

**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-SEVENTH REPORT OF THE TRUSTEE
(COMPREHENSIVE UPDATE)**

January 18, 2022



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

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TWENTY-SEVENTH REPORT OF THE TRUSTEE
(COMPREHENSIVE UPDATE)

January 18, 2022

INTRODUCTION

1. On April 20, 2018, pursuant to an order (“**Appointment Order**”) of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (“**Court**”), FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”) 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 (collectively, the “**Property**”). 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 (“**MBLAA**”), 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, 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 Order made by the Court in these proceedings on June 26, 2018 (“**Interim Stabilization Order**”).

The Realized Property Order, as amended, requires the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors.

3. The Trustee has, in total, delivered twenty-six reports to Court (collectively, the “**Reports**”) detailing the Trustee’s activities during these proceedings, providing updates to stakeholders on various projects and providing information in support of Orders sought by the Trustee. Notably, on May 21, 2021, the Trustee submitted its twenty-sixth report in these proceedings (“**Twenty-Sixth Report**”), which provided, among other things, a comprehensive update on the Trustee’s activities and support for the Trustee’s request for the June 2021 Omnibus Order. A copy of the June 2021 Omnibus Order dated June 7, 2021 is attached as **Appendix “2”**.

4. This report (“**Report**” or “**Twenty-Seventh Report**”) is the latest comprehensive update on the Trustee’s activities undertaken since the Twenty-Sixth Report. Capitalized terms not otherwise defined in this Report have the meanings ascribed to them in the Twenty-Sixth Report or other previous Reports of the Trustee, as applicable.
5. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee’s website at: www.faanmortgageadmin.com (“**Trustee’s Website**”). The Trustee intends to maintain the Trustee’s Website for the duration of these proceedings.

PURPOSE OF THE TWENTY-SEVENTH REPORT

6. The Trustee is filing this Twenty-Seventh Report to provide the Court, Investors, borrowers, brokers and other stakeholders with a comprehensive update regarding BDMC, its business and affairs and information regarding the Trustee’s activities since the date of the Twenty-Sixth Report.
7. In addition to the project updates and other information provided to the Court and stakeholders, this Twenty-Seventh Report is being delivered in support of the Trustee’s request for the following Orders that would, among other things, approve:
 - (a) the method of distribution of Realized Property received by the Trustee in respect of the South Shore Project (“**South Shore Distribution Order**”);
 - (b) the distribution to the Investors in the Kemp Project of the remaining Realized Property being held by the Trustee in respect of the Kemp Project (“**Kemp Distribution Order**”); and
 - (c) this (i) Twenty-Seventh Report and the activities of the Trustee as described herein; and (ii) the Trustee’s fees and disbursements, including the fees and disbursements of its counsel, for the period from May 1, 2021 to December 31, 2021, as more fully described herein and in the fee affidavits attached hereto (“**January 2022 Omnibus Order**”).

All capitalized terms used above and not otherwise defined are defined later in this Report.

8. Barring any issues and/or restrictions caused by the current or any future resurgence in the COVID-19 pandemic or other unforeseen events, the Trustee intends to report to the

Court approximately every six months with a further comprehensive update regarding these proceedings, or such other date as the Trustee determines is reasonable given activity levels in the various remaining project-specific developments. However, the Trustee also anticipates that it may be necessary to attend before the Court during the next interim period prior to the Trustee's delivery of its next comprehensive update regarding these proceedings to seek relief or advice and directions from the Court regarding project-specific developments, which may include, among other things, the approval of further settlement or distribution arrangements for certain BDMC loans, or other general file administration matters.

SCOPE AND TERMS OF REFERENCE

9. In preparing this Twenty-Seventh Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Olympia Trust Company ("**Olympia**") Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), the mortgage brokerage who assumed the mortgage brokerage duties of BDMC, 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 and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM, Fortress and applicable borrowers (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.
10. Some of the information used and relied upon in preparing this Twenty-Seventh 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-Seventh Report may vary

from the projections and information used to prepare this Twenty-Seventh 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-Seventh Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

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

GENERAL UPDATE

13. In accordance with its mandate, the Trustee continues to actively engage with borrowers, priority mortgagees, and other stakeholders with respect to the remaining projects in an effort to protect the Investors' loan and security positions and to maximize potential recoveries for Investors wherever possible.
14. At the time of the Trustee's appointment, there was approximately \$560 million invested through BDMC by over 11,000 individual Investors in 45 separate Fortress-affiliated real estate development projects. As at the date of this Twenty-Seventh Report, there are BDMC loans or other matters outstanding in respect of 10¹ remaining Fortress-affiliated projects, of which two relate to projects for which the Trustee is seeking distribution orders, as discussed further in this Report. Each of the remaining BDMC loans has now matured and is in default.
15. The BDMC loans and related projects have generally been in distress as a result of, among other things: (a) significant fees that were taken directly from the initial loan advances and not given to project borrowers to advance their projects; (b) issues relating to the use of funds advanced to the projects; (c) borrowers' difficulties obtaining sufficient financing to continue developing the projects (at times due to the failure to achieve

¹ As detailed in the thirteenth report to Court dated November 22, 2019 ("**Thirteenth Report**"), the QEWN Project is no longer administered by BDMC and is therefore not included in these figures.

development milestones/approvals and/or BDMC’s affiliation with Fortress); (d) various other project delays; (e) enforcement actions from priority secured creditors and related contractual standstill agreements; and (f) aggressive, adverse positions that continue to be taken by Fortress and other stakeholders in attempts to recover proceeds in priority to the Investors and/or crystallize losses to Investors. On every project, there have been competing claims to entitlements and other challenges that have and/or could reduce the amounts available to repay the BDMC loans. In certain of these instances, the Trustee has been forced to engage in time-consuming contested litigation to advocate on behalf of the Investors.

16. Despite these challenges, the Trustee continues to remain vigilant in aggressively defending the Investors’ interests. The Trustee also takes proactive steps and seeks creative solutions, as appropriate, to protect the Investors’ interests and increase potential recoveries by, among other things, negotiating settlements, actively engaging with borrowers regarding the ongoing status of their projects, actively engaging with priority secured creditors, and responding to or participating in potential or existing enforcement proceedings. The Trustee has and continues to consider the unique circumstances of each project to seek to achieve the best recoveries possible for Investors.

17. As a result of the Trustee’s continued efforts, to date the Trustee has recovered, in aggregate, approximately \$159 million in Realized Property for the benefit of the Investors by way of, *inter alia*, settlement and/or assignment transactions, sales through enforcement proceedings and sales by project borrowers, including approximately \$4 million since the date of the Twenty-Sixth Report. The following table summarizes the Realized Property to date:

Project	Type of Transaction	Status of Realization²	Payout Amount to Date (\$)
Braestone	Settlement	Complete	10,000,000
Harlowe	Settlement	Complete	15,562,896
Speers	Settlement	Complete	1,950,000
James	Settlement	Complete	4,842,541
Crestview	Settlement	Complete	4,475,000

² For the projects noted to be “In Progress”, Investors may receive further recoveries; however, the Trustee cautions that the availability and timing of any such further recoveries remains uncertain.

Project	Type of Transaction	Status of Realization ²	Payout Amount to Date (\$)
Kemp³	Power of Sale	Complete	2,176,162
Nobleton North	Settlement	Complete	14,450,000
Humberstone	Settlement	In Progress	1,750,000
CHAT	Sale	In Progress	5,692,031
Dunsire	Receivership	Complete	484,697
Solterra (Phase 3)	Completion	Complete	2,383,758
Bauhaus	Settlement	Complete	6,734,798
Danforth	Settlement	Complete	7,000,000
Solterra (Phase 4)	Settlement	Complete	16,171,969
Peter Richmond	Assignment	Complete	26,250,000
Old Market Lane	Power of Sale	Complete	1,570,967
Orchard	Sale by Borrower	Complete	1,754,122
Whitby	Sale by Borrower	Complete	12,898,875
Wellington	Settlement	Complete	6,316,800
Bowmanville	Receivership	Complete	576,614
Nobleton South	Power of Sale	Complete	2,390,316
Jasper	Sale by Borrower	Complete	856,288
North	Sale by Borrower	Complete	1,522,547
Castlemore	Settlement	Complete	9,875,358
South Shore	Power of Sale	In Progress ⁴	1,760,462
Total			\$159,446,201

18. Should the Court grant the Kemp Distribution Order, the \$700,000 of remaining Realized Property from the Kemp Project being held in trust by the Trustee (“**Kemp Holdback**”) will be distributed, less the Administrative Holdback.
19. Although several of these transactions have resulted in recoveries in excess of 100% of the principal amount owing to Investors (in certain instances after considering previously paid interest), the Trustee has also been presented with and has implemented transactions that have resulted in recoveries well below 100%. In these instances, the Trustee has often been advised that such transactions are the only viable option in the

³ The Realized Property for the Kemp Project includes \$700,000 that is being held by the Trustee in trust pending resolution of the Fortress claim, which is discussed later in this Report.

⁴ The sale of the property that was the subject of the South Shore Project has been completed; however, as detailed below, the Trustee has commenced litigation against the first priority mortgagee, Diversified Capital Inc., seeking to recover amounts related to how the power of sale proceeding was carried out by Diversified and the fees and interest taken by Diversified as a result of same.

circumstances to allow for any recovery to the Investors, and, following its review, has negotiated for the best possible recoveries for the Investors in those circumstances.

20. To date, the Trustee has made distributions in respect of 24 projects and is seeking Court approval to distribute the Realized Property in its possession (or that may subsequently come into its possession) in respect of the South Shore Project and the Kemp Holdback. As set out in the Project Analysis Summary (described below), there are 13 projects where no recoveries were possible due to the failure of the relevant project and the lack of sufficient funds to repay any BDMC debt. In such circumstances, the priority mortgagees have also generally suffered losses. Despite full or partial losses on certain projects, the Trustee has attempted to maximize recoveries for Investors whenever possible and to provide clarity, certainty and closure to such Investors with respect to their investments (which were often in default and outstanding for much longer than originally anticipated).
21. The Trustee recognizes that many Investors have experienced significant hardship as a result of their investments in Fortress-affiliated projects and understands that many of the Investors have suffered and will continue to suffer a devastating financial impact from such investments, collectively reaching hundreds of millions of dollars. This hardship continues to inform the Trustee's evaluation of potential monetization transactions for the benefit of the Investors wherever possible.
22. The Trustee also continues to prioritize its communications with Investors. The Trustee provides updates to Investors as material project developments occur and responds to Investor inquiries on a regular basis. In addition, the Trustee continues to meet and correspond regularly with Representative Counsel to discuss its activities and refine its strategies. The Trustee is of the view that such correspondence with, and feedback from, Investors and Representative Counsel has assisted the Trustee with its activities throughout these proceedings.
23. Although the administration of the loans for the majority of the projects has been completed, the Trustee anticipates that it will still likely take several years to complete the administration of the remaining BDMC loans as each remaining loan continues to be challenged by at least one of the following circumstances: (i) considerable quantum of priority debt; (ii) significant inventory units remaining for sale; and/or (iii) material estate issues, including complex and ongoing litigation, in particular with respect to the Brookdale

Project described below. As well, certain of the transactions completed by the Trustee may result in additional Realized Property that is contingent on future events. The Trustee continues to believe that this Court-supervised process provides Investors with enhanced protections and better opportunities to obtain recoveries in light of the challenging circumstances surrounding Fortress and BDMC.

24. To assist Investors in understanding the status of their particular investments, the Trustee has updated a chart that describes, to the best of the Trustee's knowledge, the capital structure and status of each project ("**Project Analysis Summary**"). The updated Project Analysis Summary as of January 14, 2022 is attached as **Appendix "3"** and will be posted on the Trustee's Website. While the Project Analysis Summary contains particularized information with respect to each project, the Trustee cautions that it is only intended to summarize certain aspects of the Trustee's analysis and understanding of each project as of a specific date. The Trustee continues to refine its analysis based on new developments and information, which can at times have a significant impact on the Trustee's review and related recommendations. The Trustee notes that certain confidential information has been excluded from the Project Analysis Summary.
25. The following sections of this Report provide information specific to the projects for which orders are being sought and updates with respect to certain other projects that have been the subject of significant developments since the delivery of the Twenty-Sixth Report. In particular:
 - (a) paragraphs 27 to 89 provide the facts and evidence in support of the order being sought with respect to the proposed distribution of Realized Property to the South Shore Investors (as defined below);
 - (b) paragraphs 90 to 126 provide the facts and evidence in support of the order being sought with respect to the proposed distribution of Realized Property to the Kemp Investors (as defined below);
 - (c) paragraphs 127 to 171 describe certain other material project-specific developments; and
 - (d) paragraphs 172 to 177 provide certain other general updates related to these proceedings.

26. An update on the funding of these proceedings and the Trustee's cash flow projections is provided in paragraphs 178 to 186, and the Trustee's fees and activities are described in paragraphs 187 to 198. Where applicable, the Trustee has attached copies of the relevant Investor notices (without appendices) to provide additional information for Investors and this Court in a streamlined and concise manner.

PROPOSED DISTRIBUTIONS OF REALIZED PROPERTY IN RESPECT OF THE SOUTH SHORE PROJECT

27. The primary question impacting the proposed distribution of the Realized Property with respect to the South Shore Project is determining the most equitable method to effect that distribution in light of the uncertain priorities of the outstanding BDMC mortgages. Based on the analysis set out below, the Trustee proposes that the Realized Property be distributed *pari passu* to all South Shore Investors in accordance with the Realized Property Order, as amended.
28. The South Shore Project is a real estate development project in Keswick, Ontario ("**South Shore Project**" or "**South Shore Property**") with three syndicated mortgage loans, which combined have principal debt totaling more than \$29.2 million, and each is administered by BDMC (collectively the "**South Shore Loans**", and such Investors in the South Shore Loans, collectively, the "**South Shore Investors**"). In total there are 530 South Shore Investors.
29. On January 24, 2019, Diversified Capital Inc. ("**Diversified**") issued a Notice of Sale under Mortgage ("**Notice of Sale**") in respect of its then outstanding first priority debt of approximately \$6.9 million that was in default. Following a delayed sale process, the South Shore Property was eventually sold on May 13, 2021 for \$13 million ("**South Shore Sale Transaction**"). The South Shore Sale Transaction completed by Diversified took place almost two and a half years from the date of issuance of the Notice of Sale. As was described in the twenty-fourth report dated December 16, 2020 ("**Twenty-Fourth Report**") and in the Twenty-Sixth Report, the Trustee had significant concerns with the length of time it took Diversified to commence the sale process and with the execution of the sale process itself.
30. Since the filing of the Twenty-Sixth Report, the Trustee requested and has been provided with additional information regarding the distribution of funds to Diversified in connection

with the South Shore Sale Transaction, which totaled approximately \$9.9 million, comprised of: (i) a return of principal of \$4.5 million; (ii) unpaid interest of \$4.7 million (on \$4.5 million of original principal); and (iii) approximately \$700,000 in renewal fees and other amounts. The Trustee and its counsel have been engaging with Diversified's counsel regarding the Trustee's concerns with respect to the amounts paid to Diversified from the proceeds of the South Shore Sale Transaction since the closing of the transaction.

31. As there has been no resolution with Diversified, the Trustee recently commenced litigation against Diversified seeking to recover certain of the amounts paid to Diversified including amounts related to the conduct and length of the power of sale proceeding leading up to the South Shore Sale Transaction and the quantum of the fees and interest taken by Diversified as a result of same. The Trustee will update the South Shore Investors as this matter develops.
32. At the time the South Shore Sale Transaction was completed, there were two construction liens registered on title to the South Shore Property, which in aggregate totaled approximately \$643,000. One of the claims was settled for approximately \$35,000 (which claim was originally advanced for approximately \$83,000 and subsequently reduced to \$73,000). The remaining claim was advanced for approximately \$560,000. The Trustee's counsel continues to engage with counsel to the lien claimant regarding the validity of that claim, and notes that approximately \$610,000 of the remaining proceeds from the South Shore Sale Transaction has been paid into Court pending resolution of such claim.
33. On May 27, 2021, the Trustee received a distribution of approximately \$1.8 million ("**South Shore Proceeds**"), representing the remaining sale proceeds after the payment of commission, legal fees, the approximately \$9.9 million taken by Diversified, the lien settlement of \$35,000 and the \$610,000 payment into Court in respect of the outstanding lien claim.
34. Although the dispute with Diversified and the lien claimant remain ongoing, the Trustee is seeking Court approval to distribute 85% of the South Shore Proceeds to the South Shore Investors in accordance with the proposed distribution methodology described below and the Realized Property Order, as amended.

OVERVIEW OF THE SOUTH SHORE LOANS

35. Immediately prior to the closing of the South Shore Sale Transaction, there were three BDMC loans registered on title to the South Shore Property: (i) the Crates Landing Loan, (ii) the South Shore 2 Loan, and (iii) the South Shore Hybrid Loan (each as defined below). A copy of the parcel register for the South Shore Property is attached as **Appendix “4”**. The following amounts were owing under each of the three South Shore Loans when the South Shore Sale Transaction closed:

	<u>Crates Landing</u>	<u>South Shore 2</u>	<u>South Shore Hybrid</u>
Number of Investors	207	95	228
Principal Outstanding (A)	8,600,000	10,073,068	10,528,957
Accrued Interest (B)	5,202,044	3,876,495	2,833,676
Total Outstanding (A+B)	13,802,044	13,949,563	13,362,633
Previously Paid Interest	1,494,172	650,823	842,316

36. As has been the case with other BDMC projects with multiple BDMC loans registered on title to a particular project with differing priority rankings, the Trustee, along with its counsel, has completed an in-depth review of the available documentation related to the South Shore Loans in order to develop a view regarding the priorities among the various loans and a recommendation regarding the most appropriate distribution methodology in the circumstances. The Trustee also discussed the quantum owed, priority position of each BDMC loan and other issues with Representative Counsel and sought input from Representative Counsel.

37. The following paragraphs describe each of the loans advanced by the South Shore Investors and the Trustee’s analysis of the applicable priority entitlements of the South Shore Investors in each loan to any proceeds received from the South Shore Project.

Crates Landing Loan

38. The Trustee understands that the South Shore Project was originally branded as the Crates Landing Project. Commencing in January 2011, 2221563 Ontario Inc. (“**South Shore Borrower**”, a Fortress-related entity) entered into various loan agreements with Derek Sorrenti (“**Sorrenti**”), Olympia, B2B Trust Company (“**B2B**”) and/or The Bank of

Nova Scotia Trust Company (“**BNS**”), in each case, in trust for individual Investors (“**Crates Landing Investors**”) with a maximum principal balance of \$8.6 million in aggregate (collectively, the “**Crates Landing Loan**”, and such agreements, the “**Crates Landing Loan Agreement**”). A sample Crates Landing Loan Agreement, with private information redacted, is attached as **Appendix “5”**.

39. On February 4, 2011, the South Shore Borrower granted a mortgage of \$4.8 million (which amount was subsequently increased to \$8.6 million) (“**Crates Landing Mortgage**”) on the South Shore Property in favour of Sorrenti, in trust (which mortgage was subsequently amended to include Olympia, B2B and BNS as trustees for those Crates Landing Investors who made their investments through registered plans). The Crates Landing Loan Agreement states that the Crates Landing Mortgage shall rank *pari passu* with an existing second ranking mortgage in favour of Snoxons Holdings Inc. (“**Snoxons**”, and such mortgage, the “**Snoxons Mortgage**”) and subordinate to the then-existing first ranking mortgage. A *pari passu* agreement was executed with Snoxons and registered on title in order to effect such *pari passu* ranking (“**Snoxons Pari Passu Agreement**”). A copy of the Snoxons Pari Passu Agreement is attached as **Appendix “6”**. The Crates Landing Loan Agreement further provided that the first ranking construction mortgage may be increased up to \$40 million, but that there shall be no other postponements or encumbrances which affect the position or security of the Crates Landing Mortgage. The Crates Landing Loan Agreement provided for an original maturity date of January 2014.
40. In July and August 2014, the Trustee understands that the Crates Landing Investors were asked to sign lender acknowledgement and consent agreements (“**LACs**”). The LACs, among other things, stated that:
- (a) the administration of the loan shall be transferred from Sorrenti to Centro Mortgage Inc. (“**Centro**”, the prior operating name for BDMC)⁵;
 - (b) the Crates Landing Investors acknowledge and confirm that prior to entering into the “Loan Agreement” (which definition is unclear), they were aware that certain provisions in the Loan Agreement allow for the postponement of the Crates Landing Mortgage in favour of additional construction and/or mezzanine or related

⁵ The Trustee notes that, while the LACs appear to have been signed in 2014, the Crates Landing Mortgage was not transferred from Sorrenti’s name into BDMC’s name on title to the South Shore Property until July 2016.

mortgage financing up to \$130 million, as more particularly described in the “Loan Agreement”;

- (c) the Crates Landing Investors agree to postpone the Crates Landing Mortgage and standstill to additional priority charges of up to a maximum of \$130 million in priority financing, which may be advanced by various parties and secured by multiple registrations;
- (d) the Crates Landing Investors acknowledge that they were advised that the face value of the Crates Landing Mortgage could be amended up to a maximum of \$20 million, and additional priority financing may be required if there is a shortfall in funds provided by other Investors under the Crates Landing Mortgage;
- (e) the Crates Landing Investors authorize and direct Centro or the relevant trustee (being Sorrenti, Olympia, B2B or BNS) to execute any documents or agreements on behalf of the Crates Landing Investors without further notice to, or approval by, such Crates Landing Investors in order to postpone and standstill to the additional priority financing contemplated in the LAC, provided that Centro or the trustee: (i) receives a written request from the South Shore Borrower to sign such documents or agreements; (ii) receives written confirmation from the South Shore Borrower that such documents or agreements are required by the senior lenders or are otherwise required to develop the South Shore Property; and (iii) receives written confirmation from the South Shore Borrower that such documents or agreements are permitted pursuant to the “Loan Agreement”; and
- (f) the Crates Landing Investors agree that the South Shore Borrower shall be solely responsible for negotiating the terms of any documents required to be signed by Centro or the relevant trustee on behalf of the Crates Landing Investors, including any priority agreements, subordination agreements or other agreements required by senior lenders, and that Centro and the trustees shall not have any obligation to review or negotiate any terms, conditions or provisions of any such documents and shall instead be entitled to rely solely on the South Shore Borrower’s written direction to execute such documents.

A sample LAC, with private information redacted, is attached as **Appendix “7”**.

41. The LACs suggest to the Crates Landing Investors that the Crates Landing Loan Agreement already provided for postponements of the Crates Landing Mortgage to up to \$130 million in priority financing. However, as noted above, the Crates Landing Loan Agreement only allows up to \$40 million in construction financing, and no other postponements to be registered on title. Accordingly, this provision may have been misleading to the Crates Landing Investors.
42. The Trustee reviewed its records to determine if the Crates Landing Loan Agreement had been amended to authorize such additional priority financing. The Trustee was able to locate an unsigned version of a loan amending agreement that may have been sent to, and executed by, some or all of the Crates Landing Investors ("**Crates Landing Amending Agreement**"). A copy of the Crates Landing Amending Agreement reviewed by the Trustee is attached as **Appendix "8"**.
43. The Crates Landing Amending Agreement appears to provide for an increase of the principal amount of the Crates Landing Loan to \$20 million and states that the Crates Landing Mortgage is a second ranking mortgage. It also provides that the priority of the Crates Landing Mortgage may be affected by the following charges: (i) the first-ranking construction charge may be increased up to \$110 million; (ii) a new second ranking charge may be registered in respect of deposit insurance security; and (iii) to the extent that \$20 million cannot be raised under the Crates Landing Loan, the South Shore Borrower may borrow the difference from a third party, which shall rank in third position on title. Accordingly, if such additional charges were registered, the Crates Landing Mortgage could be subordinated to fourth position on title.
44. It is possible that the reference to the "Loan Agreement" in the LACs was referring to the Crates Landing Amending Agreement instead of the original Crates Landing Loan Agreement. However, despite an extensive search of the available BDMC records, including available email records, the Trustee was unable to locate any correspondence to the Crates Landing Investors regarding the Crates Landing Amending Agreement and was unable to locate any executed copies of such agreements. Based on certain email correspondence, it appears that these agreements may have been distributed to the Crates Landing Investors by the brokers. However, the Trustee cannot confirm if the agreements were sent, who they may have been sent to, and/or if they were executed by all of the Crates Landing Investors.

45. Regardless of whether the Crates Landing Amending Agreement was entered into, the Trustee is of the view that the language in the LACs may have been misleading to the Crates Landing Investors. As noted above, the original Crates Landing Loan Agreement clearly does not authorize postponements to \$130 million in priority financing, as suggested in the LAC. Even if the reference to the “Loan Agreement” is referring to the Crates Landing Amending Agreement, the Crates Landing Amending Agreement only authorizes postponements in favour of construction financing, deposit insurance, and up to \$11.4 million of other financing, whereas the LAC suggests that the “Loan Agreement” allowed for the postponement to any “construction and/or mezzanine or related Mortgage financing” of up to \$130 million in aggregate. Given that the Crates Landing Mortgage was ultimately postponed on title to two BDMC mortgages (being the South Shore 2 Mortgage and the South Shore Hybrid Mortgage, each as defined below) that were not advanced in respect of construction financing or deposit insurance and exceeded \$11.4 million, this distinction is particularly relevant in the circumstances.
46. In December 2014, Sorrenti, Olympia, B2B and BNS executed an inter-lender agreement on behalf of the Crates Landing Investors at the direction of Centro, which postponed and subordinated the Crates Landing Mortgage to the new South Shore 2 Mortgage (“**2014 Inter-Lender Agreement**”). A copy of the 2014 Inter-Lender Agreement is attached as **Appendix “9”**.
47. Although the 2014 Inter-Lender Agreement was signed by Sorrenti, Olympia, B2B and BNS at the direction of Centro, it is not clear to the Trustee that all Crates Landing Investors signed the LACs and authorized Centro to give such direction. Where such Investors had not signed the LACs or other authorizing documentation⁶ prior to the date of the 2014 Inter-Lender Agreement, the Trustee reviewed certain undertakings provided by Centro to Sorrenti and B2B whereby Centro undertook to make arrangements to have the investments replaced and returned to any Crates Landing Investors who did not sign documentation authorizing Centro to provide directions to the trustees on their behalf. Copies of these undertakings, with personal information redacted, are attached as **Appendix “10”**. Based on BDMC’s records, it appears that Centro ultimately replaced certain but not all of such Crates Landing Investors. Further, in Centro’s email requesting

⁶ The Trustee notes that 8 Crates Landing Investors who invested through B2B appear to have signed direction and indemnity agreements authorizing the execution of the 2014 Inter-Lender Agreement instead of entering into a LAC.

that Olympia sign the 2014 Inter-Lender Agreement, it provided a copy of certain LACs and a memorandum of understanding purportedly signed by the remaining Crates Landing Investors whose investments were registered with Olympia (“**MOU**”) as evidence of Olympia’s authority to sign the 2014 Inter-Lender Agreement on behalf of such Investors. The MOU appears to have been signed in 2011 by some or all of the Crates Landing Investors. Although it states that the trustees, including Olympia, may execute certain required documentation on behalf of the Crates Landing Investors, such authorization is limited to documentation that relates to the provisions of the MOU. The MOU states that the Crates Landing Mortgage may only be postponed to up to \$40 million of construction financing. Accordingly, as the South Shore 2 Loan was not advanced for the purpose of construction financing, the MOU does not appear to provide sufficient authority for the trustees to execute a postponement of the Crates Landing Mortgage to the South Shore 2 Mortgage without further consent of the Crates Landing Investors. A sample MOU, with private information redacted, is attached as **Appendix “11”**.

48. In July 2016, BDMC, Olympia, B2B and BNS executed another inter-lender agreement on behalf of the Crates Landing Investors that postponed and subordinated the Crates Landing Mortgage to the new South Shore Hybrid Mortgage (“**2016 Inter-Lender Agreement**” and, together with the 2014 Inter-Lender Agreement, the “**Inter-Lender Agreements**”). A copy of the 2016 Inter-Lender Agreement is attached as **Appendix “12”**.
49. The Inter-Lender Agreements resulted in the postponement of the Crates Landing Mortgage to fourth position on title. The Trustee considered the effectiveness of such postponements in light of the available documentation authorizing the execution of such Inter-Lender Agreements and the communications made to such Crates Landing Investors regarding same. In its analysis, the Trustee considered the following factors:
 - (a) although the LACs appear to provide Centro with the authority to direct Sorrenti, Olympia, B2B and BNS to sign the Inter-Lender Agreements on behalf of the Crates Landing Investors without their knowledge or consent, the language in such LACs may have been misleading and suggests to the Crates Landing Investors that they had previously agreed to postpone their mortgage to up to \$130 million of any priority financing (which does not appear to be the case). Accordingly, the

Crates Landing Investors may not have properly understood the full implications of signing the LACs, which purported to drastically affect their rights;

- (b) the Trustee does not have evidence that all of the Crates Landing Investors signed the LACs. For those Crates Landing Investors who did not sign the LACs, the Trustee is of the view that the MOU does not provide sufficient authority for Sorrenti, Olympia, BNS or B2B to postpone to new BDMC mortgage financing without further consent from the Crates Landing Investors. Sorrenti, Olympia, B2B and BNS were only acting as bare trustees on behalf of the Crates Landing Investors who did not sign LACs and would have required the express consent of such Crates Landing Investors to agree to postpone to amounts not previously contemplated in the MOU or the Crates Landing Loan Agreement. The Trustee has not seen any documentation evidencing any such consent being provided by the remaining Crates Landing Investors who, based on the BDMC records, did not sign LACs (with the exception of 8 Crates Landing Investors who invested through B2B, who provided a signed direction and indemnity agreement authorizing the execution of the 2014 Inter-Lender Agreement);
- (c) the LACs only authorized Centro and the trustees to execute documentation upon the satisfaction of certain conditions, including the receipt of written confirmation from the South Shore Borrower that such documents were permitted pursuant to the "Loan Agreement". As described above, the original Crates Landing Loan Agreement did not authorize any further postponements except to construction financing, and the Crates Landing Amending Agreement (which the Trustee cannot confirm was ever executed) only authorized postponements to additional construction financing, deposit insurance security, or third-party mortgages of up to \$11.4 million in certain limited circumstances. Given that the South Shore 2 Loan was not a construction loan and had a maximum principal balance of \$20 million, the South Shore Borrower (a Fortress-related entity) could not have properly confirmed that the execution of the 2014 Inter-Lender Agreement (or, later, the 2016 Inter-Lender Agreement) was permitted under the "Loan Agreement" (regardless of whether such Loan Agreement was referencing the Crates Landing Loan Agreement or the Crates Landing Amending Agreement); and

(d) despite the terms of the LACs, which allowed Centro and the trustees to sign documents on behalf of Crates Landing Investors without any further notice to or approval by such Investors, the Trustee is of the view that Centro had a duty to notify the Crates Landing Investors of any material changes affecting their investments, such as a postponement to significant new financing arrangements. The Trustee reviewed the various communications made by Centro as administrator of the Crates Landing Loan and has not found any material disclosures to Crates Landing Investors regarding the execution of the Inter-Lender Agreements on their behalf or the amount of additional outstanding priority debt to be repaid ahead of the Crates Landing Loan as a result thereof.

50. For these reasons, and in light of the circumstances surrounding BDMC and Fortress generally, the Trustee is of the view that it would be unfair and inequitable to the Crates Landing Investors to bind such Investors to the terms of the Inter-Lender Agreements and the postponements registered on title as a result thereof.
51. According to BDMC's records, the total amount owing to the 207 Crates Landing Investors as of May 13, 2021, the closing date of the South Shore Sale Transaction, was approximately \$13.8 million, comprised of a principal balance of approximately \$8.6 million and unpaid interest of approximately \$5.2 million.

South Shore (Crates Landing) 2 Loan

52. On October 21, 2014, the South Shore Borrower entered into a loan agreement ("**South Shore 2 Loan Agreement**") with Centro, in trust for certain individual lenders ("**South Shore 2 Investors**"), that provided for an aggregate syndicated mortgage loan of up to \$20 million ("**South Shore 2 Loan**"). A copy of the South Shore 2 Loan Agreement, along with certain other documents provided to and/or executed by the individual South Shore 2 Investors at the time of their advances, with private information redacted, is attached as **Appendix "13"**. The Trustee understands that the project was rebranded from Crates Landing to the South Shore Project after the registration of the South Shore 2 Mortgage.
53. On January 14, 2015, the South Shore Borrower granted a mortgage of \$3.2 million (which amount was subsequently increased to \$10.7 million) ("**South Shore 2 Mortgage**") on the South Shore Property in favour of Centro (which mortgage was subsequently amended to include Olympia). On the same day: (i) the Crates Landing Mortgage was postponed on

title to the South Shore 2 Mortgage pursuant to the 2014 Inter-Lender Agreement described above; and (ii) the Snoxons Mortgage was postponed on title to the South Shore 2 Mortgage pursuant to an inter-lender agreement dated December 9, 2014 among Snoxons, the South Shore Borrower and Centro, in trust for the South Shore 2 Investors (“**Snoxons 2014 Inter-Lender Agreement**”). A copy of the Snoxons 2014 Inter-Lender Agreement is attached as **Appendix “14”**.

