

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

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

(NOVEMBER 2020 COMPREHENSIVE UPDATE)

PART 2 of 3

November 16, 2020

OSLER, HOSKIN & HARCOURT LLP
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capacity as Court-appointed Trustee of Building &
Development Mortgages Canada Inc.

INDEX
(Part 2 of 3)

TAB	DOCUMENT	Page No.
1.	Notice of Motion dated November 16, 2020	001
2.	Twenty-Fourth Report of the Trustee dated November 16, 2020	010
3.	Draft November 2020 Omnibus Order	338

Appendix 8:
Old Market Lane Notices dated March 19, 2020 and October 2, 2020



March 19, 2020

Dear Lender:

Re: Syndicated Mortgage Loans made to FCF Old Market Lane 2013 Inc. also known as Old Market Lane Inc. (“Borrower”) in respect of properties located at 177, 185 & 197 Woodbridge Avenue, Woodbridge, ON (“Properties”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) issued under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended. By order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“**Representative Counsel**”).

We are writing to you in our capacity as Trustee and further to our notice dated October 8, 2019 (“**Notice**”) regarding the sale of the Properties. Prior to the Notice, the Trustee distributed notices relating to the Properties on July 18, 2018, August 16, 2018, September 27, 2018, October 15, 2018, and January 31, 2019.

Overview of the Old Market Lane Syndicated Mortgage Loans

The Borrower is indebted to BDMC in the principal amount of \$13,262,200 pursuant to three separate loan facilities: the Original Loan Agreement dated May 1, 2011 (“**Original SMLs**”), the Old Market Lane 3 Loan Agreement dated October 4, 2013 (“**OML 3 SMLs**”) and the Hybrid Loan Agreement dated April 16, 2016 (“**Hybrid SMLs**”). All three loans are registered on title to the Properties. The Original SMLs, the OML 3 SMLs and the Hybrid SMLs are collectively referred to as the “**OML SMLs**” and the aggregate amount of debt owing to the OML SMLs is referred to as the “**BDMC Debt**”.

Details related to each of the loans are provided in the table below:

	Original¹	OML 3²	Hybrid³	Total
Principal balance (A)	3,788,500	6,379,500	3,094,200	13,262,200
Accrued interest (as at January 16,2020) (B)	819,158	1,292,912	466,779	2,578,849
Total owing (A+B)	\$4,607,658	\$7,672,412	\$3,560,979	\$15,841,049
Paid interest	\$1,631,809	\$1,377,895	\$247,536	\$3,257,240

¹ Last interest payment to Original SMLs was on May 4, 2017.

² Last interest payment to OML 3 SMLs was on July 4, 2017.

³ Hybrid SMLs received one year of upfront interest upon closing and interest accrued thereafter.



Sale Transaction

As was advised in the Notice, on September 25, 2019, 5019203 Ontario Ltd. ("**5019 Ontario**"), who holds a first priority charge registered on title to the Properties, issued a Notice of Sale Under Mortgage ("**Notice of Sale**"). 5019 Ontario took the position that the Borrower was in default under its mortgage and unless the full amount of the outstanding debt totaling \$5,624,270 (including interest and fees as at October 1, 2019) was paid on or before November 15, 2019, 5019 Ontario would be in a position to list the Properties for sale. The 5019 Ontario indebtedness is the only known indebtedness registered on title to the Properties in priority to the BDMC Debt. Subsequent to the issuance of the Notice of Sale, the Trustee contacted counsel to 5019 Ontario ("**5019 Counsel**") to request details of its planned realization process, including, among other things, the marketing plan and expected timeline.

In late October, 2019, the Trustee, in its capacity as the administrator of the subsequent mortgages registered on title to the Properties, was approached by a representative of 2735447 Ontario Inc. ("**Purchaser**") who expressed interest in purchasing the Properties. The Trustee advised the Purchaser that the Properties were subject to a Notice of Sale proceeding and that it understood 5019 Ontario would be proceeding to list the Properties for sale in the near term. Following discussions between the Purchaser and the Trustee, the Purchaser provided the Trustee with a copy of a Letter of Intent, which set out the business terms upon which the Purchaser was prepared to enter into a purchase and sale agreement for the Properties with 5019 Ontario ("**LOI**"). The LOI included, among other things, a purchase price of \$7.5 million ("**Purchase Price**"), an amount in excess of the value in the "as-is" appraisal previously commissioned by the Trustee.

Upon receipt of the LOI, the Trustee contacted 5019 Counsel to advise of the Purchaser's interest in purchasing the Properties and of the Purchase Price. The Trustee was advised by 5019 Counsel that the Purchase Price was significantly higher than the two appraisals recently commissioned by 5019 Ontario as part of the enforcement proceedings.

The Purchaser proceeded to engage in discussions with 5019 Counsel directly and ultimately provided 5019 Ontario with a formal agreement of purchase and sale reflecting the Purchase Price of \$7.5 million ("**APS**"). Following its review of the APS, 5019 Counsel determined that, in exchange for a release from all parties, including the Trustee and Representative Counsel, it would forego listing the Properties for sale with a real estate agent and would accept the APS. The releases provided 5019 Ontario with, among other things, a release from all obligations arising from the sale of the Properties.

Acceptance of the APS by 5019 Ontario resulted in significant savings to the benefit of the OML SMLs, including, among other things: (a) real estate commissions; and (b) interest on 5019 Ontario's mortgage which would have continued to accrue over the duration of a sale process at a per diem rate of \$1,483.36. Both the commissions and any incremental interest would have been payable in priority to any repayment to the OML SMLs.

In late December, 2019, 5019 Ontario accepted the Offer and executed the APS. The sale transaction closed on January 16, 2020.



Proceeds from the transaction were distributed as follows:

- i. approximately \$5.7 million to 5019 Ontario, as first mortgagee;
- ii. approximately \$74,000 to the City of Vaughan for property tax and water arrears; and
- iii. remaining proceeds, net of legal fees, of approximately \$1.57 million (“**Residual Proceeds**”) to the Trustee, on behalf of the OML SMLs, as the subsequent ranking mortgagees on the Properties. The Residual Proceeds include \$57,500 that the Trustee was able to negotiate with 5019 Counsel and that would have otherwise been payable to 5019 Ontario, as first mortgagee.

Distributions and Next Steps

The Trustee, its legal counsel, and Representative Counsel have been reviewing the documentation available in connection with the BDMC Debt. Given, among other things, the complexities of the documentation governing each of the three loan facilities, the Trustee intends to return to Court as soon as practicable to review the issues and seek approval of the distribution of the Residual Proceeds as among the OML SMLs. The Trustee will provide the OML SMLs with further information in due course, including notice of when the distribution motion will be heard by the Court.

The quantum of the distribution to the OML SMLs will be reduced by an administrative holdback of 15% to be retained by the Trustee in accordance with Court orders issued in these proceedings.

Should you have any further questions at this time, our contact information is shown below (if you contact us, please reference **Old Market Lane**).

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Old Market Lane**).

Email: BDMC@chaitons.com
 Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

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



October 2, 2020

Dear Lender:

Re: Syndicated Mortgage Loans (“OML Loans”) in respect of properties located at 177, 185 & 197 Woodbridge Avenue, Woodbridge, ON (“OML Project” or “Properties”)

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

We are writing to you in our capacity as Trustee and further to our notice of March 19, 2020.

