

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

***IN THE MATTER OF SECTIONS 97 AND 100 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990 c. C-43, AS AMENDED***

B E T W E E N:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

**FORTRESS BROOKDALE INC., FORTRESS AVENUE ROAD (2015) INC.
and FERNBROOK HOMES (BROOKDALE) LIMITED**

Respondents

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

Dated: December 14, 2018

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, Ontario M5X 1B8
Fax: 416.862.6666

Michael De Lellis

Tel: 416.862.5997
Email: mdelellis@osler.com

Jeremy Dacks

Tel: 416.862.4923
Email: jdacks@osler.com

Roger Gillott

Tel: 416.862.6818
Email: rgillott@osler.com

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

INTRODUCTION

1. These written submissions are filed on behalf of FAAN Mortgage Administrators Inc., in its capacity as Court-appointed Trustee (the “**Trustee**”) of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”). The Trustee was appointed pursuant to an order of the Honourable Mr. Justice Hainey dated April 20, 2018 (the “**Appointment Order**”) as a result of an application made by the Ontario Superintendent of Financial Services pursuant to the *Mortgage Brokerages, Lenders and Administrators Act, 2006 (Ontario)* and the *Courts of Justice Act (Ontario)*. A copy of the Appointment Order is attached as Appendix “A”. In addition, Appendix “B” includes the statutory provisions referenced herein.

2. BDMC was the principal mortgage broker and administrator used by Fortress Real Developments Inc. and certain related entities to raise initial financing from the investing public for early stage real estate developments, including the Brookdale Property at issue in these proceedings. Over 11,000 individual investors have invested an aggregate amount of approximately \$560 million in syndicated mortgage loans administered by BDMC. These funds have been advanced in connection with 45 different projects that are in various stages of development. The Trustee was appointed to advance and protect the interests of the investors in the projects funded in part through BDMC loans.

3. The Trustee is the largest economic stakeholder in these proceedings. BDMC made and administers two loans to the respondent Fortress Brookdale Inc. (the “**Borrower**”) and holds two mortgages that were registered on title to the Brookdale Property. The Borrower is indebted to BDMC in the principal amount of approximately \$4.62 million (plus additional chargeable amounts) in respect of mezzanine syndicated mortgage loan debt administered by BDMC on behalf of 87 individual investors (the “**BDMC Mez Loan**”). The Borrower is also indebted to BDMC in

the principal amount of approximately \$20.7 million (plus additional chargeable amounts) in respect of subordinate syndicated mortgage loan debt administered by BDMC on behalf of 404 individual investors (the “**BDMC Subordinated Loan**”). As such, the Trustee’s secured claims to the proceeds of sale of the Brookdale Property exceed **\$25,000,000** and greatly exceed the amounts claimed by all of the construction lien claimants combined.

4. Exhibit “F” to the Affidavit of Forest Todd sworn September 20, 2018 (the “**Todd Affidavit**”), filed on behalf of Firm Capital Mortgage Fund Inc. (“**Firm Capital**”) in this proceeding, is a summary of the amount and registered priority of all mortgages registered on title to the Brookdale Property at that time and provides as follows:

First:	Firm Capital Mortgage Fund Inc.	\$18,500,000
Second:	Quincy Investment Limited et al (“ Quincy ”)	\$5,330,000
Third:	Jaekel Capital Inc. (“ Jaekel ”)	\$675,000
Fourth:	BDMC Mez Loan	\$4,800,000
Fifth:	BDMC Subordinated Loan	\$21,800,000

5. The Todd Affidavit also refers to a claim made by Computershare Trust Company, in its capacity as trustee under a trust indenture dated November 26, 2013 (“**Computershare**”), seeking an equitable charge over the Brookdale Property in the approximate amount of \$9,000,000. On consent, this claim was dismissed as against Firm Capital but remains in issue between Computershare and the mortgagees subsequent to Firm Capital.

6. Additional stakeholders in this matter include:

- (a) Construction lien claimants; and
- (b) The Respondents Fernbrook Homes (Brookdale) Limited and Fortress Avenue Road (2015) Inc. who are the beneficial owners of the Brookdale Property.

