

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

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

(JANUARY 2022 COMPREHENSIVE UPDATE)

VOLUME 3 OF 3

January 18, 2022

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 COMMERCIAL LIST**

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 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

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TO: 150 King St. W., Suite 2308
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Jordan Wong

Tel: (416) 932-6025

Email: jwong@ksvadvisory.com

Go-To Receiver

AND **RUSSELL JOHN (TIG) FONG**
TO: tig@flyingkneefilms.com

Email List:

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mcalvaruso@osler.com; naveed@faanmortgageadmin.com; daniel@faanmortgageadmin.com;
lane@faanmortgageadmin.com; shelby@faanmortgageadmin.com; naomi@faanmortgageadmin.com;
sgraff@airdberlis.com; iaversa@airdberlis.com; mspence@airdberlis.com;
Jennifer.teskey@nortonrosefulbright.com; Jeremy.devereux@nortonrosefulbright.com;
dtaub@robapp.com; jfox@robapp.com; dullmann@blaney.com; harvey@chaitons.com;
george@chaitons.com; troy.harrison@fsrao.ca; sylvia.ezeard@fsrao.ca; steven.groeneveld@ontario.ca;
leslie.crawford@ontario.ca; vince@fortressrdi.com; jawad@fortressrdi.com;
BahnuiK@olympiatrust.com; johnsons@olympiatrust.com; sales@pacedev.ca; dfazari@cityzen.ca;
catalinadevelopments@gmail.com; jvalela@tercot.com; dan@kingridgedevelopments.ca;
nate@lambdevcorp.com; jessica@lambdevcorp.com; brad@lambdevcorp.com; oswin@kingsquare.ca;
mike@enginedevelopments.ca; shawn.keeper@dunsire.com; planni@averton.ca;
info@fusionhomes.com; mtomaszewski@amadongroup.com; mario@rosewatergroup.com;
naram.mansour@carlylecommunities.com; ramsey@cachetdevelopments.com;
shussain@sunrisehomes.ca; dbunston@georgianinternational.com;
pgoldfischer@solotexcorporation.com; pbates@batesbarristers.com; Jeff.berger@rsmcanada.com;
tmazzoli@ffmcapital.com; kkochhar@ffmcapital.com; zafar@fdsbroker.com;
cmills@millerthomson.com; davidn@gsnh.com; niedzviecki@omh.ca; mwine@MSTWLaw.com;
marg@waddellphillips.ca; David@davidchong.ca; mtamblyn@torkinmanes.com;
Mark.Adams@mcap.com; Philip.Frank@mcap.com; Bruno.Iacovetta@mcap.com; jgalati@cdcminc.ca;
tpringle@spergel.ca; arif.dhanani@rsmcanada.com; danny.nunes@dlapiper.com;
Edmond.lamek@dlapiper.com; jjoffe@ksvadvisory.com; bkofman@ksvadvisory.com;
zweigs@bennettjones.com; samantha@tsklaw.ca; jfried@mwb.ca; khampton@millerthomson.com;
Jackson@gsnh.com; micolae@harris-sheaffer.com; Robert.Armstrong@computershare.com;
Info@rosengoldberg.com; dforgione@owenswright.com; jason.wong@rcmp-grc.gc.ca;
drickards@soblerickards.ca; pcho@weirfoulds.com; Derek.sorrenti@sorrentilaw.com;
Derek.sorrenti@dslaw.ca; DJMiller@tgf.ca; Ben@northcove.net; wf@friedmans.ca; pfesharaki@tgf.ca;
lmargulies@robapp.com; nmusclow@lso.ca; HJankovi@lso.ca; gmurdoch@sorbaralaw.com;
aiqbal@millerthomson.com; pguaragna@millerthomson.com; rscott@fusionhomes.com;
jiselby@millerthomson.com; Jacqueline.Maarse@ca.gt.com; darryl@darryllevitt.com;
serge@kalloghlianmyers.com; aj@kalloghlianmyers.com; garth@kalloghlianmyers.com;
ryan.morris@blakes.com; ksherkin@millerthomson.com; Amanda.Yu@computershare.com;
PCSmortgages@computershare.com; ryan@bradjlambrealty.com; brjones@groiaco.com;
gullman@blacksutherland.com; tig@flyingkneefilms.com; bkofman@ksvadvisory.com;
mvininsky@ksvadvisory.com; jwong@ksvadvisory.com;

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1.	Notice of Motion dated January 18, 2022	021
2.	Twenty-Seventh Report of the Trustee dated January 18, 2022	039
3.	Draft January 2022 Omnibus Order	537

Appendix 17:
Snoxons 2016 Inter-Lender Agreement

INTERLENDER AGREEMENT

THIS AGREEMENT made as of the 21st day of July, 2016.

A M O N G :

BUILDING & DEVELOPMENT MORTGAGES CANADA INC., IN TRUST
(hereinafter called the "Lender")

OF THE FIRST PART

- and -

2221563 ONTARIO INC.
(hereinafter called the "Borrower")

OF THE SECOND PART

- and -

SNOXONS HOLDINGS INC.
(hereinafter called the "Subsequent Encumbrancer")

OF THE THIRD PART

WHEREAS the Borrower is the registered owner of the lands described in Schedule "A";

AND WHEREAS the Project is encumbered by the Lender Security and the Subsequent Encumbrancer Security;

AND WHEREAS the Subsequent Encumbrancer has agreed, among other things, to postpone the Subsequent Encumbrancer Security to the Lender Security;

NOW THEREFORE in consideration of the sum of Two Dollars (\$2.00) now paid by the Lender to the Subsequent Encumbrancer, the receipt and sufficiency whereof are hereby acknowledged, and other good and valuable consideration, it is hereby covenanted and agreed as follows:

SECTION 1 - DEFINITIONS

- (a) "Borrower" means 2221563 Ontario Inc. and its successors and assigns;
- (b) "Business Day" means a day other than a Saturday, Sunday or other day on which banks are authorized or obligated to close under the laws of the Province of Ontario or of Canada;

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- (c) "Charged Property" means the Project, all leases pertaining thereto, all rents, revenues and personal property of the Borrower pertaining thereto or arising therefrom, and all associated rights, benefits and proceeds therefrom, as charged, assigned, pledged or in which a security interest has been created by the Lender Security;
- (d) "Lender" means Building & Development Mortgages Canada Inc., in Trust and its successors and assigns;
- (e) "Lender Obligations" means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender under or pertaining to the loan agreement dated as of April 21, 2016, to a maximum principal amount of \$10,900,000.00, as now or hereafter amended or restated from time to time (the "Loan Agreement");
- (f) "Lender Security" means all mortgages, pledges, charges, debentures, assignments and security agreements of any nature now or hereafter executed or made by the Borrower or others in favour of the Lender to secure the Lender Obligations, as amended or supplemented from time to time, and includes, without limitation, the security documents described in the Loan Agreement.
- (g) "Project" means the lands described in Schedule "A" attached hereto, a residential condominium development to be constructed thereon, and all buildings, structures, improvements, parking facilities, walkways, expansions, reconfigurations, additions, fixtures, renovations and alterations thereon, thereof and thereto, from time to time.
- (h) "Subsequent Encumbrancer Obligations " means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Subsequent Encumbrancer.
- (i) "Subsequent Encumbrancer Security" means all mortgages, pledges, charges, assignments and security agreements of any nature now or hereafter executed or made by the Borrower in favour of the Subsequent Encumbrancer to secure the Subsequent Encumbrancer Obligations, as amended or supplemented from time to time.
- (j) "Subsequent Encumbrancer " means Snoxons Holdings Inc. and its successors and assigns.

SECTION 2 - REPRESENTATIONS AND WARRANTIES OF THE SUBSEQUENT ENCUMBRANCER

- (a) The Subsequent Encumbrancer hereby represents and warrants to the Lender that:

- 3 -

- (i) the Subsequent Encumbrancer Security is in full force and effect and has not been amended, and as of the date hereof, there is no default thereunder by the Borrower;
- (ii) it has received all necessary approvals, directions, authorizations and consents to enter into and perform its obligations under this Agreement;
- (iii) there is currently outstanding under the Subsequent Encumbrancer Security the principal amount of \$ 5,736,910.00 and accrued interest of \$3,097,926.00.
- (iv) it has the legal right and the power and authority to execute and deliver this Agreement and perform and observe its obligations and agreements hereunder; and
- (v) this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof.

SECTION 3 - SUBORDINATION AND POSTPONEMENT

- (a) The Subsequent Encumbrancer and the Lender hereby agree that:
 - (i) the Subsequent Encumbrancer Security and the mortgages, charges, pledges, assignments and security interests constituted by the Subsequent Encumbrancer Security, together with all of the rights, title, interest, benefits and advantages of the Subsequent Encumbrancer therein or derived thereunder; and
 - (ii) the Subsequent Encumbrancer Obligations,
 are hereby and shall hereafter be postponed and subordinated to:
 - (iii) the Lender Security and the mortgages, charges, pledges, assignments and security interests constituted by the Lender Security, together with all of the Lender's rights, title, interest, benefits and advantages therein or derived thereunder, and
 - (iv) the Lender Obligations;

to the intent and purpose that the Lender Security, the mortgages, charges, pledges, assignments and security interests constituted by the Lender Security and the Lender Obligations shall at all times hereafter rank prior and superior to the Subsequent Encumbrancer Security, the mortgages, charges, pledges, assignments and security interests constituted by the Subsequent Encumbrancer Security, and the Subsequent Encumbrancer Obligations to the extent of the principal secured thereby and the interest accrued thereon and all other amounts

- 4 -

secured by the Lender Security. Without limiting the generality of the foregoing:

- (v) the Subsequent Encumbrancer shall not be entitled to receive any amounts owing under the Subsequent Encumbrancer Security, including, without limitation, any principal, interest or fees, until all of the Lender Obligations have been fully paid and performed; and
 - (vi) the Lender shall have priority to, and the first right to receive, all proceeds, rents, revenues and other amounts arising out of or pertaining to the Charged Property until all of the Lender Obligations have been fully paid and performed; and
- (b) for the purposes of paragraphs 3(a)(v) and (vi) hereof only, the Lender agrees that all of the Lender Obligations shall be deemed to have been fully paid and performed when the principal secured thereby and the interest accrued thereon and all other amounts secured by the Lender Security have been paid in full to the Lender and the Loan Agreement secured by the Lender Security shall have been cancelled or terminated.

SECTION 4 - EFFECT OF POSTPONEMENT

This Agreement shall be effective as between the Lender and the Subsequent Encumbrancer notwithstanding any past, present or future agreement, event, act or omission to act on the part of the Lender, the Subsequent Encumbrancer, the Borrower or any other person, including, without limitation, any one or more of the following :

- (a) the timing of execution, delivery, attachment, perfection, registration or enforcement of the Lender Security or the Subsequent Encumbrancer Security;
- (b) the failure of the Lender to register, maintain, renew or keep current any registration of or pertaining to any of the Lender Security;
- (c) the respective dates or timing of any advances or defaults under the Lender Obligations or the Subsequent Encumbrancer Obligations, and
- (d) any partial or complete repayment at any time and from time to time by the Borrower of any monies secured by the Lender Security.

SECTION 5 - APPLICATION OF PROCEEDS

The Subsequent Encumbrancer acknowledges that all and every part of the Lender Security is held by the Lender as security for all and every part of the Lender Obligations and agrees that the Lender may apply as a permanent reduction any monies received, whether from the enforcement of and realization upon any or all of the Lender Security, the sale or refinancing of all or any part of the Charged Property or

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otherwise, to any part of the Lender Obligations which the Lender, in its sole and unfettered discretion, may determine.

SECTION 6 - DELIVERY OF INFORMATION AND NOTICES

- (a) Within a reasonable time following the Lender's reasonable request (which includes, for example, the Lender not obtaining such information from the Borrower or not obtaining same in a timely fashion), the Subsequent Encumbrancer shall provide the Lender with all material information relating to the Subsequent Encumbrancer Security and any property charged thereby;
- (b) Within a reasonable time following the Subsequent Encumbrancer's reasonable request (which includes, for example, the Subsequent Encumbrancer not obtaining such information from the Borrower or not obtaining same in a timely fashion), the Lender shall provide the Subsequent Encumbrancer with all material information relating to the Lender Security and any property charged thereby; and
- (c) The Borrower shall immediately provide the Lender with all material information relating to the Subsequent Encumbrancer Security and any property charged thereby.

SECTION 7 - AGREEMENTS OF THE SUBSEQUENT ENCUMBRANCER

The Subsequent Encumbrancer agrees with the Lender and the Borrower that:

- (a) notwithstanding the provisions of the Subsequent Encumbrancer Security, the Borrower shall be entitled to sell lots in the Project to bona fide third party purchasers without the consent of the Subsequent Encumbrancer;
- (b) the Subsequent Encumbrancer shall forthwith execute partial discharges of the Subsequent Encumbrancer Security for each of the lots as and when required upon request by the Lender or its solicitors, and shall provide such executed acknowledgments and directions with respect to such partial discharges to the solicitors for the Lender to be held by such solicitors in escrow until completion of the sale of each of the lots, whereupon the partial discharge relating to such lots may be registered by such solicitors without any further direction or consent from the Subsequent Encumbrancer and without any payment of principal, interest or any other amount being made to the Subsequent Encumbrancer, provided net proceeds from each sale are paid to the Lender to reduce the Lender Obligations. Upon the Lender Obligations being fully satisfied and upon the termination or cancellation of the Loan Agreement secured by the Lender Security, the Lender agrees to provide the partial discharges still in its or its solicitor's possession to the Subsequent Encumbrancer together with any other partial discharges of the Subsequent Encumbrancer Security held by the Lender;

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- (c) it shall not increase the principal amount secured by the Subsequent Encumbrancer Security, the interest rate charged thereon, the calculation, timing and/or accrual of payment of such interest, amend the maturity date thereof, terminate the Subsequent Encumbrancer Security, nor consent to the doing of the same, without first receiving the Lender's prior written consent thereto;
- (d) it shall not transfer, assign or dispose of any interest in the Subsequent Encumbrancer Security, nor consent to the doing of the same, unless the transferee, assignee, etc. executes and delivers to the Lender contemporaneously with such transfer, assignment, etc. an agreement agreeing to be bound by all of the terms and the obligations of the Subsequent Encumbrancer under this Agreement;
- (e) if the Borrower defaults under the Subsequent Encumbrancer Security, then the Subsequent Encumbrancer shall forthwith give written notice to the Lender of such default, which notice shall specify the nature of such default;
- (f) the Subsequent Encumbrancer hereby covenants and agrees that it shall not take or authorize to be taken any action by way of suit, power of sale, foreclosure, summary proceedings, or otherwise, or exercise any rights or remedies under the Subsequent Encumbrancer Security or otherwise for the purpose, directly or indirectly, of realizing on any of the Charged Property, until the repayment in full of the Lender Obligations and until the termination or cancellation of the Loan Agreement secured by the Lender Security;
- (g) that the Borrower proposes to build a residential condominium development on the lands described in Schedule "A" attached hereto and register one or more plan(s) of condominium thereon. The Subsequent Encumbrancer covenants and agrees to forthwith execute and deliver to the Lender such documentation (without charge, delay or requiring payment of any amount secured by the Subsequent Encumbrancer Security) as may be required to effect creation of such lots and blocks, including, without limitation, the registration of such plan(s) of subdivision; and
- (h) The Subsequent Encumbrancer covenants and agrees to forthwith execute and deliver to the Lender or the applicable authority, as the case may be, such consents, postponements, authorizations, etc. (without charge, delay or requiring payment of any amount secured by the Subsequent Encumbrancer Security) as may be required from time to time in order to allow for the completion of the Project.

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SECTION 8 - FURTHER ASSURANCES

The Subsequent Encumbrancer and the Borrower shall forthwith, and from time to time, on the request of the Lender, execute and do all deeds, documents and things which the Lender requests in order to give full effect to the subordinations and postponements of the Subsequent Encumbrancer Security, the rights and remedies of the Subsequent Encumbrancer thereunder and the Subsequent Encumbrancer Obligations to the Lender Security, the rights and remedies of the Lender thereunder and the Lender Obligations in accordance with the intent of this Agreement.

SECTION 9 - SUCCESSORS AND ASSIGNS

Subject to subsection 7(d), above, this Agreement is binding upon and shall enure to the benefit of the Lender, the Borrower, and the Subsequent Encumbrancer and their respective successors and permitted assigns.

SECTION 10 --NOTICE

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or other means of electronic communication or by hand delivery as hereinafter provided. Any such notice or other communication, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the business day it was sent or, if delivered by hand, shall be deemed to have been received at the time it is delivered to the applicable address noted below to the individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. Notices and other communications shall be addressed as follows :

- (a) If to the Lender:

Building & Development Mortgages Canada Inc., in Trust
25 Brodie Drive, Unit 1
Richmond Hill, Ontario, L4B 3K7

Attention:
Facsimile Number:

- (b) if to the Subsequent Encumbrancer:

Snoxons Holdings Inc.

Attention :
Facsimile number:

- (c) if to the Borrower:

- 8 -

2221563 Ontario Inc.
25 Brodie Drive, Unit 1
Richmond Hill, Ontario, L4B 3K7

Attention:
Facsimile number:

SECTION 11 - GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable herein.

SECTION 12 - HEADINGS

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

SECTION 13 - ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

SECTION 14 - ACKNOWLEDGEMENT OF BORROWER

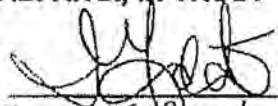
The Borrower acknowledges and consents to this Agreement and agrees to perform its obligations and hold and deal with the Charged Property in accordance with the priorities set out in this Agreement.

SECTION 15 - EXECUTION IN COUNTERPARTS

This Agreement may be executed 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.

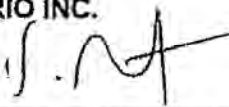
IN WITNESS WHEREOF the parties have executed this Agreement.

**BUILDING & DEVELOPMENT MORTGAGES
CANADA INC., IN TRUST**

Per: 
Name: _____
Title: *I. Galah
Principal Broker*

I have authority to bind the Bank.

2221563 ONTARIO INC.

Per: 
Name: _____
Title: _____

I have authority to bind the Corporation

- 10 -

SNOXONS HOLDINGS INC.

Per. Steph Nixen
Name: STEPHEN NIXEN
Title: President

Per. _____
Name: _____
Title: _____

We have authority to bind the Corporation

SCHEDULE "A"
LEGAL DESCRIPTION OF LANDS

Those lands and premises legally described in PIN Nos. 03475-0123 (LT), 03475-0124 (L5), 03475-0125 (LT), 03475-0126 (LT), 03475-0127 (LT), 03475-0868 (LT), 03475-0869 (LT), 03475-0870 (LT) and 03475-0927 (LT), Keswick, Ontario

Appendix 18:
Certain BDMC Notices to South Shore Hybrid Investors



BDMC
Building & Development Mortgages Canada Inc.

March 20th, 2017

Dear Investor:

RE: Syndicated Mortgage Loan (the "Loan") of \$7,620,000.00 to 2221563 Ontario Inc. on the security of a Pari Passu 2nd mortgage on 230-240 Cameron Crescent, Keswick ON (the "Project")

Please accept this update to your original investment in the South Shore project. As anticipated in the original Loan Agreement, the borrower will need to increase the Face Value amount from the current \$5,900,000.00 to \$7,620,000.00 in order to fund the necessary costs, as outlined in the original budget. These funds will work towards the overall project development and completion.

If you have additional questions about the revised Face Value, your investment, or the development in general, please speak to your mortgage agent, brokerage, or associated principal broker.

Regards,

Ildina Galati-Ferrante

Principal Broker

Building & Development Mortgages Canada Inc. o/a BDMC

(Formerly Centro Mortgage Inc.)



BDMC
Building & Development Mortgages Canada Inc.

370

May 1st, 2017

Dear Investor:

RE: Syndicated Mortgage Loan (the "Loan") of \$8,620,000.00 to 2221563 Ontario Inc. on the security of a 3rd mortgage on 230-240 Cameron Crescent, Keswick, Ontario (the "Project")

Please accept this update to your original investment in the South Shore Hybrid project.

As anticipated in the original Loan Agreement, the borrower will need to increase the Face Value amount from the current \$7,620,000.00 to \$8,620,000.00 in order to fund the necessary costs, as outlined in the original budget. These funds will work towards the overall project development and completion.

If you have additional questions about the revised Face Value, your investment, or the development in general, please speak to your mortgage agent, brokerage, or associated principal broker.

Regards,

Ildina Galati-Ferrante

Principal Broker

Building & Development Mortgages Canada Inc. o/a BDMC

(Formerly Centro Mortgage Inc.)



June 1st, 2017

Dear Investor:

RE: Syndicated Mortgage Loan (the "Loan") of \$9,300,000.00 to 2221563 Ontario Inc. on the security of a Pari Passu 2nd mortgage on 230-240 Cameron Crescent, Keswick, Ontario (the "Project")

Please accept this update to your original investment in the South Shore Hybrid project.

As anticipated in the original Loan Agreement, the borrower will increase the Face Value amount from the current \$8,620,000.00 to \$9,300,000.00 in order to fund necessary costs as outlined in the original budget. These funds will work towards the overall project development and completion.

Diversified Capital Inc. has also signed off on an Amended Subordination and Standstill Agreement outlining the revised charge of \$9,300,000.

If you have additional questions about the revised Face Value, your investment, or the development in general, please speak to your mortgage agent, brokerage, or associated principal broker.

Regards,

Ildina Galati-Ferrante

Principal Broker

Building & Development Mortgages Canada Inc. o/a BDMC

(Formerly Centro Mortgage Inc.)

Appendix 19:
2018 South Shore Investor Notice



BDMC

Building & Development Mortgages Canada Inc.
BROKERAGE LIC # 10102

373

January 5, 2018

Dear Lender:

Re: Syndicated Mortgage Loan (“the **Loan**”) of \$19,300,000.00 to 2221563 Ontario Inc. (the “**Borrower**”) on the security of a Second position mortgage on 230-240 Cameron Crescent, Keswick, ON (the “**Project**”)

The foundation piles and concrete footings (pile caps) have been completed. During the next 8 to 10 weeks preparations for commencement of superstructure will take place. This will include the completion and modifications that may be required on detailed drawings, bidding etc. and submission of permit applications. The sales office remains open during the winter months.

As you are aware, the South Shore Hybrid project has an upcoming maturity date of April 21, 2018 and the Original Loan Agreement contains provisions allowing the term to be prolonged with a revised maturity date of April 21, 2019. Interest will continue to accrue until project maturity.

Please see the attached letter from the Borrower engaging the twelve (12) month extension, as outlined in Section 4.0 of the original Loan Agreement.

If you have any further questions, please contact your licensed mortgage agent or their principal broker.

Thank you,

Ildina Galati- Ferrante
Principal Broker
Building & Development Mortgages Canada Inc.

2221563 Ontario Inc.

January 4, 2018

Building & Development Mortgages Canada Inc.
8- 25 Brodie Drive
Richmond Hill, ON
L4B 3K7

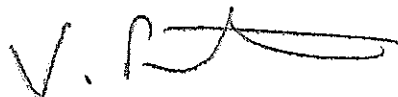
Olympia Trust Company
2200, 125-9th Ave. SE
Calgary, Alberta
T2P 0P6

Re: Extension of existing loan for the South Shore Hybrid Project

To whom it may concern;

Pursuant of Section 4.0 of the Loan Agreement, we hereby exercise our option to extend the maturity date on the above noted project by 12 months to April 21, 2019. Interest will continue to accrue until project maturity. All other terms and conditions shall remain the same.

Sincerely,

A handwritten signature in black ink, appearing to read 'V. Petrozza', with a long horizontal stroke extending to the right.

Vince Petrozza
Vice President
2221563 Ontario Inc.

Appendix 20:
South Shore Investor Notice dated January 18, 2022 (without appendices)



January 18, 2022

Dear Lender:

Re: Syndicated Mortgage Loans (“South Shore Loans”) made to 2221563 Ontario Inc. in respect of properties located at 230-240 Cameron Crescent, Keswick, ON (“South Shore Project” or “Properties”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) under an order issued by the Ontario Superior Court of Justice (Commercial List) (“**Court**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*, each as amended. By 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 the South Shore Project (formerly known as Crates Landing) and further to our notice of June 2, 2021, which advised, among other things, that Diversified Capital Inc. (“**Diversified**”), the first priority mortgagee, completed a sale transaction for the Properties (“**South Shore Sale Transaction**”) that resulted in residual proceeds of approximately \$1.8 million being paid to the Trustee (“**South Shore Proceeds**”).

On January 18, 2022, the Trustee served motion materials seeking an order, among other things, approving the proposed distribution or distributions of 85% of the South Shore Proceeds and any further realized property, if any, received in respect of the South Shore Project (“**Realized Property**”) to all syndicated mortgage lenders in the South Shore Loans (collectively the “**South Shore SMLs**”) on a *pari passu* basis (“**South Shore Distribution Order**”).

The Trustee’s motion is scheduled to be heard via a virtual Court hearing on **January 31, 2022 at 12:00 p.m.** (“**January 31st Motion**”). At this time, the Trustee will also be seeking the Court’s approval of certain other matters, as detailed in **Appendix “A”**, attached hereto. To the extent that you would like further information on the January 31st Motion, please contact the Trustee directly at the contact number provided below.

The Trustee’s motion materials filed in support of the Trustee’s request for the South Shore Distribution Order, including its twenty-seventh report to Court (“**Twenty-Seventh Report**”), are available on the Trustee’s website: <http://faanmortgageadmin.com>.



The Twenty-Seventh Report describes the following matters in support of the proposed South Shore Distribution Order:

- a) an overview of the South Shore Project and the three underlying syndicated mortgage loans pursuant to which the South Shore SMLs loaned money in respect of the South Shore Project;
- b) an overview of the South Shore Sale Transaction; and
- c) information that supports the Trustee's recommendation that any Realized Property received in respect of the South Shore Sale Transaction or the South Shore Project, including the South Shore Proceeds, should be distributed on a *pari passu* basis to all South Shore SMLs in accordance with the methodology described in the Twenty-Seventh Report, net of the Court approved administrative holdback (15%) ("**Administrative Holdback**").

