

**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***

SEVENTEENTH REPORT OF THE TRUSTEE

MARCH 27, 2020



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

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**SEVENTEENTH REPORT OF THE TRUSTEE
(Castlemore Project)**

March 27, 2020

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. 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. The Appointment Order was issued following an application made by the Superintendent of Financial Services pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), as amended, and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the Appointment Order is attached as **Appendix "1"**.

2. On October 30, 2018, this Court issued an Order (“**Realized Property Order**”) that, among other things,
 - (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness administered by BDMC on behalf of Investors (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 Interim Stabilization Order made in these proceedings on June 26, 2018.
3. On November 28, 2018, the Court issued the Braestone Settlement Approval Order, which approved, among other things, 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.
4. On December 20, 2018, the Court issued the Harlowe Settlement Approval Order, which approved, among other things, 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.
5. Capitalized terms not otherwise defined in this Seventeenth Report (“**Seventeenth Report**”) have the meanings ascribed to them in previous Reports filed by the Trustee. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee’s website at: www.faanmortgageadmin.com (“**Trustee’s Website**”). The Trustee intends to

maintain the Trustee's Website for the balance of these proceedings and will be updating it as appropriate.

PURPOSE OF THE SEVENTEENTH REPORT

6. Emerald Castle Developments Inc. is the borrower ("**Emerald Castle**") under a loan agreement dated August 25, 2014 (the "**Loan Agreement**") pursuant to which Emerald Castle received a syndicated mortgage loan from BDMC ("**BDMC Loan**") secured by a charge on real property situated at 10431 The Gore Road, Brampton, Ontario ("**Castlemore Property**").
7. On March 2, 2020, Emerald Castle commenced an application naming as the respondents FAAN Mortgage Administrators Inc., in its capacity as the Court-Appointed Trustee of Building & Development Mortgages Canada Inc. formerly known as Centro Mortgage Inc., and Olympia Trust Company (Court File No. CV-20-00637238-00CL) ("**Emerald Castle Application**"). A copy of the Notice of Application, redacted as required by an Order of the Court, is attached as **Appendix "2"**.
8. In the Emerald Castle Application, Emerald Castle seeks an Order declaring that if it pays approximately \$9.1 million to the Trustee on behalf of BDMC, then: (i) it has fully satisfied the debt owing under the Loan Agreement, (ii) it is entitled to a full discharge of all security related to the Loan Agreement, and (iii) it is entitled to a full and final release from BDMC and the syndicated mortgage lenders who loaned money to Emerald Castle pursuant to the Loan Agreement ("**Castlemore Investors**").
9. The Trustee disagrees with Emerald Castle's position. The Trustee understands that Representative Counsel also disagrees with Emerald Castle's position. As a result, both the Trustee and Representative Counsel are taking steps to vigorously oppose the Emerald Castle Application.
10. As discussed further below, various materials have already been filed or will be filed in connection with the Emerald Castle Application. The purpose of this Seventeenth Report is to provide the Court and stakeholders with information relevant to the Emerald Castle Application, including certain financial information required to ensure the evidentiary record is complete, and to describe the anticipated litigation process.

SCOPE AND TERMS OF REFERENCE

11. In preparing this Seventeenth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. (“**Fortress**”), Emerald Castle and certain of its beneficial owners. 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, including the Castlemore Project (as defined below) and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, 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.
12. Some of the information used and relied upon in preparing this Seventeenth 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 Seventeenth Report may vary from the projections and information used to prepare this Seventeenth 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 Seventeenth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
13. This Seventeenth Report has been prepared for the use of this Court and BDMC’s stakeholders as general information relating to BDMC, the Emerald Castle Application and the anticipated litigation process. Accordingly, the reader is cautioned that this Seventeenth Report may not be appropriate for any other purpose.
14. All references to dollars are in Canadian currency unless otherwise noted.

THE CASTLEMORE PROJECT

15. The Trustee has, in total, delivered sixteen reports to Court (collectively, the “**Reports**”) detailing, among other things, the Trustee’s activities during these proceedings and providing updates to stakeholders on various projects. As is set out in more detail below, three of these Reports contain material information relevant to the Castlemore project (“**Castlemore Project**”): The Trustee’s First Report, the Trustee’s Twelfth Report, and the Trustee’s Thirteenth Report.
16. The Trustee’s First Report dated June 19, 2018, provides, among other things, background information concerning BDMC and its business. A copy of the Trustee’s First Report, without appendices, is attached as **Appendix “3”**.
17. The Trustee’s Twelfth Report dated October 31, 2019, provides information relevant to the Trustee’s motion seeking the Castlemore Settlement Approval Order (as defined in that report). A copy of the Trustee’s Twelfth Report, with selected appendices, is attached as **Appendix “4”**.
18. As detailed in the Twelfth Report, on October 21, 2019, the Trustee presented to the Castlemore Investors an offer by Emerald Castle whereby Emerald Castle would pay \$9.5 million to the Trustee, on behalf of BDMC, in exchange for a full release and complete extinguishment of all rights and obligations of Emerald Castle, BDMC and the Castlemore Investors. The proposed payment reflected a recovery of approximately 45% on the principal amount of the BDMC loan.
19. On October 31, 2019, Emerald Castle increased its offer to \$10.45 million, which reflected a recovery of approximately 49% on the principal amount of the BDMC loan. Based on the initial feedback received from the Castlemore Investors, the Trustee filed a motion asking the Court to grant the Castlemore Settlement Approval Order. The hearing was originally set for November 5, 2019 but was adjourned to November 14, 2019.
20. By November 14, 2019, the Trustee had received additional feedback from the Castlemore Investors that resulted in a materially lower level of support for the proposed settlement and a materially lower level of support than other settlement transactions the Court has approved in the BDMC proceedings. As such, the Trustee’s motion was adjourned, and the Castlemore Settlement Agreement, as defined in the Twelfth Report, subsequently expired in accordance with its terms.

21. The Trustee's Thirteenth Report dated November 22, 2019 provided a comprehensive update on the Trustee's activities and a status update for certain projects, including the Castlemore Project. A copy of the Trustee's Thirteenth Report, without appendices, is attached as **Appendix "5"**.

EMERALD CASTLE COMMENCES APPLICATION

22. On March 2, 2020, Emerald Castle commenced the Emerald Castle Application. When the Emerald Castle Application was issued, Emerald Castle had not requested nor received written consent from the Trustee nor obtained leave of the Court to commence a proceeding, contrary to the stay of proceedings contained in paragraphs 9, 10 and 11 of the Appointment Order.
23. However, in an email dated March 3, 2020, Emerald Castle's counsel stated that "we did obtain permission to issue the notice of application from the team lead judge as is required by the commercial list". Emerald Castle's counsel also noted that in the Notice of Application, Emerald Castle has "requested leave in the prayer for relief as a prerequisite to the remaining reliefs sought".
24. To address this procedural irregularity and to ensure that this matter is properly brought before the Court with jurisdiction over the BDMC proceedings, on March 6, 2020, the Trustee provided a written consent as required by paragraphs 9, 10 and 11 of the Appointment Order. In particular, the Trustee consented to Emerald Castle commencing Court File No. CV-20-00637238-00CL. The Trustee's consent was expressly subject to a full reservation of the Trustee's rights to respond to the relief sought and allegations made in the Emerald Castle Application, including the Trustee's ability to request that portions of the Notice of Application be redacted and sealed. A copy of the Trustee's written consent is attached as **Appendix "6"**.

COURT GRANTS SEALING ORDER

25. On March 17, 2020, at the Trustee's request and on consent of Emerald Castle, this Court granted an Order: (i) sealing information pertaining to the appraisal or valuation of the Castlemore Property; and (ii) creating a service protocol allowing interested entities who were not parties to the Emerald Castle Application to receive service of filed materials. A copy of the Order is attached as **Appendix "7"**.

AGREEMENTS IN THE TRUSTEE'S POSSESSION

26. To ensure that the evidentiary record in the Emerald Castle Application is complete, the Trustee reviewed the agreements produced in the affidavit of Desi C. Auciello sworn on February 26, 2020 in support of the Emerald Castle Application and compared those agreements to the agreements available in BDMC's records. Based on the Trustee's request, Emerald Castle provided the Trustee with one additional agreement between Emerald Castle and Fortress dated August 25, 2014 (the "**Fortress Side Letter**"), related to the Loan Agreement and the Development Consultant Agreement, both dated as of the same date. A copy of the Fortress Side Letter is attached as **Appendix "8"** and is discussed further below. It is possible that there are other agreements entered into between Fortress and Emerald Castle (and/or Emerald Castle's beneficial owners) that are not in the Trustee's possession.

OTHER INFORMATION IN THE TRUSTEE'S POSSESSION

27. To ensure that the evidentiary record in the Emerald Castle Application is complete, the Trustee reviewed both financial and other information in its possession related to the Castlemore Project. The Trustee has information from BDMC's records as well as certain financial records provided to the Trustee by Emerald Castle up to May 2019.
28. As at March 27, 2020, the principal amount owing under the BDMC loan was approximately \$21.25 million ("**BDMC Loan**"). Based on BDMC's records, the principal had been advanced in 17 tranches, with the first tranche being advanced on November 24, 2014 and the final tranche being advanced on October 28, 2015. As at March 27, 2020, the total accrued interest was approximately \$8.57 million. Interest continues to accrue at a per diem rate of \$4,657.
29. Based on BDMC's records, there are 453 Castlemore Investors who advanced funds pursuant to the Loan Agreement, of which 289 Castlemore Investors, representing approximately \$13.62 million or 64% of the BDMC Loan, advanced funds from retirement accounts.
30. With respect to Emerald Castle, it appears from its records that Emerald Castle has five beneficial owners: Lakeview Homes (Emerald Castle) Inc., Harbour Brampton Limited Partnership, and G.F. Group Ltd. each of whom holds a 25% interest; Cachet Estate Homes (Emerald Castle) Inc. who holds a 24.99% interest; and Cachet Developments

(Emerald Castle) Inc. (“**Cachet Developments**”) who holds a 0.01% interest (collectively, the “**Emerald Castle Owners**”).

31. With respect to the proceeds of the Loan Agreement, based on BDMC’s records, 35% (approximately \$7.45 million) of the BDMC Loan (\$21.25 million) was paid by, or on behalf of BDMC, to various parties, as follows:

(a) Approximately \$4.1 million to an agent of Fortress as consultant fees. This amount represented the residual amount from the 35% not paid to the other recipients listed below;

(b) Approximately \$2.28 million as referral fees to the F Brokers (FMP Mortgage Investments Inc., FFM Capital Inc. and FDS Broker Services Inc.);

(c) Approximately \$640,000 (representing 3%) as a broker fee to BDMC in its capacity as mortgage broker (i.e. not as mortgage administrator), 90% of which was then paid to Paza Service Corp. an entity owned by one of the principals of Fortress, Vince Petrozza;

(d) Approximately \$291,000 to Olympia Trust in respect of annual fees, and approximately \$71,000 to Olympia Trust in respect of monthly fees (only in respect of certain tranches); and

(e) Approximately \$95,000 to BDMC in respect of administration fees. This amount was calculated as \$113 per investor per year multiplied by the number of years under administration. However, this amount was paid only in respect of the first four tranches.

32. Based on BDMC’s records, the remaining 65% (approximately \$13.81 million) (“**BDMC Net Advance**”) was paid for the benefit of Emerald Castle. Based on the Trustee’s review of the records of Emerald Castle and BDMC, it appears that the BDMC Net Advance was used as follows:

(a) Approximately \$11.9 million was paid to the Emerald Castle Owners;

(b) \$810,000 was paid in accordance with the Fortress Side Letter (the details of which are provided below); and

- (c) Approximately \$1.1 million remained with Emerald Castle to fund the costs of the Castlemore Project.
33. With respect to the \$810,000 paid pursuant the Fortress Side Letter, it appears as though the following payments were to be made:
- (a) \$200,000 to referring agents as commissions payable to third parties. The Trustee is not aware of the identities of these parties;
 - (b) \$225,000 to Emerald Castle as consulting fees;
 - (c) \$375,000 to Fortress as an additional placement fee; and
 - (d) \$10,000 as a donation to a charity selected by BDMC.
34. The Fortress Side Letter payments have not been verified by the Trustee.
35. In addition to the funds advanced by BDMC that were available for the Castlemore Project (approximately \$1.1 million), in March 2017, Emerald Castle also borrowed \$10.5 million from Cameron Stephens Financial Corporation (“**Cameron Stephens**”).
36. Based on Emerald Castle’s records, the Trustee understands that Emerald Castle made the following payments using funds sourced from BDMC, Cameron Stephens and other sources, such as HST refunds, through to May 2019:
- (a) Repayment of the vendor take back mortgage registered on title at the time the Loan Agreement was entered into in the amount of approximately \$8.95 million, including interest;
 - (b) Interest and fees totaling approximately \$1.8 million to Cameron Stephens;
 - (c) Monthly management fees of \$20,000 plus HST paid to Cachet Developments, one of the Emerald Castle Owners, totaling approximately \$1.2 million (including HST); and
 - (d) Other payments of approximately \$240,000 in respect of legal and accounting fees and other soft costs related to the development of the Castlemore Project.
37. By May 2019, the Trustee understands that Emerald Castle required additional funds to cover ongoing expenses, such as the Cameron Stephens’ interest payments and the

monthly management fee. Accordingly, Cachet Developments issued three capital call notices totaling \$850,000, of which 50% was being requested from the Trustee on behalf of BDMC. The table below sets out the date of the request, the total amount of the request, and the proposed use of funds.

Date	Amount	Proposed Uses
13-May-19	\$500,000	<ul style="list-style-type: none"> • Pay 6 months of interest to Cameron Stephens • Pay 6 months of management fees • Pay development soft costs and reserve
10-Dec-19	\$250,000	<ul style="list-style-type: none"> • Pay 3 months of interest to Cameron Stephens • Pay 3 months of management fees
14-Feb-20	\$100,000	<ul style="list-style-type: none"> • Pay 1 month of interest to Cameron Stephens • Pay 1 month of management fees

38. The Trustee did not agree to these requests. The only monies in the Trustee’s possession are Investor monies that are being used in accordance with Orders of the Court. In addition, it is not clear that the Loan Agreement permits requests for additional loans from BDMC. Copies of the capital call notices are attached as **Appendix “9”**.
39. Based on information provided by Emerald Castle, it appears that the Emerald Castle Owners advanced \$750,000 of the \$850,000.

NEXT STEPS IN THE EMERALD CASTLE APPLICATION

40. The Trustee will continue to take steps to oppose the Emerald Castle Application and will provide updated information to stakeholders going forward including to the Castlemore Investors. The Trustee will establish on its website a section dedicated to the Castlemore Project and will post the redacted materials currently available, including the Emerald Castle Notice of Application and the Affidavit of Desi C. Auciello dated February 26, 2020 (both redacted as required by an Order of this Court). In addition, the Trustee will post this Seventeenth Report as well as any further materials served in this matter, including any materials served by Representative Counsel which are expected to provide more detail about the Castlemore Investors.

41. After each party has served its written evidence (which includes this Seventeenth Report and any affidavits), the next step is to complete questions and cross-examinations. The Trustee will work with counsel to Emerald Castle as well as Representative Counsel to design a process that respects the logistical challenges faced by litigants in the context of the COVID-19 restrictions.
42. After the questions and cross-examinations are complete, the parties, including the Trustee, will submit factums (written arguments) to the Court explaining the factual and legal arguments supporting their positions. The parties will then work with the Court to design a hearing process that respects the COVID-19 restrictions.
43. The Trustee notes that it may be necessary to deviate from the process outlined above, if, for example, the relief sought changes.

CONCLUSION AND RECOMMENDATION

44. As is outlined above, the Trustee will take steps to oppose the Emerald Castle Application and will continue to post on its website publicly available information related to and report on the progress of the Emerald Castle Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of March, 2020.

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**

TAB 1

Appendix 1:
Appointment Order dated April 20, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

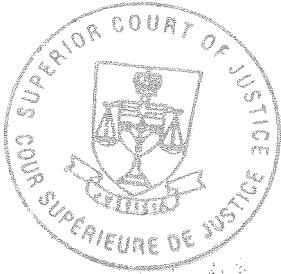
THE HONOURABLE MR.) FRIDAY, THE 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

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THE SUPERINTENDENT OF FINANCIAL SERVICES

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- and -



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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

GH

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.

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.

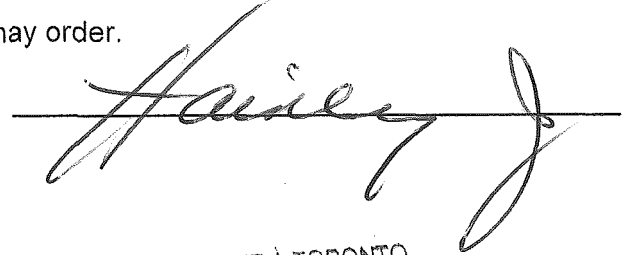
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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 20th day of April, 2018 (the "**Order**") made in an application having Court file number CV-18-596204-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$<*>, being part of the total principal sum of \$<*> which the Trustee is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

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

TAB 2

Appendix 2:

The Emerald Castle Notice of Application (redacted)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:



EMERALD CASTLE DEVELOPMENTS INC.

Applicant

and

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

Respondents

APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006, C. 29; SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C. 43, and *Rule 14.05(3)(d) of the RULES OF CIVIL PROCEDURE*, R.S.O.1990, Reg. 194, as amended

NOTICE OF APPLICATION

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing date to be determined at a 9:30 scheduling appearance before a judge presiding over the Commercial List at ~~393~~ 330a University Avenue, 10th Floor, Toronto, Ontario, M5G 1E6. *IR7a*

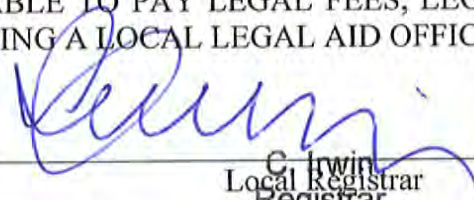
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve

a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 2, 2020

Issued by 
C. Irwin
Local Registrar
Registrar

Address of court office: Superior Court of Justice, Commercial List
330 University Avenue, 9th floor
Toronto, Ontario
M5G 1E6 1R7

TO: FANN MORTGAGE ADMINISTRATORS INC.
920- 20 Adelaide Street East
Toronto, ON
M5C 2T6

AND TO: OLYMPIA TRUST COMPANY
2200 125 -9th Ave. SE
Calgary, Alberta
T2G 0PG

APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR:

- a. Leave to bring this application;
- b. An order lifting, vacating and/or releasing all security interests currently being held by the Respondents, FAAN MORTGAGE ADMINISTRATORS INC. (“**FAAN**”), in its capacity as the Trustee of all of the interests of Building & Development Mortgages Canada Inc., (“**BDMC**”) and the Olympia Trust Company (“**Olympia**”) in respect of loans advanced under a Loan Agreement dated August 25, 2014, between Centro Mortgage Inc., In Trust, as Lender, and Emerald Castle Developments Inc. (“**Emerald Castle**”) as Borrower (the “**Loan Agreement**”) upon payment to FAAN of the amount of \$9,124,574;
- c. A declaration that \$9,124,574 represents all of the monetary obligations owed by Emerald Castle to BDMC and Olympia under the Loan Agreement, the Charge and any other security granted to BDMC by Emerald Castle in connection with the Loan;
- d. An order releasing, waiving, extinguishing, expunging and discharging all Emerald Castle’s obligations to BDMC, and to Olympia under the Loan Agreement, including a mortgage/charge registered as Instrument PR2635749 on November 25, 2014 against the property legally described as Pt Lt 13, Con 10 ND Toronto Gore Des Pt 1, Pl 43R14071 Save and Except Pt 1, Pl 43R35377; City of Brampton and

referenced as PIN 14214-0172 (LT) (the “**Property**”), and any agreements or instruments delivered pursuant thereto and all security interests granted in and to the assets of Emerald Castle to secure the Emerald Castle Loan Agreement and related registrations on title, including the Charge (collectively, the “**Security**”);

- e. A declaration that upon payment of \$9,124,574 that BDMC, BDMC’s successors and assigns, BDMC’s individual investors, Olympia Trust, Olympia Trusts’ successors and assigns, and Olympia Trusts’ individual investors shall be deemed to have released Emerald Castle from all obligations and security provided in connection with the Loan, including without limitation the Security;
- f. An order for costs on a substantial indemnity basis;
- g. An order abridging the time for service of the Application Record in this proceeding, if necessary;
- h. Such further and other relief as to this Honourable Court may deem just.

2. THE GROUNDS FOR THE APPLICATION ARE:

- a. Emerald Castle is the developer and owner of a 48-acre site near Brampton, Ontario within the proposed Area 47 Secondary Plan with up to 300 units planned for construction (the “**Project**”);
- b. On August 25, 2014, Emerald Castle, as Borrower, entered into a Loan Agreement with Centro Mortgage Inc., In Trust, (“**Centro**”) as Lender, for a non-revolving

loan in the amount of \$21,246,153.85 (“**the “Loan”**”) for a five year term, with a Borrower’s option to extend for 24 months;

- c. Emerald Castle granted security to Centro pursuant to s.8 of the Loan Agreement, (the “**Security**”) including a mortgage and general security agreement;
- d. A Charge was registered as Instrument PR2635749 on November 25, 2014 (the “**Charge**”)
- e. Section 14 of the Loan Agreement states that the in the event that the Loan is not repaid before the Maturity Date of the Loan, the Security will be released by the Secured Party upon payment to the Secured Party of an amount equal to the appraised value of the portions of the Project not under construction (“**Vacant Lands**”) at the Maturity Date of the Loan;
- f. Section 7.2 of the Loan Agreement is a Waterfall provision which governs the distribution priorities for available cash flow;
- g. The first tranche of the Loan was advanced on November 24, 2014;
- h. The Lender made subsequent advances and registered notices on title to the Property with respect to the subsequent advances;
- i. Subsequent to its registration, the Charge was transferred on 18 occasions and is currently registered to BDMC and the Olympia Trust Company;

- j. On February 3, 2016, Centro changed its name to Building & Development Mortgages Canada Inc. (“**BDMC**”);
- k. On April 20, 2018, pursuant to an order of the Ontario Superior Court of Justice (Commercial List), FAAN was appointed as trustee over all of the assets, undertakings and properties of BDMC under s. 37 of the Mortgage Brokerages, Lenders and Administrators Act, 2006, as amended and section 101 of the Courts of Justice Act, as amended;
- l. Since April 20, 2018, FAAN has been the trustee of the Loan on behalf of BDMC;
- m. The Loan matured on November 24, 2019;
- n. All of the lands in the Project remained Vacant Land as of the Maturity Date;
- o. Pursuant to s.14(i)(A) of the Loan Agreement, each party was required to obtain an appraisal of the Vacant Lands using an accredited AACI appraiser within 60 days of the Maturity Date to determine the repayment amount required to obtain a discharge of the Security (“**End of Term Event**”);
- p. Settlement discussions took place following the Maturity Date and FAAN proposed that the End of Term Event be delayed on consent;
- q. On December 6, 2019, Emerald Castle provided notice to FAAN of its intention to proceed with the End of Term Event;

- r. On January 7, 2020, Emerald Castle obtained an appraisal from CBRE, which appraised the value of the Vacant Lands at \$ [REDACTED];
- s. The CBRE appraisal confirmed the site area to be 48.80 acres gross, with 37.95 acres of net developable lands;
- t. The CBRE appraisal confirmed that approximately 22% of the site area is undevelopable due to natural heritage systems shown on the survey;
- u. On January 9, 2020, Emerald Castle provided the CBRE appraisal to FAAN together with a Waterfall calculation of \$9,124,574 due to FAAN on behalf of BDMC/Olympia pursuant to the End of Term and Waterfall provisions of the Loan Agreement;
- v. Emerald Castle remains ready, willing and able to pay \$9,124,574 under the Loan Agreement in exchange for release and discharge of the Security under s. 8 of the Loan Agreement;
- w. FAAN initially refused to obtain its own appraisal or accept the amounts payable pursuant to the Waterfall provision in exchange for release of the Security;
- x. On February 4, 2020, more than 60 days from the End of Term Event, FAAN provided an appraisal conducted by Jones Lang LaSalle Real Estate Services, Inc. (the “**JLL Appraisal**”) in the amount of \$ [REDACTED], without attorning or agreeing to the process set out in Section 14 of the Loan Agreement;

- y. The JLL Appraisal contains a fundamental calculation error with respect to usable, or developable, acres;
- z. FAAN will not agree to grant a discharge of the Security upon payment of the amount provided for in the process set out in Section 14 of the Loan Agreement;
- aa. FAAN has provided no justification for its refusal to comply with the terms of the Loan Agreement;
- bb. Emerald Castle is not in default of any of its obligations under the Loan Agreement;
- cc. This application is authorized by Rule 14.05(3)(d) of the Rules of Civil Procedure which permits an application of rights that depend upon the interpretation of a contract; and
- dd. It is a clear and reasonable interpretation of the Loan documents that upon payment of \$9,124,574 the loan should be discharged along with the Security.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF
THE APPLICATION:**

1. The affidavit of Desi Auciello, to be sworn;
2. Such further and other documents as counsel may advise and this honourable court may admit.

March 2, 2020

**FRIEDMAN LAW
PROFESSIONAL CORPORATION**
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Lawyers for the Applicant

**EMERALD CASTLE DEVELOPMENTS
INC.**
Applicant

and

**FAAN MORTGAGE ADMINISTRATORS INC. ET
AL.**
Respondents

Court File No.:

CV-20-0063738-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

**FRIEDMAN LAW PROFESSIONAL
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TAB 3

Appendix 3:

Trustee's First Report dated June 19, 2018, without appendices

**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***

FIRST REPORT OF THE TRUSTEE

JUNE 19, 2018



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**

FIRST REPORT OF THE TRUSTEE

JUNE 19, 2018

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 ("**MBLAA**"), and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the

Appointment Order is attached as **Appendix “1”** hereto.

2. The affidavit of Brendan Forbes, legal counsel at the Ministry of the Attorney General Civil Law Division, Financial Services Commission of Ontario (“**FSCO**”) branch, sworn on April 19, 2018, was filed in connection with the Superintendent’s application for the Appointment Order (“**Forbes Affidavit**”). The Forbes Affidavit contains detailed background information regarding BDMC, its business and affairs, the circumstances leading to the Trustee’s appointment, and the regulation of syndicated mortgage loans in Ontario generally. Capitalized terms not otherwise defined in this Report have the meanings ascribed to them in the Forbes Affidavit, a copy of which is attached as **Appendix “2”**, without appendices.
3. Materials filed with the Court with respect to these proceedings (other than confidential materials filed under seal), including the Forbes Affidavit, the Superintendent’s application record, motion materials, court reports and the Orders and endorsements issued by the Court, are accessible on the Trustee’s website at: www.faanmortgageadmin.com (“**Trustee’s Website**”).

PURPOSE OF THE FIRST REPORT

4. The purpose of this first report of the Trustee (“**Report**”) is to provide stakeholders with an update on the Trustee’s activities since the date of the Appointment Order and to support the Trustee’s request for an Order (“**Stabilization Order**”), *inter alia*:
 - (a) approving certain interim stabilization measures in connection with BDMC’s estate, including in respect of funds held by BDMC as at the date of the Trustee’s appointment and the funds received by the Trustee following its appointment;
 - (b) appointing representative counsel to represent Investors in respect of these proceedings; and
 - (c) clarifying the Trustee’s powers with respect to the registration, discharge, partial discharge, postponement and subordination of any mortgages so as to address any concerns of the applicable land titles offices.
5. In support of the Trustee’s request for the Stabilization Order, the Report describes the following matters:
 - (a) background information concerning BDMC and its business;

- (b) the Trustee's activities to date;
 - (c) the need for certainty with respect to funding of these proceedings, including BDMC's projected cash flow until October 31, 2018 ("**Stabilization Period**");
 - (d) details regarding funds held in bank accounts maintained by BDMC, including funds received by the Trustee following its appointment, and the Trustee's proposed use of such funds during the Stabilization Period; and
 - (e) the need for collective representation for the Investors.
6. The Trustee is seeking the Stabilization Order, among other things, to clarify and confirm the Trustee's rights and responsibilities under the Appointment Order in respect of certain Property that is subject to a Court-ordered priority charge to secure the payment of the Trustee's and its legal counsel's fees, disbursements and other costs of these proceedings ("**Trustee's Charge**") and to put some temporary restrictions on the Trustee's rights with respect to these funds during the Stabilization Period in order to give clarity to BDMC's numerous stakeholders. During the Stabilization Period, the Trustee intends to continue to analyze the remaining 43 projects that are subject to syndicated mortgage loans administered by BDMC and develop a strategy to maximize recoveries for the members of the investing public who have made loans through BDMC.
7. The Trustee will report back to the Court prior to the expiration of the Stabilization Period to give the Court, Investors, borrowers, brokers and other stakeholders further information regarding BDMC and its business and affairs, to seek further advice and directions from the Court regarding the use of the funds held or received by the Trustee and subject to the Trustee's Charge, and the proposed next steps in these proceedings.

SCOPE AND TERMS OF REFERENCE

8. In preparing this Report, the Trustee has relied upon unaudited financial information provided by, *inter alia*, BDMC, Fortress (defined below), Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), the mortgage brokerage who assumed the mortgage duties of BDMC (as explained further below), and certain of the individual borrowers who have borrowed funds from BDMC under various syndicated mortgage loans administered by BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM, 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.

9. Some of the information used and relied upon in preparing this Report consists of financial projections. The Trustee cautions that these projections are based upon assumptions about future events and conditions that are not ascertainable. The actual results may vary from the projections, even if the assumptions set forth therein materialize, and the variations from the projections could be significant. The Trustee’s review of the future oriented information used to prepare this Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
10. This 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 Stabilization Order. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Report contrary to the provisions of this paragraph.
11. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

12. BDMC is an Ontario corporation with its head office located at 25 Brodie Drive, Unit #8, Richmond Hill, Ontario. The Trustee understands that BDMC is wholly owned by Ildina Galati, who is also BDMC’s sole director and officer. BDMC was formerly known by the name Centro Mortgage Inc. and changed its name to BDMC in or around January 2016.
13. BDMC was the principal mortgage broker and administrator used by Fortress Real Developments Inc. and certain related entities (collectively, “Fortress”) to raise initial financing or “equity” 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. Often, the real property in question consisted of vacant lands or of projects taken over from other developers, including, in some cases,

projects that were facing financial difficulties. BDMC acted as lender (in trust for members of the investing public), who made loans to borrowers through syndicated mortgage loan agreements where BDMC acted as lender to the Borrower and administrator for the Investors. Syndicated mortgage loans are regulated by FSCO and are more fully described in the Forbes Affidavit.

