

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

**MOTION RECORD OF FAAN MORTGAGE ADMINISTRATORS INC., IN
ITS CAPACITY AS COURT-APPOINTED TRUSTEE
(ORCHARD APPROVAL ORDER)**

September 15, 2020

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COMMERCIAL LIST**

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TAB A

**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**

**NOTICE OF MOTION
(Orchard Approval Order)**

FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (“**Trustee**”) of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.) (“**BDMC**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, (“**MBLAA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) on September 22, 2020 at 12:00 p.m., or as soon after that time as the motion can be heard, by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order (“**Orchard Approval Order**”) substantially in the form attached to the Motion Record, *inter alia* (capitalized terms used and not defined in this paragraph have the meanings ascribed to them below):
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) confirming and approving the Trustee and OTC discharging the Orchard Mortgages registered on title to the Property in respect of the Orchard Loans in connection with the Orchard Sale Transaction upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the BDMC Discharge Payment and authorizing the Trustee and OTC to take any other steps necessary to facilitate the closing of the Orchard Sale Transaction, in their sole discretion;
 - (c) authorizing the Trustee to make a *pari-passu* distribution of the Realized Property to be received from the Orchard Sale Transaction, 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, to the syndicated mortgage lenders who advanced funds to the Orchard Project pursuant to the Original Loan Agreement (“**Original Individual Lenders**”) and the Hybrid Loan Agreement (“**Hybrid Individual Lenders**”) (collectively, the “**Orchard Individual Lenders**”);
 - (d) sealing Confidential Appendix “1” to the Nineteenth Report until further order of the Court; and
 - (e) approving the Nineteenth Report and the Trustee’s activities set out therein; and
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to the Order of the Court in respect of BDMC dated April 20, 2018 (“**Appointment Order**”), FAAN Mortgage Administrators Inc. was appointed as the Trustee, without security, of all of the assets, undertakings and properties of 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, Investors (as defined below), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust;
2. The purpose of the Trustee’s appointment is to protect the interests of the members of the investing public who invested in syndicated mortgage loans made by BDMC in respect of certain real estate development projects secured by mortgages (typically third-ranking or lower priority charges) registered on title to the applicable real property (“**Investors**”);
3. To date, the Trustee has filed eighteen reports with the Court, which describe the Trustee’s activities in carrying out its mandate under the Appointment Order. In connection with this Motion, the Trustee is filing its Nineteenth Report to Court dated September 15, 2020 (“**Nineteenth Report**”), which describes the Trustee’s activities in connection with, and other matters relating to, the Orchard Project (as defined below). Capitalized terms used but not defined herein have the meanings given in the Nineteenth Report;
4. The First Report of the Trustee dated June 19, 2018 (“**First Report**”) described the need for certain interim stabilization measures, including, among other things, clarification related to the use of certain funds held in BDMC’s accounts, to allow the Trustee to discharge its obligations pursuant to the Appointment Order, perform BDMC’s administrative tasks, and to commence an in-depth review of the real estate development projects that were funded in part through the syndicated mortgage loans that were administered by BDMC;
5. The Interim Stabilization Order was issued by the Court on June 26, 2018 and, among other things, required the Trustee to hold, in a separate account, until further order of the Court (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal

on any loan or other indebtedness administered by BDMC on behalf of Investors, whether or not (i) secured by any Real Property Charges in the name of BDMC or an RRSP Trustee, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (II) all interest paid or payable to BDMC or the Trustee at the time such repayment (in whole or in part) of principal is made (collectively, “**Realized Property**”);

6. The Second Report of the Trustee dated October 23, 2018 (“**Second Report**”) provided a further comprehensive update on the Trustee’s activities undertaken since the date of the First Report. The Second Report also contained information in support of the Realized Property Order;

7. The Realized Property Order was issued by the Court on October 30, 2018 and, among other things:

- (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of the 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;

8. On November 28, 2018, the Court granted the Braestone Settlement Approval Order, which approved, among other things, an amendment to the Realized Property Order that required 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;

9. On December 20, 2018, the Court granted the Harlowe Settlement Approval Order, which approved, among other things, a further amendment to the Realized Property Order that required 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;

10. The Trustee indicated in its previous Reports that it continues to attempt to seek to maximize recoveries for Investors and to advance potential transactions related to various projects. Further, the structure, form and recovery associated with a potential transaction will depend on the specific facts and attributes related to each unique project;

11. In this regard, the Trustee has been advised that Lamb Calgary Inc. (the “**Orchard Borrower**”) is in possession of a signed agreement of purchase and sale (the “**APS**”) in respect of a sale (the “**Orchard Sale Transaction**”) of the properties located at 602, 606, 610, 620, 624, 626, and 628, 12th Avenue SE, Calgary, Alberta (collectively, the “**Orchard Project**” or “**Property**”), which Property is subject to two mortgages registered on title in favour of BDMC and Olympia Trust Company (“**OTC**”) and which APS would require the Trustee to discharge the Orchard Mortgages (as defined below);

Confirmation and Approval of Discharge

The Orchard Project

12. The Orchard Project is an approved high-density, multifamily development site that spans approximately 1.4 acres in the downtown Calgary neighbourhood of Victoria Park. The proposed plan for the Orchard Project is a two tower, 20-story complex;

13. Presently, the Property is being used as a surface parking lot, generating some rental income for the Orchard Borrower but at an amount that the Orchard Borrower advises is insufficient to cover the Property’s monthly carrying costs;

The Orchard Loans

14. The Orchard Borrower and BDMC are parties to two loan agreements in respect of the Orchard Project: (i) a loan agreement dated January 23, 2014 (“**Original Loan Agreement**”); and (ii) a loan agreement dated April 16, 2016 (“**Hybrid Loan Agreement**”); the loans made pursuant to the Original Loan Agreement and the Hybrid Loan Agreement, shall be referred to as the “Original Loan” and the “Hybrid Loan”, respectively, and, together, the “Orchard Loans”;

15. According to BDMC’s records, as at August 31, 2020, the total amount owing to the Original Individual Lenders in connection with the Original Loan Agreement was approximately

\$18.6 million (comprised of approximately \$14.2 million in principal and approximately \$4.4 million in accrued interest);

16. According to BDMC's records, as at August 31, 2020, the total amount owing to the Hybrid Individual Lenders in connection with the Hybrid Loan Agreement was approximately \$1.87 million (comprised of approximately \$1.55 million in principal and approximately \$320,000 in accrued interest);

17. The Original Individual Lenders hold a charge registered on title to the Property in third position, and the Hybrid Individual Lenders hold a charge registered on title to the Property in fourth position (together, the "**Orchard Mortgages**");

Priority Mortgages

18. In addition to the Orchard Loans, there are two additional mortgages registered on title to the Property that, as at August 31, 2020, in aggregate total \$4.3 million of principal (and approximately \$4.9 million including accrued interest) and are registered in priority to the Orchard Loans;

19. The principal balance of each priority mortgage is as follows: (a) Lanyard Investments Inc. ("**Lanyard**") holds a first priority mortgage registered on title to the Property in the amount of \$2.3 million ("**Lanyard Mortgage**"); and (b) BJI Properties Inc. ("**BJI**"), an entity related to the Orchard Borrower, holds a second priority mortgage registered on title to the Property in the amount of \$2 million (collectively, the "**Priority Mortgages**");

20. BDMC and OTC, on behalf of the Original Individual Lenders and the Hybrid Individual Lenders, executed postponements in favour of the Priority Mortgages in connection with a refinancing that was completed in 2017, which have been registered on title to the Property;

21. The mortgages registered in favour of Lanyard and BJI are the only charges registered on title to the Property in priority to the Orchard Loans;

22. Payments on the Lanyard Mortgage are now past due, and the mortgage is in default;

Execution of the APS by the Orchard Borrower

23. The Trustee understands that in or around 2017, the funds available to the Orchard Borrower were exhausted and that certain companies related to the principal of the Orchard Borrower (the “**Related Parties**”) began advancing funds to the Orchard Project (the “**Related Party Funding**”);

24. The Trustee has been advised by the Orchard Borrower that the Related Party Funding was used to both service the Lanyard Mortgage and to fund other project costs while the Orchard Borrower evaluated its options for the Orchard Project in light of unfavourable market conditions;

25. With no meaningful improvement in the market for a development like the Orchard Project, and no near-term expectation of improvement, by late 2019 the Orchard Borrower determined that it was no longer willing to finance the Orchard Project and decided to list the Property for sale;

26. In January 2020, without consulting the Trustee, the Orchard Borrower retained CBRE to list the Property for sale (the “**Listing Agent**”);

27. In early June 2020, the Orchard Borrower presented the Trustee with a signed APS that it had entered into with Trico Developments (1990) Ltd. in respect of the Orchard Sale Transaction;

28. The proposed Orchard Sale Transaction was subject to certain due diligence conditions, which the Trustee has been informed by the Orchard Borrower have now been satisfied;

29. The Orchard Borrower entered into the APS without consulting the Trustee notwithstanding: (i) the purchase price was insufficient to repay the amounts owing to the Orchard Individual Lenders in full; and (ii) the APS required the Trustee to discharge the Orchard Mortgages;

30. A copy of the APS, redacted for certain financial information, is attached as Appendix “7” to the Nineteenth Report;

31. A copy of the unredacted APS and information detailing the estimated recovery for Orchard Individual Lenders is included as Confidential Appendix “1” to the Nineteenth Report, which is subject to a request for a sealing order and described further below;

Trustee's Review of the APS and Consideration of Alternative Options

32. Despite the foregoing, in order to determine the best possible outcome for the Orchard Individual Lenders in the circumstances, the Trustee proceeded to perform a review of the Orchard Sale Transaction;

33. In August 2018, the Trustee had commissioned an independent real estate appraiser to provide an as-is appraisal of the Property ("**Appraisal**"), which reflects an appraised value that is significantly higher than the purchase price in the APS;

34. As part of the Trustee's review of the Orchard Sale Transaction, the Trustee engaged in discussions with its appraiser who advised that: (i) there has been limited development in the surrounding area; (ii) there have been relatively few land sale transactions in the Calgary marketplace since the Appraisal was completed; and (iii) since the onset of the COVID-19 pandemic and the suppressed oil prices that followed, there is significantly more uncertainty in the Calgary market relative to when the Appraisal was completed;

35. The Trustee also engaged in discussions with the Listing Agent as part of its review, who advised that the Property was marketed to approximately 80 prospective purchasers, spanning both local and national markets and both institutional and private investor groups;

36. The Trustee understands that the list of prospective purchasers included all known targets for the area including parties that had been active in the Alberta marketplace;

37. Should the Orchard Sale Transaction be completed for the agreed upon purchase price, following repayment of amounts owing under the Priority Mortgages and other closing costs, there will be minimal proceeds available for distribution to the Orchard Individual Lenders, being an amount equal to the portion of the purchase price set out in the APS that is in excess of the amounts owed under the Priority Mortgages and reasonable and documented costs properly incurred to effect the closing of the Orchard Sale Transaction (the "**BDMC Discharge Payment**");

38. In light of the modest recovery for the Orchard Individual Lenders, the Trustee considered whether there were any alternatives to the Orchard Sale Transaction that could have a more favourable result;

39. The Trustee is of the view that the only alternative that could result in a more favourable outcome would have been a long-term hold by the Orchard Borrower until such time that the Calgary market could either support a higher price for a land transaction or until there was sufficient demand to support the development of the proposed condominium project (or some other design and use of the Property). However, the Trustee understands that the Orchard Borrower is unable to raise additional financing required to continue supporting the ongoing project costs, including to service the Lanyard Mortgage;