54. The South Shore 2 Loan Agreement provides that the South Shore 2 Mortgage would rank second on title to the South Shore Property, and that it could be postponed to certain “Permitted Encumbrances”, which included one or more construction loans in an aggregate amount not to exceed \$110,000,000, a mortgage to secure deposit insurance, and certain non-financial encumbrances. The South Shore 2 Loan Agreement also contains certain covenants that the South Shore Borrower would not permit any encumbrances other than the Permitted Encumbrances to be registered prior to, *pari passu* with, or subsequent to the South Shore 2 Mortgage.
55. The South Shore 2 Loan Agreement provides that if Centro is unable to fund the full amount of the loan as and when required, then Centro shall agree to postpone and subordinate in favour of any security required by a lender providing a loan for the shortfall, which lender may be obtained by either Centro or the South Shore Borrower (“**Replacement Lender Provision**”).
56. The “Investment Authority – Form 9D” disclosure forms provided to South Shore 2 Investors in connection with the South Shore 2 Loan does not list the Crates Landing Mortgage or the Snoxons Mortgage as existing encumbrances on title. The South Shore 2 Loan Agreement includes a representation and warranty from the South Shore Borrower that the South Shore Property was free from all encumbrances except the Permitted Encumbrances, and the South Shore 2 Loan Agreement does not otherwise appear to include any reference to the Crates Landing Mortgage or the Snoxons Mortgage. Accordingly, it is unclear if the South Shore 2 Investors were made aware of the existence of such mortgages.
57. In 2016, the South Shore Hybrid Mortgage was registered on title to the South Shore Property in third priority. As described below, the South Shore Hybrid Loan Agreement stated that the South Shore Hybrid Mortgage would rank *pari passu* with the South Shore

- 2 Mortgage. However, there does not appear to be any documentation signed by the South Shore 2 Investors (or by BDMC on their behalf) evidencing any written agreement for the South Shore 2 Mortgage to rank *pari passu* with the South Shore Hybrid Mortgage.
58. The Trustee is of the view that the South Shore Borrower and BDMC may have relied on the Replacement Lender Provision as the basis for providing an effective *pari passu* ranking between the two mortgages regardless of the lack of documentation evidencing same. Pursuant to the Replacement Lender Provision, BDMC or the Borrower could agree to find a new lender to fund any amount not advanced under the South Shore 2 Loan. As only approximately \$10.1 million of the maximum \$20 million had been advanced under the South Shore 2 Loan prior to the creation of the South Shore Hybrid Loan, the South Shore Borrower and/or BDMC may have determined that there was a shortfall that would be funded by the South Shore Hybrid Investors (as defined below). The description of the maximum principal amount of the South Shore Hybrid Loan in the South Shore Hybrid Loan Agreement (as defined and described below) contemplates a combined aggregate cap of \$20 million between both the South Shore 2 Loan and the South Shore Hybrid Loan, which further supports such inference. The South Shore Borrower and BDMC, as borrower and administrator, respectively, under both loans may have agreed that such loans should rank *pari passu*, and that no further consent of the South Shore 2 Investors was necessary given the South Shore 2 Loan Agreement already allowed for the postponement to a replacement lender funding any shortfall. Although this may have been the South Shore Borrower's and/or BDMC's intention, the Trustee is of the view that the *pari passu* ranking should not be binding given the lack of written documentation evidencing same. Further, as no evidence of a *pari passu* agreement was registered on title, the South Shore 2 Mortgage, which was registered first-in-time, continued to rank ahead of the South Shore Hybrid Mortgage on title at the time of the South Shore Sale Transaction.
59. The Trustee notes that BDMC sent a notice to the South Shore 2 Investors in 2017 indicating that the South Shore 2 Loan was a "Pari Passu 2nd Mortgage" and indicating that the South Shore Borrower had decided to "close funds via a separate charge", which would result in the South Shore 2 Mortgage being closed at \$10.7 million. This notice ("**March 2017 South Shore 2 Notice**") is attached as **Appendix "15"**. Based on the March 2017 South Shore 2 Notice, it appears that South Shore 2 Investors were given

some limited disclosure of the creation of a new charge that would rank *pari passu* with their charge.

60. According to BDMC's records, the total amount owing to the 95 South Shore 2 Investors as of May 13, 2021, the closing date of the South Shore Sale Transaction, was approximately \$14 million, comprised of a principal balance of approximately \$10.1 million and unpaid interest of approximately \$3.9 million.

South Shore Hybrid Loan

61. On April 21, 2016, the South Shore Borrower entered into a loan agreement ("**South Shore Hybrid Loan Agreement**") with BDMC, in trust for certain individual lenders ("**South Shore Hybrid Investors**") that provided for an aggregate loan of up to \$10.5 million, of which \$5 million was a buffer, and which, collectively with the South Shore 2 Loan, would not exceed \$20 million ("**South Shore Hybrid Loan**"). A copy of the South Shore Hybrid Loan Agreement, along with certain other documents provided to and/or executed by the individual South Shore Hybrid Investors at the time of their advances, with private information redacted, is attached as **Appendix "16"**.
62. On July 22, 2016, the South Shore Borrower granted a mortgage of \$5.9 million (which amount was subsequently increased to \$11.175 million) ("**South Shore Hybrid Mortgage**") on the South Shore Property in favour of BDMC (which mortgage was subsequently amended to include Olympia). On the same day: (i) the Crates Landing Mortgage was postponed on title to the South Shore Hybrid Mortgage pursuant to the 2016 Inter-Lender Agreement described above; and (ii) the Snoxons Mortgage was postponed on title to the South Shore Hybrid Mortgage pursuant to an inter-lender agreement dated July 21, 2016 among Snoxons, the South Shore Borrower and Centro, in trust for the South Shore Hybrid Investors ("**Snoxons 2016 Inter-Lender Agreement**"). A copy of the Snoxons 2016 Inter-Lender Agreement is attached as **Appendix "17"**.
63. The South Shore Hybrid Loan Agreement provides that the South Shore Hybrid Mortgage would rank *pari passu* with the South Shore 2 Mortgage in second position on title to the South Shore Property. However, the South Shore 2 Mortgage was registered first-in-time and therefore ranked prior to the South Shore Hybrid Mortgage. As noted above, there are no postponements registered on title whereby the holders of the South Shore 2

Mortgage agreed to amend and subordinate their existing second position on title in order to rank *pari passu* with the South Shore Hybrid Mortgage.

64. Further, as noted above, there does not appear to be any documentation evidencing any written agreement whereby BDMC or the South Shore 2 Investors agreed that the South Shore 2 Mortgage would rank *pari passu* with the South Shore Hybrid Mortgage. Although BDMC may have attempted to rely on the Replacement Lender Provision as described above, the Trustee is of the view that the *pari passu* ranking should not be binding without written documentation or a postponement registered on title.
65. Most of the disclosures and communications provided by BDMC to the South Shore Hybrid Investors indicated to South Shore Hybrid Investors that their loan would share *pari passu* with the South Shore 2 Loan. However, certain communications also suggested that the South Shore Hybrid Mortgage ranked in third position on title. For example, certain investor notices reference a “Pari Passu 2nd mortgage”, while another references a “3rd mortgage” on title. These notices are attached as **Appendix “18”**. In addition, in 2018, BDMC sent a notice to all holders of the “second mortgage” on the South Shore Project and referenced a principal balance of \$19.3 million (which appears to have been the combined principal of the South Shore 2 Loan and the South Shore Hybrid Loan around such time). This notice (“**2018 South Shore Investor Notice**”) is attached as **Appendix “19”**. Although the various disclosures appear to have been limited, unclear and inconsistent, the Trustee is of the view that the South Shore Hybrid Investors reasonably expected that their mortgage would rank *pari passu* with the South Shore 2 Mortgage, even if they had seen certain communications indicating that their mortgage technically ranked in third position on title.
66. The Trustee also reviewed the disclosures made to the South Shore Hybrid Investors with respect to the Crates Landing Mortgage and the Snoxons Mortgage. The “Investment Authority – Form 9D” disclosure form does not list the Crates Landing Mortgage or the Snoxons Mortgage as existing encumbrances on title but does include a repayment waterfall that contemplates that the Crates Landing Mortgage would be repaid after the payment of the South Shore 2 Loan and the South Shore Hybrid Loan (on a *pro rata* basis). The waterfall in the Form 9D does not mention the Snoxons Mortgage. The South Shore Hybrid Loan Agreement includes a representation and warranty from the South Shore Borrower that the South Shore Property was free from all encumbrances except the

Permitted Encumbrances, without any reference to the Crates Landing Mortgage or the Snoxons Mortgage. However, in the priority repayment waterfall attached as a schedule thereto, it also listed both the Crates Landing Mortgage and the Snoxons Mortgage as subsequent, *pari passu* charges ranking below the South Shore 2 Loan and the South Shore Hybrid Loan (which would also rank *pari passu*). Given such conflicting disclosures, it is unclear whether the South Shore Hybrid Investors were properly made aware of the existence of the Crates Landing Mortgage or the Snoxons Mortgage.

67. According to BDMC's records, the total amount owing to the 228 South Shore Hybrid Investors as of May 13, 2021, the closing date of the South Shore Sale Transaction, was approximately \$13.3 million, comprised of a principal balance of approximately \$10.5 million and unpaid interest of approximately \$2.8 million. The Trustee notes that, despite the terms of the South Shore Hybrid Loan Agreement, the combined principal amount of the South Shore 2 Loan and the South Shore Hybrid Loan was approximately \$20.6 million, which slightly exceeded the \$20 million cap contemplated therein.

PRIORITIES AMONG THE SOUTH SHORE LOANS

68. Based only on the mortgage registrations on title at the time the South Shore Sale Transaction was completed, Diversified's mortgage ranked in first priority, the South Shore 2 Mortgage ranked in second priority, the South Shore Hybrid Mortgage ranked in third priority, and the Crates Landing Mortgage and the Snoxons Mortgage ranked *pari passu* in fourth priority.
69. The following paragraphs summarize the Trustee's analysis regarding each group of South Shore Investors, the priorities of their respective mortgages in light of the documentation, disclosures and communications made to such Investors, and the Trustee's view regarding the effects of such documentation.

Crates Landing Investors

70. As described above, the Crates Landing Mortgage was postponed to both the South Shore 2 Mortgage and the South Shore Hybrid Mortgage in accordance with the terms of the Inter-Lender Agreements. In the Trustee's view, for the reasons described above, it would not be fair or equitable in the circumstances to bind the Crates Landing Investors to such Inter-Lender Agreements or related postponements.

South Shore 2 Investors and South Shore Hybrid Investors

71. The South Shore 2 Loan Agreement provides that the South Shore 2 Mortgage would be a second ranking mortgage, subordinate only to certain permitted encumbrances (which did not include any additional mortgages in favour of BDMC). However, as described above, the South Shore Hybrid Mortgage was later registered and purported to share the second ranking priority with the South Shore 2 Mortgage on a *pari passu* basis. There is no documentation evidencing any agreement by the South Shore 2 Investors (or BDMC on their behalf) to rank *pari passu* with the South Shore Hybrid Investors, and there is no postponement on title evidencing same. Accordingly, based only on available executed documentation and the registrations on title, the Trustee is of the view that the *pari passu* ranking should not be binding. It appears to the Trustee that the South Shore 2 Investors understood that their mortgage ranked in second priority on title, but it is not clear if they properly understood that their mortgage would share *pari passu* with the new South Shore Hybrid Mortgage.
72. The Trustee considered the following factors when reviewing the applicable priorities:
- (a) the South Shore 2 Investors did agree to participate in a loan of up to \$20 million principal that would rank in second position on title;
 - (b) the maximum principal amount of the South Shore Hybrid Loan was capped at \$20 million when combined with the outstanding principal of the South Shore 2 Loan, which suggests that the South Shore Hybrid Loan was in fact advanced to fund the shortfall in the South Shore 2 Loan (as contemplated in the Replacement Lender Provision of the South Shore 2 Loan Agreement, pursuant to which such South Shore 2 Investors agreed that their mortgage would be postponed to any charge in favour of a replacement lender);
 - (c) the March 2017 South Shore 2 Notice indicates to the South Shore 2 Investors that a new charge had been created for the remaining unadvanced portion of the South Shore 2 Loan pursuant to which a new charge would be granted, and describes the South Shore 2 Mortgage as a *pari passu* 2nd ranking mortgage to such South Shore 2 Investors; and
 - (d) the 2018 South Shore Investor Notice describes a “second mortgage” on the South Shore Project with a principal balance of \$19.3 million, which appears to have been the combined balance of the South Shore 2 Mortgage and the South Shore Hybrid

Mortgage and may have been delivered to both groups of Investors. If such notice was in fact delivered to South Shore 2 Investors, it provides further evidence to such Investors that the second-ranking mortgage in which they had an interest had continued to increase as originally contemplated in the South Shore 2 Loan Agreement (even if it was not expressly stated that such increase was implemented through two separate mortgages).

73. Further, the Trustee is of the view that the South Shore Hybrid Investors reasonably believed that their mortgage would rank *pari passu* with the South Shore 2 Mortgage based on the various disclosures made to such Investors, even if such Investors may have seen other communications indicating that their mortgage technically ranked in third priority on title.
74. Based on the above, it appears to the Trustee that the South Shore Hybrid Loan was documented as a separate loan for the remaining unadvanced portion of the South Shore 2 Loan, but appears to be effectively part of a single, \$20 million principal loan. Given that the South Shore 2 Investors had agreed that their second ranking loan could be increased up to \$20 million principal debt and were given some disclosure regarding the proposed *pari passu* arrangement, the Trustee is of the view that it is reasonable and fair to treat the South Shore 2 Loan and the South Shore Hybrid Loan, which collectively total approximately \$20.6 million principal debt, as effectively a single loan.

PROPOSED DISTRIBUTIONS IN RESPECT OF THE SOUTH SHORE PROJECT

75. Given the circumstances regarding the South Shore Loans and the related priority considerations, the Trustee considered the best approach for the distribution of the South Shore Proceeds, and any further proceeds that may be received in respect of the South Shore Project, to the South Shore Investors.
76. The Trustee considered two potential approaches to distribution, as follows:
 - (a) Distributions in accordance with the applicable documentation available to the Trustee and the ranking of the mortgages as they had been registered on title to the South Shore Property prior to the completion of the South Shore Sale Transaction (“**Priorities Approach**”), which approach would result in distributions being made in the following order: (i) the South Shore 2 Mortgage; (ii) the South Shore Hybrid Mortgage; and (iii) the Crates Landing Mortgage, *pari passu* with the Snoxons Mortgage, in that order; or

(b) Distributions on a *pari passu* basis to all the South Shore Investors (“**Pari Passu Approach**”).

77. The following table reflects the recoveries on the South Shore Loans based on the distribution of the South Shore Proceeds using the Priorities Approach:

	Crates Landing	South Shore 2	Hybrid	Total
Principal Outstanding (A)	8,600,000	10,073,068	10,528,957	29,202,025
Allocation of South Shore Proceeds (B)	-	1,760,479	-	1,760,479
Shortfall on Principal (A-B)	8,600,000	8,312,589	10,528,957	27,441,546
Recovery on Principal (B/A)	-	17.48%	-	6.03%

78. As outlined in the table above, the South Shore Proceeds would be insufficient to repay the amounts owing the South Shore 2 Investors in full under the Priorities Approach. Accordingly, under this approach there would be no recoveries available for distribution to the South Shore Hybrid Investors, the Crates Landing Investors or Snoxons.

79. The following table reflects the recoveries on the South Shore Loans based on the distribution of the South Shore Proceeds using the Pari Passu Approach, which calculates the distribution based on the total principal outstanding under each South Shore Loan:

	Crates Landing	South Shore 2	Hybrid	Total
Principal Outstanding (A)	8,600,000	10,073,068	10,528,957	29,202,025
Allocation of South Shore Proceeds (B)	518,461	607,267	634,751	1,760,479
Shortfall on Principal (A-B)	8,081,539	9,465,801	9,894,206	27,441,546
Recovery on Principal (B/A)	6.03%	6.03%	6.03%	6.03%

80. It is the Trustee’s view that the Pari Passu Approach provides the most equitable result for all South Shore Investors given the following considerations:

- (a) the poor state of the BDMC records, which affects the Trustee’s ability to rely on the written documentation;
- (b) the lack of clear, consistent or sufficient information provided to the South Shore Investors at the time of entering into their loan arrangements or during the currency

of their loans, in particular with respect to matters that may have affected or altered the priorities of their mortgages;

- (c) where disclosures were made to the South Shore Investors, such disclosures often contained conflicting information, sometimes even within the same document;
- (d) the Trustee's determination that: (i) it is reasonable for the South Shore 2 Loan and the South Shore Hybrid Loan to be effectively treated as a single loan, and (ii) the South Shore Hybrid Investors reasonably believed their mortgage ranked in second position on title;
- (e) the Trustee's view that: (i) it would be unfair and inequitable to bind the Crates Landing Investors to the terms of the Inter-Lender Agreements given, among other things, the varying levels of authority granted by such Investors to sign documents on their behalf and the likely misleading disclosures contained in such authorizing documents; (ii) there was insufficient disclosure of such postponements having been registered; (iii) the Crates Landing Investors have suffered significant delays in the repayment of the Crates Landing Loan, which originally matured in January 2014; and (iv) there would be significant prejudice resulting in a total loss for the Crates Landing Investors if the Priorities Approach were to be applied; and
- (f) the Trustee's view that:
 - i. the Crates Landing Investors were innocent parties who were harmed by the actions taken by their administrator on their behalf to postpone and subordinate their security to a new mortgage in favour of other Investors;
 - ii. the South Shore Hybrid Investors were innocent parties who were harmed by the failure of BDMC to properly document a pari passu arrangement between the South Shore 2 Loan and the South Shore Hybrid Loan, and there would be significant prejudice resulting in a total loss for the South Shore Hybrid Investors if the Priorities Approach were to be applied; and
 - iii. although the South Shore 2 Investors were innocent parties who were harmed by the insufficient disclosures regarding the existence of both the South Shore Hybrid Loan and the Crates Landing Loan, such South Shore 2 Investors were aware that their investment would be shared among

investments of other individual lenders in an aggregate amount of up to \$20 million in principal.

81. For these reasons, the Trustee is of the view that the Pari Passu Approach for distribution of any proceeds received in respect of the South Shore Project, including the South Shore Proceeds, to all South Shore Investors would be the most fair, equitable and appropriate distribution methodology in the circumstances, despite the fact that such approach would result in a dilution of the recoveries available to the South Shore 2 Investors. The Trustee is of the view that the strict application of the written documentation available to the Trustee and the application of the priorities as registered on title would be inappropriate and unfair to the South Shore Investors in the circumstances. The Trustee has shared its analysis of the South Shore Loans with Representative Counsel who supports the Trustee's position.
82. Accordingly, the Trustee is seeking the South Shore Distribution Order, which would approve a distribution of 85% of the South Shore Proceeds, as well as any further proceeds that may be received in respect of the South Shore Project, in accordance with the Pari Passu Approach.
83. The Trustee notes that this proposed distribution methodology is also consistent with the distribution methodology followed by the Trustee and approved by the Court on the CHAT Project, the OML Project, the Orchard Project and the Peter Richmond Project, each of which had two or more syndicated mortgage loans advanced by Investors, which purported to hold differing security positions on title. In each of those cases, there were also gaps or inconsistencies with the information and/or the dissemination of that information to the respective Investors; accordingly, it was determined in each of those cases that the most equitable and reasonable manner to distribute the funds recovered was on a *pari passu* basis to all the Investors in the respective projects.
84. Finally, the Trustee notes that the Pari Passu Approach does not contemplate any distributions from proceeds of the South Shore Sale Transaction to Snoxons in respect of the Snoxons Mortgage. As noted above, the Snoxons Mortgage ranked *pari passu* with the Crates Landing Mortgage in fourth position on title at the time of the South Shore Sale Transaction pursuant to the Snoxons Pari Passu Agreement. Unlike the Crates Landing Investors, who the Trustee believe should not be bound by the postponements registered on title on their behalf, Snoxons did sign the Snoxons 2014 Inter-Lender Agreement and the Snoxons 2016 Inter-Lender Agreement and registered postponements on title in

respect of its mortgage. Accordingly, such postponements of the Snoxons Mortgage are fairly and properly binding on Snoxons.

85. If the Trustee were to apply the Priorities Approach and rely strictly on title and the terms of the available documentation, the Snoxons Pari Passu Agreement would provide that any proceeds received by the Crates Landing Investors in respect of their mortgage would be shared *pro rata* with Snoxons. However, if this approach were to be applied, the Crates Landing Investors would be ineligible to receive any distributions from the South Shore Sale Transaction given that the funds were insufficient to repay the second-ranking mortgage on title. Accordingly, based on title and the terms of the relevant documentation, Snoxons could not reasonably have expected to receive any distributions in the current circumstances.
86. In addition, the proceeds were received by the Trustee in respect of the second-ranking South Shore 2 Mortgage as a result of the power of sale transaction. No proceeds were available to be distributed to Snoxons or the Crates Landing Investors in respect of their fourth-ranking mortgages in connection with such transaction. However, the Trustee proposes to use an equitable Pari Passu Approach in the context of these proceedings to distribute the proceeds it received on account of the second-ranking BDMC mortgage fairly among the South Shore Investors, regardless of the strict rankings of such BDMC mortgages on title and the documentation evidencing same.
87. The Trustee is of the view that the Crates Landing Investors are not required to share any proceeds received under the Pari Passu Approach with Snoxons in these circumstances because the Pari Passu Approach is an equitable distribution methodology that distributes the proceeds properly received on account of the South Shore 2 Mortgage and not in respect of the security interest held by the Crates Landing Investors at the closing of the South Shore Sale Transaction or the strict terms of any documentation. Further, as noted above, the application of the Priorities Approach would not result in any payment in respect of the Crates Landing Mortgage or the Snoxons Mortgage, and the Trustee understands that any further distributions would be insufficient to ever repay such fourth-priority mortgages. Accordingly, Snoxons would not be eligible for any proceeds under the Priorities Approach, and should not unjustly benefit from the Trustee's proposed equitable Pari Passu Approach among the three BDMC mortgages.
88. The Trustee was also advised by previous BDMC management that Snoxons had agreed to subordinate its charge below all three BDMC mortgages registered on title to the South

Shore Property prior to the closing of the South Shore Sale Transaction. However, the Trustee notes that it has not been able to locate any written documentation evidencing same. The Trustee has not been contacted by Snoxons regarding any potential distribution in respect of its mortgage and is not aware of any efforts made by Snoxons to recover on its mortgage since the issuance of the Notice of Sale.

89. Upon service of this Report, the Trustee intends to send a customized notice to the South Shore Investors advising that the Trustee is seeking approval to distribute the South Shore Proceeds, and any further proceeds received in connection with the South Shore Project, by way of the Pari Passu Approach. A copy of the notice that the Trustee intends to send to the South Shore Investors is attached as **Appendix “20”**.

PROPOSED DISTRIBUTION OF REMAINING REALIZED PROPERTY IN RESPECT OF THE KEMP PROJECT

90. The primary question impacting the distribution of the Kemp Holdback is whether Fortress, the Kemp Borrower (as defined below) or Mr. Fong (as defined below) are entitled to receive any portion of the Kemp Holdback on the basis of the various claims they assert are in priority to the Kemp Investors. Based on the explanation set out below, it is the Trustee’s view that none of Fortress, the Kemp Borrower, or Mr. Fong’s claims are valid and that the full amount of the Kemp Holdback should be distributed to the Kemp Investors in accordance with the Realized Property Order, as amended.

Background

91. The Kemp Project is a real estate development project in Barrie, Ontario (“**Kemp Project**”, and the related properties, “**Kemp Properties**”) that had over \$17.2 million of fourth ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors (“**Kemp Investors**”) (“**Kemp Loan**”) and approximately \$784,000 of accrued interest for which the Kemp Investors had been given a separate fifth ranking mortgage administered by BDMC (together, the fourth and fifth ranking mortgages are referred to as the “**Kemp BDMC Mortgages**”). There are 360 Kemp Investors.
92. As was advised in previous Reports, the Kemp Project was the subject of a Notice of Sale issued by Romspen Investment Corporation (“**Romspen**”) in respect of its first priority mortgage, which had matured. As part of the statutory power of sale process, the Kemp Properties were actively marketed for sale by a real estate broker.

93. Prior to the offer deadline, Fortress Kempenfelt Bay Developments (“**Kemp Borrower**”)⁷ (a Fortress-related entity) advised the Trustee that it was attempting to negotiate a sale of the Kemp Properties to Greenwin Barrie Inc. and 2714708 Ontario Inc. (jointly, “**Greenwin**”)⁸. During the power of sale process, Fortress, acting on behalf of the Kemp Borrower, initially advised that Greenwin would not be willing to submit an offer through a power of sale process. Subsequently, Fortress advised that even if Greenwin did submit an offer in the power of sale process, the consideration offered would be lower than if the offer was submitted directly to the Kemp Borrower. At that time Fortress was seeking a transaction fee of approximately 5% of the purchase price to continue to facilitate a transaction with Greenwin, which, if paid, would have further diluted the recovery to the Kemp Investors. At no time did the Trustee agree to any transaction fee.
94. Faced with these circumstances, the Trustee engaged directly with Romspen, Magnetic Capital Group Inc. (“**Magnetic**”), the second and third mortgagee, and the listing agent to determine: (i) if Greenwin would be willing to submit an offer in the power of sale process; and (ii) if yes, whether the consideration offered would be at least the same amount as had previously been contemplated.
95. Greenwin ultimately submitted an offer for \$14.9 million, which was accepted by Romspen and which the Trustee understands was the highest and best offer received by Romspen and an amount not lower than the amount that was proposed to be offered directly to the Kemp Borrower outside of the power of sale process.
96. The net remaining proceeds potentially available to the Kemp Investors from the sale of the Kemp Properties (“**Kemp Sale Transaction**”), after the repayment of: (i) the Romspen debt of approximately \$7 million; (ii) the amounts owing to Magnetic of approximately \$5.2 million; and (iii) certain other costs, including commissions and property taxes, was approximately \$2.2 million (“**Kemp Residual Proceeds**”).
97. Shortly before the anticipated distribution of the Kemp Residual Proceeds by Romspen, Fortress, on behalf of itself and the Kemp Borrower, submitted a claim to the Trustee to be paid approximately \$572,000 from the Kemp Residual Proceeds in priority to the Kemp Investors (as detailed further herein the “**Fortress Claim**”). The Trustee reviewed the

⁷ Fortress Kempenfelt Bay Developments Inc. acquired the Kemp Properties in November 2016 from Harmony Village-Lake Simcoe Inc. (“**Original Kemp Borrower**”) following a Notice of Sale proceeding that was commenced by the then first ranking mortgagee on the Kemp Properties.

⁸ Greenwin was a party that the Kemp Borrower was attempting to negotiate a transaction with prior to the commencement of the power of sale proceedings.

Fortress Claim and disagreed with the analysis provided by Fortress (as further described below). As noted below, Fortress later advised the Trustee that the Kemp Borrower was the proper claimant of the Fortress Claim.

98. To prevent a delay in the closing of the Kemp Sale Transaction and the incurrence of additional interest and costs from the priority mortgagees, it was agreed that the Kemp Residual Proceeds would be distributed to the Trustee, and held in trust, until either: (i) a consensual agreement was reached with the Kemp Borrower regarding the Fortress Claim; or (ii) a Court order was made with respect to the distribution of the Kemp Residual Proceeds.
99. After completion of the Kemp Sale Transaction, the Trustee wrote to the Kemp Investors to advise of the Kemp Residual Proceeds and the Fortress Claim. A copy of the Kemp Investor notice dated October 30, 2019 is attached as **Appendix "21"**.
100. The Kemp Borrower subsequently agreed that the Kemp Holdback (\$700,000) was sufficient to satisfy the Fortress Claim and accordingly, the remaining balance of the Kemp Residual Proceeds was distributed to the Kemp Investors. In December 2019, the Trustee distributed 85% of the \$1.5 million to the Kemp Investors, in accordance with paragraph 3(b) of the Realized Property Order, as amended, resulting in a 9% return of principal. The total return of principal to the Kemp Investors will increase to 13% should the Kemp Holdback be distributed to them in full.
101. As further described herein, the Trustee has engaged in extensive discussions and correspondence with Fortress and the Kemp Borrower, as well as with Mr. Russell John Fong ("**Mr. Fong**"), a third party in respect of whom a portion of the Fortress Claim relates, including certain correspondence and discussions on a without prejudice basis in order to determine if an agreement could be reached with respect to the distribution of the Kemp Holdback. However, the parties have not been able to reach an agreement and there have been no material communications between the parties since January 2021. Accordingly, the Trustee is seeking the approval of the Court to distribute the Kemp Holdback to the Kemp Investors notwithstanding the Fortress Claim and the Fong Claim (as defined below). The Trustee intends to serve the Kemp Borrower and Mr. Fong with its materials in support of this motion.

The Fortress Claim

102. On September 4, 2019 (approximately one week prior to the closing of the Kemp Sale Transaction), the Trustee's counsel received an email from Robins Appleby LLP ("**Robins Appleby**"), in its capacity as legal counsel to Fortress, which stated that Fortress had a claim for: (i) \$200,000 plus interest; and (ii) 2.5% of the sale price for the Kemp Properties (which amounts to approximately \$372,000, plus HST) ("**Transaction Fee**"), that ranks in priority to the entitlement of the Kemp Investors. The email further stated that the \$200,000 claim was being made in reliance upon the agency agreement, which was entered into by the Kemp Borrower, Olympia, BDMC and the individual Kemp Investors ("**Agency Agreement**"), and that the Transaction Fee was to compensate Fortress for bringing Greenwin forward and assisting it with its due diligence. Pursuant to the Agency Agreement, BDMC was appointed as agent on behalf of the Kemp Investors to facilitate the management of their interest as lenders in the Kemp Project. A copy of the Agency Agreement dated as of November 7, 2016 is attached as **Appendix "22"**.
103. On September 12, 2019, the Trustee's counsel advised Robins Appleby that insufficient information and documentation had been provided for the Trustee to properly consider the Fortress Claim. Copies of the September 4th and September 12th email exchanges are attached as **Appendix "23"**.
104. On September 24, 2019, Robins Appleby sent a further email to the Trustee's counsel, advising that it was now representing the Kemp Borrower and that the proper claimant in respect of the claim advanced in the September 4th email was the Kemp Borrower and not Fortress. The September 24th email provided the following:
- (a) the basis pursuant to which the Kemp Borrower believed its claim was valid, being its reliance on the terms of the Agency Agreement and in particular section 1.4 thereof which describes the amounts that can be distributed in priority to BDMC from "Net Cash Flow" (as defined in the Agency Agreement)⁹;
 - (b) details regarding the \$200,000 portion of the claim which relates to Mr. Fong, including a copy of a promissory note between Mr. Fong and the Kemp Borrower

⁹ Additional detail regarding the provisions of the Agency Agreement upon which the Kemp Borrower relies are provided later in this Twenty-Seventh Report.

(“**Fong Claim**”), as well as certain details regarding how the proceeds advanced by Mr. Fong were used by the Kemp Borrower, which included payments of approximately \$116,000 for “hard costs” related to the Kemp Project and a payment of \$84,000 (before HST) to Fortress for consulting fees. The promissory note was dated June 21, 2018, had a one-year term and accrued interest at 12% per annum; and

- (c) justification for the Transaction Fee, advising that Greenwin was introduced to the Kemp Project by Fortress and the Kemp Borrower (which two entities are owned and operated by Mr. Rathore and Mr. Petrozza, the principals of Fortress), and that advice and assistance was given by Fortress to the Kemp Borrower regarding negotiation of the terms of the sale transaction with Greenwin and that the Kemp Borrower also assisted with Greenwin’s due diligence over an eight-month period. Therefore, Fortress was claiming payment of the Transaction Fee, which amount was invoiced by Fortress to the Kemp Borrower.

A copy of the September 24th email and the corresponding attachments, including the promissory note between Mr. Fong and the Kemp Borrower, is attached as **Appendix “24”**.

- 105. In the hopes of resolving the Fortress Claim to the satisfaction of the parties, the Trustee, Fortress and the Kemp Borrower exchanged correspondence outlining their respective legal positions (on a with and without prejudice basis) and engaged in various discussions through to January 2021. However, as noted above, no agreement was reached, and the Kemp Borrower has not rescinded its assertion of the Fortress Claim. The Trustee has previously advised Fortress and the Kemp Borrower that if no such agreement could be reached, it would seek an award of costs against Fortress and the Kemp Borrower in connection with any Order authorizing the distribution of the full Kemp Holdback to the Kemp Investors. Copies of the letters sent by the Trustee to counsel to Fortress and the Kemp Borrower outlining its legal position, which are summarized below, are attached as **Appendix “25”**.

The Fong Claim

106. On October 14, 2020, Mr. Fong emailed the Trustee directly stating that he had advanced \$200,000 to the Kemp Borrower on June 22, 2018, and that the full amount of his loan plus accrued interest¹⁰ remained outstanding. He advised that until then, he had been dealing directly with Mr. Rathore and that it was his understanding that the Trustee was holding the funds required to repay the amounts he had advanced to the Kemp Project. He was therefore reaching out directly to the Trustee for additional details and to attempt to settle his claim with the Trustee.
107. The email from Mr. Fong further went on to claim entitlement based on the “Net Cash Flow” argument previously asserted by the Kemp Borrower. A copy of the October 14, 2020 email is attached as **Appendix “26”**. For reasons described below, the Trustee disagrees with the “Net Cash Flow” argument.
108. On November 25, 2020, the Trustee had a call with Mr. Fong during which Mr. Fong described how he became involved in the Kemp Project.¹¹ He advised that prior to advancing the funds in respect of the Kemp Project, he had once before advanced funds to Fortress through Mr. Rathore. He advised that at the time of his first investment with Fortress he was not advised of or provided with any information regarding which project his funds were going to be used for; however, the first investment paid interest monthly and was ultimately returned to him approximately two years after the investment was made¹². It was based on this first experience that he then had the confidence to advance \$200,000 to the Kemp Borrower through Mr. Rathore. He advised that as with the first advance, at the time he advanced the \$200,000 he had little information regarding how the funds were going to be used, other than being advised that they were being used for a project located in Barrie, Ontario. He advised that he had so little information that upon hearing in the news about the failure of the Colliers Project (another Fortress project that failed and resulted in a total loss for all Investors in that project), he contacted Mr. Rathore concerned that he too had lost his funds. He also advised that he had no knowledge of

¹⁰ Should it be determined that it is appropriate to pay the Fong Claim, including the related accrued interest, along with the Transaction fee, the total Fortress Claim would increase to an amount in excess of \$572,000. In the Trustee's view, the Fortress Claim otherwise includes the Fong Claim.