14. The funds loaned through BDMC were generally advanced for the purpose of providing financing for the early stages of a real estate development project. The use of proceeds from these loans included repaying vendor take back mortgages and bridge loans, obtaining initial planning consents, attending to zoning changes, funding various consultants involved in conceiving and commencing a real estate development and other “soft costs” associated with the development. Funds were also used to pay interest on other loans made to the applicable borrower in question.
15. According to the Forbes Affidavit, significant portions of the sums advanced by Investors through BDMC were used to pay “development consultant fees”. The development consultant fees were in an amount that generally appears to be equal to approximately 35% of the principal amount advanced under the applicable BDMC syndicated mortgage loan. A portion of this fee (approximately 50%) would be paid to the Investors’ brokers, FMP Mortgage Investments Inc., FFM Capital Inc. and FSDS Broker Services Inc. (who are generally referred to by BDMC and Fortress as the “**F Brokers**”); a portion would be paid to BDMC (now CDCM) in its capacity as the borrowers’ broker; and the balance, net of any additional fees, would be paid to Fortress. As described in the Forbes Affidavit, the portion of the fees paid to Fortress typically ranged between 2% and 5% of project costs.
16. In some instances, another portion of the funds advanced by Investors was retained by BDMC to pay interest owing to those same Investors on the syndicated mortgage loan. The funds held to pay interest on the BDMC loan were retained as an “interest reserve” in a separate BDMC account established for that purpose (“**Interest Reserve Account**”). Depending on the terms of the applicable loan agreement, interest reserve funds were paid or to be paid to Investors periodically in accordance with the applicable loan agreement until the reserve funds were exhausted or held until the time when the syndicated mortgage loan is repaid. However, as more particularly described below in the section “Funds Held in BDMC Bank Accounts”, the Trustee has become aware that certain of the funds held in the Interest Reserve Account are held for the benefit of borrowers and

have been historically deployed to or on behalf of borrowers for purposes unrelated to the payment of interest to Investors, including paying interest amounts owing to priority lenders and paying expenses incurred on projects.

17. Although the funds advanced by Investors were secured by mortgages held by BDMC on the related real property, the Investors typically expressly agreed to subordinate their mortgages to current or future lenders who agreed to provide construction financing.¹ In most cases, the BDMC mortgages rank third or lower in priority in respect of the specific real property in issue, and behind the mortgages securing the sums owing to senior lenders, in amounts that are often significant. Moreover, many Investors agreed to terms that permit repayment “waterfalls” that, at least in some instances, appear to permit owners of the real estate (including the borrowers and owners of the borrowers) to recover some of the amounts they invested in the developments in priority to the amounts loaned by the Investors. The Trustee is still in the process of investigating these complex priority arrangements and notes that the priority arrangements vary from project to project.
18. Approximately \$560 million is currently invested in syndicated mortgage loans administered by BDMC by over 11,000 individual Investors. These funds have been advanced in connection with 44 different projects that are in various stages of development. The following table summarizes the status of the various projects administered by BDMC, based on BDMC’s records as of May 31, 2018:

Project Status	Number of Projects	BDMC SML Debt (\$000s)
Development	24	260,066
Pre-construction	6	73,042
Construction	12	216,274
Completed	2	10,905
Total	44	\$560,287

¹ Construction financing in very broadly construed in the syndicated mortgage loan documents and generally includes all the funds needed to complete the project that are not financed by BDMC, including further “mezzanine” debt. The Trustee has been advised by borrowers and others that the agreements require BDMC to subordinate up to a certain maximum amount of construction financing specified in the syndicated mortgage loan documents as being permitted to rank in priority to BDMC’s mortgages.

A detailed schedule of the status of the ongoing projects, based on BDMC's records as of May 31, 2018, is provided as **Appendix "3"**.² As discussed in more detail below, all amounts owing on BDMC loans made to the Victoria Medical Borrower (defined below) have been repaid, BDMC's security in respect of such loans has been discharged and the Trustee is holding the amounts that have been repaid. Further, the Dunsire Project (defined below) is subject to a receivership proceeding and an order authorizing the sale of the property free and clear of the security in favour of BDMC was approved by the Court. More details on these matters are described below.

19. As described in more detail in the Forbes Affidavit, FSCO had received numerous complaints from Investors regarding BDMC's activities and the performance of their investments in BDMC compared to the promises the Investors say were made to them at the time they invested. These complaints prompted FSCO to engage in a lengthy investigation of BDMC's business and activities. As a result of its investigations, FSCO concluded that there were significant regulatory issues associated with BDMC's syndicated mortgages activities.
20. FSCO's investigation into BDMC ultimately resulted in the Superintendent and BDMC entering into a settlement agreement executed on January 31, 2018 ("**Settlement Agreement**"). Key conditions of the Settlement Agreement included: (i) that BDMC consent to the revocation of its Ontario mortgage brokerage license; (ii) that BDMC retain its Ontario mortgage administration license; (iii) that BDMC enter into and comply with a management and administration agreement ("**MAA**") appointing FAAN Mortgage as the arm's length, independent manager of BDMC's syndicated mortgage loan administration business ("**Administration Business**"); and (iv) that BDMC agreed to pay an administrative penalty of \$400,000 by no later than July 31, 2019.
21. On February 1, 2018, FSCO revoked BDMC's Ontario mortgage brokerage license with BDMC's consent pursuant to the Settlement Agreement. However, CDCM, an entity also owned by BDMC's principal, has received a mortgage brokerage license from FSCO and has assumed the functions as brokerage for the borrowers that were previously carried out by BDMC on many existing projects. A relative of the owner of BDMC is the principal broker of CDCM. Many of BDMC's former employees are now employed by CDCM.

² Although funds have only been advanced in respect of 44 projects, the chart includes a 45th project, 189 Dundas, for completeness because BDMC has had some involvement with the 189 Dundas project.

CDCM is often the principal entity facilitating contact between BDMC and the borrowers; however, the Trustee is working, with the assistance of CDCM, on establishing direct communications with all borrowers.

22. On February 7, 2018, the MAA was executed and FAAN Mortgage assumed the role of arm's length, independent manager of the Administration Business. As noted in the Forbes Affidavit, the Settlement Agreement expressly provides that its terms and any related documents, information or records are to remain confidential and subject to settlement privilege, except in certain limited circumstances. As such, the specific terms of the MAA cannot be disclosed.
23. During the period from February 7, 2018 to the date of the Appointment Order, FAAN Mortgage acted as the independent manager of the Administration Business. During this period, FAAN Mortgage was presented with a number of urgent demands for postponements of security granted to BDMC (in trust for Investors) to new loans. CDCM and certain borrowers advised FAAN Mortgage that new loans were needed either to prevent enforcement action by senior lenders and the immediate failure of a project or to fund critical steps necessary for projects to continue. In addition, FAAN Mortgage responded to a number of enforcement steps that were taken by senior lenders.
24. On April 20, 2018, as a result of events that were detailed extensively in the Forbes Affidavit, including the RCMP's execution of a search warrant at BDMC's premises on April 13, 2018, the Superintendent brought an application to Court seeking the Appointment Order to appoint FAAN Mortgage as Trustee. Among other things, there had been a number of defaults under the MAA, including access to documents and other information and failure to make mandatory payments, each as more particularly described in the Forbes Affidavit. As a result, FAAN Mortgage was operating with insufficient information regarding BDMC's arrangements and the status of the various projects where BDMC was lender to respond effectively to the urgent requests described above.
25. Since its formal appointment as Trustee, the flow of information from Fortress and CDCM has improved significantly, but BDMC's mortgage loans remain under considerable stress. As noted above and as described in more detail in the Forbes Affidavit, BDMC's security is often in third place or lower and, in many cases, BDMC is required under the applicable loan agreements to subordinate its security to facilitate further advances by senior lenders

under existing loans or the advancement of funds under new loans. The Trustee has been advised that many of the projects need further funding to permit developments to continue and that such funding is only available if the security interests granted to BDMC are further postponed and subordinated to new financing.

26. As discussed in more detail under “Activities of the Trustee to Date”, the Trustee continues to face many urgent demands to execute postponements and subordinations to new lenders and to address various types of enforcement activities by senior lenders. In addition, the Trustee has received demands to turn over certain funds held by BDMC for borrowers, Investors and others.
27. Under the Appointment Order, the Trustee was granted the Trustee’s Charge over all of the amounts held by BDMC and to be received by BDMC or the Trustee on its behalf going forward. Among other things, the Trustee is seeking the Stabilization Order to clarify the status of these proceedings, set expectations around the use of the funds subject to the Trustee’s Charge and to put certain temporary limits on the Trustee’s ability to use those funds during the Stabilization Period.

ACTIVITIES OF THE TRUSTEE TO DATE

28. To date, the Trustee has been principally engaged in three broad types of activities: (i) responding to enforcement actions by senior lenders on distressed projects; (ii) responding to urgent requests for postponements and other actions to prevent enforcement by senior lenders and to permit the projects in question to continue; and (iii) responding to a multitude of borrower and Investor inquiries.
29. The Trustee has also been working to obtain recovery for Investors whenever possible. For example, and as discussed in more detail below, the Trustee was able to obtain payment in full from the Victoria Medical Borrower notwithstanding initial indications that a portion of the debt in question would be compromised.
30. In addition, in the short time since its appointment, the Trustee has familiarized itself with certain of the distressed projects and engaged with stakeholders regarding the Investor’s interests. For example, on the Dunsire Project, it initially appeared that there would be no recoveries for the Investors, but the Trustee has since learned that some recovery should be available.

Enforcement Matters:

31. A number of BDMC's borrowers face enforcement actions taken by one or more senior lenders as a result of borrower defaults under the senior loans. The Trustee is responding to these enforcement actions in an effort to obtain the best possible result for the Investors in the circumstances, but in some cases, the Investors' interests have already been severely compromised and, in other cases, the Investors' interests are at risk of being severely compromised. It is critical that the Trustee take an active role in any enforcement process, including reviewing and negotiating any proposed enforcement steps and working with other creditors and stakeholders to ensure that any process that is undertaken protects the Investors to the maximum extent possible. A summary of certain projects currently facing material enforcement actions and the Trustee's efforts in respect of these actions follows.

32. Brookdale Project: A real estate development project in midtown Toronto ("**Brookdale Project**"), with over \$20 million of subordinate syndicated mortgage loan debt administered by BDMC and approximately \$4.7 million of "mezzanine" syndicated mortgage loan debt also administered by BDMC.³ The Investors rank in 4th and 5th position on this project. In addition, the Brookdale Project is subject to two separate enforcement processes by the senior lender: (i) a receivership application brought by Firm Capital Mortgage Fund Inc. ("**Firm**") in respect of construction financing that has matured; and (ii) a notice of sale under mortgage proceeding also brought by Firm in respect of the same debt. The Trustee understands that the receivership application was put into abeyance to permit the negotiation of a settlement agreement among a number of stakeholders who have asserted claims on the Brookdale Project, including a number of construction lien claimants and certain bondholders. A notice of sale was issued to preserve Firm's rights while a settlement was negotiated. The settlement negotiations have stalled and Firm is seeking to sell the Brookdale Project pursuant to its notice of sale under Firm's mortgage enforcement proceeding. FAAN Mortgage has been involved in discussions with the various stakeholders both before and after its appointment as Trustee and continues to seek to maximize value for the Investors in loans made by BDMC to the Brookdale Project.

³ 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.

FAAN Mortgage has invested a significant amount of time in reviewing and commenting on multiple proposed settlement arrangements that it has been presented in an attempt to protect the Investors' interests in the Brookdale Project, including engaging in extensive communications with Investors. FAAN Mortgage is now in the process of engaging directly with counsel to Firm in order to better understand the steps it is taking in its mortgage enforcement proceeding to help ensure that steps are not taken that would be to the detriment of the Investors and the Trustee has contacted the private receiver to offer its assistance in developing a process to maximize value for all stakeholders, including the Investors. At this time, it is unclear what the outcome for the Brookdale Project will be due to the existing defaults under senior loans in excess of \$23 million and the numerous additional construction liens that have been asserted. The Trustee notes that a sale of the property could result in significant losses to the Investors.

33. Bowmanville Project: a real estate development project in Clarington, Ontario ("**Bowmanville Project**"), consisting of three separate parcels of land that secure approximately \$5.3 million of syndicated mortgage loan debt administered by BDMC. Each parcel has a separate first priority mortgage holder and all three mortgage holders have sought to enforce their rights to sell or foreclose on the portion of the Bowmanville Project that is subject to their mortgages. FAAN Mortgage has been involved in discussions with the borrower and the lenders both before and after its appointment as Trustee in an effort to defend against foreclosure and to maximize recoveries for the Investors. The Trustee continues to seek to maximize value for the Investors in loans made by BDMC to the borrower in connection with the Bowmanville Project and is working cooperatively with counsel to the first priority mortgage holders. At this time, it appears that the Bowmanville Project will be refinanced, with sufficient new funds to repay the three first priority mortgages on the property that comprises the Bowmanville Project but leaving BDMC's mortgage in its current third place position (and subordinate to the new financing). The syndicated mortgage loan documents contemplate BDMC subordinating its mortgages to additional loan facilities, including the facility that is anticipated to be the source of the funding to repay the existing mortgages on the Bowmanville Project. The borrower has advised that once the senior mortgage debt is refinanced and the project is no longer in a distressed state, the borrower will be in a position to obtain the required planning approvals and to meet related milestones for the project. If the project continues to advance, the value of the project will likely be enhanced and the potential recoveries to

Investors should be higher than what would be available if the refinancing was not completed and the project was sold in its current state.

34. Dunsire Project: a real estate development project in Guelph, Ontario (“**Dunsire Project**”). On May 15, 2018, the Trustee was served with an application for a vesting order sought by RSM Canada Limited (“**RSM**”) in its capacity as receiver of the Dunsire Project to vest title to the Dunsire Project in a new owner related to the current owner, free and clear of certain encumbrances, including approximately \$1.7 million of subordinate, secured debt owed to BDMC in trust for Investors. Immediately after service of the motion record, the Trustee and its counsel engaged in comprehensive discussions with RSM regarding the proposed vesting order. The Trustee sought clarifications regarding the sales process conducted and the potential value available to BDMC and its Investors. Despite the Trustee’s request that RSM seek an adjournment for a period of thirty days to permit further marketing of the property, RSM was only prepared to provide a short adjournment. RSM ultimately obtained a vesting order on May 25, 2018. Once the transaction closes, BDMC’s security interest will be expunged from title with very little recovery to BDMC or the Investors due to the purchase price payable for the Dunsire Project and the quantum of secured debt in priority to BDMC’s loans. In the course of the Trustee’s diligence on the Dunsire Project, it learned that there may be HST refunds available for benefit of the Investors, which will likely result in at least a partial recovery for Investors.
35. Georgetown Project: A real estate development project in Georgetown, Ontario (“**Georgetown Project**”), consisting of seven different parcels of land collectively securing approximately \$14.4 million of debt owing to BDMC under various syndicated mortgage loans, including subordinate and mezzanine loans. There are a number of different senior lenders with priority mortgages on different parcels of land comprising the Georgetown Project. The senior lenders on certain parcels of land comprising the Georgetown Project have issued notices of sale with respect to the property that is subject to their mortgages and the period set by the lenders for repayment of their loans has expired. As such, the Trustee has been engaged in discussions with Fortress and other stakeholders regarding the Georgetown Project and potential options to address the defaults. The Trustee is also seeking additional details regarding the senior lenders’ intentions with respect to the Georgetown Project to ensure that the Trustee is satisfied that any sales or marketing

process is appropriate in the circumstances. However, the Trustee notes that despite its efforts, a sale of the property could result in significant losses to the Investors.

36. Colliers Project: A real estate development project in Barrie, Ontario (“**Colliers Project**”), with approximately \$53 million of debt owing to BDMC under various syndicated mortgage loans, including subordinate and mezzanine loans. The senior lender to the Colliers Project has issued a notice of sale under mortgage with respect to the property that is subject to its mortgage and the period set by the lender for repayment of its loan has expired. As such, the Trustee has been engaged in discussions with Fortress and other stakeholders regarding the Colliers Project and potential options to address the defaults. The Trustee is also seeking additional details regarding the senior lenders’ intentions with respect to the Colliers Project to ensure that the Trustee is satisfied that any sales or marketing process is appropriate in the circumstances. However, the Trustee notes that despite its efforts, a sale of the property could result in significant losses to the Investors.

Postponements:

37. In addition to the enforcement actions described above, the Trustee has been attending to various postponement and subordination requests, often sought by a borrower on an urgent basis to prevent senior lenders from taking enforcement action.
38. Prior and subsequent to the Trustee’s appointment, many of the senior loans on real estate developments that also secure BDMC syndicated mortgage loans have matured or otherwise come due. In addition, borrowers have faced funding shortfalls with respect to achieving development milestones on a project, including planning approvals. The Trustee has been asked to agree to postpone the security granted to BDMC to new loans to be made by other lenders that are intended to permit the development to continue. In many cases, the Trustee has been advised that failure to grant the postponement would (i) breach the applicable BDMC loan agreement; and (ii) cause the project to fail and enforcement steps to occur in the near term.
39. In response to these requests, the Trustee, on behalf of BDMC and its Investors, has requested detailed information regarding the applicable project and the proposed use of funds. In most instances, the Trustee has concluded that the loan agreement requires BDMC to postpone to the new loan and that permitting further advances to be made to

the borrower in priority to BDMC's loan(s) is in the best interests of the Investors as well as increases the likelihood of completion of the project.

40. The Trustee is considering its options with respect to postponement requests, but recognizes that many of the projects will fail if further funding is not advanced to permit the borrower to achieve development milestones and make payments on senior indebtedness. Further, in many cases the BDMC loan documentation requires that a postponement be granted in these circumstances. The Trustee is in the process of obtaining detailed information regarding each project, including development milestones and senior loan maturity dates, so that it can more proactively address these matters. As discussed in more detail below, the proposed Stabilization Order is intended to facilitate the desired proactive approach.

Investor Communications:

41. FAAN Mortgage has been engaging with Investors since its appointment as manager of the Administration Business and has continued to do so after its appointment as Trustee. In addition to providing Investors information about the matters described above and, where appropriate, seeking consent of Investors to material actions to be taken by the Trustee, the Trustee has provided Investors with notice of the Trustee's appointment, notice of significant developments on the projects that are the subject of their investments and responded to large volumes of telephone calls and email correspondence from Investors regarding the Trustee's appointment and the status of their investments and the related projects. Investor communications are a critical part of the Trustee's mandate and are also very time consuming and labour intensive.
42. In circumstances where FAAN Mortgage has determined that it was appropriate to seek Investor consent, it has received very few responses and has been required to rely on certain deemed consent provisions of the applicable Participation and Servicing Agreement (as more fully described in the Forbes Affidavit).

Other Matters:

43. In addition to the activities described above, since the Trustee's appointment, the Trustee's activities have included, among other things:
 - (a) commencing a detailed analysis of each project and the associated senior loans,

- syndicated mortgage loans and other relevant information, including the status of the project, the principal development milestones to completion and any known impediments to achieving such milestones;
- (b) attending to partial discharges of BDMC's security interests to facilitate sales of units or the development of properties;
 - (c) engaging with the Investors' brokerages, including FFM and FDS, who acted as brokers on behalf of individual Investors;
 - (d) engaging with other stakeholders of BDMC and related parties, including Ms. Ildina Galati, BDMC's shareholder, and her counsel, Fortress and its counsel, and CDCM and its counsel;
 - (e) engaging with borrowers and with the borrowers' broker, CDCM, regarding the postponements and enforcement matters noted above and to obtain detailed updates on the progress on projects and associated financial reporting;
 - (f) engaging with FSCO and its legal counsel, including responding to inquiries made by FSCO in respect of BDMC's activities and records and the Trustee's ongoing activities;
 - (g) 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 jurisdictions, including regulators in Manitoba, Saskatchewan, Alberta and British Columbia;
 - (h) supervising the day to day business activities of BDMC, including supervising the payment of payroll, rent and related matters;
 - (i) engaging with BDMC's bank regarding the Trustee's appointment and its mandate;
 - (j) obtaining access to and, in some cases, possession of, BDMC's records, including electronic records (primarily in the form of emails) from BDMC's third party IT service provider; and
 - (k) engaging with BDMC's insurance broker regarding the Trustee's appointment and mandate.

FUNDING OF THESE PROCEEDINGS AND CASH FLOW PROJECTION

44. The Trustee was required to engage in, and to continue to engage in, the activities described in the foregoing section in order to protect the interests of Investors. These

activities are time consuming and costly and are being carried out in circumstances where BDMC has little to no revenue.

45. As noted in the Forbes Affidavit, BDMC is functionally insolvent. BDMC has a number of regular expenses, including payroll, rent, utilities and other normal business expenses, but it has no material revenue source. BDMC previously relied upon fees payable when new loans were established and upon funding from Fortress, neither of which may be forthcoming in the future.
46. Since many of BDMC's borrowers are Fortress entities or otherwise related to Fortress, the Trustee is of the view that the Trustee's and BDMC's costs associated with administering the syndicated mortgage loans should not be borne solely by the Investors, but rather should be paid for by Fortress and the borrowers. The Appointment Order provides for the payment of the Trustee's fees, disbursements and costs (including professional advisory fees incurred) without delay and also provides that unpaid fees, disbursements and costs shall be added to the mortgages securing the amounts advanced by BDMC.
47. As such, the Trustee has been engaged in discussions with Fortress with respect to ongoing funding not only of BDMC's operating expenses but also of BDMC's professional fees (i.e., the fees of the Trustee and its counsel). The Trustee is hopeful that Fortress and the borrowers will agree to a mechanism whereby BDMC's and the Trustee's costs, including professional fees for administering the loans made by BDMC, are not borne solely by the Investors. Further, the Trustee understands that it was Fortress's practice, prior to the appointment of the Trustee, to fund BDMC's expenses (including professional fees) to the extent BDMC had insufficient revenue to pay its own expenses.
48. As a result of the above, the Trustee has succeeded in obtaining funding in the amount of approximately \$35,000 from Fortress (which has been funded through CDCM) on account of certain of BDMC's operating expenses that were incurred prior to the date of the Appointment Order. Fortress has also funded payroll and certain other operating expenses following the date of the Appointment Order in the amount of approximately \$65,000.
49. In addition, the Trustee has succeeded in obtaining some amounts for BDMC's legal and other professional expenses primarily incurred prior to FAAN Mortgage's appointment under the MAA from Fortress on account of a certain guarantee and indemnity to FAAN

Mortgage under the MAA (as more particularly described below). There are, however, significant arrears owing for the period prior to the issuance of the Appointment Order and significant expenses incurred following the issuance of the Appointment Order.

50. The Trustee has no assurance that further contributions by Fortress or CDCM will be forthcoming; nevertheless, the Trustee continues to work with Fortress and CDCM regarding funding of certain of BDMC's costs. The Trustee intends to keep the Court informed regarding these matters.
51. In addition, as noted in the Forbes Affidavit, prior to the issuance of the Appointment Order, Fortress and certain of its affiliates provided a guarantee and indemnity to FAAN Mortgage in respect of BDMC's funding obligations under the MAA. Notwithstanding the termination of the MAA, pursuant to the terms of the MAA, Fortress is still responsible for the outstanding obligations up to April 20, 2018. Fortress has made certain payments under the indemnity, but significant amounts are still owing to the Trustee and its counsel and the Trustee continues to seek to recover these amounts from Fortress.
52. Notwithstanding that Fortress has been paying certain of BDMC's expenses and has paid certain debts it owes to the Trustee, the Trustee has no assurance that such funding will continue. The Trustee has access to certain limited additional amounts (described below under "Funds held in BDMC Bank Accounts"), and it needs immediate access to certain portions of these funds and to preserve portions of these amounts during the Stabilization Period for the benefit of the estate and all its stakeholders. The Trustee is in the process of obtaining detailed information regarding each project and will use this information to develop a plan to maximize value for all the Investors.
53. The Trustee has prepared a Cash Flow Projection, on a monthly basis through to the conclusion of the Stabilization Period on October 31, 2018 ("**Cash Flow Period**"). The Cash Flow Projection is attached as **Appendix "4"**. The Cash Flow Projection has been prepared by the Trustee using the information provided to it by BDMC's employees and representatives, based on the Trustee's review of BDMC's records and third-party estimates. A summary of the Cash Flow Projection is provided in the following table:

	\$000s					
	June (2wks)	July	Aug.	Sept.	Oct.	Total
Receipts	-	-	-	-	-	-
Disbursements						
Staffing costs	16	33	33	46	33	161
Rent and utilities	1	6	7	8	7	29
Office expenses and IT	4	3	4	9	5	25
Bank charges	-	1	1	1	1	4
Other expenses	5	10	10	13	10	48
Total Operating Disbursements	26	54	56	76	55	267
New Appraisal fees	35	140	140	35	-	350
Professional fees	-	150	150	150	150	600
Total disbursements	61	344	346	261	205	1,217

54. It should be noted that there are no cash receipts projected during the Cash Flow Period. Historically, BDMC's primary source of revenue was funds raised from Investors in the form of an administration fee of \$113, per Investor per year of the term of the loan. These funds were collected at the time of the initial advance of the funds from the Investors. Although there is deferred revenue of approximately \$750,000⁴ on BDMC's balance sheet, it represents funds that were collected at the time a loan was established, which revenue was to be earned over the term of the loan. The Trustee has been advised that the cash was utilized by BDMC at or around the time it was collected. As noted above, Fortress covered BDMC costs to the extent that such costs exceeded BDMC's revenues.
55. Among other things, the Cash Flow Projection estimates total operating disbursements of approximately \$267,000, plus approximately \$350,000 for New Appraisals (defined and discussed below).

FUNDS HELD IN BDMC BANK ACCOUNTS

56. As at the date of the Appointment Order, BDMC maintained five bank accounts at The Toronto-Dominion Bank and a sixth account has since been opened. A summary of these accounts is as follows:

⁴ As at December 31, 2017.

Account name/ Reference	Primary Purpose of account (per BDMC)	Balance on April 20, 2018 (appointment)	Current Balance	Property Type⁵
Account #1 (763 Account)	Operating account	480	2,519	Estate Property
Account #2 (420 Account)	To hold funds to potentially be paid to third parties	71,329	52,594	Estate Property
Account #3 (455 Account)	To hold funds for Investors	469,882	486,874	Realized Property
Account #4 (214 Account)	Interest Reserve Account	1,403,496	1,461,471	Estate Property
Account #5 (term deposit)	Regulatory capital required to be maintained under the MBLAA	25,752	25,777	Estate Property
Account #6 (GIC account)	To hold Victoria Medical SML Loan repayments	-	4,511,218	Realized Property
Total		1,970,939	6,540,453	

763 Account – this is BDMC’s main operating account, used to pay BDMC’s operating expenses, such as payroll, rent, and other general and administrative expenses. There are almost no funds in this account. Where funds are made available by Fortress, the Trustee understands that these funds are typically paid first to CDCM and thereafter by CDCM to the 763 Account. These funds are then immediately paid out by BDMC to meet critical business needs and, to date, there have not been any surplus sums available for future needs. The funds currently in this account represent amounts transferred from the 420 Account (described below) or amounts funded by CDCM, to satisfy outstanding cheques that were issued to pay critical operating costs.

420 Account – BDMC advises it used this account as a “segregated funds account” to hold fees and other amounts received by BDMC that it believes to be payable to another party, including brokers but excluding Investors. The balance currently in the account is comprised primarily of a returned bank draft that was never cashed from 2015. The

⁵ Estate Property and Realized Property are defined and described below.

Trustee has been investigating why the bank draft was not deposited by the payee, but based on a preliminary review it appears that it may have been a duplicate payment that was issued in error by BDMC. As such, it appears that these funds are not payable to another party. Since the Trustee's appointment certain critical operating costs that have not been funded by Fortress were paid from this account.

455 Account – BDMC advises that it used this account to hold funds for Investors. There are two types of balances that are held in this account, (i) funds advanced by Investors to BDMC for investment in future syndicated mortgage loans where such loans have not yet been executed or other conditions to the advance are incomplete; and (ii) principal repayments received from borrowers to be ultimately repaid to Investors.⁶ The funds repaid in respect of the Victoria Medical SML Loans (defined and discussed below) were paid into this account and subsequently transferred to the interest bearing GIC account.

214 Account – BDMC advises that the 214 Account is the Interest Reserve Account described above. BDMC advises that this account is used to hold certain funds that were originally advanced by Investors to specific projects for the benefit of the respective borrowers under the applicable syndicated mortgage loan agreement for a project. All amounts received that were not immediately advanced to a borrower, regardless of the project, were deposited into this one bank account.⁷ Certain of these funds consist of interest reserve amounts payable to Investors. Additionally, despite the fact that the 214 Account is called the Interest Reserve Account, the Trustee has been advised that certain of the funds held in this account are funds that are for the account of certain borrowers, and, in the past, the Trustee understands that the borrowers have requested BDMC to issue payments from this account to pay for matters other than interest owing to Investors, such as interest payments on senior loans and bridge loans as well as certain development costs. In addition, the Trustee understands that in the past, BDMC received and complied with instructions to apply funds held in the Interest Reserve Account on behalf of one borrower to satisfy expenses incurred by another borrower on a distinct project.

⁶ Notwithstanding the fact that payments of interest and repayments of principal for all projects were advanced into one bank account, the balances are tracked separately by project in BDMC's accounting software, QuickBooks.

⁷ Notwithstanding the fact that funds for all projects were advanced into one bank account, the balances are tracked separately by project in BDMC's accounting software, QuickBooks.

