If the Borrower shall be comprised of more than one person/entity, then such persons/entities shall be jointly and severally liable for all of the obligations of the Borrower pursuant to this Agreement.
- (b) All notices, directions, service, correspondence and communications ("**Notice**") between the parties hereunder shall be in writing and delivered, sent by prepaid registered mail or electronically communicated by telecopier or e-mail as set forth below; delivered Notices shall be deemed to have been delivered on the day of delivery, if delivered at or before 5:00 p.m. (Toronto time) on a Business Day, or on the next Business Day if delivered after that time; Notices sent by prepaid registered mail shall be deemed to have been received on the third (3rd) Business Day following the date of mailing (notwithstanding the date of actual receipt and the fact that it may not have then been received), except in the event of interruption of postal service during which period Notices shall not be mailed; Notices electronically communicated by telecopier shall be deemed to have been delivered on the day of communication with confirmation of transmission, if communicated at or before 5:00 p.m. (Toronto time), or on the next Business Day if communicated after that time; any party may provide Notice of a change of its address and/or telefax number, provided that the Notice is communicated in accordance with this Subsection 18(b):

To the Lender:

Unit 8
25 Brodie Drive
Richmond Hill, Ontario L4B 3K7

Attention: Charene Bunnett
Fax No.:

and a copy to:

Fogler, Rubinoff LLP
Toronto Office
77 King St. W., Suite 3000
P.O. Box 95, TD Centre North
Toronto, Ontario M5K 1G8

Attention: Richard M. Rotchtin
Fax No.: (416) 941-8852
Email: rrotchtin@foglers.co

To the Borrower:

Unit 1
25 Brodie Drive
Richmond Hill, Ontario L4B 3K7

Attention: Vince Petrozza
Fax No.:
Email: vince@fortressrdi.com

and a copy to:

Robins Appleby LLP
120 Adelaide Street West
Suite 2600
Toronto, Ontario M5H 1T1

Attention: John Fox/Leor Margulies
Fax No.: (416) 868-0306

- (c) The Borrower shall not assign its rights and obligations pursuant to this Agreement, in whole or in part, without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
- (d) The Lender shall be entitled to assign all or part of its right, title and interest pursuant to this Agreement to one or more assignees, by way of simple assignment, syndication, securitization and/or other method of assignment.
- (e) All Loan Documents shall be governed by and interpreted in accordance with the laws in effect within the Province of Ontario.
- (f) The terms and conditions contained in this Agreement are inserted for the exclusive benefit of the Lender and may be waived, in whole or in part, by the Lender at any time or times. In the event of inconsistency or conflict between the provisions of this Agreement and the provisions of the Security, this Agreement shall prevail to the extent of such inconsistency or conflict.
- (g) This Agreement and the Loan Documents constitute the entire agreement between the parties hereto pertaining to the subject-matter hereof and supersede all prior agreements, negotiations, understandings and discussions, whether written or oral.

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

(r) This Agreement may be executed in counterparts.

CENTRO MORTGAGE INC. in Trust

Per: _____

Name: *Ildina Galati*
Title: *President*

Per: _____

Name:
Title:

I/We have the authority to bind the Corporation.

FORTRESS BROOKDALE INC.

Per: _____

Name: *Vincenzo Petrozza*
Title: *Vice President*

Per: _____

Name:
Title:

I/We have the authority to bind the Corporation.

SCHEDULE "A"

MUNICIPAL AND LEGAL DESCRIPTION OF THE PROPERTY

PIN 10189-0860 (LT)

FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640; SECONDLY ; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; THIRDLY; PT LT 42A PL 2247 TWP OF YORK AS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FOURTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTHLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO

PIN 10189-0245 (LT)

LOT 32, PLAN 2371, TOWNSHIP OF YORK, TORONTO (NYORK), CITY OF TORONTO

MUNICIPAL ADDRESS & ASSESSMENT ROLL NUMBER

MUNICIPAL ADDRESS	ASSESSMENT ROLL NUMBER
1678 Avenue Road, Toronto	19-08-06-2-100-02700-0000-06
1682 Avenue Road, Toronto	19-08-06-2-100-02600-0000-03
1686 Avenue Road, Toronto	19-08-06-2-100-02500-0000-00
1688-1690 Avenue Road, Toronto	19-08-06-2-100-02400-0000-04
1694-1698 Avenue Road, Toronto	19-08-06-2-100-02200-0000-05
1700 Avenue Road, Toronto	19-08-06-2-100-02100-0000-02
1702 Avenue Road, Toronto	19-08-06-2-100-02001-0000-04
1704B Avenue Road, Toronto	19-08-06-2-100-01800-0000-00
412 Brookdale Avenue, Toronto	19-08-06-2-100-02800-0000-02
414 Brookdale Avenue, Toronto	19-08-06-2-100-02900-0000-05
375 Fairlawn Avenue, Toronto	19-08-06-2-100-01700-0000-04
377 Fairlawn Avenue, Toronto	19-08-06-2-100-01600-0000-01

SCHEDULE "B"

PROJECT BUDGET

SCHEDULE "C"

3.3 Acknowledgments re Related Party Mortgages and Further Charges

- (a) Prior to the registration of any Further Charge, the holders of such mortgages shall acknowledge, both at the date of registration of any such mortgage or mortgages, as well as and when required by the Construction Lender and any insurance company providing security for purchaser deposits that:
 - (i) the Priority of Distributions set out in Section 4.2 herein shall supersede any priority entitlement or recovery pursuant to the registration of the applicable charges;
 - (ii) they shall provide all postponements, standstill agreements, partial discharges and all other documents required by the Construction Lender and any insurance company providing security for purchaser deposits;
 - (iii) in the event of a transfer of any such mortgage or mortgages, they shall require the transferee to execute all documents as required herein;
 - (iv) all interest payments during the terms of such mortgages shall be either capitalized or funded by the holders of such mortgages and there shall be no default under such mortgages for non-payment of same during the terms thereof. The Co-Tenancy shall have the right to approve the length of the term and any options to extend the terms under such mortgages such that it shall be sufficient to meet the construction, marketing and sale schedules of the Project. In the event the Project is completed and sales revenues are insufficient to repay all such mortgages in accordance with the waterfall of payments set forth in the Priority of Distributions herein, partial discharges shall be provided to the Nominee in order to complete sales of units in the Project, whether or not full or partial payment will be made under such mortgages;
 - (v) the holders of all such mortgage shall also acknowledge that notwithstanding the priority registration of their mortgages, provided the Project is completed by the Nominee, the holders of such mortgages shall only be entitled to repayment of their mortgages in accordance with the Priority of Distributions; and
 - (vi) all such lenders shall acknowledge that their security and indebtedness shall be strictly non-recourse as against Cityzen, Dominus Construction (2005) Corporation and their successors and assigns.

4.2 Priority of Distributions

The cash surplus ("**Cash Surplus**") of the Co-Tenancy arising from the receipt of any Project revenue (save for approved reserves for warranty claims, deposit insurer security, unpaid Project Costs or other reserves approved by the Co-Tenancy) shall be distributed to the Members, as and when funds become available for distribution, in the priority and manner as follows (the "**Priority of Distributions**"), without duplication, no distribution being made in any category set forth below unless and until the preceding category has been satisfied in full, unless the Members otherwise agree in writing:

- (a) firstly, to the Construction Lender for the repayment of the Construction Loan;
- (b) secondly, unpaid Project Costs including the construction and development management fees herein set out (such amounts not funded by the Construction Lender) including any Excess Loans;
- (c) thirdly, any unpaid fees owing under the Project Management Agreement;
- (d) fourthly, to repay Cityzen Excess Loan(s) (if any) plus default interest;
- (e) fifthly, to repay the Existing Mortgages or to obtain a discharge of any Further Charges up to the Maximum Land Mortgages Amount, to the extent not previously repaid by the Construction Lender.
- (f) sixthly, to repay Related Party Mortgages or equity advances by Fortress with respect to approved Project Costs (only principal amounts and no interest or fees or Priority Advance Distributions or Incremental Environmental Costs);
- (g) seventhly, the balance, if any, to the extent such balance represents the net profits (as determined by the Project accountants using GAAP) of the Co-Tenancy but exclusive of any fees, or interest on such fees or Priority Advance Distributions paid as a result of Fortress arranging any of the Existing Mortgages or Further Charges, to the extent the total owing for same is greater than the Maximum Land Mortgages Amount (the "**Actual Profit**"), shall, be distributed as follows:

With respect to the amount of Actual Profit that is less than \$10,000,000.00:

Fortress:	75%
Cityzen:	25%

With respect to the amount of Actual Profit that equals or exceeds \$10,000,000.00:

Fortress:	40%
Cityzen	60%

For clarity, all loan fees charged by Fortress or related parties as well as any interest costs arranging fees, loan fees, costs or Priority Advance Distribution included in or on the Existing Charges and the Further Charges or any Incremental Environmental Costs, as well as the Land Transfer Tax and all legal fees paid in connection with the Purchase Agreement increased by either Cityzen or Fortress, if any, shall be paid by Fortress and shall not be charged to the Project or constitute a Project Cost.

Notwithstanding the forgoing, 25% or 60% of the total Incremental Environmental Costs funded by the Construction Lender, if any and as the case may be, should be deducted from the Actual Profit payable to Fortress and paid to Cityzen.

Investment Authority – Form 9D

To: Building & Development Mortgages Canada Inc.
8-25 Brodie Drive
Richmond Hill, Ontario
Attention: Ildina Galati

I, [REDACTED], hereby instruct you to act on my behalf, on my mortgage investment of \$46,500.00, the details, conditions and disclosures of which are set below.

Details about the investment:

1. Name and Address of the Borrower: Fortress Brookdale Inc.
1 – 25 Brodie Drive
Richmond Hill, Ontario L4B 3K7

2. Municipal Address and Legal
Description of the real property (ies)

Municipal Address: 375 & 377 Fairlawn Avenue, 1678 Avenue Road, 1682 Avenue Road, 1686 Avenue Road, 1688-1690 Avenue Road, 1694-1698 Avenue Road, 1700 Avenue Road, 1702 Avenue Road, 1704B Avenue Road, 412 Brookdale Avenue, 414 Brookdale Avenue; Toronto, Ontario.

Legal Description:

PIN: 10189-0860 (LT)
FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ;
SECONDLY; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.;
THIRDLY; PT LT 42A PL 2247 TWP OF YORK AS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ;
FOURTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ;
FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.;
SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089, SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.;
SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTHLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO.

PIN: 10189-0245 (LT)
LOT 32, PLAN 2371, TOWNSHIP OF YORK, TORONTO (NYORK), CITY OF TORONTO.

3. Type of property – **retail, residential and parking complex**

4. Principal amount of mortgage/charge: **\$13,000,000.00**– (increasing to a Maximum of **\$16,600,000.00**), see paragraph 19.
5. Amount of loan to be advanced: **\$46,500.00**.
6. Rank of mortgage or charge: **A Third ranking Charge/Mortgage (The ranking of the mortgage can change at any time over the duration of the term) – subject to paragraph 19, see below.**
7. Encumbrances: **A First and Second ranking Charge/Mortgage will be registered in priority of this mortgage investment, see below.**

Balance 1st mortgage \$14,500,000.00 to Vector Financial Services Limited/Duca Financial Services

Balance 2nd mortgage \$4,100,000.00 to AG Group et al.

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

8. My investment of **\$46,500.00** represents **0.36%** of the total loan to the borrower.
9. I am satisfied that the approximate and current market value of the property against which my investment has been secured is **\$35,200,000.00** The means taken to determine said value was an Opinion of Value authored by Kevin Ferguson & Jeff Cheong of Legacy Mercantile Partners Ltd. on December 23rd 2015.
10. Including my investment and mortgage amount of **\$46,500.00**, the percentage of the value of the property including this mortgage and all prior ranking charges is currently: **90%**
11. **2 years**, commencing on the date of advance (May 27, 2015) of the Loan and ending on the final day of such period (the “**Maturity Date**”). At the Borrower’s option (to be exercised in writing not less than three (3) months prior to the Maturity Date), the Borrower may extend the Maturity Date for twelve (12) additional months (the “**Extension**”).
12. The due date of the loan is **May 27th, 2017 (Extension date May 27th, 2018)**
THE LENDER ACKNOWLEDGES INTEREST CALCULATIONS AND PAYMENT DATES ARE TO BE BASED ON THE ACTUAL DATE OF THE FIRST ADVANCE OF FUNDS TO BORROWER UNLESS OTHERWISE PROVIDED IN ANY LOAN AGREEMENTS OR DOCUMENTS THERETO.
13. The loan is amortized over **0 years**- the mortgage is an interest only mortgage.
14. The interest rate is **9.00%** calculated annually, not in advance.

15. Particulars of amounts and due dates (monthly, quarterly, etc.) of payments of interest only: All interest payable to the Lender, calculated annually, not in advance, shall accrue and be payable at the maturity date.
16. The mortgage is to be registered in the name of: **“Building & Development Mortgages Canada Inc., in Trust” FOR [REDACTED]**
17. After completion of the mortgage transaction, a collection or administration fee of per instalment is payable by the borrower: N/A
18. I understand that the mortgage shall be initially registered indicating a face value of \$13,000,000.00, and that from time to time the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower. It is anticipated that the loan amount shall be amended during the term of the loan to a **MAXIMUM OF \$16,600,000.00**
19. I understand the Charge/Mortgage in which I have an interest is currently a third ranking Charge/Mortgage against the Property and the position of the mortgage can change over the duration of the term.

I understand that a first ranking Charge/Mortgages against the Property in favour of Vector Financial Services Limited/Duca Financial Services in the amount of \$14,500,000.00, currently, and the second mortgagee will postpone its position to construction financing.

I understand that a second ranking Charge/Mortgages against the Property in favour of AG Group et al. in the amount of \$4,100,000.00, currently, and the second mortgagee will postpone its position to construction financing.

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

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

I hereby confirm that I understand and agree that the third charge/mortgage in which I have invested shall be required to postpone and standstill to prior charges/mortgages to a maximum of \$110,000,000 plus a 10% contingency if required, in priority financing. I understand that priority financing is expected to periodically increase over the term of this charge/mortgage and that such postponements shall be permitted and shall occur on the basis of cost consultant reports prepared on behalf of the borrower.

I understand that additional priority financing may be required if there is a shortfall pursuant to the terms of the charge/mortgage in which I am investing. In the event of a shortfall in the funding of this charge/mortgage I understand and

agree that other charges/mortgages may be registered against the property to fund and secure any such shortfall.

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

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

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

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

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

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

* _____
Initials

20. In the event that BDMC & Olympia, in its sole discretion, acting as approved Lender and administrator, determines that the Borrower, as a result of an act of "**Force Majeure**" (shall mean any event or series of events beyond the control of the Borrower such as strikes, walkouts, labour troubles, inability to procure materials or services or construction financing, power failures, restrictive governmental laws or regulations or the orders or directions of any administrative board, governmental department, officer or other authority, riots, insurrections, war, sabotage, rebellion or acts of God, material changes or delays in market conditions affecting sales or closings, delays in obtaining governmental approvals, permits, rezoning or similar regulatory requirements, none of which is the fault of the Borrower.), will not be able to complete the Project so as to repay the Loan on or before the maturity date on the Loan under the Loan Agreement

(as it may be extended under the terms thereof), it shall have the authority to extend the term of the Loan for such period of time, not exceeding **24** months so as to permit the Borrower to complete the Project and its sales, and thereby repay the Loan. BDMC & Olympia shall have the right to do so on one or more occasions but for a period of time not exceeding 24 months as aforesaid, without the consent of the investor;

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

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

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

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

Estimate	Paid to	Purpose
\$1395.00	Building & Development Mortgages Canada Inc.	Co-Brokerage Fee - H/O
\$100.00	Building & Development Mortgages Canada Inc.	Administrator Fee – Per client/year
\$3371.25	BDMC (FMP)	Brokerage Fee
\$2325.00	BDMC (FMP-WAY2SAVE)	Co-Brokerage Fee
\$930.00	FMP Mortgage Investments Inc. (paid Via Building & Development Mortgages Canada Inc.)	Point of Sale expenses including, but not limited to, the following: maintenance of front office support for operations, staff, insurance, promotion, events, training, due diligence, pro forma reviews, reporting and compliance and legal
\$1278.75	FMP Mortgage Investments Inc. (paid Via Building & Development Mortgages Canada Inc.)	For the provision of back office functionality including, but not limited to, customer service operations, project reviews, compliance, dedicated project & market communications, client updates, events, ongoing training, continuing education, site visits, reviews of Deloitte Special Audited Procedure Reports.
\$10,000.00	Fogler Rubinoff LLP	Legal Fees (Project commencement)

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

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

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

1st Ranking Mortgage Charge registered to Vector Financial Services Limited/Duca Financial Services with a face value of \$14,500,000.00

2nd Ranking Mortgage Charge registered to AG Group et al. with a face value of \$4,100,000.00

This mortgage is up to date and in good standing; subject to future postponements as per paragraph 21, above.

