

**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**

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

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February 16, 2021

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# TAB A

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

**BETWEEN**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**NOTICE OF MOTION  
(Motion for Approval of Wellington Settlement)**

FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (“Trustee”) of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“BDMC”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, (“MBLAA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on February 23, 2021 at 10:00 a.m., or as soon after that time as the motion can be heard, by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic.

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

**THE MOTION IS FOR:**

- 1. An Order (“Wellington Settlement Approval Order”) substantially in the form attached to the Motion Record, *inter alia*:

- (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
- (b) approving the Settlement Agreement dated as of January 13, 2021 (“**Wellington Settlement Agreement**”), among Wellington House Inc. (“**Wellington Borrower**”), the Trustee, Olympia Trust Company (“**OTC**”), Computershare Trust Company of Canada (“**Computershare**”), BJL Properties Inc. (“**BJL**”), and Brad J. Lamb (“**Lamb**”, and together with BJL, the “**Guarantors**”) with such minor amendments as the parties to the Wellington Settlement Agreement may agree upon to permit the completion of the transactions contemplated therein;
- (c) directing the Wellington Borrower to pay \$4,000,000 (the “**First Settlement Payment**”) forthwith to the Trustee in accordance with the terms of the Wellington Settlement Agreement;
- (d) directing the Wellington Borrower to pay \$2,316,800 (the “**Second Settlement Payment**”) to the Trustee in accordance with the terms of the Wellington Settlement Agreement (such funds together with the First Settlement Payment, the “**Wellington Realized Property**”);
- (e) directing the Wellington Borrower and the Guarantors to deliver the Security (as defined below);
- (f) approving and ratifying the execution of the Wellington Settlement Agreement by the Trustee, OTC and Computershare and authorizing and directing the Trustee, OTC and Computershare to comply with all of their obligations under the Wellington Settlement Agreement;
- (g) releasing, waiving, extinguishing, expunging and discharging all of the Wellington Borrower’s obligations to BDMC, OTC, Computershare and the individual lenders (“**Wellington Individual Lenders**”) under the Wellington Loan Agreement (as defined below) and related security and other loan documents contemplated by the Wellington Loan Agreement (collectively, “**Wellington Loan Obligations**”) and all security interests granted to BDMC, OTC, Computershare or the Wellington

Individual Lenders in and to the assets of the Wellington Borrower to secure the Wellington Loan Obligations (“**Loan Encumbrances**”) upon the delivery to the Wellington Borrower of a copy of a Trustee’s certificate (“**Trustee’s Certificate**”) confirming, among other things, the Trustee’s receipt of the First Settlement Payment, and the First Late Payment Fee (each as defined below), if applicable, the execution of the Security by the Wellington Borrower and the Guarantors, as applicable, and the delivery thereof to the Trustee, and ordering that none of the Trustee, BDMC, OTC, Computershare or any Wellington Individual Lender have any claim against the Wellington Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances; provided, however, that the Wellington Borrower is not released from any obligations under the Wellington Settlement Agreement, including the Wellington Borrower’s obligation to make the Second Settlement Payment and the Second Late Payment Fee (as defined below), if applicable, and to deliver the Security;

- (h) declaring that the release agreement (“**Release Agreement**”) to be given to the Trustee, BDMC, OTC, Computershare and each Wellington Individual Lender who loaned funds through BDMC to the Wellington Borrower pursuant to the Wellington Loan Agreement and all related loan documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, “**Releasees**”) by the Wellington Borrower on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, “**Releasors**”) shall be binding and effective on the Releasors in favour of the Releasees upon the delivery of the Trustee’s Certificate to the Wellington Borrower;
- (i) authorizing the Trustee to, with respect to the First Settlement Payment, make an initial distribution to the Wellington Individual Lenders following the delivery of the Trustee’s Certificate to the Wellington Borrower, and, with the respect to the Second Settlement Payment, a second distribution following receipt of such funds, in each case, in an amount equal to 85% of the Wellington Realized Property received by the Trustee, *pro rata* to the Wellington Individual Lenders entitled to

such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order (each as defined below); and

2. Such further and other relief as this Court may deem just.

## **THE GROUNDS FOR THE MOTION ARE:**

### **Background**

1. Pursuant to the Order of the Court in respect of BDMC dated April 20, 2018 (“**Appointment Order**”), FAAN Mortgage Administrators Inc. was appointed as the Trustee, without security, of all of the assets, undertakings and properties of BDMC, including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, Investors (as defined below), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust;

2. The purpose of the Trustee’s appointment is to protect the interests of the members of the investing public who invested in syndicated mortgage loans made by BDMC in respect of certain real estate development projects secured by mortgages (typically third-ranking or lower priority charges) registered on title to the applicable real property (“**Investors**”);

3. To date, the Trustee has filed twenty-four reports with the Court, which describe the Trustee’s activities in carrying out its mandate under the Appointment Order. In connection with this Motion, the Trustee is filing its Twenty-Fifth Report to Court dated February 16, 2021 (“**Twenty-Fifth Report**”), which describes the Trustee’s activities in connection with, and other matters relating to, the Wellington Project (as defined below) and the Wellington Settlement Agreement. Capitalized terms used but not defined herein have the meanings given in the Twenty-Fifth Report;

4. The Interim Stabilization Order was issued by the Court on June 26, 2018 and, among other things, required the Trustee to hold, in a separate account, until further order of the Court (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal

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

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

- (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of the Realized Property;
- (b) required the Trustee to retain 30% of all Realized Property; and
- (c) authorized the Trustee to use the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considered necessary or desirable for the administration of the estate, including in respect of those matters set out in paragraph 17 of the Interim Stabilization Order;

6. On November 28, 2018, the Court granted the Braestone Settlement Approval Order, which approved, among other things, an amendment to the Realized Property Order that required the Trustee to distribute (when aggregated with previous distributions) 80% of all Realized Property to Investors following receipt of the payment from the Braestone Borrower;

7. On December 20, 2018, the Court granted the Harlowe Settlement Approval Order, which approved, among other things, a further amendment to the Realized Property Order that required the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors following receipt of the payment from the Harlowe Borrower;

8. On November 16, 2020, the Trustee submitted its Twenty-Fourth Report to Court in these proceedings, which provided a further comprehensive update on the Trustee’s activities and a status update for each project forming part of the Trustee’s mandate pursuant to the Appointment Order.



## Reasons for the Wellington Settlement Approval Order

### Wellington Loan

9. BDMC and the Wellington Borrower are party to a loan agreement dated April 15, 2016 (as amended and/or supplemented, “**Wellington Loan Agreement**”) pursuant to which BDMC provided a syndicated mortgage loan (“**Wellington Loan**”) to the Wellington Borrower secured by a charge on real property situated at 422-424 Wellington Street West, Toronto, Ontario (“**Property**”);
10. The maturity date under the Wellington Loan Agreement was May 1, 2020, and the Wellington Loan is currently in default;
11. The Wellington Loan Agreement was entered into with respect to 23-storey mixed-use development on the Property in downtown Toronto (such development, “**Wellington Project**”);
12. In addition to the Wellington Loan, there is a first priority mortgage registered on title to the Property in favour of Cameron Stephens Financial Corporation (“**Cameron Stephens**”) that secures an outstanding principal balance of approximately \$6.7 million;
13. The Cameron Stephens indebtedness is the only known indebtedness on the Wellington Project that ranks in priority to the Wellington Loan on title to the Property;

### Wellington Borrower Notice

14. On December 20, 2019, the Wellington Borrower sent a vote solicitation and feedback request directly to the Wellington Individual Lenders (“**Wellington Borrower Notice**”) without consultation with the Trustee or Representative Counsel;
15. The purpose of the Wellington Borrower Notice was to solicit feedback from the Wellington Individual Lenders in respect of a \$2.42 million settlement offer that had been proposed by the Wellington Borrower to the Trustee (“**Original Offer**”). The Original Offer reflected a recovery of only approximately 38% of the outstanding principal balance on the Wellington Loan (and no payment of any accrued interest);

16. On December 24, 2019, the Trustee sent a notice to the Wellington Individual Lenders (“**Trustee’s Notice**”) in response to the Wellington Borrower Notice. The Trustee’s view, which was outlined in the Trustee’s Notice, was that the Original Offer was not fair or reasonable in the circumstances or in the best interests of the Wellington Individual Lenders. The Original Offer allowed the Wellington Borrower to continue to maintain control of the Wellington Project, and ultimately be the beneficiary of any profits from its development, while causing the Wellington Individual Lenders to crystallize a significant loss. The Trustee’s Notice also advised that the Trustee would not be acting upon any votes received in response to the Wellington Borrower Notice;

#### Wellington Project

17. The Wellington Borrower initially sought approval from the City of Toronto (“**City**”) for the Wellington Project. In October 2018, the Wellington Borrower advised that, following negotiations with the City, it was reducing the number of stories for which approvals were being sought from 23 to 17, in addition to making certain floor plate alterations, in an effort to achieve a design that the City would approve. The Wellington Borrower further advised that, due to these design changes, it was also canceling all existing unit sales;

18. When the City did not make a decision on the revised zoning by-law amendment (“**Amendment**”) within the required procedural time frame, the Wellington Borrower applied to the Local Planning Appeal Tribunal (“**LPAT**”) regarding its proposal. The LPAT held a hearing on the Amendment from October 29, 2018 to November 8, 2018;

19. On February 4, 2020, approximately 15 months after the LPAT hearing, a decision was released by the LPAT dismissing the Wellington Borrower’s application and denying the requested Amendment (“**Decision**”). The failure to obtain the Amendment has further delayed the Wellington Project, as the Wellington Borrower will need to resubmit a further revised application to the LPAT at a reduced density;

20. Given the lack of approvals, the Wellington Borrower advised that the estimated timeline to completion of the Wellington Project is likely an additional 6 to 7 years;

#### Wellington Final Offer

21. Notwithstanding the Decision and the extended timeline to project completion, the Trustee and the Wellington Borrower reengaged in discussions regarding the repayment of the amounts due to BDMC under the Wellington Loan Agreement. After extensive negotiations between the parties, the Wellington Borrower presented the Trustee with a revised irrevocable offer (“**Wellington Final Offer**”);

22. The Wellington Final Offer provides for two settlement payments to be made by the Wellington Borrower in the aggregate amount of approximately \$6.3 million in full satisfaction of the amounts due under the Wellington Loan Agreement;

23. The Wellington Final Offer also incorporated certain other components negotiated by the Trustee, such as the Late Payment Fees and the receipt by the Trustee of the Security;

24. The Trustee is in receipt of a deposit of \$300,000 (“**Deposit**”) from the Wellington Borrower that is being held in trust by the Trustee’s counsel pending the outcome of the hearing of the Trustee’s motion for the Wellington Settlement Approval Order;

25. As noted above, the Wellington Settlement Agreement includes the Late Payments Fees, which provide that:

(a) The Wellington Borrower shall pay a late payment fee calculated as 5% of the First Settlement Payment (less the amount of the Deposit) in the event the Wellington Borrower fails to pay any portion of the First Settlement Payment within 14 calendar days from the date of the granting of the Wellington Settlement Approval Order (“**First Late Payment Fee**”); and

(b) The Wellington Borrower shall pay a late payment fee calculated as 5% of the Second Settlement Payment in the event the Wellington Borrower fails to pay any portion of the Second Settlement Payment within 14 calendar days of September 1, 2021 (“**Second Late Payment Fee**” and together with the First Late Payment Fee, the “**Late Payment Fees**”);

26. In addition, the Wellington Borrower and the Guarantors have agreed to delivery security in connection with the Second Settlement Payment and Second Late Payment Fee, if any, (“**Security**”), including:

- (a) A first ranking charge in the principal amount of \$2.5 million registered on title to certain real property located in the Township of Adjala-Tosorontio (Alliston), Ontario (“**Farm Property**”), which Farm Property is owned by B JL, an entity related to the Wellington Borrower;
- (b) A limited recourse guarantee of B JL in the maximum principal amount of the Second Settlement Payment and the Second Late Payment Fee, plus other recoverable costs and expenses, which recourse shall be limited to the Farm Property; and
- (c) A limited personal guarantee from Lamb in the maximum principal amount of the Second Settlement Payment and the Second Late Payment Fee, plus other recoverable costs and expenses;

#### Wellington Feedback Request

27. The Trustee consulted with Representative Counsel regarding the Wellington Final Offer, and, with the support of Representative Counsel, presented the Wellington Final Offer to the Wellington Individual Lenders by delivering a notice to those lenders recommending acceptance of the Wellington Final Offer on January 28, 2021 (“**Wellington Feedback Request**”);

28. As set out in the Wellington Feedback Request, the following considerations were taken into account by the Trustee in completing its assessment of the Wellington Final Offer:

- (a) The Wellington Borrower has advised that there is an anticipated timeline of approximately 6 to 7 years to complete the Wellington Project;
- (b) The Trustee’s planning consultant has advised that the Wellington Borrower’s timeline to project completion is reasonable;
- (c) The potential implications of the COVID-19 pandemic, which has resulted in a softening in demand for downtown Toronto condominium units in the near term and created uncertainty regarding the long-term impact of the pandemic on the downtown Toronto condominium market;
- (d) The Wellington Borrower has paid the Deposit, which is being held in trust by the Trustee’s counsel. The Deposit is non-refundable in the event of a default by the Wellington Borrower under the Wellington Settlement Agreement;

- (e) The Wellington Borrower provided a commitment letter (“**Commitment Letter**”) from its lender contemplating a contribution of \$3.15 million from such financing to pay the First Settlement Payment, with the balance of the First Settlement Payment to be funded directly by the Wellington Borrower. The Commitment Letter contains certain conditions that the Wellington Borrower advised it will be able to satisfy prior to the closing of the Wellington settlement transaction;
- (f) The Wellington Borrower and the Guarantors have agreed to deliver the Security as security for payment of the Second Settlement Payment and the Second Late Payment Fee, if applicable, plus certain other costs and expenses; and
- (g) The Wellington Final Offer provides certainty regarding the amount and time frame for repayment of the Wellington Loan;

29. The Wellington Feedback Request requested that such lenders consider the Wellington Final Offer and provide their feedback, whether for or against the acceptance of the Wellington Final Offer, and any other general feedback;

30. As of the filing of this Notice of Motion, the Trustee had received 89 formal votes in response to the Wellington Feedback Request, representing a response rate of approximately 64.03% in number and approximately 63.63% in value of the Wellington Loan;

31. 88 of the Wellington Individual Lenders, representing approximately 98.9% in number and approximately 98.5% in value of such loans voting, voted in favour of the Trustee accepting the Wellington Final Offer;

32. Accordingly, in light of the overwhelmingly positive feedback from the Wellington Individual Lenders, the Trustee, with the support of Representative Counsel, has accepted the Wellington Final Offer, executed the Wellington Settlement Agreement and has brought this Motion seeking this Court’s approval of the Wellington Settlement Agreement and the issuance of the Wellington Settlement Approval Order.

### **Wellington Settlement Agreement**

33. The Wellington Settlement Agreement requires the Trustee to use commercially reasonable efforts to seek the Wellington Settlement Approval Order, though the remaining terms of the

Wellington Settlement Agreement, save and except for Sections 12 and 13 thereof, are only binding on the Trustee, BDMC, OTC and Computershare should the agreement be approved and ratified by the Court;

34. The Wellington Final Offer is conditional, among other things, upon the release and discharge of all Wellington Loan Obligations and all Loan Encumbrances, and a Court order being obtained stipulating that none of the Trustee, BDMC, Computershare, OTC or any Wellington Individual Lenders have any claim against the Wellington Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances (though the Wellington Borrower is not to be released from any obligations under the Wellington Settlement Agreement, including, without limitation, the obligation to make the Second Settlement Payment and the Second Late Payment Fee, if applicable) in consideration of the First Settlement Payment, delivery of the Security due under the Wellington Settlement Agreement, and the other obligations of the Wellington Borrower and the Guarantors under the Wellington Settlement Agreement;

35. The Wellington Settlement Agreement also provides that the Wellington Borrower is to deliver a Release Agreement to the Trustee providing that the Wellington Borrower, on behalf of itself and the other Releasers, releases all of the Releasees from all obligations under such loan documents;

36. If the Court grants the proposed Wellington Settlement Approval Order, then the settlement transaction set out therein will be effective upon the issuance by the Trustee of the Trustee's Certificate certifying that, among other things, the First Settlement Payment and the First Late Payment Fee, if applicable, and the Security have been received by the Trustee, and the conditions precedent set out in the Wellington Settlement Agreement have been satisfied or waived by the Trustee;

37. The Trustee intends to make an initial distribution to the Wellington Individual Lenders of the First Settlement Payment following the delivery of the Trustee's Certificate to the Wellington Borrower in an amount equal to 85% of the Wellington Realized Property received by the Trustee at that time, *pro rata* to the Wellington Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order;

38. Further, upon receipt of the Second Settlement Payment, the Trustee intends to make a distribution in the same manner as the First Settlement Payment, in an amount equal to 85% of the Wellington Realized Property received by the Trustee at that time, *pro rata* to the Wellington Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.

### **General**

39. The provisions of the MBLAA, including Section 37 thereof;
40. The Appointment Order;
41. The Realized Property Order;
42. The Harlowe Settlement Approval Order;
43. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 41 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
44. Sections 101 and 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
45. The inherent and equitable jurisdiction of this Honourable Court; and
46. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Twenty-Fifth Report of the Trustee and the appendices thereto; and
2. Such further and other evidence as counsel may advise and this Court may permit.

- 13 -

February 16, 2021

**OSLER, HOSKIN & HARCOURT LLP**

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

**TO: SERVICE LIST**



**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

Applicant

Respondent

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

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

**Proceedings commenced at Toronto**

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**NOTICE OF MOTION**  
**(Motion for Approval of Wellington Settlement)**

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**OSLER, HOSKIN & HARCOURT LLP**

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

# **TAB B**

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

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

**BETWEEN**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TWENTY-FIFTH REPORT OF THE TRUSTEE**

**FEBRUARY 16, 2021**



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

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<b>Appendix 2</b>	<b>Realized Property Order dated October 30, 2018</b>
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Court File No. CV-18-596204-00CL

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

**BETWEEN**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TWENTY– FIFTH REPORT OF THE TRUSTEE**

**February 16, 2021**

**INTRODUCTION**

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

2. On October 30, 2018, this Court issued an Order (“**Realized Property Order**”) that, among other things,
  - (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness administered by BDMC on behalf of Investors (including funds originally obtained with respect to the Victoria Medical SML Loans), whether or not (i) secured by any Real Property Charges in the name of BDMC or an RRSP Trustee, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (II) all interest paid or payable to BDMC or the Trustee at the time such repayment (in whole or in part) of principal is made (collectively, “**Realized Property**”);
  - (b) required the Trustee to retain 30% of all Realized Property; and
  - (c) authorized the Trustee to use the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considered necessary or desirable for the administration of the estate, including in respect of those matters set out in paragraph 17 of the Interim Stabilization Order made in these proceedings on June 26, 2018.

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

3. On November 28, 2018, the Court issued the Braestone Settlement Approval Order, which approved, among other things, an amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 80% of all Realized Property to Investors
4. On December 20, 2018, the Court issued the Harlowe Settlement Approval Order, which approved, among other things, a further amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors. A copy of the Harlowe Settlement Approval Order is attached as **Appendix “3”**.
5. The Trustee has, in total, delivered twenty-four reports to Court (collectively, the “**Reports**”) detailing, among other things, the Trustee’s activities during these proceedings

and providing updates to stakeholders on various projects. Notably, on November 16, 2020, the Trustee submitted its twenty-fourth report in these proceedings, which provided a comprehensive update on the Trustee's activities and a status update for each project.

6. The Trustee indicated in its previous Reports that it continues to seek to maximize recoveries for Investors and to advance potential transactions related to various projects. In particular, the Trustee continues to engage in negotiations with certain borrowers regarding potential payouts of the applicable loans. As a result of these negotiations, the Trustee has reached, subject to Court approval, a settlement agreement with respect to the obligations owing by Wellington House Inc. ("**Wellington Borrower**") to BDMC under a loan agreement dated April 15, 2016 ("**Wellington Loan Agreement**") pursuant to which BDMC provided a syndicated mortgage loan ("**Wellington Loan**") to the Wellington Borrower secured by a charge on real property located at 422-424 Wellington Street West, Toronto, Ontario ("**Wellington Project**" or "**Property**").
7. Capitalized terms not otherwise defined in this twenty-fifth report ("**Twenty-Fifth Report**") have the meanings ascribed to them in previous Reports filed by the Trustee. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee's website at: [www.faanmortgageadmin.com](http://www.faanmortgageadmin.com) ("**Trustee's Website**"). The Trustee intends to maintain the Trustee's Website for the duration of these proceedings and will be updating it as appropriate.