The Twenty-Seventh Report also describes certain outstanding matters related to the South Shore Project, including: (i) litigation commenced by the Trustee against Diversified seeking to recover certain of the amounts paid to Diversified, including amounts relating to the conduct of the power of sale proceeding leading up to the South Shore Sale Transaction and the quantum of fees and interest taken by Diversified as a result of same ("**Diversified Litigation**"); and (ii) ongoing discussions with respect to the remaining construction lien claim ("**Construction Lien Claim**") for which approximately \$610,000 is being held by the Court, pending resolution of same.

Next Steps:

At this time, you should review this notice and the associated Court materials carefully, including the Twenty-Seventh 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 motion seeking the South Shore Distribution Order be successful, the Trustee will distribute the South Shore Proceeds, net of the Administrative Holdback, on a *pari passu* basis to the South Shore SMLs in accordance with the Twenty-Seventh Report as soon as practicable following Court Approval.

The Trustee will update the South Shore SMLs regarding the outcome of the Construction Lien Claim and the Diversified Litigation in due course.



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

Email: Info@FAANMortgageAdmin.com

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

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

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

Email: BDMC@chaitons.com

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 21:
Kemp Investor Notice dated October 30, 2019



October 30, 2019

Dear Lender:

Re: Syndicated Mortgage Loan initially made to Harmony Village-Lake Simcoe Inc. and assumed by Fortress Kempenfelt Bay Developments Inc. (“Borrower”) on the security of a mortgage on the property located at 51, 53, 55 & 75 Bradford Street, Barrie, ON (“Kemp Project” or “Properties”)

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

We are writing to you in our capacity as Trustee and further to our notice dated August 7, 2019 (“**Notice**”) regarding enforcement steps taken on the Kemp Project by Romspen Investment Corporation (“**Romspen**”), the Borrower’s first priority lender.

As discussed in the Notice, Romspen issued a Notice of Sale Under Mortgage (“**Notice of Sale**”) and advised that events of default under its mortgage had occurred. Romspen advised that unless the full amount of the outstanding debt was paid on or before January 21, 2019, Romspen intended to sell the Properties. A copy of the Notice of Sale was previously provided to you.

As the January 21st deadline was not met, a sale and marketing process (“**Sale Process**”) for the Properties was commenced. As part of the Sale Process, the Properties were listed on the multiple listing service (MLS) website and were actively marketed by Colliers International (“**Colliers**”), the real estate broker retained by Romspen. The Properties were listed on an unpriced basis with an offer deadline of June 27, 2019.

On June 27, 2019 Romspen accepted an offer from Greenwin Barrie Inc. and 2714708 Ontario Inc., which represented the highest and best offer and proceeded to enter into an agreement of purchase and sale, as further amended, for the Properties (“**Sale Agreement**”). The transaction closed on September 10, 2019.

Key terms of the Sale Agreement include:

- a) Purchase price of \$14.9 million; and
- b) Proceeds from the transaction to be distributed as follows:
 - i. approximately \$7 million to Romspen, as first mortgagee;



- ii. approximately \$300,000 to Colliers for commissions;
- iii. approximately \$188,000 to the City of Barrie for property tax arrears;
- iv. approximately \$5.2 million to Magnetic Capital Group Inc., as the second and 3rd mortgagees; and
- v. the remaining proceeds, net of legal fees, of approximately \$2.2 million from the transaction (“**Residual Proceeds**”) to the Trustee’s counsel, on behalf of the syndicated mortgage lenders that advanced funds to the Kemp Project (“**Kemp SMLs**”), as the fourth ranking mortgagees on the Properties.

Subsequent to the closing of the Sale Transaction, counsel to Fortress Real Developments Inc. (“**FRDI**”) submitted a claim to the Residual Funds to the Trustee in the amount of approximately \$570,000 (“**FRDI Claim**”). FRDI is claiming that these amounts are in priority to the amounts owing to the Kemp SMLs.

An agreement was reached with Romspen and FRDI to distribute the Residual Proceeds to the Trustee’s counsel to be held in trust until either: (i) a consensual agreement is reached with counsel to FRDI regarding the FRDI Claim; or (ii) an order is obtained from the Court directing the distribution of the Residual Proceeds. The Trustee is in the process of reviewing the FRDI Claim. It is the Trustee’s intention to report on its review in its next comprehensive update report to the Court (currently anticipated for mid to late November).

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

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

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 22:
Kemp Agency Agreement

AGENCY AGREEMENT

This agency agreement (the "**Agreement**") is made effective as of the 7th day of November, 2016 (the "**Effective Date**")

Between:

**BUILDING & DEVELOPMENT MORTGAGES
CANADA INC., and OLYMPIA TRUST COMPANY**
(individually, a "Trustee" and collectively, the
"Trustees")

- and -

FORTRESS HARMONY VILLAGE (2016) INC.
(**"FHVI"**)

- and -

**BUILDING & DEVELOPMENT MORTGAGES
CANADA INC.,**
(the "**Agent**")

- and -

Each of the persons that has executed an
accession to this agreement in the form attached
hereto as **Schedule "A"**
(individually, a "**Lender**" and collectively, the
"**Lenders**")

RECITALS:

- A. Pursuant to a Loan Commitment dated March 20, 2012 (the "**Loan Commitment**"), the Agent has agreed to provide Harmony Village-Lake Simcoe Inc. (the "**Borrower**") various loan facilities totalling Twenty Three Million Two Hundred Ten Thousand Dollars (\$23,210,000.00) (the "**Loan**") for the purposes of financing the development and the construction of residential homes on lands known municipally as 51 Bradford Street, Barrie, Ontario (the "**Project**");
- B. Each of the Lenders has agreed to participate in the Loan pursuant to a Lender Acknowledgement & Consent (collectively, the "**Lender Consents**") dated the date set out opposite each Lenders' name in Exhibit "1" to the Accession Agreement attached as Schedule "A" to this Agreement;
- C. Pursuant to the Loan Commitment, the Borrower granted the Trustees, on behalf of the Lenders, a charge/mortgage (the "**Original Lender Mortgage**") on the Project;
- D. The Original Lender Mortgage was subordinate to a first mortgage dated May 25, 2012 and more particularly described in Schedule B to this Agreement (the "**Original First Mortgage**") in favour of certain mortgagees (collectively, the "**Original First Mortgagee**");

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- E. On April 4, 2016, the Original First Mortgagee initiated power of sale proceedings with a view to selling the Project and recovering arrears in payment secured by the Original First Mortgage;
- F. In accordance with an agreement of purchase and sale made as of August 8, 2016 and fully accepted September 28, 2016 (the "**Purchase Agreement**") the Original First Mortgagee agreed to:
- a. sell the Project to FHVI pursuant to power of sale provisions, in exchange for: a cash payment equal to all amounts outstanding with respect to the Original First Mortgage; and a vendor take back mortgage (the "**Collateral Mortgage**") equal to all amounts outstanding with respect to the Original Lender Mortgage; and
 - b. transfer the Collateral Mortgage to the Trustees, on behalf of the Lenders, in consideration of the discharge from title of the Original Lender Mortgage;
- G. The transaction contemplated in the Purchase Agreement closing on November 14, 2016, at which time the Original Lender Mortgage was discharged from title by virtue of the power of sale process;
- H. The Collateral Mortgage was registered as Instrument No. _____ in the Land Registry Office, and subsequently transferred to the Trustees, on behalf of the Lenders, pursuant to Instrument No. _____, a copy of which is attached as Schedule "C";
- I. The Collateral Mortgage is subordinate to a first charge in favour of Vector Financial Services Limited ("**Vector**") in the amount of Seven Million Dollars (\$7,000,000.00) and registered as Instrument No. _____, which secures financing arranged by FHVI to finance the acquisition and development of the Project; and
- J. Each Lender wishes to appoint the Agent to act as agent for the Lender to facilitate the management of the Lender's interest in the Collateral Mortgage and all such other documents, instruments, and security relating thereto (collectively, the "**Lender Documents**").

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements between the parties to this Agreement and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereby agree as follows:

ARTICLE 1 FHVI'S OBLIGATION TO PAY NET CASH FLOW

1.1 Project Completion

FHVI shall use its reasonable commercial efforts to complete construction, and sale of the Project in order to maximize Net Cash Flow (as defined below).

1.2 Limitation on Obligation of FHVI

The parties acknowledge that FHVI has not assumed any obligation to repay the Loan, save as specifically provided in Section 1.3 herein.

1.3 Repayment Obligations

FHVI covenants to pay to the Trustees, on behalf of the Lenders, all Net Cash Flow as defined below, up to the amount of the Loan including accrued interest, as and when received, after maintaining reasonable reserves for warranty claims, further expenses, unpaid Project expenses and other reasonable contingencies, as determined by FHVI in its sole discretion. Any remaining Net Cash Flow after repayment of the Loan as aforesaid shall be retained by FHVI.

1.4 Net Cash Flow

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

- (a) all debt secured by the first mortgage in favour of Vector in the principal amount of \$7,000,000.00, as may be increased at the sole discretion of FHVI to pay for Project costs, or any replacement of such mortgage, which first mortgage has been used to finance the acquisition and construction of the Project by FHVI, including all carrying costs, fees and other expenses related to the said mortgage;
- (b) all costs to obtain and arrange a bonding insurance facility, including all premiums, legal fees, etc. plus any payments or security paid to secure FHVI's obligations under any bonds issued by such bonding insurance to Tarion Warranty Corporation, or excess condominium deposit insurance in favour of the unit purchasers, and secured by a charge on the Project;
- (c) a further syndicated Lender loan with the Agent in the principal amount of up to \$_____ as it may be supplemented or refinanced from time to time with respect to funding, acquisition, construction and carrying costs of the Project and secured by a charge on the Project which charge shall rank in priority to the Collateral Mortgage;
- (d) any other loans arranged by FHVI to fund the cost of constructing, operating or carrying the Project and secured by a charge on the Project which charge shall rank in priority to the Collateral Mortgage;
- (e) any mortgages/charges or loans used for refinancing the mortgages referred to in Paragraphs 1.4(a), 1.4(c) and 1.4(d);
- (f) carrying costs, development, marketing, sales, leasing and other related expenses for constructing, leasing, selling or operating the Project and not otherwise financed by the Mortgages/charges referenced in Paragraphs 1.4(a), to 1.4(e) above (collectively, the **"Prior Mortgages"**); and
- (g) a market asset management fee (**"AMF"**) payable to FHVI monthly, as determined by FHVI in its sole discretion. The AMF shall only accrue and be payable once the commercial/retail component of the Project has at least 75% of its net leasable area fully leased and occupied. FHVI reserves the right to engage a third party asset manager in its place whose fees shall be a cost of the project and, if not financed, shall be paid in accordance with section 1.4(f) above.

1.5 Collateral Charge

The Collateral Mortgage shall secure the repayment obligations set out in Section 1.3 above. There shall be no restriction whatsoever on FHVI's ability to finance the Project and provide security therefor as it deems appropriate. The Trustees reserve the right to transfer their respective interests in the Collateral Mortgage

1.6 Repayment Priority

- (a) The Lenders acknowledge that Net Cash Flow will be distributed to the Lenders in the following priority:
- (i) First, in the order that each tranche of the Loan was advanced (or to any Lenders in an earlier tranche who had not been fully repaid their investments from prior distributions of Net Cash Flow), so that Lenders whose investment was advanced in a first tranche shall be fully repaid in priority to Lenders whose investment was advanced in a second tranche;
 - (ii) Second, within each tranche, Lenders will be repaid in the order of the dates when each of the Lenders were in a position to fund their investment, as evidenced by delivery of their invested funds to either the applicable broker or trustee, and execution of all of the required documentation and completion of all other steps and delivery of all documentation in order to permit release of their investment into the Project ("**Fund Ready**").
 - (iii) By way of example, if there is \$1,000,000.00 of Net Cash Flow available for distribution and there were 3 tranches of Loan advances of \$5,000,000.00 each, inclusive of accrued interest, the first \$1,000,000.00 of Net Cash Flow distribution would be made to those Lenders in the first tranche in the order that they were Fund Ready. If there were 4 Lenders in the first tranche with \$400,000.00 each invested in Tranche 1, inclusive of interest, the first 2 Lenders who were Fund Ready would get paid \$400,000.00 each and the third Lender who was Fund Ready, would receive \$200,000.00. Said third Lender and the fourth Lender would be first in line to receive the next distributions of Net Cash Flow in the amounts of \$200,000.00 and \$400,000.00 (subject to adjustment for interest). From the remaining Net Cash Flow available, the second tranche Lenders would be paid on the same basis.
- (b) When providing funds to the Trustees for repayment to the Lenders, the Agent shall provide the Trustees with a certificate signed by an officer of the Agent, indicating the order of payment of the Lenders and the Trustees shall be entitled to rely on such certificate without further inquiry.

1.7 No Representation with respect to Project Economics

The Lenders acknowledge that FHVI makes no guarantees, representations or warranties as to the ultimate profitability of the Project and the amount of Net Cash Flow that may become available to the Lenders pursuant to this Agreement.

ARTICLE 2 POSTPONEMENT, PARTIAL DISCHARGE AND SUBORDINATION AND PARTIAL DISCHARGE

- 2.1 Each Lender irrevocably authorizes and directs the Trustees:
- (a) to postpone and subordinate the Collateral Mortgage in favour of any Prior Mortgages and to enter into such standstill agreements which may include a restriction on enforcement of the Collateral Mortgage until and unless the Prior Mortgages have been satisfied and discharged, as may be required by them;
 - (b) to postpone and subordinate the Collateral Mortgage in favour of each non-financial encumbrance, as well as any deposit insurer security, if required for construction, completion and sale of the Project (including, without limitation, encumbrances pertaining to roads, sidewalks, easements, rights-of-way, subdivision agreements, site plan control agreements, development agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licenses, utility easements, Crown patent reservations and restrictive covenants);
 - (c) to partially discharge the Collateral Mortgage in respect of any part of the Project which is not material to the Project and/or the market value of the Project or which is required by any governmental authority, without requirement for payment or prepayment of any part of the Loan;
 - (d) if applicable, to provide partial discharges of the Collateral Mortgage in respect of all Project unit sales to third parties and in respect of all Project sales to third parties, without compensation, provided that the full proceeds thereof shall be used to pay down the Prior Mortgages or Project costs or are otherwise included in Net Cash Flow in accordance with Section 1.4;
 - (e) if applicable, to enter into a non-disturbance agreement, upon request, with any commercial tenant in the Project; such non-disturbance agreement shall provide for the tenant's postponement and subordination of its lease in favour of the Collateral Mortgage and the tenant's agreement to attorn to the Trustees and their successors and assigns upon the taking possession of the Project; and
 - (f) in the event that the Net Cash Flow after all of the Project has been sold or is under contract for sale is or will be insufficient to repay the Loan, to provide a full discharge of the Collateral Mortgage upon receipt by the Trustee, on behalf of its Lenders, of its respective portion of the Net Cash Flow provided for in Section 1.3 hereof,

and to execute or cause to be executed, and register (as applicable) any all documents and instruments as may be considered necessary or advisable to give full force and effect to the foregoing, as may from time-to-time requested by the Agent in accordance with an officer's certificate (the "**Officer's Certificate**") of the Agent addressed to the Trustees. The Officer's Certificate shall:

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- (g) specify the documents and instruments (the "**Subject Documents**") to be executed and registered (as applicable) by the Trustees in accordance with this Section 2.1;
- (h) confirm that the Subject Documents are required by one or more senior lenders and/or are required to permit or facilitate the development of the Project; and
- (i) confirm that the terms and conditions of the Subject Documents to be executed by the Trustee are consistent with the Lender Documents.

Each of the Trustees is entitled to rely solely on the Officer's Certificate and have no duty or obligation to review the terms and conditions of the Subject Documents or make any inquiries or investigations as to whether the Subject Documents:

- (j) are required by one or more senior lenders and/or are required to permit or facilitate the development of the Project; or
- (k) are permitted under the Lender Documents.

Upon receipt of an Officer's Certificate, the Trustees sole obligation to each of their respective Lenders shall be to execute and register the Subject Documents specified in the Officer's Certificate and provide each Lender with a copy of the Officer's Certificate and Subject Documents by email at the email address specified in Exhibit "1" to the Accession Agreement attached as Schedule "A" to this Agreement (or as the Trustee may be advised by a Lender from time-to-time) within ten (10) business days of the execution and registration of Subject Documents. For greater certainty, each Lender is solely responsible for ensuring that the correct email address has been provided to their respective Trustee for the purposes of this Section 2.1.

2.2 For the purposes of this Agreement:

- (a) "**Losses and Liabilities**" means, in respect of a Party and in relation to a matter, any and all:
 - (i) losses, costs, damages, expenses and charges (including all penalties, assessments and fines) which such Party suffers, sustains, pays or incurs directly, in connection with such matter and includes costs of legal counsel (on a full indemnity basis) and other professional advisors and reasonable costs of investigating and defending Claims arising from the matter, regardless of whether such Claims are sustained and includes taxes payable on any settlement payment or damage award in respect of such matter, and
 - (ii) liabilities and obligations (whether under common law, in equity, under applicable law or otherwise; whether tortious, contractual, vicarious, statutory or otherwise; whether absolute or contingent; and whether based on fault, strict liability or otherwise) which such Party suffers, sustains, pays or incurs directly, as a result of or in connection with such matter,

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including indirect, incidental, consequential, exemplary, special or punitive losses or damages or loss of profits suffered, sustained, paid or incurred by such Party;

- (b) **"Claim"** means any claim, demand, lawsuit, proceeding, arbitration or governmental investigation, in each case, whether asserted, threatened, pending or existing; and
- (c) **"Party"** means any one Lender, Trustee or the Agent, as applicable.

2.3 **EACH OF THE LENDERS HEREBY RELEASES AND FOREVER DISCHARGES, THEIR RESPECTIVE TRUSTEES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SERVANTS, AGENTS, ADVISORS, EMPLOYEES, AND CONSULTANTS, AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (EACH, A "TRUSTEE ENTITY") FROM ANY AND ALL LIABILITY THAT SUCH TRUSTEE ENTITY MAY HAVE FOR ANY LOSSES AND LIABILITIES INCURRED OR SUFFERED BY SUCH LENDER TO THE EXTENT ARISING OUT OF, RELATING TO, OR RESULTING FROM: (A) THE EXECUTION AND REGISTRATION OF THE SUBJECT DOCUMENTS BY THE TRUSTEE; AND (B) THE RELIANCE BY A TRUSTEE ENTITY ON THE OFFICER'S CERTIFICATE OR THE INFORMATION CONTAINED THEREIN, EVEN IF IN EACH SUCH CASE SUCH LOSSES AND LIABILITIES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY OR OTHER LEGAL FAULT OF ANY TRUSTEE ENTITY, EXCEPT TO THE EXTENT CAUSED BY OR ATTRIBUTABLE TO THE GROSS NEGLIGENCE, WILFUL MISCONDUCT OR FRAUD OF ANY TRUSTEE ENTITY.**

2.4 The Agent shall indemnify, defend and hold each of the Trustee Entities harmless from and against all Losses and Liabilities, excluding indirect, incidental, consequential, exemplary, special or punitive losses or damages or loss of profits suffered, sustained, paid or incurred by the Trustee Entity, incurred or suffered by a Trustee Entity to the extent arising out of, relating to, or resulting from: (a) the execution and registration of the Subject Documents by the Trustee; and (b) the reliance by a Trustee Entity on the Officer's Certificate or the information contained therein.

ARTICLE 3- APPOINTMENT OF AGENT

3.1 Appointment of Agent

Each Lender hereby irrevocably appoints and authorizes the Agent to act as its agent in accordance with Section 3.4, with the ability and discretion to, inter alia, exercise all rights and powers of the Lender under the Lender Documents.

3.2 Agent Fees

There are no fees payable to the Agent under this Agreement. This Agreement is without prejudice to any right the Agent may have to collect fees under any other agreement with the Lenders.

3.3 Former Trustee

The parties confirm that the Agent may rely on all documents and Lender Documents provided or executed by Sorrenti Law Professional Corporation, which was previously a trustee acting on behalf of certain Lenders.

3.4 Lender Agreements and Acknowledgements

The Lenders agree and acknowledge as follows:

- (a) The Agent shall not be required to take any action which (i) exposes it to liability; (ii) is contrary to this Agreement, the Lender Documents or any applicable law, rule, regulation, judgment or order; (iii) would require it to become registered to do business in any jurisdiction; (iv) would subject it to taxation; or (v) which it determines in its sole discretion is not a reasonable action to be taken;
- (b) The Agent has no duties or obligations other than as set out in this Agreement and there shall not be construed against the Agent any implied duties (including fiduciary duties), obligations or covenants. The Agent may execute or perform, and may delegate the execution and performance of, any of its powers, rights, discretions and duties under this Agreement through or to any persons designated by it. References in this Agreement to the Agent shall include references to any such persons;
- (c) The Agent is not obliged to (i) take or refrain from taking any action or exercise or refrain from exercising any right or discretion under the Lender Documents; or (ii) incur or subject itself to any cost in connection with the Lender Documents, unless it is first specifically indemnified or furnished with security by the Lenders;
- (d) No Lender may take any independent legal action to enforce any obligation of FHVI under the Lender Documents. Each Lender hereby acknowledges that, to the extent permitted by applicable law, the Lender Documents and the remedies provided thereunder to the Lenders are for the benefit of the Lenders collectively and acting together and not severally, and further acknowledges that each Lender's rights hereunder and under the Lender Documents are to be exercised jointly, not severally, by the Agent upon the decision of the Lenders. Accordingly, notwithstanding any of the provisions contained herein or in the Lender Documents, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action under the Lender Documents, including any declaration of default under the Lender Documents, but that any such action shall be taken only by the Agent with the prior written consent of the Lenders where required in accordance with Section 3.5 below, provided that, notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Agent the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders. Each Lender hereby further covenants and agrees that upon any such written consent being given by the other Lenders, it shall co-operate fully with the Agent to the extent requested by the Agent, and each Lender further covenants and agrees that all proceeds from the realization of or under the Lender

Documents, to the extent permitted by applicable law, are held for the benefit of all of the Lenders and shall be shared among the Lenders rateably in accordance with proportionate share of the Loan. Each Lender covenants and agrees to do all acts and things and to make, execute and deliver all agreements and other instruments, so as to fully carry out the intent and purpose of this Section and each Lender hereby covenants and agrees that it shall not seek, take, accept or receive any security for any of the obligations and liabilities of the FHVI under the Lender Documents, or any other document, instrument, writing or agreement ancillary thereto, other than such security as is provided under the Lender Documents, and that it shall not enter into any agreement with any of the parties hereto or thereto relating in any manner whatsoever to any of the Lender Documents, unless all of the Lenders shall at the same time obtain the benefit of any such security or agreement, as the case may be; and

- (e) If any Lender obtains any payment (whether voluntary, involuntary or through the exercise of any right of set off or realization) on account of amounts owing to it pursuant to the Mortgage in excess of its rateable share of payments obtained by all the Lenders, the Lender shall account to and pay over the amount of the excess rateably to the other Lenders; and;
- (f) The Lenders acknowledge that it has made its own decision to participate in the Loan without any inducement from or reliance upon the Agent with respect to the financial condition of the Borrower or the sufficiency of the Project or the Lender Documents.

3.5 Consent of Lender

- (a) Save as set out herein, the Agent shall not, without the prior written consent of Lender, acting reasonably, agree to any renewal or any material amendment, modification or waiver of any of the terms of the Lender Documents, nor consent to any action or failure to act by FHVI or any other party, or exercise any rights that the Lender may have in respect thereof or pursuant to the Agreement;
- (b) If the Agent should request Lender's written consent to any actions and shall not receive Lender's consent or denial thereof in writing within ten (10) business days of the mailing, delivery or emailing of such request, Lender shall be deemed to have given its consent to such action; and
- (c) Notwithstanding anything contained herein, in the event that the Agent obtains the written consent or agreement of Lenders holding at least fifty percent (50%) plus one dollar of the amount of the Loan (a "**Majority**") advanced from time-to-time, to any of the actions described in Section 2.1 (collectively, the "**Change**"), the consent of all of the Lenders shall be deemed to have been given to the Change and the Agent shall be deemed to be authorized to instruct the Trustees to enter into any and all such documents and instruments required to give effect to the Change on behalf of all the Lenders. By way of example, in the event that the authorized loan is \$20,000,000.00 and when the Change is being requested \$10,000,000.00 has been advanced, provided that the Agent

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obtains the written consent of Lenders to the Change who have advanced at least \$5,000,001.00, the Agent shall be permitted to proceed with the proposed Change.

- (d) In all other respects, the Agent is authorized to carry out its duties in accordance with this Agreement without the consent of the Lenders or the Trustees. The Agent may, if it chooses to so, seek instructions from the Lenders on any matter, in which case it shall only be entitled to act on such instructions if it received the approval of a Majority of Lenders.

3.6 No Liability

- (a) **THE LENDERS HEREBY RELEASE AND FOREVER DISCHARGE THE AGENT AND ITS DIRECTORS, OFFICERS, SERVANTS, AGENTS, ADVISORS, EMPLOYEES, AND CONSULTANTS, AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (EACH AN "AGENT ENTITY") FROM ANY AND ALL LIABILITY THAT SUCH AGENT ENTITY MAY HAVE FOR ANY LOSSES AND LIABILITIES INCURRED OR SUFFERED BY SUCH LENDER TO THE EXTENT ARISING OUT OF, RELATING TO, OR RESULTING FROM ACTION TAKEN OR OMITTED TO BE TAKEN BY IT OR THEM IN CONNECTION WITH THIS AGREEMENT AND/OR THE LENDER DOCUMENTS, EXCEPT TO THE EXTENT IT IS SPECIFICALLY INSTRUCTED BY THE LENDERS UNDER THIS AGREEMENT.**
- (b) Without limiting the generality of the foregoing, the Agent (i) may consult with legal counsel, independent accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in accordance with their advice; (ii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for the form, substance, accuracy or completeness of any Lender Documents, or any other documents or information made available to the Lenders; (iv) has no duty to ascertain or inquire as to the existence of a default or an event of default or the observance of any of the terms or conditions of the Lender Documents; (v) is not responsible to any Lender for the execution, enforceability, genuineness, sufficiency or value of any of the Lender Documents; (vi) shall incur no liability by acting upon any notice, certificate or other instrument believed by it to be genuine and signed or sent by the proper person; and (vii) shall not be liable for any error of judgment or any action taken or omitted to be taken by it under or in connection with this Agreement if it acts upon or relies on any advice received from any expert retained by the Agent pursuant to Section 4.2, or otherwise acts in good faith.

