

**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-THIRD REPORT OF THE TRUSTEE

OCTOBER 8, 2020



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

TABLE OF CONTENTS

INTRODUCTION..... 1

PURPOSE OF THE TWENTY-THIRD REPORT..... 2

SCOPE AND TERMS OF REFERENCE 3

OVERVIEW OF THE PORT PLACE 2 PROJECT 4

SALE AND MARKETING PROCESS FOR THE PORT PLACE 2 LANDS..... 5

PRIORITY DISPUTE..... 7

SUBORDINATION AND PRIORITY AGREEMENTS..... 8

CONCLUSION AND RECOMMENDATION 9

INDEX OF APPENDICES

Appendix 1	Appointment Order dated April 20, 2018
Appendix 2	Notices to Port Place 2 Individual Lenders
Appendix 3	Subordination and Priority Agreements

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-THIRD REPORT OF THE TRUSTEE

OCTOBER 8, 2020

INTRODUCTION

1. On April 20, 2018, pursuant to an order (“**Appointment Order**”) of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (“**Court**”), FAAN Mortgage Administrators Inc. was appointed as trustee (“**Trustee**”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under syndicated mortgage loans (“**Investors**”), brokers, or borrowers, in each case whether or not such property was or is held in trust or was or is required to be held in trust. The Appointment Order was issued following an application made by the Superintendent of Financial Services pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), as amended, and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the Appointment Order is attached as **Appendix “1”**.

2. On June 26, 2018, pursuant to an 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.
3. The Trustee has, in total, delivered twenty-two reports to Court (collectively, “**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, including the Port Place 2 Project discussed below.
4. As described in the previous Reports, the Trustee continues to seek to maximize recoveries for Investors and to pursue and advance potential transactions, where possible, relating to BDMC’s projects. However, each project is unique and presents its own facts and circumstances, and the possibility of obtaining recoveries for Investors on each project will depend on the specific facts and circumstances of each project.
5. Capitalized terms used but not otherwise defined in this twenty-third report (“**Twenty-Third 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-THIRD REPORT

6. The purpose of this Twenty-Third Report is to provide the Court and stakeholders with a general update on the status of the real estate development project (“**Port Place 2 Project**”) involving four adjacent parcels of land located in St. Catharines, Ontario municipally known as 12 Lock Street (“**12 Lock**”), 14 Lakeport Road (“**14 Lake**”), 18 Lakeport Road (“**18 Lake**”) and 28 Lakeport Road (“**28 Lake**”) (collectively, “**Port Place 2 Lands**”). This Report provides an update on: (a) a completed sale transaction in respect of one parcel of the Port Place 2 Lands; (b) proposed sale transactions involving the

remaining three parcels of the Port Place 2 Lands; and (c) the proposed settlement of a priority dispute regarding the mortgage charges on title to the Port Place 2 Lands. In connection with such settlement, the Trustee is also filing this Report in support of its motion seeking this Court's approval and authorization to enter into the Subordination and Priority Agreements (as defined herein) ("**Port Place 2 Order**").

7. This Twenty-Third Report describes the following matters:
 - (a) An overview of the Port Place 2 Project;
 - (b) The sale and marketing process for the Port Place 2 Lands;
 - (c) Details of the priority dispute;
 - (d) Details of the Subordination and Priority Agreements; and
 - (e) The Trustee's recommendation that the Subordination and Priority Agreements be approved in the proposed Port Place 2 Order.

SCOPE AND TERMS OF REFERENCE

8. In preparing this Twenty-Third Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgages 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 Port Place 2 Project, and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, Fortress 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.
9. Some of the information used and relied upon in preparing this Twenty-Third Report consists of financial projections and other information received from various third parties, including appraisals and project cost information. The Trustee cautions that the projections and other information used and relied upon are generally based upon assumptions and estimates about future events and/or market conditions that are not ascertainable or that

could change. As such, the information presented in this Twenty-Third Report may vary from the projections and information used to prepare this Twenty-Third Report and the actual results may differ both from the results projected therein and herein. Even if the assumptions relied upon therein or herein materialize, the variations from the projections could be significant. The Trustee's review of the future oriented information used to prepare this Twenty-Third Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

10. This Twenty-Third Report has been prepared for the use of this Court and BDMC's stakeholders as general information relating to BDMC and the Port Place 2 Project and to assist the Court with respect to the Trustee's request for approval and authorization to enter into the Subordination and Priority Agreements as set forth in the proposed Port Place 2 Order. Accordingly, the reader is cautioned that this Twenty-Third Report may not be appropriate for any other purpose.
11. All references to dollars are in Canadian currency.

OVERVIEW OF THE PORT PLACE 2 PROJECT

12. The Port Place 2 Project is a real estate development project comprised of four neighbouring 2-storey commercial properties in St. Catharines, Ontario. The Trustee understands that the Port Place 2 Project is owned by 2283020 Ontario Inc. and Fortress Port Place (2014) Inc., entities related to Fortress (collectively, "**Port Place 2 Borrower**"). There are three mortgage charges on the Port Place 2 Lands that currently have the following relative priorities registered on title: (a) a first priority charge ("**Initial Charge**") in respect of the mortgage loan from Magnetic Capital Group Inc. ("**Magnetic**"), Olympia Trust Company ("**OTC**") and Canadian Western Trust Company ("**CWT**", and together with Magnetic and OTC, "**Port Place 2 Secured Creditors**") securing the principal amount of \$700,000 ("**Initial Mortgage**"); (b) a second priority charge ("**BDMC Charge**") in respect of approximately \$2.9 million in principal amount of syndicated mortgage loan debt ("**BDMC Loan**") advanced by syndicated mortgage lenders in respect of the Port Place 2 Project ("**Port Place 2 Individual Lenders**") that is being administered by BDMC; and (c) a third priority charge ("**Additional Financing Charge**") in respect of the mortgage loan from Magnetic and CWT securing the principal amount of \$1.47 million in respect of the Additional Financing (as defined herein) ("**Additional Financing Mortgage**").

13. According to BDMC's records, as at September 30, 2020, the total amount owing to the Port Place 2 Individual Lenders in connection with the Port Place 2 Project was \$4.4 million, which is comprised of principal of approximately \$2.9 million and accrued interest through to September 30, 2020 of approximately \$1.5 million.¹

SALE AND MARKETING PROCESS FOR THE PORT PLACE 2 LANDS

14. In January 2019, as a result of the Initial Mortgage being in default, the holders of the Initial Charge issued a notice under section 244 of the *Bankruptcy and Insolvency Act* (Canada) and a corresponding notice of sale under section 21 of the *Farm Debt Mediation Act* (Canada), which required that the full amount of the then outstanding debt under the Initial Mortgage (totaling \$736,195.87, including interest and fees as at April 23, 2019) be paid by the Port Place 2 Borrower on or before May 30, 2019. As the May 30, 2019 deadline was not met, a sale and marketing process for the Port Place 2 Lands was commenced by the Port Place 2 Secured Creditors. In September 2019, the Trustee understands that the Port Place 2 Secured Creditors received an agreement of purchase and sale from The Lock Inc.² ("**12 Lock APS**"), for one of the parcels comprising the Port Place 2 Lands, being 12 Lock. The Trustee commissioned an independent appraisal for the Port Place 2 Lands ("**Appraisal**") and the sale price for 12 Lock was in excess of the value attributable to 12 Lock in the Appraisal. The Trustee also understands that the sale price for 12 Lock was also in excess of the value in the appraisal commissioned by the Port Place 2 Secured Creditors. The Trustee further understands that the 12 Lock APS was the only formal offer received for 12 Lock and that the offer was ultimately accepted by the Port Place 2 Secured Creditors. The Trustee has also been advised by Magnetic that the purchaser of 12 Lock is not related to the Port Place 2 Borrower or to the Port Place 2 Secured Creditors. The transaction ultimately closed on June 11, 2020 and the Initial Charge was removed from title to 12 Lock but continues to be registered on title to the other three parcels of land comprising the Port Place 2 Lands. The Port Place 2 Individual Lenders were advised of the sale and marketing process regarding the Port Place 2 Lands in notices dated February 7, 2019 and May 31, 2019, attached as **Appendix "2"**.

