

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

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

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

**(NOVEMBER 2022 COMPREHENSIVE UPDATE)**

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November 4, 2022

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**COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

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

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**INDEX**

<b>TAB</b>	<b>DOCUMENT</b>	<b>Page No.</b>
1.	Notice of Motion dated November 4, 2022	021
2.	Twenty-Ninth Report of the Trustee dated November 4, 2020	042
3.	Draft November 2022 Omnibus Order	769
4.	Draft Brookdale Settlement and Distribution Order	775
5.	Draft Eden Resolution and Distribution Order	786

**APPENDIX 11:  
COMPUTERSHARE ORIGINAL STATEMENT OF CLAIM**

Court File No.  
CV-17-585584-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

BETWEEN:

COMPUTERSHARE TRUST COMPANY OF CANADA  
in its capacity as trustee under a trust indenture dated November 26, 2013

Plaintiff

- and -

FORTRESS BROOKDALE INC., BROOKDALE REALTY CORPORATION,  
MADY AVENUE ROAD LTD.,  
OLYMPIA TRUST COMPANY, FIRM CAPITAL MORTGAGE FUND INC.,  
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, TONINO AMENDOLA,  
JAEKEL CAPITAL INC.  
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.,  
FORTRESS AVENUE ROAD (2015) INC.  
JOHN DOE AND JOHN DOE INC.

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

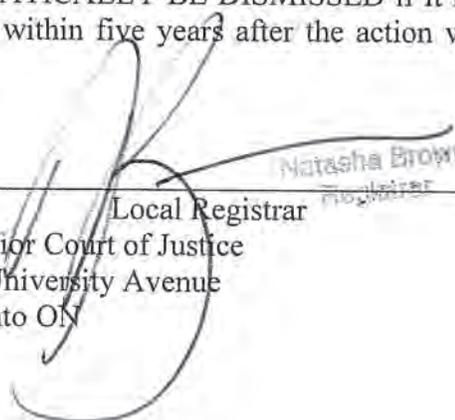
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$4,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Oct 31<sup>st</sup> / 17

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Toronto, ON M4T 1S3

AND TO: GUS STAMATIOU  
54 Kettle Court  
Vaughan, ON L6A 2M2

AND TO: ROBERT DI MATTEO  
20 Cachet Woods Court, Unit 2  
Markham, ON L6C 3G1

AND TO: TONINO AMENDOLA  
18 Norcross Road  
Toronto, ON, M3H 2R4

AND TO: JAEKEL CAPITAL INC.  
Suite 203, 10376 Yonge Street  
Richmond Hill, ON L4C 3B8

AND TO: BUILDING & DEVELOPMENT MORTGAGES CANADA INC.  
25 Brodie Drive, Unit 8  
Richmond Hill, ON L4B 3K7

AND TO: FORTRESS AVENUE ROAD (2015) INC.  
25 Brodie Drive, Unit 1  
Richmond Hill, ON L4B 3K7

AND TO: JOHN DOE

AND TO: JOHN DOE INC.

## CLAIM

1. The plaintiff, Computershare Trust Company of Canada in its capacity as trustee under a trust indenture dated November 26, 2013 (the “Trustee”), claims:

(a) a declaration that, or to the effect that, the Trustee and/or the Bondholders (defined below) are entitled to an equitable mortgage in the principal amount of \$9,028,000 (plus all other amounts, including interest owing and accruing thereon, under the Trust Indenture (defined below)), secured on title to the Project Lands (defined below), as a first ranking security interest, subject only to Senior Indebtedness (defined below);

(b) a declaration that, or to the effect that, the Trustee and/or the Bondholders are entitled to an equitable mortgage in the principal amount of \$9,028,000 (plus all other amounts, including interest owing and accruing thereon, under the Trust Indenture (defined below)), secured on title to the Project Lands, in priority to all Subsequent Encumbrances (defined below), but subject to valid encumbrances duly registered before the statement of claim was served on the Subsequent Encumbrancer (defined below), provided that such party did not have prior notice of the Trustee’s and/or the Bondholders’ rights to a mortgage on the Project Lands;

(c) a declaration that, or to the effect that, the Trustee and/or the Bondholders are entitled to an equitable general security agreement to secure payment or performance of the Bond Obligations (as defined in the Trust Indenture);

(d) further, or in the alternative to paragraphs 1(a) and (b), an order that the Project Lands be sold in accordance with Part II of the *Mortgages Act*, R.S.O. 1990, c. M.40;

(e) further, or in the alternative to paragraphs 1(a) and (b) and in the alternative to paragraph 1(d), an order that the Project Lands be partitioned or sold, pursuant to the *Partition Act*, R.S.O. 1990, c. P.4;

(f) an order for the issuance of a certificate of pending litigation (“CPL”) to be registered on title to the lands legally described as follows:

(i) Lot 33 and 34 and Part Lots 42A and Lot 43A Plan 2247 designated as Part 1 on Reference Plan 66R29204; City of Toronto, being all of PIN 10189-0865(LT); and

(ii) Lot 32 Plan 2371 York designated as Part 2 on Reference Plan 66R29204; City of Toronto, being all of PIN 10189-0866(LT),

(collectively, the “**Project Lands**”);

(g) an order that the land registrar make such entries in the register as are necessary to give effect to the orders of this court, in accordance with, *inter alia*, section 25 of the *Land Titles Act*, R.S.O. 1990, c. L. 5;

(h) an order that the registrar of personal property security at the Ontario Ministry of Government and Consumer Affairs make such entries in the personal property security registration system as are necessary to give effect to the orders of this court, in accordance with the *Personal Property Security Act*, R.S.O. 1990, c. P.10;

(i) as against the Issuer (defined below), the Guarantor (defined below), the Current Registered Owner (defined below) and the Beneficial Owner (defined below), the sum of, or

damages in the amount of, \$9,028,000, being the debt currently owed to the Trustee and/or the Bondholders in accordance with the Trust Indenture (defined below);

(j) an order appointing a receiver or receiver and manager, pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "*Courts of Justice Act*"), and section 60 of the *Personal Property Security Act*, R.S.O. 1990, c.P.10;

(k) costs of this proceeding on a full indemnity basis, in accordance with section 14.12 of the Trust Indenture (defined below);

(l) as against the Issuer, the Guarantor, the Current Registered Owner and the Beneficial Owner, prejudgment and postjudgment interest at the Interest Rate defined and calculated in accordance with the Trust Indenture;

(m) in the alternative to paragraph 1(l), as against the Issuer, the Guarantor, the Current Registered Owner and the Beneficial Owner, prejudgment and postjudgment interest in accordance with the *Courts of Justice Act*; and

(n) such further and other relief, including mandatory, ancillary, interim, interlocutory and declaratory relief, as counsel may advise.

## Overview

2. This action is brought by the Trustee in its capacity as trustee under a trust indenture dated as of November 26, 2013 (the "**Trust Indenture**") for the corporations and individuals listed in Schedule "A" (individually, a "**Bondholder**" and, collectively, the "**Bondholders**").

3. Each Bondholder subscribed for bonds (the “**Bonds**”) issued under the Trust Indenture.
4. The principal amount of the Bonds subscribed by each Bondholder is the dollar amount of the subscriptions listed in Schedule “A” (i.e. an aggregate of \$9,028,000).
5. The parties to the Trust Indenture were Brookdale Realty Corporation, as issuer (the “**Issuer**”), Olympia Trust Company,<sup>1</sup> as trustee, and Mady Avenue Road Ltd., as guarantor.
6. The Bonds were issued to finance the development of a condominium project on the Project Lands.
7. Under the Trust Indenture, the Bonds were guaranteed by Mady Avenue Road Ltd. (the “**Guarantor**”), and were to be secured by a general security agreement, and by a mortgage granted by the Guarantor on the Project Lands. These instruments were to be registered on or before October 31, 2015 (the “**Registration Date**”). The registrations were not done.
8. The Guarantor was acting as agent for and bare trustee of the Beneficial Owner, which is liable for the obligations under the Trust Indenture.
9. Certain events of default have occurred and are continuing under the Trust Indenture, including the Issuer’s failure to pay interest instalments due on or before April 15, 2017. On July 15, 2017 and October 15, 2017, further failures to pay interest instalments occurred.

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<sup>i</sup> As discussed below, Computershare Trust Company of Canada (i.e. the “Trustee”) succeeded Olympia Trust Company as trustee under the Trust Indenture.

10. The Trustee pleads and relies on the terms of the Trust Indenture. Pursuant to the Trust Indenture, and in light of the failures to cause the mortgage and general security agreement to be registered, the Trustee, for the Bondholders, is entitled to the relief sought herein.

### **The Parties and Bondholders**

11. The plaintiff, the Trustee, is a corporation incorporated pursuant to the laws of Canada. Pursuant to the Trust Indenture, the Trustee is entitled to, *inter alia*, enforce all of the provisions of the Trust Indenture against the Issuer, for and on behalf of the Bondholders.

12. The Bondholders subscribed for Bonds and, in accordance with the Trust Indenture, are entitled, *inter alia*, to hold a mortgage on the Project Lands as security for the Bonds.

13. The defendant, Fortress Brookdale Inc. (the “**Current Registered Owner**”), is the current registered owner of the Project Lands. The Current Registered Owner is incorporated under the laws of the Province of Ontario.

14. The defendant, Brookdale Realty Corporation (i.e. the Issuer), was incorporated under the laws of Alberta. It was dissolved under the *Business Corporations Act*, RSA 2000, c. B-9 (the “**ABCA**”) on January 2, 2017. The Trustee relies on section 227(2)(b) of the ABCA to bring this action against the Issuer.

15. The defendant, Mady Avenue Road Ltd. (i.e. the Guarantor), is a corporation incorporated pursuant to the laws of Ontario. Pursuant to a covenant contained in the Trust Indenture, the Guarantor agreed to guarantee the outstanding Bonds.

16. The defendant, Olympia Trust Company ("**Olympia**"), is a corporation incorporated pursuant to the laws of Alberta. Olympia was the trustee under the Trust Indenture, but was replaced by the Computershare Trust Company of Canada (i.e. the Trustee) on December 12, 2013. Olympia acts as the registered holder and holds Bonds on behalf of a series of beneficial owners, each of which is identified on Schedule "A". Olympia is also a chargee on the Project Lands, as to a 57.25% interest, under a mortgage registered on title to the Project Lands as instrument AT4645430.

17. The defendants listed in Schedule "B" registered a charge on title to the Project Lands after the Registration Date (defined below) or had notice of the Trustee's Mortgage (defined below) and GSA (defined below) (individually a "**Subsequent Encumbrancer**" and, collectively, the "**Subsequent Encumbrancers**").

18. The defendants listed in Schedule "C" registered a charge on title to the Project Lands prior to the Registration Date; however, to the extent that they had notice, at the time of registration of their respective charges, of the Trustee's and/or the Bondholders' rights to the Trustee's Mortgage and the GSA, they also are defined herein as Subsequent Encumbrancers.

19. The defendants, John Doe and John Doe Inc., are one or more individuals and corporations, which are unknown to the Trustee but are together the beneficial owners of the Project Lands, together with, *inter alia*, the defendant Fortress Avenue Road (2015) Inc. ("**Fortress 2015**") (collectively, the "**Beneficial Owner**").

### **The Bonds and the Security Documents**

20. Pursuant to a subscription agreement dated September 22, 2014 (the “**Subscription Agreement**”), the Issuer issued the Bonds for the purpose of loaning the proceeds to the Guarantor to be used by the Guarantor to pay certain development fees and costs associated with the Project Lands owned by the Beneficial Owner.

21. The Bonds mature on April 30, 2018.

22. As continuing security for the Bond Obligations (as defined in the Trust Indenture), the Issuer and the Guarantor were required to provide to the Trustee, for and behalf of the Trustee and the Bondholders, the following guarantee and security documents in form and substance satisfactory to the Trustee:

(a) a guarantee of all of the Bond Obligations, executed by the Guarantor (the “**Guarantee**”);

(b) a registered mortgage and charge on the Project Lands granted by the Guarantor (the “**Trustee’s Mortgage**”) in the amount equal to the aggregate principal amount of the Bonds outstanding on the Interest Payment Date (as defined in the Trust Indenture) directly preceding the date of registration and in any event in an amount of not more than \$10,800,000;

(c) a registered general security agreement from the Guarantor (the “**GSA**”); and

(d) such further and/or other reasonable security as shall be requested prior to the first issuance of the Bonds under the Trust Indenture,

(collectively, the “**Security Documents**”).

23. The Security Documents were to be provided to the Trustee on or before the Registration Date of October 31, 2015. The Guarantor also was required on or before the Registration Date, to register, record and file the Security Documents and the Security Interests (as defined in the Trust Indenture) created by the Security Documents, including all renewals thereof, in all places where such registration, recording or filing is necessary or desirable to give the Bondholders and the Trustee the benefit of the Security Documents, and the Security Interests created by the Security Documents. To date, none of these steps have taken place.

**The Project Lands, the Beneficial Owner and the Current Registered Owner's Notice**

24. At the time that the Trust Indenture was entered into, the Guarantor was the registered owner of the Project Lands. The Guarantor was acting as agent for and bare trustee of the Beneficial Owner, which is bound by the Guarantor and to the Trust Indenture.

25. On February 10, 2015, the Guarantor transferred the Project Lands to the Current Registered Owner and, at a time unknown to the Trustee, the beneficial ownership was transferred to the Beneficial Owner.

26. In any event, the Current Registered Owner and the Beneficial Owner had notice of the Trustee's and/or the Bondholders' interest in the Project Lands and the Security Documents. The Current Registered Owner, the Guarantor, the Issuer and the Beneficial Owner are associates within the meaning of section 1(e) of the ABCA and had common officers, directors and/or shareholders.

27. The Current Registered Owner's interest in the Project Lands and other property transferred to it by the Guarantor are subject to the interests reflected in the Security Documents, as is the interest of the Beneficial Owner.

***Mortgages Act***

28. In the alternative, the Guarantor transferred the Project Lands to the Current Registered Owner under such circumstances that the Current Registered Owner is by express covenant or otherwise obligated to indemnify the Guarantor with respect to the Trustee's Mortgage.

29. As a result, the Trustee and/or the Bondholders have the right to recover from the Current Registered Owner the amount of the debt under the Trustee's Mortgage.

30. The Trustee pleads and relies on the *Mortgages Act*, R.S.O. 1990, c. M.40, s.20.

31. In addition, the current Registered Owner and/or the Beneficial Owner assumed the obligations under the Trust Indenture, as evidenced by, *inter alia*, their payments thereunder and their agreements with the Guarantor and the original beneficial owner.

**Priority of Trustee's Mortgage Against Subsequent Encumbrances**

32. As described above, the Trust Indenture provided for the registration of the Trustee's Mortgage on title to the Project Lands, as a first ranking security interest, subject only to Senior Indebtedness taking into account indebtedness in respect of:

- (a) a Construction Financing Mortgage (as defined in the Trust Indenture);
- (b) a First Mortgage (as defined in the Trust Indenture); and
- (c) a Second Mortgage (as defined in the Trust Indenture),

unless, in any case, the terms of the instrument creating or evidencing such indebtedness provide that payment of such indebtedness ranks subordinate in right of payment to the Bonds (collectively, “**Senior Indebtedness**”), as more particularly defined in the Trust Indenture.

33. The Subsequent Encumbrancers had actual notice of the Trustee’s and/or the Bondholders’ rights and interests in the Project Lands, including their entitlement to a charge in priority to that of the Subsequent Encumbrancers. For example, Olympia was the original trustee under the Trust Indenture, and Fortress 2015 and Building & Development Mortgages Canada Inc. are owned or controlled by the same persons or have the same directing minds.

34. In light of the covenants, warranties and representations in the Trust Indenture, the equitable mortgage sought herein should be registered on title to the Project Lands, as a first ranking security interest, subject only to Senior Indebtedness.

#### **Defaults Under the Trust Indenture**

35. A number of events of default under the Trust Indenture (“**Events of Default**”) have occurred and are continuing, including the failure of the Issuer to:

- (a) pay interest within 10 business days of April 1, 2017;
- (b) pay interest within 10 business days of July 1, 2017;
- (c) pay interest within 10 business days of October 1, 2017; and
- (d) cure the defaults resulting from the breach of covenant for failing to register the Security Documents and failing to deliver annual compliance certificates within 60 days’ notice of same.

36. The Trustee has notified the Issuer, the Guarantor and the Bondholders of these Events of Default.

37. By letter dated February 3, 2017, the Trustee provided the Issuer and the Guarantor with a Notice of Default under the Trust Indenture (the “**Notice of Default**”). Specifically, the Trustee noted that the Issuer failed to: (a) deliver within 120 days after the end of each calendar year a compliance certificate certifying that the Issuer was in compliance with all conditions and covenants and all of its obligations under the Trust Indenture, contrary to section 17.10 of the Trust Indenture; and (b) provide on or before the Registration Date a guarantee executed by the Guarantor, a registered mortgage and a registered GSA, contrary to section 5.1 of the Trust Indenture.

38. By letter dated April 27, 2017, the Trustee provided the Issuer and the Guarantor with a Notice of Events of Default under the Trust Indenture (the “**Notice of Events of Default**”). Specifically, the Trustee noted that the Issuer failed to: (a) make the required interest payment to the Bondholders on April 15, 2017, contrary to section 9.1 of the Trust Indenture; and (b) remedy the defaults specified in the Notice of Default within 60 days’ of such notice, contrary to section 9.1(d) of the Trust Indenture.

39. By letter dated April 27, 2017, the Trustee provided the Bondholders with a notice of the Events of Default under the Trust Indenture, including a copy of the Notice of Events of Default delivered to the Issuer and the Guarantor.

40. In light of the defaults under the Trust Indenture, the Bondholders are entitled to payment of the principal amount of the Bonds, together with all interest, fees, costs and expenses owed thereon, in accordance with their respective entitlements.

**Indemnity**

41. Section 14.12 of the Trust Indenture provides as follows:

**14.12 Indemnity**

The Issuer and the Guarantor hereby agree to indemnify and save harmless the Trustee, the Bondholders and their respective directors, trustees, officers, employees and agents (as applicable), and all of their successors and assigns (collectively the "Indemnified Parties"), from and against all losses, demands, claims, liabilities, damages, costs, actions, penalties, obligations and expenses (including legal fees and disbursements on a solicitor and client basis), howsoever arising, in connection with the Bonds, this Indenture, the Property and/or all assets relating thereto save and except liability arising from the Trustee's gross negligence, fraud or willful misconduct in the performance of its obligations hereunder.

42. The Trustee claims against the Issuer, the Guarantor, the Current Registered Owner and the Beneficial Owner for all obligations under the Trust Indenture.

**Unjust Enrichment**

43. The Guarantor, the Current Registered Owner and the Beneficial Owner received a benefit from the Bond proceeds and the Trustee for the Bondholders suffered a corresponding deprivation. There is no juristic reason for the enrichment.

44. The Trustee claims on the basis of unjust enrichment and seeks to trace the Bond proceeds into the Project Lands or, in the alternative, damages.

**Governing Law**

45. The Trust Indenture provides that the Bond Documents (as defined therein) shall be governed by and construed in accordance with the laws of the Province of Alberta; however, the Trust Indenture does not limit proceedings to the courts of Alberta. This action is appropriately brought in Ontario.

**Service Outside of Ontario**

46. The statement of claim may be served outside of Ontario, without a court order, because the proceeding consists of claims:

- (a) in respect of real or personal property in Ontario;
- (b) for the enforcement of a contract in respect of real or personal property in Ontario;
- (c) for the sale of, and payment in respect of, a mortgage on real property in Ontario;
- (d) in respect of a contract where the contract was made in Ontario and a breach of the contract has been committed in Ontario; and
- (e) against a person ordinarily resident in or carrying on business in Ontario.

**Statutes and Rules**

47. The plaintiff pleads and relies on sections 5(3) and 24 of the *Conveyancing and Law of Property Act*, R.S.O. c.C34, the *Courts of Justice Act*, including sections 11, 96, 97, 100, 101, 103, 128 and 129, the *Land Titles Act*, R.S.O. 1990, c. L.5, including section 25, the *Mortgages Act*, R.S.O. 1990, c. M.40, including section 20 and Part II thereof, the *Partition Act*, R.S.O. 1990, c. P.4, including section 3 thereof, the *Personal Property Security Act*, R.S.O., 1990, c. P.10 including sections 58, 59, 60, 61, 62, 63, 64 and 72 thereof, and rules 1.04, 1.05, 17.02(a), (c), (e), (f) and (p), 41, 42.01 and 66 of the *Rules of Civil Procedure*.

October 31, 2017

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place  
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P.O. Box 367  
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T 416.369.5260  
F 416.777.7425

Lawyers for the Plaintiff

## SCHEDULE "A"

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
1165713 ONTARIO INC.	100,000
ZAHRA BARDAI	100,000
OLYMPIA TRUST COMPANY TR BRIAN MCCLUSKEY	64,000
OLYMPIA TRUST COMPANY TR SHARON MCCLUSKEY	55,000
DR. A. STONE MEDICINE PROFESSIONAL CORPORATION	125,000
DRS. PAUL JOZA & EVA JOZA MEDICINE PROFESSIONAL CORPORATION	50,000
FIERA MULTI-STRATEGY INCOME FUND	5,000,000
CHRISTOPHER GIFFIN	100,000
GABRIEL HEBERT	30,000
PAUL HEBERT & SYLVIE DUMONT TEN COM	30,000
ANIS KHAN	250,000
MAX NEIMAN DENTISTRY PROFESSIONAL CORPORATION	200,000
CAROLE MURPHY	25,000
OLYMPIA TRUST COMPANY FOR STEFANO PERRONE	25,000
OLYMPIA TRUST COMPANY FOR DANA SACCO	75,000
OLYMPIA TRUST COMPANY FOR MICHAEL LAYDEN	25,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	32,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	67,000
OLYMPIA TRUST COMPANY FOR GERRY SOKALSKY	100,000
OLYMPIA TRUST COMPANY FOR ANDREAS JOANNOU	85,000

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
OLYMPIA TRUST COMPANY FOR GEORGIA JOANNOU	70,000
OLYMPIA TRUST COMPANY FOR MARILYN COOK	389,000
OLYMPIA TRUST COMPANY FOR JUNG PARK	50,000
OLYMPIA TRUST COMPANY FOR PIETRO BITONDO	25,000
OLYMPIA TRUST COMPANY FOR DONNA DOUGHERTY	100,000
OLYMPIA TRUST COMPANY FOR JAMES STURINO	31,000
OLYMPIA TRUST COMPANY FOR SANDRA L. JACKSON	30,000
OLYMPIA TRUST COMPANY FOR ANNA RUFFOLO	172,000
OLYMPIA TRUST COMPANY FOR SHARON THERESE ELLIS	35,000
OLYMPIA TRUST COMPANY FOR MICHAEL BARKER	160,000
OLYMPIA TRUST COMPANY FOR MICHAEL BARKER	33,000
OLYMPIA TRUST COMPANY FOR LEE ANN TERNOEY	70,000
OLYMPIA TRUST COMPANY FOR DRAGANA PILAVDZIC	25,000
OLYMPIA TRUST COMPANY FOR CHRISTOPHER D'ATRI	225,000
OLYMPIA TRUST COMPANY FOR KAMLA BHAGWANDAS JUTA	25,000
OLYMPIA TRUST COMPANY FOR HARRY T. EARLE	75,000
OLYMPIA TRUST COMPANY FOR ALI NOURALIEI	153,000
OLYMPIA TRUST COMPANY FOR DOMENICO FILOSO	25,000
OLYMPIA TRUST COMPANY FOR RYAN MCCONAGHY	45,000
OLYMPIA TRUST COMPANY FOR KATHLEEN CHUNG	25,000
OLYMPIA TRUST COMPANY FOR MICHAEL PRENDERGAST	50,000
OLYMPIA TRUST COMPANY FOR ROBERT M. DWYER	25,000

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
<b>OLYMPIA TRUST COMPANY FOR WILMA WATSON</b>	<b>40,000</b>
<b>OLYMPIA TRUST COMPANY FOR PETER ACCARDI</b>	<b>40,000</b>
<b>OLYMPIA TRUST COMPANY FOR CINDI S. STEWART</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR DAVID D. STEWART</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR KREASAN RAJAGOPAL</b>	<b>100,000</b>
<b>OLYMPIA TRUST COMPANY FOR ROSARIO RUFFOLO</b>	<b>172,000</b>
<b>OLYMPIA TRUST COMPANY FOR PATRICK CORNWALL</b>	<b>75,000</b>
<b>RJ INSURANCE SERVICES LIMITED</b>	<b>50,000</b>
<b>SHANA ZAMERET</b>	<b>25,000</b>
<b>RUTH ZNOTINS</b>	<b>100,000</b>
<b>TOTAL OUTSTANDING</b>	<b>9,028,000</b>

## SCHEDULE "B"

CHARGE	REGISTRATION DATE	CHARGEЕ
AT4707175	OCTOBER 17, 2017	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
AT4591073	JUNE 7, 2017	FIRM CAPITAL MORTGAGE FUND INC.
AT4065378	NOVEMBER 13, 2015	QUINCY INVESTMENTS LIMITED AS TO 52.50% INTEREST 969592 ONTARIO LIMITED AS TO A 7.50% INTEREST 969593 ONTARIO LIMITED AS TO A 7.50% INTEREST 2307271 ONTARIO INC. AS TO A 10.00% INTEREST SASSO AUTO CONSULTING INC. AS TO A 2.50% INTEREST ANGELO GROSSI AS TO A 7.50% INTEREST DAVID MARK DOUBILET AS TO A 7.50% INTEREST GUS STAMATIOU AS TO A 2.50% INTEREST ROBERT DI MATTEO AS TO A 1.25% INTEREST TONINO AMENDOLA AS TO A 1.25% INTEREST

## SCHEDULE "C"

CHARGE	REGISTRATION DATE	CHARGE
AT3955352 AT4645430	ORIGINALLY REGISTERED JULY 23, 2015 CURRENT TRANSFER OF CHARGE REGISTERED AUGUST 2, 2017	ORIGINALLY CENTRO MORTGAGE INC. CURRENTLY BUILDING & DEVELOPMENT MORTGAGES CANADA, IN TRUST AS TO A 42.75% INTEREST AND OLYMPIA TRUST COMPANY INC. AS TO A 57.25 % INTEREST
AT3894769	MAY 28, 2015	JAEKEL CAPITAL INC

COMPUTERSHARE TRUST COMPANY OF CANADA in its  
capacity as trustee under a trust indenture dated November 26, 2013  
Plaintiff

-and- FORTRESS BROOKDALE INC. *et. al.*

*CV17-585584-00*  
Defendants  
Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

**Proceeding commenced at  
Toronto, Ontario**

**STATEMENT OF CLAIM**

**DLA PIPER (CANADA) LLP**  
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100 King Street West, Suite 6000  
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F 416.777.7425

Lawyers for the Plaintiff

**APPENDIX 12:  
COMPUTERSHARE FRESH AS AMENDED STATEMENT OF CLAIM**

RULE/LA RÈGLE 26.02 ( \_\_\_\_ c \_\_\_\_ )

Court File No. CV-17-585584-00CL

THE ORDER OF Justice McEwen

L'ORDONNANCE DU \_\_\_\_\_ **ONTARIO**  
DATED/FAIT LE January 14, 2022 **SUPERIOR COURT OF JUSTICE**  
**[COMMERCIAL LIST]**

.....  
REGISTRAR **B E T W E E N:** GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

COMPUTERSHARE TRUST COMPANY OF CANADA  
in its capacity as trustee under a trust indenture dated November 26, 2013

Plaintiff

- and -

FORTRESS BROOKDALE INC., BROOKDALE REALTY CORPORATION,  
MADY AVENUE ROAD LTD., OLYMPIA TRUST COMPANY,  
BUILDING & DEVELOPMENT MORTGAGES CANADA INC., and  
FORTRESS AVENUE ROAD (2015) INC.

Defendants

**FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.  
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$4,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date		Issued by	
			Local Registrar
		Address of court office:	Superior Court of Justice 330 University Avenue Toronto ON

TO: FORTRESS BROOKDALE INC.  
2220 Highway 7 West  
Suite 5  
Concord, Ontario, L4K 1W7

AND TO: BROOKDALE REALTY CORPORATION  
1600, 421-7<sup>th</sup> Avenue SW  
Calgary AB T2P 4K9

AND TO: MADY AVENUE ROAD LTD.  
8791 Woodbine Avenue, Suite 100  
Markham, ON L3F 0P4

AND TO: OLYMPIA TRUST COMPANY  
2200, 125 - 9th Avenue SE  
Calgary, AB T2G 0P6

AND TO: BUILDING & DEVELOPMENT MORTGAGES CANADA INC.  
25 Brodie Drive, Unit 8  
Richmond Hill, ON L4B 3K7

AND TO: FORTRESS AVENUE ROAD (2015) INC.  
25 Brodie Drive, Unit 1  
Richmond Hill, ON L4B 3K7

**CLAIM**

1. The plaintiff, Computershare Trust Company of Canada ("**Computershare**") in its capacity as trustee under a trust indenture dated November 26, 2013 (the "**Trust Indenture**"), claims:

(a) a declaration that, or to the effect that, Computershare and/or the Bondholders (defined below) are entitled to an equitable mortgage in the principal amount of \$9,028,000 (plus all other amounts, including interest owing and accruing thereon, under the Trust Indenture), that would have been secured on title to the Project Lands (defined below), as a first ranking security interest, subject only to Senior Indebtedness (defined below) and in priority to all subsequent encumbrances, but subject to valid encumbrances duly registered before the statement of claim was served on the subsequent encumbrancer, provided that such party did not have prior notice of Computershare's and/or the Bondholders' rights to a mortgage on the Project Lands;

(b) a declaration that the defendant, Building & Development Mortgages Canada Inc. ("**BDMC**") is not a *bona fide* third party lender without notice of the plaintiff's rights to a mortgage on the Project Lands;

(c) as against Brookdale Realty Corporation, as issuer (the "**Issuer**"), Mady Avenue Road Ltd., as guarantor (the "**Guarantor**"), Fortress Brookdale Inc. ("**Fortress Brookdale**") and Fortress Avenue (2015) Inc. ("**Fortress 2015**"), the sum of, or damages in the amount of, \$9,028,000, being the debt currently owed to Computershare and/or the Bondholders in accordance with the Trust Indenture;

(d) an order directing the release of \$9,028,000 plus any interest awarded pursuant to subparagraph 1(j) below, or otherwise, and any costs awarded pursuant to subparagraph 1(h) below, or otherwise, from the funds held by the Accountant of the

Ontario Superior Court of Justice in Court File No. CV-18-596204-00CL (the “**BDMC Proceedings**”) pursuant to an Order of the Honourable Mr. Justice McEwen dated August 28, 2020 to the plaintiff;

(e) costs of this proceeding on a full indemnity basis, in accordance with section 14.12 of the Trust Indenture;

(f) as against the Issuer, the Guarantor, Fortress Brookdale and Fortress 2015, prejudgment and postjudgment interest at the Interest Rate defined and calculated in accordance with the Trust Indenture;

(g) in the alternative to paragraph 1(f), as against the Issuer, the Guarantor, Fortress Brookdale and Fortress 2015, prejudgment and postjudgment interest in accordance with the *Courts of Justice Act*; and

(h) such further and other relief, including mandatory, ancillary, interim, interlocutory and declaratory relief, as counsel may advise.

## **Overview**

2. This action is brought by Computershare in its capacity as trustee under the Trust Indenture for the corporations and individuals listed in Schedule “A” (individually, a “**Bondholder**” and, collectively, the “**Bondholders**”).

3. Each Bondholder subscribed for bonds (the “**Bonds**”) issued under the Trust Indenture. The principal amount of the Bonds subscribed by each Bondholder is the dollar amount of the subscriptions listed in Schedule “A” (i.e. an aggregate of \$9,028,000).

4. The parties to the Trust Indenture were the Issuer, Olympia Trust Company,<sup>1</sup> as trustee, and the Guarantor.

5. The Bonds were issued to finance the development of a condominium project (the “**Project**”) located at 1678-1704 Avenue Road, 375-377 Fairlawn Avenue and 412-416 Brookdale Avenue, Toronto (the “**Project Lands**”), pursuant to and under the terms of an Offering Memorandum, as amended and restated and dated October 27, 2014 (the “**Offering Memorandum**”). The Offering Memorandum described, among other things, the roles to be played by the Issuer and the Guarantor, but also Fortress, which was defined therein as “Fortress Real Developments Inc., a corporation owned by Mr. Jawad Rathore (“**Rathore**”) and Mr. Vince Petrozza (“**Petrozza**”), the co-developer and promoter of the Project.” Elsewhere in the Offering Memorandum, it is stated that “[t]he Project will be co-developed by Mady and Fortress.”

6. Under the Trust Indenture, the Bonds were guaranteed by the Guarantor, and were to be secured by a general security agreement, and by a mortgage granted by the Guarantor on the Project Lands. These instruments were to be registered by the Issuer and the Guarantor on or before October 31, 2015 (the “**Registration Date**”). The registrations were not completed, as was required under the Trust Indenture, and therefore the Issuer and the Guarantor were, and continue to be, in default under the Trust Indenture.

7. As explained below, prior to the Registration Date, key individuals at Fortress Brookdale/Fortress 2015 and related companies (collectively referred to herein as “**Fortress**”), who were also the operating mind of Fortress’ mortgage brokerage arm, BDMC, obtained control of the Issuer and the Guarantor through a transaction with the Guarantor and the principals of the Issuer.

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<sup>1</sup> As discussed below, Computershare (i.e. the “Trustee”) succeeded Olympia Trust Company as trustee under the Trust Indenture.

8. Although the Issuer and the Guarantor were obligated under the terms of the Trust Indenture to ensure that only "Permitted Encumbrances" were placed on title prior to the Registration Date, in fact, Fortress through its broker BDMC, decided to offer syndicated mortgages which purported to be placed on title ahead of the Bonds. Fortress, BDMC, the Issuer and the Guarantor were all aware of the terms of the Trust Indenture and knew their conduct was in breach and default. Indeed, shortly after the Registration Date, BDMC's true principals, Petrozza and Rathore actively discussed with other BDMC/Fortress management that they were default under the Trust Indenture, and contemplated ways to rectify this default. Those steps to rectify the default were never taken.

9. But for the wrongful conduct of Fortress/BDMC, BDMC either would never have been able to offer syndicated mortgages, or if it had, there would have been far fewer subscribers.

10. In furtherance of their wrongful conduct, and in order to not alert Bondholders to there being any issues with the Project, BDMC itself paid certain interest payments due and owing, pursuant to the Trust Indenture. Once construction finance had been secured (which the Bonds were subordinated to under the terms of the Trust Indenture), Fortress/BDMC stopped paying the interest due and owing under the Trust Indenture.

11. In addition to the defaults under the Trust Indenture described above, certain other events of default have occurred and are continuing under the Trust Indenture, including the Issuer's failure to pay interest instalments due on or before April 15, 2017. On July 15, 2017 and October 15, 2017, and every quarter thereafter, further failures to pay interest instalments occurred.

12. Computershare pleads and relies on the terms of the Trust Indenture. Pursuant to the Trust Indenture, and in light of the failures to cause the mortgage and general security

agreement to be registered, Computershare, for the Bondholders, is entitled to the relief sought herein.

### **Developments Since this Proceeding was First Launched**

13. This claim was originally launched on October 31, 2017. A number of other parties were named as defendants. Since then, a number of events have occurred:

(a) First, Fortress Brookdale and Fortress 2015 brought a motion for a mandatory injunction (the “**Fortress Injunction**”) requiring Computershare to execute a subordination agreement to Firm Capital Corporation (“**Firm Capital**”) and two new construction finance lenders, which motion was dismissed by this Court on January 9, 2018.

(b) Second, on April 13, 2018, the RCMP executed search warrants in relation to Fortress and related entities. The RCMP’s Information To Obtain alleged that Fortress and some of its principals engaged in investor fraud, by knowingly misrepresenting the appraised value of various development properties. One week later, pursuant to an application brought by the Superintendent of Financial Services, FAAN Mortgage Administrators Inc. was appointed as trustee over all the assets, undertakings and properties of BDMC. BDMC had previously surrendered its mortgage business licence, pursuant to an order obtained by the Financial Services Commission of Ontario, after having determined that there were serious regulatory issues associated with BDMC syndicated mortgage loans (“**SMLs**”).

(c) Third, Firm Capital exercised certain rights it had under existing registered security instruments to appoint a private receiver and sell the Project Lands. In proceedings commenced by Firm Capital in connection with these steps (the “**Firm**

**Capital Proceedings**”), this Court granted a Vesting Order on October 18, 2018 in connection with the sale of the Project Lands. A certain amount of the proceeds of sale remained after satisfying the priority debt of Firm Capital, Quincy Investments limited and related parties (“**Quincy**”), and Jaekel Capital Inc. (“**Jaekel**”). Prior to any distribution to Quincy and Jaekel, each of those parties signed statutory declarations stating that they had no knowledge of Computershare or the Bondholders’ entitlement to a mortgage under the Trust Indenture. Orders have been taken out dismissing this proceeding against Firm Capital, Quincy and Jaekel (and the style of cause has been amended accordingly).

(d) Fourth, significant litigation ensued involving holders of construction liens, which litigation was case managed by Mr. Justice McEwen. That litigation concluded on August 28, 2020, with a consent order (the “**August 28 Order**”) issued by the Court providing for, among other things, the payment of \$4,551,903 to construction lien claimants. After that payment, there was a remaining balance of approximately \$17 million from the proceeds of the sale of the Project Lands. These funds were transferred from the Firm Capital Proceedings to the BDMC Proceedings pursuant to the August 28 Order, to not be paid to any party absent court order, without prejudice to any claimant’s rights (including Computershare’s) to make a claim to those proceeds. Given the sale of the Project Lands, certain consequential relief sought in the original Statement of Claim in this proceeding (e.g. seeking a sale of the Project Lands, obtaining a general security agreement or relief under the *Personal Property Security Act*) has been withdrawn as moot.

(e) Fifth, in the Fortress Injunction proceedings, Fortress produced documentation showing that Fortress 2015 had sold 25% beneficial interest in the Project Lands to Fernbrook Homes (Brookdale) Limited. However, given the amount of residual proceeds

from the Firm Capital Proceedings, the Vesting Order issued in the Firm Capital Proceedings, and the quantum of BDMC's registered mortgage and the plaintiff's equitable mortgage, there is no possible residual equity value to the Project Lands or the proceeds of the disposition thereof, and no lands upon which security can attach. As a result, Fernbrook Homes (Brookdale) Limited is not named as a defendant (in the plaintiff's original Statement of Claim, it would have been "John Doe Inc."), although as a party on the service list in the BDMC Proceedings, it will have notice of this claim.

14. As a result of the foregoing, the plaintiff has filed this Fresh as Amended Statement of Claim. No new parties have been added, nor have any new causes of action been asserted. To the extent necessary, and because of the extensive nature of the revisions (principally deletions), the plaintiff asks this Honourable Court for leave to file a Fresh as Amended Statement of Claim.

#### **The Parties and Bondholders**

15. The plaintiff, Computershare, is a corporation incorporated pursuant to the laws of Canada. Pursuant to the Trust Indenture, Computershare is entitled to, *inter alia*, enforce all of the provisions of the Trust Indenture against the Issuer, for and on behalf of the Bondholders.

16. The Bondholders subscribed for Bonds and, in accordance with the Trust Indenture, are entitled, *inter alia*, to hold a mortgage on the Project Lands as security for the Bonds.

17. Until the Project Lands were sold by Firm Capital as described above, the defendant, Fortress Brookdale, was the registered owner of the Project Lands. Fortress Brookdale is incorporated under the laws of the Province of Ontario.

18. The defendant, Fortress 2015 was the beneficial owner of the Project Lands at the time they were acquired from the Guarantor and/or other Mady entities, as described in greater detail below.

19. The defendant, Brookdale Realty Corporation (i.e. the Issuer), was incorporated under the laws of Alberta. It was dissolved under the *Business Corporations Act*, RSA 2000, c. B-9 (the “**ABCA**”) on January 2, 2017. Computershare relies on section 227(2)(b) of the ABCA to bring this action against the Issuer.

20. The defendant, Mady Avenue Road Ltd. (i.e. the Guarantor), is a corporation incorporated pursuant to the laws of Ontario. Pursuant to a covenant contained in the Trust Indenture, the Guarantor agreed to guarantee the outstanding Bonds.

21. The defendant, Olympia Trust Company (“**Olympia**”), is a corporation incorporated pursuant to the laws of Alberta. Olympia was the trustee under the Trust Indenture, but was replaced by the Computershare on December 12, 2013. Olympia acts as the registered holder and holds Bonds on behalf of a series of beneficial owners, each of which is identified on Schedule “A”. Olympia was also a chargee on the Project Lands, as to a 57.25% interest, under a mortgage registered on title to the Project Lands as instrument AT4645430. This is discussed in further detail below.

22. The defendant BDMC is a corporation incorporated under the laws of Ontario. BDMC was originally incorporated under the name “Centro Mortgage Inc.” (“**Centro**”). At all relevant times, BDMC was in the business as an administrator of SMLs and as a mortgage broker, principally in relation to real estate development projects (the “**Fortress/BDMC Projects**”) involving Fortress Real Capital Inc. and Fortress Real Developments Inc. (“**FRDI**”). The Fortress/BDMC Projects were developed by development companies who were the borrowers under the SMLs.

23. While BDMC was wholly owned by Ildina Galati, its sole registered officer and director, in reality BDMC was controlled and directed by Fortress principals Petrozza and Rathore.

### **The Bonds and the Security Documents**

24. Pursuant to a subscription agreement dated September 22, 2014, the Issuer issued the Bonds for the purpose of loaning the proceeds to the Guarantor to be used by the Guarantor to pay certain development fees and costs associated with the Project Lands owned by Fortress 2015.

25. Bonds were offered pursuant to the Offering Memorandum. In that Offering Memorandum, FRDI was held out to be the “co-developers” along with the Guarantor. Petrozza and Rathore were specifically identified in the Offering Memorandum. The Offering Memorandum further stated, among other things, that FRDI would “provide consulting, and operating services for the Project, including creating, tracking and monitoring pro forma, and arranging financing.” FRDI received part of the proceeds of the Bond offering. The Offering Memorandum also made it clear that (at that time) there were only two mortgages ranking ahead of the Bonds in terms of security. The Bonds were clearly shown to be the fourth ranking security, with only (a) two existing mortgages with a combined value of \$20,250,000; and (b) construction finance, when obtained, ranking ahead of the Bonds. It was contemplated that there could be syndicated mortgages ranking *pari passu* to the Bonds, but only where such syndicated mortgages were offered by the Guarantor.

26. As continuing security for the Bond Obligations (as defined in the Trust Indenture), the Issuer and the Guarantor were required to provide to Computershare, for and

behalf of Computershare and the Bondholders, the following guarantee and security documents in form and substance satisfactory to Computershare:

- (a) a guarantee of all of the Bond Obligations, executed by the Guarantor (the “**Guarantee**”);
- (b) a registered mortgage and charge on the Project Lands granted by the Guarantor (the “**Trustee’s Mortgage**”) in the amount equal to the aggregate principal amount of the Bonds outstanding on the Interest Payment Date (as defined in the Trust Indenture) directly preceding the date of registration and in any event in an amount of not more than \$10,800,000;
- (c) a registered general security agreement from the Guarantor (the “**GSA**”); and
- (d) such further and/or other reasonable security as shall be requested prior to the first issuance of the Bonds under the Trust Indenture,

(collectively, the “**Security Documents**”).

27. The Security Documents were to be provided to Computershare on or before the Registration Date of October 31, 2015. The Guarantor also was required on or before the Registration Date, to register, record and file the Security Documents and the Security Interests (as defined in the Trust Indenture) created by the Security Documents, including all renewals thereof, in all places where such registration, recording or filing is necessary or desirable to give the Bondholders and Computershare the benefit of the Security Documents, and the Security Interests created by the Security Documents.

28. During cross-examinations at the Fortress Injunction proceedings, Petrozza confirmed that he had read the specific clause relating to the Guarantor’s obligation to register a

mortgage for Computershare's benefit on the Registration Date. Other key individuals, such as Charene Bunnett ("**Bunnett**"), General Manager of BDMC, received copies of the Trust Indenture no later than 2014.

29. To date, none of the steps set out in paragraph 26 have taken place.

30. Importantly, the Trust Indenture was designed to ensure that, at the time the Trustee's Mortgage was registered, the Bondholders would have a first ranking security interest, subject only to Senior Indebtedness and Permitted Encumbrances. Section 8.9 of the Trust Indenture states:

The Issuer and/or the Guarantor, as applicable, shall, at their own expense, ensure that the Security Documents and all documents, caveats, security notices, financing statements and financing change statements in respect thereof, are, or cause these to be, promptly filed and refiled and registered as often as may be required by applicable law or as may be necessary or desirable to perfect and preserve the interests created by the Security Documents **and to ensure that such security interests are first ranking, subject only to Permitted Encumbrances, and the Senior Indebtedness**, and will promptly provide the Trustee with evidence (satisfactory to the Trustee) of such filing, registration and deposit after the making thereof. The Issuer and/or the Guarantor, as applicable, shall, if and when requested to do so by the Trustee, furnish to the Trustee an opinion of its legal counsel to establish compliance with the provisions of this section.

31. "Permitted Encumbrances" under the Trust Indenture do not include any of the subsequent encumbrancers on the Project Lands, including but not limited to, BDMC. Permitted Encumbrances are specifically defined and include such types of liens as: (a) liens for taxes and other regulatory charges; (b) judgment liens; (c) statutory liens; (c) easements and rights of way; (d) governmental rights; (e) Crown reservations and liens; (f) builders liens; and (g) workers compensation pledges.

32. "**Senior Indebtedness**" under the Trust Indenture also do not include any of the Subsequent Encumbrances, including but not limited to, BDMC. "Senior Indebtedness" means

the principal, interest and premium of the Guarantor (and not any other party) in respect of the Permitted Encumbrances, the initial two mortgages described in paragraph 39 below, the Construction Financing Mortgage, and any renewals, extensions or refundings of any such indebtedness.

### **Defendants Had Prior Notice of Computershare's Security Interests**

33. At the time that the Trust Indenture was entered into, the Guarantor was the registered owner of the Project Lands.

34. On or about January 20, 2015, Fortress 2015 acquired all the outstanding shares of the Guarantor for the aggregate purchase price of \$100.

35. On February 10, 2015, the Guarantor transferred the Project Lands to Fortress Brookdale. Fortress Brookdale paid \$2 for the Project Lands. On or about February 11, 2015, beneficial ownership of the Project Lands was transferred from David Mady Investments (2008) Inc. to Fortress 2015, for a purchase price of \$10.00.

36. On or about May 27, 2015, Fortress 2015 sold an undivided beneficial 25% interest in the Project Lands to Fernbrook Homes (Brookdale) Limited for a purchase price of \$4,675,000.00.

37. The defendants all had notice of Computershare's and/or the Bondholders' interest in the Project Lands and the Security Documents. Fortress Brookdale, the Guarantor, the Issuer, BDMC, and Fortress 2015 are associates within the meaning of section 1(e) of the ABCA and had common officers, directors and/or shareholders.

38. Fortress Brookdale's interest in the Project Lands and other property transferred to it by the Guarantor were subject to the interests reflected in the Security Documents, as was the interest of Fortress 2015.

***Other 2015 Loans Relating to the Project Lands***

39. As set out above, prior to the issuance of the Bonds, there were two prior lenders. The first mortgage was issued to MCAP Financial Corporation and Terra Firma Capital Corporation in connection with a \$14 million loan. This loan was subsequently refinanced with Vector Financial Services, such that Vector Financial Services was the new lender for the full amount of this loan. The second mortgage was issued to Wendelyn Financial Limited in connection with a \$6.25 million loan. This loan was refinanced through RW Fortress Inc., such that RW Fortress Inc. was the new lender for the full amount of this loan. Next in the priority sequence should have been the Bonds.

40. However, on July 23, 2015, BDMC (then known as Centro), in trust, entered into a Loan Agreement (the “**First BDMC Loan Agreement**”) with Fortress Brookdale -- who, by then, had obtained the Project Lands through the February 2015 transactions between the Guarantor and related companies, Fortress, and Fortress 2015 as described above. The First BDMC Loan Agreement says that it would purportedly “be secured by a third-ranking mortgage against the Property”, which at the time was true because the Registration Date for the Bonds was not until October 31, 2015. However, such a security interest contravened the Trust Indenture, because it was not a “Permitted Encumbrance”. This was known to BDMC at the time it entered into the Loan Agreement. Under the Loan Agreement, the funds were specifically stated to pay for, among other things, soft costs to be incurred *prior* to construction financing. In other words, by its own terms, the First BDMC Loan Agreement was expressly *not* construction finance to which the Bonds would be subordinated.

41. Petrozza was specifically identified in the First BDMC Loan Agreement as the contact person for Fortress Brookdale. Bunnett, a mortgage broker at BDMC with whom Petrozza worked closely, was the contact person for BDMC.

42. Fortress Brookdale and BDMC had actual knowledge of Computershare's and the Bondholders' rights under the Trust Indenture, at the time that those parties entered into the First BDMC Loan Agreement. As set out above, Petrozza was intimately involved in the development of the Project, specifically named in the Offering Memorandum for the Bonds, and has admitted to having read the specific term of the Trust Indenture relating to the Bondholders' rights to a mortgage, which mortgage would be subordinate only to the antecedent two mortgages, Construction Finance, and Permitted Encumbrances. The First BDMC Loan Agreement was not a Permitted Encumbrance, as BDMC fully knew. BDMC was not a *bona fide* lender for value without notice of Computershare's rights.

43. BDMC entered into the First BDMC Loan Agreement "in trust" for certain beneficiaries, being the Fortress/BDMC syndicated mortgage lenders. The knowledge of those numerous beneficiaries is irrelevant, except insofar as those beneficiaries have, or could have, commenced litigation against BDMC in its capacity as trustee. As it relates to transactions entered into by the trustee on behalf of the beneficiaries, the only relevant "knowledge" is that of the trustee.

44. The mortgage registered in connection with the First BDMC Loan Agreement was further subdivided into: (a) Olympia Trust, for certain individual lenders that held their interest through registered accounts; and (b) BDMC, for all other individual lenders. However, Olympia was not named on the First BDMC Loan Agreement, nor was it the promoter or organizer of the BDMC SMLs. Olympia essentially performed an administrative function for the benefit of BDMC. Olympia is only named in this proceeding as a necessary party, and its knowledge is irrelevant for determining whether the registered mortgage was in connection with a loan offered by a *bona fide* third party lender for value without notice.

***BDMC and Fortress Decide to Not Register the Mortgage on the Bonds***

45. As set out above, the Registration Date was to occur no later than October 31, 2015. But by February 2015, Fortress/BDMC had already transferred the Project Lands to a Fortress entity.

46. In or about October 2015, Bunnett and Petrozza had a discussion about the upcoming registration requirement. Particulars of that discussion are known to the defendants and not the plaintiff. After that discussion, Bunnett reviewed the Trust Indenture and reported to Petrozza what would happen if they did not register the mortgage, which such mortgage was to be in priority to all subsequent loans other than Permitted Encumbrances (i.e., not the BDMC SMLs). By email dated October 15, 2015, Bunnett reported to Petrozza:

So here is the risk if we do nothing on the bond:

Non-compliance with the obligations under the trust indenture (e.g. not providing the certificate of compliance) would constitute a default under the trust indenture. The Trustee then can demand, upon giving 60 days notice to Brookdale, the principal amount and interest on the Bonds and all other moneys outstanding.

If you would like more detailed information on the steps the Trustee and/or Bondholders can take upon the occurrence of an event of default, I can speak to one of our insolvency lawyers for more information.

47. Petrozza then forwarded that email to Rathore with the message "Speak to me about this." Particulars of that subsequent conversation are known only to the defendants, but it can reasonably be assumed that Petrozza and Rathore decided to not register the Trustee's Mortgage as was required under the Trust Indenture, because it never was.