The purpose of this notice is to provide information regarding the proposed distribution of 85% of the approximately \$1.57 million (“**Realized Property**”) received by the Trustee in respect of the sale transaction for the Properties completed by 5019203 Ontario Ltd., the first priority mortgagee (“**OML Sale Transaction**”). The Trustee intends to attend at Court to seek an Order (“**OML Distribution Order**”) to distribute the Realized Property to all remaining syndicated mortgage investors in the OML Loans (“**OML SMLs**”) on a *pari-passu* basis.

The OML distribution motion is scheduled to be heard via a virtual hearing on **October 15, 2020 at 10:00 am** (“**OML Distribution Motion**”). To the extent that you would like further information on the OML Distribution Motion please contact the Trustee directly at the contact number provided below.



The Trustee's motion materials filed in support of the Trustee's request for the OML Distribution Order, including its twentieth report to Court ("**Twentieth Report**"), are available on the Trustee's website: <http://faanmortgageadmin.com>. The Twentieth Report describes the following matters:

- (a) an overview of the OML Project and the three underlying syndicated mortgage loans pursuant to which the OML SMLs loaned money in respect of the OML Project;
- (b) details of the OML Sale Transaction;
- (c) information that supports the Trustee's recommendation that the Realized Property received in respect of the OML Sale Transaction should be distributed on a *pari-passu* basis to all OML SMLs in accordance with the methodology described in the Report, net of the Court approved administrative holdback (15%) ("**Administrative Holdback**"); and
- (d) information that supports the Trustee's recommendation not to distribute any amount of the Realized Property to any entity related to Fortress Real Developments Inc. as a result of certain Minutes of Settlement entered into by certain former OML SMLs and such parties.

Next Steps

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

Should the OML Distribution Motion be successful, the Trustee will distribute the Realized Property, net of the Administrative Holdback, on a *pari-passu* basis to the OML SMLs in accordance with the Twentieth Report as soon as practicable following Court approval.

Should you have any questions, our contact information is shown below (if you contact us, please reference **Old Market Lane**).

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

Should you wish to contact Representative Counsel, its contact information is shown below



(if you contact Representative Counsel, please reference **Old Market Lane**).

Email: BDMC@chaitons.com

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 9:
North Project Notice dated September 8, 2020



September 8, 2020

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Lamb Edmonton Corp. (“Borrower”) pursuant to the loan agreement dated April 23, 2014 (“Loan Agreement”) in respect of property located at 10305-21 106th Street NW, Edmonton, AB, Plan B2, Block 5, LOT 153-156 (“North Project” or the “Property”)

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

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you to the Borrower in respect of the North Project (“North SMLs”) pursuant to the Loan Agreement and the various associated documents, and further to our notice dated November 18, 2019 (“Notice”). The purpose of this notice is to advise you of the recently completed sale of the Property, an approved high-density development in downtown Edmonton that was being used as a surface parking lot.

Current Status of the BDMC Loan and the Development

Pursuant to the BDMC Loan, the total amount owing to the North SMLs is approximately \$10.2 million, comprised of a principal balance of approximately \$8.2 million and accrued interest as at July 10, 2020 (being the closing date of the Sale Transaction, as defined and discussed below) of approximately \$2 million¹. The BDMC Loan matured on June 30, 2018.

Prior to the Sale Transaction, in addition to the BDMC Loan, there was a first priority mortgage registered on title to the Property in favour of Firm Capital Mortgage Fund Inc. (“Firm Capital”) in the amount of approximately \$2.8 million. The Firm Capital mortgage was the only known charge that was registered on title to the Property in priority to the

¹ Per diem interest since April 1, 2020 is \$1,819.67



BDMC Loan.

Sale Transaction and Marketing Process

As was advised in the Notice, the Borrower retained CBRE Limited (“**CBRE**”) to list the Property for sale. The Property was listed for sale on September 17, 2019 with no deadline for offers.

On April 6, 2020, the Borrower presented the Trustee with a signed agreement of purchase and sale (“**APS**”) dated April 1, 2020 with Cidex Holdings Ltd., a third-party purchaser (“**Purchaser**”), for \$4,700,000 (“**Purchase Price**”) (“**Sale Transaction**”). The proposed Sale Transaction was subject to due diligence conditions, which conditions were satisfied in June 2020.

On April 14, 2020, the Trustee wrote to the Borrower to advise that the APS should not have been accepted without consulting the Trustee, particularly given that: (i) the Purchase Price was insufficient to repay the amounts owing to the North SMLs; and (ii) the APS required BDMC to discharge its mortgage registered on title to the Property. Notwithstanding the Trustee’s concerns, the Trustee advised that it would proceed to review the Sale Transaction.

As part of its review, the Trustee engaged in discussions with the listing agent, CBRE. From those discussions, the Trustee understands that there was continuous exposure of the Property through various marketing platforms and direct mailing campaigns from September, 2019 through to February, 2020 (“**Marketing Period**”). CBRE advised that there was limited interest in the Property throughout the Marketing Period despite the materials reaching targeted recipients, both locally and nationally. In particular, the Trustee understands that several confidentiality agreements were executed by parties who proceeded to perform some level of due diligence and that two offers were ultimately received by CBRE. The Trustee understands that the first offer, which was received in December 2019, was withdrawn following preliminary negotiations with that party. The offer from the Purchaser was the second offer received and was the only offer available to the Borrower.

In addition to its discussions with CBRE, the Trustee also engaged in discussions with its independent real estate appraiser (“**Appraiser**”) who had previously provided the Trustee with an “as-is” appraisal for the Property. Based on discussions with both CBRE and the Appraiser, the Trustee understands that in the last 2.5 years there were relatively few land sale transactions in the downtown Edmonton neighbourhood where the Property is located. With respect to those transactions, the Trustee notes the following:

- (i) Certain sales to the City of Edmonton (the “**City**”) were transacted at a higher price per square foot than the Sale Transaction (“**City Purchases**”). The Trustee



- understands that the City is forming a land assembly for the development of a central park in downtown Edmonton and appears to be paying a premium for these lands. The North Project is outside the boundary for the central park and as such the City Purchases are not viewed as appropriate properties for comparative purposes; and
- (ii) The Purchase Price is comparable in price per square foot to the remaining transactions that have been completed in downtown Edmonton (excluding the City Purchases).

In addition to considering the above, the Trustee also considered whether there were any available alternatives to the Sale Transaction that could have potentially provided for a greater recovery to the North SMLs. The Trustee is of the view that the only alternative would have been a long-term hold by the Borrower until such time that the Edmonton market could either support a higher price for a land transaction or until there was sufficient demand to support the development of the proposed condominium project (or some other design and use of the Property). The Borrower, however, advised that it was not able or willing to provide the additional financing required to support the ongoing project costs, including to service the Firm Capital mortgage. Without the Borrower continuing to service the Firm Capital mortgage, the Trustee was of the view that the Property would have likely been sold pursuant to an enforcement proceeding which could have resulted in a lower purchase price than the existing Sale Transaction.