Since the issuance of the Appointment Order, the Trustee has received a number of requests from borrowers for disbursements out of the Interest Reserve Account. On or about May 3, 2018, the Trustee forwarded letters to CDCM, in its capacity as the borrowers' broker, addressed to borrowers who appear to have an interest in the Interest Reserve Account and requested that CDCM distribute the letters to the applicable borrowers. The letters advised the respective borrowers of the Trustee's appointment and that no funds could be distributed to the borrowers from the Interest Reserve Account for a period of time because, among other things, the funds are subject to the Trustee's Charge. Further, the borrowers were advised that the Trustee was in the process of investigating the Interest Reserve Account and BDMC's other accounts and considering the various competing claims on BDMC's funds and other property. In addition, the letters stated that the Trustee needs additional time to assess the status of all projects, the anticipated overall administration costs of the estate and the potential sources of funding for same. The Trustee's assessment of these matters is ongoing. A sample copy of one of these letters sent is attached as **Appendix "4"**.

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 \$25,777 in satisfaction of this obligation in Account #5.

57. In addition to the funds maintained in the various bank accounts, BDMC also has 13 cheques totaling \$815,000 ("**Investor Cheques**") that were received by BDMC in October 2017. The Investor Cheques were received from Sorrenti Law Professional Corporation ("**Sorrenti**"), a law firm that administered certain syndicated mortgage loans brokered by BDMC. The Investor Cheques were issued by Sorrenti in its capacity as administrator of syndicated mortgage loans owing in connection with a project called Masonary that was repaid on or about October 5, 2017. At that time, certain Investors in the Masonary project requested that their payments be redeployed to projects administered by BDMC; however, as a result of the FSCO investigation and related regulatory actions, the Trustee has been advised that BDMC could not deposit the cheques or redeploy the funds. With the exception of one cheque that was adjusted and re-issued on February 27, 2018, all of the Investor Cheques are now stale dated. The Trustee has written to Sorrenti to advise that the cheques are stale dated and will therefore not be deposited by BDMC. In addition, the Trustee has advised the Investors to whom the Investor Cheques relate that they

should contact Sorrenti regarding the return of their funds. The Trustee is in the process of returning the Investor Cheques to Sorrenti.

58. The Trustee understands that BDMC does not have any other funds other than the bank balances and cheques described above and the Trustee expects to receive no additional funds other than intermittent funding from Fortress (both in accordance with its past practices and its obligations in respect of the MAA) and occasional expense reimbursements and loan repayments from borrowers. The timing and quantum of any such payments is unknown.

FUNDS RECEIVED FROM BORROWERS SINCE THE TRUSTEE'S APPOINTMENT

59. Since the Trustee's appointment, the amounts set out below have been received by BDMC from borrowers. These amounts are in addition to the amounts received from Fortress (through CDCM) described above. Funds received from Fortress were immediately disbursed to pay BDMC's operating expenses. The following amounts paid by borrowers continue to be retained by the Trustee on behalf of BDMC:

- (a) Approximately \$1.75 million for the payment of interest and the repayment of principal to Investors that advanced funds pursuant to a loan agreement dated September 23, 2015, between BDMC and Amadon-Westwater Projects Ltd. ("**Victoria Medical Borrower**") and \$2.75 million for the payment of interest and the repayment of principal to Investors that advanced funds pursuant to a loan agreement dated September 16, 2016, between BDMC and the Victoria Medical Borrower (collectively, the "**Victoria Medical SML Loans**"). The Victoria Medical Borrower had initially advised FAAN Mortgage that it would not be able to repay the Victoria Medical SML Loans in full and sought a discharge of BDMC's security in respect of such loans upon payment of a lower amount. FAAN Mortgage refused to release BDMC's security and instead engaged in negotiations with Fortress and the Victoria Medical Borrower that resulted in the full repayment of the principal and interest owing up to May 1, 2018 under the respective Victoria Medical SML Loans. After receiving payment in full, FAAN Mortgage consented to the discharge of BDMC's mortgages on the Victoria Medical Borrower's property. The Trustee received the funds paid by the Victoria Medical Borrower in the 455 Account and these funds were subsequently transferred to an interest bearing GIC account.

Certain of the Investors' brokers and certain Investors have expressed concerns regarding the Trustee's continued retention of these funds. The Trustee has responded to these brokers and Investors with a similar message that it delivered to borrowers with an interest in the Interest Reserve Account to advise that the Trustee is an officer of the Court and needs additional time to assess the status of all projects in accordance with its mandate under the Appointment Order, including the anticipated overall administration costs of the estate and the potential sources of funding for same.

At this time, the Trustee is seeking the Court's authorization to distribute 50% of the principal amounts it is holding in respect of the Victoria Medical SML Loans to the Investors who invested in such loans, pro rata based on the amount of each such Investor's investment, in the aggregate amount of approximately \$2.2 million. The Trustee has determined that the remaining amounts it is holding in respect of these loans should be retained during the Interim Stabilization Period while the Trustee continues to assess the status of all projects. As discussed in more detail below, the remaining portion of the recovery on the Victoria Medical SML Loans will be treated as Realized Property (as defined below), and will continue to be held in a separate account and not used for any purpose until further order of the Court.

- (b) Interest in the amount of approximately \$178,000⁸ was received from Braestone Development Corporation ("**Braestone Borrower**") in respect of the May 15 and June 15, 2018 interest payments. Pursuant to the loan agreement dated December 1, 2012, between BDMC and the Braestone Borrower, the Braestone Borrower is to pay interest on a monthly basis to BDMC, which is then typically distributed to the Braestone Investors. The Trustee continues to hold the funds that have been paid to BDMC in the Interest Reserve Account.
- (c) Interest in the amount of \$8,667, received from Kingridge (Oakville East) Inc. ("**QEWN Borrower**") in respect of the monthly interest payment for March, 2018. Pursuant to the loan agreement dated December 4, 2015, between BDMC and the QEWN Borrower, the QEWN Borrower is to pay interest on a monthly basis to

⁸ As of the date of this Report approximately \$100,000 of this amount has not yet been deposited into the Interest Reserve Account and accordingly is not included in the Interest Reserve Account balance in the chart above.

BDMC, which is then typically distributed to the QEWN Investors. The last monthly payment was made to BDMC on April 12, 2018, however, it had not yet been distributed to Investors prior to the Trustee's appointment and accordingly continues to be held in the Interest Reserve Account. No further interest payments have been received from the QEWN Borrower.

60. The Trustee notes that interest has been paid on only two projects since FAAN Mortgage's appointment in February, 2017. The majority of the syndicated mortgage loans administered by BDMC provide that interest accrues until the applicable loan is paid out. The Trustee notes that many of the syndicated mortgage loans administered by BDMC have matured, but that the loans are subject to postponement and standstill arrangements with senior lenders that require BDMC to wait until the senior loans are repaid before seeking repayment of its loans. The Trustee is investigating these arrangements.

INTERIM STABILIZATION MEASURES AND USE OF FUNDS TO ADMINISTER ESTATE

61. Since the issuance of the Appointment Order, and as detailed above, the Trustee has been primarily focused on dealing with urgent issues related to certain projects in various states of distress and obtaining information from the borrowers, CDCM and other stakeholders with respect to the status of the projects.
62. In responding to these urgent matters and in assessing the status of projects generally, the Trustee has been analyzing BDMC's rights and Investors' interests under the various syndicated mortgage loans administered by BDMC as well as the impact of any requested postponement or threatened enforcement action on such rights and interests. The Trustee has also begun a detailed analysis of each project and the associated senior loans, syndicated mortgage loans and other relevant information, including the status of the project, the principal development milestones to completion and any known impediments to achieving such milestones.
63. The Trustee has not yet obtained sufficient information regarding the status of each project, the funding needs of the projects, the maturity dates of third party loans made to the projects, or the next milestones associated with the completion of the projects. As noted above, the Trustee is working to complete a detailed analysis of these matters so that it is in a better position to act proactively to protect Investors' interest in these projects.

64. One important element of the Trustee's analysis is the potential recoveries to Investors if senior lenders attempt to enforce their security in the near term compared to the likely outcome for Investors if the Trustee decides to agree to a requested further postponement of BDMC's security to permit the development of a particular project to continue for a period of time. This process is dependent on a legal analysis by the Trustee's counsel and a number of factual assumptions and business judgments by the Trustee, including whether the Trustee's decision is likely to permit the project to continue towards development and completion (or to the achievement of a critical development milestone) or whether enforcement prior to the achievement of a potential milestone is likely, and, in circumstances where enforcement is the likely outcome, the anticipated timing of any such enforcement.
65. In making its assessments, the Trustee must rely, in part, on appraisals prepared in connection with the applicable project. Unfortunately, many of the available appraisals suffer from significant shortcomings, including relying on assumptions regarding (i) the outcome of completion of the applicable project (including the timing of completion, the cost to complete and the projected sales revenues), (ii) the completion of certain development milestones and (iii) other matters that may not come to pass. Few of the appraisals were completed on an "as is" basis, and the few that were are now outdated. Others appraisals are based on "as developed" values of the land premised on certain assumptions regarding the eventual completion of the project. Further, there may be projects where no appraisals are currently available.
66. In order to preserve and, to the extent possible, maximize recoveries for the Investors, and to permit the Trustee to make prudent decisions regarding Investors' interests, the Trustee is of the view that in order to fulfill its Court-ordered mandate it needs to continue to:
- (a) complete a detailed review of each of the remaining 43 projects administered by BDMC, including compiling complete information with respect to all debt owed in respect of such projects, the applicable maturity dates of such debt, and the critical project milestones so that the Trustee can proactively engage with borrowers, lenders and other stakeholders rather than being forced to react to unanticipated and urgent demands;

- (b) assess the priority waterfall contained in the applicable loan agreements, including the validity and enforceability of such waterfall;
- (c) engage in discussions with the respective borrowers and senior lenders regarding options for the projects and recoveries for Investors;
- (d) retain real estate experts to conduct appraisals on an “as is” basis with appropriate assumptions (“**New Appraisals**”) for a number of the projects, to the extent deemed necessary by the Trustee;
- (e) continue to engage with Investors and respond to Investor inquiries; and
- (f) continue to execute BDMC’s administration duties that arise in the ordinary course, including reviewing and responding to borrower and senior lender requests, and engaging proactively with senior lenders considering enforcement actions, marketing processes or any other action that may have an adverse impact on the ultimate return to Investors.

67. As noted above, there are costs associated with these activities, and these costs are high because the Trustee faces many urgent and unanticipated demands on a daily basis. The Trustee’s Charge gives the Trustee a first priority security interest in all funds held or received by BDMC, including funds held or that are to be held in trust on behalf of Investors, borrowers and other parties, to cover the Trustee’s expenses in connection with its mandate. However, in order to (i) permit the Trustee to conduct necessary activities in furtherance of its mandate, (ii) clarify and confirm the Trustee’s rights regarding certain Property that is subject to the Trustee’s Charge; and (ii) put some temporary restrictions on the Trustee’s rights with respect to these funds, the Trustee respectfully requests that the Court issue the Stabilization Order with respect to funds held or received by the Trustee, as follows:

- (a) That the Trustee distribute 50% of the principal amount held by the Trustee in respect of each of the Victoria Medical SML Loans to the applicable Investors pro rata based on each such Investor’s respective portion of such Victoria Medical SML Loans;
- (b) That the Trustee hold in a separate account, until further Order of the Court, all (I) funds that are currently in BDMC’s or the Trustee’s possession or that may come

into BDMC's or the Trustee's possession, in each case as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness owing to or administered by BDMC on behalf of Investors (including, for greater certainty, the remaining portion of the repayments on the Victoria Medical SML Loans held by the Trustee after making the distributions previously described), whether or not (i) secured by any Real Property Charges in the name of the Respondent or in the name of OTC, Computershare or any other person acting for Investors in respect of investments held through RRSPs or other registered accounts or funds (each 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**") and that the Trustee report to the Court prior to the end of the Stabilization Period with a recommendation regarding next steps with respect to the Realized Property, including any potential distribution of any Realized Property to the Investors; and

- (c) That the Trustee hold in a separate account all funds (other than Realized Property) that were in BDMC's possession on or prior to the date of the Appointment Order as well as any amounts (other than Realized Property) paid or payable to BDMC or the Trustee (in trust or otherwise) after the date of the Appointment Order, including in respect of interest where principal is not repaid, fees, expenses or other amounts (collectively, "**Estate Property**") and shall be authorized to use such Estate Property as set out in the Appointment Order and as further confirmed by the Stabilization Order.

68. The Trustee proposes to hold the Realized Property separate and apart from the Estate Property and any other Property and not to use the Realized Property for any purpose until further order of the Court. The Trustee will, however, use the Estate Property and any other Property in conformance with the Appointment Order and in accordance with the proposed Stabilization Order to permit the Trustee to carry out its mandate, including without limitation, at the Trustee's sole discretion, any of the following:

- (a) to provide a retainer for and to pay the professional fees, expenses and disbursements of the Trustee, its counsel, and any experts or other advisors retained by the Trustee pursuant to the Appointment Order;

- (b) to pay expenses of BDMC, including, without limitation, payroll, rent, utilities, taxes, and other statutory remittances;
- (c) to pay expenses incurred in the administration of any loan or indebtedness administered by BDMC, including, without limitation, in connection with obtaining New Appraisals of any property or, if necessary, taking or responding to any enforcement action;
- (d) to make protective disbursements to or on behalf of a borrower or in respect of a project, provided that any such disbursement shall be considered an advance made to the applicable borrower in respect of such project and the amount of such advance plus any applicable expenses incurred in connection therewith shall be added to the sum owing by the borrower and shall be added to the Real Property Charge in respect of same (except to the extent that such borrower is already indebted to BDMC for such amount); and
- (e) to pay general expenses of BDMC or the Trustee, in that capacity, not covered by the foregoing.

69. As noted above, the Trustee has moved the Realized Property currently in its possession into an interest bearing GIC account and intends to move any further Realized Property received during the Stabilization Period into this account so that interest is earned on all Realized Property. The Trustee is considering whether it is appropriate to take similar steps with respect to Estate Property.
70. As noted above, the Trustee intends to report to the Court prior to October 31, 2018 regarding its progress on the foregoing matters, including its recommended proposal with respect to the Realized Property. The Trustee is of the view that, by the end of the proposed Stabilization Period, it should be in a much better position to provide the Court and Investors with a detailed update on the status of each project, and will have much better information regarding the potential timing of any repayments on the existing syndicated mortgage loans and the likely outcome for Investors in such loans. At that time, the Trustee will be in a better position to determine the amount of Realized Property or any other Property that can be disbursed to the applicable Investors and to make recommendations to the Court with respect to same.

71. The Realized Property includes 50% of the principal amounts received in repayment of the Victoria Medical SML Loans and all interest received. 50% of the principal amount recovered on the Victoria Medical SML Loans is proposed to be distributed to the applicable Investors and the remaining sums are proposed to be held by the Trustee during the Stabilization Period and not used.
72. The Estate Property includes the interest paid by the Braestone Borrower and the QEWN Borrower.
73. 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 this Report and the related Court materials, the time will be charged to a general account that will, at a later date, be allocated to the various projects based on appropriate considerations and in accordance with further Court orders. Time spent on project specific tasks, such as attending to matters on the Brookdale Project and the Bowmanville Project, are recorded as pertaining to the project in question. Fees incurred in respect of project specific tasks will be paid out of Estate Property, but it is contemplated that any realizations on specific projects will be used to reimburse such amounts. Given the lack of revenue available to BDMC, there is no other option to fund the Trustee's activities for the benefit of the Investors.

REPRESENTATION FOR INVESTORS

74. As noted previously, there are approximately 11,000 Investors who participate in mortgages administered by BDMC. Although Investors reside throughout Canada, the vast majority of Investors are located in Ontario. FAAN Mortgage has been engaging with Investors since its appointment as manager of the Administration Business and has continued to do so after its appointment as Trustee.
75. The Trustee's mandate does not include providing legal advice to BDMC's Investors, and the Trustee has recommended that Investors seek independent legal advice with respect to certain matters when the Trustee has determined that it was appropriate to seek consent of Investors to certain actions to be taken by the Trustee in respect of syndicated mortgage loans. Similarly, the Trustee understands that RRSP Trustees typically advise Investors who have invested in BDMC syndicated mortgage loans to seek independent

legal advice with respect to enforcement matters and other significant developments in respect of projects and loans made in respect of such projects.

76. Given the large number of individual Investors, the Trustee is of the view that it is in the best interests of the Investors to appoint Representative Counsel in order to provide the Investors with legal representation to protect their common interests, while keeping professional fees for Investors as low as possible. If Representative Counsel is appointed, various Investors will not need to retain their own counsel to assist them in considering proposals put to them by the Trustee or responses to enforcement steps. Instead, Representative Counsel will be available to assist Investors with respect to their common interests in loans administered by BDMC and in assessing all matters in these proceedings. In appropriate circumstances, Representative Counsel will be able to provide feedback to the Trustee in connection with its mandate and, where necessary, Investor consent to certain material actions. Representative Counsel's involvement will result in more timely and cost-effective decisions, especially given the circumstances that the Trustee has faced to date.
77. Appointing Representative Counsel will enable the Trustee to put in place an efficient and effective communication plan, and will assist in the implementation of various value-preserving strategies for Investors' interests. In addition, Representative Counsel will ensure that those investors who do not opt-out of representation will be adequately represented in these proceedings.
78. The Trustee is therefore seeking an order that appoints Chaitons LLP ("**Chaitons**") as Representative Counsel and grants Representative Counsel a charge on the assets of BDMC already secured by the Trustee's Charge, as security for the legal fees and disbursements of Representative Counsel. Chaitons has extensive experience in proceedings similar to this, including those involving real estate investment firms, developers and numerous investors, including the MBLAA proceedings in respect of the entities known as the Tier 1 Trustee Corporations.
79. Chaitons acts for the Court-appointed receiver on the Dunsire Project and therefore will not represent the Investors with respect to the Dunsire Project.
80. The proposed Stabilization Order provides that, subject to prior approval by the Trustee or order of the Court, Representative Counsel shall be paid its reasonable fees and

disbursements. Representative Counsel will deliver its invoices to the Trustee, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Investors, and the Trustee will approve the invoices and arrange for payment of same from the proceeds of realization on a project.

81. It is also proposed that Representative Counsel's fees and disbursements may be paid from any distributions to be made to Investors in respect of these proceedings. When realizations are generated from a specific project, Representative Counsel would receive payments for the work on that project. Certain amounts may also need to be reserved from distributions on a given project to address circumstances where no proceeds are realized sufficient to pay Representative Counsel for its work on a given project. This will allow for a fair and reasonable allocation of legal representation for the Investors. .
82. While the Trustee is cognizant of the interests of the Investors, the Trustee is also concerned that the costs of Representative Counsel are adequately managed, so that while discharging its responsibilities, Representative Counsel can add value from the perspective of Investors. Accordingly, the Trustee has had preliminary discussions with the proposed Representative Counsel, to ensure that there is a streamlined communication strategy, and to ensure that there is no duplication of services as currently provided by the Trustee or its counsel.
83. The following is a summary of the proposed Representative Counsel's mandate:
 - (a) Representative Counsel would act for all Investors in respect of these proceedings regarding their common interests in the loans and other indebtedness administered by BDMC, including the common interests of Investors in any particular loan or other indebtedness administered by BDMC;
 - (b) Representative Counsel would act in the best interests of the Investors and take such necessary and appropriate actions as Representative Counsel deems fit from time to time;
 - (c) Representative Counsel shall have no obligation to consult with, follow the instructions of, or provide an opinion to, any individual Investor in connection with the discharge of its duties under the proposed Stabilization Order;

- (d) any Investor that does not wish to be represented by Representative Counsel would be required to provide notice of same in writing to Representative Counsel;
- (e) Representative Counsel would be permitted to communicate with the Investors by posting communications on the Trustee's website;
- (f) Representative Counsel would be entitled to a charge ("**Representative Counsel Charge**") on the Property as security for its fees and disbursements in respect of these proceedings, both before and after the making of the proposed Order; the Representative Counsel Charge shall form a charge on the Property ranking immediately subordinate in priority to the Trustee's Charge;
- (g) Representative Counsel would be at liberty to apply to this Court for advice and directions in respect of its appointment; and
- (h) notice of Representative Counsel's appointment would be posted on the Trustee's website and sent to Investors by Representative Counsel (or by the Trustee on behalf of Representative Counsel) within 7 business days of the receipt by Representative Counsel of certain contact information for the Investors.

84. The Trustee has discussed the proposed appointment of Representative Counsel with FSCO and its counsel, who have advised that they are supportive of same.

CONCLUSION AND RECOMMENDATION

85. The purpose of the Trustee's appointment is to protect the Investors. The Trustee was appointed 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. The Appointment Order also granted the Trustee's Charge to secure the payment of the Trustee's and its legal counsel's fees and disbursements as well as other costs of these proceedings.

86. The Trustee has determined that, in order to discharge its Court-ordered mandate, it needs to (a) complete a detailed evaluation of the condition of each of the projects and the associated syndicated mortgage loans made by BDMC, and (b) proactively engage with stakeholders on a project by project basis. Among other things, the Trustee needs to develop a strategy to maximize recoveries for Investors in difficult circumstances. In

furtherance of these matters, the Trustee is seeking the Stabilization Order to clarify and confirm the scope of the Trustee's Charge and to put some additional restrictions on the Trustee's rights with respect to the funds charged to give comfort to Investors, brokers and borrowers who have expressed concerns about these matters, including the Investors and brokers who have raised concerns regarding the proceeds of the Victoria Medical SML Loans and borrowers who have raised concerns regarding funds held in Interest Reserve Account.

87. The Trustee has also determined that it is advisable to appoint Representative Counsel on behalf of the Investors.
88. The proposed Stabilization Order will facilitate the Trustee in carrying out its mandate for the benefit of all Investors and other stakeholders of BDMC.
89. In light of the foregoing, the Trustee respectfully recommends that the Court issue the Stabilization Order in the form attached to the Trustee's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2018.

Faan Mortgage Administrators Inc.

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

TAB 4

Appendix 4:

Trustee's Twelfth Report dated October 31, 2019, with selected appendices

**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***

TWELFTH REPORT OF THE TRUSTEE

OCTOBER 31, 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.

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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

TWELFTH REPORT OF THE TRUSTEE

October 31, 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. 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. The Appointment Order was issued following an application made by the Superintendent of Financial Services pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), as amended, and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the Appointment Order is attached as **Appendix “1”**.

2. On October 30, 2018, this Court issued an Order (“**Realized Property Order**”) that, among other things,
 - (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness administered by BDMC on behalf of Investors (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 Interim Stabilization Order made in these proceedings on June 26, 2018.

A copy of the Realized Property Order is attached as **Appendix “2”**.

3. 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**”) 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 a proposed 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 and fees. The Braestone Settlement Approval Order was issued on November 28, 2018.

4. 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**") 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 a proposed 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. A copy of the Harlowe Settlement Approval Order dated December 20, 2018 is attached as **Appendix "3"**.
5. The Trustee has, in total, delivered eleven reports to Court (collectively, the "**Reports**") detailing, among other things, the Trustee's activities during these proceedings and providing updates to stakeholders on various projects. Notably, on May 10, 2019, the Trustee submitted its seventh report in these proceedings, which provided a comprehensive update on the Trustee's activities and a status update for each project. The Trustee intends to file a further comprehensive report in or about November 2019.
6. The Trustee indicated in its previous Reports that it continues to engage in negotiations with certain borrowers regarding potential payouts of the applicable loans. As a result of these negotiations, the Trustee has reached, subject to Court approval, a settlement agreement, as amended, with respect to the obligations owing by Emerald Castle Developments Inc. ("**Castlemore Borrower**") to BDMC under a loan agreement dated August 25, 2014 ("**Castlemore Loan Agreement**") pursuant to which BDMC provided a syndicated mortgage loan ("**Castlemore Loan**") to the Castlemore Borrower, which is secured by a charge on real property situated at 10431 Gore Road, Brampton, Ontario ("**Property**").

7. Capitalized terms not otherwise defined in this twelfth report (“**Twelfth Report**”) have the meanings ascribed to them in previous Reports filed by the Trustee. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee’s website at: www.faanmortgageadmin.com (“**Trustee’s Website**”). The Trustee intends to maintain the Trustee’s Website for the duration of these proceedings and will be updating it as appropriate.

PURPOSE OF THE TWELFTH REPORT

8. The purpose of this Twelfth Report is to provide the Court and stakeholders with the Trustee’s recommendation regarding the Castlemore Project (as defined below) based on Investor feedback, and to support the Trustee’s request for an Order (“**Castlemore Settlement Approval Order**”) that, among other things:
- (a) (i) approves the Settlement Agreement dated as of October 21, 2019, as amended (“**Castlemore Settlement Agreement**”), including the late payment fee contemplated by Section 4 thereof, if any (the “**Late Payment Fee**”), among the Castlemore Borrower, Olympia Trust Company (“**OTC**”) and the Trustee, with such minor amendments as the Trustee and the other parties to the Castlemore Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) directs the Castlemore Borrower to pay \$10.45 million¹ forthwith to the Trustee in accordance with the terms of the Castlemore Settlement Agreement (such funds, the “**Castlemore Realized Property**”); and (iii) approves and ratifies the execution of the Castlemore Settlement Agreement by the Trustee and OTC and authorizes and directs the Trustee and OTC to comply with all of their obligations under the Castlemore Settlement Agreement;
 - (b) releases, extinguishes, expunges and discharges all of the Castlemore Borrower’s obligations to BDMC, OTC, and the individual lenders under the Castlemore Loan Agreement (“**Castlemore Individual Lenders**”) and related security and other loan documents contemplated by the Castlemore Loan Agreement (collectively, the “**Castlemore Loan Obligations**”) and all security interests granted to BDMC, OTC or the Castlemore Individual Lenders in and to the assets of the Castlemore

¹ The Deposit, as defined below, was received by the Trustee’s counsel on October 22, 2019.

Borrower to secure the Castlemore Loan Obligations (“**Loan Encumbrances**”) upon the delivery to the Castlemore Borrower and filing with the Court, a copy of the Trustee’s certificate confirming, among other things, the Trustee’s receipt of the \$10.45 million payment (“**Trustee’s Certificate**”), and ordering that none of the Trustee, BDMC, OTC or any Castlemore Individual Lenders have any claim against the Castlemore Borrower in respect of the Castlemore Loan Obligations or the Loan Encumbrances; provided, however, that the Castlemore Borrower is not released from any obligations under the Castlemore Settlement Agreement;

(c) declares that the release agreement (“**Release Agreement**”) to be given to the Trustee, BDMC, OTC, and each Castlemore Individual Lender who loaned funds through BDMC or OTC to the Castlemore Borrower pursuant to the Castlemore Loan Agreement and all related loan documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the “**Releasees**”) by the Castlemore Borrower on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the “**Releasers**”) shall be binding and effective on the Releasers in favour of the Releasees upon the delivery of the Trustee’s Certificate to the Castlemore Borrower and the filing of a copy of the Trustee’s Certificate with the Court; and

(d) authorizes the Trustee to make a distribution to Castlemore Individual Lenders, upon the delivery of the Trustee’s certificate to the Castlemore Borrower and the filing of a copy of the Trustee’s Certificate with the Court, in an amount equal to 85% of the Castlemore Realized Property received by the Trustee, *pro rata* to the Castlemore Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.

9. In support of the Trustee’s request for the Castlemore Settlement Approval Order, this Twelfth Report describes the following matters:

- (a) An overview of the Castlemore Project;
- (b) The details of the Castlemore Loan Agreement;
- (c) The details of the settlement offer received by the Trustee;

- (d) The details of the Castlemore Settlement Agreement; and
- (e) Information that supports the Trustee's recommendation that the Castlemore Settlement Agreement be approved.

SCOPE AND TERMS OF REFERENCE

10. In preparing this Twelfth 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 Castlemore Borrower 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, including the Castlemore Project and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, Fortress, CDCM, 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.
11. Some of the information used and relied upon in preparing this Twelfth 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 Twelfth Report may vary from the projections and information used to prepare this Twelfth 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 Twelfth Report did not constitute an audit or review of such information under GAAS, GAAP Twelfth IFRS or any other guidelines.

12. This Twelfth Report has been prepared for the use of this Court and BDMC's stakeholders as general information relating to BDMC and the Castlemore Project and to assist the Court with respect to the Trustee's request for the proposed Castlemore Settlement Approval Order. Accordingly, the reader is cautioned that this Twelfth Report may not be appropriate for any other purpose.
13. All references to dollars are in Canadian currency unless otherwise noted.

OVERVIEW OF THE CASTLEMORE LOAN

14. The total principal due to the Castlemore Individual Lenders is approximately \$21.25 million. Total accrued interest on the Castlemore Loan as at September 30, 2019 was approximately \$7.74 million. The Castlemore Loan was made to the Castlemore Borrower pursuant to the Castlemore Loan Agreement, which matures on November 24, 2019 ("**Maturity Date**"). The Castlemore Loan Agreement contains, at the option of the Castlemore Borrower, the ability to extend the term of the Castlemore Loan for up to 24 additional months. This option was to be exercised not less than 3 months prior to the Maturity Date. The Castlemore Borrower did not exercise this option and, accordingly, the Castlemore Loan will mature on November 24, 2019.
15. In addition to the Castlemore Loan, there is a first priority mortgage registered on the Property to Cameron Stephens Financial Corporation ("**Cameron Stephens**") in the amount of approximately \$10.5 million as at September, 2019. The Cameron Stephens indebtedness is the only known indebtedness on the Castlemore Project that ranks in priority on title to the Castlemore Loan.

BACKGROUND AND OVERVIEW OF THE CURRENT STATUS OF THE PROJECT

16. The real estate development situated on the Property consists of a low-density residential development consisting of both townhomes and single-family homes ("**Castlemore Project**"). The Trustee understands that development approvals are still required for the Castlemore Project.
17. The Trustee was advised that in September 2014, the City of Brampton Council ("**Council**") adopted Official Plan Amendment 105 ("**OPA**") to implement a new Secondary Plan for Area 47 in Brampton ("**Secondary Plan**"). Although the Secondary Plan was adopted by Council, the OPA was appealed to the Ontario Municipal Board. In April 2016, Council allowed a landowners group in which the Castlemore Borrower is a member

("Landowners Group") to make their Block Plan submissions notwithstanding that certain appeals to the Secondary Plan were pending.