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

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

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

- (a) I instruct you to obtain a current and independent appraisal of the subject property and provide it to me before you complete this mortgage transaction. **No.**
I have reviewed the appraisal with my licensed mortgage agent/broker.

* _____
Initials

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

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

* _____
Initials

Disclosure:

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

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

* Investor to insert current date here

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

WARNINGS:

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

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

Investor's Signature: * _____

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

Signature

Name: [REDACTED]

Address: [REDACTED]

I, _____, did witness
WITNESS NAME

_____ on the _____ day of _____
INVESTOR NAME (day) (month)

201_, in the Town/City of _____, in the Province of _____
(town/city) (province)

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

Signature/Seal of Notary Public/Commissioner

Date:

Phone:

Name:

Fax:

Address:

Email:

PARTICIPATION AND SERVICING AGREEMENT

THIS AGREEMENT made as of the 27th day of May, 2015

B E T W E E N:


(hereinafter called "Investor")

OF THE FIRST PART

- and -

Building & Development Mortgages Canada Inc.
(Mortgage Administration Licence No. 12304)

(hereinafter called "BDMC")

OF THE SECOND PART

WHEREAS:

1. pursuant to the Loan Agreement, BDMC has agreed to provide the Borrower various loan facilities totalling Twenty Eight Million (\$28,000,000.00) Dollars (the "Loan") for the purposes of refinancing existing debt, and financing the development and the construction of residential homes on the Lands, to be secured by the Security Documents;
2. Investor has agreed to participate in the Loan to the extent of \$23,000.00 upon the terms and subject to the conditions of the Lender Acknowledgement & Consent dated May 27th 2015 (the "LAC"); and
3. Investor has agreed that BDMC will administer the Investment on behalf of Investor in accordance with the terms and subject to the conditions of this Agreement.

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

ARTICLE 1.00 - INTERPRETATION

1.1 Defined Terms

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

"Borrower" means Fortress Brookdale Inc.;

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

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

"Lands" means those lands more particularly described and charged pursuant to the Security Documents including without limitation all buildings, fixtures and improvements now or hereafter situate thereon and all easements, rights-of-way and other

similar rights appurtenant to or used in connection therewith;

“Loan” means the financing of the Project by BDMC to the Borrower to assist in the construction, on the Lands, in the maximum principal amount of Twenty Eight Million(\$28,000,000.00) Dollars on the terms and subject to the conditions set out in the Loan Agreement and includes without limitation all Principal, Interest, interest on overdue Interest, fees, expenses, charges and such other amounts owing by the Borrower from time to time to BDMC pursuant to the Loan Agreement or any of the Security Documents in respect of Loan;

“Loan Agreement” means the Loan Agreement dated May 27th 2015 between BDMC and the Borrower in respect of the Loan;

“Mortgaged Property” means:

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

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

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

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

“Project” means ;

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

“Security Documents” means the property located at 375 & 377 Fairlawn Avenue, 1678 Avenue Road, 1682 Avenue Road, 1686 Avenue Road, 1688-1690 Avenue Road, 1694-1698 Avenue Road, 1700 Avenue Road, 1702 Avenue Road, 1704B Avenue Road, 412 Brookdale Avenue, 414 Brookdale Avenue; Toronto, Ontario:

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

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

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

ARTICLE 2.00 - LOAN ORIGATION AND PARTICIPATION

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

ARTICLE 3.00- SERVICING OF INVESTMENT

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

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

- (l) if BDMC considers it necessary to accelerate repayment of the Loan and realize upon the Mortgaged Property including, inter alia, the appointment of a receiver, the exercise of powers of distress, the institution of foreclosure or power of sale proceedings and/or any other legal or equitable remedy. BDMC shall not be required to consult with Investor prior to determining what action BDMC should take to enforce its rights and exercise its remedies under the Security Documents or otherwise. BDMC shall not be required to take any action (or refrain from taking any action) that would result in BDMC being in default of any covenant, term, provision or condition of this Agreement, the Loan Agreement or the Security Documents or any obligation imposed on it by law including, without limitation, the obligation to act in a reasonable manner and in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account; and
 - (m) to fulfill all obligations of the Investor under the Loan and any Loan arrangements including the LAC relating to the execution of all necessary postponements, discharges, standstill agreements and other documentation consistent with the foregoing.
- 3.2 **Experts** To assist in administering the Investment and carrying out its duties hereunder, BDMC may retain at the expense of the Borrower, or failing same, the Participants to be shared based on their respective Proportionate Shares, such solicitors, notaries, counsel, auditors, appraisers and other experts as BDMC may, acting reasonably.
- 3.3 **No Warranties or Representations** BDMC has given no warranty or representation with respect to the Investment and shall not be responsible for the observance or performance of any of the obligations of the Borrower or the Covenantors pursuant to the Loan Agreement or the Security Documents. Investor acknowledges that it has made its own decision to participate in the Investment without any inducement from or reliance upon BDMC with respect to the financial condition of the Borrower or the Covenantors or the sufficiency of the Mortgaged Property or the Security Documents.
- 3.4 **Duty of Care** BDMC shall not be liable for any error of judgment or any action taken or omitted to be taken by it under or in connection with this Agreement if it acts upon or relies on any advice received from any expert retained by BDMC pursuant to section 3.2 or otherwise acts in good faith.
- 3.5 **Consent of Investor**
- (a) Save as set out herein, BDMC shall not, without the prior written consent of Investor, acting reasonably, agree to any renewal or any material amendment, modification or waiver of any of the terms of the Loan Agreement, the Security Documents or any agreement or document relating thereto, nor consent to any action or failure to act by the Borrower or any other party, or exercise any rights that BDMC may have in respect thereof or any rights pursuant to Section 3.1(j) hereof;
 - (b) If BDMC should request Investor's written consent to any of the action described in this paragraph and shall not receive Investor's consent or denial thereof in writing within ten (10) Business Days of the mailing, delivery or emailing of such request, Investor shall be deemed to have given its consent to such action; and
 - (c) Notwithstanding anything contained herein, in the event that BDMC obtains the written consent or agreement of Investors holdings at least fifty-one percent (51%) of the amount of the Loan advanced from time-to-time to any renewal, or material amendment, modification or waiver of any of the terms (collectively, the "**Change**") of the Loan Agreement, the Security Documents or any agreement or document relating thereto, the consent of all of the Investors shall be deemed to have been given to the

Change and BDMC shall be deemed to be authorized to enter into any and all such agreements and documentation to give effect to the Change on behalf of all the Investors. By way of example, in the event that the authorized loan is \$20,000,000.00 and when the Change is being requested \$10,000,000.00 has been advanced, provided that BDMC obtains the written consent of Investors to the Change who have advanced at least \$5,000,001.00, BDMC shall be permitted to take advantage of the provisions of this Section 3.5(b) to proceed with the proposed Change.

Investor Initials

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

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

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

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

ARTICLE 4.00- GENERAL

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

Building & Development Mortgages Canada Inc.
25 Brodie Drive – Unit 8
Richmond Hill, ON L4B 3K7
Attention: Ildina Galati- Ferrante
Fax No. 905 508 3957

and, if intended for Investor, addressed as follows:

Attention:
Fax No.

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

- 4.3 **Termination** Subject as hereafter provided, this Agreement shall remain in force until the earlier of the Loan having been paid in full and the Security Documents have been discharged or the Mortgaged Property has been realized and the proceeds of realization have been disbursed among the Participants in accordance with this Agreement. The indemnity provided in section 3.6 shall survive termination indefinitely.
- 4.4 **Effective Date of this Agreement** This Agreement shall not be effective until the date on which it is executed and delivered by BDMC and Investor.
- 4.5 **Relationship** Neither the execution of this Agreement, nor the sharing of the Investment nor any agreement to share in profits or losses arising as a result of the Investment is intended to be nor shall it be construed to be the formation of a partnership or a joint venture among the Participants.
- 4.6 **Publications or Registration of Interest** Investor shall not register this Agreement or notice thereof in any manner on the title to the Lands or with respect to any of the other Mortgaged Property.
- 4.7 **Dealings with Borrower**
- (a) Investor shall not contact or deal either directly or indirectly with the Borrower or the Covenantors or any other Person with respect to the servicing of the Investment or the enforcement of the Security without the consent of BDMC. Investor shall also not enter into any other agreement or take any other security with respect to this Agreement, the Investment or its Proportionate Share without the consent of BDMC.
 - (b) Investor shall not exercise any right of set-off, counter claim or any other claim it may have against the Borrower with respect to Contributory Advances or Contributory Payments to be made by it pursuant to this Agreement.
- 4.8 **Legal Capacity** Each Participant warrants and represents to the others that it has the legal capacity to enter into this Agreement and the Investment pursuant to its constating documents and any applicable legislation and that this Agreement constitutes a valid and binding obligation of such Participant enforceable in accordance with its terms.
- 4.9 **Entire Agreement** This Agreement constitutes the entire agreement between the Participants with respect to the Investment and supersedes all prior proposals and agreements, whether oral or written, with respect to the Investment.
- 4.10 **Amendment** No term or provision of this Agreement may be amended, waived, discharged or terminated without the unanimous written consent of all of the parties.
- 4.11 **Binding, etc.** This Agreement shall enure to the benefit of and be binding upon the parties and their successors and permitted assigns.
- 4.12 **No Waiver** The failure of any party to insist upon the strict adherence to or performance of any of the covenants contained herein shall not be considered as a waiver of such covenant by that party. A waiver of any provision in this Agreement must be in writing and signed by the waiving party.

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

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

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

Building & Development Mortgages Canada Inc.

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation

**APPENDIX 6:
CHARGE FOR BROOKDALE ORIGINAL LOAN (WITH SCHEDULES)**

Properties

PIN 10189 - 0860 LT *Interest/Estate* Fee Simple
Description FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411:SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.;SECONDLY; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; THIRDLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FORTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089:SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO
Address TORONTO

PIN 10189 - 0245 LT *Interest/Estate* Fee Simple
Description LT 32 PL 2371 TWP OF YORK; TORONTO (N YORK) , CITY OF TORONTO
Address 1690 AVENUE ROAD
TORONTO

Chargor(s)

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

Name FORTRESS BROOKDALE INC.
Address for Service 25 Brodie Drive
Unit 1
Richmond Hill, Ontario
L4B 3K7

I, Vince Petrozza, Vice-President, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

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

Statements

Schedule: See Schedules

Provisions

Principal \$10,300,000.00 *Currency* CDN
Calculation Period to accrue from the date of advance until maturity
Balance Due Date 2017/05/27
Interest Rate 9.00% per annum
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date 2017 05 27
Standard Charge Terms 200033
Insurance Amount full insurable value
Guarantor

Signed By

Lynn Pender 77 King Street West Suite 3000 PO acting for Chargor Signed 2015 07 23
Box 95 TD Centre (s)
Toronto
M5K 1G8

Tel 416-864-9700

Fax 416-941-8852

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

Submitted By

FOGLER, RUBINOFF LLP 77 King Street West Suite 3000 PO 2015 07 23
Box 95 TD Centre
Toronto
M5K 1G8

Tel 416-864-9700

Fax 416-941-8852

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

SCHEDULE 1 TO THE ATTACHED CHARGE/MORTGAGE OF LAND
GIVEN TO CENTRO MORTGAGE INC., IN TRUST
BY FORTRESS BROOKDALE INC.

1. **Definitions.** In this Charge, unless there is something in the subject matter or context to indicate otherwise, the following terms shall have the meanings set out below:

- (a) "**Act**" means the *Land Registration Reform Act* (Ontario) and any amendments thereto in effect at the time of execution and delivery of the Charge;
- (b) "**Change of Control**" means, with respect to the Chargor, a change in the Person or group of Persons, or any combination thereof, that owns or controls directly or indirectly securities of the Chargor, such that another Person or group of Persons, or any combination thereof, other than corporations that are affiliates (as defined in the *Canada Business Corporations Act*) of such corporations, owns or controls directly or indirectly securities of the Chargor other than by way of security only;
- (c) "**Charge**" means the Form, this Schedule and all other schedules annexed, as any of the foregoing may be amended from time to time and the expressions "**hereof**", "**herein**", "**hereto**" , "**hereunder**" and similar expressions refer to the Charge and not to any particular paragraph or other portion thereof;
- (d) "**Charged Premises**" means the lands and premises described in the Electronic Form as the "Properties" and includes, without limitation, all buildings and fixed improvements thereon and all fixtures and appurtenances thereof;
- (e) "**Electronic Form**" means the attached electronic form of Charge/Mortgage pursuant to the Act;
- (f) "**Environmental Claim**" means all claims, suits, actions, causes of action, losses, costs, expenses, fines, penalties, payments, liabilities, obligations and/or damages (including, without limitation, all solicitors' fees on a solicitor and own client basis) relating to, directly or indirectly arising out of, attributable to, resulting from or in any way connected with:
 - (i) the existence of any Hazardous Substance in, on, under or near the Charged Premises; and
 - (ii) the Release in, on, under, over, upon or from the Charged Premises of any Hazardous Substance,

including, without limitation, all costs and expenses of any remediation or restoration of all or any part of the Charged Premises and/or any property adjoining or in the vicinity of the Charged Premises required or mandated by the Environmental Law;

- (g) "**Environmental Law**" means any law, by-law, order, ordinance, ruling, regulation, certificate, approval, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any court of competent jurisdiction, relating to Environmental Matters and/or regulating the import, storage, distribution, labelling, sale, use, handling, transport or disposal of a Hazardous Substance, including, but not limited to, the *Environmental Protection Act* (Ontario), as amended from time to time;
- (h) "**Environmental Matters**" means:
 - (i) all environmental matters relating to the Charged Premises including, without limitation:

- (A) the existence of any Hazardous Substance which might impair the quality of the environment, or adversely affect human health or damage any plant or animal in, on, under or near the Charged Premises; and the Release in, on, under, over, upon or from the Charged Premises of any Hazardous Substance; and
 - (B) compliance with the Environmental Law;
- (i) "**Hazardous Substance**" means any substance or condition that is prohibited, controlled or otherwise regulated or otherwise hazardous in fact, including, without limitation, any contaminant, pollutant, noxious substance, toxic substance, dangerous substance, hazardous substance, material or wastes, hazardous waste, flammable or explosive material, radio-active material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, polychlorinated biphenyl waste, polychlorinated biphenyl related waste, petroleum and associated products, underground storage tanks or surface impoundments and any other substance or material now or hereafter declared, defined or deemed to be regulated or controlled in or pursuant to the Environmental Law;
 - (j) "**Interest**" means interest and other moneys payable under this Charge at the Interest Rate;
 - (k) "**Loan Agreement**" means the loan agreement dated as of May 27, 2015, entered into between the Chargee and the Chargor, as same may be amended and/or restated from time to time;
 - (l) "**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision of any country, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
 - (m) "**Principal Sum**" means the lesser of the sum referred to in the Electronic Form and the sum advanced by the Chargee to the Chargor and outstanding from time to time under this Charge;
 - (n) "**Release**" means any release, spill, emission, leakage, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration; and
 - (o) "**Security Documents**" means all instruments or agreements given as collateral security for the obligations secured by this Charge.

2. Charge

The Chargor, the owner of the Charged Premises, in consideration of \$10.00 of lawful money of Canada paid to it, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), charges the Charged Premises with payment to the Chargee of the Principal Sum, with Interest and with the power of sale expressed in this Charge. The Chargor further charges the Charged Premises to secure due payment and performance of all obligations, liabilities and all other amounts payable or arising under this Charge and the Loan Agreement.