After having considered: (i) the Sale Transaction; (ii) the alternatives available; (iii) the marketing process for the Property; and (iv) the current economic climate in Alberta and associated market uncertainty, in light of suppressed oil prices and the COVID-19 pandemic, the Trustee, with the support of Representative Counsel, determined that it was appropriate to consent to the Sale Transaction and to discharge the BDMC mortgage. Accordingly, the Sale Transaction closed on July 10, 2020.

Amounts Provided by the Borrower

The Borrower has provided the Trustee with a summary of amounts it believes should be paid from the proceeds of the Sale Transaction, in priority to the BDMC Loan (the “**Proposed Claim**”). The Proposed Claim is comprised of, among other things, carrying costs on the first priority mortgage and property taxes, which the Borrower has been funding for several years.

The Trustee has not consented to the payment of the Proposed Claim in priority to the BDMC Loan at this time and continues to be engaged in discussions with the Borrower regarding same. Should the Borrower be successful in asserting the full amount of the Proposed Claim, the Residual Proceeds (as defined below) available to the North SMLs would be significantly



reduced.

Distribution of Proceeds from the Sale Transaction

The Sale Transaction proceeds were distributed as follows:

- (i) City of Edmonton for property tax arrears (\$45,301);
- (ii) CBRE for commissions (\$177,975) and other closing costs including legal fees (\$22,359); and
- (iii) Firm Capital as the first priority mortgagee (\$2,842,745).

The remaining proceeds of \$1,611,620 (“**Residual Proceeds**”) are currently being held in trust by the Trustee’s counsel pending a resolution between the Borrower and the Trustee in respect of the priority of the Proposed Claim.

Should an agreement not be reached, the Trustee will consider all options, including potentially seeking Court approval of a distribution of the Residual Proceeds.

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

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

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **North Project**).

Email: BDMC@chaitons.com
 Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 10:
Jasper Project Notice dated September 22, 2020



September 22, 2020

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Bel-Edmonton Inc. (“Borrower”) pursuant to the loan agreement dated April 17, 2014 (“Loan Agreement”) in respect of property located at 10160-68 106th Street NW, Edmonton, AB, Plan B2, Block 6, LOT 185-187 (“Jasper House Project” or “Property”)

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

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you to the Borrower in respect of the Jasper House Project (“**Jasper SMLs**”) pursuant to the Loan Agreement and the various associated documents, and further to our notice dated November 15, 2019 (“**Notice**”). The purpose of this notice is to advise you of the pending sale of the Property to a third-party purchaser (“**Purchaser**”).

Current Status of the BDMC Loan and the Jasper House Project

As was advised in the Notice, the Jasper House Project is an approved high-density development in downtown Edmonton. The Property is currently being used as a surface parking lot, generating some rental income for the Borrower but an amount that the Borrower has advised is insufficient to cover the Property’s monthly carrying costs.

According to BDMC’s records, the total amount owing to the Jasper SMLs is approximately \$11.5 million, comprised of a principal balance of approximately \$8.3 million and accrued interest as at August 31, 2020 of approximately \$3.2 million.¹ The BDMC Loan matured in June 2018.

¹ Interest was last paid to the Jasper SMLs in September 2015. Interest has continued to accrue at per diem of \$1,819.67



In addition to the BDMC Loan, there is a first priority mortgage registered on title to the Property in favour of Firm Capital Mortgage Fund Inc. (“**Firm Capital**”) with a principal amount outstanding of approximately \$2.2 million (“**Firm Capital Mortgage**”). The Firm Capital Mortgage is the only known charge that is registered on title to the Property in priority to the BDMC Loan.

The Marketing Process

As set out in the Notice, the Borrower retained CBRE Limited (“**CBRE**”) to list the Property for sale. The Property was listed for sale on September 17, 2019 at a list price of \$7.8 million (“**List Price**”) with no deadline for offers.

In late April 2020, the Borrower received a formal offer for the Property (“**Sale Transaction**”) at a purchase price well below the List Price and ultimately executed an agreement of purchase and sale (“**APS**”) with the Purchaser in July 2020. The proposed Sale Transaction was subject to due diligence conditions which were satisfied by the end of August 2020.

The Borrower entered into the APS without consulting the Trustee, notwithstanding that: (i) the purchase price was insufficient to repay the amounts owing to the Jasper SMLs; and (ii) the APS required BDMC to discharge its mortgage registered on title to the Property (“**BDMC Mortgage**”). Despite the Trustee’s concerns regarding the purchase price, in order to seek the greatest recovery for the Jasper SMLs in the circumstances, the Trustee proceeded to review the Sale Transaction.

As part of its review, the Trustee engaged in discussions with CBRE. From those discussions, the Trustee understands that there was continuous exposure of the Property through various marketing platforms and direct mailing campaigns from September 2019 through to receipt of the APS (“**Marketing Period**”).

CBRE advised that there was limited interest in the Property throughout the Marketing Period, despite the materials being extensively distributed to targeted recipients, both locally and nationally. In particular, the Trustee understands that while several confidentiality agreements were executed by parties who proceeded to perform some level of due diligence, only two formal offers were ultimately received by CBRE for the Property, with the offer from the Purchaser being significantly higher than the other offer.

In addition to its discussions with CBRE, the Trustee also engaged in discussions with its independent real estate appraiser (“**Appraiser**”), who had previously provided the Trustee with an “as-is” appraisal for the Property in 2018, which was higher than the purchase price in the APS. Based on discussions with both CBRE and the Appraiser, the Trustee understands that in the last 2.5 years there were relatively few land sale transactions in the downtown



Edmonton neighbourhood where the Property is located and no new development in the surrounding area due to an oversupply of housing units.

In light of the expected modest recovery for the Jasper SMLs, if any, as a result of the Sale Transaction, the Trustee also considered whether there were any available alternatives that could potentially provide for a greater recovery to the Jasper SMLs. The Trustee is of the view that the only reasonable alternative is a long-term hold by the Borrower until such time that the Edmonton market can either support a higher price for a land transaction or until there is sufficient demand to support the development of the proposed condominium project (or some other design and use of the Property). The Borrower, however, advised that it has been unable to raise the additional financing required to support the ongoing project costs, including to service the Firm Capital Mortgage. Absent the servicing of the Firm Capital Mortgage, the Trustee is of the view that the Property would likely be sold by Firm Capital pursuant to an enforcement proceeding which could result in a lower purchase price than that contemplated by the Sale Transaction. Furthermore, interest would continue to accrue on the Firm Capital Mortgage, which would likely erode even the modest recovery, if any, available for the Jasper SMLs by virtue of the Sale Transaction.

After having considered: (i) the merits of the Sale Transaction; (ii) the alternatives available; (iii) the marketing process for the Property; and (iv) the current economic climate in Edmonton and associated market uncertainty, in light of the COVID-19 pandemic and the effect of suppressed oil prices on the Alberta economy, the Trustee and Representative Counsel determined that it is appropriate to discharge the BDMC Mortgage as part of the Sale Transaction. The Sale Transaction is expected to close on September 30, 2020.