48. In order to conceal from the Bondholders any problems with the Bonds (or the Security Documents that were required to be registered), Fortress personally paid the Bondholder interest obligations of the Issuer on October 9, 2015 and five subsequent quarters

(just as BDMC had previously paid the Bondholder interest obligations of the Issuer on November 17, 2014, January 15, 2015 and April 8, 2015).

49. On January 5, 2016, Bunnett (from a Centro email) set out the consequences of BDMC's actions to Petrozza (at his Centro email):

Although not explicitly captured by the events of default provision in the Trust Indenture, the actions taken by MAR to transfer ownership of the Project Lands (after being purchased by Fortress) renders it unable to satisfy its covenants and representations under the agreement. Further, as of October 31, 2015, the security with respect to the bonds issued under the Trust Indenture were required to be registered. **Since we didn't register, this is a form of default.**

To amend the indenture, to accommodate the Transfer (and **given that all of the actions to transfer were taken without advising the Trustee or the Bondholders**), we believe it would be prudent to convene a meeting of bondholders whereby, through an extraordinary resolution the parties are amended and any other defects in the indenture are cured (and any additional action or inaction by the issuer is asked to be approved by the Bondholders). At this stage, **we do not think that one can reasonably argue that these changes are not material** and that they are captured by the provisions which allows the Trustee to make amendments that are not prejudicial to the bondholders, in the opinion of the Trustee.

50. No such steps were ever taken. Instead, on May 12, 2016, Fortress Brookdale (through Petrozza) increased the Charge associated with the BDMC SMLs from \$10.3 million to \$13 million. On June 16, 2016, this was further increased to \$14.92 million. On August 16, 2016, this was further increased to \$16.6 million. On November 28, 2016, this was further increased to \$17,883,400.

### ***Mortgages Act***

51. The Guarantor transferred the Project Lands to Fortress Brookdale and Fortress 2015 under such circumstances that Fortress Brookdale and Fortress 2015 are by express covenant or otherwise obligated to indemnify the Guarantor with respect to the Trustee's Mortgage.

52. As a result, Computershare and/or the Bondholders have the right to recover from Fortress Brookdale and Fortress 2015 the amount of the debt under the Trustee's Mortgage.

53. Computershare pleads and relies on the *Mortgages Act*, R.S.O. 1990, c. M.40, s.20.

54. In addition, Fortress Brookdale and/or Fortress 2015 assumed the obligations under the Trust Indenture, as evidenced by, *inter alia*, their payments thereunder and their agreements with the Guarantor and related companies.

#### **Priority of Trustee's Mortgage Against Subsequent Encumbrances**

55. As described above, the Trust Indenture provided for the registration of the Trustee's Mortgage on title to the Project Lands, as a first ranking security interest, subject only to Senior Indebtedness and Permitted Encumbrances.

56. The defendants had actual notice of Computershare's and/or the Bondholders' rights and interests in the Project Lands, including their entitlement to a charge in priority to that of the defendants.

57. In light of the covenants, warranties and representations in the Trust Indenture, the equitable mortgage sought herein was entitled to be registered on title to the Project Lands, as a first ranking security interest, subject only to Senior Indebtedness. The rights attached to this equitable mortgage carry through to the proceeds of the sale of the Project of Lands and into the funds presently interpleaded into Court in the BDMC Proceedings.

#### **Defaults Under the Trust Indenture**

58. A number of events of default under the Trust Indenture ("**Events of Default**") have occurred and are continuing, including the failure of the Issuer to pay interest within 10

business days of April 1, 2017, July 1, 2017, October 1, 2017, and each quarterly interest payment thereafter, and the failure to cure the defaults resulting from the breach of covenant for failing to register the Security Documents and failing to deliver annual compliance certificates within 60 days' notice of same.

59. Computershare has notified the Issuer, the Guarantor and the Bondholders of the Events of Default.

60. By letter dated February 3, 2017, Computershare provided the Issuer and the Guarantor with a Notice of Default under the Trust Indenture (the "**Notice of Default**"). Specifically, Computershare noted that the Issuer failed to: (a) deliver within 120 days after the end of each calendar year a compliance certificate certifying that the Issuer was in compliance with all conditions and covenants and all of its obligations under the Trust Indenture, contrary to section 17.10 of the Trust Indenture; and (b) provide on or before the Registration Date a guarantee executed by the Guarantor, a registered mortgage and a registered GSA, contrary to section 5.1 of the Trust Indenture.

61. One day after the Notice of Default was delivered, Fortress and BDMC increased the charge associated with the BDMC SMLs from \$17,883,400 to \$19,420,000.

62. On April 25, 2017, "Brookdale Realty Corporation" (the Issuer) -- whose assets including the Project Lands had already been transferred to Fortress/BDMC in breach of the Trust Indenture as described above -- wrote to the Bondholders to advise them on how successful the Project was looking. It advised that 93% of the condominium units had been sold, and how progress was being made on excavation and shoring. The letter further assured Bondholders that "[i]nterest will continue to accrue and will be payable along with the principal investment amount upon the redemption date (April 30, 2018) or project completion." Nothing in the Trust Indenture permitted Brookdale to not pay interest when it was due. The letter

purportedly sent by Brookdale Realty Corporation was actually written by Petrozza and/or Rathore, who knew that interest was payable when due and at no other time.

63. By letter dated April 27, 2017, Computershare provided the Issuer and the Guarantor with a Notice of Events of Default under the Trust Indenture (the “**Notice of Events of Default**”). Specifically, Computershare noted that the Issuer failed to: (a) make the required interest payment to the Bondholders on April 15, 2017, contrary to section 9.1 of the Trust Indenture; and (b) remedy the defaults specified in the Notice of Default within 60 days’ of such notice, contrary to section 9.1(d) of the Trust Indenture.

64. In light of the defaults under the Trust Indenture, the Bondholders are entitled to payment of the principal amount of the Bonds, together with all interest, fees, costs and expenses owed thereon, in accordance with their respective entitlements.

#### **Further Increases in BDMC Charges after Notice of Default Delivered**

65. Well after Computershare delivered its Notice of Default and Notice of Events of Defaults, Fortress and BDMC continued to increase the size of the charge associated with the BDMC SMLs. On July 6, 2017, the charge was increased to \$21.8 million. On July 10, 2017 BDMC and Fortress Brookdale entered into a further mezzanine loan agreement (the “**Second BDMC Loan Agreement**”), for a maximum loan proceeds of \$15 million. On October 17, 2017 BDMC registered a further \$4.8 million charge associated with this mezzanine loan. The increase in the existing charge, and the new loan entered into and the additional charge taken in connection with that loan, were all made with full knowledge of Computershare and the Bondholders’ rights, which rights had even been asserted pursuant to default notices that specified those secured interest rights, which were sent to and reviewed by key individuals at Fortress and BDMC.

**BDMC as a Lender for Value with Notice of Prior Interest**

66. By virtue of the facts as set out above, at all relevant times, BDMC was not a *bona fide* lender for value without notice of Computershare and the Bondholder's prior security interest in the Project Lands. BDMC's senior management was aware of the terms of the Trust Indenture, including the security interests created therein, and BDMC officers Petrozza and Rathore were even referenced in the Offering Memorandum under which the Bonds were offered. In addition to the foregoing, BDMC chose to enter into further loan agreements and purported to take a senior security interest in the Project Lands, even after Computershare had issued the Notice of Default and Notice of Events of Default. BDMC had actual notice of Computershare and the Bondholders' prior security interest.

67. BDMC is the only lender under the First BDMC Loan Agreement and the Second BDMC Loan Agreement, and as such, the only party who provided "value" for the security interest that BDMC took. It is irrelevant that BDMC entered into these loan agreements "in trust" for other beneficiaries. Beneficiaries are subject to the knowledge of their trustees when those trustees enter into transactions on their behalf. No third party would ever enter into a transaction with a trustee if one had to "pierce the veil" of the trust to determine the "knowledge" of hundreds or thousands of potential beneficiaries.

68. It is also irrelevant that the Charge registered for the First BDMC Loan Agreement was divided between BDMC and Olympia, and that the Charge registered for the Second BDMC Loan Agreement was divided between BDMC and Computershare for the Second BDMC Loan Agreement. The SMLs were all organized by BDMC, the only lender under the agreements, and BDMC remained the administrator for all of the SMLs. Olympia and Computershare were only providing administrative services allowing for such SMLs be held in self-directed accounts, and their roles were accordingly limited to such an administrative responsibilities. Neither Olympia nor Computershare were lenders under the loan agreements,

as trustees or otherwise, and neither had any debt that was capable of being secured by a Charge.

69. To the extent that the beneficiaries of the BDMC SMLs under the First BDMC Loan Agreement and Second BDMC Loan Agreement were deceived by their trustee (BDMC), just as the Bondholders were deceived by Fortress and BDMC, such beneficiaries have their remedies in trust law against their trustee. As an equitable mortgage holder, Computershare's rights are not determined by the extent to which BDMC deceived its own beneficiaries.

70. Computershare and the Bondholders' rights as equitable mortgage holders are also not affected by the provisions of the *Land Titles Act*, R.S.O. 1990, c. L.5 (the "*Land Titles Act*"). The rights of equitable mortgage holders are a cardinal principal of property law that cannot be abrogated unless the legislative enactment is in the clearest and most unequivocal of terms. The *Land Titles Act* does not do so. To the extent that proof of fraud or deception is required, by virtue of the facts described above and originally in the Statement of Claim in this proceeding, BDMC and Fortress' creation of a security interest that purported to take priority over the known Bondholder security interest, constituted fraudulent and deceptive conduct. BDMC and Fortress knew of Computershare and Bondholders' prior interest, obtained the Project Lands without any notice to Computershare, continued to pay the Issuer's interest payments so as to not arise any suspicion by Bondholders, and obtained additional funding solely by ignoring Computershare's contractual rights and security interests. BDMC and Fortress only stopped paying the Issuer's interest payments once it had secured significant amounts of construction financing, which under the Trust Indenture would have had a first ranking security interest.

### **Indemnity**

71. Section 14.12 of the Trust Indenture provides as follows:

### **14.12 Indemnity**

The Issuer and the Guarantor hereby agree to indemnify and save harmless the Trustee, the Bondholders and their respective directors, trustees, officers, employees and agents (as applicable), and all of their successors and assigns (collectively the "Indemnified Parties"), from and against all losses, demands, claims, liabilities, damages, costs, actions, penalties, obligations and expenses (including legal fees and disbursements on a solicitor and client basis), howsoever arising, in connection with the Bonds, this Indenture, the Property and/or all assets relating thereto save and except liability arising from the Trustee's gross negligence, fraud or willful misconduct in the performance of its obligations hereunder.

72. Computershare claims against the Issuer, the Guarantor, Fortress Brookdale and Fortress 2015 for all obligations under the Trust Indenture.

### **Unjust Enrichment**

73. The Guarantor, Fortress Brookdale and Fortress 2015 received a benefit from the Bond proceeds and Computershare for the Bondholders suffered a corresponding deprivation. There is no juristic reason for the enrichment.

74. Computershare claims on the basis of unjust enrichment and seeks to trace the Bond proceeds into the Project Lands or, in the alternative, damages.

### **Governing Law**

75. The Trust Indenture provides that the Bond Documents (as defined therein) shall be governed by and construed in accordance with the laws of the Province of Alberta; however, the Trust Indenture does not limit proceedings to the courts of Alberta. This action is appropriately brought in Ontario.

### **Service Outside of Ontario**

76. The statement of claim may be served outside of Ontario, without a court order, because the proceeding consists of claims:

- (a) in respect of real or personal property in Ontario;
- (b) for the enforcement of a contract in respect of real or personal property in Ontario;
- (c) for the sale of, and payment in respect of, a mortgage on real property in Ontario;
- (d) in respect of a contract where the contract was made in Ontario and a breach of the contract has been committed in Ontario; and
- (e) against a person ordinarily resident in or carrying on business in Ontario.

### **Statutes and Rules**

77. The plaintiff pleads and relies on sections 5(3) and 24 of the *Conveyancing and Law of Property Act*, R.S.O. c.C34, the *Courts of Justice Act*, including sections 11, 96, 97, 100, 101, 103, 128 and 129, the *Land Titles Act*, including section 25, the *Mortgages Act*, R.S.O. 1990, c. M.40, including section 20 and Part II thereof, the *Partition Act*, R.S.O. 1990, c. P.4, including section 3 thereof, the *Personal Property Security Act*, R.S.O., 1990, c. P.10 including sections 58, 59, 60, 61, 62, 63, 64 and 72 thereof, and rules 1.04, 1.05, 17.02(a), (c), (e), (f) and (p), 41, 42.01 and 66 of the *Rules of Civil Procedure*.

Originally Issued: October 31, 2017

Fresh as Amended: November \_\_\_\_, 2021

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Lawyers for the Plaintiff

## SCHEDULE "A"

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
1165713 ONTARIO INC.	100,000
ZAHRA BARDAI	100,000
OLYMPIA TRUST COMPANY TR BRIAN MCCLUSKEY	64,000
OLYMPIA TRUST COMPANY TR SHARON MCCLUSKEY	55,000
DR. A. STONE MEDICINE PROFESSIONAL CORPORATION	125,000
DRS. PAUL JOZA & EVA JOZA MEDICINE PROFESSIONAL CORPORATION	50,000
FIERA MULTI-STRATEGY INCOME FUND	5,000,000
CHRISTOPHER GIFFIN	100,000
GABRIEL HEBERT	30,000
PAUL HEBERT & SYLVIE DUMONT TEN COM	30,000
ANIS KHAN	250,000
MAX NEIMAN DENTISTRY PROFESSIONAL CORPORATION	200,000
CAROLE MURPHY	25,000
OLYMPIA TRUST COMPANY FOR STEFANO PERRONE	25,000
OLYMPIA TRUST COMPANY FOR DANA SACCO	75,000
OLYMPIA TRUST COMPANY FOR MICHAEL LAYDEN	25,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	32,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	67,000
OLYMPIA TRUST COMPANY FOR GERRY SOKALSKY	100,000
OLYMPIA TRUST COMPANY FOR ANDREAS JOANNOU	85,000
OLYMPIA TRUST COMPANY FOR GEORGIA JOANNOU	70,000
OLYMPIA TRUST COMPANY FOR MARILYN COOK	389,000

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
<b>OLYMPIA TRUST COMPANY FOR JUNG PARK</b>	<b>50,000</b>
<b>OLYMPIA TRUST COMPANY FOR PIETRO BITONDO</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR DONNA DOUGHERTY</b>	<b>100,000</b>
<b>OLYMPIA TRUST COMPANY FOR JAMES STURINO</b>	<b>31,000</b>
<b>OLYMPIA TRUST COMPANY FOR SANDRA L. JACKSON</b>	<b>30,000</b>
<b>OLYMPIA TRUST COMPANY FOR ANNA RUFFOLO</b>	<b>172,000</b>
<b>OLYMPIA TRUST COMPANY FOR SHARON THERESE ELLIS</b>	<b>35,000</b>
<b>OLYMPIA TRUST COMPANY FOR MICHAEL BARKER</b>	<b>160,000</b>
<b>OLYMPIA TRUST COMPANY FOR MICHAEL BARKER</b>	<b>33,000</b>
<b>OLYMPIA TRUST COMPANY FOR LEE ANN TERNOEY</b>	<b>70,000</b>
<b>OLYMPIA TRUST COMPANY FOR DRAGANA PILAVDZIC</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR CHRISTOPHER D'ATRI</b>	<b>225,000</b>
<b>OLYMPIA TRUST COMPANY FOR KAMLA BHAGWANDAS JUTA</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR HARRY T. EARLE</b>	<b>75,000</b>
<b>OLYMPIA TRUST COMPANY FOR ALI NOURALIEI</b>	<b>153,000</b>
<b>OLYMPIA TRUST COMPANY FOR DOMENICO FILOSO</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR RYAN MCCONAGHY</b>	<b>45,000</b>
<b>OLYMPIA TRUST COMPANY FOR KATHLEEN CHUNG</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR MICHAEL PRENDERGAST</b>	<b>50,000</b>
<b>OLYMPIA TRUST COMPANY FOR ROBERT M. DWYER</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR WILMA WATSON</b>	<b>40,000</b>
<b>OLYMPIA TRUST COMPANY FOR PETER ACCARDI</b>	<b>40,000</b>
<b>OLYMPIA TRUST COMPANY FOR CINDI S. STEWART</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR DAVID D. STEWART</b>	<b>25,000</b>

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
<b>OLYMPIA TRUST COMPANY FOR KREASAN RAJAGOPAL</b>	<b>100,000</b>
<b>OLYMPIA TRUST COMPANY FOR ROSARIO RUFFOLO</b>	<b>172,000</b>
<b>OLYMPIA TRUST COMPANY FOR PATRICK CORNWALL</b>	<b>75,000</b>
<b>RJ INSURANCE SERVICES LIMITED</b>	<b>50,000</b>
<b>SHANA ZAMERET</b>	<b>25,000</b>
<b>RUTH ZNOTINS</b>	<b>100,000</b>
<b>TOTAL OUTSTANDING</b>	<b>9,028,000</b>

## SCHEDULE "B"

CHARGE	REGISTRATION DATE	CHARGE
AT4707175	OCTOBER 17, 2017	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
AT4591073	JUNE 7, 2017	FIRM CAPITAL MORTGAGE FUND INC. [PAID OUT]
AT4065378	NOVEMBER 13, 2015	QUINCY INVESTMENTS LIMITED AS TO 52.50% INTEREST 969592 ONTARIO LIMITED AS TO A 7.50% INTEREST 969593 ONTARIO LIMITED AS TO A 7.50% INTEREST 2307271 ONTARIO INC. AS TO A 10.00% INTEREST SASSO AUTO CONSULTING INC. AS TO A 2.50% INTEREST ANGELO GROSSI AS TO A 7.50% INTEREST DAVID MARK DOUBILET AS TO A 7.50% INTEREST GUS STAMATIOU AS TO A 2.50% INTEREST ROBERT DI MATTEO AS TO A 1.25% INTEREST TONINO AMENDOLA AS TO A 1.25% INTEREST [PAID OUT]

## SCHEDULE "C"

CHARGE	REGISTRATION DATE	CHARGE
AT3955352  AT4645430	ORIGINALLY REGISTERED JULY 23, 2015 CURRENT TRANSFER OF CHARGE REGISTERED AUGUST 2, 2017	ORIGINALLY CENTRO MORTGAGE INC. CURRENTLY BUILDING & DEVELOPMENT MORTGAGES CANADA, IN TRUST AS TO A 42.75% INTEREST AND OLYMPIA TRUST COMPANY INC.AS TO A 57.25 % INTEREST
AT3894769	MAY 28, 2015	JAEKEL CAPITAL INC  [PAID OUT]

COMPUTERSHARE TRUST COMPANY OF CANADA in its  
capacity as trustee under a trust indenture dated Nov 26, 2013  
Plaintiff

-and- FORTRESS BROOKDALE INC. *et. al.*

Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

**Proceeding commenced at  
Toronto, Ontario**

**FRESH AS AMENDED STATEMENT OF CLAIM**

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Lawyers for the Plaintiff

**APPENDIX 13:  
BDMC STATEMENT OF DEFENCE**

Court File No. CV-17-585584-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**[COMMERCIAL LIST]**

B E T W E E N:

COMPUTERSHARE TRUST COMPANY OF CANADA  
in its capacity as trustee under a trust indenture dated November 26, 2013

Plaintiff

- and -

FORTRESS BROOKDALE INC., BROOKDALE REALTY CORPORATION,  
MADY AVENUE ROAD LTD.,  
OLYMPIA TRUST COMPANY,  
BUILDING & DEVELOPMENT MORTGAGES CANADA INC. and  
FORTRESS AVENUE ROAD (2015) INC.

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANT,**  
**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

1. This Statement of Defence of Building & Development Mortgages Canada Inc. (“**BDMC**”) has been prepared by FAAN Mortgage Administrators Inc. (the “**Trustee**”) in its capacity as the Court-appointed trustee of the assets, undertakings, and properties of BDMC.
2. The original Statement of Claim in this proceeding was issued on October 31, 2017. The Plaintiff delivered a Fresh as Amended Statement of Claim on or about January 18, 2022 (the “**Amended Claim**”). Capitalized terms not otherwise defined herein have the meaning set out in the Amended Claim.
3. BDMC is a corporation incorporated pursuant to the laws of the Province of Ontario. BDMC, as a trustee on behalf of individual lenders (the “**Individual Lenders**”), registered two charges against the Project Lands (as defined below) as security for two syndicated mortgages made by the Individual Lenders to Fortress Brookdale Inc. (“**Fortress Brookdale**”).

4. The Trustee was appointed, pursuant to an Order of the Honourable Mr. Justice Hainey dated April 20, 2018, as the Court-appointed trustee of the assets, undertakings, and properties of BDMC.

5. This Statement of Defence addresses the allegations that are relevant to BDMC, namely, the Plaintiff's claim that it and/or the Bondholders it represents are entitled to an equitable mortgage secured on the Project Lands in priority to BDMC's registered charges. To the extent the Amended Claim seeks other grounds of relief unrelated to this issue in respect of other defendants, the Trustee currently takes no position in respect thereof, save and except to the extent they may affect BDMC's recovery from its registered syndicated mortgages.

6. Except as is expressly admitted herein, the Trustee denies each and every allegation contained in the Amended Claim, and puts the Plaintiff to the strict proof thereof. The Trustee specifically denies the allegations contained in paragraphs 1, 7, 8, 9, 10, 11, 12, 13(e), 16, 23, 25, 30, 32, 37, 38, 39, 40, 42, 43, 45, 46, 51, 52, 53, 54, 55, 56, 57, 65, 66, 67, 68, 69, 70, 72, 73, 74 and 77 of the Amended Claim.

7. The Trustee has no knowledge, or insufficient knowledge, of the allegations contained in paragraphs 2, 3, 5, 6, 14, 15, 18, 19, 20, 21, 24, 26, 27, 28, 29, 31, 34, 35, 36, 44, 47, 48, 49, 50, 58, 59, 60, 61, 62, and 63, of the Amended Claim.

8. The Trustee admits the allegations in paragraphs 4, 13(a)-(d), 17, 22, 33, 41 and 71 of the Amended Claim.

### The Project and BDMC

9. The defendant, Fortress Brookdale, is a corporation incorporated pursuant to the laws of the Province of Ontario that carried on business as a land developer.

10. Fortress Brookdale undertook to construct an eight-storey residential building located in the City of Toronto at 1678-1704 Avenue Road, 375-377 Fairlawn Avenue, and 412-416 Brookdale Avenue (the “**Project**” and the “**Project Lands**”). The Trustee’s understanding is that Fortress Brookdale took control of the Project in or around February 2015, when it acquired title to the Project Lands from Mady Avenue Road Ltd.

11. The defendant, Fortress Avenue Road (2015) Inc. (“**Fortress 2015**”) is a corporation incorporated pursuant to the laws of the Province of Ontario and was one of the beneficial owners of the Project as to a 75% interest. The Trustee’s understanding is that Fortress 2015 acquired such beneficial ownership of the Project Lands in or around February 2015 from David Mady Investments (2008) Inc. In or around May 2015, Fortress 2015 sold a beneficial interest in 25% of the Project Lands to Fernbrook Homes (Brookdale) Limited (“**Fernbrook**”), a corporation incorporated pursuant to the laws of the Province of Ontario.

12. The Trustee understands that the Plaintiff is a party to a Trust Indenture (the “**Indenture**”) dated November 26, 2013 between Brookdale Realty Corporation, as issuer (the “**Issuer**”), Olympia Trust Company, as trustee (succeeded as trustee by the Plaintiff), and Mady Avenue Road Ltd., as guarantor (the “**Guarantor**”). BDMC is not a party to the Trust Indenture.

13. BDMC was the principal mortgage administrator used by Fortress Real Developments Inc. (“**FRDI**”) and certain related entities, including Fortress Brookdale, to raise initial financing from the investing public for early stage real estate developments, including for the Project.

14. BDMC was and is a distinct entity from each of FRDI, Fortress Brookdale and Fortress 2015, with different directors and officers. The Trustee denies that Petrozza or Rathore's knowledge, if any, regarding the Indenture, and the Plaintiff's alleged right to have a mortgage registered in respect of the Project Lands by the "Registration Date" of October 31, 2015, can be imputed to BDMC, as alleged at paragraphs 42, 43 and 66 of the Amended Claim (or at all). In any case, as set out further below, even if BDMC had knowledge of the Indenture, which is not admitted but expressly denied, that does not provide a basis for the Plaintiff's alleged equitable mortgage to take priority over the charges registered for the benefit of the Individual Lenders.

15. More than 11,000 individual investors have invested an aggregate amount of approximately \$560 million in syndicated mortgage loans administered by BDMC. These funds have been advanced in connection with 45 different projects that are in various stages of development. The Trustee was appointed by the Court as the trustee of the assets, undertakings, and properties of BDMC for the purpose of advancing and protecting the interests of the individual investors in the projects funded by the BDMC loans, including the Project.

### **The BDMC Mortgages**

16. BDMC acts as administrator in respect of two syndicated mortgage loans made by Individual Lenders to Fortress Brookdale, each of which was secured by a registered charge on the Project Lands. More particularly:

#### **(a) BDMC First Mortgage**

17. BDMC (under its former name of Centro Mortgage Inc.), as trustee on behalf of the Individual Lenders, including certain Individual Lenders who have self-directed accounts with Olympia Trust Company (the "**Olympia Lenders**"), entered into a loan agreement with Fortress Brookdale dated May 27, 2015 (as amended, the "**BDMC First Mortgage**").

18. The BDMC First Mortgage was registered on title on July 23, 2015 as Instrument No. AT3955352 in the amount of \$10,300,000, as a charge that (i) Olympia holds in trust for the Olympia Lenders and (ii) BDMC holds in trust for the Individual Lenders who are not Olympia Lenders. This original charge was subsequently amended by Instruments No. AT4216294, AT4249565, AT4311566, AT4414052, AT4486280, and AT4619487, each increasing the principal amount to a final total of \$21,800,000. BDMC acts as administrator of the BDMC First Mortgage on behalf of all Individual Lenders (including the Olympia Lenders). In total, there are 404 Individual Lenders in respect of the BDMC First Mortgage.

19. BDMC advanced a total of \$20,706,000 to Fortress Brookdale under the BDMC First Mortgage. As of December 31, 2021, the accrued interest under the BDMC First Mortgage is \$10,675,079.82, and the total amount of principal and interest, all of which is due and owing, is \$31,381,079.82. The interest *per diem* on the BDMC First Mortgage is \$5,105.59, which continues to accrue.

(b) **BDMC Second Mortgage**

20. BDMC, as trustee on behalf of the Individual Lenders, including certain Individual Lenders who have self-directed accounts with Computershare Trust Company of Canada (the “**Computershare Lenders**”), entered into a loan agreement with Fortress Brookdale, dated July 10, 2017 (as amended, the “**BDMC Second Mortgage**”).

21. The BDMC Second Mortgage was registered on title on October 17, 2017 as Instrument No. AT4707175 in the amount of \$4,800,000, as a charge that (i) Computershare holds in trust for the Computershare Lenders and (ii) BDMC holds in trust for the Individual Lenders who are not Computershare Lenders. BDMC acts as administrator of the BDMC Second Mortgage on

behalf of all Individual Lenders (including the Computershare Lenders). In total, there are 87 Individual Lenders in respect of the BDMC Second Mortgage.

22. The Trustee notes that no specific relief has been sought by the Plaintiff against Computershare as trustee for the Computershare Lenders or against the Computershare Lenders themselves (as neither Computershare nor the Computershare Lenders are named as defendants). However, it appears from the Amended Claim that Computershare as plaintiff is seeking priority over the Computershare Lenders.

23. BDMC advanced a total of \$4,622,900 to Fortress Brookdale under the BDMC Second Mortgage. As of December 31, 2021, the accrued interest under the BDMC Second Mortgage is \$1,526,141.51, and the total amount of principal and interest, all of which is due and owing, is \$6,149,041.51. The interest *per diem* on the BDMC Second Mortgage is \$1,013.24, which continues to accrue.

#### **Other Mortgages Held in the Project Lands**

24. In addition to the BDMC mortgages, other secured lenders previously held mortgages in respect of the Project Lands as security for various loans advanced to Fortress Brookdale, including:

- (a) Firm Capital Mortgage Fund Inc. (“**Firm Capital**”), which held a first ranking charge, registered on title on June 7, 2017 as Instrument No. AT4591073 in the amount of \$18,500,000;
- (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 as Instrument No. AT4065378 in the amount of \$5,330,000; and

- (c) Jaekel Capital Inc. (formerly RW Fortress Inc.) (“Jaekel”), which held a third ranking charge, registered on title on May 28, 2015 as Instrument No. AT3804769 in the amount of \$6,600,000.

25. These mortgages were amended, transferred and postponed by various registrations.

26. As of October 31, 2017 (i.e. the date the original Statement of Claim was issued), the secured lenders’ registered charges on title to the Project Lands were as follows:

<u>Position</u>	<u>Lender</u>	<u>Amount<sup>1</sup></u>
First	Firm Capital	\$18,500,000
Second	Quincy	\$5,800,000
Third	Jaekel	\$675,000
Fourth	BDMC Second Mortgage	\$4,800,000
Fifth	BDMC First Mortgage	\$21,800,000

27. Each of Firm Capital, Quincy and Jaekel were named as defendants in the original Statement of Claim.

### **The Sale of the Project and the Vesting Order**

28. On or about January 24, 2018, Firm Capital and Quincy each provided notice to Fortress Brookdale of events of default under their respective loan agreements, including failure to pay

<sup>1</sup> Pursuant to the Parcel Registers, as amended, transferred and postponed.

principal amounts owing thereunder plus additional interest and fees due and owing. These notices constituted events of default in respect of the BDMC First Mortgage and BDMC Second Mortgage.

29. On March 1, 2018, Firm Capital served court materials seeking the appointment of a receiver over Fortress Brookdale's assets, including the Project. That application was not pursued.

30. Instead, on or about April 24, 2018, Firm Capital commenced notice of sale proceedings and appointed RSM Canada Limited ("**RSM**") as its private receiver over the Project. RSM undertook a sales process, and on October 18, 2018, the sale of the Project was approved by the Court, as recommended by RSM.

31. Pursuant to the Vesting Order of Justice McEwen dated October 18, 2018 (the "**Vesting Order**"), on closing of the sale transaction, the purchaser would acquire the right, title and interest in the Project Lands free and clear of any existing claims and encumbrances. The Vesting Order provided for the net proceeds of sale (after payment of closing costs and repayment of the Firm Capital mortgage) (the "**Net Proceeds**"), to be paid into Court, and for the Net Proceeds to stand in place of the Project Lands, with all claims and encumbrances attaching to the Net Proceeds (including *inter alia* the BDMC charges) in the same priority as existed immediately prior to sale.

32. The sale of the Project closed on October 24, 2018. The selling price was approximately \$50 million. The Net Proceeds, after costs and the repayment of the Firm Capital mortgage, were \$26,945,205.

33. On March 21, 2019, an order was issued approving the payment of \$5,872,436 to Quincy and \$580,062 to Jaekel out of the Net Proceeds, satisfying the outstanding obligations owing in respect of their respective loans. After repayment of the amounts owing on these mortgages, approximately \$20,492,707 in Net Proceeds remained and continued to be held in Court in trust.

### **Resolution of Construction Lien Claims**

34. Certain construction lien claimants also claimed priority to a portion of the remaining Net Proceeds. In total, sixteen construction liens were registered against the Project by twelve lien claimants claiming an aggregate amount of \$8,673,855.51 (the “**Construction Liens Claims**”).

35. The Trustee responded to the Construction Lien Claims, and incurred significant fees and expenses to respond to and resolve those claims, which were claiming priority to the BDMC mortgages and the Plaintiff’s alleged equitable mortgage. To the extent any finding is made in favour of the Plaintiff for any amounts in priority to, or that rank *pari passu* with, the BDMC’s mortgages, that amount must be reduced by the amounts expended by the Trustee to resolve the Construction Lien Claims.

36. After a mediation and other without prejudice negotiations, an Order was entered into on consent on August 28, 2020:

- (a) discharging all of the construction liens; and
- (b) directing payment in the amount of \$4,551,903.04, drawn from the Net Proceeds and being held in Court, to the construction lien claimants.

37. After payment of the amounts owing in respect of the Construction Lien Claims, approximately \$17.5 million, inclusive of accrued interest, remains and continues to be held in Court in trust.

### **The Plaintiff's Claim for Priority**

38. The Plaintiff alleges that it and the Bondholders it represents are entitled to an equitable mortgage in the principal amount of \$9,028,000 (plus other amounts, including interest owing and accruing thereon under the Indenture), in priority over the BDMC charges. More particularly, the Trustee understands that the Plaintiff seeks to enforce its alleged rights pursuant to the Indenture.

39. The Plaintiff alleges that the Indenture provided for the issuance of bonds to finance the construction of the Project. The Plaintiff maintains that:

- (a) security was to be provided by the Issuer and the Guarantor to the Plaintiff on or before the “**Registration Date**” of October 31, 2015, however, the registrations were not done;
- (b) it therefore holds an equitable mortgage; and
- (c) this mortgage ranks in priority to the BDMC charges.

### **The Trustee's Response to the Plaintiff's Claim**

40. The Trustee denies that the Plaintiff and/or the Bondholders hold an equitable mortgage in respect of the Project, and puts the Plaintiff to the strict proof thereof. In particular and without limitation, the Plaintiff and Bondholders failed to register a charge (or ensure that a charge was registered) by the Registration Date – nearly two years after the execution of the Indenture and over one year after the bonds were issued – and failed to confirm that the Issuer and Guarantor had effected such a registration. The Trustee pleads that the Plaintiff and Bondholders were negligent and reckless in failing to protect their alleged interest and should not be entitled to equitable relief.

41. In any case, in the event the Plaintiff and/or Bondholders would otherwise be found to hold an equitable mortgage, the Trustee pleads that this equitable mortgage ranks below BDMC's registered charges. Pursuant to the *Land Titles Act*, an unregistered interest cannot take priority over a registered interest.

42. The Trustee pleads that the only exception to this principle is a limited and narrow exception with respect to "fraudulent instruments". The Plaintiff does not allege that the BDMC charges are "fraudulent instruments" as defined in the *Land Titles Act*.

43. With respect specifically to the allegation at paragraph 70 of the Amended Claim that BDMC engaged in "fraudulent and deceptive conduct", the Trustee denies that BDMC engaged in such conduct, and puts the Plaintiff to the strict proof thereof. However, even if such conduct could be proved, which is not admitted but expressly denied, it would not result in the BDMC charges being "fraudulent instruments" as narrowly defined in the *Land Titles Act*.

44. The Trustee further pleads that the doctrine of actual notice is no longer operative to permit an unregistered interest to defeat a registered interest, and accordingly, the question of BDMC's knowledge of the Plaintiff and/or Bondholders' alleged rights is irrelevant to the priority dispute at issue in this case. As registered instruments, the BDMC charges take priority over any unregistered equitable mortgage in favour of the Plaintiff and/or Bondholders. The Trustee pleads and relies on sections 78(4), 78(4.1), 78(4.2), 78(5) and 93(3) of the *Land Titles Act*.

45. In the alternative, to the extent that actual knowledge of a prior interest is relevant, which is not admitted but expressly denied, it is the knowledge of the Individual Lenders that is relevant in this case. The Individual Lenders did not have any knowledge of the Plaintiff and/or

Bondholders' alleged rights and interest in the Project in priority to that of the Individual Lenders, nor can such knowledge be imputed to them.

- (a) No Knowledge: The Individual Lenders are innocent third parties who acquired their rights in the Project for *bona fide* value. There is no allegation that the Individual Lenders knew, or ought to have known, of the Bondholders' alleged rights and interest in the Project.
- (b) No Imputed Knowledge: To encourage the Individual Lenders to loan funds to the Project, the Individual Lenders were expressly advised that the Bondholders' held a subordinate, unsecured interest. To the extent that BDMC had knowledge of the Indenture and the Bondholders' right to have a senior ranking interest registered by the Registration Date, which is not admitted but expressly denied, the Individual Lenders were not provided with full and accurate disclosure of these facts. The alleged knowledge of BDMC as trustee, which is not admitted but expressly denied, cannot be deemed or imputed to the Individual Lenders as beneficiaries in these circumstances, and it would be inequitable to do so, particularly where the Plaintiff and Bondholders could have taken steps to protect their interest but failed to do so.

46. In the further alternative, to the extent that BDMC's knowledge is relevant, which is not admitted but expressly denied, the Trustee pleads that BDMC did not have any knowledge of the Plaintiff and/or Bondholders' unregistered interest at any relevant time. The Trustee specifically denies that Rathore and Petrozza's knowledge regarding the Indenture, if any, can be imputed to BDMC (or the Individual Lenders). As set out above, BDMC was a distinct entity from the various Fortress entities, and had its own directors and officers.

47. In any case, to the extent the Plaintiff and/or Bondholders hold an equitable mortgage, it only arose on October 31, 2015, after the registration of the BDMC First Mortgage, and therefore is subordinate to the BDMC First Mortgage. The Bondholders were expressly advised in the Offering Memorandum that their interest would remain unsecured until the Registration Date.

48. In the further alternative, to the extent the Plaintiff and/or Bondholders are found to hold an equitable mortgage, the Trustee pleads that the Plaintiff and/or Bondholders' rights can be no broader than provided for by the Indenture – the Plaintiff seeks a remedy in equity, and *equity regards as done that which ought to be done*. The Indenture expressly provided that the Bondholders' interest was to rank below “Senior Indebtedness” and *pari passu* with any “Syndicated Mortgage”.

49. The BDMC Second Mortgage was used to renew, extend or refund Indebtedness (as defined in the Indenture) of the Guarantor and thus is Senior Indebtedness. The BDMC Second Mortgage therefore also ranks ahead of any interest of the Plaintiff and/or Bondholders.

50. The BDMC First Mortgage and BDMC Second Mortgage are also Syndicated Mortgages, and therefore in any scenario, rank no lower than *pari passu* with the Bondholders' interest. It is irrelevant that the BDMC First Mortgage and BDMC Second Mortgage were offered by Fortress Brookdale, rather than the Guarantor. As reflected in the Indenture, the Bondholders' expectation was that their interest would rank *pari passu* with any syndicated mortgage offered by the owner of the Project. The fact that ownership may have been transferred in February 2015 from the Guarantor to Fortress Brookdale, prior to the Registration Date, cannot result in the Bondholders' obtaining a higher ranking interest than they bargained for under the Indenture.

51. The Plaintiff seeks an unjust result. The Bondholders and Individual Lenders were both *bona fide* lenders for value. *A party who seeks equity must do equity*. It would be inequitable to

provide the Bondholders with a priority interest ahead of the Individual Lenders, when that outcome was never intended nor bargained for, and where the Plaintiff failed to take steps to protect the Bondholders' interest.

52. The Trustee also pleads that to the extent the Plaintiff is found to hold an equitable mortgage that ranks ahead of, or *pari passu* with, the BDMC mortgages, that it would be inequitable in the circumstances for that priority or *pari passu* ranking to apply in respect of any interest owing under the Indenture due to the passage of time.

January 27, 2022

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- AND TO:** OLYMPIA TRUST COMPANY  
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- AND TO:** FORTRESS AVENUE ROAD (2015) INC.  
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**COMPUTERSHARE TRUST COMPANY  
OF CANADA** in its capacity as trustee under  
a trust indenture dated November 26, 2013  
Plaintiff

and

**FORTRESS BROOKDALE INC.,  
et al**  
Defendants

Court File No: CV-17-585584-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF DEFENCE**

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Development Mortgages Canada Inc.

**APPENDIX 14:  
BROOKDALE SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**  
**(dated as of November ●, 2022)**  
**(this “Settlement Agreement”)**

A M O N G:

**COMPUTERSHARE TRUST COMPANY OF CANADA,**  
**solely in its capacity as trustee under that certain trust indenture**  
**dated November 26, 2016**  
**(in such capacity, “Computershare”)**

- and -

**FAAN MORTGAGE ADMINISTRATORS INC.,**  
**solely in its capacity as Court-appointed Trustee of**  
**Building & Development Mortgages Canada Inc.**  
**(in such capacity, the “Trustee”)**

- and -

**OLYMPIA TRUST COMPANY,**  
**solely in its capacity as trustee for the Olympia Investors (as hereinafter defined)**  
**(in such capacity, “OTC”)**

**WHEREAS**, Fortress Brookdale Inc. (“**Brookdale Borrower**”) undertook to construct an eight-storey residential building located in the City of Toronto at 1678-1704 Avenue Road, 375-377 Fairlawn Avenue, and 412-416 Brookdale Avenue (the “**Brookdale Project**”, and the “**Project Lands**”). 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;

**AND WHEREAS**, Building & Development Mortgages Canada Inc. (“**BDMC**”) was the principal mortgage administrator used by Fortress Real Developments Inc. and certain related entities, including the Brookdale Borrower, to raise financing from the investing public for early state real estate developments, including for the Brookdale Project;

**AND WHEREAS**, BDMC, as trustee on behalf of individual investors (the “**Individual Investors**”), registered two charges against the Project Lands as security for two syndicated mortgage loans made by the Individual Investors through BDMC to the Brookdale Borrower;

**AND WHEREAS**, BDMC (under its former name of Centro Mortgage Inc.), as trustee on behalf of certain Individual Investors, including certain Individual Investors who have self-directed accounts with OTC (the “**Olympia Investors**”), entered into a loan agreement with the Brookdale Borrower dated May 27, 2015 (as amended, the “**Original BDMC Mortgage**”). There are currently 404 Individual Investors in respect of the Original BDMC Mortgage. BDMC acts as administrator of the Original BDMC Mortgage on behalf of all such Individual Investors (including the Olympia Investors);

**AND WHEREAS**, the Original BDMC Mortgage was registered on title to the Project Lands on July 23, 2015, as Instrument No. AT3955352 in the amount of \$10,300,000, as a charge that (i) OTC held in trust for the Olympia Investors, and (ii) BDMC held in trust for the Individual Investors that are not Olympia Investors, which original charge was subsequently amended by

Instruments No. AT4216294, AT4249565, AT4311566, AT4414052, AT4486280, and AT4619487, each increasing the principal amount to a final total of \$21,800,000;

**AND WHEREAS**, BDMC advanced a total principal amount of \$20,706,000.00 to the Brookdale Borrower under the Original BDMC Mortgage. As of October 15, 2022, there is accrued and unpaid interest on the Original BDMC Mortgage of \$12,145,489, and the total amount of principal and interest on the Original BDMC Mortgage of \$32,851,489, was due and owing. Such amount remains outstanding and per diem interest on the Original BDMC Mortgage of \$5,106 continues to accrue;

**AND WHEREAS**, BDMC, as trustee on behalf of certain Individual Investors, including certain Individual Investors (the “**Computershare Investors**”) who had self-directed accounts with Computershare Trust Company of Canada (in its capacity as trustee for the Computershare Investors, “**CTC**”), entered into a loan agreement with the Brookdale Borrower dated July 10, 2017 (as amended, the “**Mezzanine BDMC Mortgage**” and, together with the Original BDMC Mortgage, the “**BDMC Mortgages**”). There are currently 87 Individual Investors in respect of the Mezzanine BDMC Mortgage. BDMC acts as administrator of the Mezzanine BDMC Mortgage on behalf of all such Individual Investors (including the Computershare Investors);

**AND WHEREAS**, the Mezzanine BDMC Mortgage was registered on title to the Project Lands on October 17, 2017, as Instrument No. AT4707175 in the amount of \$4,800,000, as a charge that (i) CTC held in trust for the Computershare Investors, and (ii) BDMC held in trust for the Individual Investors that are not Computershare Investors;

**AND WHEREAS**, BDMC advanced a total principal amount of \$4,622,900 to the Brookdale Borrower under the Mezzanine BDMC Mortgage. As of October 15, 2022, there is accrued and unpaid interest under the Mezzanine BDMC Mortgage of \$1,817,954, and the total amount of principal and interest on the Mezzanine BDMC Mortgage of \$6,440,854, was due and owing. Such amount remains outstanding and per diem interest on the Mezzanine BDMC Mortgage of \$1,013 continues to accrue;

**AND WHEREAS**, certain other secured lenders (collectively, the “**Prior-Ranking Mortgages**”) previously held mortgages, ranking in priority to the BDMC Mortgages, in respect of the Project Lands, as security for various loans advanced to the Brookdale Borrower;

**AND WHEREAS**, on or about January 2018, two of the Prior-Ranking Mortgagees provided notice to the Brookdale Borrower of events of default under their respective loan agreements, including failure to pay principal amounts owing thereunder plus additional interest and fees due and owing, which notices constituted events of default in respect of the BDMC Mortgages;

**AND WHEREAS**, the Trustee was appointed pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”, and the proceedings commenced thereby, the “**BDMC Proceedings**”) dated April 20, 2018, as the Court-appointed trustee of the assets, undertakings, and properties of BDMC for the purpose of advancing and protecting the interests of the individual investors in the projects funded by BDMC loans, including the Brookdale Project. Pursuant to an order of the Court in the BDMC Proceedings dated June 26, 2018, Chaitons LLP was appointed as representative counsel for the investors in BDMC syndicated mortgage loans;

**AND WHEREAS**, on or around April 2018, one of the Prior-Ranking Mortgagees commenced notice of sale proceedings and appointed a private receiver over the Brookdale Project. The receiver undertook a sales process and, on October 18, 2018, the sale of the Project

Lands was approved by the Court pursuant to a vesting order (the “**Vesting Order**”). The selling price was approximately \$50 million;

**AND WHEREAS**, pursuant to the Vesting Order, on closing of the sale transaction on October 24, 2018, the purchaser acquired the right, title and interest in the Project Lands free and clear of any existing claims and encumbrances, and the net proceeds of such sale, after payment of closing costs and repayment of the first ranking Prior-Ranking Mortgagee (the “**Net Proceeds**”), were paid into court to stand in place of the Project Lands, with all applicable claims and encumbrances attaching to the Net Proceeds (including, *inter alia*, the BDMC Mortgages) in the same priority as existed immediately prior to sale;

**AND WHEREAS**, on or around March 2019, an order was issued approving the payment in full of the second and third ranking Prior-Ranking Mortgagees from the Net Proceeds.

**AND WHEREAS**, the Net Proceeds, after payment of closing costs and of the three Prior-Ranking Mortgagees, equaled approximately \$20,492,707, which amount continued to be held by the Accountant of the Ontario Superior Court of Justice (the “**Accountant**”), in trust;

**AND WHEREAS**, certain construction lien claimants claimed priority to a portion of the remaining Net Proceeds. In total, fourteen construction liens were registered against the Project Lands by twelve lien claimants claiming an aggregate amount of \$8,673,855.51 (the “**Construction Liens Claims**”);

**AND WHEREAS**, after a mediation and other without prejudice negotiations, an order was entered into on consent on August 28, 2020, (i) discharging all of the construction liens; and (ii) directing payment from the Net Proceeds in the amount of \$4,551,903.04 to such construction lien claimants;

**AND WHEREAS**, after payment of such amount in respect of the Construction Lien Claims, approximately \$17.7 million (the “**Residual Proceeds**”), inclusive of accrued interest, remains and is held by the Accountant in the account (the “**Account**”) set up to the credit of Court File No. CV-18-596204-00CL (Account No. 561131), in trust, as of the date hereof;

**AND WHEREAS**, Computershare, as trustee (as successor trustee to Olympia Trust Company), is a party to that certain trust indenture dated November 26, 2013 (the “**Trust Indenture**”), between Brookdale Realty Corporation, as issuer (the “**Issuer**”), and Mady Avenue, as guarantor (the “**Guarantor**”). Pursuant to the Trust Indenture, the Issuer issued, and holders (collectively, the “**Bondholders**”) subscribed for, bonds (the “**Bonds**”) in the total principal amount of \$9,028,000. The current Bondholders are listed in Schedule “A” hereto;

**AND WHEREAS**, the Bonds were issued to finance the development of the Brookdale Project, and in accordance with the Trust Indenture, were to be secured by, among other things, a general security agreement and a mortgage on the Project Lands (together, the “**Computershare Security**”) 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 Project Lands;

**AND WHEREAS**, Computershare, as trustee for the Bondholders, issued a Statement of Claim dated October 31, 2017, in the proceedings with the Court File No. CV-17-585584-00CL (the “**Computershare Claim**”) which was amended January 18, 2022, pursuant to an Order of Justice McEwen dated January 14, 2022;

**AND WHEREAS**, the Trustee, on behalf of BDMC, issued a statement of defence to the Computershare Claim on January 27, 2022;

**AND WHEREAS**, Computershare has asserted, 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 ranked in priority to the BDMC Mortgages. Computershare further asserts that Computershare, on behalf of the Bondholders, is therefore entitled to priority payment from the Residual Proceeds on account of the Computershare Claim;

**AND WHEREAS**, 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 were to be found to have held such an equitable mortgage, that such equitable mortgage would have ranked in priority to the BDMC Mortgages. The Trustee further denies that Computershare is entitled to priority payment from the Residual Proceeds on account of the Computershare Claim;

**AND WHEREAS**, the parties to this Settlement Agreement wish to compromise and settle between themselves all outstanding matters and claims or potential claims between them, known or unknown, as of the date of this Settlement Agreement in respect of the Residual Proceeds, including the Computershare Claim;

**NOW THEREFORE**, in consideration of the settlement payments contemplated in this Settlement Agreement, the dismissal or discontinuance, as applicable, of the Computershare Claim without costs, and the undertakings and covenants set forth herein, the sufficiency of which consideration is hereby irrevocably acknowledged by each of the parties hereto, the parties covenant and agree as follows:

## **REPRESENTATIONS AND WARRANTIES**

1. Each party hereto represents and warrants to the others that, to the best of its knowledge, the recitals to this Settlement Agreement are accurate in all material respects.
2. Computershare hereby represents and warrants to the Trustee and OTC that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, that this Settlement Agreement has been duly executed and delivered by it, and, assuming the due authorization, execution and delivery by the other parties hereto, this Settlement Agreement constitutes the legal, valid and binding obligation of Computershare, enforceable in accordance with its terms, subject to laws of general application and bankruptcy, insolvency and other similar laws affecting creditors' rights generally and general principles of equity, and it has all the necessary power and authority to execute and deliver this Settlement Agreement, including the power and authority to bind the Bondholders to the terms of this Settlement Agreement.
3. The Trustee hereby represents and warrants to Computershare and OTC that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, that this Settlement Agreement has been duly executed and delivered by it, and, assuming the due authorization, execution and delivery by the other parties hereto, and approval of the Court, this Settlement Agreement constitutes the legal, valid and binding obligation of the Trustee, enforceable in accordance with its terms, subject to laws of general application and bankruptcy, insolvency and other similar laws affecting creditors' rights generally and general principles of equity.

4. OTC hereby represents and warrants to Computershare and the Trustee that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, that this Settlement Agreement has been duly executed and delivered by it, and, assuming the due authorization, execution and delivery by the other parties hereto, this Settlement Agreement constitutes the legal, valid and binding obligation of OTC, enforceable in accordance with its terms, subject to laws of general application and bankruptcy, insolvency and other similar laws affecting creditors' rights generally and general principles of equity.

#### **COURT APPROVAL OF SETTLEMENT AGREEMENT**

5. The Trustee shall use commercially reasonable efforts to seek approval of this Settlement Agreement in the BDMC Proceedings pursuant to an order (the "**Brookdale Settlement and Distribution Order**"), substantially in the form attached as Schedule "B" hereto, including a provision that authorizes and directs the Accountant to distribute, from the Residual Proceeds held in the Account: (i) C\$4,100,000 to Computershare's counsel, DLA Piper (Canada) LLP, in trust, for the Bondholders (the "**Computershare Settlement Amount**"), and (ii) the Residual Proceeds less C\$4,100,000 to the Trustee (the "**Trustee Settlement Amount**"). Computershare shall use commercially reasonable efforts to support the issuance of the Brookdale Settlement and Distribution Order as promptly as practicable by the Court, and shall not take any action, directly or indirectly, that is materially inconsistent with, or is intended or is likely to hinder, interfere with the issuance of the Brookdale Settlement and Distribution Order by the Court.