3. Default

- (1) The occurrence of any one or more of the following events shall constitute a default under this Charge:
 - (a) the Chargor failing to pay to the Chargee principal or interest when due, or failing to pay any other indebtedness secured by this Charge within five (5) days after written notice that same is due;

- (b) the Chargor defaulting in the due and prompt performance or observance of any of their covenants or obligations hereunder or under the Loan Agreement or any of the Security Documents if such default continues for fifteen (15) days after notice of such default is given by Chargee, or the occurrence of an event which entitles, or with the giving of notice or lapse of time or otherwise would entitle, the Chargee to accelerate an indebtedness, liability or obligation secured by any of the Security Documents pursuant to the provisions thereof or the provisions of the Loan Agreement;
- (c) the Chargor defaulting in the due and prompt performance in respect of any other indebtedness which has resulted in the acceleration of such indebtedness;
- (d) if any proceedings are commenced or if an order shall be made by a court of competent jurisdiction or resolution of the directors or shareholders of the Chargor shall be passed for the dissolution, winding-up, or liquidation of the Chargor or if any application is made with respect to the Chargor under the *Companies' Creditors Arrangement Act* (Canada);
- (e) if the Chargor shall in any court file, or consent to the filing of, a petition in bankruptcy or insolvency or for any reorganization, readjustment, arrangement, composition, or similar relief under any Canadian or other applicable law or for the appointment of a receiver or trustee of all or a substantial portion of the Charged Premises or make a general assignment for the benefit of creditors, or a proposal under the *Bankruptcy and Insolvency Act* (Canada), or shall be declared by a court of competent jurisdiction bankrupt or if a trustee, custodian or a sequestrator or a receiver or receiver and manager or any other officer with similar powers shall be appointed of the Chargor or of the Charged Premises or any substantial part of the Charged Premises;
- (f) if an encumbrancer shall take possession of the Charged Premises or any substantial part of the Charged Premises, or if a distress or execution or any similar process be levied or enforced thereagainst and remain unsatisfied for such period as would permit such property to be sold thereunder;
- (g) if any representation or warranty made by the Chargor herein or in any of the Security Documents or the Loan Agreement, or in any notice, certificate, instrument or statement contemplated hereby or thereby is untrue or incorrect in any material respect as of the date on which such representation or warranty is made or any such representation or warranty becomes untrue or incorrect in any material respect at any time thereafter with reference to the facts subsisting at that time;
- (h) if any mortgage, charge, hypothec, pledge, lien or other security interest or encumbrance of whatsoever kind or nature, regardless of form and whether consensual or arising by law (statutory or otherwise) on the whole or any substantial part of the undertaking or assets of the Chargor becomes enforceable and the Person or Persons entitled to the benefit thereof takes steps to enforce such charge;
- (i) if any encumbrance or notice of an encumbrance is registered against the Charged Premises without the Chargee's prior written consent;
- (j) if the Chargor or those claiming under the Chargor shall commit any act of waste upon the Charged Premises;
- (k) if the Chargor breaches the provisions of Section 3 of this Schedule;
- (l) if any building now or hereafter in course of erection on the Charged Premises remains unfinished and without any work being done on it for a

period of ten (10) consecutive days subject to strikes or any other unavoidable delays;

- (m) if there is registered any construction lien against the Charged Premises or if there is issued any statement of claim derived therefrom, unless such lien is discharged and/or vacated within fifteen (15) days of the Chargee requiring the same to be done by the Chargor (which the Chargor agrees to do);
- (n) if the Charged Premises or a substantial part of the Charged Premises shall be expropriated by any governmental authority, body or corporation having the powers of expropriation; or
- (o) if the Chargor fails to comply with any of its obligations under the *Excise Tax Act* (Canada) to remit goods and services tax to the governmental authority entitled thereto or if any action is taken by any governmental authority against the Chargor or any other Person owing money to the Chargor with respect to goods and services tax, interest or penalties which such governmental authority claims is owing from the Chargor.

(2) Upon the occurrence of any one or more events of default under this Charge, the Principal Sum outstanding together with any and all accrued and unpaid interest and other moneys secured by this Charge shall at the option of the Chargee immediately become due and payable, and all the powers in and by this Charge or by law conferred in case of default, shall become exercisable and the powers of sale contained in this Charge may be exercised as provided in this Charge.

4. **Change in Ownership**

(1) If, without the prior written consent of the Chargee, or as contemplated by the Loan Agreement:

- (a) there is a change of ownership, control, pledge and/or sale, transfer or conveyance of the Charged Premises or any part thereof;
- (b) there is a Change of Control of the Chargor or any pledge of any interest in the Chargor; or any change in the Person(s) comprising or the partners, stockholders, members or beneficiaries of the Chargor from those represented to Chargee on the date of this Charge;
- (c) there is a merger, reorganization, dissolution or any other change in the ownership structure of the Chargor or any trustee, general partner or beneficiary of the Chargor; or
- (d) the Chargor enters into any agreement to effect any of the foregoing, whether by registered or unregistered instrument, and whether for valuable or nominal consideration,

then the Principal Sum and interest thereon and all other moneys secured by this Charge shall, at the option of the Chargee, immediately become due and payable.

(2) The Chargor shall provide such documentation as the Chargee may reasonably require in order to facilitate the giving of the consent referred to in Section 3(1) by the Chargee.

(3) The giving of a consent to any transaction referred to in Section 3(1) shall not be deemed to be a waiver of the Chargee's right to require consent to any future or successive transaction.

(4) The Chargee may require, among other things, as a term for granting any consent referred to in Section 3(1) that:

- (a) the proposed new owner or assignee of the Charged Premises (the "**Transferee**") provide the Chargee with such relevant financial information as the Chargee may request in the circumstances including

such evidence as the Chargee may require to establish the financial responsibility of the Transferee and the Chargor shall provide the Chargee with a specific authorization in writing allowing the Chargee to have access to and collect personal information concerning the Transferee; and

- (b) the Transferee shall execute the Chargee's then standard form assumption agreement in favour of the Chargee agreeing to be bound by all of the obligations of the Chargor under this Charge and other Security Documents in support thereof.

it being specifically understood that the consent of the Chargee to any transaction referred to in Section 3(1) shall not release the Chargor, from any of the covenants contained in this Charge.

(5) If the Transferee proposes to acquire less than the entire interest of the Chargor in the Charged Premises, the Chargee may require as a term for granting consent in addition to the requirements set out above that the Chargor and the Transferee execute co-ownership documentation in form and content satisfactory to the Chargee.

(6) The Chargor shall pay to the Chargee all costs of the Chargee relating to the Chargee's review of the Change of Control or change of ownership contemplated by this Charge, including a reasonable administrative charge and the fees, expenses and disbursements of the Chargee's solicitors, and such amounts shall be payable and secured by this Charge whether or not the consent of the Chargee to such Change of Control or change of ownership is granted.

5. Condominium Provisions

Provided that if all or any part of the Charged Premises is or becomes a condominium unit pursuant to the provisions of the Condominium Act, 1998, as amended, the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in this Charge:

(1) For the purposes of all parts of the Charged Premises comprising one or more such condominium units, all references in this Charge to the Charged Premises shall include the Chargor's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;

(2) The Chargor shall at all times comply with the Condominium Act, 1998, as amended and shall forward to the Chargee proof of such compliance as the Chargee may request from time to time including, without limitation, estoppel certificates issued by the Condominium Corporation; and if the Chargor fails to so comply in any respect, the Chargee may do so at its option and all costs and expenses incurred by the Chargee in connection therewith shall be secured by this Charge and payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided;

(3) The Chargor shall pay, when due, all monies payable by the Chargor or with respect to the Charged Premises in accordance with the provisions of the Condominium Act, 1998, as amended and the declaration, by-laws and rules of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Chargee upon request; and if the Chargor fails to make any such payment, the Chargee may do so at its option and all amounts so paid by the Chargee shall be secured by this Charge and shall be payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided;

(4) The Chargor hereby irrevocably appoints, authorizes and empowers the Chargee to exercise the rights of the Chargor to vote or to consent as an owner within the meaning of the Condominium Act, 1998, as amended with respect to all matters relating to the affairs of the Condominium Corporation, or to abstain from doing so, provided that:

- (a) the Chargee may at any time and from time to time give notice in writing to the Chargor and to the Condominium Corporation that the Chargee does not intend to exercise such right to vote or to consent, in which case the Chargor may exercise its right to vote or to consent for so long as such notice remains effective or until such notice is revoked by the Chargee;

and any such notice may be for an indeterminate period of time, a limited period of time or for a specific meeting or matter;

- (b) the Chargee shall not be under any obligation to vote or to consent or to protect the interests of the Chargor; and
- (c) the exercise by the Chargee of its right to vote or to consent or to abstain from doing so shall not constitute the Chargee as a mortgagee or chargee in possession and shall not give rise to any liability on the part of the Chargee;

(5) The Chargor shall forward to the Chargee by delivery or by prepaid registered mail copies of every notice, assessment, claim, demand, by-law, rule, request for consent and other communication relating to all or any part of the Charged Premises or the common elements or affairs of the Condominium Corporation on or before the date which is the earlier of:

- (a) fourteen (14) days after receipt of the same by the Chargor;
- (b) seven (7) days prior to the date set for any meeting of the Condominium Corporation or any committee thereof;
- (c) seven (7) days prior to the due date of any claim or demand for payment; and
- (d) within twenty-four (24) hours after becoming aware of any information concerning termination of any insurance policy, insurance trust agreement or management agreement relating to the Condominium Corporation or any of its assets;

(6) The Chargor hereby authorizes and directs the Condominium Corporation to permit the Chargee to inspect the records of the Condominium Corporation at any reasonable time;

(7) In addition to and notwithstanding any other provisions of this Charge, the outstanding principal amount and all accrued interest and other charges secured by this Charge shall, at the Chargee's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:

- (a) the government of the Condominium Corporation or the government of the Charged Premises by the Condominium Corporation is terminated;
- (b) a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Charged Premises, or any part of the same is expropriated;
- (c) the Condominium Corporation fails to comply with any provision of the Condominium Act, 1998, as amended or its declaration or any of its by-laws and rules;
- (d) the Condominium Corporation fails to insure its assets, including the Charged Premises, in accordance with the Condominium Act, 1998, as amended and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same.

6. **Receiver.**

(1) If and whenever the Chargee becomes entitled to enter into possession of the Charged Premises, the Chargee may, in the sole and absolute discretion of the Chargee, with or without entering into possession of the Charged Premises or any part of the Charged Premises, by instrument in writing appoint a Receiver (which term shall include a receiver and manager) of the Charged Premises or any part of the Charged Premises and of the rents and profits of the Charged Premises and with or without security and may from time to time remove any Receiver

with or without appointing another instead, and in making such appointment or appointments the Chargee shall be deemed to be acting for the Chargor.

(2) Upon the appointment of any such Receiver or Receivers from time to time, and subject to the provisions of the instrument appointing such Receiver, the following provisions shall apply:

- (a) every such Receiver may, in the discretion of the Chargee and by writing, be vested with all or any of the powers and discretions of the Chargee;
- (b) every such Receiver, so far as concerns the responsibility of such Receiver's acts or omissions, shall be deemed the agent or attorney of the Chargor and not the agent of the Chargee (unless specifically appointed by the Chargee as the agent of the Chargee);
- (c) the appointment of every Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such Receiver shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Charged Premises or any part of the Charged Premises;
- (d) every Receiver shall be the irrevocable agent or attorney of the Chargor (unless the Chargee specifically appoints such Receiver as the agent for the Chargee) for the collection of all rents falling due in respect of the Charged Premises or any part of the Charged Premises whether in respect of any leases created in priority to this Charge or subsequent to this Charge;
- (e) every such Receiver shall from time to time have the power to lease any portion of the Charged Premises which may become vacant for such term and subject to such provisions as the Receiver may deem advisable or expedient and in so doing every such Receiver shall act as the attorney or agent for the Chargor (unless specifically appointed by the Chargee as the agent of the Chargee) and such Receiver shall have authority to execute under seal any leases of any such premises in the name of and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever any such Receiver may do in the premises;
- (f) every such Receiver shall have full power to manage, operate, amend, repair, alter or extend the Charged Premises or any part of the Charged Premises in the name of the Chargor for the purpose of securing the payment of rental from the Charged Premises or any part of the Charged Premises;
- (g) the Chargee may from time to time by writing fix the reasonable remuneration of every such Receiver who shall be entitled to deduct the same out of the receipts from the Charged Premises or the proceeds of the Charged Premises;
- (h) no such Receiver shall be liable to the Chargor to account for moneys or damages other than moneys received by him in respect of the Charged Premises or any part of the Charged Premises and every such Receiver shall apply such cash so received to pay in the following order:
 - (i) his commission or remuneration as Receiver;
 - (ii) all expenses properly made or incurred by the Receiver in connection with the management, operation, amendment, repair, alteration or extension of the Charged Premises or any part of the Charged Premises;

- (iii) money which may from time to time be or become charged on the Charged Premises in priority to this Charge, and all taxes, insurance premiums and every other proper expenditure made or incurred by him in respect of the Charged Premises or any part of the Charged Premises;
- (iv) in keeping in good standing all charges on the Charged Premises prior to this Charge;
- (v) the Chargee in payment of all Interest due or falling due under this Charge and the balance to be applied upon the Principal Sum and all other moneys due and payable and secured by this Charge; and
- (vi) thereafter any surplus remaining in the hands of every such Receiver to the Chargor or its assigns.

7. **Environmental Matters.**

(1) The Chargor covenants, represents and warrants that, except as disclosed by the Chargor in writing to the Chargee and accepted in writing by the Chargee:

- (a) the Chargor's use and occupation of, and activities and operations on, the Charged Premises comply and shall comply in all respects with the Environmental Law;
- (b) neither the Chargor, nor any party for whom the Chargor is responsible at law, has Released, caused or permitted a Release or shall Release, cause or permit a Release of any Hazardous Substance into the natural environment, including, without limitation, the air, soil, subsoil or surface or groundwater in, on, over, under or at the Charged Premises;
- (c) no Hazardous Substance is or will be stored or located in, on, under or at the Charged Premises;
- (d) no active or inactive underground storage tanks are or will be located under the Charged Premises and neither the Charged Premises nor any adjacent lands have ever been used as or for a waste disposal site or coal gassification site;
- (e) the Chargor is not required to obtain, nor has obtained, nor is subject to any certificate, approval, direction, or order of any governmental authority or court of competent jurisdiction under the Environmental Law in respect of the Charged Premises or the operation of the Chargor's business thereon; and
- (f) there are no pending or threatened claims, actions, suits, prosecutions, hearings or other proceedings of any kind in any court or tribunal and the Chargor has received no notice of any such proceedings relating to an Environmental Claim or the discharge, deposit, escape or Release of any Hazardous Substance or any actual or alleged violation of the Environmental Law affecting the Charged Premises, and there is no basis for any of the foregoing being initiated.

(2) The Chargor shall use its best efforts to ensure (i) that any tenant, subtenant or other occupant of the Charged Premises shall in the future be in compliance with all requirements of Environmental Law, (ii) that no tenant, subtenant or other occupant of the Charged Premises places, suffers or permits to remain any toxic waste or other Hazardous Substance, or any contaminants, oil or pesticides at, on, under, within or about the Charged Premises.

(3) The Chargor shall permit the Chargee reasonable access to the Charged Premises at any time, and the Chargee's agents and employees from time to time, in order to conduct, at the Chargor's expense, such tests, inspections and environmental audits of the Charged Premises

as may be required by the Chargee at any time during the currency of this Charge, including, without limitation, the right to take soil samples from the Charged Premises, and the right to review and photocopy any and all records relating to the Charged Premises or the business now or hereinbefore conducted at the Charged Premises and the conducting by the Chargee of such tests, inspections and environmental audits shall not constitute the Chargee a mortgagee/chargee in possession or in control of management of the Charged Premises.

(4) The Chargor agrees to indemnify and save harmless the Chargee, its officers, directors, employees and agents, from and against (i) any Environmental Claim, and (ii) all losses, damages, costs, expenses, liabilities, claims and demands, including without limitation, legal fees incurred and the cost, liability or damage arising out of the settlement of any action entered into by the Chargee, either with or without the consent of the Chargor, that may be incurred by the Chargee as a result of:

- (a) any of the representations and warranties set out in Section 6(1) being untrue on the date of this Charge or becoming untrue at any date hereafter throughout the currency of this Charge;
- (b) the presence on, under or about or migration from the Charged Premises of any Hazardous Substance caused by or attributable, either directly or indirectly, to any act or omission of the Chargor or any other Person; and
- (c) any remediation or restoration of the Charged Premises and/or any lands adjoining or in the vicinity of the Charged Premises required or mandated by the Environmental Law attributable, either directly or indirectly, to any act or omission of the Chargor or any other Person.

