

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**

(TAX OPINIONS ORDER MOTION)

October 7, 2020

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AND TO: THE SERVICE LIST IN THE SORRENTI PROCEEDING (CV-19-628258-00CL)

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

LAW SOCIETY OF ONTARIO

Applicant

- and -

**DEREK SORRENTI and
SORRENTI LAW PROFESSIONAL CORPORATION**

Respondents

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

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TAB 1

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**

**NOTICE OF MOTION
(Motion for Tax Opinions 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, and Chaitons LLP in its capacity as representative counsel (“**Representative Counsel**”) pursuant to the Order of this Court dated June 26, 2018 (the “**Representative Counsel Order**”), will jointly make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) on October 15, 2020 at 10:00 a.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 (“**Tax Opinions Order**”) substantially in the form attached to the Motion Record granting, among other things, the following relief:
 - (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) authorizing the Trustee to release the Tax Opinions (defined below) prepared by certain professional services firms (the “**Tax Opinion Providers**”), subject to the terms of the Tax Opinions Order, for use by an Investor (defined below) in consideration of such Investor’s legal rights, if any, in an ongoing or potential action or legal proceeding relating to a Real Estate Project (defined below) to which the Tax Opinion relates (the “**Permitted Use**”);
 - (c) approving a process through which counsel representing Investors (“**Counsel**”) or Representative Counsel on behalf of Investors not separately represented by Counsel may request copies of the Tax Opinions solely for a Permitted Use;
 - (d) imposing certain restrictions prohibiting the inappropriate use or dissemination of the Tax Opinions;
 - (e) providing certain reasonable and appropriate protections for the Tax Opinion Providers, Trustee, and Representative Counsel; and
 - (f) providing that the provisions of the Tax Opinions Order will apply, with any necessary modifications, in the proceeding bearing the title of proceedings *Law Society of Ontario v. Derek Sorrenti and Sorrenti Law Professional Corporation* (Court File No.: CV-19-628258-00CL) (the “**Sorrenti Proceeding**”).
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, 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. Pursuant to the Representative Counsel Order, Chaitons LLP was appointed as Representative Counsel for all Investors in respect of these proceedings regarding their common interests in the loans and other indebtedness administered by BDMC, except for any Investors that provide written notice that such Investor does not wish to be represented by Representative Counsel;
4. To date, the Trustee has filed twenty-one reports with the Court, which describe the Trustee’s activities in carrying out its mandate under the Appointment Order, including the Thirteenth Report dated November 22, 2019, which provided a comprehensive update on the Trustee’s activities and a status update for each project forming part of the Trustee’s mandate pursuant to the Appointment Order;

Background: Tax Opinions and Requests from Investors

5. After being appointed as Trustee and taking possession of BDMC’s books and records in accordance with the Appointment Order, the Trustee became aware that it was in possession of certain opinion letters (the “**Tax Opinions**”) prepared by the Tax Opinion Providers;

6. The Tax Opinions are addressed to one or more of BDMC, Olympia Trust Company and Computershare Trust Company of Canada, and address whether certain mortgages to be registered in connection with the development of various real estate projects (the “**Real Estate Projects**”) related to Fortress Real Developments Inc. or debt to be secured by such a mortgage were qualified investments for trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered disability savings plans and tax-free savings plans (the “**Plans**”) under the *Income Tax Act* and the *Income Tax Regulations*;

7. The Tax Opinions note that they are private and confidential and certain Tax Opinions state that they are intended for the addressed recipients only and should not be shared with any third parties without the prior written consent of the applicable Tax Opinion Provider;

8. The Trustee and Representative Counsel have collectively received over 130 requests from Investors, Counsel representing Investors, or other advisors to Investors for copies of Tax Opinions;

9. The Trustee understands that Investors are generally requesting copies of the Tax Opinions because they are seeking information about their investments in connection with the Real Estate Projects and, in light of forecast or realized losses on certain projects, to assess their legal options for recovery of same;

Discussions with Tax Opinion Providers

10. In June 2020, in order to address Investor requests for the Tax Opinions, and given that the Tax Opinions purported to contain restrictions on their release without the consent of the applicable Tax Opinion Provider, the Trustee wrote to the Tax Opinion Providers to advise of the requests that the Trustee and Representative Counsel had received to date and to seek the Tax Opinion Providers’ consent for releasing copies of the Tax Opinions;

11. Subsequently, the Trustee sent follow up communications to and had discussions with the Tax Opinion Providers, provided drafts of the Tax Opinions Order to the Tax Opinion Providers, and considered all comments it received in response;

12. It is the Trustee’s understanding that the Tax Opinion Providers do not oppose the Court granting the Tax Opinions Order in the form included in the Trustee’s motion record;

Terms of the Tax Opinions Order are Appropriate

13. The Tax Opinions Order authorizes the Trustee to produce copies of Tax Opinions for a Permitted Use subject to certain conditions and sets out, among other things,

(a) a clear process and preconditions for Counsel or Investors unrepresented by Counsel other than Representative Counsel to obtain copies of Tax Opinions;

(b) provisions prohibiting the inappropriate use or dissemination of the Tax Opinions;

(c) certain protections for Tax Opinion Providers; and

(d) protections for Representative Counsel and the Trustee in the discharge of their duties and responsibilities under the proposed Tax Opinions Order as Officers of the Court;

14. The Tax Opinions Order has been developed through consultation between the Trustee, Representative Counsel and the Tax Opinions Providers, and fairly balances the ability of the Investors to obtain information about their investments in their Plans with the issues raised by the Tax Opinion Providers;

15. It is more efficient to have the Tax Opinions Order apply to the Sorrenti Proceeding instead of the Trustee bringing a separate motion for the same relief in the Sorrenti Proceeding;

General

16. The provisions of the MBLAA, including section 37 thereof;

17. The Appointment Order;

18. The Representative Counsel Order;

19. 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;

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

21. The inherent and equitable jurisdiction of this Honourable Court; and
22. 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 Twenty-Second Report of the Trustee and the appendices thereto; and
2. Such further and other evidence as counsel may advise and this Court may permit.

