

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

EMERALD CASTLE DEVELOPMENTS INC.

Applicant

and

FAAN MORTGAGE ADMINISTRATORS INC., in its capacity as the  
Court-Appointed Trustee of BUILDING & DEVELOPMENT MORTGAGES  
CANADA INC. formerly known as CENTRO MORTGAGE INC., and  
OLYMPIA TRUST COMPANY

Respondents

**FACTUM OF THE APPLICANT**

(Application Returnable October 29, 2020)

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who participate in mortgages  
administered by BDMC

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**FACTUM OF THE APPLICANT**

**PART I – OVERVIEW**

1. The Applicant, Emerald Castle Developments Inc. (“**Emerald**” or the “**Borrower**”), is the developer and owner of a 48-acre parcel of land in Brampton. In August 2014, Emerald, as borrower, entered into a loan agreement with the Respondent, Centro Mortgage Inc. (“**Centro**”), In Trust, as lender, for a non-revolving loan in the amount of \$21,246,153.85 for a five-year term. Centro obtained a mortgage on the property in respect of the loan.
2. The loan agreement was the product of extensive negotiations over a period of close to one year between arm’s length commercial parties who were represented by separate senior commercial legal counsel.
3. The loan agreement repeatedly provided that the repayment obligations of the loan and related security shall only be in accordance with the Waterfall set out in the agreement. The Waterfall detailed the priority of payments to be made, including (in part) to the existing first mortgage lender and to any construction lenders, and it made clear that Centro’s mortgage ranks *pari passu* with the mortgage obtained by Emerald’s owners to secure their equity in the project.

4. The loan agreement also provided for a termination mechanism at the end of the term of the loan (called an “end of term event”), at which time, Emerald could obtain a discharge of Centro’s mortgage and other security by deeming a sale of all vacant lands at the time, with a sale price to be established through appraisal(s), and applying the deemed sale proceeds according to the Waterfall.

5. The loan matured on November 24, 2019. Several months before, Emerald began having settlement discussions with Centro’s court-appointed Trustee, FAAN, about Emerald paying the loan on a settlement basis rather than triggering the end of term event. On October 21, 2019, the parties herein entered into a settlement agreement that provided for payment by Emerald to FAAN of \$9,500,000 in full and final satisfaction of all its liabilities under the loan agreement. However, by October 31, 2019, as a result of further negotiations, the agreed-upon settlement amount was increased to \$10,450,000.

6. FAAN then brought a motion for approval of the settlement returnable in early November 2019, and it filed its Twelfth Report outlining various reasons why it and Representative Counsel for individual investors who funded the loan, were recommending the settlement. One such reason provided was that, based on FAAN’s independent appraisal of the project, if the settlement was not approved, Emerald had the right to trigger the end of term event, which would result in a lower payout than the settlement amount, after repayment of the priority indebtedness.

7. FAAN did not ultimately proceed with the settlement motion, and in December 2019, Emerald notified FAAN of its intention to proceed with the end of term event as set out in the loan agreement.

8. In accordance with the end of term event provision, Emerald obtained an appraisal of the vacant lands of the project from an accredited AACI appraiser within 60 days of the loan’s maturity date, to determine the repayment amount required to obtain a discharge of the loan and related security. It provided the appraisal to FAAN, as well as a Waterfall calculation of \$9,124,574 due to FAAN on behalf of Centro pursuant to the end of term event and Waterfall provisions of the loan agreement.

9. FAAN has since obtained its own appraisal of the vacant lands, although not within the required 60 days despite time being of the essence in the loan agreement. FAAN has also since filed a Seventeenth Report disputing Emerald's entitlement to rely on the end of term event and therefore reversing its position as set out in its Twelfth Report filed in support of the parties' settlement.