6. Except for paragraphs 5 and 7 herein, this Settlement Agreement shall not be binding on any party hereto until 35 days following the date on which the Brookdale Settlement and Distribution Order is issued by the Court, subject to no appeal of the Brookdale Settlement and Distribution Order having been brought by such date (the "**Effective Date**"). If there is any appeal(s) brought of the Brookdale Settlement and Distribution Order, such that this Settlement Agreement is not binding 35 days following the date on which the Brookdale Settlement and Distribution Order is issued, any interest accruing thereafter on account of the Computershare Settlement Amount under the *Courts of Justice Act* (Ontario) or otherwise, shall be paid to Computershare in addition to the Computershare Settlement Amount, upon the final dismissal of any such appeal(s).

#### **DISMISSAL OF COMPUTERSHARE CLAIM**

7. Computershare and the Trustee shall use commercially reasonable efforts to have the Computershare Claim dismissed its entirety, on a with prejudice and without costs basis, by no later than ten (10) days following the date that the Court issues the Brookdale Settlement and Distribution Order. The Trustee and OTC hereby consent to such dismissal, and authorize the lawyers for Computershare to execute a consent to such dismissal to the extent necessary. Computershare hereby agrees that the Trustee shall have satisfied its obligations under this paragraph 7 solely by seeking the Court's approval of the Brookdale Settlement and Distribution Order, substantially in the form attached hereto, as part of its motion seeking, among other things, the approval of this Settlement Agreement.

#### **CONDITIONS TO FUNDING**

8. The Trustee shall deliver a certificate to the Accountant substantially in the form attached as Schedule "A" to the Brookdale Settlement and Distribution Order (the "**Trustee's Funding Certificate**"), promptly upon the satisfaction of the following conditions precedent (which

conditions (a) and (b) may be waived by the Trustee only and in its sole discretion, and condition (c) may only be waived jointly by the Trustee and Computershare):

- (a) the Brookdale Settlement and Distribution Order shall have been issued by the Court (in the form acceptable to the Trustee in its sole discretion; provided that, the issued Brookdale Settlement and Distribution Order shall provide for the payment of the Computershare Settlement Amount to Computershare as contemplated herein) and either no material objections (in the sole opinion of the Trustee) were raised by any person at the motion for the Brookdale Settlement and Distribution Order or the appeal periods in respect of the Brookdale Settlement and Distribution Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
- (b) the Computershare Claim shall have been dismissed as against BDMC and OTC on a with prejudice and without costs basis; and
- (c) Computershare and the Trustee shall have confirmed that all their respective representations and warranties contained in this Settlement Agreement continue to be, and are true and correct, as of the date of such confirmation as specified by the Trustee.

9. If an appeal of the Brookdale Settlement and Distribution Order is brought, (a) the Trustee shall promptly inform the parties hereto of the same and shall provide a copy of any appeal materials to the parties hereto; and (b) the Effective Date shall be deemed to be three (3) business days after the Trustee provides written notice that the condition in paragraph 8(a) hereof has been satisfied.

10. The Trustee shall deliver a copy of the Trustee's Funding Certificate to Computershare and OTC concurrently with its delivery to the Accountant pursuant to paragraph 8 hereof, and shall file a copy of the Trustee's Funding Certificate with the Court.

## CONDITIONS TO CLOSING

11. The Trustee shall deliver a certificate to Computershare, substantially in the form attached as Schedule "B" to the Brookdale Settlement and Distribution Order (the "**Trustee's Closing Certificate**"), in accordance with paragraph 23 hereof, promptly upon the satisfaction of the following conditions precedent (which condition (a) may be waived by the Trustee only and in its sole discretion, and condition (b) may be waived by Computershare, or by the Trustee in accordance with paragraph 12 hereof):

- (a) the Accountant shall have distributed the Trustee Settlement Amount directly to, and the Trustee Settlement Amount shall have been actually received by, the Trustee; and
- (b) the Accountant shall have distributed the Computershare Settlement Amount directly to, and the Computershare Settlement Amount shall have been actually received by, counsel for Computershare, DLA Piper (Canada) LLP (in trust).

The date on which the Trustee's Closing Certificate is delivered by the Trustee to Computershare in accordance with this paragraph 11 and the Brookdale Settlement and Distribution Order is referred to herein as the "**Closing Date**".

12. To satisfy the closing condition set out in paragraph 11(b) hereof, Computershare shall deliver written notice to the Trustee, in accordance with paragraph 23 hereof, that Computershare (or its designee) has received the Computershare Settlement Amount promptly upon receipt thereof. To the extent the Trustee has not received such written notice within three (3) business days of the Trustee's receipt of the Trustee Settlement Amount from the Accountant, the Trustee shall be permitted to confirm that the Computershare Settlement Amount has been distributed to Computershare with the Accountant, and upon receipt of such confirmation, the Trustee shall be permitted to waive the condition set forth in paragraph 11(b) hereof.

13. The Trustee shall deliver a copy of the Trustee's Closing Certificate to OTC concurrently with its delivery to Computershare pursuant to paragraph 11 hereof, and shall file a copy of the Trustee's Closing Certificate with the Court.

## **RELEASES**

14. As of the Closing Date:

- (a) Computershare, on behalf of itself, and the Bondholders, and each of their respective agents, directors, officers and employees, and each of their respective successors and assigns, hereby forever release and discharge the Trustee, BDMC, the Individual Investors and OTC (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Brookdale Project, the Project Lands, the Residual Proceeds and any right or entitlement to payment therefrom, the BDMC Mortgages and the loans made and security granted in connection therewith, the Trust Indenture, the Bonds, the Computershare Security and the Computershare Claim, and any transactions thereunder and hereunder (collectively, the "**Released Matters**").
- (b) the Trustee, on behalf of BDMC, and OTC, hereby forever release and discharge Computershare and the Bondholders (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Released Matters.

15. Each releasing party hereto agrees not to make any claim or take any proceeding in connection with the Released Matters that are released and discharged herein against any corporation or person who might claim over against any opposite party to the release set forth in paragraph 14 hereof, or who might claim contribution, indemnity or any other relief against any opposite party to the release set forth in paragraph 14 hereof under the provisions of any statute or

otherwise, except for claims or proceedings only in respect of such corporation's or person's several liability (and not caused or contributed to by an opposite party to this release).

16. In the event that any releasing party hereto should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against any party it has released in connection with the Released Matters, this Settlement Agreement may be raised as a complete bar to any such demand, action, claim or proceeding except for claims or proceedings only in respect of such party's several liability.

17. Each party hereto represents and warrants that it has not assigned or otherwise disposed of any of the claims, demands, rights, liabilities, and/or causes of action that are the subject of its release(s) given in paragraph 14 hereof.

18. Nothing in the releases contained herein shall be construed to release or discharge any party from its obligations under this Settlement Agreement.

### **MISCELLANEOUS**

19. The headings in this Settlement Agreement are for reference only and shall not affect the interpretation or meaning of this Settlement Agreement.

20. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

21. The parties agree that the terms of this Settlement Agreement shall be disclosed to the Individual Investors and the Bondholders, and this Settlement Agreement shall be included by the Trustee in the motion materials for approval of this Settlement Agreement.

22. Each party hereto represents, warrants, and confirms it has received independent legal advice relating to this Settlement Agreement, and that it has voluntarily entered into this Settlement Agreement with the benefit of such advice.

23. Any notice, document, or other communication to be delivered hereunder may be sent by email addressed to the applicable party or parties at the email addresses listed on Schedule "C" hereto.

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

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

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

27. This Settlement Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada therein, and any dispute arising from this Settlement Agreement shall be adjudicated before the Court.

*[Remainder of page left blank]*

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMPUTERSHARE TRUST COMPANY  
OF CANADA, solely in its capacity as trustee  
under that certain trust indenture dated  
November 26, 2016**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OLYMPIA TRUST COMPANY, solely in its  
capacity as trustee for the Olympia Investors**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "A"**  
**LIST OF BONDHOLDERS**

See attached.

## SCHEDULE "A"

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
1165713 ONTARIO INC.	100,000
ZAHRA BARDAI	100,000
OLYMPIA TRUST COMPANY TR BRIAN MCCLUSKEY	64,000
OLYMPIA TRUST COMPANY TR SHARON MCCLUSKEY	55,000
DR. A. STONE MEDICINE PROFESSIONAL CORPORATION	125,000
DRS. PAUL JOZA & EVA JOZA MEDICINE PROFESSIONAL CORPORATION	50,000
FIERA MULTI-STRATEGY INCOME FUND	5,000,000
CHRISTOPHER GIFFIN	100,000
GABRIEL HEBERT	30,000
PAUL HEBERT & SYLVIE DUMONT TEN COM	30,000
ANIS KHAN	250,000
MAX NEIMAN DENTISTRY PROFESSIONAL CORPORATION	200,000
CAROLE MURPHY	25,000
OLYMPIA TRUST COMPANY FOR STEFANO PERRONE	25,000
OLYMPIA TRUST COMPANY FOR DANA SACCO	75,000
OLYMPIA TRUST COMPANY FOR MICHAEL LAYDEN	25,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	32,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	67,000
OLYMPIA TRUST COMPANY FOR GERRY SOKALSKY	100,000
OLYMPIA TRUST COMPANY FOR ANDREAS JOANNOU	85,000
OLYMPIA TRUST COMPANY FOR GEORGIA JOANNOU	70,000
OLYMPIA TRUST COMPANY FOR MARILYN COOK	389,000

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
<b>OLYMPIA TRUST COMPANY FOR JUNG PARK</b>	<b>50,000</b>
<b>OLYMPIA TRUST COMPANY FOR PIETRO BITONDO</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR DONNA DOUGHERTY</b>	<b>100,000</b>
<b>OLYMPIA TRUST COMPANY FOR JAMES STURINO</b>	<b>31,000</b>
<b>OLYMPIA TRUST COMPANY FOR SANDRA L. JACKSON</b>	<b>30,000</b>
<b>OLYMPIA TRUST COMPANY FOR ANNA RUFFOLO</b>	<b>172,000</b>
<b>OLYMPIA TRUST COMPANY FOR SHARON THERESE ELLIS</b>	<b>35,000</b>
<b>OLYMPIA TRUST COMPANY FOR MICHAEL BARKER</b>	<b>160,000</b>
<b>OLYMPIA TRUST COMPANY FOR MICHAEL BARKER</b>	<b>33,000</b>
<b>OLYMPIA TRUST COMPANY FOR LEE ANN TERNOEY</b>	<b>70,000</b>
<b>OLYMPIA TRUST COMPANY FOR DRAGANA PILAVDZIC</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR CHRISTOPHER D'ATRI</b>	<b>225,000</b>
<b>OLYMPIA TRUST COMPANY FOR KAMLA BHAGWANDAS JUTA</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR HARRY T. EARLE</b>	<b>75,000</b>
<b>OLYMPIA TRUST COMPANY FOR ALI NOURALIEI</b>	<b>153,000</b>
<b>OLYMPIA TRUST COMPANY FOR DOMENICO FILOSO</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR RYAN MCCONAGHY</b>	<b>45,000</b>
<b>OLYMPIA TRUST COMPANY FOR KATHLEEN CHUNG</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR MICHAEL PRENDERGAST</b>	<b>50,000</b>
<b>OLYMPIA TRUST COMPANY FOR ROBERT M. DWYER</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR WILMA WATSON</b>	<b>40,000</b>
<b>OLYMPIA TRUST COMPANY FOR PETER ACCARDI</b>	<b>40,000</b>
<b>OLYMPIA TRUST COMPANY FOR CINDI S. STEWART</b>	<b>25,000</b>
<b>OLYMPIA TRUST COMPANY FOR DAVID D. STEWART</b>	<b>25,000</b>

<b>LIST OF BONDHOLDERS</b>	<b>BONDS SUBSCRIBED</b>
<b>OLYMPIA TRUST COMPANY FOR KREASAN RAJAGOPAUL</b>	<b>100,000</b>
<b>OLYMPIA TRUST COMPANY FOR ROSARIO RUFFOLO</b>	<b>172,000</b>
<b>OLYMPIA TRUST COMPANY FOR PATRICK CORNWALL</b>	<b>75,000</b>
<b>RJ INSURANCE SERVICES LIMITED</b>	<b>50,000</b>
<b>SHANA ZAMERET</b>	<b>25,000</b>
<b>RUTH ZNOTINS</b>	<b>100,000</b>
<b>TOTAL OUTSTANDING</b>	<b>9,028,000</b>

**SCHEDULE "B"**

**FORM OF BROOKDALE SETTLEMENT AND DISTRIBUTION ORDER**

See attached.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 14 <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF NOVEMBER, 2022

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**BROOKDALE SETTLEMENT AND DISTRIBUTION ORDER**

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

Twenty-Ninth Report as Appendix 13 (the “**Brookdale Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and Computershare Trust Company of Canada, in its capacity as trustee under that certain trust indenture dated November 26, 2013 (“**Computershare**”); (ii) authorizing and directing the Accountant of the Superior Court of Justice (the “**Accountant**”) to distribute from the account (the “**Account**”) set up to the credit of Court File No. CV-18-596204-00CL pursuant to the Order of the Honourable Justice McEwen made in the proceedings with Court File No. CV-18-593304 (Account No: 561131), the amounts to Computershare and the Trustee as set forth herein; (iii) authorizing the Trustee to make a distribution of Brookdale Realized Property to the Brookdale Investors (each as defined herein); and (iv) granting related relief, was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

**ON READING** the Twenty-Ninth Report of the Trustee dated November 4, 2022 (the “**Twenty-Ninth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to Computershare, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Blair McRadu sworn November 4, 2022, filed;

### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Ninth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Twenty-Ninth Report or the Brookdale Settlement Agreement, as applicable.

### **BROOKDALE SETTLEMENT AGREEMENT**

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

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

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

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

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

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

#### **REALIZED PROPERTY**

7. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Trustee's delivery of the Trustee's Closing Certificate to Computershare, the Trustee shall make a distribution in the aggregate amount equal to 85% of the Brookdale Realized Property to the Brookdale Original Investors and the Brookdale Mezzanine Investors on a *pari passu* and *pro rata* basis using the Pari Passu Approach, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018, each made in these proceedings.

#### **DISMISSAL AND DISCHARGE**

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

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

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

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

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

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S FUNDING CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).
- B. Pursuant to an Order of the Court made on ●, 2022 (the “**Brookdale Settlement and Distribution Order**”), the Court approved the Settlement Agreement and Mutual Release attached as Appendix “13” to the Trustee’s Twenty-Ninth Report to Court, dated November 4, 2022 (the “**Brookdale Settlement Agreement**”) among the Trustee, Olympia Trust Company, and Computershare Trust Company of Canada, in its capacity as trustee under that certain trust indenture dated November 26, 2013 (“**Computershare**”).
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Brookdale Settlement and Distribution Order or the Brookdale Settlement Agreement, as applicable.

**THE TRUSTEE CERTIFIES** the following:

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

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

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

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S CLOSING CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).
- B. Pursuant to an Order of the Court made on ●, 2022 (the “**Brookdale Settlement and Distribution Order**”), the Court approved the Settlement Agreement and Mutual Release attached as Appendix “13” to the Trustee’s Twenty-Ninth Report to Court (the “**Brookdale Settlement Agreement**”) among the Trustee, Olympia Trust Company, and Computershare Trust Company of Canada, in its capacity as trustee under that certain trust indenture dated November 26, 2013 (“**Computershare**”).
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Brookdale Settlement and Distribution Order or the Brookdale Settlement Agreement, as applicable.

**THE TRUSTEE CERTIFIES** the following:

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

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

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

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

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA  
INC.**

Applicant

Respondent

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

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

Proceedings commenced at Toronto

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**BROOKDALE SETTLEMENT AND  
DISTRIBUTION ORDER**

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**OSLER, HOSKIN & HARCOURT LLP**

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

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

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

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

**SCHEDULE "C"****NOTICE INFORMATION**

<b>Party</b>	<b>Email Address(es) for Notice</b>
Trustee	<a href="mailto:naveed@faanmortgageadmin.com">naveed@faanmortgageadmin.com</a>  - with copies to -  <a href="mailto:MDeLellis@osler.com">MDeLellis@osler.com</a> <a href="mailto:JDacks@osler.com">JDacks@osler.com</a> <a href="mailto:AHirsh@osler.com">AHirsh@osler.com</a>
Computershare	<a href="mailto:derek.bell@dlapiper.com">derek.bell@dlapiper.com</a> <a href="mailto:katelyn.ellins@dlapiper.com">katelyn.ellins@dlapiper.com</a>
OTC	<a href="mailto:ryan.morris@blakes.com">ryan.morris@blakes.com</a>

**APPENDIX 15:  
LIST OF CLAIMED FORTRESS ADVANCES**

Attach #	Type	Date	Num	Name	Memo	Credit	Note
1	Cheque	9/1/2017	DD	Firm Capital Corporation	Sept. 2017 First Mortgage Payment	122,476.42	
2	Cheque	10/1/2017	DD	Firm Capital Corporation	Oct. 2017 First Mortgage Payment	120,896.08	
3	Cheque	10/2/2017	231	JAEKEL CAPITAL INC	Interest payment	5,822.11	
2	Cheque	10/2/2017	DD	Firm Capital Corporation	Mortgage Payment	25,017.50	
4	Bill	10/13/2017	LC17-1280 B	Blake, Matlock, & Marshall Ltd.	RE: Project valuation - Brookdale	8,079.50	\$25,000.00 chq. Remainder paid for other projects
5	Bill	10/20/2017	LC17-1280B	Blake, Matlock, & Marshall Ltd.	RE: Project valuation - Brookdale	2,186.55	Bill attached
6	Cheque	10/26/2017	234	Corsianos Lee in Trust	Interest on Brookdale Term Sheet	111,267.99	
7	General Journal	11/17/2017	885	Robins Appleby LLP	To apply trust account funds transfer against invoice # 156183	2,256.43	Bill attached
8	Cheque	11/28/2017	439	BDMC Inc. in Trust	Brookdale re: interest reserve top up	2,006.71	
9	Cheque	11/30/2017	237	Robins Appleby LLP, in Trust	Retainer; re: Proposed Litigation vs. Computershare	50,000.00	
10	Cheque	12/5/2017	WIRE	MARSHALLZEHR GROUP INC - IN TRUST	RE: Good Faith Deposit	25,000.00	
11	Cheque	1/2/2018	DD	Firm Capital Corporation	Jan. 2018 First Mortgage Payment	126,833.41	
12	Cheque	1/11/2018	487	Drew MacMartin	parking- 407 Payment	176.04	
13	Cheque	2/1/2018	DD	Firm Capital Corporation	Feb. 2018 First Mortgage Payment	128,579.74	
14	Credit Card Charge	2/6/2018		TD Visa	STOLPORT CORPORATION TORONTO	45.00	
14	Credit Card Charge	2/6/2018		TD Visa	HMSHOST MONTL AIRPORT DORVAL	66.80	
14	Credit Card Charge	2/6/2018		TD Visa	MONTREAL TAXI SERVICES SAINT-LAUREN	66.70	
15	Bill Pmt -Cheque	2/20/2018	238	Owens Wright LLP	RE: Firm Capital Mortgage Loan	20,000.00	
13	Cheque	2/21/2018	DD	TD Canada Trust	TD EFT S/C	50.00	
13	Cheque	2/28/2018	DD	TD Canada Trust	OVERDRAFT INTEREST	73.84	
16	Cheque	3/9/2018	525	Firm Capital Corporation	March 1 Brookdale interest payment + TGF Law Firm	200,000.00	
17	Cheque	3/21/2018	DD	TD Canada Trust	TD EFT S/C	50.00	
17	Cheque	3/31/2018		TD Canada Trust	Service Charge	19.00	
18	Cheque	4/3/2018	DD	TD Canada Trust	NSF RETURN FEE	48.00	
18	Cheque	4/5/2018	WIRE	Fortress Brookdale Inc.	Net Payment of Funds to Fernbrook re: Fortress Brookdale Inc.	5,015.00	
19	Cheque	4/6/2018	550	Firm Capital Corporation	Avenue Rd & Brookdale	131,418.92	
20	Bill	4/6/2018	LC18-1376	Blake, Matlock, & Marshall Ltd.	RE: Project valuation - Brookdale on Avenue Road	20,170.50	Bill attached
18	Cheque	4/23/2018	DD	TD Canada Trust	TD EFT S/C	50.00	
18	Cheque	4/30/2018		TD Canada Trust	Service Charge	19.08	
21	Cheque	5/31/2018		TD Canada Trust	Service Charge	19.04	
22	Cheque	6/21/2018	DD	TD Canada Trust	EFT Billing	50.00	
22	Cheque	6/29/2018		TD Canada Trust	Service Charge	19.03	
23	Cheque	7/23/2018	DD	TD Canada Trust	EFT Billing	50.00	
23	Cheque	7/31/2018		TD Canada Trust	Service Charge	19.02	
<b>Total</b>						<b>1,107,848.41</b>	

**APPENDIX 16:  
CO-TENANCY AGREEMENT, PROJECT MANAGEMENT AGREEMENT, AND  
AMENDING CO-TENANCY AGREEMENT**

**CO-TENANCY AGREEMENT**

**BETWEEN:**

**FORTRESS AVENUE ROAD (2015) INC.  
(Fortress")**

**- and -**

**FERNBROOK HOMES (BROOKDALE) LIMITED  
("Cityzen")**

**- and -**

**FORTRESS BROOKDALE INC.  
("Nominee")**

**DOMINUS CONSTRUCTION (2005)  
CORPORATION**

**("Project Manager")**

robapp\3125756.2

**CO-TENANCY AGREEMENT****THIS AGREEMENT** is made this \_\_\_\_ day of May, 2015**B E T W E E N:**

**FORTRESS AVENUE ROAD (2015) INC.,**  
a corporation incorporated under the laws of the Province of  
Ontario

("Fortress")

- and -

**FERNBROOK HOMES (BROOKDALE) LIMITED,**  
a corporation incorporated under the laws of the Province of  
Ontario

("Cityzen")

- and -

**FORTRESS BROOKDALE INC.,**  
a corporation incorporated under the laws of the  
Province of Ontario

(the "Nominee")

- and -

**DOMINUS CONSTRUCTION (2005)  
CORPORATION**

("Project Manager")

**WHEREAS** Fortress and Cityzen (herein individually referred to as a "Member" and collectively called the "Members") have agreed to form and constitute a Co-Tenancy (hereinafter referred to as the "Co-Tenancy") and the Members are or will be the owners of undivided interests, in the proportions set out herein, in those lands and premises as more particularly described in Schedule "A" annexed hereto (herein collectively called the "Property");

- 2 -

**AND WHEREAS** the Property has been or will be acquired and will be registered in the name of the Nominee as a bare trustee for the Members in the following proportions:

MEMBER	PERCENTAGE SHARE
FORTRESS	75%
CITYZEN	25%

**AND WHEREAS** the Members wish to enter into this Agreement for the purpose of setting forth the various terms, provisions and conditions governing their respective rights and interests in the Property;

**NOW THEREFORE** in consideration of the mutual covenants of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

#### Article 1 INTERPRETATION

##### 1.1 Definitions

Unless the context otherwise requires, the terms defined in this Agreement shall for all purposes have the meanings set forth below:

- (a) "**Accounting Period**" means the period of twelve (12) months ending on the last day of March in each calendar year, except for the first Accounting Period for the Property which shall be the period from and including the Effective Date;
- (b) "**Actual Profit**" has the meaning assigned thereto in Section 4.2;
- (c) "**Adverse Development Conditions**" shall mean any event or series of events beyond the control of the Member 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 Member having acted in a commercially reasonable manner;
- (d) "**Agreement**" means this agreement, including the schedules hereto, as amended from time to time;
- (e) "**Approved**" means approved in writing pursuant to a resolution of the Management Committee by the Members which may be evidenced by an executed

- 3 -

copy of the minutes of the Management Committee meetings or a separate resolution;

- (f) **"Approved Profit Target"** means the profit as projected in the Approved Project Budget, as initially Approved;
- (g) **"Business Day"** means any day other than a Saturday, Sunday, or statutory holiday in Ontario;
- (h) **"Cash Surplus"** has the meaning assigned thereto in Article 4 hereof.
- (i) **"Construction Loan"** means the first mortgage construction loan from the Construction Lender to permit the Development of all or substantially all of the Project;
- (j) **"Construction Lender"** means the third-party qualified and Approved financial lending institution that will fund the Construction Loan;
- (k) **"Co-Tenancy"** means the Co-Tenancy established by this Agreement;
- (l) **"Date of Closing"** means the date of closing under the Purchase Agreement;
- (m) **"Development"** means the development of and the provision of Services to the Property by the Co-Tenancy to facilitate and permit the construction of the Project and provision of Services including, without limitation, the preparation of agreements of purchase and sale, marketing and sales, disclosure statements (including declaration, by-laws, rules, insurance trust agreement (if applicable), management agreement and any other documents required or permitted pursuant to the *Condominium Act*), processing of all official plan amendments, secondary plan approvals, zoning approvals, Committee of Adjustment applications, plan of condominium approvals, satisfying draft plan conditions, site plan agreements, development agreements, Section 37 Agreements and other similar agreements with any Government Authority and **"Develop"** has a similar meaning;
- (n) **"Effective Date"** means \_\_\_\_\_;
- (o) **"Excess Loan"** has a meaning ascribed thereto in Section 10.2(a);
- (p) **"Existing Mortgagees"** means the mortgagees pursuant to the Existing Mortgages, as same may be assigned from time to time;
- (q) **"Existing Mortgages"** means the Charge/Mortgages registered on title to the Property and listed in Schedule "B" to this Agreement as same may be replaced from time to time, provided they comply with Section 3.3(a) hereof;
- (r) **"First Mortgage"** means that Existing Mortgage that is shown as being in first position on the Property in Schedule "B";

- 4 -

- (s) "FMV" has a meaning ascribed thereto in Section 10.5(b)(i) hereof;
- (t) "Fortress Advance" has a meaning ascribed thereto in Section 10.2(f);
- (u) "HST" means all harmonized sales tax, goods and services taxes, value added taxes, sales taxes, use, consumption taxes and other similar taxes of whatever name or description, whether or not in existence at the date hereof, now or hereafter imposed, levied, rated, charged or assessed by the Government of Canada or by any provincial, municipal or local government or public authority, including the goods and services tax levied pursuant to the *Excise Tax Act* (Canada);
- (v) "Indemnitior" has a meaning ascribed thereto in Section 2.9 hereof;
- (w) "Management Committee" means the management committee established pursuant to the provisions of Article 5 hereof;
- (x) "Maximum Land Mortgages Amount" means \$18,700,000.00 inclusive of interest and all arranging fees and costs;
- (y) "Member" means either Fortress or Cityzen (and collectively the "Members");
- (z) "Priority Advance Distribution" has a meaning ascribed thereto in Section 4.2(b);
- (aa) "Project" means the proposed mixed use condominium development to be constructed on the Property;
- (bb) "Project Assets" has the meaning ascribed thereto in Section 2.1;
- (cc) "Project Budget" means the budget for the Development of the Project prepared in accordance with Section 1.9 of the Project Management Agreement and approved by the Quantity Surveyor and the Members as contemplated by Section 5.6(c) of this Agreement; "Approved Project Budget" means the Project Budget together with all changes and amendments thereto approved in writing by the Members;
- (dd) "Project Costs" means those costs incurred for the Project and contained in the Project Budget or otherwise approved by the Co-Tenancy;
- (ee) "Project Management Agreement" has the meaning set forth in Section 7.2 and attached as Schedule "C" to this Agreement;
- (ff) "Property" means those lands and premises described in the recitals hereto and described in Schedule "A" hereto;
- (gg) "Purchase Agreement" means the purchase agreement between Fortress and Cityzen dated \_\_\_\_\_, 2015;

- 5 -

- (hh) "**Purchaser**" means a purchaser described in Section 11.4 and Section 12.1 hereof as the case may be;
- (ii) "**Quantity Surveyor**" means the accredited cost consultant for the Project and approved by the Construction Lender;
- (jj) "**Related Party Mortgage**" has the meaning ascribed thereto in Section 3.2(b)(i);
- (kk) "**Required Fortress Advance**" has a meaning ascribed thereto in Section 10.2(f);
- (ll) "**Second Mortgage**" means that Existing Mortgage that is shown as being in second position on the Property in Schedule "B";
- (mm) "**Services**" means all services, as such term is commonly used in the residential development industry, necessary to permit the subdivision (including registration under the Condominium Act) of the Property and as may be required by any Government Authority pursuant to any subdivision, development, condominium, site plan or like agreements applicable to the Property, including storm and sanitary sewers, functioning water service, water pumping station, storm water management pond, utilities (including a hydro electric looping system), roads, sidewalks and landscaping, whether constructed on the Property or on other lands owned by any other Person;
- (nn) "**Share**" means with respect to Fortress, seventy-five per cent (75%) and with respect to Cityzen, twenty-five per cent (25%);
- (oo) "**Tenancy Interest**" means, when used in relation to a Member, all such Member's right, title and interest in and to the Property and in all other property acquired by the Members in connection therewith as set out in Section 2.1;
- (pp) "**Time of Closing**" means 11:00 a.m. Toronto time or such other time on the Date of Closing as the particular Vendor and Purchaser may agree upon;
- (qq) "**Transfer**" has the meaning ascribed thereto in Section 9.1(a) hereof;
- (rr) "**Unavoidable Delay**" means a delay in the performance of an act or compliance with a covenant caused by an act of God, fire, strike, lockout, inability to obtain or delay (which is not reasonably within the control of the party obliged to perform or comply) in obtaining material, equipment or transport, inability to obtain or delay (which is not reasonably within the control of the party obliged to perform or comply) in obtaining governmental approvals, permits, licences or allocations, restrictive laws or governmental regulations, or any other cause, whether of the kind specifically enumerated above or not, which is not reasonably within the control of the Party obliged to comply or perform, but does not mean a delay caused by lack of funds or other financial reasons of a party; and

- 6 -

## 1.2 Currency

All payments contemplated herein shall be made in Canadian funds.

## 1.3 Gender and Number

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 neuter gender, and words importing persons shall include firms and corporations, and vice versa where the context so requires.

## 1.4 Articles and Section Numbers

The division of this Agreement into Parts, Articles and Sections and the Table of Contents preceding are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

## 1.5 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 5:00 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

## Article 2 THE CO-TENANCY

### 2.1 Interests in the Co-Tenancy

The Members shall hold an undivided interest in the Property, assets and rights of the Co-Tenancy ("**Project Assets**"), both real and personal as tenants in common in the following proportions:

MEMBER	PERCENTAGE SHARE
FORTRESS	75%
CITYZEN	25%

### 2.2 Principal Office

The principal office of the Co-Tenancy shall be located at 2220 HWY 7 West, Unit 5, Concord, Ontario, or such other place or places as shall be agreed upon by the Management Committee.

### 2.3 Purpose and Scope

- (a) The Members, each expressly relying on the warranties, representations and covenants in this Agreement, hereby establish a Co-Tenancy for the purpose of governing their respective rights and obligations to and with each other with respect to the Development and construction of the Project.
- (b) The purpose, and only purpose, of the Co Tenancy is to acquire, own, Develop, market, construct and sell the Project under the Co-Tenancy name chosen by the Management Committee or such other name as may from time to time be agreed upon by the Members. The Members agree, in promoting the Development, all advertising and marketing materials, plans, signage, newspaper advertisements, promotions and any of the like shall include both Fortress and Cityzen as developers of the Development.
- (c) The Members agree to own, operate, maintain and Develop the Property and construct the Project as tenants in common in accordance with the terms of this Agreement.
- (d) Subject to any Adverse Development Conditions, the Members agree to diligently and in good faith take such steps as are commercially practical to Develop the Property. The Members acknowledge and agree that the Property will be subject to mutually agreed upon architectural restrictions recommended by the Project Manager and subject to approval by the Members as a Major Decision.
- (e) The Members hereby agree that this Agreement shall govern and define their respective rights, benefits, liabilities, obligations, interests and powers as Members with respect to:
  - (i) the Property;
  - (ii) the Development;
  - (iii) the Project;
  - (iv) all property and property rights, whether real or personal, now owned or hereafter acquired by the Members in connection with the Development and the Property;
  - (v) gross receipts, including all revenues, capital sums and other proceeds derived from the Development; and
  - (vi) all present and future leases and other agreements and choses-in-action which may be entered into or owned by or on behalf of the Members in connection with the Development, the Property and the Project.

#### 2.4 Effective Date and Continuance

- (a) This Agreement is effective from and after the Effective Date.
- (b) This Agreement shall continue in full force and effect until the later of:
  - (i) The date that the last of the residential condominium units included in the Project is sold by the Members to a third party purchaser, the retail component of the Development is completed and sold and all letters of credit deposited with any municipal and/or governmental authorities, tribunals, corporations (including Tarion Warranty Corporation) or agencies have been released;
  - (ii) the date that final settlement has been made among the Members in accordance with Section 2.4(c) unless this Agreement and the Co-Tenancy constituted hereby is otherwise terminated upon written agreement by the Members or otherwise in accordance with the provisions hereof; and
  - (iii) the date that only one Co-Tenant has an interest in the Project.
- (c) In the event that the Members sell all the residential condominium units included in the Development to one or more third party purchasers and the retail component of the Development is completed and sold (or is transferred to a Co-Tenant pursuant to the provisions of this Co-Tenancy Agreement), the Members shall make a final settlement among themselves to the end that, subject to Section 2.9 hereof, the Members shall share all of the rights and benefits and bear all of the liabilities and obligations of the Co-Tenancy in accordance with their respective Tenancy Interest, provided that any distribution of funds shall be made only in accordance with Section 4.1.

#### 2.5 *INTENTIONALLY DELETED*

#### 2.6 Partnership Not Created

Each Member expressly disclaims any intention to create a partnership. Nothing in this Agreement, or otherwise arising herefrom, shall be construed to constitute any of the Members or the Nominee a partner, agent or representative of the others or any of them or any commercial or other partnership. Each Member expressly declares its intention to rely upon:

- (a) the provisions of Section 3 of the *Partnership Act* (Ontario), as amended or re-enacted from time to time, to the effect, inter alia, that tenancy in common, common lands or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof; and

- (b) the statutory and common law as it applies to tenants in common save only to the extent that the same is, by the express provisions of this Agreement, amended or varied.

#### 2.7 Apportionment of Profits and Losses

Except as hereinafter otherwise specifically provided, all net profits derived from the ownership, operation, development and sale of the Property shall belong to the Members in accordance with their respective Tenancy Interest, and all expenditures or losses incurred in connection with the Property shall be borne by the Members in accordance with their respective Tenancy Interests.

#### 2.8 No Authority to Bind

Except as otherwise expressly provided in this Agreement, a Member shall not have any authority to act for or on behalf of the other Member or to bind the other Member or the Nominee.

#### 2.9 Indemnity

- (a) Each Member (in this Section called the "**Indemnitor**") hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless the other Member and the Nominee (in this Section called the "**Indemnitees** ") from and against any and all liability, loss, harm, damage, cost or expense, including legal fees, which the Indemnitees or either of them may suffer, incur or sustain as a result of any act of the Indemnitor committed outside the scope of or in breach of this Agreement.
- (b) In the event that any time hereafter any of the Members shall become a surety or guarantor, or become indebted or liable for any moneys borrowed by the Co-Tenancy or for any obligation entered into by the Co-Tenancy, or any of the Members expends any money on behalf of the Co-Tenancy, so long as such debt, liability, obligation or expenditure is incurred pursuant to the provisions of this Agreement, then, in any such event, each of the Members hereto covenants and agrees to protect, indemnify and save the other Member harmless against and from any such loss, damage, costs and liability whatsoever, arising in respect of the aforementioned debt, liability, obligation, expenditure or loan, in the respective Shares, subject to the provisions of Section 4.2 hereof.

#### 2.10 Liability

Subject to Section 2.9 hereof, the obligations of each Member with respect to the Project and the Co-Tenancy and all contracts and obligations entered into by or on behalf of the Members in connection therewith, including with respect to the Construction Loan, shall, in every case, be several to the extent of the Share of such Member and not joint, and not joint and several, unless expressly otherwise herein provided or agreed to in writing by the Members.

## 2.11 Legal and Beneficial Ownership

The Members confirm and agree that title to the Property and to all property, whether real, personal or mixed, comprising, used or otherwise acquired in connection with the Property or used in connection with the Co-Tenancy including, without limitation, personal property and choses-in-action, shall be taken and held in the name of the Nominee, and that beneficial ownership shall be held by each of the Members as tenants in common in the same ratio as their respective Tenancy Interests.

## 2.12 Other Businesses, etc.

Each Member shall have the free and unrestricted right independently to engage in other businesses or ventures for its own individual profit without any accountability to the other Member, even if such other businesses or ventures are similar to or compete with the Property. A Member shall not, by reason of this Agreement, have any interest in any other business or venture engaged in by any other Member, whether or not such other business or venture is similar to or competes with the Property. The legal doctrines of "corporate opportunity" or "business opportunity" sometimes applied to co-tenancies or to persons having a fiduciary relationship shall not apply to any other endeavor of any of the Members. Any proceeds to which the Members are entitled, as provided, relate only to the Property, and not to any other business or venture carried on by the Members.

Save as specifically set forth in this Agreement, no Member or any officer, director or shareholder of a Member shall be required to devote any particular amount of time or attention to the Co-Tenancy, save as otherwise provided herein, but each Member shall cause its officers and/or employees to devote such time and attention thereto as shall be necessary to permit and promote the effective ownership, holding and development of the Property in accordance with the terms and provisions of this Agreement.

Each Member covenants to perform, discharge and exercise the powers, duties and discretions entrusted, allocated or reserved to it hereunder, or as a result hereof, in good faith and in the best interest of the Co-Tenancy, and that, in connection therewith, it shall exercise that degree of care, diligence and skill that a reasonable prudent developer and owner of similar property would exercise in comparable circumstances.

## 2.13 Capital Cost Allowance

Each Member may claim such deductions for capital cost allowance in respect of its Tenancy Interest as it, in its sole discretion, deems advisable and as it may by law be allowed to claim.

## 2.14 Covenants

Each Member hereby represents and warrants that it has full power, authority and legal right to enter into and be bound by this Agreement, and covenants and agrees:

- (a) promptly to notify the other Member of all material matters coming to the attention of such Member concerning the Property;

- 11 -

- (b) to perform and observe all the terms and conditions of this Agreement;
- (c) to execute and deliver, or cause to be executed and delivered, such instruments as may from time to time be required in order to carry out the purposes of the Co-Tenancy; and
- (d) to punctually pay and discharge its separate and several debts and liabilities due or incurred pursuant to this Agreement.

#### 2.15 No Partitioning

No Member and no person claiming through or under a Member shall partition or apply to the court or other authority having jurisdiction over the matter, or commence or prosecute any proceeding for the partition or sale of the Property, or any part thereof.

In the event of a breach of the provisions of this Section by a Member, the other Member shall, in addition to all other rights and remedies at law or in equity to which it is otherwise entitled, be entitled to a decree or order perpetually restraining and enjoining such partition, application, action or other proceeding, and the first-mentioned Member are hereby precluded from pleading in defence that there would be an adequate remedy at law (it being acknowledged by all the Members that the injury and damages flowing from any such breach would be impossible to measure monetarily).

#### 2.16 Waiver of Sale

Each of the Members waives the benefit of all provisions of law, as now in effect or as hereinafter enacted, relating to actions for sale in lieu of partition of real and personal property including, without limiting the generality of the foregoing, the *Partition Act* (Ontario), as amended, and each of the Members agrees that it will not resort to any action at law or in equity for a sale in lieu of partition in respect of the Property.

#### 2.17 Indemnity for Loans from Unauthorized Acts

No Member shall lend money or give credit to, or enter into any contract or have other dealings with any person, firm or corporation purportedly on behalf of the Co-Tenancy to pledge the credit of the Co-Tenancy unless authorized or contemplated by this Agreement or as otherwise arises by operation of law, or unless the consent of the other Member to such action is specifically obtained in writing, and if it does, it shall indemnify and save the other Member harmless from all demands, costs, losses, debts, obligations, duties, claims, liabilities, damages and expenses in respect thereof.

#### 2.18 Representations and Warranties

Each Member hereby represents and warrants to the other Member that the Tenancy Interest owned by such Member are free and clear of all liens, charges, encumbrances and other security interests of whatsoever nature other than the Permitted Encumbrances, including any agreement, option, right or privilege (whether by law, pre-

- 12 -

emptive right or contract) capable of becoming a right to purchase from such Member of any of such Tenancy Interest. Fortress represents and warrants that the legal interest of the Nominee is free and clear of all liens, charges, debts, encumbrances and other security interests of whatsoever nature except the Permitted Encumbrances, including any agreement, option, right or privilege (whether by law, pre-emptive right or contract) capable of becoming a right to purchase from the interest of the Nominee of any of its interest in the Property.

### Article 3 FINANCING

#### 3.1 Acquisition of Property and Existing Mortgages

The Existing Mortgages have been granted pursuant to loan commitments issued by Vector Financial Services Limited dated April 30, 2015 and RW Fortress Inc. dated May 14, 2015 (the "**Commitments**") providing financing totaling \$21,100,000.00. Cityzen shall cause Cityzen Development (2005) Corporation to provide the covenants requested in the Commitments of Cityzen and the principals of Fortress shall provide the covenants contemplated in the Commitments required of Fortress or its principals. It is understood that guarantee of Cityzen Development (2005) Corporation shall be limited to 25% of the amounts outstanding under the First Mortgage.

#### 3.2 Financing Prior to Construction Financing

- (a) From and after the Effective Date, Fortress will fund all costs associated with the Project until the first advance under the Construction Loan is made including, without limitation:
  - (i) all realty taxes and insurance;
  - (ii) all Project Costs approved by the Members, including, for example, marketing, and sales centre construction;
  - (iii) all Land Transfer Taxes and Cityzen's legal fees associated with the closing of the purchase of the Property;(the "**Pre-Financing Costs**").
- (b) Fortress shall be entitled at any time to fund Project Costs including Incremental Environmental Costs contained in the Project Budget or approved by the Management Committee and advanced by Fortress under this Section (and for no other purpose) by the registration of additional charges on the Property (collectively, the "**Further Charges**"). Fortress may, at its discretion, arrange such funding of such Further Charges with:

- 13 -

- (i) Centro Mortgage Inc. or another syndicated lender arranged by Fortress (a "**Related Party Mortgage**") provided it complies with Section 3.3 below;
- (ii) increase, amend, or supplement from time to time those Existing Mortgages to reflect the advance of Project Costs by Fortress; or
- (iii) arrange financing with a third party lender suitable to it (a "**Third Party Mortgage**" or if multiple mortgages are arranged, "**Third Party Mortgages**").

The Co-Tenancy will execute such documents as may be required to give effect to such security, provided they are non-recourse to Cityzen.

- (c) The Existing Mortgages (as same may be replaced as per Section 3.1) shall be repaid on or before the date of the first advance under the Construction Loan, either by way of the Construction Loan or by Fortress, at its sole cost and expense. To the maximum extent that repayment of Existing Mortgages exceeds the Maximum Land Mortgages Amount, Fortress shall be responsible for paying same from its own resources or via financing secured by Further Charges which shall be postponed as per the requirements set forth herein for Further Charges. Further Charges shall be postponed in a satisfactory manner to the Construction Lender and in accordance with Section 3.3 hereof.
- (d) Project Costs funded by Fortress under this Section will be payable to Fortress in priority to profit distribution, as set out in Section 4.2. However, for clarity, no interest on Project Costs funded by Fortress under this Section will be payable to Fortress.
- (e) Following the first advance under the Construction Financing, all Pre-Financing Costs funded will become Project Costs and will be included in the Project Budget including, inter alia, the Maximum Land Mortgages Amount.(excluding Land Transfer Taxes payable in connection with the completion of the Purchase Agreement)
- (f) On the Date of Closing, Fortress shall have deposited \$250,000.00 to the Project bank account to fund Project Costs.

### 3.3 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 Cityzen, Dominus Construction (2005) Corporation and their successors and assigns.

### 3.4 Construction Financing

- (a) The Members, or the Project Manager, shall, using reasonable commercial efforts, actively pursue to obtain the Construction Loan facility with a view to obtain the most advantageous terms and conditions possible, including the lowest possible level of equity contribution for the Co-Tenancy and use reasonable commercial efforts that it will allow any Existing Mortgages (save for the First Mortgage) or Related Party Mortgages to remain on title, provided that they adhere to Section 3.3. To the maximum extent possible, all amounts required by the Co-Tenancy for the Project shall be obtained by way of conventional mortgage financing of the Property, supported, if required by the covenant of Cityzen, only to extent of ownership of the Property, and no other assets.
- (b) In furtherance of the above, a Fortress related or affiliate will have the first right to provide such financing as may be required for the Project, provided that the terms and conditions of such financing are commercially and financially equivalent or better than other terms that would be available on conventional first mortgage terms and conditions available in the marketplace.
- (c) The parties acknowledge and agree that prior to commencement of sales of units to be constructed in the Project, a non-binding discussion paper shall be obtained for the Construction Loan, subject to obtaining sufficient pre-sales and otherwise on terms satisfactory to the Management Committee.

### 3.5 Guarantees/Covenants and Tarion Security

To the extent required by any lender in respect of the insurance company providing Tarion bonds or deposit insurance for condominium sales (collectively, the "Lenders"), Cityzen or any related party or entity satisfactory to such Lenders may, but shall not be required to, execute and deliver its guarantee or indemnity of the obligations of the Co-Tenancy ("**Guarantees**") or any other covenants or undertakings required by any of the Lenders such as Project completion guarantees, cost overrun undertakings, or environmental indemnities ("**Indemnities**") and pay for any costs attributed to providing such Guarantees or Indemnities. Fortress shall not be required to provide any guarantees or other security to Tarion, other than an indemnity by Fortress. Cityzen agrees to execute all documents, and provide all financial and other information necessary in connection with obtaining the Tarion registration or bonding required.

With respect to registering the Project under the Tarion Warranty Corporation ("**Tarion**") and providing all required indemnities and documentation, Cityzen or a related party acceptable to Tarion, shall be required to provide same.

### 3.6 Incremental Environmental Costs

It is agreed that Fortress shall be responsible for the costs of any environmental remediation of the Property arising from pre-existing contamination located on or under the Property, including environmental remediation costs to remove contaminants prohibited under the Environmental Protection Act, Ontario ("Contaminants") where required to do so. It is understood and agreed that the aforesaid liability of Fortress is limited to the incremental costs ("Incremental Environmental Costs") incurred to remove such Contaminants, over and above normal and budgeted excavation, shoring, and soil removal costs that would have otherwise been incurred by the Project. In the event that the Construction Loan Facility includes sufficient funding for such Incremental Environmental Costs, the construction lender shall fund same, but the amount of the Incremental Environmental Costs, plus interest thereon incurred under the Construction Loan Facility ("Total Incremental Environmental Costs") shall be reimbursed to the Project in accordance with the priorities set forth in section 4.2 hereof. In the event that the Construction Lender is not prepared to fund such Incremental Environmental Costs, Fortress shall do so in the same manner as all other Project Costs required to be funded by Fortress herein as set forth in section 3.2 hereof.

### 3.7 Additional Capital

Except for Pre-Financing Costs, if additional capital (other than the Construction Loan Facility) is required by the Co-Tenancy for Project Costs which cannot be borrowed from a bank or other recognized lending institution despite the reasonable best efforts of the Cityzen (with Fortress having the right to seek third party financing for such additional capital on commercially competitive terms), including the provision of guarantees from Cityzen, Fortress shall contribute the required capital to the Co-Tenancy, within thirty (30) days of the earlier of the Members of the Co-Tenancy passing a resolution to such effect and the Quantity Surveyor determine that same is required. Fortress shall arrange to have discharged/vacated any construction lien registered against the Project within thirty (30) days of receipt of written notice of same.

## Article 4

### CASH SURPLUS; DISTRIBUTIONS

#### 4.1 Distribution Advances Payable to Fortress

##### (a) Priority Advance Distribution of Cash Surplus

Fortress shall receive from each loan advance under Further Charges, as advances of distributions of Cash Surplus, an amount equal to thirty-five percent (35%) of each such advance made under Related Party Mortgage (the "**Priority Advance Distribution**"). Each Priority Advance Distribution shall be equal to 35% of each advance of the gross loan advance and shall be payable concurrently with and from each advance. Provided however that any such Priority Advance Distribution and interest thereon shall not under any circumstances, constitute a Project Cost or affect the

- 17 -

calculation of Actual Profit set out in Section 4.2 hereof.

(b) No return of Priority Advance Distribution

The parties acknowledge that Fortress shall have no obligation to repay the Priority Advance Distribution notwithstanding that the terms of Section 10.2(f) apply and notwithstanding that the Approved Profit Target set out in the initial Approved Project Budget has not been achieved.

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:

- 18 -

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 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 Cityzen 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 Cityzen.

#### 4.3 Distribution on Sale

If the Members agree to sell the Co-Tenancy to a third party prior to construction of the Project, the net proceeds of sale (and in the case of a sale of assets, the net after tax proceeds of sale) shall be allocated among the Members as set forth in the preceding section, except that there shall be no requirement to retain a reserve unless required pursuant to the terms of the sale to a third party or deemed advisable by the board of directors.

### Article 5 MANAGEMENT COMMITTEE

#### 5.1 General Provision

The Members hereby establish a Management Committee for the purposes of the management of the Co-Tenancy.

## 5.2 Composition

The Management Committee shall be composed of four (4) members, being two (2) representatives of each Member. Each Member shall appoint at least one (1) alternate representative to serve on the Management Committee during the period or periods when the principal representative of such Member is not available. The principal representative and alternate, until notice of change is given as herein required, for each Member shall be as follows:

<b>MEMBER</b>	<b>PRINCIPAL REPRESENTATIVE</b>	<b>ALTERNATE REPRESENTATIVE</b>
FORTRESS	Vince Petrozza	Jawad Rathore
CITYZEN	Sam Crignano	Danny Salvatore

A Member may change any of its principal representatives or its alternate representatives from time to time by giving notice of such change to the other Member and to its representatives or alternate representatives so replaced. All references in this Article to representatives of a Member shall include and refer to the alternate representative of such Member in the event that any of its representatives is not present or is unable to act.

## 5.3 Vacating of Office

The office of a member of the Management Committee shall be vacated upon the occurrence of any of the following events:

- (a) if a receiving order is made against him/her or if she/he makes an assignment under the BIA, as amended or re-enacted from time to time;
- (b) if an order is made declaring him/her to be a mentally incompetent person or incapable of managing his/her affairs;
- (c) if he shall be removed from office by a written notice from the Member that appointed him/her pursuant to this Article; or
- (d) if by notice in writing to the Members, she/he resigns his/her office and such resignation, if not effective immediately, becomes effective in accordance with its terms.

## 5.4 Vacancies

Any vacancy in the Management Committee shall be filled by a natural person appointed by the Member which appointed the former member of the Management Committee whose loss of office created the vacancy, as soon as reasonably possible after the creation of the vacancy. Such Member shall fill the vacancy by written notice stating the name and address of the natural person whom it appoints to the Management

- 20 -

Committee to fill the vacancy. Such written notice shall be given to the other Member, to the Nominee and to the person so appointed a member of the Management Committee.

#### 5.5 Authority of Individual Representatives

The representatives appointed by each Member have the power and authority to represent and bind each Member with respect to any matter within the competence of the Management Committee.