7. As demonstrated by the above:

- (a) As the Firm Capital mortgage has been discharged from title to the Brookdale Property, and the only amount held back in respect of the Firm Capital mortgage is the \$750,000 comprising the “Applicant’s Holdback” (as defined in paragraph 9(a) of the Vesting Order in this proceeding dated October 18, 2018), the Trustee has the largest single economic stake in this proceeding; and
- (b) Every dollar that is spent from this point on in legal fees and other chargeable amounts that may be added to the indebtedness ranking in priority to the BDMC loans will erode the ultimate recovery to the investors who participate in the loans administered by BDMC.

**POSITION OF THE TRUSTEE WITH RESPECT TO
THE DECEMBER 19, 2018 COMEBACK HEARING**

8. The position of the Trustee with respect to the matters set out in the Court’s Endorsement dated October 18, 2018 that are to be dealt with at the December 19, 2018 comeback hearing in this matter is as follows:

- (a) Firm Capital should not be required to remain a party to the Construction Lien Actions;

- (b) As such, there is no need for the Applicant's Holdback to be retained and all remaining amounts should be paid to the Accountant. Any amounts remaining in the Receiver's Holdback should also be paid to the Accountant;
- (c) There is no need or benefit to segregating a portion of the Net Proceeds for the construction lien claimants, and such segregation could prejudice the other claimants to the Net Proceeds;
- (d) An efficient and streamlined process for dealing with the Construction Lien Actions on an expedited basis should be implemented in order to determine the validity, quantum and priority of the Construction Lien claims; and
- (e) In the alternative to (a) and (b) above, to the extent that Firm Capital remains a party to the Construction Lien Actions subsequent to December 19, 2018, it should do so for the limited purpose of providing evidence that is not reasonably available through other means.

9. In addition, the position of the Trustee with respect to next steps in this proceeding is as follows:

- (a) To the extent that Quincy and Jaekel also remain a party to the Construction Lien Actions subsequent to December 19, 2018, it should also be for the limited purpose of providing evidence that is not reasonably available through other means;
- (b) Quincy and Jaekel should be required to provide payout statements to the Service List forthwith. To the extent that any party believes that Quincy or Jaekel should not be paid out (with or without a holdback), they should be required to inform the Service List no later than January 18, 2019; and

- (c) Once there is greater clarity on the amounts that are properly payable to the construction lien claimants, and should a consensual resolution to the entitlement to the remaining proceeds not be achieved, the remaining parties to the proceeding at that time should attend before the Court to establish a streamlined and expedited procedure for dealing with such remaining proceeds. Such a procedure should not be established at this time, without knowing how much money is left in the estate and who would need to be a party to the proceeding.

ARGUMENT WITH RESPECT TO CONSTRUCTION LIEN MATTERS

(a) Firm Capital Should Not be Required to Remain a Party

10. Firm Capital is not a necessary or proper party to the Construction Lien Actions and should not be required to remain a party.

11. Courts have consistently held that owners are not required to remain parties to lien actions after the lien has been vacated by a general contractor.¹ This concept is also applicable to mortgagees, and in *JCP Construction Co v 1520705 Ontario Inc*² Master Albert held that the conduct of the plaintiff in “failing or refusing to let the mortgagee out of the litigation after the amount of the lien plus costs had been paid into court to vacate the lien was unreasonable, creating the need for a motion to let the mortgagees out of the action”.³

¹ *Benny Haulage Ltd v Carosi Construction Ltd* (1996), 33 CLR (2d) 44 (Ont Gen Div), Book of Authorities of FAAN Mortgage Administrators Inc. [“BOA”], Tab 2. See also *Delange Asphalt v Gallagher* (1993), Kirsh’s C.L.C.F. 44.29 (Ont Gen Div) [*Delange*], BOA, Tab 3.

² (2007), 64 CLR (3d) 144 (ONSC), BOA, Tab 5.

³ *Ibid* at para 16(d).

12. Ontario Courts have also taken into consideration privity of contract when determining whether a party should remain in a lien action. In *Ablestystems Mechanical Ltd v AER Comfort Mechanical Services Ltd*,⁴ the Court dismissed the action against both the owner and the general contractor on the basis that after the vacating of the lien “[t]hey were no longer necessary or proper parties to the action as there is no privity of contract between them and the plaintiff”.⁵

13. In addition to a lack of privity between the lien claimants and Firm Capital, it is also relevant that Firm Capital is not competing in interest with the lien claimants.