#### **PURPOSE OF THE TWENTY-FIFTH REPORT**

8. The purpose of this Twenty-Fifth Report is to provide the Court and stakeholders with the Trustee's recommendation regarding the Wellington Project based on feedback received from the syndicated mortgage lenders that advanced funds to BDMC in respect of the Wellington Project ("**Wellington Individual Lenders**") and to support the Trustee's request for an Order ("**Wellington Settlement Approval Order**") that, among other things:
  - (a) (i) approves the settlement agreement dated January 13, 2021 ("**Wellington Settlement Agreement**"), including the Late Payment Fees (as defined below), among the Wellington Borrower, Olympia Trust Company ("**OTC**"), Computershare



Trust Company of Canada (“**Computershare**”), BJL Properties Inc. (“**BJL**”)<sup>1</sup>, Brad J. Lamb (“**Lamb**”, and together with BJL, the “**Guarantors**”) and the Trustee, with such minor amendments as the Trustee and the other parties to the Wellington Settlement Agreement may agree upon to permit the completion of the transactions;

(ii) directs the Wellington Borrower to pay \$4,000,000 (“**First Settlement Payment**”)<sup>2</sup> forthwith to the Trustee in accordance with the terms of the Wellington Settlement Agreement;

(iii) directs the Wellington Borrower to pay \$2,316,800 (“**Second Settlement Payment**”) on or before September 1, 2021 to the Trustee in accordance with the terms of the Wellington Settlement Agreement (such funds together with the First Settlement Payment, the “**Wellington Realized Property**”);

(iv) directs the Wellington Borrower and the Guarantors to deliver the Security (as defined below); and

(v) approves and ratifies the execution of the Wellington Settlement Agreement by the Trustee, Computershare, and OTC and authorizes and directs the Trustee, Computershare, and OTC to comply with all of their obligations under the Wellington Settlement Agreement;

(b) releases, extinguishes, expunges and discharges all of the Wellington Borrower’s obligations to BDMC, Computershare, OTC, and the Wellington Individual Lenders and related security and other loan documents contemplated by the Wellington Loan Agreement (collectively, the “**Wellington Loan Obligations**”) and all security interests granted to BDMC, Computershare, OTC and the Wellington Individual Lenders in and to the assets of the Wellington Borrower to secure the Wellington

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<sup>1</sup> The form of settlement offer, including a settlement agreement dated as of January 13, 2021, provided by the Wellington Borrower to the Trustee was executed by Bel-Three Property Management Limited (“**Bel-Three**”), as guarantor. Pursuant to articles of amendment effective August 4, 2016, Bel-Three changed its legal name to BJL Properties Inc. Accordingly, the parties revised the form of settlement agreement to correct the legal name of this guarantor.

<sup>2</sup> The net amount owing on account of the First Settlement Payment pursuant to the Wellington Settlement Agreement, is \$3.7 million, which reflects the First Settlement Payment less the \$300,000 Deposit (as defined later in this Twenty-Fifth Report). The Deposit was received by the Trustee’s counsel on January 22, 2021, and as described further below, is to be released from trust and credited against the First Settlement Payment, prior to closing.

Loan Obligations (“**Loan Encumbrances**”), which, for greater certainty, does not include the Security, upon the delivery to the Wellington Borrower of a copy of a Trustee’s certificate (“**Trustee’s Certificate**”) confirming, among other things:

- (i) the Trustee’s receipt of the First Settlement Payment;
  - (ii) the execution of the Security by the Wellington Borrower and the Guarantors, as applicable, and the delivery thereof to the Trustee, and ordering that none of the Trustee, BDMC, Computershare, OTC or any Wellington Individual Lender have any claim against the Wellington Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances; provided, however, that the Wellington Borrower or the Guarantors are not released from any obligations under the Wellington Settlement Agreement, including the Wellington Borrower’s obligation to make the Second Settlement Payment and the Second Late Payment Fee, if applicable, and to deliver the Security;
- (c) declares that the release agreement (“**Release Agreement**”) to be provided by the Wellington Borrower on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the “**Releasors**”) in favour of the Trustee, BDMC, Computershare, OTC, and each Wellington Individual Lender who loaned funds through BDMC to the Wellington Borrower (including each of their respective officers, directors, agents, employees, and each of their respective successors and assigns) pursuant to the Wellington Loan Agreement and all other related loan documents, (collectively, the “**Releasees**”), shall be binding and effective on the Releasors in favour of the Releasees upon the delivery of the Trustee’s Certificate to the Wellington Borrower; and
- (d) authorizes the Trustee to, with respect to the First Settlement Payment, make an initial distribution to the Wellington Individual Lenders following the delivery of the Trustee’s Certificate to the Wellington Borrower and, with the respect to the Second Settlement Payment, a second distribution following receipt of such funds. Each distribution will be in an amount equal to 85% of the Wellington Realized Property received by the Trustee, *pro rata* to the Wellington Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property

Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.

9. In support of the Trustee's request for the Wellington Settlement Approval Order, this Twenty-Fifth Report describes the following matters:
- (a) Details of the Wellington Loan Agreement;
  - (b) A notice issued by the Wellington Borrower to the Wellington Individual Lenders;
  - (c) An overview of the Wellington Project;
  - (d) Details of the settlement offer received by the Trustee;
  - (e) Details of the Wellington Settlement Agreement; and
  - (f) Information supporting the Trustee's recommendation that the Wellington Settlement Agreement be approved.

#### **SCOPE AND TERMS OF REFERENCE**

10. In preparing this Twenty-Fifth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgages Services Inc. ("**CDCM**"), the Wellington Borrower and certain other individual borrowers who have borrowed funds from BDMC under various syndicated mortgage loans administered by BDMC. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the projects, including the Wellington Project and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, Fortress, CDCM, and the Wellington Borrower (including, among other things, unaudited internal information, appraisals and financial projections), the Trustee's review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.
11. Some of the information used and relied upon in preparing this Twenty-Fifth Report consists of financial projections and other information received from various third parties,

including appraisals and project cost information. The Trustee cautions that the projections and other information used and relied upon are generally based upon assumptions and estimates about future events and/or market conditions that are not ascertainable or that could change. As such, the information presented in this Twenty-Fifth Report may vary from the projections and information used to prepare this Twenty-Fifth Report and the actual results may differ both from the results projected therein and herein. Even if the assumptions relied upon therein or herein materialize, the variations from the projections could be significant. The Trustee's review of the future oriented information used to prepare this Twenty-Fifth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

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

#### **OVERVIEW OF THE WELLINGTON LOAN**

14. The total principal amount due to the Wellington Individual Lenders is approximately \$6.3 million. The total accrued interest on the Wellington Loan as of January 31, 2021 was approximately \$2 million.<sup>3</sup> The Wellington Loan was made to the Wellington Borrower pursuant to the Wellington Loan Agreement and matured on May 1, 2020.
15. In addition to the Wellington Loan, there is a first priority mortgage registered on title to the Property in favour of Cameron Stephens Financial Corporation ("**Cameron Stephens**") that the Trustee understands secures an outstanding principal balance of \$6.7 million as at January 31, 2021. The Cameron Stephens indebtedness is the only known indebtedness on the Wellington Project that ranks in priority to the Wellington Loan on title to the Property.

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<sup>3</sup> Per diem interest since January 31, 2021 is \$1,384.50.

## NOTICE ISSUED BY WELLINGTON BORROWER

16. On December 20, 2019, the Wellington Borrower sent a vote solicitation and feedback request to the Wellington Individual Lenders ("**Wellington Borrower Notice**"). The Wellington Borrower Notice was sent directly by the Wellington Borrower without consultation with the Trustee or Representative Counsel. The purpose of the Wellington Borrower Notice was to solicit feedback from the Wellington Individual Lenders in respect of a \$2.42 million settlement offer that had been proposed by the Wellington Borrower to the Trustee ("**Original Offer**"). The Original Offer reflected a recovery of only approximately 38% of the outstanding principal balance on the Wellington Loan (and no payment of any accrued interest).
17. On December 24, 2019, the Trustee sent a notice to the Wellington Individual Lenders ("**Trustee's Notice**") in response to the Wellington Borrower Notice. The Trustee's view, which was outlined in the Trustee's Notice, was that the Original Offer was not fair or reasonable in the circumstances or in the best interests of the Wellington Individual Lenders. The Original Offer allowed the Wellington Borrower to continue to maintain control of the Wellington Project, and ultimately be the beneficiary of any profits from its development, while causing the Wellington Individual Lenders to crystallize a significant loss. The Trustee's Notice also advised that the Trustee would not be acting upon any votes received in response to the Wellington Borrower Notice. A copy of the Wellington Borrower Notice and the Trustee's Notice are attached as **Appendices "4"** and **"5"**, respectively.

## BACKGROUND AND CURRENT STATUS OF THE WELLINGTON PROJECT

18. The Wellington Borrower initially sought approval from the City of Toronto ("**City**") for a 23-storey mixed-use development on the Property located on Wellington Street in downtown Toronto. In October 2018, the Wellington Borrower advised that, following negotiations with the City, it was reducing the number of stories for which approvals were being sought from 23 to 17, in addition to making certain floor plate alterations, in an effort to achieve a design that the City would approve. The Wellington Borrower further advised that, due to these design changes, it was also canceling all existing unit sales.
19. When the City did not make a decision on the revised zoning by-law amendment ("**Amendment**") within the required procedural time frame, the Wellington Borrower

applied to the Local Planning Appeal Tribunal (“**LPAT**”) regarding its proposal. The LPAT held a hearing on the Amendment from October 29, 2018 to November 8, 2018.

20. On February 4, 2020, approximately 15 months after the LPAT hearing, a decision was released by the LPAT dismissing the Wellington Borrower’s application and denying the requested Amendment (“**Decision**”). Based on discussions with the Wellington Borrower and a review of the Decision, the Trustee understands that the failure to obtain the Amendment has further delayed the Wellington Project, as the Wellington Borrower will need to resubmit a further revised application to the LPAT at a reduced density.
21. Given the lack of approvals, the Wellington Borrower advised that the estimated timeline to completion of the Wellington Project is likely an additional 6 to 7 years.

#### **FINAL OFFER AND SETTLEMENT AGREEMENT**

22. Notwithstanding the Decision and the extended timeline to project completion, the Trustee and the Wellington Borrower reengaged in discussions regarding the repayment of the amounts due to BDMC under the Wellington Loan Agreement.
23. After extensive negotiations between the parties, the Wellington Borrower presented the Trustee with a revised irrevocable offer, the principal terms of which are as follows (“**Wellington Final Offer**”):
  - (a) Two settlement payments to be made by the Wellington Borrower in the aggregate amount of approximately \$6.3 million in full satisfaction of the amounts due under the Wellington Loan Agreement to be paid as follows:
    - i. the First Settlement Payment of \$4,000,000, satisfied in part through the crediting of a \$300,000 deposit that was paid by the Wellington Borrower on January 22, 2021 (“**Deposit**”), upon receipt of Court approval of the Wellington Settlement Agreement; and
    - ii. the Second Settlement Payment in the amount of \$2,316,800 to be paid on or before September 1, 2021;
  - (b) A late payment fee calculated as 5% of the First Settlement Payment (less the amount of the Deposit) in the event the Wellington Borrower fails to pay any portion

of the First Settlement Payment within 14 calendar days from the date of the granting of the Wellington Settlement Approval Order (“**First Late Payment Fee**”),

(c) A late payment fee calculated as 5% of the Second Settlement Payment in the event the Wellington Borrower fails to pay any portion of the Second Settlement Payment within 14 calendar days of September 1, 2021 (“**Second Late Payment Fee**” and together with the First Late Payment Fee, the “**Late Payment Fees**”); and

(d) The receipt by the Trustee of security in connection with the Second Settlement Payment (“**Security**”), including:

i. A first ranking charge in the principal amount of \$2.5 million registered on title to certain real property located in the Township of Adjala-Tosorontio (Alliston), Ontario (“**Farm Property**”), which Farm Property is owned by BJL, an entity related to the Wellington Borrower,

ii. A limited recourse guarantee of BJL in the maximum principal amount of the Second Settlement Payment and the Second Late Payment Fee, plus other recoverable costs and expenses, which recourse shall be limited to the Farm Property; and

iii. A limited personal guarantee from Lamb in the maximum principal amount of the Second Settlement Payment and the Second Late Payment Fee, plus other recoverable costs and expenses.

24. As noted above, the Trustee is in receipt of the Deposit, which is being held in trust by the Trustee’s counsel pending the outcome of the Trustee’s motion for the Wellington Settlement Approval Order.

25. The Wellington Final Offer is conditional, among other things, upon the release and discharge of all Wellington Loan Obligations and all Loan Encumbrances, and a Court order being obtained stipulating that none of the Trustee, BDMC, Computershare, OTC or any Wellington Individual Lenders have any claim against the Wellington Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances (though the Wellington Borrower is not to be released from any obligations under the Wellington Settlement Agreement, including, without limitation, the obligation to make the Second

Settlement Payment and the Second Late Payment Fee, if applicable) in consideration of the First Settlement Payment, delivery of the Security due under the Wellington Settlement Agreement, and the other obligations of the Wellington Borrower and the Guarantors under the Wellington Settlement Agreement.

26. The Wellington Settlement Agreement provides that the Wellington Borrower is to deliver a Release Agreement to the Trustee providing that the Wellington Borrower, on behalf of itself and the other Releasers, releases all of the Releasees from all obligations under such loan documents.
27. The Wellington Borrower has also made certain representations and warranties and has agreed to provide such further assurances as are necessary to effectuate the transaction set out in the Wellington Final Offer. These representations and warranties include, among other things, that, to the best of the Wellington Borrower's knowledge, none of Fortress or any of its affiliates: (a) shall have any ongoing involvement in the Wellington Project; (b) is party to any agreement or other arrangement relating to the Wellington Project; or (c) is or will become entitled to receive any consideration from the Property ("**Fortress Consideration**"). Further, the Wellington Settlement Agreement contains a covenant in favour of the Trustee that should the Wellington Borrower or any of its affiliates come into the possession or control of any Fortress Consideration, such Fortress Consideration will be paid to the Trustee (until all amounts that would have otherwise been payable to BDMC under the Wellington Loan Agreement have been paid in full).
28. A copy of the Wellington Final Offer, including the form of Wellington Settlement Agreement executed by the Trustee, OTC and Computershare, is attached as **Appendix "6"**.

#### **TRUSTEE'S RECOMMENDATION AND FEEDBACK REQUEST**

29. The Trustee recommended that the Wellington Individual Lenders accept the Wellington Final Offer.
30. The Wellington Final Offer reflects a recovery of 100% of the outstanding principal balance of the Wellington Loan. The return is calculated as follows:



Principal outstanding (A)	\$ 6,316,800
First Settlement Payment (B)	\$ 4,000,000
Second Settlement Payment (C)	\$ 2,316,800
Total proposed payments (D= B+C)	\$ 6,316,800
Recovery on principal (D/A)	100%

31. The Trustee consulted with Representative Counsel regarding the Wellington Final Offer, and, with the support of Representative Counsel, presented the Wellington Final Offer to the Wellington Individual Lenders by delivering a notice to those lenders recommending the acceptance of the offer on January 28, 2021, which requested their feedback, whether for or against the acceptance of the Wellington Final Offer, and any other general feedback (“**Wellington Feedback Request**”) by February 8, 2021. A copy of the Wellington Feedback Request is attached without schedules as **Appendix “7”**.
32. In addition to the above, as set out in the Wellington Feedback Request, the following considerations were taken into account by the Trustee in completing its assessment of the Wellington Final Offer:
- (a) The Wellington Borrower has advised that there is an anticipated timeline of approximately 6 to 7 years to complete the Wellington Project;
  - (b) The Trustee’s planning consultant has advised that the Wellington Borrower’s timeline to project completion is reasonable;
  - (c) The potential implications of the COVID-19 pandemic, which has resulted in a softening in demand for downtown Toronto condominium units in the near term and created uncertainty regarding the long-term impact of the pandemic on the downtown Toronto condominium market;
  - (d) The Wellington Borrower has paid the Deposit, which is being held in trust by the Trustee’s counsel. The Deposit is non-refundable in the event of a default by the Wellington Borrower under the Wellington Settlement Agreement;
  - (e) The Wellington Borrower provided a commitment letter (“**Commitment Letter**”) from its lender contemplating a contribution of \$3.15 million from such financing to

pay the First Settlement Payment, with the balance of the First Settlement Payment to be funded directly by the Wellington Borrower. The Commitment Letter contains certain conditions that the Wellington Borrower advised it will be able to satisfy prior to the closing of the Wellington settlement transaction;

(f) The Wellington Borrower and the Guarantors have agreed to deliver the Security as security for payment of the Second Settlement Payment and the Second Late Payment Fee, if applicable, plus certain other costs and expenses; and

(g) The Wellington Final Offer provides certainty regarding the amount and time frame for repayment of the Wellington Loan.

33. As of February 16, 2021, the Trustee had received 89 formal votes in response to the Wellington Feedback Request, representing a response rate of approximately 64.03% in number and approximately 63.63% in value of the Wellington Loan. 88 of the Wellington Individual Lenders, representing approximately 98.9% in number and approximately 98.5% in value of such loans voting, voted in favour of the Trustee accepting the Wellington Final Offer.
34. Given the above considerations, and the overwhelmingly positive feedback received from the Wellington Individual Lenders, the Trustee has accepted the Wellington Final Offer, executed the Wellington Settlement Agreement and has brought a motion seeking this Court's approval of the Wellington Settlement Agreement and the issuance of the Wellington Settlement Approval Order. The Wellington Settlement Agreement requires the Trustee to use commercially reasonable efforts to seek the Wellington Settlement Approval Order and to refund the Deposit to the Wellington Borrower if the Wellington Settlement Approval Order is not granted. If the Wellington Settlement Approval Order is granted by the Court, the remaining terms of the Wellington Settlement Agreement shall be binding on the Trustee, BDMC, Computershare, OTC, the Wellington Borrower and the Guarantors, as applicable.
35. If the Court grants the proposed Wellington Settlement Approval Order, then the settlement transaction set out therein will be effective upon the issuance by the Trustee of the Trustee's Certificate certifying that, among other things, the First Settlement Payment and the Security have been received by the Trustee, and the conditions precedent set out in the Wellington Settlement Agreement have been satisfied or waived by the Trustee.

36. If the Wellington Settlement Approval Order is granted and the transaction closes in accordance with the terms of the Wellington Settlement Agreement, the Trustee intends to make an initial distribution to the Wellington Individual Lenders of the First Settlement Payment following the delivery of the Trustee's Certificate to the Wellington Borrower in an amount equal to 85% of the Wellington Realized Property received by the Trustee at that time, *pro rata* to the Wellington Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.
37. Further, upon receipt of the Second Settlement Payment, it will be distributed by the Trustee in the same manner as the First Settlement Payment, in an amount equal to 85% of the Wellington Realized Property received by the Trustee at that time, *pro rata* to the Wellington Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.

## **CONCLUSION**

38. The Trustee recommends that the proposed Wellington Settlement Approval Order be granted by the Court. The Trustee obtained overwhelmingly positive responses to the Wellington Final Offer from the Wellington Individual Lenders as 98.9% in number and 98.5% in value of such loans voting, voted in favour of acceptance of the Wellington Final Offer. The Wellington Settlement Agreement contemplates the payment of 100% of the principal amount due under the Wellington Loan Agreement. If implemented, the Wellington Settlement Agreement will result in \$4 million of Wellington Realized Property in the near term, which will permit the Trustee to make an initial distribution of Wellington Realized Property *pro rata* to the Wellington Individual Lenders who are entitled to same and a second distribution upon receipt of the Second Settlement Payment. The Trustee is of the view that it is in the best interests of the Wellington Individual Lenders to obtain the \$4 million of Wellington Realized Property now (net of the 15% administrative holdback required in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order) and the approximately \$2.3 million upon receipt of the Second Settlement Payment rather than to wait for an uncertain result in the future. Further, Representative Counsel has

advised the Trustee that it supports the Trustee's motion seeking the Wellington Settlement Approval Order.

39. The process undertaken by the Trustee for approval of the Wellington Settlement Agreement is substantially similar to the other settlement processes followed in this proceeding. The Trustee believes that this payout process provides certainty for Investors and borrowers, and accordingly, where appropriate, the Trustee intends to continue to follow a similar approval process with respect to other potential future settlement opportunities.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of February, 2021.