10. As approved by Justice Hainey, this application hearing is intended to address the issue of whether, upon payment of the required amount to Centro pursuant to the end of term event and Waterfall provisions in the loan agreement, Emerald is entitled to a discharge of the loan and related security. Assuming Emerald is successful in that regard, the parties would then proceed to a hearing to resolve any dispute concerning the calculation of the payout amount to Centro pursuant to the Waterfall and end of term event provisions. The Respondent, Olympia Trust Company, which has funded a significant portion of the loan, has elected not to appear in this proceeding.

## **PART II – THE FACTS**

11. Emerald is the developer and owner of a 48-acre parcel of land in Brampton, Ontario within the proposed Area 47 Secondary Plan (the "**Property**" or the "**Project**"). It acquired the Property in February 2012.<sup>1</sup>

12. On August 25, 2014, Emerald, as Borrower, entered into a loan agreement (the "**Loan Agreement**") with Centro, In Trust, as Lender, for a non-revolving loan in the amount of \$21,246,153.85 for a five-year term (the "**Loan**").<sup>2</sup> Centro is now known as Building & Development Mortgages Canada Inc. ("**BDMC**"), and is hereinafter referred to as "**Centro/BDMC**" or the "**Lender**".

13. The Loan Agreement provided, among other things, as follows:<sup>3</sup>

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<sup>1</sup> Affidavit of Desi C. Auciello sworn February 26, 2020 ("Auciello Affidavit"), para. 2, and Exhibit "A" to Auciello Affidavit, Application Record of the Applicant ("Application Record"), Vol. I, Tabs 2 & 2A, pp. 20 & 29

<sup>2</sup> Auciello Affidavit, para 3, and Exhibit "B" to Auciello Affidavit, Application Record, Vol. I, Tabs 2 & 2B, pp. 20 & 33-61

<sup>3</sup> Exhibit "B" to Auciello Affidavit, Application Record, Vol. I, Tab 2B, pp. 36-41, 51-53 & 57

- (a) in section 3(a), that the Loan proceeds were to provide funding: (i) to pay the Borrower the sum \$12 million being 50% of the agreed-upon Borrower's Equity in the Property; (ii) to pay for the Borrower's soft or hard costs to be incurred up to \$1 million; and (iii) to pay for 100% of the fees/costs payable to the Development Consultant under the Development Consultant Agreement (referred to below);
- (b) in sections 3(a) & (b), that the Loan would be advanced in instalments, with the Lender being required to fund the entire Loan within 11 months following execution of the Loan Agreement;
- (c) in section 4, a term of 5 years commencing on the date of the first advance of the Loan (the "**Maturity Date**");
- (d) in sections 5 and 6, that interest at the rate of 8% per annum shall accrue and be capitalized, and be repayable on the Maturity Date only in accordance with, and subject to, Section 7.2 (Waterfall) and Section 14 (End of Term Event);
- (e) in section 7.1(b), that the Loan principal and all accrued interest shall become due and payable on the Maturity Date in the manner and priority set forth in Section 7.2 (Waterfall) and Section 14 (End of Term Event);
- (f) in section 7.2.A, a **Waterfall** provision detailing the manner and priority in which available cash flow is to be paid out, which included (in part) the following order of distribution: (1) repayment of principal and interest under the existing first mortgage of \$8,150,000 or any refinancing thereof, and under any Project construction loans; (2 & 3) payment to the Borrower of unpaid Project Management Fees and a guarantee fee of 2.5%; (5) the sum of \$13 million to each of the Lender and Borrower, on a *pro rata* basis, on account of: in the case of the Lender - the portion of the Loan principal that excludes the amount of the Development Consultant Fees/Costs, and in the case of the Borrower – the Borrower's remaining Borrower's Equity; (6) payment to the Lender and Borrower, on *pro rata* basis, of the 8% accrued interest to the Lender and an 8%

annual return on the Borrower's Equity to the Borrower; (7) any remaining cash flow to be distributed *pro rata* to the Development Consultant (Fortress) and to the Borrower, and from the amount to be distributed to the Development Consultant (Fortress) there shall be deducted and paid to the Lender any remaining amount owing on the Loan;