¹ Per diem interest of \$641.91 continues to accrue.

² The 12 Lock APS was originally from 1970065 Ontario Inc., in Trust for a company to be formed. The Trustee understands that The Lock Inc. was the company that was subsequently formed to purchase 12 Lock.

15. The 12 Lock APS provided for a sale price of \$665,000. The Trustee understands that the proceeds from the transaction were distributed as follows:
 - (a) On account of tax and water arrears – approximately \$47,000;
 - (b) To pay legal fees and closing costs – approximately \$41,000;
 - (c) To reimburse certain unpaid charges of the Port Place 2 Secured Creditors – approximately \$163,000, which includes various carrying costs for the Port Place 2 Lands and a “Default Administration Fee” of \$108,500; and
 - (d) To the principal balance owing to the Port Place 2 Secured Creditors under the Initial Mortgage – approximately \$414,000.
16. Given the shortfall on the balance owing to the Port Place 2 Secured Creditors in respect of the Initial Mortgage, there were no proceeds from the 12 Lock sale transaction available for distribution to the Port Place 2 Individual Lenders. The Trustee understands that following the closing of the sale of 12 Lock, there remains approximately \$285,000 of principal outstanding and owing by the Port Place 2 Borrower under the Initial Mortgage as of the date of the 12 Lock sale transaction.
17. Pursuant to the mortgage commitment letter entered into between the Port Place 2 Borrower and the Port Place 2 Secured Creditors, in addition to the Default Administration Fee, the Port Place 2 Secured Creditors were entitled to a “Mortgage Extension Fee” of \$108,500 and accrued interest at a default interest rate of 21%. Following negotiations with the Trustee, the Port Place 2 Secured Creditors agreed to: (a) apply the Mortgage Extension Fee of \$108,500 to the principal balance owing to the Port Place 2 Secured Creditors; and (b) forego the default interest rate of 21% and instead accrue interest at the original rate of 8%.
18. The Port Place 2 Secured Creditors also listed the remaining three parcels that comprise the Port Place 2 Lands (“**Remaining Port Place 2 Lands**”) on the multiple listing service (MLS) website and retained Re/Max Niagara Realty Ltd. as their broker. The Trustee has been advised that the Remaining Port Place 2 Lands are currently subject to sale transactions that have yet to be completed. Should the sale transactions in respect of the Remaining Port Place 2 Lands be completed, and the proceeds of such sales be

insufficient to pay all remaining amounts owing by the Port Place 2 Borrower under the Initial Mortgage and the Additional Financing Mortgage (which the BDMC Loan would be postponed to in accordance with the Subordination and Priority Agreements, as described below), the Port Place 2 Individual Lenders would not recover the sums advanced to the Port Place 2 Borrower pursuant to the BDMC Loan.

PRIORITY DISPUTE

19. As described in the Trustee's Seventh Report dated May 10, 2019, following the private appointment of FAAN Mortgage as the independent manager of BDMC's business but prior to its appointment as Trustee, on or about March 2018, Magnetic and CWT provided additional financing to the Port Place 2 Project pursuant to the Additional Financing Mortgage ("**Additional Financing**"). FAAN Mortgage was not aware of or involved with this mortgage transaction until after it closed.
20. In April 2019, First Canadian Title Insurance Company ("**FCT**"), the title insurer, contacted the Trustee to dispute, the second ranking priority of the BDMC Charge on behalf of the holders of the Additional Financing Charge on the basis: (a) that the Additional Financing Charge was always intended to rank in priority to the BDMC Charge and that BDMC had agreed to such postponement at the time the Additional Financing Mortgage was advanced (regardless of whether such postponement was properly documented due to inadvertence or oversight); and (b) of the application of the doctrine of equitable subrogation given the use of the Additional Financing Mortgage proceeds. FCT also requested that the Trustee consent to a lifting of the stay of proceedings to allow the priority dispute to be resolved by the Court. In connection therewith, the Trustee engaged with FCT and requested that FCT provide it with documentation and other information to support its position that the BDMC Charge ought to be postponed to the Additional Financing Charge, so that the Trustee could assess the merits of the claim with an understanding of the relevant facts.
21. The Trustee reviewed the documentation and information provided by FCT and conducted its own diligence of BDMC's records. As a result of this review, the Trustee advised FCT that it was not aware of any formal agreement by BDMC to postpone the BDMC Charge to the Additional Financing Charge (and confirmed that the Trustee had not entered into any such agreement as well). Although not a formal agreement, the Trustee notes that the documentation evidencing the Additional Financing indicates an intention by the parties at

the time to postpone the BDMC Charge to the Additional Financing Charge. Nonetheless, the Trustee advised FCT that it could not agree to settle the priority dispute solely on the basis of a pre-existing agreement by BDMC to postpone.

22. The Trustee also considered the applicability of the doctrine of equitable subrogation and reviewed applicable case law. The doctrine of equitable subrogation is a discretionary remedy that may be granted by courts to prevent unjust enrichment. Generally, in the mortgage context, the doctrine would permit a new mortgagee that refinances an existing mortgage to be subrogated to the rights of the original mortgagee, including the original mortgagee's priority over subsequent mortgagees, notwithstanding the registration of a discharge of the original mortgage. However, it is important to note that the doctrine would only grant the new mortgagee priority over subsequent mortgagees to the extent of the amount of the original mortgage (i.e., principal plus interest) and only over lands charged by the original mortgage. This analysis would similarly apply in circumstances where new mortgage proceeds were used to pay other priority payments, such as existing property tax arrears.
23. In light of the foregoing legal analysis and given the Trustee's understanding that certain Additional Financing Mortgage proceeds were used to repay certain mortgages that were registered in priority to the BDMC Charge on certain of the Port Place 2 Lands and to pay property tax arrears for each of the Port Place 2 Lands, the Trustee considered the likelihood of success at, and anticipated costs of, a contested priority dispute before the Court. The Trustee determined that it would be in the best interest of the BDMC estate to attempt to negotiate a settlement with FCT regarding the priority dispute. The Trustee then engaged in extensive negotiations with FCT and reached an agreement in principle on a form of subordination and priority agreement for each of the Remaining Port Place 2 Lands (which forms are attached hereto as **Appendix "3"** (collectively, "**Subordination and Priority Agreements**")).

SUBORDINATION AND PRIORITY AGREEMENTS

24. Subject to the approval of the Court, pursuant to the Subordination and Priority Agreements, the Trustee will agree to subordinate the BDMC Charge to the Additional Financing Charge, but only to the extent of the following maximum priority amounts on each land parcel:

Remaining Port Place 2 Lands	Priority Discharged Mortgage Amount	Property Taxes Equitable	Settlement Allocation	Maximum Priority Amount
14 Lake	\$792,505	\$10,598	\$54,250	\$857,353
28 Lake	\$792,505	\$13,943	\$54,250	\$860,698
18 Lake	\$450,286	\$10,412	\$31,500	\$492,198

25. The maximum priority amount for each land parcel represents: (a) any priority mortgage on such parcel that was repaid using the proceeds of the Additional Financing Mortgage; (b) the property tax arrears relating to such parcel that were discharged using the proceeds of the Additional Financing Mortgage; and (c) an allocation of half the difference between the full amount claimed and the amounts that the providers of the Additional Financing Mortgage may claim in (a) and (b) above, which allocation was agreed to by the parties as a compromise position in order to consensually resolve the priority dispute and avoid contested litigation on the matter. The Trustee notes that, since the same priority mortgage was repaid on 14 Lake and 28 Lake, the applicable Subordination and Priority Agreements provide that any repayment of the Additional Financing Mortgage on account of one parcel will correspondingly reduce the Additional Financing Charge relating to such priority mortgage on the other parcel and vice versa.
26. Given the circumstances described above, the Trustee seeks the Court's approval of, and authorization to enter into, the Subordination and Priority Agreements as part of the proposed Port Place 2 Order.