*Faan Mortgage Administrators Inc.*

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

**Appendix 1:**  
**Appointment Order dated April 20, 2018**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
JUSTICE HAINEY )  
 )

FRIDAY, THE 20<sup>TH</sup> DAY  
OF APRIL, 2018

BETWEEN:

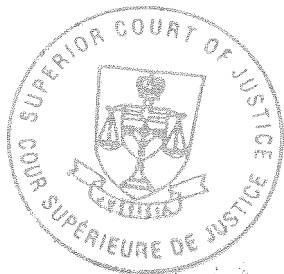
**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**



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

**APPOINTMENT ORDER**

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

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

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

### **SERVICE**

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

### **APPOINTMENT**

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

### **TRUSTEE'S POWERS**

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

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

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

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



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

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

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

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

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE**

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

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

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or  
CDCM

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE TRUSTEE**

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

**NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

**NO INTERFERENCE WITH THE TRUSTEE**

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

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

### **CONTINUATION OF SERVICES**

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

### **TRUSTEE TO HOLD FUNDS**

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

## EMPLOYEES

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

## PIPEDA

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

## LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

#### **LIMITATION ON THE TRUSTEE’S LIABILITY**

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

#### **TRUSTEE’S ACCOUNTS**

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

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

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



- 12 -

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

#### **FUNDING OF THE APPOINTMENT**

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

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

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

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

#### **SERVICE AND NOTICE**

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

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

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

#### **GENERAL**

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

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

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

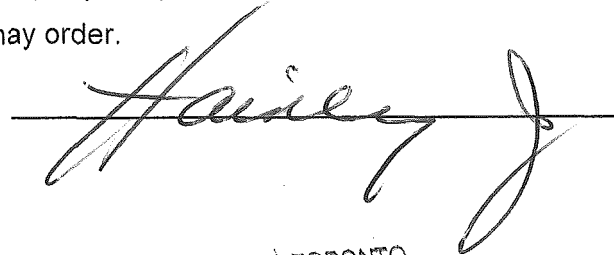
31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals,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

- 14 -

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

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

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



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APR 20 2018

PER / PAR:



**SCHEDULE "A"**  
**TRUSTEE CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

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

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

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

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

Per: \_\_\_\_\_  
Name:  
Title:

Applicant

Respondent

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**APPOINTMENT ORDER**

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

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**Ian Aversa (LSUC # 55449N)**

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*Lawyers for The Superintendent of Financial Services*

**Appendix 2:**  
**Realized Property Order dated October 30, 2018**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

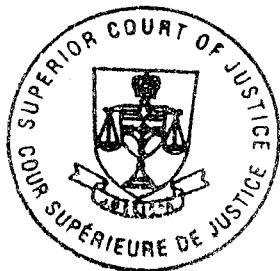
THE HONOURABLE MR. ) TUESDAY, THE 30<sup>th</sup> DAY  
JUSTICE HAINEY ) OF OCTOBER, 2018

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -



**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**REALIZED PROPERTY ORDER**

**THIS MOTION**, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the “**Respondent**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) requiring the Trustee to distribute certain Realized Property, as more fully set out herein; and (ii) authorizing the Trustee to utilize certain Realized Property to fund the Required Trustee Activities (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario;



**ON READING** the Second Report of the Trustee dated October 23, 2018 (the “**Second Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel for The Superintendent of Financial Services, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Jacob Schmidt sworn October 24, 2018, filed;

### **SERVICE**

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

### **DEFINITIONS**

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

### **REALIZED PROPERTY**

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

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

4. **THIS COURT ORDERS** that the Trustee is hereby authorized to use all or any portion of the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considers necessary or desirable

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

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

#### **GENERAL**

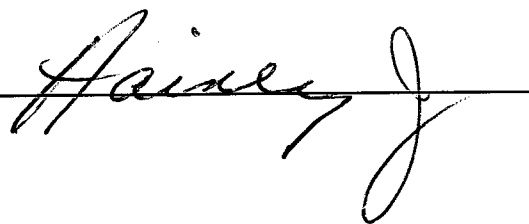
6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

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

Proceedings commenced at Toronto

**REALIZED PROPERTY ORDER**

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

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

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

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

**Appendix 3:**

**Harlowe Settlement Approval Order dated December 20, 2018**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 20 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF DECEMBER, 2018

BETWEEN:



**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**HARLOWE SETTLEMENT APPROVAL ORDER**

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

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

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

#### **SERVICE AND INTERPRETATION**

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

#### **APPROVAL OF THE HARLOWE SETTLEMENT AGREEMENT**

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

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

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

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

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

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

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

#### **REALIZED PROPERTY**

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

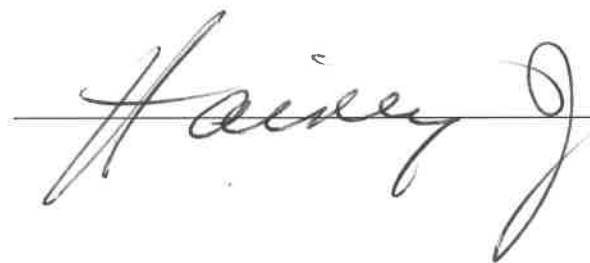
10. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, paragraph 3(b) of the Realized Property Order is hereby further amended to provide that the Trustee shall distribute 85% of all other Realized Property obtained, including the Harlowe Realized Property, *pro rata* to the Investors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



## AID AND RECOGNITION OF FOREIGN COURTS

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

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



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**Schedule “A” – Form of Trustee’s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S CERTIFICATE**

**RECITALS**

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

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

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

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

THE TRUSTEE CERTIFIES the following:

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

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

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

Per: \_\_\_\_\_

Name:

Title:

**Schedule "B" – Real Property**

PIN 21239-0519 (LT)

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

**Schedule "C" – Loan Encumbrances**

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

## Schedule “D” – Release Agreement

**[Date]**

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

AND TO: Olympia Trust Company (“OTC”)

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

Dear Sirs/Mesdames

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

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

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

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

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

Yours truly,

**THE HARLOWE INC.**

By:

\_\_\_\_\_  
Name:

Title:

Accepted and agreed to by:

**FAAN MORTGAGE  
ADMINISTRATORS INC.,** solely in its  
capacity as Court-appointed Trustee of  
Building & Development Mortgages Canada  
Inc. and in no other capacity

By:

\_\_\_\_\_  
Name:

Title:



**OLYMPIA TRUST COMPANY**

By:

---

Name:

Title:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA  
INC.**

Applicant

Respondent

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

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

Proceedings commenced at Toronto

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**HARLOWE SETTLEMENT APPROVAL ORDER**

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

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

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

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

**Appendix 4:**  
**Wellington Borrower's Notice dated December 20, 2019**



## L A M B D E V E L O P M E N T C O R P

December 20, 2019

Dear Lender:

Re: **Syndicated Mortgage Loan made to Wellington House Inc. (the “Borrower”) pursuant to the loan agreement dated April 15, 2016 (“Loan Agreement”) regarding the property located at 422-424 Wellington Street West, Toronto, ON the (“Property”)**

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**Request for approval regarding the settlement of the Syndicated Mortgage Loan to the Borrower**

We are writing to you in our capacity as the Borrower of the syndicate loan made to Wellington House Inc. You have been identified as a Syndicate Mortgage Lender (“SML”) in this project.

We understand, on April 20, 2018, FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**” or the “**Trustee**”) was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) your original Mortgage Administrator, under a court order (“**Appointment Order**”) issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*.

We further understand by order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“**Representative Counsel**”).

We have made numerous attempts over the last 18 months to work with FAAN Mortgage to settle the priority issues as it relates to the Replacement Lender (as set out below) and settle the debt owing to the SML’s. We have made several attempts to come to an agreement with FAAN Mortgage and have yet to come to a mutually agreed upon priority or settlement. For circumstances set out below we are making the settlement terms available directly to the SML’s to ensure they are aware of the recovery being made available to them through our proposed settlement.

The Borrower understands BDMC ceased funding the Wellington project due to changes in the industry, regulatory changes initiated in July of 2018 by the Minister of Finance and Financial Service Commission of Ontario that rendered it impossible for BDMC to raise further syndicate funds, thus removing the funds BDMC committed to us that were planned to bring the project to fruition.

The principal amount owing to the syndicated mortgage lenders (“**Wellington SMLs**”) as at December 17, 2019 is approximately \$6.3 million. BDMC holds a second ranking mortgage registered against title to the Property in respect of the BDMC Loan.

The BDMC loan is subordinate to a first ranking charge to Cameron Stephen’s in the amount of \$6.7 million.

The Loan Agreement called for BDMC to advance funds between \$10,695,000.00 and \$20,695,000, BDMC failed to advance 40% of the loan and ceased funding all together in February 2018.



## L A M B D E V E L O P M E N T C O R P

Due to the fact that BDMC failed to advance the loan in full, as it committed to under the Loan Agreement, the Borrower engaged Replacement Financing to keep the project stabilized and moving forward. The Replacement Financing was provided by a Corporation related to Lamb Development Corporation. The Loan Agreement outlines the priority granted to any Replacement Loan's obtained in the case of a Short Fall of funding under the BDMC Loan Agreement. That provision is as follows:

*"If, for any reason whatsoever and notwithstanding any other provision hereof, the Lender is unable to fund the full Loan for the Project, as and when required, as per the Schedule shown in the Project Budget as approved by the Lender, as amended from time to time, with consent of both the Lender and Borrower within ninety (90) days of being required to do so, then the security for the Loan funded shall be postponed and subordinated in favour of any and all security required by a lender providing the loan for the shortfall (the "**Replacement Lender**") and shall be postponed and subordinated in favour of the Security held by the Replacement Lender for advances to the Project. Either the Lender or the Borrower shall have the right to obtain a Replacement Lender on the best commercial terms available; and"*

Due to this provision the SML's are also subordinate to the Replacement lender.

We have attempted to secure the Replacement Lender on title per the provision in the Loan Agreement in the summer of 2018 and FAAN Mortgage has not replied in an appropriate timeframe further putting the project at risk as the Replacement Lender is not getting the security they are entitled to risked no further funding injections which would have arrested the project.

By the end of December 2019 the Borrower will have borrowed \$3,802,273.00 in Replacement financing that the Loan Agreement outlines will rank in advance of the BDMC Loan. The priority of debt would be as follows;

\$6,700,000.00 First Mortgagee  
\$3,802,273.00 Replacement Financing  
\$6,316,800.00 BDMC loan  
\$16,819,073.00 Total debt

The Replacement Financing debt will continue to grow at a minimum of \$100k per month.

We obtained a 3<sup>rd</sup> party Appraisal that valued the property on an "as-is" basis for \$12,070,000.00. We have been advised that FAAN Mortgage also obtained an appraisal that is for more than \$12,070,000.00. We do not have access or confirmation of any of the information contained within the appraisal FAAN Mortgage obtained.

We have offered to settle the SML for a total payout to the SML's of \$2.4M. This represents over 100% of the appraised value at this time. The calculation for determining the amount to the SML's is as follows:

\$12,070,000.00 appraised value  
-\$6,700,000.00 First Mortgage to Firm Capital Corporation  
-\$3,802,273.00 Replacement Financing  
-\$2,400,000.00 BDCM Settlement

If the appraisal FAAN Mortgage obtained was even \$1M more than the appraisal report we obtained the settlement would still represent 98% of the appraised value at this time.



## L A M B D E V E L O P M E N T C O R P

We understand this was not the originally planned outcome for this site. The proposed plan was to exit a fully funded syndicate from a complete building as the borrower affiliates have done successfully several times in Toronto. The short funded BDMC loan led to extensive additional costs for bridge funding and replacement lender financing that was not originally projected for in the project budget. This combined with the challenges we have faced with approvals have crippled the project.

In addition to these challenges, we have also been unable to obtain any commercially reasonable construction financing commitments from senior lenders so long as the BDMC loan remains on title. This challenge is not unique to Lamb Development, as cited by FAAN Mortgage *“The Trustee has been advised by potential lenders, borrowers and other parties that senior lenders are, in many cases, no longer willing to provide additional financing to further advance the respective projects while a BDMC charge remains registered on title.”*

FAAN Mortgage reports this as a specific consideration when reviewing settlements with other borrowers, they comment in one instance: *“Further, the Trustee understands that Atrium was unwilling to do so while any portion of the charge in favour of BDMC securing the Crestview Loan remained on title.”* And in another instance: *“the Borrower has advised that it has been unable to obtain the required construction financing with the BDMC charge registered on title.”*

The development approvals are still required for the Wellington House Project. We don't expect to hear back from the OMB until the middle of 2020, we are anticipating a significantly reduced GFA when they return with their decision.

The BDMC loan is scheduled to mature in the April 2020, the project realistically is at least 5 years from completion.

The combination of these challenges have left us in a position to either settle the BDMC debt or allow the project to come to a standstill. From our experience, once the project comes to a standstill the First Mortgagee will have the right to commence a power of sale, these proceedings will likely yield a sale price of less than the value the appraisal determined and therefore potentially result in a lower recovery to the SML's.

As stated at the commencement of this communication, we have delivered this offer to settle to FAAN Mortgage. We have been working on the priority rights under the contract for 18 months, we are not prepared to wait for similar periods of time for a response on our settlement offer. Furthermore, we understand several other Borrowers have made similar offers and in many (if not all cases) FAAN Mortgage wrote to those SML's asking them to vote for or against the proposed settlement. To our knowledge and for reasons unbeknownst to us, FAAN Mortgage has not notified the SML's of our offer

Our original offer to settle was made for \$1,900,000.00 in October to FAAN Mortgage to review. This was based on the appraisal we obtained for \$12,070,000.00 that funded over 100% of that value.

We attempted to follow up with them to negotiate the terms of the settlement with no success.

In good faith, we further amended our offer increasing it by \$500,000.00 in December 2019 to FAAN Mortgage, and subsequently followed up with no success. That amount is over 100% of the appraisal we obtained at \$12,070,000.00. If FAAN Mortgage had an appraisal that was significantly higher (10%



L A M B D E V E L O P M E N T C O R P

higher even), this offer would still be 98% of the value of the site.

Our Development Corporation has extensive experience in the development and real estate markets, we have had considerable successes in our previous locations like The King Charlotte, Brant Park and East 55. These 3 sites we also partially financed by SML, with this established track record, its evidence that when a project is completely funded, they results are favorable.

These favourable returns were:

Project	Total Return to SML's
The King Charlotte	148%
The Brant Park	147%
East 55	124%

We have also seen challenges on other sites since the changes and the court appointment over BDMC of FAAN Mortgage. Two of these sites included The James, and The Harlowe, in those cases, as we are doing here with Wellington House, we identified a settlement offers to yield the maximum recoveries to the SML's using similar methodology.

Although contacting SML's directly is not an undertaking we prefer to exercise, at this time we have been unable to finalize any settlement directly with FAAN Mortgage. We believe the SML's will benefit from knowledge of the proposed settlement and should have the opportunity to consider the same.

We ask you review the offer we are making a respond to us using the Instruction form attached here as Schedule "A" indicating your interest in settlement we are proposing.

Please reply by email to: [connect@lambdevcorp.com](mailto:connect@lambdevcorp.com)  
Please subject your response: Wellington House Settlement Proposal Response

Regards,

Bradley J. Lamb  
Wellington House Inc.



L A M B D E V E L O P M E N T C O R P

Schedule "A"

Wellington House Instruction Form

Re: Wellington House Project Request for Feedback & Notice

TO: Wellington House Inc. ("Borrower")

RE: Settlement of the BDMC Loan made to Wellington House Inc. ("Borrower")

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I, \_\_\_\_\_ (Lender Name) have received a request for the following: my preferred course of action is to:

- (i) Accept the \$2,400,000.00 settlement offer made by the Borrower as full and final repayment of the loan advanced by BDMC to the Borrower under the Loan Agreement dated April 15, 2016 ("Loan Agreement"), which would include a release of all BDMC Debt, security and all rights and obligations under the Loan Agreement and related documents; or
- (ii) Reject the settlement offer and await the outcome, which will likely be a sale of the Property and the results of potential recovery to Lenders in unknown.

The undersigned hereby provides the following feedback with respect to all of its interest in the Loan Agreement as described above (mark one only):

- Yes, I prefer the settlement; or
- No, I object to both the settlement described above and understand as a result the Property will likely be listed for sale and the results of any potential recover to Lenders is unknown.

If you have additional feedback with respect to the settlement, please provide full details regarding the nature of your feedback, question or concern below:

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L A M B D E V E L O P M E N T C O R P

Certification:

By returning this instruction form and signing below, I certify that (a) I have full power and authority to give my feedback with respect to the proposed settlement and its effect on my investment under the Loan Agreement; (b) I have read this Notice and Request for Feedback and the Settlement proposal from Wellington House Inc. To Lenders dated December 17, 2019; (c) I have obtained such independent legal advice as I believe is necessary in the circumstances; and (d) I hold the following interest in debt administered by BDMC under the Loan Agreement:

Debt in the amount of \$\_\_\_\_\_.

Name\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

Please return this form using one of the following methods:

- i) if by email: [connect@lambdevcorp.com](mailto:connect@lambdevcorp.com) Subject line "Wellington House Settlement Notice & Feedback Form"
- ii) if by mail to the following address:  
Wellington House Inc.  
778 King St West  
Toronto, ON  
M5V 1N6  
  
Attention: Wellington House Feedback Form
- iii) if by fax: \_\_\_\_\_, attention Wellington House Feedback Form

**Appendix 5:**  
**Trustee's Notice dated December 24, 2019**



December 24, 2019

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Wellington House Inc. (the “Borrower”) pursuant to the loan agreement dated April 15, 2016 (“Loan Agreement”) regarding the property located at 422-424 Wellington Street West Toronto, ON (“Wellington Project” or the “Property”)**

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As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) over 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 (the proceedings commenced thereby, the “**BDMC Proceedings**”). By order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel to, among other things, represent the common interests of investors in syndicated mortgage loans administered by BDMC (“**Representative Counsel**”).

It has come to the Trustee’s attention that the syndicated mortgage lenders that advanced funds for the BDMC Loan (the “**Wellington SMLs**”) may have received a vote solicitation and feedback request form from Mr. Brad Lamb, signed on behalf of the Borrower, dated December 20, 2019 (“**Notice**”). Please be advised that the Notice was sent by the Borrower without consulting the Trustee or Representative Counsel and without authorization from the Court and, in the Trustee’s view, likely contravenes the Orders of the Court in the BDMC Proceedings.

The Trustee’s Court-ordered mandate is to protect the interests of all lenders in syndicated mortgage loans administered by BDMC, including the Wellington SMLs. The Trustee continues to work diligently in furtherance of this objective and in consultation with Representative Counsel. As is stated by the Borrower in the Notice, the Trustee’s efforts have already resulted in material increases to the offers previously presented to the Trustee by the Borrower. However, notwithstanding these increases, the Trustee is of the view that accepting the latest offer presented by the Borrower to the Trustee would not be fair and reasonable in the circumstances or in the best interests of the Wellington SMLs. In the Trustee’s view, the offer provided for in the Notice allows the Borrower to continue to maintain control of the Wellington Project, and ultimately be the beneficiary of any profits from its development, while causing the Wellington SMLs to crystallize a substantial loss today (as discussed further below).

As described in the Trustee’s previous notice to the Wellington SMLs dated June 27, 2018, the Borrower received financing from a third-party lender in the amount of \$6.7 million. The Trustee has always and continues to act in good faith in its dealing with the Borrower and agreed to postpone the BDMC charge on the Wellington Project in favour of the third-party lender in order to enable the continued development of the Property for the benefit of all stakeholders.

The Notice also includes a number of self-serving statements and material omissions, including, among other things: (i) the value of the settlement offer in relation to the appraised values of the Property; (ii) the returns realized by lenders in other projects; and (iii) **a failure to disclose that the offer represents a return of only approximately 31% of what is currently owed to the Wellington SMLs (or 38% of principal)**. In addition, the Notice includes both legal conclusions and statements that the Trustee and Representative Counsel disagree with, including with respect to the priority and

quantum of the BDMC Loan and the Trustee's conduct.

In particular, the Borrower cites clause 3(b) of the Loan Agreement (the "**Replacement Lender Clause**"), which would allow the Borrower to find new financing in certain specified circumstances (including that the new loan must be "on the best commercial terms available") and to grant security that would rank in priority to the BDMC Loan in such circumstances. The Replacement Lender Clause requires advance consent of both BDMC and the Borrower prior to the making of any replacement loan. While the Trustee has been in ongoing communication with the Borrower regarding the Replacement Lender Clause, to date, no such consent has been provided by the Trustee on behalf of BDMC, as the Trustee has significant concerns including, among others, the characterization, nature, quantum and priority of the amounts that a related entity, which is owned by Mr. Lamb, is attempting to secure ahead of the Wellington SMLs.

It is very unfortunate that on the eve of the holiday season, Mr. Lamb, on behalf of the Borrower that owes the Wellington SMLs approximately \$7.7 million (inclusive of approximately \$6.3 million of principal and approximately \$1.4 million of accrued interest, as at December 20, 2019), sent you a notice offering to pay you 31 cents on the dollar for your BDMC Loan. As the Notice was not authorized by the Trustee or the Court, and represents a material deviation from the process followed by the Trustee in seeking Court approval of similar settlement offers in the BDMC Proceedings, the Trustee will not be acting upon any votes made in response to the Notice.

The Trustee has advised the Borrower of the foregoing and will continue to ensure the Wellington SMLs are kept informed of material developments that occur in respect of the Wellington Project, including with respect to future discussions between the Trustee and the Borrower.

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

Email: [Info@FAANMortgageAdmin.com](mailto: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 **Wellington Project**).