¹¹ Prior to ending the call, the Trustee suggested that Mr. Fong consider obtaining independent legal advice regarding his claim and any possible remedies he may have.

¹² Mr. Fong advised that the terms of the initial investment was originally supposed to be one year.

the Trustee's involvement with BDMC and/or the Kemp Project, nor of the challenges that the Kemp Project was facing at the time of his \$200,000 advance (which was approximately two months after the appointment of the Trustee).

109. In the hopes of resolving the Fong Claim to the satisfaction of the parties, the Trustee and Mr. Fong exchanged correspondence outlining their respective legal positions and engaged in various discussions until January 2021. However, as noted above, no agreement was reached, and, to the best of the Trustee's knowledge, Mr. Fong continues to assert the Fong Claim. The Trustee has advised Mr. Fong that if no such agreement could be reached, it would seek an award of costs against Mr. Fong in connection with any Order authorizing the distribution of the full Kemp Holdback to the Kemp Investors.

Analysis of the Fortress Claim and the Fong Claim

Net Cash Flow Argument

110. The Trustee disagrees with the Kemp Borrower and Mr. Fong that the provisions of the Agency Agreement relating to "Net Cash Flow" require the Trustee to distribute the Kemp Holdback on account of the Fortress Claim (and in turn, the Fong Claim) in priority to the Kemp Investors. The relevant provisions are set out below:

1.3 Repayment Obligations

FHVI [being the former name for the Kemp Borrower] covenants to pay to the Trustees, on behalf of the Lenders, all Net Cash Flow as defined below [...]

1.4 Net Cash Flow

"Net Cash Flow" means all cash revenues received by FHVI with respect to the sale/leasing of the Project after payment of the following [...]

(a) all debts secured by the first mortgage [...] or any replacement of such mortgage [...]

(d) any other loans arranged by FHVI to fund the cost of constructing, operating or carrying the Project and secured by a charge on the Project which charge shall rank in priority to the Collateral Mortgage; [...]

(f) carrying costs, development, marketing, sales, leasing and other related expenses for constructing, leasing, selling or operating the Project and not otherwise financed by the [mortgages] [...]

111. The Trustee's position is that the Kemp Residual Proceeds were received by the Trustee pursuant to a statutory power of sale process and are not captured by the definition of New Cash Flow or the scope of the Agency Agreement. As described above, Romspen, as the former holder of the first mortgage on the Kemp Properties, was able to initiate such power of sale process due to the Kemp Borrower's default under its mortgage with Romspen and the Kemp Borrower's failure to bring such mortgage into good standing by the end of the prescribed notice period. Romspen was therefore entitled to sell the Kemp Properties and distribute the proceeds thereof in the prescribed manner to the former holders of encumbrances on the Kemp Properties in their order of priority in accordance with applicable law. The Trustee received the Kemp Residual Proceeds in priority to the Kemp Borrower, the equity owner of the Kemp Properties, because it held the Kemp BDMC Mortgages. Accordingly, the Kemp Residual Proceeds were not received by the Trustee from the Kemp Borrower and therefore do not constitute "cash revenues received by [the Kemp Borrower]" on account of the Kemp Borrower's sale or leasing of the Kemp Properties, as set forth in the Agency Agreement.
112. In addition, the Kemp BDMC Mortgages secure the Kemp Loan and the associated Standard Charge Terms No. 200033 ("**Standard Charge Terms**") accompanying the registered charges provide, among other things, that if the Kemp Borrower (as chargor) sells, disposes of or otherwise deals with the Kemp Properties, the full principal amount secured shall, at the option of the Trustee on behalf of BDMC (as chargee), immediately become due. The effect of the statutory power of sale process was to dispose of the Kemp Properties and to delete the Kemp BDMC Mortgages (including the Standard Charge Terms) from title to the Kemp Properties. Therefore, the Trustee has a secured interest in the proceeds from the Kemp Sale Transaction (including in the Kemp Residual Proceeds) for at least the full principal amount secured by the Kemp BDMC Mortgages (being an amount significantly greater than the Kemp Residual Proceeds) in priority to all unsecured claims, including the Fortress Claim (and the Fong Claim). A copy of the Standard Charge Terms is attached as **Appendix "27"**.

113. Lastly, with respect to the specific subparagraphs in the definition of Net Cash Flow, if the concept of “Net Cash Flow” applied to the current situation, which the Trustee disagrees with, the Trustee notes that:

- (a) the loan advanced by Mr. Fong to the Kemp Borrower was not secured by a charge that ranks in priority to the Kemp BDMC Mortgages and therefore, such loan advance is not captured by subparagraph 1.4(d) of the definition of Net Cash Flow;
- (b) approximately \$111,000 of the “hard costs” claimed by the Kemp Borrower appear to relate to service of the interest on the Romspen priority mortgage and would have already been accounted for in the calculation of Net Cash Flow if it applies to the situation, given that the payment of such amount reduces the cash revenues available to be received by the Kemp Borrower. In the Trustee’s view, it would be an incorrect reading of subparagraphs 1.4(a) or (d) to double-count these amounts; and
- (c) no specific evidence has been provided to the Trustee that amounts claimed by the Kemp Borrower were on account of costs, development, marketing, sales, leasing and other related expenses for constructing, leasing, selling or operating the Kemp Project as contemplated by subparagraph 1.4(f) of the definition of Net Cash Flow, other than skeletal invoices for \$84,000 (before HST) relating to the disputed consulting fees payable to Fortress (discussed in greater detail below).

Equitable Considerations

- 114. In addition to the analysis above, the Trustee is of the view that a distribution to the Kemp Investors in the full amount of the Kemp Holdback would be the most equitable and only fair outcome in the circumstances.
- 115. First, the Kemp Project, owned by a borrower related to Fortress, failed and as a result of such failure, the Kemp Investors will receive only a nominal recovery on the principal balance of their loans, being approximately 13% (prior to deducting the Administrative Holdback) if the Court approves the Trustee’s proposed distribution, and approximately a

10%¹³ return of principal (prior to deducting the Administrative Holdback) should the Fortress Claim of \$572,000 be paid in full, from the Kemp Holdback.

116. Second, and as detailed in previous Reports, significant portions of the sums advanced by Investors on BDMC real estate development projects associated with Fortress were used to pay various fees and charges in connection with the loans. The fees and charges that were paid in most cases represented an aggregate amount of approximately 35% of the principal advanced by Investors under the applicable syndicated mortgage loan. Typically, 50% of those fees were paid to Fortress or to a Fortress related entity. The remaining fees would usually be paid to Fortress related brokers and to BDMC (or its predecessors) in its capacity as broker and/or administrator.
117. Based on BDMC's records, approximately 25% (approximately \$4.2 million) of the Kemp Loan was used for the payment of fees and was distributed as follows:
 - (a) Approximately \$2.2 million to Fortress, as consultant fees;
 - (b) Approximately \$1.4 million as referral fees to the Fortress related brokers;
 - (c) Approximately \$500,000 as a broker fee to Centro in its capacity as mortgage broker (i.e., not as mortgage administrator), 90% of which was then paid to Paza Service Corp., an entity owned by one of the principals of Fortress, Vince Petrozza; and
 - (d) Approximately \$146,000 to Sorrenti in respect of administration fees.
118. Based on BDMC's records, the remaining 75% (being approximately \$12.9 million) was paid to the Original Kemp Borrower.
119. The Trustee understands that the 10% difference between the fees of 25% paid directly from the Kemp Investor advances in this circumstance and the fees of 35% typically paid from Investor advances, being approximately \$1.7 million of the Kemp Loan, was likely paid by the Original Kemp Borrower directly to Fortress after the funds were transferred to it from Centro, although this has not been independently confirmed by the Trustee.

¹³ To date the return of principal to BDMC is 9%. Should the Fortress Claim be paid inclusive of accrued interest on the Fong Claim the BDMC return will remain at 9%; however, should the Fong Claim be paid, excluding accrued interest, the return of principal to BDMC will increase to 10%.

120. Accordingly, based on the BDMC records, at least approximately \$2.2 million, and possibly as much as \$3.9 million, from the principal amount of the Kemp Loan, has already been paid to Fortress directly or to an agent of Fortress.
121. Therefore, given: (i) the significant amounts already paid to Fortress, and entities related to Fortress, including those owned and operated by the same principals as the Kemp Borrower; (ii) the significant loss experienced by the Kemp Investors (resulting in a maximum possible return of principal of 13% before deducting the Administrative Holdback); and (iii) the legal arguments set out above, the Trustee does not agree that a further payment to the Kemp Borrower is justifiable in the circumstances. In the Trustee's view, any such payment would, directly or indirectly, provide Fortress with a further windfall to the direct detriment of the Kemp Investors in a circumstance where the Kemp Investors are suffering a catastrophic loss and the Kemp Borrower, an entity related to Fortress, defaulted under its mortgage with Romspen and failed to bring such mortgage into good standing.
122. Third, with respect to the Transaction Fee, no basis has been provided to the Trustee to support the payment of the Transaction Fee and at no point did the Trustee agree that any such fee would be paid. The Trustee's position is that the Transaction Fee is not warranted in the circumstances given that the Kemp Sale Transaction occurred through a secured creditor enforcement process which was a result of the Kemp Borrower, an entity related to Fortress, defaulting on its first priority loan obligations. The fact that Greenwin may have been initially introduced to the Kemp Properties by the Kemp Borrower is irrelevant to this analysis given the public nature of the statutory power of sale process.
123. Lastly, with respect to the Fong Claim component of the Fortress Claim, those funds were advanced directly to the Kemp Borrower on an unsecured basis and without providing any notice to the Trustee at the time it took place. As the Trustee advised Mr. Fong during the November 25th call described above, based on the Trustee's review of the promissory note between Mr. Fong and the Kemp Borrower, there is not any privity of contract between the Trustee and/or BDMC and Mr. Fong.
124. Further, the Trustee notes that the promissory note does not contain any security (i.e., it is an unsecured loan). As the Trustee explained to Mr. Fong, the Kemp Residual Proceeds were paid to the Trustee from a power of sale process on account of the Kemp BDMC

Mortgages, which were registered on title to the Kemp Properties and, as secured claims, rank in priority to any unsecured claims to the proceeds.

125. Therefore, while the Trustee appreciates that absent any payment from the Kemp Holdback, Mr. Fong may experience a significant financial loss, the Trustee does not agree that the Fong Claim should be paid from the Kemp Holdback. The Trustee is of the view that any claim that Mr. Fong may have should be asserted against the Kemp Borrower directly, as the contracting party.

Conclusion

126. Accordingly, the Trustee is seeking an order authorizing it to distribute the full amount of the Kemp Holdback to the Kemp Investors (net of the 15% Administrative Holdback required in accordance with paragraph 3(b) of the Realized Property Order as amended). Should any party oppose the Kemp Distribution Order, the Trustee will be seeking an award of costs against such party. Further Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Kemp Distribution Order.

OTHER PROJECTS WITH MATERIAL DEVELOPMENTS

Charlotte Adelaide Project

127. The Charlotte Adelaide Project is a real estate development project in downtown Toronto, Ontario ("**CHAT Project**") that involved two different syndicated mortgage loans administered by BDMC, as follows: (i) \$12.3 million of principal owed to the SML Investors, and (ii) approximately \$3.91 million of principal owed to the LH1 Investors (each as defined in the Trustee's ninth report to this Court dated July 12, 2019). As described in previous Reports, the CHAT Project borrower presented an executed agreement of purchase and sale to the Trustee in March 2019 in respect of the sale of the CHAT Project ("**CHAT Transaction**") to Adelaide Square Developments Inc. ("**CHAT Purchaser**"). Despite being presented with an executed agreement, the Trustee negotiated an amended agreement of purchase and sale with the CHAT borrower and the CHAT Purchaser for a higher sale price of \$16.5 million of which approximately \$3.6 million was payable to BDMC.
128. In addition, the Trustee, the CHAT Purchaser, Go-To Stoney Creek Elfrida LP, Go-To Stoney Creek Elfrida Inc. (collectively, "**Go-To Stoney Creek**"), and its principals,

including Mr. Oscar Furtado, among others, also entered into a memorandum of understanding (as amended, "**CHAT MOU**") in respect of the CHAT Transaction. Pursuant to the CHAT MOU, BDMC received a payment of \$2.095 million (in addition to the approximately \$3.6 million already received), inclusive of applicable penalties, and was given the opportunity to receive a further payment from the CHAT Transaction of up to \$5.2 million based on the achievement by the CHAT Purchaser of certain development milestones ("**Density Bonus**"). As part of the transaction, Go-To Stoney Creek provided the Trustee with security on a property located in Hamilton, Ontario ("**Alternate Property**"), in respect of the Density Bonus and certain other guarantees that were provided to the Trustee pursuant to the CHAT MOU.

129. In April 2021, despite the development approvals that may have given rise to the payment of the Density Bonus not having been obtained, Mr. Furtado, the principal of Go-To Stoney Creek, contacted the Trustee to request that it discharge its mortgage on the Alternate Property. Go-To Stoney Creek was of the view that given the recent input it received from the City of Toronto regarding development approvals, the Density Bonus would likely not become payable and, accordingly, Go-To Stoney Creek asked the Trustee to discharge its mortgage in order to advance the development of the Alternate Property.
130. Given the potential unrecoverable cost to the BDMC estate of litigating the matter, the Trustee determined that it would be best to engage in discussions with Go-To Stoney Creek regarding its request and whether any substitute security in respect of the payment of the Density Bonus could be provided. Ultimately, the Trustee agreed to discharge its security on the Alternate Property in exchange for an equitable mortgage ("**Equitable Mortgage**") on 355 Adelaide St. W and 46 Charlotte St. ("**Combined Properties**"), being the properties pursuant to which the possible Density Bonus relates. On that basis, on November 8, 2021, the Trustee, Go-To Stoney Creek and Go-To Spadina Adelaide Square Inc. and Go-to Spadina Adelaide Square LP (collectively, "**Go-To Spadina**"), entered into a Security Substitution Agreement and Release ("**CHAT Security Agreement**") to, among other things, document the release of the mortgage on the Alternate Property, and the terms of the Equitable Mortgage and conditions upon which the Equitable Mortgage could be registered by the Trustee on title of the Combined Properties. At that time, the Trustee was advised by Mr. Furtado that the prior ranking lenders on the Go-To Spadina project would not permit the registration of a junior ranking on title to the Combined Properties. A copy of the CHAT Security Agreement is attached as **Appendix "28"**.

131. On December 10, 2021, pursuant to an application filed by the Ontario Securities Commission (“**OSC**”) under sections 126 and 129 of the *Securities Act* (Ontario), the Court granted an Order appointing KSV Restructuring Inc. as receiver and manager (in such capacity, “**Go-To Receiver**”) of the real property and other assets, undertakings and properties of Go-To Developments Holdings Inc., Go-To Spadina and Go-To Stoney Creek, among other respondents (collectively, “**Go-To Respondents**”) (“**Go-To Receivership Order**”), including the Combined Properties and the Alternate Property. The principal of the Go-To Respondents, Mr. Furtado, is also a named respondent in the receivership proceedings. In the materials filed in support of the application, the OSC submitted, among other things, evidence alleging that Mr. Furtado misappropriated and improperly misused funds in connection with the Go-To Spadina projects. Ultimately, the Court determined that it was in the best interest of the investors in the Go-To Respondents’ projects that a receiver be appointed to ensure that the projects are managed in a proper fashion to protect the interests of their investments. On December 15, 2021, certain of the Go-To Respondents brought a motion before the Court of Appeal for Ontario appealing the Go-To Receivership Order and on December 24, 2021, the appeal was dismissed by Justice Sossin. Accordingly, the receivership is proceeding.
132. As a result of the receivership proceedings in respect of Go-To Spadina, certain events of default have occurred and are continuing under the CHAT MOU and Equitable Mortgage. Pursuant to the terms of the CHAT Security Agreement, upon such events of default, the Trustee shall be permitted to register the Equitable Mortgage on title to the Combined Properties without any further authorization required.
133. The Trustee immediately engaged with the Go-To Receiver and its counsel upon learning of the receivership proceedings involving the Go-To Respondents to determine its next steps with respect to the Equitable Mortgage given the terms of the Go-To Receiver’s appointment order. On December 17, 2021, the Trustee registered the Equitable Mortgage on title to the Combined Properties.
134. On January 18, 2022, the Trustee sent a notice to the CHAT Investors advising of the CHAT Security Agreement and the receivership proceedings. A copy of the notice is attached as **Appendix “29”**.

Brookdale Project

135. The Brookdale Project is a real estate development project in midtown Toronto, Ontario ("**Brookdale Project**") that had approximately \$4.6 million in principal amount of mezzanine syndicated mortgage loan debt and over \$20 million in principal amount of subordinated syndicated mortgage loan debt administered by BDMC and owed by Fortress Brookdale Inc. ("**Brookdale Borrower**"). These loans had fourth and fifth ranking mortgages, respectively, registered on title to the Brookdale Project.
136. The Brookdale Project was subject to a Notice of Sale proceeding brought by Firm Capital Mortgage Fund Inc. ("**Firm Capital**") in respect of first priority construction financing that had matured. Firm Capital appointed RSM Canada Limited ("**RSM**") as its private receiver over the assets comprising the Brookdale Project. RSM ran a sales process for the Brookdale Project, and, on October 18, 2018, the Court approved the sale of the property. The transaction closed on October 24, 2018. Based on RSM's Court materials, the selling price for the property was approximately \$50 million and the net proceeds, after costs and repayment of the Firm Capital mortgage, were \$26,945,205, which amount was paid into Court pending resolution of various competing claims regarding the priority of distribution of the proceeds.
137. The Trustee has played an active role in contested litigation dealing with entitlement to the net proceeds in order to protect the interests of the Investors in the Brookdale Project. The Trustee has participated in contested Court proceedings, numerous case conferences and a Court-ordered mediation and has provided hundreds of thousands of documents and other information in the context of this litigation. These proceedings have been complex and time-consuming.
138. As part of this litigation, an order was granted by the Court on March 21, 2019 approving the payment of \$5,872,436 to the second ranking mortgagee and \$580,062 to the third ranking mortgagee from the net proceeds, which prevented further interest from accruing on these loans, to the benefit of the Investors. After the repayment of these amounts, approximately \$20.4 million remained with the Court.
139. The Trustee then reached a settlement of 14 construction liens with claims totaling approximately \$8.7 million. The lien claim settlement was approved by the Honourable Mr. Justice McEwen pursuant to a consent Order dated August 28, 2020, which provided for,

among other things, the payment to the construction lien claimants of \$4,551,903 from the net proceeds held by the Court in full and final satisfaction of all lien claims and costs. Following this payment, the remaining monies were transferred to an account with the Court's accountant to the credit of these BDMC proceedings and there remains approximately \$17.5 million of proceeds held by the Court.

140. The Trustee is now continuing to address the remaining claims to the net proceeds that are seeking priority to or otherwise affecting the priority of the BDMC mortgages, being the following:
 - (a) a claim by Computershare Trust Company of Canada ("**Computershare**"), in its capacity as the trustee pursuant to a Bond Trust Indenture dated November 26, 2013, under which the Trustee understands approximately \$9 million plus interest and costs is being claimed;
 - (b) a claim by the Brookdale Borrower, an entity related to Fortress, for funds which it claims it had injected to support the carrying costs of the Brookdale Project in the amount of approximately \$1.5 million; and
 - (c) a claim by Fernbrook Homes (Brookdale) Limited, who has informed the Trustee that it is currently preserving certain rights with respect to the net proceeds.
141. In order to advance the remaining priority claims in an efficient manner, the Trustee first requested that Computershare deliver an Amended Statement of Claim in light of the many developments that have occurred with respect to the Brookdale Project. On January 14, 2022, the Court granted an Order authorizing the issuance of Computershare's amended claim. The Trustee understands that this motion was necessary as Fortress did not consent to the amendment. The Trustee will be responding in due course.
142. The Trustee is continuing its efforts to maximize Investor recoveries under both the mezzanine and subordinated syndicated BDMC mortgages and to resolve all remaining matters concerning entitlement to the remaining net proceeds from the Brookdale Project. While the Trustee is hopeful that at least some of the remaining claims can be resolved without further litigation, the Trustee is prepared to take additional steps, as necessary, to dispute all remaining competing claims to the net proceeds of sale. As such, the quantum

and timing of any distribution in respect of these loans remains unknown given the outstanding unresolved priority issues.

Eden Project

143. The Eden Project is a real estate development project in King City, Ontario consisting of 28 residential homes ("**Eden Project**"). The Trustee provided updates in previous Reports regarding the syndicated mortgage loan in the principal amount of \$5,937,000 made to 2309918 Ontario Inc. ("**Eden Borrower**") in connection with the Eden Project. In particular, the Thirteenth Report discussed the following: (i) a third party claim issued by David Chong ("**Chong**"), the Eden Borrower's counsel, naming, among others, the Trustee as a third party in a lawsuit commenced by certain purchasers of houses in the Eden Project against Chong, the Eden Borrower, and certain related individuals (collectively, the "**Eden Project Litigation**"); and (ii) a bankruptcy Order obtained by the Trustee against the Eden Borrower pursuant to section 43(2) of the BIA ("**BIA Proceedings**").
144. As previously reported, the Court directed the Trustee, its counsel and counsel to the parties to the Eden Project Litigation to meet on a without prejudice basis to discuss the Eden Project Litigation and a possible global resolution thereof. Representatives of the parties have met on multiple occasions and negotiations on a consensual settlement to resolve matters related to the Eden Project Litigation and the BIA Proceedings remain ongoing. The Trustee is optimistic that a consensual resolution to the Eden Project Litigation is achievable. Should the final terms of a settlement be achieved, the Trustee will return to Court to seek approval of same.
145. Also as previously reported, in June 2019 a bankruptcy Order was granted against the Eden Borrower and Grant Thornton Limited was appointed as bankruptcy trustee ("**GT**") to, among other things, review the affairs of the Eden Borrower and determine the nature and scope of any potential recovery efforts. GT completed the initial phase of the investigation into the affairs of the bankrupt, including through a review of certain financial and other information obtained from the Eden Borrower. GT's investigation was temporarily put on hold while the Trustee continued to explore a possible consensual settlement in respect of the Eden Project Litigation.

Sky City Project

146. The Sky City Project is a real estate development project in Winnipeg, Manitoba (“**Sky City Property**”) involving five syndicated mortgage loans administered by BDMC that were registered on title in fourth through eighth position whose principal balances in aggregate totaled approximately \$32 million (collectively, the “**BDMC Sky City Debt**”, and such Investors therein, collectively, the “**Sky City Investors**”). There were three mortgages registered on title to the Sky City Property in priority to the BDMC Sky City Debt that were either originally registered in the name of 11615467 Canada Ltd. (“**1161 Canada**”) or subsequently transferred to 1161 Canada.
147. The Sky City borrower listed the Sky City Property for sale in September 2020, but the sale process did not result in a sale transaction.
148. On October 13, 2020, while the Sky City Property was listed for sale, 1161 Canada issued a Notice of Sale requiring the full payment of its outstanding debt then owing. Since the Sky City borrower continued to be in default and did not repay its outstanding debt, on January 25, 2021, the Manitoba district registrar granted an order authorizing and empowering 1161 Canada to sell the Sky City Property by public auction (“**Auction**”), private contract or both. On March 25, 2021, 1161 Canada held an Auction, attended by the Trustee, but no offers were received. At that time the total amount owing to 1161 Canada Ltd was approximately \$11.1 million.
149. Given the result of the Auction, 1161 Canada proceeded to retain a commercial real estate broker to list the Sky City Property for sale (“**Listing Agent**”).
150. On August 9, 2021, the Trustee was advised by counsel to 1161 Canada that 1161 Canada had entered into a conditional agreement (“**Conditional Agreement**”) for the sale of the Sky City Property. Thereafter the Trustee spoke with the Listing Agent who advised that the Sky City Property was actively marketed for sale by agents based in both Winnipeg and Toronto to ensure broad coverage of the Sky City Property and that a number of interested parties executed confidentiality agreements. The Conditional Agreement, received from a third-party purchaser (“**Sky City Purchaser**”), was the highest and best offer received for the Sky City Property. The Listing Agent further advised

that the Conditional Agreement is in excess of both appraisals commissioned by 1161 Canada for the Sky City Property prior to the commencement of the sale process.

151. To effect the transaction contemplated by the Conditional Agreement ("**Sky City Transaction**"), a notice of application for an order of foreclosure was made by 1161 Canada on November 1, 2021 requiring the mortgagor or any other party with an interest in the Sky City Property to redeem the mortgages from 1161 Canada within one month. The Trustee did not believe there was a basis to, and did not object to, such foreclosure notice. In its review of the Sky City Transaction and the proposed foreclosure, the Trustee considered the following: (i) its discussions with the Listing Agent regarding the marketing process conducted in respect of the Sky City Property; (ii) the purchase price in the Conditional Agreement being in excess of both appraisals commissioned by 1161 Canada and of an independent appraisal commissioned by the Trustee in late 2018; (iii) the fact that no offers were received for the Sky City Property at Auction; and (iv) the Sky City Property was previously listed for sale by the Sky City borrower and such sale process did not result in a successful transaction.
152. As no party redeemed the mortgages within the requisite time, the District Registrar issued a final order of foreclosure and title to the Sky City Property was transferred to 1161 Canada free and clear of all subsequent encumbrances, including the charges securing the BDMC Sky City Debt. After title to the Sky City Property was transferred to 1161 Canada, 1161 Canada sold the Sky City Property to the Sky City Purchaser.
153. The Sky City Transaction has now closed at a sale price that was less than the amount required to satisfy the 1161 Canada priority debt in full. Accordingly, there were no proceeds from the Sky City Transaction available to repay any portion of the BDMC Sky City Debt.
154. On December 1, 2021, the Trustee sent a notice to the Sky City Investors advising of the outcome of sale process and of the foreclosure notice. A copy of the notice is attached as **Appendix "30"**.

Highlands of York Region Project

155. The Highlands of York Region project (“**HYR Project**”) is a real estate development project comprised of three parcels of land (collectively, “**HYR Properties**” and each an “**HYR Property**”) located in the Town of East Gwillimbury, Ontario with over \$2.5 million in principal amount of third ranking syndicated mortgage loan debt registered on title to the HYR Properties administered by BDMC (“**HYR Loan**”, and such Investors in the HYR Loan, the “**HYR Investors**”) that is subordinate to: (i) three separate first ranking vendor take back mortgages (collectively, the “**VTB Mortgages**”), each of which is registered on title to a different HYR Property, in the aggregate amount of approximately \$5 million; and (ii) a second ranking mortgage registered by Jaekel Inc. (“**Jaekel**”) on title to each of the three HYR Properties, which had an outstanding balance of approximately \$10.6 million (inclusive of interest) as at January 11, 2022.
156. The Trustee understands that one of the VTB Mortgages matured in November 2021, which the borrower under the HYR Loan (“**HYR Borrower**”) has advised was not extended, while the other two VTB Mortgages mature in March 2023 (“**2023 VTB Mortgages**”).
157. The Trustee’s planning consultant has advised that the HYR Project still requires certain development approvals and that submissions to obtain these required development approvals have been significantly delayed due to: (i) a lack of available municipal servicing and uncertainty as to when the servicing will be available; and (ii) challenges with respect to vehicular access to the HYR Properties.
158. As was advised in a notice sent to the HYR Investors on March 30, 2021, in early 2021, it came to the Trustee’s attention that the HYR Borrower had retained a listing agent to list the HYR Properties for sale. The HYR Properties were listed for sale on January 21, 2021, without a listing price or an offer deadline. Ultimately, after marketing the HYR Properties for a period of time, the listing agent set an offer date of April 15, 2021. No offers were received on the offer date. On May 18, 2021, the Trustee sent a notice to the HYR Investors informing them of the results of the sale process.
159. Following the conclusion of the unsuccessful sale process, the HYR Borrower advised the Trustee that there were no funds available to continue with the development of the

project. The HYR Borrower also advised that, for the past two years, Jaekel has been servicing the interest owing in respect of all three of the VTB Mortgages. The Trustee understands that the 2023 VTB Mortgages are paid interest semi-annually in March and September and that they were last funded in September 2021. Given the lack of direction and funding for the development of the HYR Project, and the significantly delayed development approvals, Jaekel has advised that it will no longer service the 2023 VTB Mortgages, including the upcoming interest payments due in March 2022. The Trustee understands that Jaekel has been corresponding with the HYR Borrower to determine possible next steps with respect to the HYR Project.

6th and 10th Project

160. The 6th & 10th project is a completed 224-unit residential condominium building ("**6th & 10th Project**" or "**6th & 10th Property**") located in Calgary, Alberta with over \$8.8 million in principal of first ranking syndicated mortgage loan debt administered by BDMC ("**6th & 10th Loan**", and such Investors in the 6th & 10th Loan, the "**6th & 10th Investors**"). The condominium was registered in 2017 and the borrower ("**6th and 10th Borrower**") has been in the process of selling the remaining condominium units. As of the date of this Report, the prior ranking inventory loan that was previously payable to First National Financial LP ("**First National**") has been repaid in full and there are 11 residential units remaining to be sold ("**Remaining Units**"), including three units with pending closings.
161. The BDMC loan is now more than six years past its original maturity, which had contemplated an original term ending in 2015. The 6th & 10th Borrower has advised the Trustee that, despite its expectations for the project, it has experienced considerable challenges since late 2014 as a result of, among other things, the significant drop in oil prices and the prolonged and continuing weakening of the Alberta real estate market. According to the 6th & 10th Borrower, these economic conditions resulted in continued downward pressure on the selling prices for the condominium units and a significantly extended timeline for the sale of such units. These factors, among others, resulted in the 6th & 10th Project being substantially less profitable than had originally been projected.
162. Despite the difficulties experienced by the 6th & 10th Borrower, the priority mortgage debt has now been repaid in full and the BDMC debt remains the only outstanding mortgage debt registered on title to the Remaining Units.

163. The 6th & 10th Borrower has advised the Trustee that, although the BDMC debt remains the only outstanding mortgage debt registered on title to the Remaining Units, it is making a claim to the proceeds from the Remaining Units in priority to the BDMC debt because it has funded, and continues to fund, certain project costs. The 6th & 10th Borrower provided the Trustee with a summary of its claim, which, as at October 31, 2021, totaled approximately \$2.9 million (“**Related Party Claim**”). The Trustee understands that the Related Party Claim is comprised of: (i) the initial equity contributed by the 6th & 10th Borrower to the 6th & 10th Project; (ii) guarantee fees for personal guarantees provided by the principal of the 6th & 10th Borrower in respect of the First National loan; and (iii) amounts advanced by certain companies related to the principal of the 6th & 10th Borrower to pay for, among other things, costs to service the First National loan, condominium fees and other carrying costs related to the 6th & 10th Project. The 6th & 10th Borrower does not hold a priority mortgage or any charge registered on title to the 6th & 10th Project in respect of the Related Party Claim.
164. The Trustee has not consented to any payment of the Related Party Claim in priority to any payments in respect of the 6th & 10th Loan and continues to be engaged in discussions with the 6th & 10th Borrower with respect to same. In the circumstances, in order to allow for the uninterrupted sale of the Remaining Units, the Trustee has agreed with the 6th & 10th Borrower that the proceeds (net of closing costs) from the sale of the Remaining Units will be held in escrow by the 6th & 10th Borrower’s counsel until a resolution regarding the Related Party Claim is reached or upon further order of the Court. On December 8, 2021, the 6th & 10th Borrower, its counsel, the Trustee and Olympia executed an agreement documenting this arrangement (“**Escrow Agreement**”).
165. As at the date of this Report, there is approximately \$300,000 being held pursuant to the terms of the Escrow Agreement.
166. The 6th & 10th Borrower has advised that, based on historical unit selling prices, the Remaining Units are not anticipated to generate sufficient proceeds to repay the 6th & 10th Loan in full, regardless of the outcome of the Related Party Claim. Accordingly, the Trustee anticipates that there will be a significant shortfall suffered by the 6th & 10th Investors.

167. On December 14, 2021, the Trustee sent a notice to the 6th & 10th Investors advising of the status of unit sales, the Related Party Claim and the Escrow Agreement. A copy of the notice is attached as **Appendix “31”**.

Rutherford Project

168. The Rutherford Project is a real estate development project in Edmonton, Alberta (“**Rutherford Project**”) that is comprised of 136 homes with over \$8.6 million in principal amount of third ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors (“**Rutherford Investors**”) (“**BDMC Rutherford Mortgage**”). The Rutherford Project borrower (“**Rutherford Borrower**”) has advised that the Rutherford Project has and continues to experience significant challenges which include, among other things, escalating supply costs, labour shortages, downward pressure on selling prices, difficulty obtaining sufficient third-party financing and an overall softening in demand for higher-end homes in the area. Such challenges have resulted in a significantly protracted timeline for the completion of the Rutherford Project. As at the date of this Report, out of the 136-unit project, only 67 units have been sold and 64 units have closed. The remaining units have not yet been constructed. In light of these ongoing challenges, the Rutherford Borrower has advised that, at this time, the timeline to completion and the quantum of any expected recovery to the Rutherford Investors remains unknown.
169. The Rutherford Borrower has advised the Trustee that, for an extended period of time, it has been funding certain construction related costs. Such additional financing has been required as the Bank of Nova Scotia, the first priority mortgagee, has not been willing to solely fund each unit’s construction and the Rutherford Borrower has been unable to find any alternative third-party financing to fund the shortfall. The Rutherford Borrower has advised that it has provided the necessary financing to the Rutherford Project in order to enable the continued development of the Rutherford Project to date; however, going forward, it may not be in a position to continue doing so. The Trustee continues to engage in discussions with the Rutherford Borrower regarding its intentions with respect to the completion of the project. The Trustee is considering all possible avenues for recovery with respect to this project and will provide the Rutherford Investors with any material updates.