3.7 Indemnity

Each Lender shall indemnify, defend and hold each of the Agent Entities harmless from and against all Losses and Liabilities (to the extent not reimbursed by FHVI) rateably (according to the amount of its investment) from any claim or loss suffered by, imposed upon or asserted against the Agent as a result of, or arising out of, this Agreement and/or the Lender Documents or any action taken or omitted by the Agent under this Agreement and/or the Lender Documents. The

provisions contained in this Section 3.7 related to the indemnification of the Agent by the Lenders, shall survive and continue in full force and effect, until liability of the Agent arising out of the transactions contemplated by this Agreement and the Lender Documents has been extinguished.

3.8 Successor Agent

The Agent may resign at any time by giving written notice to the Lenders such resignation to be effective upon the appointment of a successor agent. Upon delivering notice of resignation to the Lenders, the Agent has the right to appoint a successor agent, on behalf of the Lenders. If no successor agent is appointed or has accepted the appointment within thirty days after the retiring Agent's notice of resignation, then the Lenders may appoint a successor agent. Upon the acceptance of any such appointment by a successor agent, the successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation the provisions of this Agreement shall enure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

ARTICLE 4- SERVICING OF INVESTMENT

4.1 Servicing Duties

The Agent shall administer and service the Lender Documents for the Lenders in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account and shall perform, without limiting the generality of the foregoing, the following duties:

- (a) make reasonable efforts to collect all payments due under the Lender Documents and this Agreement, including without limitation, all principal, interest and interest on overdue interest, taxes (if applicable), and any other monies or payments required by the Lender Documents;
- (b) perform all necessary services with respect to the settlement of any loss under insurance policies in the event of damage to or destruction of the Project;
- (c) settle with the FHVI and any expropriating authority the amount and disposition of any compensation payable in connection with any expropriation of any part of or any interest in the Project;
- (d) pay out of payments of interest or other monies received from FHVI by the Agent:
 - (A) when necessary, insurance premiums, taxes and any other amounts which the Agent is authorized to pay on behalf of the FHVI under any of the Lender Documents;
 - (B) the reasonable fees and expenses of any experts retained by the Agent pursuant to section 4.2;

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- (C) any other reasonable expenses necessary to protect or preserve the Project; and
- (e) maintain proper records and accounts showing all receipts and disbursements in respect of the Lender Documents and permit Lender, its auditors and agents, on reasonable notice to the Agent, to examine such records and accounts from time to time and provide such copies thereof as Lender may reasonably require at its expense relating to the Lender Documents;
- (f) in the event that the Agent, in its sole discretion, acting as approved Lender and administrator, determines that FHVI, as a result of an act of *Force Majeure*, will not be able to complete the Project so as to make payments on or before the maturity date on the Lender Documents under the Lender Documents (as it may be extended under the terms thereof), it shall have the authority to extend the term of the Lender Documents for such period of time, not exceeding **24** months so as to permit FHVI to complete the Project and its sales, and thereby repay the Loan. The Agent shall have the right to do so on one or more occasions but for a period of time not exceeding 24 months as aforesaid, without the consent of the Lender;
- (g) give such notices to FHVI and other Persons as the Agent may consider necessary;
- (h) take all reasonable steps to enforce performance of the obligations of the FVHI under the Lender Documents or to protect or preserve the Project;
- (i) if the Agent considers it necessary to accelerate repayment under the Lender Documents and realize upon the Project including, inter alia, the appointment of a receiver, the exercise of powers of distress, the institution of foreclosure or power of sale proceedings and/or any other legal or equitable remedy. The Agent shall not be required to consult with the Lenders prior to determining what action it should take to enforce its rights and exercise its remedies under the Security Documents or otherwise. The Agent shall not be required to take any action (or refrain from taking any action) that would result in the Agent being in default of any covenant, term, provision or condition of this Agreement, or the Lender Documents or any obligation imposed on it by law including, without limitation, the obligation to act in a reasonable manner and in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account;
- (j) ensuring that FHVI has made satisfactory arrangements for insurance as may be required by the Lender Documents; and
- (k) acquire, assemble, record and process all the necessary information, data, applications and other forms and reports in connection with the Lender Documents.
- (l)

4.2 Retain Counsel and other Experts

To assist in administering the Collateral Mortgage and carrying out its duties hereunder, the Agent may retain at the expense of FHVI, or failing same, the Lenders to be shared based on their respective proportionate shares, such solicitors, notaries, counsel, auditors, appraisers and other experts as the Agent may, acting reasonably, believe to be necessary or desirable. Without limitation, the Agent may retain solicitors to perform and carry out all instructions and requirements necessary with respect to the Collateral Mortgage including, without limitation, the requisite title searches, the preparation, execution and delivery of the Lender Documents and the registration and filing of the Lender Documents or notices thereof as may be required to ensure the priority of the Lender Documents subject only to such encumbrances and other qualifications permitted by this Agreement.

4.3 Dealings with Borrower

Lender shall not contact or deal either directly or indirectly with FHVI or any other person with respect to the servicing of the Lender Documents or the enforcement of the Security without the consent of the Agent. Lender shall also not enter into any other agreement or take any other security with respect to this Agreement, or the Lender Documents or its proportionate interest in the Lender Documents without the consent of the Agent.

ARTICLE 5- TERM

5.1 Term

This Agreement terminates upon the earlier of

- (a) written approval by the Agent and Lenders; or
- (b) upon the distribution of all Net Cash Flow.

5.2 Survival

Termination of this Agreement will not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of termination and these rights and obligations will survive the termination of this Agreement.

ARTICLE 6- GENERAL

6.1 Entire Agreement

The Lender Documents, Lender Consents and this Agreement, including the documents and instruments contemplated by or delivered under or in connection herewith and the schedules and exhibits hereto, supersedes all prior representations, arrangements, negotiations, understandings and agreements between the parties, both written and oral, relating to the subject matter hereof, and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representation or writing whatsoever not incorporated herein and made a part hereof.

6.2 Conflict

In the event, and to the extent, of conflict between any of the terms of this Agreement, the terms of the Lender Consents, the terms of this Agreement shall prevail. In the event, and to the extent, of conflict between any of the terms of the body of this Agreement, the terms of the schedules or exhibits attached hereto, or the terms of a document or instrument to be delivered hereunder, the terms of the body of this Agreement shall prevail. In the event of a conflict between any of the terms of the schedules or exhibits attached hereto or the terms of a document or instrument to be delivered hereunder, the terms of the schedules or exhibits attached hereto shall prevail.

6.3 No Registration

The Lender shall not register this Agreement or notice thereof in any manner on the title to the Lands or with respect to any of the other Project.

6.4 Further Assurances

Each of the parties to this Agreement shall, at any time or from time to time after the date hereof, at the request of the other party hereto, execute and deliver, or cause to be executed and delivered, such additional instruments, notices, releases, certificates, powers of attorney, assurances and other documents and take such further actions as may be required in order to effectively complete the assignment and assumption contemplated hereby.

6.5 Invalidity

If at any time any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby to the fullest extent possible by law.

6.6 Expenses

The Agent shall pay all costs and expenses incurred in acting as Agent for the Lenders under the Lender Documents and this Agreement.

6.7 Assignment and Enurement

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and their respective successors and permitted assigns. The Lenders shall not assign any of its rights or obligations hereunder without the prior written consent of their respective Trustee.

6.8 Counterparts and Electronic Transmission

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. A party's electronic transmission of a copy of this Agreement duly executed by that party shall constitute effective delivery by that party of an executed copy of this Agreement to the party receiving the transmission. A party that has delivered this Agreement

by electronic transmission shall forthwith deliver an originally executed copy to the other party.

6.9 Governing Law and Jurisdiction

This Agreement, including the documents and instruments contemplated by or delivered under or in connection herewith and the schedules and exhibits hereto, are governed by and are to be construed with the in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and treated in all respects as an Ontario contract. The parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

6.10 Amendments and Waiver

No amendment or waiver of any provision of this Agreement shall be binding on any party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided. No failure or delay on the part of a party in exercising any power or right hereunder will operate as a waiver thereof.

6.11 Headings

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

6.12 Recitals

The Parties hereby acknowledge and declare that the foregoing recitals are true and correct.

6.13 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by e-mail, with a read receipt, addressed:

- (a) in the case of the Lenders to the address set out opposite each Lenders name in Exhibit "1" to the Accession Agreement executed by such Lender hereto;
- (b) in the case of Building & Development Mortgages Canada Inc. as follows:

Building & Development Mortgages Canada Inc.
1-A, 25 Brodie Drive
Richmond Hill, Ontario
L4B 3K7, Canada
Attention: Ildina Galati-Ferrante
E-mail: igalati@bdmc.ca

(c) in the case of Olympia Trust Company as follows:

Olympia Trust Company
2300, 125 – 9th Avenue SE
Calgary, Alberta
T2G 0P6
Attention: Kelly Revol
E-mail: Revolk@olympiustrust.com

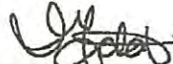
(d) in the case of FHVI as follows:

Fortress Harmony Village (2016) Inc.
8, 25 Brodie Drive
Richmond Hill, Ontario
L4B 3K7, Canada
Attention: Vincenzo Petrozza
E-mail: vince@fortressrdi.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted e-mail before 5:00 p.m. (Toronto time) on a business day, will be deemed to have been given on such business day, and if transmitted by email after 5:00 p.m. (Toronto time) on a business day, will be deemed to have been given on the business day after the date of the transmission.

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


**BUILDING & DEVELOPMENT MORTGAGES
CANADA INC.**

Per: 
Name: **Il Dina Galati-Ferrante**
Title: **President**

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

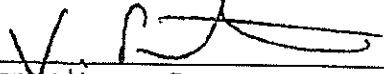
OLYMPIA TRUST COMPANY

Per: 
Name: **Carl Havel**
Title: **CFO**

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

I/We have the authority to bind the Corporation

**FORTRESS HARMONY VILLAGE (2016)
INC.**

Per: 
Name: Vince Petrozza
Title: Vice President

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

SCHEDULE "A"

Form of Accession Agreement

ACCESSION AGREEMENT

TO: Building & Development Mortgages Canada Inc. ("**BDMC**")

AND TO: Olympia Trust Company ("**Olympia**")

AND TO: Fortress Harmony Village (2016) Inc. ("**FHVI**")

AND TO: Each of the persons that has executed an accession to the Agency Agreement (as defined below)

RE: Agency Agreement made effective the 7th day of November, 2016 between BDMC and Olympia, as Trustees, FHVI, BDMC, as Agent, and each of the persons that has executed an accession to this Agency Agreement (the "**Agency Agreement**")

THIS INSTRUMENT of accession forms part of an Agency Agreement which agreement permits execution by counterpart.

All of the capitalized terms used herein have the meanings ascribed to them in the Agency Agreement;

The undersigned Lender (the "**Acceding Lender**") hereby acknowledges that he/she/it has received a copy of the Agency Agreement and having read the Agency Agreement in its entirety, specifically acknowledges that:

Initial _____	In accordance with Section 2.3 of the Agency Agreement, <u>I am giving up my right to sue BDMC and Olympia</u> , in their respective capacities as trustees of the Collateral Mortgage, for any losses that I may suffer as a result of any postponement, subordination, discharge or other action taken by the Trustees with respect to the Collateral Mortgage, as instructed by the Agent and authorized by myself in accordance with Section 2.1 of the Agency Agreement.
Initial _____	In accordance with Section 3.5 of the Agency Agreement, BDMC, in its capacity as Agent, is authorized to instruct the Trustees to postpone, subordinate, discharge or proceed with any of the other matters authorized by myself in accordance with Section 2.1 of the Agency Agreement with respect to the Collateral Mortgage.
Initial _____	In accordance with Paragraph 3.6(a) of the Agency Agreement, <u>I am giving up my right to sue BDMC</u> , in its capacity as Agent, for any losses that I may suffer as a result of any action taken or omitted to be taken by the Agent in connection with the Agency Agreement, except to the extent such acts or omissions are inconsistent with my instructions to the Agent.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agrees that:

1. all of the provisions of the Agency Agreement shall be binding upon the Acceding Lender as if an original signatory to such Agency Agreement and such provisions shall enure to the benefit of and be binding upon the Acceding Lender's personal representatives, successors and permitted assigns; and
2. the Acceding Lender represents and warrants that he/she/it provided the Loan to the Borrower pursuant to a loan agreement between the trustee set out opposite the Acceding Lenders name in Exhibit "1", in trust for such Acceding Lender, and the Borrower, dated the date set out opposite the Acceding Lender name in Exhibit "1" hereto .

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DATED as of the ____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED)

in the presence of:)

Witness

NAME: «First_Name» «Last_Name»

- 20 -

Exhibit "1"

Lender name	Trustee	Amount of Loan	Tranche	Mailing Address	E-mail
«First Name» «Last Name»	«Trustee»	«Amount»	«Tranche»	«Address» «City», «Province» «Postal Code»	«Email»

Schedule "B"

Mortgage

First Charge registered on May 25, 2012 as Instrument No. SC983676 between Harmony Village-Lake Simcoe Inc. as Mortgagor and Blue Simcoe Developments Inc., Perfect Northern Developments Corporation, 1662893 Ontario Inc. and 1662894 Ontario Inc. as Mortgagee in the original principal sum of \$4,750,000.00. By Transfer of Charge registered May 25, 2012 as Instrument No. SC983677 the said Charge was transferred to Wayne Safety Limited, [REDACTED]

[REDACTED] Glencliff Construction Limited

[REDACTED] Raicap Investments Corporation, [REDACTED]

Appendix 23:

**Email Exchange between Trustee's Counsel and Robins Appleby dated
September 4, 2019 and September 12, 2019**

From: Dacks, Jeremy [<mailto:JDacks@osler.com>]
Sent: September 12, 2019 3:09 PM
To: David Taub; De Lellis, Michael
Cc: Leor Margulies
Subject: RE: Fortress Real Developments Inc.: Claim re proceeds from sale of Fortress Kempenfelt Bay Developments Inc. lands

Hi David.

We acknowledge receipt of your e-mail correspondence.

The Trustee, as a court officer, is not in a position to properly consider the matters set out in your e-mail below as it does not contain sufficient particularity or supporting documentation with respect to your client's alleged claims.

Regards,
Jeremy

OSLER

Jeremy Dacks
Partner
416.862.4923 | JDacks@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: David Taub
Sent: September 4, 2019 3:27 PM
To: Jeremy Dacks (JDacks@osler.com); De Lellis, Michael
Cc: Leor Margulies
Subject: Fortress Real Developments Inc.: Claim re proceeds from sale of Fortress Kempenfelt Bay Developments Inc. lands

Dear Sirs:

As you know, we represent Fortress Real Developments Inc. ("FRDI") We understand that the sale of the Fortress Kempenfelt Bay Developments Inc. site (the "Property") closed yesterday. This email constitutes notice to FAAN Mortgage Administrators Inc. ("FAAN"), in its capacity as Court-appointed Trustee of Building & Development Mortgages Canada Inc., that FRDI has a claim for the following amounts from the proceeds of sale:

- (a) \$200,000 plus pre-judgment interest;
- (b) 2.5% of the sale price for the Property

FRDI claims these amounts in priority to the BDMC mortgage interest now represented by FAAN. FRDI's claim to the \$200,000 is made in reliance upon an agreement dated November 6, 2016 in which BDMC gave priority to various expenses incurred by the owner in funding the development. Its claim to the 2.5% fee is compensation for all the work undertaken by FRDI in finding the purchaser, negotiating with the purchaser and assisting with due diligence, the result of which was the purchaser's acquisition of the property. FRDI says that if it had had not brought the purchaser forward 9 months ago, the Purchaser would not have purchased the property from the lender, Firm Capital, at the purchase price and certainly not on an unconditional basis.

FRDI will cooperate with FAAN in discussing an appropriate procedure to resolve its claim.

I look forward to hearing from you.

Regards,



David Taub | [Bio](#)

T. 416.360.3354

E. dtaub@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

Appendix 24:
Robins Appleby Email dated September 24, 2019

From: David Taub <dtaub@robapp.com>
Sent: Tuesday, September 24, 2019 9:32 AM
To: Dacks, Jeremy <JDacks@osler.com>; De Lellis, Michael <MDeLellis@osler.com>
Cc: Leor Margulies <lmargulies@robapp.com>
Subject: RE: Fortress Real Developments Inc.: Claim re proceeds from sale of Fortress Kempenfelt Bay Developments Inc. lands

Hi Jeremy,

Further to your email below, the subsequent exchange between Leor and Michael, and as requested, I am setting out the basis for our client's priority claim from the sale proceeds of the Fortress Kempenfelt Bay Developments Inc. ("FKBD") lands over FAAN Mortgage Administrators Inc., in its capacity as Court-appointed Trustee of Building & Development Mortgages Canada Inc.

Firstly, the proper claimant is FKBD (formerly known as Fortress Harmony Village (2016) Inc. ("FHVI") and not Fortress Real Developments Inc. ("FRDI") . While I understand that some of the funds at issue were provided by FRDI, they were advanced on behalf of FKBD and it is FKBD which has the contractual entitlement to priority. The claim is made in reliance on a series of Agency Agreements made as of November 7, 2016 among BDMC and Olympia Trust Company as Trustees, FHVI and the various project lenders. A copy of one sample Agency Agreement executed by BDMC and FHVI is attached. I am advised that multiple Agency Agreements were signed by the various lenders.

By Articles of Amendment dated November 15, 2016, a copy of which is attached, FHVI changed its name to FKBD.

Under the terms of the Agency Agreements, the parties agreed in section 1.3 that FHVI would purchase the Project (as defined in the Agency Agreements) and that FHVI would not be responsible for repayment of the prior mortgages registered on title to the Project. In place of the mortgage obligation, the parties agreed to repay the lenders on the specific terms contained in the Agency Agreements. That obligation was to repay "all Net Cash Flow as defined below, up to the amount of the Loan..."

"Net Cash Flow" was defined in section 1.4 as including "all cash revenues received by FHVI with respect to the sale/leasing of the Project after payment of the following:

- (a) all debt secured by the first mortgage in favour of Vector in the principal amount of \$7,000,000.00 as may be increased at the sole discretion of FHVI to pay for Project costs, or any replacement of such mortgage, which first mortgage has been used to finance the acquisition and construction of the Project by FHVI, including all carrying costs, fees and other expenses related to the said mortgage;
- (d) any other loans arranged by FHVI to fund the cost of constructing operating or carrying the Project and secured by a charge on the Project which charge shall rank in priority to the Collateral Mortgage;
- (e) any mortgages/charges or loans used for refinancing the mortgages referred to in Paragraphs 1.4(a), 1.4(c) and 1.4(d); and
- (f) carrying costs, development, marketing, sales, leasing and other related expenses for construction, leasing, selling or operating the Project and not otherwise financed by the Mortgages/charges referenced in Paragraphs 1.4(a) to 1.4(e) above (collectively the "Prior Mortgages").

FHVI says that it advanced various funds and into the Project and incurred expenses which are payments as defined by section 1.4(a), (d), (e) or (f) and therefore any and all of "carrying costs, fees and other expenses related to the said mortgage";

Please find attached a Promissory Note dated June 21, 2018 in which FKBD promised to pay certain lenders \$200,000 on or before June 22, 2019. I am advised that this note evidences consulting fees and funds paid into the Project. Also please find attached payment records and a spreadsheet documenting payments of \$116,742.61 made in respect of the Project, plus outstanding invoices for the consulting fees. Additionally, please find attached an invoice in the sum of \$94,920 dated September 1, 2019 from FRDI to FKBD for FRDI's development consulting services provided.

Finally, my client claims an entitlement to 2.5% of the \$14.9 million sale price. Its claim is based upon paragraph 1.4(f) of the Agency Agreements as this sum represents marketing and sales costs for the Project owing to FRDI. As you know, the purchaser was introduced to the Project by FRDI and FKBD. Advice was given by FRDI to FKBD and assistance was given to negotiate the terms of an agreement with the purchaser and then to assist the purchaser in all its due diligence over a period of eight months. The sale ultimate would not have occurred, without these efforts. As a result, FRDI claims payment of this sum. Attached is an invoice in the sum of \$420,925 dated September 20, 2019 from FRDI to FKBD for these services.



David Taub | [Bio](#)

T. 416.360.3354

E. dtaub@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

Appendix 25:
Correspondence between Trustee and Fortress and the Kemp Borrower



Toronto

November 22, 2019

Michael De Lellis
Direct Dial: 416.862.5997
MDeLellis@osler.com
Our Matter Number: 1189997

Montréal

Calgary

SENT BY ELECTRONIC MAIL

Ottawa

Robins Appleby LLP
Suite 2600, 120 Adelaide Street West
Toronto, Ontario M5H 1T1
Attention: David Taub

Vancouver

New York

Dear Sir:

RE: Syndicated mortgage loan initially made to Harmony Village-Lake Simcoe Inc. and assumed by Fortress Kempfenfelt Bay Developments Inc. (the “Borrower”) and secured by a mortgage on the property located at 51, 53, 55 & 75 Bradford Street, Barrie, Ontario (collectively, the “Property”, the real estate development project thereon, the “Kemp Project”, and the syndicated mortgage lenders thereto, the “Kemp SMLs”).

We are counsel to FAAN Mortgage Administrators Inc. in its capacity as court-appointed trustee (the “**Trustee**”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) in the proceedings commenced under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario) and section 101 of the *Courts of Justice Act* (Ontario) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on April 20, 2018 (such proceedings commenced thereby, the “**BDMC Proceedings**”). As you know, in September 2019, Romspen Investment Corporation (“**Romspen**”), as holder of the first mortgage on the Property, completed a sale transaction for the Property through a statutory power of sale process (the “**Sale Transaction**”). As a result of the Sale Transaction, the Trustee, as holder of the fourth mortgage on the Property on behalf of the Kemp SMLs, received approximately \$2.2 million (the “**Residual Proceeds**”).

We are writing in response to the recent correspondence that we received from you and that the Trustee received from your client, Fortress Real Developments Inc. (“**Fortress**”), which, in each case, assert a claim by Fortress, on behalf of itself and the Borrower, to payment of approximately \$572,000 (the “**Fortress Claim Amount**”) from the Residual Proceeds in priority to the Kemp SMLs. Based on the information provided, the Trustee understands that the Fortress Claim Amount consists of the following:

- (i) \$200,000, for the repayment of that certain promissory note due June 22, 2019, from the Borrower to Mr. Russell John Fong (the “**Promissory Note**”). Fortress asserts that the Promissory Note funds were used to pay approximately \$117,000 of “hard costs” and approximately \$83,000 of management and consulting fees paid

to Fortress, in each case, incurred by the Borrower in connection with the Kemp Project; and

- (ii) \$372,000, as a fee that Fortress asserts is payable to it for services rendered in connection with the Sale Transaction, which Fortress calculates as 2.5% of the Sale Transaction's \$14.9 million purchase price (the "**Transaction Fee**").^[1]

In addition, the Trustee further understands that Fortress is asserting this entitlement to receive the Fortress Claim Amount in priority to the Kemp SMLs based on the terms of that certain agency agreement dated November 7, 2016, between BDMC and Olympia Trust Company (as Trustees), the Borrower (as the successor in interest to Fortress Harmony Village (2016) Inc. (as FHVI)), BDMC (as Agent) and the Kemp SMLs that executed an accession agreement thereto (as Lenders) (the "**Agency Agreement**"). In particular, specific reference is made by Fortress to the Borrower's repayment obligation with respect to "Net Cash Flow" set forth in section 1.3 of the Agency Agreement and the definition of "New Cash Flow" set forth in section 1.4 of the Agency Agreement and subsection (f) thereof. Relevant excerpts from each of these sections are set out below:

1.3 Repayment Obligations

FHVI covenants to pay to the Trustees, on behalf of the Lenders, all Net Cash Flow as defined below [...]

1.4 Net Cash Flow

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

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

As you know, the Residual Proceeds were received by the Trustee as a result of the Sale Transaction that was effectuated by Romspen pursuant to a statutory power of sale process. Romspen, as the holder of the first mortgage on the Property, was able to initiate such power of sale process due to the Borrower's default under its mortgage with Romspen and such mortgage not being brought into good standing by the end of the prescribed notice period. Romspen was therefore entitled to sell the Property and distribute the proceeds thereof in the prescribed manner

^[1] The Trustee understands that the Transaction Fee also includes approximately \$16,500 of legal fees incurred by Fortress.

OSLER

Page 3

to the holders of the encumbrances on the Property in their order of priority, without any involvement of the Borrower.

The Trustee received the Residual Proceeds because it held the fourth mortgage on the Property on behalf of the Kemp SMLs. The Residual Proceeds were not received by the Trustee from the Borrower and do not constitute “cash revenues received by [the Borrower]” on account of the Borrower’s sale or leasing of the Property. Based on the foregoing analysis, the Residual Proceeds are not captured by the definition of “Net Cash Flow” and therefore, are not being held by the Trustee on account of funds received from the Borrower pursuant to the Agency Agreement. Accordingly, the Trustee does not agree with Fortress’ claim that it is entitled to be paid the Fortress Claim Amount from the Residual Proceeds in priority to the Kemp SMLs.