40. As noted above, the Orchard Borrower has advised that the Lanyard Mortgage is in default and, should the Orchard Sale Transaction not be completed, the Trustee understands that the Property could be sold pursuant to an enforcement proceeding, a process which would likely result in a lower purchase price than that contemplated by the Orchard Sale Transaction and, accordingly, a lower recovery for the Orchard Individual Lenders;

41. The Trustee and Representative Counsel are of the view that although the Orchard Sale Transaction only provides a modest recovery for the Orchard Individual Lenders, it offers the greatest opportunity for some recovery in the circumstances and, accordingly, it is appropriate to consent to discharging the Orchard Mortgages registered on title to the Property as part of the Orchard Sale Transaction;

Additional Priority Claims

42. The Orchard Borrower provided the Trustee with a summary as of September 2020 of amounts in addition to the Priority Mortgages that it was of the view should be paid from the proceeds of the Orchard Sale Transaction in priority to the Orchard Loans;

43. These amounts totaled approximately \$2 million, and included, among other things, the Related Party Funding advanced to the Orchard Project to cover the carrying costs of the Property and other amounts and fees (the “**Related Party Claim**”);

44. If the Related Party Claim was to be paid in full from the proceeds of the Orchard Sale Transaction in priority to the Orchard Loans, after repayment of the Priority Mortgages and other closing costs, there would be no funds available for distribution to the Orchard Individual Lenders;

45. The Trustee reviewed the Related Party Claim and indicated to the Orchard Borrower that it would not consent to such a payment in priority to the Orchard Loans and, after extensive negotiations between the parties, the Related Parties agreed to forego the Related Party Claim;

46. As a result of the above, the amounts that will be paid in priority to the Orchard Loans will be the Priority Mortgages, which as at August 31, 2020 total approximately \$4.9 million including unpaid interest, and the remaining proceeds from the Orchard Sale Transaction, net of commissions and other closing costs, would be paid to BDMC;

Proposed Distribution

47. In or around December 2016, in connection with the entering into of the Hybrid Loan Agreement, BDMC and OTC, on behalf of the Original Individual Lenders and the Hybrid Individual Lenders, entered into a pari-passu agreement (the “**Pari Passu Agreement**”) that addresses the priority of the Orchard Mortgages as between the Original Loan Agreement and the Hybrid Loan Agreement;

48. Pursuant to the Pari Passu Agreement, notwithstanding any provision contained in the security documentation governing the Original Loan Agreement or the Hybrid Loan Agreement, BDMC, on behalf of the Original Individual Lenders and the Hybrid Individual Lenders, agreed that the Orchard Mortgages shall rank equally and that the Original Individual Lenders and the Hybrid Individual Lenders shall be entitled to share, on a pro rata basis, in the assets of the Orchard Borrower, in the event of the repayment of all or a portion of the applicable Orchard Loans covered by their respective security interests delivered by the Orchard Borrower;

49. Pursuant to the Pari Passu Agreement, despite the ranking of the Orchard Mortgages on title to the Property, the Orchard Individual Lenders were contractually bound to a *pari passu* ranking of their mortgages;

50. Accordingly, the Trustee is of the view that a *pari passu* distribution of the BDMC Discharge Payment is the appropriate distribution methodology to the Orchard Individual Lenders in the circumstances;

51. The proposed distribution on a *pari passu* basis would result in a *de minimus* dilution of the recovery to the Original Individual Lenders, which benefit from a charge registered on title to the Property securing the Original Loan prior to the mortgage securing the Hybrid Loan. Conversely, without a *pari passu* distribution, the Hybrid Individual Lenders would receive no amounts from the BDMC Discharge Payment;

52. Accordingly, the Trustee seeks to make a distribution of 85% of the BDMC Discharge Payment to be received from the Orchard Sale Transaction, which funds constitute Realized Property, to the Orchard Individual Lenders, on a *pari passu* basis, in accordance with the terms of the Realized Property Order (as amended), and the Trustee is seeking approval of this distribution in the proposed Orchard Approval Order;

Approval of Report and Activities

53. As part of the Orchard Approval Order, the Trustee seeks the Court's approval of the Nineteenth Report and all of the actions, conduct and activities of the Trustee as set out therein;

Sealing

54. The following two-part test applies when determining whether a sealing order should be granted:

- (a) Is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?
- (b) Do the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?¹;

55. The unredacted APS and information detailing the estimated recovery for Orchard Individual Lenders contained in the Confidential Appendix filed in connection with this motion

¹ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53.

constitutes commercially sensitive information, which, if made public prior to the closing of the Orchard Sale Transaction, may jeopardize the proposed transaction and the recoveries to the Orchard Individual Lenders;

56. There are no reasonable measures available to protect this information as an alternative to an Order sealing this information from the public record pending further Order of this Court; and

57. The salutary effects of a sealing Order outweigh the deleterious effects, as the sealing Order would protect the interests of the Orchard Individual Lenders and their potential recoveries in these proceedings;

General

58. The provisions of the MBLAA, including Section 37 thereof;

59. The Appointment Order;

60. The Realized Property Order;

61. The Harlowe Settlement Approval Order;

62. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 41 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

63. Sections 101 and 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;

64. The inherent and equitable jurisdiction of this Honourable Court; and

65. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Motion:

1. The Nineteenth Report of the Trustee and the appendices thereto; and

2. Such further and other evidence as counsel may advise and this Court may permit.

September 15, 2020

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Building & Development Mortgages Canada Inc.

TO: SERVICE LIST

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(Motion for Orchard Approval Order)

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Development Mortgages Canada Inc.

TAB B

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

NINETEENTH REPORT OF THE TRUSTEE

SEPTEMBER 15, 2020



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

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Appendix 7	Orchard Agreement of Purchase and Sale (redacted for certain financial information)
Confidential Appendix 1	Orchard Agreement of Purchase and Sale (unredacted) and Estimated Recovery for the Orchard Individual Lenders

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

NINETEENTH REPORT OF THE TRUSTEE

September 15, 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.

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

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. A copy of the Harlowe Settlement Approval Order is attached as **Appendix “3”**.
5. The Trustee has, in total, delivered eighteen 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 November 22, 2019, the Trustee submitted its thirteenth report in these proceedings, which provided a comprehensive update on the Trustee's activities and a status update for each project.

6. The Trustee indicated in its previous Reports that it continues to attempt to seek to maximize recoveries for Investors and to advance potential transactions related to various projects. Further, the structure, form and recovery associated with a potential transaction will depend on the specific facts and attributes related to each unique project. In this regard, the Trustee has been advised that Lamb Calgary Inc. ("**Orchard Borrower**") is in possession of a signed agreement of purchase and sale ("**APS**") in respect of the properties located at 602, 606, 610, 620, 624, 626, and 628, 12th Avenue SE, Calgary, Alberta (collectively, the "**Orchard Project**" or "**Property**"). The Orchard Borrower and BDMC are parties to two loan agreements in respect of the Orchard Project (together, the "**Orchard Loan Agreements**"): (i) a loan agreement dated January 23, 2014 ("**Original Loan Agreement**"); and (ii) a loan agreement dated April 16, 2016 ("**Hybrid Loan Agreement**"); the loans made pursuant to the Original Loan Agreement and the Hybrid Loan Agreement, shall be referred to as the "**Original Loan**" and the "**Hybrid Loan**", respectively, and, together, the "**Orchard Loans**". Pursuant to the Orchard Loans, which are discussed below, BDMC provided syndicated mortgage loans to the Orchard Borrower. Each of the Original Loan Agreement and the Hybrid Loan Agreement are secured by mortgages registered on title to the Property ("**Orchard Mortgages**").
7. Capitalized terms used but not otherwise defined in this nineteenth report ("**Nineteenth Report**") have the meanings ascribed to them in previous Reports. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee's website at: www.faanmortgageadmin.com ("**Trustee's Website**"). The Trustee intends to maintain the Trustee's Website for the duration of these proceedings and will be updating it as appropriate.

PURPOSE OF THE NINETEENTH REPORT

8. The purpose of this Nineteenth Report is to provide the Court and stakeholders with the Trustee's recommendation with respect to the proposed sale of the Orchard Project ("**Orchard Sale Transaction**") by the Orchard Borrower to a third-party purchaser, Trico Developments (1990) Ltd. ("**Purchaser**"), which would require the Trustee to discharge

the Orchard Mortgages registered on title to the Property upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the portion of the purchase price set out in the APS that is in excess of the amounts owed under the Priority Mortgages (defined herein) and reasonable and documented costs properly incurred to effect the closing of the Orchard Sale Transaction (the “**BDMC Discharge Payment**”), and to support the Trustee’s request for an Order (“**Orchard Approval Order**”) that, among other things:

- (a) Confirms and approves the Trustee and Olympia Trust Company (“**OTC**”) discharging the Orchard Mortgages registered on title to the Property in respect of the Orchard Loans in connection with the Orchard Sale Transaction upon receipt of the BDMC Discharge Payment and authorizes the Trustee and OTC to take any other steps necessary to facilitate the closing of the Orchard Sale Transaction, in its their discretion;
 - (b) Authorizes the Trustee to make a *pari-passu* distribution of the Realized Property to be received from the Orchard Sale Transaction, 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, to the syndicated mortgage lenders who advanced funds to the Orchard Project pursuant to the Original Loan Agreement (“**Original Individual Lenders**”) and the Hybrid Loan Agreement (“**Hybrid Individual Lenders**”) (collectively, the “**Orchard Individual Lenders**”);
 - (c) Seals Confidential Appendix “1” to this Nineteenth Report, as discussed further herein, until further order of the Court; and
 - (d) Approves this Nineteenth Report and the Trustee’s activities set out herein.
9. In support of the Trustee’s request for the Orchard Approval Order, this Nineteenth Report describes the following matters:
- (a) an overview of the Orchard Project and the underlying syndicated mortgage loans pursuant to which the Orchard Individual Lenders loaned money in respect of the Orchard Project, being the Original Loan and the Hybrid Loan;
 - (b) the details of the Orchard Sale Transaction including the marketing process conducted for the Property;

- (c) information that supports the Trustee's recommendation to discharge the Orchard Mortgages in connection with the Orchard Sale Transaction upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the BDMC Discharge Payment and to take any other steps necessary to facilitate the closing of the Orchard Sale Transaction, in its sole discretion;
- (d) a confidential appendix that provides, among other things, the financial details of the Orchard Sale Transaction and the estimated Realized Property available for distribution to the Orchard Individual Lenders; and
- (e) information that supports the Trustee's recommendation that the Realized Property to be received in connection with the Orchard Sale Transaction be distributed on a *pari passu* basis to all Orchard Individual Lenders.

SCOPE AND TERMS OF REFERENCE

10. In preparing this Nineteenth 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 Orchard Borrower, and CBRE Limited ("**CBRE**") and NAI Advent Inc. ("**NAI**"), the listing agents that were retained by the Orchard Borrower in January 2020 to sell the Property. 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 Orchard Project and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM and the Orchard Borrower (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 Nineteenth 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 Nineteenth Report may vary from the projections and information used to prepare this Nineteenth 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 Nineteenth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

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

OVERVIEW OF THE ORCHARD PROJECT

14. The Orchard Project is an approved high-density, multifamily development site that spans approximately 1.4 acres in the downtown Calgary neighbourhood of Victoria Park. The Property is in close proximity to the grounds for the Calgary Stampede and across the street from the site of the future arena for the city's professional hockey team, The Calgary Flames, which is scheduled to be completed in May 2024. The proposed plan for the Orchard Project is a two tower, 20-story complex.
15. A marketing campaign for the Orchard Project was launched by the Orchard Borrower in 2014. The sales center opened in November 2015 and was positively received by local prospective buyers. However, shortly following the launch, a prolonged weakening in the Calgary real estate market began as a result of a significant drop in oil prices. In or around November 2017, due to such economic conditions and the resulting poor pre-construction sales for the Orchard Project, the Orchard Borrower terminated all existing pre-sale agreements and returned all deposits to the unit purchasers.

