

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

**BETWEEN**

**THE LAW SOCIETY OF ONTARIO**

**Applicant**

- and -

**DEREK SORRENTI AND SORRENTI LAW PROFESSIONAL CORPORATION**

**Respondents**

**APPLICATION UNDER  
SECTION 49.47 OF THE LAW SOCIETY ACT, R.S.O. 1990. c. L.8  
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43**

**PRE-FILING REPORT OF THE PROPOSED TRUSTEE**

**FAAN MORTGAGE ADMINISTRATORS INC.**

**SEPTEMBER 29, 2019**



**FAAN Mortgage Administrators Inc.**  
Proposed Trustee of the Respondents

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## INTRODUCTION

1. FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**” or the “**Proposed Trustee**”) has been advised that the Law Society of Ontario (“**LSO**” or the “**Applicant**”) intends to make an application pursuant to section 49.47 of the *Law Society Act, R.S.O. 1990, c. L.8* and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43* seeking the appointment of FAAN Mortgage as trustee, without security, of all of the assets, undertakings and properties of Derek Sorrenti or Sorrenti Professional Law Corporation (collectively, “**Sorrenti**”) relating to Sorrenti’s trusteeship and administration of syndicated mortgage loans (“**SMLs**”) in projects affiliated with Fortress Real Developments Inc. and certain related entities (collectively, “**Fortress**”).
2. The purpose of this report is to provide this Honourable Court and the Respondent's stakeholders with information regarding the following, together with the Proposed Trustee's comments as appropriate:
  - (a) Background information concerning FAAN Mortgage’s involvement in Court-proceedings involving Building and Development Mortgages Canada Inc. (“**BDMC**”) (the “**BDMC Proceeding**”) in respect of SMLs that, as discussed further below, are related to the SML’s currently being administered by Sorrenti;
  - (b) FAAN Mortgage’s dealings, in its capacity as trustee (the “**BDMC Trustee**”) over all of the assets, undertakings and properties of BDMC, with Sorrenti, including an update on document production requests made to Sorrenti in respect of critical information concerning the SMLs that were previously administered by Sorrenti and currently administered by the BMDC Trustee;
  - (c) The status of a recent partial distribution that Sorrenti made to investors in a specific SML that is currently being administered by Sorrenti;

- (d) Complaints made to the BDMC Trustee by investors in SMLs administered by Sorrenti;  
and
- (e) A list of SMLs, including a list of the underlying projects, that appear to be currently administered by Sorrenti.

## **SCOPE AND TERMS OF REFERENCE**

3. In preparing this report, the Proposed Trustee has relied upon unaudited financial and other information obtained from publicly available sources and/or from, *inter alia*, the books and records of BDMC, Sorrenti, investors and/or individuals who have contacted the BDMC Trustee.
4. While the Proposed Trustee has reviewed the various information that it has obtained, the Proposed Trustee's review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Proposed Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.
5. This report has been prepared for the use of this Court and Sorrenti's stakeholders as general information relating to the SMLs that are administered by Sorrenti and to assist the Court with respect to the LSO's application for relief. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose.
6. All references to dollars are in Canadian currency unless otherwise noted.

## BACKGROUND

7. On April 20, 2018, the Superintendent of Financial Services (the “**Superintendent**”) obtained an Order under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29 and section 101 of the *Court of Justice Act, R.S.O. 1990 c. C.43* appointing FAAN Mortgage as trustee over all of the assets, undertakings and properties of BDMC. A copy of the Order dated April 20, 2018 in the BDMC Proceeding (the “**Appointment Order**”) is attached hereto as **Appendix “1”**.
8. The BDMC Trustee has filed 10 reports to Court in the BDMC Proceeding. Those reports and other court materials related to the BDMC Proceeding are accessible on the BDMC Trustee’s website at [www.faanmortgageadmin.com](http://www.faanmortgageadmin.com).
9. BDMC was the principal mortgage broker and administrator used in recent years by Fortress to raise initial financing through SMLs from the investing public for early stage real estate developments. Fortress and its affiliates are development consultants or borrowers with respect to various real property development projects.
10. As set out in the affidavit filed by the Superintendent in support of the Appointment Order, since 2013, BDMC has acted as mortgage administrator for approximately 60% to 70% of the development projects involving Fortress. The other 30% to 40% of SMLs that relate to Fortress projects are administered by lawyers who operate under the MBLAA’s exemption from licensing requirements applicable to lawyers.<sup>1</sup>
11. It is the BDMC Trustee’s understanding that Derek Sorrenti, an Ontario lawyer, through his professional corporation, Sorrenti Law Professional Corporation acted as administrator with respect to a number of SMLs made in respect of Fortress related projects. Certain of these loans are still administered by Sorrenti

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<sup>1</sup> Affidavit of Brendan Forbes Affidavit sworn April 19, 2018 (“Forbes Affidavit”), Application Record of the Superintendent of Financial Services, para 33.

(the “**Sorrenti Projects**”) and others were transferred to BDMC by Sorrenti prior to the BDMC Trustee’s involvement (the “**Transferred Projects**”). The Sorrenti Projects are not part of the BDMC Trustee’s mandate and are not subject to the BDMC Proceeding, while the Transferred Projects are part of the BDMC Trustee’s mandate and are subject to the BDMC Proceeding.<sup>2</sup>

## **SORRENTI DOCUMENT PRODUCTION REQUESTS**

12. The Appointment Order requires, among other things, that all persons with property, funds, records, documents or information related to the business and affairs of BDMC to provide such property, funds, records, documents and information to the BDMC Trustee and to cooperate fully with the BDMC Trustee with respect to its mandate.<sup>3</sup> Sorrenti did not comply with the BDMC Trustee’s information requests. Accordingly, as set out below, the BDMC Trustee sought and obtained an Order requiring Sorrenti to comply with the Appointment Order and to provide the Trustee with a detailed list of all information related to the Transferred Projects. A copy of the Omnibus Order in the BDMC Proceeding (including paragraphs 6 and 7 related to Sorrenti) dated May 23, 2019 is attached hereto as **Appendix “2”**. A copy of the BDMC Trustee’s Seventh Report (without appendices other than Appendix “9”), which, among other things, describes the circumstances leading up to the Omnibus Order is attached hereto as **Appendix “3”**.
13. The BDMC Trustee’s mandate requires that the BDMC Trustee understand each project and the status of each syndicated mortgage loan, to enable it to make informed decisions regarding the administration of those loans in order to protect the investors in the BDMC projects. The BDMC Trustee can only make informed decisions where it has conducted a detailed review of the relevant information, and a significant amount of relevant information was not in BDMC’s possession on the date the BDMC Trustee was

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<sup>2</sup> Seventh Report of the Trustee dated May 10, 2019 (“Seventh Report”), para 135

<sup>3</sup> Order of Justice Hailey dated April 20, 2018 (“Appointment Order”), paras 4-7

appointed. To facilitate the BDMC Trustee's discharge of its mandate, the Appointment Order (and in particular paragraphs 4 to 7 thereof) required persons with property, funds, records, documents or information related to the business and affairs of BDMC to provide such property, funds, records, documents and information to the BDMC Trustee.<sup>4</sup>

14. The BDMC Trustee and its counsel formally contacted Sorrenti on numerous occasions for over six months to request critical information related to the Transferred Projects. This followed several months of more informal requests for information by BDMC (at the request of the BDMC Trustee). Among other things, the BDMC Trustee has requested trust account records, full closing books for the applicable loan agreements and related transactions, diligence summaries and other relevant information. The BDMC Trustee needs access to this information to properly assess settlement offers, postponement requests and structured sale proposals with respect to the Transferred Projects and to discharge its court-ordered mandate.<sup>5</sup>
15. Sorrenti did not comply with the BDMC Trustee's information requests. Sorrenti advised the BDMC Trustee that staffing issues, record storage complications and other obligations delayed the delivery of the requested materials.<sup>6</sup>
16. The BDMC Trustee was concerned that Sorrenti had not made any material efforts to provide the BDMC Trustee's requested information. Accordingly, the BDMC Trustee advised Sorrenti that it intended to seek a production order. In response to this notice, Sorrenti contacted the BDMC Trustee to advise that he would commence providing information, including the trust account records.<sup>7</sup>

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<sup>4</sup> Appointment Order, paras 4-7; Seventh Report, para 140

<sup>5</sup> Seventh Report, para 141

<sup>6</sup> Seventh Report, para 142

<sup>7</sup> Seventh Report, para 142



17. Sorrenti did not deliver this information. Selected copies of the BDMC Trustee's correspondence with Sorrenti are attached as Appendix 9 to the Seventh Report.
18. Accordingly, the BDMC Trustee sought and obtained an Order requiring Sorrenti to comply with the Appointment Order and to provide the BDMC Trustee with a detailed list of all information related to the Transferred Projects, along with a plan and proposed schedule for the delivery of such documents, records and information to the BDMC Trustee, within 30 days of the date of the Order.<sup>8</sup>
19. Sorrenti was provided with a copy of the Omnibus Order shortly after its issuance. He did not comply with the terms of the order requiring him to provide the plan and required schedule within 30 days. Sorrenti advised that staff shortages and other administrative issues made it difficult for him to comply with the BDMC Trustee's information requests.
20. In order to facilitate obtaining information from Sorrenti, the BDMC Trustee suggested that a representative of the BDMC Trustee attend at Sorrenti's office to obtain the materials it required to fulfill its mandate. The BDMC Trustee's representative attended at Sorrenti's offices on July 3, 2019 and was provided with some of the information that the BDMC Trustee had requested including certain trust account details for the Transferred Projects from Sorrenti's 'PC Law' accounting software (in excel spreadsheet format). The BDMC Trustee had requested all emails related to the Transferred Projects and copies of Sorrenti's bank statements. This information was not made available on July 3, 2019 but Sorrenti agreed that the BDMC Trustee's representative could re-attend at a later date to obtain this information.
21. The BDMCs Trustee's subsequent review of the information obtained resulted in additional inquiries as the information provided appeared incomplete including, among other things, unexplained remaining balances in the relevant PC Law accounting ledgers.

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<sup>8</sup> Omnibus Order

22. The BDMC Trustee requested numerous times to schedule a re-attendance at Sorrenti's office to obtain the missing information; however, Sorrenti ultimately did not permit the BDMC Trustee to re-attend at his office citing, among other things, staff shortages, solicitor-client privilege issues and that the information requested still had to be located and organized.

## **THE BAYVIEW PROJECT**

23. As part of its motion to obtain the Omnibus Order (and as also described in the Seventh Report), the BDMC Trustee obtained the Court's authorization to sign a direction with respect to a project located at 5, 7, 9, 11 and 15 Kenaston Gardens and 577 Sheppard Ave., Toronto, known as the "**Bayview Project**". The requested direction authorizes counsel to the borrower, Pine Ridge Building Corp. ("**Pine Ridge**"), to pay approximately \$18 million to Sorrenti in respect of a syndicated mortgage loan made to Pine Ridge and administered by Sorrenti ("**Direction to Pay**").<sup>9</sup>

24. The BDMC Trustee had been advised that Pine Ridge required it to execute the Direction to Pay before it would distribute any funds to Sorrenti because BDMC remained the named lender that is party to the loan agreement with Pine Ridge in respect of the syndicated mortgage loan to the Bayview Project ("**Pine Ridge Loan Agreement**"). The BDMC Trustee investigated matters related to the Bayview Project. The underlying documentation related to the Bayview Project contained several inconsistencies. However, based on, among other things, an affidavit sworn by Mr. Sorrenti, the BDMC Trustee determined that Sorrenti was the acting administrator of the Pine Ridge Loan Agreement.<sup>10</sup>

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<sup>9</sup> Seventh Report, para 136

<sup>10</sup> Seventh Report, paras 137-138

25. Although the Bayview Project is outside the Trustee's mandate, the BDMC Trustee brought a motion to seek relief from the Court to obtain the requested authorization in order to assist the individual SML investors in the Bayview Project in recovering at least a portion of their investment.
26. Mr. Sorrenti swore an Affidavit in connection with the Trustee's application for the Direction to Pay. In his Affidavit, Mr. Sorrenti explained that he expected approximately \$18 million to become available for repayment: "I am advised that the Initial Loan Repayment to be paid to Sorrenti pursuant to the Direction to Pay is approximately \$18,000,000.00, less mortgage administration-related expenses which will not exceed \$90,000.00 and the costs with respect to this motion which will not exceed \$25,000.00, As such, there will be an aggregate distribution of approximately \$17,885,000.00 which shall be paid to the remaining 505 Bayview Project investors / lenders pro rata in accordance with the applicable agreements between Sorrenti and each individual investor / lender".<sup>11</sup>
27. Sorrenti also undertook to distribute the funds: "I confirm and undertake, that any and all funds received by Sorrenti from Pine Ridge or its lawyer William Friedman in respect of the repayment of the Loan, shall, after payment of mortgage administration-related expenses, be distributed, pro rata, to all individual investors lenders in accordance with the applicable agreements between Sorrenti and each individual investor lender."<sup>12</sup>
28. This order was granted by the Court on May 23, 2019. However, it appears that the distribution was not made until several months after due to, among other things, staffing issues of Sorrenti. The BDMC Trustee received from an investor a copy of a memorandum from Sorrenti dated August 12, 2019 which it understands was distributed to the Bayview Village syndicated mortgage investors. In the memorandum, Sorrenti advises that his office had recently received a significant portion of the amount due to be repaid

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<sup>11</sup> Affidavit of Derek Sorrenti sworn April 25, 2019, Motion Record of the Trustee dated May 10, 2019 ("Sorrenti Affidavit") at para 21

<sup>12</sup> Sorrenti Affidavit at para 20

to the syndicated mortgage investors. He indicates that, for “cash”, “non-registered” or registered Olympia Trust Company investors, a cheque is provided representing their pro-rata distribution of 90.5% of the original investment amount. The BDMC Trustee notes that the memorandum does not provide a breakdown of the monies received by Sorrenti, the amount paid to all Bayview Village syndicated mortgage investors and any deductions made therefrom. In addition, the memorandum does not provide any information relating to amounts remaining with Sorrenti, if any.

29. Regarding payment of additional funds from the Bayview Project, including the balance of the principal and accrued interest, Sorrenti advises that the borrower’s lawyer indicated that payment of the balance would still take some time as the Tarion Warranty had 1.5 years remaining and the technical audit is outstanding. Sorrenti indicates that it is therefore not in a position to provide any additional information about the timing of additional principal or interest payments associated with the loan. A copy of the memorandum is attached hereto as **Appendix “4”**.
30. As discussed in paragraph 33 below, on September 26, 2019, representatives of FAAN Mortgage attended a meeting at Sorrenti’s office with the LSO, its legal counsel and Mr. Sorrenti to gain a better understanding of the various projects that are currently being administered by Sorrenti. In that meeting Mr. Sorrenti advised that due to, among others, issues he was facing in locating addresses for a significant number of investors, he was still in the process of distributing the remaining Bayview Project funds. At that meeting, Mr. Sorrenti was unable to confirm the quantum of the Bayview Projects Funds remaining in Sorrenti’s possession.

## INVESTOR COMPLAINTS RE: SORRENTI ADMINISTERED PROJECTS

31. The BDMC Proceeding has been the subject of numerous court hearings and has received significant media coverage as have issues regarding Fortress generally. As a result, the BDMC Trustee has received numerous inquiries from investors in Fortress projects, including the Sorrenti Projects. It has become clear to the BDMC Trustee that there is confusion among the Fortress syndicated mortgage lenders as to whether or not their investment is covered by the BDMC Proceeding. Part of that confusion can be explained by the fact that many investors made loans with respect to both BDMC projects and Sorrenti Projects. As a result, despite the Sorrenti Projects not being part of its mandate, the BDMC Trustee is frequently contacted by investors on projects for which Sorrenti is the administrator, including some of the investors in the Bayview Project described above.
32. By way of example, on August 16, 2019, the Trustee received an email from an investor attaching an email exchange with Sorrenti in relation to an investment. In response to the investor's email requesting an update about the Sutton Drive project, Sorrenti responded that his office "simply does not have the capacity to deal with the volume of calls and drop ins we receive from investors in many Fortress syndicated mortgages each and every day...Obviously, this is an untenable situation to which no one has been able to provide a solution". A copy of the email exchange (redacted to protect investor privacy) is attached hereto as **Appendix "5"**.

## SORRENTI PROJECTS

33. Based on information in its possession, information obtained from publicly available sources, and a meeting amongst representatives of the LSO, LSO legal counsel, FAAN Mortgage and Mr. Sorrenti on September 26, 2019, FAAN Mortgage has prepared a list of the current underlying projects that were funded by SMLs and are currently administered by Sorrenti, which is set out below. FAAN Mortgage

notes that the list may not be complete and only lists those SMLs that appear to be active; however, it has prepared the list to assist the investors in identifying the SMLs currently administered by Sorrenti.

	<b>Project Name(s)</b>	<b>Street Address of Lands</b>	<b>Borrower Name(s)</b>
1.	Gotham	324, 326, 328 Gloucester St & 226 Lyon St., Ottawa, Ontario	Bel Ottawa Inc.
2.	Harmony Village Shepard	3260 Sheppard Avenue East, Scarborough, Ontario	Harmony Village-Sheppard Inc.
3.	Mapleview Commons	9891 & 9869 Keele St. Vaughan, Ontario	Empire Pace (Maple) Ltd.
4.	Progress Manors	1088 Progress Avenue, Scarborough, Ontario	Empire Pace (1088) Progress Ltd.
5.	Residences of Bayview/Lotus	5,7,9,11,15 Kenaston & 577 Sheppard Avenue East, Toronto Ontario	Pine Ridge Building Corp.
6.	Soba	203 Catherine Street Ottawa, Ontario	Soba Ottawa Inc.
7.	Solotex/Victoria Park Place	1650-1682 Victoria Park Avenue, Toronto, Ontario	1682 Victoria Park Avenue Inc.
8.	The Sutton/The Link	5236,5226,5218,5210 Dundas Street, 2500 Burloak Drive, Burlington, Ontario	ADI Development Sutton Inc., ADI Developments (LINK) Inc.
9.	Wismer/Eldin	Block 27, Plan 65M 4071 Markham, Ontario	1839314 Ontario Inc. Name Changed to: Pace Developments (The Mark) Inc. Great Eldin Investments
10.	Unionvillas/Uptowns of Unionville	4116, 4128, & 4142 Highway 7 East, on the north side of Highway 7, east of Birchmount Road, Ontario	Sunrise Acquisitions (Hwy 7) Inc.

34. While FAAN Mortgage has some knowledge with respect to the status of these projects based on the meeting with Mr. Sorrenti and from other sources, it does not have sufficient details to comment on their viability or specific details of their status at this time.

## CONCLUSION

35. FAAN Mortgage understands that the Law Society of Ontario brings this Application to appoint FAAN Mortgage as the trustee for the purposes of administering the Sorrenti Projects. FAAN Mortgage is a licensed mortgage administrator pursuant to the *Mortgage Brokerages, Lenders, and Administrators Act, 2006*. Furthermore, FAAN Mortgage believes that the knowledge it has gained and the processes it has

implemented in its capacity as the BDMC Trustee will assist in making this proceeding streamlined and efficient. FAAN Mortgage therefore has consented to acting as the trustee in this capacity and has reviewed the Law Society's proposed Order in this Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29th day of September, 2019.