The Trustee further notes that it would be inequitable in the circumstances surrounding the Sale Transaction for Fortress to be paid the Fortress Claim Amount from the Residual Proceeds in priority to the Kemp SMLs. In the Trustee’s view, such a payment would provide Fortress with a windfall to the direct detriment of the Kemp SMLs in circumstances where the Borrower, an entity related to Fortress, defaulted under its mortgage with Romspen and failed to bring such mortgage into good standing, which resulted in the Sale Transaction that crystalized significant losses for the Kemp SMLs and caused the deletion of the charge that the Trustee held for the benefit of the Kemp SMLs from title to the Property. As such, the Trustee has not and will not agree to Fortress’ requests that the Trustee repay the Promissory Note or pay the Transaction Fee or any other fees to Fortress in connection with the Kemp Project from the Residual Proceeds.

Please be advised that, to the extent Fortress intends to continue to pursue a claim to be paid the Fortress Claim Amount from the Residual Proceeds, the Trustee intends to bring a motion in due course before the Court to authorize the Trustee to distribute the full amount of the Residual Proceeds to the Kemp SMLs in accordance with the Orders of the Court in the BDMC Proceedings. The Trustee will file a further Court report in connection with any such motion and will ensure that you are provided with sufficient notice thereof. The Trustee otherwise reserves all its rights and remedies in the circumstances, whether at law, in equity or otherwise.

If you have any questions at this time, please contact me.

Best regards,



Michael De Lellis

c: Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
Naveed Manzoor and Shelby Draper, *FAAN Mortgage Administrators Inc.*

OSLER

Toronto

December 13, 2019

Montréal

Calgary

Ottawa

Vancouver

New York

Michael De Lellis
Direct Dial: 416.862.5997
MDeLellis@osler.com
Our Matter Number: 1189997

SENT BY ELECTRONIC MAIL

Robins Appleby LLP
Suite 2600, 120 Adelaide Street West
Toronto, Ontario M5H 1T1
Attention: David Taub

Dear Sir:

RE: Syndicated mortgage loan initially made to Harmony Village-Lake Simcoe Inc. and assumed by Fortress Kempenfelt Bay Developments Inc. (the "Borrower") and secured by a mortgage on the property located at 51, 53, 55 & 75 Bradford Street, Barrie, Ontario (collectively, the "Property", and the syndicated mortgage lenders thereto, the "Kemp SMLs").

As you know, we are counsel to FAAN Mortgage Administrators Inc. in its capacity as court-appointed trustee (the "**Trustee**") over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. in the proceedings commenced under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario) and section 101 of the *Courts of Justice Act* (Ontario) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on April 20, 2018 (such proceedings commenced thereby, the "**BDMC Proceedings**").

We are writing further to our letter to you dated November 22, 2019 (the "**November 22nd Letter**"). Your client, Fortress Real Developments Inc. ("**Fortress**", and collectively, Fortress, the Borrower, and each of their respective representatives and affiliates, the "**Fortress Parties**"), has asserted a claim on behalf of itself and the Borrower (and which claim is inclusive of legal fees incurred by Robins Appleby LLP) to payment of approximately \$572,000 (the "**Fortress Claim Amount**") from the approximately \$2.2 million received by the Trustee (the "**Residual Proceeds**") as holder of the fourth mortgage on the Property on behalf of the Kemp SMLs, from Romspen Investment Corporation ("**Romspen**") following the closing of a sale transaction for the Property effectuated by Romspen pursuant to a statutory power of sale process. As further described in the November 22nd Letter, the Trustee does not agree that any Fortress Party is entitled to be paid any portion of the Fortress Claim Amount from the Residual Proceeds in priority to the Kemp SMLs.

We hereby request that you advise the Trustee or its counsel, in writing, on or before January 3, 2020, if any Fortress Party intends to continue to pursue a claim to be paid the Fortress Claim Amount from the Residual Proceeds (the "**Fortress Claim Confirmation**"). If no Fortress Claim

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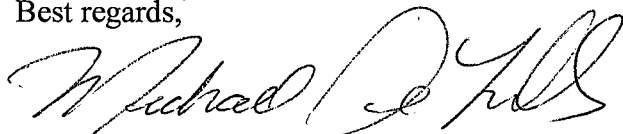
Page 2

Confirmation is received by the Trustee or its counsel on or before such date, then such claim will be considered to have been withdrawn and the Trustee will take the necessary steps to distribute the full amount of the Residual Proceeds to the Kemp SMLs in accordance with the Orders of the Court in the BDMC Proceedings. This letter shall thereafter be raised as a full and complete bar to any future demands, actions, claims or proceedings commenced by any Fortress Party in respect of the Residual Proceeds.

Please be advised that if a Fortress Claim Confirmation is received by the Trustee or its counsel on or before January 3, 2020, then the Trustee intends to bring a motion before the Court seeking, among other things, (i) the authorization to distribute the full amount of the Residual Proceeds to the Kemp SMLs in accordance with the Orders of the Court in the BDMC Proceedings, and (ii) an award of costs against Fortress in connection with such motion. The Trustee will file a further report with the Court in connection with such motion and will discuss the scheduling of such motion with you. The Trustee otherwise reserves all its rights and remedies in the circumstances, whether at law, in equity or otherwise.

If you have any questions, please contact me.

Best regards,



Michael De Lellis

c: Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
Naveed Manzoor and Shelby Draper, *FAAN Mortgage Administrators Inc.*

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

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September 28, 2020

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Ottawa

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New York

Michael De Lellis
 Direct Dial: 416.862.5997
 MDeLellis@osler.com
 Our Matter Number: 1189997

SENT BY ELECTRONIC MAIL

Robins Appleby LLP
 Suite 2600, 120 Adelaide Street West
 Toronto, Ontario M5H 1T1
 Attention: David Taub

Dear Sir:

RE: Syndicated mortgage loan (the “Loan”) initially made to Harmony Village-Lake Simcoe Inc. and assumed by Fortress Kempenfelt Bay Developments Inc. (the “Borrower”) and formerly secured by a charge originally registered as Instrument No. SC1366769 on November 30, 2016 in the original principal amount of \$17,160,963 (as may have been amended and transferred, the “BDMC Mortgage”), which incorporated Standard Charge Terms No. 200033 (the “SCT”), on the property located at 51, 53, 55 & 75 Bradford Street, Barrie, Ontario (collectively, the “Property”, the real estate development project thereon, the “Project”, and the syndicated mortgage lenders thereto, the “Kemp SMLs”).

As you know, we are counsel to FAAN Mortgage Administrators Inc. in its capacity as court-appointed trustee (the “Trustee”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“BDMC”) in the proceedings commenced under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario) and section 101 of the *Courts of Justice Act* (Ontario) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) on April 20, 2018 (such proceedings commenced thereby, the “BDMC Proceedings”). We are writing further to our letters to you dated November 22 and December 13, 2019, and in response to your letter dated January 2, 2020.

Overview

Our understanding is that your client, Fortress Real Developments Inc. (“Fortress”, and collectively, Fortress, the Borrower, and each of their respective representatives and affiliates, the “Fortress Parties”), has confirmed and continues to assert a claim, on behalf of the Fortress Parties, for payment of approximately \$572,000 (the “Fortress Claim Amount”) from the approximately \$2.2 million received by the Trustee (the “Residual Proceeds”), as the former holder of the BDMC Mortgage on behalf of the Kemp SMLs, being the fourth mortgage on the Property. By way of background, the Residual Proceeds were obtained by the Trustee from Romspen Investment Corporation (“Romspen”), as the former holder of the first mortgage on the Property, following the closing of the sale transaction for the Property completed through a statutory power of sale process initiated by Romspen in September 2019 (the “Sale Transaction”). As previously advised, the Trustee does not

agree that any Fortress Party is entitled to be paid any portion of the Fortress Claim Amount from the Residual Proceeds in priority to the Kemp SMLs in the circumstances.

Position of Fortress

In asserting its claim to the Fortress Claim Amount, Fortress relies upon the terms of that certain agency agreement dated November 7, 2016, between BDMC and Olympia Trust Company (as Trustees), the Borrower (as the successor in interest to Fortress Harmony Village (2016) Inc. (as FHVI)), BDMC (as Agent) and the Kemp SMLs that executed an accession agreement thereto (as Lenders) (the “**Agency Agreement**”).¹ In short, the Trustee understands the Fortress position to be that the Residual Proceeds constitute “Net Cash Flow” under the Agency Agreement and as a result, the Fortress Parties are entitled to receive payment on account of certain amounts (outlined below) in priority to the Kemp SMLs in accordance with the “waterfall” of payments set forth in the definition of Net Cash Flow.

The Trustee further understands that the Fortress Claim Amount (of approximately \$572,000) is comprised of the following:

- (i) \$200,000, for the repayment of that certain promissory note due June 22, 2019, from the Borrower to Mr. Russell John Fong (the “**Promissory Note**”). Fortress asserts that the Promissory Note funds were used to pay approximately \$117,000 of “hard costs” and approximately \$83,000 of management and consulting fees paid to Fortress, in each case, incurred by the Borrower in connection with the Project; and

¹ Relevant excerpts from the Agency Agreement are:

1.3 Repayment Obligations

FHVI covenants to pay to the Trustees, on behalf of the Lenders, all Net Cash Flow as defined below [...]

1.4 Net Cash Flow

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

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

1.5 Collateral Charge

The Collateral Mortgage shall secure the repayment obligations set out in Section 1.3 [...]



- (ii) \$372,000, as a fee that Fortress asserts is payable to it for services rendered in connection with the Sale Transaction, which Fortress calculates as 2.5% of the Sale Transaction's \$14.9 million purchase price (the "**Transaction Fee**").²

Position of the Trustee

As described in our prior letters and as further set forth in the reasons below (among others), the Trustee does not agree that any Fortress Party is entitled to be paid any portion of the Fortress Claim Amount from the Residual Proceeds in priority to the Kemp SMLs:

1. As previously advised, the Residual Proceeds were received by the Trustee pursuant to a statutory power of sale process and therefore, are not captured by the definition of Net Cash Flow or the scope of the Agency Agreement. Romspen, as the former holder of the first mortgage on the Property, was able to initiate such power of sale process due to the Borrower's default under its mortgage with Romspen and the Borrower's failure to bring such mortgage into good standing by the end of the prescribed notice period. Romspen was therefore entitled to sell the Property and distribute the proceeds thereof in the prescribed manner to the former holders of encumbrances on the Property in their order of priority in accordance with applicable law. The Trustee received the Residual Proceeds in priority to the Borrower because it held the fourth mortgage on the Property on behalf of the Kemp SMLs, being the BDMC Mortgage. The Residual Proceeds were not received from the Borrower and therefore do not constitute "cash revenues received by [the Borrower]" on account of the Borrower's sale or leasing of the Property, as set forth in the Agency Agreement.

In addition, the BDMC Mortgage secures the Loan and provides in the SCT that if the Borrower (as chargor) sells, disposes of or otherwise deals with the Property, the full principal amount secured shall, at the option of the Trustee on behalf of BDMC (as chargee), immediately become due. The effect of the statutory power of sale process was to delete the BDMC Mortgage from title to the Property. Therefore, the Trustee has a secured interest in the proceeds from the Sale Transaction (including the Residual Proceeds) for the full amount secured by the BDMC Mortgage (being an amount much greater than the amount of the Residual Proceeds) in priority to all unsecured claims, including the Fortress Claim Amount.

2. It would also be inequitable in the circumstances surrounding the Sale Transaction and the Kemp Project for any Fortress Party to be paid the Fortress Claim Amount from the Residual Proceeds in priority to the Kemp SMLs. In the Trustee's view, such payment would provide Fortress with a windfall to the direct detriment of the Kemp SMLs in circumstances where the Borrower, an entity related to Fortress, defaulted under its mortgage with Romspen and failed to bring such mortgage into good standing. Ultimately, such actions (and inactions) by Fortress and the Borrower resulted in the Sale Transaction, which crystalized significant

² The Trustee understands that the Transaction Fee also includes approximately \$16,500 of legal fees incurred by Fortress.

losses for the Kemp SMLs and caused the deletion of the charges that the Trustee held for the benefit of the Kemp SMLs from title to the Property.

The Trustee also understands that (i) approximately \$2.2 million of consulting fees were paid by the predecessor administrator of the Project, on behalf of the Borrower, directly to Fortress from the Kemp SMLs' advances to the Project, and (ii) additional management and consulting fees in the aggregate amount of at least \$83,000 were also paid by the Borrower to Fortress and the Borrower allegedly incurred further unsecured debt in order to make such payments to Fortress. These amounts do not include substantial amounts that were also paid directly to other parties (i.e., brokers, etc.) from the Kemp SMLs' advances to the Project.

In the Trustee's view, these significant cash payments to Fortress from the Project further demonstrate the inequities in the circumstances, which would be exacerbated to the extent that any Fortress Party is paid any portion of the Fortress Claim Amount from the Residual Proceeds in priority to the Kemp SMLs. The Trustee notes that the Kemp SMLs have suffered devastating losses on this Project and are only expected to recover 12.7% on the original principal balance of their Loan advances, and such recovery worsens to 9.3% to the extent that the Fortress Claim Amount is paid to the Fortress Parties and not paid to the Kemp SMLs.

3. Although it is the Trustee's view that the reasons outlined above are a full and complete answer to Fortress' claim to the Fortress Claim Amount, the Trustee also has significant concerns regarding the items that comprise the Fortress Claim Amount and the evidence, or lack of evidence, provided in support thereof. In particular,
 - (i) \$200,000 of the claim is to repay the Promissory Note, an unsecured loan made to the Borrower. The Promissory Note is, by its nature, subordinate to the Loan and the BDMC Mortgage and it does not indicate the intended use of its proceeds. In the Trustee's view, the amounts outstanding pursuant to the Promissory Note are not, *prima facie*, captured by the definition of Net Cash Flow. The Trustee is also of the view that it would be inequitable for the Kemp SMLs to be obligated to satisfy an independent, unsecured and subordinate obligation of the Borrower, which is an entity related to Fortress;
 - (ii) approximately \$111,000 of "hard costs" were allegedly funded from the proceeds of the Promissory Note and appear to have instead been used to repay Romspen on account of its loan. These are not true "hard costs" of the Project, but rather amounts used to repay a prior mortgagee, which are specifically treated differently from "hard costs" incurred by the Borrower under the definition of "Net Cash Flow". Accordingly, it cannot be correct that the \$111,000 that was used by the Borrower to reduce the amount of Romspen's prior ranking loan can also be characterized as "hard costs" as that would result in the same \$111,000 being accounted for twice in the definition of "Net Cash Flow" to the detriment of the Kemp SMLs;

- (iii) \$83,000 of management and consulting fees were allegedly funded from the proceeds of the Promissory Note to Fortress. This amount is only evidenced by a one-page invoice dated September 1, 2019, which allegedly covers the period from December 1, 2016 to November 1, 2018. The Trustee has significant concerns regarding the sufficiency and legitimacy of the services rendered and the evidence provided in connection therewith; and
- (iv) no basis has been provided in support of the Transaction Fee and at no point did the Trustee agree that any such fee would be paid. In addition, a transaction fee is not warranted in the circumstances given that the Sale Transaction occurred as a result of a secured creditor enforcement process and the result of a Fortress Party defaulting on the first priority loan to the Project.

Next Steps

We hereby request that you please advise the Trustee or its counsel on or before October 2, 2020, whether Fortress wishes to continue to pursue its claim to be paid the Fortress Claim Amount from the Residual Proceeds or if Fortress has determined to fully and finally withdraw such claim. To the extent Fortress determines not to withdraw such claim, the Trustee intends to file a motion with the Court seeking, among other things, the Court's authorization to distribute the full amount of the Residual Proceeds to the Kemp SMLs in accordance with the Orders of the Court in the BDMC Proceedings and an award of costs against Fortress in connection with such motion. Should Fortress agree to withdraw its claim on or before October 2, 2020, the Trustee will not seek costs from Fortress with respect to this matter. The Trustee otherwise reserves all its rights and remedies in the circumstances, whether at law, in equity or otherwise.

If you have any questions, please contact me.



Best regards,
Michael De Lellis

c: Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
Naveed Manzoor and Shelby Draper, *FAAN Mortgage Administrators Inc.*



December 28, 2020

PRIVATE AND CONFIDENTIAL

SENT BY ELECTRONIC MAIL

Fortress Real Developments Inc.
25 Brodie Drive, Unit 1
Richmond Hill, ON L4B 3K7
Attention: Mr. Jawad Rathore

Dear Sir,

Re: Syndicated mortgage loan initially made to Harmony Village-Lake Simcoe Inc. and assumed by Fortress Kempenfelt Bay Developments Inc. (the “Borrower”) and formerly secured by a charge originally registered as Instrument No. SC1366769 on November 30, 2016 in the original principal amount of \$17,160,963 (as may have been amended and transferred, the “BDMC Mortgage”), which incorporated Standard Charge Terms No. 200033, on the property located at 51, 53, 55 & 75 Bradford Street, Barrie, Ontario (collectively, the “Property”, and the syndicated mortgage lenders thereto, the “Kemp SMLs”).

We are writing to you in our capacity as court-appointed trustee (the “Trustee”) of Building & Development Mortgages Canada Inc. in the proceedings commenced under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario) and section 101 of the *Courts of Justice Act* (Ontario) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) on April 20, 2018 (such proceedings commenced thereby, the “**BDMC Proceedings**”). We are writing further to the letter dated September 28, 2020 from our counsel, Osler, Hoskin & Harcourt LLP, to your counsel, Robins Appleby LLP, regarding your claim to be paid amounts from the Residual Proceeds (as hereinafter defined) in priority to the Kemp SMLs (the “**September 28 Letter**”). No substantive response was ever received to the September 28 Letter.

As you know, the Trustee received approximately \$2.2 million (the “**Residual Proceeds**”) from the former holder of the first mortgage on the Property following the closing of a sale transaction for the Property completed pursuant to a statutory power of sale process. The Trustee, on behalf of the Kemp SMLs, received the Residual Proceeds as the former holder of the BDMC Mortgage, being the fourth-ranking mortgage on the Property at such time. To date, Fortress Real Developments Inc. (“**Fortress**”), has asserted a claim, on behalf of itself, the Borrower and their



respective representatives and affiliates (collectively, the “**Fortress Parties**”), for payment of approximately \$572,000 from the Residual Proceeds in priority to the Kemp SMLs. As previously advised, including for the reasons set forth in the September 28 Letter, the Trustee does not agree that any Fortress Party is entitled to be paid any amounts from the Residual Proceeds in priority to the Kemp SMLs.

In addition, following delivery of the September 28 Letter, the Trustee was advised by Fortress that Mr. T. Fong, an unsecured lender to the Borrower, would contact the Trustee to also assert a potential claim to the Residual Proceeds. The Trustee has engaged in discussions and correspondence with Mr. Fong and received and reviewed the documentation provided by Mr. Fong to date in support of his claim. The Trustee has separately advised Mr. Fong that, in the Trustee’s view, he too is not entitled to be paid any amounts from the Residual Proceeds in priority to the Kemp SMLs.

Accordingly, the Trustee anticipates filing a motion with the Court seeking, among other things, the Court’s authorization to distribute the full amount of the Residual Proceeds to the Kemp SMLs in accordance with the Orders of the Court in the BDMC Proceedings. Please let us know on or before 5:00 pm ET on January 8, 2021 if you or any other Fortress Party intends to continue to pursue a claim to be paid any portion of the Residual Proceeds in priority to the Kemp SMLs, or if such claim has been fully and finally withdrawn. To the extent you advise that any Fortress Party intends to continue to pursue such a claim, the Trustee will need to address such claim in a report to the Court in a substantive manner and will seek an award of costs against the Fortress Parties in connection therewith.

We are available to discuss further at your convenience. The Trustee otherwise reserves all its rights and remedies in the circumstances, whether at law, in equity or otherwise.

Yours very truly,

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

A handwritten signature in blue ink, appearing to read 'Lana Bezner', written over a white background.

Per: Lana Bezner

Appendix 26:

Mr. Fong Email dated October 14, 2020

From: Tig Fong <tig@flyingkneefilms.com>
Sent: Wednesday, October 14, 2020 4:37:38 PM
To: naveed@faanmortgageadmin.com <naveed@faanmortgageadmin.com>
Cc: Jawad Rathore <jawad@fortressrdi.com>
Subject: Re Funds Withheld from FHVI/FKBD

Good Afternoon Naveed,

My name is Tig Fong.

Up until now, I have been dealing with Mr. Jawad Rathore at Fortress.

I understand that you are in receipt of documentation regarding the funds that I advanced to the project in Barrie known as FHVI/FKBD.

Funds to repay me have been held in trust by your company for some time now and I have patiently awaited resolution of this matter.

I advanced \$200,000.00 CAD on June 22, 2018 at a rate of 12% and was entitled to all principal and earned interest as of June 22, 2019. Unfortunately, I still have yet to receive any funds as they have been held in trust by your company.

In reading materials available on your website, I have seen that interest has continued to accrue and been paid to parties in a similar situation to mine, such as mezzanine lenders on Brookdale.

In speaking with Mr Rathore, copied here, I understand that some of the delay in finalizing this matter has been an additional claim by his company and also your company's interpretation of use of net proceeds by them. Respectfully, my loan contained no such provisions and I relied on valid agreements such as the ones outlined below.

The claim is made in reliance on a series of Agency Agreements made as of November 7, 2016 among BDMC and Olympia Trust Company as Trustees, FHVI and the various project lenders. You're in receipt of these Agency Agreements executed by BDMC and FHVI.

Under the terms of the Agency Agreements, the parties you represent agreed in section 1.3 that FHVI would purchase the Project (as defined in the Agency Agreements) and that FHVI would not be responsible for repayment of the prior mortgages registered on title to the Project. In place of the mortgage obligation, the parties agreed to repay the lenders on the specific terms contained in the Agency Agreements. That obligation was to repay "all Net Cash Flow as defined below, up to the amount of the Loan..." "Net Cash Flow" was defined in section 1.4 as including "all cash revenues received by FHVI with respect to the sale/leasing of the Project after payment of the following:

- (a) all debt secured by the first mortgage in favour of Vector in the principal amount of \$7,000,000.00 as may be increased at the sole discretion of FHVI to pay for Project costs, or any replacement of such mortgage, which first mortgage has been used to finance the acquisition and construction of the Project by FHVI, including all carrying costs, fees and other expenses related to the said mortgage;
- (d) any other loans arranged by FHVI to fund the cost of constructing operating or carrying the Project and secured by a charge on the Project which charge shall rank in priority to the Collateral Mortgage;
- (e) any mortgages/charges or loans used for refinancing the mortgages referred to in Paragraphs 1.4(a), 1.4(c) and 1.4(d); and
- (f) carrying costs, development, marketing, sales, leasing and other related expenses for construction, leasing, selling or operating the Project and not otherwise financed by the Mortgages/charges referenced in Paragraphs 1.4(a) to 1.4(e) above (collectively the "Prior Mortgages").

I would like to see a swift resolution to this matter. I can appreciate that your role is to maximize return for the parties that you represent and I would like to present the following offer to help expedite.

As mentioned earlier, my funds continue to earn interest at 12% while I await repayment. In mid-August, I was expecting resolution and tabulated the interest owed to me as \$51,747.95 (as of Aug 18th to be specific).

In the interest of a swift resolution, I am prepared to settle for my \$200,000 of principle and only \$50,000 of interest; effectively rolling back the interest clock more than 2 months.

I trust that this is satisfactory and look forward to your correspondence confirming this matter so we can sort out payment details.

Regards,

Tig Russell J Fong

--



Appendix 27:
Standard Charge Terms No. 200033

Land Registration Reform Act
SET OF STANDARD CHARGE TERMS
 (Electronic Filing)

Filed by
Dye & Durham Co. Inc.

Filing Date: November 3, 2000

Filing number: 200033

The following Set of Standard Charge Terms shall be applicable to documents registered in electronic format under Part III of the Land Registration Reform Act, R.S.O. 1990, c. L.4 as amended (the "Land Registration Reform Act") and shall be deemed to be included in every electronically registered charge in which this Set of Standard Charge Terms is referred to by its filing number, as provided in Section 9 of the Land Registration Reform Act, except to the extent that the provisions of this Set of Standard Charge Terms are modified by additions, amendments or deletions in the schedule. Any charge in an electronic format of which this Set of Standard Charge Terms forms a part by reference to the above-noted filing number in such charge shall hereinafter be referred to as the "Charge".

Exclusion of Statutory Covenants

1. The implied covenants deemed to be included in a charge under subsection 7(1) of the *Land Registration Reform Act* as amended or re-enacted are excluded from the Charge.

Right to Charge the Land

2. The Chargor now has good right, full power and lawful and absolute authority to charge the land and to give the Charge to the Chargee upon the covenants contained in the Charge.

No Act to Encumber

3. The Chargor has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the land, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose.

Good Title in Fee Simple

4. The Chargor, at the time of the delivery for registration of the Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the land and the premises described in the Charge and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisos, conditions or any other matter or thing to alter, charge, change, encumber or defeat the same, except those contained in the original grant thereof from the Crown.

Promise to Pay and Perform

5. The Chargor will pay or cause to be paid to the Chargee the full principal amount and interest secured by the Charge in the manner of payment provided by the Charge, without any deduction or abatement, and shall do, observe, perform, fulfill and keep all the provisions, covenants, agreements and stipulations contained in the Charge and shall pay as they fall due all taxes, rates, levies, charges, assessments, utility and heating charges, municipal, local, parliamentary and otherwise which now are or may hereafter be imposed, charged or levied upon the land and when required shall produce for the Chargee receipts evidencing payment of the same.

Interest After Default

6. In case default shall be made in payment of any sum to become due for interest at the time provided for payment in the Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, and both before and after default and judgement, shall bear interest at the rate provided for in the Charge. In case the interest and compound interest are not paid within the interest calculation period provided in the Charge from the time of default a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the land.

No Obligation to Advance

7. Neither the preparation, execution or registration of the Charge shall bind the Chargee to advance the principal amount secured, nor shall the advance of a part of the principal amount secured bind the Chargee to advance any unadvanced portion thereof, but nevertheless the security in the land shall take effect forthwith upon delivery for registration of the Charge by the Chargor. The expenses of the examination of the title and of the Charge and valuation are to be secured by the Charge in the event of the whole or any balance of the principal amount not being advanced, the same to be charged hereby upon the land, and shall be, without demand therefor, payable forthwith with interest at the rate provided for in the Charge, and in default the Chargee's power of sale hereby given, and all other remedies hereunder, shall be exercisable.

