

**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***

**THIRTIETH REPORT OF THE TRUSTEE**

**DECEMBER 5, 2022**



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

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THIRTIETH REPORT OF THE TRUSTEE

December 5, 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. was appointed as trustee (“**Trustee**”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under syndicated mortgage loans (“**Investors**”), brokers, or borrowers, in each case whether or not such property was or is held in trust or was or is required to be held in trust. The Appointment Order was issued following an application made by the Superintendent of Financial Services pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), as amended, and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the Appointment Order is attached as **Appendix “1”**.

2. On October 30, 2018, this Court issued an Order (“**Realized Property Order**”) that, among other things,
  - (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness administered by BDMC on behalf of Investors (including funds originally obtained with respect to the Victoria Medical SML Loans), whether or not (i) secured by any Real Property Charges in the name of BDMC or an RRSP Trustee, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (II) all interest paid or payable to BDMC or the Trustee at the time such repayment (in whole or in part) of principal is made (collectively, “**Realized Property**”);
  - (b) required the Trustee to retain 30% of all Realized Property; and
  - (c) authorized the Trustee to use the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considered necessary or desirable for the administration of the estate, including in respect of those matters set out in paragraph 17 of the Interim Stabilization Order made in these proceedings on June 26, 2018 (“**Interim Stabilization Order**”).<sup>1</sup>

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-nine reports to Court (collectively, the “**Reports**”) detailing, among other things, the Trustee’s activities during these proceedings and providing updates to stakeholders on various projects. Notably, on November 4, 2022, the Trustee submitted its twenty-ninth report in these proceedings, which provided a comprehensive update on the Trustee’s activities and a status update for each project.
4. The Trustee indicated in its previous Reports that it continues to attempt to seek to maximize recoveries for Investors and to advance potential transactions related to various projects. As part of those efforts and as noted in its Twenty-Ninth Report, the Trustee has

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<sup>1</sup>All capitalized terms not otherwise defined herein have the meaning as set out in the Realized Property Order.

been meeting on a without prejudice basis to discuss a settlement in respect of the 6th & 10th Project (defined herein) and the related party claim advanced by Bel-Calgary Inc., (“**6th & 10th Borrower**“) on behalf of Lamb Development Corporation (“**LDC**“) and B JL Properties Inc. (“**BJL**“). The 6th & 10th Borrower, LDC, B JL, the Trustee and Olympia Trust Company (“**Olympia**“) have arrived at a settlement to resolve matters related to the 6th and 10th Project and have entered into a Settlement and Mutual Release Agreement dated December 5, 2022 (“**6th & 10th Settlement Agreement**“).

5. Capitalized terms used but not otherwise defined in this thirtieth report (“**Thirtieth Report**“) have the meanings ascribed to them in previous Reports. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee’s website at: [www.faanmortgageadmin.com](http://www.faanmortgageadmin.com) (“**Trustee’s Website**“). The Trustee intends to maintain the Trustee’s Website for the duration of these proceedings and will be updating it as appropriate.

#### **PURPOSE OF THE THIRTIETH REPORT**

6. The purpose of this Thirtieth Report is to provide the Court and stakeholders with the Trustee’s recommendation with respect to 6th & 10th Settlement Agreement, the proposed allocation of the funds being held in trust by the Escrow Agent (defined below) and to support the Trustee’s request for an Order (“**6th & 10th Settlement Approval and Distribution Order**“) that, among other things:
  - (a) approves the 6th & 10th Settlement Agreement;
  - (b) orders that the Escrow Agent deliver the Trustee Payment to the Trustee and the Related Party Payment to the 6th & 10th Borrower pursuant to the 6th & 10th Settlement Agreement; and
  - (c) orders the Trustee to distribute the Trustee Payment, net of the 15% Administrative Holdback, to the lenders who advanced funds to the 6th & 10th Project (“**6th & 10th Investors**“).
7. In support of the Trustee’s request for the 6th & 10th Settlement Approval and Distribution Order, this Thirtieth Report provides the following:
  - (a) an overview of the 6th & 10th Project;

- (b) an overview of the 6th & 10th Loan;
  - (c) the details of the Related Party Claim; and
  - (d) information that supports the Trustee's recommendation that the 6th & 10th Settlement Agreement be approved, and 6th & 10th Settlement Approval and Distribution Order be granted.
8. All capitalized terms used in this introduction and not otherwise defined are defined later in this Report.

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

9. In preparing this Thirtieth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), Vanguard Law Group LLP ("**Vanguard**"), the Escrow Agent and the 6th & 10th Borrower. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the projects, including the 6th & 10th Project and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM and the 6th & 10th Borrower (including, among other things, unaudited internal information, appraisals and financial projections), the Trustee's review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.
10. Some of the information used and relied upon in preparing this Thirtieth Report consists of financial projections and other information received from various third parties. 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 Thirtieth Report may vary from the projections and information used to prepare this Thirtieth 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 Thirtieth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

11. This Thirtieth Report has been prepared for the use of this Court and BDMC's stakeholders as general information relating to BDMC and the 6th & 10th Project and to assist the Court with respect to the Trustee's request for the proposed 6th & 10th Settlement Approval and Distribution Order. Accordingly, the reader is cautioned that this Thirtieth Report may not be appropriate for any other purpose.
12. All references to dollars are in Canadian currency.

### **OVERVIEW OF THE 6th & 10th LOAN**

13. Each of the 6th & 10th Investors entered into separate loan agreements with the 6th & 10th Borrower and Vanguard and/or Olympia, in trust, on various dates between November 2011 and August, 2013. According to BDMC's records, as at November 4, 2022 the total amount owing to the 6th & 10th Investors in connection with the various loan agreements was approximately \$14 million (comprised of approximately \$8.8 million in principal and approximately \$5.2 million in accrued interest) ("**6th & 10th Loan**").
14. On January 20, 2012, the 6th & 10th Borrower granted a mortgage on the 6th & 10th Property in favour of Sanjay Soni, in trust (in his capacity as the representative of Vanguard), for \$3.5 million (which amount was subsequently increased to \$8.83 million) as security for the 6th & 10th Loan ("**6th & 10th Mortgage**").
15. On March 9, 2016, pursuant to a transfer of charge registered on title to the 6th & 10th Project, the administration of the 6th & 10th Mortgage was transferred from Sanjay Soni to BDMC.
16. The 6th & 10th Borrower made interest payments to the 6th & 10th Investors of approximately \$1.98 million ("**Previously Paid Interest**") through to June 2015, after which interest began, and continues, to accrue at a per diem rate of \$3,156.48.
17. Based on BDMC's records, there are 207 6th & 10th Investors that advanced funds in respect of the 6th & 10th Loan.



## OVERVIEW OF THE 6th & 10th PROJECT

18. The 6th & 10th project is a completed 224-unit residential condominium building (“**6th & 10th Project**” or “**6th & 10th Property**”) located on the property municipally known as 1010 – 6th Street SW, Calgary, Alberta. The condominium was registered in 2017 and thereafter the 6th & 10th Borrower focused its efforts on selling the remaining condominium units.
19. In September 2017, prior to the Trustee’s appointment, the 6th & 10th Borrower obtained an inventory loan to fund the carrying costs of the unsold units at the time and granted First National GP Corporation (“**First National**”) a mortgage on the 6th & 10th Property (“**First National Mortgage**”) in the amount of \$10 million. In September, 2017 BDMC postponed the 6th & 10th Mortgage to the First National Mortgage.
20. The 6th & 10th Borrower advised the Trustee that, despite its expectations for the 6th & 10th Project, it experienced considerable challenges since 2014, including, among other things, a significant drop in oil prices and the prolonged weakening of the Alberta real estate market during the period that the 6th & 10th Project was being marketed. 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.
21. Despite the difficulties experienced by the 6th & 10th Borrower, in or around October, 2021, the First National inventory loan was finally repaid in full and the First National Mortgage was discharged from title to the 6th & 10th Property. At that time, 11 residential units remained to be sold (“**Remaining Units**”) and the 6th & 10th Mortgage became the only outstanding mortgage debt registered on title to the Remaining Units.
22. The 6th & 10th Borrower advised the Trustee that, although the 6th & 10th Mortgage was registered on title to the Remaining Units, it was making a claim (“**Related Party Claim**”) to the net proceeds from the Remaining Units in priority to the 6th & 10th Mortgage because it had funded, and continued to fund, certain project costs.
23. The 6th & 10th Borrower further confirmed to the Trustee that based on historical unit selling prices, the Remaining Units would not generate sufficient proceeds to repay the

6th & 10th Loan in full and that a significant shortfall on the principal balance was anticipated.