October 7, 2020

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

TO: SERVICE LIST

**AND TO: THE SERVICE LIST IN THE SORRENTI PROCEEDING
(CV-19-628258-00CL)**

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 Tax Opinions Order)**

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

TAB 2

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

TWENTY-SECOND REPORT OF THE TRUSTEE

OCTOBER 7, 2020



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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

TWENTY-SECOND REPORT OF THE TRUSTEE

October 7, 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. (“**FAAN**”) 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 June 26, 2018, pursuant to an order (the “**Representative Counsel Order**”) of the Court, Chaitons LLP was appointed as counsel (in such capacity, “**Representative Counsel**”) for all Investors in respect of these proceedings regarding their common interests in the loans and other indebtedness administered by BDMC, except for any Investors that provide written notice that such Investor does not wish to be represented by Representative Counsel. A copy of the Representative Counsel Order is attached as **Appendix “2”**.
3. The Trustee has, in total, delivered twenty-one reports to the 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. The Trustee indicated in its previous Reports that it continues to carry out its mandate to protect and assist the Investors.
4. Capitalized terms used but not otherwise defined in this report (“**Twenty-Second 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 TWENTY-SECOND REPORT

5. The purpose of this Twenty-Second Report is to provide the Court and stakeholders with information to support the Trustee’s recommendation with respect to the joint motion brought by the Trustee and Representative Counsel for an Order (the “**Tax Opinions Order**”) authorizing the Trustee to disseminate copies of the Tax Opinions (defined below), in accordance with the procedure set out in the proposed Tax Opinions Order, to permit Investors to consider their legal rights, if any, in an ongoing or potential action or legal proceeding relating to a Real Estate Project (defined below) to which the Tax Opinion relates (the “**Permitted Use**”).

6. As discussed in greater detail below, as a result of the Trustee taking possession of the books and records of BDMC as part of its Court-ordered mandate, the Trustee is in possession of copies of certain opinion letters (the “**Tax Opinions**”) prepared by professional services firms (the “**Tax Opinion Providers**”). The Tax Opinions generally address whether certain syndicated mortgage loans and related charges to be registered on title in connection with the development of various real estate projects (the “**Real Estate Projects**”) related to Fortress Real Developments Inc. (“**Fortress**”) were qualified investments for trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered disability savings plans and tax-free savings plans (the “**Plans**”) under the *Income Tax Act* and the *Income Tax Regulations*.
7. The Trustee and Representative Counsel have received over 130 requests from Investors, counsel representing Investors (“**Counsel**”), or other advisors to Investors for copies of Tax Opinions. The Trustee understands that Investors are generally requesting copies of the Tax Opinions because they are seeking information about their investments in connection with the Real Estate Projects and, in light of realized or forecasted losses on certain of the projects, to assess their legal options for recovery of same.
8. The Trustee, following consultations with Representative Counsel, Counsel representing certain Investors and the Tax Opinion Providers, concluded that it would be appropriate to provide copies of the Tax Opinions to Investors pursuant to a Court Order setting out clear criteria that any requestor must satisfy, prohibiting inappropriate use of or dissemination of the Tax Opinions, and providing certain reasonable and appropriate protections for the Trustee, Representative Counsel, and the Tax Opinion Providers.
9. In support of the Trustee’s request, this Twenty-Second Report describes the following matters:
 - (a) background information concerning the Tax Opinions, including a description of the Tax Opinions in the Trustee’s possession and the numerous Investor requests for copies of the Tax Opinions;
 - (b) communications by the Trustee with the Tax Opinion Providers in response to these requests;

- (c) an overview of the proposed Tax Opinions Order, including the recommended conditions and process for providing copies of the Tax Opinions; and
- (d) the applicability of the proposed Tax Opinions Order to the Sorrenti Proceeding (defined below).

SCOPE AND TERMS OF REFERENCE

10. In preparing this Twenty-Second Report, the Trustee has relied upon unaudited financial and other information provided by, among others, BDMC, Fortress, and Canadian Development Capital & Mortgage Services Inc. (“**CDCM**”). However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the Tax Opinions and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC and CDCM (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. This Twenty-Second Report has been prepared for the use of this Court and BDMC’s stakeholders as general information relating to BDMC and the Tax Opinions, and to assist the Court with respect to the Trustee’s request for the proposed Tax Opinions Order. Accordingly, the reader is cautioned that this Twenty-Second Report may not be appropriate for any other purpose.

BACKGROUND REGARDING THE TAX OPINIONS

12. After being appointed as Trustee and taking possession of BDMC’s books and records in accordance with the Appointment Order, the Trustee became aware that it was in possession of certain Tax Opinions prepared by Tax Opinion Providers.
13. As explained in detail in previous Reports, BDMC acted as a mortgage broker and administrator in connection with various Real Estate Projects related to Fortress and also as lender in trust for members of the investing public. In particular, BDMC made loans to

various borrowers affiliated with Fortress and other third-party borrowers through syndicated mortgage loan agreements where BDMC acted as lender to the borrower and administrator for the Investors. In order for an investment in a syndicated mortgage loan to be a qualified investment under a Plan, it must be held through an authorized trust company, such as Olympia Trust Company (“**Olympia**”) or Computershare Trust Company of Canada (“**Computershare**”). The Trustee understands that certain Investors held their investments in the syndicated mortgage loans through a trust company so their investment would be eligible for inclusion in their Plans.