CONCLUSION AND RECOMMENDATION

27. For the reasons noted above, the Trustee is of the view that, given the unlikelihood of success at, and anticipated costs of, a contested priority dispute before the Court, entering into the Subordination and Priority Agreements is in the best interest of the BDMC estate. Accordingly, the Trustee recommends that the Court approve, and authorize the Trustee to enter into, the Subordination and Priority Agreements, as part of the proposed Port Place 2 Order.
28. The Trustee has shared its analysis and recommendations with Representative Counsel, and Representative Counsel has advised that it supports the relief being sought, as part of the proposed Port Place 2 Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th 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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

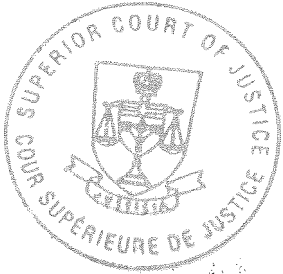
THE HONOURABLE MR.) FRIDAY, THE 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

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

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

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

GH

or CDCM

GH

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

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

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

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

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE TRUSTEE

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

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

CONTINUATION OF SERVICES

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

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE TRUSTEE’S LIABILITY

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

TRUSTEE’S ACCOUNTS

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

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

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

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

FUNDING OF THE APPOINTMENT

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

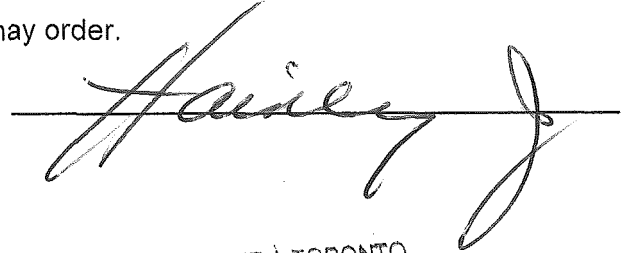
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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

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

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and - BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Miranda Spence (LSUC # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

Lawyers for The Superintendent of Financial Services

Appendix 2:
Notices to Port Place 2 Individual Lenders



February 7, 2019

Dear Lender:

Re: Syndicated Mortgage Loan made to 2283020 Ontario Inc., subsequently acquired by Fortress Port Place (2014) Inc. ("Borrower") pursuant to the loan agreement dated December 1, 2013 in respect of properties located at 14, 18A and 28, Lakeport Road & 12 Lock Street, St. Catharines, ON ("Port Place 2 Project" or "Properties")

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

We are writing to you in our capacity as Trustee regarding the Port Place 2 Project.

On January 30, 2019, Magnetic Capital Group Inc. ("**Magnetic**"), Olympia Trust Company and Canadian Western Trust Company (collectively "**Secured Creditors**"), acting as the Borrower's first ranking priority lender, issued a Notice of Intention to Enforce Security pursuant to Subsection 244(1) of the Bankruptcy and Insolvency Act ("**244 Notice**"). The Secured Creditors have advised that the Borrower is in default under their mortgage and unless the full amount of the outstanding debt totaling \$715,041.57 (including interest and fees as at January 30, 2019) is paid on or before February 11, 2019, the Secured Creditors will be in a position to enforce their security by appointing a receiver. A copy of the 244 Notice is attached to this notice.

Should a sale of the Properties be completed, and the proceeds of such sale be insufficient to pay all amounts owing by the Borrower to the priority lenders on the Port Place 2 Project, there is a risk that you may not recover the sums that you advanced to the Borrower.

The Trustee has been in touch with the Magnetic to advise of the Trustee's involvement and to ask that Magnetic keep the Trustee apprised of its activities regarding any enforcement steps it may take, including steps to commence a sale process for the Properties.

The Trustee will keep you apprised of developments related to this matter.

Should you have any further questions at this time, our contact information is below (if you are contacting us by email, please use the subject line **Port Place 2**).

Email: Info@FAANMortgageAdmin.com

Local Telephone Number: **416-606-3338**

Toll-Free Telephone Number: **1-833-495-3338**

Yours very truly,

Faan Mortgage Administrators Inc.

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



May 31, 2019

Dear Lender:

Re: Syndicated Mortgage Loan made to 2283020 Ontario Inc., subsequently acquired by Fortress Port Place (2014) Inc. ("Borrower") pursuant to the loan agreement dated December 1, 2013 in respect of properties located at 14, 18A and 28, Lakeport Road & 12 Lock Street, St. Catharines, ON ("Port Place 2 Project" or "Properties")

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

We are writing to you in our capacity as Trustee regarding the Port Place 2 Project, a real estate development project with over \$2.9 million of second ranking syndicated mortgage loan debt administered by BDMC ("**BDMC Debt**") and further to our notice dated February 7, 2019 ("**Notice**").

Notice of Sale

As was advised in the Notice, on January 30, 2019, Magnetic Capital Group Inc. ("**Magnetic**"), Olympia Trust Company and Canadian Western Trust Company (collectively "**Secured Creditors**"), acting as the Borrower's first ranking priority lender, issued a Notice of Intention to Enforce Security pursuant to Subsection 244(1) of the *Bankruptcy and Insolvency Act* ("**244 Notice**"). A copy of the 244 Notice was previously provided to you.

On April 23, 2019, the Secured Creditors, issued a Notice of Sale Under Mortgage ("**Notice of Sale**"). The Secured Creditors have taken the position that the Borrower is in default under their mortgage and unless the full amount of the outstanding debt totaling \$736,195.87 (including interest and fees as at April 23, 2019) is paid on or before May 30, 2019, the Secured Creditors will be in a position to list the Properties for sale. A copy of the Notice of Sale is attached to this notice.

The Trustee continues to be in touch with Magnetic, on behalf of the Secured Creditors, and Magnetic has advised that it will keep the Trustee apprised of its activities in connection with the Properties, including steps to commence a sale process for the Properties.

Should a sale of the Properties be completed and the proceeds of such sale be insufficient to pay all amounts owing by the Borrower to the priority lenders on the Port Place 2 Project, which may include the amounts owing to Magnetic in respect of the Additional Financing (depending on the outcome of the priority dispute described below), there is a risk that you may not recover the sums that you advanced to the Borrower.

Priority of Debt Registered on the Port Place 2 Project

As described in the Trustee's seventh report to Court dated May 10, 2019, the Trustee has also been advised by Magnetic that it financed an additional \$1.5 million of debt on the Port Place 2 Project ("**Additional Financing**") prior to the Trustee's appointment, but subsequent to FAAN Mortgage assuming its role as



independent manager of the administration business of BDMC. The charge registered on title in favour of Magnetic related to the Additional Financing currently ranks in third position, subordinate to the BDMC Debt, which is registered in second position. FAAN Mortgage was not aware of or involved with this transaction until after it closed. Magnetic disputes BDMC's second ranking position on the basis that the Additional Financing was always intended to rank in priority to the BDMC Debt and that BDMC agreed to such postponement at the time the Additional Financing was arranged. Magnetic also asserts that the BDMC Mortgage ought to be postponed to Additional Financing on the basis of equitable subrogation. Magnetic claims that it failed to enter into a postponement agreement with BDMC to affect the subordination due to a simple oversight. The Trustee has asked for evidence showing that BDMC has agreed to postpone its interest at the time the financing by Magnetic was arranged and has received certain information from Magnetic's counsel. Magnetic's counsel has also requested that the Trustee consent to lift the stay of proceedings to allow this priority dispute to be resolved by the Court. The Trustee's counsel advised counsel to Magnetic that, prior to deciding whether to lift the stay, the Trustee required certain additional information and sufficient time to consider any information provided. The Trustee is in the process of reviewing the information it has received to date, will review any further information that may be requested and provided, and will then make a determination regarding next steps.

Work Orders made by City of St. Catharines ("City")

On February 5, 2019, the City issued work orders requiring the Borrower to complete certain repairs to three of the four properties that comprise the Port Place 2 Project. These orders required these repairs be completed on or before March 7, 2019 ("**Repair Orders**"). The Borrower did not comply with these Repair Orders and accordingly, the City issued an updated direction that the required repairs be completed by May 22, 2019, the Borrower advised that the repairs would not be completed. The City advised that this was a final warning to comply and that failure to do so would result in the matter being referred to the City solicitor for legal action.