King Square Project

170. The King Square project (“**King Square Project**”) is a three-storey condominium shopping mall development in Markham, Ontario with approximately \$8.6 million in principal amount of third-ranking syndicated mortgage loan debt administered by BDMC on behalf of Investors (“**King Square Investors**”). As was advised in the Twenty-Fourth Report, the King Square Project is subject to a Notice of Sale proceeding brought by Firm Capital, the first priority mortgagee. Since the commencement of the enforcement proceedings, Firm Capital has been working together with the King Square borrower to sell the remaining inventory comprising the King Square Project and has sold approximately 59% of the net saleable area outstanding at that time. Firm Capital is owed approximately \$60.4 million inclusive of interest and fees accrued to date. The Firm Capital indebtedness includes approximately \$23 million of vendor take-back mortgages in respect of the sale of certain units, which amounts will be repaid by the purchasers upon maturity of such mortgages. Upon the repayment of such vendor take-back mortgages, the Firm Capital indebtedness will be reduced to approximately \$37.4 million (without accounting for the sale of any additional units).
171. While Firm Capital continues to sell the remaining inventory, interest continues to accrue on its outstanding debt. Accordingly, the quantum and timing of recoveries, if any, for the King Square Investors remains uncertain and continues to be dependent on the timing and selling prices of the remaining inventory.

GENERAL DEVELOPMENTS RELATED TO THE BDMC PROCEEDINGS

Class Action Proceedings

172. BDMC is a named defendant in five proposed class actions commenced in 2016 and 2017 relating to the following real estate development projects that are known as: (a) Kemp; (b) Collier Centre; (c) Orchard; (d) Progress; and (e) Sutton (collectively, the “**Class Actions**”). The Trustee notes that the first three projects noted above are projects subject to the BDMC proceedings and that the Progress and Sutton Projects are being administered by FAAN Mortgage as part of the related trusteeship proceeding bearing the title of proceedings *Law Society of Ontario v. Derek Sorrenti and Sorrenti Law Corporation* (Court File No.: CV-19-628258-00CL) (“**Sorrenti Proceedings**”).

173. The Trustee and its counsel have been required to spend considerable time in respect of the Class Actions, including interacting with Class Action counsel and BDMC's class action counsel. The Trustee has reviewed materials filed in the Class Actions and correspondence received from the parties to the Class Actions. The Trustee has also attended case management conferences in respect of the Class Actions to ensure that matters related to its mandate under the Appointment Order are properly explained to the Class Action court.
174. The plaintiffs in the Class Actions sought to partially lift the stay of proceedings imposed by the Appointment Order with respect to BDMC, solely to allow the actions to continue to recover any proceeds that may be available under insurance policies issued in favour of BDMC. The Trustee provided its consent to partially lift the stay solely to allow access to any insurance policies in accordance with the terms of draft orders negotiated with the parties, which also provide, among other things, that nothing in the Orders shall: (a) require the Trustee to defend or otherwise participate in the action; (b) permit or otherwise entitle the plaintiffs to recover any amounts held by the Trustee pursuant to the Appointment Order; or (c) affect any person's rights or entitlements relating to any insurance policies issued in favour of BDMC. On April 22, 2021, a partial lift stay order was granted in each of the Class Actions. The partial lift stay order also lifted the stay imposed by the Appointment Order with respect to the Sorrenti Proceedings on the same terms.
175. Since May 21, 2021 (the date of the Twenty-Sixth Report), the developments in the Class Actions have been mainly procedural in nature. The Class Action Plaintiffs:
 - (a) Obtained orders lifting the stay imposed by the bankruptcy of (i) FMP Mortgage Investments Inc., a broker named as a defendant in two of the Class Actions, and separately (ii) The Estate of Ildina Galati-Ferrante (Deceased). The stays were lifted for the specified purpose of obtaining the benefit of insurance proceeds, if any.
 - (b) Obtained orders replacing certain plaintiffs with new individuals to act as representative plaintiff in the particular Class Action.
 - (c) Obtained orders permitting them to discontinue their actions against Olympia due to the duplicative outstanding class action initiated by a plaintiff against Olympia in Court File No. CV-20-00643593-00CP ("**Raponi Class Action**").

(d) Obtained orders permitting them to discontinue their actions against certain named defendants on various bases, including that the defendant corporation had been struck from the corporate registry or that there was no evidence implicating individual defendants in the alleged wrongdoing.

176. On September 14, 2021, the Case Management Judge declined to impose a timetable in respect of the Class Actions, stating that it was premature to do so given the remaining preliminary steps that remained incomplete, such as delivering the remaining Amended Statements of Claim and other pleadings.
177. In addition, there have been developments in the Raponi Class Action. The Case Management Judge set a timetable for the steps associated with the certification motion and scheduled the certification motion to begin on May 31, 2022. In accordance with the Court-ordered timetable, Olympia issued claims against many third parties, including BDMC.

FUNDING OF THESE PROCEEDINGS AND CASH FLOW PROJECTION

178. The activities carried out by the Trustee in these proceedings continue to be complicated and time consuming. As previously reported, BDMC is functionally insolvent and has no sources of revenue. Pursuant to the Realized Property Order, as amended, 15% of all Realized Property continues to be withheld to fund Required Trustee Activities (“**Administrative Holdback**”). The Trustee’s continued use of Estate Property, including the Administrative Holdback, is essential to fund these proceedings and to continue to carry out the Trustee’s mandate in accordance with the Orders of the Court. As set out above, to date (and subject to the Court granting the relief sought herein), the Trustee has generated approximately \$159.5 million in Realized Property during these proceedings.
179. As discussed below, portions of the Estate Property, which include the Administrative Holdback, have been disbursed to pay BDMC’s operating expenses and professional fees. Investors may receive a portion of the remaining Administrative Holdback in the future once a final reconciliation is completed; however, the timing and amount of a future distribution, if any, is unknown at this time.

Cash receipts and disbursements from May 1, 2021 to November 30, 2021

180. In the Twenty-Sixth Report, the Trustee provided a forecast for the projected receipts and disbursements related to the administration of the BDMC estate for the period May 1, 2021 to November 30, 2021 (“**Projection Period**”). The following chart reflects the variance analysis for the Projection Period:

	Amount (\$000s)		
	Projected	Actual	Variance
Receipts			
Administrative Holdback	2,186	2,450	264
Interest	15	25	10
Total receipts	2,201	2,475	274
Disbursements			
Operating costs	229	176	53
Appraisals	18	6	12
Professional fees	3,880	1,555	2,325
Total disbursements	4,127	1,737	2,390
Net cash flow	(1,926)	738	2,664

The detailed variance analysis for the Projection Period is attached as **Appendix “32”**.

181. The significant variances during the Projection Period are explained as follows:

Administrative Holdback: The positive variances relate to amounts held in respect of the South Shore Proceeds, which were unknown at the time of the Twenty-Sixth Report.

Professional Fees: The positive variance is due in part to a timing difference, a portion of which was reversed in December 2021, as detailed below. Overall, the administration and required activities during the Projection Period took less time and, in turn, were less costly, than originally forecasted.

182. In addition, the actual receipts and disbursements for December 1, 2021 to December 31, 2021, which is after the Projection Period contemplated in the Twenty-Sixth Report, are summarized below:

	(\$000s)
Receipts	
Collections and other receipts	2
Administrative Holdback	-
Total receipts	<u>2</u>
Disbursements	
Operating costs	180
Appraisals	-
Professional fees	<u>866</u>
Total disbursements	<u>1,046</u>
Net cash flow	<u>(1,044)</u>

183. The Trustee notes the following with respect to the above chart:

Operating costs: This amount relates to amounts paid in respect of insurance, which increased significantly upon renewal.

Professional Fees: These amounts relate to the unpaid portion of the fees that were projected to be paid during the Projection Period.

Funds in the Trustee's Possession

184. A summary of the Estate and Realized Property as at December 31, 2021 is provided in the table below.

Type	Primary Purpose	Amount (\$000s)	
		As at April 30, 2021	As at December 31, 2021
Estate ¹⁴	BDMC operating funds	5,811	5,505
Realized	Held pending Investor distributions	14,355	2,542
Trust funds	Held pending resolution of claims	<u>3,379</u>	-
		<u>23,545</u>	<u>8,047</u>

Estate Property: As noted previously, since the issuance of the Interim Stabilization Order, the funds maintained in these accounts have been used to fund BDMC's operating

¹⁴ BDMC is required under the MBLAA to have a certain financial guarantee of \$25,000 available, which may include unimpaired working capital. Included in Estate Property in a separate bank account is \$25,143 in satisfaction of this obligation.

costs and the Required Trustee Activities. Funds withheld in respect of the Administrative Holdback are maintained in these accounts.

Realized Property: The funds held as at December 31, 2021 related primarily to the net proceeds of approximately \$1.5 million received from the South Shore Sale Transaction (net of the Administrative Holdback) and \$700,000 related to the Kemp Project. Since the funds related to the Kemp Project are being held in trust by the Trustee pending resolution of the Fortress Claim, the gross amount of \$700,00 is included in the Realized Property account. Should the Kemp Distribution Order be granted by the Court, this amount will be reduced by the Administrative Holdback of \$105,000 which will be transferred to Estate Property and the net amount of \$595,000 will be distributed to the Kemp Investors.

Projected receipts and disbursements for the period ending July 31, 2022

185. The Trustee has prepared a monthly cash flow projection (“**Cash Flow Projection**”) related to the administration of the BDMC estate for the period January 1, 2022 to July 31, 2022 (“**Cash Flow Period**”), which is attached as **Appendix “33”**. A summary of the Cash Flow Projection is as follows:

	\$000s
Projected Receipts	10
Projected Disbursements	
Staffing costs	98
Office expenses and IT	11
Insurance	-
Bank charges	3
Other expenses	14
Total Operating Disbursements	126
Appraisals and related consultants	18
Professional fees	2,005
Total disbursements	2,023
Projected cash flow	(2,148)
Opening cash***	5,480
Net cash flow	(2,138)
Projected closing cash	3,342

*** Opening cash, as of December 31, 2021, is comprised of Estate Property, excluding the term deposit required under the MBLAA.

186. The primary assumptions underlying the Cash Flow Projection are as follows:

Projected Receipts: The Projected Receipts are comprised of estimated interest to be earned on the funds held in the various bank accounts maintained by the Trustee.

The Trustee notes that it continues to monitor the few remaining BDMC projects with a view to maximizing realizations for the Investors. The Trustee may receive additional Realized Property during the Cash Flow Period and should that occur, a portion of such realizations will be used to offset the projected disbursements. Due to the confidential nature of the Trustee's discussions and negotiations, and similar to the previous cash flow projections filed with the Court, the Trustee has not included a forecast for these receipts during the Cash Flow Period.

Projected Operating Disbursements: These amounts relate primarily to dedicated BDMC contractors and IT support costs. The Trustee notes that the administration of the BDMC estate continues to be run out of FAAN Mortgage's office on a rent-free basis.

Professional Fees: These amounts reflect the estimated professional fees to be paid during the Cash Flow Period, including a payment contemplated in February 2022 of the outstanding professional fees through to December 31, 2021, which remain unpaid as at the date of the Twenty-Seventh Report.

APPROVAL OF THE TRUSTEE'S REPORT, ACTIVITIES AND FEES

187. The Trustee is seeking approval of this Twenty-Seventh Report, its activities as set out in this Twenty-Seventh Report, and its fees and its counsel's fees from May 1, 2021, to December 31, 2021.
188. The Trustee's activities are described at length in this Twenty-Seventh Report as they relate to the specific relief being sought herein. A summary of the Trustee's other general activities carried out since May 21, 2021 (the date of the Twenty-Sixth Report) are set out below, and included, among other things:
 - (a) communicating with borrowers, Investors, Fortress, lenders and other stakeholders regarding various matters including with respect to the status of these proceedings, the projects and relevant timelines;

- (b) engaging with Representative Counsel on behalf of the Investors with respect to all aspects of the administration of the BDMC estate, including attending conference calls on a regular basis;
- (c) drafting and sending project specific notices (including the various notices to be sent upon service of this Report) to Investors since the issuance of the Twenty-Sixth Report and corresponding with the Trustee's counsel and Representative Counsel regarding same;
- (d) responding to Investor inquiries;
- (e) posting Court materials on the Trustee's Website;
- (f) continuing its review and monitoring of the projects;
- (g) continuing to engage with stakeholders to obtain information related to the projects;
- (h) corresponding with certain borrowers and other stakeholders regarding, among other things, the status of the projects (including the sale of remaining units);
- (i) requesting information and reviewing reporting provided by certain project stakeholders;
- (j) continuing to engage with a planning consultant in order to obtain information relating to the development status of various projects;
- (k) attending to partial discharges of BDMC's security interests to facilitate sales of individual units as required pursuant to BDMC's contractual obligations with borrowers and priority lenders to the projects;
- (l) corresponding with commercial real estate agents engaged by senior lenders pursuant to enforcement proceedings commenced by those lenders, in order to obtain information relating to the sale processes carried out, including obtaining information related to marketing materials and level of interest in the relevant properties;
- (m) dealing with numerous contested and ongoing complex litigation matters before the Court;
- (n) making distributions in accordance with the various Court orders issued in these proceedings to the Investors entitled to those distributions;

(o) reviewing and preparing responses to Court materials relating to BDMC and the various projects; and

(p) attending to other business activities of BDMC and related administrative matters.

189. Investor communications remain an ongoing component of the Trustee's mandate. Overall, the volume of communications has decreased as a result of the significant number of BDMC projects that have now been exited, with increased call and email volumes following the issuance of notices and distribution of Realized Property. Investors now contact the Trustee primarily to seek specific information regarding the projects that are the subject of their investments or payments that they receive from the Trustee. The Trustee endeavors to respond to all inquiries in a timely manner.

Trustee Fees

190. Pursuant to the terms of the Appointment Order, the Trustee and its legal counsel shall be paid their reasonable fees and disbursements and shall pass their accounts from time to time.

191. The Trustee and its legal counsel are tracking their time by project. For certain tasks that affect all Investors, including general notices and the preparation of general reports to Court and the related Court materials, the time will be charged to a general account that will, at a later date once the totality of realizations is determined, be allocated to the projects based on appropriate considerations and in accordance with further Court orders.

192. The fees of the Trustee for the period between May 1, 2021 to December 31, 2021, total \$595,738.40 before HST; and HST applicable to such amount totals \$77,445.99, for an aggregate amount of \$673,184.39. Invoices for the fees of the Trustee, including summaries of the activities of the Trustee for the applicable period, are provided in the affidavit of Naveed Manzoor ("**Manzoor Affidavit**"), attached as **Appendix "34"**.

193. Detailed docket information in respect of the fees and disbursements of the Trustee for this period will be included in the confidential exhibit to the Manzoor Affidavit that will be filed separately with the Court ("**Confidential Manzoor Exhibit**"). The Trustee is seeking a sealing order with respect to the Confidential Manzoor Exhibit due to the fact that the information contained in the Trustee's detailed invoices includes privileged and commercially sensitive information regarding the projects and BDMC generally, and the

disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings. The Court has granted similar relief during the pendency of these proceedings.

194. The average hourly rate for the Trustee over the referenced billing period was approximately \$437.66/hour.

Fees of the Trustee's Counsel

195. The fees (excluding disbursements and HST) of Osler, Hoskin & Harcourt LLP ("**Osler**") as counsel to the Trustee for the period between May 1, 2021 to December 31, 2021 total \$1,268,856.36; Osler incurred \$4,302.43 disbursements during the period; and HST applicable to such amounts totals \$165,448.14, for an aggregate amount of \$1,438,606.93. Invoices for the fees, reimbursable expenses and applicable taxes of Osler, including summaries of Osler's activities in relation thereto, are provided in the affidavit of Michael De Lellis ("**De Lellis Affidavit**"), attached as **Appendix "35"**.
196. Full accounts in respect of the fees and disbursements of Osler for this period will be included in the confidential exhibit to the De Lellis Affidavit that will be separately filed with the Court ("**Confidential De Lellis Exhibit**"). The Trustee is seeking a sealing order with respect to the Confidential De Lellis Exhibit due to the fact that the information contained in Osler's detailed invoices includes privileged and commercially sensitive information regarding the projects and BDMC generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings. The Court has granted similar relief during the pendency of these proceedings.
197. The average hourly rate for Osler over the referenced billing period was \$789.64/hour.
198. The Trustee is of the view that the hourly rates charged by Osler are consistent with the rates charged by major law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.

REPRESENTATIVE COUNSEL

199. Pursuant to the Interim Stabilization Order, Chaitons LLP was appointed as representative counsel to, among other things and subject to the terms of that Order, represent the common interests of the Investors who participate in mortgages administered by BDMC, including the common interests of Investors in any particular syndicated mortgage loan.
200. The Trustee understands that Representative Counsel continues to receive a significant number of calls and written correspondence from Investors with respect to the status of their investments. Representative Counsel responds in a timely manner to such communications to the extent that they pertain to legal issues covered by Representative Counsel's mandate.
201. The Trustee also understands that Representative Counsel continues to provide guidance to Investors with respect to their rights and remedies and potential sources of recovery other than against the borrowers under the various BDMC loans, while urging Investors to individually seek independent legal advice with respect to any causes of action that they may wish to pursue. Representative Counsel has shared information with other law firms on a confidential basis to assist such firms in determining whether to commence class action litigation or pursue other litigation alternatives.
202. The Trustee continues to regularly consult with Representative Counsel whenever appropriate, including with respect to strategic decisions and steps being considered by the Trustee.

CONCLUSION AND RECOMMENDATION

203. The Trustee recommends that the requested Orders be granted by the Court. The Trustee continues to work and engage with multiple stakeholders to fulfill its mandate to protect the interests of the Investors. Among other things, the Trustee continues to administer the loans made by BDMC on behalf of the investing public and to take steps to maximize potential recoveries for Investors in the unique circumstances of each BDMC loan.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of January, 2022

Faan Mortgage Administrators Inc.

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

Appendix 1:
Appointment Order dated April 20, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

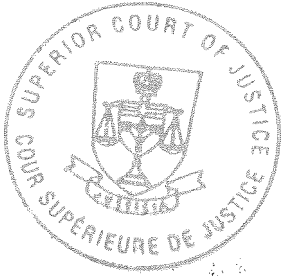
THE HONOURABLE MR.) FRIDAY, THE 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -



BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

APPOINTMENT ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

TRUSTEE'S POWERS

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

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

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

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

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

GH

or CDCM

GH

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

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

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

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

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE TRUSTEE

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

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

CONTINUATION OF SERVICES

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

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE TRUSTEE'S LIABILITY

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

TRUSTEE'S ACCOUNTS

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

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

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

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

FUNDING OF THE APPOINTMENT

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

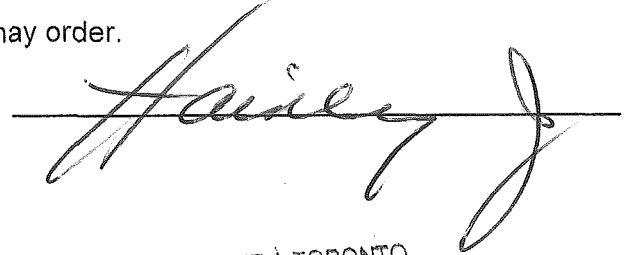
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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

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

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

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Lawyers for The Superintendent of Financial Services

Appendix 2:

June 2021 Omnibus Order dated June 7, 2021

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE PATTILLO)
MONDAY, THE 7TH
DAY OF JUNE, 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**

JUNE 2021 OMNIBUS ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”) pursuant to an Order of this Court made on April 20, 2018 (“**Appointment Order**”) 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)



authorizing the Trustee to effect a distribution or distributions to: (a) Whitby Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Whitby Project (“**Whitby Realized Property**”), (b) Nobleton South Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Nobleton South Project (“**Nobleton South Realized Property**”), and (c) Bowmanville Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Bowmanville Project (“**Bowmanville Realized Property**”) (each as such term is defined in the Twenty-Sixth Report (as defined below)), in each case, on a *pro rata* basis to the applicable Investors entitled to such funds and in accordance with the Realized Property Order, as amended, (ii) approving the Trustee’s twenty-sixth report dated May 21, 2021 (the “**Twenty-Sixth Report**”) and twenty-fifth report dated February 16, 2021 (“**Twenty-Fifth Report**” and collectively, the “**Trustee’s Reports**”), as well as the Trustee’s activities described therein, and the Trustee’s fees and disbursements, including the fees and disbursements of its counsel, for the period from October 1, 2020 to April 30, 2021; and (iii) sealing certain confidential exhibits to the Fee Affidavits (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-Sixth Report, the affidavit of Naveed Manzoor sworn May 21, 2021 and attached as Appendix “24” to the Twenty-Sixth Report (the “**Manzoor Affidavit**”) and the affidavit of Michael De Lellis sworn May 20, 2021 and attached as Appendix “25” to the Twenty-Sixth Report (the “**De Lellis Affidavit**” and, together with the Manzoor Affidavit, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Chloe Nanfara sworn May 25, 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-Sixth 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 in this Order but not defined herein shall have the meanings given to them in the Twenty-Sixth Report.

DISTRIBUTIONS OF REALIZED PROPERTY

3. **THIS COURT ORDERS** that the Trustee shall be authorized to make the following distributions of Realized Property, *pro rata* to the applicable Investors entitled to such funds, whether such Realized Property is received before or after the date of this Order:

- (a) a distribution or distributions to Whitby Investors in an amount equal to 85% of the Whitby Realized Property;
- (b) a distribution or distributions to Nobleton South Investors in an amount equal to 85% of the Nobleton South Realized Property; and
- (c) a distribution or distributions to Bowmanville Investors in an amount equal to 85% of the Bowmanville Realized Property;

each such distribution to be made in accordance with the Realized Property Order, as amended.

TRUSTEE'S REPORTS, ACTIVITIES, FEES AND DISBURSEMENTS

4. **THIS COURT ORDERS** that each of the Trustee's Reports and all the actions, conduct and activities of the Trustee as set out in each of the Trustee's Reports, be and are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Twenty-Sixth Report and the Fee Affidavits, be and are hereby approved, as follows:

- (a) the following fees and disbursements of the Trustee for the period from October 1, 2020 to April 30, 2021 are approved: fees of \$890,110.40 (plus applicable taxes of \$115,714.35 for an aggregate amount of \$1,005,824.75), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from October 1, 2020 to April 30, 2021 are approved: fees of \$1,932,560.94 and disbursements of \$8,106.12 (plus applicable taxes of \$251,955.66, for an aggregate amount of \$2,192,622.72).

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)**

Proceeding commenced at Toronto

JUNE 2021 OMNIBUS ORDER

OSLER, HOSKIN & HARCOURT LLP

1 First Canadian Place, P.O. Box 50

Toronto, ON M5X 1B8

Phone: 416-362-2111

Fax: 416-862-6666

Michael De Lellis (LSO# 48038U)

Jeremy Dacks (LSO# 41851R)

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

Appendix 3:

Project Analysis Summary dated January 14, 2022

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("Fortress"), project borrowers, a planning consultant and other third parties, as of January 14, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at January 14, 2022
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
1	6th and 10th	207	Completed	1st: \$8.8M BDMC	December 27, 2014 (extend date June 27, 2015) MATURED.	Completed 224-unit residential condominium building with 11 units remaining to be sold (" Remaining Units ") including three units with pending closings. Six units have sold since May 2021. The 6th & 10th borrower has advised the Trustee that it is making a claim to the proceeds from the Remaining Units in priority to the BDMC debt for certain project related costs it has funded and continues to fund. The 6th & 10th borrower provided the Trustee with a summary of its claim, which, as at October 31, 2021, totaled approximately \$2.9 million (" Related Party Claim "). The Trustee has not consented to any payment of the Related Party Claim in priority to BDMC and continues to be engaged in discussions with the 6th & 10th borrower with respect to same. In order to allow for the uninterrupted sale of the Remaining Units, the Trustee has agreed with the 6th & 10th borrower that the proceeds (net of closing costs) from the sale of the Remaining Units will be held in escrow by the borrower's counsel until a resolution regarding the Related Party Claim is reached or upon further order of the Court. There is currently approximately \$300,000 held in escrow.	n/a
2	Bauhaus	110	Exited	n/a	n/a	On February 28, 2020, the Trustee sought and obtained Court approval of a settlement agreement in the amount of approximately \$6.73M in respect of the BDMC debt on the Bauhaus project.	n/a
3	Bowmanville	103	Exited	n/a	n/a	n/a	On February 21, 2020, Hillmount Capital Inc. issued a s. 244 notice and a Notice of Sale Under Mortgage (" Notice of Sale "). On May 5, 2020, Ernst & Young Inc. was appointed as receiver of the Bowmanville property and retained CBRE Land Services Group (" CBRE ") to market the property for sale. On November 5, 2020, the receiver sought and obtained Court approval of an agreement of purchase and sale between the receiver and Brookhill Durham Holdings Inc., a corporation related to the borrower, for a purchase price of \$8.1M. The receiver advised that the purchase price was the highest and best offer received for the property. The sale transaction closed on November 30, 2020. After repayment of the balances owing to the priority mortgagees, the receiver's fees and other closing costs, the net funds available for distribution by the Trustee were approximately \$577,000 (" Bowmanville Residual Proceeds "). On June 7, 2021, the Trustee sought and obtained Court approval to distribute the Bowmanville Residual Proceeds <i>pro rata</i> to the Bowmanville Investors, net of the Administrative Holdback.
4	Bradford Bond Head	186	Exited	n/a	n/a	n/a	Sugarcree developments, the first priority lender, issued a s. 244 Notice and a Notice of Sale. On July 23, 2019, Quincy, the second priority mortgagee, obtained an order of the Court appointing Rosen Goldenberg Inc. as receiver over the property. The receiver ran a sale process for the property and sought and obtained Court approval for an agreement of purchase and sale (" Bond Head Sale "). The Bond Head Sale resulted in the second mortgagee suffering a shortfall under its charge and as such there were no recoveries available for BDMC in respect of its fifth ranking mortgage. Accordingly there were no funds available for distribution for the Bradford Bond Head Investors.
5	Braestone	250	Exited	n/a	n/a	On November 28, 2018, the Trustee sought and obtained court approval of a settlement agreement in the amount of \$10M in respect of the BDMC debt on the Braestone project.	n/a

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("**Fortress**"), project borrowers, a planning consultant and other third parties, as of January 14, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
6	Brookdale	491	Exited	1st: Firm Capital Corporation ("Firm") PAID OUT 2nd: AG PAID OUT 3rd: Jaekel PAID OUT 4th: \$4.6M BDMC Mezz 5th: \$20.7M BDMC Original	n/a	n/a	Sale of the property approved on October 18, 2018 pursuant to Court order. Sale transaction closed on October 24, 2018 for a purchase price of approximately \$50M. After repayment of amounts owing to the first, second and third mortgagees, approximately \$20.4M remained. Since 2019, the Trustee has been involved in complex litigation involving construction liens, which claims totaled approximately \$8.7M in aggregate. On August 28, 2020, a Court order was granted authorizing a settlement with the lien claimants for approximately \$4.5M. After paying the lien claimant settlement amounts, approximately \$17.5M continues to be held by the Court (" Brookdale Proceeds "). There are three remaining claims to the Brookdale Proceeds that are seeking priority to or otherwise affecting the priority of the BDMC mortgages, being a claim from certain bondholders (under which approximately \$9M plus interest and costs is claimed), the Fortress-related borrower (under which approximately \$1.5M is claimed) and Fernbrook Homes (Brookdale) Limited (who has informed the Trustee that it is currently preserving certain rights with respect to the Brookdale Proceeds). The quantum and timing of any distribution to the Brookdale Investors remains unknown given these outstanding unresolved priority issues.
7	Capital Pointe	728	Exited	n/a	n/a	n/a	KEB Hana Bank of Canada (" KEB "), the first priority lender, commenced a Claim in Mortgage Action. On March 4, 2019, an order was granted permitting the property to be listed for sale through a commercial realtor. On May 12, 2020, an order was granted approving a sale of the property to Magnetic Capital Group Inc. As KEB suffered a shortfall on its loan, there were insufficient proceeds to make any distribution to any of the subordinate loans registered on title including the BDMC mortgages.
8	Castlemore (Cachet)	453	Exited	n/a	n/a	n/a	In late 2019, the Trustee received a settlement offer from the borrower for \$9.5M (" Offer "), which was subsequently increased to \$10.45M (" Revised Offer "). Initially, Investor feedback was generally supportive of the Offer. Following additional negotiations, the Trustee served a motion seeking approval of the Revised Offer. However, during the period between the service of materials and the scheduled hearing, the Trustee and Representative Counsel received additional Investor feedback that resulted in a materially lower level of support for the Revised Offer. As a result, the Trustee determined that it would not be moving forward with the Revised Offer which expired in accordance with its terms. On March 2, 2020, the borrower initiated legal proceedings seeking to enforce a clause in the BDMC loan agreement (" End of Term Event Clause "). A hearing took place on November 3, 2020, and on February 2, 2021 the Court issued a decision which ruled in favour of the borrower and against the interests of the investors (" Decision "). On March 2, 2021 the Trustee commenced an appeal seeking an order to set aside the Decision. Subsequent to the filing of the appeal, the Trustee, its counsel, Representative Counsel and the borrower reached a global settlement (" Castlemore Settlement "), which included, among other things, a payment of \$9,875,358 by the borrower to the Trustee, on behalf of BDMC. On June 7, 2021 the Trustee obtained Court approval of the Castlemore Settlement and the distribution of Castlemore Settlement proceeds <i>pro rata</i> to the Castlemore Investors, net of the Administrative Holdback.

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("**Fortress**"), project borrowers, a planning consultant and other third parties, as of January 14, 2022. The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
9	Charlotte Adelaide Tower [CHAT/LH1]	301	Exited	n/a	n/a	The borrower entered into an agreement of purchase and sale for the property that was the subject of the CHAT Project for an initial cash purchase price of \$16.5M, which resulted in net proceeds of \$3.6M paid to the Trustee, on behalf of BDMC, on closing. In connection with the CHAT transaction, (i) the Trustee also negotiated and entered into a memorandum of understanding, pursuant to which BDMC received a further payment of \$2.095M, and was given the opportunity to receive a further payment of up to \$5.2M based on the achievement by the CHAT purchaser of certain development milestones ("Density Bonus") and (ii) the Trustee was granted security on a property located in Hamilton, ON ("Alternate Property"), in respect of the Density Bonus and certain other guarantees that were provided. The entity that granted security on the Alternate Property advised that it is of the view that given input it received from the City of Toronto regarding development approvals, the Density Bonus will likely not be payable and, accordingly, such entity requested that the Trustee discharge its mortgage on the Alternate Property. Following discussions with such entity, the Trustee ultimately agreed to discharge its mortgage in exchange for an equitable mortgage on 355 Adelaide St. W. and 46 Charlotte St. ("Combined Properties"), being the properties pursuant to which the possible Density Bonus relates.	On December 10, 2021, the Ontario Securities Commission obtained an order appointing a receiver over the entity that agreed to the equitable mortgage, among others, which resulted in a default occurring under the applicable agreements. As a result, the Trustee has registered the equitable mortgage on title to the Combined Properties in the amount of \$5.2 million.
10	Collier Center	949	Exited	n/a	n/a	n/a	The property was listed for sale in July 2018. On or around the beginning of May 2019, Morrison Financial Mortgage Corporation, the first priority mortgagee (" Morrison "), advised the Trustee that no formal offers for the property had been received and that it proposed to transfer the property to a related company for an amount equal to the highest informal offer it received. On May 8, 2019, Morrison transferred the property to Morrison Financial Realty Corporation for a price of \$18.457M (" Takeout Price "). Given that the Takeout Price was substantially less than the amount owed to Morrison, Morrison did not recover the full amount of its indebtedness and there were no recoveries available for distribution to the subsequent mortgagees, including BDMC.
11	Crestview Commons (Manors of Mineola)	166	Exited	n/a	n/a	On May 23, 2019, the Trustee sought and obtained court approval of a settlement agreement in the amount of \$4.475M in respect of the BDMC debt on the Crestview project.	n/a
12	Eden (King City)	129	Completed	1st: \$5.9M to BDMC	March 31, 2015 (extend date March 31, 2016) MATURED.	Construction of the homes has been completed and the homes have been sold. The BDMC mortgage remains registered on title.	Following the sale of the homes, the borrower advised that there would be no recovery to Investors on the project due to cost overruns. Based on available information, the Trustee completed a preliminary review of the sources and uses of funds for the project. The analysis identified several areas requiring further investigation. On June 19, 2019, the Trustee sought and obtained a Bankruptcy Order in respect of the borrower, and Grant Thornton (" GT ") was appointed as bankruptcy trustee. A representative of the Trustee was appointed as an inspector in the bankrupt estate. There is certain ongoing litigation involving the Eden Project. The parties have met on multiple occasions and negotiations on a consensual settlement to resolve matters remain ongoing. The Trustee is optimistic that a consensual resolution to the litigation is achievable. GT's investigation into the affairs of the bankrupt entity has been temporarily put on hold while the Trustee continues to explore a possible consensual settlement relating to the ongoing litigation in respect of the Eden Project.