14. The Tax Opinions address whether a mortgage to be registered in connection with a Real Estate Project or debt to be secured by such a mortgage would be a qualified investment for Plans under the *Income Tax Act* and the *Income Tax Regulations*. The Tax Opinions state that they are based on, among other things, certain assumed facts set out in the Tax Opinion. In certain cases, the Tax Opinions located by the Trustee in BDMC’s records include a certificate from BDMC confirming the facts that the Tax Opinion is based on. Based on these assumed facts and certain other assumptions, the Tax Opinions conclude that the debt and / or mortgage in issue is a qualified investment.
15. The Tax Opinions are addressed to one or more of BDMC, Olympia and Computershare, and were issued between 2011 and 2017 prior to the Trustee’s appointment.¹ All the Tax Opinions note that they are private and confidential. Furthermore, certain Tax Opinions state that they are intended for the addressed recipients only and should not be shared with any third parties without the prior written consent of the applicable Tax Opinion Provider.
16. Based on a review of BDMC’s records, the Trustee has identified 68 Tax Opinions issued in connection with 42 Real Estate Projects administered by BDMC and 11 Tax Opinions issued in connection with eight Real Estate Projects administered by Sorrenti (as defined and discussed further herein). Attached hereto as **Appendix “3”** is a list of the Tax Opinions that are in the Trustee’s possession.
17. In late 2019 and early 2020, the Trustee began to receive sporadic requests from Investors and a request from one Counsel for Tax Opinions. Since March 2020, the Trustee has

¹ Some of the Tax Opinions in the Trustee’s possession are addressed to either Olympia or Computershare but not to BDMC.

been receiving frequent requests from Investors that were sent in the form of a standardized letter (“**Formal Investor Request**”). Each Formal Investor Request, among other things, states that “*by way of this letter I/We as investors in the Fortress projects request that you provide us with any and all legal opinions that (the Trustee) have on file in relation to the Fortress Projects*”. The Formal Investor Requests are signed by the Investor or Investors submitting the request. A redacted sample of a Formal Investor Request is attached as **Appendix “4”**. To date, the Trustee has received over 90 Formal Investor Requests from Investors or their representatives. The Trustee’s counsel has also received requests for Tax Opinions from Counsel to, or representatives of, certain Investors.

18. In addition, the Trustee has been advised by Representative Counsel that it has received over 40 requests for Tax Opinions.
19. The Trustee notes that there are certain Real Estate Projects for which it was unable to locate a Tax Opinion in BDMC’s records. If the Trustee receives such additional Tax Opinions, subject to approval of this Court, the Trustee recommends that such additional Tax Opinions also be eligible to be provided to Investors or Counsel pursuant to the procedure set out in the Tax Opinions Order.

COMMUNICATION WITH TAX OPINION PROVIDERS

20. In June 2020, in order to address Investor requests for the Tax Opinions, and given that the Tax Opinions contained restrictions on their release without the consent of the applicable Tax Opinion Provider, the Trustee wrote to the Tax Opinion Providers to advise of the quantum of requests that the Trustee and Representative Counsel had received to date and to seek their consent for releasing copies of the Tax Opinions to the Investors or their representatives. Subsequently, the Trustee sent follow up communications to, and had discussions with, the Tax Opinion Providers concerning the request. It became apparent to the Trustee and Representative Counsel that, in light of the manner that the Tax Opinions came into the Trustee’s possession and the number of stakeholders that have a *bona fide* interest in the treatment of the Tax Opinions, the Trustee and Representative Counsel should seek an Order of the Court to deal with this issue on notice to all parties. Prior to serving this motion, the Trustee provided drafts of the proposed Tax Opinions Order to the Tax Opinion Providers and considered all comments it received in

response. The Trustee understands that the Tax Opinion Providers do not oppose the Court granting the Tax Opinions Order in the form included in the Trustee's motion record.

OVERVIEW OF PROPOSED TAX OPINIONS ORDER

21. The main elements of the proposed Tax Opinions Order are summarized below:

(a) **Trustee is authorized to produce Tax Opinions solely for a Permitted Use:**

Subject to the terms of the proposed Tax Opinions Order, the Trustee is authorized to produce copies of any Tax Opinion for a Permitted Use (*i.e.*, consideration of an Investor's legal rights, if any, in an ongoing or potential action or legal proceeding relating to a Real Estate Project to which the Tax Opinion relates).

(b) **Mechanisms for requesting and receiving Tax Opinions:** The proposed Tax Opinions Order provides two different mechanisms for an Investor to obtain a Tax Opinion, one for Investors represented by Counsel and the second for Investors that are not represented by Counsel other than Representative Counsel.

i. *Investors represented by Counsel:* Any Counsel seeking a copy of a Tax Opinion shall send a request in writing to the Trustee confirming that: (A) the Counsel represents one or more Investors that invested in a Real Estate Project to which the requested Tax Opinion relates; and (B) the Tax Opinion is being requested solely for a Permitted Use. At the Trustee's request, such Counsel will provide evidence satisfactory to the Trustee, in its sole discretion, confirming that the Counsel represents one or more Investors that invested in a Real Estate Project relating to the Tax Opinion being requested.

ii. *Investors not represented by Counsel other than Representative Counsel:* Any Investor not represented by Counsel shall request the assistance of Representative Counsel to seek a copy of a Tax Opinion. Representative Counsel may send a request on behalf of the Investor to the Trustee confirming that: (A) the Investor invested in a Real Estate Project to which the requested Tax Opinion relates; and (B) the Tax Opinion is being requested solely for a Permitted Use. At the request of Representative Counsel or the Trustee, the requesting Investor will provide evidence satisfactory to Representative Counsel or the Trustee,

as applicable, confirming that the Investor invested in a Real Estate Project relating to the Tax Opinion being requested.

- (c) **Restrictions on use and dissemination of Tax Opinions:** The Tax Opinions Order prohibits the dissemination of and imposes restrictions on the use of any Tax Opinion produced pursuant to the Order. First, any Counsel or Investor that receives a Tax Opinion or information related thereto shall not use the Tax Opinion or information for any purpose other than the Permitted Use set out in its original request. Second, the Tax Opinions shall be subject to the deemed undertaking as if the Tax Opinion was a document produced in the ongoing or potential action or legal proceeding for which the Investor or Counsel is permitted to use the Tax Opinion. Third, any Counsel or Investor that receives a Tax Opinion cannot share, disseminate, or publicize the Tax Opinion, any part of the Tax Opinion, or any information obtained from the Tax Opinion in any way, including on any electronic or social media or with any other Counsel or Investors, other than as may be required by law in connection with a Permitted Use. In the case of any Investor requesting a Tax Opinion through Representative Counsel, Representative Counsel will advise such Investor in writing that they may only use the Tax Opinion or information related thereto for the Permitted Use for which the Tax Opinion or information was requested and of the restrictions in the Tax Opinions Order. In addition, Representative Counsel will ask the Investor to provide an undertaking in writing (which undertaking may be provided in an email) confirming that the Investor has reviewed and understood the restrictions on their use of the Tax Opinions and will abide by those restrictions.
- (d) **Protections for Tax Opinion Providers:** The Tax Opinions Order includes certain protections for the Tax Opinion Providers, which the Trustee believes fairly and appropriately take into consideration their interest in this matter while still permitting the dissemination of the Tax Opinions in accordance with the procedures set out in the Order. First, the production of any Tax Opinion or information related thereto will not constitute a waiver of any privilege covering any analysis, communications, or other documents relating to the Tax Opinion, and the Tax Opinion Providers will not be deemed to be waiving any applicable confidentiality interests or privilege. Second, nothing in the Order shall be deemed