16. Presently, the Property is being used as a surface parking lot, generating some rental income for the Orchard Borrower but at an amount that the Orchard Borrower advises is insufficient to cover the Property's monthly carrying costs.

OVERVIEW OF THE ORCHARD LOANS

17. According to BDMC's records, as at August 31, 2020, the total amount owing to the Original Individual Lenders in connection with the Original Loan Agreement was approximately \$18.6 million (comprised of approximately \$14.2 million in principal and approximately \$4.4 million in accrued interest). The Original Individual Lenders hold a charge registered on title to the Property in third position.
18. The Orchard Borrower made interest payments to the Original Individual Lenders of approximately \$2.5 million through to October 2016, after which interest began, and continues, to accrue.¹
19. Based on BDMC's records, there are 340 Original Individual Lenders.
20. According to BDMC's records, as at August 31, 2020, the total amount owing to the Hybrid Individual Lenders in connection with the Hybrid Loan Agreement was approximately \$1.87 million (comprised of approximately \$1.55 million in principal and approximately \$320,000 in accrued interest). The Hybrid Individual Lenders hold a charge registered on title to the Property in fourth position.
21. The Orchard Borrower paid one year of up-front interest on the Hybrid Loan in the amount of approximately \$124,000 after which interest began, and continues, to accrue.²
22. Based on BDMC's records, there are 42 Hybrid Individual Lenders.
23. A summary of the amounts owed under each of the Orchard Loans as at August 31, 2020 is as follows:

	Original Loan	Hybrid Loan
Principal outstanding (A)	14,204,145	1,551,725
Accrued Interest as at August 31, 2020 (B)	4,406,442	322,661

¹ Per diem interest on the Original Loan Agreement is \$3,156.48

² Per diem interest on the Hybrid Loan Agreement is \$340.11

Total outstanding (A+B)	18,610,587	1,874,386
Previously paid interest	2,469,276	124,138

24. In or around December 2016, in connection with the entering into of the Hybrid Loan Agreement, BDMC and OTC, on behalf of the Original Individual Lenders and the Hybrid Individual Lenders, entered into a *pari-passu* agreement (“**Pari Passu Agreement**”) that addresses the priority of the Orchard Mortgages as between the Original Loan Agreement and the Hybrid Loan Agreement. Pursuant to the Pari Passu Agreement, notwithstanding any provision contained in the security documentation governing the Original Loan Agreement or the Hybrid Loan Agreement, BDMC, on behalf of the Original Individual Lenders and the Hybrid Individual Lenders, agreed that the Orchard Mortgages shall rank equally and that the Original Individual Lenders and the Hybrid Individual Lenders shall be entitled to share, on a *pro rata* basis, in the assets of the Orchard Borrower, in the event of the repayment of all or a portion of the applicable Orchard Loans covered by their respective security interests delivered by the Orchard Borrower. A copy of the Pari Passu Agreement is attached as **Appendix “4”**. The Trustee understands from representatives of BDMC that the Original Individual Lenders consented to the delivery of the Pari Passu Agreement by BDMC by virtue of the terms of their underlying participation and servicing agreements with BDMC.
25. In addition to the Orchard Loans, there are two additional mortgages registered on title to the Property that, as at August 31, 2020, in aggregate total \$4.3 million of principal (and approximately \$4.9 million including accrued interest) and are registered in priority to the Orchard Loans. The principal balance of each priority mortgage is as follows: (a) Lanyard Investments Inc. (“**Lanyard**”) holds a first priority mortgage registered on title to the Property in the amount of \$2.3 million (“**Lanyard Mortgage**”); and (b) B JL Properties Inc. (“**BJL**”), an entity related to the Orchard Borrower, holds a second priority mortgage registered on title to the Property in the amount of \$2 million (“**BJL Mortgage**”) (collectively, the “**Priority Mortgages**”). The Priority Mortgages were each registered on title to the Property in January 2017, prior to the court appointment of the Trustee. The Trustee understands that Lanyard and B JL advanced \$2.3 million and \$2 million, respectively, to the Orchard Borrower to refinance the then first priority \$4.3 million mortgage that was held by a third party. In connection with such refinancing, BDMC and

OTC, on behalf of the Original Individual Lenders and the Hybrid Individual Lenders, executed postponements in favour of the Priority Mortgages, which have been registered on title to the Property. The mortgages registered to Lanyard and BJI are the only charges registered on title to the Property in priority to the Orchard Loans.

26. The Trustee was advised by the Orchard Borrower that the last interest payment on account of the Lanyard Mortgage was made in May 2020. Accordingly, payments on the Lanyard Mortgage are now past due and the mortgage is in default. The Trustee understands that no interest payments have been made on account of the BJI Mortgage, which has accrued interest since it was advanced to the Orchard Borrower.
27. The Trustee also notes that, as part of its mandate, it is in possession of a Statement of Claim dated February 21, 2017 seeking to commence a class action against the Orchard Borrower, Fortress, BDMC and others in respect of the Orchard Project. A case conference had been scheduled for the spring of 2020 with respect to this and certain other class actions related to Fortress related projects. To the best of the Trustee's knowledge, that case conference did not proceed and the Trustee has received no further information with respect to the status of the proposed class action.

SALES AND MARKETING PROCESS UNDERTAKEN BY THE ORCHARD BORROWER

28. The Trustee understands that in or around 2017, the funds available to the Orchard Borrower were exhausted and that certain companies related to the principal of the Orchard Borrower ("**Related Parties**") began advancing funds to the Orchard Project ("**Related Party Funding**"). The Trustee has been advised by the Orchard Borrower that the Related Party Funding was used to both service the Lanyard Mortgage and to fund other project costs while the Orchard Borrower evaluated its options for the Orchard Project in light of the unfavourable market conditions. In particular, the Orchard Borrower considered converting the Orchard Project to a rental apartment development.
29. With no meaningful improvement in the market for a development like the Orchard Project, and no near-term expectation of improvement, by late 2019 the Orchard Borrower determined that it was no longer willing to finance the Orchard Project and decided to list the Property for sale.

30. In January 2020, without consulting the Trustee, the Orchard Borrower retained CBRE to list the Property for sale (the "**Listing Agent**").³ The Property was listed with no list price and with an offer deadline of March 18, 2020.
31. A notice was sent by the Trustee to the Orchard Individual Lenders advising of the listing on January 29, 2020 ("**January 2020 Investor Notice**"). The notice also advised that should a sale take place and the proceeds from the sale of the Property be insufficient to repay the Priority Mortgages there was a risk that the Orchard Individual Lenders may not recover the sums advanced to the Orchard Borrower. A copy of the January 2020 Investor Notice is attached as **Appendix "5"**.
32. In early June 2020, the Orchard Borrower presented the Trustee with a signed APS that it had entered into with the Purchaser in respect of the Orchard Sale Transaction. The proposed Orchard Sale Transaction was subject to certain due diligence conditions, which the Trustee has been informed by the Orchard Borrower have now been satisfied.
33. The Orchard Borrower entered into the APS without consulting the Trustee notwithstanding: (i) the purchase price was insufficient to repay the amounts owing to the Orchard Individual Lenders in full; and (ii) the APS required the Trustee to discharge the Orchard Mortgages. Despite these concerns, in order to determine the best possible outcome for the Orchard Individual Lenders in the circumstances, the Trustee proceeded to perform a review of the Orchard Sale Transaction.
34. In August 2018, the Trustee had commissioned an independent real estate appraiser to provide an as-is appraisal of the Property ("**Appraisal**"). The Appraisal reflects an appraised value that is significantly higher than the purchase price in the APS. As part of the Trustee's review of the Orchard Sale Transaction, the Trustee engaged in discussions with its appraiser who advised that: (i) there has been limited development in the surrounding area; (ii) there have been relatively few land sale transactions in the Calgary marketplace since the Appraisal was completed; and (iii) since the onset of the COVID-19 pandemic and the suppressed oil prices that followed, there is significantly more uncertainty in the Calgary market relative to when the Appraisal was completed.

³ In May 2020, the CBRE listing agents that were marketing the Property moved their real estate license to NAI inclusive of the listing agreement with the Orchard Borrower in respect of the Property.

35. The Trustee also engaged in discussions with the Listing Agent. The Listing Agent advised that the Property was marketed to approximately 80 prospective purchasers, spanning both local and national markets and both institutional and private investor groups. The Trustee understands that the list of prospective purchasers included all known targets for the area including parties that had been active in the Alberta marketplace.
36. The Listing Agent advised that there were a number of interested parties during the first few months that the Property was on the market including various institutional investors. However, there were no offers received by the original offer deadline of March 18, 2020. Unfortunately, the March offer deadline coincided with the onset of the impact of the COVID-19 pandemic on the Canadian market and another sharp drop in oil prices, both of which had and are continuing to have a detrimental impact on Alberta's economy. With no offers in hand, and in spite of the challenging economic climate, the Listing Agent continued to actively market the Property and to engage with the few remaining interested parties. The Listing Agent noted that the institutional investors that showed interest in the Property in early 2020 no longer had interest following the onset of COVID-19. Ultimately, there was one formal offer received for the Property and one offer that was only verbally expressed to the Listing Agent. Following a few rounds of negotiations, the Orchard Borrower ultimately accepted the APS from the Purchaser.
37. Should the Orchard Sale Transaction be completed for the agreed upon purchase price, following repayment of amounts owing under the Priority Mortgages and other closing costs, there will be minimal proceeds available for distribution to the Orchard Individual Lenders. In light of the modest recovery for the Orchard Individual Lenders, the Trustee considered whether there were any alternatives to the Orchard Sale Transaction that could have a more favourable result. The Trustee is of the view that the only alternative would have been a long-term hold by the Orchard Borrower until such time that the Calgary market could either support a higher price for a land transaction or until there was sufficient demand to support the development of the proposed condominium project (or some other design and use of the Property). The Trustee understands however that the Orchard Borrower is unable to raise additional financing required to continue supporting the ongoing project costs, including to service the Lanyard Mortgage.

38. As noted above, the Orchard Borrower has advised that the Lanyard Mortgage is in default. Should the Orchard Sale Transaction not be completed, the Trustee understands that the Property could be sold pursuant to an enforcement proceeding, a process which would likely result in a lower purchase price than that contemplated by the Orchard Sale Transaction and, accordingly, a lower recovery for the Orchard Individual Lenders. Further, interest would continue to accrue on the Priority Mortgages, which would likely erode even the modest recovery for the Orchard Individual Lenders.
39. The Trustee notes that, while the purchase price is significantly less than the value noted in the Appraisal, after having considered: (i) the merits of the Orchard Sale Transaction; (ii) the alternatives available including the Orchard Borrower's inability to continue to advance the Orchard Project; (iii) the marketing process undertaken for the Property; and (iv) the deterioration in the economic climate and the increased market uncertainty in light of suppressed oil prices and the COVID-19 pandemic since the Appraisal was commissioned, the Trustee and Representative Counsel are of the view that although the Orchard Sale Transaction only provides a modest recovery for the Orchard Individual Lenders, it offers the greatest opportunity for some recovery in the circumstances and accordingly, it is appropriate to consent to discharging the Orchard Mortgages registered on title to the Property as part of the Orchard Sale Transaction.