(5) Notwithstanding anything to the contrary contained herein or in the Loan Agreement, the representations, warranties, covenants and indemnities contained in this Section 6 shall survive:

- (a) any power of sale, action of foreclosure or judicial sale, or any other extinguishing of the obligations of the Chargor pursuant to this Charge; and
- (b) the exercise of any remedies available to the Chargee pursuant to this Charge.

8. **Acknowledgment.** The Chargor acknowledges having received a true copy of this Charge.

9. **Land Registration Reform Act.**

(1) It is hereby understood and agreed that wherever the words "**Chargor**", "**Chargee**" and "**Charge**" appear throughout this document, same shall correspondingly be deemed and construed to mean "**Chargor**", "**Chargee**", and "**Charge**" respectively, as such latter terms are defined in the Act, and wherever the words "**Charged Premises**" or any derivative of the word "Charge" are used throughout this document, same shall be deemed and construed to mean the "**Charged Premises**" and the applicable derivative of the word "**Charge**", as such latter term is defined in the Act.

(2) If any of the forms of words contained in this Charge is also contained in column 1 of Schedule B of the *Short Forms of Mortgages Act* (Ontario) and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in column 2 of Schedule B thereof distinguished by the same number, and this Charge shall be interpreted as if the *Short Forms of Mortgages Act* was still in force and effect.

(3) The parties to this Charge agree that the covenants implied by paragraphs 1 and 2 of subsection 7(1) of the Act (as varied in this Charge) shall be in addition to, and not in substitution for, the covenants and other provisions set forth in this Charge.

(4) In the event of any conflict between any of such implied covenants (as varied in this Charge) and any other covenant or provision of this Charge, such other covenant or provision of this Charge shall prevail.

(5) The parties to this Charge agree that the covenant deemed to be included in this Charge by clause 7(1)(iii) of the Act is varied so that the text of such clause reads as follows:

That the Chargor has not done, omitted or permitted anything whereby the land is or may be encumbered, except as the Chargor has reported to the Chargee in writing.

10. **Conflict**

In the event of an inconsistency between any of the terms and conditions contained in this Schedule and the terms and conditions contained in Standard Charge Terms No. 200033, the terms and conditions of this Schedule shall prevail.

**APPENDIX 7:
BROOKDALE MEZZANINE LOAN AGREEMENT AND RELATED
DOCUMENTATION**

LOAN AGREEMENT

THIS AGREEMENT made as of the 10th day of July, 2017,

B E T W E E N:

Building & Development Mortgages Canada Inc., in Trust

(called the "Lender")

- and -

Fortress Brookdale Inc.

(called the "Borrower")

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

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

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

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

1. **Defined Terms**

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

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

(b) "**Agreement**" means this agreement and all amendments thereof;

- (c) **"Borrower"** means Fortress Brookdale Inc. and its successors and permitted assigns;
- (d) **"Bridge Lender"** shall have the meaning attributed thereto in Section 3(c);
- (e) **"Bridge Loan"** shall have the meaning attributed thereto in Section 3(c);
- (f) **"Business Day"** means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (g) **"Conditions Precedent"** shall have the meaning attributed thereto in Section 11 hereof;
- (h) **"Co-Tenancy Agreement"** between Fortress Avenue Road (2015) Inc. Fernbrook Homes (Brookdale) Limited, Fortress Brookdale Inc. and Dominus Construction (2005) Corporation dated May 25, 2015.
- (i) **"Default"** means an event or condition, the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default;
- (j) **"Development Fees"** means any and all development management fees or construction management fees payable by the Borrower or any related parties in connection with the Project;
- (k) **"Event of Default"** shall have the meaning attributed thereto in Section 16 hereof;
- (l) **"First-Ranking Construction Loan"** means collectively, one or more secured Project construction mezzanine bridge loans, in favour of arm's-length lender(s), in an aggregate principal amount not to exceed \$110,000,000 (plus a 10% contingency) ranking *pari passu* or with stated priority between them (in the case of multiple loans), with usual cost-to-complete advances and related security/documentation;
- (m) **"First-Ranking Construction Loan Security"** means the security to be provided to the Senior Lender to service the First-Ranking Construction Loan;
- (n) **"Fortress"** means Fortress Real Developments Inc.;
- (o) **"Hazardous Substances"** means all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to environmental laws and shall include "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to and/or contemplated in environmental laws, but exclude all cleaning and related products used in the usual operation and maintenance of property;

- (p) **“Lender”** means Building & Development Mortgages Canada Inc., in trust, for and on behalf of certain persons/entities, and their respective successors and assigns;
- (q) **“Loan”** shall have the meaning attributed thereto in Section 3 hereof;
- (r) **“Loan Documents”** means this Agreement, the Security, all other documentation delivered in connection with the Loan and all amendments thereof;
- (s) **“Maturity Date”** shall have the meaning attributed thereto in Section 4 hereof;
- (t) **“Net Equity”** means a portion of the principal amount of the Loan advanced to the Borrower, from time to time, excluding: (1) the Interest Reserve (if applicable); (2) all other accrued interest; (3) the Deferred Lender Fee (if applicable); and (4) the amounts raised and paid out on account of interest payments, all fees paid by the Borrower to Fortress under the Development Consultant Agreement as Development Consultant Fees / Costs, as defined therein;
- (u) **“Notice”** shall have the meaning attributed thereto in Subsection 18(b) hereof;
- (v) **“Permitted Encumbrances”** means the First-Ranking Construction Loan Security, a mortgage to secure any insurer providing bonding to the Tarion Warranty Corporation, Deposit Security, bridge loans, mezzanine financing or providing excess deposit insurance to purchasers of condo units and such non-financial encumbrances as shall be reasonable for a development such as the Project (including, without limitation, encumbrances pertaining to easements, rights-of-way, subdivision agreements, condominium development or related agreements, site plan control agreements, Development Consultant Agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants);
- (w) **“Pledge of Shares”** shall have the meaning attributed thereto in Section 10(g) hereof;
- (x) **“Project”** means residential condominium development to be constructed on the Property, comprised of the lands located at 375 & 377 Fairlawn Avenue, 1678 Avenue Road, 1682 Avenue Road, 1686 Avenue Road, 1688-1690 Avenue Road, 1694-1698 Avenue Road, 1700 Avenue Road, 1702 Avenue Road, 1704B Avenue Road, 412 Brookdale Avenue, 414 Brookdale Avenue; Toronto, Ontario. and any adjacent lands to the current or future parcels;
- (y) **“Project Budget”** means the Project budget attached hereto as Schedule “B”;
- (z) **“Project Cost Consultant”** means an arm’s-length cost consultant approved by the Lender, acting reasonably;

- (aa) “**Property**” means the lands municipally and legally described in Schedule “A” attached hereto, together with all personal, intellectual and other property and all contracts relating thereto or associated therewith;
- (bb) “**Security**” shall have the meaning attributed thereto in Section 10 hereof;
- (cc) “**Senior Lender(s)**” means the arm's length recognized financial institution providing the First-Ranking Construction Loan for the Project and receiving the First-Ranking Construction Loan Security, all as approved by the Lender, acting reasonably;
- (dd) “**Substantial Completion**” shall have the meaning attributed thereto pursuant to the *Construction Lien Act* (Ontario);
- (ee) “**Term**” shall have the meaning attributed thereto in Section 4 hereof; and

2. **Schedules**

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

- (a) Schedule “A” - Municipal and Legal Description of the Property
- (b) Schedule “B” - Project Budget
- Schedule “C” - Addendum to Loan Agreement

3. **Loan**

- (a) The Lender hereby establishes a non-revolving loan (the “**Loan**”) in favour of the Borrower in an amount not exceeding \$15,000,000.00 (of which \$5,000,000.00 is a buffer) to provide funding for the Borrower’s costs related to the acquisition of the Property, as set out in Schedule "B" attached hereto (the “**Project Budget**”) including, without limitation, funding to repay, if any, the Bridge Loan, other reasonable closing costs of the Purchase Agreement and reasonable soft costs incurred or to be incurred prior to construction financing and to provide for any shortfall in required equity (as determined by the Senior Lender in its sole, absolute and unfettered discretion) prior to the first advance of the First-Ranking Construction Loan, all as set out in the Project Budget, but specifically excluding Development Fees which must be funded by the Senior Lender;
- (b) If, for any reason whatsoever and notwithstanding any other provision hereof, the Lender is unable to fund the full Loan for the Project, as and when required, as per the Schedule shown in the Project Budget as approved by the Lender, as amended from time to time, with consent of both the Lender and Borrower within ninety (90) days of being required to do so, then the security for the Loan funded shall be postponed and subordinated in favour of any and all security required by a lender providing the loan for the shortfall (the “**Replacement Lender**”) and shall be postponed and subordinated in favour of the Security held by the Replacement Lender for advances to the Project. Either the Lender or the

Borrower shall have the right to obtain a Replacement Lender on the best commercial terms available; and

- (c) Notwithstanding any other provision hereof, in the event that, for any reason whatsoever, less than the principal amount of the Loan is arranged for ultimate advance to the Borrower, as and when required as set out herein, then the Lender may, in its sole, absolute and unfettered discretion, agree to arrange a financing of the shortfall through an additional loan ("**Bridge Loan**") from a third party lender ("**Bridge Lender**"). The Bridge Loan shall rank in priority to the Loan and the Loan Documents and rank behind the First-Ranking Construction Loan Security (if applicable), and the Borrower and Lender agree to execute and deliver all reasonable documentation to provide required Security and related documents to the Bridge Lender as it may reasonably require to secure the Bridge Loan, and reflect such priority/ranking. The Bridge Loan shall provide for usual cost-to-complete advances and be secured by all usual security/documentation similar to the Security herein.

4. **Term**

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

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

Notwithstanding the foregoing, provided that construction of the Project has commenced and is proceeding, and the Senior Lender is continuing to fund the First-Ranking Construction Loan, if there are delays in completion of the Project and sale and closing of the residential condominium units, the Lender may extend the Maturity Date by delivery of written notice to the Borrower for a period or periods sufficient in the Lender's opinion to complete the construction and sale of the Project and in order to comply with any postponement/standstill agreements referred to in Section 14 hereof.

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

5. **Interest Rate**

Eight Percent (8%) per annum.

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

6. **Interest Payment**

Interest, at a rate of 8%, calculated annually, not in advance, shall accrue and be payable at the maturity date.

Should the Borrower choose to exercise the 12 month term extension, interest will continue to accrue at Eight Percent (8%) per annum (calculated annually, not in advance) and the final year of accrued interest will be paid in full with all other accrued interest at the time of the “extended” maturity.

7. **Prepayment/Repayment of Principal**

- (a) The Borrower may prepay the Loan, in whole but not in part, upon two (2) Business Days’ prior written notice to the Lender and without bonus, but the obligations to pay the Deferred Lender Fee and any payments to Fortress under the Development Consultant Agreement shall continue;
- (b) The outstanding Loan principal together with accrued interest owing and all other amounts due and owing, if any, pursuant to the Loan Documents shall become wholly due and payable on the earlier of Maturity Date or the occurrence of an unremedied Event of Default;
- (c) In the event that the Senior Lender requires less equity that has already been advanced by the Lender, or to the extent the Project is refinanced, to the extent that such equity can be repatriated to the Borrower, same shall be paid to the Lender to pay down the Loan or at the option of the Lender, held in a separate trust account and pledged to the Lender to secure and be used to fund Interest Reserves and interest payments; and
- (d) The Lender agrees that in the event of a shortfall or projected shortfall in repayment of the Loan, the Lender shall nonetheless provide a discharge of its security, partial or otherwise, to permit sales of individual Project units in accordance with the Loan Agreement or any postponement/standstill agreements with prior lenders, provided that the net Cash Surplus is distributed in accordance with this Section 7(d).

8. **Security**

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

- (e) Property mortgage executed by the Borrower in the principal amount of \$15,000,000.00 (of which \$5,000,000.00 is a buffer);
- (f) if the Property beneficial owner is not the Borrower, then a direction, acknowledgement and security agreement executed by the beneficial owner, Borrower and Lender, including confirmation of a second/third-ranking charge of the beneficial owner’s interest in the Property and a direction by the beneficial

owner to the Borrower to execute the Loan Documents to which the Borrower is a party, such direction to be duly acknowledged by the Borrower;

- (g) a general security agreement executed by the Borrower charging the personal property and undertaking of the Borrower, present and future, used in connection with the Property including, without limitation, all accounts, equipment, goods, inventory, chattel paper, documents of title, intangibles, securities and proceeds therefrom;
- (h) an indemnity from the Borrower indemnifying the Lender from and against all losses, demands, claims, liabilities, costs, actions, penalties, obligations and expenses imposed upon the Lender and arising in connection with the Lender being a lender hereunder in respect of the Property and all assets relating thereto, save and except in respect of matters arising and caused by the gross negligence of the Lender during any period in which the Lender shall be in exclusive possession of the Property and/or arising and caused after a completed foreclosure proceeding or sale proceeding pursuant to the Security and/or caused by the gross negligence of the Lender; such indemnity shall survive the full payment and discharge of the Loan including *inter alia*, an appropriate indemnity for all environmental matters;
- (i) a completion guarantee from the Borrower;
- (j) an undertaking by the Borrower and the sponsors to obtain construction financing from the Senior Lender for all approved Project costs as described in the Project Budget, save for the equity to be advanced by way of the Loan Amounts under this Loan Agreement, on commercially reasonable terms to be approved by the Lender, acting reasonably;
- (k) a first pledge of all the voting shares of the Borrower and any beneficial owner of the Project; and
- (l) such further and/or other security relating to the Property as the Lender shall reasonably require.

9. **Deliveries to Lender**

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

- (a) the Property parcel pages, existing registered encumbrances and existing surveys thereof; RECEIVED
- (b) the appraisal and professional reports; RECEIVED
- (c) the financial statements and Project Budget; RECEIVED

- (d) the off-title search results and corporate/personalty search results described in; RECEIVED
- (e) evidence of liability insurance in satisfactory amounts, with the Lender included as a named insured, in available; RECEIVED
- (f) all material Project contracts; RECEIVED
- (g) all Project plans and specifications and all periodic Project development reports issued to date, if applicable; RECEIVED
- (h) all architectural and engineering documents and any other consultant or internally generated developments reports with respect to the Project, together with the draft plan, zoning analysis, traffic study, sanitary study, water study, storm-water study, utility study and road study, if available; RECEIVED
- (i) a copy of the Purchase Agreement and closing statement of adjustments; and N/A
- (j) all other information and/or documentation in respect of the Project, the Property and/or the Borrower as the Lender may request, acting reasonably.

10. **Conditions Precedent to Advance**

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

- (a) the Security, duly registered and perfected (as the case may be) together with all other documentation relating to the Loan, the Property, the Project and the Borrower required by the Lender, acting reasonably;
- (b) title insurance from a title insurance company approved by the Lender, acting reasonably;
- (c) an opinion from Borrower's counsel confirming the subsistence, power and authority of the Borrower, the due authorization, execution, delivery and enforceability (subject to customary assumptions and qualifications) of the Loan Documents and such other matters as the Lender shall reasonably require;
- (d) a mortgage statement from a Permitted Encumbrance mortgagee(s) confirming that the relevant mortgage loan is in good standing and the terms thereof; RECEIVED
- (e) certificate from the Borrower certifying no Event of Default or default, the truth of all representations and warranties, the satisfaction of all conditions and compliance with all covenants set out in the Loan Documents;
- (f) an appraisal indicating completed Project value of not less than \$33,000,000.00; RECEIVED

- (g) satisfactory environmental report, geotechnical report, mechanical engineering report, structural engineering report and zoning report, prepared by the appropriate professionals (with reliance letters in favour of the Lender); RECEIVED
- (h) confirmation that realty taxes have been paid to the relevant date; RECEIVED
- (i) satisfactory financial statements in respect of the Borrower and a satisfactory summary of Borrower share ownership; RECEIVED
- (j) satisfactory Project Budget, duly approved by the Lender; RECEIVED
- (k) satisfactory insurance coverage for the Project, duly approved by the Lender's insurance consultant (if any) and the Lender; RECEIVED
- (l) all relevant consents pursuant to the Loan Documents;
- (m) certificate from the Borrower certifying that there have been no material changes affecting the Property and/or the Borrower since the later of the date of execution of this Agreement and the immediately prior advance hereunder and;
- (n) confirmation of investors' interest – the Borrower acknowledges that the Lender will be syndicating this loan to individual investors, either through cash investments or RRSP investments and that each investor will have an individual beneficial interest in the Loan Amount proportionate to the overall contributions. As part of the syndication process, the Borrower agrees to execute a confirmation of Lender's interest in the Lender's standard form with each of the investors to confirm their individual Loan Amounts;

11. Reporting & Default Mechanisms

11.1 Reporting Mechanisms

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

- (a) copies of the Project Cost Consultant's reports with each advance, as well as any preliminary or supplementary reports including the last version issued by the Project Cost Consultant;
- (b) a monthly report as to the status of all zoning and planning approvals;
- (c) a monthly status report as to revisions to the Budget, negotiations with Senior Lender, as well as updated plans and specifications for the Project. To the extent such plans and specifications materially change from those received and are approved by the Lender at the outset, same will require the approval of the Lender, acting reasonably;

- (d) financial reporting as to loan advances, sales reports, project expense reports and such other reasonable reporting requirements of the Lender and consistent with those to be provided to the Project Cost Consultant and the Senior Lender;
- (e) advice as to any material deviations to the Project Budget;
- (f) all preliminary and final plans for the design , layout , suite mix and proposed pricing of the Project and the units, any other Project specifications required by the Lender, as amended from time to time, all to be approved by the Lender, acting reasonably; and
- (g) such other reasonable requirements of the Lender consistent with the terms of this Loan Agreement and industry practice for similar types of equity/loans.