Costs Added to Principal

8. The Chargee may pay all premiums of insurance and all taxes, rates, levies, charges, assessments, utility and heating charges which shall from time to time fall due and be unpaid in respect of the land, and that such payments, together with all costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of the land and of negotiating the Charge, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize upon the security given in the Charge (including legal fees and real estate commissions and other costs incurred in leasing or selling the land or in exercising the power of entering, lease and sale contained in the Charge) shall be, with interest at the rate provided for in the Charge, a charge upon the land in favour of the Chargee pursuant to the terms of the Charge and the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the land, which payments with interest at the rate provided for in the Charge shall likewise be a charge upon the land in favour of the Chargee. Provided, and it is hereby further agreed, that all amounts paid by the Chargee as aforesaid shall be added to the principal amount secured by the Charge and shall be payable forthwith with interest at the rate provided for in the Charge, and on default all sums secured by the Charge shall immediately become due and payable at the option of the Chargee, and all powers in the Charge conferred shall become exercisable.

Power of Sale

9. The Chargee on default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice in writing given to the Chargor, enter on and lease the land or sell the land. Such notice shall be given to such persons and in such manner and form and within such time as provided in the *Mortgages Act*. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the land, if occupied, or by placing it on the land if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in a newspaper published in the county or district in which the land is situate; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability. Provided further, that in case default be made in the payment of the principal amount or interest or any part thereof and such default continues for two months after any payment of either falls due then the Chargee may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law then notice shall be given to such persons and in such manner and form and within such time as so required by law. It is hereby further agreed that the whole or any part or parts of the land may be sold by public auction or private contract, or partly

one or partly the other; and that the proceeds of any sale hereunder may be applied first in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the land or by reason of non-payment or procuring payment of monies, secured by the Charge or otherwise, and secondly in payment of all amounts of principal and interest owing under the Charge; and if any surplus shall remain after fully satisfying the claims of the Chargee as aforesaid same shall be paid as required by law. The Chargee may sell any of the land on such terms as to credit and otherwise as shall appear to him most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which he shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the land and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of said purposes may make and execute all agreements and assurances as he shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

Quiet Possession

10. Upon default in payment of principal and interest under the Charge or in performance of any of the terms or conditions hereof, the Chargee may enter into and take possession of the land hereby charged and where the Chargee so enters on and takes possession or enters on and takes possession of the land on default as described in paragraph 9 herein the Chargee shall enter into, have, hold, use, occupy, possess and enjoy the land without the let, suit, hindrance, interruption or denial of the Chargor or any other person or persons whomsoever.

Right to Distrain

11. If the Chargor shall make default in payment of any part of the interest payable under the Charge at any of the dates or times fixed for the payment thereof, it shall be lawful for the Chargee to distrain therefor upon the land or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the land, so much of such interest as shall, from time to time, be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. Provided that the Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

Further Assurances

12. From and after default in the payment of the principal amount secured by the Charge or the interest thereon or any part of such principal or interest or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants set forth in the Charge then and in every such case the Chargor and all and every other person whosoever having, or lawfully claiming, or who shall have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the land shall, from time to time, and at all times thereafter, at the proper costs and charges of the Chargor make, do, suffer, execute, deliver, authorize and register, or cause or procure to be made, done, suffered, executed, delivered, authorized and registered, all and every such further and other reasonable act or acts, deed or deeds, devises, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the land unto the Chargee as by the Chargee or his solicitor shall or may be lawfully and reasonably devised, advised or required.

Acceleration of Principal and Interest

13. In default of the payment of the interest secured by the Charge the principal amount secured by the Charge shall, at the option of the Chargee, immediately become payable, and upon default of payment of instalments of principal promptly as the same mature, the balance of the principal and interest secured by the Charge shall, at the option of the Chargee, immediately become due and payable. The Chargee may in writing at any time or times after default waive such default and any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default.

Unapproved Sale

14. If the Chargor sells, transfers, disposes of, leases or otherwise deals with the land, the principal amount secured by the Charge shall, at the option of the Chargee, immediately become due and payable.

Partial Releases

15. The Chargee may at his discretion at all times release any part or parts of the land or any other security or any surety for the money secured under the Charge either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the land or any person from the Charge or from any of the covenants contained in the Charge and without being accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee. It is agreed that every part or lot into which the land is or may hereafter be divided does and shall stand charged with the whole money secured under the Charge and no person shall have the right to require the mortgage monies to be apportioned.

Obligation to Insure

16. The Chargor will immediately insure, unless already insured, and during the continuance of the Charge keep insured against loss or damage by fire, in such proportions upon each building as may be required by the Chargee, the buildings on the land to the amount of not less than their full insurable value on a replacement cost basis in dollars of lawful money of Canada. Such insurance shall be placed with a company approved by the Chargee. Buildings shall include all buildings whether now or hereafter erected on the land, and such insurance shall include not only insurance against loss or damage by fire but also insurance against loss or damage by explosion, tempest, tornado, cyclone, lightning and all other extended perils customarily provided in insurance policies including "all risks" insurance. The covenant to insure shall also include where appropriate or if required by the Chargee, boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Chargee. Evidence of continuation of all such insurance having been effected shall be produced to the Chargee at least fifteen (15) days before the expiration thereof; otherwise the Chargee may provide therefor and charge the premium paid and interest thereon at the rate provided for in the Charge to the Chargor and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Chargee may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Chargee and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Chargee therefor shall be payable forthwith by the Chargor with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Chargee as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

Obligation to Repair

17. The Chargor will keep the land and the buildings, erections and improvements thereon, in good condition and repair according to the nature and description thereof respectively, and the Chargee may, whenever he deems necessary, by his agent enter upon and inspect the land and make such repairs as he deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate provided for in the Charge shall be added to the principal amount and be payable forthwith and be a charge upon the land prior to all claims thereon subsequent to the Charge. If the Chargor shall neglect to keep the buildings, erections and improvements in good condition and repair, or commits or permits any act of waste on the land (as to which the Chargee shall be sole judge) or makes default as to any of the covenants, provisos, agreements or conditions contained in the Charge or in any charge to which this Charge is subject, all monies secured by the Charge shall, at the option of the Chargee, forthwith become due and payable, and in default of payment of same with interest as in the case of payment

before maturity the powers of entering upon and leasing or selling hereby given and all other remedies herein contained may be exercised forthwith.

- Building Charge* 18. If any of the principal amount to be advanced under the Charge is to be used to finance an improvement on the land, the Chargor must so inform the Chargee in writing immediately and before any advances are made under the Charge. The Chargor must also provide the Chargee immediately with copies of all contracts and subcontracts relating to the improvement and any amendments to them. The Chargor agrees that any improvement shall be made only according to contracts, plans and specifications approved in writing by the Chargee. The Chargor shall complete all such improvements as quickly as possible and provide the Chargee with proof of payment of all contracts from time to time as the Chargee requires. The Chargee shall make advances (part payments of the principal amount) to the Chargor based on the progress of the improvement, until either completion and occupation or sale of the land. The Chargee shall determine whether or not any advances will be made and when they will be made. Whatever the purpose of the Charge may be, the Chargee may at its option hold back funds from advances until the Chargee is satisfied that the Chargor has complied with the holdback provisions of the *Construction Lien Act* as amended or re-enacted. The Chargor authorizes the Chargee to provide information about the Charge to any person claiming a construction lien on the land.
- Extensions not to Prejudice* 19. No extension of time given by the Chargee to the Chargor or anyone claiming under him, or any other dealing by the Chargee with the owner of the land or of any part thereof, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other person liable for the payment of the money secured by the Charge, and the Charge may be renewed by an agreement in writing at maturity for any term with or without an increased rate of interest notwithstanding that there may be subsequent encumbrances. It shall not be necessary to deliver for registration any such agreement in order to retain priority for the Charge so altered over any instrument delivered for registration subsequent to the Charge. Provided that nothing contained in this paragraph shall confer any right of renewal upon the Chargor.
- No Merger of Covenants* 20. The taking of a judgment or judgments on any of the covenants herein shall not operate as a merger of the covenants or affect the Chargee's right to interest at the rate and times provided for in the Charge; and further that any judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as provided in the Charge until the judgment shall have been fully paid and satisfied.
- Change in Status* 21. Immediately after any change or happening affecting any of the following, namely: (a) the spousal status of the Chargor, (b) the qualification of the land as a family residence within the meaning of Part II of the *Family Law Act*, and (c) the legal title or beneficial ownership of the land, the Chargor will advise the Chargee accordingly and furnish the Chargee with full particulars thereof, the intention being that the Chargee shall be kept fully informed of the names and addresses of the owner or owners for the time being of the land and of any spouse who is not an owner but who has a right of possession in the land by virtue of Section 19 of the *Family Law Act*. In furtherance of such intention, the Chargor covenants and agrees to furnish the Chargee with such evidence in connection with any of (a), (b) and (c) above as the Chargee may from time to time request.
- Condominium Provisions* 22. If the Charge is of land within a condominium registered pursuant to the *Condominium Act* (the "Act") the following provisions shall apply. The Chargor will comply with the Act, and with the declaration, by-laws and rules of the condominium corporation (the "corporation") relating to the Chargor's unit (the "unit") and provide the Chargee with proof of compliance from time to time as the Chargee may request. The Chargor will pay the common expenses for the unit to the corporation on the due dates. If the Chargee decides to collect the Chargor's contribution towards the common expenses from the Chargor, the Chargor will pay the same to the Chargee upon being so notified. The Chargee is authorized to accept a statement which appears to be issued by the corporation as conclusive evidence for the purpose of establishing the amounts of the common expenses and the dates those amounts are due. The Chargor, upon notice from the Chargee, will forward to the Chargee any notices, assessments, by-laws, rules and financial statements of the corporation that the Chargor receives or is entitled to receive from the corporation. The Chargor will maintain all improvements made to the unit and repair them after damage. In addition to the insurance which the corporation must obtain, the Chargor shall insure the unit against destruction or damage by fire and other perils usually covered in fire insurance policies and against such other perils as the Chargee requires for its full replacement cost (the maximum amount for which it can be insured). The insurance company and the terms of the policy shall be reasonably satisfactory to the Chargee. This provision supersedes the provisions of paragraph 16 herein. The Chargor irrevocably authorizes the Chargee to exercise the Chargor's rights under the Act to vote, consent and dissent.
- Discharge* 23. The Chargee shall have a reasonable time after payment in full of the amounts secured by the Charge to deliver for registration a discharge or if so requested and if required by law to do so, an assignment of the Charge and all legal and other expenses for preparation, execution and registration, as applicable to such discharge or assignment shall be paid by the Chargor.
- Guarantee* 24. Each party named in the Charge as a Guarantor hereby agrees with the Chargee as follows:
- (a) In consideration of the Chargee advancing all or part of the Principal Amount to the Chargor, and in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by the Chargee to the Guarantor (the receipt and sufficiency whereof are hereby acknowledged), the Guarantor does hereby absolutely and unconditionally guarantee to the Chargee, and its successors, the due and punctual payment of all principal moneys, interest and other moneys owing on the security of the Charge and observance and performance of the covenants, agreements, terms and conditions herein contained by the Chargor, and the Guarantor, for himself and his successors, covenants with the Chargee that, if the Chargor shall at any time make default in the due and punctual payment of any moneys payable hereunder, the Guarantor will pay all such moneys to the Chargee without any demand being required to be made.
- (b) Although as between the Guarantor and the Chargor, the Guarantor is only surety for the payment by the Chargor of the moneys hereby guaranteed, as between the Guarantor and the Chargee, the Guarantor shall be considered as primarily liable therefor and it is hereby further expressly declared that no release or releases of any portion or portions of the land; no indulgence shown by the Chargee in respect of any default by the Chargor or any successor thereof which may arise under the Charge; no extension or extensions granted by the Chargee to the Chargor or any successor thereof for payment of the moneys hereby secured or for the doing, observing or performing of any covenant, agreement, term or condition herein contained to be done, observed or performed by the Chargor or any successor thereof; no variation in or departure from the provisions of the Charge; no release of the Chargor or any other thing whatsoever whereby the Guarantor as surety only would or might have been released shall in any way modify, alter, vary or in any way prejudice the Chargee or affect the liability of the Guarantor in any way under this covenant, which shall continue and be binding on the Guarantor, and as well after as before maturity of the Charge and both before and after default and judgment, until the said moneys are fully paid and satisfied.
- (c) Any payment by the Guarantor of any moneys under this guarantee shall not in any event be taken to affect

the liability of the Chargor for payment thereof but such liability shall remain unimpaired and enforceable by the Guarantor against the Chargor and the Guarantor shall, to the extent of any such payments made by him, in addition to all other remedies, be subrogated as against the Chargor to all the rights, privileges and powers to which the Chargee was entitled prior to payment by the Guarantor; provided, nevertheless, that the Guarantor shall not be entitled in any event to rank for payment against the lands in competition with the Chargee and shall not, unless and until the whole of the principal, interest and other moneys owing on the security of the Charge shall have been paid, be entitled to any rights or remedies whatsoever in subrogation to the Chargee.

- (d) All covenants, liabilities and obligations entered into or imposed hereunder upon the Guarantor shall be equally binding upon his successors. Where more than one party is named as a Guarantor all such covenants, liabilities and obligations shall be joint and several.
- (e) The Chargee may vary any agreement or arrangement with or release the Guarantor, or any one or more of the Guarantors if more than one party is named as Guarantor, and grant extensions of time or otherwise deal with the Guarantor and his successors without any consent on the part of the Chargor or any other Guarantor or any successor thereof.

Severability

- 25. It is agreed that in the event that at any time any provision of the Charge is illegal or invalid under or inconsistent with provisions of any applicable statute, regulation thereunder or other applicable law or would by reason of the provisions of any such statute, regulation or other applicable law render the Chargee unable to collect the amount of any loss sustained by it as a result of making the loan secured by the Charge which it would otherwise be able to collect under such statute, regulation or other applicable law then, such provision shall not apply and shall be construed so as not to apply to the extent that it is so illegal, invalid or inconsistent or would so render the Chargee unable to collect the amount of any such loss.

Interpretation

- 26. In construing these covenants the words "Charge", "Chargee", "Chargor", "land" and "successor" shall have the meanings assigned to them in Section 1 of the *Land Registration Reform Act* and the words "Chargor" and "Chargee" and the personal pronouns "he" and "his" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees", and "he", "she", "they" or "it", "his", "her", "their" or "its", respectively, as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargor or Chargors, Chargee or Chargees, shall be equally secured to and exercisable by his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. The word "successor" shall also include successors and assigns of corporations including amalgamated and continuing corporations. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

Paragraph headings

- 27. The paragraph headings in these standard charge terms are inserted for convenience of reference only and are deemed not to form part of the Charge and are not to be considered in the construction or interpretation of the Charge or any part thereof.

Date of Charge

- 28. The Charge, unless otherwise specifically provided, shall be deemed to be dated as of the date of delivery for registration of the Charge.

Effect of Delivery of Charge

- 29. The delivery of the Charge for registration by direct electronic transfer shall have the same effect for all purposes as if such Charge were in written form, signed by the parties thereto and delivered to the Chargee. Each of the Chargor and, if applicable, the spouse of the Chargor and other party to the Charge agrees not to raise in any proceeding by the Chargee to enforce the Charge any want or lack of authority on the part of the person delivering the Charge for registration to do so.

DATED this day of , (year)

Appendix 28:
CHAT Security Agreement dated November 8, 2021

SECURITY SUBSTITUTION AGREEMENT AND RELEASE

This Agreement made as of the 8th day of November, 2021.

**GO-TO SPADINA ADELAIDE SQUARE INC. AND
GO-TO SPADINA ADELAIDE SQUARE LP**
(by its general partner Go-To Spadina Adelaide Square Inc.)

(hereinafter, “**Go-To Spadina**”)

OF THE FIRST PART

- and -

FAAN MORTGAGE ADMINISTRATORS INC.
solely in its capacity as Court-appointed Trustee of
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

(hereinafter called the “**Trustee**”)

OF THE SECOND PART

- and acknowledged by -

**GO-TO STONEY CREEK ELFRIDA INC. AND
GO-TO STONEY CREEK ELFRIDA LP**
(by its general partner Go-To Stoney Creek Elfrida Inc.)

(hereinafter called, collectively, “**Go-To Stoney Creek**”)

OF THE THIRD PART

WHEREAS the parties hereto, *inter alia*, entered into a Memorandum of Understanding dated April 5, 2019, as amended from time to time (the “**MOU**”).

AND WHEREAS the parties hereto have agreed to enter into this Agreement relating to certain terms of the MOU as more particularly set forth herein. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the MOU.

NOW THEREFORE IN CONSIDERATION OF the payment of the sum of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties hereto), the parties hereto covenant and agree as follows:

1. GUARANTEE

- (a) Go-To Spadina hereby unconditionally and irrevocably guarantees to the Trustee, on behalf of Building & Development Mortgages Canada Inc., the due and punctual payment and performance to the Trustee upon demand of all debts, liabilities and obligations of or owing, now or in the future, by Adelaide Square Developments Inc. or the Guarantors to the Trustee under the MOU, including the payment of the Density Bonus as and when due, and the payment of all costs and expenses, including any liquidated damages, incurred by the Trustee in connection with the enforcement of its rights under the MOU.
- (b) Go-To Spadina hereby agrees that the terms of the MOU applicable to the Guarantors and the Guaranteed Obligations shall apply to Go-To Spadina and the guarantee set forth in section 1(a) hereof, respectively, *mutatis mutandis* (including, for certainty, sections 1.0(e) and 2.0 of the MOU), and that Go-To Spadina shall comply with and be bound by such terms.

2. EQUITABLE MORTGAGE

- (a) Go-To Spadina, as collateral security for the guarantee set out in section 1(a) hereof and Go-To Spadina's obligations hereunder and under the MOU, shall execute and deliver to the Trustee an equitable mortgage effective as of the date hereof (the "**Equitable Mortgage**") in the form attached as Schedule "A" hereto. Pursuant to the Equitable Mortgage, Go-To Spadina shall grant the Trustee a charge against the Combined Properties in the principal amount of \$5,200,000.
- (b) Go-To Spadina shall execute and deliver on the date hereof an Acknowledgment and Direction (with the Equitable Mortgage attached thereto) in the form attached as Schedule "B" hereto (the "**A&D**") to the Trustee's solicitors, which executed A&D shall be held in escrow by the Trustee's solicitors to be registered only in accordance with, and subject to the terms set out in, section 2(e) hereof.
- (c) The Trustee acknowledges that it will no longer rely on Sections 1.01(f)(g)(h)(i) and (j) of the MOU and such sections shall be inoperable and of no further force and effect with respect to the Trustee.
- (d) In the event that the Equitable Mortgage is registered on title to the Combined Properties in accordance with the terms hereof, the Trustee hereby covenants and agrees to enter into postponement, subordination and standstill agreements to postpone the Equitable Mortgage to the Refinancing Charge (as defined below) (pursuant to which the Trustee will agree to take no enforcement action under the Equitable Mortgage to permit the repayment of the Refinancing Charge). Upon written request from Go-To Spadina, the Trustee shall deliver to Go-To Spadina and any lender to Go-To Spadina, within fifteen (15) days of such written request, a status certificate confirming that the Equitable Mortgage is in good standing (or,

if it is not in good standing, then describing the event of default) and setting out the unforgiven balance of the Equitable Mortgage.

- (e) If payment of the Density Bonus is triggered under the MOU, Go-To Spadina hereby confirms that the Density Bonus shall be paid to the Trustee as more particularly set out in the MOU and by no later than ten (10) days following a Trigger Date. If payment of the Density Bonus to the Trustee is not made within such ten (10) days or upon any other event of default under the MOU, this Agreement or the Equitable Mortgage (including, for certainty, upon the occurrence of any default under any senior indebtedness incurred by Go-To Spadina in respect of the Combined Properties beyond the applicable cure periods and which is continuing), the A&D shall be released from escrow and the Trustee shall be entitled, without any further authorization required, to register a charge in respect of the Equitable Mortgage on title to the Combined Properties.

3. **RELEASE OF GO-TO STONEY CREEK**

Go-To Stoney Creek Elfrida Inc. and Go-To Stoney Creek Elfrida LP are hereby fully released by the Trustee from all of their respective obligations and covenants to the Trustee under the MOU and the CB Mortgage, and shall no longer have any obligations to the Trustee under the MOU, the CB Mortgage or otherwise, including with respect to sections 1.01(f), 1.01(g), 1.01(h), 1.01(j) and 5 of the MOU.

4. **DISCHARGE OF CB MORTGAGE**

The Trustee shall forthwith register or cause to be registered a discharge of the CB Mortgage as against the Alternate Property.

5. **RESTRICTIONS**

Other than to refinance, renew and/or amend any existing security currently registered in priority to the Equitable Mortgage that does not increase the principal amount of such existing security or the indebtedness relating thereto (other than in respect of reasonable fees and costs incurred in connection with any such refinancing, renewal or amendment) (the “**Refinancing Charge**”), Go-To Spadina shall not (a) incur any indebtedness, including the giving of guarantees or refinancing indebtedness, that would be secured in priority to or pari passu with the Equitable Mortgage, or (b) incur, create, assume or suffer to exist any lien, charge, security interest or other encumbrance on the Combined Properties other than those charges and encumbrances existing as of the date hereof, charges and encumbrances relating to any permitted refinancing, renewal or amendment to the existing financial encumbrances registered on title to the Combined Properties as of the date hereof and other customary non-financial encumbrances, in each case, without the prior consent of the Trustee. Go-To Spadina shall be provided with a ten (10) day period to have any such lien, charge, security interest or other encumbrance removed from title to the Combined Properties following the date of registration thereof; provided however, that if Go-To Spadina reasonably requires more than ten (10) days to have such lien, charge, security interest or other

encumbrance removed from title to the Combined Properties, then Go-To Spadina shall not be deemed to be in default of this Agreement or the Equitable Mortgage if it shall have commenced performance for such removal within such ten (10) day period and thereafter shall be diligently performing same in good faith to completion. Go-To Spadina hereby acknowledges and agrees that this section 5 shall be deemed to be incorporated as a term of the Equitable Mortgage and any default by Go-To Spadina of this section 5 shall also be deemed to constitute a default by Go-To Spadina of the Equitable Mortgage.

6. REPORTING

Go-To Spadina hereby agrees to comply with section 1.0(d) of the MOU with respect to the Combined Properties, *mutatis mutandis*, including to provide the Trustee with any interim or final approval with respect to the Combined Properties granted by the City of Toronto Planning Department or other applicable authorities within five (5) business days of receipt thereof. Go-To Spadina shall also provide the Trustee with immediate notice of any default or event of default arising under the Equitable Mortgage or the MOU, and with such other reporting or updates with respect to the Combined Properties as reasonably requested by the Trustee from time to time.

7. MISCELLANEOUS TERMS

- (a) The parties acknowledge that the MOU remains in full force and effect and unamended, but subject to the terms agreed herein as between the parties hereto.
- (b) This Agreement shall constitute a binding contract and shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns and time shall in all respects be of the essence. It is agreed that there are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein in writing. The time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties hereto or by their respective solicitors who are expressly appointed in that regard.
- (c) This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one counterpart. The execution and delivery of this Agreement by facsimile or electronic transmission shall be as valid, binding and effective as though an original hereof had been executed and delivered by the parties hereto.
- (d) All notices hereunder shall be in writing and given by personal delivery or by email addressed:

If to Go-To Spadina at:

Go-To Spadina Adelaide Square Inc. / Go-To Spadina Adelaide Square LP
1267 Cornwall Road, Suite 201
Oakville, ON L6J 7T5
Attention: Oscar Furtado
Email: oscarfurtado@gotodevelopments.com

With a copy to its solicitors at:

Torkin Manes LLP
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7
Attention: Stephanie Eiley
Email: seiley@torkinmanes.com

If to the Trustee at:

FAAN Mortgage Administrators Inc., as court-appointed trustee of Building & Development Mortgages Canada Inc.
20 Adelaide Street East, Suite 920
Toronto, ON M5C 2T6
Attention: Naveed Manzoor / Lana Bezner
Email: naveed@faanmortgageadmin.com / lana@faanmortgageadmin.com

With a copy to its solicitors at:

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8
Attention: Michael De Lellis / Martino Calvaruso
Email: mdelellis@osler.com / mcalvaruso@osler.com

Any notice delivered personally or by email transmission shall be deemed to have been validly and effectively given and received on the date of such delivery or transmission provided that such notice is delivered or transmitted prior to 5:00 p.m. (Toronto time) on such date and provided that such date is a business day. If such notice is delivered or transmitted after 5:00 p.m. (Toronto time) or if such notice is delivered or transmitted on a date that is not a business day, such notice shall be deemed to have been given and received on the next following business day. Any notice which has been mailed shall be deemed to have been validly and effectively given and received on the third business day following the date on which such


notice was mailed. Each party agrees to immediately notify the other party in the event of a change of address.

- (e) If there is any inconsistency between the terms of the MOU and this Agreement, the terms in this Agreement shall govern.
- (f) This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[Remainder of page intentionally blank]


IN WITNESS WHEREOF the parties have hereunto set their hands and corporate seals on the date first above mentioned.

GO-TO SPADINA ADELAIDE SQUARE INC.

Per: 

Name: Oscar Furtado
Title: President
I have authority to bind the corporation

GO-TO SPADINA ADELAIDE SQUARE LP,
By its General Partner,
GO-TO SPADINA ADELAIDE SQUARE INC.

Per: 

Name: Oscar Furtado
Title: President
I have authority to bind the limited
partnership

FAAN MORTGAGE ADMINISTRATORS
INC., solely in its capacity as Court-appointed
Trustee of BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.

Per: _____
Name:
Title:
I have authority to bind the Trustee

IN WITNESS WHEREOF the parties have hereunto set their hands and corporate seals on the date first above mentioned.


GO-TO SPADINA ADELAIDE SQUARE INC.

Per: _____
Name: Oscar Furtado
Title: President
I have authority to bind the corporation

GO-TO SPADINA ADELAIDE SQUARE LP,
By its General Partner,
GO-TO SPADINA ADELAIDE SQUARE INC.