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("**Fortress**"), project borrowers, a planning consultant and other third parties, as of January 14, 2022.
The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
13	Nobleton South	137	Exited	n/a	n/a	n/a	<p>The priority mortgagees issued a Notice of Sale in respect of acquisition financing that had matured. The property was sold for \$6M pursuant to a sale transaction that closed on March 23, 2021. After repayment of the balance owing to the priority mortgagees, payment of a transaction fee and other closing costs, the net funds available for distribution by the Trustee were approximately \$2.4M ("Nobleton South Residual Proceeds").</p> <p>On June 7, 2021, the Trustee sought and obtained Court approval to distribute the Nobleton South Residual Proceeds pro rata to the Nobleton South Investors, net of the Administrative Holdback.</p>
14	Glens of Halton Hills (Georgetown, GHH)	306	Exited	n/a	n/a	n/a	<p>Notice of Intention ("NOI") to make a proposal was filed by the borrower in August 2018. Multiple lenders sought to enforce prior to the NOI filing. A sale and marketing process was undertaken by the Proposal Trustee. Proceeds from the transaction were used to, among other things, repay the first priority mortgagees on the project. As there was a shortfall in the amounts owing to the second ranking mortgagee, there were no recoveries available for distribution to BDMC. On February 5, 2019, the borrower was deemed bankrupt. The Trustee undertook a preliminary review of the sources and uses of funds on the project, which was provided to the bankruptcy trustee ("KSV"). Following the results of KSV's review, the Trustee concluded that KSV would have to incur significant additional time to further investigate the use of funds advanced by the Georgetown Investors, and there was no clear road to action or any recoveries without incurring significant additional costs. There are no funds remaining in the bankruptcy estate for KSV to continue any further investigation. Even if KSV successfully challenged certain transactions, any funds recovered would be used to satisfy fees and the shortfall to the second mortgagee before any funds could be made available for distribution to Georgetown Investors.</p>
15	Highlands of York Region (East Gwillimbury)	59	Development	<p>1st: Listed below per property: \$500K – 19851 2nd Concession Rd. ("VTB 1") \$2.2M – 19879 2nd Concession Rd. ("VTB 2") \$2.3M – 19935 2nd Concession Rd. ("VTB 3") 2nd: \$6.5M principal plus accrued interest of \$4.1M* Jaekel Capital Inc. ("Jaekel") (*as at January 11, 2022) 3rd: \$2.5M BDMC</p>	April 15, 2021 MATURED.	<p>Comprised of three parcels of land with: (i) three separate first ranking vendor take back mortgages, each of which is registered on title to a different parcel; and (ii) a second ranking mortgage registered to Jaekel on title to each of the three parcels, each in priority to the BDMC debt. Development approvals needed. The Draft Plan of Subdivision and Zoning By-Law applications were submitted to the Town of East Gwillimbury in June 2018. A notice of complete application has been received and a Public Planning Meeting has been held. Comments from the Town were sent to the borrower in the fall of 2018. The Trustee understands that a resubmission addressing the Town's comments has not been submitted to date and that the resubmission was delayed for two reasons: (i) servicing; and (ii) the Region of York not permitting access to the proposed development from 2nd Concession road, which means the road access will need to come through the subdivision to the north of the properties.</p> <p>In January 2021, the properties were listed for sale by the borrower who retained CBRE to run the sale process. No offers were received on the offer deadline. The borrower has advised the Trustee that there are no funds available to continue with the development of the project.</p> <p>VTB 3 matured in November 2021 and has not been renewed, while VTB 1 and VTB 2 mature in March 2023. The Trustee has been advised that Jaekel has been making the semi-annual interest payments in respect of the VTB mortgages, the last of which was made in September 2021 for VTB 1 and VTB 2 and through to maturity for VTB 3. Given the lack of direction and funding for the development of the HYR Project, and the significantly delayed development approvals, Jaekel has advised that it will no longer service the interest on the VTB 1 and VTB 2 mortgages, including the upcoming interest payments due in March 2022. The Trustee understands that Jaekel has been corresponding with the HYR Borrower to determine possible next steps with respect to the HYR Project.</p>	n/a

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("**Fortress**"), project borrowers, a planning consultant and other third parties, as of January 14, 2022. The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
 Summary of Project Status as at **January 14, 2022**
 (Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
16	Humberstone	94	Exited	n/a	n/a	On September 11, 2019, the Trustee sought and obtained Court approval of a settlement agreement in respect of the BDMC debt on the Humberstone project. The settlement agreement contemplated a first settlement payment in the amount of \$1.75M, which has been paid, and a possible future second settlement payment ranging from \$600,000 to \$800,000 (" Second Settlement Payment "). The borrower has elected to pay the Second Settlement Payment in the amount of \$800,000 when it completes the sale of the 95th residential unit out of the total of 101 units. The borrower has advised that the Second Settlement Payment is expected to be paid in late 2022.	n/a
17	Jasper House	163	Exited	n/a	n/a	Property was listed for sale by the borrower and was sold for approximately \$4.3M. The sale transaction closed in October 2020 with residual proceeds of approximately \$1.8M after repayment of the first priority mortgage and other closing costs. The borrower asserted a claim on behalf of itself and an affiliate in priority to BDMC in the amount of approximately \$1.6M. After extensive negotiations, the Trustee reached a settlement with the borrower and its affiliate in the amount of approximately \$527,000, subject to Court approval (" Related Party Settlement "). The North borrower registered a mortgage on title to the Jasper House Project in third position behind the BDMC loan in the amount of \$768,650 in respect of funds advanced by the North borrower to the Jasper House borrower, which amount was not repaid (" Inter-Project Loan "). The Trustee was of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan was for the Jasper House Project to reimburse the North Project for 50% of the Inter-Project Loan, or \$384,325 (" Inter-Project Allocation "), such that those additional funds would be available for distribution to the North Investors. On June 7, 2021 the Court approved the Related Party Settlement, the Inter-Project Allocation and the distribution of the net remaining proceeds of approximately \$857,000 to the Jasper House Investors, net of the Administrative Holdback.	n/a
18	King Square	176	Completed	1st: \$60.4M Firm* 2nd: \$500K Aviva 3rd: \$8.6M BDMC 4th: \$6M OYSX Inc. 5th: \$7M 2198136 Ontario Ltd. * Balance is inclusive of: (i) interest and fees through January 14, 2022, and (ii) approximately \$23M of VTBs between Firm and the purchasers of certain units which, upon maturity, will be paid by the purchasers and will reduce the amount owing to Firm.	August 31, 2019 (extend date February 28, 2020) extension was not requested by borrower. MATURED.	Unit sales are ongoing. Since the commencement of the enforcement proceeding by Firm, approximately 59% of the net saleable area has been sold.	On March 6, 2020, Firm, the first priority mortgagee, issued a Notice of Sale. Firm is working together with the King Square borrower to sell the remaining inventory comprising the King Square Project. The timing and quantum of recoveries, if any, for the King Square Investors remains uncertain and is dependent on the timing and selling prices of the remaining inventory and on the status of the amounts owing to Firm, which amounts continue to accrue interest.
19	Kingridge Square (Speers)	45	Exited	n/a	n/a	On January 29, 2019, the Trustee sought and obtained approval of a settlement agreement of \$1.95M in respect of the BDMC debt on the Speers project.	n/a
20	Lake & East	154	Exited	n/a	n/a	n/a	On May 22, 2019, Toronto Capital Corporation (" TCC ") issued a Notice of Sale. As its debt was not repaid, TCC retained CBRE to market the property for sale. On December 18, 2019, TCC accepted an offer of \$7M for the properties. The transaction closed in May 2020, at which time the total amount due to TCC was in excess of \$7.5M. As TCC suffered a shortfall on its priority loan and mortgage, there were no recoveries available to repay any amounts owing to the Investors.

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("**Fortress**"), project borrowers, a planning consultant and other third parties, as of January 14, 2022. The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
21	Mississauga Meadows 1 ("MM1")	130	Exited	n/a	n/a	n/a	The project was subject to both a 244 Notice and a Notice of Sale issued by Firm, the priority lender. A sale process was undertaken by Firm and an offer was accepted for both MM1 and MM2 which closed July 3, 2019. The purchase price resulted in a shortfall to the second priority mortgagee and no recovery to the MM1 Investors.
22	Mississauga Meadows 2 ("MM2")	82	Exited	n/a	n/a	n/a	The project was subject to both a 244 Notice and a Notice of Sale issued by Firm, the priority lender. A sale process was undertaken by Firm and an offer was accepted for both MM1 and MM2 which closed on July 3, 2019. The purchase price resulted in a shortfall to the second priority mortgagee and no recovery to the MM2 Investors.
23	Estates of Nobleton (Nobleton North)	353	Exited	n/a	n/a	On November 5, 2019, the Trustee obtained Court approval of a settlement agreement in the net amount of \$14.45M in respect of the BDMC debt on the Nobleton North project.	n/a
24	North	152	Exited	n/a	n/a	Property was listed for sale by the borrower and was sold for approximately \$4.7M. The sale transaction closed in July 2020 with residual proceeds of approximately \$1.6M after repayment of the first priority mortgage and other closing costs. The borrower asserted a claim on behalf of itself and an affiliate in priority to BDMC in the amount of approximately \$1.2M. After extensive negotiations, the Trustee reached a settlement with the borrower and its affiliate in the amount of approximately \$473,000, subject to Court approval (" Related Party Settlement "). The North borrower registered a mortgage on title to the Jasper House Project in third position behind the BDMC loan in the amount of \$768,650 in respect of funds advanced by the North borrower to the Jasper House borrower, which amount was not repaid (" Inter-Project Loan "). The Trustee was of the view that, subject to Court approval, the most equitable treatment of the Inter-Project Loan was for the Jasper House Project to reimburse the North Project for 50% of the Inter-Project Loan, or \$384,325 (" Inter-Project Allocation "), such that those additional funds would be available for distribution to the North Investors. On June 7, 2021 the Court approved the Related Party Settlement, the Inter-Project Allocation and the distribution of the net remaining proceeds of approximately \$1.5M to the North Investors, net of the Administrative Holdback.	n/a
25	Old Market Lane	241	Exited	n/a	n/a	n/a	On September 25, 2019, the first priority mortgagee, 5019203 Ontario Ltd. (" 5019 Ontario "), issued a Notice of Sale. As the full amount of the outstanding debt was not repaid in time, 5019 Ontario was in a position to list the properties for sale. The Trustee was independently presented with a proposed sale transaction prior to the commencement of 5019 Ontario's sale process, which offer was in excess of the appraisal previously commissioned by the Trustee and two appraisals commissioned by 5019 Ontario. 5019 Ontario ultimately entered into a transaction with this purchaser instead of pursuing its sale process, which resulted in residual proceeds of approximately \$1.57M being distributed to the Trustee, on behalf of BDMC, after payment of the 5019 Ontario mortgage and other closing costs. On October 15, 2020, the Trustee sought and obtained Court approval to distribute the residual proceeds on a <i>pari-passu</i> basis to all OML Investors, net of the Administrative Holdback.
26	Peter Richmond Land Assembly (LH2)	604	Exited	n/a	n/a	The Trustee undertook a focused solicitation process with respect to a potential transaction in respect of the BDMC debt on the Peter Richmond project. As a result of this solicitation process, on January 30, 2020, the Trustee obtained Court approval for the assignment of the BDMC debt and security relating to the Peter Richmond project in exchange for a cash payment of \$26.25M. On October 15, 2020, the Trustee obtained Court approval for a method to distribute the proceeds from the assignment transaction to the Peter Richmond Investors, net of the Administrative Holdback.	n/a

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Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development Pre-construction Construction Completed Exited	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up. Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced. Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction. Construction is complete, units remain unsold. All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.
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NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
27	Port Place 2	67	Exited	n/a	n/a	n/a	<p>The project was subject to a Notice of Sale issued by the first-ranking mortgagees. As the deadline for repayment was not met, a marketing and sale process for the properties was commenced. Each of the properties sold for a combined selling price of \$2.165M.</p> <p>On October 15, 2020, the Court granted an order authorizing the Trustee to enter into subordination and priority agreements that would subordinate BDMC's second priority mortgage to certain additional financing advanced by certain first-ranking mortgagees secured by a mortgage that was registered in third position (the "Additional Financing Mortgage"). The distribution of the proceeds from the sales resulted in: (a) the first priority mortgage being repaid in full; and (b) a partial repayment of the Additional Financing Mortgage. Given the shortfall on the Additional Financing Mortgage, there were no proceeds remaining to repay any amounts owing to the Port Place 2 Investors.</p>
28	Pivot (Rutherford)	176	Construction	<p>1st: \$10.7M Bank of Nova Scotia (per the Borrower) 2nd: \$1.15M Jaekel* 3rd: \$8.6M BDMC</p> <p>* inclusive of accrued interest of \$450K through January 14, 2022.</p>	July 30, 2017 (extend date July 30, 2018) MATURED.	To date 67 out of the 136 homes have been sold. 64 of those sale transactions have closed and construction has not commenced on any new units. At this time, the timeline to completion and the quantum of any expected recovery to the Rutherford Investors remains unknown.	n/a
29	Prescott	53	Exited	n/a	n/a	All homes in the development have been sold and the transactions have closed. The priority mortgagee suffered a shortfall on its mortgage; therefore, there were no funds available to repay any amounts owing to the Prescott Investors.	n/a
30	QEWN – Oakville East	12	n/a	n/a	n/a	n/a	The BDMC debt and security on the QEWN project was transferred to a new administrator in June 2020, in accordance with the Court-approved QEWN Administration Settlement. As part of the transfer, an agreement was reached to compensate the BDMC estate for costs incurred directly with respect to the QEWN project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate.
31	Sky City Winnipeg	649	Exited	n/a	n/a	As the project was significantly behind schedule, deposits were returned to condo buyers. The site was being used as a surface parking lot, the income of which was used to service a portion of the priority debt.	<p>On October 13, 2020, 11615467 Canada Ltd ("1161 Canada"), the priority mortgagee, issued a Notice of Sale requiring the full amount of its outstanding debt to be paid. As the borrower continued to be in default for failure to repay its outstanding debt, on January 25, 2021, the Manitoba district registrar granted an order authorizing and empowering 1161 Canada to sell the property by public auction, private contract or both. On March 25, 2021, 1161 Canada held a public auction, which was attended by the Trustee. No offers were received at the auction. At that time the total amount owing to 1161 Canada was approximately \$11.1M. Given the result of the auction, 1161 Canada retained a commercial real estate broker to list the property for sale, which resulted in the sale of the property for a price that was less than the amount required to satisfy the 1161 Canada priority debt in full. Accordingly, there were no proceeds from the transaction available to repay any portion of the BDMC debt on the Sky City Project.</p> <p>In order to effect the transaction, a notice of application for an order of foreclosure was made by 1161 Canada on November 1, 2021 requiring the mortgagor or any other party with an interest in the Sky City property to redeem the mortgages from 1161 Canada within one month. As no party redeemed the mortgages within the requisite time, the District Registrar issued a final order of foreclosure and title was transferred to 1161 Canada free and clear of all subsequent encumbrances, including the charges securing the BDMC debt. After title to the property was transferred to 1161 Canada, 1161 Canada sold the property to the purchaser.</p>

Derived from BDMC records, information provided by Fortress Real Developments Inc. ("**Fortress**"), project borrowers, a planning consultant and other third parties, as of January 14, 2022.
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Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
32	Solterra (Fusion)	362	Exited	n/a	n/a	On August 27, 2020, the Trustee sought and obtained approval of a settlement agreement in the amount of approximately \$16.2M in respect of the BDMC debt on the Solterra (Fusion) project. The settlement payment was in addition to the approximately \$2.4M paid to the Trustee, on behalf of BDMC, in respect of the completion of Phase 3 of the development.	n/a
33	The Greenwood (Danforth)	162	Exited	n/a	n/a	On March 16, 2020, the Trustee sought and obtained approval of a settlement agreement in the amount of \$7M in respect of the BDMC debt on the Greenwood (Danforth) project.	n/a
34	The Harlowe	303	Exited	n/a	n/a	On December 20, 2018, the Trustee sought and obtained approval of a settlement agreement in the amount of approximately \$15.6M in respect of the BDMC debt on the Harlowe project.	n/a
35	The Woodsworth (formerly The James)	130	Exited	n/a	n/a	On April 26, 2019, the Trustee sought and obtained approval of a settlement agreement in the amount of approximately \$4.8M in respect of the BDMC debt on the James project.	n/a
36	The Kemp	360	Exited	n/a	n/a	n/a	Romspen, the first priority mortgagee, issued a Notice of Sale in respect of its first priority mortgage which had matured. On June 27, 2019, Romspen accepted an offer for the sale of the properties. The transaction closed on September 10, 2019. After repayment of amounts owing to the first, second and third priority mortgagees, approximately \$2.2M remained as residual proceeds. Counsel to Fortress, on behalf of itself and the borrower, submitted a claim to the residual proceeds of approximately \$572,000 in priority to the amounts to be paid to the Trustee on behalf of the Kemp Investors. The Trustee reviewed Fortress' claim and disagreed with the analysis provided by Fortress. In December 2019, the Trustee distributed \$1.5M of the \$2.2M of remaining proceeds, with \$700,000 held back (" Kemp Holdback ") pending resolution of the Fortress claim. Thereafter, the Trustee continued its discussions with Fortress, as well as with a third party in respect of whom a portion of the Fortress claim related; however, the parties did not reach an agreement. On January 31, 2022, the Trustee is seeking the approval of the Court to distribute the Kemp Holdback to the Kemp Investors, notwithstanding the asserted claims by Fortress and such third party and net of the Administrative Holdback.
37	The Orchard	382	Exited	n/a	n/a	Property was listed for sale by the borrower. In June 2020, the borrower entered into an agreement of purchase and sale at a sale price of \$7M. After payment of the priority mortgages, including a loan from a party related to the Orchard borrower, property taxes, commission and other closing costs, approximately \$1.8M remained for distribution to the Orchard Investors. On September 22, 2020, the Trustee sought and obtained Court approval to distribute the residual proceeds on a <i>pari-passu</i> basis to the Orchard Investors, net of the Administrative Holdback.	n/a
38	The South Shore	530	Exited	1st: \$4.5M Diversified Capital Inc. (" Diversified ") 2nd: \$10.1M BDMC SS 2 3rd: \$10.5M BDMC SS Hybrid 4th (<i>pari passu</i>): \$8.6M BDMC Crates Landing 4th (<i>pari passu</i>): \$5.7M Snoxons (as of July 2016)	n/a	n/a	The project was subject to a Notice of Sale issued by Diversified, the priority mortgagee, in January 2019. Almost two years after the issuance of the Notice of Sale, the property was listed for sale and ultimately sold for \$13M, which transaction closed on May 13, 2021. Following the closing, the Trustee was advised that \$9.9M had been paid to Diversified, which included approx. \$4.7M of unpaid interest on \$4.5M of original principal. The Trustee had concerns regarding the amounts paid to Diversified given, among other things, the lengthy delay in the sale process. As these concerns have not been adequately resolved with Diversified, the Trustee recently commenced litigation against Diversified seeking to recover certain of the amounts paid to Diversified. There is also one remaining construction lien claim advanced for approximately \$560,000 that could affect the amount of residual proceeds available for investors from the sale transaction. The Trustee is continuing to engage with the lien claimant with respect to the validity and priority of such claim. Approximately \$610,000 has been paid into Court pending resolution of this claim. On January 31, 2022, the Trustee is seeking Court approval to distribute the approximately \$1.8M of residual proceeds received upon the closing of the sale transaction on a <i>pari passu</i> basis to all South Shore Investors, net of the Administrative Holdback.

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The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
39	The Wade (Victoria Medical)	118	Exited	n/a	n/a	n/a	n/a
40	Treehouse (Halo)	115	Exited	n/a	n/a	n/a	On May 22, 2019, the first priority mortgagee issued a Notice of Sale. As its debt was not repaid by the deadline, the first priority mortgagee retained CBRE to market the property for sale. On November 15, 2020, the first priority mortgagee entered into an agreement of purchase and sale for the property for \$4.3M. The transaction closed on November 20, 2020, at which time the first priority mortgagee was owed approximately \$6.7M. As the first priority mortgagee suffered a shortfall on its loan, there were no recoveries available to repay any amounts owing to Treehouse Investors.
41	Triple Creek	280	Exited	n/a	n/a	n/a	A Notice of Sale was issued by first priority lender, Romspen, and other enforcement actions were taken by the second priority lender. On December 14, 2018, an order was granted permitting the property to be listed for sale through a commercial realtor. The list price for the property was \$3M. A report prepared by the listing agent noted that over the course of the six-month sale process, with the exception of one verbal offer for \$1.9M, no offers were received. After the completion of the initial six-month listing, the listing agent continued to market the property on its website until July 2020, during which time it received three verbal offers ranging from \$700,000 to \$1.6M. Given the lack of interest in the property, Romspen sought and obtained an Order for Foreclosure on October 29, 2020, which resulted in Romspen being granted a new Certificate of Title to the property solely in its name and all subsequent encumbrances, including the BDMC mortgages, being discharged from title to the property, with no recovery for the Triple Creek Investors or the second or third priority mortgagees.
42	Union Waterfront	353	Exited	n/a	n/a	n/a	A receiver was appointed August 3, 2018 and a sale process was completed. Sale of the properties was approved on February 15, 2019 pursuant to a Court order. As there was a shortfall in amounts owing to the first priority mortgagee, no recoveries were available for distribution to BDMC.
43	Wellington House	139	Exited	n/a	n/a	On February 23, 2021, the Trustee sought and obtained Court approval of a settlement agreement in the amount of approximately \$6.3M in respect of the BDMC debt on the Wellington project. The settlement contemplated a first settlement payment of \$4M, which was received in March 2020, and a second settlement payment of \$2.3 million, which was received in July 2021. The settlement proceeds, net of the Administrative Holdback, have each been distributed <i>pro rata</i> to the Wellington Investors.	n/a
44	Whitby Commercial Park (Rosewater)	257	Exited	n/a	n/a	The borrower entered into a conditional agreement of purchase and sale for the property in late 2019 for a purchase price of \$28M. The transaction closed in March 2021. After repayment of the priority mortgage, commissions and other closing costs, the net proceeds available for distribution by the Trustee were approximately \$12.9M (" Whitby Residual Proceeds "). On June 7, 2021, the Trustee sought and obtained Court approval to distribute the Whitby Residual Proceeds <i>pro rata</i> to the Whitby Investors, net of the Administrative Holdback.	

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The Trustee has not audited, reviewed or fully verified the accuracy or completeness of the information contained herein or any assumptions in respect thereof.

Building & Development Mortgages Canada Inc.
Summary of Project Status as at **January 14, 2022**
(Unaudited)

LEGEND:	Development	Rezoning and development approvals are being sought prior to the launch of sales and marketing or lease up.
	Pre-construction	Rezoning and development approvals are submitted/fully approved and in certain projects the marketing, sales and/or leasing program has commenced.
	Construction	Demolition or clearing of on-site structures/improvements complete, construction has started via site servicing, excavation, renovation or hard construction.
	Completed	Construction is complete, units remain unsold.
	Exited	All of the assets have been sold or the loan has been paid in full or in part, and the BDMC mortgage(s) has been discharged.

NO.	Project Name	Number of Investors	Status	Capital Stack (See Note 1)	Maturity Date (see Note 3)	Project	Enforcement Proceeding
45	White Cedar Estates (Dunsire Guelph)	42	Exited	n/a	n/a	n/a	Property was sold through a Court-appointed receivership. The net proceeds remaining from the sale of the project after collection of ancillary receipts and payment of, among other things, the debt in priority to BDMC and professional fees, was approximately \$485,000. In September 2019, the Trustee received a preliminary payment of \$450,000 from the receiver, which was distributed to the Dunsire Guelph Investors in September 2020, net of the Administrative Holdback. The final payment from the receiver of approximately \$35,000 was received and distributed to the Dunsire Guelph Investors in April 2021, net of the Administrative Holdback.

Building & Development Mortgages Canada Inc.

Project Analysis Summary as at January 14, 2022 - Notes

(Unaudited)

Note 1: The Trustee cautions that the Project Analysis Summary is only intended to summarize the results of certain aspects of the Trustee's analysis to January 14, 2022. The Trustee continues to refine its analysis on each project as well as to respond to new developments and information. New developments and new information can at times have a significant impact on the Trustee's review for that project and its related recommendations. Further, certain confidential information has been excluded from the Project Analysis Summary.

Note 2: Capital stack contains information provided to the Trustee at different points in time by various sources regarding the amounts advanced under the various registered charges. The registered charges may be different than the amount due. Actual balances may vary and those variances may be material. The capital stack information is provided for reference only and the Trustee or any other party may dispute the quantum and/or priority of any mortgage. Other encumbrances may exist that have not been registered on title. The capital stack reflects principal balances only, unless otherwise stated.

Note 3: The Trustee has identified that the loan agreements on certain projects reflect maturity dates that vary depending on when the Investor entered into its agreement with BDMC. In some cases, Investors that advanced funds in a later tranche have loan agreements that reflect maturity dates that are later than the maturity dates reflected in the loan agreements of Investors that advanced funds earlier. As such, an individual Investor's loan maturity date may differ from the dates herein. The Trustee has not reviewed each Investor's individual closing package, and, accordingly, cannot confirm how many projects might be affected by varying maturity dates within a loan.

Appendix 4:
Parcel Register for South Shore Property



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #65

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ON 2021/05/20 AT 13:43:44

03475-2054 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION:

PT LOT 8, PLAN 170, N GWILLIMBURY AS IN R533209; GEORGINA; LOTS 1, 2, 3, 4, 5, 6, 7, AND 8, PLAN 447; N GWILLIMBURY; DOREDA DR, LAN 447, PT 2, 65R16653, GEORGINA AS STOPPED UP AND CLOSED BY BY-LAW REGISTERED AS YR45264; PT LOT 6, PLAN 170, N GWILLIMBURY AS IN B31794B; LOT 5, PLAN 170, N GWILLIMBURY, T/W R737440; LOTS 9, 10, 11, 12, 13, 14, AND 15, PLAN 447, N GWILLIMBURY; BLK A, PLAN 447, N GWILLIMBURY, PT LOT 8, PLAN 170, PT 1, 65R16553 LYING N/W OF LOTS 6 & 7, PLAN 447, PT LOT 8, PLAN 170, PT 1 65R16653, LYING S OF DOREDA DRIVE, LOTS 9, 10 & BLK A, PLAN 447; PT LOTS 6, 7, & 8, PLAN 170, N GWILLIMBURY, AS IN R6495667; TOWN OF GEORGINA

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE

LT CONVERSION QUALIFIED

OWNERS' NAMES

2221563 ONTARIO INC.

RECENTLY:

CONSOLIDATION FROM 03475-0123, 03475-0124, 03475-0125, 03475-0126, 03475-0127, 03475-0868, 2016/08/15

03475-0869, 03475-0870, 03475-0927

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT						
**SUBJECT,		INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2016/08/15 **				
**		ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:				
**		SUBSECTION 4 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**		AND ESCHEATS OR FORFEITURE TO THE CROWN.				
**		THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**		IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY				
**		CONVENTION.				
**		ANY LEASE TO WHICH THE SUBSECTION 70 (2) OF THE REGISTRY ACT APPLIES.				
**DATE OF CONVERSION TO		LAND TITLES: 1999/04/26 **				
PL447	1955/02/09	PLAN SUBDIVISION				C
R198450	1976/11/09	BYLAW				C
65R16653	1993/08/12	PLAN REFERENCE				C
YR45264	2001/09/05	BYLAW				C
REMARKS: TO STOP UP, CLOSE AND SELL		TO THE ABUTTING OWNERS THE UNOPENED ROAD ALLOWANCE OF DOREDA DRIVE, PL 447				
YR1069853	2007/10/15	LR'S ORDER				C
REMARKS: AMEND		DESEP FROM -- PT LT 8, PL 170, PT 1 65R16653 TO -- PT LT 8, PL 170, PT 1 65R16653 LYING NW OF LTS 6 & 7, PL 447.				
YR1416419	2009/12/09	TRANS POWER SALE	\$4,800,000	FOREMOST MORTGAGE HOLDING CORPORATION EDSON, RALPH PARTNOY, TINA RIO INVESTMENTS LIMITED	2221563 ONTARIO INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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03475-2054 (LT)

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR1629086	2011/03/31	NOTICE		2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1629087	2011/03/31	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST	C
YR1636123	2011/04/19	NOTICE		2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1637719	2011/04/26	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1637720	2011/04/26	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST	C
YR1642625	2011/05/04	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1642626	2011/05/04	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY	C
YR1645228	2011/05/10	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1650665	2011/05/20	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1650666	2011/05/20	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY	C
YR1656127	2011/05/31	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1656128	2011/05/31	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR1660699	2011/06/09	NOTICE	\$2	2221563 ONTARIO INC.	OLYMPIA TRUST COMPANY	C
YR1660700	2011/06/09	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK	C
YR1668421	2011/06/24	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1668422	2011/06/24	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK	C
YR1680843	2011/07/19	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1680844	2011/07/19	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK	C
YR1685793	2011/07/28	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1685794	2011/07/28	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK	C
YR1699568	2011/08/22	NOTICE	\$8,600,000	2221563 ONTARIO INC.	SORRENTI, DEREK OLYMPIA TRUST THE BANK OF NOVA SCOTIA TRUST COMPANY	C

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YR1699569	2011/08/22	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1699570	2011/08/22	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1705464	2011/08/31	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1705465	2011/08/31	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1710126	2011/09/09	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2BTRUST	C
YR1711081	2011/09/13	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1711082	2011/09/13	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1716118	2011/09/22	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1716119	2011/09/22	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1726662	2011/10/13	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR1726663	2011/10/13	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1737106	2011/11/02	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1737107	2011/11/02	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1746587	2011/11/22	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1746588	2011/11/22	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1757721	2011/12/14	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1757722	2011/12/14	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1768945	2012/01/10	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1768946	2012/01/10	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR1778209 REMARKS: YR1607456	2012/01/31	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1778210 REMARKS: YR1607456.	2012/01/31	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1791525 REMARKS: YR1607456	2012/03/05	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1791526 REMARKS: YR1607456.	2012/03/05	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1812940 REMARKS: YR1607456	2012/04/25	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1812941 REMARKS: YR1607456.	2012/04/25	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1827223 REMARKS: YR1607456	2012/05/25	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1827224 REMARKS: YR1607456.	2012/05/25	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1848606 REMARKS: YR1607456	2012/07/04	NOTICE	\$2	2221563 ONTARIO INC.	SORRENTI, DEREK	C
YR1848607	2012/07/04	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY	C

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YR1876962	2012/08/28	NOTICE	\$2	THE BANK OF NOVA SCOTIA TRUST COMPANY	THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR1876963	2012/08/28	TRANSFER OF CHARGE		SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR2192808	2014/09/26	TRANSFER OF CHARGE		SORRENTI, DEREK B2B BANK OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B TRUST OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR2204014	2014/10/21	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B TRUST THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR2209128	2014/10/30	CHARGE	\$4,500,000	2221563 ONTARIO INC.	DIVERSIFIED CAPITAL INC.	C
YR2209129	2014/10/30	NO ASSGN RENT GEN		2221563 ONTARIO INC.	DIVERSIFIED CAPITAL INC.	C
YR2209130	2014/10/30	POSTPONEMENT		SNOXONS HOLDINGS INC.	DIVERSIFIED CAPITAL INC.	C
YR2209131	2014/10/30	POSTPONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B TRUST THE BANK OF NOVA SCOTIA TRUST COMPANY	DIVERSIFIED CAPITAL INC.	C
YR2242948	2015/01/14	CHARGE	\$3,200,000	2221563 ONTARIO INC.	CENTRO MORTGAGE INC.	C
YR2242949	2015/01/14	POSTPONEMENT		SNOXONS HOLDINGS INC.	CENTRO MORTGAGE INC.	C
YR2242950	2015/01/14	POSTPONEMENT		SORRENTI, DEREK	CENTRO MORTGAGE INC.	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
				OLYMPIA TRUST COMPANY B2B TRUST THE BANK OF NOVA SCOTIA TRUST COMPANY		
YR2242978	2015/01/14	TRANSFER OF CHARGE	REMARKS: YR1607456, YR2204014 TO YR2242948	CENTRO MORTGAGE INC.	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY		
YR2249175	2015/01/29	TRANSFER OF CHARGE	REMARKS: YR2242948	SORRENTI, DEREK B2B BANK OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK B2B BANK OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY	C
				CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY		
YR2257613	2015/02/19	TRANSFER OF CHARGE	REMARKS: YR1607456.	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY		
YR2258713	2015/02/23	TRANSFER OF CHARGE	REMARKS: YR2242948	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY		
YR2276417	2015/04/09	TRANSFER OF CHARGE	REMARKS: YR2242948	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY		
YR2280706	2015/04/21	TRANSFER OF CHARGE	REMARKS: YR2242948	2221563 ONTARIO INC.	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				SNOXONS HOLDINGS INC.		
YR2302493	2015/06/09	NOTICE	REMARKS: YR2242948	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY		
YR2302500	2015/06/09	POSTPONEMENT	REMARKS: YR1416446 TO YR2242948	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY		
YR2302501	2015/06/09	TRANSFER OF CHARGE	REMARKS: YR2242948	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C

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YR2317841	2015/07/08	TRANSFER OF CHARGE		CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2242948					
YR2349339	2015/09/01	TRANSFER OF CHARGE		CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2242948					
YR2352237	2015/09/04	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	C
	REMARKS: YR1607456.					
YR2359250	2015/09/22	NOTICE		2221563 ONTARIO INC.	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2242948					
YR2359252	2015/09/22	TRANSFER OF CHARGE		CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2242948 YR2242948					
YR2373600	2015/10/19	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	C
	REMARKS: YR1607456.					
YR2383204	2015/11/03	TRANSFER OF CHARGE		CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2242948					
YR2399061	2015/12/03	TRANSFER OF CHARGE		CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2242948					
YR2404312	2015/12/15	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B TRUST THE BANK OF NOVA SCOTIA TRUST COMPANY	C
	REMARKS: YR1607456.					
YR2404314	2015/12/15	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
				OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	
YR2408708	2015/12/22	TRANSFER OF CHARGE		CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	CENTRO MORTGAGE INC. OLYMPIA TRUST COMPANY	C
				SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR2413640	2016/01/08	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	C
				SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	C
YR2434381	2016/02/23	TRANSFER OF CHARGE		2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
				BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2457912	2016/04/15	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
				BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2460994	2016/04/22	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
				BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2471252	2016/05/13	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
				BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2480017	2016/06/01	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
				BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2505546	2016/07/13	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C

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03475-2054 (LT)

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR2510956	2016/07/22	CHARGE	\$5,900,000	THE BANK OF NOVA SCOTIA TRUST COMPANY B2B BANK	THE BANK OF NOVA SCOTIA TRUST COMPANY B2B BANK	C
YR2510957	2016/07/22	POSTPONEMENT		2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.	C
YR2510958	2016/07/22	POSTPONEMENT		SNOXONS HOLDINGS INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.	C
YR2510962	2016/07/22	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY THE BANK OF NOVA SCOTIA TRUST COMPANY B2B BANK	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2511199	2016/07/22	APL CONSOLIDATE		2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.	C
YR2516850	2016/08/02	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2523368	2016/08/12	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2530787	2016/08/25	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2541971	2016/09/13	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2561795	2016/10/18	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2561798	2016/10/18	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR2564016	2016/10/21	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: YR1607456.		B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	B2B BANK THE BANK OF NOVA SCOTIA TRUST COMPANY	
YR2571964	2016/11/02	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: YR2510956 & YR2561795				
YR2595214	2016/12/13	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2607517	2017/01/11	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2617719	2017/01/30	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: YR2510956				
YR2626191	2017/02/15	NOTICE		2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: YR2242948				
YR2633539	2017/03/02	NOTICE	\$2	2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: YR2510956				
YR2633696	2017/03/02	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2643520	2017/03/24	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: ORIGINAL CHARGE IS YR2510956.				
YR2650434	2017/04/06	NOTICE	\$2	2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: AMENDING CHARGE YR2510956, YR2510957, YR2510962, YR2523368, YR2530787, YR2541971, YR2561795, YR2571964, YR2595214, YR2607517, YR2617719, YR2633539, YR2633696 AND YR2643520				
YR2657585	2017/04/25	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
		REMARKS: YR2510956, YR2643520				

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR2669306	2017/05/16	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
YR2669351	2017/05/16	NOTICE		2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2510956					
YR2671216	2017/05/19	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** DEEP FOUNDATIONS CONTRACTORS INC.		
YR2683637	2017/06/12	APL DEL CONST LIEN		*** COMPLETELY DELETED *** DEEP FOUNDATIONS CONTRACTORS INC.		
	REMARKS: YR2671216.					
YR2683728	2017/06/12	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2510956.					
YR2703133	2017/07/17	NOTICE		2221563 ONTARIO INC.	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2510956					
YR2703134	2017/07/17	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2510956					
YR2712105	2017/08/02	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2510956					
YR2715536	2017/08/10	TRANSFER OF CHARGE		BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	BUILDING & DEVELOPMENT MORTGAGES CANADA INC. OLYMPIA TRUST COMPANY	C
	REMARKS: YR2510956					
YR2773053	2017/12/13	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** M.G.R. CONTRACTING AND MAINTENANCE LTD.		
YR2777153	2017/12/21	CONSTRUCTION LIEN	\$559,984	DE HODGE CONTRACTING INC.		C
YR2784028	2018/01/16	CERTIFICATE		DE HODGE CONTRACTING INC.	ONTARIO SUPERIOR COURT OF JUSTICE	C
	REMARKS: YR2777153					

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR2785684	2018/01/19	CERTIFICATE		*** COMPLETELY DELETED *** M.G.R CONTRACTING AND MAINTENANCE LTD.		
	REMARKS: YR2773053					
YR2795219	2018/02/13	CONSTRUCTION LIEN	\$82,913	SUNBELT RENTALS OF CANADA INC.		C
YR2824874	2018/05/09	CERTIFICATE		SUNBELT RENTALS OF CANADA INC.		C
	REMARKS: YR2795219					
YR2885358	2018/10/12	APL DEL CONST LIEN		*** COMPLETELY DELETED *** 2221563 ONTARIO INC. FORTRESS CRATES LANDING 2013 INC.		
	REMARKS: YR2773053.					
YR3250335	2021/05/13	APL DEL CONST LIEN		DE HODGE CONTRACTING INC.		
	REMARKS: YR2771153.					
YR3250336	2021/05/13	APL DEL CONST LIEN		SUNBELT RENTALS OF CANADA INC.		
	REMARKS: YR2824874.					
YR3250337	2021/05/13	TRANS POWER SALE	\$13,000,000	DIVERSIFIED CAPITAL INC.		
	REMARKS: YR2209128. PLANNING ACT STATEMENTS.					
YR3250487	2021/05/14	NO CHNG ADDR OWNER		2833367 ONTARIO LIMITED	2833367 ONTARIO LIMITED	

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Appendix 5:
Sample Crates Landing Loan Agreement (redacted)

LOAN AGREEMENT

THIS AGREEMENT made as of the 17th day of January, 2011.