14. The Vesting Order specifically provides that, after being vacated, all Outstanding Construction Liens or Construction Lien Actions attach to the Net Proceeds, and not to the Purchased Assets.⁶ This aligns with the Court’s view in *Ablestystems* of the effect of vacating a lien:

The effect of vacating the registration of a lien results in that particular lien claimant looking to the funds in Court as security instead of an interest in the premises. In other words, once vacated, the owner and lenders can deal with the lands as they see fit and the lien claimant no longer has a claim to the lands, and, instead, must assert his or her claim against the funds in Court.⁷

15. As a result, the Outstanding Construction Liens attach only to the Net Proceeds, which is an asset that Firm Capital would have no interest in if it is not required to remain a party to the Construction Lien Actions.⁸ All indebtedness secured by its mortgage was paid to Firm Capital

⁴ (2009), 78 CLR (3d) 236 (ONSC) [*Ablestystems*], BOA, Tab 1.

⁵ *Ibid* at para 10.

⁶ Vesting Order at para 8.

⁷ *Supra*, note 4 at para 11.

⁸ Even if Firm Capital remains a party to the Construction Lien Actions, it would not have recourse to the Net Proceeds if its incremental costs incurred are less than the Applicant’s Holdback.

pursuant to the Vesting Order.⁹ Firm Capital's only remaining interest is in the Applicant's Holdback,¹⁰ which would be paid to the Accountant if Firm Capital is not required to remain a party to the Construction Lien Actions.

16. The lack of an interest of Firm Capital in the Net Proceeds also corresponds with the basis on which earlier authorities exempted the owner from an action when the lien had been vacated.

In *Delange Asphalt v Gallagher*,¹¹ Justice Tobias held:

... In my opinion, once payment is effected [vacating the lien], there is no necessity to join the owner in the statement of claim, for the interests of the owner in the land is no longer the subject of the *Construction Lien Act* action.¹²

17. In addition, conceptually, where a lien is vacated by paying funds into court pursuant to section 44 of the *Construction Act*, the lien ceases to attach to the lands, and ceases to attach to the holdbacks, and becomes instead a charge upon the funds paid into Court.¹³ The lien claimants can then proceed with an action to enforce their claims against the amount paid into court, to the same extent as if the amount paid into court had been realized through the sale of the lands.¹⁴

18. Section 44 of the *Construction Act* sets out a regime for the vacating of liens on the motion of a party, including on an *ex parte* basis, within the general context of the *Construction Act*. However, section 44 is not the exclusive means by which a lien may be vacated and does not

⁹ Vesting Order at para 6.

¹⁰ Vesting Order at para 9(a).

¹¹ *Supra* note 1.

¹² *Ibid* at p 44.46.

¹³ *Construction Act*, R.S.O. 1990, c.C-30, s.44(6).

¹⁴ *Ibid*, s. 44(9), Rule 1.

displace the general powers of the Court to vacate liens, including through the exercise of the powers set out in the *Courts of Justice Act*.¹⁵

19. Even if the lien claimants are able to establish that Firm Capital is a statutory “owner” under the *Construction Act*, which is denied, the above analysis would not change. The Net Proceeds are sufficient to satisfy the lien claimants’ claims in full, even if they establish full priority over the Firm Capital mortgage. Accordingly, no priority finding relating to Firm Capital could result in any recovery against Firm Capital, by the lien claimants, or at all. Any recovery by the lien claimants will be against the Net Proceeds.

20. No prejudice will result from Firm Capital ceasing to be a party to the Construction Lien Actions. To the extent that evidence is required from Firm Capital, such evidence can be obtained through the usual means relating to the provision of evidence from non-parties. It is unnecessary and arguably improper to require an individual with no further interest in a proceeding to remain a party simply on the basis of requiring evidence from that individual.

21. However, requiring Firm Capital to remain a party will prejudice the other claimants to the Net Proceeds, including the individual investors claiming through the BDMC loans, as the unnecessary legal fees and other expenses related to defending the 11 Construction Lien Actions will deplete the funds in the Applicant’s Holdback. If the Construction Lien Actions are dismissed against Firm Capital, the Trustee submits that the remaining balance in the Applicant’s Holdback should be added to the Net Proceeds in the hands of the Accountant, for the benefit of all claimants.