Email: [BDMC@chaitons.com](mailto: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 6:**  
**Wellington Final Offer and Wellington Settlement Agreement**

## OFFER TO SETTLE

**DATE:**           **January 13, 2021**

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

- and -

**OLYMPIA TRUST COMPANY**

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Wellington House Inc. (the “**Borrower**”), hereby presents this offer to settle (the “**Offer**”) on the terms and conditions set forth in the Settlement Agreement enclosed herewith, as full and final consideration for all obligations owing by the Borrower under that certain Loan Agreement dated April 15, 2016 (as amended, supplemented or restated from time to time, the “**Loan Agreement**”), with Building & Development Mortgages Canada Inc., in trust (“**BDMC**”), as lender, and all related security documentation in respect thereof on the terms and conditions set forth in the Settlement Agreement enclosed herewith. BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“**Olympia**”) and Computershare Trust Company of Canada (“**Computershare**”) each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare.

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

The Borrower further understands that, as this Offer represents a compromise of debt and a release of all parties’ obligations pursuant to the Loan Agreement, all security and related documentation thereto (provided that such release shall not in any way affect the Borrower’s obligations under this Offer and the Settlement Agreement enclosed herewith), the Trustee (on behalf of BDMC) intends to reach out to the individual lenders forming the syndicate under the Loan Agreement with respect to this Offer. As such, the Borrower acknowledges that seeking feedback with respect to the Offer from the individual lenders forming the syndicate under the Loan Agreement, or their proxy, is a condition precedent to the ability of the Trustee to exercise its discretion to execute the Settlement Agreement enclosed herewith. Therefore, the Borrower hereby agrees that this Offer, and its signature on the Settlement Agreement enclosed herewith, shall be irrevocable by the Borrower and shall remain open for acceptance by providing counter-signed copies of the Settlement Agreement enclosed herewith to the Borrower until 5:00 p.m. Toronto time on February

10, 2021 (or such other date as may be agreed by the Borrower in writing). Failure to accept the Offer by each of the Trustee (on behalf of BDMC), Olympia and Computershare by such date shall result in this Offer being revoked.

In connection with this Offer, the Borrower will, within one (1) business day after the date of this Offer, provide to the Trustee (or its solicitor, in trust) a cash Deposit in the amount of \$300,000, representing approximately 5% of the Settlement Payments (each as defined in the Settlement Agreement). The Borrower hereby agrees that the Deposit is being provided in accordance with Section 13 of the Settlement Agreement and shall not be refundable under any circumstances other than as set out in Section 13 of the Settlement Agreement. Pursuant to the terms of Section 13 of the Settlement Agreement or if the Settlement Agreement is not executed by the Trustee (on behalf of BDMC), Olympia and Computershare on or before 5:00 pm on February 10, 2021 (or such later date as may be agreed by the Borrower in writing), the Deposit shall forthwith upon written demand by the Borrower or the Borrower's solicitor be refunded to the Borrower's solicitor, in trust, and this Offer and the transactions contemplated by the Settlement Agreement shall be deemed to be revoked and/or terminated, as applicable.

The Borrower has provided proof of funds and written confirmation of financing evidencing that it has secured financing to pay \$3,150,000 of the First Settlement Payment (as defined in the Settlement Agreement), with the balance to be paid by the Borrower pursuant to the terms of the Settlement Agreement enclosed herewith. This Offer and the Settlement Agreement also contemplates the delivery of security for the Second Settlement Payment and the Second Late Payment Fee (each as defined in the Settlement Agreement) plus any other recoverable costs and expenses.

This Offer replaces and supersedes any and all previous offers submitted by the Borrower which are now null and void. In the event that this Offer is rejected or revoked as outlined above, the Loan Agreement shall remain unaffected and shall continue and survive in full force and effect in accordance with its terms.

## **NOTICE**

Without prejudice to any other method of giving notice, any notice required or permitted to be given to a party pursuant to this Offer and Settlement Agreement shall be conclusively deemed to have been received by such party: (i) on the next business day following the sending of the notice by prepaid private courier to the address noted below, or (ii) if sent by email during regular business hours to the email address noted below, on the same business day or, if sent by email outside of regular business hours or on a weekend or holiday, the next business day. Any party may change his, her or its address for service by notice given in any of the foregoing manners.

In the case of the Borrower or any Guarantor, the address for service as of the date of this Offer and Settlement Agreement is:

**c/o WELLINGTON HOUSE INC.**  
778 King Street West  
Toronto, ON M5V 1N6  
Attention: Brad J. Lamb and Ryan Spencer  
Email: [brad@lambdevcorp.com](mailto:brad@lambdevcorp.com)  
[ryan@bradlambrealty.com](mailto:ryan@bradlambrealty.com)

and in the case of the Trustee, the address for service is:

**FAAN MORTGAGE ADMINISTRATORS INC., in its capacity as  
Court-appointed Trustee of Building & Development Mortgages  
Canada Inc. and in no other capacity**

20 Adelaide Street East, Unit 920

Toronto, ON M5C 1H6

Attention: Shelby Draper

Email: [shelby@faanmortgageadmin.com](mailto:shelby@faanmortgageadmin.com)



The Borrower looks forward to your response.

**WELLINGTON HOUSE INC.**

By: \_\_\_\_\_

Name: Brad J. Lamb

Title: President

**SETTLEMENT AGREEMENT**  
**(dated as of January 13, 2021)**  
**(the “Settlement Agreement”)**

B E T W E E N:

**WELLINGTON HOUSE INC.**

- and -

**BJL PROPERTIES INC.**

- and -

**BRAD J. LAMB**

- and -

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

- and -

**OLYMPIA TRUST COMPANY**

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**

**WHEREAS** Wellington House Inc. (the “**Borrower**”) is the borrower under a Loan Agreement dated April 15, 2016 (as such agreement may have been amended, supplemented or restated from time to time, the “**Loan Agreement**”) with Building & Development Mortgages Canada Inc., in trust (“**BDMC**”), as lender, whereby BDMC issued a loan to the Borrower in an amount not exceeding \$20,695,000;

**AND WHEREAS** the sum of \$6,316,800 (the “**Loan**”) was actually funded by BDMC pursuant to the Loan Agreement as of the date hereof;

**AND WHEREAS** BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“**Olympia**”) and Computershare Trust Company of Canada (“**Computershare**”) each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare, respectively (collectively, the “**BDMC Individual Lenders**”);

**AND WHEREAS** on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee of the assets, properties and undertakings of BDMC (in such capacity, the “**Trustee**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC (the “**BDMC Proceedings**”);

**AND WHEREAS** the Borrower and BDMC entered into the Loan Agreement to assist in the initial funding of a residential condominium development to be constructed on the property located at 422-424 Wellington Street West, Toronto, Ontario, which land, for greater certainty, is currently represented by PIN 21240-0271 (LT) (the “**Property**”, and such development, the “**Project**”);

**AND WHEREAS** in connection with the Loan, BDMC was granted a charge on title to the Property as evidenced by Charge No. AT4333932 registered on September 6, 2016, in the principal amount of \$7,695,000, which charge was amended, transferred and/or supplemented by various instruments registered on title and is currently registered in the principal amount of \$7,415,000 (the “**Charge**”);

**AND WHEREAS** in connection with the Loan, the Borrower delivered certain other agreements, instruments, documents, and a General Security Agreement to BDMC and/or Olympia and Computershare, and a related registration has been made pursuant to Ontario’s *Personal Property Security Act* to evidence and secure payment of the obligations owing under the Loan Agreement (the “**Personal Property Security**”);

**AND WHEREAS** there is currently \$6,316,800 in principal outstanding under the Loan;

**AND WHEREAS** as of December 31, 2020, there was approximately \$1,942,437 of accrued interest payable to BDMC under the Loan, which, since such date, has accrued and continues to accrue at a per diem amount of \$1,384.50;

**AND WHEREAS** the maturity date under the Loan Agreement was May 1, 2020 (the “**Maturity Date**”), and the Loan is currently in default;

**AND WHEREAS** the Borrower has advised that the decision released by the Local Planning Appeal Tribunal (“**LPAT**”) on February 4, 2020, rejecting the Borrower’s zoning by law amendment application, has resulted in the Borrower’s need to resubmit a revised application to the LPAT at reduced density, further delaying construction of the Project;

**AND WHEREAS** the Borrower has further advised that the estimated timeline to completion of the Project is approximately six to seven years;

**AND WHEREAS** the COVID-19 pandemic has resulted in a softening in demand for downtown Toronto condominium units in the near term and the overall long term impact of the COVID-19 pandemic on the downtown Toronto condominium market is unknown at this time;

**AND WHEREAS** the Borrower provided, and the Trustee received, proof of funds and written confirmation of financing evidencing that it has secured sufficient financing to pay \$3,150,000 of the First Settlement Payment (as defined below), with the balance to be paid by the Borrower, subject to certain conditions;

**AND WHEREAS** on or about January 22, 2021, the Borrower provided a good faith deposit of \$300,000 to the Trustee (or its solicitor, in trust) (the “**Deposit**”), to be held in trust and released in accordance with the terms hereof;

**AND WHEREAS** the Borrower, Brad J. Lamb (“**Lamb**”), BJI Properties Inc. (“**BJI**”, and together with Lamb, the “**Guarantors**”, and each a “**Guarantor**”) have agreed to deliver the

Security as security for the Second Settlement Payment and the Second Late Payment Fee (each as defined below) plus other recoverable costs and expenses;

**AND WHEREAS** the Trustee will consult with the BDMC Individual Lenders with respect to the proposed Settlement Agreement and, following such consultation, if determined that it is in the best interests of the BDMC Individual Lenders to enter into this Settlement Agreement, the Trustee shall do so;

**AND WHEREAS** the parties hereto wish to enter into this Settlement Agreement in full satisfaction of the obligations owing by the Borrower to BDMC, Olympia, Computershare and the BDMC Individual Lenders under the Loan Agreement and all related security documentation in respect thereof;

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

1. Each party represents and warrants to the others that, to the best of its knowledge, the recitals to this Settlement Agreement are accurate.
2. The Borrower, the Trustee, Olympia and Computershare represent and warrant that the total amount that would be payable under the Loan Agreement as at December 31, 2020, is \$8,216,317 (the “**Obligations**”), which amount is comprised of the following amounts, and that such amounts represent all of the monetary obligations owed by the Borrower under the Loan Agreement:
  - (a) Principal owing in the amount of \$6,316,800, payable on the Maturity Date; and
  - (b) Interest owing as of December 31, 2020, in the amount of \$1,942,427, which, since such date, has accrued and continues to accrue at a per diem amount of \$1,384.50 until the date the Loan is repaid.
3. The Borrower hereby agrees to pay to the Trustee, on behalf of BDMC:
  - (a) On the Effective Date (as defined below), a lump-sum payment in the amount of \$4,000,000 (the “**First Settlement Payment**”), which shall in part be satisfied by the release and crediting of the Deposit against such payment, and
  - (b) On or before September 1, 2021 (the “**Second Settlement Payment Due Date**”), a lump-sum payment in the amount of \$2,316,800 (such lump-sum payment, the “**Second Settlement Payment**” and together with the First Settlement Payment, the “**Settlement Payments**”).
4. The Borrower and the Guarantors shall deliver the following security (the “**Security**”), as applicable, to the Trustee as security for the Second Settlement Payment and the Second Late Payment Fee (as defined below) plus any and all interest accrued and accruing thereon and other recoverable costs and expenses, which shall be duly registered, where applicable, and all in the form and on the terms acceptable to the Trustee, in its sole discretion, which, as applicable, shall be registered in the name of the Trustee (or its designee):
  - (a) A first ranking charge in the principal amount of \$2,500,000 registered on title to

the real property located at 5791 Concession Road 3, Township of Adjala-Tosorontio (Alliston), Ontario (the “**Farm Property**”), which Farm Property, for greater certainty, is currently represented by PIN 58189-0017 (LT) and owned by BJJ;

- (b) A limited recourse guarantee of BJJ in the form attached hereto as Schedule “A” in the maximum principal amount of the Second Settlement Payment, the Second Late Payment Fee (as defined below) plus other recoverable costs and expenses, which recourse shall be limited to the Farm Property;
- (c) A limited personal guarantee of Lamb in the form attached hereto as Schedule “B” in the maximum principal amount of the Second Settlement Payment, the Second Late Payment Fee plus other recoverable costs and expenses, together with a certificate of independent legal advice in connection with the delivery of such limited personal guarantee; and
- (d) Such further security and ancillary documents and agreements as the Trustee or its solicitors may, acting reasonably, deem necessary to adequately secure the Second Settlement Payment, the Second Late Payment Fee plus other recoverable costs and expenses, and complete the foregoing security.

5. Each of the Borrower and the Guarantors agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Settlement Payments and the Late Payment Fees (as defined below) plus any and all interest accrued and accruing thereon and other recoverable costs and expenses or any obligations guaranteed by, owing pursuant to, or secured by the Security, as applicable, save and except as provided in Section 13 below.

6. In the event that the Borrower fails to pay any portion of:

- (a) the First Settlement Payment within fourteen (14) calendar days of the Effective Date, the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 5% of the amount of the First Settlement Payment less the Deposit (the “**First Late Payment Fee**”); and
- (b) the Second Settlement Payment on or before the Second Settlement Payment Due Date, the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 5% of the amount of the Second Settlement Payment

(the “**Second Late Payment Fee**”, and together with the First Late Payment Fee, the “**Late Payment Fees**”).

7. The Borrower shall, upon the Effective Date, execute and deliver a full and final release in favour of the Trustee, BDMC, Olympia and Computershare and their related entities (including the BDMC Individual Lenders) (collectively, the “**Releasees**”) in respect of, *inter alia*, any and all obligations under the Loan Agreement and all other documents between the Borrower and BDMC, Olympia, Computershare and/or the BDMC Individual Lenders, in a form customarily provided to secured lenders and in the form reasonably agreed to by the Releasees (the “**Release**”). The Release shall not be effective until the Closing Date (as defined below).

8. The Borrower and each Guarantor hereby represents and warrants to the Trustee, Olympia and Computershare that, as of the date hereof, the Effective Date and the Closing Date:

- (a) The Borrower and each Guarantor is solvent, has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Settlement Agreement, all of which have been duly authorized by all proper and necessary corporate action (other than in the case of Lamb), and it has duly executed and delivered this Settlement Agreement.
- (b) Other than in the case of Lamb, the execution of this Settlement Agreement will not violate or conflict with its organizational documents.
- (c) The execution of this Settlement Agreement will not violate or conflict with any mortgage or other documentation that the Borrower or any Guarantor is party to relating to the Project or the Property, or any law, regulation or order or require any consent or approval that has not been obtained.
- (d) This Settlement Agreement is a legal, valid, and binding obligation of the Borrower and each Guarantor, enforceable against the Borrower and each Guarantor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by equitable principles.

9. The Borrower hereby further represents and warrants to the Trustee, Olympia and Computershare that, as of the date hereof, the Effective Date and the Closing Date:

- (a) To the best of its knowledge, none of Fortress Real Developments Inc. or any of its affiliates (as such term is defined in the *Business Corporations Act* (Ontario)) or any other entity controlled by it (collectively, "**Fortress**") or their respective principals, agents or legal counsel (collectively, "**Fortress Representatives**"):
  - (i) shall have any ongoing involvement in the Project;
  - (ii) is party to any ongoing agreement or other arrangement relating to the Project or the Property with the Borrower or any of its affiliates or their respective principals or agents, or
  - (iii) is or will become entitled to receive any consideration whatsoever in respect of or in any way relating to or arising from (directly or indirectly) the Property or the Project, whether from the Borrower, any lender, broker, purchaser, other person or any of their respective affiliates, principals or agents, including, without limitation, consideration in the form of money, instruments, investment property, debt, securities, options, mortgages, charges, guarantees, assets or any other form, and promptly upon the Borrower obtaining knowledge or otherwise becoming aware of any of the foregoing matters, whether before or after the Closing Date, it shall notify the Trustee of the nature and existence of such matters forthwith.
- (b) There are no arrangements between the Borrower or any of its affiliates, principals or agents involving Fortress or any Fortress Representatives whereby Fortress or any Fortress Representative would receive any consideration in respect of or in any way relating to or arising from the Property, the Project or the transactions contemplated by this Settlement Agreement, whether from the Borrower, any

lender, broker, assignee, other person or any of their respective affiliates, principals or agents of which the Borrower has knowledge.

- (c) Neither the Borrower nor any of its affiliates, principals or agents has been in contact with, had discussions with, or been in negotiations with Fortress or any Fortress Representatives in respect of a potential transaction that would result in any consideration becoming payable in any way to Fortress or any Fortress Representative in connection with the Property, the Project or the transactions contemplated by this Settlement Agreement, whether from the Borrower, any lender, broker, assignee, other person or any of their respective affiliates, principals or agents, including without limitation any potential transaction involving a settlement of the Obligations or an assignment of all or any part of the Obligations or the Charge to Fortress or any Fortress Representative.

10. The Borrower covenants in favour of the Trustee (on behalf of BDMC), Olympia and Computershare, that should the Borrower or any of its affiliates or their respective principals or agents: (a) come into the possession or control of any such consideration described in Subsection 9(a)(iii) above that would otherwise be payable to Fortress or any Fortress Representative, or (b) permit or acquiesce to any such consideration being received by Fortress or any Fortress Representative, such consideration: (i) shall and shall be deemed to be held in trust, separate and apart from such person's other money, instruments, investment property, property or assets, for the benefit of the Trustee until the full amount of the Obligations that would have been payable to BDMC under the Loan Agreement as of the Effective Date of this Settlement Agreement has been paid to the Trustee in full, or (ii) shall be deemed to become an amount that is owed by the Borrower to the Trustee (on behalf of BDMC), as applicable. In each such instance, such person shall immediately inform the Trustee of such fact and take such steps to promptly transfer such consideration to the Trustee and pay any and all such amounts to the Trustee within two (2) Business Days (as defined below) of receipt of same (the "**Turnover Obligation**"). For greater certainty, the Turnover Obligation shall survive the closing of the transactions contemplated by this Settlement Agreement and shall not be affected by the releases contemplated herein.

11. The Trustee (on behalf of BDMC), Olympia and Computershare acknowledge that the Settlement Payments represent \$1,942,437 less than the full amount of the principal and interest owing under the Loan Agreement as at December 31, 2020 (excluding additional accrued interest to the ultimate date of repayment) and any amount that could potentially become owing under the Loan Agreement, the Charge, the Personal Property Security, and any other security in respect thereof. The Trustee (on behalf of BDMC), Olympia and Computershare agree that, as of the Closing Date, they shall be deemed to accept the First Settlement Payment and, if applicable, the First Late Payment Fee, in full satisfaction of the Obligations (but, for greater certainty, such acceptance shall not in any way affect the Borrower's obligation to pay the Second Settlement Payment and, if applicable, the Second Late Payment Fee, in accordance with the terms hereof, or the Security), and shall waive any rights to any further payments that may become payable to BDMC, Olympia and/or Computershare under the Loan Agreement, the Charge, the Personal Property Security, and any other security documentation in respect thereof (but for greater certainty, such agreement and waiver shall not in any way affect (i) the Borrower's obligations to pay the Second Settlement Payment and, if applicable, the Second Late Payment Fee, in accordance with the terms hereof, (ii) the Security, or (iii) the Turnover Obligation under this Settlement Agreement).

12. The Trustee shall use commercially reasonable efforts to seek approval of the Settlement

Agreement by way of court order substantially in the form agreed between the Borrower, the Trustee, Olympia and Computershare (which shall, for greater certainty, contain a full release and discharge of all obligations of the Borrower under the Loan Agreement, the Charge, the Personal Property Security and any other security in respect thereof and a release under any and all other security instruments related to the Loan and include a release of any and all interests or claims that the Trustee (on behalf of BDMC), Olympia, Computershare and the BDMC Individual Lenders, may have in respect of the Project and the Property provided that such release shall not be effective until the Closing Date as provided herein and shall not in any way affect the Borrower's obligations hereunder, including to pay the First Settlement Payment, the Second Settlement Payment, and the Late Payment Fees, as applicable, or the Security) (the "**Order**") issued by the Court. The parties hereto agree that this Settlement Agreement shall not be binding on the Trustee (on behalf of BDMC), Olympia or Computershare until the issuance of the Order, save and except for Section 12 and Section 13 hereof, which sections shall be binding upon acceptance of this Settlement Agreement by all parties. On the date of the issuance of the Order (the "**Effective Date**"), the Borrower shall be required to issue the Release as contemplated in Section 7 herein and pay the First Settlement Payment, the Second Settlement Payment, and if applicable, the Late Payment Fees as contemplated in Sections 3 and 6 herein. The Release shall not be effective until the Closing Date and the delivery of the Trustee's Certificate (as defined below) to the Borrower.

13. The Deposit shall be refundable to the Borrower if the Effective Date has not occurred, due to no action or fault of any of the Borrower, Fortress, the Guarantors or their respective affiliates, by February 26, 2021, unless otherwise agreed in writing by the parties hereto (the "**Outside Date**"). If the Effective Date has not occurred by the Outside Date due to no action or fault of any of the Borrower, Fortress, the Guarantors or their respective affiliates, the Deposit shall, upon written demand by the Borrower or its solicitors, be refunded to the Borrower, or otherwise as the Borrower may in writing direct, and, upon the refund of the Deposit, this Settlement Agreement shall be deemed terminated and of no further force or effect (in which case the Loan, the Loan Agreement, the Charge and any other related security documentation and any obligation and liability thereunder shall remain unaffected and shall continue in favour of BDMC, Olympia and Computershare in accordance with their terms). The return of the Deposit shall be the Borrower's sole and exclusive remedy in respect of any termination of this Settlement Agreement.