B E T W E E N :

**THE BANK OF NOVA SCOTIA TRUST COMPANY IN TRUST FOR
SDRSP NO. _____**

and/or

B2B TRUST IN TRUST FOR SDRSP NO. _____

and/or

**DEREK SORRENTI, IN TRUST FOR [REDACTED]
an individual resident in the Province of Ontario**

(hereinafter referred to as the "Lender" or collectively as "Lenders", as applicable)

AND

2221563 ONTARIO INC.,
a corporation incorporated under the laws of the province of Ontario

(hereinafter referred to as the "Borrower" as applicable)

WHEREAS the Lender has agreed to lend and the Borrower has agreed to borrow the sum of [REDACTED] (the "Principal Sum") in connection with the development and construction of residential condo real estate premises situated at 230-240 Cameron Crescent, Keswick, ON, L4P 3T6. (the "Development");

AND WHEREAS the Borrower agrees to pay to the Lender interest on the Principal Sum at the rate of Eight Percent per annum (8.00% p.a.), calculated annually, during the term of this Agreement;

AND WHEREAS the Borrower has agreed to register a second mortgage/charge in favour of the Lender, or the Lender's nominee, as security for repayment of the said loan upon the properties described in Schedule "A" attached hereto;

AND WHEREAS the Borrower agrees to repay the Principal Sum to the Lender on or before January 21, 2014 together with interest as specified herein;

AND WHEREAS the Lenders and the Borrower wish to evidence their agreement in respect of the said loan (herein referred to as the "Agreement" or the "Loan Agreement");

AND WHEREAS the Lenders each acknowledge that security under the Loan Agreement shall be granted, *inter alia*, in the form of a participating interest in a syndicated second charge/mortgage with other Lenders ("Charge/Mortgage") as more fully described herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements, warranties and in consideration of the mutual premises set out herein and the payment of TEN DOLLARS (\$10.00) by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the Parties hereby respectively covenant and agree as follows:

ARTICLE 1 - RECITALS

1.01 The recitals above are true and accurate in all respects.

ARTICLE 2 - CURRENCY

2.01 All dollar amounts referred to in this Agreement and schedules annexed hereto are in Canadian funds and all sums of money required to be paid or advanced hereunder shall be paid or advanced in lawful money of Canada.

ARTICLE 3 - SCHEDULES

3.01 The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be a part thereof:

Schedule "A" – Lands to be Charged/Mortgaged
Schedule "B" – Schedule of Interest Payments
Schedule "C" – Permitted Encumbrances

ARTICLE 4 - AGREEMENT TO LEND

4.01 The Lender agrees to provide a loan to the Borrower for the Principal Sum. The loan amount so advanced is subject to a Lender's fee Zero Dollars (\$0.00), which shall be deducted from the Principal Sum and remitted to the Lender. The Borrower acknowledges itself indebted to the Lender in the amount of the Principal Sum plus interest as calculated and determined herein and the Borrowers jointly and severally promise to pay to the Lender the Principal Sum plus interest pursuant to the terms and conditions enumerated herein.

4.02 For greater certainty, interest on the Principal Sum shall accrue at a rate Eight Percent (8.00%) per annum, calculated annually, from the date of advance by the Lender to the Borrower, until January 21, 2014 (the "Due Date"). The Borrower shall remit interest payments to the Lender quarterly in accordance with a pre-determined schedule, attached hereto as Schedule "B". The initial interest payment from the Borrower to the Lender shall be pro rata on a per diem basis calculated from the date of the advance by the Borrower to the date of the first scheduled payment, April 21, 2011.

ARTICLE 5 - SECURITY

5.01 As security for the Loan, the Borrower shall give to the Lender(s):

A second charge/mortgage on the lands described in Schedule "A" attached hereto for the sum of FOUR MILLION, EIGHT HUNDRED THOUSAND DOLLARS (\$4,800,000.00); This charge/mortgage shall rank pari passu to an existing second mortgage charge registered for a face value of \$6,494,182.00.

A completed pari passu agreement between the parties outlined in schedule "C – existing encumbrances"

The Lenders and the Borrower each acknowledge that the said second charge/mortgage registered against title to the Lands pursuant to the Loan Agreement shall initially be for the sum of FOUR MILLION, EIGHT HUNDRED THOUSAND DOLLARS (\$4,800,000.00). The Lenders and the Borrower further acknowledge and agree that upon the completion of certain development and construction milestones on the Property by the Borrower, it is anticipated that the said second charge shall from time to time be amended during the term of the Loan Agreement to a maximum of EIGHT MILLION, SIX HUNDRED THOUSAND DOLLARS (\$8,600,000.00).

The Charge/Mortgage, as amended from time to time, shall be registered in the name of "Derek Sorrenti" as trustee for all non-registered investors, and in the name of the Bank of Nova Scotia Trust Company or in the name of B2B Trust Company for all registered investors. The interests of all registered and non-registered investors shall rank pari-passu as between Derek Sorrenti, B2B Trust Company and the Bank of Nova Scotia Trust Company.

The Parties each acknowledge that the registered amount of the Charge/Mortgage may be amended from time to time in accordance with the terms of this Loan Agreement, and the Parties further hereby acknowledge, consent and direct that any actions which may from time to time be required to amend of the Charge/Mortgage in accordance with the foregoing terms are hereby permitted and authorized.

- 5.02 Reasonable legal fees and disbursements of the Lenders shall be paid by the Borrower and may be deducted from each advance to the Borrower made pursuant to this Loan Agreement.

ARTICLE 6 – COVENANTS, REPRESENTATIONS AND WARRANTIES

- 6.01 The Borrower represents and warrants to the Lenders the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the continued advances of the Loan by the Lenders to the Borrower:

- (a) The Borrower has been duly incorporated and is validly subsisting as a corporation under the Business Corporations Act (Ontario), is duly qualified to carry on its business in the jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement, the Charge/Mortgage and all instruments and agreements delivered pursuant hereto and thereto, is the registered owner of the Property, is legally entitled to carry on its business as currently conducted or as currently contemplated, and has obtained all material licenses, permits and approvals from all governments, governmental commissions, boards and other agencies of jurisdictions in which it carries on (or contemplates carrying on) business which are required in respect connection with the development of the Property. The Borrower or its solicitor has delivered to the Lenders, or its solicitor, copies of the constating documents of the Borrower and the Lenders' solicitor has obtained a legal opinion from the Borrower's solicitor that the Borrower is authorized to enter into this Loan Agreement.
- (b) The execution, delivery and performance of this Loan Agreement, the Charge/Mortgage and every instrument or agreement delivered or to be delivered pursuant hereto and thereto has been duly authorized by all requisite action on the part of the Borrower; and this Agreement and all instruments and agreements delivered or to be delivered pursuant hereto and thereto have been, or will be, duly executed and delivered by the Borrower, and this Loan Agreement, the Charge/Mortgage, and each agreement and instrument delivered or to be delivered pursuant hereto and thereto constitutes, or when delivered will constitute, a valid and binding obligation of the Borrower enforceable in accordance with its terms, subject to the application of bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights generally and the fact that the right to obtain judicial orders requiring specific performance or other equitable remedies is in the discretion of the court. There are no actions, suits or proceedings pending or to the best of the Borrowers' knowledge threatened against or affecting the Borrower at law or in equity or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind which, if determined adversely, would result in any adverse change in the Borrower's business, operations, the Property, assets or condition, financial or otherwise, or in the Borrower's ability to perform its obligations under this Agreement, the Charge/Mortgage or any agreement or instrument delivered or to be delivered pursuant hereto or thereto; and the Borrower is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which default(s), either separately or in the aggregate, would result in any such adverse change.
- (c) The Borrower is not subject to any judgment, order, writ, injunction, decree or award or any rule or regulation having restricted application to the said Borrower, which, in the opinion of the Lenders acting reasonably, adversely affects, or in the future is likely to adversely affect, the Property, the Borrower, or the said Borrower's business, operations, or financial assets.

- (d) The Borrower is not in default beyond any period of grace in payment of any amount under any guarantee, bond, debenture, note or other instrument evidencing any indebtedness or under the terms of any instrument pursuant to which any of the foregoing has been issued or made and delivered.
- (e) The Borrower acknowledges that Derek Sorrenti is listed as a the Chargee/Mortgagee of the Charge/Mortgage, in his capacity as trustee only, and that Derek Sorrenti does not maintain any interest whatsoever in the Property or the Development, nor is Derek Sorrenti advancing any funds towards the Loan. Derek Sorrenti is listed as Chargee/Mortgagee for the sake of expediency and efficiency only.
- (f) The Borrower shall and does indemnify and hold harmless the Lenders and Derek Sorrenti from and against all losses, claims, damages, liabilities, and expenses, to which any such person or entity may become subject arising out of or in connection with this Loan Agreement, the use of proceeds, or any related transaction or any claim, litigation, investigation or proceeding, relating to any of the foregoing, regardless of whether the Lenders and/or Derek Sorrenti is a party thereto, and to reimburse any and all of the Lenders and/or Derek Sorrenti, forthwith upon demand for any reasonable, legal or other expenses incurred in connection with investigating or defending any of the foregoing.
- (h) The Borrower has not withheld from the Lenders or from the general public, information which adversely affects, or so far as it can now reasonably foresee, will adversely affect the Property or the said Borrower's assets, liabilities, affairs, business, operations or conditions, financial or otherwise, or its ability to perform its obligations under this Loan Agreement, the Charge/Mortgage or any agreements or instruments delivered pursuant hereto or thereto.
- (i) The Borrower acknowledges that its execution and delivery of this Loan Agreement, the Charge/Mortgage or any agreements or instruments delivered pursuant hereto or thereto (hereinafter the "Loan Documents") and the consummation of the transactions herein contemplated, does not and will not conflict with, and does not and will not result in any breach of, any of the provisions of the constating documents of the said Borrower or of any agreements or instruments to which the said Borrower is a party or by which the Property or any of the said Borrower's property and assets are bound.
- (j) The Borrower has good and marketable title to the Property and its assets free from all mortgages, security interests, liens, pledges, charges, encumbrances, title retention agreements, options or adverse claims, other than Permitted Encumbrances as identified in Schedule "C" – Permitted Encumbrances attached hereto.
- (k) The Borrower has filed or caused to be filed, in a timely manner all tax returns, reports and declarations, which are required to be filed by it. All information in such tax returns, reports and declarations is complete and accurate in all material respects. The Borrower has paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by it, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to the said Borrower and with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all accrued and unpaid federal, provincial, local, foreign and other taxes whether or not yet due and payable and whether or not disputed.
- (l) The Borrower is not in default in any material respect under, or in violation in any material respect of any of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound and the said Borrower is in compliance in all material respects with all applicable provisions of laws, rules, regulations, licenses, permit, approvals and orders of any foreign, federal, provincial, or local governmental authority.
- (m) The Borrower is now in compliance with all environmental laws and regulations in respect of the Property and the Borrower undertakes to take all necessary action to obtain any and all environmental permits and/or regulatory approvals necessary for the Borrower to develop the Property in accordance with the laws and regulations of the province of Ontario and the appropriate local municipality.
- (n) The Borrower has not caused or permitted and are not legally responsible for, nor do

they have knowledge of, any release, discharge or disposal of any hazardous material on, from, to or under the Property or any other property or asset of the Borrower.

- (o) The Borrower shall notify the Lenders immediately in the event of a default in the payment of any indebtedness for borrowed money, pursuant to the Loan Documents, or pursuant to any other loan agreement to which the Borrower is party to, whether such indebtedness now exists or shall hereafter be created. The Borrower shall also notify the Lender immediately in the event of an event of default under any mortgage, indenture or instrument to which the Borrower is a Party.
- (p) The Borrower have not received any written notice of nor does the Borrower have any knowledge of any claims, actions, charges, suits, permit revocations, remedial Orders or other current or pending proceedings ("Environmental Claims") relating to any breach of any applicable environmental laws or regulations involving the Property.
- (q) All representations and warranties of the Borrower contained in this Loan Agreement or in any Loan Documents referenced herein shall survive the execution and delivery of this Loan Agreement and shall be deemed to have been made again to the Lenders on the date of each advance pursuant to the Loan and shall be conclusively presumed to have been relied on by the Lenders regardless of any investigation made or information possessed by the Lenders. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which the Borrower shall now or hereafter give, or cause to be given, to the Lenders.
- (r) The Borrower further acknowledges and agrees that the terms of this Loan Agreement shall override the terms of any previous loan agreements to which the Borrower and the Lenders may be or may have been Parties.
- (s) The Borrower acknowledge that each Lender named as a Party to this Loan Agreement shall deliver an executed copy of this Loan Agreement to the Borrower. The Borrower acknowledges that each of said Lenders may have executed a loan agreement that has been amended to accommodate that particular Lender. The Borrower agrees to abide by the specific terms of each of said Loan Agreements.

6.02 The Lenders and the Borrower mutually acknowledge, represent and covenant as follows:

- (a) Any amounts advanced by a Lender to the Borrower pursuant to this Loan Agreement shall occur in tranches ("Instalments"):
 - i) the initial face value of the Loan will be an initial installment of \$4,800,000.00;
 - ii) it is anticipated that the face value of the Loan shall periodically increase upon the completion of certain construction and development milestones over the duration of the term in the form of various additional Instalments, to an total amount which shall not exceed the sum of \$8,600,000.00;
 - iii) prior to the release of any funds by the solicitor for the Lenders to the solicitor(s) for the Borrower, each Party hereby irrevocably acknowledges and directs that their respective solicitors are authorized to and shall cause to be registered any such instruments on title to the Lands which in the sole discretion of the solicitor for the Lenders may be required as evidence of any sums advanced to the Borrower on the security of the Charge/Mortgage. The Lenders hereby waive any requirement to be notified of the registration of any subsequent instalments under the Charge/Mortgage.
- (b) The Charge/Mortgage in which the Lenders have an interest pursuant to this Loan Agreement is a **second** ranking charge against title to the Lands. The Parties further acknowledge that the Borrower has obtained construction financing for the Development of the Property which constitutes a first ranking charge ("First Charge") against title to the Lands. **THE LENDER HEREBY UNDERSTANDS, CONSENTS AND AGREES THAT THIS FIRST CHARGE SHALL PERIODICALLY INCREASE OVER THE TERM OF THIS SECOND**

CHARGE/MORTGAGE. THE LENDER HEREBY AGREES THAT ITS INTERESTS SHALL BE POSTPONED AND STAND STILL TO ANY INCREASE IN THE FIRST CHARGE, TO A MAXIMUM OF \$40,000,000.00 but that there shall be no other postponements or encumbrances which affect the position or security afforded by the second Charge/ Mortgage contemplated herein.

ARTICLE 7 - DEFAULT

- 7.01 On the happening of any of the following events of default the Lenders may, at their option, require the unpaid balance of the Principal Sum together with all interest accrued to become immediately due and payable by the Borrower.
- (a) in the event that a Borrower fails to make the payments in the amounts and at the times specified in this Loan Agreement;
 - (b) in the event that a Borrower should breach any agreement entered into between the Lenders and the Borrower;
 - (c) in the event that a Borrower should become bankrupt or insolvent or should a Borrower be subject to the provisions of the *Bankruptcy Act* or any other *Act* for the benefit of creditors, or should a Borrower go into liquidation either voluntarily or under an order of a court of competent jurisdiction or make a general assignment for the benefit of creditors or otherwise acknowledge its insolvency;
 - (d) in the event that the Lenders in good faith believe that the prospect of payment or performance by a Borrower of the obligations under this Loan Agreement is impaired or that any collateral provided to the Lenders as security for payment of any obligations of a Borrower to the Lenders is in danger of being impaired, lost, damaged or confiscated.
 - (e) In the event of any default whatsoever with respect to any Charge/Mortgage registered against the Lands charged herein under this Charge/Mortgage, including without limitation, the commencement of power of sale proceedings under any Charge/Mortgage, at the option of the Lenders, all monies hereby secured together with accrued interest and all costs and fees thereon shall forthwith become due and payable by the Borrower to the Lenders.

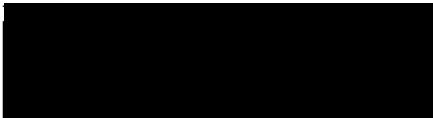
On the happening of an event of default the Lenders may require the Borrower to repay all principal and interest outstanding and due by the Borrower to the Lenders pursuant to the Loan Documents, and the Lenders may take any enforcement action deemed necessary or advisable to realize on their security without the requirement of any further demand or notice to the Borrower.

ARTICLE 8 - GENERAL

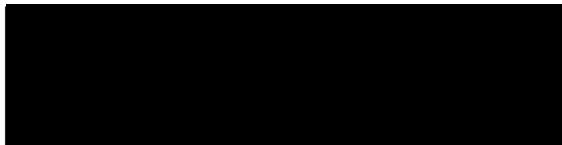
- 8.01 This Agreement shall continue in force until the Borrower has no indebtedness or liability to the Lenders.
- 8.02 The terms of this Agreement shall bind and extend to and enure to the benefit of the Parties hereto and their respective heirs, administrators, executors, legal personal representatives, successors and assigns.
- 8.03 The failure of any of the Parties to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver of such a term, provision, option, right or remedy, but the same shall continue or remain in full force and effect. No waiver by any of the parties of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.
- 8.04 This Agreement shall be governed by the laws of the Province of Ontario.
- 8.05 Time shall be of the essence hereof.
- 8.06 This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements and understandings between the Parties in writing hereto.
- 8.07 Any supplement, modification or amendment of any term, provision or condition of this Agreement shall not be binding or enforceable unless executed by the Parties in writing hereto.

- 8.08 Headings as used in this Agreement are solely for purposes of convenience and reference only and shall not be applied to explain, modify, limit or amplify the meaning, construction or interpretation of any of the provisions of this Agreement.
- 8.09 This Loan Agreement may be executed by the Parties herein in counterparts (which counterparts may be delivered by telecopier with the original forwarded immediately thereafter) each of which once executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such counterparts.
- 8.10 If any article, section or any portion of any section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid article, section or portion thereof shall be severed from the remainder of this Agreement.

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



Witness



2221563 Ontario Inc.

Per:

Alan Chapple, Director
I have authority to bind the Corporation

Schedule "A" – THE LANDS

Municipal Address: 230-240 Cameron Crescent, Keswick, ON, L4P 3T6

Legal Description: LT 1-15 PL 447 N Gwillimbury; GEORGINA; DPreda Dr PL 447 PT 2 65R18653 Georgina as stopped up and closed by by-law register as YR45264; LT 5 PL 170

Agreement.

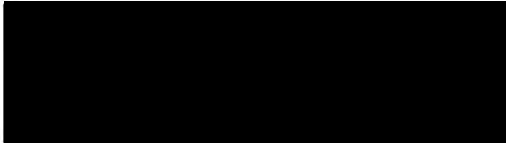
- 8.09 This Loan Agreement may be executed by the Parties herein in counterparts (which counterparts may be delivered by telecopier with the original forwarded immediately thereafter) each of which once executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such counterparts.

- 8.10 If any article, section or any portion of any section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid article, section or portion thereof shall be severed from the remainder of this Agreement.

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



Witness



2221563 Ontario Inc.

Per:

Alan Chapple, Director

I have authority to bind the Corporation



PARI PASSU AGREEMENT

THIS AGREEMENT dated as of the 17th day of January , 2010

AMONG:

SNOXONS HOLDINGS INC.
(hereinafter referred to as the “**Original 2nd Mortgagee**”)
OF THE FIRST PART;

- and -

**DEREK SORRENTI IN TRUST, B2B TRUST COMPANY
AND THE BANK OF NOVA SCOTIA TRUST COMPANY**
(hereinafter referred to as the “**New 2nd Mortgagee**”)
OF THE SECOND PART;

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

- and -

2221563 ONTARIO INC.
(hereinafter referred to as the “**Borrower**”)
OF THE THIRD PART;

RECITALS:

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

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

ARTICLE 1 - DEFINITIONS

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

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

ARTICLE 2 – CONSENT

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

ARTICLE 3 – PRIORITY

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

ARTICLE 4 – ENFORCEMENT

- 4.01** If either Mortgagee makes a demand or accelerates the time for payment of any indebtedness of the Borrower or gives notice to the Borrower of its intention to enforce security or commences proceedings in court or otherwise for the enforcement of any security or collection of any indebtedness of the Borrower, such Mortgagee, shall give the other Mortgagee seven (7) days notice of such intention, and shall from time to time, promptly provide the other Mortgagee, at its request, full information concerning the status of any action it has taken or is contemplating taking against the Borrower or any of its assets.
- 4.02** Any payments or distributions received by any Mortgagee contrary to the provisions hereof shall be received in trust for the benefit of the other Mortgagee and shall be paid to the Mortgagee or party so entitled.
- 4.03** Neither Mortgagee shall challenge or contest the validity, priority or enforceability of the security held by the other Mortgagee as set out herein. Neither Mortgagee shall take any steps or do or cause any act or thing to be done whereby the respective priorities of the Original 2nd Mortgagee nor the New 2nd Mortgagee as defined herein may be defeated or impaired. Neither Mortgagee shall claim or prove in the bankruptcy or insolvency of the

Borrower in competition with the other Mortgagee or in a manner inconsistent with this Agreement.

ARTICLE 5 - GENERAL

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

To the Borrower(s): 2221563 Ontario Inc., 230-240 Cameron Crescent, Keswick Ontario.

To the Original 2nd Mortgagee: Snoxons Holdings Inc., 2 Guthrie Court, Stouffville, Ontario.

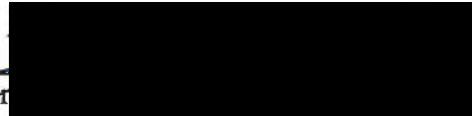
To the New 2nd Mortgagee: Derek Sorrenti In Trust, 3800 Steeles Ave West Suite 400, Vaughan, Ontario, L4L 4G9

Facsimile No.

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

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

Lender



Name: Alan Chapple
Title: Officer and Director

We have authority to bind the Corporation

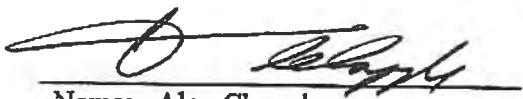
To the New 2nd Mortgagee: Derek Sorrenti In Trust, 3800 Steeles Ave West
Suite 400, Vaughan, Ontario, L4L 4G9

Facsimile No.

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

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

Lender: 



Name: Alan Chapple
Title: Officer and Director

We have authority to bind the
Corporation

SCHEDULE A

Original 2nd Mortgage Security

Snonoxs Holding Inc. Registered on December 9 2009 as Instrument No. YR 1416446 with a current balance of \$ 6,494,182.00.

SCHEDULE B

NEW 2ND MORTGAGEE SECURITY

TBA upon registration of new mortgage

Appendix 6:
Snoxons Pari Passu Agreement

PARI PASSU AGREEMENT

THIS AGREEMENT dated as of the ^{4th} day of February, 2011

AMONG:

SNOXONS HOLDINGS INC.
(hereinafter referred to as the "Original 2nd Mortgagee")
OF THE FIRST PART;

- and -

**DEREK SORRENTI IN TRUST, B2B TRUST COMPANY
AND THE BANK OF NOVA SCOTIA TRUST COMPANY**
(hereinafter referred to as the "New 2nd Mortgagee")
OF THE SECOND PART;

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

- and -

2221563 ONTARIO INC.
(hereinafter referred to as the "Borrower")
OF THE THIRD PART;

RECITALS:

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

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

ARTICLE 1 - DEFINITIONS

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

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

ARTICLE 2 - CONSENT

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

ARTICLE 3 - PRIORITY

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

ARTICLE 4 - ENFORCEMENT

- 4.01 If either Mortgagee makes a demand or accelerates the time for payment of any indebtedness of the Borrower or gives notice to the Borrower of its intention to enforce security or commences proceedings in court or otherwise for the enforcement of any security or collection of any indebtedness of the Borrower, such Mortgagee, shall give the other Mortgagee seven (7) days notice of such intention, and shall from time to time, promptly provide the other Mortgagee, at its request, full information concerning the status of any action it has taken or is contemplating taking against the Borrower or any of its assets.

- 4.02 Any payments or distributions received by any Mortgagee contrary to the provisions hereof shall be received in trust for the benefit of the other Mortgagee and shall be paid to the Mortgagee or party so entitled.
- 4.03 Neither Mortgagee or the Borrower shall challenge or contest the validity, priority or enforceability of the security held by the other Mortgagee as set out herein. Neither Mortgagee shall take any steps or do or cause any act or thing to be done whereby the respective priorities of the Original 2nd Mortgagee nor the New 2nd Mortgagee as defined herein may be defeated or impaired. Neither Mortgagee shall claim or prove in the bankruptcy or insolvency of the Borrower in competition with the other Mortgagee or in a manner inconsistent with this Agreement.

ARTICLE 5 - GENERAL

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

other electronic means of communication, other than e-mail, (with a copy to follow by regular mail), addressed to the respective parties as follows:

To the Borrower(s):

2221563 Ontario Inc.
#205 - 55 St.Clair Avenue West
Toronto, ON
M4V 2Y7

To the Original 2nd Mortgagee:

Snoxons Holdings Inc.
2 Cuthrie Court
Stouffville, ON
L4A 7X2

To the New 2nd Mortgagee:

c/o Derek Sorrenti, Barrister & Solicitor
#400 - 3800 Steeles Avenue West
Vaughan, ON
L4L 4G9

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

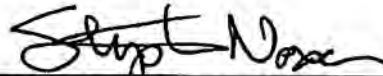
IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hands of their duly authorized officers.

DEREK SORRENTI, IN TRUST


- New 2nd Mortgagee

c/o DEREK SORRENTI
TRUSTEE

SNOXONS HOLDINGS INC.
- Original 2nd Mortgagee



Name: Stephen C. Noxon
Title: President



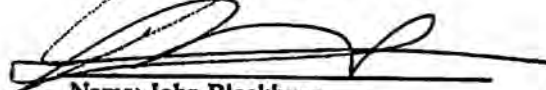
Name: Sandra J.W. Noxon
Title: Secretary

We have authority to bind the Corporation

2221563 ONTARIO INC.
- Borrower



Name: Alan Chapple
Title: Chief Executive Officer



Name: John Blackburn
Title: Vice-President

We have authority to bind the Corporation

Schedule "A"

LRO # 65 Charge/Mortgage

Registered as YR1416446 on 2009 12 09 at 16:48

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 12

Properties

<i>PIN</i>	03475 - 0123 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8 PL 170 N GWILLIMBURY AS IN R533209 ; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0124 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 1 PL 447 N GWILLIMBURY; LT 2 PL 447 N GWILLIMBURY; LT 3 PL 447 N GWILLIMBURY; LT 4 PL 447 N GWILLIMBURY; LT 5 PL 447 N GWILLIMBURY; LT 6 PL 447 N GWILLIMBURY; LT 7 PL 447 N GWILLIMBURY; LT 8 PL 447 N GWILLIMBURY ; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0125 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	DOREDA DR PL 447 PT 2 65R16653, GEORGINA AS STOPPED UP AND CLOSED BY BY-LAW REGISTERED AS YR45264		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0126 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 6 PL 170 N GWILLIMBURY AS IN B31794B ; GEORGINA.		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0127 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 5 PL 170 N GWILLIMBURY T/W R737440 ; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0868 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 9 PL 447 N GWILLIMBURY; LT 10 PL 447 N GWILLIMBURY; LT 11 PL 447 N GWILLIMBURY; LT 12 PL 447 N GWILLIMBURY; LT 13 PL 447 N GWILLIMBURY; LT 14 PL 447 N GWILLIMBURY; LT 15 PL 447 N GWILLIMBURY; BLK A PL 447 N GWILLIMBURY ; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0869 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8 PL 170 N GWILLIMBURY PT 1 65R16653 LYING NW OF LTS 6 & 7, PL 447; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0870 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8 PL 170 N GWILLIMBURY PT 1 65R16653 LYING S OF DOREDA DR , LTS 9 10 & BLK A PL 447 ; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0927 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 6 PL 170 N GWILLIMBURY; PT LT 7 PL 170 N GWILLIMBURY; PT LT 8 PL 170 N GWILLIMBURY AS IN R649566 ; GEORGINA		
<i>Address</i>	KESWICK		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 2221563 ONTARIO INC.
Address for Service 608450 - 12th Sideroad R.R.#2, P.O.
 Box 415, Ravenna, Ontario N0H 2E0

I, Stephen Glogowski, A.S.O., have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
-------------------	-----------------	--------------

Name SNOXONS HOLDINGS INC.
Address for Service 2 Guthrie Court, Stouffville, Ontario L4A 7X2

Statements

Schedule: See Schedules

Provisions

<i>Principal</i>	\$6,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	monthly, not in advance		
<i>Balance Due Date</i>	2010/05/31		
<i>Interest Rate</i>	12.0%		
<i>Payments</i>			
<i>Interest Adjustment Date</i>	2009 12 08		
<i>Payment Date</i>	Last business day of each month		
<i>First Payment Date</i>	2009 12 31		
<i>Last Payment Date</i>	2010 05 31		
<i>Standard Charge Terms</i>	200033		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>	BRIGHTSTAR CRATES LANDING (ONTARIO) GENERAL PARTNER INC. AND BRIGHTSTAR DEVELOPMENTS INC. jointly and severally		

Additional Provisions

The monthly payments will be be interest only.