ADDITIONAL PRIORITY CLAIMS

40. The Orchard Borrower provided the Trustee with a summary as of September 2020 of amounts in addition to the Priority Mortgages that it was of the view should be paid from the proceeds of the Orchard Sale Transaction in priority to the Orchard Loans. These amounts totaled approximately \$2 million, and included, among other things, the Related Party Funding advanced to the Orchard Project to cover the carrying costs of the Property and other amounts and fees (the "**Related Party Claim**"). Should the Related Party Claim be paid in full from the proceeds of the Orchard Sale Transaction in priority to the Orchard Loans, after repayment of the Priority Mortgages and other closing costs, there would be no funds available for distribution to the Orchard Individual Lenders.
41. The Trustee reviewed the Related Party Claim and indicated to the Orchard Borrower that it would not consent to its payment in priority to the Orchard Loans.

42. After extensive negotiations between the parties, the Related Parties agreed to forego the approximate \$2 million Related Party Claim. As a result of the above, the amounts that will be paid in priority to the Orchard Loans will be the Priority Mortgages which as at August 31, 2020 total approximately \$4.9 million including unpaid interest. Interest on the Priority Mortgages is continuing to accrue. The remaining proceeds from the Orchard Sale Transaction, net of commissions and other closing costs, would be paid to BDMC.

PROPOSED DISTRIBUTION

43. Pursuant to the Pari Passu Agreement, despite the ranking of the Orchard Mortgages on title to the Property, the Orchard Individual Lenders were contractually bound to a *pari passu* ranking of their mortgages. Accordingly, the Trustee is of the view that a *pari passu* distribution of the BDMC Discharge Payment is the appropriate distribution methodology to the Orchard Individual Lenders in the circumstances.
44. The Trustee notes that the proposed distribution on a *pari passu* basis would result in a *de minimus* dilution of the recovery to the Original Individual Lenders, which benefit from a charge registered on title to the Property prior to the mortgage securing the Hybrid Loan. Conversely, without a *pari passu* distribution, the Hybrid Individual Lenders would receive no amounts from the BDMC Discharge Payment.
45. Accordingly, the Trustee seeks to make a distribution of 85% of the BDMC Discharge Payment to be received from the Orchard Sale Transaction, which funds constitute Realized Property, to the Orchard Individual Lenders, on a *pari passu* basis, in accordance with the terms of the Realized Property Order (as amended), and the Trustee is seeking approval of this distribution in the proposed Orchard Approval Order.

Investor Notice

46. Contemporaneous with the service of this Nineteenth Report, the Trustee sent a notice to the Orchard Individual Lenders on September 15, 2020 (“**September 2020 Investor Notice**”) appending the Nineteenth Report (without appendices) and summarizing certain of the matters described therein. While the September 2020 Investor Notice did not disclose any of the financial details of the Orchard Sale Transaction or the quantum of recovery for the Orchard Individual Lenders, it advised of, among other things: (i) the Trustee’s intention to seek court approval confirming and approving the discharge of the Orchard Mortgages; (ii) the proposed *pari passu* distribution of the BDMC Discharge

Payment to the Orchard Individual Lenders; and (iii) advised that the Trustee provided Representative Counsel with all relevant financial and other information in its possession with respect to the Orchard Sale Transaction and that Representative Counsel supports the relief being sought by the Trustee in the Orchard Approval Order. The September 2020 Investor Notice then invited the Orchard Individual Lenders to consult with Representative Counsel and to review the materials filed in support of the Orchard Approval Order, which the Trustee intends to post on the Trustee's Website forthwith following the service of this Nineteenth Report. The Trustee also provided the Orchard Individual Lenders with information concerning the hearing of the Trustee's motion for the Orchard Approval Order. A copy of the September 2020 Investor Notice is attached as **Appendix "6"**.

CONFIDENTIAL APPENDIX

47. As the Trustee is concerned about the effect on any future sales process that would need to be implemented for the Orchard Project should the Orchard Sale Transaction not close for whatever reason, the Trustee is not publicly disclosing the purchase price at this time. As a result, it is also not possible for the Trustee to publicly disclose the estimated recovery for the Orchard Individual Lenders. The Trustee has provided all relevant financial and other information concerning the Orchard Sale Transaction and Investor recovery to Representative Counsel, who has confirmed its support for the proposed transaction and Orchard Approval Order. A copy of the APS, redacted for certain financial information, is attached as **Appendix "7"**.
48. A copy of the unredacted APS and information detailing the estimated recovery for Orchard Individual Lenders, should this Honourable Court grant the Orchard Approval Order and approve the distribution on a *pari passu* basis, is included as **Confidential Appendix "1"** to this Nineteenth Report and is subject to a request for a sealing order. Given the commercially sensitive information in the APS and the competitive nature of the marketing process that culminated in the APS, as well as the estimated recovery to Orchard Individual Lenders, the Trustee is concerned that public disclosure of the information contained in Confidential Appendix "1" prior to Court approval and the closing of a transaction may jeopardize the proposed transaction and the recoveries to the Orchard Individual Lenders. As such, the Trustee is requesting that **Confidential Appendix "1"** be sealed pending further Order of the Court.

CONCLUSION AND RECOMMENDATION

49. For the reasons noted above, the Trustee and Representative Counsel are of the view that, in light of the available alternatives, the discharge of the Orchard Mortgages from the Property by the Trustee and the Orchard Approval Order are in the best interests of the Orchard Individual Lenders in the circumstances. Accordingly, the Trustee recommends that the proposed Orchard Approval Order be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of September, 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**

Appendix 1:
Appointment Order dated April 20, 2018

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

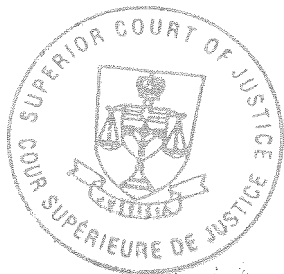
THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent



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

APPOINTMENT ORDER

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

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

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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

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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

- 4 -

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

- 5 -

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,

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.

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

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

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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

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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.

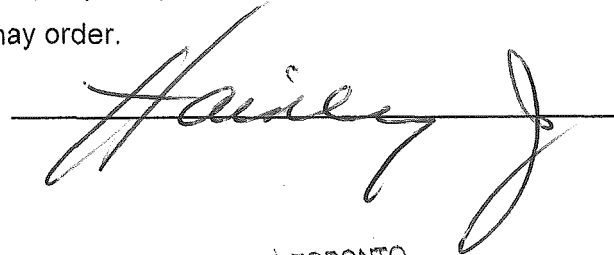
31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals,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

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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.



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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

Appendix 2:
Realized Property Order dated October 30, 2018

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

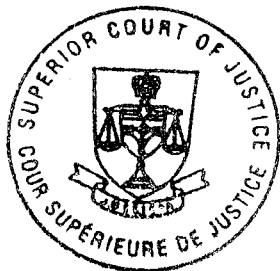
THE HONOURABLE MR.) TUESDAY, THE 30th DAY
JUSTICE HAINEY) OF OCTOBER, 2018

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -



BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

REALIZED PROPERTY ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the “**Respondent**”) 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, for an Order, *inter alia*, (i) requiring the Trustee to distribute certain Realized Property, as more fully set out herein; and (ii) authorizing the Trustee to utilize certain Realized Property to fund the Required Trustee Activities (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Second Report of the Trustee dated October 23, 2018 (the “**Second Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel for The Superintendent of Financial Services, 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 Jacob Schmidt sworn October 24, 2018, filed;

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that any capitalized terms used but not defined herein shall have the meanings given in the Order of the Court in respect of the Respondent dated June 26, 2018 (the “**Interim Stabilization Order**”) or in the Second Report.

REALIZED PROPERTY

3. **THIS COURT ORDERS** that the Trustee shall:

- (a) distribute a further amount equal to 20% of the Realized Property obtained with respect to the Victoria Medical SML Loans *pro rata* to the Investors entitled to such funds, such that, when combined with the distribution made pursuant to the Interim Stabilization Order, 70% of such funds shall have been distributed on a *pro rata* basis; and
- (b) distribute 70% of all other Realized Property obtained *pro rata* to the Investors entitled to such funds, whether received before or after the date of this Order.

4. **THIS COURT ORDERS** that the Trustee is hereby authorized to use all or any portion of 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, considers necessary or desirable

for the administration of the estate, including those matters set out in paragraph 17 of the Interim Stabilization Order (collectively, the “**Required Trustee Activities**”).

5. **THIS COURT ORDERS** that the Trustee shall report to the Court by no later than April 30, 2019 regarding the Required Trustee Activities undertaken following the date of this Order.

GENERAL

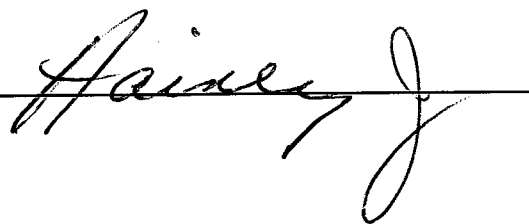
6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

7. **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.

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

OCT 30 2018

PER / PAR: 



THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

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

Proceedings commenced at Toronto

REALIZED PROPERTY ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)
Patrick Riesterer (LSUC# 60258G)

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

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

Appendix 3:
Harlowe Settlement Approval Order dated December 20, 2018

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 20 TH
)	
JUSTICE HAINEY)	DAY OF DECEMBER, 2018

BETWEEN:



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

HARLOWE SETTLEMENT APPROVAL ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the “**Respondent**”) 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, for an Order, *inter alia*, (i) approving and

ratifying the Settlement Agreement dated as of November 6, 2018 (the “**Harlowe Settlement Agreement**”) among The Harlowe Inc. (“**Harlowe**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering Harlowe to pay \$15,562,896.38 to the Trustee pursuant to the Harlowe Settlement Agreement; (iii) ordering Harlowe, the Trustee and OTC to comply with the Harlowe Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below), make a further distribution of Realized Property to Investors, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Fourth Report of the Trustee dated December 13, 2018 (the “**Fourth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to Harlowe and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Justine Erickson sworn December 14, 2018, filed;

SERVICE AND INTERPRETATION

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

APPROVAL OF THE HARLOWE SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Harlowe Settlement Agreement be and is hereby approved in its entirety, with such minor amendments as the Trustee and the other parties to the Harlowe Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) Harlowe is hereby directed to pay \$15,562,896.38 forthwith to the Trustee in accordance with the terms of the Harlowe Settlement Agreement (such funds the “**Harlowe Realized Property**”); and (iii) the execution of the Harlowe Settlement Agreement by the Trustee and OTC is hereby ratified and approved, and the Trustee and OTC are hereby

authorized and directed to comply with all of their obligations under the Harlowe Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to Harlowe substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**"), all of Harlowe's obligations to Building & Development Mortgages Canada Inc. ("**BDMC**"), OTC, and the individual lenders (the "**Harlowe Individual Lenders**") under the Loan Agreement dated as of June 10, 2013 between BDMC and Harlowe (the "**Loan Agreement**"), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**Harlowe Loan Obligations**") and all security interests granted to BDMC, OTC or the Harlowe Individual Lenders in and to the assets of Harlowe to secure the Harlowe Loan Obligations and related registrations on title (the "**Loan Encumbrances**") are hereby released, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC or any Harlowe Individual Lender shall have any claim against Harlowe in respect of the Harlowe Loan Obligations or the Loan Encumbrances; provided, however, that Harlowe shall not be released from any obligations under the Harlowe Settlement Agreement.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the Harlowe Realized Property is and shall be deemed to be "**Realized Property**" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that all of the Harlowe Individual Lenders' rights and claims under the Loan Agreement, the Security and the Loan Documents shall attach to the Harlowe Realized Property and shall have the same nature and priority as they had prior to the consummation of the Harlowe Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Registry Division of Toronto (#66) of an Application for Vesting Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") all of the Loan Encumbrances listed in Schedule "C" hereto.

7. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, and each Harlowe Individual Lender who loaned funds through BDMC or OTC to Harlowe pursuant to the 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 Harlowe on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the "**Releasors**") shall be binding and effective on the Releasors in favour of the Releasees.

8. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, as soon as practicable after delivery thereof.

REALIZED PROPERTY

9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the Trustee shall make a further distribution to Investors in an amount equal to 5% of the Realized Property held on or received after the date of the Appointment Order, including the Realized Property obtained with respect to the Victoria Medical SML Loans, *pro rata* to the Investors entitled to such funds, such that, when combined with the distributions made pursuant to the Interim Stabilization Order, the Order of this Court dated October 30, 2018 ("**Realized Property Order**") and the Order of this Court dated November 28, 2018, 85% of such funds shall have been distributed on a *pro rata* basis to the Investors entitled to such funds.

10. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, paragraph 3(b) of the Realized Property Order is hereby further amended to provide that the Trustee shall distribute 85% of all other Realized Property obtained, including the Harlowe Realized Property, *pro rata* to the Investors entitled to such funds, whether received before or after the date of this Order.

Schedule “A” – Form of Trustee’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

TRUSTEE’S CERTIFICATE

RECITALS

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

B. Pursuant to an Order of the Court dated [DATE] (the “**Harlowe Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement made as of November 6, 2018 (the “**Harlowe Settlement Agreement**”) among The Harlowe Inc. (“**Harlowe**”), the Trustee and Olympia Trust Company (“**OTC**”) and ordered that all of Harlowe’s obligations to BDMC, OTC, and the individual lenders (“**Harlowe Individual Lenders**”) under the Loan

Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Harlowe Loan Obligations**”) and all security interests granted to BDMC, OTC or the Harlowe Individual Lenders in and to the assets of Harlowe to secure the Harlowe Loan Obligations (the “**Loan Encumbrances**”) are hereby released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Harlowe Individual Lender shall have any claim against Harlowe in respect of the Harlowe Loan Obligations or the Loan Encumbrances; provided, however, that Harlowe shall not be released from any obligations under the Harlowe Settlement Agreement; and that the release of the Harlowe Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to Harlowe of a certificate confirming (i) the payment of \$15,562,896.38 to the Trustee by Harlowe; (ii) that the conditions precedent to the Harlowe Settlement Agreement as set out in section 9 of the Harlowe Settlement Agreement have been satisfied or waived by the Trustee; and (iii) the settlement has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Harlowe Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. Harlowe has paid and the Trustee has received \$15,562,896.38 pursuant to the Harlowe Settlement Agreement;
2. Harlowe has provided the Release Agreement to the Releasees;
3. Harlowe has certified that all of the representations and warranties contained in this Harlowe Settlement Agreement continue to be true as of the Effective Date;
4. Harlowe continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Harlowe Settlement Agreement;
5. The other conditions set out in the Harlowe Settlement Agreement have been satisfied or waived by the Trustee; and
6. The settlement has been completed to the satisfaction of the Trustee.

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

**FAAN Mortgage Administrators Inc., solely
in its capacity as Court-appointed Trustee of
the undertaking, property and assets of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

Schedule "B" – Real Property

PIN 21239-0519 (LT)

PART OF LOTS 21 TO 26 PLAN D111, PARTS 1, 3, 4, 5, 6, 7 AND 8 PLAN 66R29958; SUBJECT TO AN EASEMENT AS IN AT3640549; SUBJECT TO AN EASEMENT IN FAVOUR OF LOT 8 PLAN D111 AS IN AT4127651; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 66R29958 IN FAVOUR OF PART OF LOTS 21 TO 26 PLAN D111, PART 2 PLAN 66R29958 AS IN AT4939549; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 21 TO 26 PLAN D111, PART 2 PLAN 66R29958 AS IN AT4939549

Schedule "C" – Loan Encumbrances

Registration No.	Date	Type of Instrument
AT3428381	October 10, 2013	Charge
AT3428575	October 10, 2013	Transfer of Charge
AT3436925	October 24, 2013	Transfer of Charge
AT3439420	October 28, 2013	Transfer of Charge
AT3485881	December 20, 2013	Transfer of Charge
AT3497057	January 13, 2014	Transfer of Charge
AT3530200	February 28, 2014	Notice of Amending Agreement
AT3530201	February 28, 2014	Transfer of Charge
AT3537271	March 13, 2014	Transfer of Charge
AT3561924	April 22, 2014	Transfer of Charge
AT3624957	July 4, 2014	Notice of Amending Agreement
AT3671510	August 26, 2014	Transfer of Charge
AT3706643	October 3, 2014	Transfer of Charge
AT3728529	October 31, 2014	Transfer of Charge
AT3738320	November 12, 2014	Transfer of Charge
AT3749625	November 26, 2014	Transfer of Charge
AT3763762	December 11, 2014	Transfer of Charge
AT3783153	January 9, 2015	Transfer of Charge
AT3811062	February 13, 2015	Notice of Amending Agreement
AT3812523	February 18, 2015	Transfer of Charge
AT3945778	July 14, 2015	Notice of Amending Agreement
AT3945995	July 14, 2015	Transfer of Charge
AT3974731	August 12, 2105	Transfer of Charge
AT4014833	September 21, 2015	Notice of Amending Agreement
AT4020009	September 28, 2015	Transfer of Charge
AT4095416	December 15, 2015	Transfer of Charge
AT4127132	January 26, 2016	Postponement
AT4138805	February 5, 2016	Postponement
AT4166503	March 14, 2016	Transfer of Charge
AT4197452	April 20, 2016	Transfer of Charge
AT4224419	May 24, 2016	Transfer of Charge
AT4233310	June 1, 2016	Transfer of Charge
AT4271518	July 7, 2016	Transfer of Charge
AT4282089	July 18, 2016	Transfer of Charge
AT4483560	February 9, 2017	Transfer of Charge
AT4486694	February 14, 2017	Transfer of Charge

Schedule “D” – Release Agreement

[Date]

TO: FAAN Mortgage Administrators Inc. (the “Trustee”)

AND TO: Olympia Trust Company (“OTC”)

Re: Release granted in connection with repayment and settlement of the Obligations pursuant to Harlowe Settlement Agreement

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated as of June 10, 2013 (the “**Loan Agreement**”) between The Harlowe Inc. (“**Harlowe**”) and Building & Development Mortgages Canada Inc. (“**BDMC**”) and the related Security and Loan Documents. All capitalized terms used in this agreement (the “**Release Agreement**”) shall, unless otherwise defined herein, have the same meanings given to them in the Loan Agreement or the Settlement Agreement dated as of November 6, 2018 among Harlowe, the Trustee and OTC (the “**Settlement Agreement**”).

1. Harlowe hereby certifies that all of the representations and warranties contained in the Settlement Agreement are true and accurate as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Settlement Agreement.
2. Harlowe has paid the Trustee \$15,562,896.38 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$15,562,896.38 in full and final satisfaction of Obligations payable to BDMC by Harlowe under the Loan Agreement in excess of \$20,779,460 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Harlowe (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**”) hereby releases, discharges and acquits the Trustee, BDMC, OTC, and each lender or investor who loaned funds through BDMC or OTC to Harlowe pursuant to the 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**”) from any and all claims, demands, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any Releaser, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees directly or indirectly arising out of or in any way related to the Loan Agreement, the Loan Documents, the proceedings initiated by the Order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018, or any transactions hereunder or thereunder.

This Release Agreement shall be effective immediately upon the delivery of the Trustee’s Certificate and may be relied upon by any of the Releasees, whether or not such Releasee is a party to this Release Agreement or the Settlement Agreement.

This Release Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, and may be executed and delivered by facsimile or .pdf file transmitted by email, and all such counterparts, .pdf files and facsimiles when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same Release Agreement.

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

Yours truly,

THE HARLOWE INC.

By:

Name:

Title:

Accepted and agreed to by:

**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:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA
INC.**

Applicant

Respondent

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

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

Proceedings commenced at Toronto

HARLOWE SETTLEMENT APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)
Patrick Riesterer (LSUC# 60258G)

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

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

Appendix 4:
Pari Passu Agreement

PARI PASSU AGREEMENT

THIS AGREEMENT dated as of the _____ day of _____, 2016.

AMONG:

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
and
OLYMPIA TRUST COMPANY**
(collectively, hereinafter referred to as the "Original 2nd Mortgagee")

OF THE FIRST PART;

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
and
OLYMPIA TRUST COMPANY**
(together, hereinafter referred to as the "New 2nd Mortgagee")

OF THE SECOND PART;

(the **Original 2nd Mortgagee** and the **New 2nd Mortgagee** hereinafter being sometimes individually referred as a "**Mortgagee**" and sometimes collectively referred to as the "**Mortgagees**")

- and -

LAMB CALGARY INC.
(hereinafter referred to as the "**Borrower**")

OF THE THIRD PART;

RECITALS:

- A. The Borrower has executed the first mortgage as listed on Schedule "A" hereto in favour of the Original 2nd Mortgagee (the "Original 2nd Mortgage Security").
- B. The Borrower has executed a second mortgage as listed on Schedule "B" in favour of the New 2nd Mortgagee (the "New 2nd Mortgage Security").
- C. The parties hereto desire to outline the respective priorities, rights and obligations of holders of the Original 2nd Mortgage Security and the New 2nd Mortgage Security.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and other good and valuable consideration, the parties hereto hereby covenant, undertake, declare and agree as follows:

ARTICLE 1 - DEFINITIONS

In this Agreement, the following terms have the following meanings:

- (i) **"Property"** means the property described in Schedule "C".

ARTICLE 2 – CONSENT

- 2.01** The Original 2nd Mortgagee hereby acknowledges its consent to the creation and issue by the Borrower of the New 2nd Mortgage Security to the New 2nd Mortgagee and to the incurring by the Borrower of the indebtedness evidenced thereby.
- 2.02** The New 2nd Mortgagee hereby acknowledges the creation, validity and issue by the Borrower of the Original 2nd Mortgage Security to the Original 2nd Mortgagee and to the incurring by the Borrower of the indebtedness evidenced thereby.

ARTICLE 3 – PRIORITY

- 3.01** Notwithstanding any provision contained in the security documentation executed by the Borrower in connection with the Original 2nd Mortgage Security or the New 2nd Mortgage Security, the Original 2nd Mortgagee and the New 2nd Mortgagee covenant and agree with each other that their respective security interest in the Property of the Borrower shall rank equally and they shall be entitled to share, on a pro rata dollar for dollar basis, in the assets of the Borrower, in the event of the repayment of all or a portion of their respective security interests registered against the Borrower.

ARTICLE 4 – ENFORCEMENT

- 4.01** If either Mortgagee makes a demand or accelerates the time for payment of any indebtedness of the Borrower or gives notice to the Borrower of its intention to enforce security or commences proceedings in court or otherwise for the enforcement of any security or collection of any indebtedness of the Borrower, such Mortgagee, shall give the other Mortgagee seven (7) days' notice of such intention, and shall from time to time, promptly provide the other Mortgagee, at its request, full information concerning the status of any action it has taken or is contemplating taking against the Borrower or any of its assets.
- 4.02** Any payments or distributions received by any Mortgagee contrary to the provisions hereof shall be received in trust for the benefit of the other Mortgagee and shall be paid to the Mortgagee or party so entitled.