18. In 2018, as the municipality was unwilling to issue a decision on the Block Plan submissions, the Landowners Group filed an appeal. A hearing regarding the Block Plan application has been scheduled for September 8 to October 9, 2020 and a pre-hearing conference has been scheduled for November 7, 2019. The Castlemore Borrower has advised that it is possible that a settlement could be reached with the municipality at the pre-hearing conference.
19. The Castlemore Borrower has provided a five-year timeline to completion of the Castlemore Project (assuming a settlement is reached on or about November 7, 2019) with unit closings to continue through 2025. Should Block Plan approval not be granted by the end of 2019, the Trustee anticipates that the timeline to completion will be extended beyond five years.
20. The Secondary Plan and Block Plan appeals have resulted in significant delays to the Castlemore Project and have contributed to a continued lack of certainty on the timing of development. In addition to these development delays, the Castlemore Borrower advised that the Property has been further impacted by, among other things: (i) significant increases in municipal and regional development charges; and (ii) a softening of the housing market in the City of Brampton and the Greater Toronto Area, generally.

OFFER AND FEEDBACK REQUEST

21. Given the development delays experienced by the Castlemore Project, the Castlemore Borrower has been unable to commence construction of the Castlemore Project. Accordingly, the Castlemore Borrower has engaged in negotiations with the Trustee regarding the payment of the amounts due to BDMC under the Castlemore Loan Agreement. The Trustee has provided information to Investors, in this regard, primarily through previous Reports and responding to individual Investor calls and emails.
22. As noted earlier, the Castlemore Loan matures on November 24, 2019. The Castlemore Loan Agreement contains a clause that addresses the rights of the Castlemore Individual Lenders in the event that the Castlemore Loan is not repaid by the Maturity Date ("**End of Term Event Clause**").

23. Among other things, the End of Term Event Clause precludes BDMC, in its capacity as lender to the Castlemore Project, from exercising its rights under its Security (as defined in the Castlemore Loan Agreement), provided that certain procedural steps are followed by the Castlemore Borrower. These steps include, among other things, obtaining updated appraisals for the Property ("**Updated Appraisals**"). After obtaining Updated Appraisals, the Castlemore Borrower then has the option of either: (i) paying out the Castlemore Individual Lenders in the manner and priority prescribed by the Loan Agreement ("**End of Term Process**") using the average value of the Updated Appraisals for distribution purposes, subject to certain deductions; or (ii) listing the Property for sale with a reputable commercial real estate agent and then distributing the proceeds from the sale in accordance with the End of Term Process.
24. The Castlemore Borrower requested that the Trustee consider its settlement offer, as discussed in detail below, as an alternative to a repayment of the Castlemore Loan in accordance with the End of Term Event Clause.
25. The Castlemore Borrower confirmed that in the event that the Castlemore Settlement Agreement is not implemented, it will trigger the End of Term Event Clause, thereby preventing BDMC from remaining in the Castlemore Project through to completion.
26. As part of the negotiations between the parties, the Castlemore Borrower presented the Trustee with an irrevocable offer to accept a payment of \$9.5 million in full satisfaction of the amounts due under the Castlemore Loan Agreement and incorporating other components negotiated by the Trustee ("**Castlemore Offer**"). The Castlemore Offer was open for acceptance until 5:00 p.m. on November 8, 2019.
27. The Castlemore Offer represents a payment of approximately 45%² of the outstanding principal balance owing under the Castlemore Loan, calculated as follows:

²The financial figures set out in paragraphs 27 and 32 reflect the impact on investor recoveries based on the original Castlemore Offer. As discussed further in paragraphs 42 and 43 below, the Castlemore Settlement Agreement includes an amendment to increase the consideration received by the Castlemore Individual Lenders by \$950,000. Paragraphs 42 and 43 detail the financial impact of the improved consideration as a result of the amended Castlemore Settlement Agreement.

Principal outstanding (A)	\$ 21,246,154
Total Payments ² (B)	\$ 9,500,000
Net loss on principal (A-B)	\$ <u>11,746,154</u>
Net recovery percentage ² (B/A)	45%

28. The Trustee is in receipt of a deposit of \$500,000 (“**Deposit**”) from the Castlemore Borrower that is being held in trust by the Trustee’s counsel pending the granting of the Castlemore Settlement Approval Order.
29. As noted above, the Castlemore Settlement Agreement includes the Late Payment Fee, which provides that, in the event the Castlemore Borrower fails to pay any portion of the Castlemore Offer within 14 calendar days from the date of the granting of the Castlemore Settlement Approval Order, the Castlemore Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 10% of the Castlemore Offer less the amount of the Deposit.
30. The Trustee consulted with Representative Counsel regarding the Castlemore Offer, and, following that consultation, presented the Castlemore Offer to the Castlemore Individual Lenders by delivering a notice to those lenders on October 21, 2019. This notice requested that such lenders consider the Castlemore Offer and provide their feedback, whether for or against the acceptance of the Castlemore Offer and provide any other general feedback (“**Castlemore Feedback Request**”). A copy of the Castlemore Feedback Request is attached as **Appendix “4”**.
31. As of the filing of this Twelfth Report, the Trustee had received 184 formal votes in response to the Castlemore Feedback Request, representing a response rate of approximately 40.6% in number and approximately 41.4% in value of the Castlemore Loan. 140 of the Castlemore Individual Lenders, representing approximately 76.1% in number and approximately 72.3% of the value of such loans voting, voted in favour of the Trustee accepting the Castlemore Offer.
32. Acceptance of the Castlemore Offer by the Trustee would result in the Castlemore Individual Lenders foregoing certain amounts that would otherwise become due pursuant to the Castlemore Loan Agreement. These amounts, as estimated by the Trustee, are as follows:

Shortfall on remaining principal ²	\$ 11,746,154
Accrued interest (November 2014 to September 30, 2019)	\$ 7,742,712
Total potential foregone recoveries ³	\$ <u>19,488,866</u>

33. As set out in the Castlemore Feedback Request, the following additional considerations were taken into account by the Trustee in completing its assessment of the Castlemore Offer:

- (a) The Trustee engaged an independent real estate appraiser to provide an “as is” appraisal of the Castlemore Project. The appraisal contemplates a four to eight-month marketing period for the Property. Based on the “as is” value for the Property set out in the appraisal, after repayment of the priority indebtedness, the Trustee estimates that the Castlemore Individual Lenders will receive a higher recovery from the Castlemore Offer than the recovery achieved through the End of Term Event Clause;
- (b) Absent the acceptance of the Castlemore Offer, the Castlemore Borrower has advised that it will exercise its rights under the End of Term Event Clause;
- (c) The Trustee consulted with a planning consultant who confirmed that the Castlemore Borrower’s timeline to completion of 2025 or later was reasonable;
- (d) The Castlemore Offer provides certainty regarding the amount and time frame for the repayment of the Castlemore Loan;
- (e) The Castlemore Borrower has provided the Deposit in trust pending the receipt of Castlemore Settlement Approval Order. If the settlement transaction does not close by November 29, 2019, the Outside Closing Date (as defined in the Castlemore Settlement Agreement) due to a failure of the Castlemore Borrower to comply with its obligations under the Castlemore Settlement Agreement, the Deposit will be retained by the Trustee, on behalf of BDMC;

³ Before additional accrued interest accruing at a per diem rate of \$4,656.69.

- (f) There is approximately \$10.5 million of debt that ranks in priority to the Castlemore Loan and that would need to be paid in advance of the Castlemore Loan; and
 - (g) The Castlemore Offer results in a return on the Castlemore Loan of approximately 45%.
34. Given the above considerations, including the protracted time frame to completion of the Castlemore Project and the Trustee's estimation that the Castlemore Offer would result in a higher recovery for the Castlemore Individual Lenders than the recovery achieved through the End of Term Event Clause, the Trustee is of the view that, although the Castlemore Offer does not provide a full principal repayment of the Castlemore Loan, there is value in the certainty provided by the Castlemore Offer and crystalizing the outcome of the Castlemore Loan at this time. Further, the timing of the payout is known and would occur shortly after Court approval and completion of the Castlemore Settlement Agreement.
35. The Trustee has therefore accepted the Castlemore Offer, as amended and described below, and executed the Castlemore Settlement Agreement. The Castlemore Settlement Agreement requires the Trustee to use commercially reasonable efforts to seek the Castlemore Settlement Approval Order, but the remaining terms of the Castlemore Settlement Agreement are only binding on the Trustee, BDMC and OTC should the agreement be approved and ratified by the Court.

CASTLEMORE SETTLEMENT AGREEMENT

36. The Castlemore Offer is conditional, among other things, upon the release and discharge of all Castlemore Loan Obligations and all Loan Encumbrances, and a Court order being obtained providing that none of the Trustee, BDMC, OTC or any Castlemore Individual Lenders have any claim against the Castlemore Borrower in respect of the Castlemore Loan Obligations or the Loan Encumbrances (though the Castlemore Borrower is not to be released from any obligations under the Castlemore Settlement Agreement) in consideration of the payment due under the Castlemore Settlement Agreement.
37. The Castlemore Settlement Agreement also provides that the Castlemore Borrower is to deliver a Release Agreement to the Trustee providing that the Castlemore Borrower, on behalf of itself and the other Releasers, releases all of the Releasees (namely, the Trustee, BDMC, OTC, and each Castlemore Individual Lender who loaned funds through BDMC

or OTC to the Castlemore Borrower pursuant to the Castlemore Loan Agreement and all related loan documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns) from all obligations under such loan documents.

38. The Castlemore Borrower has also made certain representations and warranties and has agreed to provide such further assurances as are necessary to effectuate the transaction set out in the Castlemore Offer. These representations and warranties include, among other things, that to the best of the Castlemore Borrower's knowledge, none of Fortress or any of its affiliates: (a) has or shall have any ongoing involvement in the Castlemore Project, save and except for a Development Consultant Agreement between Fortress and the Castlemore Borrower dated August 25, 2014 ("**DCA**"); (b) is party to any agreement or other arrangement relating to the Castlemore Project, save and except for the DCA; or (c) is or will become entitled to receive any consideration from the Property ("**Fortress Consideration**"). Further, the Castlemore Settlement Agreement contains a covenant in favour of the Trustee that, among other things, should the Castlemore Borrower or any of its affiliates come into the possession or control of any Fortress Consideration, such Fortress Consideration will be paid to the Trustee (until all amounts that would have otherwise been payable to BDMC under the Castlemore Loan Agreement have been paid in full).
39. If the Court issues the proposed Castlemore Settlement Approval Order, then the settlement set out therein will be effective upon the delivery to the Castlemore Borrower by the Trustee of the Trustee's Certificate certifying that the conditions precedent set out in the Castlemore Settlement Agreement are satisfied and the filing of the Trustee's Certificate with the Court. The Trustee therefore executed the Castlemore Settlement Agreement and has brought a motion seeking this Court's approval of the Castlemore Settlement Agreement and the issuance of the Castlemore Settlement Approval Order.
40. Further, if the Castlemore Settlement Approval Order is granted, the Trustee intends to make a distribution to Castlemore Individual Lenders in an amount equal to 85% of the Castlemore Realized Property, *pro rata* to the Castlemore Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order, upon the delivery of the Trustee's certificate to the Borrower and the filing

of a copy of the Trustee's Certificate with the Court certifying, among other things, the receipt by the Trustee of the Castlemore Realized Property.

41. A copy of the Castlemore Offer, including the form of Castlemore Settlement Agreement, is attached as **Appendix "5"**.

AMENDMENTS TO THE CASTLEMORE OFFER

42. As set out above, the Castlemore Individual Lenders are generally in support of the Trustee accepting the Castlemore Offer as originally constituted. However, the Trustee also received significant Investor feedback expressing certain concerns with respect to the consideration contemplated by the Castlemore Offer, in particular from certain holders of a significant amount of the Castlemore Loan. As a result of the totality of the Investor feedback, the Trustee reengaged with the Castlemore Borrower and negotiated an amendment⁴ to the Castlemore Settlement Agreement that increased the consideration thereunder from \$9.5 million to \$10.45 million.
43. The effect of this amendment is to increase the net recovery percentage to Investors from 45% to 49%. Similarly, this amendment causes the total potential foregone recoveries to decrease from \$19,488,866 to \$18,538,866.
44. Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Castlemore Settlement Approval Order.

CONCLUSION AND RECOMMENDATION

45. The Trustee recommends that the proposed Castlemore Settlement Approval Order be granted by the Court. The Trustee obtained generally positive responses to the Castlemore Offer from affected Castlemore Individual Lenders as approximately 76.1% in number and approximately 72.3% in value voting favoured acceptance of the Castlemore Offer. The Castlemore Borrower's decision to increase the consideration has resulted in increased Investor recoveries. The Castlemore Settlement Agreement contemplates the payment of approximately 49% of the principal amount due under the Castlemore Loan. If implemented, the Castlemore Settlement Agreement will result in \$10.45 million of

⁴ The amendment was communicated by the Castlemore Borrower to the Trustee in an email sent on October 31, 2019, which the Trustee accepted and communicated to the Castlemore Borrower shortly thereafter by reply email. Accordingly, the agreement between the parties is represented by the terms of the Castlemore Settlement Agreement included in Appendix 5 modified to reflect a \$10.45 million settlement payment.

Castlemore Realized Property in the near term, which will permit the Trustee to make a distribution of Castlemore Realized Property pro rata to Castlemore Individual Lenders who are entitled to same. Further, Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Castlemore Settlement Approval Order. The Trustee is of the view that it is in the interest of the Castlemore Individual Lenders to obtain the Castlemore Realized Property now (net of the 15% administrative holdback required in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order). Further, Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Castlemore Settlement Approval Order.

46. The process followed for approval of the Castlemore Settlement Agreement is substantially similar to the process followed in respect of the Braestone Project, the Harlowe Project, a real estate development project situated at 235 Speers Road in Oakville, Ontario ("**Speers Project**"), a real estate development project situated at 452-458 Richmond Street West in Toronto, Ontario ("**James Project**"), a real estate project situated at 1640 Crestview Avenue in Mississauga, Ontario ("**Crestview Project**"), and a real estate project situated at 3 Halton Hills Drive in Halton Hills, Ontario ("**Humberstone Project**"), which led to the Court approving the Braestone Settlement Agreement, the Harlowe Settlement Agreement, a settlement agreement reached with Kingridge Development Corporation relating to the Speers Project, a settlement agreement reached with L Richmond Corp relating to the James Project, a settlement agreement reached with Carlyle Communities (Crestview) Inc. relating to the Crestview Project and a settlement agreement reached with Worthington Homes (Humberstone) Inc. relating to the Humberstone Project. The Trustee believes that this payout process provides certainty for Investors and borrowers, and the Trustee intends to continue to follow a similar approval process with respect to any other future settlement opportunities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of October, 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 4:

Castlemore Feedback Request dated October 21, 2019



October 21, 2019

Dear Lender:

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

Request for approval regarding the Syndicated Mortgage Loan to Emerald Castle Developments Inc.

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. (the "**Trustee**") was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. ("**BDMC**") under a court order ("**Appointment Order**") issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*. By order of the Ontario Superior Court of Justice (Commercial List) ("**Court**") dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC ("**Representative Counsel**"). Notices have previously been sent to you regarding the appointment of FAAN Mortgage Administrators Inc. as Trustee and of Chaitons LLP as Representative Counsel.

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you as a syndicated mortgage lender to the Borrower in respect of the Castlemore Project (as defined below) pursuant to the Loan Agreement between BDMC (then known as Centro Mortgage Inc.) and the Borrower ("**BDMC Loan**"), and the various associated documents.

Overview of Current Status of the BDMC Loan and Offer

Pursuant to the BDMC Loan, the total amount owing to the syndicated mortgage lenders that advanced funds to BDMC for the Castlemore Project ("**Castlemore SMLs**") is approximately \$28.99 million, which reflects a principal balance of approximately \$21.246 million and accrued interest as at September 30, 2019 of approximately \$7.74 million¹. BDMC has a second ranking mortgage registered against title to the Property in respect of the BDMC Loan.

As you are aware, the BDMC Loan was made to the Borrower pursuant to the Loan Agreement. The Loan Agreement, which matures on November 24, 2019 ("**Maturity Date**"), contains, at the option of the Borrower, the ability to extend the term of the BDMC Loan for up to 24 additional months. This option was to be exercised not less than 3 months prior to the Maturity Date. The Borrower has not exercised this option and, accordingly, the BDMC Loan

¹ Per diem interest since September 30, 2019 is \$4,656.69



will mature on November 24, 2019.

In addition to the BDMC Loan, there are obligations in the amount of approximately \$10.5 million (inclusive of accrued interest to September 2019) ("**Cameron Stephens Loan**") owing to Cameron Stephens Financial Corporation ("**Cameron Stephens**") secured by a first priority mortgage registered on title to the Property in favour of Cameron Stephens. The Cameron Stephens Loan is the only known indebtedness that ranks in priority to the BDMC Loan.

The Borrower has presented the Trustee with an offer to settle the BDMC Loan. For the reasons set out below, the Trustee recommends accepting the offer in full satisfaction of all amounts due or that may become owing to you under the Loan Agreement, and would like to request your feedback in advance of accepting the offer.

The offer provides for payment by the Borrower of \$9,500,000 ("**Offer**"), which reflects a recovery of approximately 45% of the outstanding principal balance of the BDMC Loan. The Offer is conditional upon Court approval and a release of all future obligations of the Borrower with respect to the Loan Agreement and the BDMC Loan. In the event that the Borrower fails to pay any portion of the Offer within two weeks of court approval of a definitive settlement agreement in respect of the Offer to be executed by the Trustee, Olympia Trust Company and the Borrower ("**Settlement Agreement**"), the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 10% of the Offer less the Deposit (discussed further herein).

The Offer also includes the extinguishment of all further rights and obligations of BDMC and the Castlemore SMLs under the Loan Agreement, related documents and the associated mortgage on the Property. If approved, payment is expected to be made by the Borrower to the Trustee shortly following Court approval.

A copy of the Offer is attached hereto as Schedule "A".

Overview of Current Status of the Castlemore Project

The Borrower is proposing to develop a low-density residential development on the Property consisting of both townhomes and single-family homes (the "**Castlemore Project**"). Development approvals are still required for the Castlemore Project.

In September 2014, the City of Brampton Council ("**Council**") adopted Official Plan Amendment 105 ("**OPA**") to implement a new Secondary Plan for Area 47 in Brampton (the "**Secondary Plan**"). Although the Secondary Plan was adopted by Council, the OPA was appealed to the Ontario Municipal Board. In April 2016, Council allowed a landowners group in which the Borrower is a member ("**Landowners Group**") to make their Block Plan submissions notwithstanding that certain appeals to the Secondary Plan were pending.

In 2018, as the municipality was unwilling to issue a decision on the Block Plan submissions, the Landowners Group filed an appeal. A hearing regarding the Block Plan application has



been scheduled for September 8 to October 9, 2020 and a pre-hearing conference has been scheduled for November 7, 2019. The Borrower has advised that it is possible that a settlement could be reached with the municipality at the pre-hearing date.

The Borrower has provided a five-year timeline to completion of the Castlemore Project (assuming a settlement is reached at the pre-hearing date), as follows:

- Block Plan approval granted by the end of 2019;
- Draft Plan approval to be achieved in 2021;
- Sales and Marketing to commence in 2022;
- Site servicing to commence in late 2023; and
- Construction to commence in 2024 with closings to continue through 2025.

Should Block Plan approval not be granted by the end of 2019, the above timeline will be further delayed.

The Secondary Plan and Block Plan appeals have resulted in significant delays to the Castlemore Project and have contributed to a continued lack of certainty on the timing of development. In addition to these development delays, the Borrower advised that the Property has been further impacted by, among other things: (i) significant increases in municipal and regional development charges; and (ii) a softening of the housing market in the City of Brampton and the Greater Toronto Area, generally. Accordingly, the Borrower is seeking to repay the debt owing to Castlemore SMLs under the Loan Agreement at a discount.

The Offer reflects a recovery on the principal amount as follows:

Principal outstanding (A)	21,246,154
Loan repayment (B)	9,500,000
Shortfall (A-B)	<u>11,746,154</u>
% recovery on principal outstanding (B/A)	<u>45%</u>

The amount distributed to the Castlemore SMLs from the Offer will be net of an administrative holdback of 15% (“**Holdback**”) to be retained by the Trustee in accordance with the Court orders issued in these proceedings. The Castlemore SMLs may receive a portion of the Holdback in the future; however, the timing and amount, if any, is unknown at this time.



Additional Loan Agreement Considerations

In addition to the challenges and delays encountered by the Borrower as described above, the Trustee considered the impact of a clause in the Loan Agreement that addresses the rights of the Castlemore SMLs in the event that the BDMC Loan is not repaid by the Maturity Date (the “**End of Term Event Clause**”).

Among other things, the End of Term Event Clause precludes BDMC, in its capacity as lender to the Castlemore Project, from exercising its rights under its Security (as defined in the Loan Agreement), provided that certain procedural steps are followed by the Borrower. These steps include obtaining updated appraisals for the Property (the “**Updated Appraisals**”). The Borrower then has the option of either: (i) paying out the Castlemore SMLs in the manner and priority prescribed by the Loan Agreement (the “**Waterfall**”) using the average value of the Updated Appraisals for distribution purposes, subject to certain deductions (“**Borrower’s Pay Out Option**”); or (ii) listing the Property for sale with a reputable commercial real estate agent and then distributing the proceeds from the sale in accordance with the Waterfall (“**Borrower’s Listing Option**”).

The Borrower requested that the Trustee consider its Offer as an alternative to a repayment of the BDMC Loan in accordance with the End of Term Event Clause. The Borrower advised the Trustee, however, that if the Offer is not accepted by the Castlemore SMLs, it will trigger the End of Term Event Clause on the Maturity Date.

Assessment of the Offer and Recommendation

The Borrower has been unable to commence construction as the Property still requires development approvals. The Borrower has advised that the Castlemore Project is estimated to be completed in 2025 or later, depending on the timing of development approvals.

Acceptance of the Offer by the Trustee would result in the Castlemore SMLs foregoing the remaining principal and accrued interest, which would otherwise be due on the BDMC Loan, as follows:

Remaining principal	\$11,746,154
Accrued interest (November, 2014 to September 30, 2019)	\$7,742,713
Total potential foregone recoveries	<u>\$19,488,867</u>

Since September 30, 2019, additional interest has continued to accrue at a per diem of \$4,656.69.

The following considerations were taken into account by the Trustee in completing its

assessment of the Offer:

- The Trustee engaged an independent real estate appraiser to provide a current “as is” appraisal of the Property. The appraisal contemplates a marketing period of four to eight months. Based on this “as is” value for the Property, after repayment of the Cameron Stephens Loan, the Trustee estimates that the recovery to the Castlemore SMLs from the Offer will be superior to the recovery achieved through the End of Term Clause (regardless of whether the Borrower exercises the Borrower’s Pay Out Option or the Borrower’s Listing Option);
- Absent the acceptance of the Offer by the Castlemore SMLs, the Borrower has advised that on the Maturity Date, it will exercise its rights under the End of Term Clause;
- The timeline to completion of the Castlemore Project is estimated to be 2025 or later. The Trustee consulted with a planning consultant who confirmed that the Borrower’s timeline to project completion was reasonable;
- The Offer provides certainty regarding the amount and time frame for the repayment of the BDMC Loan;
- The Borrower has provided a good faith deposit of \$500,000 to the Trustee’s counsel, to be held in trust (“**Deposit**”), pending the outcome of this voting request and obtaining Court approval of the Settlement Agreement. If the settlement transaction does not close by November 29, 2019 due to a failure of the Borrower to comply with its obligations under the Settlement Agreement, the Deposit shall be paid to and retained by the Trustee, on behalf of BDMC;
- There is debt of approximately \$10.5 million that ranks in priority to the BDMC Loan that must be paid in advance of the BDMC Loan; and
- The Offer results in a return on the BDMC Loan of approximately 45% of the principal balance.

Given the above considerations, including the protracted time frame to completion of the Castlemore Project and the Borrower’s intention to exercise its rights under the End of Term Event Clause if the Castlemore SMLs do not vote in favour of accepting the Offer, the Trustee is of the view that, although the Offer provides only a partial repayment to the Castlemore SMLs, there is value in the certainty provided by accepting the Offer and crystalizing the outcome of the BDMC Loan. Furthermore, the timing of the payout is known and will occur shortly after Court approval.

Options to Castlemore SMLs

The two options available to the Castlemore SMLs are as follows:



- 1) Accept the Offer made by the Borrower for the repayment of the BDMC Loan, which includes a release of BDMC, the Trustee and individual lenders with respect to all rights and obligations under the Loan Agreement and related documents; or
- 2) Not accept the Offer, in which case the Borrower has advised that it will exercise its rights under the End of Term Clause, which would result in a payout that the Trustee estimates will be less favourable than the Offer for the Castlemore SMLs.

Next Steps

At this time, you should review this notice and the Offer carefully and arrange to obtain independent legal advice regarding these matters. If desired, you can consult with Chaitons LLP, in its capacity as Representative Counsel. Representative Counsel's contact information is below.

Attached as Schedule "B" hereto is an instruction letter to the Trustee that gives you an opportunity to indicate whether you are in favour of or against the acceptance of the Offer in full satisfaction of your investment under the BDMC Loan.

Please complete and return the instruction letter to us within ten (10) days.

After ten (10) days, the Trustee, in consultation with Representative Counsel, will decide whether to accept the Offer by an exercise of the discretion granted to the Trustee under the Appointment Order. Any acceptance by the Trustee of the Offer would not be binding on the Trustee or the Castlemore SMLs until the Offer is approved by the Court. In the event that the Trustee accepts the Offer, copies of the Court materials will be served upon you prior to the proposed Court date.

A prompt response is required in the circumstances.

Should you have any questions of the Trustee, our contact information is below (if you are contacting us by phone or email, please reference **Castlemore Project**).

Email: Info@FAANMortgageAdmin.com
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, their contact information is below (if you are contacting Representative Counsel by phone or email, please reference **Castlemore Project**).

Email: BDMC@chaitons.com



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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 5:
Castlemore Offer and Castlemore Settlement Agreement

OFFER TO SETTLE

DATE: OCTOBER 21, 2019

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

- and -

OLYMPIA TRUST COMPANY

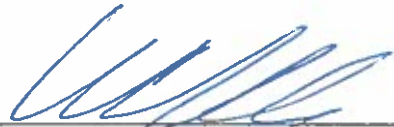
Emerald Castle Developments Inc. (the “Borrower”), hereby presents this offer to settle (the “Offer”) on the terms and conditions set forth in the Settlement Agreement enclosed herewith, as full consideration for all obligations owing by the Borrower under that certain Loan Agreement dated August 25, 2014 (the “Loan Agreement”) with Centro Mortgage Inc. (now Building & Development Mortgages Canada Inc.), in trust (“BDMC”), as lender. BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“Olympia”) acts as trustee for a subset of such lenders who have self-directed accounts with Olympia.

The Borrower understands that FAAN Mortgage Administrators Inc. was appointed as trustee of BDMC (the “Trustee”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018 under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC, and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to BDMC, and any actions involving BDMC with respect to this Offer shall be directed to and executed by the Trustee.

The Borrower further understands that, as this Offer represents a compromise of debt and a release of all parties’ obligations pursuant to the Loan Agreement and related documents (provided that such release shall not in any way affect the Borrower’s obligations under this Offer and the Settlement Agreement enclosed herewith), the Trustee and Olympia intend to reach out to the individual lenders forming the syndicate under the Loan Agreement with respect to this Offer. Therefore, the Borrower hereby agrees that this Offer, and its signature on the Settlement Agreement enclosed herewith, shall be irrevocable by the Borrower and shall remain open for acceptance by providing counter-signed copies of the Settlement Agreement enclosed herewith to the Borrower until 5:00 p.m. Toronto time on November 8, 2019 (or such other date as may be agreed by the Borrower in writing). Failure to accept the Offer by each of the Trustee, on behalf of BDMC, and Olympia, by such date shall result in this Offer being revoked. In the event that this Offer is rejected or revoked as outlined above, the Loan Agreement shall remain unaffected and shall continue and survive in full force and effect in accordance with its terms. This Offer is made on the understanding that the Trustee and Olympia will not consider any other offers while this Offer is open for acceptance by the Trustee.

The Borrower looks forward to your response.

**EMERALD CASTLE DEVELOPMENTS
INC.**

By: 
Name: DESI C. AUCIELLO
Title: ASO

**SETTLEMENT AGREEMENT
(dated as of October 21, 2019)
(the "Settlement Agreement")**

B E T W E E N:

EMERALD CASTLE DEVELOPMENTS INC.

- and -

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

- and -

OLYMPIA TRUST COMPANY

WHEREAS Emerald Castle Developments Inc. (the "**Borrower**") is the borrower under a Loan Agreement dated August 25, 2014 (the "**Loan Agreement**") with Centro Mortgage Inc. (now Building & Development Mortgages Canada Inc.), in trust ("**BDMC**"), as lender, whereby BDMC issued a loan in an amount up to and including the principal sum of \$21,246,153.85 to the Borrower;

AND WHEREAS the principal sum of \$21,246,153.85 (the "**Loan**") was actually funded by BDMC pursuant to the Loan Agreement;

AND WHEREAS BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company ("**Olympia**") acts as trustee for a subset of such lenders who have self-directed accounts with Olympia;

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

AND WHEREAS the Borrower, BDMC and Olympia entered into the Loan Agreement to assist in the development of a low-density residential project consisting of both townhomes and single-family homes to be constructed at 10431 Gore Road, Brampton, Ontario, legally described in Schedule "A" hereto (the "**Property**", and such development, the "**Project**");

AND WHEREAS in connection with and as security for payment of the Loan and performance of other obligations set out in the Loan Agreement, BDMC and Olympia were granted a charge on title to the Property, which is described in Schedule "B" hereto, in the initial principal amount of \$10,000,000, which charge was subsequently increased to \$22,000,000 (the "**Charge**");

AND WHEREAS there is currently \$21,246,153.85 in principal outstanding under the Loan;

AND WHEREAS as of September 30, 2019, there was approximately \$7,742,712.79 of accrued interest payable to BDMC under the Loan, which continued to accrue at a per diem amount of \$4,656.69 since September 30, 2019;

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

AND WHEREAS construction on the Project has not yet commenced, and the Borrower has advised that the Project is not estimated to be completed until 2025, or later;

AND WHEREAS the Borrower has further advised that, absent a settlement on the terms hereof with respect to, among other things, the Obligations (as defined below), on the Maturity Date, it will exercise its rights under Section 14 of the Loan Agreement to initiate certain “end of term” procedures, which may preclude the Trustee from exercising BDMC’s rights under the Security (as defined in the Loan Agreement);

AND WHEREAS, on or about October 21, 2019, the Borrower provided a good faith deposit of \$500,000 to the Trustee’s law firm (the “**Deposit**”), to be held in trust and released in accordance with the terms hereof, as evidence of its financial ability to make the Settlement Payment (as defined herein);

AND WHEREAS the Trustee consulted with individual lenders with respect to the proposed Settlement Agreement and, following such consultation, determined that it is in the best interests of the individual lenders to enter into this Settlement Agreement;

AND WHEREAS the parties hereto wish to enter into this Settlement Agreement in full satisfaction of the Obligations owing by the Borrower to BDMC under the Loan Agreement and the Charge and all other security granted by the Borrower with respect to the Obligations;

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Each party represents and warrants to the others that to the best of its knowledge, the recitals to this Settlement Agreement are accurate.
2. The parties hereto represent and warrant that the total amount that would be payable to BDMC and Olympia under the Loan Agreement, the Charge and any other security granted by the Borrower to BDMC and/or Olympia, as applicable, as at September 30, 2019 is \$28,988,866.62 (the “**Obligations**”), consisting of the following amounts, and that such amounts represent all of the monetary obligations owed by the Borrower to BDMC and Olympia under the Loan Agreement, the Charge and any other security granted to BDMC and/or Olympia by the Borrower in connection with the Loan (“**Other Security**”):
 - (a) Principal owing in the amount of \$21,246,153.85, payable on the Maturity Date; and
 - (b) Interest owing in the amount of \$7,742,712.79 as of September 30, 2019, plus any

additional interest that would be accrued from such date until the date the Loan is repaid.