14. Upon the Effective Date, the Deposit shall automatically become the property of the Trustee, Olympia and Computershare and shall constitute Realized Property (as such term is defined in the Order of the Court dated June 26, 2018 in the BDMC Proceedings, which definition may be amended from time to time in subsequent Orders of the Court). On the Closing Date, the Deposit shall be credited against the First Settlement Payment in accordance with Section 3 herein. For clarity, the Deposit shall be non-refundable to the Borrower in all circumstances except as expressly set out in Section 13 herein.

15. The obligations of the Trustee (on behalf of BDMC), Olympia and Computershare contained in this Settlement Agreement, including, without limitation, the obligations set out in Sections 11 and 17 hereto (except for the obligations contained in Section 12 and Section 13 hereto, which shall be effective as of the date that the Trustee, Olympia and Computershare execute this Settlement Agreement) shall be subject to the issuance of a certificate to the Borrower by the Trustee in the form to be attached to the Order (the "**Trustee's Certificate**") and the filing of the Trustee's Certificate with the Court following the satisfaction of the conditions precedent set out in Section 16 herein (the "**Closing Date**").

16. The Trustee shall be required to issue the Trustee's Certificate to the Borrower upon the



satisfaction of the following conditions precedent (which conditions may be waived by the Trustee in its sole discretion):

- (a) the Security has been executed by the Borrower and the Guarantors, as applicable, and delivered to the Trustee (on behalf of BDMC) and, to the extent applicable, duly registered in all applicable offices, all on terms and conditions satisfactory to the Trustee in its sole discretion;
- (b) the Trustee, Borrower and each Guarantor shall have entered into or delivered such additional documents, instruments, assignments, and assurances as the Trustee may reasonably require, on terms and conditions satisfactory to the Trustee in its sole discretion, in connection with the Security to effect the transactions contemplated hereby and thereby in accordance with their true intent;
- (c) the Order has been granted by the Court and no material objections (in the sole opinion of the Trustee) were raised by the BDMC Individual Lenders or by any other party at the motion for approval of the Order, or, if any material objection is raised, the appeal periods in respect of the Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
- (d) the Borrower has paid the First Settlement Payment, and, if applicable, the First Late Payment Fee, to the Trustee or its counsel, in trust;
- (e) the Borrower has provided the Release to the Releasees;
- (f) the Borrower and the Guarantors have certified that all of their representations and warranties contained in this Settlement Agreement continue to be true as of the Closing Date; and
- (g) the Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of this Settlement Agreement.

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

17. As of the Closing Date: (i) the Borrower, the Trustee (on behalf of BDMC), Olympia and Computershare acknowledge and agree that they shall have no further rights or obligations in connection with the Obligations, the Loan Agreement and all security related thereto and the Loan Agreement and all security related thereto shall be terminated with no further force or effect; (ii) the Borrower shall be permitted to cause any and all security held by BDMC, Olympia and/or Computershare to secure the Obligations to be discharged, including the discharge of the Charge from title to the Property and the discharge of any registrations held by BDMC, Olympia and/or Computershare against the Borrower under the *Personal Property Security Act* (Ontario) in connection with the transactions contemplated by the Loan Agreement; (iii) the Borrower shall be permitted to release any interest the Trustee (on behalf of BDMC), Olympia and Computershare may have in any insurance policy(ies) relating to the Property in connection with the transactions contemplated by the Loan Agreement; and (iv) pursuant to the Order, BDMC, Olympia, Computershare and the BDMC Individual Lenders shall be deemed to have released the Borrower and all other parties thereto from all obligations and security provided in connection with the Loan

Agreement and such other security and covenants related thereto; provided, however, that the releases, discharges and other matters described in this Section 17 shall not in any way affect the Borrower's obligations to pay the Second Settlement Payment and, if applicable, the Second Late Payment Fee in accordance with the terms hereof or any of the rights acquired by the Trustee in connection with the transactions contemplated hereby, including the Security.

18. In this Settlement Agreement, "**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in Toronto, Ontario.

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

20. The parties agree and acknowledge that the terms of this Settlement Agreement may be disclosed to the BDMC Individual Lenders under the Loan and shall be included in the motion materials for approval of the Settlement Agreement, provided that such terms may be provided to the Court on a confidential basis and subject to a request for a sealing order at the Trustee's discretion.

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

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

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

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

25. This version of the Settlement Agreement supersedes an earlier version dated as of January 13, 2021 that was executed by B JL Properties Inc. under its former legal name, Bel-Three Property Management Limited.

*[Remainder of page intentionally left blank]*

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

**WELLINGTON HOUSE INC.**

By: \_\_\_\_\_

Name: Beno S. Lam  
Title: PRESIDENT

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

By: \_\_\_\_\_

Name: Lana Bezner  
Title: Managing Director

**OLYMPIA TRUST COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMPUTERSHARE TRUST COMPANY OF CANADA**

**Amanda Yu**  
Associate Relationship Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Yasmin Ali  
Manager - PCS

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

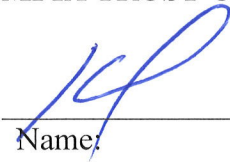

**WELLINGTON HOUSE INC.**

By: \_\_\_\_\_  
Name:  
Title:

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

By: \_\_\_\_\_  
Name:  
Title:

**OLYMPIA TRUST COMPANY**

By:  \_\_\_\_\_   
Name: Kelly Revol                      Jonathan Bahnuik  
Title: Vice President                      General Counsel

**COMPUTERSHARE TRUST COMPANY OF CANADA**

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed to by each Guarantor solely for the limited purpose of their respective agreements, covenants, representations, and warranties set forth in Sections 1, 4, 5, 8, 19, 20, 21, 22, 23, 24 and 25 of this Settlement Agreement, as of the date indicated above.

**BJL PROPERTIES INC.**

By:

Name: Brad J. Lamb

Title: President

SIGNED & DELIVERED

In the presence of:

RYAN SPENCER

Witness' Name:

Brad J. Lamb

**SCHEDULE "A"**

**Form of BJL Guarantee**

## LIMITED RECOURSE GUARANTEE

**THIS GUARANTEE** (this “**Guarantee**”), dated as of \_\_\_\_\_, 2021, is made by BJJ Properties Inc. (the “**Guarantor**”), in favour and for the benefit of FAAN Mortgage Administrators Inc., solely in its capacity as court-appointed trustee of Building & Development Mortgages Canada Inc. and in no other capacity (the “**Trustee**”).

### RECITALS:

- A. Wellington House Inc. (the “**Borrower**”) is the borrower under a Loan Agreement dated April 15, 2016 (as such agreement may have been amended, supplemented or restated from time to time, the “**Loan Agreement**”) with Building & Development Mortgages Canada Inc., in trust (“**BDMC**”);
- B. BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“**Olympia**”) and Computershare Trust Company of Canada (“**Computershare**”) each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare, respectively (collectively, the “**BDMC Individual Lenders**”);
- C. On April 20, 2018, the Trustee was appointed as trustee of the assets, properties and undertakings of BDMC pursuant to an order of the Ontario Superior Court of Justice (Commercial List) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC;
- D. The maturity date under the Loan Agreement was May 1, 2020, and the loan is currently in default;
- E. The Borrower, the Trustee (on behalf of BDMC), Olympia, Computershare, Brad J. Lamb and the Guarantor entered into a settlement agreement dated as of January 13, 2021, (as amended, supplemented, restated or modified from time to time, the “**Settlement Agreement**”) in full satisfaction of the obligations owing by the Borrower to BDMC, Olympia, Computershare and the BDMC Individual Lenders under the Loan Agreement and all related security documentation in respect thereof, subject to and in accordance with the terms thereof;
- F. The Guarantor is an affiliate of the Borrower;
- G. The Guarantor owns the real property located at 5791 Concession Road 3, Township of Adjala-Tosorontio (Alliston), Ontario and legally described as PIN 58189-0017 (LT) PT LT 8 CON 3 TOSORONTIO AS IN RO198346 EXCEPT PT 1 51R20140 & PT 1, 51R15699; ADJALA-TOSORONTIO (the “**Farm Property**”);
- H. Pursuant to the Settlement Agreement, the Guarantor agreed to deliver a first ranking charge in favour of the Trustee in the principal amount of \$2,500,000 registered against title to the Farm Property as security for the Guaranteed Obligations (as defined below) (the “**Charge**”) and the parties have agreed that the Charge shall incorporate a set of

standard charge terms no. 200033 by reference and shall include the additional charge terms set out on Schedule "A" hereto;

- I. It is a condition precedent to the Trustee issuing the Trustee's Certificate (as defined in the Settlement Agreement) to the Borrower pursuant to the Settlement Agreement and the release of the Obligations (as defined in the Settlement Agreement) and the security related thereto in accordance with the Settlement Agreement, that the Guarantor execute and deliver this Guarantee;

**THEREFORE**, in consideration of the Trustee issuing the Trustee's Certificate to the Borrower pursuant to the Settlement Agreement and the release of the Obligations and the security related thereto in favour of the Borrower in accordance with the terms of the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby agrees as follows:

1. **Guarantee**

Subject to Section 2, the Guarantor hereby unconditionally and irrevocably guarantees the due and punctual payment and performance to the Trustee of the Second Settlement Payment and the Second Late Payment Fee, if any (each as defined in the Settlement Agreement) from or by the Borrower or any successor to the Borrower, under the Settlement Agreement together with all fees, costs and expenses (including, without limitation, the fees and expenses incurred by the Trustee and its counsel in enforcing any rights under this Guarantee, the Charge, the Settlement Agreement and any security or other documents delivered pursuant thereto and any other protective disbursements) and all liabilities of the Borrower arising as a consequence of its failure to pay or fulfil any of such debts, liabilities and obligations (collectively, the "**Guaranteed Obligations**").

2. **Limited Recourse**

Notwithstanding any other provision hereof, the Settlement Agreement, the Charge or any other document, the only remedy that the Trustee shall have against the Guarantor hereunder in the event of non-payment or satisfaction by the Guarantor of the Guaranteed Obligations is to realize upon the Farm Property in accordance with the terms of the Charge. For greater certainty, it is hereby declared that the Trustee shall in no circumstance have any right of payment from the Guarantor hereunder independent of the foregoing, provided that the Guarantor may be named in any action to recover or enforce the Trustee's rights against the Farm Property.

3. **Demand**

The Guarantor's liability under this Guarantee shall arise immediately upon written demand for payment from the Trustee to the Guarantor, and each such written demand shall be accepted by the Guarantor as complete and satisfactory evidence of non-payment or non-performance of the Guaranteed Obligations by the Borrower. The Guarantor shall pay to the Trustee such amount or amounts payable under this Guarantee immediately upon such written demand.

4. **Waiver of Guarantor Defences**

The Guarantor agrees that its obligations under this Guarantee are irrevocable, continuing, absolute and unconditional, and shall not be discharged or impaired or otherwise affected by, and the



Guarantor hereby irrevocably waives, any defences to enforcement it may have (now or in the future) by reason of:

- (a) any illegality, invalidity or unenforceability of any Guaranteed Obligation, the Charge, the Settlement Agreement or any security or other documents delivered pursuant thereto for any reason whatsoever;
- (b) any change in, or variation of, the Guaranteed Obligations or any other obligation of any party under the Settlement Agreement, the Charge or any security or other documents delivered pursuant thereto including, without limitation, any increase in the Guaranteed Obligations, any change in the interest or fees payable, any renewal, extension, amendment, rescission, waiver, release, discharge, indulgence, compromise, arrangement or other variation in connection with the Guaranteed Obligations, the Charge, the Settlement Agreement or any security or other documents delivered pursuant thereto;
- (c) any taking, exchange, substitution, variation, release, impairment, subordination or non-perfection of any security or collateral for the Guaranteed Obligations, or any taking, release, impairment, amendment, waiver or other modification of any guarantee of the Guaranteed Obligations;
- (d) the enforceability, validity, perfection or effect of perfection or non-perfection of any security interest securing the Guaranteed Obligations;
- (e) any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Guaranteed Obligations;
- (f) any other person being or becoming in any other way responsible to the Trustee for, or in respect of, all or any part of the Guaranteed Obligations;
- (g) any loss or diminution in value of the security or collateral held for the Guaranteed Obligations, whether such loss or diminution arises from any act or omission of the Trustee;
- (h) any default, failure or delay, wilful or otherwise, in the performance of the Guaranteed Obligations, the Charge, the Settlement Agreement, or any security or other documents delivered pursuant thereto;
- (i) any change in the name, object, capital, ownership or control, or constitution of the Borrower, the Guarantor, any other guarantor or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower, the Guarantor, any other guarantor or their assets or any resulting restructuring, compromise, release or discharge of any Guaranteed Obligations;
- (j) any merger, amalgamation, consolidation or other fundamental change of the Borrower, the Guarantor or any other guarantor;
- (k) any failure of the Trustee to disclose to the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties

or prospects of the Borrower now or hereafter known to the Trustee and the Guarantor hereby waives any duty of the Trustee to disclose such information;

- (l) the failure of any other guarantor or third party to execute or deliver any other guarantee or agreement, or the release or reduction of liability of the Guarantor or any other guarantor or surety with respect to the Guaranteed Obligations;
- (m) the failure of the Trustee to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of the Settlement Agreement, the Charge, any security for the Guaranteed Obligations, in law or otherwise;
- (n) any defence, set-off or counterclaim (other than a defence of payment or performance) of any nature that may at any time be available to, or be asserted by, the Borrower against the Trustee;
- (o) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government; or
- (p) any other circumstance, act or omission that might diminish or vary the risk of the Guarantor or otherwise operate as a defence available to, or a legal or equitable discharge of, the Guarantor's obligations.

## 5. Guarantor Acknowledgments

The Guarantor further acknowledges and agrees as follows:

- (a) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature, shall guarantee any ultimate balance owing to the Trustee, and applies to all presently existing and future Guaranteed Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Guaranteed Obligations.
- (b) This Guarantee is a guarantee of payment and performance and not of collection. The Trustee shall not be obligated to enforce or exhaust its remedies or recourses against the Borrower or any other person or under the Settlement Agreement before proceeding to enforce this Guarantee. The liability of the Guarantor to make payment under this Guarantee shall arise immediately upon delivery to the Guarantor of a written demand for payment by the Trustee in accordance with the terms hereof.
- (c) Any payments by the Guarantor hereunder shall be made free and clear of and without deduction for, or on account of, any taxes, fees, or other charges.
- (d) Any payments hereunder on account of the Guaranteed Obligations shall be made in Canadian dollars.
- (e) This Guarantee is a direct guarantee and independent of the obligations of the Borrower to the Trustee. The Trustee may resort to the Guarantor for payment and performance of the Guaranteed Obligations whether or not the Trustee shall have

resorted to any collateral or shall have proceeded against the Borrower or any other guarantors with respect to the Guaranteed Obligations. The Trustee may, at the Trustee's option, proceed against the Guarantor and the Borrower, jointly and severally, or against the Guarantor only without having obtained a judgment against the Borrower.

- (f) The Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonour, and any other notice with respect to any of the Guaranteed Obligations, the Charge and this Guarantee, and any requirement that the Trustee protect, secure, perfect or insure any encumbrance or any property subject thereto.
- (g) The Guarantor agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Guaranteed Obligation is voided, rescinded or recovered or must otherwise be returned by the Trustee upon the insolvency, bankruptcy, reorganization, dissolution or winding-up of the Borrower or the Guarantor.
- (h) This Guarantee shall continue to apply to all Guaranteed Obligations owing to the Trustee by any amalgamated corporation resulting from the Borrower amalgamating with one or more other corporations.

## **6. Subordination and Postponement**

All present and future indebtedness and liability of the Borrower to the Guarantor is hereby subordinated and postponed in right of payment to the prior payment in full of the Guaranteed Obligations. Any amounts received by the Guarantor in violation of this Section 6 shall be held by the Guarantor in trust for the benefit of the Trustee and forthwith upon receipt paid over to the Trustee without in any way reducing, lessening or limiting the obligations of the Guarantor under this Guarantee. This subordination and postponement is independent of the Guarantee and shall remain in force until all Guaranteed Obligations shall have been paid and discharged in full.

## **7. Subrogation**

The Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under this Guarantee until all Guaranteed Obligations shall have been paid and discharged in full. Subject to the foregoing, upon full and final payment and performance of all Guaranteed Obligations, the Guarantor shall be subrogated to the rights of the Trustee against the Borrower, and the Trustee agrees to take such steps as the Guarantor may reasonably request, at the Guarantor's expense, to give effect to such subrogation.

## **8. Representations and Warranties**

To induce the Trustee to enter into the Settlement Agreement and to issue the Trustee's Certificate to the Borrower pursuant to the Settlement Agreement, the Guarantor represents and warrants that:

- (a) There are no conditions precedent to the effectiveness of this Guarantee that have not been satisfied or waived.
- (b) It has the full corporate power and authority to enter into this Guarantee, to carry out its obligations hereunder and to consummate the transactions contemplated hereby.
- (c) Its execution and delivery of this Guarantee and performance of its obligations hereunder have been duly authorized by all requisite corporate and other action on the part of the Guarantor.
- (d) This Guarantee has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.
- (e) It has, independently and without reliance upon the Trustee and based on such documents and information as the Guarantor has deemed appropriate, made its own credit analysis and decisions to enter into this Guarantee.

#### 9. **Indemnity**

Subject to Section 2, the Guarantor hereby agrees to indemnify and hold harmless the Trustee from any losses, damages, liabilities, claims and related expenses incurred by the Trustee or asserted against the Trustee by any person arising out of, in connection with or resulting from this Guarantee or any failure of any Guaranteed Obligations to be legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms. The Guarantor, as a separate and distinct obligation, agrees to indemnify and save harmless the Trustee from and against all losses resulting from the failure of the Borrower to pay such Guaranteed Obligations.

#### 10. **Set-Off**

To the maximum extent permitted by applicable law, the Trustee may apply any amounts owing to, or sums standing to the credit of, the Guarantor to the payment when due of any amounts owing by the Guarantor under this Guarantee.

#### 11. **Limitation Period**

No limitation period under the *Limitations Act, 2002* (Ontario) shall expire earlier than the second anniversary of the date on which demand for payment of the Guaranteed Obligations under this Guarantee is made in accordance with the provisions of this Guarantee.

#### 12. **Notice**

All notices and other communication provided for hereunder (each, a “**Notice**”) shall be in writing and be delivered by personal delivery, nationally recognized courier, certified or registered mail, facsimile or by electronic transaction to the addresses of parties set forth below or such other address that may be designated by the receiving party from time to time in accordance with this Section:

- (a) if to the Trustee:

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

Attention: Lanza Bezner  
Email: lana@faanmortgageadmin.com

- (b) if to the Guarantor:

778 King Street West  
Toronto, ON M5V 1N6

Attention: Brad J. Lamb and Ryan Spencer  
Email: brad@lambdevcorp.com  
ryan@bradjlambrealty.com

Notices shall be deemed to have been given:

- (c) when received (if delivered by personal delivery, nationally recognized courier, certified or registered mail or electronic transmission) except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time in Toronto, Ontario, then on the next business day for the recipient; and
- (d) when sent (if delivered by facsimile), except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. in Toronto, Ontario, then on the next business day for the recipient.

### 13. **Successors and Assigns**

This Guarantee is binding upon the Guarantor and its heirs, executors, liquidators, administrators, personal representatives and assigns, and shall enure to the benefit of the Trustee and its successors and assigns.

### 14. **Assignability**

The Guarantor may not, without the prior written consent of the Trustee, assign any of its rights, powers or obligations hereunder. The Trustee may assign this Guarantee and its rights hereunder without the consent of the Guarantor. Any purported assignment in violation of this Section shall be null and void.

### 15. **Severability**

If any term or provision of this Guarantee is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Guarantee or invalidate or render unenforceable such term or provision in any other jurisdiction.

## 16. **Governing Law and Attornment**

All matters arising out of or relating to this Guarantee are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Each party irrevocably attorns to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) with respect to any matter arising under or relating to this Guarantee and irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action, application or proceeding.

## 17. **Cumulative Rights**

The rights and remedies of the Trustee under this Guarantee are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, or in equity or otherwise.

## 18. **Entire Agreement**

This Guarantee constitutes the sole and entire agreement of the Guarantor and the Trustee with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, negotiations, agreements, and discussions both written and oral, with respect to such subject matter. There are no representations, warranties, conditions, covenants or other agreements, express or implied, written or oral, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Guarantee, except as expressly set forth herein and in the Settlement Agreement.

## 19. **Headings**

Section headings are for convenience of reference only and shall not define, modify, expand or limit any of the terms of this Guarantee.

## 20. **Amendments and Waivers**

No amendment or waiver of any provision of this Guarantee shall be valid and binding unless it is in writing and signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against which the waiver is to be effective.