#### 5.6 Authority of Management Committee

Subject to Section 5.7 hereof, the Management Committee has the power and authority, and the Members hereby direct the Management Committee, to be responsible for all major decisions ("**Major Decisions**") including, *inter alia*, the following:

- (a) execution of contracts in the name of the Co-Tenancy with all relevant consultants, professionals, and other service providers (unless delegated to the Manager);
- (b) any Project Costs which are not items set out in the Project Budget as may be agreed to from time to time;
- (c) Review and approve all budgets, including the Project Budget, subject to the requirements of the Quantity Surveyor;
- (d) source, negotiate, and enter into financing arrangements for the Construction Lender;
- (e) the sale or lease of all or part of the Property, including the overall sales program and pricing of units for sale;
- (f) participate with the Project Manager in the preparation of the bidders list, and tendering of construction contracts;
- (g) approve all construction contracts in excess of \$50,000 or any non-arm's length contract vis-à-vis Cityzen or the Manager;
- (h) zoning applications and settlement thereof;
- (i) approval of design of project and major design changes; and
- (j) any material design changes materially increasing the Approved Project Budget.

The decision of the Management Committee with respect to any matter within its competence shall be binding on the Members and the Nominee.

### 5.7 Advisors

A representative shall be entitled to invite advisors to attend meetings of the Management Committee, subject to such restrictions on their attendance at and their participation in meetings as the Management Committee may impose.

### 5.8 Meetings

Meetings of the Management Committee may be held in person or by telephone from time to time at such time and place as the representative of each Member may determine and such notice shall be given in accordance with the provisions of this Agreement not less than twenty-four (24) hours (excluding any day that is not a Business Day) before the time when the meeting is scheduled to be held, provided that notice shall not be necessary if all the representatives are present or if the absent representative(s) have waived notice of or otherwise signified their consent to the holding of such meeting.

Notwithstanding the foregoing, meetings of the Management Committee will be held at least monthly from and after the commencement of construction of the Project.

### 5.9 Voting Rights

The representative of each Member on the Management Committee shall have one (1) vote each.

### 5.10 Quorum

Subject to Section 5.21, a quorum for a meeting of the Management Committee shall be two (2) representatives present in person or by phone (one representing each Member), provided that if there shall be no quorum present at any properly convened meeting of the Management Committee, such meeting shall be automatically adjourned and reconvened on ten (10) Business Days' notice to all representatives and notwithstanding anything else contained herein, the representatives present at such reconvened meeting shall constitute a quorum for the transaction of business by the Management Committee. For the purpose of determining quorum, a member of the Management Committee attending or participating in any meeting, by means of conference telephone or other communications equipment, or by means of a proxy, as permitted herein, shall be deemed and counted as a representative of such Member attending or having attended such meeting in person. Where there is any vacancy or vacancies in the Management Committee, the remaining members may exercise all powers of the Management Committee so long as a quorum remains in office.

### 5.11 Proxies

Each of the members of the Management Committee is authorized to appoint by means of a proxy a proxy holder, who is not required to be a member of the Management Committee, to attend and act at the meetings of the Management Committee in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy. A proxy holder appointed pursuant to this subsection shall have the same rights as

- 22 -

the member who appointed him to speak at and participate in a meeting of the members of the Management Committee in respect of any matter and to vote at the meeting.

#### 5.12 Chairman

A chairman of the Management Committee shall be elected annually by the Management Committee. He/she shall be chairman of any of the meetings of the Management Committee at which s/he is present, failing which the members of the Management Committee shall choose one of their other members to be chairman. The chairman of a meeting shall not be entitled to cast a second or tie breaking vote in the event that an equal number of votes is cast at any meeting of the Management Committee.

#### 5.13 Decisions by Vote

Subject to Section 5.18 and any decision of the Management Committee at any meeting thereof shall require the approval of two (2) representatives, one representing each Member. If the Management Committee is unable to reach agreement in accordance with this Agreement with respect to any issue before it, the Chairman of the Management Committee shall call a further meeting of the Management Committee at which the item under dispute shall be the sole item on the agenda. If at this further meeting of the Management Committee, or such further meeting as the Management Committee may agree to, the representatives of the Members after using their best efforts, in good faith, fail to reach agreement on the disputed item, the Management Committee shall refer the matter to arbitration in accordance with Section 15.1.

#### 5.14 Decisions in Good Faith

The Management Committee shall implement the provisions of this Agreement and undertakes to perform the duties assigned to it under this Agreement. Any decision required to be made by the Management Committee shall be made in good faith and strictly upon the merits of the matter in respect of which its decision is required and shall not be unreasonably delayed.

#### 5.15 Records and Systems

All financial planning and recording for the Co-Tenancy, the Property and the Development, including accounting, bookkeeping, audit and banking systems and procedures, shall be established by the Project Manager. The Project Manager shall be responsible for establishing and maintaining all financial planning and recording for the Co-Tenancy, the Property and the Development, including accounting, bookkeeping, audit and banking systems and procedures.

#### 5.16 Agreement for Provision of Materials or Services

The fact that a Member or an Affiliate of a Member has entered into an agreement with the Co-Tenancy for the provision of materials or services for the Property shall not

constitute a conflict of interest which would limit its rights or actions under this Agreement unless specifically provided in such agreement or in this Agreement.

#### 5.17 Where Defaulting Member

In addition to, and without in any way limiting, the remedies contained in this Agreement or otherwise available to a Member that is a Non-Defaulting Member with respect to the default of a Member that is a Defaulting Member hereunder, in the event of a continuing Event of Default on the part of the Defaulting Member, where the alleged Event of Default is not the subject of an arbitration pursuant to Section 15 hereof, the representative of a Defaulting Member shall be entitled to attend but not to vote (although he shall be entitled to continue receiving notices of meetings) at any meeting of the Management Committee. In such case, so long as any such default continues, a quorum for a meeting shall be constituted by the representative(s) of the Non-Defaulting Member, any decision of the Management Committee shall be made by such representatives of the Non-Defaulting Member and any decision so made shall be final and binding on all Members and on the Nominee.

#### 5.18 Indemnity

Each Member hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless each representative on the Management Committee from and against any and all liability loss, harm damage, cost or expense, including legal fees, which such representative may suffer, incur or sustain as a result of any suit, claim or demand brought or commenced against such representative and arising out of any action properly taken by the Management Committee. The liability of each Member under or by virtue of this Section is not limited to its Share.

#### 5.19 Remuneration of Management Committee

Unless approved by all Members, no fees, salaries, commissions or other compensation shall be paid by the Members to the members of the Management Committee in respect of their work related thereto. Such Members shall, however, be entitled to reimbursement of all actual, reasonable and appropriate expenditures made by them on behalf of the Members and the Co-Tenancy and in accordance with the terms of this Agreement.

#### 5.20 Information on Property

Solely with respect to books and records maintained from the date of this Agreement, each Member shall:

- (a) furnish to the other Member such information respecting the Property and the Development as may be reasonably required by such other Member at the expense of the requesting Member; and
- (b) have the right at all reasonable times and on reasonable notice at its expense and during usual business hours to audit, examine and make

- 24 -

copies of or extracts from the books and records of the Co-Tenancy which pertain exclusively to the Property.

Such right may be exercised through any agent or employee of such Member designated by it or by an outside independent chartered accountant designated by such Member. Each Member shall bear all expenses incurred by it in any examination made for its account.

#### Article 6

*INTENTIONALLY DELETED*

#### Article 7

### **PROJECT MANAGER**

#### 7.1 Appointment of Project Manager

Dominus Construction (2005) Corporation shall be appointed project manager (the "**Project Manager**") to manage and supervise all aspects of the development of the Project.

#### 7.2 Project Management Agreement

The Co-Tenancy will enter into a Project Management Agreement substantially on the terms attached as Schedule "C" to this Agreement. The appointment of the Project Manager will be effective until the expiry or termination of the Project Management Agreement.

Any decision by the Co-Tenancy relating to the purported default of the Project Manager under the Project Management Agreement shall be made by the Fortress representative on the Management Committee, acting reasonably, subject to Arbitration in accordance with Section 15.1 hereof.

#### Article 8

### **OTHER FINANCIAL AND ACCOUNTING MATTERS**

#### 8.1 Fiscal Year

Accounts for the Co-Tenancy shall be prepared and settled as of the 31st day of March in each year or as of any other date the Members may agree upon.

#### 8.2 Books of Account

Proper and complete books, records, reports and accounts of the Co-Tenancy shall be kept at the principal office of the Co-Tenancy and shall be open and available for inspection and copying by any one of the parties hereto or its authorized representative at any reasonable time during normal business hours. The said books and records shall fully

and accurately reflect all transactions of the Co-Tenancy and shall be maintained in conformity with GAAP.

### 8.3 Accountants

The accountants (the "**Accountants**") of the Co-Tenancy shall be PricewaterhouseCoopers Canada or such other firm of chartered accountants as shall be appointed by the Management Committee.

### 8.4 Financial Statements

Within ninety (90) days after the end of each Accounting Period of the Co-Tenancy, the Management Committee shall cause the Accountants of the Co-Tenancy to furnish to each Member an annual report consisting of:

- (a) a Balance Sheet;
- (b) Statement of Earnings;
- (c) Statement of Members Capital;
- (d) Statement of Changes in Financial Position;
- (e) Applicable notes and tax information;
- (f) a profit and loss statement for such year; and
- (g) any additional information that the Members may require for the preparation of their individual federal and provincial income tax returns.

Unless otherwise determined by the Management Committee, the said financial statements shall not be audited and shall be accompanied by the report of the Accountants thereon. The Accountants shall also, at such other time as may reasonably be required by a Member, prepare audited financial statements of the books and accounts of the Co-Tenancy, and for such purpose the Accountants shall have access to all books of account, records, vouchers, cheques, papers and documents of or which relate to the Co-Tenancy. The Accountants shall furnish copies of all audited financial statements to each Member forthwith after preparation. The cost of audit shall be for the Member who requests same unless there is a discrepancy of greater than 5%, in which case the cost of audit is a Project Cost.

### 8.5 Banking

A separate bank account (the "**Member's Account**") shall be opened and maintained for the Co-Tenancy in the name of the Co-Tenancy or in such other name or names as may from time to time be agreed upon by the Management Committee. The bank of the Co-Tenancy shall be such bank or banks as the Management Committee may from time to time determine. All gross receipts and other monies from time to time

- 26 -

received on account of the Co-Tenancy shall be paid immediately into the Member's Account in the same drafts, cheques, bills and cash in which they are received and all disbursements on account of the Co-Tenancy shall be made by cheque on such bank. All cheques, negotiable instruments and withdrawals from the Member's Account shall require the signature as per Section 16.4(d). All other documents required to be executed in respect of matters including, but not limited to, the repayment to the Members of their respective advances to the Co-Tenancy under this Agreement, distribution of Cash Surplus to the Members, financing commitment, mortgages and sales of any part of the Property, shall be executed as per Section 16.4(d).

#### 8.6 Payment for Services

Except as may be hereafter approved by the Members, no payment will be made to any Member for its services or the services of its shareholders, directors or employees.

#### 8.7 Status Report

Each Member will, at the request and expense of the other Member, execute and deliver to the other Member, or such party as the other Member may in writing designate, a certificate which certifies to the best of the knowledge of such Member after due investigation as to the then status of this Agreement, including as to whether it is in full force and effect, is modified or unmodified, confirming the state of accounts between the Members, the existence or non-existence of defaults, and any other matter pertaining to this Agreement as to which the other Member shall, acting reasonably, request a certificate.

#### 8.8 Lawyers

Robins Appleby LLP will be project lawyers for the purchase of the Property. Sheldon Spring of Goldman, Spring, Kichler & Sanders LLP will be the project lawyers for all other work for the Project and acting for the Joint Venture.

### Article 9

#### TRANSFERS OF INTERESTS IN THE CO-TENANCY

##### 9.1 Prohibition against Disposition

- (a) In this Agreement, "**transfer**" means to sell, assign, surrender, gift, transfer, pledge, mortgage, charge, create a security interest in, hypothecate or otherwise encumber or deal any portion of its Tenancy Interest, whether legal or beneficial. Any change in legal or beneficial ownership of a Member shall be deemed to be a transfer by such Member of its Tenancy Interest and shall be prohibited by the terms of this Agreement, save to Affiliates (as defined in the *Ontario Business Corporations Act*) or family trusts, provided the directing minds for each of the Members is as follows:

Fortress: Vince Petrozza and/or Jawad Rathore

- 27 -

Cityzen: Sam Crignano and/or Danny Salvatore

The Project still must continue at all times with Cityzen / Fernbrook and / Fortress banners.

- (b) Except as otherwise expressly provided in this Agreement or unless the unanimous written consent of all of the Members is first obtained, and the transferee first enters into an assumption agreement in favour of the Co-Tenancy and the other Member in the form reasonably satisfactory to the solicitors of the Co-Tenancy and the other Member pursuant to which the transferee shall agree to be bound by all of the terms, covenants, conditions and agreements contained in this Agreement on the part of the transferor as fully and effectively as if the transferee had originally executed this Agreement as the transferor, no Member shall transfer (by operation of law, contract or otherwise) any portion of its Tenancy Interest and any attempt to do otherwise shall be void.
- (c) In granting or withholding its consent under this Section, each Member may act in its sole arbitrary and unfettered discretion.

#### Article 10 DEFAULT

##### 10.1 Act of Default

A Member shall be deemed to have committed an act of default, in the event that such Member:

- (a) In the case of Fortress failing to advance within fifteen (15) days its proportionate share of any moneys which may from time to time be required pursuant to the provisions of Articles 3 and 4 hereof, or of any other provision herein contained or fails to discharge any First Mortgage, Existing Mortgage or Further Charges when required for advance of Construction Loan, save for discharge of a construction lien as set out in Section 3.6, which shall govern the nature of the default.
- (b) In the case of Cityzen, a breach of its obligations under Section 3.5 regarding Tarion registration or indemnities.
- (c) Is in default under any other provision or provisions of this Agreement, and such default continues for a period of thirty (30) days after written notice thereof by the other Member.
- (d) Makes any assignment for the benefit of creditors or is adjudged bankrupt or insolvent by any court of competent jurisdiction under any legislation then in force, or takes the benefit of any act that may be in force for bankrupt or insolvent debtors, or shall go into liquidation, either voluntary

- 28 -

or under an order of a court of competent jurisdiction, or otherwise acknowledges its insolvency.

- (e) Is the subject of any order made for the winding up of the Member.
- (f) Is the subject of any distress or execution or any similar process that is levied or enforced upon or against such Member's interest in the Co-Tenancy and the same remains unsatisfied for a period of sixty (60) days, unless the Member is in good faith disputing such process and has given security, which, in the absolute discretion of the other Member shall be deemed sufficient to pay in full the amount claimed in the event that it shall be held to be a valid claim.

The Member committing such act of default shall be referred to herein as the "**Defaulting Member**", and the other or others of them shall be referred to herein as the "**Non-Defaulting Member**".

## 10.2 Remedies

In the event of default as aforesaid and provided such default continues for a period of five (5) days after written notice thereof to the Defaulting Member by the Non-Defaulting Member, the Non-Defaulting Member shall have the following rights, in addition to any other right contained herein:

- (a) Non-Defaulting Member may advance to the Co-Tenancy the Defaulting Member's portion of an advance as is required to be made and the amount so advanced by the Non-Defaulting Member shall be owing to the Non-Defaulting Member as a loan (the "**Excess Loan**") and be repaid forthwith by the Defaulting Member to the Non-Defaulting Member and, until repaid, shall bear interest at a rate per annum calculated monthly and adjusted monthly on the first business day of each month, equal to 10 percent (10%) above the Prime Lending Rate, adjusted on a daily basis, charged by the Co-Tenancy's Bank to its best risk commercial customers, on the amounts from time to time owing to the Non-Defaulting Member by the Defaulting Member as aforesaid, and, until so repaid, such amounts together with interest thereon as aforesaid shall, to the extent thereof, be and constitute a first lien and charge on and against the shares of the Defaulting Member in the Co-Tenancy, and on and against all other interests of the Defaulting Member in the Project and on all moneys derivable thereunder or therefrom, all of which interests of the Defaulting Member are hereinafter collectively referred to as the "**Defaulting Member's Interests**" and same shall be enforceable both as a security interest under the *Personal Property Security Act* (Ontario) and as a mortgage under the *Mortgages Act* (Ontario) as applicable.
- (b) The Non-Defaulting Member is hereby irrevocably authorized, instructed and directed for on behalf of and as attorney for the Defaulting Member to

- 29 -

execute any and all documents required to be executed pursuant to the provisions hereof and to do all such other things as may be necessary or advisable in connection therewith, it being expressly understood and intended by each of the Members that the grant of the foregoing Power of Attorney is coupled with an interest to do so.

- (c) It is understood and agreed that, during the period of such default, the nominees of the Non-Defaulting Member to the board of directors and Management Committee shall be vested with the irrevocable right to exercise and cast the vote of both of the nominees of the Defaulting Member on the board of directors and Management Committee.
- (d) It is further understood and agreed that, during the period of such default, the Non-Defaulting Member shall be vested with and authorized to make all decisions, do all acts, and sign all documents required, which shall be binding on the Co-Tenancy and on all the parties hereto without requiring the approval, consent or affirmative vote of the Defaulting Member or its nominees or other representatives.
- (e) In the event of an unremedied act of default and an Excess Loan being made by the Non-Defaulting Member, no payment shall be made by the Co-Tenancy to the Defaulting Member of any moneys received by the Co-Tenancy that would otherwise be available for distribution to the Members until the Co-Tenancy or the Defaulting Member has made repayment to the Non-Defaulting Member of all Excess Loan advanced by it, plus interest.
- (f) In addition to the rights and remedies in Section 10.2, in the event Fortress breaches its obligation to procure and obtain any funding within the time or times required pursuant to Sections 3.2(a), 3.2(b), or Section 3.6, (the "**Funding Sections**") or fails to advance the funds required pursuant to the Funding Sections, Fortress' share of distributions of Cash Surplus under Section 4.2(h) shall be reduced proportionately by a fraction, the numerator of which is the principal amount of all advances that Fortress is required to procure, arrange or make pursuant to the Funding Sections (to the extent set out in Approved Project Budget in effect as of the date of distribution of cash flow at any given time as per Section 4.2 for amounts then known and otherwise as estimated by the Members, acting reasonably and in good faith as of the date of Fortress' default) after deducting therefrom that portion of such advances allocated, reserved or paid on account of any Priority Advance Distributions, together with the aggregate of all interest payable on such required advances (the resulting amount hereinafter referred to as the "**Required Fortress Advance**") less the principal amount of all Required Fortress Advances that Fortress has actually procured, arranged for or made pursuant to the Funding Sections after deducting therefrom that portion of such advance or advances made, allocated, reserved or paid on account of any Priority Advance

- 30 -

Distributions, together with the aggregate of any and all interest on the Fortress Advance on the amounts so advanced (the resulting amount hereinafter referred to as the "Fortress Advance") and the denominator of which is the Required Fortress Advance. For certainty, the numerator and denominator are intended to represent net amounts that a co-tenant would contribute as non-interest bearing equity for a project without any fee being charged thereon; and

- (g) In the event Fortress fails to advance its share of funds as required by the Funding Sections hereof and if Cityzen obtains third party financing to provide those funds, then all cost of placing and servicing such financing (including interest charged by the Lender thereof), shall be paid by Fortress and shall not be charged to the Project or constitute a Project Cost, or failing such payment by Fortress and payment thereof by Cityzen, it shall be treated as an Excess Loan and recovered as per Section 4.2, plus interest as per Section 10.2(a).

### 10.3 Specific Performance

If any party is in default under any of the terms and conditions of this Agreement, the Non-Defaulting Party may institute and maintain legal proceedings to compel the specific performance of the terms and conditions of this Agreement by the party in default without limitation of its other legal remedies. The party in default hereby agrees that any court of competent jurisdiction may make any order for specific performance as aforesaid.

### 10.4 No Waiver

No failure by the Co-Tenancy or the Non-Defaulting Member to insist upon strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of partial payment during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in force and effect with respect to any other then existing or subsequent breach thereof.

### Article 11

*INTENTIONALLY DELETED.*

### Article 12

*INTENTIONALLY DELETED.*

- 31 -

## Article 13

**AGREEMENT TO BE BOUND**

## 13.1 Agreement to be Bound

Notwithstanding anything to the contrary contained herein, any sale, transfer or assignment of shares of the Co-Tenancy to a third party (other than where such third party has agreed to purchase all of the issued and outstanding Tenancy Interest or all of the assets of the Co-Tenancy) or any issue of Tenancy Interest to a third party, subject to Section 9.1 hereof shall be conditional upon such person or the Member, as the case may be, having first delivered to the parties hereto its consent, under seal, agreeing to be bound by the provisions of this Agreement to the same extent as if from and after the date of signing such consent, it was a subscribing party hereto, with such modifications to this Agreement as may be necessary or desirable for the purpose of ensuring that the intent of this Agreement is implemented. Until then, the Co-Tenancy shall not be under any obligation to register the transfer of such shares. Upon such consent having been signed, the terms and conditions of this Agreement are to be applicable to such person or the Member, as the case may be, *mutatis mutandis*.

## Article 14

**TERMINATION AND SURVIVAL**

## 14.1 Termination

This Agreement shall terminate on the earliest to occur of:

- (a) the written agreement of the parties hereto to terminate this Agreement;
- (b) the dissolution or bankruptcy of the Co-Tenancy; or
- (c) all of the Tenancy Interest being owned by a single Member.

## Article 15

**DISPUTE RESOLUTION**

15.1 If, at any time or from time to time during the continuance of the Co-Tenancy or after the dissolution or other termination thereof, any material dispute, difference, or question shall arise between or among any of the parties, their heirs, executors, administrators, successors, assigns or nominees or any of them, touching or concerning the Co-Tenancy or the Property, meaning or effect of this Agreement or any provision hereof, such material dispute, difference or question shall be submitted to and settled by arbitration and the decision of the arbitrator appointed as hereinafter provided, to deal with such matter shall be final and binding upon all the parties, their representatives, the Nominee, and there shall be no appeal therefrom.

- 32 -

The arbitration shall be conducted by a single arbitrator agreed upon by the Members. If, within five (5) days after notice of the matter has been given by one of the Members to the other Member, the Members cannot agree upon a single arbitrator, then, a single arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) on the application of any one of the Members, upon notice to the other Member. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act*, R.S.O. 1990 and any amendments thereto.

**Article 16**  
**THE NOMINEE**

16.1 General Provisions

- (a) The Members appoint the Nominee to acquire and hold title to the Property, and all other property, assets and rights of the Co-Tenancy as bare trustee for the Members in the proportions set out hereunder:

MEMBER	PERCENTAGE SHARE
FORTRESS	75%
CITYZEN	25%

- (b) The Nominee accepts such appointment and acknowledges and declares that it agrees to hold the Property and all other property, assets and rights of the Co-Tenancy as bare trustee for the Members in accordance with the provisions hereof and that the Nominee has no beneficial interest, right or title to or in the Property, or other property, assets or rights, or any part thereof of the Co-Tenancy.
- (c) The Nominee also agrees that it will perform such activities and enter into such agreements in connection with the Property as the Management Committee may request from time to time.

16.2 General Duties

The Nominee shall:

- (a) at all times comply with the provisions of this Agreement and follow the directions of the Management Committee;
- (b) act solely on the directions of the Management Committee and not on the directions of an individual Member; and
- (c) not acquire or hold any property, incur any liability, undertake any obligation or perform any activity except on the directions of the Management Committee and in connection with the Property.

### 16.3 Duties re: the Property

- (a) The Nominee shall cause to be provided to each Member such information relating to the Property as the Member may reasonably request.
- (b) The Nominee shall cause to be maintained appropriate and proper books of account and records with respect to the Property.
- (c) Each Member shall have the right from time to time and at all reasonable times during usual business hours to audit, examine and make copies of or extracts from the records relating to the Property. Such right may be exercised through any Person designated by the Member. Each Member shall bear all expenses of any such examination.

### 16.4 Organization of the Nominee

The Nominee shall be organized or re-organized, as the case may be, as follows:

- (a) The business and affairs of the Nominee shall be managed by the Board of Directors of the Nominee. There shall be four (4) Directors, being two (2) nominees of FORTRESS and two (2) nominees of Cityzen. The authorized number of directors of the Nominee shall be increased or decreased accordingly. Should any vacancy occur on the Board of Directors for any reason, such vacancy shall forthwith be filled by a nominee to be appointed by the Member which is then not represented by the nominee to which it is entitled and until such vacancy is filled, the Board of Directors shall not transact any business or exercise any of the powers or functions except as may be necessary to qualify or elect a new director. There should be no casting vote by any director in the event of a tie in any vote.
- (b) At all times, the following Members shall have the right to be represented on and have elected to the Board of Directors of the Nominee, the following respective number of nominees:

<b>MEMBER</b>	<b># OF NOMINEES</b>
FORTRESS	Two (2)
CITYZEN	Two (2)

Each of the Members expressly covenants and agrees to vote or cause to be voted, its respective shares at all meetings of the shareholders, or to consent to all resolutions of the shareholders, as the case may be, respecting the election or appointment of Directors, to give full effect to the provisions of this Section.

- (c) Subject to the provisions herein in an Event of Default, the Nominee shall have four (4) Officers, namely a President, a Secretary, First Vice-

- 34 -

President and Second Vice-President, the first officers of which shall be the following respective nominees:

POSITION	NAME OF NOMINEE
President	Sara Crignano
Secretary	Vince Petrozza
First Vice-President	Danny Salvatore
Second Vice-President	Jawad Rathore

In the event of the resignation, removal or death of any of the above-named officers, the Members whose nominee such officer was shall have the sole and exclusive right to appoint a replacement for such officer.

- (d) All documents, instruments or agreements and cheques having a legally binding effect on the Members in respect of the Property shall be signed by the President or the First Vice-President, together with the Secretary or the Second Vice-President on behalf of the Members at the direction of the Management Committee or, where applicable, at the direction of all the Members.
- (e) Each Member shall subscribe for and there shall be issued to each of the Members common shares at the rate of \$1.00 per share in the capital of the Nominee as follows:

Member	No. and Class of Shares
FORTRESS	75 Common Shares
CITYZEN	25 Common Shares

It is expressly understood and agreed that, without the unanimous consent of the Members, the Nominee shall not allot or issue any additional shares in the capital thereof.

- (f) All share certificates issued or to be issued by the Nominee shall be endorsed with a memorandum as follows:

"This certificate is issued to and held by the party to whom it is issued, subject to the terms of an agreement made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, among \_\_\_\_\_, \_\_\_\_\_, and Fortress Brookdale Inc."

- (g) The Members hereby agree that this Section shall constitute a unanimous shareholders agreement and that, for so long as this Section is in force, the directors of the Nominee are hereby relieved of all of their rights, duties, powers, obligations and discretion as directors with respect to the management of the business and affairs of the Nominee including, without limitation, all of their rights, duties, powers, obligations and discretions as

- 35 -

directors pursuant to the provisions of the *Business Corporations Act* (Ontario) and any amendments thereto, and all such rights, duties, powers, obligations and discretions are hereby entrusted to the Co-Tenancy.

- (h) Unless expressly provided to the contrary herein, the rules and procedures and the organization of the Board of Directors of the Nominee shall, *mutatis mutandis*, be identical to that of the Management Committee, and for all purposes of this Agreement, any duly constituted meeting of the Management Committee shall be deemed to be a duly constituted meeting of the Board of Directors of the Trustee, and vice versa, as it relates to the Nominee's involvement in the Development, and any resolution duly passed by the Board of Directors of the Nominee as it relates to the Development and the Co-Tenancy shall be deemed to be a resolution duly passed by the Management Committee and vice versa.

#### 16.5 Indemnity by Members

Each Member hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless the directors and officers of the Nominee from and against any and all liability, loss, harm, damage, cost or expense, including legal fees, which they may suffer, incur or sustain as a result of any suit, claim or demand, brought or made against them and arising out of the due and proper performance by them of their duties as directors and officers of the Nominee.

#### 16.6 Obligations of Members

- (a) The Members covenant and agree to and with each other that they shall cause their respective nominees on the Board of Directors of the Nominee to cause it to follow the directions of the Management Committee properly given pursuant to this Agreement and to comply with the provisions of this Agreement.
- (b) The Members, in their capacity as shareholders of the Nominee, shall do, or cause to be done, all such acts and things as shall be necessary or desirable to give effect to the provisions of this Agreement including, without limiting the generality of the foregoing, voting or causing to be voted the shares in the capital of the Nominee beneficially owned by them.
- (c) The Members, in their capacity as shareholders of the Nominee, agree from time to time to transfer their interest in the shares in the capital of the Nominee whenever such transfer is required in connection with the transfer of a Tenancy Interest under or by virtue of this Agreement and to do all acts and things as may be necessary, desirable or useful for such purpose. In the event of the refusal or failure of a Member to transfer its shares in the Nominee as aforesaid, each of the other Members may, as attorney for the Member refusing or failing to transfer its shares, transfer

- 36 -

such shares as required to comply with this agreement and to execute and deliver all necessary documents or writings and to do all such acts as are necessary to give effect to the foregoing and for such purpose only each Member is irrevocably constituted and appointed the attorney of each of the other Members.

#### 16.7 Fiscal Year

The financial year of the Nominee shall be the same as the accounting period of the Co-Tenancy Accounting Period.

#### 16.8 By-Laws of the Nominee

The by-laws of the Nominee shall give effect to the foregoing provisions of this Article and shall provide, among other things, as follows:

- (a) subject to the provisions regarding Defaulting Members, the presence of all directors shall be required to constitute a quorum at any meeting of the Board of Directors;
- (b) any resolution of the Board of Directors shall require the affirmative votes of 2 directors, one representing each Member;
- (c) the presence of shareholders of the Nominee holding shares having voting rights and representing in person or by proxy at least one hundred per cent (100%) or all issued shares entitled to voting rights at such meeting shall be required to constitute a quorum at any meeting of the shareholders;
- (d) any resolution of shareholders shall require the affirmative votes of at least one hundred per cent (100%) of all issued shares entitled to voting rights at the meeting at which such resolution is passed;
- (e) any director shall have the right any time and from time to time to call a meeting of the Board of Directors;
- (f) any shareholder holding one (1) or more shares in the Nominee entitled to voting rights at such meeting shall have the right at any time or from time to time to call a meeting of the shareholders;
- (g) the chairman presiding at directors' meetings shall have the right to vote in his/her capacity as a director in the first instance, but shall have no second or casting vote in case of an equality of votes; and
- (h) the chairman presiding at shareholders' meetings shall have the right to vote in the first instance in his/her capacity as a shareholder, and as a proxy if so appointed, but shall have no second or casting vote in case of an equality of votes.

#### 16.9 Restricted Activity

The Nominee shall not carry on, nor be permitted to carry on, any business of any nature or kind whatsoever in its own right, and shall be restricted in all of its activities to the performance of its function as Nominee as herein set forth. Notwithstanding that the ownership of the Property may be registered in the name of the Nominee, the true and beneficial ownership thereof shall for all purposes be vested in the Members in their respective Tenancy Interest.

### Article 17

#### GENERAL CONTRACT PROVISIONS

#### 17.1 Governing Law

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties agree that the courts of the province of Ontario will have exclusive jurisdiction to determine all disputes and claims arising between the parties.

#### 17.2 Severability

If any covenant, obligation or agreement set forth herein or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation and agreement to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each such covenant, obligation and agreement shall be separately valid and enforceable to the fullest extent permitted by law.

#### 17.3 Waiver

No waiver by any Member of any breach of any of the provisions of this Agreement by the other Member shall take effect or be binding upon the Party unless in writing and signed by such Member. Unless otherwise provided therein, such waiver shall not limit or affect the rights of the Members with respect to any other breach.

#### 17.4 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section, and the regulations promulgated pursuant thereto or thereunder, as amended, restated or re-enacted from time to time.

#### 17.5 Notice

Any notice or other communication required or permitted to be given or made hereunder shall be in writing and shall be well and sufficiently given or made if delivered in person during normal business hours on a Business Day and left with the receptionist or other responsible employee of the relevant party at the applicable address set forth

- 38 -

below; or sent by prepaid first class mail; charges prepaid and confirmed by prepaid first class mail or sent by any electronic means of sending messages, including e-mail or facsimile transmission which produces a paper record (an "**Electronic Transmission**"), to any of the parties hereto at the address set out opposite his respective name below:

MEMBER	ADDRESS FOR SERVICE
FORTRESS	25 Brodie Drive Unit 1 Richmond Hill, ON L4B 3K7 Fax No.:
CITYZEN	2220 Highway 7 West, Unit 5, Concord, Ontario Fax No.:
NOMINEE	25 Brodie Drive Unit 1 Richmond Hill, ON L4B 3K7 Fax No.:
PROJECT MANAGER	56 The Esplanade, Suite 308 Toronto, Ontario M5E 1A7 Fax No.:

Any party may change its address for notice at any time by Notice given to all of the other parties to this Agreement pursuant to the provisions of this section.

Any Notice given or made in accordance with this section shall be deemed to have been given or made and to have been received:

- (i) on the day it was delivered, if delivered as aforesaid;
- (ii) on the third (3) Business Day (excluding each day during which there exists any general interruption of postal services due to strike, lockout or other cause) after it was mailed, if mailed as aforesaid; and
- (iii) on the day of sending if sent by Electronic Transmission during normal business hours of the addressee on a Business Day and, if not, then on the first Business Day after the sending thereof.

#### 17.6 Further Assurances

Each of the parties shall from time to time and at all times do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

#### 17.7 Entire Agreement

This Agreement constitutes the entire Agreement between the parties relating to the Co-Tenancy and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, among the parties with respect thereto.

#### 17.8 Amendments

No amendment or modification of this Agreement shall be binding unless in writing and signed by the parties.

#### 17.9 Time of the Essence

Time shall be the essence of this Agreement.

#### 17.10 Counterparts

This Agreement may be executed in any number of counterparts provided each party executes a counterpart and all of the counterparts taken together shall for all purposes constitute one agreement, binding on the parties notwithstanding that all parties are not signatory to the same counterpart.

#### 17.11 Marketing Materials

Fortress Real Developments Inc., shall be permitted to use, without payment, logos, whether trademarked or not or other identifying symbols for both Cityzen and Fernbrook Homes and any related entities, in any marketing or advertising material in the context that Fortress is developing the Project and providing financing for the Project in conjunction with Cityzen and the Cityzen/Fernbrook entities. Cityzen shall have the right to approve the use of any such logos or defined symbols or affiliation with the Project, acting reasonably, from time to time upon written request therefor.

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- 40 -

## 17.12 Enurement

The provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto the day and year first above written.

**FORTRESS AVENUE ROAD (2015) INC.**

By: 

Name: Vince Petrozza

Title: Vice-President

I have authority to bind the Corporation

**FERNBROOK HOMES (BROOKDALE) LIMITED**

By: \_\_\_\_\_

Name: Sam Crignano

Title: Secretary/Treasurer

I have authority to bind the Corporation

**FORTRESS BROOKDALE INC.**

By: 

Name: Vince Petrozza

Title: Vice President

I have authority to bind the Corporation

**DOMINUS CONSTRUCTION (2005)  
CORPORATION**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the Corporation

- 41 -

## 17.12 Enurement

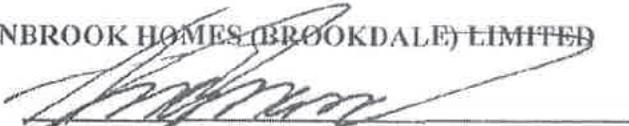
The provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto the day and year first above written.

**FORTRESS AVENUE ROAD (2015) INC.**

By: \_\_\_\_\_  
 Name: Vince Petrozza  
 Title: Vice-President  
 I have authority to bind the Corporation

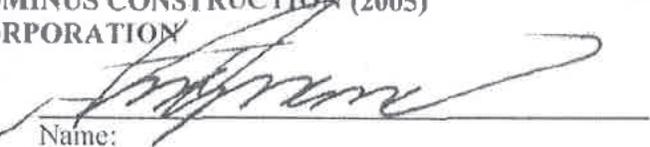
**FERNBROOK HOMES (BROOKDALE) LIMITED**

By:  \_\_\_\_\_  
 Name: Sam Crignano  
 Title: Secretary/Treasurer  
 I have authority to bind the Corporation

**FORTRESS BROOKDALE INC.**

By: \_\_\_\_\_  
 Name: Vince Petrozza  
 Title: Vice President  
 I have authority to bind the Corporation

**DOMINUS CONSTRUCTION (2005)  
CORPORATION**

By:  \_\_\_\_\_  
 Name:  
 Title:  
 I have authority to bind the Corporation

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF 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 (N YORK), CITY OF TORONTO

**SCHEDULE "B"**  
**EXISTING MORTGAGES**

**First Mortgage:**

Charge registered as Instrument No. ● on May ●, 2015 in favour of Vector Financial Limited and DUCA Financial Services Credit Union Ltd , in the principal amount of \$14,500,000.00.

**Second Mortgage:**

Charge registered as Instrument No. ● on May ●, 2015, in the principal amount of \$6,600,000.00.

**SCHEDULE "C"**  
**PROJECT MANAGEMENT AGREEMENT**

**THIS AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_,

**BETWEEN:**

**FORTRESS BROOKDALE 2014 INC.,**  
a Co-Tenancy incorporated under the laws of Ontario,

(hereinafter called the "**Corporation**")

**A N D:**

**DOMINUS CONSTRUCTION (2005) CORPORATION,**  
a Co-Tenancy incorporated under the laws of Ontario,

(hereinafter called the "**Manager**")

**WHEREAS:**

**A.** The Corporation wishes to develop a mixed use retail/residential condominium project (the "**Project**") on lands municipally known as Avenue Road and Brookdale Avenue, Toronto (the "**Property**");

**B.** The Corporation wishes to retain the services of a project manager.

**1.1**                    **Appointment and Duties of Manager**

The Corporation hereby engages the Manager on behalf and for the benefit of the Corporation, to manage and supervise all aspects of the development and construction of improvements upon the Corporation's lands.

**1.2**                    **Definitions**

"**Approved**" means approved in writing pursuant to a resolution of the Management Committee.

"**Budget**" means the pro-forma budget approved by the Management Committee from time to time pursuant hereto.

"**Co-Tenancy Agreement**" means the agreement between \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_\_.

"**Event of Default**" means, in the case of the Manager:

- (a) the material failure of the Manager to perform its duties and discharge its obligations under this Agreement;
- (b) the malfeasance or misfeasance of the Manager in the performance of its duties and discharge of its obligations under this Agreement; or

- 2 -

- (c) a breach by the Manager of any trust or fiduciary duty created by this Agreement for funds received by it in accordance with Section 4.8(q) on account of the costs of the Project to be paid to contractors, consultants, and suppliers retained in connection with the Project or the Manager's refusal to account for such funds.

"**Notice of Complaint**" has the meaning set forth in Section 1.15.

"**Notice of Termination**" has the respective meanings set forth in Section

"**Management Committee**" has the meaning ascribed to it in the Co-Tenancy Agreement.

"**Members**" means any of the Members of the Corporation.

All other capitalized terms shall have the meanings ascribed to them in the Co-Tenancy Agreement.

### 1.3 Appointment of and Acceptance by Manager

The Manager accepts its appointment and covenants and agrees to carry out its obligations hereunder in a competent, honest, diligent and efficient manner in accordance with the terms of this Agreement.

### 1.4 Representations and Warranties by Manager

The Manager represents and warrants that as of the date of this Agreement:

- (a) it has and will have throughout the Term, all of the requisite skills and experience to carry out the Manager's obligations and duties under this Agreement;
- (b) it is fully qualified and licensed to the extent required by law to manage real estate development and perform all obligations of the Manager hereunder in the jurisdiction in the City of Vaughan and agrees to comply with all such laws now or hereinafter in effect; and
- (c) its personnel are qualified and that it possesses the necessary experience and expertise to enable it to perform the services and duties hereunder.

### 1.5 Duty of Care

- (a) The Manager shall carry out its duties under this Agreement diligently and expeditiously and with due care, and time shall in all respects hereof be of the essence. The Manager will carry out its duties in an efficient manner in keeping with the highest standards of managers of comparable, similar quality developments in the City of Vaughan, taking into account size, age and location.
- (b) The Manager will not be responsible for matters beyond its reasonable control (including, without limitation, delay in the completion of the Project and increase in the cost to complete the Project) or for matters involving the expenditure of funds which are not made available by the Corporation.

### 1.6 Independent Contractor

The parties acknowledge that the Manager shall undertake its duties hereunder as an independent contractor and not as agent or in any other way representative of the Corporation except as herein expressly provided. It is further acknowledged that nothing in this Agreement or in any acts of the parties hereto shall be deemed to create a partnership relationship between the Manager and the Corporation.

### 1.7 Scope of Authority

In connection with the performance by the Manager of its duties under this Agreement, the Manager shall have the authority and the obligation:

- (a) to negotiate, settle and, execute, as agent for the Corporation, without personal liability, all contracts provided that the aggregate amount of the expenses to be incurred thereunder are provided for in the Budget including, without limitation, any contingency therein or have otherwise been approved by the Corporation;
- (b) to apply on behalf of the Corporation in the name of the Corporation, as agent for the Corporation and without personal liability, to authorities for, and obtain, all land use classification amendments, applications, licences, permits and written approvals necessary or required for the Project (including, without limitation, demolition, excavation, site plan and building permits and their related agreements);
- (c) negotiate and monitor performance obligations under development, servicing, site plan and other similar agreements required by any Governmental Agency;
- (d) to incur on behalf of the Corporation all expenses, whether or not of a capital nature, provided for in the then current Budget (and taking into account the contingency which is available) or otherwise Approved by the Corporation with respect to a category of expense therein; and
- (e) in the event of an emergency when the representatives of the Corporation cannot, after reasonable efforts in the circumstances by the Manager, be reasonably located for the purpose of giving their written approval, to proceed (and the Manager is hereby authorized and instructed to proceed) with such steps as in its discretion are deemed necessary for the protection or preservation of the Project or other property, the Corporation or the Manager, as the case may be, or from any penalty or other liability or the prevention of injury, or death to person. Upon the happening of any such event, the Manager shall promptly give notice thereof to the Corporation and any expenditures by the Manager in that regard shall be deemed to be Approved by the Corporation and added to the Budget.

### 1.8 *INTENTIONALLY DELETED*

### 1.9 Management Services

The Manager shall in a proper and efficient manner, carry out the following development management services in connection with the Project at the expense of the Corporation:

- (a) **Development Concepts:** with the direction and instruction of the Board of Directors, formulate, present and finalize (i) development concepts for the Project and (ii) the Budget;
- (b) **Contractors:** with the Board of Directors' written approval, select and enter into, as agent for the Corporation and without personal liability, contracts in respect of the Project on behalf of the Corporation with contractors, consultants, suppliers and others provided the aggregate amount of such expenses do not exceed the total amount of the Budget including, without limitation, any contingency or are otherwise approved by the Corporation and such contractors, consultants, suppliers and others are dealing at arm's length with the Manager (unless otherwise approved by the Board of Directors); and co-ordinate, direct and supervise their work, scrutinize and settle their accounts and supervise and use its commercially reasonable efforts to ensure their performance;

- 4 -

- (c) Layout, Design: direct the layout, design and engineering for the Project including, without limitation, the preparation of all drawings and specifications, and obtain the written approval of the Corporation of any material changes thereto;
- (d) Co-ordination: co-ordinate and direct to completion, the construction of the Project including, without limitation, demolition, if any and site preparation and time schedules in accordance with the plans and specifications approved by the Corporation, the requirements of all ground leases, site plan agreements, property development agreements, construction contracts and applicable laws, co-ordinate the preparation of all plans, specifications, all engineering drawings;
- (e) Material Changes: notify the Board of Directors promptly of material changes or developments affecting the Project including, without limitation, material changes to the Budget;
- (f) Safety: use commercially reasonable efforts to cause all contractors employed on the Project to be responsible for the safety of all workers and equipment on the Project in accordance with all applicable legislation governing construction safety;
- (g) Liens: use commercially reasonable efforts, to require all contractors employed in respect of the Project to cause any and all construction liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Corporation, the Manager, any consultant, any subcontractor or any of them or on their or its behalf in respect of the Project which may be registered against or otherwise affect the Corporation's lands to be released, discharged and/or vacated forthwith by all appropriate means, including payment of funds into court, if necessary;
- (h) Legal Actions: monitor and notify the Board of Directors of legal actions affecting the Project arising from the registration of construction liens;
- (i) Insurance:
  - (i) use all reasonable efforts to place or cause to be placed such policies of insurance in respect of the Project and bonding of contractors employed in respect of the Project (where appropriate) as the Corporation consider necessary or desirable to protect the Corporation, the Manager, contractors, suppliers, consultants and their property and interests from liability, damage or loss, including builders' risk insurance, liability insurance, errors and omissions insurance and delayed start up/business interruption insurance in each case to the extent such insurance and bonding is available in the marketplace at a cost acceptable to the Corporation. The Manager shall be responsible for recommending the amount and type of coverage required (which must be Approved by the Corporation) and for settling the insurance contracts, renewing existing insurance coverage, filing claims, liaison with insurance adjusters, compliance (to the extent that the Manager shall be so empowered hereunder) with all statutory conditions and the various policies of insurance but only in connection with the insurance which it places. The Corporation shall satisfy itself with respect to the adequacy of such insurance. Upon the request of the Corporation, the Manager shall provide the Corporation with certified copies of all insurance policies;
  - (ii) All placement of insurance shall comply with the requirements of any other agreements to which the Corporation may from time to time be a party, which are known to the Manager and which call for specific requirements as to insurance coverage, amounts, and payment of proceeds thereunder; and

- 5 -

- (iii) The Manager shall procure contractual liability insurance, if available at reasonable cost, ("Contractual Liability Insurance") in support of the indemnification set out in Section 1.20 in an amount and with companies acceptable to the Corporation. Such insurance shall not be cancellable without thirty days prior written notice to the Corporation and the Manager shall deliver certificates thereof to the Corporation annually or as otherwise necessary to evidence coverage for the entire term of this Agreement. The Manager shall pay for the Contractual Liability Insurance if it is part of the Manager's standing blanket insurance program and it is not specific to the Project, otherwise the cost of the Contractual Liability Insurance shall form a part of the costs of the Project.
- (j) Notification: promptly give the Corporation notice of any damage to the Project when the Manager becomes aware of such damage and copies of any notices given by the Manager to any insurer in connection with the Project with respect to any claim against the Corporation relating to the Project or the Project or any circumstance which may give rise to any such claim and copies of all notices, work orders, claims and directives, in each case, received from Authorities in connection with the Project, including, without limitation in respect of any employment, workplace health and safety and environmental matters. In addition, the Manager shall notify the Corporation upon receipt of any notice or communication from an insurance carrier regarding adverse change in coverage or the uninsurability of the Project;
- (k) Books of Account, Information: at all times during the Project, maintain at its office in Vaughan, Ontario or the city in which the Corporation's lands is located, or at the Corporation's lands, appropriate books of account and records with respect to the contracts and in accordance with generally accepted accounting principles and practices applicable to the development management industry in Canada and applied on a consistent basis. The Corporation may, acting reasonably and at reasonable times, with reasonable notice in the circumstances, examine and access such books of account and records and cause to be undertaken by auditors or others, at the cost of the Corporation (except in the case of an Event of Default which the Manager has not cured or commenced to cure in accordance with Section 1.15(a)), inspections and audits of such books of accounts and records and to make copies of such books of account and records;
- (l) Budgets: When required by the Corporation, the Manager shall prepare and submit a preliminary Budget for approval by the Corporation. The Manager may propose adjustments to the Budget from time to time. Such proposed adjustments by the Manager to the Budget shall be either approved by the Corporation or the Corporation shall provide comments on such adjustments by no later than 15 days after their receipt in which event the Manager shall forthwith submit a revised draft for written approval by the Corporation. Subject to the foregoing, so long as and to the extent that any such adjustment proposed by the Manager has not been so approved by the Corporation, the Manager may proceed on the basis of the most recently approved Budget and the Corporation and the Manager shall meet to discuss the applicability of the Manager's proposed adjustments to the Budget;
- (m) Monthly Reports: prepare and deliver in paper and/or electronic format to the Corporation within 15 days after each month end:

  - (i) a cost and financial pro-forma analysis for the Project and a consolidated report showing projected capital costs and costs incurred to date and projected variances to the Budget which the Corporation shall approve or reject prior to the next monthly report;
  - (ii) reports on construction, contractual and legal matters and any significant developments affecting or relating to the Project;

- 6 -

- (iii) an updated timetable for the development, construction and completion of the Project;  
and
- (iv) such other reports and information as the Corporation may reasonably require;
- (n) Inspection by the Corporation's Auditors: make available to the auditors and appraisers retained by the Corporation from time to time upon request, such information and material as they may require for purposes of their audits or reviews relating to the Corporation's lands and as may be necessary for such auditors or appraisers to properly carry out their duties and the Manager shall otherwise co-operate as may be necessary for such auditors or appraisers to carry out their duties;
- (o) Additional Reports and Information provide any of the Corporation with whatever additional reports and information relating to the Project which it may reasonably request and/or whatever additional reports and information are customary to be provided by a Manager.
- (p) Inspection: allow the Corporation and their representatives to at all times have access at their own risk to the Project during the construction of the Project and the Manager shall provide facilities for such access;
- (q) Banking:
  - (i) Banking: handle all banking necessary for the due performance of the accounting and administrative functions of the Manager under this Agreement and for the receipt and disbursements of all monies of the Corporation pertaining to the Project required to be attended to by the Manager under this Agreement on account of the costs of the Project to be paid to contractors, consultants and suppliers retained in connection with the Project. The Manager shall forthwith deposit in a separate account for the Corporation's lands or the Project maintained by the Manager in the name of the Corporation or as the Corporation direct, all cash, cheques and other negotiable instruments received by the Manager pursuant to this Agreement. The Manager shall deal with such cash, cheques and negotiable instruments in accordance with sound cash management practices so that the Corporation are adequately protected;
  - (ii) Monies held in Trust: receive and hold in trust all monies received by the Manager on account of amounts to be paid to contractors, consultants and suppliers retained in connection with the Project for or on account of the Corporation solely for the account of and in trust for the Corporation and deposit same immediately and solely into the Corporation's account as contemplated by subsection (i) and without being co-mingled with any other monies which are not related to the Corporation's lands. With the written approval of the Corporation, the Manager shall invest monies in investments approved by the Corporation. The Manager shall provide such control over accounting and financial transactions as is reasonably required to protect Corporation's assets from theft, negligence or fraudulent activity on the part of the Manager or the Manager's employees. Losses arising from such instances are to be borne by the Manager to the extent not covered by insurance; and
  - (iii) Provision of Funds: not at any time be requested to and shall not overdraw the bank account or accounts operated by it in connection with the Corporation's lands or the Project, and if the amount of the expenditures authorized to be made pursuant to this Agreement in accordance with Approved amounts set out in the Budget exceed at any time the amount held by the Manager for the Corporation, the Corporation shall immediately furnish to the Manager sufficient funds to enable it to make such expenditures based on the total amount being applied for. If the Corporation fail to

- 7 -

furnish such funds, the Manager shall not be required, in its capacity as Manager, to expend its own funds and shall have no other liability whatsoever for any consequences arising from such failure by the Corporation and the Corporation hereby agree to indemnify and save the Manager harmless in its capacity as Manager, for any and all actions by third parties arising from its failure to make any expenditures by reason of the failure to provide funds. If the Manager elects to advance its own funds on behalf of the Corporation such payments shall constitute a demand obligation of the Corporation to the Manager and bear interest at a rate per annum equal to the aggregate of the Prime Rate and one percent calculated and compounded monthly until such advances are re-paid to the Manager. The Manager shall (other than in circumstances of an emergency) provide no less than four (4) Business Days' prior written notice of any requirement of the Corporation to provide funds.