3. The Borrower hereby agrees to pay to the Trustee, on behalf of BDMC and Olympia, on the Effective Date (as defined below) an amount equal to \$9,500,000 (the "Settlement Payment"), which shall be satisfied by (a) a lump-sum payment in the amount of \$9,000,000, and (b) the release and crediting of the Deposit against the Settlement Payment. The Borrower agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Settlement Payment and, if applicable, the Late Payment Fee (as defined below) save and except as provided in Section 11, below.

4. In the event that the Borrower fails to pay any portion of the Settlement Payment within fourteen calendar days from the date of the Order (as defined below), the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 10% of the Settlement Payment less the Deposit (the "Late Payment Fee").

5. The Borrower shall, on the Effective Date, execute and deliver a full and final release in favour of the Trustee, BDMC, Olympia and their related entities (including the individual lenders) (collectively, the "Releasees") in respect of, *inter alia*, any and all Obligations under the Loan Agreement and all other documents between the Borrower and BDMC, in a form customarily provided to secured lenders and in the form reasonably agreed to by the Releasees (the "Release"). The Release shall not be effective until the Closing Date (as defined below); provided that such Release shall not in any way affect the Trustee's obligations under this Settlement Agreement.

6. The Borrower hereby represents and warrants to the other parties hereto that, as of the date hereof:

- (a) It has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Settlement Agreement, all of which have been duly authorized by all proper and necessary corporate action and it has duly executed and delivered this Settlement Agreement.
- (b) The execution of this Settlement Agreement will not violate or conflict with its organizational documents, any mortgage or other documentation it is party to relating to the Project or the Property, or any law, regulation or order or require any consent or approval that has not been obtained.
- (c) This Settlement Agreement is a legal, valid, and binding obligation of the Borrower, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by equitable principles.
- (d) To the best of its knowledge, none of Fortress Real Developments Inc. or any of its affiliates (as such term is defined in the Ontario *Business Corporations Act* (Ontario)) or any other entity controlled by it (collectively, "Fortress") or their respective principals, agents or legal counsel (collectively, "Fortress Representatives"):

- (i) currently has or shall have any ongoing involvement in the Project, save and except for a Development Consultant Agreement between Fortress and the Borrower dated August 25, 2014 (the "DCA");
 - (ii) after reasonable inquiry and investigation, is party to any agreement or other arrangement relating to the Project or the Property with the Borrower or any of its affiliates or their respective principals or agents, save and except for the DCA between Fortress and the Borrower; or
 - (iii) after reasonable inquiry and investigation, is or will become entitled to receive any consideration whatsoever in respect of or in any way relating to or arising from (directly or indirectly) the Property or the Project, whether from the Borrower, any lender, broker, purchaser, other person or any of their respective affiliates, principals or agents, including, without limitation, consideration in the form of money, instruments, investment property, debt, securities, options, mortgages, charges, guarantees, assets or any other form, and promptly upon the Borrower obtaining knowledge or otherwise becoming aware of any of the foregoing matters, whether before or after the Closing Date, it shall notify the Trustee of the nature and existence of such matters forthwith.
- (e) There are no arrangements between the Borrower or any of its affiliates, principals or agents involving Fortress or any Fortress Representatives whereby Fortress or any Fortress Representative would receive any consideration in respect of or in any way relating to or arising from the Property, the Project or the transactions contemplated by this Settlement Agreement, whether from the Borrower, any lender, broker, assignee, other person or any of their respective affiliates, principals or agents.
- (f) Neither the Borrower nor any of its affiliates, principals or agents has been in contact with, had discussions with, or been in negotiations with Fortress or any Fortress Representatives in respect of a potential transaction that would result in any consideration becoming payable in any way to Fortress or any Fortress Representative in connection with the Property, the Project or the transactions contemplated by this Settlement Agreement, whether from the Borrower, any lender, broker, assignee, other person or any of their respective affiliates, principals or agents, including without limitation any potential transaction involving a settlement of the Obligations or an assignment of all or any part of the Obligations or the Charge to Fortress or any Fortress Representative.

7. The Borrower covenants in favour of the Trustee that should the Borrower or any of its affiliates or their respective principals or agents: (a) come into the possession or control of any such consideration described in Subsection 6(d)(iii), above, that would otherwise be payable to Fortress or any Fortress Representative, or (b) permit or acquiesce to any such consideration being received by Fortress or any Fortress Representative, such consideration: (y) shall and shall be deemed to be held in trust, separate and apart from such person's other money, instruments, investment property, property or assets, for the benefit of the Trustee until the full amount of the Obligations that would have been payable to BDMC under the Loan Agreement as of the Effective

Date of this Settlement Agreement has been paid to the Trustee in full, or (z) shall be deemed to become an amount that is owed by the Borrower to the Trustee, as applicable. In each such instance, such person shall immediately inform the Trustee of such fact and take such steps to promptly transfer such consideration to the Trustee and pay any and all such amounts to the Trustee within two (2) business days of receipt of same (the "**Turnover Obligation**"). For greater certainty, the Turnover Obligation shall survive the closing of the transactions contemplated by this Settlement Agreement and shall not be affected by the releases contemplated by Section 9 hereof.

8. The Trustee, on behalf of BDMC, acknowledges that the Settlement Payment represents \$19,488,866.62 less than the full amount of the principal and interest owing as at September 30, 2019 (excluding additional accrued interest to the ultimate date of repayment) and any amount that could potentially become owing under the Loan Agreement, the Charge and any Other Security. The Trustee, on behalf of BDMC, and Olympia hereby agree that, as of the Closing Date (as defined herein), they shall be deemed to accept the Settlement Payment and, if applicable, the Late Payment Fee in full satisfaction of the Obligations, and the performance of any obligations under the Loan Agreement, the Charge and any other security and shall waive any rights, to any further payments that may become payable to BDMC and/or Olympia under the Loan Agreement, the Charge and any Other Security, provided that such agreement and waiver shall not in any way affect the Turnover Obligations under this Settlement Agreement.

9. The Trustee shall use commercially reasonable efforts to seek approval of the Settlement Agreement by way of court order substantially in the form agreed between the Borrower, the Trustee, and Olympia (which shall, for greater certainty, contain a full release and discharge of all Obligations of the Borrower under the Loan Agreement, the Charge and Other Security provided that such release shall not be effective until the Closing Date as provided in Sections 10, 11 and 12 hereof and shall not in any way affect the Borrower's obligations hereunder) (the "**Order**") issued by the Court. The parties hereto agree that, except for the immediately preceding sentence and Section 11 hereof, this Settlement Agreement shall not be binding on any party until the issuance of the Order. Following the date of the issuance of the Order (the "**Effective Date**"), the Borrower shall be required to issue the Release as contemplated in Sections 3, 4 and 5 herein and pay the Settlement Payment and, if applicable, the Late Payment Fee, to the law firm representing the Trustee, to be held by such law firm in trust and not to be released until the Closing Date or, if applicable, returned to the Borrower in accordance with Section 11, below.

10. The obligations of the Trustee, on behalf of BDMC, and Olympia contained in this Settlement Agreement (except for the obligation to seek Court approval pursuant to Section 9 hereto, which shall be effective as of the date that the Trustee and Olympia execute this Settlement Agreement) shall be subject to the issuance of a certificate to the Borrower by the Trustee in the form to be attached to the Order (the "**Trustee's Certificate**") and the filing of the Trustee's Certificate with the Court following the satisfaction of the conditions precedent set out in Section 12 herein (the "**Closing Date**").

11. Notwithstanding anything to the contrary herein, if the Closing Date does not occur by November 29, 2019 (the "**Outside Closing Date**") by reason of a breach by the Borrower of its obligations under this Settlement Agreement then the full amount of the Deposit shall become the property of and be retained by the Trustee, on behalf of BDMC, to compensate it for time, fees and expenses incurred in connection with the transactions contemplated by this Settlement

Agreement. Conversely, if all of the conditions precedent set out in section 12 herein have been satisfied and the Closing Date does not occur on or before the Outside Closing Date solely because of the failure of the Trustee to issue the Trustee's Certificate to the Borrower and file the Trustee's Certificate with the Court, then the Deposit, and if applicable, any amounts in excess of the Deposit received by the Trustee (or its counsel, in trust) in respect of the Settlement Payment shall be returned to the Borrower upon written demand by the Borrower or its solicitors, without set-off or any deduction whatsoever and the Settlement Agreement shall be deemed terminated (in which case the Loan, the Obligations, the Loan Agreement, the Charge and the Other Security and any obligation and liability thereunder shall remain unaffected and shall continue in favour of BDMC and Olympia in accordance with their terms). The return of the Deposit and, if applicable, any amounts in excess of the Deposit received by the Trustee (or its counsel, in trust) in respect of the Settlement Payment, shall be the Borrower's sole and exclusive remedy in respect of any termination of this Settlement Agreement. The Trustee may, in its sole discretion, extend the Outside Closing Date to a date acceptable to the Borrower.

12. The Trustee shall be required to issue the Trustee's Certificate to the Borrower and file the Trustee's Certificate with the Court promptly upon the satisfaction of the following conditions precedent (which conditions may be waived by the Trustee in its sole discretion):

- (a) the Order has been granted by the Court and no material objections (in the sole opinion of the Trustee) were raised by individual lenders or by any other party at the motion for approval of the Order, or, if any material objection is raised, the appeal periods in respect of the Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
- (b) the Borrower has paid the Settlement Payment and, if applicable, the Late Payment Fee to the Trustee's law firm, in trust;
- (c) the Borrower has provided the Release to the Releasees;
- (d) the Borrower has certified that all of the representations and warranties contained in this Settlement Agreement continue to be true as of the Closing Date; and
- (e) the Borrower continues to be, in compliance with all of the terms of this Settlement Agreement.

For greater certainty, the rights and obligations of each party as contained in the Loan Agreement and the security granted to BDMC and Olympia (including without limitation the Charge) shall remain effective until the Closing Date.

13. As of the Closing Date: (i) the Borrower, the Trustee, on behalf of BDMC, Olympia and all individual lenders acknowledge and agree that they shall have no further rights or obligations in connection with the Obligations, the Loan Agreement, the Charge and Other Security and the Loan Agreement shall automatically be terminated with no further force or effect; (ii) the Borrower shall be permitted to cause any and all security held by BDMC and/or Olympia to secure the Obligations to be discharged, including the discharge of the Charge from title to the Property; (iii) the Borrower shall be permitted to release any interest the Trustee, on behalf of BDMC, and Olympia may have in any insurance policy(ies) relating to the Property; and (iv) the individual

lenders shall be deemed to have released the Borrower from all obligations and security provided in connection with the Loan Agreement; provided, however, that the releases, discharges, and other matters described in this paragraph 13 shall not in any way affect the Borrower's obligations hereunder.

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

15. The parties agree that the terms of this Settlement Agreement shall be disclosed to the individual lenders under the Loan and shall be included in the motion materials for approval of the Settlement Agreement.

16. Each party confirms it has received independent legal advice relating to this Settlement Agreement, and that it has voluntarily entered into this Settlement Agreement with the benefit of such advice for the purpose of making a full and final settlement of amounts outstanding under the Loan through this Settlement Agreement.

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

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

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

[Remainder of page intentionally left blank]

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

**EMERALD CASTLE DEVELOPMENTS
INC.**

By: _____

Name: DESIC. FUCIELLO

Title: ASO

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

By: _____

Name:

Title:

OLYMPIA TRUST COMPANY

By: _____

Name:

Title:

SCHEDULE "A"

Legal Description of Property

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

PIN 14214-0172 (LT)

SCHEDULE "B"

Charge

Registration No. PR2635749 against PIN 14214-0172 (LT), as amended by notices registered as Instrument Nos. PR2668022, PR2679352, and PR2725417

TAB 5

Appendix 5:

**Relevant excerpts from the Trustee's Thirteenth Report dated November 22, 2019,
without appendices**

**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**

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

November 22, 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**

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

November 22, 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 (“**MBLAA**”), and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the

Appointment Order is attached as **Appendix “1”**.

2. On 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).
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 28, 2018, the Court issued the Braestone Settlement Approval Order, which approved, among other things, 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.
6. On December 20, 2018, the Court issued the Harlowe Settlement Approval Order, which approved, among other things, 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. A copy of the Harlowe Settlement Approval Order is attached as **Appendix “4”**.
7. The Trustee has, in total, delivered twelve reports to Court (collectively, the “**Reports**”) detailing, among other things, the Trustee’s activities during these proceedings, providing updates to stakeholders on various projects and providing information in support of Orders sought by the Trustee. Notably, on May 10, 2019, the Trustee submitted its seventh report in these proceedings (“**Seventh Report**”), which provided a further comprehensive update on the Trustee’s activities undertaken since the date of the Second Report and a status update for each project. In addition to the project updates provided to the Court and other stakeholders contained in the Seventh Report, the Seventh Report provided support for the Trustee’s request for the Omnibus Order and the LRO Direction Order. A copy of the Omnibus Order dated May 23, 2019 is attached hereto as **Appendix “5”**.
8. This Thirteenth Report is the latest comprehensive update on the Trustee’s activities undertaken since the Seventh Report. Capitalized terms not otherwise defined in this Thirteenth Report have the meanings ascribed to them in the Second Report, the Seventh Report, or other previous Reports of the Trustee, as applicable.
9. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee’s website at: www.faanmortgageadmin.com (“**Trustee’s Website**”). The Trustee intends to

maintain the Trustee's Website for the duration of these proceedings and will be updating it as appropriate.

PURPOSE OF THE THIRTEENTH REPORT

10. In the Seventh Report, the Trustee advised of its intention to report back to the Court in approximately six months with a further comprehensive update regarding these proceedings. Accordingly, the Trustee is filing this report to provide the Court, Investors, borrowers, brokers and other stakeholders with further information regarding BDMC, its business and affairs and information regarding the Trustee's activities since the filing of the Seventh Report.
11. In addition to the project updates and other information provided to the Court and other stakeholders herein, this Thirteenth Report is being delivered in support of the Trustee's request for the following Order ("**December 2019 Omnibus Order**"):
 - (a) approving the QEWN Administration Settlement; and
 - (b) approving the Eighth Report, Ninth Report, Tenth Report, Eleventh Report, Twelfth Report and this Thirteenth 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 April 1, 2019 to September 30, 2019, as more fully described herein and in the fee affidavits attached hereto.
12. The Trustee intends to report back to the Court in approximately six months with a further comprehensive update regarding these proceedings.
13. As has been the case since the Seventh Report, the Trustee anticipates that it will likely be necessary to attend before the Court during the next six months to seek relief or advice and directions from the Court regarding general file administration matters or project specific issues, which may include, among other things, the approval of settlement, repayment or assignment arrangements for loans on certain real estate development projects.

SCOPE AND TERMS OF REFERENCE

14. In preparing this Thirteenth 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 Thirteenth 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 Thirteenth Report may vary from the projections and information used to prepare this Thirteenth 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 Thirteenth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
16. This Thirteenth 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 December 2019 Omnibus Order. Accordingly,

the reader is cautioned that this Thirteenth Report may not be appropriate for any other purpose.

17. All references to dollars are in Canadian currency unless otherwise noted.

GENERAL UPDATE

18. Since the Seventh Report, the Trustee has continued to be very active with respect to the BDMC projects in order to protect the Investors' interests to the extent possible. 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. During this time, the Trustee has filed 5 project-specific reports with the Court relating to transactions entered into by the Trustee in an effort to maximize recoveries for Investors. The Trustee has now completed payout and other transactions and obtained other Realized Property through its efforts on behalf of the Investors as part of these proceedings, in the cumulative amount of approximately \$63.4¹ million. The Trustee also seeks to improve Investor recoveries by recovering professional fee reimbursements from borrowers or other parties, whenever possible. To date, the Trustee has recovered approximately \$675,000 on account of professional fee reimbursements.
20. From the date of its appointment, the Trustee has prioritized the dissemination of information to Investors. 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. To date, the Trustee has disseminated 131 notices to Investors in respect of their investments. In addition, the Trustee dedicates resources to respond to the substantial number of Investor inquiries

¹ This amount does not include: (i) any future amounts that may become payable to BDMC Investors on the CHAT Project, (ii) the Second Settlement Payment (as defined in the Humberstone Settlement Approval Order of the Court made on September 11, 2019), nor (iii) any amounts that may be payable to Investors in respect of the Castlemore Project (as the Court hearing contemplated in the Twelfth Report of the Trustee has been adjourned), each as more particularly described below.

received on a weekly basis. The Trustee has also had numerous in-person meetings with individual Investors and their representatives and 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. In addition, to assist Investors in understanding the status of their particular syndicated mortgage loan, the Trustee has created, and continues to update, a chart on its website which provides, to the best of the Trustee's knowledge, the capital structure, the development status of each project and other project-specific information ("**Project Analysis Summary**"). The Project Analysis Summary as of November 15, 2019 is attached hereto as **Appendix "6"**. While the Project Analysis Summary contains particularized information with respect to each project, the Trustee cautions that it is only intended to summarize certain aspects of the Trustee's analysis and understanding with respect to each project as of a specific date. The Trustee continues to refine its analysis as required based on new developments and information, which can at times have a significant impact on the Trustee's review and related recommendations. The Trustee notes that certain confidential information has been excluded from the Project Analysis Summary.
22. It remains the Trustee's view that it will likely take several years to complete the administration of certain of the projects due to their early development stages and the complex capital structures involved. In addition, certain of the transactions entered into by the Trustee may result in additional Realized Property that is contingent on future events. Further recommendations and long-term strategies for projects are continuing to be developed by the Trustee 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 continues to recognize the hardship experienced by the Investors in connection with their investments. Through its communications with the Investors, the Trustee is aware that many of the Investors have suffered and will continue to suffer a devastating financial impact from their investments in Fortress projects through BDMC. As a result of, among other things, significant fees taken directly from initial loan advances, difficulties obtaining financing to advance projects (especially those which have not

received development approvals and in part due to BDMC's affiliation with Fortress), project delays and issues relating to the use of funds advanced to the projects, the majority of the BDMC loans are in some form of distress. Despite these difficult circumstances, the Trustee has recovered approximately \$63.4 million in Realized Property for the benefit of the Investors. Accordingly, the Trustee has, over time, reduced the portion of the Realized Property that it withholds to discharge the Required Trustee Activities² 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. 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 Seventh Report are described below.

REALIZED PROPERTY GENERATED BY THE TRUSTEE

Settlement and Assignment Agreements in Respect of Certain Projects

26. Since the date of the Seventh Report, the Trustee has continued to engage in discussions with numerous stakeholders regarding the marketing, conveyance, transfer, assignment, sale and/or settlement of BDMC's interests in various real estate development projects that would result in 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 potential lenders, borrowers and other parties that senior lenders are, in many cases, no longer willing to provide additional financing to further advance the respective projects while a BDMC charge remains registered on title. Further, recoveries under some of the projects are uncertain and may not be realized for several years. As a result, the Trustee has actively engaged with the borrowers and any other parties that may have an interest

² "Required Trustee Activities" are defined in paragraph 21 of the Second Report.

in the respective property with respect to payout opportunities that provide recoveries and certainty to Investors.

28. Seven settlement agreements have been negotiated by the Trustee and approved by the Court to date in respect of the following projects: the Braestone Project, the Harlowe Project, the Speers Project, the James Project, the Crestview Project, the Humberstone Project and the Nobleton North Project.
29. The Trustee evaluates each potential settlement opportunity based on the specific factors applicable to the underlying project. 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). In other cases, the best result for the Investors in the circumstances was a partial recovery of the principal obligation owing to Investors.
30. As part of the Trustee's project-specific analysis, the Trustee also considers whether a transaction for the assignment and/or purchase of the BDMC debt and security may be in the best interests of the Investors. As a result, the Trustee has also been engaging in discussions with interested parties to attempt to sell BDMC's interest in certain syndicated mortgage loans. It is the Trustee's view that the competitive tension that may be created among the borrowers and potential purchasers of the BDMC debt and security will assist in maximizing Investor recoveries. Examples of this alternative transaction structure to attempt to maximize Investor recoveries are described below with respect to the Nobleton North and Peter Richmond Projects.
31. The three settlement transactions that have been completed since the date of the Seventh Report are discussed in greater detail below. A fourth settlement agreement relating to the Castlemore Project was also executed by the Trustee during this period. As discussed below, the motion in respect of the Castlemore Project has been adjourned.

Crestview

32. As described in greater detail in the Trustee's Eighth Report to Court dated May 17, 2019 ("**Eighth Report**"), BDMC provided a syndicated mortgage loan ("**Crestview Loan**") to Carlyle Communities (Crestview) Inc. pursuant to a loan agreement dated October 18, 2013 (as amended, "**Crestview Loan Agreement**"), which was secured by a charge on

real property situated at 1640 Crestview Avenue, Mississauga, Ontario (“**Crestview Project**”).

33. The Crestview borrower advised the Trustee that it was ready to commence construction of the Crestview Project, which consists of 20 three-story townhouses expected to be completed no earlier than 2021, subject to obtaining construction financing. However, the Crestview borrower advised that it canvassed the market for such financing and that, other than Atrium Mortgage Investments (“**Atrium**”), the first priority mortgagee on the property, lenders were generally not willing to advance funds at the time given the limited number of pre-sales completed by the Crestview borrower. Further, the Trustee understands that Atrium was unwilling to do so while any portion of the charge in favour of BDMC securing the Crestview Loan remained on title.
34. As a result, the Crestview borrower engaged in negotiations with the Trustee regarding the payment of the amounts due to BDMC under the Crestview Loan Agreement. As part of these negotiations, the Crestview borrower presented the Trustee with an irrevocable offer (“**Crestview Offer**”) to accept a payment of \$4.475 million in full satisfaction of the amounts due under the Crestview Loan Agreement (“**Crestview Settlement Payment**”).
35. The Trustee presented this offer to the Crestview Investors by delivering a notice to those lenders on May 7, 2019, which requested that such lenders consider the Crestview Offer and provide their feedback, whether for or against the acceptance of the offer, as well as any other general feedback.
36. The Trustee received overwhelmingly positive responses to the Crestview Offer and, accordingly, brought a motion seeking Court approval of the Crestview Settlement Agreement. On May 23, 2019, the Court issued the proposed approval Order (“**Crestview Settlement Approval Order**”).
37. Since the making of the Crestview Settlement Approval Order, the Trustee has received the Crestview Settlement Payment from the Crestview borrower and the transaction has closed. The Trustee then distributed an amount equal to 85% of the Crestview Realized Property *pro rata* to the Crestview Investors entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended.

Humberstone

38. As described in greater detail in the Trustee's Tenth Report to Court dated September 4, 2019 ("**Tenth Report**"), BDMC provided a syndicated mortgage loan ("**Humberstone BDMC Loan**") to Worthington Homes (Humberstone) Inc. pursuant to a loan agreement dated December 1, 2015, which was secured by a charge on real property situated at 3 Halton Hills Drive, Halton Hills, Ontario ("**Humberstone Project**").
39. The Humberstone borrower advised the Trustee that it was experiencing financing challenges on account of changes in the marketplace since the Humberstone Project commenced and that construction of the project would likely not be completed until 2022 or later. Further, the Humberstone borrower did not anticipate being able to make interest and fee payments on the first priority mortgage registered against title. The Trustee was subsequently advised by the Humberstone borrower that the first priority mortgagee was prepared to begin enforcement proceedings if its required interest and fee payments were not made.
40. After exploring various options, the Humberstone borrower presented the Trustee with a two-step plan that would: (i) provide an interim financing solution to deal with the Humberstone borrower's critical short-term cash flow constraints; and (ii) seek a subsequent refinancing of the indebtedness secured by the Humberstone Project.
41. The interim financing solution was a short-term bridge loan ("**Humberstone Bridge Loan**") that required delivery of a subordination and standstill agreement by the Trustee to subordinate and postpone the Humberstone BDMC Loan to the Humberstone Bridge Loan. The Trustee agreed to this postponement, as described at paragraph 103 below.
42. The Humberstone borrower then secured an offer of financing for the Humberstone Project ("**Humberstone Financing Transaction**"), which would be used to, among other things, repay loans senior to the Humberstone BDMC Loan and to provide a partial repayment of the Humberstone BDMC Loan.
43. As a result, after negotiations with the Trustee, the Humberstone borrower presented the Trustee with an irrevocable offer ("**Humberstone Offer**") to accept (i) a first settlement payment of \$1.75 million upon the closing of the Humberstone Financing Transaction ("**First Humberstone Settlement Payment**"), and (ii) a second settlement payment ranging between \$600,000 and \$800,000 tied to certain Humberstone Project milestones

and an election to be made by the Humberstone borrower at a later date (“**Second Humberstone Settlement Payment**”).

44. The Humberstone Offer provided that the Second Humberstone Settlement Payment would be secured by a new charge registered against title to the Humberstone Project in the name of a third-party administrator.
45. The Trustee presented this offer to the Humberstone Investors by delivering a notice to those lenders on August 23, 2019, which requested that such lenders consider the Humberstone Offer and provide their feedback, whether for or against the acceptance of the offer, as well as any other general feedback.
46. The Trustee received overwhelmingly positive responses to the Humberstone Offer and brought a motion seeking Court approval of the Humberstone Settlement Agreement. On September 11, 2019, the Court issued the proposed approval Order (“**Humberstone Settlement Approval Order**”).
47. Since the making of the Humberstone Settlement Approval Order, the Humberstone Financing Transaction has closed, the Trustee has received the First Humberstone Settlement Payment from the Humberstone Borrower, and the security in respect of the Second Humberstone Settlement Payment has been delivered and registered. The Trustee has distributed an amount equal to 85% of the First Humberstone Settlement Payment *pro rata* to the Humberstone Investors entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended.

Nobleton North

48. As described in greater detail in the Trustee’s eleventh report to Court dated October 31, 2019 (“**Eleventh Report**”), BDMC provided a syndicated mortgage loan (“**Nobleton North Loan**”) to Nobleton North Holdings Inc. pursuant to a loan agreement effective December 13, 2013 (“**Nobleton North Loan Agreement**”) which was secured by a charge on real property situated at 13735 Highway 27, Township of King, Ontario (“**Nobleton North Project**”). The total principal amount owing to the Nobleton North Investors was approximately \$18.58 million.
49. As detailed further in the Eleventh Report, the Nobleton North borrower provided a proposal to the Trustee to partially repay the obligations owing under the Nobleton North

Loan Agreement in exchange for a release of all amounts due or that may become due thereunder (“**Original Settlement Offer**”). During its review and negotiations in respect of the Original Settlement Offer, on October 4, 2019, the Trustee received an offer from 2716360 Ontario Limited (“**Nobleton North Assignee**”) for the assignment of the right, title and interest in and to the indebtedness owed by the Nobleton North borrower to BDMC under the Nobleton North Loan in exchange for a cash payment (“**Assignment Offer**”).

50. After learning of the Assignment Offer, on October 10, 2019, the Nobleton North borrower’s legal counsel presented the Trustee with an unsolicited offer to settle the amounts owing to the Nobleton North Investors for a cash payment of \$15 million, which was materially in excess of the cash payment contemplated by the Assignment Offer (“**Revised Settlement Offer**”).
51. The Trustee immediately provided Representative Counsel with a copy of the Revised Settlement Offer, and Representative Counsel proceeded to engage with counsel to the Nobleton North borrower to determine if the Revised Settlement Offer was an executable transaction that would provide the Nobleton North Investors with a more meaningful recovery than that contemplated by the Assignment Offer. However, as at October 31, 2019, Representative Counsel was of the view that while considerable progress had been made with respect to material issues relating to the Revised Settlement Offer, certain material issues remained.
52. Accordingly, the Trustee was in possession of only one executable transaction for the benefit of the Nobleton North Investors, being the Assignment Offer. That transaction required that Court approval be obtained by November 8, 2019, failing which the Assignee would not be bound to complete the proposed transaction and the Trustee would potentially lose an opportunity to generate meaningful recoveries. As such, the Trustee, with the support of Representative Counsel, concluded that serving the motion for approval of the Assignment Offer presented the best opportunity to maximize recoveries for the Nobleton North Investors. The Trustee proceeded to serve its Eleventh Report and motion materials with respect to the Assignment Offer on October 31, 2019, returnable at a hearing scheduled for November 5, 2019 (“**Nobleton North Approval Hearing**”).
53. In response to the motion materials served by the Trustee, on November 1, 2019, the Nobleton North borrower served responding motion materials seeking, among other

things, an Order approving the Revised Settlement Offer. Immediately upon receiving these motion materials, the Trustee engaged in discussions with legal counsel to the Nobleton North borrower, the Nobleton North Assignee (and its legal counsel) and Representative Counsel with a view to maximizing recoveries for the Nobleton North Investors.