The Trustee will keep you informed as to the developments on the Port Place 2 Project as more information becomes available.

Should you have any further questions at this time, our contact information is below (if you are contacting us by email, please use the subject line **Port Place 2**).

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 3:
Subordination and Priority Agreements

SUBORDINATION AND PRIORITY AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2020

B E T W E E N:

MAGNETIC CAPITAL GROUP INC. and CANADIAN WESTERN TRUST

(hereinafter referred to, collectively, as the “**Senior Lender**”)

- and -

OLYMPIA TRUST COMPANY and FAAN MORTGAGE ADMINISTRATORS INC. solely in its capacity as court-appointed trustee of BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

(hereinafter referred to, collectively, as the “**Subordinate Lender**”)

- and -

2283020 ONTARIO INC. and FORTRESS PORT PLACE (2014) INC.

(hereinafter referred to, collectively, as the “**Borrower**”)

WHEREAS 2283020 Ontario Inc. is the registered and beneficial owner of the lands described in Schedule "A" hereto (the “**Lands**”);

AND WHEREAS the Senior Lender provided a loan in the principal amount of \$1,470,000,000 to the Borrower at an interest rate of 8% per annum (the “**Senior Debt**”) secured in part by certain security granted in connection therewith by the Borrower, including a mortgage on the Lands registered as Instrument No. NR475898 on March 13, 2018 (the “**Senior Security**”);

AND WHEREAS the Subordinate Lender provided a loan in the principal amount of \$2,928,707 to the Borrower at an interest rate of 8% (the “**Subordinate Debt**”) secured in part by certain security granted in connection therewith by the Borrower, including a mortgage on the Lands registered as Instrument No. NR346800 on February 27, 2014 originally in favour of Centro Mortgage Inc., as assigned and amended (the “**Subordinate Security**”);

AND WHEREAS in order to ensure that the relative priorities as between the Senior Security and the Subordinate Security are clearly established notwithstanding the date of registration of the Senior Security and the Subordinate Security, the parties have entered into this Agreement;

NOW THEREFORE WITNESS that in consideration of the covenants hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree each with the others as follows:

1. SUBORDINATION AND POSTPONEMENT

- (a) The Subordinate Lender agrees with, and declares to, the Senior Lender that the Subordinate Security shall be and is hereby postponed and subordinated to and in favour of the Senior Security and the Senior Debt to the maximum principal amount set out in Schedule "A" plus interest at the rate set out herein accrued on such maximum principal amount and protective disbursements allocated to such maximum principal amount (the "**Maximum Amount**") only so that irrespective of the actual order of execution, delivery, registration, filing or crystallization in relation to each other, the Subordinate Security shall be an encumbrance upon the Lands in the same manner and to the same extent as if it had been executed, delivered, registered and/or filed for the purpose of perfecting the security represented thereby and/or crystallized after the Senior Security, to the Maximum Amount. The Subordinate Lender agrees with, and declares to, the Senior Lender that the respective priorities of the Subordinate Security and the Senior Security set out in this section and all other rights established, altered or specified in this Agreement, are applicable irrespective of the time or order of creation, execution, delivery, attachment or perfection thereof, the method of perfection, the time or order of registration or filing of financing statements or recording of mortgages or other instruments, assignments or agreements, the giving of or failure to give notice of the acquiring of any charge, lien or security interest or other encumbrance or the date or dates of any loan or any advance or advances by any of the parties hereto, the date or dates of any default by the Borrower or of any other party under the Subordinate Security or the Senior Security or any other indebtedness related thereto or the date of crystallization of any floating charge referred to therein, or the date of the taking of enforcement proceedings including possession with respect to such Senior Security. Notwithstanding the foregoing or anything to the contrary, the subordination and postponement of the Subordinate Security contained in this Agreement shall be limited to the Maximum Amount such that the Senior Security shall be postponed and subordinated to and in favour of the Subordinate Security and the Subordinate Debt for the principal amount, interest and costs in excess of the Maximum Amount.
- (b) If, prior to the indefeasible payment of the Senior Debt to the extent of the Maximum Amount, the Subordinate Lender or any person on its behalf shall receive any payment from (including by way of offset), or distribution of assets of, the Borrower, which the Subordinate Lender is not entitled to receive and retain in accordance with the provisions of this Agreement, then the Subordinate Lender shall, and shall cause such other person to, receive and hold such payment or distribution in trust for the benefit of the Senior Lender and promptly pay the same over or deliver to the Senior Lender in precisely the form received by the Subordinate Lender or such other person on its behalf as the Senior Lender shall direct (except for any necessary endorsement or assignment) and such payment or distribution shall be applied by the Senior Lender, to the repayment of the Senior Debt.
- (c) If, prior to the indefeasible payment of the Subordinate Debt, the Senior Lender or any person on its behalf shall receive any payment from (including by way of offset), or distribution of assets of, the Borrower, which the Senior Lender is not entitled to

receive and retain in accordance with the provisions of this Agreement, then the Senior Lender shall, and shall cause such other person to, receive and hold such payment or distribution in trust for the benefit of the Subordinate Lender and promptly pay the same over or deliver to the Subordinate Lender in precisely the form received by the Senior Lender or such other person on its behalf as the Subordinate Lender shall direct (except for any necessary endorsement or assignment) and such payment or distribution shall be applied by the Subordinate Lender, to the repayment of the Subordinate Debt.

- (d) Notwithstanding anything to the contrary contained herein, the Senior Lender and the Subordinate Lender agree that any payment received by the Senior Lender in reduction of the Senior Debt as defined under this Agreement shall reduce such Senior Debt and reduce the Senior Debt (as defined in the subordination and priority agreement between the parties hereto in respect of the property municipally known as 28 Lakeport Road, St. Catharines, Ontario (the “**28 Lakeport Subordination Agreement**”)) in a corresponding amount.

2. NOTICE OF ENFORCEMENT

Concurrently with the commencement of any Insolvency Proceeding (as defined below), the appointment of a receiver, manager, receiver-manager, liquidator, trustee, trustee in bankruptcy, sequestrator, custodian or other person having similar powers or authority or the taking of any other action to realize or enforce the Senior Security or the Subordinate Security or make any demand in respect of the Senior Debt or the Subordinate Debt, the Subordinate Lender or the Senior Lender, as the case may be, shall give the other notice in writing of such appointment or other action.

“**Insolvency Proceeding**” means any of the foregoing actions: (a) commence any case, proceeding or other action under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, arrangement or relief of debtors against or in respect of the Borrower; (b) institute proceedings to have the Borrower adjudicated a bankrupt or insolvent; (c) consent to, or acquiesce in, the commencement of bankruptcy, insolvency, restructuring or winding up proceedings against the Borrower; (d) file a petition or application or consent to the filing of same seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of the Borrower.

3. NOTICE OF DEFAULT AND DEMAND

- (a) The Senior Lender agrees to give the Subordinate Lender written notice of any demand for payment or event of default under the Senior Security of which it becomes aware, and the particulars of same; provided further that the Senior Lender shall provide timely updates to the Subordinate Lender from time to time (and when requested by the Subordinate Lender, acting reasonably) of the status of and any material developments relating to such demand for payment or event of default.
- (b) The Subordinate Lender agrees to give the Senior Lender written notice of any demand for payment or event of default under the Subordinate Security of which it becomes aware, and the particulars of same; provided further that the Subordinate

Lender shall provide timely updates to the Senior Lender from time to time (and when requested by the Senior Lender, acting reasonably) of the status of and any material developments relating to such demand for payment or event of default.

4. EQUITABLE REMEDIES

The parties hereto acknowledge that a breach of the obligations hereunder by any party could result in irreparable damages to the non-breaching party or parties, and that in the event of such breach, damages at law would be an inadequate remedy. Accordingly, the parties hereto agree that upon a breach of the provisions hereof, each party shall be entitled to equitable remedies, including without limitation the right to obtain specific performance and injunctions against the relevant breach hereunder.