- 4.03** Neither Mortgagee or the Borrower shall challenge or contest the validity, priority or enforceability of the security held by the other Mortgagee as set out herein. Neither Mortgagee shall take any steps or do or cause any act or thing to be done whereby the respective priorities of the Original 2nd Mortgagee nor the New 2nd Mortgagee as defined herein may be defeated or impaired. Neither Mortgagee shall claim or prove in the bankruptcy or insolvency of the Borrower in competition with the other Mortgagee or in a manner inconsistent with this Agreement.

ARTICLE 5 - GENERAL

- 5.01** From time to time upon request therefor the Original 2nd Mortgagee and the New 2nd Mortgagee may advise each other of the particulars of the indebtedness and liability of the Borrower and any other information about the Borrower to each other and all security held by each therefor and the Borrower hereby expressly consents to the sharing of information about the Borrower among the Original 2nd Mortgagee and the New 2nd Mortgagee.
- 5.02** Each of the Original 2nd Mortgagee, New 2nd Mortgagee and the Borrower shall do, perform, execute and deliver all acts, deeds and documents as may be necessary from time to time to give full force and effect to the intent of this Agreement; provided, however, that no consent of the Borrower shall be necessary to any amendment of the terms hereof by the Original 2nd Mortgagee or the New 2nd Mortgagee unless the interests of the Borrower are directly affected thereby.
- 5.03** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof.
- 5.04** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall supercede and replace any other priority or similar agreement executed by the parties with respect to the matters contained herein; provided that a Mortgagee assigning or transferring any of the indebtedness of the Borrower or any security held in connection therewith shall first deliver to the other Mortgagee a written agreement by the proposed assignee or transferee in favour of the other Mortgagee acknowledging such proposed assignee or transferee to be bound by the provisions hereof to the same extent as the assignor or transferor.
- 5.05** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 5.06** Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by: (i) personal delivery; or (ii) by transmittal by facsimile, or other electronic means of communication, other than e-mail, (with a copy to follow by regular mail), addressed to the respective parties as follows:

To the Borrower(s):

Lamb Calgary Inc.
778 King Street West
Toronto, Ontario, M5V 1N6

To the Original 2nd Mortgagee:

Building & Development Mortgages Canada Inc.
1-A, 25 Brodie Drive
Richmond Hill, Ontario, L4B 3K7
Olympia Trust Company
2200, 125 9 Avenue SE
Calgary, Alberta, T2G 0P6


To the New 2nd Mortgagee:

Building & Development Mortgages Canada Inc.
1-A, 25 Brodie Drive
Richmond Hill, Ontario, L4B 3K7

or to such other address or facsimile number or telecopy number as any party may from time to time notify the others in accordance with this Section 5.06. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof or, if made or given by facsimile or electronic means of communication, on the first business day following the transmittal thereof.


IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hands of their duly authorized officers.

**BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.**


Per: 
General Manager New 2nd mortgagee
Charene Burnett

OLYMPIA TRUST COMPANY


Per: 
Cora Dumais
Team Lead

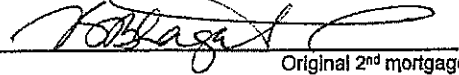
Per: 
New 2nd mortgagee

**BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.**

Per: 
General Manager Original 2nd mortgagee
Charene Burnett

OLYMPIA TRUST COMPANY

Per: 
Cora Dumais
Team Lead

Per: 
Original 2nd mortgagee

Vibha Bhagat
Supervisor

LAMB CALGARY INC.

Per: _____
Borrower

SCHEDULE A**Original 2nd Mortgage Security:**

Fourteen Million Six Hundred Thousand Dollar (\$14,600,000.00) Charge/Mortgage registered on May 9, 2014 in the South Alberta Land Titles Office as instrument number: 141 112 373, as amended. Registered charge/mortgage attached hereto.

SCHEDULE B**New 2nd Mortgage Security:**

Three Million Seven Hundred Thousand Dollar (\$3,700,000.00) Copy of charge/mortgage attached hereto.

SCHEDULE C
DESCRIPTION OF PROPERTY

MUNICIPAL ADDRESS:

602, 606, 610, 620, 624 – 628 12th Avenue SE, Calgary, Alberta

LEGAL DESCRIPTION:

PLAN C
BLOCK 76
THE WESTERLY 10 FEET THROUGHOUT OF LOT 30 AND THE WHOLE OF LOT 31

PLAN "C"
BLOCK 76
LOTS 32 TO 38 INCLUSIVE
EXCEPTING THEREOUT ALL MINES AND MINERALS
OUT OF LOTS 35 AND 36

PLAN C
BLOCK 76
THE WESTERLY 21 FEET THROUGHOUT LOT 29 AND THAT PORTION OF LOT 30 WHICH
LIES TO THE EAST OF THE WESTERLY 10 FEET THROUGHOUT SAID LOT 30

PLAN C
BLOCK 76
THE WESTERLY 6.5 FEET OF LOT 27, THE WHOLE OF LOT 28 AND THAT PORTION
OF LOT 29 LYING TO THE EAST OF THE WESTERLY 21 FEET OF SAID LOT 29

DESCRIPTIVE PLAN 1412005
BLOCK 76
LOT 45
EXCEPTING THEREOUT ALL MINES AND MINERALS

ALL MINES AND MINERALS WITHIN, UPON OR UNDER:
PLAN C
BLOCK 76
LOTS 43 AND 44

ALL MINES AND MINERALS WITHIN, UPON OR UNDER:
PLAN C
BLOCK 76
LOTS 39 AND 40

ALL MINES AND MINERALS WITHIN, UPON OR UNDER:
PLAN C
BLOCK 76
LOTS 41 AND 42

Appendix 5:
Investor Notice dated January 29, 2020



January 29, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to Lamb Calgary Inc. (“Borrower”) pursuant to the loan agreements dated January 23, 2014 and April 16, 2016 in respect of property located at 602, 606, 610, 620, 624-628, 12th Avenue SE, Calgary, AB (“Orchard Project” or “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. (“**Trustee**”) was appointed as trustee over Building & Development Mortgages Canada Inc. under a court order issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* as amended, and section 101 of the *Courts of Justice Act*, as amended.

We are writing to you in our capacity as Trustee regarding the Orchard Project.

The Orchard Project is an approved high-density development in downtown Calgary with over \$14.2 million and \$1.6 million of syndicated mortgage loan debt (collectively the “**Orchard SMLs**”). Based on a review of the registrations on title, the Orchard SMLs appear to be subordinate to a first ranking mortgage on title in the amount of approximately \$2.3 million in favour of Lanyard Investments Inc. and a second ranking mortgage on title in favour of a party related to the Borrower in the amount of approximately \$2 million (collectively the “**Priority Debt**”). The Property is currently being used as a surface parking lot.

The Trustee has been advised that the Borrower is seeking to sell the Property and has retained CBRE Limited to list the Property. The Property is listed with no list price and an offer deadline of March 18, 2020. The Trustee will determine next steps, if any, should any offers be received by the Borrower.

Should a sale take place and should the proceeds from the sale of the Property be insufficient to repay the Priority Debt on the Orchard Project, there is risk that you may not recover the sums that you advanced to the Borrower.

The Trustee will keep you informed of the developments related to these matters.

Should you have any further questions at this time, our contact information is shown below (if you are contacting us by email, please use the subject line **Orchard Project**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 6:
Investor Notice dated September 15, 2020



September 15, 2020

Dear Lender:

Re: Syndicated Mortgage Loans made to Lamb Calgary Inc. (“Borrower”) pursuant to the loan agreements dated January 23, 2014 (“Original Loan”) and April 16, 2016 (“Hybrid Loan”) in respect of property located at 602, 606, 610, 620, 624, 626 and 628, 12th Avenue SE, Calgary, AB (“Orchard Project” or “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) issued under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended. By order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel 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 Orchard Project and further to our notice dated January 29, 2020. Since that time, the Trustee has continued to engage with the Borrower regarding the status of the Orchard Project.

The purpose of this notice is to advise that the Trustee intends to attend at Court for an Order (“**Orchard Approval Order**”) that, among other things: (i) confirms and approves the Trustee discharging the mortgages registered on title to the Property securing both the Original Loan and the Hybrid Loan (“**Orchard Mortgages**”) in connection with the proposed sale of the Property (“**Sale Transaction**”) to a third-party purchaser, Trico Developments (1990) Ltd., upon receipt by the Trustee of the portion of the purchase price set out in the agreement of purchase and sale (“**APS**”) that is in excess of the amounts owed under the mortgages registered on title in priority to the Orchard Mortgages and reasonable and documented costs properly incurred to effect the closing of the Sale Transaction (the “**BDMC Discharge Payment**”); (ii) authorizes the Trustee to make a *pari-passu* distribution of the BDMC Discharge Payment to the syndicated mortgage lenders who advanced funds to the Orchard Project pursuant to the Original Loan and the Hybrid Loan (jointly, the “**Orchard SMLs**”); and (iii) approves the Nineteenth Report (as defined below) and the activities of the Trustee described therein.



The Orchard approval motion is scheduled to be heard via a virtual hearing on **September 22, 2020 at 12:00pm** (“**Orchard Approval Motion**”). To the extent that you would like further information on the Orchard Approval Motion please contact the Trustee directly at the contact number provided below.

The Trustee’s motion materials filed in support of the Trustee’s request for the Orchard Approval Order, including its nineteenth report to Court (“**Nineteenth Report**”), are available on the Trustee’s website: <http://faanmortgageadmin.com>. The Nineteenth Report describes the following matters:

- (a) an overview of the Orchard Project and the underlying syndicated mortgage loans pursuant to which the Orchard SMLs loaned money to the Borrower in respect of the Orchard Project;
- (b) details of the Sale Transaction including the marketing process conducted by CBRE Limited, the listing agent for the Property;
- (c) information relevant to the Trustee’s recommendation to discharge the Orchard Mortgages in connection with the Sale Transaction upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the BDMC Discharge Payment and to take any other steps necessary to facilitate the closing of the Sale Transaction, in its sole discretion;
- (d) a confidential appendix that provides, among other things, the financial details of the Sale Transaction and the estimated proceeds available for the BDMC Discharge Payment; and
- (e) Information that supports the Trustee’s recommendation that the BDMC Discharge Payment be distributed on a *pari-passu* basis to all Orchard SMLs, net of the Court approved administrative holdback (15%) (“**Administrative Holdback**”).

The Nineteenth Report, without appendices, is attached hereto as Appendix “A”.

Next Steps

Given the commercially sensitive nature of the Sale Transaction and other considerations, it is the view of both the Trustee and Representative Counsel that additional information (including the purchase price for the Property) should not be made public at this time. Given that the information currently being provided to the Orchard SMLs is limited, the Trustee will not be seeking their feedback regarding the Sale Transaction prior to attending Court.



Instead, the Trustee has provided Representative Counsel with all relevant financial and other information in its possession with respect to the Sale Transaction including, among other things, the unredacted APS for its review and consideration.

The Trustee and Representative Counsel are of the view that, while the Sale Transaction only provides a modest recovery for the Orchard SMLs, it offers the greatest opportunity for some recovery in the challenging circumstances facing the Orchard Project as further detailed in the Nineteenth Report, and accordingly it is appropriate to consent to discharging the Orchard Mortgages registered on title to the Property as part of the Sale Transaction.