## 21. **Execution and Delivery**

This Guarantee may be executed in counterparts and may be executed and delivered by facsimile or by other electronic form and all such counterparts shall together constitute one and the same agreement.

*[Signature Page Follows]*

**IN WITNESS OF WHICH** the Guarantor has duly executed this Guarantee.

**Guarantor:**

**BJL PROPERTIES INC.**

By:

---

Name: Brad J. Lamb

Title: President

**SCHEDULE "A"**

**Charge Terms**



## SCHEDULE TO CHARGE - ADDITIONAL PROVISIONS

**WHEREAS** the Chargor has agreed to execute and deliver this Charge in favour of the Chargee as security for the payment and performance of the Chargor's obligations under the Guarantee.

In consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Chargor agrees as follows:

### **Section 1      Definitions**

As used in this Charge, the following terms have the following meanings:

**"Change of Control"** means, in the case of any corporation or partnership, the transfer or issue by sale, assignment, subscription, transmission on death, mortgage, charge, security interest, operation of law or otherwise, of any shares, voting rights or interest which would result in any change in the effective control of such corporation or partnership.

**"Charged Premises"** means the lands and premises described in this Charge as the "Property" (the "**Land**") together with all appurtenances thereto and rights and benefits (including density rights) in respect thereof (and all renewals, extensions and amendments or substitutions thereof); and all buildings, structures, improvements, appurtenances, attachments, fixtures and fixed equipment located on, in or under the Land, including all systems, including heating, ventilation, air-conditioning, electrical, lighting, plumbing and water systems and all elevators, escalators, floor coverings, furnaces and boilers and fittings and other fixed plant, machinery and equipment presently situated on or under the Land or which may at any time hereafter be constructed or brought or placed on or under the Land or used in connection with the Land; all substitutions and replacements of and increases, additions and, where applicable, accessions to the foregoing.

**"Chargee"** means FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc., and its successors and assigns.

**"Chargor"** means BJL Properties Inc., and its successors and permitted assigns.

**"Event of Default"** means the occurrence of any one or more of the following events: (i) the Chargor fails to pay any amount due to the Chargee under this Charge or under the Guarantee when such amount becomes due and payable, or (ii) the Chargor fails to perform, observe or comply with any other term, covenant, condition or provision of this Charge or the Guarantee, beyond the applicable cure period set out herein or in the Guarantee, as applicable.

**"Guarantee"** means the limited recourse guarantee dated as of the date hereof granted by the Chargor in favour of the Chargee whereby the Chargor, as guarantor, among other things, guarantees the obligations of Wellington House to make the Second Settlement Payment and the Second Late Payment Fee (each as defined in the Settlement Agreement) under the Settlement Agreement.

**"Lamb"** means Brad J. Lamb.

**"Lien"** means (i) any mortgage, charge, pledge, hypothecation, security interest, assignment by way of security, encumbrance, lien (statutory or otherwise), hire purchase agreement, conditional sale agreement, deposit arrangement, title retention agreement or arrangement, or any other assignment, arrangement or condition that in substance secures payment or performance of an obligation, (ii) any trust arrangement, (iii) any arrangement which creates a right of set-off out of the ordinary course of business, or (iv) any agreement to grant any such rights or interests.

“**Person**” means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity, and pronouns have a similarly extended meaning.

“**Secured Obligations**” means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by the Chargor under, in connection with, or pursuant to, this Charge and the Guarantee, and by Wellington House and Lamb to the Chargee, under, in connection with or pursuant to the Settlement Agreement, and whether incurred by the Chargor alone or jointly with another or others and whether as principal, guarantor or surety and in whatever name or style.

“**Security**” means the grants, assignments, conveyances, transfers, mortgages, pledges and charges contemplated in this Charge.

“**Settlement Agreement**” means the settlement agreement dated January 13, 2021 between, among others, the Chargor and the Chargee and Wellington House and Lamb and Olympia Trust Company and Computershare Trust Company of Canada, as the same may be amended, modified, extended, renewed, replaced, restated, supplemented or novated from time to time.

“**Wellington House**” means Wellington House Inc., and its successor and permitted assigns.

## **Section 2 Interpretation**

- (1) In this Charge, the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”. The words “Article”, “Section” and other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Charge.
- (2) In this Charge, the words “Charge”, “Chargee”, “Chargor”, “land” and “successor” shall have the meanings assigned to them in Section 1 of the *Land Registration Reform Act* (Ontario) and the words “Chargor” and “Chargee” and the pronouns “it” and “its” relating thereto and used therewith, shall be read and construed as “Chargor” or “Chargor’s”, “Chargee” or “Chargee’s”.
- (3) The division of this Charge into Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect its interpretation.
- (4) Any reference to this Charge is a reference to this Charge as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced, supplemented or novated and includes all schedules to it.
- (5) Certain covenants implied by the *Land Registration Reform Act* (Ontario) shall be varied as follows:
  - (a) In the event of any conflict between the covenants implied by paragraphs 1 and 2 of Section 7(1) of the *Land Registration Reform Act* (Ontario) (as varied in this Charge) and any other covenant or provision of this Charge, such other covenant or provision of this Charge shall prevail.
- (6) The parties intend that this Charge be considered to have been executed by the Chargor under seal for all purposes with the intention that this Charge be a specialty under applicable laws, whether or not a seal is actually affixed hereto.

- (7) This Charge is the result of negotiations between the parties to it and shall not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation.
- (8) If more than one Person is named as or otherwise becomes liable for or assumes the obligations and liabilities of the Chargor, then all such obligations and liabilities of all such Persons so named or who otherwise become liable for the obligations and liabilities of the Chargor hereunder shall be joint and several.
- (9) Time is of the essence in this Charge.

### **Section 3 Charge**

The Chargor hereby grants, assigns, conveys, transfers, mortgages, pledges and charges the Charged Premises in favour of the Chargee as security for the due payment and performance of the Secured Obligations in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

### **Section 4 Payments under Charge**

For value received, the Chargor hereby acknowledges itself indebted to and agrees to pay to the Chargee the Secured Obligations. Payment of an amount of the indebtedness owing pursuant to the Secured Obligations shall constitute payment of the same amount of indebtedness secured by this Charge.

### **Section 5 [Reserved]**

[Reserved]

### **Section 6 Continuing Security**

This Charge shall operate until all Secured Obligations have been fully paid and performed to the Chargee in the manner contemplated by the Guarantee and/or the Settlement Agreement. This Charge shall not cease to operate or be deemed to be void by reason of the Secured Obligations becoming or being zero from time to time. This Charge shall not cease to operate although the Chargor may not be indebted to the Chargee at any particular time and notwithstanding fulfillment from time to time in whole or in part of any of the Secured Obligations and notwithstanding any change in the nature or form of the Secured Obligations but shall cease only upon completion of the obligations of the Chargor, Wellington House and Lamb under the Guarantee and/or the Settlement Agreement at which time the Chargee shall deliver to the Chargor a discharge of this Charge in registrable form. Without limiting any other provision hereof, this Charge secures, inter alia, a running account and a portion or portions of the Secured Obligations may become owing in one or more sums at any future date or dates and the amount of such sum or sums will be secured by this Charge and this Charge will be security for the ultimate balance owing to the Chargee of the Secured Obligations or any part thereof and notwithstanding any change in the amount, nature and form of the Secured Obligations from time to time. If the whole or any part of the Secured Obligations or other amount secured hereby is repaid, this Charge shall be and remain valid security for any subsequent sum or sums of any part of the Secured Obligations by the Chargor to the Chargee until such time as obligations of the Chargor under the Guarantee have been completed. The provisions relating to defeasance contained in Subsection 6(2) of the *Land Registration Reform Act* (Ontario) are hereby expressly excluded from this Charge. Nothing contained in this Charge shall in any way affect or prejudice any right of the Chargee independently of this Charge to recover the Secured Obligations or any part of them from the Chargor. If the Secured Obligations exceed the principal amount of this Charge, the Chargee may conclusively determine what part of the Secured Obligations not exceeding the principal amount shall be deemed to be secured by this Charge and what part shall be deemed not to be so secured.

## Section 7 Covenants

The Chargor hereby covenants, promises, agrees, represents and warrants, as applicable, to the Chargee as follows (which representations and warranties shall survive the execution, delivery and registration of the Charge and shall be deemed continuously repeated until a discharge of this Charge):

- (1) All of the agreements, conditions, covenants, undertakings, provisions and stipulations contained in the Guarantee which are to be kept and performed by the Chargor are hereby made a part of this Charge to the same extent, and with the same force and effect as if they were fully set forth herein, and the Chargor covenants and agrees duly and punctually to keep and perform them or cause them to be kept and performed strictly in accordance with their terms.
- (2) On demand by the Chargee at any time that an Event of Default shall have occurred beyond all applicable cure periods and be continuing, the Chargor shall pay to the Chargee all amounts payable under this Charge and the Guarantee, without deduction or set off of any kind.
- (3) The Chargor shall defend its title to the Charged Premises and shall not sell, transfer, convey or otherwise dispose of the Charged Premises without the consent of the Chargee, in its sole discretion, and the Chargor shall not encumber or permit to exist any Liens upon the Charged Premises.
- (4) The Chargor shall not permit a Change of Control with respect to the Chargor to occur without the prior written consent of the Chargee.
- (5) The Chargor shall not permit the registration of any other Liens on the Charged Premises until such time as the Charge has been discharged from title without the prior written consent of the Chargee.
- (6) The Chargor shall obey or cause to be obeyed all applicable laws, regulations, rules, orders and judgments which in any way relate to the Charged Premises or the use thereof.
- (7) The Chargor shall, promptly upon request, provide the Chargee with any information reasonably relating to the Charged Premises in its possession or control, including, without limitation, any surveys, title opinions, insurance policies, reports relating to building inspections, environmental site assessments and environmental studies and reports.
- (8) The Chargor is the sole registered and beneficial owner of the Charged Premises and owns title thereto free and clear of any and all Liens.
- (9) [Reserved]
- (10) There are no claims, actions or proceedings pending or threatened or judgments outstanding against the Chargor relating to, or that could adversely affect, the Chargor or the Charged Premises.
- (11) There are no leases or other agreements of any kind pursuant to which any Person has the right to use or occupy any of the Charged Premises.
- (12) All real estate taxes payable in respect of the Charged Premises to date have been fully paid and acquitted, without subrogation.
- (13) No Person has any right to purchase, option to purchase, right of first refusal, right of first offer or other rights with respect to the Charged Premises.
- (14) The Charged Premises is in compliance with all applicable statutes, laws, by-laws, regulations, ordinances, requirements, restrictions and orders of any government, regulatory authority,

government department, agency, commission, board, tribunal or court having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof.

- (15) The Chargor has no knowledge of any expropriation or condemnation or similar proceeding pending or threatened against any part of the Charged Premises.

## **Section 8 Default**

The occurrence of an Event of Default beyond any applicable cure periods and which is continuing constitutes default hereunder shall entitle the Chargee to exercise whatever rights or remedies as provided for herein.

## **Section 9 Remedies**

- (1) From and after the occurrence of an Event of Default, in addition to the remedies provided in Standard Charge Terms 200033:
- (a) the principal amount secured by this Charge and all other sums secured by this Charge, shall, at the option of the Chargee, immediately become payable; and
  - (b) the Chargee may realize upon the Charged Premises and enforce its rights by:
    - (i) entry into possession of the Charged Premises by any method permitted by law with power, among other things, to exclude the Chargor therefrom, to preserve and maintain the Charged Premises and to make such repairs, replacements, alterations and additions to the whole or any part of the Charged Premises that the Chargee may think advisable, to satisfy the whole or any part of any other prior claim or encumbrance then affecting the Charged Premises, to receive rents, income and profits of all kinds owing to the Chargor in respect of the Charged Premises and to pay therefrom all expenses of maintaining, preserving, protecting and operating the Charged Premises, including payments which may be due for insurance, real estate taxes, assessments, charges or liens prior to the charge of this Charge upon the Charged Premises and for the services of lawyers, agents and other Persons, and all costs, charges and expenses incurred in connection with the execution of the powers contained in this Charge; and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including (without limitation) the power to advance its own moneys and to enter into contracts and to undertake obligations for the foregoing purposes upon the security of this Charge;
    - (ii) sale, grant of options to purchase, or lease of all or any part of the Charged Premises;
    - (iii) holding, storing and keeping idle or operating all or any part of the Charged Premises;
    - (iv) collection of any proceeds arising in respect of the Charged Premises;
    - (v) institution of proceedings in any court of competent jurisdiction for the appointment of a receiver (which term as used in this Charge includes a receiver and manager) of all or any part of the Charged Premises;

- (vi) institution of proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
- (vii) filing of proofs of claim and other documents to establish claims to the Charged Premises in any proceeding relating to the Chargor;
- (viii) taking any action or proceeding to enforce the performance of any covenant in favour of the Chargee contained in this Charge, whether before or after entry into possession of the Lands or any part thereof;
- (ix) appointment by instrument in writing of a receiver or agent of all or any part of the Charged Premises and removal or replacement from time to time of any such receiver or agent; and
- (x) any other remedy or proceeding authorized or permitted in this Charge or otherwise by law or equity.

### **Section 10 Exercise of Remedies**

After the occurrence of an Event of Default beyond any applicable cure periods and which is continuing, the remedies under Section 9 may be exercised from time to time without demand, notice, advertisement or other formality or control by the Chargor, separately or in combination and are in addition to, and not in substitution for, any other rights of the Chargee however arising or created. The Chargee is not bound to exercise any right or remedy and the exercise of any right or remedy is without prejudice to any other rights of the Chargee including the right to claim for any deficiency. The taking of any action or proceeding or refraining from so doing, or any other dealings with any other security for the monies secured by this Charge shall not release or affect the Security.

### **Section 11 Dealing with the Charged Premises**

- (1) The Chargee is not obliged to exhaust its recourse against the Chargor or any other Person or against any other security it may hold before realizing upon or otherwise dealing with the Charged Premises in such manner as it may consider desirable.
- (2) The Chargee may grant extensions or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Chargor and with other Persons, sureties or securities as it may see fit without prejudice to the obligations and liability of the Chargor or the rights of the Chargee in respect of the Charged Premises.
- (3) The Chargee is not (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Charged Premises, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Charged Premises or for the purpose of preserving any rights of any Persons in respect of the Charged Premises, (iii) responsible for any loss occasioned by any sale or other dealing with the Charged Premises or by the retention of or failure to sell or otherwise deal with the Charged Premises, or (iv) bound to protect the Charged Premises from depreciating in value or becoming worthless.
- (4) The Chargee has no obligation to keep the Charged Premises in its possession identifiable.
- (5) The Chargee may, after the Security is enforceable, (i) notify any Person obligated on an account or on chattel paper or any obliger on an instrument to make payments to the Chargee, whether or not the Chargor was previously making collections on such accounts, chattel paper, instruments, and (ii) assume control of any proceeds arising from the Charged Premises.

## **Section 12 Standards of Sale**

Without prejudice to the ability of the Chargee to dispose of the Charged Premises in any manner which is commercially reasonable, the Chargor acknowledges that:

- (a) the Charged Premises may be disposed of in whole or in part;
- (b) the Charged Premises may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (c) any sale conducted by the Chargee will be at such time and place, on such notice and in accordance with such procedures as the Chargee, in its sole discretion, may deem advantageous;
- (d) the Charged Premises may be disposed of in any manner and on any terms necessary to avoid violation of applicable law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, and require that the prospective bidders and purchasers have certain qualifications) or in order to obtain any required approval of the disposition (or of the resulting purchase) by any governmental or regulatory authority or official;
- (e) a disposition of the Charged Premises may be on such terms and conditions as to credit or otherwise as the Chargee, in its sole discretion, deems advantageous; and
- (f) the Chargee may establish an upset or reserve bid or price in respect of the Charged Premises.

## **Section 13 Dealings by Third Parties**

No Person dealing with the Chargee or its agent or a receiver is required to determine (i) whether the Security has become enforceable, (ii) whether the powers which the Chargee or its agent or a receiver is purporting to exercise have become exercisable, (iii) whether any money remains due upon the Security, (iv) the necessity or expediency of the stipulations and conditions subject to which any sale or lease is made, (v) the propriety or regularity of any sale or any other dealing by the Chargee or its agent or a receiver with the Charged Premises, or (vi) how any money paid to the Chargee has been applied. Any bona fide purchaser of all or any part of the Charged Premises from the Chargee or any receiver or agent will hold the Charged Premises absolutely, free from any claim or right of whatever kind, including any equity of redemption, of the Chargor, which it specifically waives (to the fullest extent permitted by law) as against any such purchaser and all rights of redemption, stay or appraisal which the Chargor has or may have under any rule of law now existing or hereafter adopted.

## **Section 14 Notices**

Any notice, direction or other communication given under this Charge must be in writing, sent by personal delivery, courier or facsimile and addressed to the Chargee or the Chargor at the address set out in the Guarantee.

## **Section 15 Waivers, etc.**

No consent or waiver by the Chargee is binding unless made in writing and signed by an authorized officer of the Chargee. Any consent or waiver given under this Charge is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Charge constitutes a waiver of any other provision (whether or not similar). A failure or delay on the part of the

Chargee in exercising a right under this Charge does not operate as a waiver of, or impair, any right of the Chargee however arising. A single or partial exercise of a right on the part of the Chargee does not preclude any other or further exercise of that right or the exercise of any other right by the Chargee. The Chargor waives presentation and surrender of this Charge against payment.

#### **Section 16 Application of Proceeds**

All monies collected by the Chargee upon the enforcement of the Chargee's rights and remedies under the Charge, including any sale or other disposition of the Charge or all or any portion of the Charged Premises, together with all monies received by the Chargee under this Charge, will be applied by the Chargee on account of such part of the Secured Obligations as it chooses. The Chargee will remit to the Chargor or as the Chargor or any court of competent jurisdiction otherwise directs, the amount of any proceeds received by it upon any realization or other disposition of the Charge or from the exercise of the rights and remedies as the holder of the Charge which are in excess of the Secured Obligations.

#### **Section 17 Additional Security; No Merger**

The Charge is in addition to, without prejudice to and supplemental to all other security now held or which may hereafter be held by the Chargee in respect of the Secured Obligations. This Charge does not operate by way of merger, rebate or discharge of any of the Secured Obligations and no judgment recovered by the Chargee shall operate by way of merger of, or in any way affect, the security constituted by the Charge which is in addition to, and not in substitution for, any other security now or hereafter held by the Chargee in respect of the Secured Obligations, nor shall the remedies of the Chargee in respect thereof be prejudiced or delayed in any manner whatsoever. by the taking of this Charge.

#### **Section 18 Further Assurances**

The Chargor will do all acts and things and execute and deliver or cause to be executed and delivered all deeds, transfers, assignments, documents and instruments that the Chargee may require for (i) protecting the Charged Premises, (ii) perfecting the Security, and (iii) exercising all powers, authorities and discretions conferred upon the Chargee. After the Security becomes enforceable the Chargor will do all acts and things and execute and deliver all deeds, transfers, assignments and instruments that the Chargee may require for facilitating the sale of the Charged Premises in connection with its realization.

#### **Section 19 Successors and Assigns**

This Charge is binding on the Chargor, its successors and assigns, and enures to the benefit of the Chargee and its successors and assigns. This Charge may be assigned by the Chargee without the consent of, or notice to, the Chargor, to such Person as the Chargee may determine and, in such event, such Person will be entitled to all of the rights and remedies of the Chargee as set forth in this Charge or otherwise. In any action brought by an assignee to enforce any such right or remedy, the Chargor will not assert against the assignee any claim or defence which the Chargor now has or may have against the Chargee. The Chargor may not assign, transfer or delegate any of its rights or obligations under this Charge without the prior written consent of the Chargee which may be given or withheld in the Chargee's sole discretion.

#### **Section 20 Amendment**

This Charge may only be amended, supplemented or otherwise modified by written agreement executed by the Chargee and the Chargor.



**Section 21 Severability**

If any provision of this Charge is determined to be illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Charge and the remaining provisions will remain in full force and effect.

**Section 22 Chargee**

FAAN Mortgage Administrators Inc. is the court-appointed trustee of Building & Development Mortgages Canada Inc. pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018 issued under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario) and the *Courts of Justice Act* (Ontario).

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF** the Chargor has executed this Charge.

**BJL PROPERTIES INC.**

By: \_\_\_\_\_  
Name: Brad J. Lamb  
Title: President

**SCHEDULE "B"**

**Form of Personal Guarantee**

## GUARANTEE

**THIS GUARANTEE** (this “**Guarantee**”), dated as of \_\_\_\_\_, 2021, is made by Brad J. Lamb (the “**Guarantor**”), an individual with a mailing address located at 778 King St. W., Toronto, Ontario, M5V 1N6, in favour and for the benefit of FAAN Mortgage Administrators Inc., solely in its capacity as court-appointed trustee of Building & Development Mortgages Canada Inc. and in no other capacity (the “**Trustee**”), with a business address located at 920-20 Adelaide Street East, Toronto, Ontario, M5C 2T6.