¹⁵ R.S.O. 1990, c. C.43. See e.g. s. 100.

(b) The Net Proceeds Should Not Be Segregated

22. The Vesting Order provides complete protection for all claimants to the Net Proceeds and further segregation of the Net Proceeds is not necessary or appropriate. Specifically, the Vesting Order provides that the Net Proceeds:

- (a) are to be held by the Court “for the benefit of all those claiming an interest in such Net Proceeds pending further order of the Court”;¹⁶ and
- (b) stand in the place of the Purchased Assets and all Claims, Outstanding Construction Liens and Encumbrances attach to the Net Proceeds with the same priority as existed immediately prior to the sale of the Purchased Assets.¹⁷

23. This result is in keeping with the principle enunciated by the Court in *Gilvesy Construction v 810941 Ontario Ltd* (1994)¹⁸ that the priority between lien claimants and mortgagees is not changed or affected by the liens being vacated to facilitate a sale of the premises.

24. It is also unclear what purpose the segregation of the Net Proceeds would serve. That purpose cannot be to modify the rights of any claimant, as any such purpose would be contrary to the Vesting Order and the jurisprudence. Specifically, the Vesting Order provides that the Net Proceeds are “for the benefit of all those claiming an interest in such Net Proceeds”¹⁹ (emphasis

¹⁶ Vesting Order at para 6.

¹⁷ Vesting Order at para 8.

¹⁸ *Gilvesy Construction v 810941 Ontario Ltd* (1994), 17 CLR (2d) 187 (Ont Gen Div) at para 8, BOA, Tab 4.

¹⁹ Vesting Order at para 6.

added) and that the substitution of the Net Proceeds for the Purchased Assets has no effect on the priority of any claimant.²⁰

25. Accordingly, segregating the funds would serve no useful purpose. However, there are potential harms that may result from segregation.

26. First, the segregation of the Net Proceeds could prejudice other claimants to the Net Proceeds. The act of hiving off a portion of the Net Proceeds for the sole benefit of the lien claimants necessarily implies that such funds are placed beyond the reach of the non-lien claimants. The prejudice of denying non-lien claimants access to the segregated portion of the Net Proceeds is inconsistent with such amounts being for the benefit of all parties, each of whom is entitled to the same priority rights as though the Purchased Assets had not been sold and converted into the Net Proceeds, as provided in the Vesting Order.

27. A further harm is the unnecessary administrative burden. Segregation of the Net Proceeds will layer onto the process one more step that will require effort, and the associated expense, to implement and manage.

28. Based on the foregoing, it is submitted that the segregation of the Net Proceeds is inappropriate. Segregation offers no benefit, as all claimants are entitled to assert their priorities against a secure asset without the imposition of segregation.

²⁰ Vesting Order at para 8.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Osler, Hoskin & Harcourt LLP
Osler, Hoskin & Harcourt LLP

APPENDIX "A"

Appointment Order

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -



BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

APPOINTMENT ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

TRUSTEE'S POWERS

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

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

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

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

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

GH

or CDCM

GH

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

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

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

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

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE TRUSTEE

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

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

CONTINUATION OF SERVICES

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

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE TRUSTEE’S LIABILITY

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

TRUSTEE’S ACCOUNTS

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

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

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

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

FUNDING OF THE APPOINTMENT

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

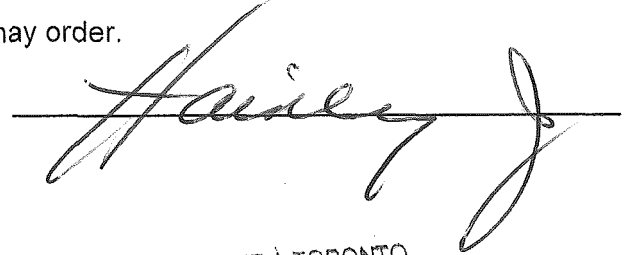
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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

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

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

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

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Miranda Spence (LSUC # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

Lawyers for The Superintendent of Financial Services

APPENDIX “B”

Construction Act, R.S.O. 1990, c. C-30

Note: The reproduction of section 44 of the *Construction Act* set out below is how the section read immediately prior to July 1, 2018. This is the version of the *Construction Act* that applies to this matter, as the contract for the improvement was entered into before the day that subsection 2(2) of the *Construction Lien Amendment Act, 2017* came into force, as per subsection 87.3(1) of the *Construction Act*.