*FAAN Mortgage Administrators Inc.*

**FAAN MORTGAGE ADMINISTRATORS INC.,  
SOLEY IN ITS CAPACITY AS PROPOSED TRUSTEE  
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**

# **Appendix “1”**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 20<sup>TH</sup> DAY  
JUSTICE HAINEY ) OF APRIL, 2018

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -



**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**APPOINTMENT ORDER**

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

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

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

### **SERVICE**

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

### **APPOINTMENT**

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

### **TRUSTEE'S POWERS**

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

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

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

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

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

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

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

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

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE**

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

Canadian Development Capital & Mortgage Services  
Inc. ("CDCM")

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

GH

or  
CDCM

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE TRUSTEE**

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

### **NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY**

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

### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

### **NO INTERFERENCE WITH THE TRUSTEE**

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



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

#### **CONTINUATION OF SERVICES**

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

#### **TRUSTEE TO HOLD FUNDS**

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

## **EMPLOYEES**

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

## **PIPEDA**

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

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

#### **LIMITATION ON THE TRUSTEE'S LIABILITY**

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

#### **TRUSTEE'S ACCOUNTS**

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

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

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

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

#### **FUNDING OF THE APPOINTMENT**

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

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

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

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

#### **SERVICE AND NOTICE**

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

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

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

#### **GENERAL**

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

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

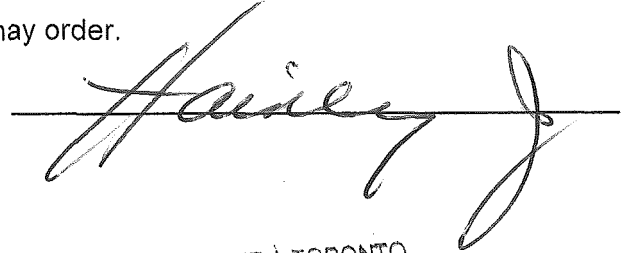
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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

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

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



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

APR 20 2018

PER / PAR:



**SCHEDULE "A"**

**TRUSTEE CERTIFICATE**

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

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

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

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

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

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

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

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

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

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

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



THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**APPOINTMENT ORDER**

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*Lawyers for The Superintendent of Financial Services*

## **Appendix “2”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

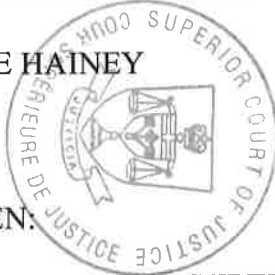
THE HONOURABLE MR. )

THURSDAY, THE 23<sup>RD</sup>

JUSTICE HAINES )

DAY OF MAY, 2019

BETWEEN:



**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**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 Transaction Process (as defined herein), (ii) directing the Trustee to make a further distribution of Realized Property in respect of the Victoria Medical SML Loans to applicable Investors, (iii) approving the execution of the Direction to Pay in respect of the Bayview Project by the Trustee, (iv) compelling the production of certain documents, records and information from Derek Sorrenti and Sorrenti Law Professional Corporation, (v) compelling the production of certain documents, records and information from Halo Townhomes Inc. (the “**Treehouse Borrower**”) and Symgine (Lake East) Inc. (the “**Lake & East Borrower**”) and (vi) approving the Fourth Report, the Fifth Report, the Sixth Report and the Seventh Report (as defined herein) (collectively, the “**Trustee’s Reports**”), the Trustee’s activities as set out in the Trustee’s Reports and the fees and disbursements of the Trustee and its legal counsel for the period from October 1, 2018, to March 31, 2019, was heard this day at 330 University Avenue, Toronto, Ontario;

**ON READING** the Seventh Report of the Trustee dated May 10, 2019 (the “**Seventh Report**”), the affidavit of Naveed Manzoor sworn May 10, 2019 and attached as Appendix “15” to the Seventh Report (the “**Manzoor Affidavit**”) and the affidavit of Michael De Lellis sworn May 10, 2019 and attached as Appendix “16” to the Seventh Report (the “**De Lellis Affidavit**”) and, collectively with the Manzoor Affidavit, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Justine Erickson sworn May 10, 2019, filed;

#### **SERVICE AND INTERPRETATION**

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

### **TRUSTEE TRANSACTION PROCESS**

3. **THIS COURT ORDERS** that the Trustee Transaction Process attached as Schedule “A” hereto, be and is hereby approved and the Trustee is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the Trustee Transaction Process.

### **VICTORIA MEDICAL REALIZED PROPERTY**

4. **THIS COURT HEREBY AUTHORIZES AND DIRECTS** the Trustee to distribute:

(a) \$372,650 to the Original Victoria Medical Investors on a *pro rata* basis, and

(b) \$301,086 to the Hybrid Victoria Medical Investors on a *pro rata* basis,

from the amounts held by the Trustee as Realized Property in respect of the Victoria Medical SML Loans.

### **DIRECTION TO PAY**

5. **THIS COURT ORDERS** that the Trustee be and is hereby authorized to execute the Direction to Pay upon receipt of its fees and expenses incurred in connection with matters relating to the Sorrenti Affidavit, the Direction to Pay and obtaining this Order, in an amount not to exceed \$25,000.

### **PRODUCTION OF DOCUMENTS, RECORDS & INFORMATION**

6. **THIS COURT ORDERS** that, in accordance with paragraphs 4, 5, 6 and 7 of the Appointment Order, Derek Sorrenti and the Sorrenti Law Professional Corporation, and each of their respective successors, assigns, agents, trustees, executors, guardians and heirs (collectively, the “**Sorrenti Parties**”), shall (a) preserve any and all documents, records and information of any kind related to the Transferred Projects that are or ought to be in such person’s possession or control (whether in paper, electronic or other form), (b) take all reasonable steps to regain possession or control of any such documents, records or information that was but is no longer in such person’s possession or control, including by providing the Trustee with the names and last known contact information of any person who may have such documents, records or information

in his, her or its possession or control, (c) forthwith provide any and all such documents, records and information to the Trustee or its legal counsel, and (d) otherwise comply with the Appointment Order.

7. **THIS COURT ORDERS** that Derek Sorrenti and the Sorrenti Law Professional Corporation shall provide the Trustee with a detailed list of all documents, records and information of any kind related to the Transferred Projects and with a plan and proposed schedule for the delivery of such documents, records and information to the Trustee as soon as reasonably practicable, and in any event within 30 days of the date of this Order, and the Trustee shall have the right to approve or negotiate the proposed timetable and, following the Trustee's approval thereof, the Sorrenti Parties shall deliver such documents, records and information to the Trustee no later than the date set out in the approved schedule or such later date as the Trustee may agree in writing.

8. **THIS COURT ORDERS** that the Treehouse Borrower and the Lake & East Borrower, and each of their respective successors, assigns, agents, trustees, executors, guardians and heirs (each collectively, the "**Treehouse Borrower Parties**" and the "**Lake & East Borrower Parties**", respectively), shall (a) comply with their respective reporting obligations contained in the Amending and Extension Agreement (including Sections 2.6 and 2.7 thereof), and in the Symgine Reporting Agreement (including Article 2 thereof), as applicable, and (b) otherwise comply with the Appointment Order, including paragraphs 4, 5, 6 and 7 thereof.

9. **THIS COURT ORDERS** that the Treehouse Borrower Parties and the Lake & East Borrower Parties shall provide the Trustee with all documents, records and information necessary to satisfy the reporting obligations required by the Amending and Extension Agreement and the Symgine Reporting Agreement, as applicable, and the Treehouse Borrower and the Lake & East Borrower shall provide the Trustee with a plan and proposed schedule for the delivery of such documents, records and information to the Trustee as soon as reasonably practicable, and in any event within 15 days of the date of this Order, and the Trustee shall have the right to approve or negotiate the proposed timetable and, following the Trustee's approval thereof, the Treehouse Borrower Parties and the Lake & East Borrower Parties shall each deliver such documents, records and information to the Trustee no later than the date set out in the approved schedule or such later

date as the Trustee may agree in writing.

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

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

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

(a) the following fees and disbursements of the Trustee for the period from October 1, 2018 to March 31, 2019 are approved: fees of \$866,270.35 (plus applicable taxes of \$112,615.15 for an aggregate amount of \$978,885.50), and

(b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from October 1, 2018 to March 31, 2019 are approved: fees of \$1,540,161.50 and disbursements of \$20,019.68 (plus applicable taxes of \$202,571.06 for an aggregate amount of \$1,762,752.24).

### **SEALING**

12. **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**

13. **THIS COURT ORDERS** that the Trustee and its affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing any of their duties in carrying out the provisions of this Order, including in connection with the Trustee Transaction

Process, the Trustee's execution of the Direction to Pay and the distribution of any funds in respect of the Bayview Project, except to the extent that such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Trustee, as determined by this Court.

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

15. **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.

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



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

MAY 23 2019

PER / PAR:   
Stacey Hutchison  
Registrar Superior Court of Justice



## SCHEDULE "A"

### Trustee Transaction Process

This Trustee Transaction Process has been developed by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC") to summarize the process and key materials that will be required by the Trustee in order to approve any sale, financing, refinancing, payout or other restructuring offer affecting any real estate development project (a "Project") where: (i) BDMC holds a mortgage on title to the relevant property comprising the Project; (ii) such BDMC mortgage would not be repaid in full as part of the proposed transaction; and (iii) Fortress, its principals or any other related entity of Fortress (such entity, a "Fortress Party") is anticipated to, directly or indirectly, receive or otherwise control, consideration of any kind (including without limitation fees, proceeds or new security) in connection with such proposed transaction (each, a "Proposed Transaction").

The Trustee will review any Proposed Transaction presented by any stakeholder on any Project. The Trustee will seek detailed information regarding, without limitation, the sale or financing process conducted, the number of proposals received, the status of project development, the project budget and estimated remaining cost to complete, the proposed distribution of proceeds and consideration, the reason for the Proposed Transaction and the viability of any alternative solutions. The Trustee shall be entitled to also seek any information that it deems appropriate from third parties in order to develop a comprehensive analysis regarding the impact of the Proposed Transaction on the relevant BDMC investors. The borrowers, the relevant Fortress Party or any other parties to the Proposed Transaction, shall be required to provide documentation reasonably requested by the Trustee in connection with its review of the Proposed Transaction on a timely basis, including an explanation as to why any subordinate interest (equity or otherwise) is receiving compensation in a situation where the BDMC investors are not being paid in full.

If the Trustee determines, following its review of the Proposed Transaction, that it is appropriate for BDMC investors to consider the Proposed Transaction, the Trustee will seek investor consent or feedback in a manner determined by the Trustee in its sole discretion, including requiring investors to have a minimum of 10 days to respond to a request for consent or feedback.

Following receipt and consideration of investor feedback, the Trustee shall determine, in its sole discretion, whether it believes that the Proposed Transaction is in the best interests of the relevant investors on the Project and should be pursued.

If the Trustee chooses to proceed with a Proposed Transaction that involves: (i) fees of any kind that exceed 5% of the purchase price, the amount of new or replacement financing, or the settlement amount, as the case may be (such amount, the "Transaction Price") being paid, directly or indirectly, to a Fortress Party, or (ii) any new security being granted, directly or indirectly, to a Fortress Party, the Trustee shall seek Court approval of such Proposed Transaction prior to entering into such Proposed Transaction on behalf of BDMC. Prior to any motion for approval of a Proposed Transaction:

- i. the Trustee shall prepare a report to the Court describing its recommendation and any remaining concerns the Trustee or the investors may have with respect to the Proposed Transaction; and
- ii. the relevant Fortress Party shall be required to file appropriate evidence with the Court justifying the consideration being proposed to be provided to the Fortress Party in connection with the Proposed Transaction.

If Court approval is obtained, the Trustee will proceed with the Proposed Transaction on behalf of the BDMC investors.

If the Trustee chooses to proceed with a Proposed Transaction that does not involve fees exceeding 5% of the Transaction Price being paid to a Fortress Party nor security being granted to a Fortress Party, the Trustee shall be entitled, but not required, to seek Court approval prior to entering into the Proposed Transaction on behalf of BDMC.

**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

**OMNIBUS ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

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**Michael De Lellis (LSO# 48038U)**

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

## **Appendix “3”**

**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**

**SEVENTH REPORT OF THE TRUSTEE  
(COMPREHENSIVE UPDATE)**

**MAY 10, 2019**



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

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**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**

**SEVENTH REPORT OF THE TRUSTEE  
(COMPREHENSIVE UPDATE)**

**May 10, 2019**

**INTRODUCTION**

1. On April 20, 2018, pursuant to an order (“**Appointment Order**”) of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (“**Court**”), FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”) was appointed as trustee (“**Trustee**”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under syndicated mortgage loans (“**Investors**”), brokers, or borrowers, in each case whether or not such property was or is held in trust or was or is required to be held in trust (collectively, the “**Property**”). The Appointment Order was issued following an application made by the Superintendent of Financial Services (“**Superintendent**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), as amended, and section



101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the Appointment Order is attached as **Appendix “1”**.

2. On June 19, 2018, the Trustee submitted its first report in these proceedings (“**First Report**”). The First Report provided a comprehensive update on the Trustee’s activities during the first two months of these proceedings, including additional background information regarding BDMC and its business and updated information on the status of the real estate development projects in which the Investors hold syndicated mortgage loans.
3. On October 23, 2018, the Trustee submitted its second report in these proceedings (“**Second Report**”). The Second Report provided a further comprehensive update on the Trustee’s activities undertaken since the date of the First Report, including a detailed description of the in-depth analysis the Trustee is conducting with respect to each real estate development project and a status update for each of those projects. The Second Report also included information in support of the Realized Property Order (described below). Capitalized terms not otherwise defined in this Report have the meanings ascribed to them in the Second Report, or other previous reports of the Trustee.
4. On October 30, 2018, this Court issued an Order (“**Realized Property Order**”) that, among other things,
  - (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness administered by BDMC on behalf of Investors (including funds originally obtained with respect to the Victoria Medical SML Loans), whether or not (i) secured by any Real Property Charges in the name of BDMC or an RRSP Trustee, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (II) all interest paid or payable to BDMC or the Trustee at the time such repayment (in whole or in part) of principal is made (collectively, “**Realized Property**”);
  - (b) required the Trustee to retain 30% of all Realized Property; and
  - (c) authorized the Trustee to use the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the

Trustee, in its sole discretion, considered necessary or desirable for the administration of the estate, including in respect of those matters set out in paragraph 17 of the Order made by the Court in these proceedings on June 26, 2018 (“**Interim Stabilization Order**”).

A copy of the Interim Stabilization Order dated June 26, 2018 is attached as **Appendix “2”**. A copy of the Realized Property Order dated October 30, 2018 is attached as **Appendix “3”**.

5. On November 19, 2018, the Trustee submitted its third report in these proceedings (“**Third Report**”). The Third Report provided the Court and the stakeholders with the Trustee’s recommendation in favor of a settlement agreement reached with Braestone Development Corporation (“**Braestone Borrower**”) relating to the real estate development project in Moonstone, Ontario that provided for an early payout of the Investors under the loan agreement dated December 1, 2012 between the Braestone Borrower and BDMC (“**Braestone Settlement Agreement**”). The Third Report also included information in support of an Order of the Court (“**Braestone Settlement Approval Order**”) approving, among other things: (i) the Braestone Settlement Agreement and the transactions contemplated thereby; (ii) an amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 80% of all Realized Property to Investors following receipt of the payment from the Braestone Borrower; and (iii) the approval of the Trustee’s and its counsel’s activities to the date of the Third Report and fees up to and including September 30, 2018. The Braestone Settlement Approval Order was issued on November 28, 2018. A copy of the Braestone Settlement Approval Order is attached as **Appendix “4”**.
6. On December 13, 2018, the Trustee submitted its fourth report in these proceedings (“**Fourth Report**”). The Fourth Report provided the Court and the stakeholders with the Trustee’s recommendation in favor of a settlement agreement reached with The Harlowe Inc. (“**Harlowe Borrower**”) relating to the real estate development project located at Bathurst and Richmond Street in Toronto, Ontario (“**Harlowe Project**”) that provided for a payout of the Investors under the loan agreement dated June 10, 2013 between the Harlowe Borrower and BDMC (“**Harlowe Settlement Agreement**”). The Fourth Report also included information in support of an Order of the Court (“**Harlowe Settlement Approval Order**”) approving, among other things: (i) the Harlowe Settlement Agreement

and the transactions contemplated thereby, and (ii) a further amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors following receipt of the payment from the Harlowe Borrower. The Harlowe Settlement Approval Order was issued on December 20, 2018. A copy of the Harlowe Settlement Approval Order is attached as **Appendix “5”**.

7. On January 23, 2019, the Trustee submitted its fifth report in these proceedings (“**Fifth Report**”). The Fifth Report provided the Court and the stakeholders with the Trustee’s recommendation in favour of a settlement agreement reached with Kingridge Development Corporation (“**Speers Borrower**”) relating to the Speers Borrower’s real estate development project located at 235 Speers Road in Oakville, Ontario (“**Speers Project**”) that provided for a payout of the Investors under the loan agreement dated September 18, 2013, between the Speers Borrower and BDMC (“**Speers Settlement Agreement**”). The Order approving the Speers Settlement Agreement was issued on January 29, 2019.
8. On April 18, 2019, the Trustee submitted its sixth report in these proceedings (“**Sixth Report**”). The Sixth Report provided the Court and the stakeholders with the Trustee’s recommendation in favour of a settlement agreement reached with L Richmond Corp. (“**James Borrower**”) relating to the property located at 452-458 Richmond Street W, Toronto (“**James Project**”) that provided for a payout of the Investors under the loan agreement dated June 1, 2016, between the James Borrower and BDMC (“**James Settlement Agreement**”). The Order approving the James Settlement Agreement was issued on April 26, 2019.
9. Materials filed with the Court with respect to these proceedings, including the Trustee’s reports to Court and the various Court orders issued in these proceedings, are accessible on the Trustee’s website at: [www.faanmortgageadmin.com](http://www.faanmortgageadmin.com) (“**Trustee’s Website**”). The Trustee intends to maintain the Trustee’s Website for the currency of these proceedings and will be updating it as appropriate.

#### **PURPOSE OF THE SEVENTH REPORT**

10. The Trustee is required under the Realized Property Order (as amended) to report back to the Court by no later than May 10, 2019 with a further comprehensive update regarding

these proceedings. The purpose of this Seventh Report of the Trustee ("**Seventh Report**") is to provide the Court and stakeholders a comprehensive update with respect to the various projects in these proceedings, as well as an update on the Trustee's activities undertaken since the filing of the Second Report.

11. In addition to the project updates provided to the Court and other stakeholders herein, this Seventh Report is being delivered in support of the Trustee's request for the following:

(a) an Order ("**Omnibus Order**"), among other things:

- i. approving the Trustee Transaction Process, as more particularly described below;
- ii. directing the Trustee to distribute \$372,650 to the Original Victoria Medical Investors and \$301,086 to the Hybrid Victoria Medical Investors (each as defined below) to equalize payments previously made to Victoria Medical Investors, as more particularly described below;
- iii. approving the execution of the Bayview Direction (as defined below) by the Trustee;
- iv. compelling production of documents, records and information related to the Transferred Projects by Sorrenti (each as defined below) to the Trustee or its legal counsel and to otherwise comply with the terms of the Appointment Order;
- v. compelling production of information by the Treehouse Borrower and the Lake and East Borrower, respectively, sufficient to satisfy their respective reporting obligations as contained in the Amending and Extension Agreement executed in connection with the Treehouse Project and the Reporting Agreement executed in connection with the Lake and East Project (each as defined and described below) to the Trustee or its legal counsel and to otherwise comply with the terms of the Appointment Order; and
- vi. approving the Fourth Report, the Fifth Report, the Sixth Report and this Seventh Report, as well as the Trustee's activities described

therein, and the Trustee's fees and disbursements, including the fees and disbursements of its counsel, for the period from October 1, 2018 to March 31, 2019, as more fully described herein and in the fee affidavits attached hereto; and

(b) an Order ("**LRO Direction Order**") directing the applicable Land Registry Office to, upon the filing by the Trustee of one or more certificate(s) with the Court, expunge and delete the Appointment Order from title to the property(ies) identified in such certificate(s).

12. The Trustee intends to report back to the Court on or about October 31, 2019 with a further comprehensive update regarding these proceedings. That comprehensive report will give the Court, Investors, borrowers, brokers and other stakeholders further information regarding BDMC and its business and affairs and information regarding the Trustee's activities during that period.
13. The Trustee anticipates that it will likely be necessary to attend before the Court prior to October 31, 2019 to seek relief or advice and directions from the Court regarding general file administration matters or project specific issues, which may include the approval of settlement and repayment arrangements for other real estate development projects.

## **SCOPE AND TERMS OF REFERENCE**

14. In preparing this Seventh Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), the mortgage brokerage who assumed the mortgage brokerage duties of BDMC, and certain other individual borrowers who have borrowed funds from BDMC under various syndicated mortgage loans administered by BDMC. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the projects and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM, Fortress and applicable borrowers (including, among other things, unaudited internal information, appraisals and financial projections), the Trustee's review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or

International Financial Reporting Standards (“IFRS”). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.

15. Some of the information used and relied upon in preparing this Seventh Report consists of financial projections and other information received from various third parties, including appraisals and project cost information. The Trustee cautions that the projections and other information used and relied upon are generally based upon assumptions and estimates about future events and/or market conditions that are not ascertainable or that could change. As such, the information presented in this Seventh Report may vary from the projections and information used to prepare this Seventh Report and the actual results may differ both from the results projected therein and herein. Even if the assumptions relied upon therein or herein materialize, the variations from the projections could be significant. The Trustee’s review of the future oriented information used to prepare this Seventh Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
16. This Seventh Report has been prepared for the use of this Court and BDMC’s stakeholders as general information relating to BDMC and to assist the Court with respect to the Trustee’s request for the proposed Orders. Accordingly, the reader is cautioned that this Seventh Report may not be appropriate for any other purpose.
17. All references to dollars are in Canadian currency unless otherwise noted.