### RECITALS:

- A. Wellington House Inc. (the “**Borrower**”) is the borrower under a Loan Agreement dated April 15, 2016 (as such agreement may have been amended, supplemented or restated from time to time, the “**Loan Agreement**”) with Building & Development Mortgages Canada Inc., in trust (“**BDMC**”);
- B. BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“**Olympia**”) and Computershare Trust Company of Canada (“**Computershare**”) each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare, respectively (collectively, the “**BDMC Individual Lenders**”);
- C. On April 20, 2018, the Trustee was appointed as trustee of the assets, properties and undertakings of BDMC pursuant to an order of the Ontario Superior Court of Justice (Commercial List) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC;
- D. The maturity date under the Loan Agreement was May 1, 2020, and the loan is currently in default;
- E. The Guarantor is an officer and director of the Borrower;
- F. The Borrower, the Trustee (on behalf of BDMC), Olympia, Computershare, BJI Properties Inc. and the Guarantor entered into a settlement agreement dated as of January 13, 2021, (as amended, supplemented, restated or modified from time to time, the “**Settlement Agreement**”) in full satisfaction of the obligations owing by the Borrower to BDMC, Olympia, Computershare and the BDMC Individual Lenders under the Loan Agreement and all related security documentation in respect thereof, subject to and in accordance with the terms thereof;
- G. It is a condition precedent to the Trustee issuing the Trustee’s Certificate (as defined in the Settlement Agreement) to the Borrower pursuant to the Settlement Agreement and the release of the Obligations (as defined in the Settlement Agreement) and the security related thereto in accordance with the Settlement Agreement, that the Guarantor execute and deliver this Guarantee;

**THEREFORE**, in consideration of the Trustee issuing the Trustee’s Certificate to the Borrower pursuant to the Settlement Agreement and the release of the Obligations and the security related

thereto in favour of the Borrower in accordance with the terms of the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby agrees as follows:

1. **Guarantee**

The Guarantor hereby unconditionally and irrevocably guarantees the due and punctual payment and performance to the Trustee of the Second Settlement Payment and the Second Late Payment Fee, if any (each as defined in the Settlement Agreement) from or by the Borrower or any successor to the Borrower, under the Settlement Agreement together with all fees, costs and expenses (including, without limitation, the fees and expenses incurred by the Trustee and its counsel in enforcing any rights under this Guarantee, the Settlement Agreement and any security or other documents delivered pursuant thereto and any other protective disbursements) and all liabilities of the Borrower arising as a consequence of its failure to pay or fulfil any of such debts, liabilities and obligations (collectively, the “**Guaranteed Obligations**”).

2. **Demand**

The Guarantor’s liability under this Guarantee shall arise immediately upon written demand for payment from the Trustee to the Guarantor, and each such written demand shall be accepted by the Guarantor as complete and satisfactory evidence of non-payment or non-performance of the Guaranteed Obligations by the Borrower. The Guarantor shall pay to the Trustee such amount or amounts payable under this Guarantee immediately upon such written demand.

3. **Waiver of Guarantor Defences**

The Guarantor agrees that his obligations under this Guarantee are irrevocable, continuing, absolute and unconditional, and shall not be discharged or impaired or otherwise affected by, and the Guarantor hereby irrevocably waives, any defences to enforcement he may have (now or in the future) by reason of:

- (a) any illegality, invalidity or unenforceability of any Guaranteed Obligation, the Settlement Agreement or any security or other documents delivered pursuant thereto for any reason whatsoever;
- (b) any change in, or variation of, the Guaranteed Obligations or any other obligation of any party under the Settlement Agreement or any security or other documents delivered pursuant thereto including, without limitation, any increase in the Guaranteed Obligations, any change in the interest or fees payable, any renewal, extension, amendment, rescission, waiver, release, discharge, indulgence, compromise, arrangement or other variation in connection with the Guaranteed Obligations, the Settlement Agreement or any security or other documents delivered pursuant thereto;
- (c) any taking, exchange, substitution, variation, release, impairment, subordination or non-perfection of any security or collateral for the Guaranteed Obligations, or any taking, release, impairment, amendment, waiver or other modification of any guarantee of the Guaranteed Obligations;

- (d) the enforceability, validity, perfection or effect of perfection or non-perfection of any security interest securing the Guaranteed Obligations;
- (e) any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Guaranteed Obligations;
- (f) any other person being or becoming in any other way responsible to the Trustee for, or in respect of, all or any part of the Guaranteed Obligations;
- (g) any loss or diminution in value of the security or collateral held for the Guaranteed Obligations, whether such loss or diminution arises from any act or omission of the Trustee;
- (h) any default, failure or delay, wilful or otherwise, in the performance of the Guaranteed Obligations, the Settlement Agreement, or any security or other documents delivered pursuant thereto;
- (i) any change in the name, object, capital, ownership or control, or constitution of the Borrower, any other guarantor or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower, the Guarantor, any other guarantor or their assets or any resulting restructuring, compromise, release or discharge of any Guaranteed Obligations;
- (j) any merger, amalgamation, consolidation or other fundamental change of the Borrower or any other guarantor;
- (k) any failure of the Trustee to disclose to the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower now or hereafter known to the Trustee and the Guarantor hereby waives any duty of the Trustee to disclose such information;
- (l) the failure of any other guarantor or third party to execute or deliver any other guarantee or agreement, or the release or reduction of liability of the Guarantor or any other guarantor or surety with respect to the Guaranteed Obligations;
- (m) the failure of the Trustee to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of the Settlement Agreement, any security for the Guaranteed Obligations, in law or otherwise;
- (n) any defence, set-off or counterclaim (other than a defence of payment or performance) of any nature that may at any time be available to, or be asserted by, the Borrower against the Trustee;
- (o) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government; or
- (p) any other circumstance, act or omission that might diminish or vary the risk of the Guarantor or otherwise operate as a defence available to, or a legal or equitable discharge of, the Guarantor's obligations.

#### 4. **Guarantor Acknowledgments**

The Guarantor further acknowledges and agrees as follows:

- (a) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature, shall guarantee any ultimate balance owing to the Trustee, and applies to all presently existing and future Guaranteed Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Guaranteed Obligations.
- (b) This Guarantee is a guarantee of payment and performance and not of collection. The Trustee shall not be obligated to enforce or exhaust its remedies or recourses against the Borrower or any other person or under the Settlement Agreement before proceeding to enforce this Guarantee. The liability of the Guarantor to make payment under this Guarantee shall arise immediately upon delivery to the Guarantor of a written demand for payment by the Trustee in accordance with the terms hereof.
- (c) Any payments by the Guarantor hereunder shall be made free and clear of and without deduction for, or on account of, any taxes, fees, or other charges.
- (d) Any payments hereunder on account of the Guaranteed Obligations shall be made in Canadian dollars.
- (e) This Guarantee is a direct guarantee and independent of the obligations of the Borrower to the Trustee. The Trustee may resort to the Guarantor for payment and performance of the Guaranteed Obligations whether or not the Trustee shall have resorted to any collateral or shall have proceeded against the Borrower or any other guarantors with respect to the Guaranteed Obligations. The Trustee may, at the Trustee's option, proceed against the Guarantor and the Borrower, jointly and severally, or against the Guarantor only without having obtained a judgment against the Borrower.
- (f) The Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonour, and any other notice with respect to any of the Guaranteed Obligations and this Guarantee, and any requirement that the Trustee protect, secure, perfect or insure any encumbrance or any property subject thereto.
- (g) The Guarantor agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Guaranteed Obligation is voided, rescinded or recovered or must otherwise be returned by the Trustee upon the insolvency, bankruptcy, reorganization, dissolution or winding-up of the Borrower.
- (h) This Guarantee shall continue to apply to all Guaranteed Obligations owing to the Trustee by any amalgamated corporation resulting from the Borrower amalgamating with one or more other corporations.

- (i) The Guarantor has received independent legal advice from his own lawyer at his own cost with respect to the terms of this Guarantee before its execution.
- (j) The Guarantor has read this Guarantee, understands it and agrees to be bound by its terms and conditions.

## 5. **Subordination and Postponement**

All present and future indebtedness and liability of the Borrower to the Guarantor is hereby subordinated and postponed in right of payment to the prior payment in full of the Guaranteed Obligations. Any amounts received by the Guarantor in violation of this Section 5 shall be held by the Guarantor in trust for the benefit of the Trustee and forthwith upon receipt paid over to the Trustee without in any way reducing, lessening or limiting the obligations of the Guarantor under this Guarantee. This subordination and postponement is independent of the Guarantee and shall remain in force until all Guaranteed Obligations shall have been paid and discharged in full.

## 6. **Subrogation**

The Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under this Guarantee until all Guaranteed Obligations shall have been paid and discharged in full. Subject to the foregoing, upon full and final payment and performance of all Guaranteed Obligations, the Guarantor shall be subrogated to the rights of the Trustee against the Borrower, and the Trustee agrees to take such steps as the Guarantor may reasonably request, at the Guarantor's expense, to give effect to such subrogation.

## 7. **Representations and Warranties**

To induce the Trustee enter into the Settlement Agreement and to issue the Trustee's Certificate to the Borrower pursuant to the Settlement Agreement, the Guarantor represents and warrants that:

- (a) There are no conditions precedent to the effectiveness of this Guarantee that have not been satisfied or waived.
- (b) He is an adult individual of sound mind.
- (c) He has the full power and capacity to enter into this Guarantee, to carry out his obligations hereunder and to consummate the transactions contemplated hereby.
- (d) He has signed this Guarantee freely and voluntarily and not under duress or undue influence. The Guarantor acknowledges that there has been no unconscionability, no inequality of bargaining power or fiduciary relationship between the parties.
- (e) He has received independent legal advice in respect of this Guarantee, by his personal solicitor, and in his own interests only. Such solicitor has provided to the Trustee, a signed Certificate of Independent Legal Advice in the form attached hereto as Schedule "A".



- (f) This Guarantee has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.

## 8. **Indemnity**

The Guarantor hereby agrees to indemnify and hold harmless the Trustee from any losses, damages, liabilities, claims and related expenses incurred by the Trustee or asserted against the Trustee by any person arising out of, in connection with or resulting from this Guarantee or any failure of any Guaranteed Obligations to be legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms. The Guarantor, as a separate and distinct obligation, agrees to indemnify and save harmless the Trustee from and against all losses resulting from the failure of the Borrower to pay such Guaranteed Obligations.

## 9. **Set-Off**

To the maximum extent permitted by applicable law, the Trustee may apply any amounts owing to, or sums standing to the credit of, the Guarantor to the payment when due of any amounts owing by the Guarantor under this Guarantee.

## 10. **Limitation Period**

No limitation period under the *Limitations Act, 2002* (Ontario) shall expire earlier than the second anniversary of the date on which demand for payment of the Guaranteed Obligations under this Guarantee is made in accordance with the provisions of this Guarantee.

## 11. **Notice**

All notices and other communication provided for hereunder (each, a “**Notice**”) shall be in writing and be delivered by personal delivery, nationally recognized courier, certified or registered mail, facsimile or by electronic transaction to the addresses of parties set forth herein or such other address that may be designated by the receiving party from time to time in accordance with this Section. Notices shall be deemed to have been given:

- (a) when received (if delivered by personal delivery, nationally recognized courier, certified or registered mail or electronic transmission) except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time in Toronto, Ontario, then on the next business day for the recipient; and
- (b) when sent (if delivered by facsimile), except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. in Toronto, Ontario, then on the next business day for the recipient.

Email notices and other communications may be sent to the following addresses:

- (a) if to the Trustee:

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

Attention: Lana Bezner  
Email: lana@faanmortgageadmin.com

(b) if to the Guarantor:

778 King Street West  
Toronto, ON M5V 1N6

Attention: Brad J. Lamb  
Email: brad@lambdevcorp.com

## 12. **Successors and Assigns**

This Guarantee is binding upon the Guarantor and his heirs, executors, liquidators, administrators, personal representatives and assigns, and shall enure to the benefit of the Trustee and its successors and assigns. This Guarantee shall not be discharged or affected by the death or disability of the Guarantor.

## 13. **Assignability**

The Guarantor may not, without the prior written consent of the Trustee, assign any of his rights, powers or obligations hereunder. The Trustee may assign this Guarantee and its rights hereunder without the consent of the Guarantor. Any purported assignment in violation of this Section shall be null and void.

## 14. **Severability**

If any term or provision of this Guarantee is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Guarantee or invalidate or render unenforceable such term or provision in any other jurisdiction.

## 15. **Governing Law and Attornment**

All matters arising out of or relating to this Guarantee are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Each party irrevocably attorns to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) with respect to any matter arising under or relating to this Guarantee and irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action, application or proceeding.

## 16. **Cumulative Rights**

The rights and remedies of the Trustee under this Guarantee are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, or in equity or otherwise.

## 17. **Entire Agreement**

This Guarantee constitutes the sole and entire agreement of the Guarantor and the Trustee with respect to the subject matter contained herein and supersedes all prior and contemporaneous

understandings, negotiations, agreements, and discussions both written and oral, with respect to such subject matter. There are no representations, warranties, conditions, covenants or other agreements, express or implied, written or oral, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Guarantee, except as expressly set forth herein and in the Settlement Agreement.

**18. Headings**

Section headings are for convenience of reference only and shall not define, modify, expand or limit any of the terms of this Guarantee.

**19. Amendments and Waivers**

No amendment or waiver of any provision of this Guarantee shall be valid and binding unless it is in writing and signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against which the waiver is to be effective.

**20. Execution and Delivery**

This Guarantee may be executed in counterparts and may be executed and delivered by facsimile or by other electronic form and all such counterparts shall together constitute one and the same agreement. The Guarantor acknowledges receiving a copy of this Guarantee.

*[Signature Page Follows]*

**IN WITNESS OF WHICH** the Guarantor has duly executed this Guarantee.

SIGNED, SEALED & DELIVERED

In the presence of:

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Witness

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Guarantor

Name: Brad J. Lamb

Address: 778 King St. W., Toronto,  
Ontario, M5V 1N6

Birthdate: December 30, 1961

**SCHEDULE "A"**

**Form of Certificate of Independent Legal Advice**

**TO:** FAAN Mortgage Administrators Inc., solely in its capacity as court-appointed trustee of Building & Development Mortgages Canada Inc. and in no other capacity (the "**Trustee**")

I, \_\_\_\_\_ of \_\_\_\_\_ of the City of \_\_\_\_\_, Province of \_\_\_\_\_ hereby certify as follows:

1. On \_\_\_\_\_, 2021, I was retained by, and did meet alone with Brad J. Lamb, to explain to him the terms and implications of him executing:
  - (a) A Guarantee dated \_\_\_\_\_, 2021 in favour of the Trustee guaranteeing, the obligation of Wellington House Inc. (the "**Borrower**") to pay to the Trustee the Second Settlement Payment and the Second Late Payment Fee (each as defined in the certain Settlement Agreement dated as of January 13, 2021) plus certain other recoverable costs and expenses (the "**Guarantee**").
2. I fully explained to Brad J. Lamb the terms and implications of the Guarantee. I further explained the obligations imposed on him in executing the Guarantee and the circumstances in which such liability could be enforced by the Trustee.
3. Brad J. Lamb advised, and I am satisfied, that he fully understands the terms and effect of executing the Guarantee.
4. Brad J. Lamb also advised, and I am satisfied, that in executing the Guarantee he is acting freely and voluntarily and not under undue influence, duress, intimidation, or inducement of the Borrower, the Trustee or any other person.
5. I am only acting for Brad J. Lamb alone and do not, nor does any person at my firm, act for the Borrower, the Trustee or any person in connection with this matter.

*[Signature Page Follows]*

DATED this \_\_\_ day of \_\_\_\_\_, 2021.

**LEGAL REPRESENTATIVE**

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Name (Print):

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Phone Number:

**Acknowledgement and Confirmation**

I, Brad J. Lamb acknowledge and confirm that:

1. I retained the law firm of \_\_\_\_\_ to act in my interest alone as my personal lawyer. All the statements made above by my lawyer are true and accurate.
2. I acknowledge that my lawyer has explained to me, and I fully understand, the terms and implications of the Guarantee and my rights and obligations under such Guarantee.
3. I understand that I am free to decide of my own will whether or not to execute the Guarantee and have no obligation to the Borrower or the Trustee to do so. I have executed the Guarantee freely and voluntarily without duress, undue influence, intimidation or inducement.

**IN WITNESS OF WHICH** the undersigned has duly executed this Certificate of Independent Legal Advice this \_\_\_ day of \_\_\_\_\_, 2021.

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Guarantor  
Name: Brad J. Lamb

**Appendix 7:**  
**Wellington Feedback Request dated January 28, 2021**



January 28, 2021

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Wellington House Inc. (“Borrower”) pursuant to the loan agreement dated April 15, 2016 (“Loan Agreement”) regarding the property located at 422-424 Wellington Street West, Toronto, ON (“Wellington Project” or the “Property”)**

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**Request for approval regarding the Syndicated Mortgage Loan to the Borrower**

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (the “**Trustee**”) over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an order (“**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended. By further 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 Wellington Project and further to the following notices: (i) the December 20, 2019 vote solicitation and feedback request that you may have received from Brad J. Lamb, signed on behalf of the Borrower (“**Borrower Notice**”); (ii) the December 24, 2019 notice sent to you by the Trustee in response to the Borrower Notice (“**Trustee’s Response**”); and (iii) the March 26, 2020 notice sent to you by the Trustee (“**March Notice**”).

**Current Status of the BDMC Loan**

Pursuant to the terms of the Loan Agreement, the total amount owing to the Wellington Project syndicated mortgage lenders that advanced funds through BDMC (“**Wellington SMLs**”) in respect of the BDMC Loan is approximately \$8.2 million, which includes a principal balance of approximately \$6.3 million and accrued interest of approximately \$1.9 million (as at December 31, 2020)<sup>1</sup>. The BDMC Loan is secured by a second ranking mortgage that is registered on title to the Property. The BDMC Loan matured on May 1, 2020 and, accordingly, is now in default.

In addition to the BDMC Loan, there is a first priority mortgage registered on title to the

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<sup>1</sup> Per diem interest since December 31, 2020 is \$1,384.50.





Property in favour of Cameron Stephens Financial (“**Cameron Stephens**”), which the Trustee understands secures an outstanding amount of approximately \$6.7 million. The Cameron Stephens mortgage is the only known charge registered on title to the Property in priority to the BDMC Loan.

### **The Borrower Notice and Trustee’s Response**

The Borrower Notice, which was sent without consulting the Trustee or Representative Counsel, solicited feedback from the Wellington SMLs in connection with a \$2.4 million settlement offer previously submitted by the Borrower to the Trustee (“**Preliminary Offer**”). The Preliminary Offer represented a recovery of approximately 38% of the outstanding principal balance on the BDMC Loan.

The Trustee’s view, which was outlined in the Trustee’s Response, was that the Preliminary Offer was not fair or reasonable in the circumstances or in the best interests of the Wellington SMLs. The Preliminary Offer would have allowed the Borrower to continue to maintain control of the Wellington Project, and ultimately be the beneficiary of any profits from its development, while causing the Wellington SMLs to crystallize a significant loss. The Trustee also advised that it would not be acting upon any votes from the Wellington SMLs received in response to the Borrower Notice.

### **Status of the Wellington Project**

As the Trustee previously advised in the March Notice, the Borrower revised the design of the Wellington Project, including reducing the number of levels from 23 to 17 together with certain floor plate alterations in an effort to achieve a design that the City of Toronto (“**City**”) would approve. The City did not make a decision on the revised zoning by-law amendment (“**Amendment**”) within the required time frame, and therefore, the Borrower applied to the Local Planning Appeal Tribunal (“**LPAT**”) with respect to its proposal. The LPAT held a hearing on the Amendment from October 29, 2018 to November 8, 2018.

On February 4, 2020, a decision was released by the LPAT, dismissing the Borrower’s application and denying the requested Amendment (“**Decision**”). Based on discussions with the Borrower and a review of the Decision, the Trustee understands that the failure to obtain the Amendment has further delayed the Wellington Project, as the Borrower will need to resubmit a further revised application to the LPAT at a reduced density.

Given the lack of approvals, the Borrower has advised that the estimated timeline to completion of the Wellington Project is likely a further 6 to 7 years.

### **The Settlement Agreement**

Notwithstanding the Decision and the extended timeline to project completion, the Trustee



continued to engage with the Borrower regarding a potential settlement with respect to the BDMC Loan.