At this time, you should review this notice and the associated Court materials carefully including the Nineteenth Report attached hereto, and, if desired, arrange to obtain independent legal advice regarding these matters. You can also consult Representative Counsel whose contact information is provided below.

Should the Orchard Approval Motion be successful, the Trustee intends to distribute the BDMC Discharge Payment, net of the Administrative Holdback, on a *pari-passu* basis to the Orchard SMLs as soon as practicable following Court approval.

Should you have any questions of the Trustee, our contact information is shown below (if you contact us, please reference **Orchard Project**).

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Orchard 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 7:

Orchard Agreement of Purchase and Sale (redacted for certain financial information)

OFFER TO PURCHASE AND INTERIM AGREEMENT
(hereinafter referred to as the "Offer")

FROM: Trico Developments (1990) Ltd.
1005 -- 11 Avenue SW
Calgary, AB T2R 0G1
Attention: Wayne Chiu
(hereinafter referred to as the "Purchaser")

TO: Lamb Calgary Inc.
778 King Street West
Toronto, ON M5V 1N6
Attention: Brad Lamb
(hereinafter referred to as the "Vendor")

THROUGH: Advent Commercial Real Estate Corp. o/a NAI Advent
3633 8 Street SE
Calgary, Alberta T2G 3A5
Attention:
(hereinafter referred to as the "Brokerage")

Subject to the terms and conditions herein, the Purchaser hereby offers to purchase the property legally, municipally and otherwise described as Schedule "A" attached (hereinafter referred to as the "Lands").

1. PURCHASE PRICE

The purchase price (hereinafter referred to as the "Purchase Price") paid by the Purchaser to the Vendor shall be the sum of [REDACTED] in lawful money of Canada to be paid in the following manner:

[REDACTED] deposit (hereinafter referred to as the "First Deposit") by way of cheque payable to Advent Commercial Real Estate Corp. o/a NAI Advent, in trust, within THREE (3) BANKING DAYS of conditional acceptance hereof, to be deposited in an interest bearing trust account with interest to accrue to the benefit of the Purchaser.

[REDACTED] further deposit (hereinafter referred to as the "Second Deposit") by way of cheque payable to Advent Commercial Real Estate Corp. o/a NAI Advent, in trust, within THREE (3) BANKING DAYS after satisfaction of the conditions specified in Paragraph 2 herein, to be deposited in an interest bearing

Purchaser	Vendor
	

trust account with interest to accrue to the benefit of the Purchaser.



(more or less) subject to adjustments shall be paid by cash or certified cheque on the date of closing.

2. CONDITIONS PRECEDENT

The obligations of the Purchaser and Vendor to complete this transaction shall be subject to the following conditions being satisfied, which if not met within the indicated time period will render this Offer null and void and entitle the Purchaser to the return of all deposit monies and accrued interest.

- a) The Purchaser shall have thirty (30) DAYS, from the receipt of documentation specified in Paragraph 7 herein, to examine and approve the zoning, records, titles, contracts, permitted encumbrances, soil reports, environmental, engineering and other aspects pertaining to the Lands. The Purchaser shall notify the Vendor in writing within the thirty (30) DAY period if it approves the results of these examinations.

3. CLOSING DATE

The date of closing of this transaction shall be 1:00 p.m. on the 60th day of following waiver of all conditions, or as otherwise agreed upon by both the Vendor and Purchaser in writing (hereinafter referred to as the "Date of Closing"). Possession of the Lands shall be given to the Purchaser on the Date of Closing.

4. INCLUSIONS IN PURCHASE PRICE

The Purchase Price includes all installations, architectural plans, architectural models, engineering and environmental studies, development plans, etc., leases, privileges, signs, trade names, and appurtenances belonging to the Lands and owned by the Vendor and used in the operation or ownership thereof.

5. ADJUSTMENTS

Adjustments shall be made as of the Date of Closing with respect to all items of revenue and expense including but not limited to rents, taxes, utilities, principal, interest and other payments on any mortgage and other similar items.

No adjustment shall be made in respect of any claim of the Vendor for any arrears, but the Purchaser shall provide to the Vendor any amounts received by it on

Purchaser	Vendor

account of such arrears. The Date of Closing shall be for the Purchaser's account both as to revenue and expense.

6. REPRESENTATIONS AND WARRANTIES

The following representations and warranties of this Offer shall not be discharged by or merged in the Date of Closing of this transaction, but shall survive the same and continue thereafter as warranties and representations between the Vendor and the Purchaser.

The Vendor warrants and represents that as of the date hereof:

- a) that the Vendor is duly incorporated and validly subsisting and has the corporate power to own and to sell the Lands and to enter into this agreement and to complete the transaction contemplated herein;
- b) that the Vendor has received no notice that the Lands and its present use do not fully comply with all applicable laws, by-laws, regulations, codes, standards and agreements (including laws, bylaws, regulations, codes, standards and agreements relating to the environmental condition of the Lands) enacted or administered by, or entered into with, any governmental or other authority having jurisdiction, or has no knowledge of any such defect;
- c) that the Vendor is not now (nor will be on the Date of Closing) a non-resident of Canada within the meaning of the Income Tax Act of Canada;
- d) that the Vendor is not the agent or trustee for anyone with an interest in the Lands who is (or will be on the Date of Closing) a non-resident of Canada within the meaning of the Income Tax Act of Canada;
- e) that the Vendor has received no notice from any authority or tenant advising of any repair or work which is necessary to the Lands or any part thereof;
- f) that the Vendor has not received any notice and is not aware of any expropriation or proposed expropriation of or similar proceedings affecting the Lands or any part hereof;
- g) that the Vendor has no knowledge and has received no notice of any pending or threatened litigation or proceedings relating to the Lands;
- h) that the Vendor has not received any notice and is not aware of any material or substantial facts or circumstances relating to the Lands or to zoning, or

Purchaser	Vendor
	


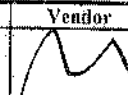
permitted use thereof, which have not been disclosed to the Purchaser and which might, if disclosed, be reasonably expected to affect the Purchaser's decision to proceed with the proposed purchase;

- i) that all municipal, school and other taxes and assessments, general and special affecting the Lands shall have been fully paid to the appropriate taxing authorities up to and including the Date of Closing;
- j) that all public utility charges, all insurance premiums and all other costs and expenses relating to the Lands shall have been fully paid to the persons properly entitled thereto, up to and including the Date of Closing;
- k) that the operation of the Lands is not subject to any written service, operating, management, employment or other contract except the contracts to be delivered to the Purchaser under paragraph 7;
- l) that no person will have as of the Date of Closing of sale, any right of first refusal, option or other right to purchase the Lands, now or in the future;
- m) that no leases for the Lands shall be amended or varied and no new lease shall be granted prior to the Date of Closing without the Purchaser's prior written approval, which approval shall not be unreasonably withheld; and
- n) the Vendor has full and absolute right and power to transfer to the Purchaser good and marketable title to the Lands, free and clear of any lien, claim, charge, encumbrance or interest, other than the Permitted Encumbrances listed on Schedule "B".
- o) to the best of the Vendor's knowledge, there is not any hazardous or toxic material, substance, contaminate or waste released into the environment or deposited or discharged or disposed of on or near the Property

7. DELIVERY OF DOCUMENTS

The Vendor covenants, within THREE (3) BUSINESS DAYS of the acceptance of this Offer, to deliver to the Purchaser the following:

- a) true and complete copies of any contracts (including leases) affecting the Lands;
- b) financial statements showing the revenue and expenses of the Lands for the last completed fiscal year of the Vendor;

Purchaser	Vendor
	

- c) monthly statements showing the revenue and expenses of the Lands for such month following the most recent statement referred to in subparagraph b) until the month prior to acceptance of this Offer;
- d) a plan of survey or surveyor's certificate of the Lands made or updated by a qualified land surveyor within the last three years, if available;
- e) copies of any environmental audits or reports, engineering studies, soil reports, property appraisals and maintenance reports in possession or control of the Vendor for the Lands; and
- f) all development plans, architectural renderings, development permits, architectural models and other material in possession or control of the Vendor for development of the Lands.

8. COVENANTS

The Vendor covenants and agrees with the Purchaser to do nothing to encumber the Lands after the execution of this Offer and while the same is in effect, and upon the Date of Closing of this transaction, the Vendor will deliver to the Purchaser a registrable transfer of title, subject only to the permitted encumbrances listed on Schedule "B" attached hereto. Such transfer shall be prepared at the expense of the Vendor.

In connection with the inspection of the Lands and the investigations which the Purchaser may determine to undertake, the Vendor agrees to permit and to obtain the permission of any occupant or manager of the Lands to allow the Purchaser and its servants, agents and consultants to enter upon the Lands for such purpose and to render such assistance as may be necessary, including letters of authorization to obtain information relating thereto.

In order to fully apprise the Purchaser of the status of the Lands, the Vendor hereby authorizes and directs all municipal, provincial, federal and other authorities having jurisdiction over the Lands, to conduct such inspections and provide the Purchaser with such information, certificates, clearances and statements relating thereto, as the Purchaser may in writing request, all at the Purchaser's own expense. The Vendor agrees to execute specific authorizations in pursuance of this paragraph within TWO (2) BUSINESS DAYS of request by the Purchaser.

Purchaser	Vendor
	

9. CLOSING DOCUMENTATION

FIVE (5) BUSINESS DAYS prior to the Date of Closing, the Vendor shall deliver to the Purchaser's solicitor, in trust:

- a) a duly executed registrable Transfer of Land conveying the Lands to the Purchaser free and clear of all liens, charges, encumbrances whatsoever save and except those permitted herein;
- b) duplicate certificates of title to the Lands;
- c) a Vendor's Statement of Adjustment approved by the Vendor;
- d) originals of all documents as delivered in Paragraph 7 and an assignment of the same to the extent that the Purchaser desires to assume the same;
- e) an assignment of all permits and licences that have been issued to the Vendor that are necessary to operate the Lands;
- f) the Vendor's undertaking to re-adjust on the Statement of Adjustments, if necessary, after the Date of Closing; and
- g) such other documents as the Purchaser or his solicitors may reasonably require to give effect to the intent of this Offer.

The aforesaid shall be delivered to the Purchaser's solicitor upon reasonable and usual trust conditions which permit the use of the transfer documentation upon the Vendor's solicitor's receipt of the difference between the balance due on the Date of Closing and the estimated new mortgage proceeds, if applicable.

10. RISK

Until the Date of Closing, the Lands shall be and remain at the risk of the Vendor. In the event of damage prior to completion of the transaction which is reasonably likely to cost more than FIFTY THOUSAND DOLLARS (\$50,000.00) to repair, the Purchaser shall have the right to elect to take the proceeds of any insurance and complete the purchase, or to terminate the Offer, whereupon it shall be entitled to the return of any deposit monies with any interest earned thereon. In the event of lesser damage, the Vendor shall repair such damage prior to the Date of Closing or shall allow the Purchaser an abatement in the Purchase Price equal to the reasonable cost of such repair. In the event of any expropriation of all or part of the Lands, or if the Vendor or Purchaser shall have any knowledge of any actual or contemplated expropriation, the Purchaser shall have the right to elect to take the proceeds of any such expropriation and complete the purchase, or to terminate

Purchaser	Vendor
	

the Offer, whereupon it shall be entitled to the return of any deposit monies with any interest earned thereon without deduction or setoff.