54. As a result of these further discussions and negotiations, the Nobleton North borrower increased its Revised Settlement Offer to \$15.3 million ("**Final Settlement Offer**"), and the Trustee, with the support of Representative Counsel, agreed to an expense reimbursement in the amount of \$850,000 ("**Expense Reimbursement**"), payable to the Nobleton North Assignee, for costs and related fees incurred in connection with the Assignment Offer and to resolve all outstanding matters with the Nobleton North Assignee. The settlement amount of \$15.3 million less the expense reimbursement of \$850,000 resulted in net proceeds of \$14.45 million ("**Nobleton North Net Settlement Amount**"), which represented a repayment of 94% of the principal amount owing (after paid interest) on the Nobleton North Loan.
55. At the Nobleton North Approval Hearing, the Court approved the Final Settlement Offer and the payment of the Expense Reimbursement by the Trustee ("**Nobleton North Settlement Transaction**").
56. The Nobleton North Settlement Transaction closed on November 8, 2019. The Trustee paid the Expense Reimbursement to the Nobleton North Assignee on November 13, 2019, and the Trustee anticipates that the Nobleton North Net Settlement Amount will be distributed *pro rata* to the Nobleton North Investors entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended, within approximately two weeks.

Castlemore

57. As described in greater detail in the Trustee's twelfth report to Court dated October 31, 2019 ("**Twelfth Report**"), BDMC provided a syndicated mortgage loan ("**Castlemore Loan**") to Emerald Castle Developments Inc. pursuant to a loan agreement dated August 25, 2014 ("**Castlemore Loan Agreement**"), which is secured by a charge on real property situated at 10431 Gore Road, Brampton, Ontario ("**Castlemore Project**").

58. Pursuant to the Castlemore Loan, the total principal amount owing to the Castlemore Investors is approximately \$21.25 million. Total accrued interest on the Castlemore Loan as at September 30, 2019 was approximately \$7.74 million.
59. As described in the Twelfth Report, the Trustee understands that development approvals are still required for the Castlemore Project, and that construction of the Castlemore Project has been significantly delayed as a result of, among other things, an appeal regarding the City of Brampton's unwillingness to issue a decision on the Block Plan application. A hearing regarding the Block Plan application is currently scheduled to commence in September 2020. The Castlemore borrower has advised the Trustee that the Castlemore Project will not be completed for at least five years.
60. The Castlemore Loan is set to mature in late November 2019. The Castlemore borrower had advised the Trustee that, at maturity, it would trigger a clause contained in the Castlemore Loan Agreement limiting certain rights of the Castlemore Investors in the event the Castlemore Loan was not repaid by the maturity date ("**End of Term Event Clause**"). The End of Term Event Clause and its implications are described in greater detail at paragraphs 22 to 25 of the Twelfth Report.
61. In light of the foregoing, the Trustee engaged in negotiations with the Castlemore borrower regarding the payment of amounts due to BDMC under the Castlemore Loan Agreement.
62. As part of the negotiations, the Castlemore borrower presented the Trustee with an irrevocable offer to accept a payment of \$9.5 million in full satisfaction of the amounts due under the Castlemore Loan Agreement ("**Castlemore Offer**"), which included payment of a deposit in the amount of \$500,000 ("**Deposit**").
63. The Trustee presented the Castlemore Offer to the Castlemore Investors by sending a notice on October 21, 2019, which requested that such Investors consider the Castlemore Offer and provide their feedback, whether for or against the acceptance of the Castlemore Offer and provide any other general feedback ("**Castlemore Feedback Request**"). The Castlemore Investors were initially generally supportive of the Trustee accepting the Castlemore Offer as originally constituted, however, the Trustee also received feedback expressing concerns with respect to the consideration contemplated by the Castlemore Offer (in particular from certain holders of a significant amount of the Castlemore Loan). As a result of the totality of the Investor feedback, the Trustee reengaged with the

Castlemore borrower and negotiated an increase to the consideration contemplated by the Castlemore Offer from \$9.5 million to \$10.45 million (“**Revised Castlemore Offer**”).

64. Accordingly, the Trustee executed the Revised Castlemore Offer and, on October 31, 2019, with the support of Representative Counsel, served its Twelfth Report and motion materials seeking approval of the Revised Castlemore Offer, returnable at a hearing originally scheduled for November 5, 2019.
65. During the period between service of the Trustee’s motion materials and November 5, 2019, certain Castlemore Investors engaged independent legal counsel and requested additional time to review the motion materials and have further discussions in order to consider their position with respect to Trustee’s approval motion. In response to this request, the Trustee, with the support of Representative Counsel, agreed to adjourn the hearing of the motion to November 14, 2019.
66. On November 11, 2019, the Trustee was served with responding motion materials by Fortress, which opposed the inclusion of certain provisions relating to Fortress in the Revised Castlemore Offer³.
67. Further, during the period between October 31, 2019 and November 13, 2019, the Trustee and Representative Counsel were contacted by numerous Investors expressing concerns with respect to the Revised Castlemore Offer and voting against its acceptance. In addition, a number of Investors that originally favoured acceptance of the Castlemore Offer reversed their position and advised the Trustee that they were no longer supportive of the Trustee accepting the Castlemore Offer and seeking Court approval of same. The Trustee and Representative Counsel were also contacted by a smaller number of additional Investors expressing support for the Revised Castlemore Offer.
68. The additional Investor feedback received after the filing of the Twelfth Report resulted in a materially lower level of support for the Revised Castlemore Offer and a materially lower level of support than in other settlement transactions. As such, the Trustee determined that it would not be moving forward with its motion seeking approval of the Revised Castlemore Offer at the November 14, 2019 hearing. The Trustee therefore adjourned the

³ Prior to the November 5, 2019 hearing, Fortress and its legal counsel had advised the Trustee of its intention to oppose certain provisions of the Revised Castlemore Offer, however, responding materials were served on November 11, 2019.

motion seeking approval of the Castlemore Offer. The Trustee intends to continue engaging with the relevant stakeholders in the Castlemore Project in an effort to maximize Investor recoveries.

Other Realized Property Generated by the Trustee

69. As a result of exercising its powers granted pursuant to the Appointment Order, monitoring the development of each project, actively participating in any enforcement proceedings and revising its project-specific analysis on an ongoing basis, the Trustee has also obtained additional Realized Property with respect to four other projects: the Kemp Project, the Dunsire Project, the Solterra Project and the CHAT Project.
70. The Kemp Project: a real estate development project in Barrie, Ontario ("**Kemp Project**") which had 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 had been given a separate mortgage administered by BDMC. Romspen Investment Corporation ("**Romspen**") had a first priority mortgage registered in the amount of \$6.05 million and Magnetic Capital Group Inc. ("**Magnetic**") had second and third ranking mortgages registered in the amount of \$1,449,500 and \$3,000,000, respectively.
71. The Kemp Project was subject to a notice of sale under a mortgage proceeding ("**Notice of Sale**") issued by Romspen in respect of its first priority mortgage, which had matured. The Kemp Project borrower, an entity related to Fortress, was unable to meet the deadline to pay its outstanding debt, and, as a result, Romspen commenced power of sale proceedings in respect of the Kemp Project. As part of the statutory power of sale process, the Kemp Project properties were listed on the multiple listing service (MLS) website and were actively marketed by Colliers International, a real estate broker retained by Romspen. The Kemp Project properties were listed with an offer deadline of June 27, 2019.
72. Prior to the offer deadline, Fortress advised the Trustee that it was attempting to negotiate a sale of the Kemp Project with Greenwin Barrie Inc. and 2714708 Ontario Inc. (collectively, "**Greenwin**"). During the power of sale process, Fortress initially advised the Trustee that Greenwin would not be willing to submit an offer through the power of sale process. Subsequently, Fortress advised that even if Greenwin was prepared to submit

an offer through the power of sale process, the consideration offered would be lower than if the offer was submitted directly to the Kemp borrower (a Fortress-related entity). Fortress was initially seeking a transaction fee in the amount of approximately 5% of the purchase price, which would have diluted Investor recoveries. At no time did the Trustee ever agree to any transaction fee.

73. Faced with these circumstances, the Trustee engaged directly with Romspen, Magnetic and Greenwin to determine: (i) whether Greenwin was willing to submit an offer through the power of sale process; and (ii) if Greenwin was willing to submit an offer through the power of sale process, whether the consideration offered through such process would be at least the amount that was previously contemplated.
74. Greenwin provided an offer to purchase the Kemp Project to Romspen in the power of sale process prior to the offer deadline. Romspen subsequently entered into an agreement of purchase and sale with Greenwin ("**Kemp Sale Agreement**"), which the Trustee understands represented the highest and best offer for the Kemp Project properties. The Kemp Sale Agreement contemplated the purchase of the Kemp Project properties for \$14.9 million, which the Trustee understands is not lower than the amount that was proposed to be offered directly to the Kemp borrower outside of the power of sale process. In addition, the offer submitted through the power of sale did not include any transaction fee payable to Fortress.
75. The distribution of the proceeds was as follows: (i) approximately \$7 million to Romspen, as first mortgagee; (ii) approximately \$300,000 to Colliers International in respect of commissions; (iii) approximately \$188,000 to the City of Barrie for property tax arrears; (iv) approximately \$5.2 million to Magnetic, as the second and third mortgagees; and (v) the remaining proceeds, net of legal fees, of approximately \$2.2 million from the transaction ("**Residual Proceeds**") to the Trustee's counsel, on behalf of the Kemp Investors, as the fourth ranking mortgagees. The transaction closed on September 10, 2019. In order to attempt to secure the maximum recoveries for the Kemp Investors, the Trustee reviewed the payout statements and other information provided by the priority mortgagees to ensure the appropriate amounts were paid in priority to BDMC.
76. Shortly before the distribution of the proceeds by Romspen, Fortress, on behalf of itself and the Kemp borrower, submitted a claim to the Residual Proceeds in the amount of

approximately \$572,000. Fortress claimed that it should be paid this amount in priority to the amounts to be paid to Trustee on behalf of the Kemp Investors. To prevent any delay in the closing of the transaction and the incurrence of additional interest and costs, it was agreed that the Residual Proceeds would be distributed to the Trustee, in trust, until either: (a) a consensual agreement is reached with Fortress regarding its claim; or (b) an order is obtained from the Court with respect to the distribution of Residual Proceeds.

77. Since the closing of the Kemp Project transaction, the Trustee has sought additional information from Fortress in respect of the basis for its claim. Fortress has stated that the \$572,000 claim consists of: (i) \$200,000 relating to the repayment of a promissory note between the Kemp borrower and a third party used to pay approximately \$117,000 of “hard costs” and approximately \$83,000 of management and consulting fees owing to Fortress, and (ii) \$372,000, representing a transaction fee for Fortress of 2.5% of the purchase price. Fortress has asserted its priority on the basis of an agency agreement dated November 7, 2016 between BDMC, Olympia Trust Company, the Kemp borrower, and the Kemp Investors (“**Kemp Agency Agreement**”). Fortress relies on a section of the Kemp Agency Agreement that describes the Kemp borrower’s repayment obligation in respect of “Net Cash Flow” from the Kemp Project.
78. The Trustee has reviewed this information and does not agree that the Kemp Agency Agreement provides Fortress with any entitlement to the Residual Proceeds. In particular, the provision relied on by Fortress relates only to cash revenues received by the Kemp borrower in respect of the Kemp Project. The Residual Proceeds are not cash revenues and were never received by the Kemp borrower. The Residual Proceeds are proceeds of a power of sale proceeding controlled by a third-party mortgagee after default of its mortgage by the Kemp borrower. Thus, the provisions relating to “Net Cash Flow” in the Kemp Agency Agreement are not applicable and the Trustee (on behalf of the Kemp Investors) is entitled to be paid the Residual Proceeds in the prescribed manner in accordance with the priority of the mortgages registered on title. In addition, the Trustee notes that it did not agree at any time to repay any promissory note or, as noted above, to any transaction fee to Fortress in connection with the Kemp Project sale transaction or otherwise. The Trustee also is of the view that it would be inequitable in the circumstances of the Kemp Project sale transaction for Fortress to receive any amounts from the Residual Proceeds in priority to the Kemp Investors.

79. The Trustee has formally responded in writing denying Fortress' claim to any amount of the Residual Proceeds. Should Fortress maintain its position after reviewing the Trustee's response, the Trustee intends to bring a motion authorizing the Trustee to distribute the full amount of the Residual Proceeds to the Kemp Investors and will file a further Court report in connection with any such motion.
80. However, in order to distribute as much Realized Property to the Kemp Investors as soon as possible, the Trustee intends to distribute a portion of the undisputed amount of the Residual Proceeds within two weeks of the December 2, 2019 Court hearing.
81. Dunsire Project: a real estate development project in Guelph, Ontario ("**Dunsire Project**") that is subject to a receivership proceeding. On May 25, 2018, the Court-appointed receiver, RSM Canada Limited ("**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 the BDMC mortgage. After the closing of the sale transaction, the Trustee engaged with RSM to determine whether any additional assets of the Dunsire borrower existed to satisfy any portion of the BDMC debt. As a result, the Trustee became aware that certain HST refunds and the return of a deposit being held by Tarion Warranty Corporation would result in a potential recovery to the Investors ("**Ancillary Receipts**"). Subsequently, RSM advised the Trustee that after repayment of the debt in priority to the BDMC loan and deduction of fees and disbursements, the net remaining balance in the Dunsire Project estate after collection of the Ancillary Receipts was approximately \$490,000. On September 13, 2019, the Trustee received a preliminary distribution from RSM, on behalf of the Dunsire Investors, of \$450,000. A second and final payment to the Trustee, on behalf of the Investors, is expected in the near term. Upon receipt of this final payment, the Trustee will distribute these funds *pro rata* to the Dunsire Investors entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended.
82. Solterra Project: a residential real estate development project in Guelph, Ontario ("**Solterra Project**"), with approximately \$14.2 million⁴ of second ranking syndicated

⁴ The amount owed to the Solterra Investors was originally approximately \$16.3 million prior to the \$2.1 million payment noted in paragraph 84.

mortgage debt administered by BDMC. There is a first ranking mortgage advanced on a revolving basis with a balance at November 15, 2019 of approximately \$185,000 securing a construction loan for Phase 4 of the Solterra Project. This amount is expected to fluctuate as Phase 4 homes are constructed and completed.

83. The Trustee understands that construction on this project is ongoing, and that the Solterra borrower is currently in the process of constructing Phase 4A of the Solterra Project. The houses comprising Phase 3 have been constructed and sold. The Solterra borrower expects to complete construction of the final homes in 2024.
84. The final home in Phase 3 of the Solterra Project is expected to close in early 2020. The proceeds from the sales of the Phase 3 homes that have already closed were sufficient to repay the first priority lender on those properties, and the Trustee negotiated with the Solterra borrower to apply the remaining net proceeds from such sales to the BDMC loan. As a result, approximately \$2.1 million of the BDMC loan was repaid in October 2019. Once the final home in Phase 3 closes, and the Trustee is in receipt of those net proceeds, the Trustee will distribute all the proceeds from Phase 3 *pro rata* to the Solterra Investors entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended.
85. The Trustee is working with the Solterra borrower to determine the expected repayment process for the Phase 4 homes, following which the Trustee expects to provide partial discharges of the BDMC mortgage in the normal course as closings occur in accordance with the terms of the BDMC loan agreement.
86. Charlotte Adelaide Project: a real estate development project in downtown Toronto (“**CHAT Project**”) that had two different syndicated mortgage loans administered by BDMC: \$12.3 million owed to certain syndicated mortgage investors (“**CHAT-SML Investors**”) and such loan, the “**CHAT-SML Loan**”) and approximately \$3.91 million owed to another group of syndicated mortgage lenders (“**CHAT-LH1 Investors**”, and such loan, the “**CHAT-LH1 Loan**”).
87. As described in the Seventh Report and the Ninth Report, in March 2019, the CHAT borrower presented an executed agreement of purchase and sale to the Trustee. Despite being presented with an executed agreement, the Trustee negotiated with the CHAT borrower and the purchaser, Adelaide Square Developments (“**Adelaide Square**”), an

amended agreement of purchase and sale for the purchase of the property comprising the CHAT Project ("**CHAT Property**") ("**CHAT Transaction**"). The new purchase price was \$16.5 million cash (an increase of \$1.5 million from the original cash purchase price), of which approximately \$3.6 million would be immediately payable to BDMC.

88. In addition, Adelaide Square, Go-To Stoney Creek Elfrida LP, its general partner and principals, and the Trustee also entered into a memorandum of understanding ("**MOU**") in respect of the CHAT Transaction. Pursuant to the MOU, BDMC was entitled to receive a further payment of \$1 million within 60 days ("**60-Day Payment**") of the closing date (being June 3, 2019) and \$950,000 within 150 days ("**150-Day Payment**") of the closing date (being September 3, 2019), 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 ("**Density Bonus**"). 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. The sale transaction reflected a gross selling price between \$18.45 million and \$23.65 million. The quantum of the Density Bonus, if any, will not likely be known for a period of approximately 18 to 24 months from the closing date.
89. On June 3, 2019, in breach of the MOU, the Trustee received \$500,000 of the \$1 million due in respect of the 60-Day Payment. However, on August 6, 2019, the Trustee received the remaining \$500,000 owing under the 60-Day Payment. On September 3, 2019, the 150-Day Payment became due and payable by Adelaide Square. On November 20, 2019, the Trustee received the 150-Day Payment together with late payment fees of \$145,000 owing to the Trustee in respect of the 60-Day and 150-Day Payments. The Trustee has now received all payments it is entitled to under the CHAT Transaction save and except for any Density Bonus that may become payable.
90. 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 Investor distributions. In the context of those discussions, the CHAT-LH1 Investor's legal counsel requested that the Trustee defer its distribution of the proceeds received from the CHAT Transaction pending its review of the documentation relating to the relative priorities of the CHAT-SML Loan and the CHAT-LH1 Loan.

91. The Trustee and/or its counsel engaged in a number of meetings and discussions with the CHAT-LH1 Investor and/or its counsel and provided the documentation requested to the extent available. Despite these discussions being productive in limiting the outstanding information gaps, the parties were not able to reach an agreement that would allow the Trustee to distribute the proceeds from the CHAT Transaction without a Court order.
92. In order to avoid further distribution delays, the Trustee served materials in respect of a motion to be heard by the Court on October 16, 2019 (“**CHAT Hearing**”) to approve the distribution of the proceeds from the CHAT Transaction to the CHAT-SML Investors or as the Court may otherwise direct. Counsel to the CHAT-LH1 Investor served Court materials in favour of the proceeds being distributed first to the CHAT-LH1 Investors in priority to the CHAT-SML Investors, or, in the alternative, on a *pro rata* basis. Pursuant to an endorsement of the Court, Representative Counsel represented only the interests of the CHAT-SML Investors for the purposes of the CHAT Hearing.
93. In a decision released on October 17, 2019, the Court ordered that the proceeds of the CHAT Transaction be distributed by the Trustee *pro rata* among the CHAT-SML Investors and the CHAT-LH1 Investors (“**CHAT Order**”). In addition, the Court ordered that the legal costs of the CHAT-LH1 Investor were to be paid from the BDMC estate. This amount was paid from the Administrative Holdback retained by the Trustee.
94. As all amounts payable to the Trustee with respect to the CHAT Transaction (other than any Density Bonus) have recently been received, the Trustee intends to proceed to distribute the CHAT Realized Property in accordance with the CHAT Order.

Summary of Realized Property

95. A table summarizing the Realized Property generated in these proceedings to date is as follows:

Project	Type of Transaction	Status of Realization⁵	Payout Amount to Date (\$)
Braestone	Settlement	Complete	10,000,000
Harlowe	Settlement	Complete	15,562,896
Speers	Settlement	Complete	1,950,000
James	Settlement	Complete	4,842,541
Crestview	Settlement	Complete	4,475,000
KEMP	Power of Sale	Complete	2,176,162
Nobleton North	Settlement	Complete	14,450,000
Humberstone	Settlement	In Progress	1,750,000
CHAT	Sale	In Progress	5,692,031
Dunsire	Receivership	In Progress	450,000
Solterra	Phase 3 Completion	In Progress	2,084,365
Total			\$63,432,995

OTHER TRANSACTIONS INVOLVING BDMC MORTGAGES

Financing and Refinancing Arrangements

96. The Trustee continues to be asked to execute postponements of BDMC mortgages to other financing sources. However, the Trustee notes that it has been receiving fewer postponement requests than it had prior to the date of the Seventh Report. This may be in part due to the Trustee being advised by certain borrowers and other parties on numerous projects that senior lenders are, in many cases, no longer willing to advance funds to the respective projects while a BDMC charge remains registered on title.
97. 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,

⁵ For the projects noted to be "In Progress", Investors may receive further recoveries as discussed above.

because such action increases the likelihood of advancement of the project or stabilizes the asset where it is anticipated to result in a greater recovery to Investors than may otherwise be achieved.

98. 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 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.
99. Below is a summary of certain postponements that have been entered into since the date of the Seventh Report.
100. Bauhaus: a real estate development project in Toronto, Ontario ("**Bauhaus Project**"), with over \$5.6 million of second ranking syndicated mortgage loan debt administered by BDMC. The Bauhaus Project is still in the pre-construction phase. The Bauhaus borrower advised that in September 2019 it attended at a Local Planning Appeal Tribunal seeking both a zoning by-law amendment and site plan approval. A decision is expected to be released during the summer of 2020.
101. The Bauhaus borrower sought a postponement for a new first priority loan in the amount of \$10 million to be advanced by Firm Capital Corporation ("**Firm**"). At the time of the request, the Bauhaus borrower advised that the existing priority lender was not willing to renew its mortgage. The Bauhaus borrower further advised, and the Trustee confirmed, that the interest rate charged on the then existing second priority mortgage was extremely high compared with the rate offered by Firm. The loan advanced by Firm was to be used to: (i) repay all amounts owing to the existing first and second priority loans on the Bauhaus Project; (ii) fund an interest reserve for Firm; and (iii) pay certain fees associated with the transaction.
102. Upon review of the relevant documentation and after discussions with the Bauhaus borrower, the Trustee determined that the postponement request was in the best interests of the Bauhaus Investors as it would stabilize the Bauhaus Project by preventing any enforcement actions from commencing, and would provide for lower carrying costs going forward. Accordingly, on or about October 4, 2019, the Bauhaus Project was refinanced

and the first and second priority lenders were repaid in full. The Trustee agreed to subordinate the BDMC mortgage to the new Firm mortgage in the amount of \$10 million in accordance with the BDMC loan documents and received payment of its expenses in connection with postponing BDMC's mortgage.

103. Humberstone: a real estate development project in Halton Hills, Ontario. As described above, the Humberstone BDMC Loan obligations have been settled by the Trustee and the Humberstone borrower pursuant to a settlement agreement approved by the Court in the Humberstone Settlement Approval Order. As part of the process leading to the Humberstone Offer, the Humberstone borrower presented the Trustee with a two-step plan that would, in part, provide an interim financing solution to deal with the Humberstone borrower's critical short-term cash flow constraints.
104. The Humberstone borrower requested that the Trustee postpone the Humberstone BDMC Loan to the Humberstone Bridge Loan, which would be a new second priority loan secured by the Humberstone Project in the amount of \$3 million. At the time of the request, the Humberstone borrower advised that the existing second priority lender mortgage had matured and was being renewed on a monthly basis and that fees were outstanding on the project's priority mortgage. The Humberstone Bridge Loan was to be used to: (i) repay all amounts owing to the existing second priority loan on the Humberstone Project; (ii) fund an interest reserve for the Humberstone Bridge Loan; (iii) service the interest costs and extension fees owing on the first priority mortgage; and (iv) cover project payables required to advance the Humberstone Project.
105. The Trustee determined that the postponement request was in the best interests of BDMC Investors as it would: (i) stabilize the Humberstone Project by preventing both the first and second priority mortgagees from commencing any enforcement proceedings; and (ii) give the Trustee the time required to complete its settlement negotiations with the Humberstone borrower. On July 26, 2019, in accordance with the BDMC loan documents, the Trustee executed an agreement to subordinate BDMC's mortgage to the new second priority lender in the amount of \$3 million and received payment of its expenses in connection with postponing BDMC's mortgage.

106. 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.
107. As discussed in the Seventh Report, the King Square borrower sought a postponement for an additional \$7.5 million of first ranking priority debt from Firm, the current senior lender, to fund additional costs required to allow the King Square borrower to complete the King Square 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 in the amount of approximately \$20.6 million securing the sale deposits received and used by the King Square borrower for the construction of the King Square Project.
108. The Trustee sought and obtained the consent of the King Square Investors to the postponement, and subsequently agreed to postpone to the additional funds. The Trustee also negotiated an extension of the term of the BDMC loan to August 31, 2019, with the option of one further six-month extension to be granted at the Trustee's discretion. This extension was not requested by the King Square borrower and accordingly the BDMC loan is now past due.
109. At the time of the postponement, the Trustee was advised, and the Investors were notified, that the King Square borrower anticipated that the condominium would be registered by the end of April 2019 and that the units that were subject to sale agreements would close by the end of June 2019. These timelines were not met by the King Square borrower. However, registration of the condominium took place in August 2019 and individual unit closings commenced in mid-October 2019.
110. As at November 15, 2019, approximately 17% of net saleable area has closed, and approximately 83% of net saleable area remains in inventory. To facilitate these closings, prior to providing partial discharges of the BDMC mortgage, the Trustee reviewed statements of adjustments and flows of funds to ensure that the proceeds from the unit closings were used appropriately to repay Firm's first priority mortgage.
111. As at November 15, 2019, the Trustee understands that approximately \$58.5 million remains outstanding on the Firm mortgage. As units close, the charge registered in favour of Aviva also continues to decrease, as fewer deposits need to be secured.

112. The Trustee understands that the King Square borrower is currently focused on completing the remaining scheduled closings and that once these are completed it will recommence actively marketing the remaining unsold units for sale or lease.
113. The Trustee has been advised by the King Square borrower that it would only be in a position to commence repayment of the BDMC loan upon either the acquisition of an inventory loan or following full repayment of the Firm mortgage from additional unit closings. However, it is unknown at this time if the King Square borrower will be able to secure an inventory loan, which would potentially accelerate the timing of any repayment to BDMC Investors. Should the King Square borrower be unable to secure an inventory loan, any Investor recoveries would be dependent upon the timing and purchase prices of the sale or lease of the remaining inventory units. Accordingly, the timing and quantum of Investor recoveries remain uncertain.

Sale transactions initiated by project borrowers outside enforcement proceedings

114. Since the date of the Seventh Report, as part of its project specific analysis, the Trustee has continued to discuss project developments and potential sale transactions with project borrowers. With respect to certain of the projects, the borrower has advised the Trustee that it is seeking to sell the project prior to completion of the development and in certain cases, is listing the property through a commercial broker. The Trustee notes that 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.
115. In the event that there is an offer from a third party, the Trustee will evaluate each proposed sale transaction, including the proposed distribution of the sale proceeds, to determine whether, given the circumstances, it appears to be in the best interests of BDMC Investors to agree to discharge the BDMC mortgage. The Trustee asks for detailed information regarding the status of the project financing, the sales process being conducted, the number of offers received, the status of project development, 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.

116. The Trustee will review the proposed sale and, to the extent it determines it is worth pursuing, will seek 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 other potential revenue streams 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.
117. As set out below, two projects with BDMC loans are currently listed for sale outside of an enforcement proceeding.
118. Jasper Project: a real estate development project in Edmonton, Alberta ("**Jasper Project**") with over \$8.3 million of second ranking syndicated mortgage loan debt administered by BDMC. There is one priority mortgage registered on title in the amount of approximately \$2.2 million. The Jasper Project is an approved high-density development in the downtown core of Edmonton. The Trustee has been advised that the Jasper borrower is seeking to sell the property and has retained CBRE Group, Inc. ("**CBRE**") to list the property. The property is listed for \$7,800,000 with no offer deadline. Should a sale of the property be completed at or below the list price, the proceeds of such a sale will be insufficient to repay the BDMC Investors in full.
119. North Project: a real estate development project in Edmonton, Alberta ("**North Project**") with over \$8.2 million of second ranking syndicated mortgage loan debt administered by BDMC. There is one priority mortgage registered on title in the amount of approximately \$2.8 million.
120. The North Project is an approved high-density development in the downtown core that is currently being used as a surface parking lot. The Trustee has been advised that the North borrower is seeking to sell the property and has retained CBRE to list the property. The property is currently listed for \$8.25 million with no offer deadline. Should a sale of the property be completed at or below the list price, the proceeds of such a sale will be insufficient to repay the North Investors in full.

121. To the extent that offers are received with respect to the Jasper Project and North Project, the Trustee will then determine what steps, if any, it should take with respect to the relevant BDMC mortgage on title.

Sale transactions conducted through enforcement proceedings

122. There continue to be several projects currently subject to enforcement proceedings commenced by senior lenders whose mortgages have gone into default. These enforcement proceedings have often led to a sale of the property by way of a formal sale process, which may or may not involve Court proceedings.
123. To the extent possible, the Trustee takes an active role in these proceedings in order to ascertain, and potentially improve, the likelihood of recoveries to the Investors. Despite having limited control over the negotiations and terms of any potential transaction, as a subsequent mortgagee, the Trustee requests as much information as possible with respect to the sale process conducted in order to ensure, to the extent possible, that any process conducted has been commercially reasonable and has considered the duties of the relevant parties and the debt(s) owing to BDMC.
124. Where the Trustee determines that it is likely that senior lenders will suffer a shortfall (often based on the appraisals commissioned by the Trustee) and, as a result, the 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, as appropriate: (i) working to resolve potential priority disputes; (ii) determining whether the borrower has any other assets that could be used to satisfy outstanding debts owing; (iii) reviewing sources and uses of funds to evaluate whether there are transactions to suggest any improper use or transfers that may warrant further investigation; (iv) negotiating reduced fees with priority lenders; and (v) reviewing payout statements of priority mortgagees.
125. Below is an update on certain sale transactions that have been conducted in the context of enforcement proceedings.
126. 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. BDMC's records reflect the following priority debt ahead of BDMC: (i) Sugarcrest Developments Inc. ("**Sugarcrest**") with a first ranking mortgage in excess of \$7.6 million; (ii) Quincy Investments Ltd. and certain others (collectively, "**Quincy**") with second and third ranking mortgages in the amounts of \$4.7 million and \$1.2 million, respectively; and (iii) 2635837 Ontario Inc. with a fourth ranking mortgage in the amount of \$2.9 million.