to be an acknowledgement by the Tax Opinion Providers or constitute a finding that: (i) any Investor has a legal right to production of any Tax Opinion; (ii) any Investor is in a relationship of proximity with any Tax Opinion Provider; (iii) any Investor is known to the Tax Opinion Providers; or (iv) any Investor is owed any duty of care by any Tax Opinion Provider. Third, the Trustee will advise the applicable Tax Opinion Provider, Olympia, and Computershare if it produces a Tax Opinion issued by or naming any of them, or information related thereto.

- (e) **Protections for Trustee:** The provisions of the Appointment Order, in particular paragraph 18, shall apply to the actions the Trustee takes in accordance with the Tax Opinions Order. In addition, the Trustee shall incur no liability or obligation as a result of producing one or more Tax Opinions or information related thereto, save and except for gross negligence or wilful misconduct on its part. Without limiting the foregoing, the Trustee: (i) shall not be and shall not be deemed to be making any representations or incurring any obligation in connection with the accuracy of the Tax Opinion or information; (ii) will not incur any liability as a result of any reliance placed on or use of a Tax Opinion (whether a Permitted Use or not) by any Investor or Counsel that receives a Tax Opinion or information related thereto from the Trustee or by any person who otherwise obtains a copy of the Tax Opinion or information, directly or indirectly, from a Counsel or Investor who received a Tax Opinion; and (iii) shall not incur any liability arising from any breach of any confidentiality obligations relating to the Tax Opinions or any restrictions on the use of the Tax Opinions.
- (f) **Protections for Representative Counsel:** The provisions of the Representative Counsel Order, in particular paragraph 10, shall apply to the actions that Representative Counsel takes in accordance with the Tax Opinions Order. In addition, the Order provides protections to Representative Counsel that are similar to the ones outlined above for the Trustee.

APPLICATION OF PROPOSED TAX OPINIONS ORDER TO SORRENTI PROCEEDING

22. The provisions of the proposed Tax Opinions Order will apply, with any necessary modifications, in the *Law Society of Ontario v. Derek Sorrenti and Sorrenti Law Professional Corporation* (Court File No.: CV-19-628258-00CL) proceeding (the “**Sorrenti Proceeding**”) where FAAN has been appointed trustee of all of the assets, undertakings

and properties in the possession, power or control of Derek Sorrenti or Sorrenti Law Professional Corporation (collectively, “**Sorrenti**”) relating to Sorrenti’s trusteeship and administration of syndicated mortgage loans in projects affiliated with Fortress and all of its direct or indirect affiliates and any entity under common control with Fortress. As noted above, the Trustee is currently aware of 11 Tax Opinions that relate to eight Real Estate Projects that are part of the Sorrenti Proceeding, and the Trustee believes it is more efficient to obtain one order that applies to both proceedings instead of bringing a separate motion for the same relief in the Sorrenti Proceeding. The Trustee will also be serving its motion for the Tax Opinions Order on the Service List in the Sorrenti Proceeding.

CONCLUSION AND RECOMMENDATION

23. For the reasons noted above, the Trustee and Representative Counsel are of the view that it is appropriate to disseminate the Tax Opinions solely in accordance with the provisions, conditions, and protections of the proposed Tax Opinions Order described herein. The Trustee and Representative Counsel are of the view that the proposed Tax Opinions Order fairly balances the ability of the Investors to obtain information about their investments in their Plans with the issues raised by the Tax Opinion Providers. Accordingly, the Trustee recommends that the proposed Tax Opinions Order be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of October, 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:

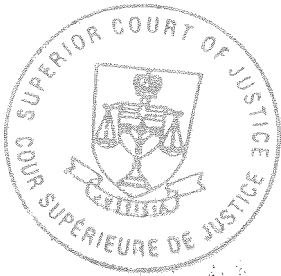
THE SUPERINTENDENT OF FINANCIAL SERVICES

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,

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

SERVICE

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

APPOINTMENT

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

TRUSTEE'S POWERS

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

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

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

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

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE TRUSTEE

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

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

CONTINUATION OF SERVICES

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

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE TRUSTEE’S LIABILITY

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

TRUSTEE’S ACCOUNTS

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

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

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

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

FUNDING OF THE APPOINTMENT

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

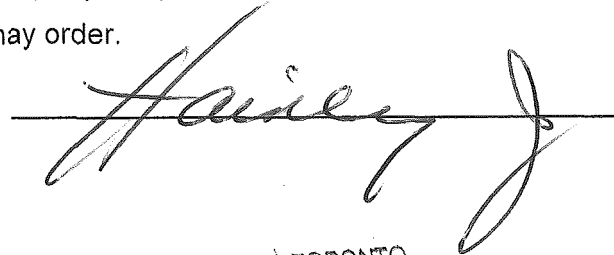
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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

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

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that FAAN Mortgage Administrators Inc., the Trustee (in such capacity, the "**Trustee**") of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), including, without limitation, all of the assets in possession or under the control of the Respondent, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage ("**Investors**"), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 20th day of April, 2018 (the "**Order**") made in an application having Court file number CV-18-596204-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$<*>, being part of the total principal sum of \$<*> which the Trustee is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the <*> day of each month] after the date hereof at a notional rate per annum equal to the rate of <*> per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

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Lawyers for The Superintendent of Financial Services

Appendix 2:
Representative Counsel Order dated June 26, 2018

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.