## **GENERAL UPDATE**

18. Over the past six months, the Trustee has been very active with respect to the BDMC projects and in seeking to protect the Investors’ interests with respect to their investments. The Trustee continues to seek to maximize recoveries for Investors, whenever possible, and has completed payout and other transactions to date in the cumulative amount of approximately \$35.9 million<sup>1</sup>. The Trustee also seeks to improve Investor recoveries by recovering professional fee reimbursements from borrowers whenever possible. To date, the Trustee has recovered approximately \$725,000 on account of professional fee

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<sup>1</sup> This amount does not include any future amounts that may become payable to BDMC Investors on the CHAT Project, as more particularly described below.

reimbursements. Further, the Trustee continues to monitor the development status of each project, to negotiate postponements in connection with new or replacement funding arrangements to allow the ongoing development of the projects where necessary, to deal with project-specific transactions presented to the Trustee, to proactively take steps, where appropriate, to seek or improve recoveries for Investors, and to respond to any enforcement actions as they arise.

19. From the date of its appointment, the Trustee has prioritized the dissemination of information to Investors. As described in greater detail below, the Trustee continues to provide numerous project-specific notices, meet and/or communicate with both individual Investors and groups of Investors and consider Investor feedback in the discharge of its mandate.
20. In particular, the Trustee has had several in-person meetings with groups of Investors who have organized themselves for such purpose. The Trustee believes that these meetings have been beneficial to the conduct of these proceedings and the Trustee has incorporated Investor feedback received at these meetings in its activities.
21. To assist Investors in understanding the status of their particular syndicated mortgage loan investments administered by BDMC, the Trustee has created a chart setting out specific details regarding the capital structure and development progress for each ongoing project ("**Project Analysis Summary**"). In response to Investor feedback, the Trustee has posted the Project Analysis Summary in a prominent location on the Trustee's Website to facilitate ease of reference. The updated Project Analysis Summary as of May 3, 2019 is attached hereto as **Appendix "6"**. The Project Analysis Summary contains particularized information with respect to each project, though the Trustee cautions that the Project Analysis Summary is only intended to summarize the results of certain aspects of the Trustee's analysis to the date of this Seventh Report. The Trustee continues to refine its analysis on each project as well as to respond to new developments and information. New developments and new information can at times have a significant impact on the Trustee's review for that project and its related recommendations. Further, certain confidential information has been excluded from the Project Analysis Summary.
22. As reported previously by the Trustee, it is anticipated that it will take several years to complete the administration of many of the projects due to the early development status

of several of those projects and the complex capital structures involved. Accordingly, the Trustee will continue to monitor the development of the projects and update its analysis and recommendations over time to reflect material developments over the life of the projects. Further recommendations and long term strategies for projects are being developed and deployed on a case-by-case basis, including strategies to enhance opportunities for repayment or improve recoveries in circumstances where the long term viability of the project or the Investors' economic recovery is uncertain.

23. The Trustee recognizes the hardship experienced by the Investors in connection with their investments, including the impact of delays in the completion of projects, the repayments by the borrowers of the BDMC loans and the distributions of payments received by BDMC to Investors. Accordingly, the Trustee has, over time, reduced the portion of the Realized Property that it withholds to discharge the Required Trustee Activities<sup>2</sup> from 50% to 15%. As detailed herein, this hardship continues to inform the Trustee's evaluation of potential monetization transactions for the benefit of Investors.
24. As set out in the Second Report, the Trustee continues to believe that this Court-supervised process provides Investors with enhanced protections and better opportunities to obtain recoveries in light of the challenging circumstances surrounding Fortress and BDMC.
25. Updates and information specific to certain projects that have been the subject of significant developments since delivery of the Second Report are described below.

#### **SETTLEMENT AGREEMENTS REACHED ON VARIOUS PROJECTS**

26. Since the date of the Second Report, the Trustee has spent a significant amount of time engaging with certain borrowers and with Fortress on behalf of certain borrowers regarding potential payouts of BDMC loans, in most cases, prior to completion of the respective projects.
27. Given the circumstances surrounding Fortress (including heightened negative media attention) and the resulting changes in the marketplace, the Trustee has been advised by borrowers and other parties on numerous projects that senior lenders are, in many cases,

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<sup>2</sup> "Required Trustee Activities" are defined in paragraph 21 of the Second Report.



no longer willing to advance funds to the respective projects while a BDMC charge remains registered on title. Further, recoveries under certain of the projects are uncertain and/or would not otherwise be realized for several years. As a result, the Trustee has actively engaged with Fortress and the respective borrowers with respect to payout opportunities that provide near term recoveries and certainty to Investors.

28. Four settlement agreements have been negotiated by the Trustee and approved by the Court to date: the Braestone Settlement Agreement, the Harlowe Settlement Agreement, the Speers Settlement Agreement, and the James Settlement Agreement. In certain cases, the negotiation of the settlement agreements has resulted in payouts in excess of 100% of the principal obligations owing to the Investors entitled to such funds (where previously paid interest is taken into account). With respect to the James Settlement Agreement, the Trustee successfully negotiated an increased payout to Investors following receipt of feedback from Investors on the original settlement offer.

29. A table summarizing the payouts follows:

<b>Project</b>	<b>Payout Amount (\$)</b>	<b>Overall Recovery (% of loan principal)<sup>3</sup></b>	<b>Approval Order Date</b>
Braestone	10,000,000	115	November 28, 2018
Harlowe	15,562,896	115	December 20, 2018
Speers	1,950,000	114	January 29, 2019
James	4,842,541	85	April 26, 2019

30. The Trustee continues to advance payout discussions related to certain other projects. Should those negotiations sufficiently advance to the Trustee's satisfaction, the proposed settlement would be presented to Investors for their feedback.

31. In accordance with previous Orders of the Court, with the exception of the James Project, the Trustee has distributed 85% of the proceeds from these settlement agreements to Investors on these projects. The Trustee is in the process of closing the transaction set out in the James Settlement Agreement and anticipates that those proceeds will be distributed in the near term.

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<sup>3</sup> This calculation includes previously paid interest as repayment of principal, where applicable.

32. Following the date of the Sixth Report and the James Settlement Approval Order, the Trustee was contacted by counsel to KingSett Mortgage Corporation (“**KingSett**”) regarding certain information provided by the James Borrower to the Trustee and described in the Sixth Report. When the proposed James settlement was first offered by the James Borrower, the James Borrower informed the Trustee that KingSett was not willing to renew its existing first priority loan and that the James Borrower had found a replacement lender that would only provide a partial payout to the James Investors in exchange for a full and complete discharge of the BDMC mortgage on title. KingSett has advised the Trustee that the statement made by the James Borrower to the Trustee about KingSett is inaccurate, and that it had proactively granted extensions of its existing priority loan to the James Borrower including an extension to August 1, 2019 and had discussed with the James Borrower a proposal for construction financing to help move the project forward but the James Borrower advised KingSett that it had accepted a more suitable proposal. After finding out that the James Borrower went forward with a different construction financing proposal, KingSett advised that it also provided a letter of intent to bridge the financing with the new lender.
33. The Trustee followed up with the James Borrower and Fortress with respect to the information concerning KingSett that was provided to the Trustee. The James Borrower advised that, solely with respect to the renewal of its then-existing first priority loan, KingSett was not willing to renew on the same terms and conditions. The Trustee was further advised from KingSett that a renewal was not available on the same terms and conditions because circumstances had changed.
34. Accordingly, as stated above, the James Borrower chose not to move forward with the KingSett proposal. Irrespective of any factual dispute between KingSett and the James Borrower, the Trustee notes that the status of the KingSett mortgage was one of several factors that were considered by the Trustee and presented to the Investors with respect to the James settlement.
35. In order to give clarity on the process to Investors and borrowers regarding repayment opportunities, the Trustee intends to continue to follow a similar approval process as has been undertaken to date. Additional details regarding the completed settlement transactions and the Trustee’s activities regarding same are provided in the above referenced reports to Court.

## **TRANSACTIONS INVOLVING BDMC MORTGAGES ON VARIOUS PROJECTS**

### **Financing and Refinancing Arrangements**

36. Further to the updates provided in the Second Report, the Trustee continues to be asked to execute postponements of BDMC mortgages to other financing sources. In circumstances where a borrower requires additional funding to continue its development of a real estate development project, or where the borrower is seeking to refinance an existing loan because that senior loan has either matured, is nearing maturity or is otherwise in default, the new lender (or replacement lender, as appropriate) generally requires that any new financing be repaid in priority to any BDMC mortgage debt. Therefore, in order to finalize the terms of such new financing arrangement, the borrowers require that the Trustee agree to postpone the BDMC mortgage on title to the new lender's additional charge. Accordingly, the Trustee reviews all postponement requests carefully to ensure that the provision of additional financing in priority to the BDMC mortgages and/or the terms of any such postponement are in the best interests of BDMC Investors.
37. In response to postponement requests, the Trustee, on behalf of BDMC and its Investors, requests detailed information regarding the applicable project and the proposed use of funds. In certain instances, the Trustee has concluded based on its review that the new financing arrangement is in the best interests of the Investors in the circumstances, because such action increases the likelihood of completion of the project or stabilizes the asset where it is anticipated to result in a greater recovery to Investors than may otherwise be achieved.
38. In other circumstances, the Trustee is limited in its ability to decline postponement requests due to restrictive terms contained in the loan agreements and/or standstill agreements previously entered into by BDMC with senior lenders requiring BDMC to enter into further postponements without regard to the impact on BDMC Investors. In all cases, the Trustee has endeavoured to negotiate the least restrictive postponements possible in the circumstances and to recover its costs in connection therewith. Since the Second Report, as set out below, the Trustee has succeeded in recovering some of its and its counsel's costs in connection with the consideration, negotiation and execution of postponements.

39. The Trustee has also communicated with Investors and Representative Counsel regarding postponements, including seeking prior Investor consent where the Trustee deems appropriate and circumstances permit. Below is a summary of certain material postponements that have been entered into since the date of the Second Report.
40. King Square: a three-storey condominium shopping mall development in Markham, Ontario ("**King Square Project**"), with approximately \$8.6 million of third ranking syndicated mortgage loan debt administered by BDMC. Construction is now largely complete, and the mall is open to the public. As at February 26, 2019, the borrower advised that 211 commercial units have been sold, 20 are reported as leased and 185 units are remaining in inventory. At that time, a total of 8 commercial units were open for business and renovation work was underway on 16 units. The borrower is actively marketing the remaining units for sale or lease and is in the process of registering the condominium.
41. The King Square borrower sought a postponement for an additional \$7.5 million of first ranking priority debt from Firm Capital Mortgage Fund Inc. ("**Firm**"), the current senior lender, to fund additional costs required to allow the borrower to complete the project. At the time of the request, Firm had a first ranking charge registered on the property for \$74.7 million. In addition to the Firm debt, there is also a charge registered in favour of Aviva Insurance Company securing the sale deposits received and used by the borrower in the construction of the King Square Project, totaling approximately \$20.6 million.
42. The Trustee was advised, and the Investors were notified, that the borrower forecasts the repayment of the BDMC debt during the summer of 2019, likely by way of an inventory loan. The Trustee also notified the Investors that there is a risk that the King Square Project will not generate enough proceeds from the sale or lease of the remaining inventory or that the borrower may encounter difficulty securing an inventory loan to repay the Investors in full at such future date after the repayment of the priority mortgagees. Furthermore, the timeline to repay the Investors may be further delayed if the sale or lease of the remaining inventory units takes longer than currently anticipated or if it takes longer than anticipated to secure an inventory loan.
43. The Trustee determined that the postponement request was in the best interests of BDMC Investors, but sought the consent of the King Square Investors prior to agreeing to the

postponement as the BDMC King Square loan had matured and the maximum amount of the first ranking construction loans permitted under the BDMC loan agreement itself had already been exceeded (although the Trustee notes that certain other documents executed by Investors did provide for a higher maximum priority construction financing threshold). The vast majority of the King Square Investors that responded to the request consented to an extension of the term of the loan to August 31, 2019, with the option of one further six-month extension to be granted at the Trustee's discretion, and to an increase in the maximum priority financing amount sufficient to cover all expected costs to complete the King Square Project. The Trustee negotiated and entered into an Amending and Extension Agreement that reflected these terms and received full payment of its expenses in connection with same.

44. Old Market Lane Project: a real estate development project in Woodbridge, Ontario ("**OML Project**"), with approximately \$3.8 million of second ranking syndicated mortgage loan debt and two additional subordinate syndicated mortgage loans that rank *pari passu* in third position on the property, in the amounts of approximately \$3.1 million and \$6.4 million, respectively, each administered by BDMC. As of the date of the Second Report, the OML Project was subject to a notice of sale under a mortgage proceeding ("**Notice of Sale**") commenced by JYR Real Capital Mortgage Investment Corporation ("**JYR**") in respect of its debt in excess of \$695,000, and a notice of intention to enforce security (a "**244 Notice**") under the *Bankruptcy and Insolvency Act* ("**BIA**") issued by Firm, the first ranking mortgagee, in respect of senior financing in excess of \$3.5 million. On or about December 21, 2018, the OML Project was refinanced and JYR and Firm were repaid in full. The Trustee agreed to subordinate BDMC's mortgage to the new first priority lender in the amount of \$5.25 million in accordance with the BDMC loan documents and received full payment of its expenses in connection with responding to the enforcement actions and postponing BDMC's mortgage.
45. The Trustee's ability to execute the postponement was particularly challenging as one of the BDMC charges was held in the name of Sanjay Pahuja (the former administrator), in trust for certain BDMC Investors, and had not been properly transferred to BDMC. The Trustee was advised by the borrower that they were unable to complete a transfer of the charge from Mr. Pahuja to BDMC because of an inability to locate Mr. Pahuja. Accordingly, in order to protect the Investors' interest in the OML Project, the Trustee contemplated a

Court application to facilitate the transfer of the mortgage to BDMC. In the course of reviewing information requested from the borrower in support of this application, the Trustee located information that enabled it to contact Mr. Pahuja directly, effect a transfer of the charge and complete the postponement without need for Court involvement.

46. The Trustee has recently been involved in discussions with both Fortress and a potential purchaser with respect to a proposed sale transaction for the OML Project. To the extent that any Fortress related party is proposed to receive compensation in connection with any such transaction, it is proposed that the Trustee Transaction Process described below will apply to such transaction.
47. Peter Richmond Project: a real estate development project in downtown Toronto, Ontario (“**Peter Richmond Project**”) with over \$27.6 million of second ranking syndicated mortgage loan debt administered by BDMC and approximately \$4.5 million of third ranking syndicated mortgage loan debt also administered by BDMC. There are a number of different senior lenders with priority mortgages on different parcels of land comprising the Peter Richmond Project. In early June 2018, the Peter Richmond borrower asked the Trustee to agree to postpone to a \$5 million charge in favour of PTI Developments Inc. (“**PTI**”), a company related to the borrower (which is a Fortress joint venture), with respect to a \$5 million commitment PTI made to the borrower in October 2017. The Trustee understands that at the time of the request certain advances had already been made with respect to the commitment and additional funds were subsequently advanced during the second half of 2018 in good faith pending the outcome of the negotiations with respect to the proposed postponement. The Trustee understands that the PTI funds were used to pay project costs on the Peter Richmond Project.
48. Following its review of the relevant documentation, including the project budget, the Trustee determined that, under the circumstances, it was in the best interests of all Investors on the Peter Richmond Project to postpone to the new PTI charge to allow the Peter Richmond Project to continue and to allow necessary project costs to be paid at a lower cost than would reasonably be expected to be offered by alternative third party financing sources. After also reviewing the project costs to be paid by PTI, the Trustee negotiated with the borrower and PTI that any postponement of the BDMC mortgages would be to a maximum of \$3.5 million in favour of PTI (\$1.5 million less than the original commitment) and would be at a lower interest rate than originally requested by PTI.

49. However, there were several delays in finalizing the postponement with PTI. The primary cause of the delay was the lack of documentation presented to the Trustee regarding the original loan advanced by BDMC Investors on the Peter Richmond Project to the Julian Cole Development Corporation ("**LH2 Loan**"). The original LH2 charge was extinguished in connection with the acquisition by the current borrower of the properties comprising the Peter Richmond Project in 2014, and the LH2 Loan Investors were assigned a replacement vendor take-back mortgage. It was unclear to the Trustee whether the original LH2 Loan documentation continued to govern following the 2014 transaction, and the Trustee made multiple information requests of CDCM, Fortress and the borrower in this regard. The Trustee was not provided with sufficient documentation evidencing that such LH2 Loan documentation survived the 2014 purchase transaction. Therefore, the Trustee initially proceeded on the basis that the terms of the new LH2 charge governed the obligations to the LH2 Loan Investors.
50. In late August 2018, Bank of Nova Scotia Trust Company ("**Scotia Trust**") and B2B Trust ("**B2B**"), the trustees for certain Investors under the LH2 Loan, informed the borrower and the Trustee that they would not sign the postponement on behalf of their Investors without explicit consent from each of the Investors. After attempts by the borrower to reach these Investors and seek their consent, and extended negotiations between the borrower and the Trustee regarding potential alternative solutions, the borrower proposed to pay out the amounts due to these seven LH2 Loan Investors in order to allow the postponement to proceed for the benefit of the remaining Investors and the Peter Richmond Project. Based on the documentation available to the Trustee at the time, the Trustee agreed with the borrower's proposal to pay out these seven LH2 Loan Investors. The borrower paid these amounts in late December 2018, which extinguished any remaining interest of Scotia Trust and B2B in the LH2 charge and which would allow the Trustee and Olympia to sign on behalf of all remaining LH2 Loan Investors.
51. However, in late December 2018, Olympia also expressed that it could not sign the postponement without the express consent of 13 of its LH2 Loan Investors, as it did not have sufficient documentation from those Investors on file to do so. At that time, following multiple further requests by the Trustee to former representatives of BDMC and the borrower, the Trustee was presented for the first time with documentation evidencing that the terms and conditions of the LH2 Loan agreement and related documents did survive

the extinguishment of the original LH2 charge and were extended to the new LH2 charge. The original LH2 Loan documents provided sufficient authority for BDMC and Olympia to execute the requested postponement. This is contrary to the information originally provided to the Trustee in or around July 2018.

52. Following the Trustee's review of these documents, the Trustee was satisfied that the postponement should be granted and executed the postponement. The postponement to PTI was ultimately registered on title to the properties comprising the Peter Richmond Project in the amount of \$3.5 million on February 1, 2019. The PTI charge currently ranks in second position on title.
53. Further, in consideration for allowing the PTI charge to be registered, the Trustee required and the borrower agreed to register the BDMC charge on 359 Richmond Street, being a parcel in the Peter Richmond land assembly that should originally have been subject to the BDMC charge but for which the BDMC charge had not previously been registered.
54. Whitby Project: a real estate development project in Whitby, Ontario ("**Whitby Project**"), with over \$14.7 million of second ranking syndicated mortgage loan debt administered by BDMC. As of the date of the Second Report, the Whitby Project was subject to a Notice of Sale proceeding brought by Ken Gold, the first mortgagee, in respect of acquisition financing that had matured. The Trustee took several steps to respond to the enforcement proceedings and to maximize potential recoveries for the Investors. The Trustee entered into extensive negotiations with the Whitby borrower, which culminated in a refinancing of the Whitby Project after seeking feedback from the Whitby Investors. As part of the negotiations, the Whitby borrower agreed that it would not be paid any further management fees until such time that the first parcel of land is sold in accordance with the development milestones presented to the Trustee. In connection with the refinancing, the Trustee executed an extension to the term of the BDMC loan and agreed to subordinate BDMC's mortgage to such replacement financing. The borrower also agreed to enhanced reporting obligations, including a monthly accounting of the use of funds advanced by the new priority lender. This replacement financing was expected to be sufficient to both repay Ken Gold (which did occur) and fund project costs through to the point of land servicing. The Trustee executed an Amending Agreement reflecting these terms and received full payment of its fees in connection with responding to the enforcement actions and postponing BDMC's mortgage. The borrower has advised that it is now in the process of



obtaining the required development approvals and working to meet related milestones, which is projected to increase the value of the Whitby Project.