24. In the circumstances, in order to allow for the uninterrupted sale of the Remaining Units, the Trustee agreed with the 6th & 10th Borrower that the proceeds (net of closing costs) from the sale of the Remaining Units would be held in escrow by Goldman, Sloan, Nash & Haber LLP ("**Escrow Agent**") until a consensual resolution regarding the Related Party Claim could be reached or upon further order of the Court. On December 8, 2021, the 6th & 10th Borrower, its counsel, the Escrow Agent, the Trustee and Olympia executed an agreement documenting this arrangement ("**Escrow Agreement**"). A copy of the Escrow Agreement is attached as **Appendix "2"**.
25. On December 14, 2021, the Trustee sent a notice to the 6th & 10th Investors advising of the status of the unit sales, the anticipated shortfall on the 6th & 10th Mortgage, the Related Party Claim and the Escrow Agreement. A copy of the notice is attached as **Appendix "3"**.

#### **PRIORITY CLAIM**

26. As was discussed in the Twenty-Ninth Report, all Remaining Units have now been sold and, pursuant to the Escrow Agreement, there is approximately \$3.7 million being held in escrow ("**Escrow Funds**").
27. In October, 2022, the 6th & 10th Borrower provided the Trustee with an updated summary of its Related Party Claim, which totaled approximately \$2.7 million, and was primarily comprised of the following: (a) the initial equity contributed by the 6th & 10th Borrower; (b) guarantee fees; and (c) amounts advanced to the 6th & 10th Project by LDC and BJL to pay for, among other things, certain carrying costs associated with the 6th & 10th Property, including costs to service the First National inventory loan, condominium fees and property taxes. The Trustee also notes that the 6th & 10th Borrower has never had a charge registered on title to the 6th & 10th Project in respect of the Related Party Claim. Should the Related Party Claim be paid in full, in priority to the 6th & 10th Loan, there would only be approximately \$1 million remaining for distribution to the 6th & 10th Investors.
28. The Trustee reviewed the Related Party Claim and indicated to the 6th & 10th Borrower that it would not consent to its payment in full and continued to engage in discussions with the 6th & 10th Borrower regarding same.

## Settlement and Mutual Release Agreement

29. Following the issuance of the Twenty-Ninth Report and after negotiations between the parties and an in-depth review of the amounts comprising the Related Party Claim, the Trustee determined that it would be in the best interests of the 6th & 10th Investors to resolve the Related Party Claim consensually.
30. Accordingly, with the support of Representative Counsel, the Trustee proceeded to negotiate a settlement with the 6th & 10th Borrower, on behalf of LDC and BJL, regarding, among other things, the allocation and distribution of the Escrow Funds, which resulted in the parties entering into the 6<sup>th</sup> & 10th Settlement Agreement, a copy of which is attached as **Appendix “4”**. The key terms of the 6th & 10th Settlement Agreement are as follows:
- (a) the parties agree that the Escrow Funds shall be allocated as follows (“**Distributions**”)
    - i. a payment in the amount of \$2.3 million to the Trustee, on behalf of the 6th & 10th Investors (“**Trustee Payment**”); and
    - ii. a payment of the residual balance from the Escrow Funds of approximately \$1.4 million to the 6th & 10th Borrower (“**Related Party Payment**”). The Related Party Payment is approximately \$1.3 million less than the amount originally claimed by the 6th & 10th Borrower;
  - (b) an agreement that should the 6th & 10th Borrower, LDC, or BJL come into possession of any further consideration arising from the 6th & 10th Project (“**Further Consideration**”), such Further Consideration shall be paid to the Trustee until the full amount owing under the 6th & 10th Loan has been repaid in full; and
  - (c) the 6th & 10th Settlement Agreement provides for releases between the parties on closing.

## TRUSTEE'S RECOMMENDATION

31. The Trustee Payment results in a return of approximately 26% of the outstanding principal balance owing under the 6th & 10th Loan or 48% of the outstanding principal when including Previously Paid Interest. The recovery is calculated as follows:

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Principal outstanding (A)	\$ 8,828,600
Trustee Payment (B)	\$ 2,300,000
Previously Paid Interest (paid through June 27, 2015)	\$ 1,976,315
Total Payments (C)	\$ 4,276,315
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Recovery on principal (B/A)	26%
Recovery on principal including Previously Paid Interest (C/A)	48%

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32. As set out in the Investor Notice (described below), prior to the negotiation with the 6th & 10th Borrower, the Trustee considered whether there were any other alternatives to the 6th & 10th Settlement Agreement that may have resulted in a more favourable outcome for the 6th & 10th Investors.
33. Upon review and consideration of the alternatives with its counsel and Representative Counsel, the Trustee is of the view that the only alternative to the 6th & 10th Settlement Agreement would have been to enter into contested litigation and defend against the Related Party Claim.
34. In the circumstances, the Trustee determined it would be appropriate to enter into the 6th & 10th Settlement Agreement for the following reasons: (i) the Related Party Claim is comprised of certain amounts that the Trustee believes may have otherwise ranked in priority to the 6th & 10th Loan, specifically those payments made to service the First National Mortgage and the payments made in respect of condominium fees and property taxes; (ii) the length of time and costs associated with litigating a claim of this nature, which may or may not have ultimately resulted in a better outcome for the 6th & 10th Investors, and (iii) further delays in distributing the Escrow Funds should the matter need to be adjudicated before the Court.

35. After giving careful consideration to the matters noted above, the Trustee also considered the following with respect to the merits of entering into the 6th & 10th Settlement Agreement: (i) the certainty it provides regarding the amount and timeframe for the partial repayment of the 6th & 10th Loan; (ii) the lack of favourable available alternatives, including the uncertainty related to timing, outcome and costs that would result from litigating the Related Party Claim, as outlined above; (iii) the 6th & 10th Settlement Agreement allows the Trustee to finally monetize the investments of the 6th & 10th Investors who have endured a significant delay in the recovery of their loans given that nearly seven years have passed since the maturity of the 6th & 10th Loan; and (iv) the Trustee Payment results in a principal return of approximately 26% on the 6th & 10th Loan and a return of approximately 48% on principal when previously paid interest is taken into account.
36. Based on the foregoing, the Trustee and Representative Counsel are of the view that although the 6th & 10th Settlement Agreement only provides a partial recovery for the 6th & 10th Investors, it offers the greatest opportunity for a meaningful recovery in the circumstances, and there is value in the in the certainty provided by the 6th & 10th Settlement Agreement and crystalizing the outcome of the 6th & 10th Loan at this time.
37. If the 6th & 10th Settlement Approval and Distribution Order is granted and the settlement closes in accordance with the terms of the 6th & 10th Settlement Agreement, the Trustee intends to distribute the Trustee Payment (less the Administrative Holdback) to the 6th & 10th Investors forthwith following Court approval and receipt of the Trustee Payment.

#### **Investor Notice**

38. Contemporaneous with the service of this Thirtieth Report, the Trustee sent a notice to the 207 6th & 10th Investors on December 5, 2022 ("**December 2022 Investor Notice**") to disclose the financial and other details of the 6th & 10th Settlement Agreement and to provide information concerning the Court hearing where the Trustee is seeking approval of the 6th & 10th Settlement Agreement and the distribution to the 6th & 10th Investors.
39. A copy of the December 2022 Investor Notice is attached as **Appendix "5"**.