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

11.2 **Default Mechanisms**

In the event that there is an Event of Default and the Lender exercises any of its remedies under its Security, Fortress will be delegated all responsibilities of determining the best course of action for enforcement, including managing the affairs of the Borrower pursuant to the exercise of the pledge of shares of the Borrower and any beneficial owner of the Project in order to maximize the recovery of the Loan for the Lender and its underlying investors.

12. **Representations and Warranties**

The Borrower represents and warrants as follows:

- (a) the Borrower is duly constituted and validly subsisting under the laws of the Province of Ontario, has all necessary power and authority to own its properties and assets and to carry on its business as now conducted and is duly licensed or registered or otherwise qualified in all jurisdictions wherein the nature of its assets or the business transacted by it makes such licensing, registration or qualification necessary;
- (b) the Borrower has full power and capacity to enter into, deliver and perform its obligations under the Loan Documents to which it is a party and all other instruments contemplated hereunder to which it is a party;
- (c) the execution and delivery and performance by the Borrower of the Loan Documents to which it is a party and all obligations contained herein and therein,

and all other instruments contemplated hereunder to which it is a party and the consummation of the transactions contemplated hereby and thereby:

- (i) have been duly authorized by all necessary action;
 - (ii) do not and will not conflict with, result in any breach or violation of, or constitute a default under any such party's constating documents or by-laws, or any applicable laws or judgment presently in effect and applicable to it, or of any material Project agreement to which any such party is bound;
 - (iii) do not (except for the Security) result in or require the creation of any security interest or encumbrance upon or with respect to which the Borrower is bound; and
 - (iv) do not require the consent or approval (other than those consents or approvals already obtained and copies of which have been delivered to the Lender and other than those consents which, if not obtained, would not adversely affect any material component of the Security, the value of the Property or the operation of the business of the Borrower at the Property) of, or registration or filing with (except as contemplated herein), any other person, including any public authority.
- (d) the Borrower has provided to the Lender accurate and complete copies of all material Project agreements;
 - (e) each Loan Document and all other instruments contemplated hereunder are, or when executed and delivered to the Lender will be, legal, valid and binding obligations enforceable against the Borrower in accordance with their respective terms, subject to the limitations with respect to enforcement imposed under law in connection with bankruptcy, insolvency, liquidation, reorganization and other laws affecting the enforcement of creditors' rights generally and subject to the availability of equitable remedies which are only available in the discretion of the court from which they are sought;
 - (f) the Security granted by the Borrower constitutes an assignment, a fixed and specific mortgage and charge, a floating charge and security on its undertaking, property and assets purported to be assigned, mortgaged, charged or subjected to the Security thereby and ranks in priority to all other security interests upon such undertaking, property and assets other than Permitted Encumbrances;
 - (g) subject to any limitations stated therein, all financial statements which were furnished to the Lender hereunder, fairly present the financial condition of the relevant party as at the date thereof, and no material adverse change has occurred since the date of such delivery;
 - (h) no event has occurred and is continuing, and no circumstance exists which has not been waived, which:

- (i) constitutes a default or Event of Default; or
 - (ii) constitutes a default or event of default under any Permitted Encumbrance which may materially adversely affect the value of the Property or impair the validity or enforceability of the Security.
- (i) the Borrower is not in violation of any terms of its constating documents or, in any material respect, of any applicable law (including, without limitation, all building, zoning, planning, development, construction, construction lien, environmental and occupation laws);
 - (j) the Borrower owns all intellectual property used and/or to be used in connection with the Project, free from all encumbrances;
 - (k) the Borrower is solvent and will not become insolvent after giving effect to the transactions contemplated in this Agreement;
 - (l)
 - (i) each material Project agreement is in full force and effect and has not been modified or supplemented;
 - (ii) the Borrower is not in default under any material Project agreement, and to the knowledge of the Borrower, no other party to any such material Project agreement is in default of any material obligation thereunder; and in each such case, no event has occurred which, with the giving of notice or the lapse of time, or both, would constitute such a default; and
 - (iii) no notice or other written or oral communication has been provided by or to the Borrower to or from any party under any material Project agreement which alleges that, as of the date hereof, either a default exists or with the passage of time will exist under the provisions of such material Project agreement.
 - (m) the Property has full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the normal operation of the Property and the Borrower has no knowledge of any fact or condition that would result in the interruption or termination of such access;
 - (n) all public utilities required for the normal operation of the Property connect into the Property through adjoining public highways or if they pass through adjoining private land, do so in accordance with valid registered easements and are sufficient for the operation of the Property;
 - (o) no legal action or other proceeding has been instituted or, to the best of its knowledge after making diligent enquiry, threatened against the Borrower; the Borrower has not received notice of any work orders, deficiency notices or notices of violation pertaining to the Property;

- (p) to the best of its knowledge, and save as otherwise disclosed to the Lender in the reports provided by the Borrower, including without limitation the potential presence of methane, the Property complies with all laws regarding environmental matters; the Property has never been used as a land fill site or to store Hazardous Substances either above or below ground, in storage tanks or otherwise; no Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at, on or near the Property; and there are no outstanding directions, writs, injunctions, orders or judgments issued pursuant to environmental laws in respect of the Property;
- (q) the Borrower will on the closing of the Purchase Agreement, have good, valid and marketable title to the Property, free from all encumbrances except the Permitted Encumbrances; and
- (r) the Borrower has filed or caused to be filed in a timely manner all tax returns, reports and declarations required to be filed under law; all information in such tax returns, reports and declarations is complete and accurate in all material respects; the Borrower has paid all taxes due and payable.

13. **Covenants**

The Borrower covenants and agrees as follows:

- (a) to defend its right, title and interest in the Property for the benefit of the Lender against all claims and demands whatsoever of all persons/entities, other than holders of Permitted Encumbrances;
- (b) not to create or suffer to exist any encumbrance of any nature (whether prior to, *pari passu* with or subordinate to the Security) upon the Property or any part thereof other than Permitted Encumbrances;
- (c) to preserve, repair and keep in good order, condition and repair or cause to be preserved, repaired and kept in good order, condition and repair the Property and all appurtenances thereto and all properties and assets used in connection with the Property, to the standard of a prudent owner of similar property, and the Borrower shall carry on and conduct, or cause to be carried on and conducted, the operation of the Property in a prudent manner so as to preserve and protect the Property; the Borrower shall keep the Property in good condition and order, or shall cause the Property to be put and kept in good condition and order, and shall promptly make, or cause to be made, all needed repairs and replacements thereto, including such repairs and replacements to implement the recommendations which a prudent owner of a property similar to the Property would deem appropriate or necessary from time to time; the Borrower shall at any and all reasonable times, upon the prior written request of the Lender, permit the Lender to inspect the Property or any part thereof during normal business hours;
- (d) to carry on or cause to be carried on and conduct or cause to be conducted the operation of the Property in a prudent manner so as not to materially impair the

value of the Property or the use of the Property for the purpose for which it is held;

- (e) to duly and punctually pay, or cause to be paid, to the Lender the principal of and interest accrued on the Loan, any premium of the Loan and all other amounts owing in respect of the Loan on the dates, at the places, in the monies, and in the manner mentioned herein and in the Loan, in strict conformity therewith, and shall faithfully observe and perform all the conditions, covenants and requirements of all Loan Documents;
- (f) to pay or cause to be paid, on or before the due date thereof, all taxes, rates, levies, duties and assessments, general and special, ordinary and extraordinary, of every nature and kind whatsoever, including local improvement taxes which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower or any other person on account thereof, and shall from time to time as the same are paid, at the written request of the Lender produce for inspection by the Lender, satisfactory evidence that all such taxes have been paid when due (together with such further supporting information or documentation reasonably required by the Lender);
- (g) the Lender shall be entitled to register or file or cause to be registered or filed the Security (or a notice or financing statement in respect hereof) without delay at every public office of record in the Province of Ontario and in any other jurisdiction where the Borrower is "located" for the purposes of perfecting a security interest pursuant to the *Personal Property Security Act* (Ontario), in each case, where the registration or filing thereof is, in the opinion of the Lender, required to preserve, perfect and/or protect the security hereby or thereby created; and the Lender shall be entitled to renew or cause to be renewed any such registrations or filings as may be necessary from time to time to so preserve, perfect and/or protect the security hereby or thereby created;
- (h) the Borrower shall fully and effectively maintain and keep the Security or cause the Security to be maintained and kept as valid and effective security at all times while the Loan is outstanding and shall not permit or suffer the registration of any lien whatsoever, whether of workmen, builders, contractors, engineers, architects or suppliers of material, upon or in respect of any of the Property, which would rank subsequent to, *pari passu* with or prior to the security of the Security other than Permitted Encumbrances;
- (i) the Borrower shall cooperate fully with the Lender with respect to any proceedings before any court, board or other public authority which may in any way materially and adversely affect the rights of the Lender hereunder or any rights obtained by it under any of the Loan Documents and, in connection therewith, shall keep the Lender fully advised of the status of all such proceedings and shall allow the Lender and its counsel at its election to attend meetings in respect of such proceedings; the Borrower shall cooperate with the Lender in obtaining for the Lender the benefits of any insurance proceeds lawfully or equitably payable in connection with the Property to the extent that the Lender is

entitled to the same under the terms of the Loan Documents, and the Lender shall be reimbursed for any actual out-of-pocket expenses incurred in connection therewith (including, without limitation, legal fees and disbursements, and the payment by the Borrower of the expense of an appraisal on behalf of the Lender in case of a fire or other casualty affecting the Property or any part thereof) out of such insurance proceeds;

- (j) the Borrower shall cause the Property to be used only for Project purposes and for no other purpose, and the Borrower will do, observe and perform or cause to be done, observed and performed, in all material respects, all of its obligations and all matters and things necessary or expedient to be done, observed or performed under or by virtue of all applicable laws;
- (k) the Borrower shall do, observe and perform, or cause to be done, observed and performed, in all material respects, all of the obligations and things necessary or expedient to be done, observed or performed by the Borrower under or by virtue of all Permitted Encumbrances and material Project agreements; for greater certainty, this covenant regarding Permitted Encumbrances applies to all prior-ranking financial encumbrances which are Permitted Encumbrances;
- (l) if the Borrower shall fail to perform any covenant on its part contained in this Agreement the Lender may, after giving concurrent notice to the Borrower, itself perform (but shall not be obliged to perform), any of such covenants provided no payment or expenditure of funds is required in connection therewith, or, if a default has occurred, and if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds, or with money borrowed by or advanced to it for such purpose; all sums so expended or advanced shall be payable by the Borrower together with interest thereon which shall accrue, until paid, at the interest rate applicable to the Loan from the date of such expenditure or advance until repayment but no such performance or payment shall be deemed to relieve the Borrower from any default hereunder;
- (m) the Borrower shall encumber or cause to be encumbered in favour of the Lender, as part of the Security, all additional improvements, licenses, easements and rights of way which, in any way or manner, it shall hereafter acquire in connection with the Property, and the Borrower shall make or cause to be made all requisite registrations required by this Agreement with respect thereto; any and all times the Borrower will do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all and every such further acts, deeds and assurances in law as the Lender shall reasonably require, for the purpose of giving the Lender a valid encumbrance of the nature herein specified upon all such property (subject only to Permitted Encumbrances) for the better encumbering unto the Lender all and singular the lands and premises, and property encumbered under the Security, or intended so to be or which the Borrower may hereafter become bound to encumber or cause to be encumbered in favour of the Lender;

- (n) so long as the Loan or any portion thereof remains outstanding the Borrower shall not cancel or materially amend any material Project agreements without the Lender's consent;
- (o) the Borrower shall give prompt notice to the Lender upon the occurrence of any default or any Event of Default or any event, circumstance or matter which may reasonably be expected to have a material adverse effect on the financial condition of the Borrower and/or the Property; the Borrower shall not create, assume, incur or suffer to exist any security interest in or upon any of its undertakings, properties, rights or assets secured by the Security except for Permitted Encumbrances;
- (p) upon two (2) Business Days' prior written notice or at any time in an emergency as reasonably determined by the Lender, the Borrower shall permit the Lender to have reasonable access at all reasonable times and from time to time, to the Property and to all related records (including records pertaining to the Borrower), and shall permit the Lender, acting reasonably, to make copies of and abstracts from such records;
- (q) the Borrower shall give to the Lender prompt written notice of any material adverse change in the condition of the business, financial or otherwise, of the Borrower;
- (r) the Borrower shall give to the Lender prompt written notice of all actions, suits, litigation or other proceeding commenced or threatened against the Borrower and/or in respect of the Property;
- (s) the Borrower shall obtain and maintain during the Term the following Property insurance coverage:
 - (i) prior to commencing construction, all risk builder's insurance with extended coverage for all other risks and perils in, representing an amount equal to 100% of the gross replacement cost of all buildings located on the Property, without deduction for foundations or footings; the proceeds payable under such policy shall be payable to the Lender as mortgage creditor, pursuant to a standard mortgage clause approved by the Insurance Bureau of Canada;
 - (ii) if applicable and prior to commencement of construction, broad form boiler insurance with coverage on all electrical equipment, mechanical equipment and pressure vessels; such policy shall contain a standard mortgage clause approved by the Canadian Boiler and Machinery Underwriters Association, or an equivalent clause, with proceeds payable thereunder to the Lender as mortgage creditor;
 - (iii) general liability insurance covering damages in an amount of not less than \$5,000,000.00 per occurrence;

- (iv) environmental liability and remediation insurance covering damages in an amount of not less than \$5,000,000.00 per occurrence; such coverage shall include third party pollution liability claims and first party on-site remediation expenses; and
 - (v) such other insurance as shall be requested by the Lender, acting reasonably.
- (t) the Borrower shall deliver to the Lender, within one hundred and twenty (120) days following the Borrower's fiscal year, unaudited financial statements in respect of the Property and unaudited financial statements in respect of the Borrower, prepared internally by a qualified person in accordance with generally accepted accounting principles, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information; in addition to the above financial statements, the Borrower covenants to provide to the Lender, from time to time, upon request, any further financial information then still undisclosed and reasonably required, pertaining to the Property and/or the Borrower; the Lender reserves the right to disclose to third parties any financial information concerning the Property and/or the Borrower, provided that such third parties shall be limited to potential assignees of part or all of the Loan, the Lender's auditors, the Lender's solicitors, the Lender's bankers, the Lender's other advisors and persons to whom such information is ordinarily disclosed in a mortgage securitization or mortgage syndication;
- (u) subject to Adverse Development Conditions, the Borrower covenants to develop and construct and/or cause the development and construction of the Property in accordance with the delivered plans and specifications using only new materials and not Hazardous Substances, without defect in construction, installation and/or materials;
 - (v) the Borrower covenants not to materially amend the delivered plans and specifications or fail to construct in accordance with the delivered plans and specifications without the Lender's prior written consent, which consent shall not be unreasonably withheld;
 - (w) the Borrower shall pay, regardless of whether any part of the Loan shall be advanced, all reasonable third party costs, fees and expenses incurred by the Lender in connection with the transaction hereunder including, without limitation:
 - (i) all costs incurred in connection with a survey, an appraisal, an engineering review, an architectural review, an environmental review, other professional consultant review, a credit review, a lease review and an insurance review;
 - (ii) all legal fees and disbursements of the Lender's solicitors for enforcement only; and

- (iii) all registration, recording and filing fees and land transfer and mortgage taxes, if applicable.
- (x) the Borrower shall not sell, transfer, lease, license or otherwise convey an interest in the Property or any part thereof, save and except as contemplated for the staging and completion of the Project or to an entity approved by the Lender, in its sole, absolute and unfettered discretion.