PRIORITY AND POSTPONEMENT

It is understood and agreed that this mortgage is hereby postponed in favour of the first mortgage in favour of Foremost Mortgage Holding Corporation et. al. registered against the subject properties on December 9th, 2009 as Instrument No. YR1416425 for the principal amount of \$2,400,000.00, which first mortgage shall have priority over the within second mortgage in respect of all interest, taxes, costs and other sums secured thereby and that all funds advanced pursuant to the said first mortgage, regardless of the day or dates made, shall be entitled to priority over all monies advanced or owing under the within second mortgage.

Signed By

Gordon Alfred Ullman	130 Adelaide Street West, Suite 3425, PO Box 34 Toronto M5H 3P5	acting for Chargor (s)	Signed	2009 12 09
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Tel 4163611500

Fax 4163611674

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

BLACK SUTHERLAND LLP	130 Adelaide Street West, Suite 3425, PO Box 34 Toronto M5H 3P5	2009 12 09
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Tel 4163611500

Fax 4163611674

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$60.00
<i>Total Paid</i>	\$60.00

SCHEDULE

INDEBTEDNESS

1. For the purposes of this Charge, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Chargor to the Chargee (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others and whether arising from dealings between the Chargee and the Chargor or from other dealings or proceedings by which the Chargee may become a creditor of the Chargor) payable under or by virtue of:
 - (a) the Loan Agreement dated the ___ day of December, 2009 as may be amended from time to time including but not limited to the Loan, Project Advances, Project Loan Balance, Land Purchase Note and Project Loan Note as defined and described therein;
 - (b) any instrument, agreement or other document whatsoever taken by way of renewal or replacement thereof, as amended from time to time; and
 - (c) the Charge.

PAYMENT PROVISIONS

2. The amount of principal money secured by this Charge is Six Million Dollars (\$6,000,000.00) and the rate of interest chargeable thereon is as hereinafter set out.

PROVIDED this Charge to be void upon payment of the Indebtedness in lawful money of Canada with interest at the rate per annum which is twelve percent (12%) per annum adjusted and calculated daily and payable monthly as follows:

The whole of the principal sum of Six Million Dollars (\$6,000,000.00) or so much thereof as has been advanced hereunder shall become due and be payable on the 31st day of May, 2010, and interest, adjusted and calculated daily, and payable monthly at the aforesaid rate, as well after as before maturity and both before and after default, on such portion of the principal sum advanced as remains from time to time unpaid on the last business day of each and every month in each and every year until the said principal sum has been fully paid; the first payment of interest shall be computed from the date of the first advance hereunder upon the portion of the principal sum advanced to become due and payable on the last business day of the calendar month commencing immediately following the month in which the first advance is made hereunder. Any overdue payment of interest shall bear interest at the same rate. Any payment made after 12:00 p.m. noon on any payment date shall be deemed, for the purposes of calculation of interest, to have been made and received on the next bank business day.

ADDITIONAL PROVISIONS

3. The within Charge is being given as additional security to a Loan Agreement of even date between the parties hereto and payments made on account of the said Loan Agreement shall be applied to the within Charge. Payment under the Loan Agreement shall be considered payment under this Charge. Upon payment of all amounts owing under the Loan Agreement and this Charge, the Chargee shall execute, at the expense of the Chargor, a discharge of this Charge. Default under the Loan Agreement shall constitute a default under this Charge and default under this Charge shall constitute a default under the Loan Agreement.
4. Provided that the Chargor herein shall have the privilege of prepaying the whole of the principal sum secured on any payment date upon payment of all outstanding interest and other costs secured by the Charge.

5. In the event that the Chargor shall sell, transfer or otherwise dispose of the lands herein at the Mortgagee's option, the entire principal balance outstanding together with interest and other costs secured shall become due and payable forthwith.

EVENTS OF DEFAULT

6. An "Event of Default" shall occur upon the happening of any of the following, namely:
- (a) if the Chargor shall make default under any one or more of the covenants, conditions, terms, agreements, provisos and obligations herein contained by and on the part of the said Chargor to be kept, observed and performed;
 - (b) if the Chargor becomes insolvent or bankrupt, or a trustee in bankruptcy be appointed for the Chargor or if the Chargor shall make a general assignment for the benefit of creditors or shall go into liquidation either voluntarily or under an order of a court of competent jurisdiction or otherwise acknowledges its insolvency;
 - (c) if at any time there is or has been any discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Chargee by or on behalf of the Chargor with respect to the charged property or any of the Chargor's financial condition and responsibility, and if such discrepancies or inaccuracies are material and cannot be rectified or nullified by the Chargor to the satisfaction of the Chargee within forty-eight (48) hours of written notification thereof to the Chargor;
 - (d) if any charge or encumbrance affecting the charged property to which the Chargee has consented is in default;
 - (e) if the Chargor shall make default under any one or more of the covenants, agreements, provisions, obligations, representations or warranties contained in the Loan Agreement made between the Chargor and the Chargee in connection with this Charge;
 - (f) if the lands charged herein being sold, conveyed, transferred or if the Chargor enters into an agreement for sale or transfer of title of the property hereby mortgaged to a purchaser or transferee not approved in writing by the Chargee, which approval may be unreasonably withheld;

The Chargor having obtained any subsequent financing or refinancing of the property, other than such financing as exists on the date of registration of this Charge without having obtained the prior written approval of the Chargee, such approval may be unreasonably withheld;

On the death of a Chargor or of a shareholder owning the majority of the shares issued in the capital stock of the Chargor (if the Chargor is a corporation) or in the event that any or all of the shares issued and outstanding in the capital stock of the Chargor are directly or indirectly transferred, pledged, encumbered or hypothecated or dealt with in any manner whatsoever;

There is litigation or any other proceeding, application, claim or action pending or threatened before any court, administrative board or other tribunal which, if determined adversely to the Chargor, in the opinion of the Chargee would materially affect the charged property or would have a material adverse effect on the financial condition of the Chargor or the income of the property; and/or

The Chargor fails to observe and perform any covenant contained in this Charge or in any additional security document given in connection herewith.

7. If an Event of Default shall occur, the Chargee, in addition to and without prejudice to any other rights it has hereunder may at its option treat this Charge as being in default and at the option of the Chargee and on demand the full principal balance outstanding and all other costs, charges and expenses hereby secured including legal fees and disbursements on a solicitor and his own client basis shall immediately become due and payable and all the powers in and by this Charge conferred shall become exercisable, at the option of the

Chargee, and the powers of sale herein contained may be exercised as herein provided.

PROVIDED further that nothing herein shall be construed so as to permit the Chargor the privilege of prepaying the said Charge in whole or in part upon the happening of any of the Events described above.

PROVIDED further that an Event of Default may be waived by the Chargee provided such waiver shall not operate as a waiver of any other or further Event of Default.

INSURANCE PROVISIONS

8. (a) In addition to the insurance provided for under paragraph 16 of Standard Charge Terms No. 200033 the Chargor, in accordance with the provisions of this paragraph, shall maintain insurance against the perils therein described on all chattels used on, in or about the charged property, including if applicable, boiler and machinery insurance, builder's risk insurance and such other insurance as may be reasonably required by the Chargee including loss of rental income insurance on a 100% basis. The fire insurance on the buildings and chattels on the charged property shall contain a standard extend coverage endorsement to full one hundred percent (100%) replacement cost or the full insurable value, whichever shall be the greater, but in no event less than the principal amount of the Charge; with standard mortgage endorsement clause (IBC 3000) to form part of the policy. The policy must also allow for partial occupancy and contain a comprehensive public liability coverage for a minimum of TWO MILLION DOLLARS (\$2,000,000.00) per each occurrence; no insurance may be subject to a co-insurance clause.
- (b) The Chargor shall provide such time or times as requested by the Chargee written evidence of the continuation and of the existence of the insurance as required by this Charge.
- (c) In the event that evidence of continuation of insurance as herein required has not been delivered to the Chargor, the Chargee shall be entitled to a servicing fee for each written enquiry which the Chargee shall make to the insurer pertaining to such renewal (or resulting from the Chargor's non-performance of the within covenant). In the event that the Chargor pursuant to the within provision arranges insurance coverage with respect to the said lands, the Chargee in addition to the afore-noted servicing fee shall be entitled to a further servicing fee for arranging the necessary insurance coverage.

REALTY TAXES

9. (a) The Chargor shall throughout the term of the Charge:
- (i) Pay all municipal taxes levied upon the property as the same fall due and furnish to the Chargee, within thirty (30) days after payment of such taxes in full, evidence of payment thereof, and
- (b) Notwithstanding paragraph 8(a) above, the following provisions shall apply at the option of the Chargee:
- (i) The Chargee may deduct from any advances of money secured by this Charge an amount sufficient to pay any and all taxes (and any other liens, charges, encumbrances or claims against the lands) which have become or will become due and payable and are unpaid at the date of such advance;
- (ii) The Chargor shall pay to the Chargee on each monthly payment date of principal and interest and in addition thereto until the indebtedness hereby secured is fully paid an installment in the amount of the taxes; the amount of the monthly installments shall be equal to the amount of such annual taxes next due as estimated by the Chargee, less all installments already paid

therefor, divided by the number of monthly installments therefor becoming due not later than one (1) month prior to the due date of any such taxes and shall be subject to increase or decrease to the extent required to create as of the monthly payment date on the Charge immediately preceding the due date of any such taxes an amount sufficient for the payment thereof in full on such due date (the due date is that date from and after which penalties accrue and become an additional charge if payment is not made on or before such date).

- (iii) The Chargor covenants to transmit to the Chargee all assessment notices, tax notices or other documents affecting the imposition and payment of taxes against the lands as soon as the same shall have been received by the Chargor and to obtain and deliver the same to the Chargee at least thirty (30) days prior to the date for the payment thereof.
- (iv) In no event shall the Chargee be liable for any interest on any amount paid to it as in this clause required and the money so received may be held by it with its own funds pending payment or application thereof as herein provided.
- (v) The Chargee shall pay the taxes to the amount of the then unused credit therefor on or before their due date and may at its option pay any of such taxes when payable either before or after the said due date without notice or make advances therefor in excess of the then amount of credit for such taxes; any excess amount advanced shall be immediately due and payable to the Chargee and shall be secured as additional principal sum under this Charge and bear the same rate of interest from the date of advance as the principal indebtedness;
- (vi) An official receipt therefor shall be conclusive evidence of such payment and of the validity of such taxes.
- (vii) The Chargee may apply credits for the above taxes or any part thereof on account of any delinquent installments of principal or interest or any other payments maturing or due under this Charge and the amount of credit existing at any time shall be reduced by the amount thereof paid or applied as herein provided.
- (viii) The amount of the existing credit hereunder at the time of any transfer of the Chargor's interest in the said lands shall without assignment thereof enure to the benefit of the Chargor's successor and shall be applied under the subject of all the provisions hereof;
- (ix) Upon the payment in full of the money secured hereby, the amount of any used credit shall be paid to the party lawfully entitled thereto;
- (x) If payments are not made as in this clause provided and such default continues for a period of ten (10) days, the Chargee may at its option declare the whole of the principal sum and interest hereby secured and not previously paid immediately due and payable and proceed as in the case of any other default in payment thereof.

UFFI AND ASBESTOS WARRANTY

10. The Chargor represents and warrants that the charged property is not, has never been, and will not during the term and any extension of the term of this mortgage contain asbestos in any form, urea formaldehyde in any form, polychlorinated bi-phenol or products treated with polychlorinated bi-phenol, radioactive substances or any other substance which have been determined by any government authority having jurisdiction, (including the Worker's Compensation Board) to be injurious to human life or health. If such a substance is found in the subject property prior to any advances of funds hereunder, the Chargee shall be relieved of its obligation to make any advance and the fees payable by the Chargor to the Chargee

shall be immediately forfeited to the Chargee. If such a substance is found in the subject property after funds have been advanced by the Chargee to the Chargor, then at the Chargee's sole option, the funds so advanced with all other amounts payable under the Charge shall become immediately due and payable by the Chargor to the Chargee.

HAZARDOUS WASTE

11. In addition to the liability imposed on the Chargor under any instrument evidencing or securing the Charge, the Chargor shall be liable for any and all of the Chargee's costs, expenses, damages or liabilities (including, without limitation, all reasonable legal fees) directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge disposal or presence on, under or about the charged property of any hazardous or noxious substances and such liability shall survive foreclosure of the security for the Charge and any other extinguishing of the obligations of the Chargor to the Chargee in respect of the Charge and any other exercise by the Chargee of any remedies available to it for any default under the Charge.

LOAN AGREEMENT REMAINS IN EFFECT

12. Provided further that the Chargor covenants and agrees that all the obligations, terms, covenants, warranties and stipulations on the part of the Chargor contained in the Loan Agreement dated the ____ day of December, 2009 made between the Chargee and the Chargor (the "Loan Agreement") form an integral part of this Charge and all such terms of the aforesaid Loan Agreement shall be deemed to be part of this Charge and of the same force and effect as if they were fully set forth herein, and the Chargor covenants and agrees to keep and perform such terms and failure on the part of the Chargor to observe, keep and perform such terms shall constitute an act of default hereunder and this Charge shall then be deemed to be in default. To the extent that any term or terms of the Loan Agreement conflicts with any term or terms of this Charge, the Chargee in its sole and unfettered discretion shall determine which term or terms shall be effective.

RETURNED OR LATE CHEQUES

13. In the event that any of the Chargor's cheques are not honoured when presented for payment to the Bank or Trust Company on which they are drawn or in the event that any payment cheque is received late the Chargor shall pay to the Chargee for each such late or returned cheque the sum of TWO HUNDRED DOLLARS (\$200.00) as a servicing fee as a liquidated amount to cover the Chargee's administrative costs with respect to same. In the event that the said cheque which has not been honoured by the Chargor's Bank is not forthwith replaced by the Chargor, the Chargee shall be entitled to a further servicing fee for each written request which may be necessitated by the Chargor not forthwith replacing such dishonoured cheque. The aforementioned fee shall become part of the debt secured and shall bear interest at the interest rate set forth in this Charge.

DISCHARGE PROVISIONS

14. The Chargee shall have a reasonable time after payment of the Charge monies in full within which to prepare and execute a discharge or assignment of this Charge. Any discharge of this Charge shall be prepared by the Chargee at the Chargor's expense. All prepayments of principal and other monies required to be made other than regular monthly mortgage payments are to be made by way of certified cheque, cash, bank draft or money order and any interest as aforesaid shall continue to run on any payments received after 12:00 p.m. and shall not be credited until the following banking business day. The Chargee's administrative costs, legal costs and other expenses and costs incurred shall be paid by the Chargor prior to the Chargee being required to prepare the discharge or assignment contemplated herein.

Any prepayments or payments of principal monies owing hereunder shall, notwithstanding any other provision of this Charge, only be made and credited on a banking business day. In the event a maturity date shall fall on a non-banking business day, interest shall continue to accrue until the next bank business day.

VALIDITY OF PROVISIONS

15. If any provision of this Charge is held to any extent invalid or unenforceable, the remainder of this Charge, other than the provision which is held invalid or unenforceable, shall not be affected.

PRESENT AND FUTURE FIXTURES ENCUMBERED

16. All erections and improvements fixed or otherwise now on or hereafter put upon the said premises including but without limiting the generality of the foregoing, all fences, heating, piping, plumbing, aerals, air conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration equipment, window blinds, radiators and covers, fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, shutters and awnings, floor coverings and all apparatus and equipment appurtenant thereto are and shall, in addition to other fixtures thereon, be and become fixtures and an accession to the freehold and a part of the realty as between the parties hereto, their heirs, executors, administrators, successors, legal representatives and assigns and all persons claiming by, through or under them and shall be a portion of the security for the indebtedness herein mentioned.

APPOINTMENT OF RECEIVER

17. (a) At any time after the security hereby constituted becomes enforceable, or the monies hereby secured shall have become payable, without limiting any rights otherwise available to the Chargee under the Loan Agreement, the Chargee may from time to time appoint by writing a Receiver of the lands, with or without Bond, and may from time to time remove the Receiver and appoint another in his stead, and any such Receiver appointed hereunder shall have the following powers:
- (i) To take possession of the charged lands and to collect and get in the same and for such purpose to enter into and upon any lands, buildings and premises wheresoever and whatsoever and for such purpose to do any act and take any proceedings in the name of the Chargor or otherwise as he shall deem necessary;
 - (ii) To carry on or concur in carrying on the business of the Chargor, and to employ and discharge agents, workmen, accountants and others upon such terms and with such salaries, wages or remuneration as he shall think proper, and to repair and keep in repair the charged lands and to do all necessary acts and things for the carrying on of the business of the Chargor and the protection of the said charged lands of the Chargor;
 - (iii) To sell or lease or concur in selling or leasing any or all of the charged lands, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as seen fit by the Receiver and any such sale may be made from time to time as to the whole or any part or parts of the charged lands; and he may make any stipulations as to title or conveyance or commencement of title or otherwise which he shall deem proper; and he may buy or rescind or vary any contracts for the sale of any part of the charged lands and may resell the same; and he may sell any of the same on such terms as to credit or part cash and part credit or otherwise as shall appear in his sole opinion to be most advantageous and at such prices as can reasonably be obtained therefor and in the event of a sale on credit neither he nor the Chargee shall be accountable for or charged with any monies until actually received;
 - (iv) To make any arrangement or compromise which the Receiver may think expedient in the interest of the Chargee and to consent to any modification or change in or omission from the provisions of this Charge and to exchange any part or part of the charged lands for any other property suitable for the

purposes of the Chargee and upon such terms as may seem expedient and either with or without payment or exchange of money or regard to the equality of the exchange or otherwise;

- (v) To borrow money to carry on the business of the Chargor and to charge the whole or any part of the charged lands in such amounts as the Receiver may from time to time deem necessary and in so doing the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the charged lands in priority to this Charge;
 - (vi) To execute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the charged lands, to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceedings or action then pending or thereafter instituted and to appeal any suit, proceeding or action;
 - (vii) To execute and deliver to the purchaser of any part or parts of the charged lands, good and sufficient deeds for the same, the Receiver hereby being constituted the irrevocable attorney of the Chargor for the purpose of making such sale and executing such deed, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Chargor, and all other persons claiming the said property or any part of parcels thereof by, from, through or under the Chargor, and the proceeds of any such sale shall be distributed in the manner hereinafter provided;
- (b) And it is agreed that no purchaser at any sale purporting to be made in pursuance of the aforesaid power or powers shall be bound or concerned to see or inquire whether any default has been made or continued, or whether any notice required hereunder has been given, or as to the necessity or expediency of the stipulations subject to which such sale shall have been made, or otherwise as to the propriety of such sale or regularity of its proceedings, or be affected by notice that no such sale default has been made or continues, or notice given as aforesaid, or that the sale is otherwise unnecessary, improper or irregular; and notwithstanding any impropriety or irregularity or notice thereof to such purchaser, the sale as regards such purchaser shall be deemed to be within the aforesaid power and be valid accordingly and the remedy (if any) of the Chargor, or of any part claiming by or under it, in respect of any impropriety or irregularity whatsoever in any such sale shall be in damages only.

The net profits of the business of the Chargor and the net proceeds of any sale of the charged lands or part thereof shall be applied by the Receiver subject to the claims of any creditors ranking in priority to this Charge:

- (i) Firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable by him;
- (ii) Secondly, in payments of all costs, charges and expenses payable hereunder;
- (iii) Thirdly, in payment to the Chargee of the principal sum owing hereunder;
- (iv) Fourthly, in payment to the Chargee of all interest and arrears of interest and any other monies remaining unpaid hereunder; and
- (v) Fifthly, any surplus shall be paid to the Chargor; provided that, in the event that any party claims a charge against all or a portion of the surplus, the Receiver shall make such disposition of all or a portion of the surplus as the

Receiver deems appropriate in the circumstances.

- (c) The Chargee shall not be liable to the Receiver for his remuneration costs, charges or expenses, and the Receiver shall not be liable for any loss howsoever arising unless the same shall be caused by his own negligence or willful default; and he shall, when so appointed, by notice in writing pursuant hereto, be deemed to be the agent of the Chargor and the Chargor shall be solely responsible for his acts and defaults and for his remuneration.

It is agreed that the Chargee in exercising any of the rights given to the Chargee under this Charge shall be deemed not to be a Chargee in possession or a Mortgagee in possession.

POST-DATED CHEQUE REQUIREMENT

18. Provided that the Chargor shall deliver to the Chargee or Assignee of the Chargee on the execution of the within Charge and upon any renewal thereof, a series of six (6) post-dated cheques, each cheque to be in the amount of the monthly payment hereinbefore mentioned, failing which, the within Charge shall be deemed to be in default and the balance of the principal, together with accrued interest shall, at the option of the Chargee, forthwith become due and payable.

TITLE INSURANCE

19. As further security the Chargee shall require Title Insurance satisfactory in form, content and coverage to the Chargee's solicitor, from First American Title Insurance Company. The cost of said insurance shall be borne by the Chargor.

SUBSEQUENT FINANCING

20. No financing subject to the Chargee's Mortgage shall be permitted without the prior written consent of the Chargee.

INSPECTION

21. The Chargor agrees to permit the Chargee the right to inspect the property as the Chargee deems necessary to ensure the up keep of the property.

CONSTRUCTION LIEN ACT

22. No portion of the proceeds of the within loan is being borrowed by the Chargor for the purposes of financing any alteration, additions or repair to any building on the property or for any construction, erection or installation on the property, otherwise the whole of the outstanding principal and interest accrued thereon shall immediately become due and payable at the option of the Chargee and if any amount of monies be claimed in priority over this Charge pursuant to the Construction Lien Act, and amendments thereto, same may be added to the principal amount outstanding under this Charge and, in the event the Chargee be obliged to pay any amounts owing under the said Act, same shall be added to the debt of the within Charge.

ACCELERATION ON BREACH OF COVENANTS

23. If the Chargor defaults in the performance or observance of any covenant, term or provision contained in the Standard Charge Terms and within Additional Provisions, including default in payment of any amount due and payable hereunder, then, at the option of the Chargee, the balance of the principal and interest hereby secured, together with accrued interest shall immediately become due and payable.

AMENDMENTS

24. No change to vary or to amend this Charge is binding on the Chargee unless made in writing, signed by the Chargor and Chargee.

GOODS AND SERVICES TAX AND PROVINCIAL SALES TAX

25. All applicable taxes which relate to any charge stated herein shall be paid by the Chargor when due.

SURVEY ETC.

26. An original copy of any certificate of Location and Survey, Reference Plan or any other document or agreement registered on title shall be provided to the Chargee within five (5) business days of registration on title c/o Mr. Gordon A. Ullman, Black Sutherland LLP, 130 Adelaide Street West, Suite 3425, Toronto, Ontario, M5H 3P5.

GUARANTEE AND COVENANTS

27. The Guarantors, in consideration of such advance or advances as the Chargee may make under the Charge and in consideration of the sum of One (\$1.00) Dollar now paid to them by the Chargee, the receipt of which is hereby acknowledged:

Hereby covenant and agree with the Chargee, as principal debtor and not as surety, to well and truly pay or cause to be paid to the Chargee up to an amount not to exceed the Principal, interest, taxes, charges and all other monies which the Chargor has by this Charge covenanted to pay to the Chargee or which are secured by this Charge or intended so to be secured, the said payments to be made on the days and times and in the manner provided for in this Charge;

Hereby further covenant and agree to keep, observe and perform the covenants, terms, provisos, stipulations and conditions of this Charge, the Standard Charge Terms or any other document which is to be kept, observed and performed by the Chargor and at all times to indemnify, protect and save harmless the Chargee from all loss, costs and damage in respect of the advances of the Charge money up to the maximum sum of the Principal Amount plus interest, costs, fees and charges and every other matter and thing contained or referred to in this Charge, the Standard Charge Terms or any other document.

Further agree that the Chargee may from time to time without notice extend the time for payment of all monies secured by this Charge, amend the terms and times of payment and the rate of interest with respect to the said monies, refrain from enforcing payment of the said monies, release of any portion or portions of the mortgaged premises and waive or vary any of the covenants and conditions in this Charge, the Standard Charge Terms or any other document to be kept observed and performed by the Chargor and grant any indulgence to the Chargor in respect of any default by the Chargor which may arise under this Charge, the Standard Charge Terms or any other document. And notwithstanding any such act by the Chargee, the Guarantors shall be bound by the provisions of this Charge, the Standard Charge Terms and any other document until the monies secured under this said Charge shall have been paid and satisfied.

Further acknowledges that the Chargee may at any time grant or refuse any additional credit to the Chargor, accept or release or renounce any collateral or other security, administer or otherwise deal with the land and premises described in this Charge, take any assignment of the rentals with respect to the said lands and premises and apply any and all monies at any time received from the Chargor or from any other person or from the proceeds of any securities given in connection with this Charge in any manner the Chargee may deem appropriate. The Chargee may also utilize any and all insurance proceeds in reduction of the principal monies and interest secured by this Charge or for the refurbishing of the lands and premises or in any other manner that the Chargee may in its absolute discretion deem advisable.

Agree that all of the matters mentioned herein may be performed by the Chargee without notice to them, the Guarantors, without releasing or in any way modifying, altering, varying or in any way affecting the liability of the Guarantors hereunder; and

Agree that all of the covenants and agreements of them, the Guarantors, contained herein shall be binding upon them and their respective heirs, executors, administrators and assigns and shall accrue to the benefit of the Chargee, its successors and assigns and that their liability as Guarantors hereunder and the liability of his executors, administrators and assigns shall be joint and several.

Schedule "B"

LRO # 65 Charge/Mortgage

In preparation on 2011 02 04 at 11:56

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 2

Properties

<i>PIN</i>	03475 - 0123	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8 PL 170 N GWILLIMBURY AS IN R533209 ; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0927	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 6 PL 170 N GWILLIMBURY; PT LT 7 PL 170 N GWILLIMBURY; PT LT 8 PL 170 N GWILLIMBURY AS IN R649566 ; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0126	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8 PL 170 N GWILLIMBURY AS IN B31794B ; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0127	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 5 PL 170 N GWILLIMBURY T/W R737440 ; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0125	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	DOREDA DR PL 447 PT 2 65R16653, GEORGINA AS STOPPED UP AND CLOSED BY BY-LAW REGISTERED AS YR45264			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0124	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 1 PL 447 N GWILLIMBURY; LT 2 PL 447 N GWILLIMBURY; LT 3 PL 447 N GWILLIMBURY; LT 4 PL 447 N GWILLIMBURY; LT 5 PL 447 N GWILLIMBURY; LT 6 PL 447 N GWILLIMBURY; LT 7 PL 447 N GWILLIMBURY; LT 8 PL 447 N GWILLIMBURY ; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0868	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 9 PL 447 N GWILLIMBURY; LT 10 PL 447 N GWILLIMBURY; LT 11 PL 447 N GWILLIMBURY; LT 12 PL 447 N GWILLIMBURY; LT 13 PL 447 N GWILLIMBURY; LT 14 PL 447 N GWILLIMBURY; LT 15 PL 447 N GWILLIMBURY; BLK A PL 447 N GWILLIMBURY ; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0869	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8 PL 170 N GWILLIMBURY PT 1 65R16653 LYING NW OF LTS 6 & 7, PL 447; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			
<i>PIN</i>	03475 - 0870	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8 PL 170 N GWILLIMBURY PT 1 65R16653 LYING S OF DOREDA DR , LTS 9 10 & BLK A PL 447 ; GEORGINA			
<i>Address</i>	CAMERON CRESCENT KESWICK			

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 2221563 ONTARIO INC.
Acting as a company

Address for Service 55 St. Clair Avenue West, Suite 205, Toronto, Ontario, M4V 2Y7

I, Alan Chapple, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
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Name	SORRENTI, DEREK Acting as an individual	Trustee	100.0%
Address for Service	3800 Steeles Avenue West, Suite 400, Vaughan, Ontario, L4L 4G9		

Statements

Schedule:

Provisions

Principal	\$ 4,800,000.00	Currency	CDN
Calculation Period	annually		
Balance Due Date	2014/01/21		
Interest Rate	8.0%		
Payments	\$ 96,000.00		
Interest Adjustment Date	2011 01 21		
Payment Date	due and payable quarterly commencing April 21, 2011		
First Payment Date	2011 04 21		
Last Payment Date	2014 01 21		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

File Number

Chargee Client File Number : 100119-1

ADDITIONAL PROVISIONS

1. Default

In addition to any other Default Clauses set out in this Charge, or in the Standard Charge Terms referred to herein, the monies hereby secured, together with interest thereon as aforesaid, shall become payable and the security hereby constituted shall become enforceable immediately upon demand by the Chargee on the occurrence or happening or any of the following events ("Event(s) of Default"):

- (a) the Chargor makes default in the payment of the principal, interest or other monies hereby secured on any principal or interest payment and other monies owed by it to the Chargee whether secured by this Charge or not;
- (b) the Chargor makes material default in the observance or performance of any written covenant or undertaking heretofore or hereafter given by it to the Chargee and such default has not been cured within fifteen (15) days of written notice thereof being delivered to the Chargor;
- (c) if any statement, information (oral or written) or representation; heretofore or hereafter made or given by or on behalf of the Chargor to the Chargee and pertaining to the assets or the financial condition of the Chargor, and whether contained herein or not is false, inaccurate and/or misleading in any material respect;
- (d) an order is made or an effective resolution passed for the winding-up, liquidation, amalgamation or reorganization of the Chargor, or a petition is filed for the winding up of the Chargor;
- (e) the Chargor becomes insolvent or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency; or the Chargor makes a bulk sale of its assets; or a bankruptcy petition or receiving order is filed for the winding up of the Chargor;
- (f) any proceedings with respect to the Chargor are commenced under the Companies' Creditors Arrangement Act;
- (g) the Chargor ceases or threatens to cease to carry on its business or the Chargor commits or threatens to commit any act of bankruptcy or insolvency;
- (h) the property hereby mortgaged and charged or any part thereof, other than sales of lots containing fully completed single family dwellings to bona fide purchasers for value, prior approved in writing by the Chargee, are sold by the Chargor or if there is a change in the present effective voting control of the Chargor or a change in the beneficial ownership of the Chargor or the assets or any one of them;
- (i) the monies secured hereby, together with interest thereon shall not be repaid to the Chargee on maturity;

2. Chargee May Remedy Default

If the Chargor should fail to perform any covenant or agreement of the Chargor hereunder, the Chargee may itself perform or cause to be performed such covenant or agreement and all expenses incurred or payments made by the Chargee in so doing, together with interest thereon at the rate set forth herein, shall be added to the indebtedness accrued herein and shall be paid by the Chargor and be secured by this Charge together with all other indebtedness secured thereby, provided however that the foregoing shall not in any way be interpreted as an obligation of the Chargee.

3. Construction Liens

Provided also that upon the registration of any construction lien against title to the charged property which is not discharged within a period of ten (10) days from the registration thereof, all monies hereby secured shall, at the option of the Chargee, forthwith become due and payable.

The Chargee may at its option, withhold from any advances for which the Chargor may have qualified, such holdbacks as the Chargee in its sole discretion, considers advisable to protect its position under the provisions of the Construction Lien Act, 1990, so as to secure its priority over any construction liens, until the Chargee is fully satisfied that all construction lien periods have expired and that there are no

preserved or perfected liens outstanding. Nothing in this clause shall be considered to make the Chargee an "owner" or "payer" as defined under the Construction Lien Act, 1990, nor shall there be, or be deemed to be, any obligation by the Chargee to obtain any holdback which may be required by the said legislation. Any holdback which may be required to be made by the owner or payer shall remain solely the Chargor's obligation. The Chargor hereby covenants and agrees to comply in all respects with the provisions of the Construction Lien Act, 1990.

4. Construction Loan

Provided that the Chargor and Chargee agree that this is a construction loan, the following conditions apply:

- (a) the Chargor covenants that all installation of services and construction on the lands hereby secured shall be carried out by reputable contractors with sufficient experience in a project of this nature and size, which contractors must be approved by the Chargee and which approval shall not be unreasonably withheld.
- (b) that the installation of services and the construction of dwellings on the said lands, once having been commenced, shall be continued in a good and workmanlike manner, with all due diligence and in substantial accordance with the plans and specifications delivered to the Chargee and to the satisfaction of the Municipality and all governmental and regulatory authorities having jurisdiction.
- (c) provided that should the servicing and constructions on the said lands cease for any reason whatsoever (strike, material shortages, weather and conditions or circumstances beyond the control of the Chargor excepted), for a period of fifteen (15) consecutive days unless explained to the satisfaction of the Chargee acting reasonably (Saturdays, Sundays and Statutory holidays excepted), then the monies hereby secured, at the option of the Chargee shall immediately become due and payable. In the event that construction does cease, then the Chargee shall have the right, at its sole option, to assume complete control of the servicing and construction of the project on the said lands in such manner and on such terms as it deems advisable. The cost of completion of servicing and construction of the project by the Chargee and all expenses incidental thereto shall be added to the principal amount of the Charge, together with a arrangement fee of fifteen percent (15%) of the costs of the construction completed by the Chargee. All costs and expenses, as well as the said management fee shall bear interest at the rate as herein provided for and shall form part of the principal secured hereunder and the Chargee shall have the same rights and remedies with respect so collection of name as it would have with respect to collection of principal and interest hereunder or at law.
- (d) at the option of the Chargee, at all times there shall be a holdback of ten percent (10%) with respect to work already completed.
- (e) all advances which are made from time to time hereunder shall be based on Certificate of the Chargee's agents prepared at the expense of the Chargor, which Certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such Certificates shall further certify that such completed construction and/or servicing to the date of such Certificate shall be in accordance with the approved plans and specifications for the said construction and further, in a good and workmanlike manner and in accordance with the permits issued for such servicing and construction and in accordance with all municipal and other governmental requirements of any authority having jurisdiction pertaining to such servicing and construction and there shall be no outstanding work orders or other requirements pertaining to service and construction on the said lands. Such Certificates with respect to any values shall not include materials on the side which are not incorporated into the buildings or the services.