11. NOTICES

Any notices required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by delivery to the Purchaser at the following address:

Trico Developments (1990) Ltd.
1005 – 11 Avenue SW
Calgary, AB T2R 0G1
Attention: Wayne Chiu

and to the Vendor at the following address:

Lamb Calgary Inc.
778 King Street West
Toronto, ON M5V 1N6

Attention: Brad Lamb

Notice shall be deemed to be given upon actual delivery.

12. ASSIGNMENT

The Purchaser shall have the right to assign its interest in this Offer provided however that the Purchaser shall remain liable for the Purchaser's covenants and obligations herein until the Date of Closing. Such assignee then shall inherit all of the Purchaser's rights and obligations under this Offer. This Offer shall extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

13. FACSIMILE TRANSMISSION

This Offer or a counterpart hereof may be executed and transmitted by fax, with transmission confirmed as complete, and if so, executed and transmitted, this Offer shall be for all purposes as effective and binding upon such party as if such party had delivered an originally executed document.

Purchaser	Vendor
	

14. COMMISSION

It is mutually agreed and understood between the Purchaser and the Vendor that, upon the completion of this purchase and sale transaction there will be a commission of FOUR PERCENT (4%) of the Purchase Price (hereinafter referred to as the "Commission") payable to Advent Commercial Real Estate Corp., which shall be paid by the Vendor. The Vendor hereby authorizes Advent Commercial Real Estate Corp. o/a NAI Advent to deduct the amount of this Commission from any deposit monies paid by the Purchaser prior to remitting the balance to it as part of the sales settlement at the Date of Closing. In the event the deposit monies do not cover Brokerage's Commission, the balance of the Commission due will be payable to Advent Commercial Real Estate Corp. o/a NAI Advent by the Vendor out of the sale proceeds.

15. AGENCY DISCLOSURE


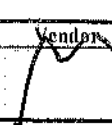
The Brokerage hereby discloses to the Vendor and the Purchaser that the Brokerage's licensed associates are acting as facilitators by providing services to both parties in order to complete the transaction that do not require the exercise of discretion or judgement or the giving of confidential advice or advocating on behalf of either to Purchaser or the Vendor. The parties further agree that the licensed associate will disclose to both parties all facts known to the licensed associate that materially affect or may materially affect the marketability or market value of the Lands.

OR

The Brokerage hereby discloses that it is acting as a sole agent for the Purchaser in this transaction. The Vendor and Purchaser hereby acknowledge this disclosure.

OR

The Brokerage hereby discloses that it is acting as a sole agent for the Landlord in this transaction. The Vendor and Purchaser hereby acknowledge this disclosure.

Purchaser	Vendor
	

16. TIME

Specific times shall be in accordance with the system of standard or daylight saving time in effect where the Lands are located. If the date for making of any payment hereunder or the date for doing any act shall be a Saturday, Sunday or holiday in the City of Calgary, such date shall be extended to the first business day next following such date. "Business Day" means a day other than a Saturday, Sunday, statutory or municipal holiday in the City of Calgary.

Time shall be of the essence in this Offer.

17. DEFAULT BY PURCHASER

If the Purchaser fails to fulfill its obligations in respect of the Date of Closing after the conditions precedent have been fully satisfied as hereinbefore set out, through no fault of the Brokerage, then the First Deposit and Second Deposit shall be forfeited by the Purchaser to the Vendor as a genuine pre-estimate by the Vendor and Purchaser of the liquidated damages thereby suffered by the Vendor. If the Purchaser fails to fulfill its obligations in respect of the delivery of the Second Deposit after the conditions precedent have been fully satisfied as hereinbefore set out, through no fault of the Brokerage, then the First Deposit shall be forfeited by the Purchaser to the Vendor as a genuine pre-estimate by the Vendor and Purchaser of the liquidated damages thereby suffered by the Vendor. In either instance this Offer shall be rendered null and void and the Vendor will have no further claim against the Purchaser. It is understood that the forfeiture of the First and/or Second Deposits will be split evenly between the Vendor and the Brokerage.

18. FINTRAC REQUIREMENTS

As part of the closing procedures the Purchaser hereby agrees to provide all such documentation and information, including identification to its council in order to ensure compliance with the federal legislation of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

19. GOODS & SERVICES TAX

It is understood that any Goods and Services Taxes (GST) payable on the Purchase Price of the Lands shall be paid by the Purchaser and collectable by the Vendor and are separate and in addition to the Purchase Price. The Purchaser intends to be a registrant for GST purposes on or before the Date of Closing. It is

Purchaser	Vendor
	

understood by the parties hereto that if the Purchaser is a registrant for GST purposes at the Date of Closing, then the Purchaser may deliver to the Vendor a statutory declaration stating the Purchaser's GST registration number and confirming the Purchaser's registration in lieu of making the aforesaid payment of GST.

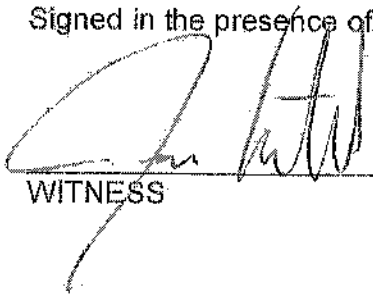
20. IRREVOCABLE DATE

This Offer shall be open for acceptance by the Vendor and irrevocable by the Purchaser until 5:00 p.m. on the 5th day of June 2020.

DATED AT the City of Calgary, in the Province of Alberta, this 5th day of June 2020.

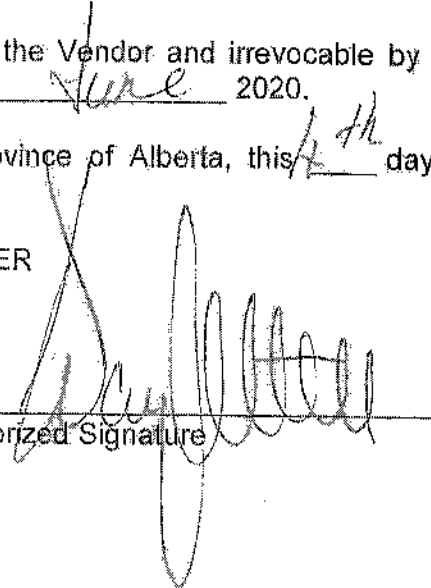
Signed in the presence of:


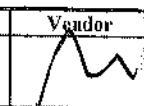
PURCHASER


WITNESS

PER:

Authorized Signature



Purchaser	Vendor
	

ACCEPTANCE

We, the undersigned Vendor of the Lands, hereby accept the above Offer and agree to complete the sale on the terms and conditions in the Offer and should we fail to do so, the Purchaser may, at its option, cancel the Offer and withdraw any deposit monies or take whatever remedies the Purchaser may have at law, including specific performance, among others.

Any deposit monies shall always apply firstly to pay the Commission and we authorize Advent Commercial Real Estate Corp. o/a NAI Advent to deduct from any deposit monies the Commission payable.

We hereby irrevocably assign out of the proceeds of the sale any unpaid balance of the Commission and we direct our solicitor to pay the same to Advent Commercial Real Estate Corp. o/a NAI Advent upon the completion of the sale. WE HEREBY NOTIFY BOTH THE PURCHASER AND OUR SOLICITOR OF THIS ASSIGNMENT.

DATED AT the City of Toronto, in the Province of Ontario, this 4 day of June 2020.

Signed in the presence of:

VENDOR

[Signature]
WITNESS

PER:

[Signature]
Authorized Signature

DATE OF ACCEPTANCE

This Offer was made (finalized) on June 4, 2020 (the "Date of Acceptance").

Initials of the person(s) who signed last. [Signature]

Purchaser	Vendor
<u>[Signature]</u>	<u>[Signature]</u>

SCHEDULE "A"

The "Lands"Municipal Address614 12th Avenue SE Calgary, AlbertaLegal Description


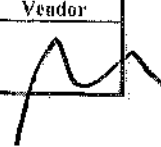
Descriptive Plan 1710817

Block 76

Lot 46

Excepting Thereout All Mines And Minerals

Area: 0.561 Hectares (1.39 Acres) More Or Less

Purchaser	Vendor
	

SCHEDULE "B"

Permitted Encumbrances

Registration #

Date

Nature of Instrument

NONE

Purchaser	Vendor
	

**Confidential Appendix 1:
Orchard Agreement of Purchase and Sale (unredacted) and Estimated Recovery for the
Orchard Individual Lenders**

**[This Confidential Appendix 1 is redacted in its entirety and
subject to a request for a sealing Order]**

TAB C

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	TUESDAY, THE 22 ND
)	
JUSTICE HAINEY)	DAY OF SEPTEMBER, 2020

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

**ORDER
(Orchard Discharge Approval)**

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

confirming and approving the Trustee discharging the mortgages registered as instrument numbers 141 112 373 and 161 293 854 with the Alberta Land Titles Office, together with any related instruments and personal property security registrations (collectively, the “**Orchard Discharges**”), in connection with the Orchard Sale Transaction (as defined in the Nineteenth Report (as defined below)) upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the BDMC Discharge Payment in accordance with the terms of this Order, and to take any other steps necessary to facilitate the closing of the Orchard Sale Transaction, in its sole discretion, (ii) authorizing the Trustee to make a distribution of an amount equal to 85% of the Orchard Realized Property (as defined below) to the Orchard Individual Lenders (as defined in the Nineteenth Report) *pari passu* to the Orchard Individual Lenders entitled to such funds, (iii) sealing Confidential Appendix “1” to the Nineteenth Report, and (iv) approving the Nineteenth Report and the activities of the Trustee set out therein, was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Nineteenth Report of the Trustee dated September 15, 2020 (the “**Nineteenth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Sean Stidwill sworn September 15, 2020, filed;

SERVICE AND INTERPRETATION

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

ORCHARD DISCHARGES

3. **THIS COURT ORDERS** that execution and delivery by the Trustee, on behalf of BDMC, and Olympia Trust Company of the Orchard Discharges to Lamb Calgary Inc. or its counsel in

connection with the Orchard Sale Transaction upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the BDMC Discharge Payment is hereby approved, and that the Trustee and Olympia Trust Company are authorized to take any other steps necessary to facilitate the closing of the Orchard Sale Transaction, in their sole discretion, and further confirms that the Trustee is permitted to take any of the foregoing actions or steps pursuant to the Order of this Court dated April 20, 2018.

4. **THIS COURT ORDERS** that Lamb Calgary Inc. shall make the BDMC Discharge Payment to the Trustee, on behalf of BDMC, concurrently with or, if concurrent payment is not possible, as soon as is practicable following the closing of the Orchard Sale Transaction.

ORCHARD REALIZED PROPERTY

5. **THIS COURT ORDERS** that upon receipt by the Trustee, on behalf of BDMC, of the BDMC Discharge Payment, such funds are and shall be deemed to be “Realized Property” as defined in the Order of this Court dated June 26, 2018 (the “**Orchard Realized Property**”).

6. **THIS COURT ORDERS** that, as soon as is practicable upon receipt of the Orchard Realized Property, the Trustee shall make a distribution to the Orchard Individual Lenders in an amount equal to 85% of the Orchard Realized Property, *pari passu* to the Orchard Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

SEALING

7. **THIS COURT ORDERS** that Confidential Appendix “1” of the Nineteenth Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

APPROVAL OF NINETEENTH REPORT AND ACTIVITIES

8. **THIS COURT ORDERS** that the Nineteenth Report and the Trustee's activities described therein are hereby approved.

AID AND RECOGNITION OF FOREIGN COURTS

9. **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.

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

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(Orchard Discharge Approval)

OSLER, HOSKIN & HARCOURT LLP

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in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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

**(ORCHARD
APPROVAL ORDER)**

OSLER, HOSKIN & HARCOURT LLP

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