**CONCLUSION AND RECOMMENDATION**

40. For the reasons noted above, the Trustee and Representative Counsel are of the view that, in light of the available alternatives, the 6th & 10th Settlement Approval and Distribution Order is in the best interests of the 6th & 10th Investors in the circumstances. Accordingly, the Trustee recommends that the proposed 6th & 10th Settlement Approval and Distribution Order be granted by the Court.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of December, 2022.

**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**

## **CONCLUSION AND RECOMMENDATION**

40. For the reasons noted above, the Trustee and Representative Counsel are of the view that, in light of the available alternatives, the 6th & 10th Settlement Approval and Distribution Order is in the best interests of the 6th & 10th Investors in the circumstances. Accordingly, the Trustee recommends that the proposed 6th & 10th Settlement Approval and Distribution Order be granted by the Court.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of December, 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 20<sup>TH</sup> DAY  
JUSTICE HAINEY ) OF APRIL, 2018

BETWEEN:

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Applicant

- and -



BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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*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](http://www.faanmortgageadmin.com).

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

#### **GENERAL**

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

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

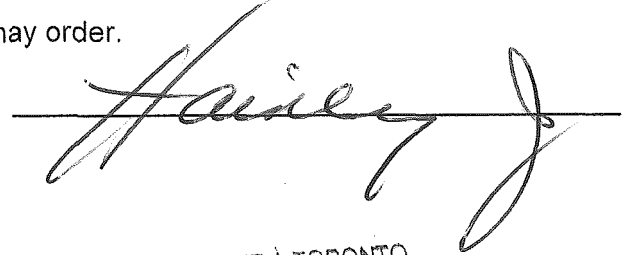
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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 20<sup>th</sup> day of April, 2018 (the "**Order**") made in an application having Court file number CV-18-596204-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$<\*>, being part of the total principal sum of \$<\*> which the Trustee is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

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

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

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



THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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**APPOINTMENT ORDER**

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*Lawyers for The Superintendent of Financial Services*

**Appendix 2:**  
**Escrow Agreement dated December 8, 2021**

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** (the “**Agreement**”) is made as of December 8, 2021 by and among Bel Calgary Inc. (the “**Borrower**”), Olympia Trust Company (“**Olympia**”), FAAN Mortgage Administrators Inc., solely in its capacity as Court-Appointed Trustee of Building & Development Mortgages Canada Inc. (“**BDMC**”) and in no other capacity (the “**Trustee**”), Miller Thomson LLP (“**Miller Thomson**”) and Goldman Sloan Nash & Haber LLP as escrow agent (the “**Escrow Agent**”).

**WHEREAS** pursuant to a commitment letter with First National Financial LP dated September 12, 2017 (as amended, the “**FN Commitment Letter**”), the Borrower has granted to First National Financial GP Corporation a mortgage registered on title to the properties municipally known as 1010 – 6<sup>th</sup> Street SW, Calgary, Alberta and legally described in Schedule “A” hereto (hereinafter referred to respectively as the “**Property**”) in the Alberta Land Titles Office (the “**Land Registry Office**”) as Instrument No. 171 278 333 (the “**FN Mortgage**”), which stands as security for certain debts and obligations of the Borrower under the FN Commitment Letter.

**AND WHEREAS** BDMC and Olympia are the trustees for various individual lenders under various loan agreements and related documentation with the Borrower (collectively, the “**BDMC Loan Agreements**”). The debts and obligations of the Borrower under the BDMC Loan Agreements are secured by a mortgage registered against title to the Property on January 20, 2012 in the Land Registry Office as Instrument No. 121 018 133 (as variously amended, increased and transferred, the “**BDMC Mortgage**”).

**AND WHEREAS** on April 20, 2018, the Trustee was appointed as trustee of all of the assets, undertakings and properties of BDMC pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 47 of the *Mortgage Brokerages Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously administered by BDMC;

**AND WHEREAS** the Borrower has sold and will be transferring to third party purchasers condominium units, parking units, storage units or other properties within the Property (collectively the “**Units**” and individually a “**Unit**”) and in connection therewith the parties hereto have agreed that the Escrow Funds (as hereinafter defined) received by Miller Thomson on behalf of the Borrower in connection with the final closing of each Unit sale transaction shall be sent to the Escrow Agent, who shall hold and distribute the Escrow Funds in accordance with this Agreement.

**NOW THEREFORE**, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Borrower has or shall irrevocably direct each purchaser of a Unit described in Schedule “B” hereto to pay on the final closing of its Unit sale transaction all of the proceeds or funds due on completion of such transaction, after payment of

only applicable amounts required to be paid to reduce the FN Mortgage debt and any reasonable legal fees, commissions, taxes and other costs that are agreed to by the Borrower, the Trustee and Olympia, acting reasonably (such applicable amounts, the “**Applicable Deductions**”, and such remaining proceeds, collectively, the “**Escrow Funds**”), to the Borrower’s counsel, Miller Thomson, in trust. The Borrower hereby irrevocably directs Miller Thomson to pay all Escrow Funds received by it to the Escrow Agent within one (1) business day following the date that such Escrow Funds are released from closing escrow.

2. The Borrower represents and warrants that the Units listed on Schedule “B” shall comprise all of the remaining Property subject to the BDMC Mortgage as of the date of this Agreement. The Borrower further agrees that any other proceeds or funds that it may receive in respect of the Property on or after the date hereof (excluding any Applicable Deductions that may be paid to the Borrower in accordance with the terms hereof) shall be paid by the Borrower to the Escrow Agent and shall be included in the Escrow Funds subject to this Agreement.
3. The Escrow Agent undertakes and agrees, and the Borrower, Olympia and the Trustee irrevocably direct the Escrow Agent (and this shall constitute the Escrow Agent's good and sufficient authority for so doing) to retain and hold the Escrow Funds in trust in a separate interest-bearing account, which Escrow Funds shall only be released in accordance with the terms hereof. Each of the parties hereto shall be entitled to request copies of an account statement from the Escrow Agent from time to time, showing all activities involving the Escrow Funds since the date of this Agreement. The Escrow Agent shall only be permitted to release the Escrow Funds (together with all interest accrued thereon): (i) in accordance with the terms of a joint written irrevocable direction signed by each of the Borrower, Olympia and the Trustee, or (ii) in accordance with the terms of any final non-appealable decision, order, judgment, or decree of the Court.
4. Olympia and the Trustee shall continue to execute and deliver partial discharges of the BDMC Mortgage for Unit sale transactions in accordance with the terms of the BDMC Loan Agreements. For greater certainty, Olympia and the Trustee shall be given the opportunity to review and/or approve of the Trust Reconciliation Statement, Statement of Adjustments and all Applicable Deductions, the Offer to Purchase Agreement and the titles evidencing the transfer to the Purchaser’s name, prior to delivering any partial discharge with respect to such Unit sale transaction.
5. The Borrower, Olympia and the Trustee may jointly agree to remove the Escrow Agent at any time by agreement in writing. The Borrower agrees not to replace or remove Miller Thomson as its counsel for the closing of the Unit transactions without the written approval of each of Olympia and the Trustee. The Borrower acknowledges that as a condition of any removal or replacement of the Escrow Agent or Miller Thomson, the Borrower shall cause such replacement firm or successor agent to execute and deliver to the parties hereto an agreement having the same format and terms as the within Agreement and vesting in the replacement firm or successor agent the same powers, rights, duties and responsibilities as Miller Thomson or the Escrow Agent hereunder (the

**"Replacement Agreement")**. Miller Thomson or the Escrow Agent, as applicable, shall only be discharged and released from any further duty or obligation under this Agreement at such time as:

- a. the replacement firm or successor agent has executed and delivered to the parties hereto the Replacement Agreement;
  - b. with respect to any replacement of Miller Thomson, (i) all Unit transactions that Miller Thomson has assisted the Borrower with have closed and proceeds have been received, and (ii) all Escrow Funds in Miller Thomson's possession have been transferred to the Escrow Agent; and
  - c. with respect to any replacement of the Escrow Agent, (i) each of the Borrower, Olympia and the Trustee shall have signed a joint written direction identifying the successor escrow agent and directing all Escrow Funds to be transferred to such successor escrow agent, and (ii) all Escrow Funds in the Escrow Agent's possession shall have been transferred to the successor escrow agent.
6. The Escrow Agent may resign and be discharged from its duties or obligations hereunder upon giving notice in writing of such resignation to each of the parties hereto, specifying a date when such resignation shall take effect not earlier than ten business days from the date of such notice subject to the terms and conditions hereinafter set out. It is understood and agreed that in the event of such resignation, a successor agent shall be designated by the Trustee, Olympia and the Borrower in writing, each acting reasonably, on or prior to the effectiveness thereof. If the Borrower, Olympia and the Trustee do not appoint a successor escrow agent or if a successor escrow agent has not accepted such appointment by the end of the ten business day period, the Escrow Agent may, in its sole discretion, apply to the Court for the appointment of a successor escrow agent or for other appropriate relief. The Escrow Agent shall only be discharged and released from any further duty or obligation under this Agreement at such time as:
- a. the successor agent has executed and delivered to the parties hereto the Replacement Agreement;
  - b. each of the Borrower, Olympia and the Trustee shall have signed a joint written direction approving of the successor escrow agent and directing all Escrow Funds to be transferred to such successor escrow agent, and
  - c. all Escrow Funds in the Escrow Agent's possession shall have been transferred to the successor escrow agent.
7. The Borrower, Olympia and the Trustee agree that nothing in this Agreement shall affect the validity or enforceability of the FN Mortgage or the BDMC Mortgage or any provisions thereof and agree and acknowledge that the FN Mortgage and the BDMC Mortgage and all covenants and obligations thereunder shall continue to be in full force and effect in the same manner and subject to the same conditions as they were prior to this Agreement being executed.
8. In the event that any disagreements arise among the parties hereto in respect of Miller Thomson's or the Escrow Agent's obligations under this Agreement or any

action contemplated by Miller Thomson or the Escrow Agent hereunder, Miller Thomson or the Escrow Agent may apply to the Court for clarification or direction with respect to its obligations under this Agreement.

9. The Escrow Agent shall hold, administer and dispose of the Escrow Funds pursuant to the terms of this Agreement. The parties hereto acknowledge and agree that upon the disposition of the funds in accordance with paragraph 3 hereto, the Escrow Funds held by the Escrow Agent shall become the property of the applicable parties designated in accordance therewith. Prior to such time, the Escrow Funds held by the Escrow Agent shall be the property of Olympia and the Trustee, in trust for the individual lenders under the BDMC Loan Agreements, in accordance with such documents and the BDMC Mortgage registered on title to the Property. The Escrow Agent acknowledges and agrees that it does not have any interest in the Escrow Funds but is serving as escrow agent only.
10. None of the Borrower, Miller Thomson, Olympia or the Trustee is the agent of the Escrow Agent for any purpose, and neither has any authority to act for, or in the name of the Escrow Agent or to obligate the Escrow Agent personally or otherwise.
11. The Escrow Agent is hereby expressly authorized to comply with and obey any and all unappealable orders, judgments, or decrees of any court entered or issued with or without jurisdiction and the Law Society of Ontario ("**LSO**") Rules of Professional Conduct, and in any case in which the Escrow Agent obeys or complies with any such orders, judgments or decrees of any such court and the LSO Rules of Professional Conduct, it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance.
12. The parties agree that the duties of Miller Thomson and the Escrow Agent under this Agreement are purely administrative in nature and are expressly limited to those duties set out herein and that Miller Thomson and the Escrow Agent shall incur no liability whatsoever, except by reason of their negligence or wilful misconduct. The reasonable out-of-pocket costs, charges and expenses of Miller Thomson and the Escrow Agent, including any goods and services tax thereon, shall be borne by the Borrower.
13. Neither Miller Thomson nor the Escrow Agent shall be bound by any notice, claim or demand or any amendment of this Agreement unless in writing and executed and received in accordance with the terms of this Agreement.
14. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada and the parties hereto attorn to the Courts of the Province of Ontario.
15. Each of the terms and provisions of this Agreement is and is deemed severable in whole or in part, and if any term or provision or the application thereof in any circumstances should be invalid, illegal or unenforceable, the remaining terms and provisions or application thereof to circumstances other than those as to which a term or provision is held invalid, illegal, or unenforceable, shall not be

affected and they shall remain in full force and effect.

16. This Agreement and the rights and obligations of the parties hereto shall inure to the benefit of and shall bind the parties hereto and their respective successors and assigns.
17. All notices to be given under this Agreement shall be in writing and served personally, by registered or certified mail, by overnight courier or by email or other electronic transmission to the parties at the following addresses:

**To the Escrow Agent:**

Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario M5H 1V2  
Attention: David Nakelsky  
Email: [davidn@gsnh.com](mailto:davidn@gsnh.com)

**To Miller Thomson:**

Miller Thomson LLP  
3000, 700 - 9th Avenue SW  
Calgary, Alberta T2P 3V4  
Attention: Jeffrey H. Selby  
Email: [jhselby@millerthomson.com](mailto:jhselby@millerthomson.com)

**To the Borrower:**

Bel Calgary Inc.  
778 King Street West  
Toronto, ON M5V 1N6  
Attention: Brad Lamb/ Ryan Spencer  
Email: [ryan@bradjlambrealty.com](mailto:ryan@bradjlambrealty.com)  
Facsimile number: 416-368-5114

**To Olympia:**

Olympia Trust Company  
4000, 520 – 3 Avenue SW  
Calgary, Alberta, T2P 0R3  
Email: [bahnuikj@olympiatrust.com](mailto:bahnuikj@olympiatrust.com)

**To the Trustee:**

FAAN Mortgage Administrators Inc.,  
as Court-Appointed Trustee of  
Building & Development Mortgages Canada Inc.  
20 Adelaide Street East, Suite 920  
Toronto, Ontario MSC 2T6  
Email: [ana@faanmortgageadmin.com](mailto:ana@faanmortgageadmin.com)

Each such notice shall be deemed served on the date on which the document is delivered in accordance with the above.

18. In addition to paragraphs 5 and 6 hereof, this Agreement shall in any event automatically terminate upon the earlier of: (a) final distribution of the Escrow Funds in accordance with paragraph 3 above; or (b) such time as the Borrower has repaid the BDMC Mortgage in full, at which time (i) BDMC, Olympia and the Trustee shall be fully released from all duties, obligations and liabilities hereunder and the BDMC Mortgage in full, and (ii) any remaining Escrow Funds shall be distributed to the Borrower.
19. This Agreement may be executed in original or electronically in one or more counterparts, each of which so executed shall constitute an original and all of which together shall constitute one and the same agreement.