55. Lake and East Project: a real estate development project in Oakville, Ontario ("**Lake and East Project**"), with over \$9.1 million of second ranking syndicated mortgage debt administered by BDMC. As was advised in the Second Report, the Lake and East Project was subject to a Notice of Sale proceeding brought by Vector Financial Services Limited ("**Vector**"), the first mortgagee, in respect of over \$3.7 million of senior financing that had matured. The Lake and East Project was refinanced on or about November 7, 2018, with sufficient new funds to repay Vector and provide additional funding to continue the development of the Lake and East Project. In connection with the refinancing, the Trustee agreed to subordinate BDMC's mortgage to the new first priority lender, Toronto Capital Corp ("**TCC**"), in accordance with the requirement to do so under the BDMC loan documents and as a result of the borrower agreeing to enhanced reporting obligations to the Trustee as part of a new reporting agreement between Symgine (Lake East) Inc. ("**Lake and East Borrower**") and the Trustee ("**Symgine Reporting Agreement**"). The Symgine Reporting Agreement includes a requirement to provide monthly accounting of the use of funds advanced by TCC. The Trustee also received full payment of its fees in connection with responding to the enforcement actions and postponing BDMC's mortgage. As set out below at paragraph 144, the Lake and East Borrower has not complied with its reporting obligations under the Symgine Reporting Agreement and the Trustee is seeking an Order requiring them to do so.
56. Treehouse Project: a real estate development project in Scarborough, Ontario ("**Treehouse Project**"), with over \$5.4 million of second ranking syndicated mortgage debt administered by BDMC. As was advised in the Second Report, the Treehouse Project was subject to a 244 Notice and Notice of Sale proceeding commenced by Firm, the first ranking mortgagee, in respect of over \$1.8 million of senior financing that had matured. BDMC's syndicated mortgage loan with respect to the Treehouse Project had also matured and the borrower requested that the Trustee postpone to new financing from TCC in the amount of \$3.5 million to repay Firm and fund additional project costs.
57. The Trustee sought and obtained Investor input through a notice and an in-person meeting regarding the proposed refinancing and the extension of the term of the BDMC loan, and, following Investor feedback, ultimately determined that, under the circumstances, it was

in the best interests of Investors to postpone to the replacement first priority financing. In connection with such postponement request, the Trustee agreed to subordinate BDMC's mortgage and to extend the term of the loan to November 30, 2021 following extensive negotiations with Halo Townhomes Inc. ("**Treehouse Borrower**"). Those extensive negotiations resulted in the Treehouse Borrower agreeing to make a payment of \$200,000 of the interest then owing to the BDMC Investors<sup>4</sup> and agreeing to enhanced reporting obligations of the borrower to the Trustee, which would include monthly accounting of the use of funds advanced by TCC. These obligations were set out in an amending agreement to the BDMC loan agreement between the Treehouse Borrower and the Trustee ("**Amending and Extension Agreement**"). The Trustee also received full payment of its fees and those of its legal counsel, in connection with responding to the enforcement actions and postponing BDMC's mortgage. As set out below at paragraph 146, the Treehouse Borrower has not complied with its reporting obligations under the Amending and Extension Agreement and the Trustee is seeking an Order requiring them to do so.

58. The Trustee has been involved in discussions with both Fortress and a potential purchaser with respect to a proposed sale transaction for the Treehouse Project. As the transaction was presented to the Trustee by Fortress and the Trustee had not been in direct contact with the Treehouse Borrower regarding this potential transaction, the Trustee has reached out to the Treehouse Borrower to request information regarding same and is awaiting a response. To the extent that any Fortress related party is proposed to receive compensation in connection with any such transaction, it is proposed that the Trustee Transaction Process described below will apply to such transaction.

## **Sale Transactions**

### ***(a) Sale transactions presented to the Trustee by project borrowers***

59. Since the date of the Second Report, the Trustee has also been approached by several borrowers on various projects seeking the Trustee's approval with respect to sale transactions that have been or are in the process of being negotiated by such borrowers. These sale transactions have arisen either as a result of enforcement proceedings commenced by senior lenders, or because the borrower no longer seeks to develop, or is no longer able to develop, the project to completion. In most of these circumstances, the

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<sup>4</sup> Interest paid by borrowers since the date of Appointment Order is considered to be Estate Property and is therefore not distributable to Investors.

borrowers advise the Trustee that their lenders are no longer willing to support projects associated with BDMC. Potential purchasers generally require a discharge of all the mortgages on title as a condition of the sale transaction despite the BDMC Investors suffering a shortfall on their investments in these projects as a result of the proposed transaction. Accordingly, to complete the transaction, the borrower and the purchasers require the prior consent of the Trustee to discharge any BDMC mortgages on title.

60. The Trustee evaluates each proposed sale transaction, including the proposed use of funds, to determine whether, given the circumstances, it appears to be in the best interests of BDMC Investors to agree to discharge the BDMC mortgage and receive any proceeds available to Investors as a result of the sale transaction. The Trustee asks for detailed information regarding the status of the project financing, the sale process conducted, the number of offers received, the status of project development, the project budget and estimated remaining cost to complete, the reason for the proposed sale and the viability of any alternative solutions. Depending on the borrower and the terms of the BDMC loan documentation, the Trustee may or may not receive all the information requested.
61. The Trustee reviews the proposed sale and, to the extent it determines it is worth pursuing, seeks to negotiate terms that would provide for the best recoveries possible to BDMC Investors in the circumstances. The Trustee may seek to negotiate a structured sale that would provide for a new mortgage to be registered on title, alternate security being granted in favour of the BDMC Investors following the sale, or an equity stake or other potential revenue stream to be paid to BDMC Investors upon the achievement of certain milestones in the project following the sale. These alternative structures, if successfully negotiated, may provide additional recoveries to BDMC Investors following the discharge of their original mortgage investments.
62. Where the Trustee determines that the sale is likely to be in the best interests of Investors in the circumstances, it strives to seek Investor feedback (when timelines permit) prior to approving the discharge of the BDMC mortgage. The Trustee often faces significant time pressure from borrowers in making these decisions, as the Trustee's approval is often one of the last remaining conditions to finalize the sale.
63. Below is a summary of certain sale transactions that have been presented to or executed by the Trustee to date.
64. Charlotte Adelaide Project: a real estate development project in downtown Toronto

(“**CHAT Project**”), with over \$12.3 million of second ranking syndicated mortgage loan debt administered by BDMC (“**CHAT SML Investors**”) and approximately \$3.91 million of third ranking syndicated mortgage loan debt also administered by BDMC (“**CHAT-LH1 Investors**”). The CHAT-LH1 Investors are subordinated to the CHAT SML Investors pursuant to the terms of an interlender agreement. As of the Second Report, the CHAT Project was subject to a 244 Notice issued in July 2018 by Diversified Capital Inc. (“**Diversified**”). On January 24, 2019, Diversified issued a Notice of Sale in respect of the matured debt owing to Diversified in an amount in excess of \$10.2 million. On March 1, 2019, the Trustee agreed to subordinate and postpone BDMC’s second and third ranking mortgages to replacement first priority financing in the amount of approximately \$11.8 million from 729171 Alberta Inc., in trust (“**729 Alberta**”) in the form of a demand loan, with an interest reserve funded through August 2019. Following the successful replacement of the Diversified mortgage, the borrower, an entity related to Fortress, engaged in negotiations for the sale of the property.

65. In March 2019, the borrower presented an executed agreement of purchase and sale to the Trustee, which it had entered into with Adelaide Square Developments (“**Adelaide Square**”) for the sale of the property comprising the CHAT Project (“**CHAT Property**”).
66. The Trustee reviewed this purchase agreement and additional transaction details provided by the borrower and potential purchaser, including the use of funds from the proposed transaction. Based on the proposed use of funds, the Trustee determined that, even though the BDMC Investors would suffer a shortfall as a result of the proposed transaction, significant fees were still being proposed to be paid to an entity related to Fortress. Despite the original purchase agreement already having been executed by the borrower and the purchaser, the Trustee commenced extensive negotiations with the borrower and Adelaide Square, given that its consent to the transaction was required to discharge the BDMC mortgage. The Trustee was faced with significant time pressures from Adelaide Square and the borrower due to the scheduled closing of a neighbouring property being purchased by Adelaide Square contemporaneously with the proposed acquisition of the CHAT Property. Adelaide Square advised that the contemporaneous closings were a condition of the proposed transaction and advised that the purchase price being offered for the CHAT Property was a premium to what would otherwise be offered by the purchaser if the properties were acquired separately. As such, the circumstances resulted

in the Trustee not having sufficient time to seek Investor feedback prior to finalizing the proposed transaction.

67. The Trustee, the borrower and Adelaide Square negotiated an amended agreement of purchase and sale for the purchase of the CHAT Property for \$16.5 million cash (an increase of \$1.5 million from the original cash purchase price) of which approximately \$3.6 million would be payable to BDMC, and negotiated a memorandum of understanding (“**MOU**”) among Adelaide Square, Go-To Stoney Creek Elfrida LP, its general partner and principals, and the Trustee, pursuant to which BDMC will receive a further payment of \$1.95 million, in two installments, with the opportunity to receive a further payment of up to \$5.2 million based on the achievement by the purchaser of certain development milestones. The Trustee also negotiated additional guarantees and security in respect of these amounts. The MOU was executed on April 4, 2019 and the original BDMC mortgages were discharged.
68. This sale transaction results in a gross selling price between \$18.45 million and \$23.65 million for the CHAT Property, which will provide recoveries of approximately 45% to 88% of the principal amounts advanced by the CHAT SML Investors. Given the shortfall to CHAT SML Investors, the transaction results in no recoveries for the CHAT-LH1 Investors.
69. Further, under this amended purchase agreement, the Trustee negotiated a reduction in transaction fees payable to the Fortress entity from approximately \$4 million to \$425,000. This reduction required extensive negotiations with the principals of Fortress, who stated that such fees were appropriate given the services provided by Fortress in connection with the transaction, which involved the negotiation of the purchase agreement, attending to rezoning matters, arranging for the refinancing with 729 Alberta and providing guarantees in respect of such refinancing. The Trustee strongly disagreed with the quantum of fees being proposed to be paid to Fortress under a transaction where the CHAT SML Investors would suffer a significant shortfall and the CHAT-LH1 Investors would not receive any recovery on their investments. The Trustee worked diligently and cooperatively with the borrower, Fortress and the purchaser to consensually restructure the transaction in order to provide for better recoveries for Investors and to limit the fee to Fortress to an amount akin to a commission for services rendered.

70. Following the closing of the CHAT transaction, the Trustee was approached by counsel to a CHAT-LH1 Investor who made certain inquiries with respect to the transaction and the proposed resulting Investor distributions. These discussions are ongoing, and the Trustee will report further with any material updates.
71. Bradford Bond Head Project: a real estate development project in Bradford, Ontario (“**Bradford Bond Head Project**”) with over \$8.3 million of fifth ranking syndicated mortgage loan debt administered by BDMC. Sugarcrest Developments Inc. (“**Sugarcrest**”) holds a first ranking mortgage in excess of \$7.9 million, Quincy Investments Ltd. and certain others (collectively, “**Quincy**”) hold a \$3.85 million second ranking mortgage and a \$1.2 million third ranking mortgage, and 2635837 Ontario Inc. holds a fourth ranking mortgage for \$2.9 million. In January 2019, Quincy filed a statement of claim against the borrower claiming a default under its second ranking mortgage and that Quincy is entitled to sell the property as a result of such default. The Trustee understands that a statement of defence has not yet been filed in this action. Further, following the issuance of the statement of claim, Sugarcrest issued a 244 Notice and Notice of Sale. Sugarcrest is now in a position to list the property for sale.
72. In an effort to refinance the Bradford Bond Head Project to avoid a sale under an enforcement process, the borrower advised the Trustee that it had found a potential new equity partner for the Bradford Bond Head Project that would repay the Sugarcrest and Quincy mortgages and would provide an equity stake to the fourth ranking mortgagee. This transaction would require a discharge of BDMC’s mortgage from title and an extinguishment of the BDMC loan, in exchange for either (i) a one-time payment to BDMC Investors of approximately \$250,000 (which would result in a return of approximately 11% of principal, taking into account previously paid interest), or (ii) a \$100,000 payment to BDMC investors plus a 15% equity stake in the Bradford Bond Head Project (which would, assuming projected profits in the current project budget are achieved, result in a future return of approximately 26% of principal, taking into account previously paid interest). Although this potential transaction had not yet been finalized, the Trustee sought the feedback of Investors regarding the available options. The Trustee also advised that, should both options be rejected, the property would likely be sold by Sugarcrest or Quincy, which would, based on the “as is” appraisal obtained by the Trustee and communications from the borrower regarding its recent canvassing of the market, be unlikely to result in any recovery to Investors.

73. The Trustee received numerous phone calls and emails from Investors who were struggling to choose among three difficult options. The Trustee received negative feedback to the proposed transaction from Investors irrespective of the option they ultimately chose. However, subsequent to obtaining the Investor feedback, the borrower advised the Trustee that the equity partner had changed its views on the transaction and was no longer willing to participate in the project going forward. The borrower further advised that it is seeking to pursue all available options, including attempting to identify a new equity partner while continuing to seek refinancing. Accordingly, the project remains at a standstill until a solution is found by the borrower or one of the priority lenders takes steps to sell the property.

***(b) Sale transactions that have been completed in enforcement proceedings***

74. As described in greater detail below, there are several projects currently subject to enforcement proceedings commenced by senior lenders whose mortgages went into default. These enforcement proceedings often lead to a sale of the property through a formal sale process, which can include a Court proceeding.
75. The Trustee takes an active role in participating in these proceedings to the extent possible, in order to ascertain, and potentially improve, the likelihood of recoveries to BDMC Investors. In these formal processes, as a subsequent mortgagee, the Trustee has limited control over the negotiation and terms of any potential transactions. However, the Trustee asks for as much information as possible with respect to the sale process conducted, the number of participants involved, the level of interest and the general scope of potential recoveries to BDMC to ensure that any process conducted has been commercially reasonable and has considered the debt owed to BDMC. Where the Trustee determines that it is likely that senior lenders will suffer a shortfall (often based on the new appraisals commissioned by the Trustee) and, as a result, the BDMC Investors will not recover any amounts on a project, the Trustee limits its continued involvement in the proceedings. However, in circumstances where the Trustee is of the view that it may be able to increase returns to Investors, it has developed strategies to seek to maximize such recoveries, including working to resolve potential priority disputes, determining whether the borrower has any other assets that could be used to satisfy outstanding debts owing

and reviewing sources and uses of funds to evaluate whether there are transactions to suggest any improper use or transfers that may warrant further investigation.

76. Below is a summary of certain sale transactions that have been completed in the context of enforcement proceedings, and certain steps that the Trustee has taken in an effort to improve recoveries to BDMC Investors.
77. Brookdale Project: enforcement steps were taken in 2018 in respect of a real estate development project in midtown Toronto ("**Brookdale Project**"), with approximately \$4.6 million of "mezzanine"<sup>5</sup> syndicated mortgage loan debt administered by BDMC and over \$20 million of subordinate syndicated mortgage loan debt also administered by BDMC. These loans had fourth and fifth ranking mortgages, respectively, registered on title to the Brookdale Project.
78. The Brookdale Project was subject to a Notice of Sale proceeding brought by Firm in respect of first priority construction financing that had matured. Firm appointed RSM Canada Limited ("**RSM**") as its private receiver over the assets comprising the Brookdale Project. RSM ran a sale process for the Brookdale Project and on October 18, 2018, the Court approved the sale of the property, as recommended by RSM. The transaction closed on October 24, 2018. Based on RSM's Court materials, the selling price for the property was approximately \$50 million and the net proceeds, after costs and repayment of the Firm mortgage were \$26,945,205 ("**Net Proceeds**"), which amount was paid into Court pending resolutions of various claims that may rank in priority to the BDMC mortgages.
79. The Trustee has played an active role in the Court proceedings dealing with entitlement to the Net Proceeds in order to protect the interests of the Investors in the Brookdale Project. The Trustee has participated in contested Court proceedings, numerous case conferences, and provided required documents and other information in the context of this litigation. These proceedings have been complex and time-consuming.
80. In particular, on February 13, 2019, a case conference was held to review next steps in the process of resolving 11 construction lien actions in respect of the Brookdale property,

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<sup>5</sup> A mezzanine syndicated mortgage loan debt is a BDMC syndicated mortgage loan debt that is in priority to other BDMC syndicated mortgage loan debt but still subordinate to debt owed to senior lenders. Typically, BDMC mezzanine syndicated mortgage loan agreements contain the same mandatory subordination provisions as are found in other BDMC syndicated mortgage loan agreements.



which the Trustee understands total approximately \$9.6 million, and related priority issues in respect of the distribution of the Net Proceeds. At the case conference, the Court established a process that would allow the various actions to proceed in a timely and cost-effective manner. Following a second case conference, an order was issued by the Court on March 21, 2019 approving the payment of \$5,872,436 to the second ranking mortgagee and \$580,062 to the third ranking mortgagee from the Net Proceeds, which prevented further interest from accruing on these loans. After the repayment of the amounts owing to the second and third mortgagees, the Trustee understands that approximately \$20.4 million ("**Residual Proceeds**") remains held by the Court in an interest-bearing trust account. The Residual Proceeds will remain in Court pending the determination of the quantum and priority of the remaining claims, including the construction lien claims and the claims of certain bondholders and other parties, relative to the mezzanine and syndicated BDMC mortgages. The next case conference is scheduled for May 29, 2019 to deal with the construction lien actions. The Trustee will continue its efforts to maximize Investor recoveries under both the mezzanine and syndicated BDMC mortgages. At this time, the quantum and timing of any distribution in respect of these loans is unknown given the outstanding priority issues remaining unresolved.

81. Dunsire Project: a real estate development project in Guelph, Ontario ("**Dunsire Project**") that is subject to a receivership proceeding. As detailed in the Second Report, on May 25, 2018, the receiver, RSM, obtained an amended and restated vesting order from the Court in respect of the Dunsire Project to approve a sale transaction and to vest title to the Dunsire Project in a new owner related to the then-current owner, free and clear of certain encumbrances, including approximately \$1.7 million of subordinate, secured debt owed to BDMC in trust for Investors. Since the Second Report, the Trustee completed its review of the information provided by RSM with respect to the use of funds by the borrower on this project and determined that it was not worthwhile to pursue any further investigation due to the lack of additional potential recoveries for BDMC Investors. However, the Trustee's investigation and subsequent inquiries into the assets and affairs of the borrower revealed that certain HST refunds and Tarion deposits may result in a potential recovery to Investors. RSM has now advised that it expects to distribute at least \$350,000 to the Trustee in the next few months.

82. Glens of Halton Hills / Georgetown Project: a real estate development project in Georgetown, Ontario ("**Georgetown Project**"), with three syndicated mortgage loan facilities administered by BDMC: a third ranking loan of approximately \$1.7 million, a fourth ranking loan of approximately \$8.3 million, and a fifth ranking loan of approximately \$4.4 million. As noted in the Second Report, there were several different senior lenders with priority mortgages on different parcels of land comprising the Georgetown Project. Certain of the senior lenders issued Notices of Sale and 244 Notices in respect of such parcels of land. On August 24, 2018, the borrower filed a notice of intention to file a proposal under the BIA ("**NOI**") and KSV Kofman Inc. ("**KSV**") was appointed as proposal trustee. The stated purpose of the NOI proceeding was to create a stabilized environment to allow the borrower to solicit offers for the acquisition of the lands and assets comprising the Georgetown Project, and to concurrently solicit refinancing alternatives. KSV undertook a sales and marketing process for the Georgetown Project. On December 10, 2018, KSV served a motion seeking court approval of a sale of the properties to JYR and Leaping Loft Ltd for a purchase price of \$7 million. At the date of the motion, the total first ranking mortgage debt was approximately \$5.4 million. In addition, JYR had a second ranking mortgage on all the properties in the amount of approximately \$2.4 million. Accordingly, the sale resulted in a shortfall to JYR (in its capacity as mortgagee) and no amounts distributable to BDMC Investors.
83. A proposal was not filed by the required deadline and the borrower did not seek a further time extension from the Court to do so; accordingly, the borrower was deemed bankrupt and KSV was appointed trustee of the bankrupt estate on February 5, 2019. A representative of the Trustee was appointed as an Inspector in the bankrupt estate. The Trustee has undertaken a preliminary review of the use of funds on the Georgetown Project based on information it was able to obtain. The Trustee has shared its findings with KSV to assist KSV in determining whether there were any improper transactions completed by the borrower for which below-market compensation may have been received. The bankruptcy trustee's review is currently ongoing.
84. Union Waterfront Project: a real estate development project in St. Catharines, Ontario ("**Union Waterfront Project**"), with over \$7.4 million of third ranking syndicated mortgage debt and approximately \$9.4 million of fourth ranking syndicated mortgaged debt administered by BDMC. The Union Waterfront Project is subject to receivership

proceedings initiated by FirstOntario Credit Union (“**FirstOntario**”), the first ranking mortgagee, in respect of unpaid debt owed to FirstOntario in excess of \$10 million. On February 15, 2019, the receiver sought and obtained court approval of an agreement of purchase and sale for the properties comprising the Union Waterfront Project for a purchase price of \$8.1 million. This purchase price resulted in a shortfall to FirstOntario and resulted in no recoveries being available to BDMC Investors on this project. The BDMC mortgages on the Union Waterfront Project have now been discharged. Following the Trustee’s review of additional available information with respect to the project and discussions with the receiver, the Trustee determined that no further steps should be taken.