Priority Claims

The Borrower has provided the Trustee with a summary of amounts it believes should be paid from the proceeds of the Sale Transaction, in priority to the BDMC Loan (the “**Related Party Claim**”). The Borrower has advised the Trustee that the Related Party Claim, which totals approximately \$1.7 million, is comprised of, among other things, amounts advanced by certain companies related to the principal of the Borrower to cover interest on the Firm Capital Mortgage and other carrying costs of the Property.

The Trustee has not consented to the payment of the Related Party Claim in priority to the amounts owing to the Jasper SMLs at this time and continues to be engaged in discussions with the Borrower regarding same. In the circumstances, the Trustee has agreed to discharge the BDMC Mortgage on the further condition that the proceeds from the Sale Transaction that are in excess of the amount required to pay out the Firm Capital Mortgage and other closing costs are to be held in trust by the Trustee until a consensual resolution regarding the residual proceeds is reached or upon further order of the Court. Should the Borrower be



successful in asserting the full amount and priority of the Related Party Claim, there would be no residual proceeds from the Sale Transaction available for the Jasper SMLs.

In addition to the Related Party Claim, there is a further mortgage registered on title to the Property in third position, subsequent to the BDMC Mortgage, in favour of Lamb Edmonton Corp. in the amount of \$768,650, which reflects the principal balance of the loan. Lamb Edmonton Corp. is an entity related to the principal of the Borrower. The Trustee is reviewing the nature of this charge and related loan to determine whether it could affect entitlement to the residual proceeds from the Sale Transaction.

Next Steps

The Trustee is of the view that consenting to the Sale Transaction and the discharging of the BDMC Mortgage is the best option in the circumstances and offers the greatest opportunity for some recovery for the Jasper SMLs, particularly in light of the challenging circumstances facing the Jasper House Project.

Should an agreement not be reached with the Borrower with respect to the Related Party Claim, the Trustee will consider all options, including potentially seeking Court approval of a distribution to the Jasper SMLs of the residual proceeds from the Sale Transaction.

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

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

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Jasper House Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 11:
Orchard Notice dated September 15, 2020



September 15, 2020

Dear Lender:

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

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

We are writing to you in our capacity as Trustee regarding the Orchard Project and further to our notice dated January 29, 2020. Since that time, the Trustee has continued to engage with the Borrower regarding the status of the Orchard Project.

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



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

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

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

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

Next Steps

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



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

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

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

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

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

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Orchard Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 12:
King Square Notice dated March 25, 2020



March 25, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to King Square Ltd. (“Borrower”) pursuant to the loan agreement dated May 8, 2014 in respect of property located at 9390 Woodbine Avenue, Markham, ON (“King Square Project”)

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

We are writing to you in our capacity as Trustee regarding steps taken by Firm Capital Mortgage Fund Inc. (“**Firm Capital**”), the senior lender registered on title to the King Square Project, and further to our notice dated December 17, 2019 (“**Notice**”).

As was advised in the Notice, registration of the King Square Project condominium took place in August 2019 and individual unit closings commenced in mid-October (five months later than anticipated). The Borrower’s intention after completing the scheduled closings was to recommence actively marketing the remaining commercial units for lease or sale with a view to continuing to service and pay down the Firm Capital mortgage. Despite the Borrower’s intentions, the Trustee understands that the Borrower has faced cash flow challenges and was unable to make its February and March interest payments to Firm Capital.

Accordingly, on March 6, 2020, Firm Capital issued a Notice of Sale Under Mortgage (“**Notice of Sale**”). As was advised in the Notice, Firm Capital holds a charge registered on title in priority to the charge registered on title in favour of the syndicated mortgage lenders who advanced funds to the King Square Project. Pursuant to the Notice of Sale, Firm Capital took the position that unless the full amount of its outstanding debt totaling \$55,863,345.28 (including interest through to March 6, 2020) is paid on or before April 11, 2020, Firm Capital would be in a position to sell the remaining King Square property subject to its mortgage. A copy of the Notice of Sale is attached to this notice.

The Trustee has been in touch with Firm Capital with respect to the Notice of Sale and will closely monitor any developments including a sales process, should one be commenced,



involving the King Square Project. The Trustee will request that Firm Capital allow it to have input into any such sales process.

Should a sales process be commenced in respect of the King Square Project and the proceeds of such sales be insufficient to pay all amounts owing to Firm Capital, there is a risk that you may not recover the sums that you advanced to the Borrower.

We will keep you informed of developments related to this matter.

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

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **King Square Project**):

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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 13:
Bowmanville Notice dated October 21, 2020



October 21, 2020

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Debt”) made to Brookhill Holdings Inc. (“Borrower”) in respect of properties located at 2499 Nash Road Bowmanville, ON (“Bowmanville Project” or “Property”)

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

We are writing to you in our capacity as Trustee regarding the Bowmanville Project and further to our notice dated May 8, 2020 (“**Notice**”).

As was advised in the Notice, on April 28, 2020 the Trustee was served with materials in respect of a motion brought by Hillmount Capital Inc. (“**Hillmount**”) seeking the Court appointment of a receiver for the Bowmanville Project. On May 5, 2020, an order of the Court was granted appointing Ernst & Young Inc. as the receiver of the Property (“**Receiver**”).

On October 14, 2020, the Receiver served materials in connection with its motion originally scheduled to be heard via a virtual hearing on October 21, 2020, seeking, among other things, Court approval for (i) the agreement of purchase and sale dated September 17, 2020 (“**Sale Transaction**”) between the Receiver and Brookhill Durham Holdings Inc., a company related to the Borrower (“**Purchaser**”), and (ii) the distribution of proceeds from the Sale Transaction. Due to a delay with the Court, the virtual hearing has since been postponed to a future date and time which has yet to be determined.

Motion materials in respect of the Receiver’s motion including, among other things, the Receiver’s first report to Court dated October 14, 2020 (“**Report**”) are available on the Receiver’s website at <https://documentcentre.ey.com/#/detail-engmt?eid=374>.

In its Report, filed together with its application, the Receiver provided the following details regarding the sale process:

- i) CBRE Land Services Group (“**CBRE**”) was retained to list the Property for sale with



- an offer submission deadline of August 19, 2020 (“**Bid Deadline**”);
- ii) CBRE received multiple offers for the Property on the Bid Deadline and set August 28, 2020 as the deadline for the second round of offers;
 - iii) One offer was materially higher than the other offers, however it was subject to due diligence and was ultimately withdrawn on August 31, 2020; and
 - iv) The offer from the Purchaser was the highest and best offer received by CBRE.

The Purchase price for the Property has not been publicly disclosed to protect the value of the Property if the transaction with the Purchaser fails to close for any reason. The purchase price and other documents including a summary of the offers received by the Receiver and the appraisal obtained by the Receiver were provided to the Court on a confidential basis.