Per: _____
Name: Oscar Furtado
Title: President
I have authority to bind the limited partnership

FAAN MORTGAGE ADMINISTRATORS
INC., solely in its capacity as Court-appointed
Trustee of BUILDING & DEVELOPMENT
MORTGAGES CANADA INC.

Per:  _____
Name: Lana Bezner
Title: Managing Director
I have authority to bind the Trustee

Go-To Stoney Creek hereby acknowledges the terms of this Agreement, including it being released by the Trustee from its obligations under the MOU.

GO-TO STONEY CREEK ELFRIDA INC.

Per:



Name: Oscar Furtado

Title: President

I have authority to bind the corporation

GO-TO STONEY CREEK ELFRIDA LP,
By its General Partner,
GO-TO STONEY CREEK ELFRIDA INC.

Per:



Name: Oscar Furtado

Title: President

I have authority to bind the limited
partnership

Appendix 29:
CHAT Investor Notice dated January 18, 2022



January 18, 2022

Dear Lender:

Re: Syndicated Mortgage Loan initially made to Langston Hall Development Corporation pursuant to the loan agreement dated June 16, 2010 and assumed by Fortress Charlotte Inc. and Syndicated Mortgage Loan made to the Borrower pursuant to the loan agreement dated December 1, 2014 on the security of a mortgage on the property located at 46 Charlotte, Toronto, ON (“CHAT Project”)

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 (“**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 and further to our previous notices with respect to the CHAT Project and the Trustee’s twenty-sixth report to Court dated May 21, 2021 and the Trustee’s twenty-seventh report to Court dated January 18, 2022.

As was detailed in previous notices, the CHAT Project borrower presented an executed agreement of purchase and sale to the Trustee in March 2019 in respect of the sale of the CHAT Project (“**CHAT Transaction**”) to Adelaide Square Developments Inc. (“**CHAT Purchaser**”). Despite being presented with an executed agreement, the Trustee negotiated an amended agreement of purchase and sale with the CHAT borrower and the CHAT Purchaser for a higher sale price of \$16.5 million of which approximately \$3.6 million was payable to BDMC at close.

In addition, the Trustee, the CHAT Purchaser, Go-To Stoney Creek Elfrida LP, Go-To Stoney Creek Elfrida Inc. (collectively, “**Go-To Stoney Creek**”), and its principals including Mr. Oscar Furtado, among others, also entered into a memorandum of understanding (“**MOU**”) in respect of the CHAT Transaction. Pursuant to the MOU and after the closing of the CHAT Transaction, BDMC received additional payments totaling \$2.095 million, inclusive of applicable penalties, and was entitled to receive a further payment of up to \$5.2 million based on the achievement by the CHAT Purchaser of certain development milestones (“**Density Bonus**”). As part of the CHAT Transaction, Go-To Stoney Creek provided the Trustee with security on a property located in Hamilton, Ontario (“**Alternate Property**”), in



respect of the Density Bonus and certain other guarantees that were provided to the Trustee pursuant to the MOU. For clarity, the Density Bonus is the only potential remaining amount that may be payable to BDMC in respect of the CHAT Transaction as all other amounts have been paid.

In April 2021, notwithstanding that the CHAT Purchaser had not obtained the development approvals that may give rise to payment of the Density Bonus, Mr. Furtado contacted the Trustee and took the position that the Trustee was required to discharge its mortgage on the Alternate Property. He advised that, in his view, in light of recent input received from the City of Toronto regarding development approvals, it was unlikely that the Density Bonus would become payable.

While the Trustee did not agree with Go-To Stoney Creek's position, given the potentially unrecoverable cost to the BDMC estate of litigating the requested discharge, the Trustee ultimately agreed to discharge its security on the Alternate Property in exchange for an equitable mortgage on 355 Adelaide St. W and 46 Charlotte St. ("**Combined Properties**") ("**Equitable Mortgage**") (i.e. a mortgage that can be registered on title to a property upon the occurrence of certain conditions), being the properties pursuant to which the Density Bonus relates. On that basis, on November 8, 2021 the Trustee, Go-To Stoney Creek and Go-To Spadina Adelaide Square Inc. and Go-to Spadina Adelaide Square LP (collectively, "**Go-To Spadina**") entered into a Security Substitution Agreement and Release ("**CHAT Security Agreement**") to, among other things, document the release of the mortgage on the Alternate Property and the terms of the Equitable Mortgage, including the conditions upon which such mortgage could be registered by the Trustee on title to the Combined Properties.

On December 10, 2021, the Trustee learned that pursuant to an application filed by the Ontario Securities Commission ("**OSC**"), the Court granted an order appointing KSV Restructuring Inc. as receiver and manager (in such capacity, "**Go-To Receiver**") of the real property and other assets, undertakings and properties of Go-To Developments Holdings Inc., Go-To Spadina and Go-To Stoney Creek (parties to the CHAT Security Agreement), among other respondents (collectively, "**Go-To Respondents**") ("**Receivership Proceedings**"). The principal of the Go-To Respondents, Mr. Furtado, is also a named respondent in the Receivership Proceedings. In the materials filed in support of the receivership application, the OSC submitted, among other things, evidence alleging that Mr. Furtado misappropriated and improperly misused funds in connection with the Go-To Spadina project.

As a result of the Receivership Proceedings, certain events of default have now occurred and are continuing under the MOU and the Equitable Mortgage. Pursuant to the terms of the CHAT Security Agreement, upon such events of default, the Trustee was permitted to move forward with the registration of the Equitable Mortgage on title to the Combined Properties without any further authorization required. Upon learning of the Receivership Proceedings



and the terms thereof, the Trustee: (i) immediately engaged with the Go-To Receiver and its counsel to determine the Trustee's next steps with respect to the Equitable Mortgage given the terms of the Go-To Receiver's appointment order; and (ii) registered the Equitable Mortgage on title to the Combined Properties on December 17, 2021.

The Trustee is continuing to monitor the Receivership Proceedings and considering further actions, if any, and will keep you apprised of any further developments.

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

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

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

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 30:
Sky City Investor Notice dated December 1, 2021

December 1, 2021

Dear Lender:

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

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

We are writing to you in our capacity as Trustee regarding the Sky City Project and further to our notice dated April 24, 2021 (“**Notice**”).

As was advised in the Notice, there are multiple syndicated mortgage loans administered by BDMC (“**BDMC Debt**”) registered on title to the Property in fourth through eighth positions. The principal balance of the BDMC Debt in aggregate totals approximately \$32 million and was advanced by 649 individual lenders. There are three mortgages registered on title to the Sky City Project in priority to the BDMC Debt that were either originally registered in the name of 11615467 Canada Ltd. (“**1161 Canada**”) or subsequently transferred to 1161 Canada. As of March 2021 approximately \$11.1 million (“**Priority Debt**”) was owed to 1161 Canada.

Sale Process Update

As was advised in the Notice, since no bids were received for the Property at the public auction held in March 2021 (“**Auction**”), 1161 Canada proceeded to retain a commercial real estate broker (“**Listing Agent**”) to list the Property for sale. The Listing Agent listed the Property for sale for \$9.75 million, in July 2021. As you were previously advised, the Property was also marketed for sale by the Borrower in September 2020 with a different commercial real estate broker; however, the Borrower’s sale process did not result in a successful transaction for the Property.

On August 9, 2021 the Trustee was advised by counsel to 1161 Canada that 1161 Canada had entered into a conditional agreement (“**Conditional Agreement**”) for the sale of the

Property. Thereafter the Trustee spoke with the Listing Agent who advised that the Property was actively marketed for sale by agents based in both Winnipeg and Toronto to ensure broad coverage of the Property and that a number of interested parties executed confidentiality agreements; however, the Conditional Agreement, received from a third party purchaser (“**Purchaser**”), was the highest and best offer for the Property. The Listing Agent further advised that the Conditional Agreement is in excess of both appraisals commissioned by 1161 Canada for the Property prior to the commencement of the sale process.

The transaction contemplated in the Conditional Agreement is scheduled to close on December 10, 2021 (“**Transaction**”). Given the commercially sensitive nature of the Transaction, the purchase price for the Property has not been made public at this time. However, counsel to 1161 Canada has confirmed that the purchase price is less than the amount required to satisfy the Priority Debt in full. Accordingly, there will be no proceeds from the Transaction available to repay any portion of the BDMC Debt.

Further, in order to effect the Transaction, a notice of application for an order of foreclosure (“**Foreclosure Notice**”) has been made by 1161 Canada (a copy of which is attached to this notice) requiring the mortgagor or any other party with an interest in the Property to redeem the mortgages from 1161 Canada within one month. Provided the mortgagor or any other party with an interest in the Property fails to redeem the mortgages within the requisite time, the District Registrar will issue a final order of foreclosure, which after being registered in the Land Titles Office, will transfer legal title to 1161 Canada free and clear of all subsequent encumbrances, including the charges securing the BDMC Debt. Once title to the Property has vested in 1161 Canada, the Property will be subsequently sold to the Purchaser.

In addition to the discussion with the Listing Agent detailed above with respect to the marketing process for the Property, the Trustee considered the following in its review of the proposed Transaction and Foreclosure Notice: (i) the purchase price provided for in the Conditional Agreement is in excess of both appraisals commissioned by 1161 Canada and an independent appraisal commissioned by the Trustee in September 2018, (ii) no offers were received for the Property at Auction, and (iii) the Property was previously listed for sale by the Borrower without resulting in a successful transaction. **Based on the foregoing, the Trustee does not believe there is a basis to and does not intend to object to the Foreclosure Notice.** Should there be no objections to the Foreclosure Notice, the Transaction is expected to close and the Land Titles Office will issue the new Certificate of Title in the name of the Purchaser.

The Trustee will keep you apprised of developments with respect to the Foreclosure Notice as well as the closing of the Transaction.

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

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

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

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 31:
6th & 10th 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 10th Avenue SW, Calgary, AB, (“6th and 10th Project”)

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 6th and 10th Project (“**6th and 10th SMLs**”).

Project Update

The 6th and 10th 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 6th and 10th 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 6th and 10th 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.¹ 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 6th and 10th 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 6th and 10th 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 6th and 10th 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 6th and 10th 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.

¹ Interest was last paid to the 6th and 10th 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 **6th and 10th Project**).

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

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

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

Yours very truly,

Faan Mortgage Administrators Inc.

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

Appendix 32:
Variance Analysis for the Project Period

Building Development & Mortgages Canada Inc.

Variance Analysis for the Period May 1, 2021 to November 30, 2021 ("Projection Period")

(Unaudited; \$C)

	Note	Projected	Actual	Variance
Administrative holdback	1	2,185,653	2,449,721	264,068
Interest		15,113	24,742	9,629
Total receipts		<u>2,200,766</u>	<u>2,474,463</u>	<u>273,697</u>
Staff		141,380	108,402	32,978
IT fees		5,709	2,664	3,045
Office expenses		5,250	656	4,594
Insurance		59,899	51,344	8,555
Other		13,160	9,652	3,508
Interest & bank charges		3,500	3,023	477
Operating costs		<u>228,898</u>	<u>175,742</u>	<u>53,156</u>
Appraisals and related consultants		17,500	6,215	11,285
Professional fees	2	3,880,136	1,554,814	2,325,322
Total disbursements		<u>4,126,534</u>	<u>1,736,771</u>	<u>2,389,763</u>
Net cash inflow (outflow)		<u>(1,925,768)</u>	<u>737,692</u>	<u>2,663,460</u>

Notes

1. Proceeds relate to the Administrative Holdback retained from the residual proceeds from the North and Jasper House Project sale transactions, the Castlemore Settlement Payment, the South Shore Proceeds, and the Wellington Project second settlement payment. The positive variance relates to the amounts withheld from the South Shore Proceeds which were not forecast to be collected in the Projection Period
2. The positive variance is expected to be a timing difference.

Appendix 33:
Cash Flow Projection

Building Development & Mortgages Canada Inc.
Cash Flow Projection for the Period Ending July 31, 2022
(Unaudited; \$C)

	Note	Jan	Feb	Mar	Apr	May	Jun	Jul	Total
Administrative holdback	1	-	-	-	-	-	-	-	-
Interest	2	1,827	1,724	1,463	1,393	1,324	1,254	1,184	10,168
Total receipts		1,827	1,724	1,463	1,393	1,324	1,254	1,184	10,168
Staff	3	14,077	14,077	14,077	14,077	14,077	14,077	14,077	98,538
IT fees		1,266	766	766	766	766	766	766	5,862
Office expenses		750	750	750	750	751	752	753	5,256
Other		1,000	2,300	1,000	2,300	2,300	2,300	2,300	13,500
Interest & bank charges		500	500	500	500	501	502	503	3,506
Operating costs		17,593	18,393	17,093	18,393	18,395	18,397	18,399	126,662
Appraisals and related consultants	4	2,500	2,500	2,500	2,500	2,500	2,500	2,500	17,500
Professional fees	5	290,000	764,810	190,000	190,000	190,000	190,000	190,000	2,004,810
Total disbursements		310,093	785,703	209,593	210,893	210,895	210,897	210,899	2,148,971
Opening cash	6	5,480,456	5,172,190	4,388,211	4,180,081	3,970,581	3,761,010	3,551,367	5,480,456
Net cash inflow (outflow)		(308,266)	(783,979)	(208,130)	(209,499)	(209,571)	(209,643)	(209,715)	(2,138,804)
Closing cash		5,172,190	4,388,211	4,180,081	3,970,581	3,761,010	3,551,367	3,341,652	3,341,652

Notes

- Similar to previous cash flow projections filed with the Court, the receipts during the Cash Flow Period are projected to be significantly lower than the projected expenses. Notwithstanding this, the Trustee notes that progress has been made with respect to realizations on certain projects and the Trustee expects to receive additional Realized Property during the Cash Flow Period, a portion of which will be used to offset the projected expenses. Due to the uncertainty and timing of these additional realizations and similar to previous cash flow projections filed with the Court, the Trustee has not included a forecast for these receipts during the Cash Flow Period.
- Represents estimated interest to be earned on Estate Property and Realized Property maintained by the Trustee during the Cash Flow Period. When significant cash balances accrue in the various accounts, the Trustee arranges for short term GICs in order to generate additional interest, which subsequently forms part of the Estate Property used to offset costs associated with the administration of the estate.
- Represents gross BDMC contractor costs.
- Fees are estimates for consulting services provided by the appraisal firms and a planning consultant.
- Represents estimated professional fees (including HST) to be paid during the Cash Flow Period including a payment in February, 2022 of certain outstanding professional fees through December 31, 2021 which, remain unpaid as at the date of the Twenty-Seventh Report.
- Opening cash flow is comprised of Estate Property, excluding the term deposit required under the MBLAA.

Appendix 34:
Manzoor Affidavit

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

**AFFIDAVIT OF NAVEED MANZOOR
(sworn January 18, 2022)**

I, Naveed Manzoor, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a managing director of FAAN Mortgage Administrators Inc., the Court-Appointed Trustee (the “**Trustee**”), without security, of all of the assets, undertakings and properties of the Respondent in these proceedings and as such have knowledge of the matters

hereinafter deposed. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.¹

2. I make this affidavit in support of a motion by the Trustee for, among other things, approval of the fees and disbursements of the Trustee.

3. In addition to the description of the activities of the Trustee contained in its Twenty-Seventh Report dated January 18, 2022, attached hereto as Exhibit “A” is a copy of each invoice issued by the Trustee for the period between May 1, 2021 and December 31, 2021 (the “**Approval Period**”) setting out the Trustee’s fees, reimbursable expenses and applicable taxes for the relevant period, along with a summary of the activities undertaken by the Trustee in connection with such invoice. I confirm that these accounts accurately reflect the services provided by the Trustee in this matter for the Approval Period and the fees and disbursements claimed by it for the Approval Period.

4. Attached hereto as Exhibit “B” is a schedule of the accounts rendered by the Trustee for the fees and disbursements incurred in connection with the activities summarized in Exhibit “A” undertaken in these proceedings during the Approval Period.

5. Attached hereto as Exhibit “C” is a schedule summarizing the individuals who have worked on this matter, including their roles, hours and rates during the Approval Period.

6. Confidential Exhibit “D” (the “**Confidential Manzoor Exhibit**”) hereto contains true copies of the dockets rendered by the Trustee for activities undertaken during the Approval Period. The Trustee is seeking a sealing order with respect to the Confidential Manzoor Exhibit

¹ Capitalized terms used and not otherwise defined in this affidavit have the meanings given to them in the Twenty-Seventh Report to Court of the Trustee dated January 18, 2022.

due to the fact that the information contained in the Trustee’s detailed dockets includes privileged and commercially sensitive information regarding the projects and BDMC generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings.

7. To the best of my knowledge, the total hours, fees and disbursements incurred by the Trustee for the Approval Period are reasonable and appropriate in the circumstances.

SWORN BEFORE ME over video teleconference this 18th day of January, 2022. The affiant was located in the Town of Oakville in the Province of Ontario and the commissioner was located in the City of Toronto in the Province of Ontario. The affidavit was commissioned remotely in accordance with O. Reg. 431/20 as a result of COVID-19



Commissioner for Taking Affidavits

Naveed Manzoor

THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF NAVEED MANZOOR
SWORN BEFORE ME ON THIS 18th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Exhibit A



Invoice 037

May 31, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee (“Trustee”) of Building & Development Mortgages Canada Inc. (“BDMC”)**

Invoice for the period May 1 to May 31, 2021

The Trustee’s activities for the period May 1 to May 31, 2021 (“**Period**”), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters including, but not limited to, the following:
 - 6th and 10th Project – reviewing and executing partial discharges;
 - Bowmanville Project – corresponding with an investor regarding a rescission right claim. Drafting and reviewing individual investor notices with respect to the distribution of the residual proceeds from the sale transaction;
 - Castlemore Project – internal review and discussion with Osler Hoskin & Harcourt LLP (“**Osler**”), the Trustee’s counsel regarding next steps with respect to a settlement agreement and related draft Court order. Drafting, reviewing, and finalizing an investor notice with respect to the settlement agreement;
 - Charlotte Adelaide (CHAT) Project – continuing to correspond with the purchaser, the purchaser’s counsel and Osler regarding its request of the Trustee to discharge the mortgage it was granted as security for the potential density bonus payment;
 - Highlands of York Region Project – drafting, reviewing and finalizing a notice to investors regarding an update on the borrower’s sales process;
 - Jasper House Project – finalizing the details of a settlement proposal in respect of a claim made by the borrower, on behalf of itself and a related entity, to the residual proceeds from the sale of the project and corresponding with Osler regarding same. Reviewing and commenting on a draft Court order. Drafting, reviewing and finalizing an investor notice regarding the settlement;



- Nobleton South Project – drafting, reviewing and finalizing an investor notice with respect to the sale of the property and the distribution of the sale proceeds;
 - North Project – finalizing the details of a settlement proposal in respect of a claim made by the borrower, on behalf of itself and a related entity, to the residual proceeds from the sale of the project and corresponding with Osler regarding same. Reviewing and commenting on a draft Court order. Drafting, reviewing and finalizing an investor notice with respect to the settlement;
 - Prescott Project - drafting, reviewing and finalizing an investor notice with respect to the sale of the final two residential units;
 - Rutherford Project – reviewing and executing partial discharges; and
 - South Shore Project – internal review and discussions with Osler regarding matters related to the sale of the project by the priority lender including an analysis of the payout statement, direction of funds, and lien claims. Reviewing and commenting on a letter to the priority lender with respect to the payment it received on closing of the sale transaction. Drafting and reviewing a notice to investors regarding the sale of the property;
- Drafting, reviewing and finalizing the Trustee’s Twenty-Sixth Report to Court dated May 21, 2021 in respect of the motion returnable June 7, 2021 (“**June 7th Motion**”), and corresponding with Osler and Chaitons LLP (“**Representative Counsel**”), extensively regarding same;
 - Reviewing and commenting on the draft notice of motion and the draft Court order in respect of the June 7th Motion;
 - Drafting, reviewing and finalizing a notice to investors in respect of the June 7th Motion; and
 - Providing project specific updates to the investors upon request.

Investor Notices

- Drafting, finalizing and distributing the following project specific notices:
 - Highlands of York Region Notice dated May 18, 2021;
 - Prescott Notice dated May 19, 2021;
 - Trustee’s Notice dated May 22, 2021;
 - Castlemore Notice dated May 22, 2021;
 - Bowmanville Notice dated May 22, 2021;



- Jasper House Notice dated May 22, 2021;
- North Notice dated May 22, 2021; and
- Nobleton South Notice dated May 22, 2021.

General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare Trust Company of Canada on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	174,904.00
HST		22,737.52
Total	\$	<u>197,641.52</u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.

Time Summary

For the Period May 1 to 31, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	65.00	35,425.00
Lana Bezner	Managing Director	495	64.80	32,076.00
Daniel Sobel	Managing Director	495	9.75	4,826.25
Shelby Draper	Senior Director	475	89.90	42,702.50
Naomi Leiberman	Manager	440	92.55	40,722.00
Nick Niktikakis	Manager	325	58.93	19,152.25
			<u>380.93</u>	<u>174,904.00</u>

Average Hourly Rate				<u>459.15</u>
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Invoice 038

June 30, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee (“Trustee”) of Building & Development Mortgages Canada Inc. (“BDMC”)**

Invoice for the period June 1 to June 30, 2021

The Trustee’s activities for the period June 1 to June 30, 2021 (“**Period**”), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters including, but not limited to, the following:
 - Bowmanville Project – corresponding with an investor regarding a rescission right claim. Reviewing and finalizing a distribution schedule and drafting, reviewing and finalizing individual investor notices with respect to the distribution of the residual proceeds from the sale transaction;
 - Brookdale Project – reviewing the amended statement of claim filed on behalf of the bondholders in respect of their claim to the residual sale transaction proceeds currently being held by the Court. Corresponding with Osler Hoskin & Harcourt LLP (“**Osler**”), the Trustee’s counsel regarding same;
 - Charlotte Adelaide (CHAT) Project – internal discussions with Osler regarding the memorandum of understanding and possible next steps with respect to the payment of the potential density bonus payment;
 - Humberstone Project – corresponding with the borrower and with Osler regarding the postponement request from the title insurer and reviewing documentation in respect of same;
 - Nobleton South Project – reviewing and finalizing a distribution schedule of residual proceeds from the sale transaction. Drafting, reviewing and finalizing individual investor notices with respect to the distribution of sale proceeds;
 - Rutherford Project – corresponding with the borrower regarding an updated sales analysis. Reviewing and executing partial discharges;



- South Shore Project – ongoing review and analysis of the payout to the priority lender. Corresponding internally and with Osler regarding matters related to the sale process, sale transaction and payout to the priority lender. Drafting, reviewing, and finalizing a notice to investors regarding the sale of the property;
- Whitby Project – reviewing and finalizing a distribution schedule following receipt of residual proceeds from the sale transaction and drafting, reviewing and finalizing individual investor notices with respect to the distribution;
- Attending Court hearing in respect of the Trustee’s June 7, 2021 motion; and
- Providing project specific updates to the investors upon request.

Investor Notice

- Drafting, finalizing and distributing the South Shore Notice dated June 2, 2021.

General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare Trust Company of Canada on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	71,290.35
HST		9,267.75
Total	\$	<u>80,558.10</u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.

Time Summary

For the Period June 1 to 30, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	35.00	19,075.00
Lana Bezner	Managing Director	495	1.95	965.25
Daniel Sobel	Managing Director	495	4.00	1,980.00
Shelby Draper	Senior Director	475	32.25	15,318.75
Naomi Leiberman	Manager	440	27.74	12,205.60
Nick Niktikakis	Manager	325	66.91	21,745.75
			<u>167.85</u>	<u>71,290.35</u>
Average Hourly Rate				<u>424.73</u>



Invoice 039

July 31, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

Invoice for the period July 1 to July 31, 2021

The Trustee's activities for the period July 1 to July 31, 2021 ("**Period**"), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters including, but not limited to, the following:
 - Brookdale Project – internal review and analysis of the amended statement of claim filed on behalf of the bondholders in respect of their claim to the residual sale proceeds being held by the Court. Corresponding with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's legal counsel, regarding same. Corresponding internally regarding the Trustee's recovery scenario analysis;
 - Eden/King City Project – corresponding internally regarding a potential settlement offer from the borrower, the title insurers and Lawpro. Reviewing comments from Chaitons LLP's ("**Representative Counsel**") on the potential settlement. Reviewing documentation and correspondence related to the residual balance remaining in respect of the priority lenders' loan;
 - Humberstone Project – extensive communication with Osler, the borrower and the priority lender regarding the postponement request from the project's title insurer. Reviewing documentation related to the postponement request and discussing same with the borrower, Osler and the priority lender including attending several phone calls;
 - Jasper House Project – reviewing and finalizing a distribution schedule of residual proceeds from the sale transaction. Drafting, reviewing and finalizing individual investor notices with respect to the distribution;
 - North Project – reviewing and finalizing a distribution schedule of residual proceeds from the sale transaction. Drafting, reviewing and finalizing individual investor notices with respect to the distribution;



- South Shore Project – ongoing review and analysis of the payout to the priority lender. Corresponding internally and with Osler regarding matters related to the sale process conducted by the priority lender and payment amounts included in its payout statement. Reviewing and corresponding with Osler regarding a letter to the priority lender’s legal counsel; and
- Wellington Project – corresponding with the borrower regarding the timing of the second settlement payment.
- Corresponding with Osler regarding the status of the various ongoing class actions;
- Corresponding with the RCMP regarding matters related to the Tax Opinions; and
- Providing project specific updates to the investors upon request.

General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare Trust Company of Canada on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	67,496.95
HST		<u>8,774.60</u>
Total	\$	<u><u>76,271.55</u></u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.