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

85. There are several other projects with mortgages administered by BDMC that are facing enforcement actions by one or more senior lenders that could materially affect the recoveries of Investors under their mortgages. As of the date of this Seventh Report, to the best of the Trustee’s knowledge, 17 of the 45 projects have priority mortgage loans that are formally noted in default or are otherwise subject to enforcement proceedings by senior lenders (including the projects described above).
86. The Trustee continues to respond to enforcement actions in an effort to obtain the best possible result for the Investors in the circumstances. In some cases, the Investors’ interests are at risk of being, or have already been, severely compromised due to the development status of the project, the quantum of the debt ranking in priority to the BDMC debt relative to the value of the property and/or a borrower’s inability to source necessary financing for the development. In such cases, the Trustee is considering alternative approaches to attempt to increase recoveries that may be generated, including obtaining and analyzing information regarding the borrower’s sources and uses of funds wherever possible to determine if further steps should be taken.
87. It is critical that the Trustee take an active role in any enforcement process, including engaging with enforcing lenders regarding any proposed enforcement steps and working with the enforcing lender, Court officers and other stakeholders to ensure that any enforcement process, including any sales process to be established, is structured in a manner that protects the interests of the Investors to the extent possible. Given the current

circumstances, when possible, the Trustee is seeking an accounting regarding the borrower's sources and uses of funds (including the borrower's use of the funds provided by BDMC) and analyzing historical transactions. However, the Trustee recognizes that there may be occasions where the underlying value of the projects (based on updated appraisals) will not be sufficient to repay all of the lenders who hold security in priority to BDMC, and, as such, the Trustee has not incurred significant costs reviewing those projects.

88. When the Trustee is notified that a lender has taken or intends to take enforcement action, the Trustee generally engages in correspondence with the lender or its representative to inform the lender of the Trustee's mandate and the existence of these proceedings. The Trustee requests that the enforcing lender keep the Trustee apprised of developments in respect of the proposed enforcement steps, which may include providing the Trustee with access to sales process materials and a role in any sales process to be undertaken for the specific project. To date, lenders have generally responded positively to the Trustee's requests, but the Trustee notes that certain lenders may not be obliged to respond positively to these requests as BDMC is a subsequent mortgagee on these projects with limited information rights. As a result, the Trustee must assess the reliability and completeness of any information provided by these lenders.
89. Below is a summary of certain projects that are facing material enforcement actions by senior lenders and the Trustee's efforts in respect of these actions since the date of the Second Report.
90. Capital Pointe Project: a real estate development project in Regina, Saskatchewan ("**Capital Pointe Project**"), with four syndicated mortgage loan facilities administered by BDMC in the amounts of approximately \$1.6 million, approximately \$9.4 million, approximately \$6.7 million and approximately \$15.6 million. These loans have 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> ranking mortgages, respectively, registered on title to the Capital Pointe Project. There are two senior lenders with priority mortgages on the property.
91. The Capital Pointe Project is subject to a Claim in Mortgage Action brought by KEB Hana Bank of Canada ("**KEB**"), the first-priority mortgagee, in respect of financing in excess of \$1.6 million that has matured. The second-priority mortgage is in the amount of approximately \$2.9 million. On March 4, 2019, the Court of Queen's Bench of

Saskatchewan granted an order permitting the property to be listed for sale for 8 months with no deadline for offers at a price of \$8.5 million. The Trustee's counsel worked with counsel for KEB with respect to the terms of this order to maximize potential value for the Investors in the Capital Pointe Project.

92. In addition, the City of Regina ("**City**") issued an order that requires the borrower to backfill the hole that is the site of the Capital Pointe Project as it was of the view that the property was in an unsafe condition. The City's order was appealed by the borrower. A final decision issued by the Appeal Board on February 4, 2019 concluded that backfilling the site was the most appropriate remedy in the circumstances. The Appeal Board required that the hole be backfilled by March 30, 2019, failing which the City would be permitted to file the hole and register a charge on the property for the cost of doing so, which would rank in priority to all mortgages on the property. As the borrower did not backfill the site by March 30, 2019, by way of a letter dated April 30, 2019, the City advised the listing agent that it is proceeding with its process to engage a contractor and that the backfill of the hole is expected to commence shortly. Any costs incurred as a result of the process to backfill the hole are likely to be paid in priority to all mortgages, including the BDMC mortgages. Accordingly, Investor recoveries on this Capital Pointe Project remain uncertain.
93. Colliers Centre Project: a real estate development project in Barrie, Ontario ("**Colliers Project**") with over \$36 million of fourth ranking syndicated mortgage loan debt administered by BDMC and approximately \$16.9 million of fifth ranking syndicated mortgage loan debt also administered by BDMC. The Colliers Project is subject to a Notice of Sale proceeding issued by Morrison Financial Inc. ("**Morrison**") in respect of construction financing in excess of \$30 million that has matured. As noted in the Second Report, the notice period for the sale of the Colliers Project expired some time ago and the property has been marketed for sale since July 2018. The Trustee has been in correspondence with Morrison regarding the sale process and understands that Morrison has continued to actively market the property for sale but has not received any formal offers.
94. As a result, Morrison recently advised the Trustee that is now in the process of seeking to transfer the property to one of its related companies for an amount equal to the highest informal offer it received, and developing the Colliers Project to completion in an attempt

to recover the full amount owed to it. Morrison also advised that it has been in discussions with the mortgagees that rank immediately below the Morrison mortgage (and ahead of the BDMC mortgage) to gauge their interest in paying out the Morrison debt as an alternative path forward in the event that such mortgagees had any concerns that Morrison's takeout proposal would be prejudicial to their interests. Morrison has advised that, following these discussions, no alternative proposal acceptable to Morrison was raised. Should the transfer of the property proceed as advised by Morrison, there will be insufficient funds from this transaction to make any distribution to any mortgagee subsequent to Morrison, including BDMC on behalf of the Investors in respect of the Colliers Project.

95. Eden Project: As described in the Second Report, the Trustee continues to face challenges to recoveries on the syndicated mortgage loan made to 2309918 Ontario Inc. ("**Eden Borrower**"). The Eden Borrower is indebted to BDMC in respect of loans made for a real estate development project in King City, Ontario, consisting of 28 residential homes ("**Eden Project**"). Construction of the Eden Project is complete, and these homes have been sold. The senior loans have been discharged, though the mortgages in favour of BDMC have not been discharged and, to date, no payments of the sums secured by BDMC's mortgages have been repaid. Investors in the Eden Project are owed in excess of \$7 million (including accrued interest).
96. Since July 2018, the Trustee faced significant pressure from representatives of the Eden Borrower, PACE Developments Inc. ("**PACE**") and CDCM to discharge BDMC's security on all the homes to permit buyers to own the properties free and clear of any pre-existing security.
97. At that time, the Trustee was advised by PACE, the developer on the Eden Project, on behalf of the Eden Borrower, that there would be no recovery to Investors on the Eden Project, notwithstanding previous communications a few weeks earlier by Fortress that full payment would be made to BDMC Investors. PACE advised that certain cost overruns not previously accounted for had absorbed the over \$7 million payable to Investors. Notwithstanding these developments, the Eden Borrower and PACE continued to insist that the Trustee discharge BDMC's security. When the Trustee refused to do so, the Eden Borrower threatened to bring legal action against the Trustee.

98. On September 12, 2018, the Trustee made formal demand against the Eden Borrower and PACE. In addition to demanding repayment of the full amount owed to Investors and professional fees incurred to the date of the letter, the Trustee demanded additional documentation to explain the significant change in the Eden Borrower's financial position over such a short timeframe. As no repayments were made, on October 19, 2018, the Trustee delivered a further demand letter and 244 Notice.
99. While PACE responded to certain of the Trustee's requests for documents, the Trustee does not have full information with respect to the Eden Project. From the information obtained from PACE, the Trustee has been able to develop a preliminary flow of funds analysis for the Eden Project. This flow of funds does not adequately explain the significant, rapid, and unforeseen change in forecast recoveries to the Investors, and as such, the Trustee determined that further action on behalf of the Investors in the Eden Project was warranted.
100. Accordingly, on or about May 1, 2019, the Trustee served an application for a Bankruptcy Order against the Eden Borrower pursuant to section 43(2) of the BIA. That application is scheduled to be heard on May 21, 2019. If a Bankruptcy Order is granted, the broad statutory investigatory powers given to trustees in bankruptcy will assist in bridging the current information gap with respect to the Eden Project. It is anticipated that the proposed trustee in bankruptcy will carefully review the affairs of the Eden Borrower and determine the nature and scope of any potential recovery efforts.
101. Mississauga Meadows 1 Project: a real estate development project in Mississauga, Ontario ("**MM1 Project**"), with approximately \$5.2 million of fifth ranking syndicated mortgage loan debt administered by BDMC. The MM1 Project is subject to both a 244 Notice and a Notice of Sale issued by Firm, the first ranking mortgagee, in respect of senior financing in excess of \$4.9 million that has matured. On or about January 17, 2019 Firm commenced a combined sale process for the properties that are the subject of the MM1 and MM2 Projects (defined below), with an offer deadline of February 19, 2019. Firm engaged CBRE Group, Inc. to market the properties for sale. By the offer deadline, Firm advised the Trustee that it had received seven offers for the Projects. Firm ultimately accepted an offer from the party with the highest offer for the MM1 and MM2 Projects, which is scheduled to close on May 30, 2019. On closing, the BDMC mortgages on these projects would be extinguished.

102. Based on discussions with Firm regarding the quantum of the offers and the known debt that ranks in priority to the BDMC loans on these projects, it appears highly unlikely that there will be any funds available for distribution to the MM1 and MM2 Investors. The Trustee is continuing to correspond with Firm regarding the sale of these properties. Once the outcome of the sale process is known, the Trustee will send a notice to the MM1 and MM2 Investors regarding same.
103. Mississauga Meadows 2 Project: a real estate development project in Mississauga, Ontario ("**MM2 Project**"), with approximately \$3.6 million of third ranking syndicated mortgage loan debt administered by BDMC. The MM2 Project is subject to both a Notice of Sale and a 244 Notice issued by Firm, the first ranking mortgagee, in respect of senior financing in excess of \$1.4 million that has matured. Additional details regarding the sale process in respect of the MM2 Project are provided above.
104. Triple Creek Project: a real estate development project in Rocky View County, Alberta ("**TC Project**"), with over \$12.9 million of syndicated mortgage loan debt administered by BDMC and approximately \$2.5 million of accrued interest for which the Investors have been given a separate mortgage administered by BDMC. The Investors have 4<sup>th</sup> and 5<sup>th</sup> ranking mortgages registered on this project. The TC Project is a large block of land near Calgary that is currently outside of the existing built boundary. The TC Project is subject to a Notice of Sale initiated by Romspen Investment Corporation ("**Romspen**"), the first priority mortgagee, prior to the issuance of the Appointment Order, in respect of senior financing in excess of \$3.2 million that has matured. Eagles Edge Capital Corporation, the second priority mortgagee, has also commenced enforcement proceedings against the TC Project in connection with outstanding debt in excess of approximately \$2.6 million.
105. On December 14, 2018, the Court of Queen's Bench of Alberta granted an order permitting the property that is the subject of the TC Project to be listed for sale for six months, with no deadline for offers, at a list price of \$3 million. Should a sale of the property be completed at or below the list price, there will be no funds available for distribution to the Investors. Further, given the priority debt is in excess of \$5.8 million, the property would need to sell for well in excess of the list price in order to result in any recovery to Investors.
106. Peter Richmond Project: as noted above, the Peter Richmond Project is a real estate development project in downtown Toronto, Ontario with over \$27.6 million of second



ranking syndicated mortgage loan debt administered by BDMC and approximately \$4.5 million of third ranking syndicated mortgage loan debt also administered by BDMC. There are several different senior lenders with priority mortgages on different parcels of land comprising the Peter Richmond Project. Two of the five priority mortgages have been extended, but the remaining three priority mortgages have now matured. In March 2019, the first ranking vendor take-back mortgagee on the 128 Peter Street property ("**128 Peter**"), one of the parcels of land comprising the Peter Richmond Project, issued a Statement of Claim seeking foreclosure on the property. In response to the Statement of Claim, the Trustee filed a statutory form to convert the foreclosure proceedings to a power of sale, which would provide an opportunity for a better outcome for Investors. A foreclosure or sale of 128 Peter would jeopardize the entire Peter Richmond Project, as this parcel forms an integral part of the land assembly. The Trustee is in discussions with the borrower with respect to its efforts to find replacement financing to prevent any further enforcement action on 128 Peter or on any of the other parcels.

107. Port Place Project: a real estate development project in St Catharines, Ontario ("**Port Place Project**") with over \$2.9 million of second ranking syndicated mortgage loan debt administered by BDMC. The Port Place Project is subject to a 244 Notice issued by Magnetic Capital Group ("**Magnetic**") in respect of priority financing in excess of \$715,000 that has matured. The Trustee has corresponded with Magnetic since the issuance of its 244 Notice. On April 23, 2019, Magnetic served a Notice of Sale that would allow Magnetic to sell the property after May 30, 2019 if its mortgage has not been repaid by the borrower.
108. The Trustee has been advised by Magnetic that it also financed an additional \$1.5 million of debt to the Port Place Project that was used to pay out priority financing and property taxes, which occurred following the appointment of FAAN Mortgage as the independent manager of BDMC's business but prior to the Trustee's appointment. The charge on title in favour of Magnetic related to this debt currently ranks subordinate to the BDMC mortgage. FAAN Mortgage was not aware of or involved with this transaction until after it closed. Magnetic disputes BDMC's second ranking position on the basis that its additional financing was always intended to rank in priority to the BDMC debt and that BDMC agreed to such postponement at the time the additional financing was arranged. Magnetic also asserts that the BDMC mortgage ought to be postponed to this additional financing on the basis of equitable subrogation. Magnetic claims that it failed to enter into a postponement

agreement with BDMC to effect such subordination due to simple oversight. The Trustee's counsel has repeatedly asked for evidence showing that BDMC had agreed to postpone its interest at the time the financing by Magnetic was arranged and has received certain information from Magnetic's counsel along with a request for the Trustee to consent to lift the stay of proceedings to pursue an application from the Court to resolve the priority dispute. The Trustee's counsel advised counsel to Magnetic that, prior to deciding whether to lift the stay, the Trustee requires certain additional information and sufficient time to consider any information it is provided. The Trustee is in the process of reviewing the information it has received to date, will review any further information that may be requested and provided, and will then make a determination regarding next steps.

109. South Shore Project: a real estate development project in Keswick, Ontario ("**South Shore Project**") with over \$20.6 million of second ranking syndicated mortgage loan debt and approximately \$8.6 million of third ranking syndicated mortgage loan debt administered by BDMC. The South Shore Project is subject to a Notice of Sale proceeding commenced by Diversified in respect of priority construction financing in excess of \$6.9 million that has matured. The Trustee has corresponded with Diversified and others since the issuance of its Notice of Sale. Diversified has advised that it has commenced efforts to market the property for sale; however, there are currently no offers for the property. Diversified advised that it will continue to keep the Trustee apprised of its marketing efforts and will provide the Trustee with details regarding the process being undertaken. Given no offers have been received to date, Investor recoveries on the South Shore Project remain uncertain.
110. The Kemp Project: a real estate development project in Barrie, Ontario ("**Kemp Project**") with over \$17.2 million of fourth ranking syndicated mortgage loan debt administered by BDMC and approximately \$784,000 of fifth ranking accrued interest for which the Investors have been given a separate mortgage administered by BDMC. The Kemp Project is subject to a Notice of Sale proceeding commenced by Romspen in respect of priority financing in excess of \$6.3 million that has matured. The borrower has been in negotiations with a prospective buyer of the property comprising the Kemp Project for an extended period of time; however, as of the date of this Seventh Report, the financial details of this transaction have not been provided to the Trustee as the borrower has

advised that the details remain subject to further negotiation. Accordingly, Investor recoveries on the Kemp Project remain uncertain.

## **PROPOSED TRUSTEE TRANSACTION PROCESS**

111. As described in previous reports of the Trustee, BDMC was the principal mortgage broker and administrator used by Fortress to raise initial financing from Investors for early stage real estate developments. At the time of the First Report, approximately \$560 million was invested in BDMC syndicated mortgage loans by over 11,000 individual Investors. All or substantially all of the loans under the Trustee's administration relate to projects where Fortress, its affiliates or other related parties are or were, at the time of the BDMC investment, either direct borrowers, joint venture parties, or development consultants. At the time of the Trustee's appointment, BDMC had no independent business separate from investing in the development projects presented to BDMC by Fortress.
112. The Trustee continues to be presented with several different forms of refinancing, sale, payout and other restructuring proposals (each, a "**Proposed Transaction**") that would materially affect the BDMC Investors' interests. Although to date the payout offers on certain projects provided recoveries in excess of 100% of the principal amount (after taking into account previously paid interest) owing to BDMC Investors on such projects, the Trustee has also been presented with Proposed Transactions that would result in recoveries well below 100%.
113. Several Proposed Transactions have been recently brought to the Trustee by the borrowers on projects or by Fortress in its capacity as development consultant or other similar role on such projects. These Proposed Transactions require prior approval of the Trustee in order to proceed and often require a discharge and release of the BDMC mortgage from title or a postponement to additional financing. The Trustee is often advised by borrowers or by Fortress that the Proposed Transaction represents the only viable option to allow the relevant project to continue, or that a certain Proposed Transaction would provide the best recoveries for the Investors, even though Investors would be suffering a substantial shortfall.
114. The Trustee has faced challenges testing these assertions by borrowers and Fortress. Notably, the Trustee does not have control over any sale or refinancing process conducted by the borrowers on the real estate development projects. The properties are owned and

controlled by the respective borrowers and the Trustee only represents the interests of BDMC as a subordinate lender on those projects. In the context of its review of the Proposed Transactions, the Trustee seeks to obtain as much information as possible related to the projects and the Proposed Transaction, as the Trustee is not the custodian of the projects and may not otherwise have up-to-date information; this request for information may include:

- development milestones;
- project budgets;
- timelines to completion of the project;
- detailed information regarding the parties contacted and proposals received in any sales or refinancing processes conducted by the borrower; and
- detailed terms of the Proposed Transaction including total amounts to be paid to all parties at the time of closing the transaction and any future payments, security interests or other compensation to be received by any party in the future in connection with the Proposed Transaction.

115. In the context of reviewing Proposed Transactions that have been presented to the Trustee, the Trustee is typically provided with some of the required information as detailed above. At times there is resistance to providing certain information, in particular as it relates to the details of the Proposed Transaction and the intended use of funds. In addition, the borrowers are also at times resistant to the Trustee having independent discussions with prospective purchasers and lenders without the borrower present. Given that postponements are being negotiated with such lenders, and in some cases the Proposed Transactions result in some form of carried interest for the syndicate to be paid at a future date based on certain project milestones being met, the Trustee will ultimately have an ongoing relationship with the proposed purchasers or lenders. As such, the Trustee views the establishment of those relationships without the influence of other parties as a critical component in the evaluation of the Proposed Transactions.

116. Many of the Proposed Transactions that have recently been presented to the Trustee have involved: (a) a proposed payment of significant fees to, or the granting of priority security in favour of, Fortress, its principals or a related entity (a "**Fortress Party**") as consideration for sourcing and negotiating the Proposed Transaction, (b) a significant payment being made to the borrower (where a company related to or controlled by Fortress is the

borrower on the project) whose equity position is subordinate to BDMC's priority position, or (c) other forms of consideration being paid to Fortress for any number of other reasons. These payments are proposed to be paid to Fortress Parties despite the Investors suffering a shortfall on Fortress-related projects as a result of such Proposed Transactions. The Trustee is often informed by the principals of Fortress that Fortress was primarily responsible for obtaining and negotiating the Proposed Transaction, and that such Proposed Transaction provides a better result for Investors than the alternative, which, according to Fortress, would be an enforcement proceeding.

117. Accordingly, the Trustee faces a dilemma when reviewing these Proposed Transactions. First, these Proposed Transactions are often presented as the "only option" for BDMC Investors to recover any amount from a project, as absent acceptance of the Proposed Transaction, the project would likely become subject to an enforcement proceeding, which the borrower alleges would result in a lower recovery than would otherwise be attained through the Proposed Transaction. Second, Proposed Transactions can involve a carried interest in the project for the BDMC Investors that in theory would provide Investors with a better outcome than could otherwise be achieved absent such transaction. The carried interest, when offered, is generally only payable in the event the project is completed and certain profit targets for the benefit of the purchaser are paid, which create additional uncertainty and time delay. Therefore, while on paper such a Proposed Transaction may appear to provide for a superior result than a sale pursuant to an enforcement proceeding, there is no certainty that the benefit of the carried interest will be realized. Finally, as set out in the immediately preceding paragraph, the Proposed Transactions involve substantial payments to a Fortress Party as compensation for facilitating the Proposed Transaction. In light of the above, the Proposed Transactions need to be carefully scrutinized as part of these proceedings.
118. Further, the Trustee is often approached by the borrowers after the Proposed Transaction is significantly advanced or even finalized with the purchaser or lender. It appears to the Trustee that, prior to the Trustee's appointment, borrowers previously treated BDMC approval as a final condition that was only perfunctory in nature. The Trustee's review, information requests and resulting negotiation on behalf of BDMC, can come as a surprise to the borrowers, prospective purchasers or lenders. As such, despite the Trustee continually emphasizing to all parties that a structured process must be followed,

borrowers, prospective purchasers and lenders have generally failed to anticipate the information required and time necessary for the Trustee, as a Court officer, to review a transaction and seek Investor feedback, which causes misunderstandings with such borrowers, purchasers or lenders regarding the time needed and the approval process that must be followed in order to close the proposed transaction. Accordingly, the Trustee often faces unnecessary and significant time pressure from borrowers, prospective purchasers and lenders to meet the timelines communicated by such borrowers to purchasers or lenders in advance of consultation with the Trustee.