Key terms of the Sale Agreement and draft approval and vesting order include:

- i) Receiver to obtain a vesting order, vesting in the Purchaser the Borrower’s right, title and interest, if any, to the Property;
- ii) Closing date of November 23, 2020;
- iii) Proceeds from the transaction are proposed to be distributed by the Receiver as follows:
 - a. To pay Hillmount \$147,652.46 in repayment of the Receiver’s borrowings to carry the Property during the receivership period, including to fund the professional fees of the Receiver, its counsel as well as other professional advisors;
 - b. To pay all amounts owing to Hillmount under its mortgage, which amounts total approximately \$4.76¹ million;
 - c. To pay all amounts owing to Jaekel Inc., the second priority mortgagee, which amounts total approximately \$2.2² million;

¹ The amount to be paid to Hillmount as set out in the Report is \$4.82 million. The Trustee was able to negotiate with Hillmount a reduction of \$53,712.50 in respect of certain fees and as such the total amount owing to Hillmount is now approximately \$4.76 million.

² The amount to be paid to Jaekel Inc. as set out in the Report is \$2.3 million. The Trustee was able to negotiate with Jaekel Inc. a reduction of \$60,000 in respect of certain fees and as such the total amount owing to Jaekel Inc. is now approximately \$2.2 million.



- d. To pay the remaining costs associated with the receivership proceedings; and
- e. To pay the remaining sale proceeds to the Trustee in respect of the BDMC Debt.

In addition to the remaining sale proceeds, the Receiver shall also pay to the Trustee any additional funds that may come into its possession with respect to the Bowmanville Project, subject to a review by the Receiver of BDMC's security.

Given the quantum of debt in priority to the BDMC Debt and the Trustee's discussions with the Receiver, the Trustee understands that the Bowmanville Project syndicated mortgage lenders will experience a significant shortfall on their loan. Once the transaction has closed, the Trustee will provide a notice with the financial details of the Sale Transaction, including the sale price, and information in respect of the ultimate distribution by the Trustee to the Bowmanville Project syndicated mortgage lenders.

Should you have any questions at this time, our contact information is shown below (if you contact us, please use the subject line **Bowmanville Project**).

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please use the subject line **Bowmanville Project**):

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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 14:
Port Place 2 Notice dated October 8, 2020



October 8, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to 2283020 Ontario Inc., subsequently acquired by Fortress Port Place (2014) Inc. 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. was appointed as trustee (in such capacity, the “Trustee”) over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“BDMC”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (“Court”) issued under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended. By order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“Representative Counsel”). Notices have previously been sent to you regarding the appointment of FAAN Mortgage Administrators Inc. as Trustee and of Chaitons LLP as Representative Counsel.

We are writing to you in our capacity as Trustee and further to the Trustee’s seventh report to court dated May 10, 2019 and our notice to you dated May 31, 2019.

The purpose of this notice is to provide, among other things: (i) information regarding the Port Place 2 Project, a real estate development comprised of four neighboring 2-storey commercial properties with approximately \$2.9 million in principal amount of second ranking syndicated mortgage loan debt administered by BDMC; and (ii) the Trustee’s intention to attend at Court to seek an Order (“Port Place 2 Order”) approving, and authorizing the Trustee to enter into, certain subordination and priority agreements. The effect of the subordination and postponement agreements will be to subordinate BDMC’s second priority mortgage to the mortgage securing the Additional Financing (as defined below) on title to the Properties.

The Port Place 2 motion is scheduled to be heard via a virtual hearing on **October 15, 2020 at 10:00am** (“Port Place 2 Motion”). To the extent that you would like further information on the Port Place 2 Motion please contact the Trustee directly at the contact number provided below.

The Trustee’s motion materials filed in support of the Trustee’s request for the Port Place 2 Order, including its twenty-third report to Court (“Twenty-Third Report”), are available on the Trustee’s website: <http://faanmortgageadmin.com>. The Twenty-Third Report describes



the following matters:

- (a) an overview of the Port Place 2 Project, including a completed sale transaction for one of the Properties and the other proposed sale transactions involving the Properties;
- (b) details of the priority issue with respect to additional financing advanced by Magnetic Capital Group Inc., Olympia Trust Company and Canadian Western Trust Company in the principal balance of \$1.47 million that is currently registered in third position among the mortgage charges on the Properties (“**Additional Financing**”);
- (c) details of the subordination and priority agreements; and
- (d) the Trustee’s recommendation that the subordination and priority agreements be approved, and the Trustee be authorized to enter into the subordination and priority agreements, in accordance with the proposed Port Place 2 Order.

Next Steps

At this time, you should review this notice and the associated Court materials carefully including the Twenty-Third Report available on the Trustee’s website, and, if desired, arrange to obtain independent legal advice regarding these matters. You can also consult Representative Counsel whose contact information is provided below.

Should you have any questions of the Trustee, our contact information is shown below (if you contact us, please reference **Port Place 2 Project**).

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Port Place 2 Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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 15:
Lake and East Notice dated July 21, 2020



July 21, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to Symgine (Lake East) Inc. (“Borrower”) in respect of properties located at 2226 Lakeshore Road West & 83 East Street, Oakville, ON (“Lake & East Project” or “Properties”)

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

We are writing to you in our capacity as Trustee regarding the Lake & East Project and further to our notice dated June 12, 2019 (“**Notice**”).

Enforcement Proceedings

As was advised in the Notice, on May 22, 2019, Toronto Capital Corporation (“**TCC**”), the first priority mortgagee on the Properties, issued a Notice of Sale Under Mortgage (“**Notice of Sale**”). TCC took the position that the Borrower was in default under its mortgage and unless the full amount of the outstanding debt was paid on or before July 8, 2019, TCC would be in a position to list the Properties for sale. A copy of the Notice of Sale was previously provided to you.

As the July 8, 2019 deadline was not met, TCC retained CBRE Limited (“**CBRE**”) to market the Properties for sale. Marketing of the Properties was launched on August 15, 2019 with an offer deadline of September 25, 2019. CBRE received multiple offers on the offer deadline, followed by two additional rounds of offers.

On December 18, 2019, TCC accepted an offer for the Properties from 2726102 Ontario Inc. (“**Purchaser**”), which represented the highest and best offer and proceeded to enter into an agreement of purchase and sale, as further amended, for the Properties (“**Sale Transaction**”). The Trustee was advised by TCC’s counsel that the Purchaser is not related to the Borrower or to TCC. After a series of delays, the Sale Transaction finally closed in



May, 2020. At that time the total principal and interest due to TCC was \$7,521,286.

The key economic terms of the Sale Transaction are as follows:

- a) Purchase price of \$7 million; and
- b) Proceeds to be distributed as follows:
 - i) Approximately \$158,000 to CBRE for real estate commissions; and
 - ii) The remaining proceeds, net of property taxes, closing costs and legal fees, to TCC as first priority mortgagee.

Unfortunately, as TCC has suffered a shortfall on its loan, there are no recoveries to repay any amounts owing to the syndicated mortgage lenders who advanced funds to BDMC in respect of the Lake & East Project (“**Lake & East SMLs**”) who hold a second ranking mortgage registered on title to the Properties.

As applicable, the Trustee recommends that you seek advice from your tax professional to determine how to account for the loss on your investment in the Lake & East Project.

Symgine Reporting Agreement

As was advised in a notice dated November 26, 2018 and in various reports to Court issued in these proceedings, when the Trustee executed the postponement request made by the Borrower, subordinating the Lake & East SMLs to the financing from TCC, the purpose of the TCC financing was to repay the first priority mortgage registered to Vector Financial Services Limited (which was in default at the time) and to fund additional project related costs.