After extensive negotiations, the Borrower presented the Trustee with a revised offer to settle the BDMC Loan, which was documented in a settlement agreement (“**Settlement Agreement**”). The key terms of the Settlement Agreement are as follows:

- (i) Two settlement payments in the aggregate amount of approximately \$6.3 million comprised of the following:
  - a. a lump sum payment by the Borrower of \$4 million (less the deposit paid<sup>2</sup>), upon receipt of Court approval of the Settlement Agreement (“**First Settlement Payment**”); and
  - b. a second lump sum payment by the Borrower on or before September 1, 2021 in the amount of approximately \$2.317 million (“**Second Settlement Payment**” and together with the First Settlement Payment, the “**Settlement Payments**”);

The Settlement Payments represent a recovery of 100% of the outstanding principal balance of the BDMC Loan calculated as follows:

Principal outstanding (A)	\$6,316,800
First Settlement Payment (B)	\$4,000,000
Second Settlement Payment (C)	\$2,316,800
Total Settlement Payments (D = B+C)	<u>\$6,316,800</u>
Total recovery on principal (D/A)	<u>100%</u>

- (ii) The Settlement Agreement is conditional upon Court approval and a release of all future obligations of the Borrower with respect to the Loan Agreement and the BDMC Loan;
- (iii) Should the Borrower fail to pay any portion of the First Settlement Payment within two weeks of Court approval of the Settlement Agreement, the Borrower shall pay a late payment fee of 5% of the amount of the First Settlement Payment less the Deposit;

<sup>2</sup> The Trustee’s counsel received a deposit of \$300,000 on January 22, 2021 (“**Deposit**”)



- (iv) Should the Borrower fail to pay any portion of the Second Settlement Payment within two weeks of September 1, 2021, the Borrower shall pay a late payment fee of 5% of the amount of the Second Settlement Payment ("**Second Late Payment Fee**");
- (v) The Trustee shall receive the following security ("**Security**") in connection with the Second Settlement Payment:
  - a) A first ranking charge in the principal amount of \$2.5 million registered on title to certain real property located in the Township of Adjala-Tosorontio (Alliston), Ontario ("**Farm Property**"), which Farm Property is currently owned by Bel-Three Property Management Limited ("**Bel-Three**"), an entity related to the Borrower and a limited recourse guarantee of Bel-Three, which recourse shall be limited to the Farm Property; and
  - b) A limited personal guarantee from Brad J. Lamb (together with Bel-Three, "**Guarantors**") in the maximum principal amount of the Second Settlement Payment and the Second Late Payment Fee plus all recoverable costs and expenses.
- (vi) All further rights and obligations of BDMC and the Wellington SMLs under the Loan Agreement, related documents and the associated mortgage on the Property shall be extinguished.

A copy of the Settlement Agreement executed by the Borrower is attached to this feedback request notice as Schedule "A".

Should the Settlement Agreement be approved by the Court and the related transaction close, the amount to be distributed to the Wellington SMLs from the Settlement Payments will be net of an administrative holdback of 15% ("**Administrative Holdback**") to be retained by the Trustee in accordance with the Court orders issued in these proceedings. The Wellington SMLs may receive a portion of the Administrative Holdback in the future; however, the timing and amount, if any, is unknown at this time.

### **Assessment of the Settlement Agreement and Recommendation**

Acceptance of the Settlement Agreement by the Trustee would result in BDMC, on behalf of the Wellington SMLs, foregoing potential interest payments of approximately \$1.9 million as at December 31, 2020, which would otherwise continue to accrue<sup>3</sup> should the BDMC Loan remain outstanding.

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<sup>3</sup> Interest continues to accrue at a per diem rate of \$1,384.50.



For the reasons set out below, the Trustee recommends acceptance of the Settlement Agreement in full satisfaction of all amounts due or that may become owing to you under the Loan Agreement and is requesting your feedback in advance of accepting the Settlement Agreement.

The following factors were considered by the Trustee in completing its assessment of the Settlement Agreement:

- The Borrower has advised that there is an anticipated timeline of approximately 6 to 7 years to complete the Wellington Project;
- The Trustee's planning consultant has advised that the Borrower's timeline to project completion is reasonable;
- The potential implications of the COVID-19 pandemic, which has resulted in a softening in demand for downtown Toronto condominium units in the near term and created uncertainty regarding the long-term impact of the pandemic on the downtown Toronto condominium market;
- The Settlement Payments represent a recovery of 100% of the principal balance owing in respect of the BDMC Loan;
- The Borrower has provided a good faith Deposit, which represents 7.5% of the First Settlement Payment. The Deposit is being held by the Trustee's counsel in trust pending the outcome of this voting request and Court approval of the Settlement Agreement. The Deposit shall be non-refundable to the Borrower in the event of default by the Borrower under the Settlement Agreement;
- The Borrower has executed a financing commitment letter ("**Commitment Letter**") with Cameron Stephens that contemplates a contribution of \$3.15 million from such financing to the First Settlement Payment, with the balance of the First Settlement Payment to be funded separately by the Borrower. The Borrower has provided the Trustee with a copy of the Commitment Letter. The Trustee notes that the Commitment Letter contains certain conditions that the Borrower has advised that it will be able to satisfy;
- The Borrower and the Guarantors have agreed to deliver the Security in respect of the Second Settlement Payment; and
- The certainty that will be achieved regarding the amount and time frame for the repayment of the BDMC Loan.



Given the above considerations, the choice before the Wellington SMLs is as follows:

- 1) Accept the Settlement Agreement, which includes a release by BDMC, the Trustee and the Wellington SMLs with respect to all rights and obligations under the Loan Agreement and related documents; or
- 2) Not accept the Settlement Agreement.

Should the Settlement Agreement not be accepted, the outcome of the Wellington Project and the likelihood of realizing a recovery greater than or equal to the Settlement Payments is not known at this time. The Trustee would have to reengage with the Borrower to determine next steps, which may include having the BDMC Loan remain outstanding until such time that the Wellington Project is completed. There can be no guarantee that the principal amount of the BDMC Loan would be repaid in full or in part at that time.

### **Next Steps**

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

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

**If you have any objections to the acceptance of the Settlement Agreement described herein, you should return the instruction letter to us by mail, email, or fax, by February 8, 2021. If you agree with the Trustee's recommendation to accept the Settlement Agreement, please also return the instruction letter to us by mail, email, or fax, by February 8, 2021 to indicate your agreement.**

After February 8, 2021, the Trustee, in consultation with Representative Counsel, will decide whether to accept the Settlement Agreement by an exercise of the discretion granted to the Trustee under the Appointment Order. Any acceptance by the Trustee of the Settlement Agreement would not be binding on the Trustee or the Wellington SMLs until the Settlement Agreement is approved by the Court. In the event that the Trustee accepts the Settlement Agreement, information regarding the Court hearing, including where you can find a copy of the Court materials, will be provided to you prior to the proposed Court date.

A prompt response is required in the circumstances.



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

Email: [Info@FAANMortgageAdmin.com](mailto: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 **Wellington Project**).

Email: [BDMC@chaitons.com](mailto: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**

**TAB C**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	TUESDAY, THE 23 <sup>rd</sup>
	)	
JUSTICE HAINEY	)	DAY OF FEBRUARY, 2021

BETWEEN:

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**WELLINGTON SETTLEMENT APPROVAL ORDER**

**THIS MOTION**, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29*, as amended, and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43*, as amended, for an Order, *inter alia*, (i) approving and ratifying the Settlement Agreement dated as of January 13,



2021 (the “**Wellington Settlement Agreement**”) among Wellington House Inc. (the “**Borrower**”), the Trustee, Olympia Trust Company (“**OTC**”), Computershare Trust Company of Canada (“**Computershare**”), BJL Properties Inc. (“**BJL**”), and Brad J. Lamb (“**Lamb**”, and together with BJL, the “**Guarantors**”); (ii) ordering the Borrower to pay the Settlement Payments and the Late Payment Fees (as each such term is defined in the Wellington Settlement Agreement), as applicable, to the Trustee pursuant to the Wellington Settlement Agreement; (iii) ordering the Borrower, the Trustee, OTC, Computershare, BJL, and Lamb to comply with the Wellington Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery to the Borrower of a copy of the Trustee’s Certificate (as defined below), make a distribution of Wellington Realized Property to Wellington Individual Lenders (each as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

**ON READING** the Twenty-Fifth Report of the Trustee dated February 16, 2021 (the “**Twenty-Fifth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the Borrower and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of ● sworn February ●, 2021, filed;

### **SERVICE AND INTERPRETATION**

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

### **APPROVAL OF THE WELLINGTON SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (i) the Wellington Settlement Agreement be and is hereby approved in its entirety, including without limitation, the Late Payment Fees as contemplated by

Section 6 thereof, if any, with such minor amendments as the Trustee and the other parties to the Wellington Settlement Agreement may agree upon to permit the completion of the transactions contemplated thereby; (ii) the Borrower is hereby directed to pay the First Settlement Payment in the amount of \$4,000,000 forthwith to the Trustee, on behalf of BDMC, in accordance with the terms of the Wellington Settlement Agreement; (iii) the Borrower is hereby directed to pay the Second Settlement Payment in the amount of \$2,316,800 to the Trustee, on behalf of BDMC, on or before the Second Settlement Payment Due Date, in accordance with the terms of the Wellington Settlement Agreement (such funds received under paragraphs 3(ii) and 3(iii) together, the **“Wellington Realized Property”**); (iv) the Borrower and the Guarantors are hereby directed to deliver the Security (as defined in the Wellington Settlement Agreement), as applicable; and (v) the execution of the Wellington Settlement Agreement by the Trustee, OTC, and Computershare is hereby ratified and approved, and the Trustee, OTC, and Computershare are hereby authorized and directed to comply with all of their obligations under the Wellington Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee’s certificate to the Borrower substantially in the form attached as Schedule “A” hereto (the **“Trustee’s Certificate”**), all of the Borrower’s obligations to Building & Development Mortgages Canada Inc. (**“BDMC”**), OTC, Computershare and the individual lenders (the **“Wellington Individual Lenders”**) under the Loan Agreement dated April 15, 2016 between BDMC and the Borrower (as amended and/or supplemented, the **“Loan Agreement”**), the Security and the Loan Documents (as each such term is defined in the Loan Agreement) (collectively, the **“Wellington Loan Obligations”**) and all security interests granted to BDMC, OTC, Computershare or the Wellington Individual Lenders in and to the assets of the Borrower to secure the Wellington Loan Obligations and related registrations on title, including the Charge (as defined in the Wellington Settlement Agreement) (the **“Loan Encumbrances”**, which for greater certainty shall not include the Security (as defined in the Wellington Settlement Agreement)) are hereby released, waived, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC, Computershare or any Wellington Individual Lender shall have any claim against the Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances; provided that, notwithstanding the foregoing, (i) the releases, discharges, and other matters contained or described in this paragraph shall not in any way affect the obligations of the Borrower, BDL, or

Lamb under, or any rights acquired by the Trustee in connection with, the Wellington Settlement Agreement, including the Borrower's obligation to make the Second Settlement Payment and, if applicable, the Second Late Payment Fee and to deliver the Security (as defined in the Wellington Settlement Agreement) to the Trustee in accordance with the terms thereof, and (ii) nothing in this paragraph shall affect the Turnover Obligation (as defined in the Wellington Settlement Agreement).

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

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate to the Borrower, the Wellington Realized Property is and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that all of the Wellington Individual Lenders' rights and claims under the Loan Agreement and related security, which for greater certainty shall not include the Security (as defined in the Wellington Settlement Agreement), shall attach to the Wellington Realized Property and shall have the same nature and priority as they had prior to the consummation of the Wellington Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

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

8. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate to the Borrower, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, Computershare, and each Wellington Individual Lender who loaned funds through BDMC to the Borrower pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents,

employees, and each of their respective successors and assigns (collectively, the “**Releasees**”) by the Borrower on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the “**Releasers**”) shall be binding and effective on the Releasers in favour of the Releasees.

### **REALIZED PROPERTY**

9. **THIS COURT ORDERS** that, as of the date of this Order, the full amount of the Deposit (as defined in the Wellington Settlement Agreement) constitutes Realized Property as defined in the Interim Stabilization Order and shall be retained by the Trustee, on behalf of BDMC, in accordance with the terms of the Wellington Settlement Agreement.

10. **THIS COURT ORDERS** that, with respect to the First Settlement Payment, upon the delivery of the Trustee’s Certificate, and with respect to the Second Settlement Payment, upon receipt by the Trustee of such funds, the Trustee shall make a distribution to Wellington Individual Lenders in an amount equal to 85% of the Wellington Realized Property, *pro rata* to the Wellington Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

### **AID AND RECOGNITION OF FOREIGN COURTS**

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

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

the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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**Schedule “A” – Form of Trustee’s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

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

**TRUSTEE’S CERTIFICATE**

**RECITALS**

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

B. Pursuant to an Order of the Court made on February 23, 2021 (the “**Wellington Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement dated as of January 13, 2021 (the “**Wellington Settlement Agreement**”) among Wellington House Inc. (the “**Borrower**”), the Trustee, Olympia Trust Company (“**OTC**”), Computershare Trust Company of Canada (“**Computershare**”), BJL Properties Inc. (“**BJL**”), and Brad J. Lamb (“**Lamb**” and

together with BJJ, the “**Guarantors**”) and ordered that all of the Borrower’s obligations to BDMC, OTC, Computershare, and the individual lenders (“**Wellington Individual Lenders**”) under the Loan Agreement dated as of April 15, 2016 (as amended and/or supplemented, the “**Loan Agreement**”), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Wellington Loan Obligations**”) and all security interests granted to BDMC, OTC, Computershare or the Wellington Individual Lenders in and to the assets of the Borrower to secure the Wellington Loan Obligations (the “**Loan Encumbrances**”, which for greater certainty shall not include the Security (as defined in the Wellington Settlement Agreement)) are hereby released, waived, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC, Computershare or any Wellington Individual Lender shall have any claim against the Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances (provided that, (i) such releases shall not in any way affect the obligations of the Borrower, BJJ, or Lamb under, or any rights acquired by the Trustee in connection with, the Wellington Settlement Agreement, including the Borrower’s obligation to make the Second Settlement Payment and the Second Late Payment Fee (as each such term is defined in the Wellington Settlement Agreement), if applicable, and to deliver the Security (as defined in the Wellington Settlement Agreement) to the Trustee, and (ii) nothing shall affect the Turnover Obligation (as defined in the Wellington Settlement Agreement)), and that the release of the Wellington Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to the Borrower of a certificate confirming (i) the payment of the First Settlement Payment (as defined in the Wellington Settlement Agreement) to the Trustee (on behalf of BDMC) by the Borrower in accordance with the terms of the Wellington Settlement Agreement; and (ii) that the conditions precedent to the Wellington Settlement Agreement as set out in Section 16 of the Wellington Settlement Agreement have been satisfied or waived by the Trustee.

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

THE TRUSTEE CERTIFIES the following:

1. The Security (as defined in the Wellington Settlement Agreement) has been executed by the Borrower and the Guarantors, as applicable, and delivered to the Trustee (on behalf of

- BDMC), and duly registered in all applicable offices on terms and conditions satisfactory to the Trustee in its sole discretion;
2. The Trustee, Borrower and each Guarantor have entered into or delivered such additional documents, instruments, assignments, and assurances as the Trustee reasonably required in connection with the Security (as defined in the Wellington Settlement Agreement) to effect the transactions contemplated thereby and by the Wellington Settlement Agreement in accordance with their true intent;
  3. The Wellington Settlement Approval Order has been granted by the Court and no material objections (in the sole opinion of the Trustee) were raised by the individual lenders or by any other party at the motion for approval of the Wellington Settlement Approval Order, or, if any material objection was raised, the appeal periods in respect of the Wellington Settlement Approval Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
  4. The Borrower has paid, and the Trustee has received, the First Settlement Payment and, if applicable, the First Late Payment Fee (each as defined in the Wellington Settlement Agreement) pursuant to the Wellington Settlement Agreement;
  5. The Borrower has provided the Release Agreement to the Releasees;
  6. The Borrower and the Guarantors have certified that all of their representations and warranties contained in the Wellington Settlement Agreement continue to be true as of the Closing Date; and
  7. The Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Wellington Settlement Agreement.

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

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

Per: \_\_\_\_\_

Name:

Title:





**Schedule "B" – Real Property**

PIN 21240-0271

PT LT 18 SEC F PL MILITARY RESERVE TORONTO DESIGNATED AS PTS 1 & 2 66R29746; SUBJECT TO AN EASEMENT OVER PT 2 ON PLN 66R-29746 IN FAVOUR OF PT LTS 17 AND 18 SECTION F, MILITARY RESERVE PLAN DESIGNATED AS PTS 2 AND 4 PLN 64R13628 AS IN WF61931; TOGETHER WITH AN EASEMENT OVER PT 3 ON PLN 66R-29746 AS IN WF61931; CITY OF TORONTO

### Schedule “C” – Loan Encumbrances

1. Instrument No. AT4333932 registered September 6, 2016 being a Charge in favour of Building & Development Mortgages Canada Inc. (“**BDMC**”) to secure the original principal amount of \$7,695,000 (the “**BDMC Charge**”).
2. Instrument No. AT4333936 registered September 6, 2016 being a Transfer of the BDMC Charge to BDMC and Olympia Trust Company (“**OTC**”).
3. Instrument No. AT4345972 registered September 19, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
4. Instrument No. AT4363748 registered October 5, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
5. Instrument No. AT4394230 registered November 7, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
6. Instrument No. AT4428537 registered December 8, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
7. Instrument No. AT4447242 registered January 3, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
8. Instrument No. AT4485647 registered February 13, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
9. Instrument No. AT4508364 registered March 10, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
10. Instrument No. AT4523786 registered March 30, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
11. Instrument No. AT4553267 registered May 2, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
12. Instrument No. AT4593680 registered June 9, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
13. Instrument No. AT4623213 registered July 11, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
14. Instrument No. AT4784386 registered January 19, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and Computershare Trust Company of Canada (“**CTCC**”).
15. Instrument No. AT4794700 registered February 1, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.

16. Instrument No. AT4794699 registered February 1, 2018 being a Notice of Agreement amending the BDMC Charge to reduce the principal amount secured to \$7,415,000.
17. Instrument No. AT4847106 registered April 23, 2018 being a postponement of the BDMC Charge to Instrument No. AT4847029 registered April 23, 2018 being a Charge in favour of Cameron Stephens Financial Corporation.

## Schedule “D” – Release Agreement

[DATE]

TO: FAAN Mortgage Administrators Inc., as Court-appointed Trustee of Building & Development Mortgages Canada Inc. (in such capacity, the “Trustee”)

AND TO: Olympia Trust Company (“OTC”)

AND TO: Computershare Trust Company of Canada (“Computershare”)

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

Dear Sirs/Mesdames,

Reference is made to the Loan Agreement dated as of April 15, 2016 (as amended and/or supplemented, the “**Loan Agreement**”) between Wellington House Inc. (the “**Borrower**”) and Building & Development Mortgages Canada Inc., in trust (“**BDMC**”), and the related Security and Loan Documents (each as defined in the Loan Agreement). All capitalized terms used in this agreement (the “**Release Agreement**”) shall, unless otherwise defined herein, have the same meanings given to them in the Loan Agreement or the Settlement Agreement dated as of January 13, 2021 among the Borrower, the Trustee, OTC, Computershare, BJL Properties Inc. (“**BJL**”), and Brad J. Lamb (“**Lamb**”) (the “**Wellington Settlement Agreement**”).

1. The Borrower hereby certifies that all of its representations and warranties contained in the Wellington Settlement Agreement are true and accurate in all material respects as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Wellington Settlement Agreement.
2. The Borrower has paid the Trustee (on behalf of BDMC) the First Settlement Payment and, if applicable, the First Late Payment Fee pursuant to the Wellington Settlement Agreement, and the Borrower waives, and shall not assert, any right of set-off or any other defence to the payment of such amounts.
3. In consideration of the acceptance of the First Settlement Payment and, if applicable the First Late Payment Fee, in full and final satisfaction of the Obligations (which, for greater certainty, does not include or affect the obligation to make the Second Settlement Payment and, if applicable, the Second Late Payment Fee (as each such term is defined in the Wellington Settlement Agreement), to deliver the Security (as defined in the Wellington Settlement Agreement) to the Trustee, or any of the rights acquired by the Trustee in connection the Wellington Settlement Agreement) payable to BDMC by the Borrower under the Loan Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower (on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) (collectively, the “**Releasers**”) hereby releases, discharges and acquits the Trustee, BDMC, OTC, Computershare and each lender or investor who loaned funds through BDMC to the Borrower pursuant to the Loan

Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the “**Releasees**”) from any and all claims, demands, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any Releasor, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees directly or indirectly arising out of or in any way related to the Loan Agreement, the Loan Documents, the proceedings initiated by the Order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018, or any transactions hereunder or thereunder.

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

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

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

Yours truly,

**WELLINGTON HOUSE INC.**

By:

\_\_\_\_\_  
Name:

Title:

Accepted and agreed to by:

**FAAN MORTGAGE  
ADMINISTRATORS INC.**, solely in its  
capacity as Court-appointed Trustee of  
Building & Development Mortgages Canada  
Inc. and in no other capacity

By:

\_\_\_\_\_  
Name:

Title:

**OLYMPIA TRUST COMPANY**

By:

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Name:

Title:

**COMPUTERSHARE TRUST  
COMPANY OF CANADA**

By:

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Name:

Title:



**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA  
INC.**

Applicant

Respondent

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

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

Proceedings commenced at Toronto

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**WELLINGTON SETTLEMENT APPROVAL  
ORDER**

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**OSLER, HOSKIN & HARCOURT LLP**

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

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

Applicant

Respondent

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

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

**Proceedings commenced at Toronto**

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

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