*[SIGNATURE PAGES FOLLOW]*



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

**GOLDMAN SLOAN NASH & HABER LLP**

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

Name: DAVID NAFISKEY

Title: Partner

I/We have authority to bind the Corporation

**BEL CALGARY INC.**

\_\_\_\_\_  
Name/Title: Brad J. Lamb, President

I have authority to bind the Corporation

**MILLER THOMSON LLP**

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

Name:

Title:

I/We have authority to bind the Corporation

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

**GOLDMAN SLOAN NASH & HABER LLP**

Per:

\_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation

**BEL CALGARY INC.**

\_\_\_\_\_

Name/Title: Brad J. Lamb, President

I have authority to bind the Corporation

**MILLER THOMSON LLP**

Per:

\_\_\_\_\_

Name:


Title:

*Michael S. Mazzoni*  
*Calgary Managing Partner*

I/We have authority to bind the Corporation

**BUILDING & DEVELOPMENT  
MORTGAGES CANADA INC.**

by: FAAN MORTGAGE  
ADMINISTRATORS INC., solely in its  
capacity as court appointed trustee of  
BUILDING & DEVELOPMENT  
MORTGAGES CANADA INC. and in no  
other capacity

Per: 

Name: Lana Bezner  
Title: Managing Director

I/We have authority to bind the Corporation

**OLYMPIA TRUST COMPANY**

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

Name:  
Title:

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

Name:  
Title:

I/We have authority to bind the Corporation

**BUILDING & DEVELOPMENT  
MORTGAGES CANADA INC.**

by: FAAN MORTGAGE  
ADMINISTRATORS INC., solely in its  
capacity as court appointed trustee of  
BUILDING & DEVELOPMENT  
MORTGAGES CANADA INC. and in no  
other capacity

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

Name:  
Title:

I/We have authority to bind the Corporation

**OLYMPIA TRUST COMPANY**

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

Name: **Andrea Gillis, Vice President**  
Title:

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

Name: **Jonathan Bahnuik**  
Title: **General Counsel**

I/We have authority to bind the Corporation

**SCHEDULE "A"**  
**LEGAL DESCRIPTION**

**Condominium Units**

- CONDOMINIUM PLAN 1711022  
UNIT 8  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 42  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 52  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 90  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 122  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 130  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 138  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 162  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
  
- CONDOMINIUM PLAN 1711022  
UNIT 178  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

- CONDOMINIUM PLAN 1711022  
UNIT 186  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 208  
AND 40 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

**Storage Units**

- CONDOMINIUM PLAN 1711022  
UNIT 242  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 254  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 256  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 257  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 269  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 302  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 385  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 422  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

- CONDOMINIUM PLAN 1711022  
UNIT 460  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 481  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 495  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 513  
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

**Parking Units**

- CONDOMINIUM PLAN 1711022  
UNIT 226  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 237  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 238  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 285  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 300  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022

UNIT 311  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS

- CONDOMINIUM PLAN 1711022  
UNIT 352  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 374  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 412  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 419  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 420  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 424  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 429  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 471  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS
- CONDOMINIUM PLAN 1711022  
UNIT 493  
AND 2 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY  
EXCEPTING THEREOUT ALL MINES AND MINERALS



## SCHEDULE "B"

Bel Calgary  
 Business 84869 0400 RT0001  
 Unsold Inventory  
 As of September 14, 2021

Suite No.	Sale Price (as per APS)	Less HST (fed. Portion or GST)	Plus HST Rebate (fed portion) or GST	Net Sale Price
302	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
706	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
808	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
1306	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
1706	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
1806	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
1906	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
2206	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
2406	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
2506	\$335,000	\$16,214.91	\$5,513.07	\$324,298.16
2806	\$356,500	\$17,255.57	\$5,866.89	\$345,111.33
<b>11</b>	<b>\$3,900,000.00</b>	<b>\$188,770.57</b>	<b>\$64,181.99</b>	<b>\$3,775,411.42</b>

4 parkings	140,000.00	6,666.67	133,333.33
1 locker	4500	214.29	4,285.71

<b>Total</b>	<b>\$3,913,030.47</b>		
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**Appendix 3:**  
**Investor Notice dated December 14, 2021**



December 14, 2021

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Bel Calgary Inc. (“Borrower”) in respect of property located at 633 10<sup>th</sup> Avenue SW, Calgary, AB, (“6<sup>th</sup> and 10<sup>th</sup> Project”)**

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

We are writing to you in our capacity as Trustee regarding your loan made in respect of the 6<sup>th</sup> and 10<sup>th</sup> Project (“**6<sup>th</sup> and 10<sup>th</sup> SMLs**”).

**Project Update**

The 6<sup>th</sup> and 10<sup>th</sup> Project is a completed 224-unit residential condominium building situated in the Beltline district of southwest Calgary. The condominium registered in late 2017 and there are currently 11 residential units remaining to be sold (“**Remaining Units**”).

Despite the Borrower’s expectations for the development of the 6<sup>th</sup> and 10<sup>th</sup> Project, the Borrower advised that it experienced considerable challenges since late 2014 as a result of, among other things, the significant drop in oil prices and a prolonged and continuing weakening of the Alberta real estate market. These economic conditions resulted in (i) continued downward pressure on the selling prices for the condominium units, and (ii) a significantly extended timeline for the sale of such units. The Borrower advised that these factors, among other things, resulted in the project being substantially less profitable than had originally been projected.

**Current Status of the BDMC Loan**

According to BDMC’s records, the total amount owing to the 6<sup>th</sup> and 10<sup>th</sup> SMLs is approximately \$13.3 million, comprised of a principal balance of approximately \$8.8 million



and accrued interest as at November 30, 2021 of approximately \$4.5 million.<sup>1</sup> The BDMC Loan matured in June 2015.

After the condominium registered in 2017, the Borrower obtained an inventory loan from First National Financial LP ("**First National**") to fund, among other things, a repayment of the remaining balance owing in respect of the construction financing and certain carrying costs associated with the remaining inventory. The First National loan was secured by a priority mortgage on the Borrower's unsold condominium units in the 6<sup>th</sup> and 10<sup>th</sup> Project ("**First National Mortgage**").

First National has now been repaid in full and there are no known charges registered on title to the Remaining Units in priority to the mortgage in respect of the BDMC Loan.

### **Priority Claims**

The Borrower has advised the Trustee that, for an extended period of time, it has funded, and continues to fund, certain costs related to the 6<sup>th</sup> and 10<sup>th</sup> Project for which it is seeking to be repaid from the proceeds of sale of the Remaining Units in priority to BDMC. The 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 Related Party Claim is comprised of: (a) the initial equity contributed by the Borrower to the 6<sup>th</sup> and 10<sup>th</sup> Project; (b) guarantee fees for personal guarantees provided by the principal of the Borrower in respect of the First National loan; and (c) amounts advanced by certain companies related to the principal of the Borrower to pay for, among other things, costs to service the First National Mortgage, condominium fees and other carrying costs of the unsold condominium units. The Borrower does not hold a priority mortgage or any charge registered on title to the 6<sup>th</sup> and 10<sup>th</sup> Project in respect of the Related Party Claim.

The Trustee has not consented to the payment of the Related Party Claim in priority to the BDMC Loan and continues to be engaged in discussions with the Borrower with respect to same. In the circumstances, the Trustee has agreed with the 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. On December 8, 2021, the Trustee, Olympia Trust Company, the Borrower and the Borrower's legal counsel executed an Escrow Agreement documenting this arrangement. As of the date of this notice, there is approximately \$300,000 being held by the Borrower's counsel pursuant to the Escrow Agreement.

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<sup>1</sup> Interest was last paid to the 6<sup>th</sup> and 10<sup>th</sup> SMLs in July 2015. Interest has continued to accrue at a per diem rate of \$1,961.91.



## **Next Steps**

The Borrower has advised that, based on the historical unit selling prices, the Remaining Units will not generate sufficient proceeds to repay the BDMC Loan in full (regardless of the outcome of the Related Party Claim). Accordingly, at this time the recovery, if any, on the BDMC Loan is unknown, including the timing and quantum thereof; however, a significant shortfall on the principal balance is anticipated.

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

Should you have any questions of the Trustee, our contact information is shown below (if you contact us, please reference **6<sup>th</sup> and 10<sup>th</sup> Project**).