119. Notwithstanding the above, given the Fortress Parties' industry experience and familiarity with the projects, the Trustee recognizes that there are circumstances where a Fortress Party's involvement in a transaction can be accretive and benefit the Investors.
120. As a result, the Trustee seeks the Court's approval of the proposed Trustee Transaction Process attached as **Appendix "7"** hereto. The Trustee Transaction Process seeks to standardize and regularize the process for the negotiation of all Proposed Transactions involving any consideration being provided to a Fortress Party in a similar manner to the standardized process developed for the approval of payout offers. The payout offer process has simplified negotiations and approval of multiple settlements, including on the Harlowe Project, the Speers Project and the James Project. The Trustee Transaction Process would ensure that all transactions involving consideration being provided to a Fortress Party would be negotiated and approved by the Trustee in a fair, consistent and transparent manner.
121. The Trustee Transaction Process contemplates that the Trustee will review all Proposed Transactions involving consideration being provided to a Fortress Party and will seek Investor feedback with respect to any Proposed Transaction that the Trustee, in its discretion, believes is reasonable in the circumstances and may be in the best interests of such Investors to move forward with. Where Investors seek to move forward with Proposed Transactions involving fees of any kind that exceed 5% of the Transaction Price (as defined in the Trustee Transaction Process) being paid to a Fortress Party, or any new security being granted to a Fortress Party in priority to any remaining BDMC security, the Trustee will be required to seek Court approval of such Proposed Transaction prior to entering into such Proposed Transaction on behalf of BDMC. Prior to any motion for approval of a Proposed Transaction, the Trustee will prepare a report to the Court

describing its recommendation and any concerns with respect to the Proposed Transaction, and the Fortress Party will be required to file appropriate evidence with the Court justifying the consideration being proposed to be provided to the Fortress Party.

122. Where fees to any Fortress Party do not exceed 5% of the Transaction Price and no security is being granted to a Fortress Party in priority to any remaining BDMC security, the Trustee will be entitled, but shall not be required, to seek Court approval to enter into any Proposed Transaction on behalf of BDMC that it deems, in its reasonable discretion, to be in the best interests of the relevant Investors, following receipt of feedback from such Investors.
123. The Trustee believes that the Trustee Transaction Process will allow for transparency, scrutiny and Court supervision over any consideration being provided to Fortress Parties as part of these proceedings. It will also allow Investors to consider Fortress' contribution to a transaction in light of potential alternatives. In addition, the Trustee Transaction Process will provide clarity and certainty to borrowers, mortgagees, investors and purchasers with respect to the process for finalizing transactions involving a BDMC mortgage.

#### **ADDITIONAL RELIEF SOUGHT BY THE TRUSTEE**

##### **Victoria Medical Project**

124. As described in the Second Report, BDMC and Amadon-Westwater Projects Ltd. ("**Victoria Medical Borrower**") are party to a loan agreement dated September 23, 2015 ("**Original Victoria Medical Loan Agreement**", and the loan made pursuant to such agreement, the "**Original Victoria Medical SML Loan**") and to a loan agreement dated September 16, 2016 ("**Hybrid Victoria Medical Loan Agreement**", and the loan made pursuant to such agreement, the "**Hybrid Victoria Medical SML Loan**", and the Original Victoria Medical SML Loan together with the Hybrid Victoria Medical SML Loan, the "**Victoria Medical SML Loans**"). The Trustee has undertaken a review of the documentation underlying the Victoria Medical SML Loans and confirmed the *pari passu* ranking of the security delivered in connection with such loans.
125. BDMC received and disbursed \$1,021,393 on account of obligations owing in respect of the Original Victoria Medical Loan Agreement ("**Victoria Medical Pre-Appointment**

**Original SML Payment Amount**") prior to the Trustee's appointment and as such, this payment was not subject to any Administrative Holdback (as defined below). Following its subsequent negotiations with respect to the Victoria Medical SML Loans, the Trustee received a payment in an amount sufficient to repay in full the principal and interest owing up to May 1, 2018 under each of the Victoria Medical SML Loans. This payment was in the amount of approximately \$1.75 million and \$2.75 million on account of the Original Victoria Medical Loan Agreement and Hybrid Victoria Medical Loan Agreement, respectively. After receiving such payment, the Trustee consented to the discharge of BDMC's mortgages on the Victoria Medical Borrower's property.

126. The Trustee initially held such funds pending further direction of the Court. Subsequently, in accordance with the terms of the Interim Stabilization Order and the Realized Property Order, in July and November 2018, the Trustee made distributions (collectively, the "**2018 Victoria Medical SML Distributions**") to Investors of 50% and 20% of the principal balance held by the Trustee on each of the Victoria Medical SML Loans, respectively, on a *pro rata* basis. The November 2018 distribution also included a repayment of 70% of the outstanding interest owing on the Victoria Medical SML Loans.
127. Subsequent to the 2018 Victoria Medical SML Distributions, the Court issued the Harlowe Settlement Approval Order, which, among other things, further amended the Realized Property Order to require the Trustee, upon the completion of the Harlowe transaction, to make a further distribution of (when aggregated with previous distributions) 85% of all Realized Property to Investors with respect to the Victoria Medical SML Loans. The Harlowe transaction was completed, however the further distribution in respect of the Victoria Medical SML Loans has not yet been made. The Trustee is currently holding \$673,736 in respect of that distribution.
128. In light of the *pari passu* ranking of the security delivered in connection with the Victoria Medical SML Loans and the Victoria Medical Pre-Appointment Original SML Payment Amount being received and disbursed by BDMC prior to the Appointment Order, there was an unintended consequence of the distributions made by the Trustee pursuant to Court orders. While these distributions were made on a *pro rata* basis, they do not reflect the overall *pari passu* entitlement to such funds of Investors under the Original Victoria Medical SML Loan ("**Original Victoria Medical Investors**") and Investors under the Hybrid Victoria Medical SML Loan ("**Hybrid Victoria Medical Investors**").



129. Accordingly, it is proposed that the Court would direct the Trustee to pay \$372,650 to the Original Victoria Medical Investors and \$301,086 to the Hybrid Victoria Medical Investors (together, the “**Victoria Medical Equalization Payments**”), which, when combined with payments made from Realized Property made pursuant to the Interim Stabilization Order, the Realized Property Order, the Braestone Settlement Approval Order, and the Harlowe Settlement Approval Order and taking into account the Victoria Medical Pre-Appointment Original SML Payment Amount, would result in an overall *pari passu* repayment of the Victoria Medical SML Loans.
130. The purpose of equalizing the payments is to ensure that all Victoria Medical Investors receive the same *pro rata* distribution on their loans, regardless of whether they invested pursuant to the Original Victoria Medical Loan or the Hybrid Victoria Medical Loan, due to the *pari passu* ranking of the two loans. As an example, if an Investor invested \$100,000 in either the Original Victoria Medical Loan or the Hybrid Victoria Medical Loan, the net principal repayment in both circumstances after the Victoria Medical Equalization Payments would be \$85,000. Without equalizing the payments, the Original Victoria Medical SMLs would unfairly benefit over the Hybrid Victoria Medical SMLs as a result of the payment received prior to the Trustee’s appointment.
131. Following the making of the Victoria Medical Equalization Payments, if approved by the Court, the Trustee will have distributed 85% of the Realized Property in respect of the Victoria Medical SMLs.

#### **Appointment Order Removal**

132. The Appointment Order authorizes the Trustee to register the Appointment Order on title to the projects where necessary or desirable. In certain instances, the applicable land registry offices (“**LRO**”) have required that the Appointment Order be registered on title before the LRO will recognize the Trustee’s authority to sign certain documents that are to be registered on title (such as postponements). Further, in certain circumstances, the Trustee has registered the Appointment Order on title to projects involving enforcement proceedings. However, the Trustee understands that certain LROs have stated that they will not remove a court order from title unless they are provided with another court order as authority for doing so. Since the Appointment Order is only relevant while BDMC retains an interest in the property, there will be times when it will be necessary to have the Appointment Order removed from title.

133. One example of such an instance occurred in respect of the transaction involving the CHAT Property. The Trustee had previously executed a postponement of interest on the CHAT Property and the Appointment Order was registered on title at the time the postponement was executed. As discussed above, the CHAT Property has been sold and the BDMC mortgages on the CHAT Property have been discharged. However, the Appointment Order remains on title, where it may cause issues for the new property owner as it seeks to deal with its property in the ordinary course. To facilitate the completion of the transaction involving the CHAT Property, the Trustee's counsel gave an undertaking to bring a motion seeking to have the Appointment Order removed from title.
134. There are likely to be other instances where the Trustee determines that it is appropriate to have the Appointment Order removed from title. As such, the Trustee is seeking the LRO Direction Order from this Court to give the Trustee the discretion to have the Appointment Order removed from title when the Trustee determines that it is necessary, which determination is proposed to be evidenced by the delivery of a Trustee's certificate to that effect. The issuance of the LRO Direction Order will permit the Trustee to continue to efficiently administer the syndicated mortgage loans and not incur unnecessary expenses in coming before the Court for removal of the Appointment Order on a case by case basis.

#### **Direction to Pay – Bayview Project**

135. Derek Sorrenti, an Ontario lawyer, in his personal capacity or through his professional corporation, Sorrenti Law Professional Corporation (collectively, "**Sorrenti**") acted as administrator or conveyancer on several syndicated mortgage loans made in respect of Fortress related projects. Certain of these loans are still administered by Sorrenti ("**Sorrenti Projects**") and others were transferred to BDMC by Sorrenti prior to the Trustee's involvement ("**Transferred Projects**"). The Sorrenti Projects are not part of the Trustee's mandate and are not subject to these proceedings (though the Trustee receives inquiries regarding Sorrenti Projects from time to time), while the Transferred Projects are part of the Trustee's mandate and are subject to these proceedings. The Trustee is seeking a Direction Authorization (defined below) with respect to one Sorrenti Project, known as the "Bayview Project", as well as a Production Order (defined below) with respect to the Transferred Projects (discussed in greater detail in the following section).

136. The Trustee is seeking the Court's authorization to sign a direction with respect to a project located at 5, 7, 9, 11 and 15 Kenaston Gardens and 577 Sheppard Ave., Toronto, known as the "Bayview Project". The requested direction authorizes counsel to the borrower, Pine Ridge Building Corp. ("**Pine Ridge**"), to pay approximately \$18 million to Sorrenti in respect of a syndicated mortgage loan made to Pine Ridge and administered by Sorrenti ("**Direction to Pay**"). The Trustee has been advised that the applicable borrower requires it to execute the Direction to Pay before such borrower will distribute any funds to Sorrenti because BDMC remains the named lender that is party to the loan agreement with Pine Ridge in respect of the syndicated mortgage loan to the Bayview Project ("**Pine Ridge Loan Agreement**"). As discussed in more detail below, the Trustee investigated matters related to the Bayview Project and, since the Bayview Project is not part of the Trustee's mandate, determined that it is advisable to seek this Court's approval of the execution of the Direction to Pay ("**Direction Authorization**").
137. Although the Pine Ridge Loan Agreement was entered into by BDMC, the Trustee understands that, at all material times, the loan made thereunder was administered by Sorrenti on behalf of the various individual lenders who advanced funds to the Bayview Project. The Trustee has made several inquiries of Sorrenti and other persons with knowledge of the Bayview Project and has reviewed the documents provided by Sorrenti and others, as well as the available BDMC records. The Trustee has not been able to locate any documents entered into by BDMC (under its current name or its former name, Centro Mortgage Inc.) and individual lenders to the Bayview Project appointing BDMC as administrator or otherwise. However, the Trustee has been provided with representative samples of individual lender agreements, which name Sorrenti as administrator of the Pine Ridge Loan Agreement.
138. The Trustee has been advised by Sorrenti that he has made due inquiry of certain individuals with particularized information with respect to the Bayview Project (such persons, collectively, "**Bayview Knowledge Parties**"). The Bayview Knowledge Parties have confirmed that, to the best of their knowledge after due inquiry, at all material times throughout the existence of the Bayview Project syndicated mortgage loan, Sorrenti was acting in the capacity of administrator of the loan made under the Pine Ridge Loan Agreement. The Trustee understands that the approximately \$18 million to be repaid by Pine Ridge will be distributed to the individual lenders to the Bayview Project, after

deducting mortgage administration-related expenses which will not exceed \$90,000 and the costs with respect to the time spent by the Trustee and its counsel dealing with this matter, including this motion, which will not exceed \$25,000. The aggregate amount to be distributed will be approximately \$17,885,000. Derek Sorrenti has sworn an affidavit setting out these and other relevant facts related to the Bayview Project ("**Sorrenti Affidavit**"), and the Trustee understands that such affidavit has been reviewed by the other Bayview Knowledge Parties. The Sorrenti Affidavit is attached hereto as **Appendix "8"**, and includes a copy of the Direction to Pay.

139. The Trustee was asked in late 2018 to execute the Direction to Pay. In order to assist the individual lenders in the Bayview Project recover their monies given the inconsistencies in the underlying documentation, the Trustee came up with a solution to the predicament facing such lenders and recommended seeking this Court's advice and direction. The Trustee advised Sorrenti and others that it would seek the Direction Authorization provided that doing so would not be at the expense of the Investors subject to the Trustee's mandate, and that it would do so at a future court date in connection with other BDMC matters in order to avoid incurring unnecessary costs. On the basis of the evidence set forth in the Sorrenti Affidavit, including the information provided by the other Bayview Knowledge Parties and the absence of evidence that BDMC acted as administrator in respect of the Bayview Project, the Trustee requests that the Court order the Direction Authorization so that the funds can be paid to the applicable individual lenders without further delay.

#### **Document Production Requests**

140. The Trustee's mandate requires that the Trustee understand each project and the status of each syndicated mortgage loan so that the Trustee can make informed decisions regarding the administration of those loans. The Trustee can only make informed decisions where it has conducted a detailed review of the relevant information, and a significant amount of relevant information was not in BDMC's possession on the date the Trustee was appointed. To facilitate the Trustee's discharge of its mandate, the Appointment Order (and in particular paragraphs 4 to 7 thereof) required persons with property, funds, records, documents or information related to the business and affairs of BDMC to provide such property, funds, records, documents and information to the Trustee

and to cooperate fully with the Trustee with respect to its mandate, including by providing access to the relevant property or information.

**Sorrenti**

141. The Trustee and its counsel have formally contacted Sorrenti on numerous occasions for over six months to request critical information related to the Transferred Projects. This followed several months of more informal requests for information by BDMC (at the request of the Trustee). Among other things, the Trustee has requested trust account records, full closing books for the applicable loan agreements and related transactions, diligence summaries and other relevant information. The Trustee needs access to this information to properly assess settlement offers, postponement requests and structured sale proposals.
142. To date, Sorrenti has not complied with any of the Trustee's information requests. Sorrenti has advised that staffing issues, record storage complications and other obligations have delayed the delivery of the requested materials. In addition, certain of the information may have been provided to others in connection with lawsuits commenced against Sorrenti. While the Trustee understands that it may take some time to assemble the documents and information requested, it has now been more than six months since the Trustee began formally requesting documents and information from Sorrenti, and to date the Trustee is not persuaded that Sorrenti has made any material efforts to provide the information or to comply with the provisions of the Appointment Order. However, after being advised that a Production Order was going to be sought against him, Sorrenti recently contacted the Trustee to advise that he would commence providing information. The Trustee requested that Sorrenti prioritize delivery of the trust account records. As of the date of this Seventh Report, the Trustee has not received any information from Sorrenti. Selected copies of relevant correspondence seeking information from Sorrenti are attached hereto as **Appendix "9"**.
143. The following projects are Transferred Projects<sup>6</sup>: (a) the Colliers Project; (b) the Georgetown Project; (c) the Kemp Project; (d) the MM1 Project; (e) the MM2 Project; (f)

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<sup>6</sup> Includes projects where Sorrenti acted as conveyancer.

the OML Project; (g) the South Shore Project; (h) the Treehouse Project; (i) the Castlemore (Cachet) project and (j) the Whitby Project.

***Lake and East Project and Treehouse Project***

144. Lake and East Project: Since the placement of the refinancing described in paragraph 55 above, the Lake and East Borrower has not complied with the reporting obligations as set out in the Symgine Reporting Agreement. The Trustee and its legal counsel have followed up with the Lake and East Borrower on numerous occasions requesting the previously agreed-upon reporting information, but to date has not received any such information. The necessity of the Lake and East Borrower complying with its reporting obligations under the Symgine Reporting Agreement has recently become more acute. A copy of the Symgine Reporting Agreement (without exhibits) is attached hereto as **Appendix “10”**.
145. In early April 2019, the Trustee received a demand letter issued by TCC (the first priority lender) advising that the new mortgage had gone into default on March 16, 2019 and that, unless the mortgage was brought into good standing by April 12, 2019, the lender would pursue enforcement proceedings. As this date has now passed, it is possible that TCC may proceed with enforcement action on this project. The Trustee’s counsel has continued to request the required reporting information, as well as further information regarding the defaults and the Lake and East Borrower’s proposed efforts to cure same, but, as of the date of this Seventh Report, has not been provided with any update by the Lake and East Borrower.
146. Treehouse Project: Since the placement of the refinancing described in paragraph 56 above, the Treehouse Borrower, being the same principals as the Lake and East Borrower, has not complied with the reporting obligations as set out in the Amending and Extension Agreement. The Trustee and its legal counsel have followed up with the Treehouse Borrower on numerous occasions requesting the previously agreed-upon reporting information, but, with the exception of bank statements being provided for one month of the reporting period, no response has been received. The necessity of the Treehouse Borrower complying with its reporting obligations under the Amending & Extension Agreement has also recently become more acute. A copy of the Amending & Extension Agreement (without exhibits) is attached hereto as **Appendix “11”**.

147. In early April 2019, the Trustee received a demand letter issued by TCC (the first priority lender) advising that the new mortgage had gone into default on April 1, 2019 and that, unless the mortgage was brought into good standing by April 24, 2019, the lender would be pursuing enforcement proceedings. As this date has now passed, it is possible that TCC may proceed with enforcement action on this project. It is also crucial that the Trustee obtain this information as it has been presented with a Proposed Transaction for the Treehouse Project. The Trustee's counsel has continued to request the required reporting information, as well as further information regarding the defaults and the Treehouse Borrower's efforts to cure same, but, as of the date of this Seventh Report, has not been provided with any update by the Treehouse Borrower. Selected copies of relevant correspondence involving the Lake and East Borrower and the Treehouse Borrower are attached hereto as **Appendix "12"**.

***Production Order***

148. Since Sorrenti, the Lake and East Borrower and the Treehouse Borrower have each not cooperated with the Trustee with respect to the delivery of important information on the Transferred Projects, the Lake and East Project, and the Treehouse Project, respectively, the Trustee has determined that it has no other option but to seek an order of this Court compelling Sorrenti, the Lake and East Borrower and the Treehouse Borrower to provide the requested information as soon as reasonably practicable. The Trustee is therefore seeking an order (as part of the Omnibus Order):

- (a) requiring Sorrenti, the Lake and East Borrower and the Treehouse Borrower to provide the Trustee with a detailed list of all documents, records and information of any kind related to the Transferred Projects, the reporting obligations required by the Lake and East Borrower under the Symgine Reporting Agreement and by the Treehouse Borrower under the Amending and Extension Agreement, as the case may be, and a plan and proposed schedule for the delivery of such documents, records and information to the Trustee as soon as reasonably practicable, and in any event within 15 days of the date of the order in the case of the Lake and East Borrower and the Treehouse Borrower and 30 within days of the date of the order in the case of Sorrenti;

(b) authorizing the Trustee to approve or negotiate amendments to each proposed timetable; and

(c) requiring Sorrenti, the Treehouse Borrower and the Lake and East Borrower to deliver such documents, records and information to the Trustee by no later than the date set out in the approved schedule or such later date as the Trustee may agree in writing ("**Production Order**").

149. Sorrenti, the Treehouse Borrower and the Lake and East Borrower will be served with this Seventh Report and will have an opportunity to comply with the Trustee's information requests prior to the Court hearing for the motion to approve the Production Order. To the extent that Sorrenti, the Lake and East Borrower and/or the Treehouse Borrower take steps to comply with their respective obligations, the Trustee will consider potential amendments to the requested Production Order.