- (r) Security. Arrange security for the physical protection of the Project and, when necessary, for the control of vehicular and pedestrian access and egress;
- (s) Personnel.
  - (i) engage (either as employees of the Manager or by contractual arrangements to which the Corporation is not a party) such persons as shall be necessary and desirable for the continued and uninterrupted performance by the Manager of its obligations under this Agreement and so that it is not necessary for the Corporation to have any employees to carry out the services of the Manager under this Agreement. None of such persons shall be, or be deemed to be, employees of the Corporation and the Manager shall advise such staff at the time of hiring that they are employees of the Manager and not of anyone else. The Manager shall be solely responsible for all employment matters relating to such employees including hiring, training, discipline, dismissal and administration of any collective agreements covering such employees.
  - (ii) the Manager shall, at its sole expense:
    - (A) comply with all obligations to or in respect of its employees including compliance with all employment standards, human rights, health and safety, labour relations, workers' compensation, pay equity and employment equity legislation and all other legislation or common law applicable to its employees;
    - (B) comply with all collective agreement and collective bargaining obligations;
    - (C) conduct all aspects of its labour relations so as to promote positive relations with employees and their representatives and so as to avoid labour problems by the prompt handling of grievances and complaints from the employees and their bargaining agents;
    - (D) make every effort to avoid any type of labour disruption and keep the Corporation fully advised in a timely manner of the status of collective bargaining or other circumstances which could lead to a labour disruption;
    - (E) promptly remit Employment Insurance, Canada Pension Plan and Workers' Compensation payments and other similar statutorily required payments and provide satisfactory proof thereof to the Corporation as and when requested by the Corporation;

- 8 -

- (F) make all other payments to or on behalf of its employees in a timely manner and in accordance with its contractual and statutory obligations;
- (G) ensure its employees are competent and properly trained and supervised to perform their duties in a safe and efficient manner and work in compliance with all applicable legislation and with all statutory rules and regulations and with the policies and directives of the Corporation, in each case pertaining to the Corporation's lands; and
- (H) take reasonable steps to ensure that its contractors and employees carry out the foregoing obligations;

Notwithstanding anything to the contrary contained herein, the only employees of the Manager which the Manager is responsible to pay its head office staff. All site personnel, including site supervisors shall form part of the costs of the Project.

- (l) Employee Dishonesty Insurance. arrange and maintain, if available at reasonable cost, errors & omissions insurance and employee dishonesty insurance with regard to its employees who handle, or are responsible for, monies in connection with the Project and such other insurance (and limits) as the Corporation decide appropriate, in an amount not less than \$2,000,000 in connection with employee dishonesty insurance and not less than \$5,000,000 in connection with the Manager's errors and omissions insurance, and otherwise on terms satisfactory to the Corporation, acting reasonably. The cost of such insurance shall form a part of the costs of the Project;
- (u) Meetings. co-ordinate and attend to all meetings with consultants, professionals and other service providers; attend the meetings with Corporation as required;
- (v) Opening, Promotion and Marketing. provide management services with respect to the opening, promotion and marketing of the Project;
- (w) Method of Keeping Accounts. maintain (in accordance with instructions given by the Corporation from time to time as to the manner in which the same shall be maintained) accounts with respect to matters arising under this Agreement in order for the Corporation to readily extract financial statements pertaining to the Project in the form required by the Corporation. The Manager shall cooperate with the auditors of the Corporation in the preparation of such financial statements and their presentation to the Corporation. The Manager shall establish and maintain complete and accurate development technical records in respect of all matters relating to the development or the Project;
- (x) Attend to all matters with respect to marketing the condominium units, and registering the condominium corporation, in accordance with a marketing and pricing plan approved by the Corporation;
- (y) Taxes. recommend to the Corporation the execution and filing with any Governmental body documents necessary to be filed in connection with the business of the Project, including Income Tax and HST Returns
- (z) Generally. generally do and perform all things directly necessary for the proper and efficient administration and management of the completion of the Project.

**1.10 Ownership of Plans**

The Manager acknowledges that, in accordance with and subject to the agreements between the Corporation or the Manager (on behalf of the Corporation, as agent for the Corporation and without personal liability) and the consultants, all plans and specifications and all copies thereof and all models with respect to the Project are the property of the Corporation. The Manager shall not use the same with respect to any other work and upon request by the Corporation, the same shall be delivered to the Corporation upon termination of this Agreement.

**1.11 No Concessions to the Manager**

The Manager hereby undertakes not to accept for its own account in the execution of its duties under this Agreement any commissions, reductions, rebates, finder's fees or other concessions from tradesmen, suppliers, contractors, insurers or tenants and if such concessions are received by the Manager, they shall be remitted to or credited to the Corporation forthwith after receipt.

The Manager shall disclose to and obtain the written approval of the Corporation from time to time with respect to any proposed expenditure relating to the Project to any person not at arm's length from the Manager and (to the best of the Manager's knowledge in accordance with prudent corporate policies in that regard) each of its directors and officers.

The Manager will specifically identify in the Budget or otherwise, costs and expenses paid to persons not at arm's length from the Manager.

The Manager may pay, as Project Cost, a commission to its sales staff of 10.75% of the sales price (exclusive of HST) of all extras and upgrades sold by them to unit purchasers.

**1.12 Rights of Examination by the Corporation**

Upon a written request of any of the Members the Manager will, at any and all times during normal business hours and on reasonable notice, permit the Members, or their respective agents and representatives, to conduct physical inspections of the Project and/or examine all books of account, reports and other records of the Manager relating to the services performed for the Corporation by the Manager under this Agreement, to make copies thereof or extracts therefrom or to have the same audited or reviewed by an auditor or consultant appointed by, and at the expense of, the Corporation, or of the applicable Member conducting such review and inspections, provided that if such examinations demonstrate any material shortcoming in the performance by the Manager of its obligations hereunder, such costs shall be borne by the Manager.

**1.13 Meetings**

At the request of any of the Members or the Manager, from time to time, the Members and the Manager shall meet at the principal offices of the Manager in Toronto, Ontario or another mutually agreed upon location upon five (5) Business Days' notice, on a mutually agreed upon date. The Manager shall be prepared to report to the Corporation on the status of the Project and the Manager's activities relating to the Project.

**1.14 Approvals by the Corporation**

The Manager shall have authority to take all actions contemplated in the Approved Budget.

**1.15 Approvals**

All requests for approvals by the Manager shall be in writing and all approvals of the Corporation shall be in writing, provided that if such request or written approval is reflected in an e-mail sent by each Member to the Manager or by the Manager to the Corporation, as the case may be, such request or written approval shall be deemed to be in writing.

**1.16 Termination of Manager**

- (a) **Default by Manager:** If an Event of Default occurs, the Corporation may give notice (a "Notice of Complaint") to the Manager specifying in reasonable detail the Event of Default and if, within 30 days of receipt of any Notice of Complaint, the Manager fails to cure the Event of Default in a reasonable manner, or if more than 30 days are required to cure the Event of Default, the Manager fails to commence and continue diligently to cure or give reasonable assurances to the Corporation that such Event of Default will be cured within a reasonable period of time, the Corporation shall have the right to terminate the appointment as manager by notice (a "Notice of Termination") to the Manager stating that its appointment as manager is terminated and the reason for termination. Such termination shall be effective as of the date on which the Notice of Termination is received by the Manager.
- (b) **Termination by the Manager:** The Manager may terminate its appointment as manager at any time on not less than 180 days' notice to the Corporation.
- (c) **Termination of Project:** If at any time the Project or a substantial part thereof is stopped, suspended, abandoned or terminated for any reason whatsoever including, without limitation, under an order of an Authority or by the Corporation, for a period of more than 30 days, either the Manager or the Corporation may, without prejudice to any other right or remedy it may have, terminate its appointment as manager by giving the Corporation or the Manager, as applicable, a Notice of Termination. Such Notice of Termination shall be effective as of the date which is 30 days after the date on which the Notice of Termination is given by the Manager or the Corporation, as applicable.

**1.17 Delivery of Records, etc.**

If its appointment as manager is terminated, the Manager shall, notwithstanding such termination, forthwith upon termination and from time to time thereafter deliver to the Corporation all records and documents in an organized manner, including, without limitation the following:

- (a) document plans;
- (b) project budgets;
- (c) all contracts;
- (d) all operating records;
- (e) books of account; and
- (f) all supplies, services and materials (to the extent paid for by the Corporation if the same have been acquired by the Manager in accordance with the terms of this Agreement), keys, garage cards, parking permits and passes,

- 11 -

and ancillary documents maintained with respect to the Project (whether on or off-site) which are then in the possession or control of the Manager which the Corporation reasonably require and which relate directly or indirectly to the Project; provided that the Manager may elect to retain copies of such records, books of account and documents and notwithstanding such expiry or termination the Corporation shall thereafter and from time to time for a reasonable period of time produce at their offices the originals of such items whenever the Manager reasonably requires them for its purposes in connection with its obligations under this Agreement. The Manager shall keep all such information confidential.

Upon termination of its appointment as manager, the Manager shall also deliver to the Corporation the following with respect to the Project:

- (i) a final accounting as of the date of termination to be delivered within 45 days after such termination; and
- (ii) any balance of monies of Corporation held by the Manager with respect to the Project to be delivered immediately upon such termination.

#### **1.18 Effect of Continued Performance**

If its appointment as manager is terminated, the Corporation shall not be under any obligation to pay to the Manager any amount whatsoever for services performed by the Manager after the effective date of termination unless such performance has been expressly approved by the Corporation and, in that event, the Manager shall be entitled to be paid on a quantum meruit basis.

#### **1.19 Duties of the Corporation Flowing From Termination**

Upon termination of the Manager's appointment as manager, the Corporation shall:

- (a) to the extent necessary, assume the contracts entered into by the Manager on behalf of the Corporation if such contracts have been entered into in accordance with the terms and provisions of this Agreement and indemnify and save the Manager harmless against any liability by reason of anything done or required to be done under any such contract after the effective date of termination of the appointment as manager provided that if any contract covers any improvement in addition to the Project, then the Corporation shall have the option to elect either to terminate any such contract or to retain it provided that the third party to such contract acknowledges that it relates only to the Project and any fees and expenses provided for therein are adjusted on a prorated basis;
- (b) pay for and indemnify and save the Manager harmless against the costs of all services, materials and supplies ordered by the Manager in accordance with the terms and provisions of this Agreement but which may not have been charged to and paid by the Manager at the time of termination;
- (c) pay to the Manager the Supervision Fee to the effective date of termination; and
- (d) be entitled to conduct a post-termination financial audit of the Project at their own expense, and the Manager shall co-operate with respect to same.

#### **1.20 Rights on Termination**

Any termination of its appointment as manager shall terminate the Manager's rights and obligations under this Agreement from and after the date of such termination except rights and obligations with

- 12 -

respect to matters to be performed to such date and all legal remedies available at such date for any breach of this Agreement. In addition, Sections 1.09, 1.11, 1.16, 1.17, 1.18, 1.20 and 1.22 shall survive any termination of this Agreement and shall remain in full force and effect thereafter.

#### **1.21 Indemnity by Manager**

During, and after the termination of, its appointment as manager, the Manager shall indemnify and save the Corporation harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever, at law or in equity, arising:

- (a) by way of any material breach by the Manager, its employees, servants, agents or other persons for whom it is legally responsible, of any of the terms and provisions of this Agreement;
- (b) by reason of any negligent act or omission, or willful misconduct of the Manager, its employees, servants, agents or other persons for whom it is responsible at law (except to the extent covered and paid by the insurance of the Corporation relating to the Corporation's lands or the Project); or
- (c) by reason of any action taken by the Manager outside the terms and provisions of this Agreement or contrary to the direction of the Corporation pursuant to this Agreement which results in a material adverse impact on the Corporation.

This section survives the expiry or termination of this Agreement.

This indemnity shall not extend to any debt, cost, expense, claim or demand for which insurance proceeds have been recovered by the Corporation and shall not override any provision of this Agreement that allocates responsibility to the Corporation.

#### **1.22 Assignment by Manager**

The Manager shall not assign its appointment as manager or subcontract its obligations hereunder without the prior consent of the Corporation, which consent may be unreasonably withheld. No assignment or subcontracting shall relieve the Manager of its responsibilities, duties and obligations under this Agreement unless the Corporation consent, which consent may be unreasonably withheld and unless the assignee shall confirm by agreement with the Corporation that it shall be bound by the terms and provisions of this Agreement.

#### **1.23 Confidentiality**

- (a) The Manager shall keep in strict confidence and shall not disclose to any person who is not a party hereto except as necessary to discharge its obligations hereunder, this Agreement and any and all information obtained with respect to the Project, or the Corporation or of either of them unless and until written approval of the Corporation is obtained or such disclosure is, in connection with proceedings between the parties hereto or is otherwise required by law including, without limitation, the securities laws or the policies, rules or by-laws, as applicable, of any securities commission or similar body having jurisdiction over a party hereto and of any stock exchange on which any securities issued by such party are traded. All reports and other information referable to the Project received by the Manager or any one of its officers, directors or shareholders shall be considered to have been received on an absolutely confidential basis and accordingly shall, not be disclosed to any other person whatsoever other than as necessary to discharge its obligations hereunder.
- (b) The Corporation shall each keep in strict confidence and shall not disclose to any person who is not a party hereto, this Agreement and any and all information obtained with respect to the

- 13 -

Manager, unless and until the consent of the Manager is obtained or such disclosure is, in connection with proceedings between the parties hereto or is otherwise required by law including, without limitation, securities laws or the policies, rules or by-laws, as applicable, of any securities commission or similar body having jurisdiction over a party hereto and of any stock exchange on which any securities issued by such party are traded. All reports and other information referable to the Manager received by the Corporation or any one of its officers, directors or shareholders shall be considered to have been received on an absolutely confidential basis and accordingly, shall not be disclosed to any other person whatsoever.

- (c) Nothing in this Section shall preclude disclosure by a Member or the Manager of information referable to the Project (including projections), on a confidential basis, as aforesaid:
- (i) to its officers, directors, employees, servants, agents, shareholders, tenants, lenders or prospective lenders, and purchasers, or any of their respective advisors, and then only as and to the extent necessary and it shall instruct the aforesaid to comply with the applicable provisions of this section;
  - (ii) necessary or desirable to assist in a financing, refinancing or sale of the Corporation's lands or an interest therein;
  - (iii) subject to reasonable notice to the other parties hereto, in pleadings or in evidence in the course of any legal or administrative proceedings under circumstances whereby such Member or Manager is obliged to disclose such information;
  - (iv) to contractors, consultants, suppliers and others in connection with the Project or the Manager's performance of its obligations hereunder;
  - (v) as may be required by law or by any governmental authority having jurisdiction over such Member or the Manager and being entitled in law to receive such information, nor shall any Member or the Manager be precluded from extracting from such information financial data necessary to report on the status of such Member's investment in the Corporation's lands to its shareholders, lenders, professional advisers and such other persons as a prudent Member of real estate would determine acting reasonably; or
  - (vi) otherwise with the consent of the other parties hereto.
- (d) The obligations contained in this section shall survive the expiry or termination of this Agreement.

#### 1.24 Compensation of Manager

The parties agree that the Manager shall receive as its sole compensation:

- (a) the sum equal to one point seven five percent (1.75%) of the "Total Sale Proceeds" received by the Corporation for the Project as determined by the accountants for the Joint Venture (the "**Development Management Fee**" and paid out as per the Approval Budget. The term "Total Sale Proceeds" shall mean the total receipts (inclusive of sales taxes) of the Corporation from sales of the dwelling units and commercial units (if applicable) as well as any charges for upgrades and extras supplied under the provisions of an agreement between the Corporation and the purchasers of any such unit (exclusive of sales taxes) but not including reimbursement by purchasers for adjustable items including Tarion registration fees, installation charges for water and other meters, development charges, legal fees and realty taxes. The Development Management Fee

- 14 -

shall be payable commencing with the execution of this Agreement and paid in accordance with the Approved Budget, as amended from time to time; plus

- (b) a sum equal to three percent (3%) of the costs for "Construction-Building" for the 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, from time to time, payable the month after such costs are incurred (the "**Construction Management Fee**"). The term "costs for Construction-Building" as above set forth shall mean three percent (3% of hard costs as determined by the official draw requests submitted by the Manager to the Management Committee or the Construction Lender as certified by the Quantity Surveyor and paid out as per the Approval Budget to the extent the Construction Loan Facility permits same.

The Development Management Fee and the Construction Management Fee are herein collectively referred to as the "**Supervision Fee**". The Construction Management Fee shall be payable commencing with the initial draw from the construction financing obtained for each building for which a building permit has been issued with the Project.

It is understood and agreed that the Manager shall be entitled to its Supervision Fee whether or not the Corporation has made any profits. It shall be responsible for all head office employees, but may contract out the accounting services as approved by the Members. Compensation to all Project on-site employees dedicated to working on the Project should be a Project Cost, as per the Approved Budget.

#### 1.25 General

- (a) **Severability** - Should any provision or provisions of this Agreement for any reason be determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, which remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid or unenforceable provision or provisions.
- (b) **Notice** - Any notice or other communication (a "**Notice**") required or permitted to be given or made hereunder shall be in writing and shall be well and sufficiently given or made if delivered in person during normal business hours on a Business Day and left with the receptionist or other responsible employee of the relevant party at the applicable address set forth below; or sent by prepaid first class mail; or sent by any electronic means of sending messages, including e-mail or facsimile transmission which produces a paper record (an "**Electronic Transmission**"), charges prepaid and confirmed by prepaid first class mail to any of the parties hereto at the address set out opposite his respective name below:

(A) to the Corporation at:

(B) to the Manager at:

56 The Esplanade  
Suite 301  
Toronto, Ontario M5E 1A7

- 15 -

Facsimile No.:

Any party may change its address for notice at any time by Notice given to all of the other parties to this Agreement pursuant to the provisions of this section.

Any Notice given or made in accordance with this section shall be deemed to have been given or made and to have been received:

- (I) on the day it was delivered, if delivered as aforesaid;
  - (II) on the third (3) Business Day (excluding each day during which there exists any general interruption of postal services due to strike, lockout or other cause) after it was mailed, if mailed as aforesaid; and
  - (III) on the day of sending if sent by Electronic Transmission during normal business hours of the addressee on a Business Day and, if not, then on the first Business Day after the sending thereof.
- (c) **Time** - Time shall be of the essence of this Agreement.
  - (d) **Waiver** - Any waiver of or consent to depart from the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the parties hereto giving it and only in the specific instance for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise and no delay in exercising any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.
  - (e) **Entire Agreement** - This Agreement and the schedules hereto expresses herein the entire understanding and agreement of the parties hereto concerning the subject matter hereof and there is no implied covenant, condition, term, reservation or warranty relating to or concerning such subject matter
  - (f) **Further Assurances** - The parties hereto shall execute such further and other assurances and documents and do all such things and acts which shall be necessary or proper for carrying out the purpose and intent of this Agreement.
  - (g) **Enurement** - The provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective Personal Representatives, heirs, successors and permitted assigns.

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( )

( )



**ROBINS APPLEBY**  
BARRISTERS + SOLICITORS

Leor Margulies  
T. 416.360.3372  
E. [lmargulies@robapp.com](mailto:lmargulies@robapp.com)  
F. 416.868.0306

Delivered by: Mail  
File No.: 1500107

June 10, 2016

Fortress Real Developments Inc.  
Unit 1  
25 Brodie Drive  
Richmond Hill ON L4B 3K7

Attention: Vince Petrozza

Dear Sirs:

Re: Fortress Brookdale Inc. – Amending Co-Tenancy Agreement

Enclosed please find one (1) fully executed copy of the Amending Co-Tenancy Agreement for your records.

Yours very truly,

**ROBINS APPLEBY LLP**

Per:

**Leor Margulies**

LM:mk

Encl.

robapp\3444322.1

**AMENDING CO-TENANCY AGREEMENT**

**THIS AGREEMENT is effective as of the 29<sup>th</sup> day of May, 2015**

**B E T W E E N:**

**FORTRESS AVENUE ROAD (2015) INC.,**  
a corporation incorporated under the laws of the Province of Ontario

("Fortress")

- and -

**FERNBROOK HOMES (BROOKDALE) LIMITED,**  
a corporation incorporated under the laws of the Province of Ontario

("Cityzen")

- and -

**FORTRESS BROOKDALE INC.,**  
a corporation incorporated under the laws of the Province of Ontario

(the "Nominee")

- and -

**DOMINUS CONSTRUCTION (2005) CORPORATION**

("Project Manager")

**WHEREAS** the parties entered into a Co-Tenancy Agreement effective as of the 28<sup>th</sup> day of May, 2015 (the "Co-Tenancy Agreement");

**AND WHEREAS** the parties wish to amend the Co-Tenancy Agreement on the terms hereof;

**NOW THEREFORE** in consideration of the mutual covenants of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, it is hereby agreed as follows:

1. The second recital is deleted and replaced with the following:

**WHEREAS** the Property has been or will be acquired and will be registered in the name of the Nominee as a bare trustee for the Members in the following proportions:

- 2 -

MEMBER	PERCENTAGE SHARE
FORTRESS	74.99%
CITYZEN	24.99%
NOMINEE	0.02%

2. Section 1.1(y) shall be deleted and replaced with the following:

1.1(y) "Member" means either Fortress or Cityzen or the Nominee (and collectively, the "Members");

3. Section 2.1 shall be deleted and replaced with the following:

2.1 Interest in the Co-Tenancy

The Members shall hold an undivided interest in the Project Assets, as tenants in common in the following proportions:

MEMBER	PERCENTAGE SHARE
FORTRESS	74.99%
CITYZEN	24.99%
NOMINEE	0.02%

4. Sections 4.2(g) shall be deleted and replaced with the following:

4.1(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:	74.99%
Cityzen:	24.99%
Nominee:	0.02%

- 3 -

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

Fortress:	39.99%
Cityzen:	59.99%
Nominee:	0.02%

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 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 Cityzen incurred on the purchase of its 24.99% interest in the Property shall be Project Costs.

Notwithstanding the forgoing, 24.99% or 59.99% 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.

5. Section 16.1(a) and (b) shall be deleted and replaced with the following:

16.1 General Provisions

- (a) The Members appoint the Nominee to acquire and hold title to the Project Assets, and all other property, assets and rights of the Co-Tenancy as bare trustee for the Members in the proportions set out hereunder:

MEMBER	PERCENTAGE SHARE
FORTRESS	74.99%
NOBLETON	24.99%
NOMINEE	0.02%

- (b) The Nominee accepts such appointment and acknowledges and declares that it agrees to hold the Project Assets and all other property, assets and rights of the Co-Tenancy as bare trustee for the Members in accordance with the provisions hereof and that the Nominee has no beneficial interest, right or title to or in the Project Assets, or other property, assets or rights, or any part thereof of the Co-Tenancy, save specifically as set out herein as to a 0.02% Tenancy Interest."

- 4 -

## 6. Section 16.1(d) shall be added as follows:

## (d) Nominee Rights and Obligations

Notwithstanding anything contained herein, subject to the provisions of Article 16 and the Waterfall provisions in Article 4.2, the Nominee shall have no further obligations, capital or otherwise, under this Agreement as a Member and no other rights in terms of voting or otherwise under the provisions of this Co-Tenancy Agreement. In the event that either Fortress or Cityzen are purchasing the interest of the other pursuant to the provisions of this Agreement, the Nominee shall be required to transfer its interest in the Project Assets to the ultimate Purchaser for nominal consideration at the time of closing of the said purchase transaction.

## 7. A new Section 16.10 shall be added as follows:

16.10 HST Operator

- (a) The Nominee hereby acknowledges, confirms and agrees that it has been appointed by the Members as "operator" of the Co-Tenancy for the purposes of collecting, remitting and administering all harmonized sales tax ("HST") in respect of the business and operations of the Project;
- (b) The Nominee hereby acknowledges, confirms and agrees to make and file all elections and do all other acts and things as may be by law required to ensure that the Members comply with Part IX of the *Excise Tax Act* or any successor thereof; and
- (c) The Nominee hereby acknowledges, confirms and agrees to provide to the Members herein a copy of the form of Election required under the *Excise Tax Act* after completion of same, upon request, and the other Members (on a several basis) also covenants and agrees to execute any or all elections or other forms required by the Nominee, as same may exist from time to time, for the purposes of completing same.

- 5 -

8. Save and except as set out herein, the Co-Tenancy Agreement shall remain in full force and effect and unamended.

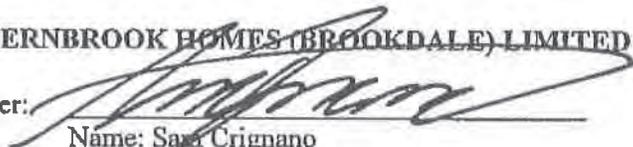
**FORTRESS AVENUE ROAD (2015) INC.**

Per: 

Name: Vince Petrozza  
Title: Vice-President

I have authority to bind the Corporation.

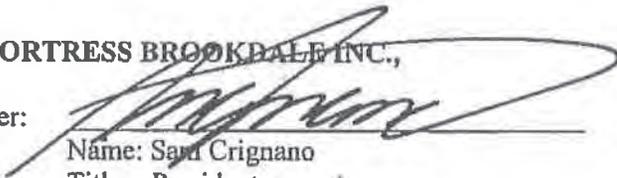
**FERNBROOK HOMES (BROOKDALE) LIMITED**

Per: 

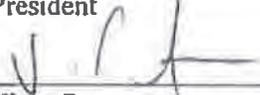
Name: Sam Crignano  
Title: Secretary/Treasurer

I have authority to bind the Corporation.

**FORTRESS BROOKDALE INC.,**

Per: 

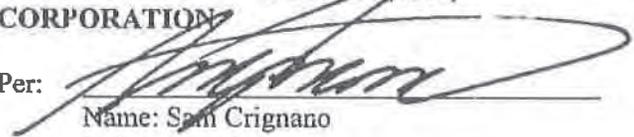
Name: Sam Crignano  
Title: President

Per: 

Name: Vince Petrozza  
Title: Secretary

We have authority to bind the Corporation.

**DOMINUS CONSTRUCTION (2005)  
CORPORATION**

Per: 

Name: Sam Crignano  
Title: President

I have authority to bind the Corporation.

**APPENDIX 17:  
INTERLENDER AGREEMENT**

**INTERLENDER AGREEMENT**

THIS AGREEMENT made as of the 17<sup>th</sup> day of October, 2017.

**A M O N G :**

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC., IN TRUST**  
(hereinafter called the "Lender")

OF THE FIRST PART

- and -

**FORTRESS BROOKDALE INC.**  
(hereinafter called the "Borrower")

OF THE SECOND PART

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC., in Trust and OLYMPIA TRUST COMPANY**  
(hereinafter collectively called the "Subsequent Encumbrancer")

OF THE THIRD PART

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

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

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

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

**SECTION 1 - DEFINITIONS**

- (a) "Borrower" means Fortress Brookdale Inc. and its successors and assigns;
- (b) "Business Day" means a day other than a Saturday, Sunday or other day on which banks are authorized or obligated to close under the laws of the Province of Ontario or of Canada;

- (c) "Charged Property" means the Project, all leases pertaining thereto, all rents, revenues and personal property of the Borrower pertaining thereto or arising therefrom, and all associated rights, benefits and proceeds therefrom, as charged, assigned, pledged or in which a security interest has been created by the Lender Security;
- (d) "Lender" means Building & Development Mortgages Canada Inc., in Trust and its successors and assigns;
- (e) "Lender Obligations" means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender to a maximum principal amount of \$15,000,000.00 under or pertaining to the loan agreement dated as of July 10, 2017, as now or hereafter amended or restated from time to time (the "Loan Agreement");
- (f) "Lender Security" means all mortgages, pledges, charges, debentures, assignments and security agreements of any nature now or hereafter executed or made by the Borrower or others in favour of the Lender to secure the Lender Obligations, as amended or supplemented from time to time, and includes, without limitation, the security documents described in the Loan Agreement.
- (g) "Project" means the lands described in Schedule "A" attached hereto, a residential condominium development to be constructed thereon, and all buildings, structures, improvements, parking facilities, walkways, expansions, reconfigurations, additions, fixtures, renovations and alterations thereon, thereof and thereto, from time to time.
- (h) "Subsequent Encumbrancer Obligations " means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Subsequent Encumbrancer.
- (i) "Subsequent Encumbrancer Security" means all mortgages, pledges, charges, assignments and security agreements of any nature now or hereafter executed or made by the Borrower in favour of the Subsequent Encumbrancer to secure the Subsequent Encumbrancer Obligations, as amended or supplemented from time to time.
- (j) "Subsequent Encumbrancer" means, collectively, Building & Development Mortgages Canada Inc. and Olympia Trust Company and their respective successors and assigns.

**SECTION 2 - REPRESENTATIONS AND WARRANTIES OF THE SUBSEQUENT ENCUMBRANCER**

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

**SECTION 3 - SUBORDINATION AND POSTPONEMENT**

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

to the intent and purpose that the Lender Security, the mortgages, charges, pledges, assignments and security interests constituted by the

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

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

#### SECTION 4 - EFFECT OF POSTPONEMENT

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

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

**SECTION 5 - APPLICATION OF PROCEEDS**

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

**SECTION 6 - DELIVERY OF INFORMATION AND NOTICES**

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

**SECTION 7 - AGREEMENTS OF THE SUBSEQUENT ENCUMBRANCER**

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

- (a) notwithstanding the provisions of the Subsequent Encumbrancer Security, the Borrower shall be entitled to sell units in the Project to bona fide third party purchasers without the consent of the Subsequent Encumbrancer;
- (b) the Subsequent Encumbrancer shall forthwith execute partial discharges of the Subsequent Encumbrancer Security for each of the units as and when required upon request by the Lender or its solicitors, and shall provide such executed acknowledgments and directions with respect to such partial discharges to the solicitors for the Lender to be held by such solicitors in escrow until completion of the sale of each of the units, whereupon the partial discharge relating to such units may be registered by such solicitors without any further direction or consent from the Subsequent Encumbrancer and without any payment of principal, interest or any other amount being made to the Subsequent Encumbrancer, provided the Borrower is not in default under the provisions of the Loan Agreement. Upon the Lender Obligations being fully satisfied and upon the termination or cancellation of the Loan Agreement secured by the Lender Security, the Lender agrees to provide the partial discharges still in its or its solicitor's possession to the Subsequent Encumbrancer together with any other partial discharges of the Subsequent Encumbrancer Security held by the Lender.

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

**SECTION 8 - FURTHER ASSURANCES**

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

**SECTION 9 - SUCCESSORS AND ASSIGNS**

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

**SECTION 10 --NOTICE**

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

(a) if to the Lender:

Building & Development Mortgages Canada Inc., in Trust  
25 Brodie Drive, Unit 8  
Richmond Hill, Ontario, L4B 3K7

Attention:  
Facsimile Number:

(b) if to the Subsequent Encumbrancer:

Olympia Trust Company  
2200 125 - 9<sup>th</sup> Avenue SE  
Calgary, Alberta, T2G 0P6

Attention:  
Facsimile number:

Building & Development Mortgages Canada Inc.  
25 Brodie Drive, Unit 8  
Richmond Hill, Ontario, L4B 3K7

Attention:  
Facsimile number:

(c) if to the Borrower:

Fortress Brookdale Inc.  
2220 Highway 7 West, #5  
Concord, Ontario, L4K 1W7

Attention:  
Facsimile number:

#### **SECTION 11 - GOVERNING LAW**

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

#### **SECTION 12 - HEADINGS**

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

#### **SECTION 13 - ENTIRE AGREEMENT**

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

#### **SECTION 14 - ACKNOWLEDGEMENT OF BORROWER**

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

#### **SECTION 15 - EXECUTION IN COUNTERPARTS**

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

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF the parties have executed this Agreement.

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

Per:   
Name: Charlene Bunnet  
Title: General Manager

I have authority to bind the Bank.

**FORTRESS BROOKDALE INC.**

Per:   
Name: Darryl Salvatore  
Title: First Vice-President

Per:   
Name: Vince Petrozza  
Title: Secretary

I/We have authority to bind the Corporation

**OLYMPIA TRUST COMPANY**

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

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

I/We have authority to bind the Corporation

IN WITNESS WHEREOF the parties have executed this Agreement.

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

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

I have authority to bind the Bank.

**FORTRESS BROOKDALE INC.**

Per: \_\_\_\_\_  
Name: Danny Salvatore  
Title: First Vice-President

Per: \_\_\_\_\_  
Name: Vince Petrozza  
Title: Secretary

I/We have authority to bind the Corporation

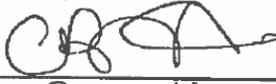
**OLYMPIA TRUST COMPANY**

Per: *[Signature]*  
Name: *Hyde Letmas*  
Title: *Team Lead*

Per: *[Signature]*  
Name: **CHARLIE GRIFFITH**  
Title: *Manager*

I/We have authority to bind the Corporation

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

Per: 

Name: C. Burnett

Title: General Manager

I/We have authority to bind the Corporation

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF LANDS**

Those lands and premises legally described in PIN Nos. 10189-0865 (LT) and 10189-0866 (LT), City of Toronto

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

**Properties**

PIN 10189 - 0865 LT

Description LOTS 33 & 34 PLAN 2371, PART LOT 42A & LOT 43A PLAN 2247 PT 1 66R29204;  
TOGETHER WITH AN EASEMENT OVER PT 3 66R29204 AS IN AT4379990; SUBJECT  
TO AN EASEMENT AS IN AT4660181; CITY OF TORONTO

Address TORONTO

PIN 10189 - 0866 LT

Description LOT 32 PLAN 2371 YORK PT 2 66R29204; SUBJECT TO AN EASEMENT AS IN  
AT4660181; CITY OF TORONTO

Address TORONTO

**Source Instruments**

Registration No.	Date	Type of Instrument
AT3955352	2015 07 23	Charge/Mortgage
AT4645430	2017 08 02	Transfer Of Charge

**Party From(s)**

Name BUILDING &amp; DEVELOPMENT MORTGAGES CANADA INC.

Address for Service in Trust

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

I, Charene Bunnett, General Manager, have the authority to bind the corporation.

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

Name OLYMPIA TRUST COMPANY

Address for Service 2200, 125 - 9th Avenue SE  
Calgary, Alberta  
T2G 0P6

I, Tara Trowbridge, Manager and I, Alison Cysouw, Team Lead, have the authority to bind the corporation.

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

**Party To(s)**

Capacity

Share

Name BUILDING &amp; DEVELOPMENT MORTGAGES CANADA INC.

Address for Service in Trust

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

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number AT4707175 registered on 2017/10/17

The registration of this document is not prohibited by registration AT4303858 registered on 2016/08/09 .

The applicant(s) hereby applies to the Land Registrar.

**Signed By**

Richard Martin Rotchlin	77 King Street West Suite 3000 PO Box 95 TD Centre Toronto M5K 1G8	acting for Party From(s)	Signed	2017 10 17
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Tel 416-864-9700

Fax 416-941-8852

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

**Submitted By**

FOGLER, RUBINOFF LLP	77 King Street West Suite 3000 PO Box 95 TD Centre Toronto M5K 1G8			2017 10 17
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Tel 416-864-9700

Fax 416-941-8852

**Fees/Taxes/Payment**

Statutory Registration Fee \$63.35

Total Paid \$63.35

**APPENDIX 18:  
SAMPLE EDEN LOAN AGREEMENT**

**Schedule "D"**

**LOAN AGREEMENT**

THIS AGREEMENT made as of the 6<sup>th</sup> day of December, 2013.

**B E T W E E N: OLYMPIA TRUST COMPANY IN TRUST FOR** [REDACTED]

**(as bare trustee)**

An individual resident in the Province of Ontario

(hereinafter referred to as the "Lender")

- and -

[REDACTED]

A corporation organized and existing pursuant to the laws of the Province of Ontario

(hereinafter referred to as the "Borrower")

**WHEREAS** the Lender has agreed to lend the Borrower the amount of Twenty Five Thousand Dollars (\$25,000.00) (the "Loan") in connection with the development of Mixed Use development, to be situated on property municipally known and located 230, 230A, 240 & 250 Dew Street, King City, Ontario.(the "Property");

**AND WHEREAS** the Borrower has agreed to Charge/Mortgage the Property to the Lender as a Second (2<sup>nd</sup>) Charge/Mortgage (the Charge/Mortgage") as security for repayment of the Loan;

**AND WHEREAS** the terms of the Charge/Mortgage shall be substantially similar in form and content to the draft Charge/Mortgage attached hereto as Schedule "A", subject to the modifications outlined herein;

**AND WHEREAS**, for greater certainty, the Borrower agrees to pay to the Lender interest on the Loan at the rate of Eight Percent per annum (8.00% p.a.), such amount to be paid quarterly, during the term of this Agreement;

**AND WHEREAS** the Legal Description of the Property is described in Schedule "B" attached hereto;

**AND WHEREAS** the Lender and the Borrowers (collectively the "Parties" and individually a "Party") wish to evidence their agreement to the Loan (hereinafter also referred to as the "Agreement" or the "Loan Agreement");

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

**ARTICLE 1.00 - RECITALS**

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

**ARTICLE 2.00 - CURRENCY**

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

**ARTICLE 3.00 - SCHEDULES**

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

Schedule "A" - Draft Charge/Mortgage of the Property

Schedule "B" - Legal Description of the Property

Schedule "C" - Schedule of Interest Payments

Schedule "D" - Permitted Encumbrances

Schedule "E" - Deferred Lender fee

**ARTICLE 4.00 - AGREEMENT TO LEND**

4.01 The Lender agrees to provide a loan to the Borrower for the amount of the Loan. The advance amount is subject to a Lender's fee of Zero Dollars (\$0.00), which shall be deducted from the Loan and remitted to the Lender. The Borrower acknowledges their indebtedness for the amount of the Loan and promise to pay to the Lender the Loan pursuant to the terms and conditions hereinafter provided.

4.02 The Loan shall bear interest at a rate per annum of 8% calculated ANNUALLY, not in advance, from the date of advancement until March 31, 2015, (the "Due Date"). The Borrower shall remit interest payments to the Lender quarter-annually in accordance with a pre-determined schedule, the initial interest payment from the Borrower to the Lender shall be pro-rata based on the date of the Borrower's receipts of the funds lent by the Lender to the date of the Lender's first scheduled payment.

## ARTICLE 5.00 - SECURITY

5.01 As security for the Loan the Borrower shall give to the Lender a Charge/Mortgage on the Property described in Schedule "B", which is currently a second (2<sup>nd</sup>) Charge/Mortgage, **but which position may change as hereinafter provided.**

The Parties acknowledge that the Charge/Mortgage:

a) shall be registered against title to the Property in the amount of FIVE MILLION AND FIFTY THOUSAND DOLLARS (\$5,050,000.00) (the "Initial Amount");

b) shall initially be registered in the name of Vanguard Law Group LLP. Trustee as chargee/mortgagee (the "Mortgage");

c) shall be transferred proportionately to other trustees as may be required from time to time; and

d) shall be amended during the term of the Loan Agreement to a maximum of SEVEN MILLION DOLLARS (\$7,000,000.00) (the "Total Amount"), based upon the achievement and completion of certain development and construction milestones related to the Property.

Such amendments and all future advances shall be based on quarterly reports received from the Cost Consultant to be retained in relation to this Project. The Cost Consultant shall be: To be confirmed

**The Lender hereby consents to registration of any instruments on title in relation to the transfers and/or amendments and hereby waives any right to further notice thereof.**

5.02 The Charge/Mortgage, as amended from time to time, shall be registered in the name of "Vanguard Law Group LLP,," as trustee for all non-registered investors, and shall be transferred to any of:

Olympia Trust,

for all registered investors (collectively the "Trustees").

The interests of all registered and non-registered investors shall at all times and for all purposes rank pari-passu as between the Trustees.

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

5.04 Reasonable legal fees and disbursements of the Lender shall be paid by the

Borrower and may be deducted from the proceeds of the Loan advanced to the Borrower.

**ARTICLE 6.00 – COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

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

6.01

- (a) The Borrower has been duly incorporated and is validly subsisting as a corporation under the Business Corporations Act (Ontario), is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement, the Charge/Mortgage and all instruments and agreements delivered pursuant hereto and thereto, is the registered owner of the Property, is legally entitled to carry on its business as currently conducted or as currently contemplated, and has obtained all material licenses, permits and approvals from all governments, governmental commissions, boards and other agencies of jurisdictions in which it carries on (or contemplates carrying on) business which are required in respect connection with the development of the Property. The Borrower or its solicitor has delivered to the Lender, or its solicitor, copies of the constating documents of the Borrower and the Lender's solicitor has obtained a legal opinion from the Borrower's solicitor that the Borrower is authorized to enter into this Loan Agreement.
- (b) The execution, delivery and performance of this Loan Agreement, the Charge/Mortgage and every instrument or agreement delivered or to be delivered pursuant hereto and thereto has been duly authorized by all requisite action on the part of the Borrower; and this Agreement and all instruments and agreements delivered or to be delivered pursuant hereto and thereto have been, or will be, duly executed and delivered by the Borrower, and this Loan Agreement, the Charge/Mortgage, and each agreement and instrument delivered or to be delivered pursuant hereto and thereto constitutes, or when delivered will constitute, a valid and binding obligation of the Borrower enforceable in accordance with its terms, subject to the application of bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights generally and the fact that the right to obtain judicial orders requiring specific performance or other equitable remedies is in the discretion of the court.
- (c) There are no actions, suits or proceedings pending or to the best of the Borrower's knowledge threatened against or affecting the Borrower at law or in equity or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind which, if determined adversely, would result in any adverse change in the Borrower's business, operations, the Property, assets or condition, financial or otherwise, or in the Borrower's ability to perform its

obligations under this Agreement, the Charge/Mortgage or any agreement or instrument delivered or to be delivered pursuant hereto or thereto; and the Borrower is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which default(s), either separately or in the aggregate, would result in any such adverse change.

- (d) The Borrower is not subject to any judgment, order, writ, injunction, decree or award or any rule or regulation having restricted application to the Borrower, which, in the opinion of the Lender acting reasonably, adversely affects, or in the future is likely to adversely affect, the Property, the Borrower, the Borrower's business, operations, or financial assets.
- (e) The Borrower is not in default beyond any period of grace in payment of any amount under any guarantee, bond, debenture, note or other instrument evidencing any indebtedness or under the terms of any instrument pursuant to which any of the foregoing has been issued or made and delivered.
- (f) The Borrower acknowledges that Vanguard Law Group LLP, is listed as a the Chargee/Mortgagee of the Charge/Mortgage, in his capacity as bare trustee only, and that Vanguard Law Group LLP., does not maintain any interest whatsoever in the Property, nor is Vanguard Law Group LLP., advancing any funds towards the Loan. Vanguard Law Group LLP, is listed as Chargee/Mortgagee for the sake of expediency and efficiency only.
- (g) The Borrower shall indemnify and hold harmless the Lender and Vanguard Law Group LLP., from and against all losses, claims, damages, liabilities, and expenses, joint or several, to which any such person or entity may become subject arising out of or in connection with this Loan Agreement, the use of proceeds, or any related transaction or any claim, litigation, investigation or proceeding, relating to any of the foregoing, regardless of whether the Lender and/or Vanguard Law Group LLP., is a party thereto, and to reimburse any and all of the Lender and/or Vanguard Law Group LLP., forthwith upon demand for any reasonable, legal or other expenses incurred in connection with investigating or defending any of the foregoing.
- (h) The Borrower has not withheld from the Lender, the Lender's solicitor, or from the general public, information which adversely affects, or so far as it can now reasonably foresee, will adversely affect the Property or the Borrower's assets, liabilities, affairs, business, operations or conditions, financial or otherwise, or its ability to perform its obligations under this Loan Agreement, the Charge/Mortgage or any agreements or instruments delivered pursuant hereto or thereto.
- (i) The Borrower acknowledges that its execution and delivery of this Loan Agreement, the Charge/Mortgage or any agreements or instruments delivered pursuant hereto or thereto (hereinafter the "Loan Documents") and the

consummation of the transactions herein contemplated, does not and will not conflict with, and does not and will not result in any breach of, any of the provisions of the constating documents of the Borrower or of any agreements or instruments to which the Borrower is a party or by which the Property or any of the Borrower's property and assets are bound.

- (j) The Borrower has good and marketable title to the Property and its assets free from all mortgages, security interests, liens, pledges, charges, encumbrances, title retention agreements, options or adverse claims, other than Permitted Encumbrances as identified in Schedule "E" – Permitted Encumbrances attached hereto.
- (k) The Borrower has filed or caused to be filed, in a timely manner all tax returns, reports and declarations, which are required to be filed by it. All information in such tax returns, reports and declarations is complete and accurate in all material respects. The Borrower has paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by it, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to the Borrower and with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all accrued and unpaid federal, provincial, local, foreign and other taxes whether or not yet due and payable and whether or not disputed.
- (l) The Borrower is not in default in any material respect under, or in violation in any material respect of any of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound and the Borrower is in compliance in all material respects with all applicable provisions of laws, rules, regulations, licenses, permit, approvals and orders of any foreign, federal, provincial, or local governmental authority.
- (m) The Borrower is now in compliance with all environmental laws and regulations in respect of the Property and the Borrower undertakes to take all necessary action to obtain any and all environmental permits and/or regulatory approvals necessary for the Borrower to develop the Property in accordance with the laws and regulations of the province of Ontario and the appropriate local municipal authority(ies).
- (n) The Borrower has not caused or permitted, nor does it have knowledge of, any release, discharge or disposal of any hazardous material on, from, to or under the Property or any other property or asset of the Borrower.
- (o) The Borrower shall notify the Lender immediately in the event of a default by the Borrower in the payment of any indebtedness for borrowed money, pursuant to the Loan Documents, or pursuant to any other loan agreement to which the Borrower is a party, whether such indebtedness now exists or shall hereafter be created. The Borrower shall also notify the Lender immediately in

the event of an event of default under any mortgage, indenture or instrument to which the Borrower is a Party.

- (p) The Borrower has not received any written notice of nor does the Borrower have any knowledge of any claims, actions, charges, suits, permit revocations, remedial Orders or other current or pending proceedings (“Environmental Claims”) relating to any breach of any applicable environmental laws or regulations involving the Property.
- (q) All representations and warranties of the Borrower contained in this Loan Agreement or in any Loan Documents referenced herein shall survive the execution and delivery of this Loan Agreement and shall be deemed to have been made again to the Lender on the date of each advance pursuant to the Loan and shall be conclusively presumed to have been relied on by the Lender regardless of any investigation made or information possessed by the Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which the Borrower shall now or hereafter give, or cause to be given, to the Lender.
- (r) The Borrower further acknowledges and agrees that the terms of this Loan Agreement shall override the terms of any previous loan agreements to which the Borrower and the Lender may be or may have been a party.
- (s) The Borrower acknowledges that each Lender named as a Party to this Loan Agreement shall deliver an executed copy of this Loan Agreement to the Borrower. The Borrower acknowledges that each of said Lenders may have executed a loan agreement that has been amended to accommodate that particular Lender. The Borrower agrees to abide by the specific terms of each of said loan agreements.

6.02 The Parties mutually acknowledge and covenant as follows:

- (a) Any amounts advanced by a Lender to the Borrower pursuant to this Loan Agreement may occur in tranches (“Instalments”);
- (b) prior to any release of funds by the solicitor for the Lender to the solicitor for the Borrower, each Party hereby irrevocably acknowledges and directs that their respective solicitors are authorized to and shall cause to be registered any such instruments on title to the Property which in the sole discretion of the solicitor for the Lender may be required as evidence of any sums advanced to the Borrower on the security of the Charge/Mortgage;
- (c) The Charge/Mortgage in which the Lender has an interest pursuant to this Loan Agreement is currently a **second** ranking charge against title to the Property. **The Parties acknowledge that the Borrower shall be permitted to obtain additional financing to be secured via additional registered encumbrances against the Property and/or the Future Properties. The said encumbrances may constitute one or more prior ranking charge(s)/mortgage(s) against title to the Property and/or the Future**

**Properties.** The Parties hereby confirm and agree that the said prior charge(s)/mortgage(s) shall be permitted to periodically increase over the term of the Loan Agreement to a maximum of THIRTY-TWO MILLION DOLLARS (\$32,000,000.00) of priority financing to the Loan contemplated herein (hereinafter referred to as the “Maximum Priority Financing Amount” or “MFPA”), and that Lender’s interests shall postpone and standstill to such prior charge(s)/mortgage(s) and/or certain development agreements as between the Borrower and the appropriate governmental authority, but that there shall be no other postponements or encumbrances which affect the position or security afforded to the Lender by the Charge/Mortgage contemplated herein.

- (d) The Parties acknowledge and agree that it is anticipated the Maximum Priority Financing Amount will be advanced to the Borrower in multiple stages based on the achievement of certain construction milestones, and that said MFPA may be advanced by various parties and/or secured via multiple registrations INCLUDING BUT NOT LIMITED TO: CITY SITE PLAN, DEVELOPMENT PLANS, ANY PLANNING ACTS REQUIREMENTS, MEZZANINE FINANCING AND/OR INSURANCE ON DEPOSITS on the Property and/or Future Properties which shall take priority to the Charge/Mortgage which secures this Loan.

#### **ARTICLE 7.00 – ACKNOWLEDGEMENTS OF THE LENDER**

- 7.01 The Lender acknowledges that the purposes of the monies raised via this syndicated mortgage are, firstly, to assist in addressing various funding requirements related to all elements of the project’s progress, especially prior to the commencement of construction, and, secondly, to provide a source of funds to facilitate the payment of interest due to investors pursuant to the terms of the mortgage loan.

Investors are advised that if the total amount of funds raised under this syndicated mortgage is less than the total amount of funds required by the borrower, this could lead to an insufficiently funded interest reserve.

An insufficiently funded interest reserve may result interest payments to investors in this syndicated mortgage being delayed, incomplete or even missed. The mortgage would continue to accrue any unpaid interest, and any unpaid amounts would be recoverable at the time of payout of the mortgage at maturity, assuming the successful completion of the project.

It is expected that the interest reserve for this syndicated mortgage will be fully funded for the entire term of the loan once the syndicated mortgage has raised all funds sought pursuant to the terms of the mortgage loan.

I confirm that I have read and understand the above information regarding interest payments under this syndicated mortgage investment.

- 7.02 The Lender acknowledges and confirms that from time to time, as further advances are contemplated pursuant to the terms of this Agreement, the Trustees, or any of them, may be required to execute certain documents related to the provisions identified herein. The Lender hereby confirms that the Lender irrevocably authorizes any Trustee or all of them to execute any such required documentation on the Lender's behalf as may be required from time to time.
- 7.03 The Lender acknowledges, confirms and irrevocably directs that any amendment or postponement referred to in this Loan Agreement may be executed on behalf of the Lender by the Trustee representing the said Lender without further notice to or approval of the Lender.
- 7.04 The Lender acknowledges and confirms that it indemnifies and holds harmless, Olympia Trust and Vanguard Law Group LLP, in their capacity as Trustees, and Vanguard Law Group LLP, in his capacity as solicitor for the Lender(s) in connection with the Loan, the Loan Agreement, the Charge/Mortgage and all matters related thereto.




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Lender Initials

#### ARTICLE 8.00 - DEFAULT

Any unpaid balance of the Loan to the Borrower, together with all interest accrued thereon, shall become immediately due and payable to the Lender on the happening of any of the following events of default:

- (a) the Borrower fails to make the payments in the amounts and at the times specified in this Agreement; (except for as outlined in section 7.01 paragraph 2 above.)
- (b) the Borrower breaches a material term of any agreement entered into between the Lender and the Borrower;
- (c) the Borrower becomes bankrupt or insolvent or becomes subject to the provisions of the *Bankruptcy Act* or any other *Act* for the benefit of creditors, or enters into liquidation either voluntarily or under an order of a court of competent jurisdiction or makes a general assignment for the benefit of creditors or otherwise acknowledge its insolvency;
- (d) the Lender in good faith believes that the prospect of payment or performance by the Borrower of the obligations under this Agreement is impaired or that any collateral provided to the Lender as security for payment of any obligations of the Borrower to the Lender is in danger of being impaired, lost, damaged or confiscated.

On the happening of an event of default and subject to the provisions of any prior Charge/Mortgage, or any postponement Agreement related thereto, the Lender shall have

the right, without any further demand or notice whatsoever, to require payments of all amounts whatsoever then outstanding and owing or which may become owing by the Borrowers to the Lender under any other agreement made between the Lender and the Borrowers.

#### **ARTICLE 9.00 - GENERAL**

9.01 This Agreement shall continue in force until the Borrowers have no indebtedness or liability to the Lender pursuant to the terms hereof and/or any agreements related hereto.