14. **Events of Default**

Events of Default (“**Events of Default**”) shall be as follows:

- (a) if the Borrower fails to pay interest, principal or other amount owing hereunder on a due date during the Term and such default remains outstanding for ten (10) days; or
- (b) if the Borrower fails to pay all principal on the Maturity Date, subject to the Terms of this Agreement, or
- (c) if the Borrower fails to complete all obligations it may have under the Purchase Agreement; or
- (d) if the Borrower fails to pay, or cause to be paid, taxes, rates, levies, duties, public utility charges and assessments, general and special, ordinary and extraordinary, of any nature or kind whatsoever, including local improvement taxes, which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower, on account thereof and any such default shall continue either for a period of five (5) Business Days after written notice to the Borrower from the Lender or for such shorter period as would, if continued, render the Property, or any part thereof, liable to forfeiture or sale; or
- (e) if the Borrower creates, permits or suffers to exist, any encumbrance against the Property or any part thereof, other than Permitted Encumbrances and, in the case of encumbrances which have not been created by the Borrower, the same continue to exist for a period of ten (10) days after written notice thereof has been given to the Borrower by the Lender or for such shorter period as would, if continued, render the Property or any part thereof, liable to forfeiture or sale; or
- (f) if any representation or warranty in any of the Loan Documents or any financial statements delivered pursuant thereto, is (or, at the time it was given or repeated, was) false or erroneous in any material respect and such false or erroneous condition shall continue for a period of ten (10) days following the Borrower’s receipt of written notice thereof from the Lender; or
- (g) if the Borrower shall fail to comply with any covenant/agreement in any of the Loan Documents and such non-compliance shall continue for a period of ten (10) days following the Borrower’s receipt of written notice thereof from the Lender, or such longer cure period as may be reasonable in the circumstances, provided

the Borrower takes diligent and commercially reasonable steps to cure such default as soon as possible; or

- (h) if any material provision in the Loan Documents shall for any reason cease to be valid, binding and enforceable in accordance with its terms or the Borrower shall so assert in writing; or any security interest created under any of the Loan Documents shall cease to be a valid and perfected security interest having the priority in any of the collateral purported to be covered thereby; or
- (i) if the Borrower does, or fails to do, anything which would entitle an insurer to cancel or not renew a policy of insurance on the Property required hereunder which is not rectified within fifteen (15) days following the Borrower becoming aware of such entitlement to cancel or not renew, and in any event not later than ten (10) days prior to the termination or expiry of such policy, or if any policy of insurance is cancelled, expires or terminates and is not replaced in accordance with the requirements of this Agreement; or
- (j) if all or any material part of the Property is expropriated; or
- (k) if one or more final judgments for the payment of money (which is not covered by insurance) shall be rendered against the Borrower; or
- (l) if any writ, attachment, execution, enforcement, sequestration, extent, distress or any other similar process shall become enforceable against the Borrower, or if a distress or any analogous process is levied against any properties or assets of the Borrower; or
- (m) if the Borrower shall suspend or cease or threaten to suspend or cease its business; or
- (n) if the Borrower shall breach any law which results in a notice or control order or cancellation of any license or certificate or approval that results in any material disruption of the business at the Property or that could reasonably be expected to have a material adverse effect on the Security, the repayment of the Loan, the Lender's rights under the Loan Documents, the Property or the business operations, prospect or condition of the Borrower (financial or otherwise); or
- (o) if any environmental order is issued by any public authority against the Property and such environmental order has not been satisfied or discharged within the shorter of time allowed for in such environmental order and within thirty (30) days after the date such environmental order was received by the Borrower; or
- (p) if the Borrower shall admit its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency or if an order shall be made or an effective resolution passed for the winding up of such entity or if such entity shall make an assignment for the benefit of its creditors or if a receiver or a liquidator or a trustee in bankruptcy of such entity shall be appointed or if such entity shall

make a proposal to its creditors under a bankruptcy act including, without limitation, the *Companies' Creditors Arrangement Act* (Canada); or

- (q) if any proceeding is instituted for the winding up of the Borrower or a petition in bankruptcy be presented against such entity under a bankruptcy act and if in either case such proceeding or petition shall not have been dismissed or withdrawn within twenty (20) days of the commencement of the proceeding or petition; or
- (r) if ownership control of the Borrower shall be transferred without the Lender's approval, which approval may be withheld in the Lender's sole, absolute and unfettered discretion; or
- (s) if the Borrower shall sell, transfer, lease, license or otherwise convey an interest in the Property or any part thereof in contravention of Subsection 15(x) hereof, or if the Borrower shall mortgage or otherwise encumber an interest in the Property or any part thereof in contravention of this Agreement, then the Lender may, in its sole, absolute and unfettered discretion, demand immediate repayment of the Loan principal in full together with all accrued interest and all other amounts due hereunder; or
- (t) if the Borrower is in default of any Permitted Encumbrance for more than fifteen (15) days after receiving written notice of such default; or
- (u) in the event that the Lender determines in its sole discretion and in conjunction with the consultations with the Project Cost Consultant, if any, that the Borrower is substantially in default of meeting the Project development and construction schedule including, inter alia, development approvals, servicing and sale of units, or if there are substantial cost overruns occurring (excluding causes beyond the reasonable control of the Borrower or its construction manager).

15. **Postponement and Subordination and Partial Discharge**

The Lender covenants and agrees as follows:

- (a) to postpone and subordinate the Loan Documents in favour of First-Ranking Construction Loan Security and to enter into such standstill agreements as may be required by the Senior Lender. It is acknowledged that under the terms of any First-Ranking Construction Loan Security, the Lender will be prevented from taking any steps of enforcement of the Loan, notwithstanding a default under the terms of the Loan including, non-payment of the Loan on the Maturity Date, and that as a result, the Loan repayment may be extended as set forth in Section 4 hereof in the event that the Project has commenced construction and has not been completed by the Maturity Date, as it may be extended from time-to-time. In addition, as a result of such extension, interest will continue to accrue as there will be insufficient monies in the Interest Reserve.
- (b) to postpone and subordinate the Loan Documents in favour of each non-financial encumbrance, as well as any deposit insurer security, if applicable, which is

reasonable for a development such as the Project and which individually does not materially adversely affect the market value of the Property (including, without limitation, encumbrances pertaining to roads, sidewalks, easements, rights-of-way, subdivision agreements and/or condominium agreements, site plan control agreements, development agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants);

- (c) to discharge the Loan Documents in respect of any part of the Property which is not material to the Project and/or the market value of the Property or which is required by any governmental authority, without requirement for payment or prepayment of any part of the Loan;
- (d) if applicable, to provide partial discharges of the Loan Documents in respect of all Project unit sales to third parties and in respect of all Project sales to third parties, without compensation, provided that the full proceeds thereof shall be used immediately to first pay down the First-Ranking Construction Loan Security and then to pay down other Project trade creditors;
- (e) if applicable, to enter into a non-disturbance agreement, upon request, with any Project; such non-disturbance agreement shall provide for the tenant's postponement and subordination of its lease in favour of the Loan Documents and the tenant's agreement to attorn to the Lender and its successors and assigns upon an Event of Default; and
- (f) The investor hereby agrees that in the event there is an early repayment of the Loan by the Borrower (excluding receipts from enforcement or sale of Project units) ("**Early Repayment**"), same shall be paid to investors in the Loan in the order of priority of advance by the applicable tranche in the original Loan, and then pari passu amongst the investors who had their share of the Loan funded within the same loan tranche.

16. **General**

- (a) If the Borrower shall be comprised of more than one person/entity, then such persons/entities shall be jointly and severally liable for all of the obligations of the Borrower pursuant to this Agreement.
- (b) All notices, directions, service, correspondence and communications ("**Notice**") between the parties hereunder shall be in writing and delivered, sent by prepaid registered mail or electronically communicated by telecopier or e-mail as set forth below; delivered Notices shall be deemed to have been delivered on the day of delivery, if delivered at or before 5:00 p.m. (Toronto time) on a Business Day, or on the next Business Day if delivered after that time; Notices sent by prepaid registered mail shall be deemed to have been received on the third (3rd) Business Day following the date of mailing (notwithstanding the date of actual receipt and the fact that it may not have then been received), except in the event of interruption of postal service during which period Notices shall not be mailed;

Notices electronically communicated by telecopier shall be deemed to have been delivered on the day of communication with confirmation of transmission, if communicated at or before 5:00 p.m. (Toronto time), or on the next Business Day if communicated after that time; any party may provide Notice of a change of its address and/or telefax number, provided that the Notice is communicated in accordance with this Subsection 18(b):

To the Lender: Building & Development Mortgages Canada Inc.
8-25 Brodie Drive, Richmond Hill, Ontario
L4B 3K7
Attention: Ildina Galati-Ferrante

and a copy to: Fogler Rubinoff LLP
77 King Street West, Suite 3000
Toronto, Ontario M5K 1G8
Attention: Richard Rotchtin

To the Borrower: Fortress Real Developments Inc
25 Brodie Drive, Unit 1
Richmond Hill, Ontario L4B 3K7
Attention: Vince Petrozza

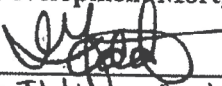
And a copy to: Robins Appleby LLP
120 Adelaide St West
Suite 2600
Toronto, Ontario M5G 1V2

- (c) The Borrower shall not assign its rights and obligations pursuant to this Agreement, in whole or in part, without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
- (d) The Lender shall be entitled to assign all or part of its right, title and interest pursuant to this Agreement to one or more assignees, by way of simple assignment, syndication, securitization and/or other method of assignment.
- (e) All Loan Documents shall be governed by and interpreted in accordance with the laws in effect within the Province of Ontario.
- (f) The terms and conditions contained in this Agreement are inserted for the exclusive benefit of the Lender and may be waived, in whole or in part, by the Lender at any time or times. In the event of inconsistency or conflict between the provisions of this Agreement and the provisions of the Security, this Agreement shall prevail to the extent of such inconsistency or conflict.

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

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


Building & Development Mortgages Canada Inc., in Trust

Per: 
Name: Ildiba Galati-Ferrante
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

Fortress Brookdale Inc.

Per: 
Name: Vince Petrozza
Title: COO

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

SCHEDULE "A" TO LOAN AGREEMENT

MUNICIPAL AND LEGAL DESCRIPTION OF THE PROPERTY

Municipal Address: 375 & 377 Fairlawn Avenue, 1678 Avenue Road, 1682 Avenue Road, 1686 Avenue Road, 1688-1690 Avenue Road, 1694-1698 Avenue Road, 1700 Avenue Road, 1702 Avenue Road, 1704B Avenue Road, 412 Brookdale Avenue, 414 Brookdale Avenue; Toronto, Ontario.

Legal Description:

PIN: 10189-0860 (LT)
 FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411; SAVE ANDEXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ;
 SECONDLY; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; THIRDLY; PT LT 42A PL 2247 TWP OF YORKAS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ; FOURTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT- 3451640. ; FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089, SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTHLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO.

PIN: 10189-0245 (LT)
 LOT 32, PLAN 2371, TOWNSHIP OF YORK, TORONTO (NYORK), CITY OF TORONTO.

MUNICIPAL ADDRESS & ASSESSMENT ROLL NUMBER

MUNICIPAL ADDRESS	ASSESSMENT ROLL NUMBER
1678 Avenue Road, Toronto	19-08-06-2-100-02700-0000-06
1682 Avenue Road, Toronto	19-08-06-2-100-02600-0000-03
1686 Avenue Road, Toronto	19-08-06-2-100-02500-0000-00
1688-1690 Avenue Road, Toronto	19-08-06-2-100-02400-0000-04
1694-1698 Avenue Road, Toronto	19-08-06-2-100-02200-0000-05
1700 Avenue Road, Toronto	19-08-06-2-100-02100-0000-02
1702 Avenue Road, Toronto	19-08-06-2-100-02001-0000-04
1704B Avenue Road, Toronto	19-08-06-2-100-01800-0000-00
412 Brookdale Avenue, Toronto	19-08-06-2-100-02800-0000-02
414 Brookdale Avenue, Toronto	19-08-06-2-100-02900-0000-05
375 Fairlawn Avenue, Toronto	19-08-06-2-100-01700-0000-04
377 Fairlawn Avenue, Toronto	19-08-06-2-100-01600-0000-01

**SCHEDULE C
ADDENDUM TO LOAN AGREEMENT**

THIS ADDENDUM to the Loan Agreement described below is made as at the 10th day of July, 2017

BETWEEN:

Building & Development Mortgages Canada Inc., In Trust (called, the "Lender")

- and -

Fortress Brookdale Inc. (called, the "Borrower")

(together, the "Parties")

AND WHEREAS the Parties are parties to a Loan Agreement made as of July 10th, 2017 (the "Loan Agreement");

AND WHEREAS any individual investor who enters into an agreement to participate in the Loan (as defined in the Loan Agreement) by way of syndicated mortgage after April 27, 2017 and prior to such date as advised by Building & Development Mortgages Canada Inc. will be provided with updated loan documents, including updated disclosure documents which rely on an estimated market value appraisal prepared in accordance with the standards of the Appraisal Institute of Canada;

NOW THEREFORE the Parties agree as follows:

- 1 Any individual investor who enters into an agreement to participate in the Loan by way of syndicated mortgage after April 27, 2017 and prior to such date as the Parties are advised in writing by Building & Development Mortgages Canada Inc. may, within 15 days of receipt of the updated loan and disclosure documents (including updated disclosure documents which rely on an estimated market value appraisal prepared in accordance with the standards of the Appraisal Institute of Canada) rescind their loan and require repayment of their loan by the Borrower by written notice to their mortgage agent or broker and shall be entitled to repayment by the Borrower within 60 days of the Parties having been advised in writing of the rescission request by the individual investor's mortgage agent or broker.

**BUILDING & DEVELOPMENT MORTGAGES
CANADA INC., IN TRUST**

Per: _____

Name: *Ildina Galati*

Title:

FORTRESS BROOKDALE INC.

Per: _____

Name: *Vince Petrozza*

Title:



Important Information Regarding Your Syndicated Mortgage Loan

BDMC and FFM Capital Inc. are in the process of updating the loan documentation (including updated disclosure documents) given to and executed by prospective syndicated mortgage lenders. These updates are aimed at updating the disclosure pertaining to the risks present for a project, conflicts of interest, and by including appraisals which reflect the current estimated market value of the property.

1. **Syndicated mortgage loans are inherently high risk investments. The information you have received regarding the syndicated mortgage loan may be incomplete and may not fully address all of the risks present in the project.**
2. The disclosure you have received regarding the syndicated mortgage loan may rely on a value for the property that was determined using a valuation method that does not provide an estimated market value for the property. The estimated market value is an estimate of the value of the property assuming it is in its current state. Providing an estimated market value is important because it provides an estimate of how much the property could be sold for at the time of your investment if it was necessary to enforce the mortgage. BDMC, the brokerage brokering the loan on behalf of the borrower, has undertaken to obtain an appraisal for the property which provides an estimated market value, prepared by a member of the Appraisal Institute of Canada and according to the guidelines established by that institution, as necessary.

[Note to preparer of form: Paragraph 2 is not included in this statement if an approved appraisal has been provided.]

3. If you decide to lend funds to the Brookdale Mezz project, your agreement regarding your loan must include a right to cancel your loan once you have been provided updated loan documents, including updated disclosure documents which rely on an estimated market value appraisal prepared in accordance with the standards of the Appraisal Institute of Canada.
4. Your right to cancel your syndicated mortgage loan in the project and how to exercise that right is detailed on the final page of loan agreement. Once you have received the new loan documents, you may cancel your loan agreement and

have the right to require repayment of your loan. You do not need any reason in order to cancel your syndicated mortgage loan. 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.

By signing this notice you are acknowledging that you have read and understand its contents.

[Redacted Signature]

Signature of Syndicated Mortgage Lender

Aug 24/17
Date

[Redacted Name]

Print Name of Lender

[Redacted Signature]

Aug 24/17
Date

The signature of the Agent indicates that the Agent has reviewed this disclosure with the lender and has advised of the risks involved to the lender.

FIRST LOAN AMENDING AGREEMENT

THIS AGREEMENT made effective as of the 2nd day of October, 2017.