As part of the negotiations with respect to the postponement to TCC, the Borrower agreed to enhanced reporting to the Trustee, which was to include a monthly accounting of the use of funds advanced by TCC. These obligations were set out in a reporting agreement between the Borrower and the Trustee (“**Symgine Reporting Agreement**”).

The Borrower has not complied with its reporting obligations under the Symgine Reporting Agreement. The Trustee and its legal counsel followed up with the Borrower on numerous occasions requesting information required to be provided pursuant to the Symgine Reporting Agreement; however, no response was received. As the Borrower did not respond, the Trustee sought and obtained an order of the Court (“**Omnibus Order**”) compelling the Borrower to provide the required reporting information within 15 days of the date of the Omnibus Order. The Borrower failed to comply with these provisions and is in violation of this Court Order. The Trustee’s legal counsel also wrote to the Borrower’s legal counsel and reiterated its demands for information and noted that should the Borrower fail to comply,



the Trustee reserved all its rights to take further action.

In light of the Borrower's failure to comply with the Omnibus Order, the Trustee, in consultation with Representative Counsel, is considering next steps with respect to this matter.

We will keep you posted as to any further developments with respect to the Lake & East Project.

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

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference the **Lake & East Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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 16:
Triple Creek Notice dated October 21, 2020



October 21, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to Fortress Triple Creek Inc. (“Borrower”) regarding the property located at South of Highway 8, Rocky View County, Alberta (“Triple Creek Project” or “Property”)

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

We are writing to you in our capacity as Trustee regarding the Triple Creek Project and further to our notices of May 10, 2018 and June 3, 2019 (“**Notices**”).

The Triple Creek Project is a proposed real estate development project with over \$15.4 million of syndicated mortgage loan debt administered by BDMC (“**BDMC Debt**”) on behalf of 279 individual lenders (“**Triple Creek SMLs**”). The Triple Creek SMLs have two charges on the Property in respect of the BDMC Debt, being a fourth ranking mortgage registered in the amount of approximately \$12.9 million, representing the original principal amount advanced by the Triple Creek SMLs, and a fifth ranking mortgage registered in the amount of approximately \$2.5 million, representing accrued interest to July, 2017, being the date that the Property was acquired by the Borrower from the original Triple Creek Project borrower. The Property is a large block of land near Calgary currently classified as ‘Ranch and Farmland District’, which only permits agricultural uses. As of the date of the commencement of the enforcement proceedings discussed below, the Borrower was unsuccessful in having the Property re-designated to allow for residential development.

As was advised in the Notices, on May 1, 2018, Romspen Investment Corporation (“**Romspen**”), acting as the Borrower’s first priority lender, commenced an enforcement proceeding in respect of financing that had matured. As at September 3, 2020, Romspen was owed approximately \$4.2 million comprised of principal of \$3.1 million and accrued interest



and fees of approximately \$1,100,000. In addition to the Romspen debt, there is a second priority mortgage securing amounts owing to Eagles Edge Capital Corporation (“**Eagles**”) and a third priority mortgage securing amounts owing to Jaekel Capital Inc. (“**Jaekel**”), in the original principal amounts of approximately \$2.5 million and \$1.4 million, respectively.

On December 14, 2018, an order was granted by the Court of the Queen’s Bench of Alberta (“**Alberta Court**”) permitting the Property to be listed for sale with a licensed real estate agent (“**Listing Agent**”) for six months, with no deadline for offers, at a list price of \$3 million (“**List Price**”). The Trustee was advised by counsel to Romspen that over the course of the six-month listing period no formal offers were received for the Property.

On September 25, 2020, the Trustee was served with materials in respect of a motion by Romspen seeking an Order for Foreclosure (“**Foreclosure Motion**”). The Foreclosure Motion is scheduled to be heard via a virtual hearing on October 29, 2020. An Order for Foreclosure would result in Romspen being granted a new Certificate of Title to the Property solely in its name and all subsequent encumbrances, including the charges securing the BDMC Debt, being discharged from title to the Property, with no recovery for the Triple Creek SMLs.

In its affidavit, filed together with its motion materials, Romspen included a report prepared by the Listing Agent dated July 22, 2020, which provided, among other things, the following details regarding the sale process:

- (i) Over 60 inquiries about the Property were received by the Listing Agent, however, with the exception of one verbal offer for \$1.9 million, no offers were received;
- (ii) After completion of the initial six-month listing period, the Listing Agent, with Romspen’s consent, continued to market the Property on its website until July 2020. During this subsequent 12-month period it received less than 20 inquiries about the Property and three verbal offers ranging from \$700,000 to \$1.6 million; and
- (iii) It is the Listing Agent’s view that, given, among other things, the slowdown in the real estate market due to the COVID-19 pandemic and a slumping Alberta economy, the Property would not sell “anywhere near the list price of \$3 million”.



In addition to reviewing the report prepared by the Listing Agent, the Trustee also considered the following:

- Romspen’s appraisal of the Property obtained in August 2018, which is included in the motion materials, had an “as is” value of \$2.8 million and forced liquidation value of \$2.4 million;
- The Trustee’s independent appraisal of the Property obtained in August 2018, which was consistent with the Romspen appraisal;
- The Property was marketed for sale for more than 18 months and during that period no formal written offers were received and the highest verbal offer communicated for the Property was \$1.9 million;
- The Listing Agent’s view that the Property will not sell for anywhere near the original List Price;
- Counsel to Romspen advised that both Eagles and Jaekel do not intend to object to the Foreclosure Motion despite the fact that neither priority mortgagee will receive any recovery; and
- There is greater than \$8 million of debt that ranks in priority to BDMC.

Based on the foregoing, **the Trustee does not intend to take a position with respect to the Foreclosure Motion.** Accordingly, should the Order of Foreclosure be granted by the Alberta Court, unfortunately you will not recover any of the funds you have advanced to the Triple Creek Project.

At this time, you should carefully review this notice and the associated Foreclosure Motion materials which have been posted to the Trustee’s website in a newly created section dedicated to the Triple Creek Project at: <http://www.faanmortgageadmin.com>. Should you have any questions or concerns regarding the Trustee’s position, please do not hesitate to contact the Trustee, seek advice from Representative Counsel and/or seek independent legal advice regarding this matter.

The Trustee will provide a further update after the Foreclosure Motion.



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

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Triple Creek Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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 17:
Sky City Notice dated September 23, 2020



September 23, 2020

Dear Lender:

Re: Syndicated Mortgage Loans (“BDMC Loans”) made to or assumed by 6566074 Manitoba Ltd. (“Borrower”) in respect of property located at 245 Graham Street, Winnipeg, MB (“Sky City Project” or “Property”)

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

We are writing to you in our capacity as Trustee regarding the Sky City Project, a high-density development site in downtown Winnipeg that is currently being used as a surface parking lot. The Sky City project launched sales to the public in September 2015 but experienced a number of delays resulting in the Borrower eventually terminating all existing pre-sale agreements and returning all deposits to the unit purchasers. The Borrower advised that it was considering its options with respect to the Property as its preliminary design for the condominium had proven to be too tall and with too much commercial space.