5. FURTHER ASSURANCES

The parties hereto agree that they shall at all times do, execute, acknowledge and deliver all such acts, deeds and agreements as may be reasonably necessary or desirable to give effect to the terms and provisions of this Agreement.

6. EXCHANGE OF INFORMATION

Upon written request by the Subordinate Lender or the Senior Lender to the other, each of the Subordinate Lender and the Senior Lender agree (without liability) to provide to the other copies of any reports received from the Borrower, a statement confirming the status of their respective indebtedness, including the amount of the indebtedness then outstanding, the then applicable interest rate and payment terms and particulars of all existing or alleged defaults by the Borrower in respect thereof. The Borrower hereby consents to the foregoing exchange of information.

7. HEADINGS

The headings and captions in this Agreement have been inserted for convenience only and are not a part hereof.

8. ASSIGNMENT

The Subordinate Security may not be assigned by the Subordinate Lender in whole or in part unless the assignee of the Subordinate Lender in the Subordinate Security delivers to the Senior Lender a written agreement, in form and substance satisfactory to the Senior Lender, acting reasonably, whereby such assignee agrees to be bound by this Agreement, provided that nothing herein shall prevent the Subordinate Lender from adding or removing investors to its loan provided that the Subordinate Security remains registered in the name of the Subordinate Lender. The Senior Security may not be assigned by the Senior Lender in whole or in part unless the assignee of the Senior Lender in the Senior Security delivers to the Subordinate Lender a written agreement, in form and substance satisfactory to the Subordinate Lender, acting reasonably, whereby such assignee agrees to be bound by this Agreement.

9. NOTICES

Any demand, notice or communication to be made or given hereunder or under the Documents shall be in writing and given by personal delivery or by email addressed to the respective parties as follows:

(1) To the Subordinate Lender:

FAAN Mortgage Administrators Inc. solely in its capacity as Court-appointed Trustee of Building & Development Mortgages Canada Inc. and in no other capacity

20 Adelaide Street East, Suite 920
Toronto, Ontario M5C 2T6

Email: Info@FAANMortgageAdmin.com

With a copy to:

Olympia Trust Company
2200 125 9th Avenue SE
Calgary, Alberta T2G 0P6

Attention: Samantha Johnson
Email: johnsons@olympia.com

(2) To the Senior Lender:

c/o Sorbara, Schumacher, McCann LLP
31 Union Street East
Waterloo, Ontario N2J 1B8

Attention: Greg Murdoch
Email: gmurdoch@sorbaralaw.com

(3) To the Borrower:

c/o Robins Appleby LLP
Suite 2600, 120 Adelaide Street West
Toronto, Ontario M5H 1T1

Attention: Leor Margulies
Email: lmargulies@robapp.com

or to such other address as any party may from time to time notify the others in accordance with this section. Any demand, notice or communication given by personal delivery shall be effected between 9:00 a.m. and 5:00 p.m. on the date of delivery and conclusively deemed to have been given on the day of actual delivery thereof, or, if given by other electronic means of communication, on the first Business Day following the transmittal thereof. “**Business**

Day” means a day that the principal office of the Senior Lender is open for business to the general public, but does not in any event include a Saturday or a Sunday.

10. ENUREMENT

This Agreement shall be binding upon the parties hereto and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the parties hereto in respect of its subject matter and supersedes any prior agreements, undertakings, declarations, or representations, written or oral, in respect thereof. Notwithstanding the foregoing, the parties hereto further agree that this Agreement and the 28 Lakeport Subordination Agreement (as defined in Section 1(d) of this Agreement) shall be read together in order ensure the intended relative priorities between the applicable Senior Security and Subordinate Security.

12. SEVERABILITY

If any of the provisions of this Agreement shall be held invalid or unenforceable by any court having jurisdiction, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the parties hereto should be construed and enforced accordingly.

13. ACKNOWLEDGMENT OF RECEIPT

The Borrower acknowledges receipt of an executed copy of this Agreement and agrees to the terms thereof.

14. PARAMOUNTCY OF SUBORDINATION AND PRIORITY AGREEMENT

It is acknowledged and agreed by the parties hereto that the terms of this Agreement shall govern, the Senior Security, the Senior Debt, the Subordinate Debt and the Subordinate Security as if recited in all respects therein, and that in the event of any conflict between the terms of this Agreement and those of any of the Senior Debt, the Senior Security, the Subordinate Debt or the Subordinate Security, the terms of this Agreement shall in every respect govern.

15. TERMINATION

This Agreement, including all rights, obligations, subordinations, and postponements created hereunder or pursuant hereto, shall terminate and cease to have effect on the date on which the Senior Debt shall have been indefeasibly paid in full.

16. GOVERNING LAW

This agreement shall be construed and enforced in accordance with, and the rights of the parties hereto shall be governed by, the laws of the Province of Ontario. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

17. COUNTERPARTS AND EXECUTION AND DELIVERY

This Agreement may be executed in several counterparts and delivered via electronic transmission, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date written in the beginning of this Agreement.

[SIGNATURE LINES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

MAGNETIC CAPITAL GROUP INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

CANADIAN WESTERN TRUST

By: _____
Name:
Title:

By: _____
Name:
Title:

OLYMPIA TRUST COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

**FAAN MORTGAGE ADMINISTRATORS
INC. solely in its capacity as court-appointed
trustee of BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.**

By: _____

Name:

Title:

By: _____

Name:

Title:

2283020 ONTARIO INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

FORTRESS PORT PLACE (2014) INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE A

Lands / Legal Description / Priority Amount

Municipal Address	Legal Description	Maximum Priority Amount of Senior Debt
14 Lockport, St. Catharines, Ontario	PIN 46195-0668 (LT) PT LT 13 RCP 696 GRANTHAM BEING PT 1 ON 30R11783; CITY OF ST. CATHARINES	\$857,353.77

SUBORDINATION AND PRIORITY AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2020

B E T W E E N:

MAGNETIC CAPITAL GROUP INC. and CANADIAN WESTERN TRUST

(hereinafter referred to, collectively, as the “**Senior Lender**”)

- and -

OLYMPIA TRUST COMPANY and FAAN MORTGAGE ADMINISTRATORS INC. solely in its capacity as court-appointed trustee of BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

(hereinafter referred to, collectively, as the “**Subordinate Lender**”)

- and -

2283020 ONTARIO INC. and FORTRESS PORT PLACE (2014) INC.

(hereinafter referred to, collectively, as the “**Borrower**”)

WHEREAS 2283020 Ontario Inc. is the registered and beneficial owner of the lands described in Schedule "A" hereto (the “**Lands**”);

AND WHEREAS the Senior Lender provided a loan in the principal amount of \$1,470,000,000 to the Borrower at an interest rate of 8% per annum (the “**Senior Debt**”) secured in part by certain security granted in connection therewith by the Borrower, including a mortgage on the Lands registered as Instrument No. NR475898 on March 13, 2018 (the “**Senior Security**”);

AND WHEREAS the Subordinate Lender provided a loan in the principal amount of \$2,928,707 to the Borrower at an interest rate of 8% (the “**Subordinate Debt**”) secured in part by certain security granted in connection therewith by the Borrower, including a mortgage on the Lands registered as Instrument No. NR346800 on February 27, 2014 originally in favour of Centro Mortgage Inc., as assigned and amended (the “**Subordinate Security**”);

AND WHEREAS in order to ensure that the relative priorities as between the Senior Security and the Subordinate Security are clearly established notwithstanding the date of registration of the Senior Security and the Subordinate Security, the parties have entered into this Agreement;

NOW THEREFORE WITNESS that in consideration of the covenants hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree each with the others as follows:

1. SUBORDINATION AND POSTPONEMENT

- (a) The Subordinate Lender agrees with, and declares to, the Senior Lender that the Subordinate Security shall be and is hereby postponed and subordinated to and in favour of the Senior Security and the Senior Debt to the maximum principal amount set out in Schedule "A" plus interest at the rate set out herein accrued on such maximum principal amount and protective disbursements allocated to such maximum principal amount (the "**Maximum Amount**") only so that irrespective of the actual order of execution, delivery, registration, filing or crystallization in relation to each other, the Subordinate Security shall be an encumbrance upon the Lands in the same manner and to the same extent as if it had been executed, delivered, registered and/or filed for the purpose of perfecting the security represented thereby and/or crystallized after the Senior Security, to the Maximum Amount. The Subordinate Lender agrees with, and declares to, the Senior Lender that the respective priorities of the Subordinate Security and the Senior Security set out in this section and all other rights established, altered or specified in this Agreement, are applicable irrespective of the time or order of creation, execution, delivery, attachment or perfection thereof, the method of perfection, the time or order of registration or filing of financing statements or recording of mortgages or other instruments, assignments or agreements, the giving of or failure to give notice of the acquiring of any charge, lien or security interest or other encumbrance or the date or dates of any loan or any advance or advances by any of the parties hereto, the date or dates of any default by the Borrower or of any other party under the Subordinate Security or the Senior Security or any other indebtedness related thereto or the date of crystallization of any floating charge referred to therein, or the date of the taking of enforcement proceedings including possession with respect to such Senior Security. Notwithstanding the foregoing or anything to the contrary, the subordination and postponement of the Subordinate Security contained in this Agreement shall be limited to the Maximum Amount such that the Senior Security shall be postponed and subordinated to and in favour of the Subordinate Security and the Subordinate Debt for the principal amount, interest and costs in excess of the Maximum Amount.
- (b) If, prior to the indefeasible payment of the Senior Debt to the extent of the Maximum Amount, the Subordinate Lender or any person on its behalf shall receive any payment from (including by way of offset), or distribution of assets of, the Borrower, which the Subordinate Lender is not entitled to receive and retain in accordance with the provisions of this Agreement, then the Subordinate Lender shall, and shall cause such other person to, receive and hold such payment or distribution in trust for the benefit of the Senior Lender and promptly pay the same over or deliver to the Senior Lender in precisely the form received by the Subordinate Lender or such other person on its behalf as the Senior Lender shall direct (except for any necessary endorsement or assignment) and such payment or distribution shall be applied by the Senior Lender, to the repayment of the Senior Debt.
- (c) If, prior to the indefeasible payment of the Subordinate Debt, the Senior Lender or any person on its behalf shall receive any payment from (including by way of offset), or distribution of assets of, the Borrower, which the Senior Lender is not entitled to

receive and retain in accordance with the provisions of this Agreement, then the Senior Lender shall, and shall cause such other person to, receive and hold such payment or distribution in trust for the benefit of the Subordinate Lender and promptly pay the same over or deliver to the Subordinate Lender in precisely the form received by the Senior Lender or such other person on its behalf as the Subordinate Lender shall direct (except for any necessary endorsement or assignment) and such payment or distribution shall be applied by the Subordinate Lender, to the repayment of the Subordinate Debt.

- (d) Notwithstanding anything to the contrary contained herein, the Senior Lender and the Subordinate Lender agree that any payment received by the Senior Lender in reduction of the Senior Debt as defined under this Agreement shall reduce such Senior Debt and reduce the Senior Debt (as defined in the subordination and priority agreement between the parties hereto in respect of the property municipally known as 14 Lakeport Road, St. Catharines, Ontario (the “**14 Lakeport Subordination Agreement**”)) in a corresponding amount.

2. NOTICE OF ENFORCEMENT

Concurrently with the commencement of any Insolvency Proceeding (as defined below), the appointment of a receiver, manager, receiver-manager, liquidator, trustee, trustee in bankruptcy, sequestrator, custodian or other person having similar powers or authority or the taking of any other action to realize or enforce the Senior Security or the Subordinate Security or make any demand in respect of the Senior Debt or the Subordinate Debt, the Subordinate Lender or the Senior Lender, as the case may be, shall give the other notice in writing of such appointment or other action.

“**Insolvency Proceeding**” means any of the foregoing actions: (a) commence any case, proceeding or other action under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, arrangement or relief of debtors against or in respect of the Borrower; (b) institute proceedings to have the Borrower adjudicated a bankrupt or insolvent; (c) consent to, or acquiesce in, the commencement of bankruptcy, insolvency, restructuring or winding up proceedings against the Borrower; (d) file a petition or application or consent to the filing of same seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of the Borrower.

3. NOTICE OF DEFAULT AND DEMAND

- (a) The Senior Lender agrees to give the Subordinate Lender written notice of any demand for payment or event of default under the Senior Security of which it becomes aware, and the particulars of same; provided further that the Senior Lender shall provide timely updates to the Subordinate Lender from time to time (and when requested by the Subordinate Lender, acting reasonably) of the status of and any material developments relating to such demand for payment or event of default.
- (b) The Subordinate Lender agrees to give the Senior Lender written notice of any demand for payment or event of default under the Subordinate Security of which it becomes aware, and the particulars of same; provided further that the Subordinate

Lender shall provide timely updates to the Senior Lender from time to time (and when requested by the Senior Lender, acting reasonably) of the status of and any material developments relating to such demand for payment or event of default.

4. EQUITABLE REMEDIES

The parties hereto acknowledge that a breach of the obligations hereunder by any party could result in irreparable damages to the non-breaching party or parties, and that in the event of such breach, damages at law would be an inadequate remedy. Accordingly, the parties hereto agree that upon a breach of the provisions hereof, each party shall be entitled to equitable remedies, including without limitation the right to obtain specific performance and injunctions against the relevant breach hereunder.

5. FURTHER ASSURANCES

The parties hereto agree that they shall at all times do, execute, acknowledge and deliver all such acts, deeds and agreements as may be reasonably necessary or desirable to give effect to the terms and provisions of this Agreement.

6. EXCHANGE OF INFORMATION

Upon written request by the Subordinate Lender or the Senior Lender to the other, each of the Subordinate Lender and the Senior Lender agree (without liability) to provide to the other copies of any reports received from the Borrower, a statement confirming the status of their respective indebtedness, including the amount of the indebtedness then outstanding, the then applicable interest rate and payment terms and particulars of all existing or alleged defaults by the Borrower in respect thereof. The Borrower hereby consents to the foregoing exchange of information.

7. HEADINGS

The headings and captions in this Agreement have been inserted for convenience only and are not a part hereof.

8. ASSIGNMENT

The Subordinate Security may not be assigned by the Subordinate Lender in whole or in part unless the assignee of the Subordinate Lender in the Subordinate Security delivers to the Senior Lender a written agreement, in form and substance satisfactory to the Senior Lender, acting reasonably, whereby such assignee agrees to be bound by this Agreement, provided that nothing herein shall prevent the Subordinate Lender from adding or removing investors to its loan provided that the Subordinate Security remains registered in the name of the Subordinate Lender. The Senior Security may not be assigned by the Senior Lender in whole or in part unless the assignee of the Senior Lender in the Senior Security delivers to the Subordinate Lender a written agreement, in form and substance satisfactory to the Subordinate Lender, acting reasonably, whereby such assignee agrees to be bound by this Agreement.

9. NOTICES

Any demand, notice or communication to be made or given hereunder or under the Documents shall be in writing and given by personal delivery or by email addressed to the respective parties as follows:

(1) To the Subordinate Lender:

FAAN Mortgage Administrators Inc. solely in its capacity as Court-appointed Trustee of Building & Development Mortgages Canada Inc. and in no other capacity

20 Adelaide Street East, Suite 920
Toronto, Ontario M5C 2T6

Email: Info@FAANMortgageAdmin.com

With a copy to:

Olympia Trust Company
2200 125 9th Avenue SE
Calgary, Alberta T2G 0P6

Attention: Samantha Johnson
Email: johnsons@olympia.com

(2) To the Senior Lender:

c/o Sorbara, Schumacher, McCann LLP
31 Union Street East
Waterloo, Ontario N2J 1B8

Attention: Greg Murdoch
Email: gmurdoch@sorbaralaw.com

(3) To the Borrower:

c/o Robins Appleby LLP
Suite 2600, 120 Adelaide Street West
Toronto, Ontario M5H 1T1

Attention: Leor Margulies
Email: lmargulies@robapp.com

or to such other address as any party may from time to time notify the others in accordance with this section. Any demand, notice or communication given by personal delivery shall be effected between 9:00 a.m. and 5:00 p.m. on the date of delivery and conclusively deemed to have been given on the day of actual delivery thereof, or, if given by other electronic means of communication, on the first Business Day following the transmittal thereof. “**Business**

Day” means a day that the principal office of the Senior Lender is open for business to the general public, but does not in any event include a Saturday or a Sunday.