BETWEEN:

FORTRESS BROOKDALE INC.
(the "Borrower")

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC., in Trust
(the "Lender")

WHEREAS:

- A. the Borrower and the Lender entered into a loan agreement dated as of July 10, 2017 (the "Loan Agreement"); and
- B. each of the Borrower and the Lender wish to enter into this amending agreement in order to amend certain of the terms of the Loan Agreement.

NOW THEREFORE in consideration of the premises set forth above, the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Expressions and Definitions**

Unless otherwise defined herein, all expressions and definitions contained in this agreement shall have the same meaning as the corresponding expressions and definitions in the Loan Agreement.

2. **Amendment of Loan Agreement**

The Loan Agreement is hereby amended as follows:

- (a) Section 1(h) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (h) "Co-Tenancy Agreement" means the co-tenancy agreement among Fortress Avenue Road (2015) Inc, Fernbrook Homes (Brookdale) Limited, Fortress Brookdale Inc. and Dominus Construction (2005) Corporation dated May 25, 2015, as the same may be amended from time to time.
- (b) Section 1(f) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (f) "Net Equity" means a portion of the principal amount of the Loan advanced to the Borrower, from time to time, excluding: (1) the Interest

Reserve (if applicable); (2) all other accrued interest; and (3) the amounts raised and paid out on account of interest payments;

- (e) Section 1(v) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (v) "Permitted Encumbrances" means the First-Ranking Construction Loan Security, a mortgage to secure any insurer providing bonding to the Taron Warranty Corporation, deposit security, Bridge Loans, mezzanine financing or providing excess deposit insurance to purchasers of condo units, security relating to the FCC Loan, and such non-financial encumbrances as shall be reasonable for a development such as the Project (including, without limitation, encumbrances pertaining to easements, rights-of-way, subdivision agreements, condominium development or related agreements, site plan control agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants) and any other encumbrances shown on the Property parcel register as of the date of this Agreement.
- (d) Section 1(bb) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (bb) "Security" shall have the meaning attributed thereto in Section 8 hereof.
- (e) The following definition is added to the Loan Agreement as Section 1(ff):
 - (ff) "FCC Loan" means a loan from Firm Capital Corporation to the Borrower in the principal amount of approximately \$6,700,000.00, as set out in a loan proposal dated September 27, 2017.
- (f) Section 3(a) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (a) The Lender hereby establishes a non-revolving loan (the "Loan") in favour of the Borrower in an amount not exceeding \$15,000,000.00 (of which \$5,000,000.00 is a buffer) to provide funding for the Borrower's costs related to the development of the Property, as set out in Schedule "B" attached hereto (the "Project Budget") including, without limitation, funding to repay, if any, the Bridge Loan, and reasonable soft costs incurred or to be incurred prior to construction financing and to provide for any shortfall in required equity (as determined by the Senior Lender in its sole, absolute and unfettered discretion) prior to the first advance of the First-Ranking Construction Loan, all as set out in the Project Budget, but specifically excluding Development Fees which must be funded by the Senior Lender.

- (g) Section 4 of the Loan Agreement is hereby amended by correcting the reference to "Section 1.4" at the end of the third paragraph of Section 4 so that the reference is to "Section 1.5".
- (h) Section 7 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (a) **Prepayment/Repayment of Principal**
 - (a) The Borrower may prepay the Loan, in whole but not in part, upon two (2) Business Days' prior written notice to the Lender and without bonus.
 - (b) The outstanding Loan principal together with accrued interest owing and all other amounts due and owing, if any, pursuant to the Loan Documents shall become wholly due and payable on the earlier of the Maturity Date or the occurrence of an Event of Default.
 - (c) In the event that the Senior Lender requires less equity than has already been advanced by the Lender, or to the extent the Project is refinanced and such equity can be repatriated to the Borrower, (subject to the limitations described in Section 4.2(f) of the Co-Tenancy Agreement) such equity shall be paid to the Lender to pay down the Loan or at the option of the Lender, held in a separate trust account and pledged to the Lender to secure and be used to fund Interest Reserves and interest payments.
 - (d) Repayment of the Loan and discharge of the Security shall be subject to and in accordance with the provisions of Section 3.3 and 4.2 of the Co-Tenancy Agreement, respectively, copies of which are attached as Schedule "D", and the Security shall be deemed to be a Related Party Mortgage, as defined in the Co-Tenancy Agreement, for the purposes of repayment, and the Priority of Distribution set out in Section 4.2 of the Co-Tenancy Agreement shall supersede any priority entitlement or repayment to which the Lender may otherwise be entitled pursuant to the Security or at law.
 - (e) The Lender shall provide any postponements, standstill agreements, partial discharges and any other documents required by any prior ranking mortgagee and any insurance company providing security for purchaser deposits, all in relation to the development of the Project.
 - (f) In the event of a transfer of the Security by the Lender, the Lender agrees to require the transferee to execute any documentation required pursuant to Section 3.3 of the Co-Tenancy Agreement.

- (g) In the event the Project is completed and sales revenues are insufficient to repay the Loan as a Related Party Mortgage in accordance with the Priority of Distributions described in Section 4.2 of the Co-Tenancy Agreement, partial discharges of the Security shall be provided to the Borrower in order to complete sales of units in the Project, whether or not full or partial payment will be made under the Loan:
 - (h) The Security shall be strictly non-recourse against Dominus Construction (2005) Corporation and Fernbrook Homes (Brookdale) Limited and Fortress Avenue Road (2015) Inc.; and
 - (i) The Lender agrees to execute all postponements, partial discharges (subject to payment in accordance herewith, if any), consents, etc., in order to allow for the registration of the Project as a condominium and to allow for the transfers of the units once the Project has been completed and sold.
- (j) Section 8 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
8. The security for the Loan (hereinafter the "Security") shall be as follows, subject only to the Permitted Encumbrances:
- (a) Property mortgage executed by the Borrower in the principal amount of \$15,000,000.00 (of which \$5,000,000.00 is a buffer);
 - (b) if the Property beneficial owner is not the Borrower, then a direction, acknowledgement and security agreement executed by the beneficial owner, Borrower and Lender, including confirmation of a fourth-ranking charge of the beneficial owner's interest in the Property and a direction by the beneficial owner to the Borrower to execute the Loan Documents to which the Borrower is a party, such direction to be duly acknowledged by the Borrower;
 - (c) a general security agreement executed by the Borrower charging the personal property and undertaking of the Borrower, present and future, used in connection with the Property including, without limitation, all accounts, equipment, goods, inventory, chattel paper, documents of title, intangibles, securities and proceeds therefrom;
 - (d) an indemnity from the Borrower indemnifying the Lender from and against all losses, demands, claims, liabilities, costs, actions, penalties, obligations and expenses imposed upon the Lender and arising in connection with the Lender being a lender hereunder in respect of the Property and all assets relating thereto, save and except in respect of matters arising and caused by the gross negligence of the Lender during any period in which the Lender

shall be in exclusive possession of the Property and/or arising and caused after a completed foreclosure proceeding or sale proceeding pursuant to the Security and/or caused by the gross negligence of the Lender; such indemnity shall survive the full payment and discharge of the Loan including *inter alia*, an appropriate indemnity for all environmental matters;

- (e) a completion guarantee from the Borrower;
 - (f) an undertaking by the Borrower and the sponsors to obtain construction financing from the Senior Lender for all approved Project costs as described in the Project Budget, save for the equity to be advanced by way of the Loan under this Loan Agreement, on commercially reasonable terms to be approved by the Lender, acting reasonably; and
 - (g) such further and/or other security relating to the Property as the Lender shall reasonably require.
- (j) Section 9(i) of the Loan Agreement is hereby deleted in its entirety.
 - (k) Section 11.2 of the Loan Agreement is hereby deleted in its entirety.
 - (l) Section 12(q) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (q) the Borrower has good, valid and marketable title to the Property, free from all encumbrances except the Permitted Encumbrances;
 - (m) Section 13(s)(iv) of the Loan Agreement is hereby deleted in its entirety.
 - (n) Section 14(e) of the Loan Agreement is hereby deleted in its entirety.
 - (o) Section 14(s) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
 - (s) if the Borrower shall sell, transfer, lease, license or otherwise convey an interest in the Property or any part thereof in contravention of Subsection 13(x) hereof, or if the Borrower shall mortgage or otherwise encumber an interest in the Property or any part thereof in contravention of this Agreement, then the Lender may, in its sole, absolute and unfettered discretion, demand immediate repayment of the Loan principal in full together with all accrued interest and all other amounts due hereunder. Notwithstanding the foregoing, the sale of units within a plan of condominium shall not be an Event of Default.

- (p) Section 15(a) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
- (a) to postpone and subordinate the Loan Documents in favour of First-Ranking Construction Loan Security, the FCC Security and security of any prior ranking mortgagee, and to enter into such standstill agreements as may be required by any prior ranking mortgagee. It is acknowledged that under the terms of any First-Ranking Construction Loan Security, the Lender will be prevented from taking any steps to enforce the Security, notwithstanding a default under the terms of the Loan, including, without limitation, non-payment of the Loan on the Maturity Date. In such event, interest will continue to accrue as there will be insufficient monies in the Interest Reserve.
- (q) Section 15(e) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:
- (e) if applicable, upon request, to enter into a non-disturbance agreement with any tenant of the Property, provided such non-disturbance agreement shall provide for the tenant's postponement and subordination of its lease in favour of the Security and the tenant's agreement to affirm to the Lender and its successors and assigns upon an Event of Default;
- (r) Section 16(b) of the Loan Agreement is hereby amended by deleting reference to "Fortress Real Developments Inc." and replacing the same with "Fortress Brookdale Inc." and by adding the following as parties to receive notice:

With a Copy to: Fembrook Homes (Brookdale) Limited
2220 HWY 7 West
Concord, Ontario L4K 1W7

Attention: Albert Chen

And to their solicitors: Goldman Spring Kichler & Sanders LLP
Suite 700, 40 Sheppard Avenue West
North York, Ontario M2N 6K9

Attention: Ari Reichmann

- (s) Exhibit 1 attached hereto is added as Schedule "D" to the Loan Agreement.

3 Ratification and Confirmation

Except for the amendments expressly set forth above, the Loan Agreement is in all respects ratified and confirmed and the Loan Agreement and this agreement shall be read, taken and construed as one and the same agreement and where the terms of this agreement are inconsistent

with those of the Loan Agreement, the terms of this agreement shall govern and be binding upon the parties.

4. **Further Assurances**

The parties hereto covenant and agree from and after the execution and delivery of this agreement to sign such other instruments, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this agreement and every part of it.

5. **Governing Law**

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

6. **Counterparts**

This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this agreement to produce or account for more than one such counterpart.

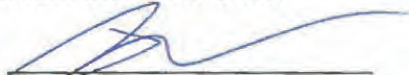
7. **Binding Effect**


This agreement shall inure to the benefit of and be binding upon the parties to it and their respective heirs, executors, successors, assigns and legal representatives.

Signature Page Follows

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date hereof.

FORTRESS BROOKDALE INC.

Per: 
Name: Danny Salvatore c/s
Title: First Vice-President

Per: 
Name: Vince Petrozza c/s
Title: Secretary
We have authority to bind the Corporation

**BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.**

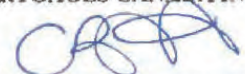
Per: 
Name: Charlene Burnet
Title: General Manager
I have authority to bind the Corporation

EXHIBIT 1 to AMENDING AGREEMENT

SCHEDULE D

1.3 Acknowledgments re Related Party Mortgages and Further Charges

- (a) On Closing (or within a reasonable time after Closing) with respect to the Second Mortgage and otherwise prior to the registration of any Further Charge, the holders of such mortgages shall acknowledge, both at the date of registration of any such mortgage or mortgages, as well as and when required by the Construction Lender and any insurance company providing security for purchaser deposits that:

- 14 -

- (i) the Priority of Distributions set out in Section 4.2 herein shall supersede any priority entitlement or recovery pursuant to the registration of the applicable charges;
- (ii) they shall provide all postponements, standstill agreements, partial discharges and all other documents required by the Construction Lender and any insurance company providing security for purchaser deposits;
- (iii) in the event of a transfer of any such mortgage or mortgages, they shall require the transferee to execute all documents as required herein;
- (iv) with respect to the Second Mortgage: all interest payments during the terms of such mortgage shall be funded by Fortress. In the event the Project is completed and sales revenues are insufficient to repay all such mortgages in accordance with the waterfall of payments set forth in the Priority of Distributions herein, partial discharges shall be provided to the Nominee in order to complete sales of units in the Project, whether or not full or partial payment will be made under such mortgage;
- (v) With respect to all Further Charges: all interest payments during the terms of such mortgages shall be either capitalized or funded by the holders of such mortgages and there shall be no default under such mortgages for non-payment of same during the terms thereof. The Co-Tenancy shall have the right to approve the length of the term and any options to extend the terms under such mortgages such that it shall be sufficient to meet the construction, marketing and sale schedules of the Project. In the event the Project is completed and sales revenues are insufficient to repay all such mortgages in accordance with the waterfall of payments set forth in the Priority of Distributions herein, partial discharges shall be provided to the Nominee in order to complete sales of units in the Project, whether or not full or partial payment will be made under such mortgages;
- (vi) the holders of all such mortgage shall also acknowledge that notwithstanding the priority registration of their mortgages, provided the Project is completed by the Nominee, the holders of such mortgages shall only be entitled to repayment of their mortgages in accordance with the Priority of Distributions; and
- (vii) all such lenders shall acknowledge that their security and indebtedness shall be strictly non-recourse as against Citizen, Dominus Construction (2005) Corporation and their successors and assigns.

4.2 Priority of Distributions

The cash surplus ("Cash Surplus") of the Co-Tenancy arising from the receipt of any Project revenue (save for approved reserves for warranty claims, deposit insurer security, unpaid Project Costs or other reserves approved by the Co-Tenancy) shall be distributed to the Members, as and when funds become available for distribution, in the priority and manner as follows (the "Priority of Distributions"), without duplication, no distribution being made in any category set forth below unless and until the preceding category has been satisfied in full, unless the Members otherwise agree in writing:

- (a) firstly, to the Construction Lender for the repayment of the Construction Loans;
- (b) secondly, unpaid Project Costs including the construction and development management fees herein set out (such amounts not funded by the Construction Lender) including any Excess Loans;
- (c) thirdly, any unpaid fees owing under the Project Management Agreement;
- (d) fourthly, to repay Citizen Excess Loan(s) (if any) plus default interest;
- (e) fifthly, to repay the Existing Mortgages or to obtain a discharge of any Further Charges up to the Maximum Land Mortgages Amount, to the extent not previously repaid by the Construction Lender;
- (f) sixthly, to repay Related Party Mortgages or equity advances by Fortress with respect to approved Project Costs (only principal amounts and no interest or fees or Priority Advance Distributions or Incremental Environmental Costs);
- (g) seventhly, the balance, if any, to the extent such balance represents the net profits (as determined by the Project accountants using GAAP) of the Co-Tenancy but exclusive of any fees, or interest on such fees or Priority Advance Distributions paid as a result of Fortress arranging any of the Existing Mortgages or Further Charges, to the extent the total owing for same is greater than the Maximum Land Mortgages Amount (the "Actual Profit"), shall be distributed as follows:

- 18 -

With respect to the amount of Actual Profit that is less than \$10,000,000.00:

Fortress:	75%
Citizen:	25%

With respect to the amount of Actual Profit that equals or exceeds \$10,000,000.00:

Fortress:	40%
Citizen:	60%

For clarity, all loan fees charged by Fortress or related parties as well as any interest costs arranging fees, loan fees, costs or Priority Advance Distributions included in or on the Existing Charges and the Further Charges or any Incremental Environmental Costs, as well as the Land Transfer Tax paid in connection with the Purchase Agreement (or in connection with Fortress' acquisition of the Property), shall be paid by Fortress and shall not be charged to the Project or constitute a Project Cost. Without limitation, legal fees of Citizen incurred on the purchase of its 25% interest in the Property shall be Project Costs.

Notwithstanding the foregoing, 25% or 60% of the Total Incremental Environmental Costs funded by the Construction Lender, if any and as the case may be, should be deducted from the Actual Profit payable to Fortress and paid to Citizen.

Investment Authority – Form 9D

To: Building & Development Mortgages Canada Inc.
8-25 Brodie Drive
Richmond Hill, Ontario
Attention: Ildina Galati-Ferrante

I, [REDACTED] hereby instruct you to act on my behalf, on my mortgage investment of \$350,000.00, the details, conditions and disclosures of which are set below.