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

150. In accordance with the Appointment Order, the Trustee continues to engage in the activities described in this Report to protect the interests of Investors. These activities are complicated, time consuming and costly and are being carried out in circumstances where BDMC has no revenue.

151. As previously reported, BDMC is functionally insolvent. BDMC has regular expenses but it no longer has any revenue sources. Prior to FAAN Mortgage's private appointment as independent manager of BDMC's administration business on February 7, 2018, BDMC relied upon fees payable when new loans were established and upon funding from other sources. BDMC has not agreed to administer any new loans since the date of the Appointment Order, will not be administering new loans in the future and funding from other sources has ended. BDMC received very limited funding from Fortress for a short time after February 7, 2018, but that funding has ceased.

152. Accordingly, the Trustee's continued use of Estate Property and the Administrative Holdback (defined below) is essential to fund these proceedings and to continue to carry out the Trustee's mandate in accordance with Orders of this Court.



**Cash receipts and disbursements from October 1, 2018 to March 31, 2019**

153. In the period October 1, 2018 to March 31, 2019 (“**Period**”), the Trustee has succeeded in obtaining Estate Property from certain borrowers in the amounts set out below:
- (a) approximately \$493,000 on account of professional fee reimbursements in connection with postponements in respect of refinancings and other significant transactions, which the Trustee has negotiated on a case by case basis; and
  - (b) approximately \$200,000 on account of interest paid by the Treehouse Borrower in connection with the Treehouse refinancing, as discussed in paragraph 57 above.
154. Pursuant to the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order, 15% of all Realized Property has been withheld to fund the Required Trustee Activities (“**Administrative Holdback**”). The Trustee has retained a total of approximately \$4.1 million from the three settlements approved by the Court during the Period (being Braestone, Harlowe and Speers), approximately \$73,000 from the amounts held in the 455 Account (as defined below) and approximately \$673,000 from the Victoria Medical loan repayments. Investors may receive a portion of the Administrative Holdback in the future; however, the timing and amount of a future distribution, if any, is unknown at this time.
155. Portions of the Estate Property and the Administrative Holdback described in the previous paragraph have been disbursed to pay BDMC’s operating expenses and professional fees. The chart below provides a summary of the variance analysis for collections and amounts paid during the Period. The detailed variance analysis is attached as **Appendix “13”**.

	\$000s		
	Projected	Actual	Variance
Collections <sup>7</sup>	-	849	849
Administrative Holdback	-	4,874	4,874
Total receipts	-	5,723	5,723
Operating costs	279	278	1
Appraisals	350	152	198
Professional fees	1,200	1,676	(476)
Total disbursements	1,829	2,106	(277)
Net cash flow	(1,829)	3,617	5,446

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

**Collections** – the positive variance relates primarily to the collection of interest and the reimbursement of fees by borrowers on various projects in respect of postponements requested in relation to refinancings and other significant transactions on certain projects.

**Administrative Holdback** – the positive variance relates to the amounts withheld related to the completed settlement transactions that took place in the Period, which were not included in the projection.

**Appraisals** – the positive variance relates to a delay in the receipt of final invoices for all new appraisals commissioned by the Trustee. Accordingly, certain amounts projected for new appraisals remain unpaid. This is a timing difference.

**Professional fees** – includes the fees paid to the Trustee, its legal counsel and Representative Counsel. The variance relates to fees paid in excess of amounts budgeted to be paid in the Period, which is offset by the professional fee reimbursements of approximately \$493,000 paid by borrowers during the Period.

157. BDMC continues to maintain six bank accounts at the Toronto-Dominion Bank (“TD”). Certain professional fee reimbursements have also been paid to the Trustee’s legal counsel directly, which are being held in a trust account (“Trust Account”). A summary

<sup>7</sup> Includes approximately \$156,000 of interest previously received from the Braestone borrower, payable to Olympia, which was deposited in the BDMC account during the Period.

of the TD accounts based on the general ledger balances maintained by BDMC, which include outstanding cheques, as well the Trust Account, are as follows:

<b>Account Name/ Reference</b>	<b>Primary Purpose of Account (per BDMC)</b>	<b>Balance in Second Report</b>	<b>Balance at March 31-19</b>	<b>Property Type</b>
Account #1 (763 Account)	Operating account	418	265	Estate
Account #2 (420 Account)	To hold funds to potentially be paid to third parties	118	-	Estate
Account #3 ("455 Account")	To hold funds for Investors	486,874	-	Realized
Account #4 (214 Account)	Interest Reserve Account	1,002,680	4,156,958	Estate
Account #5 (term deposit)	Regulatory capital required to be maintained under the MBLAA	25,857	26,056	Estate
Account #6 (GIC account)	To hold Victoria Medical SML Loan repayments	2,288,702	673,736	Realized
<b>Total held by BDMC</b>		<b>3,804,649</b>	<b>4,857,015</b>	
Trust Account	Funds paid to Osler, in trust	103,989	567,233	Estate
		<b>3,908,638</b>	<b>5,424,248</b>	

158. A high-level summary of the accounts is provided below. A more detailed discussion of these accounts is available in the First Report.

**Accounts #1 and #2** – BDMC’s primary operating accounts. Funds are advanced from the 214 Account (Account #4) to these accounts to fund operations. Payments are then issued by way of cheque or wire transfer from these accounts.

**Account #3** – Previously held Investor funds. As explained in the Second Report, the funds in the account related to funds advanced by seven prospective investors that were not ultimately deployed to a project and three Investors who had uncashed cheques from a project that was paid out prior to the Trustee’s appointment. The Trustee has returned 85% of these funds to the individuals, pursuant to the various Court orders with respect to

Realized Property and has transferred the remaining Administrative Holdback of approximately \$73,000 to Account #4.

**Account #4** – Since the issuance of the Interim Stabilization Order the funds maintained in this account have been used to fund BDMC’s operating costs. Funds withheld on account of the Administrative Holdback have been transferred into this account.

**Account #5** – BDMC is required under the MBLAA to have a certain financial guarantee of \$25,000 available, which may include unimpaired working capital. BDMC maintains \$26,056 in satisfaction of this obligation in Account #5.

**Account #6** – This is an account that currently holds the residual balance from the Victoria Medical SML Loans to be repaid to Investors, net of the Administrative Holdback transferred to Account #4.

159. The Trustee has prepared a monthly cash flow projection (“**Cash Flow Projection**”) for the seven-month period ending October 31, 2019 (“**Cash Flow Period**”). The Cash Flow Projection is attached as **Appendix “14”**. The Cash Flow Projection has been prepared by the Trustee based on the Trustee’s review of BDMC’s records, its activities pursuant to the Appointment Order and third-party estimates. A summary of the Cash Flow Projection is provided in the following table:

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	<u>\$000s</u>
Receipts	1,619
Disbursements	
Staffing costs	144
Office expenses and IT	12
Insurance	54
Bank charges	4
Other expenses	24
Total Operating Disbursements	<u>238</u>
New appraisal fees	267
Professional fees	3,500
Total disbursements	<u>4,005</u>
Net cash flow	<u>(2,386)</u>
Opening cash <sup>1</sup>	4,724
Net cash flow	<u>(2,386)</u>
Closing cash	<u>2,338</u>

Note 1: Comprised of Estate Property, excluding the term deposit required under MBLAA

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160. The projected cash receipts relate to the reimbursements by borrowers and the Administrative Holdbacks from the James settlement approved by the Court on April 26, 2019, the initial payment received from the CHAT sale transaction and the additional payments forecasted to be received from the CHAT sale transaction in June 2019 and September 2019. The forecast does not include any potential receipts during the Cash Flow Period from future recoveries, payout or sale transactions that may be completed.
161. Among other things, the Cash Flow Projection estimates total operating disbursements of approximately \$238,000. Overall operating costs have been reduced due to a headcount reduction and the vacating of BDMC's offices in November 2018. The Trustee notes that the administration of BDMC's estate is being run out of FAAN Mortgage's offices on a rent-free basis.
162. It is anticipated that the new appraisals will be finalized and paid for in the near term and that certain of these appraisals will need to be refreshed in the Cash Flow Period. Further, it is contemplated that outstanding professional fees of the Trustee and its counsel as well as Representative Counsel, which have accrued but remained unpaid as at March 31,

2019, will be paid in the Cash Flow Period, as well as certain additional professional fee expenses that will be paid in the Cash Flow Period.

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

163. The Trustee is seeking the approval of the Fourth Report, Fifth Report, the Sixth Report, and this Seventh Report, its activities as set out in the Fourth Report, Fifth Report, the Sixth Report and this Seventh Report, and its fees and its counsel's fees from October 1, 2018 to March 31, 2019.
164. The Trustee's activities are described at length in the Fourth Report, the Fifth Report, the Sixth Report and this Seventh Report. In addition to these activities, the Trustee's activities (including the activities of its counsel) have included, among other things:
- (a) communicating with borrowers, Investors, Fortress, lenders, Representative Counsel and other stakeholders regarding various matters including with respect to the status of these proceedings, the projects and relevant timelines;
  - (b) drafting and sending 58 notices to Investors as of May 1, 2019;
  - (c) holding in-person meetings with certain Investors;
  - (d) responding to Investor inquiries;
  - (e) posting the Trustee's Court materials on the Trustee's Website;
  - (f) continuing the Trustee's in-depth review of the real estate development projects;
  - (g) continuing to engage with stakeholders to obtain information related to the projects;
  - (h) reviewing periodic reporting provided by certain project borrowers;
  - (i) ongoing review of appraisals commissioned by the Trustee;
  - (j) continuing to engage and negotiate with borrowers and with CDCM, as broker to some of the borrowers, regarding certain requests for postponements in relation to refinancings and certain enforcement matters;
  - (k) attending to partial discharges of BDMC's security interests to facilitate sales of individual units or the development of properties in the ordinary course;

- (l) continuing to engage and negotiate with borrowers regarding potential payouts and settlement offers in respect of certain BDMC loans;
  - (m) continuing to engage and negotiate with borrowers and prospective purchasers regarding sale transactions for certain properties;
  - (n) continuing to engage and negotiate with borrowers, senior lenders and other relevant stakeholders regarding enforcement actions commenced by such lenders;
  - (o) continuing to determine circumstances where affirmative enforcement action should be taken by the Trustee on behalf of the Investors, and taking such action where appropriate;
  - (p) preparing and serving materials as required in connection with the matters before the Court;
  - (q) preparing Reports to the Court and attending hearings before the Court;
  - (r) making distributions in accordance with the various Court orders issued in these proceedings to the parties entitled to those distributions, being the Investors in the Victoria Medical, Braestone, Harlowe and Speers Projects and those Investors whose funds were retained in the 455 Account;
  - (s) sending letters to certain plaintiffs in actions naming BDMC as defendant to advise such persons of the stay of proceedings set out in the Appointment Order;
  - (t) engaging with FSCO and its legal counsel;
  - (u) engaging with mortgage brokerage and administration licensing authorities outside of Ontario to discuss the Trustee's mandate and the Appointment Order and to address matters related to BDMC's licenses in such jurisdiction; and
  - (v) attending to the ordinary course business activities of BDMC and the related administrative matters including but not limited to statutory reporting required by FSCO, filing tax returns, and issuing T5s to Investors.
165. Further, the Trustee has continued to maintain ongoing discussions with borrowers regarding, among other things, the status of the relevant projects, expected timelines to completion where the project is under construction, or, where development is idle, the borrower's plans to move the project forward.

166. Investor communications remain a significant component of the Trustee's mandate. On average, the Trustee receives 20-30 calls a day and 20-30 emails a day, with increased call and email volumes following of the issuance of any material notices or media attention on the projects, Fortress or the proceedings generally. Investors contact the Trustee to seek general information about the proceedings, the role of the Trustee and Representative Counsel, as well as specific information regarding the projects that are the subject of their investments. The Trustee endeavours to respond to all inquiries in a timely manner.
167. In addition to general inquiries, the Trustee also informs the affected Investors by way of notices, sent by email to the majority of Investors, when enforcement action is taken against a project they have invested in or when other material developments occur with respect to their project. Where appropriate, the Trustee seeks the consent of Investors to material actions to be taken by the Trustee, such as (a) extensions to the term of a loan or the execution of a postponement that would have the effect of extending the term of a loan or waiving or amending a material provision of the applicable loan agreement, or (b) settlement proposals.
168. In addition to corresponding with Investors by telephone and email, the Trustee has met and continues to meet both formally and informally with groups of Investors and agents for Investors.

### **Trustee Fees**

169. Pursuant to the terms of the Appointment Order, the Trustee and its legal counsel shall be paid their reasonable fees and disbursements and shall pass their accounts from time to time.
170. The Trustee and its legal counsel are tracking their time by project. For certain tasks that affect all Investors, including general notices and the preparation of general reports to Court and the related Court materials, the time will be charged to a general account that will, at a later date once the totality of realizations are more clear, be allocated to the various projects based on appropriate considerations and in accordance with further Court orders.
171. The fees of the Trustee for the period between October 1, 2018 to March 31, 2019, total \$866,270.35 before HST; and HST applicable to such amounts totals \$112,615.15, for an



aggregate amount of \$978,885.50. Invoices for the fees of the Trustee, including summaries of the activities of the Trustee for the applicable period, are provided in the affidavit of Naveed Manzoor ("**Manzoor Affidavit**"), attached as **Appendix "15"**.

172. Detailed docket information in respect of the fees and disbursements of the Trustee for this period are included in the confidential exhibit to the Manzoor Affidavit that is being filed separately with the Court ("**Confidential Manzoor Exhibit**"). The Trustee is seeking a sealing order with respect to the Confidential Manzoor Exhibit due to the fact that the information contained in the Trustee's detailed invoices includes privileged and commercially sensitive information regarding the projects and BDMC generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings.
173. The average hourly rate for the Trustee over the referenced billing period was approximately \$363.29/hour.

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

174. The fees (excluding disbursements and HST) of Osler, Hoskin & Harcourt LLP ("**Osler**") as counsel to the Trustee for the period between October 1, 2018 to March 31, 2019 total \$1,540,161.50; Osler incurred \$20,019.68 disbursements during the period; and HST applicable to such amounts totals \$202,571.06, for an aggregate amount of \$1,762,752.24. Invoices for the fees, reimbursable expenses and applicable taxes of Osler, including summaries of Osler's activities in relation thereto, are provided in the affidavit of Michael De Lellis ("**De Lellis Affidavit**"), attached as **Appendix "16"**.
175. Full accounts in respect of the fees and disbursements of Osler for this period are included in the confidential exhibit to the De Lellis Affidavit that is being separately filed with the Court ("**Confidential De Lellis Exhibit**"). The Trustee is seeking a sealing order with respect to the Confidential De Lellis Exhibit due to the fact that the information contained in Osler's detailed invoices includes privileged and commercially sensitive information regarding the projects and BDMC generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings.
176. The average hourly rate for Osler over the referenced billing period was \$664.23/hour.

177. The Trustee is of the view that the hourly rates charged by Osler are consistent with the rates charged by major law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.

### **Fee Recoveries**

178. Since the date of the Appointment Order, the Trustee and its counsel have recovered approximately \$725,000 on account of professional fee reimbursements in connection with postponements in respect of refinancings and other significant transactions. The Trustee has succeeded in negotiating these fee recoveries on a case by case basis and continues to seek to recover fees when appropriate.

### **REPRESENTATIVE COUNSEL**

179. Pursuant to the Interim Stabilization Order, Chaitons LLP was appointed as representative counsel to, among other things and subject to the terms of that Order, represent the common interests of the Investors who participate in mortgages administered by BDMC, including the common interests of Investors in any particular syndicated mortgage loan.
180. To date, 11 Investors with a total of \$608,000 invested through BDMC have opted out of representation by Representative Counsel.
181. The Trustee understands that Representative Counsel continues to receive a significant number of calls and written correspondence from Investors with respect to the status of their investments. Representative Counsel responds in a timely manner to such communications to the extent that they pertain to legal issues covered by Representative Counsel's mandate.
182. The Trustee understands that Representative Counsel continues to consider the rights and remedies of Investors and potential sources of recovery other than against the borrowers under the various BDMC loans to be pursued on a group or class action basis, while urging Investors to individually seek independent legal advice with respect to any such causes of action that they may have to pursue such remedies if so advised. Representative Counsel has communicated with other law firms on a confidential basis to share certain information to assist such law firms in determining whether they would be willing to commence litigation on a contingency fee basis. These confidential discussions remain ongoing.

183. The Trustee also continues to regularly consult with Representative Counsel whenever appropriate, including with respect to (i) requests for Investor feedback regarding certain postponements and sale transactions, (ii) enforcement steps taken by senior lenders or by the Trustee, (iii) other potential sources of recovery on projects, including the Trustee's review of any sources and uses of funds received from borrowers and (iv) strategic decisions and steps being considered by the Trustee. Representative Counsel has also attended certain meetings with the Trustee and Investors and has taken active roles on certain projects that are subject to enforcement proceedings in a manner that ensures a non-duplication of efforts.

### **CONCLUSION AND RECOMMENDATION**

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of May, 2019.

*Faan Mortgage Administrators Inc.*

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

**Appendix 9:**  
**Selected Sorrenti Correspondence**



Lana Bezner < Lana Bezner < lana@faanmortgageadmin.com >

---

**Re: Information required by BDMC**

1 message

---

**Lana Bezner** < Lana Bezner < lana@faanmortgageadmin.com >  
To: derek.sorrenti@sorrentilaw.com, derek.sorrenti@dslaw.ca

Fri, Oct 26, 2018 at 4:12 PM

Hi Derek,

Please let me know when we can expect to receive the information requested in the email below.

Thanks,  
Lana

---

**Lana Bezner, MBA, CPA, CA, CIRP**

**FAAN Mortgage Administrators**

20 Adelaide Street East, Unit 920  
Toronto, Ontario, M5C 1H6

T. 416.996.7646

E. [lana@faanmortgageadmin.com](mailto:lana@faanmortgageadmin.com)

On Tue, Oct 16, 2018 at 10:30 AM Lana Bezner < Lana Bezner < lana@faanmortgageadmin.com > wrote:

Hi Derek,

As you are aware, FAAN Mortgage Administrators Inc. is the Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC") pursuant to an order made by the Court on April 20, 2018 ("Court Order").

Further to the various email exchanges you have had with Julia Svetanic from BDMC, we are writing to you regarding the information that the Trustee requires from Sorrenti Law related to the projects administered by BDMC. Pursuant to paragraph 4 of the Court Order, all parties having Property (as defined in the Court Order), in such Person's (as defined in the Court Order) possession or control, must grant immediate and continued access to the Property to the Trustee, and must deliver all such Property to the Trustee upon the Trustee's request. The Court Order can be accessed at the following link: <http://faanmortgageadmin.com/wp-content/uploads/2018/04/Order-of-Justice-Hainey-dated-April-20-2018.pdf>

The Trustee cannot discharge its Court-ordered mandate with respect to the Projects set out below without the requested information.

Please see below for a summary of the information we are currently requesting to be provided to the Trustee.

Projects Previously Administered by Sorrenti Law:

- Colliers
- Georgetown (Glens of Halton Hills)
- Harmony Village Lake Simcoe (the Kemp)
- Mississauga Meadows 1 (MM1)
- Mississauga Meadows 2 (MM2)
- Old Market Lane
- Crates Landing (South Shore)

For the above referenced projects, we require the following information:

1. All trust account records;
2. Closing books, or information required to create the closing books if one does not exist, including all security documents related to the loans administered by BDMC;
3. Any records pertaining to project due diligence that was collected at the time Sorrenti Law administered the projects;
4. All charges, amending agreements, postponement documents etc.; and
5. Any other project related information maintained in your records.

Projects where Sorrenti Law acted as Conveyancer:

- Treehouse (Halo)
- Castlemore (Cachet)
- Rosewater (Whitby)

For the above referenced projects, we require items 2, 4 and 5 from the list above.

Please contact us on or before Friday, October 19, 2018 to advise of the availability of the above-referenced information and to provide a timeline within which we can expect to receive the requested documents.

If you have any questions regarding this request, I can be reached by email or at the number below.

Thanks,  
Lana

---

**Lana Bezner, MBA, CPA, CA, CIRP**

**FAAN Mortgage Administrators**  
20 Adelaide Street East, Unit 920  
Toronto, Ontario, M5C 1H6

T. 416.996.7646

E. [lane@faanmortgageadmin.com](mailto:lane@faanmortgageadmin.com)

---

**From:** Riesterer, Patrick  
**Sent:** Thursday, January 10, 2019 6:05 PM  
**To:** Derek Sorrenti  
**Cc:** Charene Bunnett; Loredana Iannacchino; De Lellis, Michael; Lana Bezner  
**Subject:** RE: Bayview - Direction to pay

Hi Derek,

We've reviewed the materials you sent to us and we have a number of questions. Can you please send us the documents listed below under the heading "Bayview Documents", as well as the documents and information listed further below that were previously requested by FAAN, including on October 16 and October 26, 2018? With respect to the documents and information requested previously, I understand that you may not have it all. If you can please start sending us what you do have as and when you lay hands on it, it would be very helpful. We may have further document requests as we continue to review, but we will be in a better position to discuss the matter with you when we have reviewed the requested documents.