5. Environmental

- (a) The following terms have the following meanings in this Section:
 - (i) "Applicable Environmental Laws" means all federal, provincial, municipal and other laws, statutes, regulations, by-laws and codes and all international treaties and agreements, now or hereafter in existence, intended to protect the environment or relating to Hazardous Material (as hereinafter defined), including without limitations the *Environmental Act (Ontario)*, as amended from time to time (the "EPA"), and

the *Canadian Environmental Protection Act*, as amended from time to time (the "CEPA"); and

- (ii) "Hazardous Material" means, collectively, any contaminants (as defined in the EPA), toxic substance (as defined in the CEPA), dangerous goods (as defined in the *Transportation of Dangerous Goods Act (Canada)*, as amended from time to time) or pollutants or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm to the natural environment or material risk to human health.

(b) The Chargor hereby represents and warrants that:

- (i) neither the Chargor nor, to its knowledge, after due enquiry, any other person, firm or corporation (including without limitation any tenant or previous tenant or occupant of the Lands or any part thereof) has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the lands;
- (ii) the business and assets of the Chargor are in compliance with all Applicable Environmental Laws;
- (iii) no control order, stop order, minister's order, preventative order or other enforcement action has been threatened or issued or is pending by any governmental agency in respect of the Lands and Applicable Environmental Laws; and
- (iv) the Chargor has not received notice nor has any knowledge of any action or proceeding, threatened or pending, relating to the existence in, or under the Lands or on the property adjoining the Lands of, or the spilling, discharge or emission on or from the Lands or any such adjoining property of, any Hazardous Material.

(c) The Chargor covenants that:

- (i) the Chargor will not cause or knowingly permit to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of any Hazardous Material at, upon, under, into or within the Lands or any contiguous real estate or any body or water on or flowing through or contiguous to the Lands;
- (ii) the Chargor shall, and shall cause any person permitted by the Chargor to use or occupy the Lands or any part thereof, to continue to operate its business and assets located on the Lands in compliance with the Applicable Environmental Laws and shall permit the Chargee to review and copy any records of the Chargor insofar as they relate to the Lands at any time and from time to time to ensure such compliance;
- (iii) the Chargor will not be involved in operation at or in the Lands which could lead to the imposition on the Chargor of liability under the Applicable Environmental Laws or the issuance of any order under the Applicable Environmental Laws to stop discharging, shut down, clean up or decommission or the creation of a lien on the Lands under any of the Applicable Environmental Laws;
- (iv) the Chargor will not knowingly permit any tenant or occupant of the Lands to engage in any activity that could lead to the imposition of liability on such tenant or occupant or the Chargor of liability under the Applicable Environmental Laws or the issuance of any order under the Applicable Environmental Laws to stop discharging, shut down, clean up or decommission or the creation of a lien on the Lands under any Applicable Environmental Laws;
- (v) the Chargor shall strictly comply with the requirements of the Applicable Environmental Laws (including, but not limited to obtaining any permits, licenses or similar authorizations to construct, occupy, operate or use the Lands or any fixtures or equipment located thereon by reason of the Applicable Environmental Laws) and shall notify the Chargee promptly in the event of any spill or location of Hazardous

Material upon the Lands, and shall promptly forward to the Chargee copies of all notices, permits, applications or other communications and reports in connection with any spill or other matters relating to the Applicable Environmental Laws, as they may affect the Lands;

- (vi) the Chargor shall remove any Hazardous material (or if removal is prohibited by law, to take whichever action is required by law) promptly upon discovery as its sole expense;
 - (vii) the Chargor will not install on the Lands, nor knowingly permit to be installed on the Lands, asbestos or any substance containing asbestos deemed hazardous by any Applicable Environmental Law; and
 - (viii) the Chargor will at its own expense carry out such investigations and tests as the Chargee may reasonably require from time to time in connection with environmental matters.
- (d) The Chargor hereby indemnifies and holds harmless the Chargee, its officers, directors, employees, agents, shareholders and any receiver or receiver and manager appointed by or on the application of the Chargee (the "Indemnified Persons") from and against and shall reimburse the Chargee for any and all losses, liabilities, claims, damages, costs and expenses, including legal fees and disbursements, suffered, incurred by or assessed against any of the Indemnified Persons whether as holder of the within Charge, as mortgagee in possession, a successor in interest to the Chargor as owner of the Lands by virtue of foreclosure or acceptance of a deed in lieu of foreclosure or otherwise:
- (i) under or an account of the Applicable Environmental Laws, including the assertion or any lien thereunder;
 - (ii) for, with respect to, or as a result of, the presence on or under, or the discharge, emission, spill or disposal from, the Lands or into or upon and land, the atmosphere, or any watercourse, body or water of wetland, or any Hazardous Material where a source of the Hazardous Material is the Lands including, without limitation:
 - a. the costs of defending and/or counterclaiming or claiming over against third parties in respect or any action or matter; and
 - b. any costs, liability or damage arising out of a settlement of any action entered into by the Chargee;
 - (iii) in complying with or otherwise in connection with any order, consent, decree, settlement, judgement or verdict arising from the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or other placement or release in on or from the Lands of any Hazardous Material (including without limitation any order under the Applicable Environmental Laws to clean up, decommission or pay for any clean up or decommissioning), whether or not such deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or other placement or release in, on or from the Lands or any Hazardous Material:
 - a. resulted by, through or under the Chargor; or
 - b. occurred with the Chargor's knowledge and consent, or
 - c. occurred before or after the date of this Charge, whether with or without the Chargor's knowledge.

The provisions of this paragraph shall survive foreclosure of this Charge and satisfaction and release of this Charge and satisfaction and repayment of the amount secured hereunder. Any accounts for which the Chargor shall become liable to the Chargee under this paragraph shall, if paid by the Indemnified Person, bear interest from the date of payment at the interest rate stipulated herein and together with such interest shall be secured hereunder.

- (e) In the event of any spill of Hazardous Material affecting the Lands, whether or not the same originated from the Lands, or if the Chargor fails to comply with any of the requirements of the Applicable Environmental Laws, the Chargee may at its election, but without the obligation so to do, give such and cause such work to be performed at the Lands and take any and all other actions as the Chargee shall deem necessary or advisable in order to remedy said spill or Hazardous Material or cure said failure of compliance and say amounts paid as a result thereof, together with interest therein at the interest rate stipulated herein from the date of payment by the Chargee shall be immediately due and payable by the Chargor and until paid shall be added to and become a part of the amount secured hereunder.

6. Letters of Credit

The parties hereto acknowledge and agree that this Charge shall also secure payment by the Chargor to the Chargee of all amounts advanced by the Chargee pursuant to or by way or issuance or any letters of credit, renewals thereof, substitutions therefore and accretions thereto or pursuant to similar instruments issued at the Chargor's request or on its behalf and issued by the Chargee or on behalf of or at the request of or upon the credit of the Chargee and the total amount of such letters of credit shall be decreed to have been advanced and fully secured by this Charge from the date of the issuance of such letters of credit, regardless of when or whether such letters of credit are called upon by the holder(s) thereof. In the event of the enforcement or exercise by the Chargee or any of the remedies or rights provided for in this Charge, the Chargee shall be entitled to retain and shall not be liable to pay or account to the Chargor or any other party in respect of the full amount of any outstanding letters of credit from the proceeds of such enforcement or exercise until such time as the letters of credit have expired, have been cancelled and have been amended to the Lender or the issuer(s) thereof.

7. Appointment of a Receiver

NOTWITHSTANDING anything herein contained, it is declared and agreed that at any time, and from time to time, when there shall be default under the provisions of these presents, the Chargee may at such time, and from time to time, and with or without entering into possession of the Charged Property appoint in writing a receiver (the "Receiver" which term shall include a receiver/manager) of the Charged Property, or any part thereof, and of the rents and profits thereof and with or without security and may from time to time by similar writing remove any such Receiver and appoint another in its place and stead, and in the making of any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. The Chargor hereby agrees and consents to the appointment of the Receiver of the Chargee's choice and without limitation, whether pursuant to this Charge, the Mortgages Act, the Construction Lien Act or pursuant to the Courts of Justice Act (as the Chargee may at its sole option require). Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Charged Property and every part thereof.

Upon the appointment of any such Receiver or Receivers from time to time the following provisions shall apply:

- (i) a statutory declaration of an officer of the Chargee as to default under the provisions of these presents shall be conclusive evidence thereof;
- (ii) every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due with respect to the Charged Property, and every part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (iii) the Chargee may from time to time fix the remuneration of every such Receiver who shall be entitled to deduct same out of the Charged Property or the proceeds thereof;
- (iv) each such Receiver shall, so far as concerns responsibility and liability for its acts or omissions, be deemed to be the agent or attorney of the Chargor and in no event the agent of the Chargee;
- (v) the appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such Receivership shall not have the effect of constituting the Chargee a chargee in possession with respect to the Charged Property or any part thereof;

- (vi) the Receiver shall have the power to rent any portion of the Charged Property for such terms and subject to such provisions as it may deem advisable or expedient and in so doing such Receiver shall be acting as the attorney or agent of the Chargor and shall have the authority to execute any lease of any such premises in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever acts such Receiver may do in the Charged Property;
- (vii) every such Receiver shall have full power to complete any unfinished construction upon the Charged Property;
- (viii) any such Receiver shall have full power to carry on or concur in the carrying on of the business of the Chargor, and to employ and discharge such agents, workmen, accountants and other individuals or companies as are required to carry on the said business, upon such terms and with such salaries, wages or remuneration as it shall think proper, and to repair and keep in repair the Charged Property and to do all necessary acts and things for the carrying on of the business of the Chargor and the protection of the Charged Property.
- (ix) any such Receiver shall have the power to sell or lease or concur in selling or leasing the Charged Property, or any part thereof, any to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise, and any such sale may be made either a public auction or private sale as to the Receiver may seem best and any such sale may be made from time to time as to the whole or any part of the Charged Property; and the Receiver may make any stipulations as to title or conveyance or commencement of title or otherwise as it shall deem proper;
- (x) any such Receiver shall have the power to borrow money to carry on the business of the Chargor or to maintain the whole or any part of the Charged Property, in such amounts as the Receiver may from time to time deem necessary as in so doing, the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the Charged Property in priority to this Charge;
- (xi) any such Receiver shall have the power to execute and prosecute all suits, proceedings and actions which the Receiver in its opinion considers necessary for the proper protection of this Charged Property, to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action;
- (xii) any such Receiver shall not be liable to the Chargor to account: for moneys or damages other than cash received by it with respect to the Charged Property or any part thereof and out of such cash so received every such Receiver shall pay in the following order:
 - (a) its remuneration;
 - (b) all payments made or incurred by the Receiver in connection with the management, operation, amendment, repair, alteration or extension of the Charged Property or any part thereof.
 - (c) in payment of interest, principal and other money which may from time to time be or become a charge upon the Charged Property in priority to moneys owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it with respect to the Charged Property or any part thereof;
 - (d) in payment of all interest and arrears of interest and any other moneys remaining unpaid hereunder;
 - (e) the residue of any money so received by the Receiver shall be applied to the principal sum or any other amounts from time to time owing under this Charge;
 - (f) subject to subparagraph (e) above, in the discretion of the Receiver, interest, principal and other moneys which may from time to time constitute a charge or encumbrance on the

Charged Property subsequent in priority or subordinate to the interest of the Chargee under this Charge;

and that such Receiver may in its discretion retain reasonable reserves to meet accruing amounts and anticipated payments in connection with any of the foregoing, and further, that any surplus remaining in the hands of the Receiver, after payments made and such reasonable reserves retained as aforesaid, shall be payable to the Chargor.

PROVIDED that save as to moneys payable to the Chargor pursuant to subparagraph (xiii) of this Paragraph, this Chargor hereby releases and discharges the Chargee and every such Receiver from every claim of every nature, whether sounding in damages for negligence or trespass or otherwise, which may arise or be caused to the Chargor or any person claiming through or under it by reason or as a result of anything done by the Chargee or any such Receiver under the provisions of this Paragraph, unless such claim be the direct and proximate result of bad faith or gross neglect.

The Chargor hereby irrevocably appoints the Chargee as its attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Chargee and/or its solicitor so as to give affect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Chargor and all parties dealing with the Chargor, the Chargee and/or Receiver and/or with respect to the Charged Property in the same manner as if such documentation was duly executed by the Chargor itself.

8. Miscellaneous

The Chargor agrees as follows:

- (a) to maintain the project in good repair and in a state of good operating efficiency;
- (b) to pay taxes, utilities and other operating and maintenance costs and provide evidence thereof to the Chargee;
- (c) to perform all governmental requirements and obligations as required;
- (d) to deliver to the Chargee all reasonable financial information deemed necessary by the Chargee, when requested;
- (e) to provide or comply with such other covenants and terms as the Chargee may reasonably require.

9. Restriction on Transfer

In the event of the Chargor selling, transferring or conveying title or its rights to a purchaser, transferee or grantee not approved by the Chargee, (other than agreements of purchase and sale related to individual residential condominium units to be built on the Charged Property as part of the proposed development project for the Charged Property) then, at the sole option of the Chargee, all monies secured, together with all accrued and unpaid interest thereon and any other amounts due under this Charge shall become due and payable.

10. Subsequent Financing

No financing subsequent to the Chargee's facilities shall be permitted, without the prior written consent of the Chargee. However, a new first mortgage of not more than \$40,000,000 is permitted in the place of the existing first mortgage currently registered in the amount of \$2,400,000, and such new first mortgage shall be for the purpose of providing construction financing for the residential condominium project to be built on the Charged Property.

11. Development Allowances

Notwithstanding any other provision herein:

- (a) The Chargor shall have the privilege of installing roads, watermains, sewers and other internal or external services or utilities and services in connection with the development of the Charged Property and carry on building operations generally and such acts shall not be deemed to be acts of waste hereunder.
- (b) The Chargee shall execute and deliver within a reasonable time and without payment on account of principal and/or interest or any other costs or amount other than the Chargee's reasonable legal costs, any and all plans and documents and postponements required to facilitate the registration of a

plan or plans of subdivision or condominium of the Charged Property and/or to rezone the Charged Property and/or to obtain approval for the development of the Charged Property and/or to convert the registration of the Charged Property from Land Titles qualified to absolute title and to do the foregoing, the execution of consents or agreements with the relevant municipality or region or any other governmental authority or agency or utility which may be required for such registration, rezoning or development, the execution of any cost sharing agreements with adjoining property owner or owners of properties in the same vicinity as the Charged Property and the execution of a consent of the Chargee under any declaration creating a condominium on the Charged Property or any part or parts thereof.

- (c) In the event the Chargor is required to grant easements and/or property to any municipal or regional authority, conservation authority or public utility commission or private utility supplier for the supply and/or installation of gas services, telephone services, cable television, electrical services, water, sewers or similar services in order to service the Charged Property, the Chargee shall execute and deliver within a reasonable time and without payment on account of principal and/or interest or any other costs or amounts, other than the Chargee's reasonable legal costs, any consent or postponement required for such grants.
- (d) The Chargee shall execute and deliver within a reasonable time and without payment on account of principal and/or interest or any other cost or amount other than the Chargee's reasonable legal costs, such partial discharge or discharges or other assurances or postponements as may be required to convey to any governmental authority or agency, or conservation authority, any part of the Charged Property required for municipal, regional or governmental purposes in order to register a plan or plans of subdivision or condominium of the Charged Property, or any part of parts thereof, or as may be required to rezone the Charged Property or obtain approval for the development of the Charged Property and without limiting the generality of the foregoing, such public purposes as roads, road widenings, walkways 1-foot reserves, school sites, parks, easements and rights-of-way.

12. Voting Control

The Chargor agrees that voting control shall not change during the currency of this loan without the prior written consent of the Chargee.

13. Prepayment Privileges

The within Charge may be prepaid in whole or in part at any time and times without notice, bonus or penalty including without limitation, prepayment of any individual lender to the exclusion of any and all other lenders.

Appendix 7:
Sample LAC (redacted)

This Agreement made and effective as of the 17th day of Aug, 2014.

BETWEEN:

FORTRESS REAL DEVELOPMENTS INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called "Fortress")

- AND -

CENTRO MORTGAGE INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called the "Broker")

- AND -

CENTRO MORTGAGE INC. (The Mortgage Administrator License No. 12304), a corporation incorporated under the laws of the Province of Ontario, (hereinafter called the "Administrator")

- AND -

OLYMPIA TRUST COMPANY, a corporation incorporated under the laws of the Province of Alberta (hereinafter called "Olympia")

- AND -

The undersigned individual Lender that has advanced funds to the Borrower and has agreed to be a party hereto (hereinafter called the "Lender")

WHEREAS 2221563 Ontario Inc. (the "Borrower") is borrowing up to \$20,000,000.00 from the undersigned Lender pursuant to certain loan agreements (collectively referred to herein as the "Loan Agreements");

AND WHEREAS the loan from the Lender to the Borrower ranks *pari passu* with other borrowings by the Borrower pursuant to similar Loan Agreements with other individual lenders (collectively referred to herein with the Lender as the "Junior Secured Lenders") and such loans are collectively secured by a Mortgage (the "Mortgage") on the Borrower's lands described as PIN 03475-0123, PIN 03475-0124, PIN 03475-0125, PIN 03475-0126, PIN 03475-0127, PIN 03475-0868, PIN 03475-0869, PIN 03475-0870, PIN 03475-0927 (the "Lands");

AND WHEREAS the Lender and the Junior Secured Lenders have agreed to postpone their loans to one or more construction loans obtained by the Borrower up to \$100,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$20,000,000.00 if required (the "First Priority Construction Loans"), whereby the collective indebtedness of the Junior Secured Lenders would rank junior to the First Priority Construction Loans;

AND WHEREAS the Lender is lending the Borrower funds from his or her registered savings plan accounts ("RRSP Account") and is holding the Mortgage granted by the Borrower in such account as security for payment;

AND WHEREAS the RRSP Account is administered by Olympia pursuant to a trust account agreement with the Lenders;

AND WHEREAS the RRSP Account is subject to the requirements of the *Income Tax Act* (Canada) and the regulations thereunder;

AND WHEREAS the Lender is a client of Fortress and/or the Broker and has been introduced to the Borrower by either Fortress or the Broker;

AND WHEREAS the Broker has delivered to Olympia a legal opinion confirming that the Mortgage granted by the Borrower to the Lender is eligible for investment by the RRSP Account provided the amount of the First Priority Construction Loans and the Mortgage granted to all of the Junior Secured Lenders do not exceed the fair market value of the Lands;

AND WHEREAS the above representations are being made by Fortress, the Broker and the Lender and not by Olympia or the Administrator;

NOW THEREFORE, IN CONSIDERATION OF the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged and confirmed, do hereby covenant and agree as follows:

1. The Lender acknowledges and confirms that he or she has loaned the Borrower \$ [REDACTED] pursuant to the Loan Agreement, whereby his or her participating share in the Mortgage as at the date hereof is [REDACTED] % (based on the aggregate loans made by the Junior Secured Lenders being \$8,600,000.00).
2. The Lender hereby acknowledges and confirms that prior to entering into the Loan Agreement he or she was aware that: (i) certain provisions in the Loan Agreement allow for the postponement of the Mortgage in favor of additional construction and/or mezzanine or related Mortgage financing to a maximum of \$100,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$20,000,000.00 if required (the "Maximum Priority Financing Amount" or "MPFA"); and (ii) the Lender is required to postpone his or her interest in the Mortgage in favor of certain development agreements between the Borrower and certain governmental authorities (including but not limited to: city site plan, development plans, Planning Act requirements, mezzanine financing and/or insured deposit Mortgage security for AVIVA or other like insurance providers for purchaser's deposits and/or Condominium Act registrations), as such requirements are more particularly described in the Loan Agreement, in order to facilitate the development of the Lands.
3. The Lender confirms that he or she fully understands the effect of the terms of the Loan Agreement and that the Lender hereby reconfirms his or her instructions to proceed with the loan pursuant to the terms and conditions outlined in the Loan Agreement.
4. The Lender hereby agrees to postpone the Mortgage to an amount not to exceed the MPFA and/or to any required development agreements between the Borrower and the applicable government authority(ies) in order to facilitate the development of the Lands.
5. The Lender acknowledges that the MPFA may be advanced to the Borrower in multiple stages based on the achievement of certain construction milestones, and may be advanced by various parties and/or secured via multiple registrations on the Lands.
6. The Lender hereby acknowledges that he or she was advised that the face value of the Mortgage could be amended periodically during the term to increase the face value of the Mortgage to a maximum of \$20,000,000.00. The Lender hereby confirms that he or she fully understands the effect of this term of the Loan Agreement and that the Lender re-confirms his or her instructions to proceed with the investment.
7. The Lender understands that, as at the date hereof, pursuant to the Loan Agreement, the Mortgage securing the loan ranks subsequent to other registered Mortgages against the Lands in the amount of \$2,400,000.00. Further, the Lender understands that prior to further advances under the Mortgage the Borrower shall be required to provide an updated valuation of the Lands to the Administrator for the purpose of confirming that the combined value of all registered Mortgage security on the Lands does not exceed the most recent valuation of the Lands (which currently indicates an estimated value of

\$22,600,000.00 for the Lands authored by [REDACTED] of Legacy GMP Ltd. dated as at May 8, 2014, and is in accordance with the terms and provisions of the Loan Agreement).

8. The Lender hereby acknowledges and confirms that the Mortgage he or she has an interest in is currently registered with a maturity date of January 21, 2014. The Lender further acknowledges the term shall be extended for a period of 2.5 additional year(s) (with the option to the Borrower to extend the maturity date an additional 12 months without penalty, should they provide 3 months written notice) and upon the original maturity date the registration will be amended to reflect the new maturity date of July 21, 2016 (July 21, 2017 if the extension is utilized). The Lender irrevocably authorizes and consents to the execution of any documents by Olympia or the Administrator on the Lender's behalf without further notice to, or approval by the Lender for the purpose of granting this term extension of the Mortgage.
9. The Lender hereby acknowledges and confirms that all interest payments due and payable after October 21, 2013 shall accrue and become payable by the Borrower, together with the principal sum, on the new maturity date.
10. The Lender hereby acknowledges that the "Administrator" of this Mortgage has changed from Derek Sorrenti to Centro Mortgage Inc.
11. THE LENDER HEREBY UNDERSTANDS, CONSENTS AND AGREES THAT OTHER CHARGES/MORTGAGES AND/OR DEVELOPMENT AGREEMENTS MAY BE REGISTERED IN PRIORITY TO THE MORTGAGE AGAINST THE LANDS DURING THE TERM OF THE MORTGAGE. THE LENDER HEREBY CONFIRMS THAT HE OR SHE UNDERSTANDS AND AGREES THAT THE MORTGAGE SHALL BE REQUIRED TO POSTPONE AND STANDSTILL TO PRIOR CHARGES/MORTGAGES TO A MAXIMUM OF \$130,000,000.00 IN PRIORITY FINANCING. THE LENDER ALSO UNDERSTANDS THAT PRIORITY FINANCING TO THE MORTGAGE IS EXPECTED TO PERIODICALLY INCREASE OVER THE TERM OF THE MORTGAGE AND THAT SUCH POSTPONEMENTS SHALL BE PERMITTED AND SHALL OCCUR ON THE BASIS OF COST CONSULTANT REPORTS PREPARED ON BEHALF OF THE BORROWER. THE LENDER UNDERSTANDS THAT ADDITIONAL PRIORITY FINANCING MAY BE REQUIRED IF THERE IS A SHORTFALL IN FUNDS PROVIDED BY OTHER INVESTORS PURSUANT TO THE TERMS OF THE MORTGAGE. IN THE EVENT OF A SHORTFALL IN THE FUNDING OF THE MORTGAGE, OTHER CHARGES/MORTGAGES MAY BE REGISTERED AGAINST THE LANDS TO FUND AND SECURE ANY SUCH SHORTFALL.

THE LENDER UNDERSTANDS THAT OLYMPIA AND/OR THE ADMINISTRATOR MAY BE REQUESTED BY THE BORROWER TO EXECUTE SUCH DOCUMENTS AS MAY BE REQUIRED TO PERMIT THE REGISTRATION OF CERTAIN DOCUMENTS OR AGREEMENTS FOR THE PURPOSE OF GRANTING SENIOR LENDERS PRIORITY TO THE MORTGAGE AND FACILITATING THE PLANNED DEVELOPMENT OF THE LANDS (EXAMPLES OF SUCH DOCUMENTS OR AGREEMENTS INCLUDE BUT ARE NOT LIMITED TO: PARTIAL DISCHARGES OF THE MORTGAGE, CITY SITE PLANS, DEVELOPMENT PLANS, PLANNING ACT REQUIREMENTS, MEZZANINE FINANCING, INSURED DEPOSIT MORTGAGE SECURITY FOR AVIVA OR OTHER LIKE INSURANCE PROVIDERS FOR PURCHASER'S DEPOSITS OR CONDOMINIUM REGISTRATION DOCUMENTS). THE LENDER HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS OLYMPIA TO EXECUTE ANY DOCUMENTS OR AGREEMENTS WHICH THE CORPORATION HAS REQUESTED OLYMPIA EXECUTE (IN WRITING) AND HAS ADVISED OLYMPIA (IN WRITING) THAT SUCH DOCUMENTS OR AGREEMENTS ARE: (I) REQUIRED BY SENIOR LENDERS OR ARE OTHERWISE REQUIRED TO DEVELOP THE LANDS; AND (II) PERMITTED PURSUANT TO THE TERMS OF THE LOAN AGREEMENT. THE PARTIES HEREBY AGREE THAT OLYMPIA SHALL NOT HAVE ANY OBLIGATION TO REVIEW THE TERMS, CONDITIONS OR PROVISIONS OF ANY SUCH DOCUMENTS OR AGREEMENTS (INCLUDING ANY PRIORITY AGREEMENTS) AND SHALL BE ENTITLED TO RELY SOLELY ON THE CORPORATION'S WRITTEN DIRECTION TO OLYMPIA THAT SUCH DOCUMENTS OR AGREEMENTS ARE PERMITTED TO BE EXECUTED UNDER THE LOAN AGREEMENT AND THAT SUCH DOCUMENTS OR

AGREEMENTS ARE REQUIRED BY THE SENIOR LENDERS OR ARE OTHERWISE REQUIRED TO DEVELOP THE LANDS. FOR GREATER CERTAINTY, THE LENDER ACKNOWLEDGES AND AGREES THAT THE BORROWER WILL BE SOLELY RESPONSIBLE FOR NEGOTIATING THE TERMS OF ALL SUCH DOCUMENTS AND AGREEMENTS.


THE LENDER HEREBY RE-CONFIRMS HIS OR HER CONSENT AND AGREEMENT TO POSTPONE AND STANDSTILL TO ANY REQUIRED FINANCING OR DEVELOPMENT AGREEMENTS, AND TO PARTIALLY DISCHARGE THE MORTGAGE, WITHOUT PAYMENT, WITH RESPECT TO ANY LANDS SECURED BY THE MORTGAGE WHICH MAY BE REQUIRED FOR PUBLIC OR QUASI PUBLIC PURPOSES.

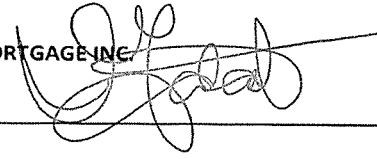
12. The Lender understands that additional priority financing may be required and may be registered against the Lands in priority to the Mortgage in the event there is a shortfall in funds provided by the Junior Secured Lenders. The maximum amount of funding that the Junior Secured Lenders will postpone to is \$100,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$20,000,000.00 if required. In the event that additional priority financing is required, the Lender hereby irrevocably authorizes and directs the Administrator and/or Olympia to execute any documents or agreements on the Lender's behalf without further notice to, or approval by the Lender to postpone and standstill to such additional priority financing provided that Olympia: (i) receives a written request from the Borrower to sign such documents or agreements; (ii) receives written confirmation from the Borrower that such documents or agreements are required by the senior lenders or are otherwise required to develop the Lands; and (iii) receives written confirmation from the Borrower that such documents or agreements are permitted pursuant to the Loan Agreement.
13. The Lender irrevocably authorizes and consents to the execution of any documents by Olympia or the Administrator on the Lender's behalf without further notice to, or approval by the Lender for the purpose of granting partial discharges of the Mortgage in the course of the development of the Lands during the term of the Loan Agreement as more particularly described in the Loan Agreement provided that Olympia and the Administrator: (i) receives a written request from the Borrower to sign such documents or agreements; (ii) receives written confirmation from the Borrower that such documents or agreements are required by the senior lenders or are otherwise required to develop the Lands; and (iii) receives written confirmation from the Borrower that such documents or agreements are permitted pursuant to the Loan Agreement. For greater certainty, the Lender agrees that Olympia and the Administrator shall be entitled to rely solely on the Borrower's written confirmation in (ii) and (iii) above without any further investigation or verification. In the event that the Borrower was not entitled to receive a partial discharge of the Mortgage and Olympia or the Administrator has partially discharged the Mortgage based on a written confirmation of the Borrower in accordance with (ii) and (iii) above, the Lender's recourse shall be limited to the Borrower and the Lender shall not have any claim for damages or otherwise against Olympia or the Administrator for partially discharging the Mortgage. The Lender hereby confirms his or her authorization and consent in this regard.
14. The Lender irrevocably authorizes and consents to the execution of any documents by Olympia or the Administrator on the Lender's behalf without further notice to, or approval by the Lender for the purpose of granting a full discharge of the Mortgage provided that Olympia and the Administrator: (i) receives a written request from the Borrower to sign such discharge documents or agreements; (ii) receives written confirmation from the Borrower that it has paid the Lender all such amounts owing under the Loan Agreement and that the discharge of the Mortgage is permitted pursuant to the Loan Agreement. For greater certainty, the Lender agrees that Olympia and the Administrator shall be entitled to rely solely on the Borrower's written confirmation in (ii) above without any further investigation or verification that all such amounts have actually been paid by the Borrower to the Lender as required by the Loan Agreement. In the event that the Lender has not been paid all amounts owing under the Loan Agreement and Olympia

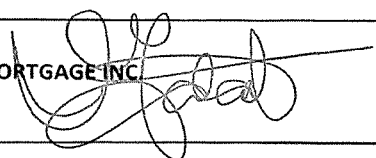
- or the Administrator has discharged the Mortgage based on a written confirmation of the Borrower in accordance with (ii) above, the Lender's recourse shall be limited to the Borrower and the Lender shall not have any claim for damages or otherwise against Olympia or the Administrator for discharging the Mortgage. The Lender hereby confirms his or her authorization and consent in this regard.
15. The Lender understands that from time to time, as further advances are contemplated pursuant to the terms of the Loan Agreement, Olympia and/or the Administrator may be required to execute certain documents related to the provisions identified herein. The Lender hereby confirms that he or she continues to irrevocably authorize Olympia and/or the Administrator to execute any such required documentation on his or her behalf, provided that Olympia and/or the Administrator: (i) receives a written request from the Borrower to sign such documents or agreements; (ii) receives written confirmation from the Borrower that such documents or agreements are required by the senior lenders or are otherwise required to develop the Lands; and (iii) receives written confirmation from the Borrower that such documents or agreements are permitted pursuant to the Loan Agreement.
 16. The Lender acknowledges and agrees that Olympia and/or the Administrator shall not be responsible for reviewing or negotiating any terms, conditions or provisions of any priority agreements, subordination agreements or other documents or agreements that may be required by senior lenders or as may otherwise be required to develop the Lands. The Lender acknowledges that the Borrower shall be solely responsible for reviewing and negotiating all such agreements and documents and that Olympia and/or the Administrator shall be entitled (without any further review or investigation) to execute and deliver such documents and agreements provided it receives the written confirmation from the Borrower as contemplated herein.
 17. The Lender hereby indemnifies and saves harmless Olympia and the Administrator and each of their directors, officers, employees, shareholders and agents for, and hold such persons harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, suit, settlement, cost or expense (including, without limitation, the fees and expenses of legal counsel), incurred without gross negligence, willful misconduct or fraud on the part of the indemnified person (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by such indemnified person in connection with the exercise or performance of its duties hereunder, including without limitation, the costs and expenses of defending against any claim of liability hereunder, directly or indirectly. All indemnities, all limitations of liability and all other provisions for the protection of Olympia and the Administrator and the other indemnified persons provided for in this Agreement shall survive the termination of this Agreement.
 18. All parties hereto (including the Lender) have obtained independent legal advice (and if necessary independent tax advice) with regard to the Loan Agreement, the Mortgage and this Agreement.
 19. Fortress, the Broker and the Lender each acknowledge and agree that Olympia may be required to issue T4 slips to the Lender pursuant to the *Income Tax Act* (Canada) in the event that it is concluded that the First Priority Construction Loans and the Mortgage granted to all of the Junior Secured Lenders exceeds the fair market value of the Lands. Further, the parties also acknowledge that Olympia may be required to issue T4 slips to the Lender pursuant to the *Income Tax Act* (Canada) in the event that the Borrower fails to provide Olympia with the requisite confirmation as to the value of the Lands as set out above. Fortress, the Broker and the Lender acknowledge and agree that the Lender will suffer adverse tax consequences in the event that Olympia is required to issue T4 tax slips in accordance with the *Income Tax Act* (Canada) and each of Fortress and the Broker agrees to use its commercially reasonable efforts to take such actions to avoid such result.


20. The parties hereto agree that this agreement shall be construed and enforced in accordance with the laws of the Province of Alberta.

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

FORTRESS REAL DEVELOPMENTS INC.
Per: 

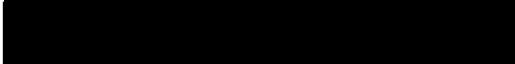
CENTRO MORTGAGE INC.
Per: 

Per: _____
CENTRO MORTGAGE INC.
Per: 

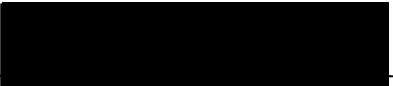
Per: _____
OLYMPIA TRUST COMPANY
Per: 

Per: _____

Per: 


Name of Lender (please print)


Signature


Name of witness to Lender's Signature