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **6<sup>th</sup> and 10<sup>th</sup> Project**).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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

**Appendix 4:**  
**Settlement and Mutual Release Agreement dated December 5, 2022**

## SETTLEMENT AND MUTUAL RELEASE AGREEMENT (6<sup>th</sup> & 10<sup>th</sup>)

This agreement (“**Settlement Agreement**”) made as of December 5, 2022,

B E T W E E N:

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

(hereinafter, the “**Trustee**”)

- and -

**OLYMPIA TRUST COMPANY**

(hereinafter, “**Olympia**”)

- and -

**BJL PROPERTIES INC.**

(hereinafter, “**BJL**”)

-and –

**Lamb Development Corporation**

(hereinafter, “**LDC**”)

- and -

**BEL-CALGARY INC.**

(hereinafter, the “**Borrower**”)

**WHEREAS** on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as Trustee of the assets, properties and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an Order (“**Appointment Order**”) of the Ontario Superior

Court of Justice (Commercial List) (the “**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the syndicated mortgage loans previously entered into by BDMC (the “**BDMC Proceedings**”);

**WHEREAS** the “**6<sup>th</sup> & 10<sup>th</sup> Project**” is a completed 224-unit residential condominium project located in Calgary, Alberta, on the property municipally known as 1010 – 6<sup>th</sup> Street SW, Calgary, Alberta (the “**Property**”);

**WHEREAS** Vanguard Law Group LLP, as trustee for certain investors (the “**BDMC Investors**”), including investors who hold self-managed accounts with Olympia, entered into various syndicated mortgage loan agreements with the Borrower pursuant to which a loan in the principal amount of approximately \$8.8 million was made to the Borrower (the “**BDMC Loan**”);

**WHEREAS** the BDMC Loan was secured by a mortgage, held in trust by Sanjay Soni for the BDMC Investors, registered on title to the Property in the Alberta Land Titles Office (the “**Land Registry Office**”) as Instrument No. 121 018 133 on January 20, 2012 (as variously amended, increased and transferred, the “**BDMC Mortgage**”);

**WHEREAS** the BDMC Mortgage was transferred from Sanjay Soni to BDMC on or about March 9, 2016;

**WHEREAS**, in connection with the Borrower selling and transferring to third party purchasers certain remaining condominium units, parking units, storage units or other properties within the Property (each a “**Remaining Unit**” and, collectively, the “**Remaining Units**”), the Trustee, Olympia, the Borrower, Miller Thomson LLP (“**Miller Thomson**”) and Goldman Sloan Nash & Haber LLP as escrow agent (the “**Escrow Agent**”), entered into an escrow agreement, made as of December 8, 2021 (the “**Escrow Agreement**”), whereby the parties agreed that the Escrow Funds (as hereinafter defined) received by Miller Thomson on behalf of the Borrower in connection with the final closing of each Remaining Unit sale transaction would be sent to the Escrow Agent, who would hold and distribute those funds in accordance with the Escrow Agreement (“**Escrow Funds**”);



**WHEREAS** the sale transactions for each of the Remaining Units have closed and the Escrow Agent holds Escrow Funds in the amount of \$3,668,959 as of November 4, 2022, with interest continuing to accrue;

**WHEREAS** the Borrower, LDC and BJJ did not register a charge on title to the Property;

**WHEREAS** the Borrower, LDC, and BJJ confirm that there is no further consideration due to the Borrower, LDC, BJJ or any related entity in respect of the 6<sup>th</sup> & 10<sup>th</sup> Project or the Property (the “**Material Representation**”);

**WHEREAS** the amount outstanding in respect of principal and interest under the BDMC Loan as of November 4, 2022 is approximately \$14 million, with principal of approximately \$8.8 million and interest of approximately \$5.2 million;

**WHEREAS** the Borrower provided the Trustee with a summary of amounts totalling approximately \$2.7 million that it believes should be paid collectively to BJJ and LDC from the Escrow Funds in priority to repayment of the BDMC Loan (the “**Related Party Claim**”);

**AND WHEREAS** the Trustee, Olympia, BJJ, LDC and the Borrower (collectively, the “**Parties**” and each a “**Party**”) wish to compromise and settle between themselves, without any admission whatsoever as to the veracity of any facts that have been asserted by any Party, all claims or potential claims and disputes between them as of the date of this Settlement Agreement relating to the Escrow Funds (collectively, the “**Disputed Matters**”);

**NOW THEREFORE** in consideration of the undertakings, covenants and releases set forth herein, the sufficiency of which consideration is hereby irrevocably acknowledged by each of the Parties, the Parties covenant and agree as follows:

1. Each Party represents and warrants to the others that, to the best of its knowledge, the recitals to this Settlement Agreement are accurate.
2. The Parties agree that the Escrow Funds shall be allocated and distributed as follows (the “**Distributions**”):

- (a) \$2.3 million to the Trustee, on behalf of BDMC, in partial satisfaction of the obligations owing by the Borrower under the BDMC Loan (“**Trustee Payment**”); and
- (b) The balance of the Escrow Funds, being approximately \$1.4 million as of November 4, 2022, to the Borrower, on behalf of BJL and LDC, in connection with the Related Party Claim (“**Related Party Payment**”).

3. The Trustee, Olympia, and the Borrower hereby irrevocably authorize and direct the Escrow Agent to transfer the Trustee Payment and the Related Party Payment to the Trustee and the Borrower’s respective accounts set forth on Schedules “A” and “B” hereto. The Parties agree that this irrevocable joint direction constitutes the Escrow Agent’s good and sufficient authority for making the Distributions. The Parties agree that none of the Escrow Agent, its partners, its employees, or its agents shall be liable, responsible or accountable for any loss or damage whatsoever to any Party in connection with the Distributions, the Escrow Funds and the Disputed Matters.

4. The Borrower, LDC and BJL covenant in favour of the Trustee (on behalf of BDMC) and Olympia that:

- (a) none of the Borrower, LDC, BJL or any of their affiliates (as such term is defined in the *Business Corporations Act* (Ontario)) or their respective principals, agents or legal counsel is or will become entitled to receive any consideration whatsoever in respect of or in any way relating to or arising from (directly or indirectly) the Property or the 6<sup>th</sup> & 10<sup>th</sup> Project, whether from any purchaser, governmental authority or other entity, including, without limitation, consideration in the form of money or tax credits (the “**Further Consideration**”);
- (b) promptly upon the Borrower, LDC, or BJL obtaining knowledge of any of the matters set out paragraph 4(a) above it shall notify the Trustee of the nature and existence of such matters forthwith; and
- (c) should the Borrower, LDC, BJL, or any of their affiliates or their respective principals or agents come into the possession or control of any Further

Consideration that would otherwise be payable to the Borrower, LDC, BJL or any of their affiliates (the “**Notice Trigger**”), such Further Consideration shall and shall be deemed to be held in trust, separate and apart from such person’s other money, instruments, investment property, property or assets, for the benefit of the Trustee until the full amount owing under the BDMC Loan has been fully and finally determined and, if any further amount is owing, paid to the Trustee in full. Upon the occurrence of the Notice Trigger, such person shall immediately inform the Trustee of such fact and, if any such amount is owing, shall promptly transfer such Further Consideration to the Trustee and pay any and all such amounts to the Trustee within two Business Days of receipt of same (the “**Turnover Obligation**”). For greater certainty, the Turnover Obligation shall survive the closing of the transactions contemplated by this Settlement Agreement and shall not be affected by the releases contemplated herein.

5. The Borrower hereby acknowledges and confirms that the Trustee may further distribute the amounts distributed to it pursuant to paragraph 2(b) hereof as the Trustee sees fit, in its sole discretion.

6. Effective upon completion of the Distributions:

(a) BDMC and the Trustee hereby forever release and discharge BJL, LDC and the Borrower from any and all actions, causes of action, claims, complaints, demands for payment or other similar processes, and potential actions, causes of action, claims, complaints, demands for payment or other similar processes, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in relation to the Disputed Matters, save and except those related to the Material Representation and/or the Turnover Obligation; and

(b) BJL, LDC and the Borrower hereby forever release and discharge BDMC and the Trustee from any and all actions, causes of action, claims, complaints, demands for payment or other similar processes, and potential actions, causes of action, claims, complaints, demands for payment or other similar processes, whether at

law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in relation to the Disputed Matters.