10. ENUREMENT

This Agreement shall be binding upon the parties hereto and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the parties hereto in respect of its subject matter and supersedes any prior agreements, undertakings, declarations, or representations, written or oral, in respect thereof. Notwithstanding the foregoing, the parties hereto further agree that this Agreement and the 14 Lakeport Subordination Agreement (as defined in Section 1(d) of this Agreement) shall be read together in order ensure the intended relative priorities between the applicable Senior Security and Subordinate Security.

12. SEVERABILITY

If any of the provisions of this Agreement shall be held invalid or unenforceable by any court having jurisdiction, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the parties hereto should be construed and enforced accordingly.

13. ACKNOWLEDGMENT OF RECEIPT

The Borrower acknowledges receipt of an executed copy of this Agreement and agrees to the terms thereof.

14. PARAMOUNTCY OF SUBORDINATION AND PRIORITY AGREEMENT

It is acknowledged and agreed by the parties hereto that the terms of this Agreement shall govern, the Senior Security, the Senior Debt, the Subordinate Debt and the Subordinate Security as if recited in all respects therein, and that in the event of any conflict between the terms of this Agreement and those of any of the Senior Debt, the Senior Security, the Subordinate Debt or the Subordinate Security, the terms of this Agreement shall in every respect govern.

15. TERMINATION

This Agreement, including all rights, obligations, subordinations, and postponements created hereunder or pursuant hereto, shall terminate and cease to have effect on the date on which the Senior Debt shall have been indefeasibly paid in full.

16. GOVERNING LAW

This agreement shall be construed and enforced in accordance with, and the rights of the parties hereto shall be governed by, the laws of the Province of Ontario. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

17. COUNTERPARTS AND EXECUTION AND DELIVERY

This Agreement may be executed in several counterparts and delivered via electronic transmission, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date written in the beginning of this Agreement.

[SIGNATURE LINES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

MAGNETIC CAPITAL GROUP INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

CANADIAN WESTERN TRUST

By: _____
Name:
Title:

By: _____
Name:
Title:

OLYMPIA TRUST COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

**FAAN MORTGAGE ADMINISTRATORS
INC. solely in its capacity as court-appointed
trustee of BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.**

By: _____

Name:

Title:

By: _____

Name:

Title:

2283020 ONTARIO INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

FORTRESS PORT PLACE (2014) INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE A

Lands / Legal Description / Priority Amount

Municipal Address	Legal Description	Maximum Priority Amount of Senior Debt
28 Lockport, St. Catharines, Ontario	PIN 46195-0119 (LT) LT 10 RCP 696 GRANTHAM; CITY OF ST. CATHARINES	\$860,697.93

SUBORDINATION AND PRIORITY AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2020

B E T W E E N:

MAGNETIC CAPITAL GROUP INC. and CANADIAN WESTERN TRUST

(hereinafter referred to, collectively, as the “**Senior Lender**”)

- and -

OLYMPIA TRUST COMPANY and FAAN MORTGAGE ADMINISTRATORS INC. solely in its capacity as court-appointed trustee of BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

(hereinafter referred to, collectively, as the “**Subordinate Lender**”)

- and -

2283020 ONTARIO INC. and FORTRESS PORT PLACE (2014) INC.

(hereinafter referred to, collectively, as the “**Borrower**”)

WHEREAS the Borrower is the registered and beneficial owner of the lands described in Schedule "A" hereto (the “**Lands**”);

AND WHEREAS the Senior Lender provided a loan in the principal amount of \$1,470,000,000 to the Borrower at an interest rate of 8% per annum (the “**Senior Debt**”) secured in part by certain security granted in connection therewith by the Borrower, including a mortgage on the Lands registered as Instrument No. NR475898 on March 13, 2018 (the “**Senior Security**”);

AND WHEREAS the Subordinate Lender provided a loan in the principal amount of \$2,928,707 to the Borrower at an interest rate of 8% (the “**Subordinate Debt**”) secured in part by certain security granted in connection therewith by the Borrower, including a mortgage on the Lands registered as Instrument No. NR346800 on February 27, 2014 originally in favour of Centro Mortgage Inc., as assigned and amended (the “**Subordinate Security**”);

AND WHEREAS in order to ensure that the relative priorities as between the Senior Security and the Subordinate Security are clearly established notwithstanding the date of registration of the Senior Security and the Subordinate Security, the parties have entered into this Agreement;

NOW THEREFORE WITNESS that in consideration of the covenants hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree each with the others as follows:

1. SUBORDINATION AND POSTPONEMENT

- (a) The Subordinate Lender agrees with, and declares to, the Senior Lender that the Subordinate Security shall be and is hereby postponed and subordinated to and in favour of the Senior Security and the Senior Debt to the maximum principal amount set out in Schedule "A" plus interest at the rate set out herein accrued on such maximum principal amount and protective disbursements allocated to such maximum principal amount (the "**Maximum Amount**") only so that irrespective of the actual order of execution, delivery, registration, filing or crystallization in relation to each other, the Subordinate Security shall be an encumbrance upon the Lands in the same manner and to the same extent as if it had been executed, delivered, registered and/or filed for the purpose of perfecting the security represented thereby and/or crystallized after the Senior Security, to the Maximum Amount. The Subordinate Lender agrees with, and declares to, the Senior Lender that the respective priorities of the Subordinate Security and the Senior Security set out in this section and all other rights established, altered or specified in this Agreement, are applicable irrespective of the time or order of creation, execution, delivery, attachment or perfection thereof, the method of perfection, the time or order of registration or filing of financing statements or recording of mortgages or other instruments, assignments or agreements, the giving of or failure to give notice of the acquiring of any charge, lien or security interest or other encumbrance or the date or dates of any loan or any advance or advances by any of the parties hereto, the date or dates of any default by the Borrower or of any other party under the Subordinate Security or the Senior Security or any other indebtedness related thereto or the date of crystallization of any floating charge referred to therein, or the date of the taking of enforcement proceedings including possession with respect to such Senior Security. Notwithstanding the foregoing or anything to the contrary, the subordination and postponement of the Subordinate Security contained in this Agreement shall be limited to the Maximum Amount such that the Senior Security shall be postponed and subordinated to and in favour of the Subordinate Security and the Subordinate Debt for the principal amount, interest and costs in excess of the Maximum Amount.
- (b) If, prior to the indefeasible payment of the Senior Debt to the extent of the Maximum Amount, the Subordinate Lender or any person on its behalf shall receive any payment from (including by way of offset), or distribution of assets of, the Borrower, which the Subordinate Lender is not entitled to receive and retain in accordance with the provisions of this Agreement, then the Subordinate Lender shall, and shall cause such other person to, receive and hold such payment or distribution in trust for the benefit of the Senior Lender and promptly pay the same over or deliver to the Senior Lender in precisely the form received by the Subordinate Lender or such other person on its behalf as the Senior Lender shall direct (except for any necessary endorsement or assignment) and such payment or distribution shall be applied by the Senior Lender, to the repayment of the Senior Debt.
- (c) If, prior to the indefeasible payment of the Subordinate Debt, the Senior Lender or any person on its behalf shall receive any payment from (including by way of offset), or distribution of assets of, the Borrower, which the Senior Lender is not entitled to

receive and retain in accordance with the provisions of this Agreement, then the Senior Lender shall, and shall cause such other person to, receive and hold such payment or distribution in trust for the benefit of the Subordinate Lender and promptly pay the same over or deliver to the Subordinate Lender in precisely the form received by the Senior Lender or such other person on its behalf as the Subordinate Lender shall direct (except for any necessary endorsement or assignment) and such payment or distribution shall be applied by the Subordinate Lender, to the repayment of the Subordinate Debt.