The Borrower has retained CW Stevenson Inc. (the “**Listing Agent**”) to list the Property for sale. The Property was listed for sale on September 15, 2020 with no list price and a deadline for offers of October 15, 2020. The Trustee has been in discussions with the Listing Agent who has advised that the Property will be marketed to over 1,000 private, public and institutional investors as well as the local real estate community in Winnipeg.

The Property has multiple syndicated mortgage loans administered by BDMC registered on title whose principal balances in aggregate total approximately \$32 million and are as follows¹:

¹ The Trustee notes that there are certain agreements in place involving the BDMC Loans which may affect their priority ranking.



- \$25 million in fourth ranking position;
- \$3.5 million in fifth ranking position;
- \$1.3 million in sixth ranking position;
- \$2 million in seventh ranking position; and
- \$586,000 in eighth ranking position.

In addition to the BDMC Loans, there are three priority mortgages registered on title to the Property (“**Priority Mortgages**”) that in aggregate total approximately \$9.5 million. The first priority mortgage is registered in favour of 11615467 Canada Ltd. in the amount of \$5 million, the second priority mortgage is registered in favour of JYR Real Capital Mortgage Investment in the amount of \$2.5 million, and the third priority mortgage is registered in favour of Ruixia Li in the amount of \$2 million. The Trustee understands that the Priority Mortgages have substantial accrued and unpaid interest and are currently in default. To date, the priority mortgagees have not initiated any enforcement proceedings in respect of the Property and have been supportive of the Borrower listing the Property for sale.

Other Priority Claims

The Borrower has provided the Trustee with a summary of amounts it believes should be paid from the proceeds of a sale transaction for the Property, in priority to the BDMC Loans (the “**Related Party Claim**”). The Borrower advises that the Related Party Claim, which totals approximately \$2 million is comprised of, among other things, amounts advanced by certain companies related to the principal of the Borrower to cover the carrying costs of the Property.

The Trustee has not consented to the payment of the Related Party Claim in priority to the BDMC Loans and at this time continues to be engaged in discussions with the Borrower regarding same.

Next Steps

The Trustee has been advised by the Listing Agent that while significant interest is expected in the Property, it is unknown at this time what, if any, residual proceeds will be remaining to satisfy amounts owing under any of the BDMC Loans from a sale transaction after repayment of the Priority Mortgages and a repayment, if any, to the Borrower on account of the Related Party Claim. Accordingly, at this time it is unknown whether you will recover any of the sums that you advanced to the Borrower.



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

Should you have any questions at this time, our contact information is shown below (if you contact us, please reference **Sky City Project**).

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Sky City Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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 18:
Whitby Notices dated February 4, 2020 and June 18, 2020



February 4, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to Thickson Road 407 Whitby Limited (the “Borrower”) pursuant to the loan agreement dated May 4, 2014 (“BDMC Loan”) on the security of a mortgage on the property located at 5360, 5400 and 5675 Thickson Road North, Whitby, Ontario (“Whitby Project”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. (the “**Trustee**”) was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. 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. By order of the Ontario Superior Court of Justice (Commercial List) dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“**Representative Counsel**”). Notices have previously been sent to you regarding the appointment of FAAN Mortgage as Trustee and of Chaitons LLP as Representative Counsel.

We are writing to you in our capacity as Trustee regarding the Whitby Project and further to our notices of December 10, 2018 and January 29, 2019 (“**Notices**”).

Financing of the Whitby Project

As was discussed in the Notices, upon receiving consent from the Whitby Project syndicated mortgage lenders (“**Whitby SMLs**”), the Trustee postponed the BDMC Loan to a loan advanced by Downing Street Financial Inc. (the “**Downing Street Loan**”). At that time, the Whitby SMLs also consented to an extension of the term of the BDMC Loan to December 31, 2019 with three further six-month extensions available to the Borrower, at the discretion of the Trustee. The Borrower has requested the first extension of the term of the BDMC Loan, which the Trustee has granted.

The Trustee notes that the Downing Street Loan was advanced to: (i) repay the original vendor take back mortgage; (ii) establish an interest reserve to service the new first ranking mortgage; and (iii) pay project costs, including, among other things, various consultants whose services were required to advance development approvals.

The Trustee has been advised by the Borrower that in accordance with its projections, the funds advanced by Downing Street Financial Inc. will be exhausted in early 2020 and accordingly, the Borrower is in discussions with another prospective lender regarding additional financing required for the Whitby Project (“**Bridge Financing**”). The Borrower has advised the Trustee that, once it has negotiated the terms of the Bridge Financing, it will be requesting that the Trustee postpone the BDMC Loan to such financing.

Possible Sale Transaction and Status of the Whitby Project

The Borrower has informed the Trustee that it has entered into a conditional agreement of purchase and sale for the Whitby Project (“**Sale Transaction**”). The Trustee is advised by the Borrower that



the discharge of the BDMC Loan is a prerequisite to the closing of the Sale Transaction. The prospective purchaser is currently completing its due diligence. The due diligence period was set to end on January 31, 2020; however, the prospective purchaser requested, and the Borrower agreed to, a 90-day extension. Should the prospective purchaser waive the due diligence conditions, it is contemplated that the Sale Transaction would be completed within 90 days thereafter. Should the prospective purchaser confirm its agreement to pursue the Sale Transaction, the Trustee intends to seek consent of the Whitby SMLs to the Sale Transaction in advance of agreeing to discharge the BDMC Loan.

Notwithstanding the fact that the Whitby Project is subject to the Sale Transaction, as noted above, the funds generated from the Downing Street Loan, including the interest reserve, will soon be exhausted. The Borrower requires the Bridge Financing to service the Downing Street Loan, either through to the closing of the Sale Transaction, or thereafter, should it not be completed. If the Sale Transaction is not completed, the Bridge Financing will be required to fund other necessary costs to advance the Whitby Project including the submission of a Draft Plan of Subdivision.

The Trustee will keep you informed of the developments related to the Bridge Financing and to the status of the Sale Transaction.

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 **Whitby Project**).

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

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

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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**



June 18, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to Thickson Road 407 Whitby Limited (the “Borrower”) pursuant to the loan agreement dated May 4, 2014 on the security of a mortgage on the property located at 5360, 5400 and 5675 Thickson Road North, Whitby, Ontario (“Whitby Project” or the “Property”)

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

We are writing to you in our capacity as Trustee regarding the Whitby Project and further to our notice of February 4, 2020 (“**Notice**”), which is attached as Appendix “A” to this notice.

Financing of the Whitby Project

As was discussed in the Notice, the funds advanced by Downing Street Financial Inc. (“**Downing Street**”), the first priority lender to the Whitby Project, were expected to be exhausted in early 2020 and accordingly, the Borrower was in discussions with a prospective lender regarding additional financing required for the Whitby Project. The Borrower has since advised that: (i) the prospective lender with whom they were in discussions is no longer willing to advance funds to the Whitby Project; and (ii) the Downing Street Loan was exhausted and the Borrower was unable to fund the May interest payment owing to Downing Street. Accordingly, the Borrower was in default under its loan agreement (“**Default**”).