7. The Parties each agree not to make any claims or take any proceedings against any other corporation or person who might, in connection with the matters which are released and discharged above, claim over against the opposite Party or Parties to the releases herein, or who might claim contribution or indemnity under any statutory provision or otherwise from any Party or Parties discharged by the releases herein, or who might seek declaratory relief in a third party proceeding against any Party or Parties discharged by the releases herein, save and except any claims or proceedings in relation to the Material Representation and/or the Turnover Obligation. For greater certainty, this Settlement Agreement shall not operate in respect of the ongoing actions *Olympia Trust Company v. Building & Development Mortgages Canada Inc.*, Ontario Superior Court of Justice at Toronto Court File No. CV-20-00643593-0A52 and *Olympia Trust Company v. Bel Calgary Inc. et al.*, Ontario Superior Court of Justice at Toronto Court File No. CV-20-00643593-0A42, both being third party claims in *Raponi v. Olympia Trust Company*, Ontario Superior Court of Justice at Toronto Court File No. CV-20-00643593-00CP.

8. In the event that any Party should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against any of the releasees in connection with the matters which are released and discharged above, this Settlement Agreement may be raised as a complete bar to any such demand, action, claim, proceeding or step in a proceeding, save and except any demands, actions, claims or proceedings in relation to the Material Representation and/or the Turnover Obligation.

9. Nothing in the releases contained in the foregoing paragraphs shall be construed to release any Party from its obligations under this Settlement Agreement.

10. The Parties undertake and agree that this Settlement Agreement shall be treated as confidential and that no information relating in any way to the terms hereof shall be disclosed by the Parties or their officers, directors or employees, as applicable, to any person, organization, agency or body corporate, whether public or private, except as, and only to the extent that, such

disclosure is (i) required by law, (ii) necessary to enforce this Settlement Agreement, or (iii) consistent with paragraph 11 below.

11. The Parties acknowledge and agree that the Trustee shall be entitled to describe and/or disclose this Settlement Agreement to the extent the Trustee decides is necessary or desirable, in the Trustee's sole discretion, (i) to Chaitons LLP, in its capacity as Representative Counsel in the BDMC Proceedings, and/or (ii) to Investors (as defined in the Appointment Order) and the Court in connection with the BDMC Proceedings, including in any report to Court and any other materials prepared by the Trustee in connection with a motion before the Court seeking an Order approving this Settlement Agreement ("**Court Approval**").

12. The Parties agree that this Settlement Agreement shall be binding upon acceptance of this Settlement Agreement, save and except for paragraphs 2, 3, 5, 6, 7 and 8 hereof, which shall be conditional upon Court Approval. The Trustee shall use commercially reasonable efforts to seek Court Approval.

13. Each Party represents and warrants that:

- (a) it has not assigned to any person or corporation any of its actions, causes of action, claims, complaints, demands for payment, or other similar processes, or its potential actions, causes of action, claims, complaints, demands for payment, or other similar processes, whether at law or in equity, as released above; and
- (b) the execution, delivery and performance of this Settlement Agreement by it:
  - (i) are within its corporate or similar power, as applicable;
  - (ii) have been duly authorized by all necessary corporate or similar action, as applicable; and
  - (iii) do not (A) contravene its certificate of incorporation, articles, by-laws, membership agreement, or other constating documents, as applicable, or (B) violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to it.

14. Each Party hereby warrants that the terms of this Settlement Agreement are fully understood by it and that this Settlement Agreement is made and the releases herein are given voluntarily, after receiving independent legal advice, for the purpose of making a full and final compromise, adjustment and settlement of the aforesaid claims and issues.

15. This Settlement Agreement constitutes the entire Settlement Agreement between the Parties in respect of the subject matter hereof and supersedes all prior negotiations and understandings in respect of the subject matter hereof. Each of the Parties agrees and confirms that it has not been induced to enter into this Settlement Agreement by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition or agreement expressed, implied or collateral affecting this agreement or which will amend or alter this Settlement Agreement.

16. No amendment, supplement, modification, waiver or termination of this Settlement Agreement shall be binding unless executed in writing by all Parties. No Party may assign this Settlement Agreement or any rights or obligations under this Settlement Agreement without the prior written consent of the Parties.

17. This Settlement Agreement may be executed by the Parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This Settlement Agreement may be delivered by facsimile, PDF, electronic mail, or other electronic means.

18. This Settlement Agreement shall be governed by the laws of Ontario and the laws of Canada applicable therein, without reference to conflict of laws rules. Any dispute arising from or relating to this Settlement Agreement shall be decided by the Court and the Parties attorn to the exclusive jurisdiction of the Court for this purpose.

19. This Settlement Agreement shall enure to the benefit of the Parties and their respective successors, assigns, heirs, and representatives and be binding upon the Parties and their respective successors, assigns, heirs and representatives.

*[Signature page follows]*

IN WITNESS WHEREOF the undersigned have executed this Settlement Agreement by proper signing officers under seal as of the date set forth above.

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

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

I have authority to bind the corporation.

**OLYMPIA TRUST COMPANY**

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

I have authority to bind the corporation.

**BJL PROPERTIES INC.**

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

I have authority to bind the corporation.

**LAMB DEVELOPMENT CORPORATION**


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

I have authority to bind the corporation.

**BEL-CALGARY INC.**

IN WITNESS WHEREOF the undersigned have executed this Settlement Agreement by proper signing officers under seal as of the date set forth above.

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

By:   
Name: Lana Bezner  
Title: Managing Director

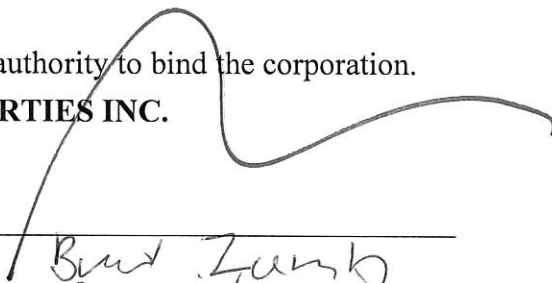
I have authority to bind the corporation.

**OLYMPIA TRUST COMPANY**

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

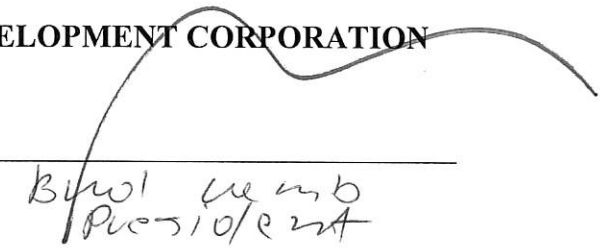
I have authority to bind the corporation.

**BJL PROPERTIES INC.**

By:   
Name: Brent Zumb  
Title: President

I have authority to bind the corporation.

**LAMB DEVELOPMENT CORPORATION**

By:   
Name: Brent Zumb  
Title: President

I have authority to bind the corporation.

**BEL-CALGARY INC.**



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

Name: *Bruce Lamb*

Title: *President*

I have authority to bind the corporation.

**SCHEDULE "A"**

**Trustee's Account Details**

Beneficiary Bank Information (Canadian Currency):

Name: Toronto Dominion Bank

Street: 9200 Weston Rd

City: Woodbridge

Prov: Ontario

Country: Canada

Postal Code: L4H 2P8

Institution ID = 004

Branch Transit = 18982

Account = 1898 5027455

Swift Number = TDOMCATTOR

Beneficiary Information:

Name: Building & Development Mortgages Canada Inc. (Or optional: BDMC)

Street: 920 – 20 Adelaide Street East

City: Toronto

Province: Ontario

Country: Canada

Postal Code: M5C 2T6

## **SCHEDULE “B”**

### **Borrower’s Account Details (see attached)**

#### Beneficiary Bank Information (Canadian Currency):

Name: Royal Bank of Canada

Street: 2 Bloor Street East

City: Toronto

Prov: Ontario

Country: Canada

Postal Code: M4W 1A8

Institution ID = 003

Branch Transit = 00002

Account = 00002 1525468

Swift Number = ROYCCAT2

#### Beneficiary Information:

Name: Bel Calgary Inc

Street: 778 King Street West

City: Toronto

Province: Ontario

Country: Canada

Postal Code: M5V 1N6

**Appendix 5:**  
**Investor Notice dated December 5, 2022**



December 5, 2022

Dear Lender:

**Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Bel Calgary Inc. (“Borrower”) in respect of property located at 633 10<sup>th</sup> Avenue SW, Calgary, AB, (“6th & 10th Project” and the “Property”)**

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

We are writing to you in our capacity as Trustee regarding your loan made in respect of the 6th & 10th Project and further to updates provided in the Trustee’s notice dated December 14, 2021 and the Trustee’s twenty-ninth report to Court dated November 4, 2022 (“**Twenty-Ninth Report**”).