Details about the investment:

1. Name and Address of the Borrower: Fortress Brookdale Inc.
1 – 25 Brodie Drive
Richmond Hill, Ontario L4B 3K7

2. Municipal Address and Legal
Description of the real property (ies)

Municipal Address: 375 & 377 Fairlawn Avenue, 1678 Avenue Road, 1682 Avenue Road, 1686 Avenue Road, 1688-1690 Avenue Road, 1694-1698 Avenue Road, 1700 Avenue Road, 1702 Avenue Road, 1704B Avenue Road, 412 Brookdale Avenue, 414 Brookdale Avenue; Toronto, Ontario.

Legal Description:

PIN: 10189-0860 (LT)
FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ;
SECONDLY; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.;
THIRDLY; PT LT 42A PL 2247 TWP OF YORK AS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ;
FOURTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640. ; FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089, SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTHLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO.

PIN: 10189-0245 (LT)
LOT 32, PLAN 2371, TOWNSHIP OF YORK, TORONTO (NYORK), CITY OF TORONTO.

3. Type of property – retail, residential and parking complex

4. Principal amount of mortgage/charge: **\$4,800,000.00**– (increasing to a Maximum of **\$15,000,000.00**) (which \$5M is a buffer), see paragraph 18.
5. Amount of loan to be advanced: **\$350,000.00**.
6. Rank of mortgage or charge: **A Fourth ranking Charge/Mortgage (The ranking of the mortgage can change at any time over the duration of the term) – subject to paragraph 18, see below.**
7. Encumbrances: **A First, Second & Third ranking Charge/Mortgage will be registered in priority of this mortgage investment, see below.**

Balance 1st mortgage \$18,500,000.00 to Firm Capital Corporation.

Balance 2nd mortgage \$4,100,000.00 and is registered in the amount of \$5,330,000.00 to AG Group et al.

- **Balance 3rd mortgage \$650,000.00 to Jaekel Capital Inc. **to be retired from this charge.**

Please refer to paragraph 19, below for details on future postponements to construction financing and development agreements.

8. My investment of **\$350,000.00** represents **7.29%** of the total loan to the borrower.
9. I am satisfied that the approximate and current market value of the property against which my investment has been secured is **\$33,000,000.00** The means taken to determine said appraisal to value authored by Peter Bobechko of Blake, Matlock and Marshal Ltd. Dated on February 13, 2017.
10. Including my loan and mortgage amount of **\$350,000.00**, the percentage of the value of the property including this mortgage and all prior ranking charges is currently: **85%**
11. **2 years, commencing on the date of advance (July 30th, 2017) of the Loan and ending on the final day of such period (the “Maturity Date”). At the Borrower’s option (to be exercised in writing not less than three (3) months prior to the Maturity Date), the Borrower may extend the Maturity Date for twelve (12) additional months (the “Extension”).**
12. **The due date of the loan is July 30th, 2019 (Extension date July 30th, 2020) THE LENDER ACKNOWLEDGES INTEREST CALCULATIONS AND PAYMENT DATES ARE TO BE BASED ON THE ACTUAL DATE OF THE FIRST ADVANCE OF FUNDS TO BORROWER UNLESS OTHERWISE PROVIDED IN ANY LOAN AGREEMENTS OR DOCUMENTS THERETO.**
13. The loan is amortized over **0 years**- the mortgage is an interest only mortgage.
14. The interest rate is **8.00%** calculated annually, not in advance.

15. Particulars of amounts and due dates (monthly, quarterly, etc.) of payments of interest only: All interest payable to the Lender, calculated annually, not in advance, shall accrue and be payable at the maturity date.
16. The mortgage is to be registered in the name of: "COMPUTERSHARE TRUST COMPANY OF CANADA" FOR [REDACTED]
17. After completion of the mortgage transaction, a collection or administration fee of per instalment is payable by the borrower: N A
18. I understand that the mortgage shall be initially registered indicating a face value of \$4,800,000.00, and that from time to time the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower. It is anticipated that the loan amount shall be amended during the term of the loan to a **MAXIMUM OF \$15,000,000.00**.
19. I understand the Charge/Mortgage in which I have an interest is currently a fourth ranking Charge/Mortgage against the Property and the position of the mortgage can change over the duration of the term.

I understand that a first ranking Charge/Mortgages against the Property in favour of Firm Capital Corporation in the amount of \$18,500,000.00, currently, and the second mortgagee will postpone its position to construction financing.

I understand that a second ranking Charge/Mortgages against the Property in favour of AG Group et al. in the amount of \$4,100,000.00, currently, and the third mortgagee will postpone its position to construction financing.

I understand that a third ranking Charge/Mortgages against the Property in favour of Jaekel Capital Inc. in the amount of \$650,000.00, currently, and the fourth mortgagee will postpone its position to construction financing.

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

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

I hereby confirm that I understand and agree that the fourth charge/mortgage in which I have invested shall be required to postpone and standstill to prior charges/mortgages to a maximum of \$110,000,000 plus a 10% contingency if required, in priority financing. I understand that priority financing is expected to periodically increase over the term of this charge/mortgage and that such postponements shall be permitted and shall occur on the basis of cost consultant reports prepared on behalf of the borrower.

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

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

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

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

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

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

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

* 
Initials

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

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

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

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

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

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

Estimate	Paid to	Purpose
\$10,500.00	Building & Development Mortgages Canada Inc.	Co-Brokerage Fee - H/O
\$100.00	Building & Development Mortgages Canada Inc.	Administrator Fee – Per client/year
\$11,375.00	BDMC (FMP)	Brokerage Fee
\$31,500.00	BDMC (FMP-RCI)	Co-Brokerage Fee
\$7000.00	FMP Mortgage Investments Inc. (paid Via Building & Development Mortgages Canada Inc.)	Point of Sale expenses including, but not limited to, the following: maintenance of front office support for operations, staff, insurance, promotion, events, training, due diligence, pro forma reviews, reporting and compliance and legal
\$9625.00	FMP Mortgage Investments Inc. (paid Via Building & Development Mortgages Canada Inc.)	For the provision of back office functionality including, but not limited to, customer service operations, project reviews, compliance, dedicated project & market communications, client updates, events, ongoing training, continuing education, site visits, reviews of Deloitte Special Audited Procedure Reports.

\$10,000.00	Fogler Rubinoff LLP	Legal Fees (Project commencement)
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1. *(Instructions: Clauses (a) and (b) below refer to information which each investor may require from the lawyer. If you require the information referred to in a clause, initial the clause).*

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

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

1st Ranking Mortgage Charge registered to Firm Capital Corporation with a face value of \$18,500,000.00

2nd Ranking Mortgage Charge registered to AG Group et al. with a face value of \$4,100,000.00

3rd Ranking Mortgage Charge registered to Jaekel Capital Inc. with a face value of \$650,000.00

This mortgage is up to date and in good standing; subject to future postponements as per paragraph 21, above.

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

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

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

(a) I instruct you to obtain a current and independent appraisal of the subject property and provide it to me before you complete this mortgage transaction. **No.**
I have reviewed the appraisal with my licensed mortgage agent/broker.

* 

Initials

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

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

* 

Initials

Disclosure:

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

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

Aug 18/17.

* Investor to insert current date here

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

WARNINGS:

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

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

Investor's Signature: * 

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



Signature

Name: 2416653 Ontario Inc. per Robert Piluso

Address: 70 Pippin Road, Suite #56 Vaughan, Ontario L4K 4M9

I, , did witness

WITNESS NAME


INVESTOR NAME

on the 18 day of August
(day) (month)

2017 in the Town/City of Toronto, in the Province of Ontario
(town/city) (province)

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


Signature/Seal of Notary Public/Commissioner

Date:

Phone:

Name:

Fax:

Address:

Email:

Michael Norman Sinclair Patterson
A Commissioner, etc., Province of Ontario,
for Nexera Law Group Professional
Corporation.

Expires August 13, 2018

PARTICIPATION AND SERVICING AGREEMENT

THIS AGREEMENT made as of the 10th day of July, 2017

B E T W E E N:

[REDACTED]
(hereinafter called "Lender")

OF THE FIRST PART

- and -

**Building & Development Mortgages Canada Inc.
(Mortgage Administration Licence No. 12304)**

(hereinafter called "BDMC")

OF THE SECOND PART

WHEREAS:

1. pursuant to the Loan Agreement, BDMC has agreed to provide the Borrower various loan facilities totalling Fifteen Million (\$15,000,000.00) Dollars (the "Loan") for the purposes of refinancing existing debt, and financing the development and the construction of residential homes on the Lands, to be secured by the Security Documents;
2. Lender has agreed to participate in the Loan to the extent of \$50,000.00 upon the terms and subject to the conditions of the Lender Acknowledgement & Consent dated July 10th 2017 (the "LAC"); and
3. Lender has agreed that BDMC will administer the Investment on behalf of Lender in accordance with the terms and subject to the conditions of this Agreement.

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

ARTICLE 1.00 - INTERPRETATION

1.1 Defined Terms

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

"Borrower" means Fortress Brookdale Inc.;

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

"Investment" means the investment in the Loan of the Lender as set out in the LAC and the 4th recital hereof;

"Lands" means those lands more particularly described and charged pursuant to the Security Documents including without limitation all buildings, fixtures and improvements now or hereafter situate thereon and all easements, rights-of-way and other

similar rights appurtenant to or used in connection therewith;

“Loan” means the financing of the Project by BDMC to the Borrower to assist in the construction, on the Lands, in the maximum principal amount of Fifteen Million (\$15,000,000.00) Dollars on the terms and subject to the conditions set out in the Loan Agreement and includes without limitation all Principal, Interest, interest on overdue Interest, fees, expenses, charges and such other amounts owing by the Borrower from time to time to BDMC pursuant to the Loan Agreement or any of the Security Documents in respect of Loan;

“Loan Agreement” means the Loan Agreement dated July 10th 2017 between BDMC and the Borrower in respect of the Loan;

“Mortgaged Property” means:

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

“Participants” means BDMC and the Lender and other Lenders acquiring interests in the Loan and "Participant" means any one of them;

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

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

“Project” means the property located at 375 & 377 Fairlawn Avenue, 1678 Avenue Road, 1682 Avenue Road, 1686 Avenue Road, 1688-1690 Avenue Road, 1694-1698 Avenue Road, 1700 Avenue Road, 1702 Avenue Road, 1704B Avenue Road, 412 Brookdale Avenue, 414 Brookdale Avenue; Toronto, Ontario.

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

“Security Documents” means the property located at 375 & 377 Fairlawn Avenue, 1678 Avenue Road, 1682 Avenue Road, 1686 Avenue Road, 1688-1690 Avenue Road, 1694-1698 Avenue Road, 1700 Avenue Road, 1702 Avenue Road, 1704B Avenue Road, 412 Brookdale Avenue, 414 Brookdale Avenue; Toronto, Ontario:

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

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

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

ARTICLE 2.00 - LOAN ORIENTATION AND PARTICIPATION

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

ARTICLE 3.00- SERVICING OF INVESTMENT

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

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

Borrower under the Loan or the Security Documents or to protect or preserve the Mortgaged Property;

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

3.2 **Experts** To assist in administering the Investment and carrying out its duties hereunder, BDMC may retain at the expense of the Borrower, or failing same, the Participants to be shared based on their respective Proportionate Shares, such solicitors, notaries, counsel, auditors, appraisers and other experts as BDMC may, acting reasonably.

3.3 **No Warranties or Representations** BDMC has given no warranty or representation with respect to the Investment and shall not be responsible for the observance or performance of any of the obligations of the Borrower or the Covenantors pursuant to the Loan Agreement or the Security Documents. Lender acknowledges that it has made its own decision to participate in the Investment without any inducement from or reliance upon BDMC with respect to the financial condition of the Borrower or the Covenantors or the sufficiency of the Mortgaged Property or the Security Documents.

3.4 **Duty of Care** BDMC shall not be liable for any error of judgment or any action taken or omitted to be taken by it under or in connection with this Agreement if it acts upon or relies on any advice received from any expert retained by BDMC pursuant to section 3.2 or otherwise acts in good faith.

3.5 **Consent of Lender**

- (a) Save as set out herein, BDMC shall not, without the prior written consent of Lender, acting reasonably, agree to any renewal or any material amendment, modification or waiver of any of the terms of the Loan Agreement, the Security Documents or any agreement or document relating thereto, nor consent to any action or failure to act by the Borrower or any other party, or exercise any rights that BDMC may have in respect thereof or any rights pursuant to Section 3.1(j) hereof;
- (b) If BDMC should request Lender's written consent to any of the action described in this paragraph and shall not receive Lender's consent or denial thereof in writing within ten (10) Business Days of the mailing, delivery or emailing of such request, Lender shall be deemed to have given its consent to such action; and
- (c) Notwithstanding anything contained herein, in the event that BDMC obtains the written consent or agreement of Lenders holdings at least fifty-one percent (51%) of the amount of the Loan advanced from time-to-time to any renewal, or material amendment, modification or waiver of any of

the terms (collectively, the "Change") of the Loan Agreement, the Security Documents or any agreement or document relating thereto, the consent of all of the Lenders shall be deemed to have been given to the Change and BDMC shall be deemed to be authorized to enter into any and all such agreements and documentation to give effect to the Change on behalf of all the Lenders. By way of example, in the event that the authorized loan is \$20,000,000.00 and when the Change is being requested \$10,000,000.00 has been advanced, provided that BDMC obtains the written consent of Lenders to the Change who have advanced at least \$5,000,001.00, BDMC shall be permitted to take advantage of the provisions of this Section 3.5(b) to proceed with the proposed Change.


Lender Initials

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

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

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

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

ARTICLE 4.00- GENERAL

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

Building & Development Mortgages Canada Inc.
25 Brodie Drive – Unit 8
Richmond Hill, ON L4B 3K7
Attention: Ildina Galati- Ferrante
Fax No. 905 508 3957

and, if intended for Lender, addressed as follows:

Attention:
Fax No.

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

- 4.3 **Termination** Subject as hereafter provided, this Agreement shall remain in force until the earlier of the Loan having been paid in full and the Security Documents have been discharged or the Mortgaged Property has been realized and the proceeds of realization have been disbursed among the Participants in accordance with this Agreement. The indemnity provided in section 3.6 shall survive termination indefinitely.
- 4.4 **Effective Date of this Agreement** This Agreement shall not be effective until the date on which it is executed and delivered by BDMC and Lender.
- 4.5 **Relationship** Neither the execution of this Agreement, nor the sharing of the Investment nor any agreement to share in profits or losses arising as a result of the Investment is intended to be nor shall it be construed to be the formation of a partnership or a joint venture among the Participants.
- 4.6 **Publications or Registration of Interest** Lender shall not register this Agreement or notice thereof in any manner on the title to the Lands or with respect to any of the other Mortgaged Property.
- 4.7 **Dealings with Borrower**
- (a) Lender shall not contact or deal either directly or indirectly with the Borrower or the Covenantors or any other Person with respect to the servicing of the Investment or the enforcement of the Security without the consent of BDMC. Lender shall also not enter into any other agreement or take any other security with respect to this Agreement, the Investment or its Proportionate Share without the consent of BDMC.
 - (b) Lender shall not exercise any right of set-off, counter claim or any other claim it may have against the Borrower with respect to Contributory Advances or Contributory Payments to be made by it pursuant to this Agreement.
- 4.8 **Legal Capacity** Each Participant warrants and represents to the others that it has the legal capacity to enter into this Agreement and the Investment pursuant to its constating documents and any applicable legislation and that this Agreement constitutes a valid and binding obligation of such Participant enforceable in accordance with its terms.
- 4.9 **Entire Agreement** This Agreement constitutes the entire agreement between the Participants with respect to the Investment and supersedes all prior proposals and agreements, whether oral or written, with respect to the Investment.
- 4.10 **Amendment** No term or provision of this Agreement may be amended, waived, discharged or terminated without the unanimous written consent of all of the parties.
- 4.11 **Binding, etc.** This Agreement shall enure to the benefit of and be binding upon the parties and their successors and permitted assigns.
- 4.12 **No Waiver** The failure of any party to insist upon the strict adherence to or performance of any of the covenants contained herein shall not be considered as a waiver of such covenant by that party. A waiver of any provision in this Agreement must be in writing and signed by the waiving party.

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

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

Per: [Redacted]

Name:
Title:

Per: [Redacted]

Name:
Title:

Building & Development Mortgages Canada Inc.

Per: [Signature]
Name:
Title:

I/We have authority to bind the Corporation