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

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

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

9.05 Time shall be of the essence hereof.

9.06 This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements and understandings between the Parties in writing hereto, except for the Mortgage Commitment in relation to the Loan executed by the Parties hereto.

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

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

9.09 If any provision of this Agreement is determined to be invalid or unenforceable by an arbitrator or a court of competent jurisdiction from which no further appeal lies or is taken, that provision shall be deemed to be severed here from, and the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.

9.10 This Loan Agreement may be executed by the Parties named herein in counterparts (which counterparts may be delivered by telecopier with the original forwarded immediately thereafter) each of which once executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same

instrument, which shall be sufficiently evidenced by any such counterparts.

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

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

[Redacted signature]

[Redacted signature]

[Redacted signature]

**Per:**

[Redacted signature]

[Redacted signature]

*I have the authority to bind the Corporation*

## SCHEDULE "A" - DRAFT CHARGE/MORTGAGE OF THE PROPERTY

See attached.

## SCHEDULE "B" – LEGAL DESCRIPTION OF THE PROPERTY

**Municipal Address: 230, 230A, 240, 250 Dew Street, King City, Ontario**

**Legal Description/PIN:**

**230 & 230 A Dew Street: Part Lot 38 Plan 337 AS IN R252725, PIN 03372-0329;**

**240 Dew Street: PCL 40-2 SEC C337 Part Lots 40-43 Plan 337 (Parts 2 & 3 65R-3689) PIN 03372-0032;**

**250 Dew Street: PLC 40-1 SEC 337; Part Lot 40-43 Plan 337 (Part 1 65R-3689) PIN 03372-0331; KING CITY**

## SCHEDULE "C" – SCHEDULE OF INTEREST PAYMENTS

Interest payments shall be calculated at an annual interest rate of 8%, paid quarter-annually in trust to Vanguard Law Group LLP & Olympia Trust, as applicable, commenced on June 30, 2012. An investor's first quarterly payment shall be pro-rated based on the number of days invested.

## SCHEDULE "D" – PERMITTED ENCUMBRANCES

The Parties acknowledge that the Borrower has obtained first mortgage financing in the amount of FOUR MILLION FOUR HUNDRED THOUSAND DOLLARS (\$4,400,000.00) registered in favour of Marshall Zher Group Inc.

The Borrower hereby confirms that the above charge/mortgage is up to date and in good standing as at the date hereof.

The Charge/Mortgage in which the Lender has an interest pursuant to this Loan Agreement is currently a **second** ranking charge against title to the Property. **The Parties acknowledge that the Borrower shall be permitted to obtain additional financing to be secured via additional registered encumbrances against the Property and/or the Future Properties. The said encumbrances may constitute one or more prior ranking charge(s)/mortgage(s) against title to the Property and/or the Future Properties.** The Parties hereby confirm and agree that the said prior charge(s)/mortgage(s) shall be permitted to periodically increase over the term of the Loan Agreement to a maximum of THIRTY-TWO MILLION DOLLARS (\$32,000,000.00) of priority financing to the Loan contemplated herein (hereinafter referred to as the "Maximum Priority Financing Amount" or "MFPA"), and that Lender's interests shall postpone and standstill to such prior charge(s)/mortgage(s) and/or certain development agreements as between the Borrower and the

**APPENDIX 19:  
EDEN SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**  
**(dated as of August 2, 2022)**  
**(the “Settlement Agreement”)**

B E T W E E N:

**FAAN MORTGAGE ADMINISTRATORS INC.,**  
**solely in its capacity as Court-appointed Trustee of**  
**Building & Development Mortgages Canada Inc.**  
**(in such capacity, the “Trustee”)**

- and -

**OLYMPIA TRUST COMPANY**  
**(“OTC”)**

- and -

**MOHAMMAD NASSARI, MANMEET SACHAR, TANPREET MARWAH, XIANG RONG ZHANG, FRANCESCO OLIVETI, CASSANDRA OLIVETI, WEI ZHUO YE, LI-NA XIE, WEI XIE, XIYAO CHANG, GINO BARBUTO, DEBRA BARBUTO, JOSEPH DEGIORGIO, MARIA DEGIORGIO, DANIELLE DEGIORGIO, LUIGI FABBRO, RENATA FABBRO, YULIA KATZNELSON, OLGA KATZNELSON, PHILLIP GENOVASE, OUSSAMA BENKABBOUR, SAVITA BENKABBOUR, MALGORZATA SHEIKHAN, TARIQ ALLAUDDIN MUNSHI, AYESHA TARIQ MUNSHI, MICHAEL PASQUALE VENTRESCA, DOLORES VENTRESCA, LOHAN SUBHASH, LEELAWANTI SUBHASH, FRANCO ANTHONY CATAPANO, VICTOR VATCHE PROUDIAN, SABRINA ROMANO, RYAN MACRI and ALLISON MACRI**  
**(collectively, the “May 2019 Purchaser Plaintiffs”)**

- and -

**FCT INSURANCE COMPANY LTD.**

- and -

**STEWART TITLE GUARANTY COMPANY**

- and -

**RALPH HON-KING WONG and**  
**LOREINA WEI-YEE CHEW**  
**(together, the “August 2019 Purchaser Plaintiffs”)**

- and -

**CHICAGO TITLE INSURANCE COMPANY CANADA**

- and -

**DIMITRIOS MILLIS, NICOLETTA BISOUKIS, BEHSHEED AKHAVAN,**  
**MOHAMMAD-HASSAN SHEIDAEI (the “Additional 2019 Purchasers”)**

- and -

- 2 -

**TITLEPLUS**

- and -

**DAVID CHONG**  
**(“Mr. Chong”)**

- and -

**LAWYERS’ PROFESSIONAL INDEMNITY COMPANY**

- and -

**PETER SCIAVILLA, DINO SCIAVILLA and PAMELA VENTRESCA**  
**(collectively, the “Related Party Individual Defendants”)**

- and -

**PACE DEVELOPMENTS INC.**  
**(“Pace”)**

- and -

**CHAITONS LLP, on behalf of the**  
**Individuals SMLs and not in its personal or other capacity**

**WHEREAS** 2309918 Ontario Inc. (the “**Borrower**”) is the borrower under various loan agreements (collectively, the “**Loan Agreements**”) entered into between or among the Borrower, Vanguard Law Group LLP (“**Vanguard**”), in trust, OTC, in trust, and/or the Individual SMLs (as defined below), pursuant to which a syndicated mortgage loan (the “**Loan**”) was made to the Borrower in connection with a real estate development project consisting of three parcels of land located at 230-250 Dew Street in King City, Ontario (such development project, the “**Eden Project**”);

**AND WHEREAS** there are 129 individual syndicated mortgage lenders under the Loan (collectively, the “**Individual SMLs**”);

**AND WHEREAS** Vanguard administered the Loan and related security on behalf of the Individual SMLs, and Vanguard’s administration thereof was transferred to Building & Development Mortgages Canada Inc. (“**BDMC**”) in or around April 2016 (the “**Transfer of Administration**”);

**AND WHEREAS** the aggregate principal amount of the Loan outstanding was \$5,937,000 plus interest of \$1,530,426.52 as at June 19, 2019;

**AND WHEREAS** in connection with and as security for payment of the Loan and interest and performance of other obligations set out in the Loan Agreements (collectively, the “**Obligations**”), Vanguard was granted a charge on title to the lands comprising the Eden Project in the initial principal amount of \$3,500,000 registered as Instrument No. YR1797496, which was transferred to BDMC pursuant to the Transfer of Administration and which was subsequently increased to \$5,920,000 pursuant to various instruments registered on title to such properties (as variously transferred, amended, and otherwise modified, the “**Lenders’ Mortgage/Charge**”);

**AND WHEREAS** OTC acts as trustee for a subset of the Individual SMLs and received a transfer of the Lenders' Mortgage/Charge in connection therewith;

**AND WHEREAS** the Borrower retained Mr. Chong to act as solicitor in connection with the Eden Project;

**AND WHEREAS** the lands comprising the Eden Project were subsequently consolidated and subdivided to facilitate the sale of 28 residential units (each, a "**Dwelling**") with the real property legal descriptions set out on Schedule "A" hereto that were constructed as part of the Eden Project and, as a result thereof, the Lenders' Mortgage/Charge was registered against title to each Dwelling;

**AND WHEREAS**, prior to the appointment of the Trustee, each of the 28 Dwellings was sold and transferred to one or more individual third-party purchasers;

**AND WHEREAS** counsel for the various title insurers have advised that each individual third-party purchaser paid the purchase price for their respective Dwelling;

**AND WHEREAS**, upon repayment of the Loan plus interest, the Lenders' Mortgage/Charge was to be discharged;

**AND WHEREAS**, the Loan was not repaid;

**AND WHEREAS** the Lenders' Mortgage/Charge remains registered on title to each of the 28 Dwellings, and the Lenders' Mortgage/Charge is the only security remaining on title to any of the Dwellings that acts as security for the Borrower's obligations in connection with the Eden Project;

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

**AND WHEREAS**, on June 26, 2018, Chaitons LLP was appointed as the Court-appointed representative counsel for the Individual SMLs (in such capacity, "**Representative Counsel**") pursuant to an order of the Court with authority to execute this Settlement Agreement on their behalf;

**AND WHEREAS**, on September 12, 2018, the Trustee, on behalf of BDMC, declared all of the Obligations under the Loan Agreements due and payable and made demand on the Borrower in respect of same;

**AND WHEREAS**, on October 19, 2018, the Trustee, on behalf of BDMC, issued further demand for repayment of the Loan and issued a Notice of Intention to Enforce a Security to the Borrower under Section 244 of the *Bankruptcy and Insolvency Act* ("**BIA**");

**AND WHEREAS**, on June 19, 2019, the Trustee obtained a bankruptcy order against the Borrower (the proceedings commenced thereby, the "**Bankruptcy Proceedings**"), which

appointed Grant Thornton Limited as trustee in bankruptcy of the Borrower's estate (the "**Bankruptcy Trustee**");

**AND WHEREAS** Peter Sciavilla is the sole director of the Borrower;

**AND WHEREAS** Peter Sciavilla is the President of the Borrower, Dino Sciavilla is the Chief Executive Officer of the Borrower, and Pamela Ventresca is the Vice-President of the Borrower;

**AND WHEREAS** the Borrower is an Ontario corporation owned jointly by Pace and Dino Sciavilla;

**AND WHEREAS**, on May 8, 2019, the May 2019 Purchaser Plaintiffs commenced an action against the Borrower, Mr. Chong, and the Related Party Individual Defendants in the proceedings with Court File No. CV-19-619617-00CL (the "**May 2019 Purchaser Litigation**");

**AND WHEREAS** FCT Insurance Company Ltd. and Stewart Title Guaranty Company have provided title insurance to the May 2019 Purchaser Plaintiffs in respect of their Dwellings and, as title insurers in interest, have the authority to execute this Settlement Agreement on behalf of the May 2019 Purchaser Plaintiffs;

**AND WHEREAS** the Trustee was served with a third-party claim by Mr. Chong issued on July 24, 2019 ("**Third Party Claim**") naming the Trustee, OTC, and Pace as third parties in the May 2019 Purchaser Litigation proceedings;

**AND WHEREAS** representatives of the parties to the May 2019 Purchaser Litigation attended a chambers appointment before the Court during which the Court required Mr. Chong to discontinue the Third Party Claim against the Trustee and, on October 21, 2019, the Trustee received a Notice of Discontinuance whereby Mr. Chong wholly discontinued the Third Party Claim as against the Trustee, without costs and without prejudice to the right of Mr. Chong to seek leave of the Court to initiate a third party proceeding as against BDMC;

**AND WHEREAS**, on August 30, 2019, the August 2019 Purchaser Plaintiffs commenced an action against the Borrower, Mr. Chong, and the Related Party Individual Defendants in the proceedings with Court File No. CV-19-626617-00CL (the "**August 2019 Purchaser Litigation**") and together with the May 2019 Purchaser Litigation, the "**Purchaser Litigation**")

**AND WHEREAS** Chicago Title Insurance Company Canada has provided title insurance to the August 2019 Purchaser Plaintiffs in respect of their Dwellings and, as title insurer in interest, has the authority to execute this Settlement Agreement on behalf of the August 2019 Purchaser Plaintiffs;

**AND WHEREAS** 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 execute this Settlement Agreement on behalf of the Additional 2019 Purchasers;

**AND WHEREAS** FCT Insurance Company Ltd., Stewart Title Guaranty Company, Chicago Title Insurance Company Canada, and TitlePLUS are hereby referred to collectively as the "**Title Insurers**" and each is a "Title Insurer".

**AND WHEREAS** Mr. Chong is insured by the Lawyers' Professional Indemnity Company ("**LawPro**");

**AND WHEREAS** LawPro, as insurer in interest, is authorized to execute this Settlement Agreement on behalf of Mr. Chong;

**AND WHEREAS** OTC has been served with a Statement of Claim dated August 6, 2020 in the proceedings with the Court File No. CV-20-00643593-00CP (the "**Proposed Class Action**") commenced by an individual plaintiff on his own behalf and on behalf of a proposed class consisting of, among others, a subset of Individual SMLs that invested in the Loan through a registered plan account held in trust by OTC (collectively, the "**OTC Investors**");

**AND WHEREAS** the relief sought in the Proposed Class Action includes, among other things, a claim for damages against OTC, and OTC has advised that, in connection with the Proposed Class Action, it may be required to make a third party claim against other parties to this Settlement Agreement or otherwise;

**AND WHEREAS** the parties hereto agree that the Settlement Payments (as defined below) are being provided to FAAN as consideration for the discharge of the Lenders' Mortgage/Charge from title to each of the 28 Dwellings, and, in connection therewith, the Trustee is requiring the dismissal of the Purchaser Litigation;

**NOW THEREFORE** in consideration of the Settlement Payments being made directly to the Trustee, the dismissal of the Purchaser Litigation (including the Third Party Claim), the discharge of the Lenders' Mortgage/Charge from title to each of the Dwellings, and the other covenants, agreements, and releases set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **Recitals**

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

### **Court Approval of Settlement Agreement**

2. The Trustee shall use commercially reasonable efforts to seek approval of this Settlement Agreement by way of court order issued substantially in the form set out in Schedule "B" hereto, which includes the authority for the Trustee to make a distribution to the Individual SMLs (the "**Order**"). The parties hereto agree that, except for the immediately preceding sentence, this Settlement Agreement shall not be binding on any party until 35 days following the date on which the Order is issued, subject to no appeal of the Order having been brought by then (the "**Effective Date**").

### **Settlement Payments**

3. On or before the later of (a) 60 days from the date of this Settlement Agreement, and (b) 5 days from the Effective Date (such later date, the "**Payment Deadline**"), the following payments shall be made directly to the Trustee, on behalf of BDMC and OTC, by wire transfer at the account (the "**Trustee's Account**") specified on Schedule "C" hereto (collectively, the "**Settlement Payments**" and each a "**Settlement Payment**");

- (a) \$500,000, to be paid by Pace;
- (b) \$875,000, to be paid by Mr. Chong (or LawPro, on behalf of Mr. Chong); and
- (c) \$875,000, to be paid by the May 2019 Purchaser Plaintiffs and/or the August 2019 Purchaser Plaintiffs and/or the Additional 2019 Purchasers (or one or more of the Title Insurers, on behalf of such plaintiffs).

4. Each of Pace, Mr. Chong, LawPro, the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers and the Title Insurers agrees that it waives, and shall not assert, any right of set-off or any other defense to the payment of the Settlement Payments.

### **Dismissal of Purchaser Litigation**

5. Within 10 days of the Payment Deadline:
- (a) the May 2019 Purchaser Plaintiffs (or FCT Insurance Company Ltd. and Stewart Title Guaranty Company on their behalf, as applicable) shall have sought and obtained a dismissal of the May 2019 Purchaser Litigation (which, for greater certainty, includes the Third Party Claim) on a with prejudice and without costs basis, and each of the parties hereto that is a party to the May 2019 Purchaser Litigation hereby consents to such dismissal and authorizes the lawyers for the May 2019 Purchaser Plaintiffs to execute a consent to the foregoing dismissal; and
  - (b) the August 2019 Purchaser Plaintiffs (or Chicago Title Insurance Company Canada on their behalf) shall have sought and obtained a dismissal of the August 2019 Purchaser Litigation on a with prejudice and without costs basis, and each of the parties hereto that is a party to the August 2019 Purchaser Litigation hereby consents to such dismissal and authorizes the lawyers for the August 2019 Purchaser Plaintiffs to execute a consent to the foregoing dismissal.

### **Closing of the Settlement Transaction**

6. The Trustee shall be required to issue a certificate to the other parties hereto in accordance with Section 22 hereof substantially in the form attached to the Order (the “**Trustee’s Certificate**”) and file the Trustee’s Certificate with the Court promptly upon the satisfaction of the following conditions precedent (which conditions may be waived by the Trustee in its sole discretion):

- (a) the Order has been granted by the Court and either no material objections (in the sole opinion of the Trustee) were raised by any person at the motion for the Order or the appeal periods in respect of the Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
- (b) each of the Settlement Payments shall have been paid directly to, and actually received by, the Trustee at the Trustee’s Account;
- (c) the May 2019 Purchaser Litigation (which, for greater certainty, includes the Third Party Claim) shall have been dismissed on a with prejudice and without costs basis;

- (d) the August 2019 Purchaser Litigation shall have been dismissed on a with prejudice and without costs basis; and
- (e) it has received a signed acknowledgment from the Bankruptcy Trustee, on behalf of the Borrower, in form and substance satisfactory to the Trustee, in its sole discretion, acknowledging and confirming that:
  - (i) it is aware of the terms of this Settlement Agreement;
  - (ii) the Borrower and its estate have no interest in the Settlement Payments and such payments do not constitute property or proceeds of the Borrower or its bankruptcy estate;
  - (iii) the Bankruptcy Trustee, on behalf of 230 Ontario, consents to a dismissal of the May 2019 Purchaser Litigation (including the Third Party Claim) and of the August 2019 Purchaser Litigation, in each case on a with prejudice and without costs basis, and authorizes the lawyers for the applicable plaintiffs to execute a consent in respect of the applicable dismissal; and
  - (iv) the Bankruptcy Trustee will, as soon as is practicable following the Closing Date, but subject to completion of the administration of the estate and its statutory duties under the BIA, seek a discharge of the Borrower from, and termination of, the Bankruptcy Proceedings.

The date on which the Trustee's Certificate is issued in accordance with this Section 6 is hereinafter referred to as the "**Closing Date**".

7. If an appeal of the Order is brought, (i) the Trustee shall promptly inform the parties hereto of the same and shall provide a copy of any appeal materials to the parties hereto; and (ii) the Effective Date shall be deemed to be three business days after the Trustee provides written notice that the condition in subparagraph 6(a) has been satisfied.

### **Discharge of Lenders' Mortgage/Charge**

8. Within 10 days of the Closing Date, the Trustee, on behalf of BDMC, and OTC shall discharge the Lenders' Mortgage/Charge from title to the Dwellings.

### **Releases**

9. As of the Closing Date:

- (a) Pace (on behalf of itself and its Affiliates (as defined below)) and the Related Party Individual Defendants, and each of their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns, hereby forever release and discharge the Trustee, BDMC, OTC, the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers, the Title Insurers, Mr. Chong and LawPro (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised,

or which might have been raised, in respect of the Loan, the Loan Agreements, the Lenders' Mortgage/Charge and any and all security provided in respect of the Loan (collectively, the "**Security**"), and the Purchaser Litigation (which, for greater certainty, includes the Third Party Claim) (collectively, the "**Released Matters**"). Throughout this Settlement Agreement, "**Affiliates**" shall be as defined in the *Business Corporations Act* (Ontario) but shall not include (i) Fortress Real Developments Inc. or any of its Affiliates, or (ii) the Borrower;

- (b) the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers, and the Title Insurers, and each of their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns, hereby forever release and discharge the Trustee, BDMC, OTC, Pace, the Related Party Individual Defendants, Mr. Chong and LawPro (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Released Matters;
- (c) Mr. Chong and LawPro, and each of their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns, hereby forever release and discharge the Trustee, BDMC, OTC, Pace, the Related Party Individual Defendants, the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers, and the Title Insurers (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Released Matters; and
- (d) the Trustee, on behalf of BDMC, and OTC hereby forever release and discharge Pace, the Related Party Individual Defendants, the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers, the Title Insurers, Mr. Chong and LawPro (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Released Matters.

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

11. In the event that any party to this Settlement Agreement should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against any party it has released in connection with the matters which are released and discharged above, this Settlement Agreement may be raised as a complete bar to any such demand, action, claim or proceeding except for claims or proceedings only in respect of such party's several liability.

12. Each party hereto represents and warrants that it has not assigned or otherwise disposed of any of the claims, demands, rights, liabilities, and/or causes of action that are the subject of its release(s) given in Section 9 hereof.

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

14. The parties to this Settlement Agreement agree that, as of the Closing Date, they shall not oppose and shall not support any party that opposes any discharge of the Borrower from, and termination of, the Bankruptcy Proceedings sought by the Bankruptcy Trustee.

### **OTC Investor Matters**

15. Any claims asserted against OTC by or on behalf of the OTC Investors in respect of any loss relating to the Eden Project, including in the Proposed Class Action, shall be restricted to several claims such that any recovery from OTC shall be limited to OTC's proportionate degree of liability, as established at a trial or other disposition (an "**OTC Investor Claim**").

16. Any court or tribunal presiding over an OTC Investor Claim shall have full authority to determine the proportionate liability of any party to this Settlement Agreement whether or not such party appears in the proceeding, and the proportionate liability of any party to this Settlement Agreement may be determined as if that party is a party to the proceeding in which the OTC Investor Claim is asserted. For greater certainty, notwithstanding this provision, the releases set out herein apply and protect those released thereby from further liability as stated therein.

17. Notwithstanding paragraphs 9(d), 10 and 11, in any proceeding in respect of an OTC Investor Claim, OTC may bring a motion pursuant to Rule 31.10 seeking to conduct pre-trial documentary and oral discovery of any party to this agreement and/or compel that party to appear at a trial pursuant to Rule 53.04 as if such party was a defendant or third party in that proceeding, in accordance with the procedural rules governing that proceeding, and that party (except for the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs [and the Additional 2019 Purchasers]) will agree not to oppose the substance of the motion and to obey the summons, as applicable. For greater certainty, this provision shall not otherwise affect the releases contained herein.

### **Miscellaneous**

18. The headings in this Settlement Agreement are for reference only and shall not affect the interpretation or meaning of this Settlement Agreement.

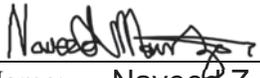
19. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

20. The parties agree that the terms of this Settlement Agreement shall be disclosed to the Individual SMLs under the Loan and this Settlement Agreement shall be included in the motion materials for approval of this Settlement Agreement.
21. Other than Representative Counsel, each party hereto represents, warrants, and confirms it has received independent legal advice relating to this Settlement Agreement, and that it has voluntarily entered into this Settlement Agreement with the benefit of such advice. Representative Counsel represents, warrants, and confirms it has voluntarily entered into this Settlement Agreement.
22. Any notice, document, or other communication to be delivered hereunder may be sent by email addressed to the applicable party or parties at the email addresses listed on Schedule “D” hereto.
23. This Settlement Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings, representations and understandings between the parties. This Settlement Agreement shall further enure to the benefit of and be binding upon the parties and their respective successors, representatives and assigns.
24. Nothing herein shall be deemed to be an admission of liability on the part of any of the parties hereto. Nothing herein shall be deemed to be an admission by the parties to this Settlement Agreement of the truth or accuracy of any facts asserted in the Purchaser Litigation or the Proposed Class Action by any opposite party.
25. This Settlement Agreement may be executed by the parties in counterparts, and may be executed in original or electronically by DocuSign or PDF and may be delivered in original, by facsimile, or by e-mail and all such counterparts shall together constitute one and the same agreement.
26. This Settlement Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada therein, and any dispute arising from this Settlement Agreement shall be adjudicated before the Court.

*[Remainder of page left blank]*

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

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

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

**OLYMPIA TRUST COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**MOHAMMAD NASSARI, MANMEET  
SACHAR, TANPREET MARWAH, XIANG  
RONG ZHANG, FRANCESCO OLIVETI,  
CASSANDRA OLIVETI, WEI ZHUO YE,  
LI-NA XIE, WEI XIE, XIYAO CHANG,  
GINO BARBUTO, DEBRA BARBUTO,  
JOSEPH DEGIORGIO, MARIA  
DEGIORGIO, DANIELLE DEGIORGIO,  
LUIGI FABBRO, RENATA FABBRO,  
YULIA KATZNELSON, OLGA  
KATZNELSON, PHILLIP GENOVASE,  
OUSSAMA BENKABBOUR, SAVITA  
BENKABBOUR, MALGORZATA  
SHEIKHAN, TARIQ ALLAUDDIN  
MUNSHI, AYESHA TARIQ MUNSHI,  
MICHAEL PASQUALE VENTRESCA,  
DOLORES VENTRESCA, LOHAN  
SUBHASH, LEELAWANTI SUBHASH,  
FRANCO ANTHONY CATAPANO,  
VICTOR VATCHE PROUDIAN, SABRINA  
ROMANO, RYAN MACRI and ALLISON  
MACRI**

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

**FAAN MORTGAGE ADMINISTRATORS  
INC., solely in its capacity as Court-  
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no other capacity**

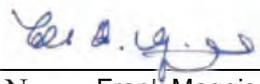
By: \_\_\_\_\_  
Name:  
Title:

**OLYMPIA TRUST COMPANY**

By:   
Name: \_\_\_\_\_  
Title: Andrea Gillis  
Executive Vice President **Jonathan Bahnuik**  
General Counsel

**MOHAMMAD NASSARI, MANMEET  
SACHAR, TANPREET MARWAH, XIANG  
RONG ZHANG, FRANCESCO OLIVETI,  
CASSANDRA OLIVETI, WEI ZHUO YE,  
LI-NA XIE, WEI XIE, XIYAO CHANG,  
GINO BARBUTO, DEBRA BARBUTO,  
JOSEPH DEGIORGIO, MARIA  
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LUIGI FABBRO, RENATA FABBRO,  
YULIA KATZNELSON, OLGA  
KATZNELSON, PHILLIP GENOVASE,  
OUSSAMA BENKABBOUR, SAVITA  
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SHEIKHAN, TARIQ ALLAUDDIN  
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MICHAEL PASQUALE VENTRESCA,  
DOLORES VENTRESCA, LOHAN  
SUBHASH, LEELAWANTI SUBHASH,  
FRANCO ANTHONY CATAPANO,  
VICTOR VATCHE PROUDIAN, SABRINA  
ROMANO, RYAN MACRI and ALLISON  
MACRI**

**by FCT INSURANCE COMPANY LTD.  
and STEWART TITLE GUARANTY  
COMPANY, as title insurers in interest**

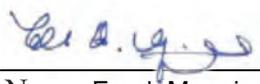
By:   
Name: Frank Maggisano  
Title: Vice President Claims and Quality Assurance

By:  
Name:  
Title:

**FCT INSURANCE COMPANY LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**STEWART TITLE GUARANTY  
COMPANY**

By:   
Name: Frank Maggisano  
Title: Vice President Claims and Quality Assurance

**RALPH HON-KING WONG and  
LOREINA WEI-YEE CHEW**  
**by CHICAGO TITLE INSURANCE  
COMPANY CANADA, as title insurer in  
interest**

By: \_\_\_\_\_  
Name:  
Title:

**CHICAGO TITLE INSURANCE  
COMPANY CANADA**

By: \_\_\_\_\_

**by FCT INSURANCE COMPANY LTD.  
and STEWART TITLE GUARANTY  
COMPANY, as title insurers in interest**

By: \_\_\_\_\_  
Name:  
Title:

By: **John** Digitally signed by  
Name: **John Tracy** John Tracy  
Title: **Tracy** Date: 2022.08.15  
16:44:45 -04'00'

**FCT INSURANCE COMPANY LTD.**

By: **John** Digitally signed  
Name: **John Tracy** by John Tracy  
Title: **Tracy** Date: 2022.08.15  
16:45:11 -04'00'

**STEWART TITLE GUARANTY  
COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**RALPH HON-KING WONG and  
LOREINA WEI-YEE CHEW**  
**by CHICAGO TITLE INSURANCE  
COMPANY CANADA, as title insurer in  
interest**

By: \_\_\_\_\_  
Name:  
Title:

**CHICAGO TITLE INSURANCE  
COMPANY CANADA**

By: \_\_\_\_\_

**by FCT INSURANCE COMPANY LTD.  
and STEWART TITLE GUARANTY  
COMPANY, as title insurers in interest**

By: \_\_\_\_\_  
Name:  
Title:

By:  
Name:  
Title:

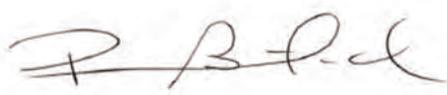
**FCT INSURANCE COMPANY LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**STEWART TITLE GUARANTY  
COMPANY**

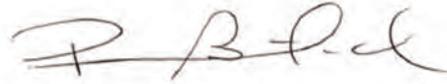
By: \_\_\_\_\_  
Name:  
Title:

**RALPH HON-KING WONG and  
LOREINA WEI-YEE CHEW**  
**by CHICAGO TITLE INSURANCE  
COMPANY CANADA, as title insurer in  
interest**

By:   
\_\_\_\_\_  
Name: Pierre Béland  
Title: Senior Claims Counsel – Assistant  
Vice President

**CHICAGO TITLE INSURANCE  
COMPANY CANADA**

By:



\_\_\_\_\_  
Name: Pierre Béland

Title: Senior Claims Counsel – Assistant  
Vice President

**DIMITRIOS MILLIS, NICOLETTA  
BISOUKIS, BEHSHEED AKHAVAN and  
MOHAMMAD-HASSAN SHEIDAEI**

**by TITLEPLUS, as title insurer in interest**

By: \_\_\_\_\_

Name:

Title:

**TITLEPLUS**

By: \_\_\_\_\_

Name:

Title:

**PACE DEVELOPMENTS INC.**

By: \_\_\_\_\_

Name:

Title:

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
**David Chong**

**LAWYERS' PROFESSIONAL  
INDEMNITY COMPANY**

DIMITRIOS MILLIS, NICOLETTA  
BISOUKIS, BEHSHEED AKHAVAN and  
MOHAMMAD-HASSAN SHEIDAEI

by TITLEPLUS, as title insurer in interest

By: Mario Merucci  
Name: MARIO MERUCCI  
Title: LAWYER FOR TITLEPLUS

**TITLEPLUS**

By: N. Dalimonte  
Name: Nadia Dalimonte  
Title: Manager, TitlePLUS Claims & Counsel

**PACE DEVELOPMENTS INC.**

By: \_\_\_\_\_  
Name:  
Title:

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
**David Chong**

**LAWYERS' PROFESSIONAL  
INDEMNITY COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

SIGNED, SEALED & DELIVERED  
In the presence of:

|

Name:

Title:

**DIMITRIOS MILLIS, NICOLETTA  
BISOUKIS, BEHSHEED AKHAVAN and  
MOHAMMAD-HASSAN SHEIDAEI**

**by TITLEPLUS, as title insurer in interest**

By: \_\_\_\_\_

Name:

Title:

**TITLEPLUS**

By: \_\_\_\_\_

Name:

Title:

**PACE DEVELOPMENTS, INC.**

By: \_\_\_\_\_ 

Name:

Title:

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
**David Chong**

**LAWYERS' PROFESSIONAL  
INDEMNITY COMPANY**

By: \_\_\_\_\_

Name:

Title:

Name:

Title:

**DIMITRIOS MILLIS, NICOLETTA BISOUKIS, BEHSHEED AKHAVAN and MOHAMMAD-HASSAN SHEIDAEI**

**by TITLEPLUS, as title insurer in interest**

By: \_\_\_\_\_

Name:

Title:

**TITLEPLUS**

By: \_\_\_\_\_

Name:

Title:

**PACE DEVELOPMENTS INC.**

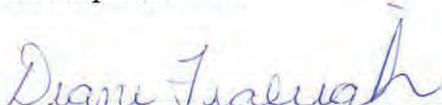
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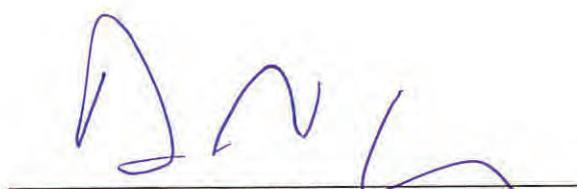
Title:

SIGNED, SEALED & DELIVERED

In the presence of:



Print Witness Name: Diane Fraleigh



**David Chong**

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY**

By: \_\_\_\_\_

Name:

Title:

Name:

Title:

**DIMITRIOS MILLIS, NICOLETTA BISOUKIS, BEHSHEED AKHAVAN and MOHAMMAD-HASSAN SHEIDAEI**

**by TITLEPLUS, as title insurer in interest**

By: \_\_\_\_\_

Name:

Title:

**TITLEPLUS**

By: \_\_\_\_\_

Name:

Title:

**PACE DEVELOPMENTS INC.**

By: \_\_\_\_\_

Name:

Title:

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
**David Chong**

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY**

By:



\_\_\_\_\_  
Name: David Waterhouse

Title: Claims Counsel

SIGNED, SEALED & DELIVERED

In the presence of:



Print Witness Name: \_\_\_\_\_



Peter Sciavilla

SIGNED, SEALED & DELIVERED

In the presence of:



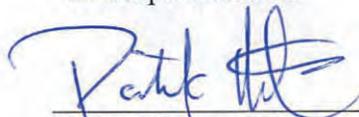
Print Witness Name: \_\_\_\_\_



Dino Sciavilla

SIGNED, SEALED & DELIVERED

In the presence of:



Print Witness Name: \_\_\_\_\_



Pamela Ventresca

**CHAITONS LLP, on behalf of the  
Individuals SMLs and not in its personal or  
other capacity**

By: \_\_\_\_\_

Name:

Title:

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
**Peter Sciavilla**

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
**Dino Sciavilla**

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
**Pamela Ventresca**

**CHAITONS LLP, on behalf of the  
Individuals SMLs and not in its personal or  
other capacity**

By:

  
\_\_\_\_\_  
Name: **G. Benchetrit**  
Title: **Partner**

**SCHEDULE "A"**

**Legal Description of Dwellings**

No.	PIN	Legal Description
1.	PIN 03372-0919 (LT)	LOT 1, PLAN 65M4514; TOWNSHIP OF KING
2.	PIN 03372-0920 (LT)	LOT 2, PLAN 65M4514; TOWNSHIP OF KING
3.	PIN 03372-0921 (LT)	LOT 3, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
4.	PIN 03372-0922 (LT)	LOT 4, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
5.	PIN 03372-0923 (LT)	LOT 5, PLAN 65M4514; TOWNSHIP OF KING
6.	PIN 03372-0924 (LT)	LOT 6, PLAN 65M4514; TOWNSHIP OF KING
7.	PIN 03372-0925 (LT)	LOT 7, PLAN 65M4514; TOWNSHIP OF KING
8.	PIN 03372-0926 (LT)	LOT 8, PLAN 65M4514; TOWNSHIP OF KING
9.	PIN 03372-0927 (LT)	LOT 9, PLAN 65M4514; TOWNSHIP OF KING
10.	PIN 03372-0928 (LT)	LOT 10, PLAN 65M4514; TOWNSHIP OF KING
11.	PIN 03372-0929 (LT)	LOT 11, PLAN 65M4514; TOWNSHIP OF KING
12.	PIN 03372-0930 (LT)	LOT 12, PLAN 65M4514; TOWNSHIP OF KING
13.	PIN 03372-0980 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 15, 16, 17 AND 18 ON 65R-37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 17 ON 65R-37241 AS IN YR2539216; TOGETHER WITH AN EASEMENT OVER PART 14 PLAN 65R37241 AS IN YR2867635; SUBJECT TO AN EASEMENT OVER PART 15 PLAN 65R37241 IN FAVOUR OF PARTS 13 & 14 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
14.	PIN 03372-0981 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 13 AND 14 ON 65R-37241; SUBJECT TO AN EASEMENT OVER PART 14 PLAN 65R37241 IN FAVOUR OF PARTS 15, 16, 17 & 18 PLAN 65R37241 AS IN YR2867635; TOGETHER WITH AN EASEMENT OVER PART 15 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
15.	PIN 03372-0982 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 32 & 33 PLAN 65R37241; TOWNSHIP OF KING

No.	PIN	Legal Description
16.	PIN 03372-0983 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 34 & 35 PLAN 65R37241; TOWNSHIP OF KING
17.	PIN 03372-0984 (LT)	PART LOT 13, PLAN 65M4514, PARTS 3 AND 4 PLAN 65R37241; TOWNSHIP OF KING
18.	PIN 03372-0985 (LT)	PART OF LOT 13, PLAN 65M4514, PARTS 1 & 2 PLAN 65R37241; TOWNSHIP OF KING
19.	PIN 03372-0986 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 36, 37, PLAN 65R37241; TOWNSHIP OF KING
20.	PIN 03372-0987 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 38, 39, 40, PLAN 65R37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 40, PLAN 65R37241 AS IN YR2760258; TOWNSHIP OF KING
21.	PIN 03372-0988 (LT)	PART LOT 15, PLAN 65M4514, PARTS 9 & 10, PLAN 65R37241; TOWNSHIP OF KING
22.	PIN 03372-0989 (LT)	PART LOT 15, PLAN 65M4514, PARTS 11 & 12, PLAN 65R37241; TOWNSHIP OF KING
23.	PIN 03372-0990 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 19 AND 20, 65R37241; TOWNSHIP OF KING
24.	PIN 03372-0991 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 21, 22, 23, 24 & 25, 65R37241 SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 23, 24 & 25 65R37241 AS IN YR2539230; TOWNSHIP OF KING
25.	PIN 03372-0992 (LT)	PT LT 18 PL 65M4514 BEING PTS 26, 27, 28 & 29 ON 65R-37241; S/T EASE IN GROSS OVER PT 5 PL 65R-36537 AS IN YR2539230; TOWNSHIP OF KING
26.	PIN 03372-0993 (LT)	PT LT 18 PL 65M4514 BEING PTS 30 & 31 ON PL 65R-37241; TOWNSHIP OF KING
27.	PIN 03372-0994 (LT)	PART LOT 14 PLAN 65M4514, PARTS 7 & 8 65R37241; TOWNSHIP OF KING
28.	PIN 03372-0995 (LT)	PART LOT 14 PLAN 65M4514, PARTS 5 & 6 65R37241; TOWNSHIP OF KING

**SCHEDULE “B”**

**Form of Order**

(see attached)

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	●DAY, THE ● <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF ●, 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**

**ORDER  
(Eden Resolution)**

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

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(i) approving and ratifying the Settlement Agreement and Mutual Release dated as of August 2, 2022 (the “**Eden Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and the other parties thereto; (ii) ordering that the Settlement Payments (as defined in the Eden Settlement Agreement) be made to the Trustee pursuant to and in accordance with the Eden Settlement Agreement; and (iii) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below) in accordance with the Eden Settlement Agreement, make a distribution of Eden Realized Property (as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

**ON READING** the ● Report of the Trustee dated ●, 2022 (the “**● Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the 2309918 Ontario Inc. (the “**Borrower**”), and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of ● sworn ●, 2022, filed;

### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the ● Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the ● Report or the Eden Settlement Agreement, as applicable.

### **APPROVAL OF THE EDEN SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (i) the Eden Settlement Agreement be and is hereby approved and ratified in its entirety; (ii) the following payments are directed to be made to the Trustee, on behalf of BDMC and OTC, in accordance with the terms of the Eden Settlement Agreement and in each case prior to the Payment Deadline, (a) \$500,000 by Pace, (b) \$875,000 by Mr. Chong (or LawPro, on behalf of Mr. Chong), and (c) \$875,000 by the May 2019 Purchaser Plaintiffs and/or the August 2019 Purchaser Plaintiffs and/or the Additional 2019 Purchasers (or

one or more of the Title Insurers, on behalf of such parties); and (iii) the execution of the Eden Settlement Agreement by the Trustee, OTC, and Representative Counsel is hereby ratified and approved, and the Trustee, OTC, and Representative Counsel are hereby authorized and directed to comply with all of their respective obligations under the Eden Settlement Agreement, as applicable.

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate as soon as practicable after delivery thereof in accordance with the Eden Settlement Agreement.

5. **THIS COURT ORDERS** that, only as contemplated by the Eden Settlement Agreement, upon the registration in the Land Registry Office for York Region (#65) of an Application to Register an Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") the Lender's Mortgage/Charge listed in Schedule "C" hereto.

#### **REALIZED PROPERTY**

6. **THIS COURT ORDERS AND DECLARES** that only upon the delivery of the Trustee's Certificate in accordance with the Eden Settlement Agreement, the Settlement Payments (the "**Eden Realized Property**") are and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that the rights and claims of the Individual SMLs in respect of the Loan Agreements and related security shall attach to the Eden Realized Property and shall have the same nature and priority as they had prior to the consummation of the Eden Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

7. **THIS COURT ORDERS** that, as soon as is practicable, the Trustee shall make a distribution to the Individual SMLs in an amount equal to 85% of the Eden Realized Property, *pro rata* to the Individual SMLs entitled to such funds, in accordance with paragraph 3(b) of the Order

of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

## RELEASES

8. **THIS COURT ORDERS** that, as of the Closing Date:

- (i) none of the Borrower, BDMC, and OTC shall have any further rights or obligations in connection with the Obligations, the Loan Agreements, the Lender's Mortgage/Charge, and the other Security;
- (ii) the Loan Agreements shall have no further force or effect; and
- (iii) BDMC and OTC shall have no further rights to any further payments that may become payable under the Loan Agreements, the Lender's Mortgage/Charge, and the other Security.

9. **THIS COURT ORDERS** that the Borrower and its shareholders, agents, directors, officers, employees, and their respective successors and assigns, hereby forever release and discharge the Trustee, BDMC, OTC, the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers, the Title Insurers, Mr. Chong and LawPro (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Loan, the Loan Agreements, the Lender's Mortgage/Charge and any and all other Security, and the Purchaser Litigation (which, for greater certainty, includes the Third Party Claim).

## AID AND RECOGNITION OF FOREIGN COURTS

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

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make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).
- B. Pursuant to an Order of the Court made on ●, 2022 (the “**Eden Resolution Order**”), the Court approved and ratified the Settlement Agreement and Mutual Release dated as of August 2, 2022 (the “**Eden Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and certain other parties.
- C. The releases contemplated in the Eden Settlement Agreement and the Eden Resolution Order are not effective until the Trustee issues the Trustee’s Certificate to the other parties to the Eden Settlement Agreement in accordance with the terms thereof.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Eden Resolution Order or the Eden Settlement Agreement, as applicable.

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**THE TRUSTEE CERTIFIES** the following:

1. The Eden Resolution Order has been granted by the Court and either no material objections (in the sole opinion of the Trustee) were raised by any person at the motion for the Eden Resolution Order or the appeal periods in respect of the Eden Resolution Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
2. Each of the Settlement Payments has been paid directly to, and actually received by, the Trustee at the Trustee's Account;
3. The May 2019 Purchaser Litigation (which, for greater certainty, includes the Third Party Claim) has been dismissed on a with prejudice and without costs basis;
4. The August 2019 Purchaser Litigation has been dismissed on a with prejudice and without costs basis; and
5. The Trustee has received a signed acknowledgment from the Bankruptcy Trustee, on behalf of the Borrower, in form and substance satisfactory to the Trustee, in its sole discretion, acknowledging and confirming that:
  - (i) it is aware of the terms of this Settlement Agreement;
  - (ii) the Borrower and its estate have no interest in the Settlement Payments and such payments do not constitute property or proceeds of the Borrower or its bankruptcy estate;
  - (iii) the Bankruptcy Trustee, on behalf of 230 Ontario, consents to a dismissal of the May 2019 Purchaser Litigation (including the Third Party Claim) and of the August 2019 Purchaser Litigation, in each case on a with prejudice and without costs basis, and authorizes the lawyers for the applicable plaintiffs to execute a consent in respect of the applicable dismissal; and
  - (iv) the Bankruptcy Trustee will, as soon as is practicable following the Closing Date, but subject to completion of the administration of the estate and its statutory duties under the BIA, seek a discharge of the Borrower from, and termination of, the Bankruptcy Proceedings.

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

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

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

Name:

Title:

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**Schedule “B” – Real Property**

No.	PIN	Legal Description
1.	PIN 03372-0919 (LT)	LOT 1, PLAN 65M4514; TOWNSHIP OF KING
2.	PIN 03372-0920 (LT)	LOT 2, PLAN 65M4514; TOWNSHIP OF KING
3.	PIN 03372-0921 (LT)	LOT 3, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
4.	PIN 03372-0922 (LT)	LOT 4, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
5.	PIN 03372-0923 (LT)	LOT 5, PLAN 65M4514; TOWNSHIP OF KING
6.	PIN 03372-0924 (LT)	LOT 6, PLAN 65M4514; TOWNSHIP OF KING
7.	PIN 03372-0925 (LT)	LOT 7, PLAN 65M4514; TOWNSHIP OF KING
8.	PIN 03372-0926 (LT)	LOT 8, PLAN 65M4514; TOWNSHIP OF KING
9.	PIN 03372-0927 (LT)	LOT 9, PLAN 65M4514; TOWNSHIP OF KING
10.	PIN 03372-0928 (LT)	LOT 10, PLAN 65M4514; TOWNSHIP OF KING
11.	PIN 03372-0929 (LT)	LOT 11, PLAN 65M4514; TOWNSHIP OF KING
12.	PIN 03372-0930 (LT)	LOT 12, PLAN 65M4514; TOWNSHIP OF KING
13.	PIN 03372-0980 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 15, 16, 17 AND 18 ON 65R-37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 17 ON 65R-37241 AS IN YR2539216; TOGETHER WITH AN EASEMENT OVER PART 14 PLAN 65R37241 AS IN YR2867635; SUBJECT TO AN EASEMENT OVER PART 15 PLAN 65R37241 IN FAVOUR OF PARTS 13 & 14 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
14.	PIN 03372-0981 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 13 AND 14 ON 65R-37241; SUBJECT TO AN EASEMENT OVER PART 14 PLAN 65R37241 IN FAVOUR OF PARTS 15, 16, 17 & 18 PLAN 65R37241 AS IN YR2867635; TOGETHER WITH AN EASEMENT OVER PART 15 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
15.	PIN 03372-0982 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 32 & 33 PLAN 65R37241; TOWNSHIP OF KING
16.	PIN 03372-0983 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 34 & 35 PLAN 65R37241; TOWNSHIP OF KING
17.	PIN 03372-0984 (LT)	PART LOT 13, PLAN 65M4514, PARTS 3 AND 4 PLAN 65R37241; TOWNSHIP OF KING
18.	PIN 03372-0985 (LT)	PART OF LOT 13, PLAN 65M4514, PARTS 1 & 2 PLAN 65R37241; TOWNSHIP OF KING
19.	PIN 03372-0986 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 36, 37, PLAN 65R37241; TOWNSHIP OF KING
20.	PIN 03372-0987 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 38, 39, 40, PLAN 65R37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 40, PLAN 65R37241 AS IN YR2760258; TOWNSHIP OF KING
21.	PIN 03372-0988 (LT)	PART LOT 15, PLAN 65M4514, PARTS 9 & 10, PLAN 65R37241; TOWNSHIP OF KING
22.	PIN 03372-0989 (LT)	PART LOT 15, PLAN 65M4514, PARTS 11 & 12, PLAN 65R37241; TOWNSHIP OF KING

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23.	PIN 03372-0990 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 19 AND 20, 65R37241; TOWNSHIP OF KING
24.	PIN 03372-0991 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 21, 22, 23, 24 & 25, 65R37241 SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 23, 24 & 25 65R37241 AS IN YR2539230; TOWNSHIP OF KING
25.	PIN 03372-0992 (LT)	PT LT 18 PL 65M4514 BEING PTS 26, 27, 28 & 29 ON 65R-37241; S/T EASE IN GROSS OVER PT 5 PL 65R-36537 AS IN YR2539230; TOWNSHIP OF KING
26.	PIN 03372-0993 (LT)	PT LT 18 PL 65M4514 BEING PTS 30 & 31 ON PL 65R-37241; TOWNSHIP OF KING
27.	PIN 03372-0994 (LT)	PART LOT 14 PLAN 65M4514, PARTS 7 & 8 65R37241; TOWNSHIP OF KING
28.	PIN 03372-0995 (LT)	PART LOT 14 PLAN 65M4514, PARTS 5 & 6 65R37241; TOWNSHIP OF KING

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**Schedule “C” – Lender’s Mortgage/Charge**

Registration Instrument No. YR1797496 registered on March 20, 2012, as:

- transferred by Instrument Nos. YR1798016, YR1833808, YR1833809, YR1886635, YR1958951, YR1958955, YR2099174, YR2136733, YR2136734, and YR2438713;
- transferred from Sanjay Soni to Building & Development Mortgages Canada Inc. by Instrument No. YR2443820;
- transferred from Olympia Trust Company to Building & Development Mortgages Canada Inc. by Instrument No. YR2456227;
- amended by Inst. Nos. YR1893548, YR2087780, YR2182638, and YR2321166;
- postponed by Instrument Nos. YR2323109, YR2323111, YR2391969, YR2510935, YR2540057, and YR2714813; and
- modified by names changes by Instrument Nos. YR1816457 (Vanguard Law Group LLP, in Trust to Sanjay Soni) and YR1833806 (Olympia Trust to Olympia Trust Company).

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**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA  
INC.**

Applicant

Respondent

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

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

Proceedings commenced at Toronto

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**EDEN RESOLUTION ORDER**

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**OSLER, HOSKIN & HARCOURT LLP**

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

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

Tel: (416) 362-2111

Fax: (416) 862-6666

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

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**SCHEDULE “C”****Trustee’s Account Details****Beneficiary Bank Information (Canadian Currency):**

Name: Toronto Dominion Bank

Street: 9200 Weston Rd

City: Woodbridge

Prov: Ontario

Country: Canada

Postal Code: L4H 2P8

Institution ID = 004

Branch Transit = 18982

Account = 1898 5027455

Swift Number = TDOMCATTOR

**Beneficiary Information:**

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

Street: 920 – 20 Adelaide Street East

City: Toronto

Province: Ontario

Country: Canada

Postal Code: M5C 2T6

## SCHEDULE "D"

### Notice Information

Party	Email Address(es) for Notice
Trustee	<a href="mailto:naveed@faanmortgageadmin.com">naveed@faanmortgageadmin.com</a>  - with copies to -  <a href="mailto:MDeLellis@osler.com">MDeLellis@osler.com</a> <a href="mailto:JDacks@osler.com">JDacks@osler.com</a> <a href="mailto:AHirsh@osler.com">AHirsh@osler.com</a>
OTC	<a href="mailto:ryan.morris@blakes.com">ryan.morris@blakes.com</a>
May 2019 Purchaser Plaintiffs	<a href="mailto:adam@zasadalaw.ca">adam@zasadalaw.ca</a>
FCT Insurance Company Ltd.	<a href="mailto:adam@zasadalaw.ca">adam@zasadalaw.ca</a>
Stewart Title Guaranty Company	<a href="mailto:adam@zasadalaw.ca">adam@zasadalaw.ca</a>
August 2019 Purchaser Plaintiffs	<a href="mailto:richard@himprolaw.com">richard@himprolaw.com</a>
Chicago Title Insurance Company Canada	<a href="mailto:richard@himprolaw.com">richard@himprolaw.com</a>
Additional 2019 Purchasers	<a href="mailto:merocchi@bslsc.com">merocchi@bslsc.com</a>
TitlePLUS	<a href="mailto:merocchi@bslsc.com">merocchi@bslsc.com</a>
Mr. Chong	<a href="mailto:gcaplan@mcr.law">gcaplan@mcr.law</a>
LawPro	<a href="mailto:gcaplan@mcr.law">gcaplan@mcr.law</a>
Related Party Individual Defendants	<a href="mailto:patrick@martinlawoffice.ca">patrick@martinlawoffice.ca</a>
Pace	<a href="mailto:patrick@martinlawoffice.ca">patrick@martinlawoffice.ca</a>

Representative Counsel	<a href="mailto:george@chaitons.com">george@chaitons.com</a>
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**APPENDIX 20:  
HIGHLANDS INVESTOR NOTICES SENT SINCE TWENTY-SEVENTH REPORT**



February 17, 2022

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to South West Queensville Holdings Inc. (“Borrower”) pursuant to the loan agreement dated March 16, 2016 regarding the property located at 19935 2<sup>nd</sup> Concession Road (“19935 Concession”), 19851 2<sup>nd</sup> Concession Road and 19879 2<sup>nd</sup> Concession Road, Queensville, ON (collectively the “HYR Project” or the “Properties” and each a “Property”)**

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

We are writing to you in our capacity as Trustee regarding the HYR Project and further to our notice dated May 18, 2021 (“**Notice**”) and the Trustee’s twenty-seventh report to Court dated January 18, 2022 (“**Twenty-Seventh Report**”). The purpose of this notice is to provide you with information in respect of an enforcement proceeding commenced for 19935 Concession, one of the three Properties that are the subject of the HYR Project.