127. In January 2019, Quincy filed a statement of claim against the Bradford Bond Head borrower claiming a default under its second ranking mortgage and its entitlement to sell the property as a result of such default. Following the issuance of Quincy's statement of claim, Sugarcrest issued a 244 Notice and Notice of Sale.
128. On June 21, 2019, the Trustee was served with Court materials in respect of a motion brought by Quincy seeking the appointment of a receiver over the Bradford Bond Head Project. On July 23, 2019, the Court issued an Order appointing Rosen Goldenberg Inc. ("**RGI**") as receiver. The Trustee has been engaged in discussions with RGI regarding the receivership proceedings and the sales and marketing process for the Bradford Bond Head Project. RGI's deadline for the submission of offers for the properties that are the subject of the Bradford Bond Head Project was on November 7, 2019. Following the offer deadline, RGI advised the Trustee of the following: (i) there were 11 offers for the property; (ii) the highest and best offer for the property was accepted and is subject to conditions which currently remain outstanding, and (iii) in any event, based on the information available to RGI, it appears that the proceeds from the proposed sale transaction will be insufficient to repay any amounts owing to the Bradford Bond Head Investors.
129. The Trustee notes that it appears the information that RGI has regarding the quantum owing to the prior ranking mortgagees is materially different than that contained in BDMC's records. The Trustee has raised this discrepancy with RGI and RGI has advised that it will not to distribute any funds without first requesting and reviewing updated payout statements. The Trustee intends to continue to monitor the receivership proceedings to determine if any recovery may be possible for Bradford Bond Head Investors.
130. Brookdale Project: a real estate development project in midtown Toronto ("**Brookdale Project**") that had approximately \$4.6 million of mezzanine 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.

131. 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 as its private receiver over the assets comprising the Brookdale Project. RSM ran a sales process for the Brookdale Project and the Trustee had input into such process through regular discussions with RSM and in particular with respect to the parties contacted. 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 resolution of various claims that may rank in priority to the BDMC mortgages.
132. 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.
133. 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, pursuant to which the Trustee understands approximately \$8.7 million is being claimed, and related priority issues in respect of the distribution of the Net Proceeds. At the case conference, the Court established a process that was intended to 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 ("**Brookdale Proceeds**") remains held by the Court in an interest-bearing trust account. The Brookdale 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.

134. Pursuant to an agreement reached by the applicable parties at the case conference held on February 13, 2019, the Trustee, (i) on March 15, 2019, delivered a response to the lien claimants providing information required by section 39 of the *Construction Act*, (ii) on March 15, 2019, delivered a statement of defence to the lien actions, and (iii) on April 15, 2019, produced the BDMC documents that the Trustee determined to be relevant.
135. At a further case conference held on May 29, 2019, the Court issued a consent endorsement setting out, among other things, a process for the further production of documents by the parties. In accordance with this endorsement, the Trustee, (i) on June 30, 2019, advised the lien claimants of additional documents that the Trustee is seeking, and (ii) on July 31, 2019, produced additional documents to the lien claimants.
136. A further case conference was held on August 28, 2019 and the Court issued an endorsement that set out a timetable that required (i) by September 13, 2019, the Trustee and the lien claimants to meet and discuss the technical impediments to the production of BDMC documents and to agree on a mediator and a schedule for a mediation between the Trustee and the lien claimants, (ii) by October 11, 2019, the Trustee to provide its position on the validity of the liens, and (iii) by December 19, 2019, a mediation must be held.
137. The Trustee has complied with all of the requirements of the endorsement of the Court dated August 28, 2019. Specifically, the Trustee (i) met with carriage counsel representing the lien claimants (along with each party's technical specialists) and ultimately established a plan for the production of additional BDMC documents, (ii) reviewed the documents produced by the lien claimants and provided its position on the validity of the construction liens, and (iii) along with carriage counsel for the lien claimants, selected the Honourable George W. Adams, Q.C. as the mediator and scheduled a mediation that will be held on December 12, 2019. Further, in response to requests by carriage counsel, hundreds of thousands of additional documents have been produced and provided by the Trustee to carriage counsel since the August 28, 2019 case conference.
138. The Trustee will continue its efforts to maximize Investor recoveries under both the mezzanine and subordinated 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.

139. 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, \$9.4 million, \$6.7 million and \$15.6 million, respectively. These loans have 3rd, 4th, 5th and 6th ranking mortgages, respectively, registered on title to the Capital Pointe Project. There are two senior lenders with priority mortgages on the Capital Pointe property.
140. 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 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 maintain flexibility and have input with respect to the sale process.
141. In addition, the City of Regina issued an order that required the Capital Pointe 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. Although the City’s order was appealed by the Capital Pointe borrower, ultimately, the Appeal Board concluded that the site had to be backfilled. The Capital Pointe borrower failed to backfill the site by the March 30, 2019 deadline, and accordingly the City engaged a contractor to do so. The costs incurred by the City to backfill the hole have been added to the property taxes in respect of the property, which the Trustee understands are required to be paid in priority to all mortgages, including the BDMC mortgages. The Trustee understands that the property taxes owed by the Capital Pointe borrower to the City are currently over \$2 million, which includes certain unpaid tax levies, penalties and charges associated with such unpaid tax levies, and the costs to backfill and remediate the site.
142. In August 2019, the Court-appointed selling agent lowered the list price for the property to \$2 million, with a requirement for any buyer to assume the property taxes associated with the Capital Pointe property. The Trustee understands that, despite lowering the list price,

no offers were received until November 7, 2019. The Trustee understands that the selling agent ultimately received two offers in respect of the property and the offer from Royalty Developments Ltd. ("**Royalty**") for \$2,205,065 plus the assumption of certain property taxes was accepted.

143. On November 15, 2019, the Trustee was served with court materials seeking approval of the proposed sale to Royalty. The Trustee understands that this transaction will result in the first ranking mortgagee suffering a shortfall on its loan. If an Order is granted in respect of the proposed sale, the BDMC mortgage will be removed from title and the Trustee understands that there will be insufficient proceeds from this transaction to make any distribution to the second ranking mortgagee or any Capital Pointe Investors in respect of their subsequent mortgages. The hearing for approval of the sale is scheduled for December 2, 2019. The Trustee will provide an update to the Capital Pointe Investors following this hearing.
144. Colliers Centre Project: a real estate development project in Barrie, Ontario ("**Colliers Project**") that had 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 was subject to a Notice of Sale issued by Morrison Financial Inc. ("**Morrison**") in respect of construction financing in excess of \$30 million that had matured. As discussed in the Seventh Report, the property had been marketed for sale since July 2018 and no formal offers were received. Accordingly, Morrison proposed to transfer the property to one of its related companies for an amount equal to the highest informal offer it received. The Trustee was advised by Morrison that no better offer was received following consultation by Morrison with the other mortgagees in priority to BDMC. On May 8, 2019, the debt owing to Morrison had increased to over \$35 million and Morrison completed the transfer of the property to its related company for a price of \$18.5 million. At this price, there were insufficient funds to repay Morrison in full, let alone to make any distribution to any mortgagee subordinate to Morrison, including BDMC. On closing of the transaction, the BDMC mortgages were extinguished without any payment to the Investors.
145. Glens of Halton Hills / Georgetown Project: the real estate development project in Georgetown, Ontario ("**Georgetown Project**") that had 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.

146. As described in previous Reports, as a result of multiple senior lenders to the Georgetown Project taking enforcement steps, the Georgetown Project was sold through notice of intention to file a proposal (“**NOI**”) proceedings under the *Bankruptcy and Insolvency Act* (“**BIA**”). The proceeds from the transaction were insufficient to pay the second ranking mortgage in full. Given the shortfall to the second ranking mortgagee, no amounts were distributable to BDMC Investors and the BDMC mortgages were extinguished.
147. On February 5, 2019, the Georgetown borrower was deemed bankrupt and KSV Kofman Inc. (“**KSV**”) was appointed as trustee of the bankrupt estate. A representative of the Trustee was appointed as an Inspector of the bankrupt estate.
148. The Trustee has been working with KSV to determine whether there were any improper transactions completed by the Georgetown borrower for which below-market compensation may have been received. KSV provided the Trustee with its review of the use of funds however certain information requests made by KSV to the Georgetown borrower remain outstanding. The Trustee has requested that KSV continue to pursue answers to the outstanding items. As at the date of this report, KSV has not concluded whether there may be any transfers at undervalue that can be challenged under the BIA. The Trustee continues to work with KSV in this regard but notes that there is limited funding available for KSV to continue to pursue such investigation. Even if funds are recovered as a result of KSV’s investigation, such funds would first be used to satisfy the remaining amount owed to the second ranking mortgagee, which is approximately \$2.4 million.
149. Mississauga Meadows 1 Project (“**MM1 Project**”) and Mississauga Meadows 2 Project (“**MM2 Project**” and together with the MM1 Project, the “**MM1 and MM2 Projects**): The MM1 and MM2 Projects are real estate development projects in Mississauga, Ontario. The MM1 Project had approximately \$5.2 million of fifth ranking syndicated mortgage loan debt administered by BDMC while the MM2 Project had approximately \$3.6 million of third ranking syndicated mortgage loan debt administered by BDMC. The MM1 and MM2 Projects were each subject to a 244 Notice and a Notice of Sale issued by Firm, the first ranking mortgagee on both projects. Firm had senior debt on the MM1 Project and the

MM2 Project in excess of \$4.9 million and \$1.4 million, respectively, that had matured prior to the commencement of the 244 Notice and Notice of Sale processes.

150. As set out in the Seventh Report, on or about January 17, 2019 Firm commenced a combined sale process for the MM1 and MM2 Projects with an offer deadline of February 19, 2019. Firm engaged CBRE to market the properties for sale. Firm advised the Trustee that it had received multiple offers for the MM1 and MM2 Projects by the offer deadline and that it accepted the highest offer in the amount of \$10,000,000. The transaction closed on July 3, 2019. This purchase price resulted in a shortfall to the second priority mortgagee, and accordingly there was no recovery to BDMC Investors. Upon closing, the BDMC mortgages were extinguished.
151. Following the closing of the transaction, the Trustee sought information from the priority lenders to confirm whether the funds from the sale were paid in accordance with the prior-ranking debt and the amounts owing thereunder. The Trustee recently received the information it required to make such determination and has concluded that no further actions are warranted in the circumstances.
152. Old Market Lane: a real estate development project in Woodbridge, Ontario ("**OML Project**"), with three separate syndicated mortgage loans in the amounts of approximately \$3.8 million, \$3.1 million and \$6.4 million, respectively, each administered by BDMC.
153. On September 25, 2019, 5019203 Ontario Ltd. ("**5019 Ontario**"), the first priority mortgagee, served a Notice of Sale that would allow 5019 Ontario to sell the property after November 15, 2019 if its mortgage has not been repaid by the OML borrower. The Trustee has engaged in correspondence with 5019 Ontario's legal counsel since the issuance of the Notice of Sale. As of the date of this Report, the Trustee understands that 5019 Ontario's mortgage has not been repaid.
154. The Trustee understands that 5019 Ontario is currently obtaining appraisals and intends to list the property with a commercial real estate broker in a few weeks' time. The Trustee is also in discussions with a party who is interested in the OML Project and has advised 5019 Ontario's legal counsel of same. The Trustee will update the OML Project Investors with respect to any proceedings that may be commenced by the mortgagee.

OTHER MATERIAL PROJECT DEVELOPMENTS

155. As set out above, in order to provide the BDMC Investors with information on the status of their investment, the Trustee has updated the Project Analysis Summary attached as **Appendix “6”** to this Report and will be posting the updated Project Analysis Summary on the Trustee’s Website. In addition to the projects described above, the following projects have been the subject of material developments since the date of the Seventh Report. These material developments could be as a result of enforcement proceedings, the commencement of litigation or other changes in the development of the project that may affect the BDMC Investors.
156. Eden Project: 2309918 Ontario Inc. (“**Eden Borrower**”) is indebted to BDMC in respect of loans made in relation to 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 have been made in respect of the BDMC mortgages. Investors in the Eden Project are owed in excess of \$7 million (including accrued interest).
157. In the summer of 2018, the Trustee was advised by PACE Developments Inc. (“**PACE**”), the developer of the Eden Project, that there would be no recovery to the Eden Investors, notwithstanding previous communications a few weeks earlier by Fortress that full payment would be made to the Eden Investors. PACE advised that certain cost overruns not previously accounted for had absorbed the over \$7 million owed to Eden Investors.
158. Based on information provided by the Eden Borrower and PACE, the Trustee was able to develop a preliminary flow of funds analysis for the Eden Project. However, the Eden Borrower and PACE could not adequately explain the significant, rapid, and unforeseen change in forecast recoveries to the Investors, which went from an anticipated full repayment to zero recovery in only a matter of weeks.
159. For these reasons and the reasons set out in the Seventh Report, 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.
160. Pursuant to an Order of the Court made on June 19, 2019 (“**Eden Bankruptcy Order**”), the Eden Borrower was adjudged bankrupt and Grant Thornton Limited was appointed as

bankruptcy trustee (“**GT**”). A representative of the Trustee has been appointed as an inspector in the bankruptcy proceedings.

161. GT is currently conducting an investigation of the affairs of the bankrupt. Following its appointment, GT attended at PACE’s office and obtained certain of their electronic records that were deemed relevant for the purpose of its mandate. GT also contacted David Chong (“**Chong**”), the Eden Borrower’s counsel, to request trust ledgers relating to the Eden Borrower and closing books in respect of the Eden Project.
162. GT has obtained certain of the information requested from the Eden Borrower, PACE, and Chong, though other relevant information remains outstanding. GT continues to conduct its investigation and has reached out to the principals of the Eden Borrower, PACE and other related parties in this regard.
163. Shortly after the making of the Eden Bankruptcy Order, in violation of the stay of proceedings contained in the Appointment Order, the Trustee was provided with a third party claim issued by Chong (“**Third Party Claim**”) naming, among others, the Trustee as a third party in a lawsuit commenced by certain purchasers of houses in the Eden Project against Chong, the Eden Borrower, and certain related individuals (collectively, the “**Eden Project Litigation**”). The relief sought in the Third Party Claim includes, among other things, a mandatory Order that BDMC and Olympia Trust Company do all things necessary to discharge their security registered against the Eden Project.
164. On October 8, 2019, the parties to the Eden Project Litigation attended a chambers appointment before the Court where the Court directed the parties to meet to attempt to resolve the outstanding procedural issues with respect to the Eden Project Litigation. On October 21, 2019, the Trustee received a Notice of Discontinuance whereby Chong wholly discontinued the Third Party Claim as against the Trustee, without costs and without prejudice to the right of Chong to seek leave of the Court to initiate a third party proceeding as against BDMC.
165. In accordance with the Court’s direction, the Trustee and its counsel and counsel to the parties to the Eden Project Litigation met on a without prejudice basis to discuss the Eden Project Litigation. Since that meeting, the parties have continued to exchange information in advance of a second meeting scheduled for late November.

166. Peter Richmond Project: a real estate development project in downtown Toronto, Ontario currently comprised of multiple parcels of land ("**Peter Richmond Project**") with over \$27.4 million of third ranking syndicated mortgage loan debt administered by BDMC and approximately \$4.5 million of fourth ranking syndicated mortgage loan debt also administered by BDMC (collectively, the "**Peter Richmond Loans**"). There are several different senior lenders with separate first priority mortgages on the different parcels of land comprising the Peter Richmond Project, and other than 120 Peter (as defined and discussed below), all such mortgages appear to be in default.
167. The project plan of the Peter Richmond Project contemplated the acquisition of the final neighbouring parcel of land at 120 Peter Street ("**120 Peter**"). Following years of litigation with the owner of 120 Peter regarding the Peter Richmond borrower's right to acquire 120 Peter pursuant to an existing purchase and sale agreement, on November 4, 2019, the Court of Appeal of Ontario upheld the decision of Justice Perell of the Ontario Superior Court of Justice that, among other things, determined that the prior owner of 120 Peter ("**Prior 120 Owner**") was not entitled to terminate the agreement of purchase and sale between the Prior 120 Owner and the Peter Richmond borrower. Accordingly, the Trustee understands that the Peter Richmond borrower completed the purchase of 120 Peter in accordance with the agreement of purchase and sale. BDMC's loan agreement with the Peter Richmond borrower in respect of the \$35 million third-ranking charge provides that BDMC shall be entitled to a mortgage on 120 Peter once it has been acquired by the Peter Richmond borrower.
168. As set out in the Seventh Report, in March 2019, Rathcliffe Properties Limited ("**Rathcliffe**"), the first ranking vendor take-back ("**VTB**") 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 the Peter Richmond Investors. In August, 2019, the Peter Richmond borrower secured replacement financing for 128 Peter from PTI Developments Inc. ("**PTI**"), an entity related to the Peter Richmond borrower, and the entity that also holds the second priority mortgage on five parcels of land. The Trustee understands that PTI took assignment of Rathcliffe's first ranking VTB mortgage on 128 Peter and subsequently transferred it to

Windsor Capital Corporation. The Trustee was notified on October 23, 2019 that the Rathcliffe power of sale proceedings had been discontinued.

169. On September 23, 2019, Toopbin Management Ltd. ("**Toopbin**"), the first ranking VTB mortgagee on the 126 Peter Street property, another parcel comprising the Peter Richmond Project, issued a demand letter to the Peter Richmond borrower. The letter demanded payment of its mortgage, which had matured on March 1, 2019, and advised that failure to comply with the terms of its demand would result in steps being taken to enforce its remedies under its mortgage. The Trustee understands that Toopbin is still considering its next steps with respect to the enforcement of its mortgage.
170. In light of the status of the various priority mortgages on the parcels of land comprising the Peter Richmond Project, the significant amount owing under the BDMC loans and estimated time horizon for the completion of the project, the Trustee has been in discussions with the borrower and certain other interested parties regarding a potential transaction involving the Peter Richmond Loans. The Trustee has commenced a focused sales process to determine the best possible transaction in the circumstances for Investors on the Peter Richmond Project. The Trustee will consider the results of this sales process to determine if proceeding with a transaction is in the best interests of Investors at this time, including a potential transaction involving the assignment of BDMC's debt and security position in respect of the Peter Richmond Project.
171. Port Place 2 Project: a real estate development project involving four land parcels (collectively, "**Port Place 2 Lands**") in St Catharines, Ontario. The Trustee understands that the Port Place 2 Project is owned by an entity related to Fortress ("**Port Place 2 Borrower**"). At present, there are three mortgage charges on the Port Place 2 Lands that have the following relative priorities registered on title: (i) a first priority charge in respect of the mortgage loan from Magnetic, Olympia Trust Company and Canadian Western Trust Company ("**CWT**") in the approximate amount of \$700,000; (ii) a second priority charge ("**BDMC PP2 Charge**") in respect of over \$2.9 million of syndicated mortgage loan debt that was administered by BDMC; and (iii) a third priority charge in respect of the mortgage loan from Magnetic and CWT in the approximate amount of \$1.47 million ("**Magnetic/CWT Mortgage**").

172. The holders of the first ranking mortgage charge on the Port Place 2 Lands issued a 244 Notice and Notice of Sale, which required that the full amount of the then outstanding debt (totaling \$736,196, including interest and fees as at April 23, 2019) be paid by the Port Place 2 Borrower on or before May 30, 2019. The Trustee understands that this outstanding debt has not yet been repaid as of the date hereof. The Trustee also understands that such holders are in the process of negotiating the sale of one of the four land parcels for an amount that would be insufficient to repay, in full, the debt owing to such holders in connection with their first ranking mortgage charge.
173. As described in the Seventh Report, following the appointment of FAAN Mortgage as the independent manager of BDMC's business but prior to the appointment of the Trustee, Magnetic and CWT provided additional financing to the Port Place 2 Project pursuant to the Magnetic/CWT Mortgage. FAAN Mortgage was not aware of or involved with this mortgage transaction until after it closed.
174. In April 2019, First Canadian Title Insurance Company ("**FCT**"), the title insurer, on behalf of the holders of the Magnetic/CWT Mortgage, contacted the Trustee to dispute the second ranking priority of the BDMC PP2 Charge. The Trustee and FCT are currently in discussions aimed at resolving this priority dispute.
175. 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. On January 24, 2019, Diversified Capital Inc. ("**Diversified**") issued a Notice of Sale in respect of priority construction financing in excess of \$6.9 million that has matured. The Trustee has corresponded with Diversified since the issuance of its Notice of Sale. Diversified advised that to date it had been informally marketing the South Shore property for sale, however, no offers for the South Shore property have been received. Diversified advised the Trustee in October 2019 that it is in the process of commencing a formal marketing process including retaining a commercial broker to list the property for sale. The Trustee intends to continue to engage with Diversified with respect to the sales process. Investor recoveries on the South Shore Project remain uncertain at this time.
176. 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 TC Project Investors have 4th and 5th ranking mortgages registered on the TC Project. The TC Project is a large block of land near Calgary that is outside of the existing built boundary. Prior to the issuance of the Appointment Order, the TC Project was subject to a Notice of Sale initiated by Romspen, the first priority mortgagee, in respect of senior financing in excess of \$3.4 million that had 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.

177. 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 offer deadline, at a list price of \$3 million. Since the date of the Seventh Report, the Trustee was advised that no formal offers were received for the property and that the property is no longer being listed for sale. Romspen is considering its options given the lack of market interest in the property. The Trustee notes that, given the priority debt on the TC Project is in excess of \$5.8 million, the property would need to sell for well in excess of the prior listing price in order to result in any recovery to the TC Project Investors.
178. 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 set out in the Seventh Report, the Lake and East Project had previously been 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 its development. In connection with the refinancing, the Trustee agreed to subordinate BDMC's mortgage to the new first priority lender, Toronto Capital Corp ("**TCC**"), provided that the Lake and East borrower agreed to enhanced reporting obligations to the Trustee as part of a new reporting agreement between Symgine (Lake East) Inc. (the Lake and East borrower) and the Trustee ("**Symgine Reporting Agreement**").
179. The Symgine Reporting Agreement includes, among other things, a requirement to provide monthly accounting of the use of funds advanced by TCC. The Lake and East

borrower did not comply with its reporting obligations under the Symgine Reporting Agreement and on May 23, 2019, pursuant to the Omnibus Order, the Lake and East borrower was compelled to provide the required reporting within 15 days of the issuance of the Omnibus Order.

180. Despite the Trustee following up on several occasions, including by letter dated August 6, 2019 to the Lake and East borrower's counsel, to date the Lake and East borrower has not complied with the Omnibus Order. The Trustee has not received a response to the August 6, 2019 letter.
181. On May 22, 2019, TCC issued a Notice of Sale stating that the Lake and East borrower was in default of its mortgage and, unless the full amount of the outstanding debt in the amount of approximately \$5.3 million was paid on or before July 8, 2019, TCC would be in a position to list the property for sale. The Lake and East borrower did not repay the TCC mortgage and, accordingly, TCC listed the Lake and East Property for sale with CBRE on August 15, 2019. Offers were due on September 25, 2019. The Trustee understands that following the September 25, 2019 offer date, TCC accepted an offer that is scheduled to close in early 2020. As of the date of this Thirteenth Report, the financial details regarding this transaction are not final as the transaction is subject to a due diligence period.
182. As a result of the Lake and East borrower's failure to comply with its reporting obligations, the Trustee will not be in a position to properly consider any transaction until it is in receipt of the required information from the Lake and East borrower.
183. Treehouse Project: a real estate development project located in Scarborough, Ontario ("**Treehouse Project**") with over \$5.4 million of second ranking syndicated mortgage debt administered by BDMC. The Trustee understands that the Lake and East borrower and the Treehouse borrower are related parties. As set out in the Seventh Report, the Treehouse Project was subject to a 244 Notice and a 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 Treehouse 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.

184. Ultimately, after seeking Investor feedback, the Trustee agreed 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. (the Treehouse borrower). Those negotiations resulted in the Treehouse borrower agreeing to make a payment of \$200,000 of the interest then owing to the Trustee on behalf of BDMC Investors⁶ and agreeing to enhanced reporting obligations of the Treehouse borrower, including a 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 Treehouse borrower did not comply with its reporting obligations under the Amending and Extension Agreement and on May 23, 2019, pursuant to the Omnibus Order, the Treehouse borrower was compelled to provide the required reporting within 15 days of the issuance of the Omnibus Order. Despite the Trustee following up on several occasions, including by letter dated August 6, 2019 to the Treehouse borrower's counsel, the Treehouse borrower did not comply with the Omnibus Order. The Trustee has not received a response to the August 6, 2019 letter.
185. Similar to the Lake and East Project, on May 22, 2019, TCC issued a Notice of Sale stating that the Treehouse borrower was in default of its mortgage and, unless the full amount of the outstanding debt owed to TCC in the amount of approximately \$3.7 million was paid on or before July 8, 2019, TCC would be in a position to list the property for sale. The Treehouse borrower did not repay the TCC mortgage and, accordingly, TCC listed the Treehouse Property for sale with CBRE as an unpriced tender on August 15, 2019. Offers were due on September 25, 2019. Although CBRE has advised the Trustee that it ran a robust marketing process for the Treehouse Property, none of the offers received were sufficient to repay the first priority mortgage owing to TCC. Accordingly, TCC has not accepted any offers for the Treehouse Property.
186. The Trustee understands that TCC continues to pursue its options with respect to the sale of the Treehouse Property. As a result of the Treehouse borrower's failure to comply with

⁶ Interest paid by borrowers since the date of Appointment Order is Estate Property in accordance with the Interim Stabilization Order.

its reporting obligations, the Trustee will not be in a position to properly consider any transaction until it is in receipt of the required information from the Treehouse borrower.

QEWN ADMINISTRATION SETTLEMENT

187. QEWN Project: a real estate development project in Oakville, Ontario (“**QEWN Project**”) with over \$2.3 million of second ranking syndicated mortgage debt administered by BDMC. Unlike most of the projects administered by BDMC which are widely held, the QEWN Project has only 12 Investors (“**QEWN Investors**”), all of whom the Trustee understands are “friends and family” of the Chief Operating Officer of Fortress, Mr. Vince Petrozza.
188. In March 2019, at the request of the QEWN borrower, the Trustee entered into extensive negotiations regarding a potential postponement to additional funding that the QEWN borrower advised was necessary to prevent the project from going into default. The replacement lender ultimately did not provide the funding. The Trustee understands that, as a result, certain of the QEWN Investors individually funded the amount required by the QEWN borrower. Such Investors were granted a third-ranking mortgage on the property in the amount of \$600,000.
189. Following the postponement negotiations, the QEWN Investors inquired about the possibility of transferring the administration of the QEWN Project to the individual Investors. On May 29, 2019, counsel for the QEWN Investors formally requested the Trustee to transfer the administration of the QEWN Project to the Investors and relinquish the property associated with the QEWN Project, including the Loan Agreement, the charge registered in favour of BDMC on the properties comprising the QEWN Project, and any related monetary entitlements in the BDMC estate. On June 6, 2019, the Trustee’s counsel responded outlining certain preliminary criteria that would need to be met for the Trustee to consider a change in administration in light of the unique nature of the QEWN Project, including the need for a proper replacement administrator.
190. After several months, counsel for the QEWN Investors reengaged with counsel to the Trustee to indicate that his clients still wished to proceed with a change in administration and that the QEWN Investors had now arranged for a lawyer to be the proposed replacement administrator (“**Proposed Administrator**”) for the QEWN Investors.

191. The Trustee has reviewed all of the BDMC loans under its administration and has confirmed that, to the best of its knowledge, no other project has the same type of Investor composition as the QEWN Project (i.e., all other projects have numerous unrelated third-party Investors). Given the unique nature of circumstances surrounding the QEWN Project (notably, that each of the QEWN Investors is a family member or friend of Mr. Petrozza), and subject to Court approval and the granting of a Court-ordered release in favour of the Trustee, its counsel and Representative Counsel, the Trustee is prepared to transfer its administration of the project upon the satisfaction of the following conditions precedent ("**QEWN Administration Settlement**"):
- (a) a letter provided by the Proposed Administrator acknowledging its acceptance of the administration duties being assumed under the loan and security documents;
 - (b) each QEWN Investor acknowledging and agreeing, after having each received independent legal advice: (i) that it is their individual desire to have the Proposed Administrator appointed after being informed of the impact of the QEWN Administration Settlement, which includes no longer having the benefits of Court supervision, Representative Counsel and a licensed mortgage administrator to oversee the administration of their loan and security, and (ii) that the Trustee, its counsel and Representative Counsel shall receive a Court-ordered release in connection with all matters relating to the QEWN Project as part of the QEWN Administration Settlement;
 - (c) consent of the QEWN Project borrower to the appointment of the Proposed Administrator being obtained; and
 - (d) an agreement being reached between the Trustee and the QEWN Investors to compensate the BDMC estate for costs incurred directly with respect to the QEWN Project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate.
192. The Trustee developed the proposed QEWN Administration Settlement after consulting with both the Law Society of Ontario and the Financial Services Regulatory Authority of Ontario ("**FSRA**"). The Law Society of Ontario confirmed that as a general matter it does not object to the transfer of the administration of the QEWN Project. FSRA confirmed it

had no formal objection to the transfer on the basis that: (i) it does not regulate lawyers who are acting as administrators as they are exempt under the MBLAA; (ii) the transfer would be subject to the Court's approval; and (iii) the unique composition of the QEWN Investors among the BDMC portfolio. While not objecting, FSRA did raise a number of considerations that it asked the Trustee to include in this Report to bring to the Court's attention, including: (i) the Fortress projects warrant a higher degree of Court scrutiny given their history and context; (ii) Court supervision has been valuable with respect to these projects; and (iii) that FSRA considers the suitability and capacity of the Proposed Administrator important in the circumstances.

193. For the foregoing reasons, the Trustee is seeking approval of the proposed QEWN Administration Settlement as part of the proposed December 2019 Omnibus Order. Should the conditions precedent set out above be satisfied in the sole opinion of the Trustee, it is proposed that the Trustee would deliver a certificate to counsel for the QEWN Investors upon which time the Order in respect of the QEWN Administration Settlement and associated release would become effective and the Proposed Administrator would be appointed on behalf of the QEWN Investors.