Time Summary

For the Period July 1 to 31, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	25.20	13,734.00
Lana Bezner	Managing Director	495	35.85	17,745.75
Shelby Draper	Senior Director	475	22.55	10,711.25
Naomi Leiberman	Manager	440	16.63	7,317.20
Nick Niktikakis	Manager	325	55.35	17,988.75
			<u>155.58</u>	<u>67,496.95</u>
Average Hourly Rate				<u>433.84</u>



Invoice 040

August 31, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

Invoice for the period August 1 to August 31, 2021

The Trustee's activities for the period August 1 to August 31, 2021 ("**Period**"), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters including, but not limited to, the following:
 - 6th and 10th Project – corresponding internally regarding a related party claim being advanced by the borrower and preparing and reviewing an analysis regarding same. Reviewing and executing partial discharges, as required;
 - Castlemore Project - dealing with matters related to the settlement distribution. Reviewing and finalizing individual investor notices with respect to the settlement distribution;
 - Charlotte Adelaide (CHAT) Project – corresponding with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's legal counsel, regarding matters related to the memorandum of understanding and the second density bonus payment and corresponding with the Purchaser regarding the same;
 - Eden/King City Project – corresponding with Osler, Chaitons LLP's ("**Representative Counsel**"), the Bankruptcy Trustee and its counsel on matters related to a potential settlement with the borrower, the title insurers and Lawpro.
 - King Square Project – corresponding with the priority lender regarding the status of unit sales and the remaining square footage to be sold and reviewing information provided by the priority lender regarding same;
 - South Shore Project – continuing to review and analyze information related to the payout to the priority lender. Corresponding internally and with Osler regarding matters related to the sale process and payment amounts included in the priority lender's payout statement. Reviewing a draft letter to the priority lender's counsel regarding the Trustee's review of, among other things, the payout statement. Reviewing a draft notice of motion prepared by Osler to, among other things, direct



the priority lender to provide the Trustee with the remaining information requested. Corresponding internally and with Osler regarding the priority lender's response;

- Wellington Project – dealing with matters related to the receipt of the second settlement payment from the borrower. Reviewing and finalizing individual investor notices with respect to the distribution of same;
- Corresponding with Osler regarding the status of the various ongoing class actions;
- Corresponding with Osler regarding Tax Opinion matters;
- Corresponding with the RCMP regarding Tax Opinion matters; and
- Providing project specific updates to the investors upon request.

General Matters

- Compiling a summary and completing an analysis of the status of the remaining syndicated mortgage loans and corresponding internally regarding next steps with respect to same;
- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare Trust Company of Canada on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	62,640.80
HST		8,143.30
Total	\$	<u>70,784.10</u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.

Time Summary

For the Period August 1 to 31, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	19.60	10,682.00
Lana Bezner	Managing Director	495	38.25	18,933.75
Daniel Sobel	Managing Director	495	1.00	495.00
Shelby Draper	Senior Director	475	24.35	11,566.25
Naomi Leiberman	Manager	440	23.27	10,238.80
Nick Niktikakis	Manager	325	33.00	10,725.00
			<u>139.47</u>	<u>62,640.80</u>
Average Hourly Rate				<u>449.13</u>



Invoice 041

September 30, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

Invoice for the period September 1 to September 30, 2021

The Trustee's activities for the period September 1 to September 30, 2021 ("**Period**"), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters including, but not limited to, the following:
 - 6th and 10th Project – corresponding internally regarding the terms of an escrow agreement. Reviewing and analyzing the related party claim advanced by the borrower. Reviewing and executing partial discharges as required;
 - Charlotte Adelaide (CHAT) Project – corresponding with Osler, Hoskin and Harcourt LLP ("**Osler**"), counsel to the Trustee, regarding matters related to an amendment to the memorandum of understanding in respect of the second density bonus payment and corresponding with the purchaser and its counsel regarding same;
 - Highlands of York Region Project – corresponding with the second priority lender regarding the status of the project and its intentions regarding next steps with;
 - Rutherford Project – corresponding with the borrower regarding the status of the project and expected next steps and discussing same internally;
 - South Shore Project – continuing to review and analyse the payout to the priority lender from the sale transaction. Corresponding internally and with Osler regarding matters related to the sale and payout to the priority lender. Reviewing documentation provided by the priority lender with respect to the payout. Reviewing the BDMC loan agreements in order to determine the priorities among the three syndicated mortgage loans and discussing same with Osler; and
 - Winnipeg Project – corresponding with counsel and agent to the priority lender regarding the status of the sales process.



- Corresponding with Osler regarding the status of each of the class actions to which BDMC is a named defendant;
- Providing project specific updates to the investors upon request.

General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare Trust Company of Canada on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	60,394.00
HST		7,851.22
Total	\$	<u>68,245.22</u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.

Time Summary

For the Period September 1 to 30, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	19.95	10,872.75
Lana Bezner	Managing Director	495	30.95	15,320.25
Daniel Sobel	Managing Director	495	1.25	618.75
Shelby Draper	Senior Director	475	15.30	7,267.50
Naomi Leiberman	Manager	440	20.40	8,976.00
Nick Niktikakis	Manager	325	53.35	17,338.75
			<u>141.20</u>	<u>60,394.00</u>
Average Hourly Rate				<u>427.72</u>



Invoice 042

October 31, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee (“Trustee”) of Building & Development Mortgages Canada Inc. (“BDMC”)**

Invoice for the period October 1 to October 31, 2021

The Trustee’s activities for the period October 1 to October 31, 2021 (“**Period**”), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters including, but not limited to, the following:
 - 6th and 10th Project – continuing to correspond internally and with Osler, Hoskin, Harcourt LLP (“**Osler**”), the Trustee’s counsel, regarding the terms of an escrow agreement in respect of the sale proceeds generated from unit sales and a related party claim advanced by the borrower. Reviewing and executing partial discharges, as required. Corresponding with the borrower regarding the status of the remaining unsold units;
 - Brookdale Project – corresponding with Computershare Trust Company of Canada (“**Computershare**”) regarding the investor fee structure;
 - Charlotte Adelaide (CHAT) Project – continuing to correspond with Osler regarding an amendment to the memorandum of understanding in respect of the second density bonus payment and corresponding with the purchaser and its counsel regarding same;
 - Harmony Village Lake Simcoe (The Kemp) Project – drafting a report to Court regarding the distribution of the remaining funds considering the claim submitted to the trustee by Fortress Real Developments Inc. (“**Fortress**”) on behalf of the project borrower (a party related to Fortress) and discussing same internally;
 - King Square Project – reviewing information provided by the priority lender in respect of unit sales and remaining units in inventory and corresponding internally regarding the Trustee’s review of the payout statement;



- South Shore Project – continuing to review and correspond regarding the payout to the priority lender. Corresponding with Osler regarding matters related to the sale and payout to the priority lender. Reviewing documentation provided by the priority lender with respect to the payout. Reviewing the BDMC loan agreements to determine priorities among the three syndicated mortgage loans.
- Corresponding with Osler regarding the status of each of the class actions to which BDMC is a named defendant; and
- Providing project specific updates to the investors upon request.

General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	46,842.60
HST		6,089.54
Total	\$	<u>52,932.14</u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.

Time Summary

For the Period October 1 to 31, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	13.20	7,194.00
Lana Bezner	Managing Director	495	21.65	10,716.75
Daniel Sobel	Managing Director	495	1.65	816.75
Shelby Draper	Senior Director	475	6.60	3,135.00
Naomi Leiberman	Manager	440	18.29	8,047.60
Nick Niktikakis	Manager	325	52.10	16,932.50
			<u>113.49</u>	<u>46,842.60</u>
Average Hourly Rate				<u>412.75</u>



Invoice 043

November 30, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

Invoice for the period November 1 to November 30, 2021

The Trustee's activities for the period November 1 to November 30, 2021 ("**Period**"), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters including, but not limited to, the following:
 - 6th and 10th Project – corresponding internally regarding the terms of an escrow agreement. Corresponding with the borrower regarding the status of the remaining unsold units in inventory. Drafting and reviewing an investor notice;
 - Brookdale Project – corresponding internally regarding an inquiry by a bondholder invested in the projection and communicating with the bondholder regarding same;
 - South Shore Project – continuing the Trustees ongoing review and analysis of the payout to the priority lender. Corresponding internally and with Osler regarding matters related to the sale and payout to the priority lender. Reviewing documentation provided by the priority lender with respect to the payout. Reviewing BDMC loan agreements to assess and determine priorities among the three syndicated mortgage loans.
 - Winnipeg Project – reviewing correspondence received from the priority lender's counsel with respect a foreclosure order. Internal discussions and with Osler regarding the same. Drafting and reviewing notice to investors;
- Corresponding with Osler regarding the status of each of the class actions to which BDMC is a named defendant;
- Corresponding internally and with Osler regarding the framework for the next omnibus report. Preparing the framework.
- Drafting the Twenty Seventh Report to Court;
- Providing project specific updates to the investors upon request.



General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare Trust Company of Canada on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	63,788.30
HST		8,292.48
Total	\$	<u>72,080.78</u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.
 Time Summary
 For the Period November 1 to 30, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	20.70	11,281.50
Lana Bezner	Managing Director	495	32.35	16,013.25
Daniel Sobel	Managing Director	495	6.00	2,970.00
Shelby Draper	Senior Director	475	6.05	2,873.75
Naomi Leiberman	Manager	440	29.92	13,164.80
Nick Niktikakis	Manager	325	53.80	17,485.00
			<u>148.82</u>	<u>63,788.30</u>
Average Hourly Rate				<u>428.63</u>



Invoice 044

December 31, 2021

Re: **FAAN Mortgage Administrators Inc. in its capacity as Court appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC")**

Invoice for the period December 1 to December 31, 2021

The Trustee's activities for the period December 1 to December 31, 2021 ("**Period**"), include, but are not limited to the following:

Project Matters

- Throughout the Period the Trustee dealt with numerous project specific matters and corresponded with Osler Hoskin & Harcourt LLP ("**Osler**"), the Trustee's counsel, and Chaitons LLP ("**Chaitons**"), representative counsel, as necessary regarding same, including, but not limited to, the following:
 - 6th and 10th Project – corresponding internally regarding the terms of an escrow agreement with the borrower and finalizing and executing the same. Corresponding with the borrower regarding the status of the remaining unsold units in inventory. Reviewing and finalizing an investor notice;
 - Charlotte Adelaide ("CHAT") Project – reviewing materials filed in connection with a receivership order involving the CHAT Project and discussing same internally and with Osler.
 - South Shore Project – continuing the Trustee's ongoing review and analysis of the payout to the priority lender. Corresponding internally and with Osler regarding matters related to the sale and payout to the priority lender. Reviewing documentation provided by the priority lender with respect to the payout. Reviewing BDMC loan agreements to assess and determine priorities among the three syndicated mortgage loans;
 - Winnipeg Project – reviewing correspondence received from the priority lender's counsel with respect to a foreclosure order and corresponding internally and with Osler regarding same. Reviewing and finalizing a notice to investors;
- Corresponding with Osler regarding the status of each of the class actions to which BDMC is a named defendant;
- Corresponding internally and with Osler regarding the framework for the next omnibus report and preparing same.



- Drafting the Twenty Seventh Report to Court;
- Providing project specific updates to the investors upon request.

Investor Notices

- Drafting, finalizing and distributing the following project specific notice:
 - Winnipeg Notice dated December 1, 2021; and
 - 6th and 10th Notice dated December 14, 2021.

General Matters

- Logging and responding to numerous investor calls and emails during the Period;
- Corresponding with Olympia Trust Company on a periodic basis regarding various matters related to the BDMC loans;
- Corresponding with Computershare Trust Company of Canada on a periodic basis regarding various matters related to certain BDMC loans;
- Paying operating expenses;
- Managing the BDMC staff, responding to their questions and providing direction as necessary;
- Corresponding with Representative Counsel on a periodic basis regarding matters not specifically referenced above; and
- Attending meetings, calls and exchanging numerous emails with Osler regarding matters not specifically referenced above.

Total fees per attached time summary	\$	48,381.40
HST		6,289.58
Total	\$	<u>54,670.98</u>



FAAN Mortgage Administrators Inc.
 Building & Development Mortgages
 Canada Inc.
 Time Summary
 For the Period December 1 to 31, 2021

Professional	Role	Rate (\$)	Hours	Total (\$)
Naveed Manzoor	Managing Director	545	10.30	5,613.50
Lana Bezner	Managing Director	495	26.35	13,043.25
Daniel Sobel	Managing Director	495	3.10	1,534.50
Shelby Draper	Senior Director	475	7.00	3,325.00
Naomi Leiberman	Manager	440	26.56	11,686.40
Nick Niktikakis	Manager	325	40.55	13,178.75
			113.86	48,381.40
Average Hourly Rate				424.92

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF NAVEED MANZOOR
SWORN BEFORE ME ON THIS 18th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Exhibit B

FAAN Mortgage Administrators Inc.
Building & Development Mortgages Canada Inc.

Invoice Summary

(Unaudited; \$C)

Date	Billing Period	Fees	HST	Total
31-May-21	May 1 to 31, 2021	174,904.00	22,737.52	197,641.52
30-Jun-21	June 1 to 30, 2021	71,290.35	9,267.75	80,558.10
31-Jul-21	July 1 to 31, 2021	67,496.95	8,774.60	76,271.55
31-Aug-21	August 1 to 31, 2021	62,640.80	8,143.30	70,784.10
30-Sep-21	September 1 to 30, 2021	60,394.00	7,851.22	68,245.22
31-Oct-21	October 1 to 31, 2021	46,842.60	6,089.54	52,932.14
30-Nov-21	November 1 to 30, 2021	63,788.30	8,292.48	72,080.78
31-Dec-21	December 1 to 31, 2021	48,381.40	6,289.58	54,670.98
Total		595,738.40	77,445.99	673,184.39

THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF NAVEED MANZOOR

SWORN BEFORE ME ON THIS 18th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Exhibit C

FAAN Mortgage Administrators Inc.
 Building & Development Mortgages Canada Inc.
Summary of Hours and Fees by Staff Member
 May 1, 2021 to December 31, 2021
 (Unaudited; \$C)

Professional	Role	Rate (\$)	Hours	Amount (\$)
Naveed Manzoor	Managing Director	545	208.95	113,877.75
Lana Bezner	Managing Director	495	252.15	124,814.25
Daniel Sobel	Managing Director	495	26.75	13,241.25
Shelby Draper	Senior Director	475	204.00	96,900.00
Naomi Lieberman	Manager	440	255.36	112,358.40
Nick Niktikakis	Manager	325	413.99	134,546.75
Total			1,361.20	595,738.40
Average Hourly Rate				<u>437.66</u>

THIS IS CONFIDENTIAL EXHIBIT "D" REFERRED TO IN
THE AFFIDAVIT OF NAVEED MANZOOR
SWORN BEFORE ME ON THIS 18th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Exhibit D

**THIS EXHIBIT IS REDACTED IN ITS ENTIRETY
AND IS SUBJECT TO A REQUEST FOR A SEALING ORDER**

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF NAVEED MANZOOR
(sworn January 18, 2022)

OSLER, HOSKIN & HARCOURT LLP

1 First Canadian Place, P.O. Box 50

Toronto, ON M5X 1B8

Phone: 416-362-2111

Fax: 416-862-6666

Michael De Lellis (LSO# 48038U)

Jeremy Dacks (LSO# 41851R)

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

Appendix 35:
De Lellis Affidavit

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

**AFFIDAVIT OF MICHAEL DE LELLIS
(sworn January 17, 2022)**

I, Michael De Lellis, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and am a partner with Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel for FAAN Mortgage Administrators Inc., in its capacity as Court-Appointed Trustee (the “**Trustee**”), without security, of all of the assets, undertakings and properties of the Respondent in these proceedings and as such have knowledge of the matters hereinafter deposed. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. I make this affidavit in support of a motion by the Trustee for, among other things, approval of the fees and disbursements of the Trustee and its counsel.
3. Attached hereto as Exhibit “A” is a copy of each invoice issued by Osler for the period between May 1, 2021 and December 31, 2021 (the “**Approval Period**”) setting out Osler’s fees, reimbursable expenses and applicable taxes for the relevant period, along with a summary of the activities undertaken by Osler in connection with such invoice. I confirm that these accounts accurately reflect the services provided by Osler in this matter for the Approval Period and the fees and disbursements claimed by it for the Approval Period.
4. Attached hereto as Exhibit “B” is a schedule of the accounts rendered by Osler to the Trustee for the fees and disbursements incurred by Osler in connection with the activities summarized in Exhibit “A” undertaken in these proceedings during the Approval Period.
5. Attached hereto as Exhibit “C” is a schedule summarizing the respective years of call and billing rates of each of the professionals at Osler that rendered services to the Trustee, the hours worked by each such individual and a blended hourly rate for fees incurred during the Approval Period.
6. Confidential Exhibit “D” (the “**Confidential De Lellis Exhibit**”) hereto contains true copies of the full accounts rendered by Osler to the Trustee for activities undertaken during the Approval Period. The Trustee is seeking a sealing order with respect to the Confidential De Lellis Exhibit due to the fact that the information contained in Osler’s detailed invoices includes privileged and commercially sensitive information regarding the projects and Building & Development Mortgages Canada Inc., generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to investors in these proceedings.

7. To the best of my knowledge, the rates charged by Osler throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services. I believe that the total hours, fees and disbursements incurred by Osler for the period between May 1, 2021 and December 31, 2021 are reasonable and appropriate in the circumstances.

SWORN BEFORE ME over video teleconference this 17th day of January, 2022. The affiant was located in the Town of Oakville in the Province of Ontario and the commissioner was located in the City of Toronto in the Province of Ontario. The affidavit was commissioned remotely in accordance with O. Reg. 431/20 as a result of COVID-19.



Commissioner for Taking Affidavits

Michael De Lellis

Lauren Elizabeth Madeleine Scott,
A Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires March 6, 2023.

THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF MICHAEL DE LELLIS
SWORN BEFORE ME ON THIS 17th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Lauren Elizabeth Madeleine Scott,
A Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires March 6, 2023.

Exhibit A

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place
PO BOX 50
Toronto ON M5X 1B8
CANADA
416.362.2111 main
416.862.6666 facsimile

503

OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12518034**
Date: **June 28, 2021**
Client No.: 232833

GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	364,230.42
REIMBURSABLE EXPENSES *	693.67
HST @ 13%	47,439.48
TOTAL (CAD):	412,363.57

* Includes non-taxable expenses of 5.00 CAD

PAYMENT DUE UPON RECEIPT



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REMITTANCE ADVICE

Canadian Dollar EFT and Wire Payments:

TD Canada Trust
751 3rd Street S.W.
Calgary, Alberta T2P 4K8
Transit No: 80629-0004
Account No: 5219313
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12518034**
Client No.: 232833

Amount: 412,363.57 CAD

Email payment details to payments@osler.com,
referencing invoice number(s) being paid.

Please return remittance advice(s) with
cheque.

osler.com

FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	17.20	815	14,018.00
Jeremy E. Dacks	77.50	990	76,725.00
Michael De Lellis	77.90	985	76,731.50
Roger Gillott	26.80	990	26,532.00
Adam H. Hirsh	0.90	840	756.00
Ryan H. Nielsen	1.70	840	1,428.00
Mary J. Paterson	34.20	890	30,438.00
<u>ASSOCIATE</u>			
Justine Erickson	62.70	670	42,009.00
Elie Farkas	21.70	590	12,803.00
Lauren Harper	0.60	670	402.00
Chloe Nanfara	49.50	500	24,750.00
Sean Stidwill	69.60	670	46,632.00
Riley Whitlock	3.50	740	2,590.00
<u>PARAPROFESSIONAL</u>			
Suzanne L. Herceg	0.60	490	294.00
Kevin MacEachern	0.50	210	105.00
Lorna Storm	0.70	325	227.50
<u>STUDENT</u>			
Maha Ansari	12.50	300	3,750.00
Tamara Kljakic	2.80	250	700.00
Reba Nauth	10.80	300	3,240.00
<u>DATA HOSTING</u>			
Total			99.42
TOTAL FEES (CAD):	471.70		364,230.42

Invoice dated June 28, 2021

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between May 1, 2021 to May 31, 2021:

- 6th and 10th: Attending to partial discharge package and trust conditions; attending to correspondence and discussions regarding same;
- Averton Prescott: Attending to partial discharge package and trust conditions; attending to correspondence and discussions regarding same;
- Averton Rutherford: Attending to partial discharge packages and trust conditions; attending to correspondence and discussions regarding same;
- Brookdale: Reviewing status of project matters, correspondence regarding document collection, and litigation materials; attending to correspondence and discussions regarding same;
- Castlemore: Drafting and reviewing settlement documentation, settlement agreement, notice to investors, and draft settlement approval order; attending to correspondence, status updates, conference calls with stakeholders, and internal discussions regarding same;
- CHAT: Attending on diligence relating to memorandum of understanding; drafting, reviewing, and revising amended and restated memorandum of understanding term sheet;
- Class Action Proceedings: Attending to correspondence; reporting to client;
- Eden: Reviewing status of project matters;
- Humberstone: Reviewing priority and standstill agreements;
- Jasper: Reviewing and revising draft settlement, release agreements, and approval order; attending to correspondence, conference calls with stakeholders, and internal discussions regarding same;
- North: Reviewing and revising draft settlement, release agreements, and approval order; attending to correspondence, conference calls with stakeholders, and internal discussions regarding same;
- Sky City Winnipeg: Reviewing transfer of mortgages; attending to correspondence regarding same;
- South Shore: Attending to research on various legal matters; drafting, reviewing, and revising letters to stakeholders, draft orders, direction, consent, affidavit, and motion materials; conducting subsearch for current parcel register and summarizing instruments registered on title; considering legal issues related to construction liens; attending to correspondence, diligence, conference calls with stakeholders, and internal discussions regarding construction lien, payout statement, accounting, and closing issues;

- General: Drafting and finalizing omnibus report to Court, related motion materials, fee affidavits, project chart, letter to the Court, and investor notices; attending to serving and filing motion materials; engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence.

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OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12528552**
Date: **July 20, 2021**
Client No.: 232833

GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	195,637.92
REIMBURSABLE EXPENSES *	577.99
HST @ 13%	25,464.26
TOTAL (CAD):	221,680.17

* Includes non-taxable expenses of 337.00 CAD

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REMITTANCE ADVICE

Canadian Dollar EFT and Wire Payments:

TD Canada Trust
751 3rd Street S.W.
Calgary, Alberta T2P 4K8
Transit No: 80629-0004
Account No: 5219313
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12528552**
Client No.: 232833
Amount: 221,680.17 CAD

Email payment details to payments@osler.com,
referencing invoice number(s) being paid.

Please return remittance advice(s) with
cheque.

osler.com

FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	5.20	815	4,238.00
Jeremy E. Dacks	55.00	990	54,450.00
Michael De Lellis	39.20	985	38,612.00
Roger Gillott	0.10	990	99.00
Adam H. Hirsh	8.20	840	6,888.00
Ryan H. Nielsen	0.80	840	672.00
Shelley W. Obal	8.50	1,155	9,817.50
Mary J. Paterson	5.00	890	4,450.00
Nancy L. Roberts	2.70	1,085	2,929.50
Elizabeth Sale	0.40	875	350.00
<u>ASSOCIATE</u>			
Justine Erickson	16.10	670	10,787.00
Lauren Harper	0.90	670	603.00
Adam Margeson	39.00	500	19,500.00
Timothy Mitchell	0.50	795	397.50
Chloe Nanfara	11.00	500	5,500.00
Sean Stidwill	49.50	670	33,165.00
Riley Whitlock	2.30	740	1,702.00
<u>PARAPROFESSIONAL</u>			
Lisa Gidari	1.40	420	588.00
Kevin MacEachern	1.00	210	210.00
Lorna Storm	0.60	325	195.00
<u>OSLER WORKS - DISPUTE</u>			
Ali Manbachi	0.80	350	280.00
<u>DATA HOSTING</u>			
Total			99.42
<u>CORPORATE SEARCHES FIXED FEES</u>			
Corporate Searches by Elizabeth E. Buchanan			105.00
TOTAL FEES (CAD):	248.20		195,637.92

Invoice dated July 20, 2021

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between June 1, 2021 to June 30, 2021:

- 6th and 10th: Attending to partial discharge package and closing; attending to correspondence regarding same;
- Averton Rutherford: Attending to partial discharge packages; attending on correspondence regarding same and partial disclosure;
- Brookdale: Reviewing amended statement of claim; attending to correspondence, internal discussions, and conference calls regarding statement of claim and next steps;
- Castlemore: Reviewing draft letter to Court summarizing relief sought; attending on correspondence regarding settlement approval motion;
- CHAT: Reviewing revised draft amended and restated memorandum of understanding term sheet; attending on correspondence, internal discussions, and status update call regarding same;
- Class Action Proceedings: Reviewing materials, including lift stay motion in Harmony and Orchard, and reporting on same; attending case management conference in Raponi action; attending to correspondence;
- Eden: Reviewing correspondence; discussing next steps internally and with stakeholders;
- Humberstone: Reviewing and considering standstill and postponement agreements; attending on correspondence and discussions with stakeholders regarding same;
- King Square: Attending on correspondence and appointment order removal matters;
- Jasper: Attending on payment matters and correspondence regarding same;
- North: Attending on payment matters;
- South Shore: Reviewing and revising draft investor notice; attending to research on various legal matters; attending to title search, PPSA registration, corporate search, and regulatory matters; considering legal issues and strategy; attending to correspondence, diligence, conference calls with stakeholders, and internal discussions regarding same;
- General: Drafting and revising letter to the Court; preparing oral submissions, discussing issues, and attending June 7 hearing; reviewing Court endorsement and orders; attending to the administration of Court matters, including serving and filing motion materials; engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters.

OSLER, HOSKIN & HARCOURT LLP
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416.862.6666 facsimile

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OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12538133**
Date: **August 25, 2021**
Client No.: 232833

GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	146,055.42
REIMBURSABLE EXPENSES *	1,201.20
HST @ 13%	19,140.43
TOTAL (CAD):	166,397.05

* Includes non-taxable expenses of 22.50 CAD

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REMITTANCE ADVICE

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Calgary, Alberta T2P 4K8
Transit No: 80629-0004
Account No: 5219313
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12538133**
Client No.: 232833
Amount: 166,397.05 CAD

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Please return remittance advice(s) with
cheque.