### **Overview**

As was previously advised, the HYR Project has over \$2.5 million of syndicated mortgage loan debt pursuant to a mortgage that currently ranks in third position on title to each of the Properties. The BDMC Loan is subordinate to: (i) three separate first ranking vendor take back mortgages, each of which is registered on title to a different Property, in the aggregate amount of approximately \$5 million (collectively, the “**VTB Mortgages**”); and (ii) a second ranking mortgage registered on title to all three Properties in favour of Jaekel Capital Inc. (“**Jaekel**”), with an outstanding balance of approximately \$10.6 million (inclusive of interest) as at January 11, 2022.

As detailed in the Notice, in early 2021, it came to the Trustee’s attention that the Borrower had listed the Properties for sale with a commercial real estate agent on January 21, 2021,



without a list price or an offer deadline. Ultimately, after marketing the Properties for a period of time, the listing agent set an offer date of April 15, 2021. No offers were received on the offer date. Following the conclusion of the unsuccessful sale process, the Borrower advised the Trustee that there were no funds available to continue the development of the HYR Project and that it was considering possible next steps with respect to the HYR Project.

### **VTB Mortgages**

The 19935 Concession VTB Mortgage matured in November 2021. The Trustee understands that the other two VTB Mortgages mature in March 2023 (“**2023 VTB Mortgages**”).

As detailed in the Twenty-Seventh Report, the Borrower advised that, for the past two years, Jaekel had been servicing the interest owing in respect of the VTB Mortgages. The Trustee understands that the interest on the 2023 VTB Mortgages is paid semi-annually in March and September and that interest was last paid in September 2021. Given the lack of direction and funding for the development of the HYR Project, and the significantly delayed development approvals, Jaekel advised the Trustee that it will no longer service the 2023 VTB Mortgages, and that it will not pay the March 2022 interest payments.

### **Notice of Sale**

On January 18, 2022, Laura Grant, the holder of the 19935 Concession VTB Mortgage, delivered a Notice of Sale Under Mortgage (“**Notice of Sale**”), pursuant to which she indicated that events of default under the VTB Mortgage on 19935 Concession had occurred and unless the full amount of the outstanding debt totaling \$2,270,299.19 (including interest and fees as at January 18, 2022) was paid on or before February 24, 2022, Ms. Grant would be in a position to sell 19935 Concession. A copy of the Notice of Sale is attached.

Should a sale of 19935 Concession be completed, any proceeds in excess of the amount owing to Ms. Grant, as first priority mortgagee, would be payable to Jaekel as the second ranking mortgagee. Should there be insufficient proceeds remaining from the sale transaction to repay Jaekel in full, there will be no monies available from this Property to repay the BDMC Loan and the BDMC mortgage will be removed from title to 19935 Concession. The Notice of Sale would not affect the registration of the BDMC mortgage on the other two Properties comprising the HYR Project.

We will keep you informed of developments as they occur in respect of 19935 Concession and the other two Properties.



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

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

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

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

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

## NOTICE OF SALE UNDER CHARGE/MORTGAGE OF LAND

TO: THE PARTIES NAMED IN SCHEDULE "A" ATTACHED HERETO

**TAKE NOTICE** that default has been made in payment of the monies due under a certain charge/mortgage of land dated March 16, 2016 made between:

**SOUTH WEST QUEENSVILLE HOLDINGS INC.**

as Chargor

- and -

**LAURA GRANT**

as Chargee

on the security of:

PT LT 17 CON 2 EAST GWILLIMBURY PART 1, PLAN 65R37180; TOWN OF  
EAST GWILLIMBURY  
Town of East Gwillimbury, Regional Municipality of York  
PIN 03419-1005 (LT) (formerly PIN 03419-0072 (LT))

Municipally known as 19935 Second Concession Road, East Gwillimbury,  
Ontario

which charge/mortgage of land was registered on March 16, 2016 in the Land Registry Office for the Land Titles Division of York Region (No. 65) as Instrument No. YR2444821.

**AND WE** hereby give you notice that the amount due on the charge/mortgage for principal, interest, outstanding fees, property management charges, discharge fee and costs respectively, are made up as follows:

For principal	\$2,250,000.00
For interest to January 18, 2022	\$12,082.42
Outstanding fees	\$565.00
Property management charges	\$581.95
Discharge fee and costs	\$998.29
For costs	\$6,071.53
<b>TOTAL DUE AS AT JANUARY 18, 2022</b>	<b><u>\$2,270,299.19</u></b>

(such amount for costs being up to and including the service of the notice only and thereafter such further costs and disbursements will be charged as may be proper) together with interest at the rate of 4.00% per annum, on the principal, interest and costs hereinbefore mentioned, from January 19, 2022 to the date of payment.

**AND UNLESS** the said sums are paid on or before **February 24, 2022** the undersigned shall sell the property covered by the said charge/mortgage of land under the provisions contained in it.

This Notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

**DATED** at Toronto, Ontario, this 18<sup>th</sup> day of January, 2022.

**LAURA GRANT**  
by her lawyers

Chaitons LLP

Per: 

Eva Lake  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9  
Tel: (416) 222-8888  
Fax: (416) 224-5706

Inquiries to: Diane  
(416) 218-1121  
diane@chaitons.com



June 1, 2022

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to South West Queensville Holdings Inc. (“Borrower”) pursuant to the loan agreement dated March 16, 2016 regarding the property located at 19935 2<sup>nd</sup> Concession Road (“19935 Concession”), 19851 2<sup>nd</sup> Concession Road and 19879 2<sup>nd</sup> Concession Road, Queensville, ON (collectively, the “HYR Project” or the “Properties”)**

---

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

We are writing to you in our capacity as Trustee regarding the HYR Project and further to our notice dated February 17, 2022 (“**Notice**”).

As you are aware, the HYR Project is a proposed low-density residential development located in the Town of East Gwillimbury with over \$2.5 million of BDMC syndicated mortgage loan debt pursuant to a mortgage that currently ranks in third position on title to each of the Properties. The BDMC Loan is subordinate to separate first ranking vendor take back mortgages registered on each of the three parcels that together form the Properties (each a “**VTB Mortgage**”) and a second ranking mortgage registered to Jaekel Capital Inc. (“**Jaekel**”) on all three Properties (collectively, the “**Priority Mortgages**”). The amounts owing pursuant to the Priority Mortgages total approximately \$16 million.

### **19935 Concession**

As detailed in the Notice, on January 18, 2022, Laura Grant, the holder of the VTB Mortgage registered on 19935 Concession delivered a Notice of Sale Under Mortgage (“**Notice of Sale**”), pursuant to which Ms. Grant indicated that events of default under its VTB Mortgage on 19335 Concession had occurred and unless the full amount of the outstanding debt of \$2,270,299.19 was paid, Ms. Grant would be in a position to sell 19935 Concession. A copy of the Notice of Sale was previously provided to you. Subsequent to the issuance of the Notice of Sale, the Trustee was advised that Jaekel redeemed the 19335 Concession VTB Mortgage.



As a result of the redemption by Jaekel, the BDMC Loan remained on title to 19935 Concession and now ranks subordinate to Jaekel's first and second mortgages registered on title to that parcel.

### **Enforcement by Jaekel**

On May 10, 2022, the Trustee received a copy of a notice issued by Jaekel dated April 19, 2022 ("**April 19<sup>th</sup> Notice**") advising that its mortgage had matured and that amounts owing thereunder totaling \$13,370,494.90 (inclusive of the amount advanced to redeem the 19335 Concession VTB Mortgage) were immediately due and payable by the Borrower by no later than fifteen days after the date of its letter and failing which, Jaekel would be in a position to commence enforcement proceedings, which may include, among other things, seeking a judgement of foreclosure under its mortgage. The April 19<sup>th</sup> Notice also included a Notice of Intention to Enforce Security under s. 244(1) of the *Bankruptcy and Insolvency Act* and a Notice of Intent by Secured Creditor under s. 21 of the *Farm Debt Mediation Act*. A copy of the April 19<sup>th</sup> Notice is attached as Exhibit "A".

The Trustee has spoken to Jaekel's legal counsel who has advised that Jaekel is still considering its options with respect to the Properties.

We will continue to monitor this situation and keep you informed of any material developments related to these matters as more information becomes available.

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

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

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

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

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

# AGUECI CALABRETTA

BARRISTERS & SOLICITORS

JOSEPH AGUECI, B.A., LL.B.  
JOHN CALABRETTA, LL.B.  
JAMES M. BUTSON, B.A., LL.B.  
FRANCES AGUECI, B.A., B.ED., LL.B.  
LEE GUARINO, LL.B.  
RYAN MCCONAGHY, B.A., J.D.  
CRISTINA INTERNICOLA, B.A., B.A., J.D.  
L.G. STORTINI, B.A., LL.B., CRIMINAL COUNSEL

April 20, 2022

Sent Via Regular Mail

Building & Development Mortgages Canada Inc.  
25 Brodie Drive  
Unit 8  
Richmond Hill, Ontario  
L4B 3K7

Olympia Trust Company  
2200, 125-9<sup>th</sup> Avenue S.E.  
Calgary, Alberta  
T2G 0P6

RECEIVED  
APR 29 2022  
OLYMPIA TRUST COMPANY

Dear Madams/Sirs:

Re: Mortgage in the original principal amount of \$6,810,000.00 given by South West Queensville Holdings Inc., as mortgagor to RW Fortress Inc., now known as Jaekel Capital Inc., as mortgagee and registered on title to 19851, 19879 and 19935, 2<sup>nd</sup> Concession Road, East Gwillimbury, Ontario on March 16, 2016

Mortgage is registered as Instrument Number YR2444823

Mortgagor: South West Queensville Holdings Inc.  
Mortgagee: Jaekel Capital Inc.  
Guarantor: Fortress Real Developments Inc.

---

We are lawyers for Jaekel Capital Inc., formerly known as RW Fortress Inc., the mortgagee under the mortgage noted above.

NORTH AMERICAN CENTRE  
5700 YONGE STREET, STE 1110 TORONTO, ONTARIO M2M 4K2  
TEL. 416 250 5700 | FAX. 416 250 5797 | ✉ INFO@ACLAW.CA

ACLAW.CA

**AGUECI  
CALABRETTA**

BARRISTERS &amp; SOLICITORS

Enclosed please find for your information a letter dated April 19, 2022 that we sent to the owner of the above-noted properties, South West Queensville Holdings Inc. pursuant to the Mortgage described above, and to a Guarantor, Fortress Real Developments Inc.

Please feel free to contact me regarding the above.

Yours very truly,

**AGUECI CALABRETTA**

Per:

Lee Guarino

LG/

**AGUECI  
CALABRETTA**  
BARRISTERS & SOLICITORS

JOSEPH AGUECI, B.A., LL.B.  
JOHN CALABRETTA, LL.B.  
JAMES H. BUTSON, B.A., LL.B.  
FRANCES AGUECI, B.A., B.Ed., LL.B.  
LEE GUARINO, LL.B.  
RYAN MCCONAGHY, B.A., J.D.  
CRISTINA INTERNICOLA, B.A., B.A., LL.B.  
L.G. STORTINI, B.A., LL.B., CRIMINAL COUNSELLOR

April 19, 2022

Sent Via Registered Mail and Regular Mail

South West Queensville Holdings Inc.  
56 The Esplanade  
Suite 206  
Toronto, Ontario  
M5E 1A7

Att: Giuseppe Valela

Fortress Real Developments Inc.  
Unit 1, 25 Brodie Drive  
Richmond Hill, Ontario  
L4B 3K7

Dear Sirs:

Re: Mortgage in the original principal amount of \$6,810,000.00 given by South West Queensville Holdings Inc., as mortgagor to RW Fortress Inc., now known as Jaekel Capital Inc., as mortgagee and registered on title to 19851, 19879 and 19935, 2<sup>nd</sup> Concession Road, East Gwillimbury, Ontario on March 16, 2016

Mortgage is registered as Instrument Number YR2444823

Mortgagor: South West Queensville Holdings Inc.  
Mortgagee: Jaekel Capital Inc.  
Guarantor: Fortress Real Developments Inc.

---

We are lawyers for Jaekel Capital Inc., formerly known as RW Fortress Inc.

Please be advised that the Mortgage described above has matured, and the amounts owing

NORTH AMERICAN CENTRE  
5700 YONGE STREET, STE 1110 TORONTO, ONTARIO M2M 4K2  
TEL. 416 250 5700 | FAX. 416 250 5797 | ✉ INFO@ACLAW.CA

ACLAW.CA

# AGUECI CALABRETTA

BARRISTERS & SOLICITORS

thereunder to our client are immediately due and payable in full, inclusive of principal, interest and costs by South West Queensville Holdings Inc. The amount owing to our client pursuant to the Mortgage described above is \$13,370,494.90 calculated as follows as of April 19, 2022:

Mortgage Amount at registration (March 16, 2016)	\$ 6,810,000.00
Outstanding Principal Sum (not inclusive of other advances) (as at April 19, 2022)	\$ 6,017,650.00
Interest paid on Gawlik, Goreski, Grant mortgage (September 16, 2019)	\$ 88,000.00
Interest paid on Gawlik, Goreski, Grant mortgage (March 12, 2020)	\$ 88,000.00
Interest paid on Gawlik, Goreski, Grant mortgage (September 14, 2020)	\$ 88,000.00
Interest paid on Gawlik, Goreski mortgage (March 15, 2021)	\$ 43,000.00
Interest paid on Grant mortgage (March 19, 2021)	\$ 108,492.75
Interest paid on Gawlik, Goreski mortgage (September 13, 2021)	\$ 43,000.00
Payout of Grant mortgage (February 22, 2022)	\$ 2,279,727.54
Interest paid on Gawlik and Goreski mortgage (March 11, 2022)	\$ 43,000.00
Appraisals (March 14, 2022)	\$ 2,468.00
Appraisal (March 21, 2022)	\$ 6,215.00
Property taxes paid (March 28, 2022)	\$ 15,771.10
Property Insurance (April 12, 2022)	\$ 8,365.68
Interest Owing as at April 19, 2022	\$ 4,538,786.82
Mortgage balance outstanding as at April 19, 2022	\$13,370,494.90
Per Diem Interest after April 19, 2022: \$4,395.77 per diem	

Our client hereby demands payment from you of the said \$13,370,494.90 by no later than fifteen days after the date of this letter, along with per diem interest accruing after April 19, 2022 to the date of payment, failing which our client will commence enforcement proceedings against both of you arising from default in payment of the said \$13,370,494.90 sum, which enforcement proceedings may include, but are not limited to, seeking a judgment of foreclosure under the said Mortgage. Our client's demand for payment against South West Queensville Holdings Inc. arises under the Mortgage noted above, and our client's demand for payment against Fortress Real Developments Inc. arises pursuant to its guarantee obligations as guarantor of the said Mortgage as set out in the said Mortgage and in its related standard charge terms and pursuant to the written Guarantee Agreement dated March 9, 2016 signed by Fortress Real Developments Inc.

Enclosed please find our client's Notice of Intention to Enforce Security under s. 244(1) of the *Bankruptcy and Insolvency Act* of Canada and our client's Notice by Secured Creditor under s. 21(1) of the *Farm Debt Mediation Act* of Canada.

ACLAW.CA

AGUECI  
CALABRETTA  
BARRISTERS & SOLICITORS

Please govern yourselves accordingly.

Yours very truly,

AGUECI CALABRETTA

Per:

Lee Guarino

LG/





### NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor  
JAEKEL CAPITAL INC.

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name  
SOUTH WEST QUEENSVILLE HOLDINGS INC.

Farmer's address

Unit/Suite/Apt.	Street Number	Number Suffix	Street Name	Street Type
	19935		SECOND CONCESSION	ROAD
Street direction	PO Box or Route Number	Municipality (City, Town, etc.)	Province	Postal code
		EAST GWILLIMBURY	Ontario	L9N 0G8

The security being (type(s) of security) on (asset(s))

LAND MORTGAGE	PT LT 17 CON 2 EAST GWILLIMBURY PART I, PLAN 6SR37180; TOWN OF EAST GWILLIMBURY AS IN PIN 03419-1005 (LT)

Dated this 19th day of APRIL, 2022 at TORONTO

JAEKEL CAPITAL INC., c/o Joseph Agueci, Lawyer

Name of secured creditor or authorized representative (print)

416-250-5700

Signature of secured creditor or authorized representative

Creditor's phone number and ext.

joe@ac1aw.ca

416-250-5797

Email address of secured creditor or authorized representative

Creditor's fax number

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

- a) currently engaged in farming for commercial purposes; and
- b) insolvent, meaning that you are:
  - unable to meet your obligations as they generally become due; or
  - have ceased paying your current obligations in the ordinary course of business as they generally become due; or
  - the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement. Application forms and more information about the service can be obtained from:

Farm Debt Mediation Service	
<a href="https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service">https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service</a>	
Eastern Canada Office Tel: 1-866-452-5556 Email: <a href="mailto:aafc.fdmseast-smmeaest.aac@agr.gc.ca">aafc.fdmseast-smmeaest.aac@agr.gc.ca</a> Fax: 1-506-452-4975	Western Canada Office Tel: 1-866-452-5556 Email: <a href="mailto:aafc.fdmwest-smmeaquest.aac@agr.gc.ca">aafc.fdmwest-smmeaquest.aac@agr.gc.ca</a> Fax: 1-306-780-7353

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the *Farm Debt Mediation Act* for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC-PPU-227. Information may be accessible or protected as required under the provisions of the *Access to Information Act*.



### NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of

Name of creditor  
JAEKEL CAPITAL INC.

To enforce a remedy against the property of, or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name  
SOUTH WEST QUEENSVILLE HOLDINGS INC.

Farmer's address

Unit/Suite/Apt.	Street Number	Number Suffix	Street Name	Street Type
	19879		SECOND CONCESSION	ROAD
Street direction	PO Box or Route Number	Municipality (City, Town, etc.)	Province	Postal code
		EAST GWILLIMBURY	Ontario	L9N 0G8
The security being (type(s) of security)			on (asset(s))	
LAND MORTGAGE			PT W1/2 LT 16 CON 2 EAST GWILLIMBURY PART 2, PLAN	
			65R37180; TOWN OF EAST GWILLIMBURY	
			AS IN PIN 03419-1006 (LT)	

Dated this 19th day of APRIL, 2022 at TORONTO

JAEKEL CAPITAL INC., c/o Joseph Agueci, Lawyer

Name of secured creditor or authorized representative (print)

416-250-5700

Signature of secured creditor or authorized representative

Creditor's phone number and ext.

joe@aclaw.ca

416-250-5797

Email address of secured creditor or authorized representative

Creditor's fax number

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

- a) currently engaged in farming for commercial purposes; and
- b) insolvent, meaning that you are:
  - unable to meet your obligations as they generally become due; or
  - have ceased paying your current obligations in the ordinary course of business as they generally become due; or
  - the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement. Application forms and more information about the service can be obtained from:

Farm Debt Mediation Service	
<a href="https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service">https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service</a>	
<b>Eastern Canada Office</b> Tel: 1-866-452-5556 Email: <a href="mailto:aaafc.fdmseast-smmeaest.aac@agr.gc.ca">aaafc.fdmseast-smmeaest.aac@agr.gc.ca</a> Fax: 1-506-452-4975	<b>Western Canada Office</b> Tel: 1-866-452-5556 Email: <a href="mailto:aaafc.fdmwest-smmeaouest.aac@agr.gc.ca">aaafc.fdmwest-smmeaouest.aac@agr.gc.ca</a> Fax: 1-306-780-7353

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**NOTICE OF INTENT BY SECURED CREDITOR**

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor  
**JAEKEL CAPITAL INC.**

To enforce a remedy against the property of, or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name  
**SOUTH WEST QUEENSVILLE HOLDINGS INC.**

Farmer's address

Unit/Suite/Apt.	Street Number	Number Suffix	Street Name	Street Type
	19851		SECOND CONCESSION	ROAD
Street direction	PO Box or Route Number	Municipality (City, Town, etc.)	Province	Postal code
		EAST GWILLIMBURY	Ontario	L9N 0G8

The security being (type(s) of security) \_\_\_\_\_ on (asset(s)) \_\_\_\_\_

LAND MORTGAGE	PT W1/2 LT 16 CON 2 EAST GWILLIMBURY PT 3, PLAN 65R37180; TOWN OF EAST GWILLIMBURY AS IN PIN 03419-1007 (LT)
---------------	--------------------------------------------------------------------------------------------------------------

Dated this 19th day of APRIL, 2022 at TORONTO

**JAEKEL CAPITAL INC., c/o Joseph Agueci, Lawyer**

Name of secured creditor or authorized representative (print)

Signature of secured creditor or authorized representative

416-250-5700

Creditor's phone number and ext.

joe@ac1aw.ca

416-250-5797

Creditor's fax number

Email address of secured creditor or authorized representative

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

- a) currently engaged in farming for commercial purposes; and
- b) insolvent, meaning that you are:
  - unable to meet your obligations as they generally become due; or
  - have ceased paying your current obligations in the ordinary course of business as they generally become due; or
  - the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement. Application forms and more information about the service can be obtained from:

<b>Farm Debt Mediation Service</b>	
<a href="https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service">https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service</a>	
<b>Eastern Canada Office</b> Tel: 1-866-452-5556 Email: <a href="mailto:aafc.fdmseast-smmeaest.aac@agr.gc.ca">aafc.fdmseast-smmeaest.aac@agr.gc.ca</a> Fax: 1-506-452-4975	<b>Western Canada Office</b> Tel: 1-866-452-5556 Email: <a href="mailto:aafc.fdmwest-smmeaouest.aac@agr.gc.ca">aafc.fdmwest-smmeaouest.aac@agr.gc.ca</a> Fax: 1-306-780-7353

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the *Farm Debt Mediation Act* for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC-PPU-227. Information may be accessible or protected as required under the provisions of the *Access to Information Act*.

NOTICE OF INTENTION TO ENFORCE SECURITY  
(Subsection 244(1) of the Bankruptcy and Insolvency Act)

TO: See Schedule "A" Attached Hereto

TAKE NOTICE THAT:

1. JAEKEL CAPITAL INC., a secured creditor, intends to enforce the following security on the property of the insolvent persons:
  - A. All undertakings, property and assets, including, without limiting the generality of the foregoing, all of the intangibles, proceeds, books, real property and acquired personal or moveable property of every nature and kind.
2. The security that is to be enforced is in the form of:
  - A. Charge/Mortgage registered as Instrument Number YR2444823 on March 16, 2016 in the Land Registry Office for the Land Titles Division for the Regional Municipality of York (No. 65); and,
  - B. Guarantee of the said Charge/Mortgage by Fortress Real Developments Inc. as set out and described in the said Charge/Mortgage and in the Standard Charge Terms filed as 200033 as incorporated therein and as set out in the written Guarantee Agreement signed by Fortress Real Developments Inc. dated March 9, 2016.
3. The total amount of indebtedness secured by the security is \$13,370,494.90 plus interest and proper costs, charges and expenses as set out therein.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 15-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at the City of Toronto, this 19<sup>th</sup> day of April, 2022

**JAEKEL CAPITAL INC.**  
By its solicitors  
AGUECI & CALABRETTA  
Barristers and Solicitors  
5700 Yonge Street, Suite 1110  
Toronto, Ontario  
M2M 4K2

Tel. (416) 250-5799  
Fax (416) 250-5797  
Email: lee.guarino@aclaw.ca

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

*Lee Guarino*

NOTE:

This Notice is a required document under the Bankruptcy & Insolvency Act (the "Act"). The use of the word "insolvent" is prescribed by the Act but nothing herein shall be deemed to imply that any person to whom this Notice is delivered is, in fact insolvent.



July 26, 2022

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to South West Queensville Holdings Inc. (“Borrower”) pursuant to the loan agreement dated March 16, 2016 regarding the properties located at 19935 2<sup>nd</sup> Concession Road, 19851 2<sup>nd</sup> Concession Road, and 19879 2<sup>nd</sup> Concession Road, Queensville, ON (“HYR Project” or the “Properties”)**

---

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

We are writing to you in our capacity as Trustee regarding the HYR Project and further to our notice dated June 1, 2022.

As you are aware, the HYR Project is a proposed low-density residential development located in the Town of East Gwillimbury with over \$2.5 million of BDMC syndicated mortgage loan debt pursuant to a mortgage that currently ranks in third position on title to the Properties. The BDMC Loan is subordinate to separate first ranking vendor take back mortgages registered on each of the three parcels that together form the Properties and a second ranking mortgage registered to Jaekel Capital Inc. (“**Jaekel**”) on all three Properties (collectively the “**Priority Mortgages**”). The amounts owing pursuant to the Priority Mortgages total approximately \$16 million.

### **Enforcement by Jaekel**

On April 19, 2022 (“**April 19<sup>th</sup> Notice**”), Jaekel issued a notice advising that its mortgage had matured and that amounts owing thereunder were immediately due and payable by the Borrower by no later than fifteen days after the date of its letter and failing which Jaekel would be in a position to commence enforcement proceedings, which may include, among other things, seeking a judgement of foreclosure under its mortgage. A copy of the April 19<sup>th</sup> Notice was previously provided to you.



On July 11, 2022, Jaekel issued a notice of sale under mortgage (“**Notice of Sale**”) again advising that its mortgage has matured and that amounts owing thereunder which total \$13,761,647.58 were immediately due and payable by the Borrower by no later than August 22, 2022. Should these amounts not be paid Jaekel will be in a position to list the Properties for sale. A copy of the Notice of Sale is attached to this notice.

The Trustee has been in correspondence with Jaekel regarding the proposed sale process for the Properties in the event that its debt is not repaid on or before August 22, 2022. Jaekel advised that it will consult with the Trustee on the development and execution of the sale process, including the selection of a listing agent.

The Trustee will keep you informed of any material developments related to these matters.

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

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

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

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

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

**NOTICE OF SALE UNDER MORTGAGE**

**TO: THE PARTIES NAMED IN SCHEDULE "A" ATTACHED HERETO**

**TAKE NOTICE** that default has been made in payment of the moneys due under a certain charge/mortgage of land registered on the 16<sup>th</sup> day of March, 2016, in the Land Registry Office for the Land Titles Division of York Region (No. 65) as Instrument Number YR2444823, made between:

**SOUTH WEST QUEENSVILLE HOLDINGS INC.**

**as Mortgagor(s)**

**- and -**

**RW FORTRESS INC.**

**as Mortgagee**

**- and -**

**FORTRESS REAL DEVELOPMENTS INC.**

**as Guarantor**

on the security of:

PT LT 17 CON 2 EAST GWILLIMBURY PART 1, PLAN 65R37180; TOWN OF EAST GWILLIMBURY

AS IN PIN 03419-1005 (LT)

and known municipally as  
19935 2<sup>nd</sup> Concession Road  
East Gwillimbury, Ontario  
L9N 0G8

**- and -**

PT W1/2 LT 16 CON 2 EAST GWILLIMBURY PART 2, PLAN 65R37180; TOWN OF EAST GWILLIMBURY

AS IN PIN 03419-1006 (LT)

and known municipally as  
19879 2<sup>nd</sup> Concession Road  
East Gwillimbury, Ontario  
L9N 0G8

**- and -**

PT W1/2 LT 16 CON 2 EAST GWILLIMBURY PT 3, PLAN 65R37180; TOWN OF EAST GWILLIMBURY

AS IN PIN 03419-1007 (LT)

- 2 -

and known municipally as  
 19851 2<sup>nd</sup> Concession Road  
 East Gwillimbury, Ontario  
 L9N 0G8

**AND WHICH** charge/mortgage of land was amended by Notice Under s.71 of *The Land Titles Act*, registered in the Land Registry Office for the Land Titles Division of York Region (No. 65) on the 30<sup>th</sup> day of November, 2021, as Instrument No. YR3347729.

**AND** I hereby give you notice that the amount now due on the mortgage for principal money, interest, arrears paid to first mortgagee re: 19935 2<sup>nd</sup> Concession Road, arrears paid to first mortgagee re: 19879 2<sup>nd</sup> Concession Road, arrears paid to first mortgagee re: 19851 2<sup>nd</sup> Concession Road, paid to discharge first mortgagee re: 19935 2<sup>nd</sup> Concession Road, appraisal fees paid by mortgagee, realty tax arrears paid re: 19935 2<sup>nd</sup> Concession Road, realty tax arrears paid re: 19879 2<sup>nd</sup> Concession Road, realty tax arrears paid re: 19851 2<sup>nd</sup> Concession Road; property insurance premium paid by mortgagee and costs, respectively, is **\$13,761,647.58**, made up as follows:

For Principal	\$ 6,017,650.00
For Interest	4,906,179.14
For Arrears Paid to First Mortgagee re: 19935 2 <sup>nd</sup> Concession Road	243,492.75
For Arrears Paid to First Mortgagee re: 19879 2 <sup>nd</sup> Concession Road	198,000.00
For Arrears Paid to First Mortgagee re: 19851 2 <sup>nd</sup> Concession Road	60,000.00
Paid to Discharge First Mortgage re: 19935 2 <sup>nd</sup> Concession Road	2,279,727.54
For Appraisal Fees Paid by Mortgagee	8,701.00
For Realty Taxes Arrears Paid re: 19935 2 <sup>nd</sup> Concession Road	7,265.78
For Realty Taxes Arrears Paid re: 19879 2 <sup>nd</sup> Concession Road	6,869.03
For Realty Taxes Arrears Paid re: 19851 2 <sup>nd</sup> Concession Road	6,639.06
For Property Insurance Premium Paid by Mortgagee	8,365.68
For Solicitors' costs and disbursements (including H.S.T. #123958498)	18,757.60

**\$13,761,647.58**  
 =====

- 3 -

(such amount for costs and disbursements being up to and including the service of this notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of **12.00%** per annum, on the principal and interest hereinbefore mentioned, from the **11<sup>th</sup> day of July, 2022**, to the date of payment.

**AND** unless the said sums are paid on or before the **22<sup>nd</sup> day of August, 2022**, the Mortgagee shall sell the property covered by the said mortgage under the provisions contained in it.

**AND FURTHER TAKE NOTICE** that by Articles of Amendment filed on the 15<sup>th</sup> day of March, 2016, and registered in the Land Registry Office for the Land Titles Division of York Region (No. 65) on the 1<sup>st</sup> day of December, 2016, as Instrument No. YR2589350, the name **RW FORTRESS INC.** has been changed to **JAEKEL CAPITAL INC.**

**THIS** notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

**DATED** at the City of Toronto, this **11<sup>th</sup> day of July, 2022**.

**JAEKEL CAPITAL INC.,**  
Mortgagee, by its solicitors,  
**AGUECI & CALABRETTA**  
Barristers and Solicitors  
5700 Yonge Street  
Suite 1110  
Toronto, Ontario  
M2M 4K2  
(416) 250-5700

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

**Joseph Agueci**  
**(LSO #21921L)**



October 11, 2022

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to South West Queensville Holdings Inc. (“Borrower”) pursuant to the loan agreement dated March 16, 2016 regarding the properties located at 19935 2<sup>nd</sup> Concession Road, 19851 2<sup>nd</sup> Concession Road, and 19879 2<sup>nd</sup> Concession Road, Queensville, ON (“HYR Project” or the “Properties”)**

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

We are writing to you in our capacity as Trustee regarding the HYR Project and further to our notice dated July 26, 2022 (“**Notice**”).

As you are aware, the HYR Project is a proposed low-density residential development located in the Town of East Gwillimbury with over \$2.5 million of BDMC syndicated mortgage loan debt pursuant to a mortgage that currently ranks in third position on title to the Properties. The BDMC Loan is subordinate to separate first ranking vendor take back mortgages registered on each of the three parcels that together form the Properties and a second ranking mortgage registered to Jaekel Capital Inc. (“**Jaekel**”) on all three Properties (collectively the “**Priority Mortgages**”). The amounts owing pursuant to the Priority Mortgages total approximately \$16 million.

#### **Enforcement by Jaekel Capital Inc.**

As you are further aware, on July 11, 2022, Jaekel issued a notice of sale under mortgage (“**Notice of Sale**”) advising that its mortgage has matured and that amounts owing thereunder which totaled \$13,761,647.58 were immediately due and payable by the Borrower by no later than August 22, 2022. A copy of the Notice of Sale was previously provided to you.

As its debt was not repaid by August 22, 2022, Jaekel retained CBRE Limited to list the



Properties for sale. The Properties were listed for sale in late September, 2022 without a listing price and a deadline for offers has been set for October 19, 2022.

The Trustee will keep you informed of any material developments related to these matters.

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

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

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

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

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

**APPENDIX 21:  
VARIANCE ANALYSIS FOR THE PROJECT PERIOD**

Building Development & Mortgages Canada Inc.  
**Cash Flow Projection for the Period Ending April 30, 2023**  
(Unaudited; \$C)

	Note	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Total
Administrative holdback	1	-	-	2,372,410	-	-	-	-	2,372,410
Interest	2	6,480	5,992	5,807	8,986	8,861	8,735	8,609	53,470
Total receipts		6,480	5,992	2,378,217	8,986	8,861	8,735	8,609	2,425,880
Staff	3	8,985	8,985	8,985	8,985	8,985	8,985	8,985	62,893
IT fees		766	9,897	766	766	766	766	766	14,493
Office expenses		750	750	750	750	750	750	750	5,250
Insurance	4	-	-	160,694	-	-	-	-	160,694
Other		4,580	2,200	4,700	2,200	2,200	2,200	2,200	20,280
Interest & bank charges		500	500	500	500	500	500	500	3,500
Operating costs		15,581	22,332	176,395	13,201	13,201	13,201	13,201	267,110
Appraisals and related consultants		1,000	1,000	1,000	1,000	1,000	1,000	1,000	7,000
Professional fees	5	283,000	292,009	95,000	70,000	70,000	70,000	70,000	950,009
Total disbursements		299,581	315,341	272,395	84,201	84,201	84,201	84,201	1,224,119
Net cash flow		(293,100)	(309,349)	2,105,822	(75,215)	(75,340)	(75,466)	(75,591)	1,201,762
Opening cash	6	3,888,270	3,595,170	3,285,821	5,391,643	5,316,429	5,241,089	5,165,623	3,888,270
Net cash inflow (outflow)		(293,100)	(309,349)	2,105,822	(75,215)	(75,340)	(75,466)	(75,591)	1,201,762
Closing cash		3,595,170	3,285,821	5,391,643	5,316,429	5,241,089	5,165,623	5,090,032	5,090,032

**Notes**

- The projected Administrative Holdback for December relates to the Eden Settlement Payments and the Brookdale Trustee Settlement Amount. The Trustee notes that progress has been made with respect to realizations on one other project; accordingly, additional Realized Property may be received during the Cash Flow Period. Due to the confidential nature of the ongoing negotiations and similar to previous cash flow projections filed with the Court, the Trustee has not included these receipts in the Cash Flow Projection.
- Represents estimated interest to be earned on Estate Property and Realized Property maintained by the Trustee. When significant cash balances accrue in the various accounts, the Trustee arranges for short term GIC's to generate additional interest, which subsequently forms part of the Estate Property used to offset costs associated with the administration of the estate.
- Represents gross BDMC contractor costs.
- Represents cost to renew BDMC's insurance.
- Represents the payment of fees (including HST) to the Trustee, its legal counsel and Representative Counsel, including a payment in December, 2022 for certain unpaid professional fees incurred through October 15, 2022.
- Opening cash flow is comprised of Estate Property, excluding the term deposit required under the MBLAA.

**APPENDIX 22:  
CASH FLOW PROJECTION**

Building Development & Mortgages Canada Inc.

**Variance Analysis for the Period January 1, 2022 to July 31, 2022**

(Unaudited; \$C)

	Note	Projected	Actual	Variance
Administrative holdback	1	-	105,000	105,000
Interest		10,168	17,087	6,919
Total receipts		<u>10,168</u>	<u>122,087</u>	<u>111,919</u>
Staff		98,538	74,260	24,278
IT fees		5,862	3,279	2,583
Office expenses		5,256	4,698	558
Other		13,500	13,391	109
Interest & bank charges		3,506	2,745	761
Operating costs		<u>126,662</u>	<u>98,372</u>	<u>28,289</u>
Appraisals and related consultants		17,500	1,551	15,949
Professional fees	2	2,004,810	1,188,585	816,225
Total disbursements		<u>2,148,972</u>	<u>1,288,508</u>	<u>860,464</u>
Net cash inflow (outflow)		<u>(2,138,804)</u>	<u>(1,166,421)</u>	<u>972,383</u>

Notes

1. The positive variance relates to the Kemp Holdback, which was authorized to be distributed pursuant to the January, 2022 Omnibus Order. These funds were not included in the cash flow projection, as the approval of the release of the Kemp Holdback was uncertain as at the date of the Twenty-Seventh Report.
2. Represents the payment of fees (including HST) to the Trustee, its legal counsel and Representative Counsel. The positive variance is in part a timing difference, as portion of the projected fees were paid in August and September 2022, and in part due to lower costs being incurred by the Trustee and its counsel during the projection period.

**APPENDIX 23:  
MANZOOR AFFIDAVIT**

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

**AFFIDAVIT OF NAVEED MANZOOR  
(sworn November 2, 2022)**

I, Naveed Manzoor, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a managing director of FAAN Mortgage Administrators Inc., the Court-Appointed Trustee (the “**Trustee**”), without security, of all of the assets, undertakings and properties of the Respondent in these proceedings and as such have knowledge of the matters

hereinafter deposed. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.<sup>1</sup>

2. I make this affidavit in support of a motion by the Trustee for, among other things, approval of the fees and disbursements of the Trustee.

3. In addition to the description of the activities of the Trustee contained in its Twenty Ninth report to Court to be filed, attached hereto as Exhibit “A” is a copy of each invoice issued by the Trustee for the period between January 1, 2022 and October 15, 2022 (the “**Approval Period**”) setting out the Trustee’s fees, reimbursable expenses and applicable taxes for the relevant period, along with a summary of the activities undertaken by the Trustee in connection with such invoice. I confirm that these accounts accurately reflect the services provided by the Trustee in this matter for the Approval Period and the fees and disbursements claimed by it for the Approval Period.

4. Attached hereto as Exhibit “B” is a schedule of the accounts rendered by the Trustee for the fees and disbursements incurred in connection with the activities summarized in Exhibit “A” undertaken in these proceedings during the Approval Period.

5. Attached hereto as Exhibit “C” is a schedule summarizing the individuals who have worked on this matter, including their roles, hours and rates during the Approval Period.

6. Confidential Exhibit “D” (the “**Confidential Manzoor Exhibit**”) hereto contains true copies of the dockets rendered by the Trustee for activities undertaken during the Approval Period. The Trustee is seeking a sealing order with respect to the Confidential Manzoor Exhibit

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<sup>1</sup> Capitalized terms used and not otherwise defined in this affidavit have the meanings given to them in the Twenty Ninth Report to Court of the Trustee to be filed.

due to the fact that the information contained in the Trustee's detailed dockets 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.

7. To the best of my knowledge, the total hours, fees and disbursements incurred by the Trustee for the Approval Period are reasonable and appropriate in the circumstances.

SWORN BEFORE ME over video teleconference this 2nd day of November, 2022. The affiant was located in the Town of Oakville in the Province of Ontario and the commissioner was located in the City of Ottawa in the Province of Ontario. The affidavit was commissioned remotely in accordance with O. Reg. 431/20 as a result of COVID-19




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*Commissioner for Taking Affidavits*




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Naveed Manzoor

THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF NAVEED MANZOOR  
SWORN BEFORE ME ON THIS 2nd DAY OF NOVEMBER, 2022



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A Commissioner for Taking Affidavits

**Exhibit A**



Invoice 045

January 31, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period January 1 to January 31, 2022**

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The Trustee's activities for the period January 1 to January 31, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - 6<sup>th</sup> and 10<sup>th</sup> Project – reviewing and executing partial discharges as required;
  - Brookdale Project - internal review and analysis of the Amended Statement of Claim filed by the bondholders in respect of their claim to the residual sale proceeds being held by the Court. Corresponding with Osler regarding same. Internal analysis, and review of statement of defense with respect to the amended statement of claim. Corresponding with Osler regarding same;
  - Charlotte Adelaide ("**CHAT**") Project – drafting, reviewing, and finalizing notice to investors regarding the receivership order involving the CHAT Project;
  - Rutherford Project – corresponding with the borrower regarding the status of the project and expected next steps and discussing the same internally;
  - South Shore Project – continuing the Trustee's ongoing review and analysis of the payout to the priority lender from the sale transaction. Corresponding internally and with Osler regarding matters related to the sale and payout to the priority lender. Reviewing new documentation provided by the priority lender with respect to the payout and considering implications with respect thereto. Discussing the same with Osler. Drafting and reviewing notice of motion and statement of claim. Discussions with Osler regarding same. Drafting, reviewing and finalizing notice to investors; and
  - Winnipeg Project – reviewing and finalizing notice to investors;



- Corresponding with Osler regarding the status of each of the class actions to which BDMC is a named defendant;
- Corresponding internally and with Osler regarding the framework for the next omnibus report and preparing same.
- Drafting, reviewing and finalizing the Twenty Seventh Report to Court dated January 28, 2022 in respect of motion returnable January 31, 2022 (“**January 31<sup>st</sup> Motion**”) and corresponding with Osler and Chaitons LLP (“Representative Counsel”), extensively regarding same;
- Reviewing and commenting on the draft notice of motion and the draft Court order in respect of the January 31<sup>st</sup> Motion;
- Drafting, reviewing and finalizing a notice to investors in respect of the January 31<sup>st</sup> Motion;
- Attending the January 31<sup>st</sup> Motion; and
- Providing project specific updates to the investors upon request.

### **Investor Notices**

- Drafting, finalizing and distributing the following project specific notice:
  - South Shore Notice dated January 19, 2022;
  - Charlotte Adelaide (“CHAT”) Notice Dated January 19, 2022; and
  - Winnipeg Notice dated January 31, 2022.

### **General Matters**

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and



- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	118,239.65
HST		15,371.15
Total	\$	<u>133,610.80</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period January 1 to 31, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	28.25	16,808.75
Lana Bezner	Managing Director	545	45.60	24,852.00
Daniel Sobel	Managing Director	545	14.75	8,038.75
Shelby Draper	Senior Director	495	51.80	25,641.00
Naomi Lieberman	Manager	495	51.17	25,329.15
Nick Niktikakis	Manager	350	50.20	17,570.00
			241.77	118,239.65
Average Hourly Rate				489.06



Invoice 046

February 28, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period February 1 to February 28, 2022**

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The Trustee's activities for the period February 1 to February 28, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - 6<sup>th</sup> and 10<sup>th</sup> Project – reviewing and executing partial discharges as required;
  - Charlotte Adelaide ("CHAT") Project – reviewing motion materials filed by the Receiver and discussing the same internally;
  - Glens of Halton Hills ("Georgetown") Project – preparing for and attending Inspector meeting in respect of the bankruptcy of the borrower entity;
  - Highlands of York Region Project – corresponding with second priority lender regarding the status of the project and its intentions following the issuance of a Notice of Sale under mortgage by one of the priority mortgagees. Discussion internally and with Chaitons regarding the same. Drafting, reviewing, and finalizing notice to investors;
  - Harmony Village Lake Simcoe ("The Kemp") Project – drafting, reviewing and finalizing individual investor distribution notices with respect to the residual balance of funds to be distributed to the investors;
  - Rutherford Project – internal review and analysis of recovery analysis provided by the borrower. Ongoing correspondence and discussions with the borrower. Discussing the same with Osler. Ongoing discussions with the second priority lender regarding postponing to additional financing that the project may require; and



- South Shore Project – continuing the Trustee’s review and analysis of the payout to the priority lender. Corresponding internally and with Osler regarding matters related to the sale and payout to the priority lender. Drafting and reviewing notice of motion and statement of claim;
- Corresponding with Osler regarding the status of each of the class actions to which BDMC is a named defendant; and
- Providing project specific updates to the investors upon request.

### **Investor Notices**

- Drafting, finalizing and distributing the following project specific notice:
  - Highlands of York Region Notice dated February 17, 2022.

### **General Matters**

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	53,806.20
HST		6,994.81
Total	\$	<u>60,801.01</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period February 1 to 28, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	14.25	8,478.75
Lana Bezner	Managing Director	545	25.03	13,641.35
Daniel Sobel	Managing Director	545	0.75	408.75
Shelby Draper	Senior Director	495	8.80	4,356.00
Naomi Lieberman	Manager	495	27.73	13,726.35
Nick Niktikakis	Manager	350	37.70	13,195.00
			114.26	53,806.20
Average Hourly Rate				470.91



Invoice 047

March 31, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period March 1 to March 31, 2022**

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The Trustee's activities for the period March 1 to March 31, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - 6<sup>th</sup> and 10<sup>th</sup> Project – internal review and discussions with respect to sale of remaining units, summary of funds advanced provided by the borrower and its related claim. Related discussions with borrower. Reviewing and executing partial discharges as required;
  - Rutherford Project – Ongoing discussions with the borrower and the second priority lender regarding considerations regarding postponing to additional financing that the project may require; and
  - South Shore Project – continuing the Trustee's ongoing review and analysis of the payout to the priority lender. Corresponding internally and with Osler regarding matters related to the Twenty-Eighth report to Court and drafting of same. Calls with Osler regarding remaining construction lien. Drafting, reviewing and finalizing individual investor distribution notices with respect to the residual sale proceeds to be distributed to the investors;
- Providing project specific updates to the investors upon request.

**General Matters**

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;



- Paying operating expenses;
- Reviewing and finalizing Annual Information Return for BDMC;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	62,060.05
HST		8,067.81
Total	\$	<u>70,127.86</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period March 1 to 31, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	15.50	9,222.50
Lana Bezner	Managing Director	545	32.22	17,559.90
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	3.55	1,757.25
Naomi Lieberman	Manager	495	30.42	15,057.90
Nick Niktikakis	Manager	350	52.75	18,462.50
			134.44	62,060.05
Average Hourly Rate				461.62



Invoice 048

April 30, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period April 1 to April 30, 2022**

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The Trustee's activities for the period April 1 to April 30, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - 6<sup>th</sup> and 10<sup>th</sup> Project – internal review and discussions with respect to sale of remaining units, summary of funds advanced provided by the borrower and its related claim. Reviewing and executing partial discharges as required;
  - Brookdale Project – preparing for and attending call with bondholder group representatives to discuss next steps in respect of their claim to the residual sale proceeds being held by the Court;
  - Rutherford Project – ongoing discussions with the borrower and the second priority lender with respect to a possible postponement to additional funding that may be required by the project. Continuing an analysis with respect to the sources and uses of funds for the project; and
  - South Shore Project – call with a cost consultant to discuss the works in place at the South Shore Project prior to the site's closure. Discussions with Osler regarding same;
- Corresponding with Osler regarding the status of each of the class actions to which BDMC is a named defendant;
- Providing project specific updates to the investors upon request.



### General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	44,026.10
HST		5,723.39
Total	\$	<u>49,749.49</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period Apr 1 to 30, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	12.50	7,437.50
Lana Bezner	Managing Director	545	14.38	7,837.10
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	7.75	3,836.25
Naomi Lieberman	Manager	495	24.95	12,350.25
Nick Niktikakis	Manager	350	35.90	12,565.00
			95.48	44,026.10
Average Hourly Rate				461.10



Invoice 049

May 31, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period May 1 to May 31, 2022**

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The Trustee's activities for the period May 1 to May 31, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - 6<sup>th</sup> and 10<sup>th</sup> Project –reviewing and executing partial discharges as required;
  - Brookdale Project - attending call with bondholder group representatives to discuss next steps in respect of their claim to the residual sale proceeds being held by the Court;
  - Charlotte Adelaide Project – drafting and reviewing proof of claim to be filed in Receivership proceeding, corresponding with Osler re same;
  - Highlands of York Region Project – ongoing discussions with second priority lender and its counsel regarding its intentions to enforce including potentially seeking to commence foreclosure proceedings. Discussions with Osler regarding same. Drafting and reviewing notice to lenders;
  - Rutherford Project – ongoing discussions with the borrower and the second priority mortgagee with respect to a possible postponement to additional funding that may be required by the project. Continuing an analysis with respect to the sources and uses of funds for the project; and
  - South Shore Project – drafting and reviewing affidavit filed by the Trustee in respect of the construction lien claim. Reviewing the motion record filed by the priority mortgagee in respect of the ongoing litigation;



- Preparing various summaries of BDMC recoveries by project to date;
- Providing project specific updates to the investors upon request.

### General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	51,448.95
HST		6,688.36
Total	\$	<u>58,137.31</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period May 1 to 31, 2022

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Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	595	13.00	7,735.00
Lana Bezner	Managing Director	545	27.36	14,911.20
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	4.75	2,351.25
Naomi Lieberman	Manager	495	24.20	11,979.00
Nick Niktikakis	Manager	350	41.35	14,472.50
			110.66	51,448.95
Average Hourly Rate				464.93



Invoice 050

June 30, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period June 1 to June 30, 2022**

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The Trustee's activities for the period June 1 to June 30, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - Brookdale Project – attending call with bondholder group representative to discuss next steps in respect of their claim to the residual sale proceeds being held by the Court. Discussion with Osler re same. Preparing summary of costs incurred by the Trustee in settling the various construction lien claims;
  - Charlotte Adelaide Project – drafting and reviewing proof of claim filed in Receivership proceeding with Osler;
  - Highlands of York Region Project – ongoing discussions with second priority lender regarding the enforcement proceeding. Discussions with Osler and enforcing creditor's counsel regarding same. Finalizing notice to lenders regarding enforcement action taken by the second priority lender;
  - Eden/King City Project – drafting and reviewing report material outlining the settlement agreement reached among the parties for inclusion in next report to Court; and
  - South Shore Project – reviewing motion record filed by the priority mortgagee in respect of the ongoing litigation, calls with appraiser that had previously prepared appraisal for the project, and calls with costs consultants to discuss the works in place at the South Shore Project prior to the site's closure.
- Providing project specific updates to the investors upon request.



### Investor Notices

- Drafting, finalizing and distributing the following project specific notice:
  - Highlands of York Region Notice dated June 1, 2022.

### General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	51,487.90
HST		6,693.43
Total	\$	<u>58,181.33</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period Jun 1 to 30, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	15.00	8,925.00
Lana Bezner	Managing Director	545	24.22	13,199.90
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	4.00	1,980.00
Naomi Lieberman	Manager	495	29.90	14,800.50
Nick Niktikakis	Manager	350	35.95	12,582.50
			109.07	51,487.90
Average Hourly Rate				472.06



Invoice 051

July 31, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period July 1 to July 31, 2022**

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The Trustee's activities for the period July 1 to July 31, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - 6<sup>th</sup> and 10<sup>th</sup> Project – corresponding with the borrower on the last remaining units for sale and updated quantum of related party claim;
  - Highlands of York Region Project – ongoing discussions with second priority lender regarding the enforcement proceeding. Discussions with Osler and enforcing creditor's counsel regarding same. Finalizing notice to lenders regarding enforcement action taken by the second priority lender;
  - Eden/King City Project – drafting and reviewing report material outlining the settlement agreement reached among the parties for inclusion in next report to Court; and
  - South Shore Project – gathering, reviewing and corresponding with Osler regarding information related to the ongoing litigation with the priority mortgagee;
- Providing project specific updates to the investors upon request.