SORRENTI MATTERS

Sorrenti Document Production

194. As set out in the Affidavit of Brendan Forbes sworn April 19, 2018 in support of the Appointment Order, since 2013, BDMC has acted as mortgage administrator in respect of syndicated mortgage loans on approximately 60% to 70% of the development projects involving Fortress (either as developer, owner or otherwise). The remaining 30% to 40% of syndicated mortgage loans advanced to Fortress-related projects are or were administered by lawyers who operate under the MBLAA exemption from licensing requirements applicable to lawyers. Derek Sorrenti, an Ontario lawyer, in his personal capacity or through his professional corporation, Sorrenti Law Professional Corporation (collectively, "**Sorrenti**") acted as administrator on several of these syndicated mortgage loans. Certain of these loans were still administered by Sorrenti prior to the Trustee's involvement with BDMC, while others were transferred to BDMC's administration by Sorrenti ("**Transferred Projects**").

195. As set out in the Seventh Report, the Trustee formally contacted Sorrenti on numerous occasions in order to obtain critical information related to the Transferred Projects. Sorrenti did not comply with the Trustee's repeated information requests. As a result of Sorrenti's failure to provide information required for the Trustee's administration of the BDMC estate, the Trustee sought and obtained the Omnibus Order, which, among other things, required Sorrenti to comply with the Appointment Order and to provide the Trustee with a detailed list of all information related to the Transferred Projects, along with a plan and proposed schedule of delivery of such documents, records and information to the Trustee, within 30 days of the date of the Omnibus Order.
196. Sorrenti did not comply with the Omnibus Order and failed 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 requests. In order to facilitate obtaining the required information from Sorrenti, the Trustee attended at Sorrenti's office on July 3, 2019 and was provided with some of the information requested including certain trust account details for the Transferred Projects. The Trustee had also requested all emails related to the Transferred Projects and copies of Sorrenti's bank statements. This information was not made available to the Trustee at that time.
197. Despite Sorrenti agreeing that the Trustee could re-attend at the Sorrenti office at a later date to obtain the missing information, and despite the Trustee's numerous follow-up requests regarding same, ultimately Sorrenti did not provide an opportunity for the Trustee to re-attend at the Sorrenti office.

Sorrenti Appointment Order

198. On September 30, 2019, pursuant to an order of the Court, FAAN Mortgage was appointed as trustee over all the assets, undertakings and properties of Sorrenti that relate to Sorrenti's administration of syndicated mortgage loans ("**Sorrenti Proceedings**"). FAAN Mortgage's appointment was the result of an application made by the Law Society of Ontario under section 49.47 of the *Law Society Act* and section 101 of the *Courts of Justice Act*.
199. Immediately following FAAN Mortgage's appointment in the Sorrenti Proceedings, it attended at Sorrenti's office to, among other things, obtain information and documentation relating to the syndicated mortgage loans administered by Sorrenti. FAAN Mortgage was

also able to obtain certain of the outstanding information previously requested in its capacity as Trustee of BDMC and is continuing its review of this information.

200. Consistent with the BDMC proceedings, FAAN Mortgage will be prioritizing the dissemination of information to Sorrenti investors through project-specific notices, meetings and/or communications with individual investors and groups of investors, and through the filing of Court reports in respect of the Sorrenti Proceedings.
201. All Court materials filed in respect of the Sorrenti Proceedings are available on FAAN Mortgage's website and are reported separately from the BDMC proceedings.

FUNDING OF THESE PROCEEDINGS AND CASH FLOW PROJECTION

202. The Trustee continues to discharge its duties in accordance with the Appointment Order. These activities are complicated, time consuming and are being carried out in circumstances where BDMC has no revenue.
203. As previously reported, BDMC is functionally insolvent and has no sources of revenue. 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 continues to be withheld to fund the Required Trustee Activities ("**Administrative Holdback**"). Accordingly, the Trustee's continued use of Estate Property and the Administrative Holdback is essential to fund these proceedings and to continue to carry out the Trustee's mandate in accordance with Orders of this Court.
204. As discussed below, portions of the Estate Property and the Administrative Holdback have been disbursed to pay BDMC's operating expenses and professional fees. 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.

Cash receipts and disbursements from April 1, 2019 to October 31, 2019

205. In the Seventh Report, the Trustee provided a forecast for the projected receipts and disbursements related to the administration of the BDMC estate for the period April 1, 2019 to October 31, 2019 ("**Period**").

206. The chart below provides a summary of the variance analysis for receipts and disbursements related to the administration of the BDMC estate during the Period. The detailed variance analysis is attached as **Appendix “7”**. This analysis does not include any Realized Property received during the Period which has been or will be distributed to Investors.

	Amount (\$000s)		
	Projected	Actual	Variance
Receipts			
Collections and other receipts	61	87	26
Administrative Holdback	1,558	2,970	1,412
Total receipts	1,619	3,057	1,438
Disbursements			
Operating costs	238	210	28
Appraisals	267	210	57
Professional fees	3,500	2,821	679
Total disbursements	4,005	3,241	764
Net cash flow	(2,386)	(184)	2,202

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

Administrative Holdback: the positive variance relates to amounts withheld in respect of: (i) completed settlement transactions (Crestview and Humberstone); (ii) Dunsire Project payment; (iii) the Solterra Project Phase 3 recoveries to date; and (iv) the Residual Proceeds received from the Kemp Project transaction⁷, all of which were not included in the projection. This variance was partially offset by the late receipt of the CHAT 150-Day Payment, which was included in the projection but not received during the Period.

Professional fees: the positive variance relates to a timing difference.

⁷ Given the \$572,000 claim from Fortress, which has not been resolved, for the purposes of the variance analysis, the Administrative Holdback on the Residual Proceeds has been calculated net of this amount.

208. As the Thirteenth Report is being issued after the end of the Period, the actual receipts and disbursements from November 1, 2019 through to November 15, 2019 are summarized below.

	(\$000s)
Receipts	
Collections and other receipts	10
Administrative Holdback	2,167
Total receipts	2,177
Disbursements	
Operating costs	19
Appraisals	0
Professional fees	2,158
Total disbursements	2,177
Net cash flow	0

209. The Trustee notes the following with respect to the above chart: (i) the Administrative Holdback is related to amounts withheld from the Nobleton North Settlement Transaction; and (ii) the Professional Fees relate to certain fees accrued between April 1, 2019 and September 30, 2019 that were paid in November, 2019.

Funds in Possession of Trustee

210. BDMC continues to maintain multiple bank accounts. A summary of the Estate and Realized Property is in the table below.

Property Type	Primary Purpose	Amount (\$000s)	
		As at March 31, 2019	As at November 15, 2019
Estate	BDMC operating funds	\$4,750	\$4,568 ⁸
Realized	Held pending Investor distributions	674	20,780
		\$5,424	\$25,348

⁸ BDMC is required under the MBLAA to have a certain financial guarantee of \$25,000 available, which may include unimpaired working capital. Included in Estate Property in a separate bank account is \$26,278 in satisfaction of this

211. A summary of the Estate and Realized Property is provided below.

Realized Property – The funds held at November 15, 2019 relate primarily to the proceeds received from the CHAT and Kemp sale transactions, Solterra Phase 3 closings, the Dunsire Project and the Nobleton North Settlement Transaction, which will be distributed to the respective Investors in these projects. The balances are net of the Administrative Holdback transferred to Estate Property.

Also included in the Realized Property is the deposit (\$500,000) received in respect of the Castlemore Offer, which may have to be returned depending on the outcome of the Trustee's ongoing discussions with the Castlemore borrower and Castlemore Investors.

Estate Property – As noted previously, since the issuance of the Interim Stabilization Order, the funds maintained in these accounts have been used to fund BDMC's operating costs. Funds withheld on account of the Administrative Holdback have been transferred into these accounts.

obligation.

Projected receipt and disbursements for the period ending May 31, 2020

212. The Trustee has prepared a monthly cash flow projection (“**Cash Flow Projection**”) relating to the administration of the BDMC estate for the period November 16, 2019 to May 31, 2020 (“**Cash Flow Period**”), attached as **Appendix “8”**. A summary of the Cash Flow Projection is as follows:

	<u>\$000s</u>
Projected Receipts	209
Projected Disbursements	
Staffing costs	150
Office expenses and IT	18
Insurance	54
Bank charges	4
Other expenses	13
Total Operating Disbursements	<u>239</u>
Appraisal fees	100
Professional fees	4,080
Total disbursements	<u>4,419</u>
Projected Net Cash Flow	<u>(4,210)</u>
Opening cash	4,542
Net cash flow	<u>(4,210)</u>
Projected Closing cash	<u>332</u>

213. The projected receipts reflect the Administrative Holdback from: (i) the 150-Day Payment from the CHAT sale transaction; and (ii) the Solterra Project’s final Phase 3 closing. The Trustee notes that, similar to previous cash flow projections filed with the Court, the receipts during the Cash Flow Period are projected to be significantly lower than the projected expenses. However, the Trustee notes that considerable progress has been made with respect to potential transactions involving multiple projects. Accordingly, the Trustee expects to receive additional Realized Property during the Cash Flow Period, a portion of which will be used to offset the projected expenses. Due to the confidential nature of the ongoing negotiations with respect to these potential transactions, and similar to previous cash flow projections filed with the Court, the Trustee has not included a forecast for these receipts in the Cash Flow Period.

214. The Cash Flow Projection estimates total operating disbursements of approximately \$239,000. The Trustee notes that the administration of BDMC's estate continues to be run out of FAAN Mortgage's offices on a rent-free basis.
215. The Cash Flow Projection reflects payment of outstanding professional fees through to September 30, 2019 which remain unpaid as at the date of the Thirteenth Report, and estimated professional fees for the Cash Flow Period.

APPROVAL OF THE TRUSTEE'S REPORTS, ACTIVITIES AND FEES

216. The Trustee is seeking the approval of the Eighth Report, Ninth Report, Tenth Report, Eleventh Report, Twelfth Report and this Thirteenth Report, its activities as set out in the Eighth Report, Ninth Report, Tenth Report, Eleventh Report, Twelfth Report and this Thirteenth Report, and its fees and its counsel's fees from April 1, 2019 to September 30, 2019.
217. The Trustee's activities are described at length in the Eighth Report, Ninth Report, Tenth Report, Eleventh Report, Twelfth Report and this Thirteenth Report. These activities have included, among other things:
 - (a) communicating with borrowers, Investors, Fortress, lenders and other stakeholders regarding various matters including with respect to the status of these proceedings, the projects and relevant timelines;
 - (b) engaging with Representative Counsel on behalf of the Investors with respect to all aspects of the administration of the BDMC estate, including attending meetings and conference calls on a regular basis;
 - (c) drafting and sending 32 notices to Investors since May 2019;
 - (d) holding in-person meetings with certain Investors;
 - (e) responding to Investor inquiries;
 - (f) posting Court materials on the Trustee's Website;
 - (g) continuing the Trustee's review of the projects;
 - (h) continuing to engage with stakeholders to obtain information related to the projects;

- (i) reviewing periodic reporting provided by certain project borrowers;
- (j) reviewing updated appraisals commissioned by the Trustee;
- (k) engaging with appraisers to obtain updated market information as necessary;
- (l) continuing to engage with a planning consultant in order to obtain information relating to the development status of various projects;
- (m) continuing to engage and negotiate with borrowers and other stakeholders regarding certain requests for postponements in relation to refinancing transactions;
- (n) attending to partial discharges of BDMC's security interests to facilitate sales of individual units or the development of properties in the ordinary course;
- (o) continuing to engage and negotiate with borrowers and prospective purchasers regarding settlement and/or assignment transactions for certain properties;
- (p) preparing and circulating an offer letter to parties who expressed interest to the Trustee in entering into a transaction in respect of a BDMC loan;
- (q) corresponding with certain lenders who have expressed interest to the Trustee in refinancing certain projects and introducing such parties to borrowers, as appropriate;
- (r) continuing to engage and negotiate with borrowers, senior lenders and other relevant stakeholders regarding enforcement actions commenced by such lenders;
- (s) corresponding with commercial real estate agents engaged under enforcement proceedings in order to obtain information relating to sale processes;
- (t) continuing to assess circumstances where affirmative enforcement action could be taken by the Trustee on behalf of the Investors;
- (u) preparing and serving materials as required in connection with the matters before the Court;
- (v) preparing Reports to the Court and attending hearings before the Court;
- (w) making distributions in accordance with the various Court orders issued in these proceedings to the parties entitled to those distributions;

- (x) 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;
 - (y) reviewing and responding to materials naming BDMC as a third-party claimant;
 - (z) engaging with FSRA and its legal counsel;
 - (aa) 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
 - (bb) attending to other business activities of BDMC and related administrative matters.
218. Investor communications remain a significant component of the Trustee's mandate. On average, the Trustee receives 10-15 calls a day and 15-20 emails a day, with increased call and email volumes following the issuance of 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.
219. 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 with respect to actions proposed to be taken by the Trustee, such as settlement proposals.
220. 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

221. 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.
222. 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.

223. The fees of the Trustee for the period between April 1, 2019 to September 30, 2019, total \$947,426 before HST; and HST applicable to such amounts totals \$123,165, for an aggregate amount of \$1,070,591. 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 "9"**.
224. Detailed docket information in respect of the fees and disbursements of the Trustee for this period will be included in the confidential exhibit to the Manzoor Affidavit that 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.
225. The average hourly rate for the Trustee over the referenced billing period was approximately \$376/hour.

Fees of the Trustee's Counsel

226. The fees (excluding disbursements and HST) of Osler, Hoskin & Harcourt LLP ("**Osler**") as counsel to the Trustee for the period between April 1, 2019 to September 30, 2019 total \$1,895,036; Osler incurred \$15,421 disbursements during the period; and HST applicable to such amounts totals \$248,104, for an aggregate amount of \$2,158,561. 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 "10"**.
227. Full accounts in respect of the fees and disbursements of Osler for this period will be included in the confidential exhibit to the De Lellis Affidavit that 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.

- 228. The average hourly rate for Osler over the referenced billing period was \$692/hour.
- 229. 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

- 230. Since the date of the Appointment Order, the Trustee and its counsel have recovered approximately \$675,000 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

- 231. 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.
- 232. To date, 11 Investors with a total of \$608,000 invested through BDMC have opted out of representation by Representative Counsel.
- 233. 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.
- 234. The Trustee understands that Representative Counsel continues to provide guidance to Investors with respect to their rights and remedies and potential sources of recovery other

than against the borrowers under the various BDMC loans, while urging Investors to individually seek independent legal advice with respect to any causes of action that they may have to pursue such remedies if so advised. Representative Counsel has also communicated with other law firms on a confidential basis to share information to assist such law firms in determining whether to commence class action litigation, and when requested to do so by individual or groups of Investors, has provided information to other law firms to facilitate their litigation initiatives. 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

235. The Trustee recommends that the December 2019 Omnibus 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 in the circumstances with respect to the administration and enforcement of the relevant loans.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of November, 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**

TAB 6

Appendix 6:

**Trustee's written consent to Emerald Castle commencing
Court File No. CV-20-00637238-00CL dated March 6, 2020**

Toronto

March 6, 2020

Mary Paterson
Direct Dial: 416.862.4924
mpaterson@osler.com
Matter No: 1189997

Montréal

SENT BY EMAIL

Ottawa

Calgary

Bill Friedman
Friedman Law Professional Corporation
150 Ferrand Drive, Suite 802
Toronto, ON M3C 3E5

New York

Re: Castlemore (Court File No. CV-20-00637238-00CL)¹

Dear Mr. Friedman:

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. 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.

Pursuant to paragraph 9 of the Appointment Order, “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”.

Pursuant to paragraph 10 of the Appointment Order, “(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”.

On March 2, 2020, Emerald Castle Developments Inc. (“**Emerald Castle**”) commenced an application naming as the respondents FAAN Mortgage Administrators Inc., in its capacity as the Court-Appointed Trustee of Building & Development Mortgages Canada

¹ *Emerald Castle Developments Inc. v. FAAN Mortgage Administrators Inc., in its capacity as the Court-Appointed Trustee of Building & Development Mortgages Canada Inc. formerly known as Centro Mortgage Inc., and Olympia Trust Company*

Inc. formerly known as Centro Mortgage Inc., and Olympia Trust Company (Court File No. CV-20-00637238-00CL).

At the time of issuing the Notice of Application, contrary to paragraphs 9 and 10 of the Appointment Order, Emerald Castle had not requested nor received written consent from the Trustee nor obtained leave of the Court. However, in an email dated 3-Mar-2020, Emerald Castle's counsel stated that "we did obtain permission to issue the notice of application from the team lead judge as is required by the commercial list". Emerald Castle's counsel also noted that in the Notice of Application, Emerald Castle has "requested leave in the prayer for relief as a prerequisite to the remaining reliefs sought".

To address this procedural irregularity, the Trustee has prepared this written consent as required by paragraphs 9 and 10 of the Appointment Order. In particular, the Trustee consents to Emerald Castle commencing Court File No. CV-20-00637238-00CL. For the sake of clarity, nothing in this written consent limits in any way the Trustee's rights to respond to relief sought and allegations made in the Notice of Application in Court File No. CV-20-00637238-00CL, including the Trustee's ability to request that portions of the Notice of Application be redacted and sealed.

Yours very truly,



Mary Paterson
MP:vs

C: Michael De Lellis and Jeremy Dacks (*Osler*)
George Benchetrit (*Court-Appointed Representative Counsel*)
Jonathan Bahnuik (*Olympia Trust Company*)

TAB 7

Appendix 7:

Order sealing pertaining to the appraisal or valuation of Castlemore dated March 17, 2020

heard this day at the court house, 330 University Avenue, 9th Floor, Toronto, Ontario, M5G 1R7.

ON READING the submissions of the lawyer(s) for the parties, including the consent of the Applicant and the parties who filed Notices of Appearance,

SEALING

1. THIS COURT ORDERS that any portion of the Court file containing information pertaining to the appraisal or valuation of the Property at issue in this proceeding shall be sealed 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.

2. THIS COURT ORDERS that the Notice of Application, as issued, shall be sealed 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.

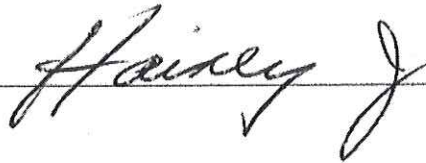
3. THIS COURT ORDERS THAT redacted versions of any sealed document, including the Notice of Application, shall be prepared and filed with the Court.

SERVICE

4. 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.

5. THIS COURT ORDERS that the Trustee shall maintain the E-Service List in accordance with the Protocol and that the Trustee shall post all non-confidential material that is filed with the Court on the Case Website established in Court File No. CV-18-596204-00CL.



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

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

MAR 19 2020

PER / PAR:



A handwritten signature in blue ink, appearing to be a stylized "U" or similar mark, is written next to the "PER / PAR:" label.

EMERALD CASTLE DEVELOPMENTS INC. Applicant

and
FAAN MORTGAGE ADMINISTRATORS INC. IN ITS
CAPACITY AS THE COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
FORMERLY KNOWN AS CENTRO MORTGAGE INC. ET AL.
AND OLYMPIA TRUST COMPANY Respondents

Court File No: CV-20-00637238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER (SEALING & SERVICE)

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Michael De Lellis (LSO# 48038U)
Tel: 416.862.5997
Email: mdelellis@osler.com

Jeremy Dacks (LSO# 41851R)
Tel: 416.862.4923
Email: jdacks@osler.com

Mary Paterson (LSO# 51572P)
Tel: 416.862.4924
Email: mpaterson@osler.com
Fax: 416.862.6666

Lawyers for the Respondent,
FAAN Mortgage Administrators Inc., in its capacity as the Court-
Appointed Trustee of Building & Development Mortgages Canada
Inc. formerly known as Centro Mortgage Inc.

TAB 8

Appendix 8:

Fortress Side Letter between Emerald Castle and Fortress dated August 25, 2014



Delivered by: Email

August 25, 2014

Emerald Castle Developments Inc.
c/o Cachet Estate Homes Inc.
Suite 200
361 Connie Crescent
Concord, ON L4K 5R2

Attention: Desi Auciello

Dear Mr. Auciello:

RE: **Loan Agreement between Centro Mortgage Inc., In Trust and Emerald Castle Developments Inc. dated the 25th day of August, 2014 ("Loan Agreement")**
AND RE: **Development Consultant Agreement dated the 25th day of August, 2014 between Fortress Real Developments Inc. and Emerald Castle Developments Inc. (the "DCA") - 10431 The Gore Road, Brampton**

We wish to confirm that Centro Mortgage Inc. will be funding as part of its loan facility under the Loan Agreement on a net basis (to be grossed up by the applicable Development Consultant Fees/Costs under the DCA) \$810,000 (the "**Additional Advance**"), which shall form part of the Development Consultant Fees/Costs in Section 3(c) to be advanced as follows after the first \$2,000,000 of gross advances of the Loan have been made and which the parties agree can be made notwithstanding Section 3(c) of the Development Consultant Agreement which limits Development Consultant Fees/Costs to a maximum of 35% of an advance:

1. \$200,000 to referring agents with respect to this transaction, which represents all of the commissions payable to third parties ("**Referring Parties**");
2. \$225,000 to the Borrower for consulting fees;
3. \$375,000 to Fortress with respect to additional placement fees as per s.3(b) of the DCA; and
4. \$10,000 to be donated by the Borrower to a local charity/community program selected by the Lender with the charitable receipt for such donation to be issued to the Borrower or to whomsoever the Borrower may designate.

The parties confirm that there are no other commissions payable other than those referred to in paragraph 1 above in favor of the Referring Parties.

Fortress further confirms that repayment of the Additional Advances plus all interest and fees relating thereto shall be repaid from amounts otherwise payable to Fortress under the terms of the Development Consultant Agreement.

Yours very truly,

FORTRESS REAL DEVELOPMENTS INC.

Per:



Vince Petrozza

robapp\2854758.2

TAB 9

Appendix 9:

Capital Call Notices from Emerald Castle to BDMC dated May 13, 2019; December 10, 2019; and February 13, 2020



CAPITAL CALL NOTICE

TO: Centro Mortgage Inc., in Trust (Lender) c/o FAAN Mortgage
 Administrators & Emerald Castle Developments Inc. (Borrower)
RE: 10431 The Gore Rd., Brampton
DATE OF NOTICE: May 13, 2019
DATE DUE: June 12, 2019

Pursuant to the Loan Agreement dated August 25, 2014 an Additional Loan /Additional Equity Advance in the amount of **\$500,000.00** is required to fund ongoing development costs.

Please refer to the Uses and Sources Schedule below:

<u>USES</u>			
Interest - Cameron Stephens (Note 1)	\$ 67,813	per month x 6	406,875
Management Fees (pursuant to DCA)	\$ 20,000	per month x 6	120,000
Development soft costs and reserve			142,125
			669,000
<u>SOURCES</u>			
Project Cash Balance			169,000
Centro Mortgage Inc. - Additional Loan		50.0%	250,000
Emerald Castle Developments Inc. - Additional Equity Advance		50.0%	250,000
			669,000

(Note 1) Land loan in the amount of \$10,500,000 bearing interest at prime + 3.80% maturing on October 1, 2019.

Please wire transfer funds (details attached hereto) or provide certified cheques payable to **Emerald Castle Developments Inc.**

Best Regards,

Desi C. Auciello
 President, CEO & Counsel
 Cachet Group of Companies

Remit to: Intermediary Bank / Correspondent Bank as per Currency

CAD	CIBCCATT	CIBC, TORONTO, CANADA
USD	PNBPUS3NNYC	WELLS FARGO BANK N.A. NEW YORK. U.S.A.
EUR	SOGEFRPP	SOCIETE GENERALE, PARIS, FRANCE
GBP	BARCGB22	BARCLAYS BANK PLC, LONDON, U.K.
<i>Others</i>		<i>Contact CIBC for 'Remit To' Bank information.</i>

With mandatory fields completed as shown:

BENEFICIARY BANK INFORMATION:

<u>ORDERING CUSTOMER</u>	/Ordering Customer account number
SWIFT F50 – Ordering Customer	Name of Ordering Customer
	Street address
	City, Province/State
	Country
<u>BRANCH OF ACCOUNT</u>	
	//CC001008642
SWIFT F57A – Account with Institution	
(Provide full address of the branch if	300 WEST BEAVER CREEK, RICHMOND HILL, ONTARIO. CANADA
Swift BIC CIBCCATT is not used)	
<u>BENEFICIARY</u>	51-93214
SWIFT F59 – Beneficiary Customer	Emerald Castle Developments Inc.
	360 Connie Crescent, Suite 200
	Concord, Ontario, Canada

*CC=Canadian Code

0010= Institution number for CIBC

NNNN=5 digit Branch Transit



CAPITAL CALL NOTICE

TO: Centro Mortgage Inc., in Trust (Lender) c/o FAAN Mortgage
Administrators & Emerald Castle Developments Inc. (Borrower)
RE: 10431 The Gore Rd., Brampton
DATE OF NOTICE: December 10, 2019
DATE DUE: December 31, 2019

Pursuant to the Loan Agreement dated August 25, 2014 an Additional Loan /Additional Equity Advance in the amount of **\$250,000.00** is required to fund ongoing development costs.

Please refer to the Uses and Sources Schedule below:

<u>USES</u>			
Interest - Cameron Stephens (Note 1)	\$ 67,813	per month x 3	203,438
Management Fees (pursuant to DCA)	\$ 20,000	per month x 3	60,000
Cameron Stephens - Extension Fee (January 2, 2020)			16,800
Rounding/Reserve			2,189
			282,426
<u>SOURCES</u>			
Project Cash Balance			32,426
Centro Mortgage Inc. - Additional Loan		50.0%	125,000
Emerald Castle Developments Inc. - Additional Equity Advance		50.0%	125,000
			282,426

(Note 1) Land loan in the amount of \$10,500,000 bearing interest at prime + 3.80% maturing on April 1, 2020.

Please wire transfer funds (details attached hereto) or provide certified cheques payable to **Emerald Castle Developments Inc.**

Best Regards,

Desi C. Auciello
President, CEO & Counsel
Cachet Group of Companies

Remit to: Intermediary Bank / Correspondent Bank as per Currency

CAD	CIBCCATT	CIBC, TORONTO, CANADA
USD	PNBPUS3NNYC	WELLS FARGO BANK N.A. NEW YORK. U.S.A.
EUR	SOGEFRPP	SOCIETE GENERALE, PARIS, FRANCE
GBP	BARCGB22	BARCLAYS BANK PLC, LONDON, U.K.
<i>Others</i>		<i>Contact CIBC for 'Remit To' Bank information.</i>

With mandatory fields completed as shown:

BENEFICIARY BANK INFORMATION:

<u>ORDERING CUSTOMER</u>	/Ordering Customer account number
SWIFT F50 – Ordering Customer	Name of Ordering Customer
	Street address
	City, Province/State
	Country
<u>BRANCH OF ACCOUNT</u>	
	//CC001008642
SWIFT F57A – Account with Institution	
(Provide full address of the branch if	300 WEST BEAVER CREEK, RICHMOND HILL, ONTARIO. CANADA
Swift BIC CIBCCATT is not used)	
<u>BENEFICIARY</u>	Account No. 51-93214
SWIFT F59 – Beneficiary Customer	Emerald Castle Developments Inc.
	360 Connie Crescent, Suite 200
	Concord, Ontario, Canada

*CC=Canadian Code

0010= Institution number for CIBC

NNNN=5 digit Branch Transit



CAPITAL CALL NOTICE

TO: Centro Mortgage Inc., in Trust (Lender) c/o FAAN Mortgage
 Administrators & Emerald Castle Developments Inc. (Borrower)
RE: 10431 The Gore Rd., Brampton
DATE OF NOTICE: February 13, 2020
DATE DUE: February 28, 2020

Pursuant to the Loan Agreement dated August 25, 2014 an Additional Loan /Additional Equity Advance in the amount of **\$100,000.00** is required to fund ongoing development costs.

Please refer to the Uses and Sources Schedule below:

<u>USES</u>			
Interest - Cameron Stephens (Note 1)	\$ 67,813	per month	67,813
Management Fees (pursuant to DCA)	\$ 20,000	per month	20,000
Reserve			60,188
			148,000
<u>SOURCES</u>			
Project Cash Balance			48,000
Centro Mortgage Inc. - Additional Loan		50.0%	50,000
Emerald Castle Developments Inc. - Additional Equity Advance		50.0%	50,000
			148,000

(Note 1) Land loan in the amount of \$10,500,000 bearing interest at prime + 3.80% maturing on April 1, 2020.

Please wire transfer funds (details attached hereto) or provide certified cheques payable to **Emerald Castle Developments Inc.**

Best Regards,

Desi C. Auciello
 President, CEO & Counsel
 Cachet Group of Companies

Remit to: Intermediary Bank / Correspondent Bank as per Currency

CAD	CIBCCATT	CIBC, TORONTO, CANADA
USD	PNBPUS3NNYC	WELLS FARGO BANK N.A. NEW YORK. U.S.A.
EUR	SOGEFRPP	SOCIETE GENERALE, PARIS, FRANCE
GBP	BARCGB22	BARCLAYS BANK PLC, LONDON, U.K.
<i>Others</i>		<i>Contact CIBC for 'Remit To' Bank information.</i>

With mandatory fields completed as shown:

BENEFICIARY BANK INFORMATION:

<u>ORDERING CUSTOMER</u>	/Ordering Customer account number
SWIFT F50 – Ordering Customer	Name of Ordering Customer
	Street address
	City, Province/State
	Country
<u>BRANCH OF ACCOUNT</u>	
	//CC001008642
SWIFT F57A – Account with Institution	
(Provide full address of the branch if	300 WEST BEAVER CREEK, RICHMOND HILL, ONTARIO. CANADA
Swift BIC CIBCCATT is not used)	
<u>BENEFICIARY</u>	Account No. 51-93214
SWIFT F59 – Beneficiary Customer	Emerald Castle Developments Inc.
	360 Connie Crescent, Suite 200
	Concord, Ontario, Canada

*CC=Canadian Code

0010= Institution number for CIBC

NNNN=5 digit Branch Transit