JUSTICE HAINES

BETWEEN:

) TUESDAY, THE 26th DAY
)
) OF JUNE, 2018

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 FOR THE APPROVAL OF INTERIM STABILIZATION MEASURES
AND APPOINTMENT OF REPRESENTATIVE COUNSEL**

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) appointing representative counsel to represent Investors in respect of these proceedings; and (ii) approving certain interim

stabilization measures in connection with the Respondent's estate, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the First Report of the Trustee dated June 19, 2018 (the "**First Report**"), and on hearing the submissions of counsel for the Trustee, counsel for The Superintendent of Financial Services, and Chaitons LLP, 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 David Williams sworn June 20, 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 April 20, 2018 (the "**Appointment Order**") or in the First Report.

REPRESENTATIVE COUNSEL

3. **THIS COURT ORDERS** that, subject to Paragraph 8 below, Chaitons LLP is hereby appointed as counsel ("**Representative Counsel**") for all Investors in respect of these proceedings (including, without limitation, all those persons who are Investors as a result of having investments held through registered retirement savings plans ("**RRSPs**") or other registered accounts or funds with RRSP Trustees (defined below)) regarding their common interests in the loans and other indebtedness administered by the Respondent, including the common interests of Investors in any particular loan or other indebtedness administered by the Respondent, unless and until written notice is provided by a particular Investor to Representative Counsel that such Investor does not wish to be represented by Representative Counsel. Notwithstanding the foregoing, Representative Counsel shall not represent Investors in respect of any syndicated mortgage loan made to Dunsire (Landsdown) Inc.

4. **THIS COURT ORDERS** that, in fulfilling its mandate under Paragraph 3, Representative Counsel shall act in the best interests of the Investors and shall take such necessary and appropriate steps or actions as Representative Counsel deems fit from time to time, including, where appropriate, to give such consents on behalf of Investors that may be necessary or desirable in the circumstances, provided however that Representative Counsel shall not be obligated to take any step or action where Representative Counsel determines (in consultation with the Trustee) that the best interests of Investors would not be served by any such step or action.

5. **THIS COURT ORDERS** that Representative Counsel shall have no obligation to consult with, follow the instructions of, or provide an opinion to, any individual Investor in connection with the discharge of its duties under this Order.

6. **THIS COURT ORDERS** that the Trustee shall provide to Representative Counsel, without charge to the Investors, the following information, documents and data (including personal information), to the extent such information, documents or data is in the Trustee's possession or control in respect of these proceedings (the "**Information**"):

- (a) the names, last known addresses and last known email addresses (if any) of the Investors (the "**Investor Contact Information**"); and
- (b) such additional information, documents and data (including personal information) as may be reasonably requested in writing by Representative Counsel and which is (i) relevant to the Investors' participation in these proceedings and (ii) reasonably necessary for Representative Counsel to fulfill its mandate in these proceedings, or as ordered by the Court,

provided that the Trustee and its counsel may recover their time and expenses for so doing at their standard rates. This Order shall be sufficient legal authority for the Trustee to disclose the Information to Representative Counsel under the *Personal Information Protection and Electronic Documents Act* (Canada), other applicable privacy legislation, or any other applicable law without the knowledge or consent of the individual Investors or any other person, the Trustee is not required to obtain any consent from any Investor or any other person to authorize disclosure of the Information to Representative Counsel, and

the Trustee shall have no liability whatsoever for making such disclosures in accordance with the terms hereof.

7. **THIS COURT ORDERS** that notice of the granting of this Order, substantially in the form attached hereto as **Schedule "A"**, shall be sent by Representative Counsel (or by the Trustee on behalf of Representative Counsel) to each Investor by electronic or regular mail at the address for such Investor provided pursuant to Paragraph 6(a), within seven business days of the date of receipt by Representative Counsel of the Investor Contact Information, and that the notice shall also be posted on the Trustee's website at www.faanmortgageadmin.com.

8. **THIS COURT ORDERS** that any Investor who does not wish to be represented by Representative Counsel in these proceedings shall notify the Trustee and Representative Counsel, in writing, that he, she or it is opting out of representation by delivering a notice by electronic or regular mail substantially in the form attached as **Schedule "B"** hereto, and such Investor shall thereafter not be bound by the actions of Representative Counsel and shall represent himself, herself or itself or be represented by any counsel that he, she or it may retain exclusively at his, her or its own expense.

9. **THIS COURT ORDERS** that Representative Counsel may communicate with any Investor who has not opted out pursuant to Paragraph 8 hereof by electronic or regular mail at the addresses provided pursuant to Paragraph 6(a) or such other addresses provided by the applicable Investor to Representative Counsel.

10. **THIS COURT ORDERS** that Representative Counsel shall have no liability as a result of its appointment or the performance of its duties or in carrying out the provisions of this Order and any subsequent Orders in these proceedings, save and except for any gross negligence or willful misconduct on its part.

11. **THIS COURT ORDERS** that, subject to prior approval by the Trustee or further Order of the Court, Representative Counsel shall be paid its reasonable fees and disbursements, at its standard rates and charges, and shall be entitled to and is hereby granted a charge (the "**Representative Counsel Charge**") on the Property as security for its fees and disbursements in respect of these proceedings, both before and after the making of this Order, and that the

Representative Counsel Charge shall form a charge on the Property ranking immediately subordinate in priority to the Trustee's Charge but ranking in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

12. **THIS COURT ORDERS** that, subject to prior approval by the Trustee or further Order of the Court, Representative Counsel is entitled to be paid its fees and disbursements from any distributions to be made to the Investors in these proceedings.

13. **THIS COURT ORDERS** that all reasonable professional fees and disbursements that may be incurred by Representative Counsel, whether incurred prior to or after the date of this Order, will form part of the indebtedness owing to the Investors.

14. **THIS COURT ORDERS** that Representative Counsel shall be given notice of all motions in these proceedings, and that the giving of notice to Representative Counsel shall constitute service on all of the Investors who have not opted out pursuant to Paragraph 8 hereof.