In order to remedy the Default, the Borrower successfully negotiated additional financing in the amount of \$650,000 from Downing Street for the Whitby Project pursuant to an amendment to the original commitment letter between Downing Street and the Borrower, the key terms of which are as follows:



- Increase to the existing first mortgage of \$650,000 (“**Subsequent Advance**”);
- Interest: 12% per annum on the Subsequent Advance (compared to 8.75% on the existing advance); and
- Lender fee: \$13,000.

Based on current projections provided by the Borrower, the Subsequent Advance provides the Borrower with sufficient funding to remedy the Default and cover expenses on both the existing first mortgage and the Subsequent Advance through to October 2020 while it attempts to complete a sale of the Property. Absent the Subsequent Advance, Downing Street advised that it intended to pursue the remedies available to it under its loan agreement with the Borrower including taking the steps necessary to enforce its security.

On May 29, 2020, at the request of Downing Street and the Borrower, the Trustee executed an Amending Agreement to also subordinate and postpone the BDMC charge registered on title to the Property to the Subsequent Advance.

Status of the Sale Transaction

The conditional period contained in the agreement of purchase and sale for the Whitby Project (“**Sale Transaction**”) has been extended to December 1, 2020. The Sale Transaction is described in greater detail in the Notice. Should the prospective purchaser waive the due diligence conditions, it is contemplated that the Sale Transaction would close within 30 days thereafter. As noted above, the Subsequent Advance only provides sufficient funding through to October 31, 2020. Accordingly, while the Borrower is continuing to work with the potential purchaser as it continues its due diligence, it is also exploring other alternatives.

The Trustee will continue to keep you informed of the developments related to the status of the Sale Transaction and the Whitby Project.



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

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference the **Whitby Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

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 19:
Brookdale Notice dated October 21, 2020



October 21, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to Fortress Brookdale Inc. (the “Borrower”) pursuant to the loan agreements dated May 27, 2015 and July 10, 2017 on the security of a mortgage on the property located at 1678-1704 Avenue Road, 375-377 Fairlawn Avenue and 412-416 Brookdale Avenue, Toronto, Ontario (“Brookdale Project” or “Property”)

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

As you know, BDMC is the administrator to two syndicated mortgage loans in respect of the Brookdale Project, one dated July 10, 2017 (“**Mezz Loan**”) and one dated May 27, 2015 (“**Syndicated Loan**”). As at September 30, 2020, the amount owing pursuant to the Mezz Loan is approximately \$5.7 million (comprised of approximately \$4.6 million of principal and \$1.1 million of interest) and the amount owing pursuant to the Syndicated Loan is approximately \$29 million (comprised of approximately \$20.7 million in principal and \$8.3 million in interest), respectively.

We are writing to you in our capacity as Trustee and further to our notice dated September 12, 2019 (“**Notice**”) regarding the Brookdale Project and the Trustee’s thirteenth report to Court dated November 22, 2019 (“**Thirteenth Report**”).

As was advised in the Notice, the Brookdale Project was subject to a notice of sale under mortgage proceeding brought by Firm Capital Mortgage Fund Inc. (“**Firm**”) in respect of construction financing that had matured. Firm then appointed RSM Canada Limited (“**RSM**”) as the private receiver of the Brookdale Project. On October 18, 2018, the Court approved the sale of the Property and on October 24, 2018 the transaction for the Property closed.

On December 6, 2018, RSM served a Certificate of Completion confirming that it had paid the net proceeds from the sale of the Property into a trust account maintained by the Court. RSM’s materials identified that the selling price for the Property was \$50 million and the net proceeds were approximately \$26.95 million.



Pursuant to an order of the Court dated March 21, 2019, payments were made to the second and third ranking mortgagees registered on title to the Brookdale Project from the net proceeds. Following such repayments, approximately \$20.4 million (“**Brookdale Proceeds**”) remained with the Court. The Brookdale Proceeds have been held by the Court in an interest-bearing account pending the determination of the quantum and priority of the remaining claims against the Brookdale Proceeds, including the construction lien claims, and claims by the Borrower, certain bondholders and Fernbrook Homes (Brookdale) Limited, each of which is described below.

Since 2019, the Trustee has been involved in complex litigation involving the 14 construction liens registered against the Property, which in aggregate totaled approximately \$8.7 million (“**Lien Claims**”).

As outlined in the Thirteenth Report, on August 28, 2019, various parties, including the Trustee’s legal counsel, attended a case management conference where next steps regarding the Lien Claims were addressed and an endorsement was issued by the Court. The Trustee complied with all requirements of the endorsement including selecting the Honorable George W. Adams Q.C. as mediator and scheduling a mediation for the Lien Claims for December 12, 2019 (“**Mediation**”).

The Mediation took place as scheduled and while productive, it did not immediately result in a resolution of the Lien Claims. Subsequent to the Mediation, the Trustee and its counsel continued extensive negotiations with carriage counsel to the lien claimants and ultimately a settlement was reached.

To implement the settlement and to fully and finally resolve the legal proceedings commenced by Firm, an order of the Court was issued on August 28, 2020 which provides for, among other things, (i) the settlement of the Lien Claims and payment to the construction lien claimants of \$4,551,903 from the Brookdale Proceeds held by the Court in full and final satisfaction of all amounts owing on account of the Lien Claims including costs (“**Settlement and Costs Payment**”); and (ii) a full and final release from the construction lien claimants (“**Construction Lien Settlement Order**”). A copy of the Construction Lien Settlement Order is available on the Trustee’s website at www.faanmortgage.com in a section dedicated to the Brookdale proceedings. Subsequent to the making of the Settlement and Costs Payment, there remains \$17,273,910 from the Brookdale Proceeds as at October 16, 2020, which is being held in trust by the Court. In addition to settling the Lien Claims, the Trustee is continuing to address matters relating to the priority and quantum of claims that continue to be made at this time from the remaining known claimants to the Brookdale Proceeds, which are summarized below:

1. A claim by Computershare Trust Company of Canada, in its capacity as the Trustee, pursuant to a Bond Trust Indenture dated November 26, 2013, which provided for the issuance of 8% bonds which matured in April, 2018 which the Trustee understands is in the principal amount of approximately \$9 million plus interest and costs;



2. A claim by the Borrower for funds which it advises it had injected to support the carrying costs of the Brookdale Project in the amount of approximately \$1.5 million; and
3. A claim by Fernbrook Homes (Brookdale) Limited who has informed the Trustee that they are currently preserving certain rights with respect to the Brookdale Proceeds.

The Trustee intends to continue its discussions with the remaining claimants as part of its efforts to resolve all remaining matters concerning entitlement to the Brookdale Proceeds and to maximize recoveries under both the Mezz Loan and the Syndicated Loan but, at this time, the amount and timing of any distribution in respect of these loans is unknown given the outstanding claims described above.

Next Steps

The Trustee will provide further updates as more information becomes available. **At this time there is no action required by the lenders.**

Should you have any questions at this time, our contact information is below (if you contact us, please reference **Brookdale Project**).

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

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Brookdale Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD OF
FAAN MORTGAGE ADMINISTRATORS INC.,
in its capacity as Court-appointed Trustee

(November 2020 Comprehensive Update)

(Part 2 of 3)

OSLER, HOSKIN & HARCOURT LLP

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

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)

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

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