**Trustee’s Motion**

On December 5, 2022, the Trustee served motion materials, including its thirtieth report to Court (“**Thirtieth Report**”) seeking an order (“**6th & 10th Settlement Approval and Distribution Order**”) that, among other things:

- (a) approves the Settlement Agreement (defined below);
- (b) orders that the Escrow Agent deliver the Trustee Payment to the Trustee and the Related Party Payment (each as defined below) to the Borrower pursuant to the Settlement Agreement; and
- (c) authorizes the Trustee upon receipt of the Trustee Payment to distribute 85% of the Trustee Payment to the syndicated mortgage lenders under the BDMC Loan (“**6th & 10th SMLs**”).

The Trustee’s motion is scheduled to be heard via a virtual Court hearing on **December 14, 2022 at 11:00 a.m.** (“**December 14<sup>th</sup> Motion**”). To the extent that you would like further



information on the December 14<sup>th</sup> Motion, please contact the Trustee directly at the contact number or email address provided below.

The Trustee's motion materials filed in support of the Trustee's request for the 6th & 10th Settlement Approval and Distribution Order, including its Thirtieth Report, are available on the Trustee's website at <http://faanmortgageadmin.com>.

### **Project Update**

The 6th & 10th Project is a completed 224-unit residential condominium building situated in the Beltline district of southwest Calgary. The condominium was registered in late 2017 and thereafter the Borrower focused its efforts on selling the remaining condominium units.

Despite the Borrower's expectations for the development of the 6th & 10th Project, the Borrower advised that it experienced considerable challenges since 2014, including, among other things, the significant drop in oil prices and a prolonged weakening of the Alberta real estate market during the period that the 6th & 10th Project was being marketed. According to the Borrower, these economic conditions resulted in (i) continued downward pressure on the selling prices for the condominium units, and (ii) a significantly extended timeline for the sale of such units. These factors, among other things, resulted in the project being substantially less profitable than had originally been projected.

### **Current Status of the BDMC Loan**

According to BDMC's records, the total amount owing to the 6th & 10th SMLs is approximately \$14 million, comprised of a principal balance of approximately \$8.8 million and accrued interest as at November 4, 2022 of approximately \$5.2 million.<sup>1</sup> The BDMC Loan matured in June 2015.

After the condominium registered in 2017, the Borrower obtained an inventory loan from First National Financial LP ("**First National**") to fund, among other things, certain carrying costs associated with the remaining inventory. The First National loan was secured by a priority mortgage on the Borrower's unsold condominium units in the 6th & 10th Project ("**First National Mortgage**").

In or around October 2021, the First National inventory loan was finally repaid in full and the First National Mortgage was discharged from title to the Property. At that time, 11 residential units remained to be sold ("**Remaining Units**") and the BDMC Loan became the only outstanding mortgage debt registered on title to the Remaining Units.

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<sup>1</sup> Interest was last paid to the 6th & 10th SMLs in July 2015. Interest has continued to accrue at a per diem rate of \$1,961.91.



### **Related Party Claim**

The Borrower has advised the Trustee that, for an extended period of time, it had funded certain costs related to the 6th & 10th Project for which it is seeking to be repaid from the proceeds of sale of the Remaining Units in priority to BDMC (“**Related Party Claim**”).

In light of the Related Party Claim and in order to allow for the uninterrupted sale of the Remaining Units, the Trustee agreed with the Borrower that the proceeds (net of closing costs) from the sale of the Remaining Units would be held in escrow by Goldman, Sloan, Nash & Haber LLP (“**Escrow Agent**”) until a resolution regarding the Related Party Claim could be reached or upon further order of the Court. On December 8, 2021, the Trustee, Olympia Trust Company, the Borrower and the Borrower’s legal counsel executed an agreement documenting this arrangement (“**Escrow Agreement**”).

As was discussed in the Twenty-Ninth Report, all Remaining Units have now been sold and pursuant to the Escrow Agreement, there is approximately \$3.7 million being held in escrow (“**Escrow Funds**”).

In October 2022, the Borrower provided the Trustee with an updated summary of its Related Party Claim, which totaled approximately \$2.7 million. The Related Party Claim is comprised of: (a) the initial equity contributed by the Borrower to the 6th & 10th Project; (b) guarantee fees; and (c) amounts advanced by companies related to the principal of the Borrower to pay for, among other things, costs to service the First National Mortgage and other carrying costs of the unsold condominium units. The Borrower has never had a charge registered on title to the 6th & 10th Project in respect of the Related Party Claim.

### **Settlement and Mutual Release Agreement**

Following negotiations between the parties and an in-depth review of the amounts comprising the Related Party Claim, the Trustee determined that it would be in the best interests of the 6th & 10th SMLs to resolve the Related Party Claim consensually.

Accordingly, with the support of Representative Counsel, the Trustee proceeded to negotiate a settlement with the Borrower regarding, among other things, the allocation and distribution of the Escrow Funds, which resulted in the parties entering into an agreement (“**Settlement Agreement**”).



The Settlement Agreement included, among other things, that the Escrow Funds shall be allocated as follows:

- i) a payment in the amount of \$2.3 million to the Trustee, on behalf of the 6th & 10th SMLs ("**Trustee Payment**") resulting in a principal return of approximately 26% on the BDMC Loan and a principal return of approximately 48% when previously paid interest of approximately \$1.98 million is taken into account; and
- ii) a payment of the residual balance from the Escrow Funds of approximately \$1.4 million to the 6th & 10th Borrower ("**Related Party Payment**"). The Related Party Payment is approximately \$1.3 million less than the amount originally claimed by the Borrower;

### **Trustee's Recommendation**

As set out in the Thirtieth Report, the Trustee is of the view that the only alternative to the Settlement Agreement would have been to enter into contested litigation and defend against the Related Party Claim, which would have, among other things, involved lengthy and costly litigation with an uncertain result. Accordingly, after giving careful consideration to the alternative, the Trustee and Representative Counsel are of the view that although the Settlement Agreement only provides a partial recovery for the 6th & 10th SMLs, it offers the greatest opportunity for a meaningful recovery in the circumstances, and there is value in the certainty provided by the Settlement Agreement and crystalizing the outcome to the 6th & 10th SMLs at this time.

### **Next Steps**

At this time, you should review this notice and the associated Court materials carefully, including the Thirtieth Report available on the Trustee's website, and, if desired, arrange to obtain independent legal advice regarding these matters. You can also consult Representative Counsel whose contact information is provided below. Should the Court grant the 6th & 10th Settlement Approval and Distribution Order, the Trustee will distribute the Trustee Payment, net of the 15% Administrative Holdback, to the 6th & 10th SMLs as soon as practicable.





Should you have any questions of the Trustee, our contact information is shown below (if you contact us, please reference “6th & 10th Project”).

Email: [Info@FAANMortgageAdmin.com](mailto:Info@FAANMortgageAdmin.com)  
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference “6th & 10th Project”).

Email: [BDMC@chaitons.com](mailto:BDMC@chaitons.com)  
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

*Faan Mortgage Administrators Inc.*

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