15. **THIS COURT ORDERS** that Representative Counsel shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the performance or variation of its powers and duties.

INTERIM STABILIZATION MEASURES

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

- (a) distribute 50% of the principal amount held by the Trustee in respect of each of the Victoria Medical SML Loans (as defined in the First Report) to the applicable Investors pro rata based on each such Investor's respective portion of such Victoria Medical SML Loans;
- (b) hold, until further Order of the Court, in a separate account all (I) funds that are currently in the Respondent's or the Trustee's possession or that may come into the Respondent's or the Trustee's possession, other than such amounts to be distributed pursuant to paragraph 16(a), in each case as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness owing to or administered by the

Respondent on behalf of Investors, whether or not (i) secured by any Real Property Charges in the name of the Respondent or in the name of OTC, Computershare or any other person acting for Investors in respect of investments held through RRSPs or other registered accounts or funds (each an “**RRSP Trustee**”), (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (II) all interest paid or payable to the Respondent or the Trustee at the time such repayment (in whole or in part) of principal is made (collectively “**Realized Property**”) and shall report to the Court by no later than October 31, 2018 with a recommendation regarding next steps with respect to the Realized Property, including any potential distribution of any Realized Property to the Investors; and

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

For greater certainty, Realized Property and Estate Property shall be included within the definition of “Property” as set out in the Appointment Order.

17. **THIS COURT ORDERS** and confirms that, with the exception of Realized Property, which shall be held as provided for in Paragraph 16(b), the Trustee is hereby empowered and authorized, but not obligated, to use any Property to aid the Trustee in complying with the Appointment Order and carrying out its mandate, as the Trustee, in its sole discretion, considers necessary or desirable for the effective administration of the estate including, without in any way limiting the generality of the foregoing, to do any of the following:

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

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

in each case without interference from any other Person and without regard to any arrangement in existence as of the date hereof between the Respondent, any borrower, any Investor or any other Person.

18. **THIS COURT ORDERS** that, in using any Property in accordance with the Appointment Order or this Order, the Trustee shall keep detailed records regarding the source and use for such payments and shall report to the Court from time to time regarding same.

19. **THIS COURT ORDERS** that the Trustee be and is at liberty, but is not obligated, to surrender the Respondent's mortgage administrator license issued under the MBLAA and any corresponding license in any other jurisdiction at such time as the Trustee may determine, with the concurrence of the applicable regulatory authorities, that it is no longer necessary or desirable for the Respondent to maintain such license(s). In addition, the Trustee is authorized, but not required, to apply for such other licenses as the Trustee determines are necessary or desirable for it to hold in connection with its mandate.

LAND TITLE DOCUMENTS

20. In addition to any powers granted to the Trustee in the Appointment Order, the Trustee is hereby empowered:

- (a) to direct the applicable land registry office, registrar, other official or similar government authority under *The Land Titles Act* (Ontario), the *Land Registration Reform Act* (Ontario), the *Land Titles Act* (Alberta), or any other comparable legislation in any province, including for greater certainty the Registrar of Land Titles of Alberta, (“**Real Property Authority**”) to register a copy of this Order and any other Orders in respect of the Property, notwithstanding the requirements of s. 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar provincial enactment, and notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is, for the purposes of this paragraph 20, expressly waived, and for such purposes the Trustee shall be treated as if it were a receiver appointed pursuant to the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3;
- (b) 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, postponement, subordination or similar dealings in respect of any mortgage or interest in land (each, a “**Land Title Document**”) and, for greater certainty, the applicable Real Property Authority is hereby directed, following (i) registration of this Order or being presented with a certified true copy of this Order and (ii) being presented with such Land Title Document, to register such Land Title Document to register, discharge, partially discharge, transfer, assign, postpone, subordinate 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.

GENERAL

21. **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.

22. **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.

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

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

JUN 26 2018

PER / PAR:

Handwritten initials "ML" in blue ink.

SCHEDULE "A"

You are receiving this notice because you have invested in certain syndicated mortgage loan products or other indebtedness administered by Building & Development Mortgages Canada Inc. ("**BDMC**"). As previously advised, by an Order issued by the Ontario Superior Court of Justice ("**Court**") on April 20, 2018 on application by The Superintendent of Financial Services, FAAN Mortgage Administrators Inc. was appointed trustee of BDMC by the Court (the "**Trustee**").

By Order dated June 9, 2018 (the "**Representation Order**") granted by the Court, Chaitons LLP was appointed as representative counsel ("**Representative Counsel**") for all Investors in respect of their interests in the loans and other indebtedness administered by BDMC, including where such loans or other indebtedness is held through RRSPs or other registered accounts or funds, unless and until written notice is provided by a particular Investor to Representative Counsel that such Investor does not wish to be represented by Representative Counsel.

A copy of the Representation Order is attached hereto. All capitalized terms not defined above are used as defined in the Representation Order.

You have no obligation to pay or otherwise compensate Representative Counsel in respect of its efforts on your behalf, but Representative Counsel's fees and disbursements will be added to the indebtedness that was administered by BDMC and paid in priority to a distribution to you or to any other Investor, whether or not you or any other Investor opts out of the group.

If you do not wish to be represented by Representative Counsel, you may opt-out of the group in accordance with Paragraph 8 of the Representation Order by completing the form attached hereto.

If you have any questions concerning this matter, please contact either Representative Counsel at BDMC@chaitons.com or the Trustee at:

Email:	Info@FAANMortgageAdmin.com
Local Telephone Number:	416-606-3338
Toll-Free Telephone Number:	1-833-495-3338

SCHEDULE "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

OPT-OUT FORM

TO: Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
Email: BDMC@chaitons.com

I, _____ am an Investor as defined in the Order dated April 20, 2018 (the "**Appointment Order**") granted by the Ontario Superior Court of Justice (Commercial List) in the proceeding commenced under Court File No. CV-18-596204-00CL (the "**Trusteeship Proceeding**"), in that I invested the sum of \$_____ with respect to the project known as _____ administered by Building & Development Mortgages Canada Inc.