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FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	2.00	815	1,630.00
Jeremy E. Dacks	24.90	990	24,651.00
Michael De Lellis	26.50	985	26,102.50
Roger Gillott	1.90	990	1,881.00
Adam H. Hirsh	9.60	840	8,064.00
Ryan H. Nielsen	3.50	840	2,940.00
Shelley W. Obal	2.50	1,155	2,887.50
Mary J. Paterson	8.60	890	7,654.00
Nancy L. Roberts	3.70	1,085	4,014.50
Iris Tam	1.60	750	1,200.00
<u>ASSOCIATE</u>			
Justine Erickson	3.70	670	2,479.00
Lauren Harper	1.00	670	670.00
Adam Margeson	11.90	500	5,950.00
Chloe Nanfara	5.30	500	2,650.00
Sean Stidwill	76.80	670	51,456.00
Luke Stretch	0.70	500	350.00
Riley Whitlock	0.60	740	444.00
<u>PARAPROFESSIONAL</u>			
Kevin MacEachern	1.50	210	315.00
Lorna Storm	1.90	325	617.50
<u>DATA HOSTING</u>			
Total			99.42
TOTAL FEES (CAD):	188.20		146,055.42

Invoice dated August 25, 2021

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between July 1, 2021 to July 31, 2021:

- Brookdale: Attending to correspondence, research, and internal discussions regarding statement of defence issues;
- Castlemore: Attending to correspondence and internal discussions regarding settlement agreement and closing of same; receiving status updates; reviewing settlement agreement, settlement bringdown certificate, and notices of abandonment;
- Class Action Proceedings: Reviewing motion records related to Harmony and Galati lift stay motion; preparing for and attending call with class action counsel;
- Eden: Attending on diligence, internal discussions, status updates, calls with stakeholders, and correspondence; conducting subsearches to obtain current parcel registers and registered documents;
- Humberstone: Revising and reviewing draft intercreditor, priority, settlement, postponement, and standstill agreements; attending to correspondence, diligence, and discussions with stakeholders regarding same;
- South Shore: Drafting and reviewing letter to Diversified; attending to research and considering strategy on various legal matters; attending to construction lien issues; reviewing motion record; attending to correspondence, diligence, and discussions with stakeholders regarding same;
- Wellington: Attending to correspondence and status update regarding settlement payment; reviewing and revising discharge documents;
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; attending to the administration of Court matters.

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place
PO BOX 50
Toronto ON M5X 1B8
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416.362.2111 main
416.862.6666 facsimile

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OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12547584**
Date: **September 30, 2021**
Client No.: 232833

GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	189,943.42
REIMBURSABLE EXPENSES *	600.81
HST @ 13%	24,764.25
TOTAL (CAD):	215,308.48

* Includes non-taxable expenses of 50.00 CAD

PAYMENT DUE UPON RECEIPT



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REMITTANCE ADVICE

Canadian Dollar EFT and Wire Payments:

TD Canada Trust
751 3rd Street S.W.
Calgary, Alberta T2P 4K8
Transit No: 80629-0004
Account No: 5219313
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12547584**
Client No.: 232833
Amount: 215,308.48 CAD

Email payment details to payments@osler.com,
referencing invoice number(s) being paid.

Please return remittance advice(s) with
cheque.

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FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	11.00	815	8,965.00
Jeremy E. Dacks	36.40	990	36,036.00
Michael De Lellis	55.30	985	54,470.50
Roger Gillott	4.00	990	3,960.00
Adam H. Hirsh	2.30	840	1,932.00
Ryan H. Nielsen	1.50	840	1,260.00
Shelley W. Obal	5.20	1,155	6,006.00
Mary J. Paterson	12.60	890	11,214.00
Nancy L. Roberts	7.10	1,085	7,703.50
<u>ASSOCIATE</u>			
Justine Erickson	2.50	670	1,675.00
Elie Farkas	1.80	590	1,062.00
Adam Margeson	32.00	500	16,000.00
Chloe Nanfara	3.10	500	1,550.00
Sean Stidwill	49.90	670	33,433.00
Riley Whitlock	1.10	740	814.00
<u>PARAPROFESSIONAL</u>			
Suzanne L. Herceg	0.20	490	98.00
Charlene Read	0.60	325	195.00
Lorna Storm	0.60	325	195.00
<u>OTHER PROFESSIONAL</u>			
Flora Juma	4.10	250	1,025.00
<u>STUDENT</u>			
Zoe Sebastien	7.50	300	2,250.00
<u>DATA HOSTING</u>			
Total			99.42
TOTAL FEES (CAD):	238.80		189,943.42

Invoice dated September 30, 2021

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between August 1, 2021 to August 31, 2021:

- Brookdale: Attending to correspondence; considering strategic options with respect to ongoing litigation issues and attending to internal discussions regarding the same; conducting legal research;
- Castlemore: Reviewing and commenting on waiver language;
- CHAT: Attending to correspondence and conference calls with stakeholders; reviewing and revising draft memorandum of understanding term sheet; participating in internal discussions regarding same; reviewing and considering Trustee's comments to memorandum of understanding issues; conducting subsearch to obtain current parcel registers and reviewing parcel registers and block plan;
- Eden: Considering strategic options and reviewing ongoing litigation matters; attending to correspondence with stakeholders; conducting legal research and due diligence; considering and discussing ongoing litigation matters;
- Humberstone: Attending on correspondence; reviewing executed settlement agreement; attending on review of finalized intercreditor agreement;
- South Shore: Considering strategy, issues and potential next steps; attending on various correspondence and discussions with stakeholders; reviewing and attending on diligence with respect to various documents; preparing for and attending interpleader consent motion hearing;
- Wellington: Attending on correspondence regarding discharge documents;
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; attending on partial discharges; conducting legal research and due diligence; conducting corporate profile searches; coordinating title searches.

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place
PO BOX 50
Toronto ON M5X 1B8
CANADA
416.362.2111 main
416.862.6666 facsimile

516

OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12557537**
Date: **October 29, 2021**
Client No.: 232833

GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	126,002.42
REIMBURSABLE EXPENSES	117.35
HST @ 13%	16,395.57
TOTAL (CAD):	142,515.34

PAYMENT DUE UPON RECEIPT



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REMITTANCE ADVICE

Canadian Dollar EFT and Wire Payments:

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751 3rd Street S.W.
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Transit No: 80629-0004
Account No: 5219313
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12557537**
Client No.: 232833
Amount: 142,515.34 CAD

*Email payment details to payments@osler.com,
referencing invoice number(s) being paid.*

*Please return remittance advice(s) with
cheque.*

osler.com

FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	9.60	815	7,824.00
Jeremy E. Dacks	18.40	990	18,216.00
Michael De Lellis	23.80	985	23,443.00
Adam H. Hirsh	3.60	840	3,024.00
Ryan H. Nielsen	3.80	840	3,192.00
Shelley W. Obal	10.50	1,155	12,127.50
Mary J. Paterson	6.60	890	5,874.00
Nancy L. Roberts	2.50	1,085	2,712.50
Riley Whitlock	1.20	740	888.00
<u>ASSOCIATE</u>			
Justine Erickson	12.50	670	8,375.00
Adam Margeson	44.20	500	22,100.00
Chloe Nanfara	1.40	500	700.00
Sean Stidwill	23.10	670	15,477.00
<u>STUDENT</u>			
Simone Livshits	6.50	300	1,950.00
<u>DATA HOSTING</u>			
Total			99.42
TOTAL FEES (CAD):	167.70		126,002.42

Invoice dated October 29, 2021

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between September 1, 2021 to September 30, 2021:

- 6th and 10th: Attending to correspondence; reviewing draft escrow agreement and discussing internally regarding the same;
- Brookdale: Attending to correspondence with stakeholders; considering legal issues; preparing for and participating in internal discussions to consider strategy and potential next steps;
- CHAT: Attending to correspondence with stakeholders; reviewing and revising draft memorandum of understanding term sheet; participating in internal discussions regarding same; reviewing real property search results; participating in internal discussions to consider strategy and potential next steps; discussing closing mechanics and required documentation;
- Eden: Attending to correspondence with stakeholders; conducting legal research and due diligence;
- South Shore: Attending to correspondence with stakeholders and Trustee; conducting legal research and due diligence;
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on class action matters; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence; attending on PPSA searches.

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place
PO BOX 50
Toronto ON M5X 1B8
CANADA
416.362.2111 main
416.862.6666 facsimile

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OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12567784**
Date: **November 25, 2021**
Client No.: 232833

GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	102,881.92
REIMBURSABLE EXPENSES	461.30
HST @ 13%	13,434.62
TOTAL (CAD):	116,777.84

PAYMENT DUE UPON RECEIPT



We are committed to protecting the environment. Please provide your email address to payments@osler.com to receive invoices and reminder statements electronically.



REMITTANCE ADVICE

Canadian Dollar EFT and Wire Payments:

TD Canada Trust
751 3rd Street S.W.
Calgary, Alberta T2P 4K8
Transit No: 80629-0004
Account No: 5219313
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12567784**
Client No.: 232833
Amount: 116,777.84 CAD

Email payment details to payments@osler.com,
referencing invoice number(s) being paid.

Please return remittance advice(s) with
cheque.

osler.com

FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	12.10	815	9,861.50
Jeremy E. Dacks	17.00	990	16,830.00
Michael De Lellis	20.60	985	20,291.00
Roger Gillott	1.60	990	1,584.00
Adam H. Hirsh	2.20	840	1,848.00
Ryan H. Nielsen	3.60	840	3,024.00
Shelley W. Obal	6.00	1,155	6,930.00
Mary J. Paterson	10.40	890	9,256.00
Nancy L. Roberts	1.20	1,085	1,302.00
Riley Whitlock	0.50	740	370.00
<u>ASSOCIATE</u>			
Jesse-Ross Cohen	17.80	705	12,549.00
Justine Erickson	7.40	670	4,958.00
Elie Farkas	0.40	590	236.00
Adam Margeson	13.60	500	6,800.00
Chloe Nanfara	1.50	500	750.00
Sean Stidwill	7.90	670	5,293.00
<u>PARAPROFESSIONAL</u>			
Kevin MacEachern	1.50	210	315.00
Lorna Storm	1.80	325	585.00
<u>DATA HOSTING</u>			
Total			99.42
TOTAL FEES (CAD):	127.10		102,881.92

Invoice dated November 25, 2021

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between October 1, 2021 to October 31, 2021:

- 6th and 10th: Attending to correspondence with stakeholders; reviewing and revising escrow agreement and loan agreement, attending to discussions and correspondence regarding the same;
- Brookdale: Attending to correspondence and conference calls with stakeholders; conducting legal research and preparing research memorandums; considering issues related to amended statement of defense and attending to discussions and correspondence regarding same;
- CHAT: Attending to correspondence; reviewing and considering draft security substitution agreement; reviewing and revising draft security substitution agreement; reviewing memorandum of understanding, attending to discussions and correspondence regarding same; conducting legal research and due diligence;
- Class Action Proceedings: Reviewing and revising engagement letter for noticing agent; reviewing draft order; preparing for and attending scheduling hearing; reviewing third party claims; considering next steps;
- Eden: Attending to ongoing litigation matters and correspondence regarding same; considering next steps;
- South Shore: Attending to correspondence and conference calls with stakeholders; revising letter to Diversified; considering and discussing strategy and next steps; conducting legal research;
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; attending on class action matters; conducting legal research and due diligence; reviewing registered interests; conducting insurance renewal litigation searches.

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OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12582486**
Date: **December 17, 2021**
Client No.: 232833

GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	68,002.92
REIMBURSABLE EXPENSES	50.25
HST @ 13%	8,846.91
TOTAL (CAD):	76,900.08

PAYMENT DUE UPON RECEIPT



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REMITTANCE ADVICE

Canadian Dollar EFT and Wire Payments:

TD Canada Trust
751 3rd Street S.W.
Calgary, Alberta T2P 4K8
Transit No: 80629-0004
Account No: 5219313
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12582486**
Client No.: 232833
Amount: 76,900.08 CAD

Email payment details to payments@osler.com,
referencing invoice number(s) being paid.

Please return remittance advice(s) with
cheque.

osler.com

FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	4.00	815	3,260.00
Jeremy E. Dacks	10.70	990	10,593.00
Michael De Lellis	12.50	985	12,312.50
Roger Gillott	1.80	990	1,782.00
Adam H. Hirsh	0.60	840	504.00
Ryan H. Nielsen	2.40	840	2,016.00
Mary J. Paterson	6.70	890	5,963.00
Nancy L. Roberts	8.80	1,085	9,548.00
Riley Whitlock	9.40	790	7,426.00
<u>ASSOCIATE</u>			
Jesse-Ross Cohen	0.50	705	352.50
Justine Erickson	8.20	670	5,494.00
Justin Kanji	8.00	545	4,360.00
Chloe Nanfara	2.10	500	1,050.00
<u>PARAPROFESSIONAL</u>			
Lorna Storm	0.10	325	32.50
<u>STUDENT</u>			
Zoe Sebastien	10.70	300	3,210.00
<u>DATA HOSTING</u>			
Total			99.42
TOTAL FEES (CAD):	86.50		68,002.92

Invoice dated December 17, 2021

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between November 1, 2021 to November 30, 2021:

- 6th and 10th: Attending to correspondence; finalizing escrow agreement;
- Brookdale: Reviewing and drafting correspondence; drafting order and consent; reviewing background documentation;
- CHAT: Reviewing and drafting correspondence; reviewing and revising acknowledgement and direction; reviewing and revising discharge; considering and discussing legal strategy and next steps;
- Class Action Proceedings: Reviewing and drafting correspondence with respect to Raponi action;
- Eden: Reviewing and drafting correspondence concerning next steps;
- Kemp: Attending to correspondence and conference calls with stakeholders; considering and discussing next steps;
- South Shore: Attending to correspondence and conference calls with stakeholders; considering and discussing strategy and next steps; reviewing and summarizing priority claims analysis;
- Winnipeg Sky City: Attending to correspondence to investors and clients; conducting legal research and due diligence; reviewing documents such as amended statement of claim and foreclosure order;
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence.

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place
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CANADA
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416.862.6666 facsimile

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OSLER

FAAN Mortgage Administrators Inc.
20 Adelaide Street East
Suite 920
Toronto, ON M5C 2T9
CANADA

Invoice No.: **12592699**
Date: **January 12, 2022**
Client No.: 232833
GST/HST No.: 121983217 RT0001

Attention: Naveed Manzoor

Contact: **Michael De Lellis**
Direct Dial: (416) 862-5997
E-mail: MDeLellis@osler.com

For professional services rendered for Building & Development Mortgages Canada Inc.
Administrator (F#1189997).

OUR FEE HEREIN	76,101.92
REIMBURSABLE EXPENSES *	599.86
HST @ 13%	9,962.62
TOTAL (CAD):	86,664.40

* Includes non-taxable expenses of 66.30 CAD

PAYMENT DUE UPON RECEIPT



We are committed to protecting the environment. Please provide your email address to payments@osler.com to receive invoices and reminder statements electronically.



REMITTANCE ADVICE

Canadian Dollar EFT and Wire Payments:

TD Canada Trust
751 3rd Street S.W.
Calgary, Alberta T2P 4K8
Transit No: 80629-0004
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SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: **12592699**
Client No.: 232833
Amount: 86,664.40 CAD

Email payment details to payments@osler.com,
referencing invoice number(s) being paid.

Please return remittance advice(s) with
cheque.

osler.com

FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Martino Calvaruso	14.40	815	11,736.00
Jeremy E. Dacks	15.20	990	15,048.00
Michael De Lellis	13.90	985	13,691.50
Roger Gillott	6.80	990	6,732.00
Adam H. Hirsh	0.30	840	252.00
Ryan H. Nielsen	1.50	840	1,260.00
Mary J. Paterson	6.00	890	5,340.00
Nancy L. Roberts	10.00	1,085	10,850.00
Riley Whitlock	3.20	790	2,528.00
<u>ASSOCIATE</u>			
Justine Erickson	9.50	670	6,365.00
Justin Kanji	1.00	545	545.00
Chloe Nanfara	1.70	500	850.00
<u>PARAPROFESSIONAL</u>			
Charlene Read	0.20	325	65.00
Lorna Storm	0.80	325	260.00
<u>STUDENT</u>			
Anxhela Adhamidhis	1.00	300	300.00
Lauren Scott	0.60	300	180.00
<u>DATA HOSTING</u>			
Total			99.42
TOTAL FEES (CAD):	86.10		76,101.92

Invoice dated January 12, 2022

For services rendered for FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. for the period between December 1, 2021 to December 31, 2021:

- 6th and 10th: Revising escrow agreement and draft investor notice; attending to correspondence regarding same;
- Brookdale: Attending to correspondence regarding status of Computershare litigation; participating in discussions regarding same;
- CHAT: Attending to correspondence, reviewing materials, and participating in discussions related to receivership and mortgage issues; registering charge and conducting subsearch;
- Class Action Proceedings: Attending to correspondence and internal discussions;
- Eden: Attending to correspondence regarding status update;
- Kemp: Attending to correspondence and status update;
- South Shore: Considering construction lien issues; revising draft motion materials and litigation schedule; attending to correspondence and internal discussions regarding same;
- Union Waterfront: Attending to correspondence regarding motion record;
- Winnipeg Sky City: Considering legal issues; attending to correspondence and reviewing documents regarding foreclosure matters;
- General: Engaging with the Trustee extensively regarding multiple matters, including projects not referred to above, potential transactions, case strategies, financial analyses; drafting and revising omnibus report to Court and fee affidavit; attending on communications with stakeholders; attending on status updates and meetings; engaging with representative counsel regarding various matters; conducting legal research and due diligence.

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF MICHAEL DE LELLIS

SWORN BEFORE ME ON THIS 17th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Lauren Elizabeth Madeleine Scott,
A Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires March 6, 2023.

EXHIBIT B

Date of Account	For Billing Period Ending	Fees	Expenses / Disbursements*	Taxes	Total
June 28, 2021	May 31, 2021	\$364,230.42	\$693.67	\$47,439.48	\$412,363.57
July 20, 2021	June 30, 2021	\$195,637.92	\$577.99	\$25,464.26	\$221,680.17
August 25, 2021	July 31, 2021	\$146,055.42	\$1,201.20	\$19,140.43	\$166,397.05
September 30, 2021	August 31, 2021	\$189,943.42	\$600.81	\$24,764.25	\$215,308.48
October 29, 2021	September 30, 2021	\$126,002.42	\$117.35	\$16,395.57	\$142,515.34
November 25, 2021	October 31, 2021	\$102,881.92	\$461.30	\$13,434.62	\$116,777.84
December 17, 2021	November 30, 2021	\$68,002.92	\$50.25	\$8,846.91	\$76,900.08
January 12, 2022	December 31, 2021	\$76,101.92	\$599.86	\$9,962.62	\$86,664.40
Total	-	\$1,268,856.36	\$4,302.43	\$165,448.14	\$1,438,606.93

*Includes non-taxable expenses

THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF MICHAEL DE LELLIS
SWORN BEFORE ME ON THIS 17th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Lauren Elizabeth Madeleine Scott,
A Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires March 6, 2023.

EXHIBIT C**Billable Rates for May 1, 2021 to December 31, 2021**

<u>Name</u>	<u>Year of Call (if applicable)</u>	<u>Billing rate</u>	<u>Hours Worked</u>
Adhamidhis, Anxhela	N/A	\$300	1.0
Ansari, Maha	N/A	\$300	12.5
Calvaruso, Martino	2009	\$815	75.8
Cohen, Jesse-Ross	2015	\$705	18.3
Dacks, Jeremy	1999	\$990	255.1
De Lellis, Michael	2003	\$985	269.7
Erickson, Justine	2016	\$670	122.6
Elie Farkas	2018	\$590	23.9
Gidari, Lisa	N/A	\$420	1.4
Gillott, Roger	1996	\$990	43.0
Harper, Lauren	2016	\$670	2.5
Hirsh, Adam	2008	\$840	27.7
Herceg, Suzanne	N/A	\$490	0.6
Juma, Flora	N/A	\$250	4.1
Kanji, Justin	2019	\$545	9.0
Kljakic, Tamara	N/A	\$250	2.8
Livshits, Simone	N/A	\$300	6.5
MacEachern, Kevin	N/A	\$210	4.5
Manbachi, Ali	N/A	\$350	0.8
Margeson, Adam	2020	\$500	140.7

Mitchell, Timothy	2011	\$795	0.5
Nanfara, Chloe	2020	\$500	75.6
Nauth, Reba	2021	\$300	10.8
Nielsen, Ryan	2009	\$840	18.8
Obal, Shelley	1985	\$1,155	32.7
Paterson, Mary	2005	\$890	90.1
Read, Charlene	N/A	\$325	0.8
Roberts, Nancy	1996	\$1,085	36.0
Sale, Elizabeth	2004	\$875	0.4
Scott, Lauren	N/A	\$300	0.6
Sebastian, Zoe	N/A	\$300	10.7
Stidwill, Sean	2016	\$670	276.8
Storm, Lorna	N/A	\$325	6.5
Stretch, Luke	2020	\$500	0.7
Tam, Iris	1995	\$750	1.6
Whitlock, Riley	2014	\$740/\$790	21.8
		Total:	1606.9

Blended Rate (excluding expenses / disbursements and HST) $\$1,268,856.36 \div 1606.9^1 =$	\$789.64
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¹ Certain invoices in respect of the Approval Period include fees charged for services provided on a fixed fee basis and, accordingly, there are no hours associated with those fees included in the calculation of the 'Blended Rate'.

THIS IS CONFIDENTIAL EXHIBIT “D” REFERRED TO IN
THE AFFIDAVIT OF MICHAEL DE LELLIS
SWORN BEFORE ME ON THIS 17th DAY OF JANUARY, 2022



A Commissioner for Taking Affidavits

Lauren Elizabeth Madeleine Scott,
A Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires March 6, 2023.

Exhibit D

**THIS EXHIBIT IS REDACTED IN ITS ENTIRETY
AND IS SUBJECT TO A REQUEST FOR A SEALING ORDER**

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL DE LELLIS
(sworn on January 17, 2022)

OSLER, HOSKIN & HARCOURT LLP

1 First Canadian Place, P.O. Box 50

Toronto, ON M5X 1B8

Phone: 416-362-2111

Fax: 416-862-6666

Michael De Lellis (LSO# 48038U)

Jeremy Dacks (LSO# 41851R)

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

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 31 ST
)	
JUSTICE MCEWEN)	DAY OF JANUARY, 2022

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***

JANUARY 2022 OMNIBUS ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”) pursuant to an Order of this Court made on April 20, 2018 (“**Appointment Order**”) of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i)

authorizing the Trustee to make a distribution or distributions to: (a) South Shore Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the South Shore Project (“**South Shore Realized Property**”), on a *pro rata* basis to the South Shore Investors entitled to such funds as determined in accordance with the Pari Passu Approach, and (b) Kemp Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Kemp Project (“**Kemp Realized Property**”), on a *pro rata* basis to the Kemp Investors entitled to such funds (each as such term is defined in the Twenty-Seventh Report (as defined below)), and in each case, in accordance with the Realized Property Order dated October 30, 2018, as amended, (ii) approving the Trustee’s twenty-seventh report dated January 18, 2022 (the “**Twenty-Seventh Report**”), as well as the Trustee’s activities described therein, and the Trustee’s fees and disbursements, including the fees and disbursements of its counsel, for the period from May 1, 2021 to December 31, 2021; and (iii) sealing certain confidential exhibits to the Fee Affidavits (as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-Seventh Report, the affidavit of Naveed Manzoor sworn January 18, 2022 and attached as Appendix “34” to the Twenty-Seventh Report (the “**Manzoor Affidavit**”) and the affidavit of Michael De Lellis sworn January 17, 2022 and attached as Appendix “35” to the Twenty-Seventh Report (the “**De Lellis Affidavit**” and, together with the Manzoor Affidavit, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of ● sworn January ●, 2022, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Seventh Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms used in this Order but not defined herein shall have the meanings given to them in the Twenty-Seventh Report.

DISTRIBUTIONS OF REALIZED PROPERTY

3. **THIS COURTS ORDERS** that all proceeds received or receivable by the Trustee in respect of:

- (a) the South Shore Sale Transaction and/or the South Shore Project; and
- (b) the Kemp Sale Transaction and/or the Kemp Project,

respectively, are and shall be deemed to be “Realized Property” as defined in the Order of this Court dated June 26, 2018.

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

- (a) a distribution or distributions to the South Shore Investors in an amount equal to 85% of the South Shore Realized Property on a *pro rata* basis to the applicable South Shore Investors entitled to such funds as determined in accordance with the Pari Passu Approach;
- (b) a distribution or distributions to the Kemp Investors in an amount equal to 85% of the Kemp Realized Property, on a *pro rata* basis to the applicable Kemp Investors entitled to such funds; and

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

TRUSTEE’S REPORT, ACTIVITIES, FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the Twenty-Seventh Report, and all the actions, conduct and activities of the Trustee as set out in the Twenty-Seventh Report, be and are hereby approved.

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

- (a) the following fees and disbursements of the Trustee for the period from May 1, 2021 to December 31, 2021 are approved: fees of \$595,738.40 (plus applicable taxes of \$77,445.99 for an aggregate amount of \$673,184.39), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from May 1, 2021 to December 31, 2021 are approved: fees of \$1,268,856.36 and disbursements of \$4,302.43 (plus applicable taxes of \$165,448.14, for an aggregate amount of \$1,438,606.93).

SEALING

7. **THIS COURT ORDERS** that Exhibit “D” of the Manzoor Affidavit and Exhibit “D” of the De Lellis Affidavit shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

GENERAL

8. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories of Canada.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada 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.

10. **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.



THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

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

Proceeding commenced at Toronto

JANUARY 2022 OMNIBUS ORDER

OSLER, HOSKIN & HARCOURT LLP

1 First Canadian Place, P.O. Box 50

Toronto, ON M5X 1B8

Phone: 416-362-2111

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Michael De Lellis (LSO# 48038U)

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Inc.**

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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

(January 2022 Comprehensive Update)

VOLUME 3 OF 3

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