**Investor Notices**

- Drafting, finalizing and distributing the following project specific notice:
  - Highlands of York Region Notice dated July 26, 2022.

**General Matters**

FAAN MORTGAGE ADMINISTRATORS INC. | 920-20 Adelaide Street East Toronto, Ontario, M5C 2T6



- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	25,055.95
HST		3,257.27
Total	\$	<u>28,313.22</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period Jul 1 to 31, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	9.10	5,414.50
Lana Bezner	Managing Director	545	8.74	4,763.30
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	0.00	-
Naomi Lieberman	Manager	495	9.17	4,539.15
Nick Niktikakis	Manager	350	29.54	10,339.00
			56.55	25,055.95
Average Hourly Rate				443.08



Invoice 052

August 31, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period August 1 to August 31, 2022**

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The Trustee's activities for the period August 1 to August 31, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - Brookdale Project - attending call with bondholder group representative to discuss next steps in respect of their claim to the residual sale proceeds being held by the Court;
  - Eden/King City Project – drafting and reviewing report material outlining the settlement agreement reached among the parties for inclusion in next report to Court;
  - King Square Project – attending call with the first priority lender regarding the units remaining for sale and next steps; and
  - Rutherford Project – attending project update call with borrower; and
  - South Shore Project – gathering information in respect of ongoing litigation with the priority mortgagee;
- Providing project specific updates to the investors upon request.

**General Matters**

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;



- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	20,065.25
HST		<u>2,608.48</u>
Total	\$	<u><u>22,673.73</u></u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period Aug 1 to 31, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	9.25	5,503.75
Lana Bezner	Managing Director	545	7.94	4,327.30
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	0.00	-
Naomi Lieberman	Manager	495	8.16	4,039.20
Nick Niktikakis	Manager	350	17.70	6,195.00
			43.05	20,065.25
Average Hourly Rate				466.09



Invoice 053

September 30, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period September 1 to September 30, 2022**

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The Trustee's activities for the period September 1 to September 30, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - Brookdale Project - attending call with bondholder group representative to discuss next steps in respect of their claim to the residual sale proceeds being held by the Court;
  - Highlands of York Region Project – reviewing listing agreement and corresponding with priority mortgagee;
  - Eden/King City Project – drafting and reviewing report material outlining the settlement agreement reached among the parties for inclusion in next report to Court; and
  - South Shore Project – gathering information in respect of ongoing litigation with the priority mortgagee and calls with Osler re same;
- Providing project specific updates to the investors upon request.

**General Matters**

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Paying operating expenses;



- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	12,580.75
HST		1,635.50
Total	\$	<u>14,216.25</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period Sept 1 to 30, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	6.85	4,075.75
Lana Bezner	Managing Director	545	6.66	3,629.70
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	0.00	-
Naomi Lieberman	Manager	495	3.04	1,504.80
Nick Niktikakis	Manager	350	9.63	3,370.50
			26.18	12,580.75
Average Hourly Rate				480.55



Invoice 054

October 15, 2022

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

**Invoice for the period October 1 to October 15, 2022**

---

The Trustee's activities for the period October 1 to October 15, 2022 ("**Period**"), include, but are not limited to the following:

**Project Matters**

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
  - 6<sup>th</sup> and 10<sup>th</sup> Project – requesting updated statement of funds held in trust and cross referencing same to Trustee's records, analysis of related party claim advanced by the borrower and potential settlement alternatives;
  - Brookdale Project – reviewing settlement agreement and discussion with Osler re same;
  - Highlands of York Region Project – ongoing discussions with second priority lender regarding the enforcement proceeding. Drafting, reviewing and finalizing notice to investors regarding the listing of the properties; and
  - Humberstone Project – corresponding with borrower with respect to the second milestone payment and timing thereof;
- Providing project specific updates to the investors upon request.
- Drafting and reviewing the Trustee's Twenty-Ninth Report to Court.

**Investor Notices**

- Drafting, finalizing and distributing the following project specific notice:
  - Highlands of York Region Notice dated October 11, 2022.



### General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans; *[Handwritten signature]*
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	21,887.95
HST		2,845.43
Total	\$	<u>24,733.38</u>



FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
 Time Summary  
 For the Period Oct 1 to 15, 2022

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<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Total (\$)</b>
Naveed Manzoor	Managing Director	595	6.40	3,808.00
Lana Bezner	Managing Director	545	7.32	3,989.40
Daniel Sobel	Managing Director	545	0.00	-
Shelby Draper	Senior Director	495	0.00	-
Naomi Lieberman	Manager	495	22.59	11,182.05
Nick Niktikakis	Manager	350	8.31	2,908.50
			44.62	21,887.95
Average Hourly Rate				490.54

THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF NAVEED MANZOOR  
SWORN BEFORE ME ON THIS 2nd DAY OF NOVEMBER, 2022



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A Commissioner for Taking Affidavits

**EXHIBIT B**

FAAN Mortgage Administrators Inc.  
Building & Development Mortgages Canada Inc.

**Invoice Summary**  
(Unaudited; \$C)

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<b>Date</b>	<b>Billing Period</b>	<b>Fees</b>	<b>HST</b>	<b>Total</b>
31-Jan-22	January 1 to 31, 2022	118,239.65	15,371.15	133,610.80
28-Feb-22	February 1 to 28, 2022	53,806.20	6,994.81	60,801.01
31-Mar-22	March 1 to 31, 2022	62,060.05	8,067.81	70,127.86
30-Apr-22	April 1 to 30, 2022	44,026.10	5,723.39	49,749.49
31-May-22	May 1 to 31, 2022	51,448.95	6,688.36	58,137.31
30-Jun-22	June 1 to 30, 2022	51,487.90	6,693.43	58,181.33
31-Jul-22	July 1 to 31, 2022	25,055.95	3,257.27	28,313.22
31-Aug-22	August 1 to 31, 2022	20,065.25	2,608.48	22,673.73
30-Sep-22	September 1 to 30, 2022	12,580.75	1,635.50	14,216.25
31-Oct-22	October 1 to 15, 2022	21,887.95	2,845.43	24,733.38
<b>Total</b>		<b>460,658.75</b>	<b>59,885.64</b>	<b>520,544.39</b>

THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF NAVEED MANZOOR  
SWORN BEFORE ME ON THIS 2nd DAY OF NOVEMBER, 2022



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A Commissioner for Taking Affidavits

**EXHIBIT C**

FAAN Mortgage Administrators Inc.  
 Building & Development Mortgages Canada Inc.  
**Summary of Hours and Fees by Staff Member**  
 January 1, 2022 to October 15, 2022  
 (Unaudited; \$C)

<b>Professional</b>	<b>Role</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Naveed Manzoor	Managing Director	595	130.10	77,409.50
Lana Bezner	Managing Director	545	199.47	108,711.15
Daniel Sobel	Managing Director	545	15.50	8,447.50
Shelby Draper	Senior Director	495	80.65	39,921.75
Naomi Lieberman	Manager	495	231.33	114,508.35
Nick Niktikakis	Manager	350	319.03	111,660.50
<b>Total</b>			<b>976.08</b>	<b>460,658.75</b>
Average Hourly Rate				<u>471.95</u>

THIS IS CONFIDENTIAL EXHIBIT "D" REFERRED TO IN  
THE AFFIDAVIT OF NAVEED MANZOOR  
SWORN BEFORE ME ON THIS 2nd DAY OF NOVEMBER, 2022



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A Commissioner for Taking Affidavits

**Exhibit D**

**THIS EXHIBIT IS REDACTED IN ITS ENTIRETY  
AND IS SUBJECT TO A REQUEST FOR A SEALING ORDER**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Applicant**

**Respondent**

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

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

Proceeding commenced at Toronto

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**AFFIDAVIT OF NAVEED MANZOOR**  
**(sworn November 2, 2022)**

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**OSLER, HOSKIN & HARCOURT LLP**

1 First Canadian Place, P.O. Box 50

Toronto, ON M5X 1B8

Phone: 416-362-2111

Fax: 416-862-6666

**Michael De Lellis** (LSO# 48038U)

**Jeremy Dacks** (LSO# 41851R)

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

**APPENDIX 24:  
DE LELLIS AFFIDAVIT**

**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

**AFFIDAVIT OF MICHAEL DE LELLIS  
(sworn November 4<sup>th</sup>, 2022)**

I, Michael De Lellis, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and am a partner with Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel for FAAN Mortgage Administrators Inc., in its capacity as Court-Appointed Trustee (the “**Trustee**”), without security, of all of the assets, undertakings and properties of the Respondent in these proceedings and as such have knowledge of the matters hereinafter deposed. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. I make this affidavit in support of a motion by the Trustee for, among other things, approval of the fees and disbursements of the Trustee and its counsel.
3. Attached hereto as Exhibit “A” is a copy of each invoice issued by Osler for the period between January 1, 2022 and October 15, 2022 (the “**Approval Period**”) setting out Osler’s fees, reimbursable expenses and applicable taxes for the relevant period, along with a summary of the activities

undertaken by Osler in connection with such invoice. I confirm that these accounts accurately reflect the services provided by Osler in this matter for the Approval Period and the fees and disbursements claimed by it for the Approval Period.

4. Attached hereto as Exhibit “B” is a schedule of the accounts rendered by Osler to the Trustee for the fees and disbursements incurred by Osler in connection with the activities summarized in Exhibit “A” undertaken in these proceedings during the Approval Period.

5. Attached hereto as Exhibit “C” is a schedule summarizing the respective years of call and billing rates of each of the professionals at Osler that rendered services to the Trustee, the hours worked by each such individual and a blended hourly rate for fees incurred during the Approval Period.

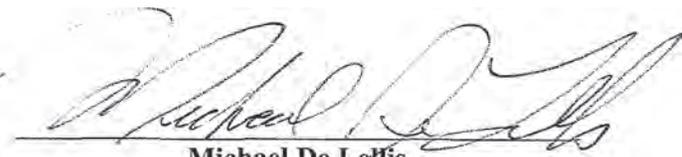
6. Confidential Exhibit “D” (the “**Confidential De Lellis Exhibit**”) hereto contains true copies of the full accounts rendered by Osler to the Trustee for activities undertaken during the Approval Period. The Trustee is seeking a sealing order with respect to the Confidential De Lellis Exhibit due to the fact that the information contained in Osler’s detailed invoices includes privileged and commercially sensitive information regarding the projects and Building & Development Mortgages Canada Inc., 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.

7. To the best of my knowledge, the rates charged by Osler throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services. I believe that the total hours, fees and disbursements incurred by Osler for the period between January 1, 2022 and October 15, 2022 are reasonable and appropriate in the circumstances.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario on  
November 4<sup>th</sup>, 2022

  
\_\_\_\_\_  
**Commissioner for Taking Affidavits**

Blain McRady

  
\_\_\_\_\_  
**Michael De Lellis**

THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF MICHAEL DE LELLIS  
SWORN BEFORE ME ON THIS 4<sup>th</sup> DAY OF NOVEMBER, 2022



---

A Commissioner for Taking Affidavits  
Blair McRadu

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
416.862.6666 facsimile

730

OSLER

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: **12601925**  
Date: **February 23, 2022**  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.  
Administrator (F#1189997).

OUR FEE HEREIN	260,256.92
REIMBURSABLE EXPENSES	604.60
HST @ 13%	33,912.00
<b>TOTAL (CAD):</b>	<b>294,773.52</b>

**PAYMENT DUE UPON RECEIPT**



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**REMITTANCE ADVICE**

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751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: **12601925**  
Client No.: 232833  
Amount: 294,773.52 CAD

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referencing invoice number(s) being paid.

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cheque.

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<b><u>EXPENSES - TAXABLE</u></b>	
Courier Expenses	46.00
Printing Costs	110.70
Telecommunications - External	4.80
Agent's Fees & Expenses	132.00
Land Titles Search	310.00
Title-Related Searches-Toronto	1.10
<b>TOTAL (CAD):</b>	<b><u>604.60</u></b>

Invoice dated February 23, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between January 1, 2022 to January 31, 2022:

- 6<sup>th</sup> and 10<sup>th</sup>: Attending to correspondence with developer's counsel; attending to matters related to escrow agreement; attending to matters regarding partial discharge of mortgages;
- Brookdale: Attending to research on various matters relating to ongoing litigation; drafting, reviewing and revising statement of defence; considering equitable mortgage and matters and analysis relating thereto; attending to matters concerning Computershare's fresh as amended statement of claim; attending to correspondence and teleconferences with Trustee;
- CHAT: Attending on various matters relating to ongoing receivership proceedings;
- Class Actions: Considering and discussing next steps; reviewing pleadings; preparing for and attending hearing;
- Eden: Attending on various matters relating to settlement agreement; attending to, reviewing, and responding to correspondence; reviewing various legal issues;
- Kemp: Attending to correspondence;
- Old Market Lane: Conducting real property searches;
- Sky City: Reviewing and revising draft investor notice;
- South Shore: Attending to correspondence; considering lien claim; reviewing relevant documentation and considering matters and analysis relating thereto; drafting and reviewing correspondence regarding Diversified litigation;
- Union Waterfront: Attending to discussions with investor counsel and on correspondence regarding same; reviewing motion record and draft motion materials; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence; attending to matters relating to preparation of fee affidavit; attending to matters in connection with omnibus motion, preparation of omnibus report and attending hearing.

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Toronto ON M5X 1B8  
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OSLER

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: **12611802**  
Date: **March 28, 2022**  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc. Administrator (F#1189997).

OUR FEE HEREIN	26,108.92
REIMBURSABLE EXPENSES *	611.27
HST @ 13%	3,408.24
<b>TOTAL (CAD):</b>	<b>30,128.43</b>

\* Includes non-taxable expenses of 503.00 CAD

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Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: **12611802**  
Client No.: 232833  
Amount: 30,128.43 CAD

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Printing Costs	30.75
Special Supplies Costs	5.00
Telecommunications - External	17.52
Agent's Fees & Expenses	55.00
<u>EXPENSES - NON-TAXABLE</u>	
Filing Fees	183.00
Notice of Motion	320.00
<b>TOTAL (CAD):</b>	<b>611.27</b>

Invoice dated March 28, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between February 1, 2022 to February 28, 2022:

- 6<sup>th</sup> and 10<sup>th</sup>: Attending to correspondence with developer's counsel and escrow agent; attending to matters relating to preparation of partial discharges of mortgages in connection with sale of units and reviewing documentation in relation to same; reviewing escrow agreement;
- Brookdale: Attending to court matters relating to statement of defence;
- CHAT: Attending to correspondence; attending to matters related to filing of charge; reviewing receiver's motion record for approval of sales process, court endorsement and sale process approval order; attending on internal discussions regarding same;
- Class Actions: Working on next steps and attending to correspondence on same; reporting to Trustee;
- Eden: Attending to correspondence; discussing status updates;
- Highlands of York: Reviewing and revising draft investor notice; attending to correspondence; discussing enforcement proceedings;
- Peter Richmond: Attending to matters relating to assignment transactions;
- South Shore: Attending to correspondence; receiving update regarding contested construction lien and discussing next steps; attending to matters related to scheduling of hearing; drafting, reviewing and revising aide memoire in Diversified litigation; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence; attending to correspondence to the Court concerning omnibus court hearing.

OSLER, HOSKIN & HARCOURT LLP  
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OSLER

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: **12621683**  
Date: **April 26, 2022**  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.  
Administrator (F#1189997).

OUR FEE HEREIN	70,580.92
REIMBURSABLE EXPENSES	105.92
HST @ 13%	9,189.29
<b>TOTAL (CAD):</b>	<b>79,876.13</b>

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751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: **12621683**  
Client No.: 232833  
Amount: 79,876.13 CAD

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referencing invoice number(s) being paid.

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Courier Expenses	105.92
<b>TOTAL (CAD):</b>	<b><u>105.92</u></b>

Invoice dated April 26, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between March 1, 2022 to March 31, 2022:

- 6<sup>th</sup> and 10<sup>th</sup>: Attending to partial discharges and attending to correspondence on same; attending to correspondence related to escrow funds;
- Brookdale: Attending to correspondence; attending on meeting to discuss status of litigation and next steps; attending to pleadings;
- CHAT: Attending to correspondence; reviewing receiver's motion record for approval of sales process;
- Class Actions: Preparing for and attending call with class counsel; working on next steps; attending to Raponi matters;
- Eden: Attending to correspondence; drafting, reviewing and revising settlement documentation; attending to matters related to settlement negotiations and documentation;
- South Shore: Attending to correspondence; discussing various issues and considering next steps, and participating in internal discussions and discussions with Trustee regarding same; drafting, revising and attending to Trustee report and compiling appendices relating thereto; attending to correspondence related to Diversified litigation; reviewing, revising and finalizing aide memoire for case conference in Diversified litigation; attending to matters relating to Diversified litigation schedule, case conference and correspondence with Court regarding same; reviewing, revising and finalizing motion materials analyzing construction lien claim; preparing for and attending court hearing and reporting to Trustee; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence.

OSLER, HOSKIN & HARCOURT LLP  
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**OSLER**

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: **12635168**  
Date: **May 19, 2022**  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc. Administrator (F#1189997).

OUR FEE HEREIN	61,590.42
REIMBURSABLE EXPENSES *	320.00
HST @ 13%	8,006.75
<b>TOTAL (CAD):</b>	<b>69,917.17</b>

\* Includes non-taxable expenses of 320.00 CAD

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SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: **12635168**  
Client No.: 232833  
Amount: 69,917.17 CAD

Email payment details to [payments@osler.com](mailto:payments@osler.com), referencing invoice number(s) being paid.

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - NON-TAXABLE</u>	
Notice of Motion	320.00
<b>TOTAL (CAD):</b>	<b><u>320.00</u></b>

Invoice dated May 19, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between April 1, 2022 to April 29, 2022:

- 6<sup>th</sup> and 10<sup>th</sup>: Drafting partial discharge packages; reviewing materials regarding sale unit;
- Brookdale: Attending to correspondence and responding to inquiries; attending on conference call with investor; attending on internal discussions regarding litigation; attending on status update discussions with Trustee and on matters relating thereto; attending to settlement discussions and reviewing documentation and analysis regarding same;
- CHAT: Attending to correspondence; reviewing motion record of receiver; attending on internal discussions regarding same; reviewing revised draft approval order and claims procedure order;
- Class Actions: attending to matters relating to conference call with class action counsel; obtaining and reviewing factum filed in Raponi class action; drafting and reviewing correspondence regarding same;
- Eden: Reviewing and revising draft settlement agreement and attending on correspondence regarding same; attending on internal discussions regarding litigation;
- Southshore: Attending to correspondence; attending on meetings regarding outstanding issues, next steps and to respond to inquiries; reviewing and revising Trustee's report; discussing litigation preparation matters; attending on correspondence regarding tax assessment; preparing, reviewing and revising motion materials for discharge of construction lien; attending on various discussions and meetings regarding same; attending on pre-trial matters and procedures and corresponding with Court regarding same; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence.

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
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**OSLER**

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: **12645177**  
Date: **June 23, 2022**  
Client No.: 232833  
  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

---

For professional services rendered for Building & Development Mortgages Canada Inc.  
Administrator (F#1189997).

OUR FEE HEREIN	83,393.92
REIMBURSABLE EXPENSES	256.48
HST @ 13%	10,874.55
<b>TOTAL (CAD):</b>	<b>94,524.95</b>

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751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: **12645177**  
Client No.: 232833  
  
Amount: 94,524.95 CAD

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cheque.*

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Courier Expenses	5.98
Printing Costs	3.00
OnCorp Fees for Searches/Certificates/Filings	18.30
Title-Related Searches-Toronto	229.20
<b>TOTAL (CAD):</b>	<b>256.48</b>

Invoice dated June 23, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between May 1, 2022 to May 29, 2022:

- 6<sup>th</sup> and 10<sup>th</sup>: Attending to correspondence regarding escrow funds and responding to inquiries; attending to partial discharges;
- Brookdale: Attending to correspondence; reviewing and drafting correspondence on litigation and participating in internal discussions and discussions with Trustee regarding same; considering inquiry regarding requested consent; attending to matters regarding amended pleading;
- CHAT: Attending to correspondence; participating in internal discussions and discussions with Trustee; preparing, reviewing and revising draft proof of claim; conducting real property searches;
- Class Actions: Working on next steps; reviewing Raponi materials updates and considering Raponi certification; attending to correspondence regarding insurance; considering additional inquiries from class action counsel and corresponding with Trustee regarding same;
- Eden: Attending on correspondence; attending on internal discussions regarding settlement; revising settlement agreement; attending to inquiries from representative counsel and on matters relating thereto.
- Highlands of York: Attending on correspondence; reviewing notice of intention to enforce security; attending on internal discussions and discussions with Trustee regarding same; reviewing and revising investor notice;
- Rutherford: Attending on correspondence; coordinating review of documentation and response to inquiries; attending on correspondence related to postponement; reviewing and analyzing loan and related documentation with respect to same; attending on meetings to discuss postponement and related matters;
- Southshore: Attending to correspondence; reviewing and revising draft affidavit for construction lien motion; conducting and reviewing research; attending to motion materials and factum; discussing pre-trial conference strategy; reviewing claimant arguments for construction lien motion; reviewing, revising and finalizing letter of request for motion and accompanying memorandum; attending to correspondence regarding Diversified litigation; reviewing motion and responding evidence in Diversified litigation and discussing same; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence; conducting corporate profile and real property searches.

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
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## Invoice Issued in Canadian Dollars

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: 12655235  
Date: July 18, 2022  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: Michael De Lellis  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc. Administrator (F#1189997).

OUR FEE HEREIN	62,447.42
REIMBURSABLE EXPENSES	573.15
HST @ 13%	8,192.67
<b>TOTAL (CAD):</b>	<b>71,213.24</b>

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#### REMITTANCE ADVICE

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751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

##### Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 12655235  
Client No.: 232833  
Amount: 71,213.24 CAD

Please provide details of EFT/wire to [payments@osler.com](mailto:payments@osler.com), itemizing invoice number(s) being paid. Email money transfers are not accepted.

Please return remittance advice(s) with cheque.

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<b><u>EXPENSES - TAXABLE</u></b>	
Printing Costs	375.30
Special Supplies Costs	21.60
OnCorp Fees for Searches/Certificates/Filings	173.25
Title-Related Searches-Toronto	3.00
<b>TOTAL (CAD):</b>	<b><u>573.15</u></b>

Invoice dated July 18, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between June 1, 2022 to June 30, 2022:

- Brookdale: Attending to correspondence; attending to matters related to settlement; attending on internal discussions and discussions with Trustee;
- CHAT: Attending to correspondence; reviewing, revising and finalizing draft proof of claim; reviewing receiver's motion materials for sale of property and participating in discussions regarding same;
- Class Actions: Reviewing relevant materials; considering certification developments; reporting to Trustee regarding Raponi action;
- Eden: Attending to correspondence, including regarding next steps and settlement;
- Highlands of York: Attending to correspondence from and discussions with counsel for first secured mortgagee; attending on internal discussions and discussion with Trustee regarding same; preparing reporting letter to the Trustee reviewing correspondence concerning potential enforcement process and attending meeting with Trustee regarding same;
- South Shore: Attending to correspondence and inquiries; attending to matters relating to Diversified responding motion record; attending on internal discussions and discussions with Trustee regarding same; reviewing and considering evidence; reviewing property abstract; reviewing construction lien claim; reporting to Trustee; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence; conducting corporate profile searches; considering inquiry regarding distributions to beneficiary of investor.

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
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## Invoice Issued in Canadian Dollars

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: 12665703  
Date: August 22, 2022  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: Michael De Lellis  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc. Administrator (F#1189997).

OUR FEE HEREIN	16,805.42
REIMBURSABLE EXPENSES	4.98
HST @ 13%	2,185.35
<b>TOTAL (CAD):</b>	<b>18,995.75</b>

### PAYMENT DUE UPON RECEIPT



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#### REMITTANCE ADVICE

##### Canadian Dollars EFT and Wire Payments:

TD Canada Trust  
751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

##### Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 12665703  
Client No.: 232833  
Amount: 18,995.75 CAD

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Please return remittance advice(s) with cheque.

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Courier Expenses	4.98
<b>TOTAL (CAD):</b>	<b>4.98</b>

Invoice dated August 22, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between July 1, 2022 to July 31, 2022:

- Brookdale: Reviewing and responding to correspondence; considering letter received from opposing counsel;
- Class Actions: Reviewing amended statement of claim in class action;
- Eden: Attending on conference calls; attending to correspondence with opposing counsel; reviewing pleadings and attending to correspondence regarding same; attending to matters related to settlement.
- Highlands of York: Attending on correspondence; reviewing and revising draft investor notice and attending on correspondence regarding same; corresponding with counsel to secured creditor; reporting to Trustee;
- South Shore: Attending to correspondence; attending on internal discussions regarding Diversified motion; serving and filing construction lien motion materials; attending to next steps for construction lien motion and correspondence regarding same; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence; coordinating and commissioning affidavit.

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
416.862.6666 facsimile

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OSLER

## Invoice Issued in Canadian Dollars

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: 12675275  
Date: September 27, 2022  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: Michael De Lellis  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc. Administrator (F#1189997).

OUR FEE HEREIN	25,872.42
REIMBURSABLE EXPENSES	80.30
HST @ 13%	3,373.85
<b>TOTAL (CAD):</b>	<b>29,326.57</b>

### PAYMENT DUE UPON RECEIPT



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#### REMITTANCE ADVICE

##### Canadian Dollars EFT and Wire Payments:

TD Canada Trust  
751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

##### Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 12675275  
Client No.: 232833  
Amount: 29,326.57 CAD

Please provide details of EFT/wire to [payments@osler.com](mailto:payments@osler.com), itemizing invoice number(s) being paid. Email money transfers are not accepted.

Please return remittance advice(s) with cheque.

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Title-Related Searches-Toronto	80.30
<b>TOTAL (CAD):</b>	<b>80.30</b>

Invoice dated September 27, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between August 1, 2022 to August 31, 2022:

- Brookdale: Attending to correspondence, including regarding settlement matters; attending on discussions with Trustee regarding settlement negotiations; attending on conference call with stakeholders; attending to matters related to balance of funds held in Court;
- CHAT: Attending on correspondence; reviewing motion record served by receiver in connection with proposed sale; attending on internal discussions and considering issues relating thereto;
- Class Actions: Reviewing certification decision in Raponi litigation; attending on discussions and correspondence regarding same; reviewing amended statement of claim; reviewing decisions received in respect of Olympia class actions and considering impact on BDMC; reporting to Trustee;
- Eden: Attending on matters regarding finalizing settlement agreement; attending to correspondence and discussions with Trustee regarding same; attending to correspondence with representative counsel regarding settlement agreement;
- Highlands of York Region: Reviewing and drafting correspondence concerning redemption period;
- South Shore: Attending to correspondence, including regarding construction lien matters; attending on matters for case conference; attending to matters related to scheduling of motion in construction lien claim and corresponding with opposing counsel regarding same; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence.

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
416.862.6666 facsimile

754

**OSLER**

## Invoice Issued in Canadian Dollars

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: **12685802**  
Date: **October 19, 2022**  
Client No.: **232833**  
GST/HST No.: **121983217 RT0001**

Attention: Naveed Manzoor

Contact: **Michael De Lellis**  
Direct Dial: **(416) 862-5997**  
E-mail: **MDeLellis@osler.com**

For professional services rendered for Building & Development Mortgages Canada Inc. Administrator (F#1189997).

OUR FEE HEREIN	21,473.42
REIMBURSABLE EXPENSES	3,507.30
HST @ 13%	3,247.49
<b>TOTAL (CAD):</b>	<b>28,228.21</b>

### PAYMENT DUE UPON RECEIPT



We are committed to protecting the environment. Please provide your email address to [payments@osler.com](mailto:payments@osler.com) to receive invoices and reminder statements electronically.



#### REMITTANCE ADVICE

##### Canadian Dollars EFT and Wire Payments:

TD Canada Trust  
751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

##### Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: **12685802**  
Client No.: **232833**  
Amount: **28,228.21 CAD**

Please provide details of EFT/wire to [payments@osler.com](mailto:payments@osler.com), itemizing invoice number(s) being paid. Email money transfers are not accepted.

Please return remittance advice(s) with cheque.

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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Printing Costs	1.05
Agent's Fees & Expenses	3,506.25
<b>TOTAL (CAD):</b>	<b><u>3,507.30</u></b>

Invoice dated October 19, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between September 1, 2022 to September 30, 2022:

- Brookdale: Attending to correspondence; attending to matters related to settlement agreement;
- CHAT: Reviewing order issued in receivership proceedings;
- Class Actions: Attending to matters related to Raponi notice of appeal;
- Eden: Attending to correspondence, including with counsel for Chicago Title; attending on matters regarding finalizing of settlement agreement; attending on internal discussions and discussions with Trustee regarding same; attending to settlement payment mechanics; considering administrative issues relating to settlement;
- South Shore: Attending to correspondence, including relating to examinations; attending to matters related to lien claim; attending on matters related to the Diversified litigation; preparing for and attending case conference, reviewing endorsement from case conference, reporting to Trustee regarding same and attending to follow-up tasks; conducting legal research; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence.

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
416.862.6666 facsimile

757

OSLER

## Invoice Issued in Canadian Dollars

FAAN Mortgage Administrators Inc.  
20 Adelaide Street East  
Suite 920  
Toronto, ON M5C 2T9  
CANADA

Invoice No.: 12692238  
Date: October 27, 2022  
Client No.: 232833  
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: Michael De Lellis  
Direct Dial: (416) 862-5997  
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc. Administrator (F#1189997).

OUR FEE HEREIN	73,876.50
REIMBURSABLE EXPENSES	264.17
HST @ 13%	9,638.29
<b>TOTAL (CAD):</b>	<b>83,778.96</b>

### PAYMENT DUE UPON RECEIPT



We are committed to protecting the environment. Please provide your email address to [payments@osler.com](mailto:payments@osler.com) to receive invoices and reminder statements electronically.



#### REMITTANCE ADVICE

##### Canadian Dollars EFT and Wire Payments:

TD Canada Trust  
751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

##### Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 12692238  
Client No.: 232833  
Amount: 83,778.96 CAD

Please provide details of EFT/wire to [payments@osler.com](mailto:payments@osler.com), itemizing invoice number(s) being paid. Email money transfers are not accepted.

Please return remittance advice(s) with cheque.

osler.com

**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<u>EXPENSES - TAXABLE</u>	
Printing Costs	32.55
Special Supplies Costs	4.17
Title-Related Searches-Toronto	227.45
<b>TOTAL (CAD):</b>	<b>264.17</b>

Invoice dated October 27, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court appointed trustee of Building & Development Mortgages Canada Inc. for the period between October 1, 2022 to October 15, 2022:

- Brookdale: Attending to correspondence; reviewing loan and security documentation, communications to investors, pleadings and court orders, and considering matters and analysis relating thereto; drafting, reviewing and revising draft settlement agreement and settlement order; attending on internal discussions and discussions with Trustee regarding the foregoing; attending on discussions and correspondence with Computershare's counsel regarding settlement agreement and order; conducting real property searches;
- Eden: Attending to matters relating to settlement agreement; attending to correspondence; and
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; attending on class action matters; conducting legal research and due diligence; reviewing and considering outline of omnibus report; drafting, reviewing and revising omnibus report; attending on request forms for omnibus hearing and to correspondence with Court regarding same.

THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF MICHAEL DE LELLIS  
SWORN BEFORE ME ON THIS 4<sup>th</sup> DAY OF NOVEMBER, 2022



---

A Commissioner for Taking Affidavits  
Blair McRadu

**EXHIBIT B**

<b>Date of Account</b>	<b>For Billing Period Ending</b>	<b>Fees</b>	<b>Expenses / Disbursements*</b>	<b>Taxes</b>	<b>Total</b>
February 23, 2022	January 31, 2022	\$260,256.92	\$604.60	\$33,912.00	\$294,773.52
March 28, 2022	February 28, 2022	\$26,108.92	\$611.27	\$3,408.24	\$30,128.43
April 26, 2022	March 31, 2022	\$70,580.92	\$105.92	\$9,189.29	\$79,876.13
May 19, 2022	April 29, 2022	\$61,590.42	\$320.00	\$8,006.75	\$69,917.17
June 23, 2022	May 31, 2022	\$83,393.92	\$256.48	\$10,874.55	\$94,524.95
July 18, 2022	June 30, 2022	\$62,447.42	\$573.15	\$8,192.67	\$71,213.24
August 22, 2022	July 31, 2022	\$16,805.42	\$4.98	\$2,185.35	\$18,995.75
September 27, 2022	August 31, 2022	\$25,872.42	\$80.30	\$3,373.85	\$29,326.57
October 19, 2022	September 30, 2022	\$21,473.42	\$3,507.30	\$3,247.49	\$28,228.21
October 27, 2022	October 15, 2022	\$73,876.50	\$264.17	\$9,638.29	\$83,778.96
Total	-	\$702,406.28	\$6,328.17	\$92,028.48	\$800,762.93

\*Includes non-taxable expenses

THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF MICHAEL DE LELLIS  
SWORN BEFORE ME ON THIS 4<sup>th</sup> DAY OF NOVEMBER, 2022



---

A Commissioner for Taking Affidavits  
Blair McRadu

**EXHIBIT C****Billable Rates for January 1, 2022 to October 15, 2022**

<b><u>Name</u></b>	<b><u>Year of Call (if applicable)</u></b>	<b><u>Billing Rate</u></b>	<b><u>Hours Worked</u></b>
Adhamidhis, Anxhela	2022	\$325	29.60
Buchanan, Elizabeth	N/A	\$290	1.80
Calvaruso, Martino	2009	\$875	52.40
Cohen, Jesse	2015	\$775	10.60
Dacks, Jeremy	1999	\$1125	96.40
Davis, Hannah	2022	\$325	7.60
De Lellis, Michael	2003	\$1075	128.4
Dick, Marleigh	2020	\$570	63.20
Duggal, Chloe	N/A	\$325	7.90
Erickson, Justine	2016	\$735	76.40
Farkas, Elie	2018	\$660	1.30
Gillott, Roger	1996	\$1075	42.00
Herceg, Suzanne	N/A	\$515	1.10
Hirsh, Adam	2008	\$900	39.30
Kanji, Justin	2019	\$615	8.40
MacEachern, Kevin	N/A	\$225	4.00
Margeson, Adam	2020	\$570	7.00
McRadu, Blair	2017	\$695	45.30
Nanfara, Chloe	2020	\$570	72.20
Nielsen, Ryan	2009	\$920	0.70
Obal, Shelley	1985	\$1250	1.40

Paterson, Mary	2005	\$955	40.80
Read, Charlene	N/A	\$350	0.10
Roberts, Nancy	1996	\$1175	50.00
Scott, Lauren	N/A	\$325	13.00
Sheeley, Mark	2014	\$800	5.0
Stewart, John	N/A	\$275	1.00
Storm, Lorna	N/A	\$350	7.50
Stretch, Luke	N/A	\$570	0.70
Sun, Tiffany	2022	\$325	0.20
Timlick, Sean	2022	\$325	1.70
Whitlock, Riley	2014	\$850	8.90
Yow, Jessica	N/A	\$300	6.50
		<b>Total:</b>	841.40

<b>Blended Rate<sup>1</sup></b> (excluding expenses / disbursements and HST) \$702,406.28/841.40 =	<b>\$834.81</b>
----------------------------------------------------------------------------------------------------------	-----------------

<sup>1</sup> Certain invoices in respect of the Approval Period include fees charged for services provided on a fixed fee basis and, accordingly, there are no hours associated with those fees included in the calculation of the 'Blended Rate'.

THIS IS CONFIDENTIAL EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL DE LELLIS  
SWORN BEFORE ME ON THIS 4<sup>th</sup> DAY OF NOVEMBER, 2022



---

A Commissioner for Taking Affidavits  
Blair McRadu

**EXHIBIT D**

**THIS EXHIBIT IS REDACTED IN ITS ENTIRETY AND IS  
SUBJECT TO A REQUEST FOR A SEALING ORDER.**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Applicant**

**Respondent**

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL DE**  
**LELLIS (sworn November 4<sup>th</sup>, 2022)**

**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**

## Tab 3

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 14 <sup>th</sup>
	)	
JUSTICE MCEWEN	)	DAY OF NOVEMBER, 2022

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**NOVEMBER 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) approving the Trustee’s twenty-eighth report, dated March 21, 2022 (the “**Twenty-Eighth Report**”) and the Trustee’s twenty-ninth report dated November 4, 2022 (the “**Twenty-Ninth**

**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 January 1, 2022 to October 15, 2022; and (ii) sealing certain confidential exhibits to the Fee Affidavits (as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

**ON READING** the Twenty-Ninth Report, the affidavit of Naveed Manzoor sworn November 2, 2022 and attached as Appendix “23” to the Twenty-Ninth Report (the “**Manzoor Affidavit**”) and the affidavit of Michael De Lellis sworn November 4, 2022 and attached as Appendix “24” to the Twenty-Ninth 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 Blair McRadu sworn November 4, 2022, filed;

#### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Ninth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order but not defined herein shall have the meanings given to them in the Twenty-Ninth Report.

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

3. **THIS COURT ORDERS** that the Twenty-Eighth Report and the Twenty-Ninth Report, and all the actions, conduct and activities of the Trustee as set out in the Twenty-Eighth Report and the Twenty-Ninth Report, be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Twenty-Ninth 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 January 1, 2022 to October 15, 2022 are approved: fees of \$460,658.75 (plus applicable taxes of \$59,885.64 for an aggregate amount of \$520,544), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from January 1, 2022 to October 15, 2022 are approved: fees of \$702,406.28 and disbursements of \$6,328.17 (plus applicable taxes of \$92,028.48, for an aggregate amount of \$800,762.93).

### **SEALING**

5. **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**

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

7. **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.

8. **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.

---

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Applicant**

**Respondent**

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

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

Proceeding commenced at Toronto

---

**NOVEMBER 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.**

## Tab 4

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 14 <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF NOVEMBER, 2022

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**BROOKDALE SETTLEMENT AND DISTRIBUTION ORDER**

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

Twenty-Ninth Report as Appendix 14 (the “**Brookdale Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and Computershare Trust Company of Canada, in its capacity as trustee under that certain trust indenture dated November 26, 2013 (“**Computershare**”); (ii) authorizing and directing the Accountant of the Superior Court of Justice (the “**Accountant**”) to distribute from the account (the “**Account**”) set up to the credit of Court File No. CV-18-596204-00CL pursuant to the Order of the Honourable Justice McEwen made in the proceedings with Court File No. CV-18-593304 (Account No: 561131), the amounts to Computershare and the Trustee as set forth herein; (iii) authorizing the Trustee to make a distribution of Brookdale Realized Property to the Brookdale Investors (each as defined herein); and (iv) granting related relief, was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

**ON READING** the Twenty-Ninth Report of the Trustee dated November 4, 2022 (the “**Twenty-Ninth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to Computershare, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Blair McRadu sworn November 4, 2022, filed;

### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Ninth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Twenty-Ninth Report or the Brookdale Settlement Agreement, as applicable.

### **BROOKDALE SETTLEMENT AGREEMENT**

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

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

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

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

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

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

#### **REALIZED PROPERTY**

7. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Trustee's delivery of the Trustee's Closing Certificate to Computershare, the Trustee shall make a distribution in the aggregate amount equal to 85% of the Brookdale Realized Property to the Brookdale Original Investors and the Brookdale Mezzanine Investors on a *pari passu* and *pro rata* basis using the Pari Passu Approach, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018, each made in these proceedings.

#### **DISMISSAL AND DISCHARGE**

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

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

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

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

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

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S FUNDING CERTIFICATE**

**RECITALS**

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

**THE TRUSTEE CERTIFIES** the following:

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

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

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

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S CLOSING CERTIFICATE**

**RECITALS**

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

**THE TRUSTEE CERTIFIES** the following:

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

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

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

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

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA  
INC.**

Applicant

Respondent

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

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

Proceedings commenced at Toronto

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**BROOKDALE SETTLEMENT AND  
DISTRIBUTION ORDER**

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**OSLER, HOSKIN & HARCOURT LLP**

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

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

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

## Tab 5

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 14 <sup>TH</sup>
	)	
JUSTICE MCEWEN	)	DAY OF NOVEMBER, 2022

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**ORDER  
(Eden Resolution and Distribution Order)**

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

(i) approving and ratifying the Settlement Agreement and Mutual Release dated as of August 2, 2022 (the “**Eden Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and the other parties thereto; (ii) ordering that the Settlement Payments (as defined in the Eden Settlement Agreement) be made to the Trustee pursuant to and in accordance with the Eden Settlement Agreement; and (iii) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below) in accordance with the Eden Settlement Agreement, make a distribution of Eden Realized Property (as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

**ON READING** the Twenty-Ninth Report of the Trustee dated November 4, 2022 (the “**Twenty-Ninth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the 2309918 Ontario Inc. (the “**Borrower**”), and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Blair McRadu sworn November 4, 2022, filed;

### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Ninth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Twenty-Ninth Report or the Eden Settlement Agreement, as applicable.

### **APPROVAL OF THE EDEN SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (i) the Eden Settlement Agreement be and is hereby approved and ratified in its entirety; (ii) the following payments are directed to be made to the Trustee, on behalf of BDMC and OTC, in accordance with the terms of the Eden Settlement Agreement and in each case prior to the Payment Deadline, (a) \$500,000 by Pace, (b) \$875,000 by

Mr. Chong (or LawPro, on behalf of Mr. Chong), and (c) \$875,000 by the May 2019 Purchaser Plaintiffs and/or the August 2019 Purchaser Plaintiffs and/or the Additional 2019 Purchasers (or one or more of the Title Insurers, on behalf of such parties); and (iii) the execution of the Eden Settlement Agreement by the Trustee, OTC, and Representative Counsel is hereby ratified and approved, and the Trustee, OTC, and Representative Counsel are hereby authorized and directed to comply with all of their respective obligations under the Eden Settlement Agreement, as applicable.

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate as soon as practicable after delivery thereof in accordance with the Eden Settlement Agreement.

5. **THIS COURT ORDERS** that, only as contemplated by the Eden Settlement Agreement, upon the registration in the Land Registry Office for York Region (#65) of an Application to Register an Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") the Lender's Mortgage/Charge listed in Schedule "C" hereto.

#### **REALIZED PROPERTY**

6. **THIS COURT ORDERS AND DECLARES** that only upon the delivery of the Trustee's Certificate in accordance with the Eden Settlement Agreement, the Settlement Payments (the "**Eden Realized Property**") are and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that the rights and claims of the Individual SMLs in respect of the Loan Agreements and related security shall attach to the Eden Realized Property and shall have the same nature and priority as they had prior to the consummation of the Eden Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

7. **THIS COURT ORDERS** that, as soon as is practicable, the Trustee shall make a distribution to the Individual SMLs in an amount equal to 85% of the Eden Realized Property, *pro*

*rata* to the Individual SMLs entitled to such funds, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

## **RELEASES**

8. **THIS COURT ORDERS** that, as of the Closing Date:

- (i) none of the Borrower, BDMC, and OTC shall have any further rights or obligations in connection with the Obligations, the Loan Agreements, the Lender's Mortgage/Charge, and the other Security;
- (ii) the Loan Agreements shall have no further force or effect; and
- (iii) BDMC and OTC shall have no further rights to any further payments that may become payable under the Loan Agreements, the Lender's Mortgage/Charge, and the other Security.

9. **THIS COURT ORDERS** that the Borrower and its shareholders, agents, directors, officers, employees, and their respective successors and assigns, hereby forever release and discharge the Trustee, BDMC, OTC, the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers, the Title Insurers, Mr. Chong and LawPro (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Loan, the Loan Agreements, the Lender's Mortgage/Charge and any and all other Security, and the Purchaser Litigation (which, for greater certainty, includes the Third Party Claim).

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

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order.

All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).
- B. Pursuant to an Order of the Court made on ● (the “**Eden Resolution and Distribution Order**”), the Court approved and ratified the Settlement Agreement and Mutual Release dated as of August 2, 2022 (the “**Eden Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and certain other parties.
- C. The releases contemplated in the Eden Settlement Agreement and the Eden Resolution and Distribution Order are not effective until the Trustee issues the Trustee’s Certificate to the other parties to the Eden Settlement Agreement in accordance with the terms thereof.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Eden Resolution and Distribution Order or the Eden Settlement Agreement, as applicable.

**THE TRUSTEE CERTIFIES** the following:

1. The Eden Resolution and Distribution Order has been granted by the Court and either no material objections (in the sole opinion of the Trustee) were raised by any person at the motion for the Eden Resolution and Distribution Order or the appeal periods in respect of the Eden Resolution and Distribution Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
2. Each of the Settlement Payments has been paid directly to, and actually received by, the Trustee at the Trustee's Account;
3. The May 2019 Purchaser Litigation (which, for greater certainty, includes the Third Party Claim) has been dismissed on a with prejudice and without costs basis;
4. The August 2019 Purchaser Litigation has been dismissed on a with prejudice and without costs basis; and
5. The Trustee has received a signed acknowledgment from the Bankruptcy Trustee, on behalf of the Borrower, in form and substance satisfactory to the Trustee, in its sole discretion, acknowledging and confirming that:
  - (i) it is aware of the terms of this Settlement Agreement;
  - (ii) the Borrower and its estate have no interest in the Settlement Payments and such payments do not constitute property or proceeds of the Borrower or its bankruptcy estate;
  - (iii) the Bankruptcy Trustee, on behalf of 230 Ontario, consents to a dismissal of the May 2019 Purchaser Litigation (including the Third Party Claim) and of the August 2019 Purchaser Litigation, in each case on a with prejudice and without costs basis, and authorizes the lawyers for the applicable plaintiffs to execute a consent in respect of the applicable dismissal; and
  - (iv) the Bankruptcy Trustee will, as soon as is practicable following the Closing Date, but subject to completion of the administration of the estate and its statutory duties under the BIA, seek a discharge of the Borrower from, and termination of, the Bankruptcy Proceedings.

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

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

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

Name:

Title:

**Schedule “B” – Real Property**

No.	PIN	Legal Description
1.	PIN 03372-0919 (LT)	LOT 1, PLAN 65M4514; TOWNSHIP OF KING
2.	PIN 03372-0920 (LT)	LOT 2, PLAN 65M4514; TOWNSHIP OF KING
3.	PIN 03372-0921 (LT)	LOT 3, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
4.	PIN 03372-0922 (LT)	LOT 4, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
5.	PIN 03372-0923 (LT)	LOT 5, PLAN 65M4514; TOWNSHIP OF KING
6.	PIN 03372-0924 (LT)	LOT 6, PLAN 65M4514; TOWNSHIP OF KING
7.	PIN 03372-0925 (LT)	LOT 7, PLAN 65M4514; TOWNSHIP OF KING
8.	PIN 03372-0926 (LT)	LOT 8, PLAN 65M4514; TOWNSHIP OF KING
9.	PIN 03372-0927 (LT)	LOT 9, PLAN 65M4514; TOWNSHIP OF KING
10.	PIN 03372-0928 (LT)	LOT 10, PLAN 65M4514; TOWNSHIP OF KING
11.	PIN 03372-0929 (LT)	LOT 11, PLAN 65M4514; TOWNSHIP OF KING
12.	PIN 03372-0930 (LT)	LOT 12, PLAN 65M4514; TOWNSHIP OF KING
13.	PIN 03372-0980 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 15, 16, 17 AND 18 ON 65R-37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 17 ON 65R-37241 AS IN YR2539216; TOGETHER WITH AN EASEMENT OVER PART 14 PLAN 65R37241 AS IN YR2867635; SUBJECT TO AN EASEMENT OVER PART 15 PLAN 65R37241 IN FAVOUR OF PARTS 13 & 14 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
14.	PIN 03372-0981 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 13 AND 14 ON 65R-37241; SUBJECT TO AN EASEMENT OVER PART 14 PLAN 65R37241 IN FAVOUR OF PARTS 15, 16, 17 & 18 PLAN 65R37241 AS IN YR2867635; TOGETHER WITH AN EASEMENT OVER PART 15 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
15.	PIN 03372-0982 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 32 & 33 PLAN 65R37241; TOWNSHIP OF KING
16.	PIN 03372-0983 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 34 & 35 PLAN 65R37241; TOWNSHIP OF KING
17.	PIN 03372-0984 (LT)	PART LOT 13, PLAN 65M4514, PARTS 3 AND 4 PLAN 65R37241; TOWNSHIP OF KING
18.	PIN 03372-0985 (LT)	PART OF LOT 13, PLAN 65M4514, PARTS 1 & 2 PLAN 65R37241; TOWNSHIP OF KING
19.	PIN 03372-0986 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 36, 37, PLAN 65R37241; TOWNSHIP OF KING
20.	PIN 03372-0987 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 38, 39, 40, PLAN 65R37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 40, PLAN 65R37241 AS IN YR2760258; TOWNSHIP OF KING
21.	PIN 03372-0988 (LT)	PART LOT 15, PLAN 65M4514, PARTS 9 & 10, PLAN 65R37241; TOWNSHIP OF KING
22.	PIN 03372-0989 (LT)	PART LOT 15, PLAN 65M4514, PARTS 11 & 12, PLAN 65R37241; TOWNSHIP OF KING

23.	PIN 03372-0990 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 19 AND 20, 65R37241; TOWNSHIP OF KING
24.	PIN 03372-0991 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 21, 22, 23, 24 & 25, 65R37241 SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 23, 24 & 25 65R37241 AS IN YR2539230; TOWNSHIP OF KING
25.	PIN 03372-0992 (LT)	PT LT 18 PL 65M4514 BEING PTS 26, 27, 28 & 29 ON 65R-37241; S/T EASE IN GROSS OVER PT 5 PL 65R-36537 AS IN YR2539230; TOWNSHIP OF KING
26.	PIN 03372-0993 (LT)	PT LT 18 PL 65M4514 BEING PTS 30 & 31 ON PL 65R-37241; TOWNSHIP OF KING
27.	PIN 03372-0994 (LT)	PART LOT 14 PLAN 65M4514, PARTS 7 & 8 65R37241; TOWNSHIP OF KING
28.	PIN 03372-0995 (LT)	PART LOT 14 PLAN 65M4514, PARTS 5 & 6 65R37241; TOWNSHIP OF KING

**Schedule “C” – Lender’s Mortgage/Charge**

Registration Instrument No. YR1797496 registered on March 20, 2012, as:

- transferred by Instrument Nos. YR1798016, YR1833808, YR1833809, YR1886635, YR1958951, YR1958955, YR2099174, YR2136733, YR2136734, and YR2438713;
- transferred from Sanjay Soni to Building & Development Mortgages Canada Inc. by Instrument No. YR2443820;
- transferred from Olympia Trust Company to Building & Development Mortgages Canada Inc. by Instrument No. YR2456227;
- amended by Inst. Nos. YR1893548, YR2087780, YR2182638, and YR2321166;
- postponed by Instrument Nos. YR2323109, YR2323111, YR2391969, YR2510935, YR2540057, and YR2714813; and
- modified by names changes by Instrument Nos. YR1816457 (Vanguard Law Group LLP, in Trust to Sanjay Soni) and YR1833806 (Olympia Trust to Olympia Trust Company).

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA  
INC.**

Applicant

Respondent

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

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

Proceedings commenced at Toronto

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**EDEN RESOLUTION AND DISTRIBUTION  
ORDER**

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**OSLER, HOSKIN & HARCOURT LLP**

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

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

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

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

Applicant

Respondent

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

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

**Proceedings commenced at Toronto**

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

**(November 2022 Comprehensive Update)**

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**OSLER, HOSKIN & HARCOURT LLP**

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Toronto, ON M5X 1B8

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