2. NOTICE OF ENFORCEMENT

Concurrently with the commencement of any Insolvency Proceeding (as defined below), the appointment of a receiver, manager, receiver-manager, liquidator, trustee, trustee in bankruptcy, sequestrator, custodian or other person having similar powers or authority or the taking of any other action to realize or enforce the Senior Security or the Subordinate Security or make any demand in respect of the Senior Debt or the Subordinate Debt, the Subordinate Lender or the Senior Lender, as the case may be, shall give the other notice in writing of such appointment or other action.

“Insolvency Proceeding” means any of the foregoing actions: (a) commence any case, proceeding or other action under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, arrangement or relief of debtors against or in respect of the Borrower; (b) institute proceedings to have the Borrower adjudicated a bankrupt or insolvent; (c) consent to, or acquiesce in, the commencement of bankruptcy, insolvency, restructuring or winding up proceedings against the Borrower; (d) file a petition or application or consent to the filing of same seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of the Borrower.

3. NOTICE OF DEFAULT AND DEMAND

(a) The Senior Lender agrees to give the Subordinate Lender written notice of any demand for payment or event of default under the Senior Security of which it becomes aware, and the particulars of same; provided further that the Senior Lender shall provide timely updates to the Subordinate Lender from time to time (and when requested by the Subordinate Lender, acting reasonably) of the status of and any material developments relating to such demand for payment or event of default.

(b) The Subordinate Lender agrees to give the Senior Lender written notice of any demand for payment or event of default under the Subordinate Security of which it becomes aware, and the particulars of same; provided further that the Subordinate Lender shall provide timely updates to the Senior Lender from time to time (and when requested by the Senior Lender, acting reasonably) of the status of and any material developments relating to such demand for payment or event of default.

4. EQUITABLE REMEDIES

The parties hereto acknowledge that a breach of the obligations hereunder by any party could result in irreparable damages to the non-breaching party or parties, and that in the event of

such breach, damages at law would be an inadequate remedy. Accordingly, the parties hereto agree that upon a breach of the provisions hereof, each party shall be entitled to equitable remedies, including without limitation the right to obtain specific performance and injunctions against the relevant breach hereunder.

5. FURTHER ASSURANCES

The parties hereto agree that they shall at all times do, execute, acknowledge and deliver all such acts, deeds and agreements as may be reasonably necessary or desirable to give effect to the terms and provisions of this Agreement.

6. EXCHANGE OF INFORMATION

Upon written request by the Subordinate Lender or the Senior Lender to the other, each of the Subordinate Lender and the Senior Lender agree (without liability) to provide to the other copies of any reports received from the Borrower, a statement confirming the status of their respective indebtedness, including the amount of the indebtedness then outstanding, the then applicable interest rate and payment terms and particulars of all existing or alleged defaults by the Borrower in respect thereof. The Borrower hereby consents to the foregoing exchange of information.

7. HEADINGS

The headings and captions in this Agreement have been inserted for convenience only and are not a part hereof.

8. ASSIGNMENT

The Subordinate Security may not be assigned by the Subordinate Lender in whole or in part unless the assignee of the Subordinate Lender in the Subordinate Security delivers to the Senior Lender a written agreement, in form and substance satisfactory to the Senior Lender, acting reasonably, whereby such assignee agrees to be bound by this Agreement, provided that nothing herein shall prevent the Subordinate Lender from adding or removing investors to its loan provided that the Subordinate Security remains registered in the name of the Subordinate Lender. The Senior Security may not be assigned by the Senior Lender in whole or in part unless the assignee of the Senior Lender in the Senior Security delivers to the Subordinate Lender a written agreement, in form and substance satisfactory to the Subordinate Lender, acting reasonably, whereby such assignee agrees to be bound by this Agreement.

9. NOTICES

Any demand, notice or communication to be made or given hereunder or under the Documents shall be in writing and given by personal delivery or by email addressed to the respective parties as follows:

- (1) To the Subordinate Lender:

FAAN Mortgage Administrators Inc. solely in its capacity as Court-appointed Trustee of Building & Development Mortgages Canada Inc. and in no other capacity

20 Adelaide Street East, Suite 920
Toronto, Ontario M5C 2T6

Email: Info@FAANMortgageAdmin.com

With a copy to:

Olympia Trust Company
2200 125 9th Avenue SE
Calgary, Alberta T2G 0P6

Attention: Samantha Johnson
Email: johnsons@olympia.com

(2) To the Senior Lender:

c/o Sorbara, Schumacher, McCann LLP
31 Union Street East
Waterloo, Ontario N2J 1B8

Attention: Greg Murdoch
Email: gmurdoch@sorbaralaw.com

(3) To the Borrower:

c/o Robins Appleby LLP
Suite 2600, 120 Adelaide Street West
Toronto, Ontario M5H 1T1

Attention: Leor Margulies
Email: lmargulies@robapp.com

or to such other address as any party may from time to time notify the others in accordance with this section. Any demand, notice or communication given by personal delivery shall be effected between 9:00 a.m. and 5:00 p.m. on the date of delivery and conclusively deemed to have been given on the day of actual delivery thereof, or, if given by other electronic means of communication, on the first Business Day following the transmittal thereof. “**Business Day**” means a day that the principal office of the Senior Lender is open for business to the general public, but does not in any event include a Saturday or a Sunday.

10. ENUREMENT

This Agreement shall be binding upon the parties hereto and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement among the parties hereto in respect of its subject matter and supersedes any prior agreements, undertakings, declarations, or representations, written or oral, in respect thereof.

12. SEVERABILITY

If any of the provisions of this Agreement shall be held invalid or unenforceable by any court having jurisdiction, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the parties hereto should be construed and enforced accordingly.

13. ACKNOWLEDGMENT OF RECEIPT

The Borrower acknowledges receipt of an executed copy of this Agreement and agrees to the terms thereof.

14. PARAMOUNTCY OF SUBORDINATION AND PRIORITY AGREEMENT

It is acknowledged and agreed by the parties hereto that the terms of this Agreement shall govern, the Senior Security, the Senior Debt, the Subordinate Debt and the Subordinate Security as if recited in all respects therein, and that in the event of any conflict between the terms of this Agreement and those of any of the Senior Debt, the Senior Security, the Subordinate Debt or the Subordinate Security, the terms of this Agreement shall in every respect govern.

15. TERMINATION

This Agreement, including all rights, obligations, subordinations, and postponements created hereunder or pursuant hereto, shall terminate and cease to have effect on the date on which the Senior Debt shall have been indefeasibly paid in full.

16. GOVERNING LAW

This agreement shall be construed and enforced in accordance with, and the rights of the parties hereto shall be governed by, the laws of the Province of Ontario. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

17. COUNTERPARTS AND EXECUTION AND DELIVERY

This Agreement may be executed in several counterparts and delivered via electronic transmission, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date written in the beginning of this Agreement.

[SIGNATURE LINES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

MAGNETIC CAPITAL GROUP INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

CANADIAN WESTERN TRUST

By: _____
Name:
Title:

By: _____
Name:
Title:

OLYMPIA TRUST COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

**FAAN MORTGAGE ADMINISTRATORS
INC. solely in its capacity as court-appointed
trustee of BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

2283020 ONTARIO INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

FORTRESS PORT PLACE (2014) INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

Lands / Legal Description / Priority Amount

Municipal Address	Legal Description	Maximum Priority Amount of Senior Debt
18 Lakeport Road, Catharines, Ontario	PIN 46195-0121 (LT) LT 12 RCP 696 GRANTHAM; CITY OF ST. CATHARINES	\$492,197.76