Vacating lien by payment into court

Without notice

44 (1) Upon the motion of any person, without notice to any other person, the court shall make an order vacating,

- (a) where the lien attaches to the premises, the registration of a claim for lien and any certificate of action in respect of that lien; or
- (b) where the lien does not attach to the premises, the claim for lien,

where the person bringing the motion pays into court, or posts security in an amount equal to, the total of,

- (c) the full amount claimed as owing in the claim for lien; and
- (d) the lesser of \$50,000 or 25 per cent of the amount described in clause (c), as security for costs.

On payment in of reasonable amount

(2) Upon the motion of any person, the court may make an order vacating the registration of a claim for lien, and any certificate of action in respect of that lien, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien.

Where lien does not attach to premises

(3) Where the lien does not attach to the premises, the court may make an order, upon the motion of any person, vacating a claim for lien given to the owner, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien.

Where general lien

(4) Where a motion is made to vacate the registration of a general lien against one or more of the premises subject to that lien, the court may apportion the general lien between the premises in respect of which the motion is made and all other premises that are subject to the lien.

Reduction of amount paid into court

(5) Where an amount has been paid into court or security has been posted with the court under this section, the court, upon notice to such persons as it may require, may order where it is appropriate to do so,

- (a) the reduction of the amount paid into court, and the payment of any part of the amount paid into court to the person entitled; or

- (b) the reduction of the amount of security posted with the court, and the delivery up of the security posted with the court for cancellation or substitution, as the case may be.

Lien a charge upon amount paid into court

(6) Where an order is made under clause (1) (a) or subsection (2), the lien ceases to attach to the premises and ceases to attach to the holdbacks and other amounts subject to a charge under section 21, and becomes instead a charge upon the amount paid into court or security posted, and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given.

Idem

(7) Where an order is made under clause (1) (b) or subsection (3), the lien ceases to attach to the holdbacks and other amounts subject to a charge under section 21 and becomes instead a charge upon the amount paid into court or security posted and the owner or payer shall, in respect of the operation of sections 21, 23 and 24, be in the same position as if the lien had not been preserved or written notice of the lien had not been given.

Consolidation of motions

(8) Where more than one motion is made under subsection (1), (2) or (3) for the payment into court or posting of security to obtain an order vacating the registration of one or more preserved or perfected liens arising from the same improvement, the court may consolidate the motions and require that the amount paid into court or security posted be adequate to satisfy all the liens that are the subject of each of the motions, or make any other order that it considers appropriate.

Rules

- (9) Where an order is made under subsection (1), (2) or (3), the following rules apply:
1. The lien claimant whose lien was the subject of the order may proceed with an action to enforce the claim against the amount paid into court or security posted in accordance with the procedures set out in Part VIII, but no certificate of action shall be registered against the premises.
 2. The amount paid into court or security posted is subject to the claims of all persons having a lien to the same extent as if the amount paid into court or security posted was realized by the sale of the premises in an action to enforce the lien and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.
 3. Where any amount is realized in a lien action by the sale of the premises or otherwise, it shall be pooled into a common fund with the amount paid into court or security posted under this section, and shall be distributed among all lien claimants in accordance with the priorities provided for in section 80.
 4. A lien claimant whose lien is sheltered, in accordance with subsection 36 (4), under the lien that was the subject of the order may proceed with an action to enforce the sheltered lien as if the order had not been made.

Courts of Justice Act, R.S.O. 1990, c. C.43

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

FIRM CAPITAL MORTGAGE FUND INC. - and -

FORTRESS BROOKDALE INC.,
FORTRESS AVENUE ROAD (2015) INC. and
FERNBROOK HOMES (BROOKDALE) LIMITED

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

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

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, Ontario M5X 1B8
Fax: 416.862.6666

Michael De Lellis

Tel: 416.862.5997
Email: mdelellis@osler.com

Jeremy Dacks

Tel: 416.862.4923
Email: jdacks@osler.com

Roger Gillott

Tel: 416.862.6818
Email: rgillott@osler.com

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