#### Bayview Documents

- Any agreements between Sorrenti Law Professional Corporation and Centro mortgage (we only have the bare trust agreement)
- Loan Agreement between Sorrenti Law Professional Corporation, as lender, and Pine Ridge Building Corp., as borrower, dated June 6, 2013
- Intercreditor Agreement, postponement agreement or similar agreement setting out the relative priorities of the amounts owing under the borrower's loan from Centro compared to the Borrower's loan from Sorrenti Law Professional Corporation
- List of all investors and their entitlements under both loans
- Pay out statement or flow of funds showing contemplated amounts payable to each investor
- Information regarding the discharge of charge registered on or about November 19, 2018 and flow of funds in respect of same

#### Previously requested documents

#### Projects Previously Administered by Sorrenti Law:

- Colliers
- Georgetown (Glens of Halton Hills)
- Harmony Village Lake Simcoe (the Kemp)
- Mississauga Meadows 1 (MM1)
- Mississauga Meadows 2 (MM2)
- Old Market Lane
- Crates Landing (South Shore)

#### For the above referenced projects, we require the following information:

1. All trust account records;
2. Closing books, or information required to create the closing books if one does not exist, including all security documents related to the loans administered by BDMC;
3. Any records pertaining to project due diligence that was collected at the time Sorrenti Law administered the projects;
4. All charges, amending agreements, postponement documents etc.; and

5. Any other project related information maintained in your records.

Projects where Sorrenti Law acted as Conveyancer:

- Treehouse (Halo)
- Castlemore (Cachet)
- Rosewater (Whitby)

For the above referenced projects, we require items 2, 4 and 5 from the list above.

Best regards,  
Patrick

**OSLER**

**Patrick Riesterer**

Associate

416.862.5947 | [PRiesterer@osler.com](mailto:PRiesterer@osler.com)

Osler, Hoskin & Harcourt LLP | [osler.com](http://osler.com)

---

**From:** Riesterer, Patrick <[PRiesterer@osler.com](mailto:PRiesterer@osler.com)>

**Sent:** Monday, January 07, 2019 5:12 PM

**To:** Derek Sorrenti <[derek.sorrenti@sorrentilaw.com](mailto:derek.sorrenti@sorrentilaw.com)>

**Cc:** Charene Bunnett <[cbunnett@cdcminc.ca](mailto:cbunnett@cdcminc.ca)>; Loredana Iannacchino <[loredana@sorrentilaw.com](mailto:loredana@sorrentilaw.com)>; De Lellis, Michael <[MDeLellis@osler.com](mailto:MDeLellis@osler.com)>

**Subject:** Re: Bayview - Direction to pay

Hi Derek,

Happy New Year to you too. I'm back in the office this week and we will be looking over these materials in the next few days.

Best regards,  
Patrick

On Jan 7, 2019, at 5:10 PM, Derek Sorrenti <[derek.sorrenti@sorrentilaw.com](mailto:derek.sorrenti@sorrentilaw.com)> wrote:

Patrick:

Happy New Year.

May I please hear from you regarding this matter?

Thank you.

<image001.jpg>

Derek F. Sorrenti, H.B.A., LL.B.  
Managing Principal  
Sorrenti Law Professional Corporation  
# 310 - 3300 Highway #7  
Vaughan, ON L4K 4M3

---

**Tel** 905-264-6414 ext. 400

**Fax** 905-264-6413

**Web** [www.sorrentilaw.com](http://www.sorrentilaw.com)

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**From:** Derek Sorrenti  
**Sent:** Friday, January 04, 2019 11:09 AM  
**To:** 'Riesterer, Patrick'  
**Cc:** 'Charene Bunnett'; Loredana Iannacchino  
**Subject:** RE: Bayview - Direction to pay

Good morning Patrick.  
I will be returning to the office on Monday.  
Over the holidays I have had a few dozen investors inquire as to the status of the Bayview repayment.  
Would you therefore kindly advise me as to the status of this matter before Monday.  
I look forward to receiving your reply.

<image002.jpg>

Derek F. Sorrenti, H.B.A., LL.B.  
Managing Principal  
Sorrenti Law Professional Corporation  
# 310 - 3300 Highway #7  
Vaughan, ON L4K 4M3  

---

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**From:** Derek Sorrenti  
**Sent:** Wednesday, December 19, 2018 5:44 PM  
**To:** 'Riesterer, Patrick'  
**Cc:** 'Charene Bunnett'; [jawad@fortressrdi.com](mailto:jawad@fortressrdi.com)  
**Subject:** RE: Bayview - Direction to pay

Patrick:

See attached examples of supporting documentation as requested.

Please let me know if anything further is required.

<image002.jpg>

Derek F. Sorrenti, H.B.A., LL.B.  
Managing Principal  
Sorrenti Law Professional Corporation  
# 310 - 3300 Highway #7  
Vaughan, ON L4K 4M3  

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---

**From:** Derek Sorrenti  
**Sent:** Wednesday, December 19, 2018 1:37 PM  
**To:** 'Riesterer, Patrick'  
**Cc:** Bill Friedman ([wf@friedmans.ca](mailto:wf@friedmans.ca)); Charene Bunnett ([cbunnett@cdcminc.ca](mailto:cbunnett@cdcminc.ca))  
**Subject:** RE: Bayview - Direction to pay

Patrick, thank you for your telephone call earlier today.  
As requested, please see the attached documents which I believe should be sufficient for FAAN to execute the requested direction to pay in relation to the above matter.  
I look forward to hearing from you.

<image002.jpg>

Derek F. Sorrenti, H.B.A., LL.B.  
Managing Principal  
Sorrenti Law Professional Corporation  
# 310 - 3300 Highway #7  
Vaughan, ON L4K 4M3

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**From:** Derek Sorrenti  
**Sent:** Wednesday, December 19, 2018 12:12 PM  
**To:** Lana Bezner; Bill Friedman ([wf@friedmans.ca](mailto:wf@friedmans.ca))  
**Cc:** Charene Bunnett ([cbunnett@cdcminc.ca](mailto:cbunnett@cdcminc.ca)); Jonathan Bahnuik  
**Subject:** RE: Bayview - Direction to pay

Lana.

I have not received a reply from you to date regarding our request for FAAN to execute the direction to pay required by the borrower in relation to the Lotus (Bayview) syndicate mortgage.  
Please advise whether you intend to respond. I have offered to provide you with any documents we have in our possession, in the event FAAN requires any additional information, prior to executing the direction to pay in its capacity as the court appointed trustee for Centro / BDMC.

Bill:

I would ask that you reply all to confirm the quantum of funds currently in hand at your firm which you are prepared to send to our office today in relation to this matter.

Thank you.

<image002.jpg>

Derek F. Sorrenti, H.B.A., LL.B.  
Managing Principal  
Sorrenti Law Professional Corporation  
# 310 - 3300 Highway #7  
Vaughan, ON L4K 4M3

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**From:** Derek Sorrenti  
**Sent:** Monday, December 17, 2018 4:37 PM  
**To:** Lana Bezner  
**Subject:** RE: Bayview - Direction to pay

Lana:

May I please hear from you?

<image002.jpg>

Derek F. Sorrenti, H.B.A., LL.B.  
Managing Principal  
Sorrenti Law Professional Corporation  
# 310 - 3300 Highway #7  
Vaughan, ON L4K 4M3

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**Tel** 905-264-6414 ext. 400  
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---

**From:** Derek Sorrenti  
**Sent:** Thursday, December 13, 2018 10:24 AM  
**To:** Lana Bezner  
**Cc:** Loredana Iannacchino; [BahnuikJ@olympiatrust.com](mailto:BahnuikJ@olympiatrust.com); Bill Friedman  
**Subject:** Re: Bayview - Direction to pay

Lana:

If you require additional information in order for FAAN to execute the direction to pay requested by the borrower please let me know.

Otherwise please execute the Direction to Pay and forward it to me forthwith.

Centro/BDMC has no beneficial interest in these funds.

The lawyer for the borrower is presently holding a significant amount of money that they are prepared to send to my office in order to partially repay the investors in this project which our office administers.

I would like to be able to receive these funds this week and arrange to disburse funds to investors as soon as possible.

I look forward to hearing from you.

<Direction to pay - December  
2018 .2.pdf>

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**From:** Riesterer, Patrick  
**Sent:** Monday, January 28, 2019 4:38 PM  
**To:** Derek Sorrenti  
**Cc:** naveed@faanmortgageadmin.com; Ms Lana Bezner; Dacks, Jeremy; Erickson, Justine; De Lellis, Michael  
**Subject:** Bayview loan and documentation requirements

Derek,

Thanks for the discussion on Friday. Further to that discussion, we thought it would be productive to give you a list of items that it would be helpful to include in the affidavit so that the relevant evidentiary matters are addressed, as well as to remind you of the list of documents that the Trustee is seeking with respect to syndicated mortgage loans that were previously administered by you.

Affidavit/evidentiary matters:

It would be helpful to have an affidavit and supporting documents, to the extent available, that addresses the following points: (1) that Sorrenti Law Professional Corporation (SLPC) is the administrator of the Centro loan to Pine Ridge Building Corp (Borrower) and is fully responsible to the individual cash lenders in the Bayview project; (2) that Centro is not party to any agreements with individual lenders in the Bayview project (including statements regarding the reference to the SLPC loan agreement in the agreements with the individual lenders); (3) that Centro has no ongoing role or responsibility of any kind to individual lenders, whether as administrator of the Bayview loan (under the MBLAA or otherwise) or in any other capacity, and only acted as broker when the loans were placed, or information regarding any role Centro may continue to have; (4) that Centro is not party to any agreement with SLPC regarding this loan other than the bare trustee agreement with respect to the charge; (5) information regarding any directions Centro may have given SLPC with respect to the Bayview project mortgage, and its authority for giving such directions; (6) that Centro is not party to any other agreement with the Borrower regarding the Bayview loan or any other matter, and the Borrower has no liability to Centro other than under the Loan Agreement; and (6) that all funds will be distributed pro rata to individual lenders in accordance with the applicable agreements between SLPC, the Borrower and the individual lenders.

As noted on the call, it is not appropriate to suggest that investors in other projects should pay the costs associated with obtaining an explanation of the Bayview Project loan transaction.

Document request:

With respect to the previously requested documents, please note that the Trustee is not asking for all documents in your possession regarding the loans you previously administered. The Trustee has, for example, copies of the loan agreements and copies of the agreements with the individual lenders. There is a defined list of missing items or missing categories of items for the projects where you acted as administrator or where you facilitated the conveyancing, which is set out below.

Projects Previously Administered by SLPC or you in your personal capacity:

- a) Colliers
- b) Georgetown (Glens of Halton Hills)
- c) Harmony Village Lake Simcoe (the Kemp)
- d) Mississauga Meadows 1 (MM1)
- e) Mississauga Meadows 2 (MM2)
- f) Old Market Lane
- g) Crates Landing (South Shore)

For the above referenced projects, the Trustee requires the following information:

1. All trust account records;
2. Closing books for the Loan Agreement, or information required to create the closing books if one does not exist, including all security documents related to the loans previously administered by you and now administered by BDMC. For example, the Trustee needs:
  - a. Copies of GSAs
  - b. Copies of Indemnity Agreements
  - c. Officer's Certificates
3. Due diligence documentation and related information that was collected at the time SLPC administered the projects;
4. Copies of all charges, amending agreements, postponements, subordination agreements, etc. to the extent not registered on title.; and
5. Any other project related information maintained in your records (e.g., any periodic financial reporting provided by borrowers).

As previously noted, please prioritize the trust account records. It would also be helpful to get a list of the materials you do have as soon as possible, with copies to follow.

Projects where by SLPC or you acted as Conveyancer:

- h) Treehouse (Halo)
- i) Castlemore (Cachet)
- j) Rosewater (Whitby)

For the above referenced projects, the Trustee requires the following items from the list above:

2. Closing books for the Loan Agreement, or information required to create the closing books if one does not exist, including all security documents related to the loans previously administered by you and now administered by BDMC. For example, the Trustee needs:
  - a. Copies of GSAs
  - b. Copies of Indemnity Agreements
  - c. Officer's Certificates
4. Copies of all charges, amending agreements, postponements, subordination agreements, etc. to the extent not registered on title.; and
5. Any other project related information maintained in your records (e.g., any periodic financial reporting provided by borrowers).

As noted on our call, if we do not begin receiving the documents we previously requested forthwith, the Trustee will be required to describe the issue in its next report to the Court.

We look forward to seeing this matter progress to a conclusion in the near term.

Best regards,  
Patrick



**Patrick Riesterer**  
Associate  
416.862.5947 | [PRiesterer@osler.com](mailto:PRiesterer@osler.com)  
Osler, Hoskin & Harcourt LLP | [osler.com](http://osler.com)

\*\*\*\*\*

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## **Appendix “4”**





**SORRENTI LAW**  
PROFESSIONAL CORPORATION

# 310 – 3300 Highway 7  
Vaughan, ON L4K 4M3  
Tel 905-264-6414  
Fax 905-264-6413  
Web [www.sorrentilaw.com](http://www.sorrentilaw.com)

**MEMORANDUM**

**To:** All “Bayview Village” Syndicate Mortgage Investors (“SMI”)  
**From:** Sorrenti Law Professional Corporation, in its capacity as mortgage administrator (the “Administrator”)  
**Re:** Centro Mortgage Inc., in trust Loan to Pine Ridge Building Corp. (“Loan” or “Loan Agreement”) and Syndicated Mortgage Loan (“SML”) to Bayview Village / Lotus Developments  
5,7,9,11 and 15 Kenaston Gardens and 577 Sheppard Avenue East, Toronto, ON (the “Project”)  
**And Re:** Available Funds Distribution and Project Update  
**Date:** August 12, 2019

---

You are receiving this communication because you have been identified as an investor in the Bayview Village / Lotus SML.

The purpose of this communication is to advise you that our office has recently received a significant portion of the amount due to be repaid to all SMI pursuant to the Loan Agreement.

If you are a “cash” or a “non-registered” investor, then attached to this memo is a cheque representing your pro-rata distribution equalling approximately 90.5% of the amount you originally invested in the SML.

If you are an investor through a “registered” plan held through Olympia Trust Company, then a cheque representing your pro-rata distribution equalling approximately 90.5% of the amount you originally invested in the SML through your plan, has been forward to Olympia Trust for deposit to your registered account.

The borrower’s lawyer provided the following information in response to our recent inquiry about the anticipated timing of repayment of additional funds, including the balance of the principal and accrued interest:

*“Payment of the balance will still take quite some time. LC’s (Lines of Credit) collateralized with cash are held by the City, Tarion Warranty still has about 1 and a half years and the technical audit is still outstanding, and this may take quite some time.”*

**As a result, at this time, the Administrator is not in a position to provide any additional information about the timing or the availability of additional principal or interest payments associated with this Loan.**

We will follow-up regularly with the borrower to inquire as to the timing of payment of additional monies due all SMI pursuant to the terms of the Loan Agreement and we will notify all SMI of any additional relevant information we receive.

We trust that the foregoing update is satisfactory in the circumstances.

**SORRENTI LAW PROFESSIONAL CORPORATION**  
in its capacity as Mortgage Administrator



September 3, 2019

**RE:      Mortgagor:      BAYVIEW (PINE RIDGE BUILDING CORP.)**  
**Our Ref:      MOR6934**

---

Enclosed please find the following document(s), which were received by Olympia Trust Company ("Olympia") from Sorrenti Law Professional Corporation in its capacity as Mortgage Administrator.

Enclosed with this letter, please find the following:

- Memorandum from Sorrenti Law dated August 12, 2019

Based on the information contained in this document, it appears that the legal action with respect to the Mortgage has concluded and the available funds have been disbursed and applied to the Mortgage. Olympia is aware that there may be additional funds received with respect to this matter in the future. As the payment of the balance could still take quite some time, Olympia believes it is in the best interest of the account holders to close all Olympia Accounts that hold the Mortgage. If additional funds become available later, Olympia will work to ensure that the holders of the closed accounts receive the funds to which they are entitled.

Pursuant to your Plan agreement with Olympia, you agree to indemnify Olympia against any losses, cost or expenses incurred by Olympia in connection with the Mortgage or the removal of the Mortgage from your Plan. You further acknowledged that Olympia may not be able to deliver the Mortgage to you, as is the case with the Mortgage.

To review any amounts received on your plan, please login to your web portal to review your account statements. If you have any questions in regards to login information or need assistance with this, please feel free to email us at [rrspinfo@olympiatrust.com](mailto:rrspinfo@olympiatrust.com) and a member of our team will be pleased to assist you.

If you have any further questions in regard to the above, please email [rrspmortgagelegal@olympiatrust.com](mailto:rrspmortgagelegal@olympiatrust.com).

Yours Truly,

**Samantha Johnson**  
Team Lead, Mortgage Documentation  
Registered Plans & TFSA Division  
Enclosure

# **Appendix “5”**

From: **REDACTED**  
Date: Fri, Aug 16, 2019 at 1:01 PM  
Subject: Fwd: Sutton Drive Project in Burlington ,Ontario  
To: <[info@faanmortgageadmin.com](mailto:info@faanmortgageadmin.com)>

Hello

I just thought I'd forward an email in which one of our investors received from Derek Sorrenti regarding more information on the Sutton project. This is an example of the tone he uses towards the investors inquiring about their life savings. He says he is not being compensated for this work, but the truth is, he was compensated at the forefront.

When the investors ask for copies of their files, which he is required to provide, he does not get back to them. Complaints to the LSO haven't helped either. I'm not expecting action from you, but just wanted to provide an example of why the investors are frustrated with Sorrenti.

Regards, **REDACTED**

On Tuesday, August 6, 2019, 3:50 PM, Derek Sorrenti <[derek.sorrenti@sorrentilaw.com](mailto:derek.sorrenti@sorrentilaw.com)> wrote:

Hello **REDACTED**:

Attached is the latest update we received from the borrower in May 2019. These updates were emailed to all investors for whom we were provided contact information.

We are expecting a further update from the borrower shortly.

To be candid, our office simply does not have the capacity to deal with the volume of calls and drop ins we receive from investors in many Fortress syndicated mortgages each and every day.

**It was never supposed to be our job to relay investment information to investors. We signed on to manage funds and make interest payments. Period.**

**Communication about project status was to be the responsibility of the brokers, agents and others involved in marketing and selling these investments.**

Unfortunately, these people and entities have all fallen by the wayside for various reasons after collecting their fat fees and commission cheques, leaving us to "clean up the mess" .... All in exchange for little to no compensation.

Obviously, this is an untenable situation to which no-one has been able to provide a solution.

Our office is doing its best every day to deal with the remaining Fortress mortgages we are administering.

Therefore, we have chosen to issue mass communication via email to investors whose information we have been provided. This is the only realistic way for this matter to be dealt with in the circumstances. We are ONLY providing updates when there is legitimate information to share.

You may well be frustrated with the situation you and the other investors find yourselves in. Multiply that by 3000 investors (and no access to present funds to pay for staff to answer 3000 inquiries) and THAT is where my office currently is in this mess.

Therefore, patience and understanding on all sides is the order of the day.

I trust the above and attached will be helpful information to you.

When there is additional information available to be shared, our office will send it.

Best regards,

<image001.jpg>  
Derek F. Sorrenti, H.B.A., LL.B.  
Managing Principal  
Sorrenti Law Professional Corporation  
# [310 - 3300](tel:310-3300) Highway #7  
Vaughan, ON L4K 4M3  

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Web [www.sorrentilaw.com](http://www.sorrentilaw.com)

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**From:** REDACTED

**Sent:** Tuesday, August 06, 2019 3:42 PM

**To:** Derek Sorrenti <[derek.sorrenti@sorrentilaw.com](mailto:derek.sorrenti@sorrentilaw.com)>

**Subject:** Sutton Drive Project in Burlington ,Ontario

Dear Mr.Sorrenti,

I have sent several emails inquiring about the project in Sutton Drive by ADI. You haven't replied to us at all. As a Mortgage administrator of this project you are suppose to update us especially now that the building is completed and had few units remaining unsold. We are suppose to be getting our money now and this is but unfair in our part for you to remain silent of this inquiry.

The only phone conversation I got from you was when a friend of mine went to your office in my behalf to inquire about this project and was then able to talk to you thru her phone while she was in your office. That was in January,2019.

Hope to hear from you soon.

Very truly yours,

**REDACTED**

Phone no's.: **REDACTED**

**REDACTED**

Email: **REDACTED**

Sent from Yahoo Mail for iPad

<190503-TA-LNK-Investor Update 2019 Q1- Final.pdf>