Under Paragraph 8 of the Order dated June ●, 2018, Investors who do not wish Chaitons LLP to act as their representative counsel may opt out.

I hereby notify you that I wish to exercise my option to opt out of representation by Chaitons LLP under the Order and will be represented as an independent individual party at my own expense to the extent I wish to appear or participate in the Trusteeship Proceeding.

 Date

 Print Name:

ONTARIO
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER: INTERIM STABILIZATION PROCESS

OSLER, HOSKIN & HARCOURT LLP

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

Jeremy Dacks (LSUC# 41851R)

Michael De Lellis (LSUC# 48038U)

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:
List of Tax Opinions in Trustee's Possession

BDMC Estate

Summary of Tax Opinions in the Trustee's Possession

Project Name	Number of Tax Opinions
1 6th and 10th	2
2 1407 Dundas (MM2)	1
3 1401 Dundas (MM1)	1
4 Braestone	1
5 Castlemore	1
6 Capital Pointe	3
7 South Shore	2
8 Crestview	1
9 Dunsire Guelph (White Cedars)	1
10 Fusion (Solterra)	2
11 Harlowe	1
12 Harmony Village Lake Simcoe (Kemp)	1
13 King Square	1
14 Langston Hall 1 (CHAT)	2
15 Peter Richmond (Langston Hall 2)	4
16 North	1
17 Old Market Lane	3
18 Port Place 2	1
19 Port Place (Union waterfront)	4
20 QEWN	1
21 Speers	1
22 Treehouse	1
23 Triple Creek	1
24 Victoria Medical	2
25 James	1
26 Winnipeg	6
27 Humberstone	2
28 Hylands of York Region	3
29 Lake and East	1
30 Nobleton South	1
31 Orchard	3
32 Prescott	1
33 Wellington House	2
34 Bauhaus	1
35 Bowmanville	1
36 Bradford Bond Head	1
37 Brookdale	1
38 Colliers	1
39 Danforth	1
40 Georgetown	1
41 Rosewater (Whitby)	1
42 Rutherford	1
Total	68

Sorrenti Estate**Summary of Tax Opinions in the Trustee's Possession**

Project Name	Number of Tax Opinions
1 Wismer 3	1
2 Residences of Bayview	1
3 Mapleview Commons	2
4 Progress Manor	1
5 Soba	1
6 The Sutton	2
7 Unionvillas	2
8 Solotex	1
Total	11

Appendix 4:
Formal Investor Request

March 11 2020

FAAN/Sorrenti Law
20 Adelaide Street East
Suite 920
Toronto, ON
M5C 2T6

RE: Fortress Projects Administered by FAAN (BDMC) and Sorrenti Law

[Redacted]

By way of this letter I/We as investors in the Fortress projects request you provide us with any and all legal opinions that you have on file in relation to the fortress projects.

Kindly forward this to me/us ASAP, we look forward to receiving the information shortly. In addition, kindly note that we authorize to speak directly with [Redacted] regarding this matter and our files.

Of course you can also reach us directly, my/our contact information is on file with you already.

Regards,

Investor's Name

[Redacted]

[Redacted]

Investor's Signature

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 15 TH
)	
JUSTICE HAINEY)	DAY OF OCTOBER, 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***

TAX OPINIONS ORDER

THIS MOTION, made jointly 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. (“**BDMC**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29*, as amended, and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43*, as amended, and by Chaitons LLP in its capacity as representative counsel (in such capacity, the “**Representative Counsel**”) pursuant to the Order of this Court dated June 26, 2018 (the “**Representative Counsel Order**”), for an Order, among other things, authorizing the Trustee to

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release the Tax Opinions (defined below) subject to the terms of this Order, was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-Second Report of the Trustee dated October 7, 2020 (the “**Twenty-Second Report**”), and on hearing the submissions of counsel for the Trustee, Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of ● sworn ●, 2020, filed;

SERVICE AND INTERPRETATION

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

TAX OPINIONS

3. **THIS COURT ORDERS** that, subject to the terms of this Order, the Trustee is authorized, but not required, to produce copies of any opinion letters that the Trustee has located in the records of BDMC, or that otherwise come into the Trustee’s possession, that were prepared by professional services firms (the “**Tax Opinion Providers**”), that are addressed to one or more of BDMC, Olympia Trust Company (“**Olympia**”), and Computershare Trust Company of Canada (“**Computershare**”), and that address whether certain mortgages to be registered in connection with the development of various real estate projects related to Fortress Real Developments Inc. (the “**Real Estate Projects**”) were qualified investments for trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered disability savings plans and tax-free savings plans under the *Income Tax Act* and the *Income Tax Regulations* (the “**Tax Opinions**”), solely for use by a syndicated mortgage lender to one or more of the Real Estate Projects (“**Investor**”), or Representative Counsel on an Investor’s behalf or such other counsel representing one or more Investors (“**Counsel**”), in consideration of

such Investor's legal rights, if any, in an ongoing or potential action or legal proceeding relating to a Real Estate Project to which the Tax Opinion relates (the "**Permitted Use**").

4. **THIS COURT ORDERS** that any Counsel seeking a copy of a Tax Opinion shall send a request in writing to the Trustee: (a) confirming that the Counsel represents one or more Investors that invested in a Real Estate Project to which the requested Tax Opinion relates; and (b) confirming that the Tax Opinion is being requested solely for a Permitted Use. At the Trustee's request, such Counsel will provide evidence satisfactory to the Trustee, in its sole discretion, confirming that the Counsel represents one or more Investors that invested in a Real Estate Project relating to the Tax Opinion being requested.

5. **THIS COURT ORDERS** that any Investor not represented by Counsel shall request the assistance of Representative Counsel to seek a copy of a Tax Opinion. Representative Counsel may send a request in writing on behalf of the Investor to the Trustee: (a) confirming that the Investor invested in a Real Estate Project to which the requested Tax Opinion relates; and (b) confirming that the Tax Opinion is being requested solely for a Permitted Use. At the request of Representative Counsel or the Trustee, such Investor will provide evidence satisfactory to Representative Counsel or the Trustee, as applicable, in its sole discretion, confirming that the Investor invested in a Real Estate Project relating to the Tax Opinion being requested.

6. **THIS COURT ORDERS** that, in response to a request from Counsel or Representative Counsel pursuant to paragraphs [*4 or 5 herein], and subject to paragraph [*7] below, the Trustee shall (a) if it determines in its reasonable discretion that the Investor or Counsel is requesting the Tax Opinion solely for a Permitted Use, provide a copy of the Tax Opinion or information related thereto to the requesting Counsel or Representative Counsel; and (b) otherwise refuse the request.

7. **THIS COURT ORDERS** that any Counsel or Investor that receives a Tax Opinion or information related thereto from the Trustee or Representative Counsel pursuant to this Order:

- (a) shall not use the Tax Opinion or information related thereto for any purpose other than the Permitted Use set out in its original request;
- (b) shall be subject to the deemed undertaking as described in Rule 30.1 of the *Rules of Civil Procedure* as if the Tax Opinion was a document produced in the ongoing

or potential action or legal proceeding for which the Investor or Counsel is permitted to use the Tax Opinion; and

- (c) shall not share, disseminate, or publicize the Tax Opinion, any part of the Tax Opinion, or any information obtained from the Tax Opinion in any way, including on any electronic or social media or with any other Counsel or Investors, other than as may be required by law in connection with a Permitted Use.

8. **THIS COURT ORDERS** that before providing an Investor a copy of a Tax Opinion or information related thereto pursuant to this Order,

- (a) Representative Counsel will advise such Investor in writing: (i) that they may only use the Tax Opinion or information for the Permitted Use for which the Tax Opinion or information was requested, and (ii) of the limitations on the use of the Tax Opinion or information related thereto contained in this Order, including those set out in paragraph [*7]; and
- (b) Representative Counsel will ask such Investor to provide an undertaking in writing (which undertaking may be provided in an email to Representative Counsel) confirming that the Investor has reviewed and understood the limitations on their use of the Tax Opinions referenced in paragraph 8(a) above and will abide by such restrictions.

9. **THIS COURT ORDERS** that the production of any Tax Opinion or information related thereto pursuant to this Order shall not constitute a waiver of any privilege covering any analysis, communications, or other documents relating to the Tax Opinion. For certainty, by not opposing the production of any Tax Opinion by the Trustee pursuant to this Order, the Tax Opinion Providers are not and will not be deemed to be waiving any applicable confidentiality interests or privilege applicable to the Tax Opinion or its contents.

10. **THIS COURT ORDERS** that nothing in this Order shall be deemed to be an acknowledgement by the Tax Opinion Providers or constitute a finding that: (a) any Investor has a legal right to production of any Tax Opinion, (b) any Investor is in a relationship of proximity

with any Tax Opinion Provider, (c) any Investor is known to the Tax Opinion Providers, or (d) any Investor is owed any duty of care by any Tax Opinion Provider.

11. **THIS COURT ORDERS** that the Trustee will advise the applicable Tax Opinion Provider, Olympia, and Computershare if it produces a Tax Opinion issued by or naming any of them, or information related thereto, pursuant to this Order.

LIMITATION ON TRUSTEE'S AND REPRESENTATIVE COUNSEL'S LIABILITY

12. **THIS COURT ORDERS** that the provisions of the Appointment Order, and in particular paragraph 18 thereof, shall apply to the actions that the Trustee takes, as an officer of this Court, in accordance with this Order, and further that the Trustee shall incur no liability or obligation whatsoever as a result of producing one or more Tax Opinions or information related thereto pursuant to this Order, save and except for gross negligence or wilful misconduct on its part. Without limiting the foregoing, by providing a copy of a Tax Opinion or information related thereto pursuant to this Order, the Trustee: (a) shall not be and shall not be deemed to be making any representations or incurring any obligation in connection with the accuracy of the Tax Opinion or information; (b) will not incur any liability as a result of any reliance placed on or use of a Tax Opinion (whether a Permitted Use or not) by any Investor or Counsel that receives a Tax Opinion or information related thereto from the Trustee or by any person who otherwise obtains a copy of the Tax Opinion or information, directly or indirectly, from a Counsel or Investor who received a Tax Opinion; and (c) shall not incur any liability arising from any breach of any confidentiality obligations relating to the Tax Opinions or any restrictions on the use of the Tax Opinions.

13. **THIS COURT ORDERS** that the provisions of the Representative Counsel Order, and in particular paragraph 10 thereof, shall apply to the actions that Representative Counsel takes in accordance with this Order and further that Representative Counsel shall incur no liability or obligation whatsoever as a result of providing one or more Tax Opinions or information related thereto pursuant to this Order, save and except for gross negligence or wilful misconduct on its part. Without limiting the foregoing, by providing a copy of a Tax Opinion or information related thereto pursuant to this Order, Representative Counsel: (a) shall not be and shall not be deemed to be making any representations or incurring any obligation in connection with the accuracy of the Tax Opinion or information; (b) will not incur any liability as a result of any reliance placed on or

use of a Tax Opinion or information (whether a Permitted Use or not) by any Investor that receives a Tax Opinion or information related thereto from the Representative Counsel or by any person who otherwise obtains a copy of the Tax Opinion, directly or indirectly, from an Investor who received a Tax Opinion; and (c) shall not incur any liability arising from any breach of any confidentiality obligations relating to the Tax Opinions or any restrictions on the use of the Tax Opinions.

GENERAL

14. **THIS COURT ORDERS** that the provisions of this Order apply, with any necessary modifications, in the proceeding bearing the title of proceedings *Law Society of Ontario v. Derek Sorrenti and Sorrenti Law Professional Corporation* (Court File No.: CV-19-628258-00CL).

15. **THIS COURT ORDERS** that the Trustee, Representative Counsel, the Tax Opinion Providers, Olympia, Computershare, or any Counsel or Investor may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or under this Order, on notice to the Trustee and any party likely to be affected by the order sought.

16. **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.

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

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Applicant

Respondent

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

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

Proceedings commenced at Toronto

TAX OPINIONS 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)

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

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

Draft

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**

(Tax Opinions Order Motion)

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)

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