- (g) in section 8, that as part of the security that the Lender is to receive for the Loan (the "**Security**"), the Borrower is to provide the Lender with a mortgage on the Property for the principal sum of \$22 million (the "**Centro/BDMC Mortgage**"), which mortgage shall rank *pari passu* with the Borrower's Pari-Passu Mortgage for the same principal amount securing repayment of the Borrower's Equity (the "**Emerald *Pari Passu* Mortgage**"), and both mortgages are entitled to distribution as per the said Waterfall;
- (h) in section 14, an **End of Term Event** providing that, in the event the Loan is not repaid by the Maturity date, and despite any provisions of the Security, the Lender shall only be permitted to exercise its rights under the Security in the event that the Borrower does not adhere to the following procedure: (i) each party shall obtain its own appraisal of any portions of the Project not under construction for either servicing or house construction ("**Vacant Lands**"), failing which the appraisal obtained by the one party shall govern as to the value, and where both appraisals are obtained within the 60 days then the average of the two appraisals will apply. The Borrower shall then have the option to obtain a partial discharge of the Security as against the Vacant Lands upon payment of the appraised value less specified deductions pursuant to the Waterfall in section 7.2 (the "**Paydown**"). Upon payment of the Paydown in accordance with the Waterfall, the Lender shall provide partial discharges of all of its Security in respect of the Vacant Lands, and the same shall no longer be Security for the Loan. In the event the Borrower does not exercise the foregoing option to obtain the discharges, the lands shall be listed for sale with a reputable commercial real estate agent;

- (i) in section 7.2.A.7, that in the event there is a shortfall once all the Project lands have been sold and the Lender's rights under section 14 have been fully exercised, the Lender agrees to waive its rights to repayment of any remaining amount owing on the Loan and provide a release of the Borrower and a discharge of all remaining Security;
- (j) in section 7.2.B, that the Waterfall spells out how funds are to be paid to either the Borrower or the Lender and/or the Development Consultant as and when received from the sale of the Project in whole or in part;
- (k) in section 17(g), that the Loan Agreement and related documents constitute the entire agreement between the parties; and
- (l) in section 17(j), that time shall be of the essence.

14. Accordingly, it was a fundamental term of the Loan Agreement that Emerald's repayment obligations under the Loan and the Security would be in accordance with a Waterfall, and that there would be a termination mechanism at the end of the term of the Loan, regardless of the stage of the Project, by which Emerald could obtain a discharge of the Security on all the Vacant Lands by deeming a sale of the Vacant Lands at the time with a sale price to be established through appraisal(s), and applying the deemed sale proceeds according to the Waterfall.<sup>4</sup>

15. Emerald also entered into a Development Consulting Agreement with Fortress Real Developments Inc. ("**Fortress**") dated August 25, 2014.<sup>5</sup> Section 5 of that agreement contained the same Waterfall provision as in the Loan Agreement.

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<sup>4</sup> Supplementary Affidavit of Desi Auciello sworn May 13, 2020 ("Supp. Auciello Affidavit"), paras. 21 & 25, Application Record, Vol. II, Tab 3, pp. 11-12

<sup>5</sup> Auciello Affidavit, para 4, and Exhibit "C" to Auciello Affidavit, Application Record, Vol. I, Tabs 2 & 2C, pp. 20 & 63-77



16. The only other Loan-related agreements were: (a) an Indemnity letter from Centro/BDMC to Emerald dated August 25, 2014;<sup>6</sup> and (b) a letter from Fortress of the same date confirming the breakdown of a portion of the Loan in the amount of \$810,000.<sup>7</sup>

17. As indicated, section 8 of the Loan Agreement provided that the Centro/BDMC Mortgage and the Emerald *Pari Passu* Mortgage, each securing the same principal sum, shall rank *pari passu* with each other and be entitled to distribution according to the Waterfall. In that regard:

- (a) The Centro/BDMC Mortgage was registered on title to the Property on November 24, 2014. On that date, the mortgage secured the principal sum of \$10 million. As subsequent Loan instalments were advanced, the Lender registered notices on title to the Property, increasing the principal amount secured, ultimately to \$21,246,154 in June 2015.<sup>8</sup> The mortgage was transferred on 18 occasions and is currently registered to BDMC and the Respondent, Olympia Trust Company;
- (b) The Emerald *Pari Passu* Mortgage was registered on title to the Property on November 25, 2014 securing the principal sum of \$22,000,000 in respect of the Borrower's (or its owners') equity in the Project. In accordance with the definition of "*Pari Passu* Mortgage" in the Loan Agreement,<sup>9</sup> the mortgage was registered in favour of a company designated by the Borrower, which was 2429730 Ontario Limited.<sup>10</sup>

18. The first tranche of the Loan was advanced on November 24, 2014. Accordingly, the Maturity Date was November 24, 2019.<sup>11</sup>

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<sup>6</sup> Exhibit "C" to Supp. Auciello Affidavit, Application Record, Vol. I, Tab 3C, p. 27

<sup>7</sup> Exhibit "D" to Supp. Auciello Affidavit, Application Record, Vol. II, Tab 3D, p. 30; Transcript of cross-examination of Desi Auciello held July 8, 2020, qq. 238-39, Application Record, Vol. III, Tab 12, p. 312

<sup>8</sup> Auciello Affidavit, para 6, and Exhibits "A" & "E" to Auciello Affidavit, Application Record, Vol. I, Tabs 2, 2A & 2E, pp. 21, 29-31 & 91-105

<sup>9</sup> Exhibit "B" to Auciello Affidavit, Application Record, Vol. I, Tab 2B, p. 35

<sup>10</sup> Exhibit "A" to Auciello Affidavit, Application Record, Vol. I, Tab 2A, p. 29

<sup>11</sup> Auciello Affidavit, para. 13, Application Record, Vol. I, Tab 2, p. 22

19. Several months prior to the Maturity Date, and in August 2019, FAAN on behalf of Centro/BDMC, invited a proposal from Emerald to pay the Loan on a settlement basis rather than triggering the End of Term Event at section 14 of the Loan Agreement.<sup>12</sup>

20. A year earlier, FAAN had requested and received a Waterfall payout calculation, so it was well aware of the same. FAAN also received extensive documentation regarding the Project and the Loan, as well as Emerald Castle's entire general ledger from the commencement of the Loan.<sup>13</sup>

21. Following FAAN's aforesaid invitation, Emerald engaged in settlement discussions with FAAN. On October 21, 2019, Emerald, FAAN and Olympia Trust entered into a settlement agreement that provided for payment by Emerald to FAAN of \$9,500,000 in full and final satisfaction of all its liabilities under the Loan Agreement. However, by October 31, 2019, as a result of further negotiations, the agreed-upon settlement amount was increased to \$10,450,000.<sup>14</sup>

22. On October 31, 2019, FAAN brought a motion for approval of the settlement agreement. FAAN filed its Twelfth Report with the Court in support of the settlement. At paragraph 23 of its Twelfth Report, FAAN confirmed the application of the End of Term Event in the Loan Agreement, as follows:<sup>15</sup>

*“Among other things, the End of Term Event Clause precludes BDMC, in its capacity as lender to the Castlemore Project, from exercising its rights under its Security (as defined in the Castlemore Loan Agreement), provided that certain procedural steps are followed by the Castlemore Borrower. These steps include, among other things, obtaining updated appraisals for the Property (“Updated Appraisals”). After obtaining Updated Appraisals, the Castlemore Borrower then has the option of either: (i) paying out the Castlemore Individual Lenders in the manner and priority prescribed by the Loan Agreement (“End of Term Process”) using the average value of the Updated Appraisals for distribution purposes,*

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<sup>12</sup> Supp. Auciello Affidavit, para. 57, Application Record, Vol. II, Tab 3, p. 17

<sup>13</sup> Supp. Auciello Affidavit, paras. 47, 49 & 53, Application Record, Vol. II, Tab 3, pp. 15-16

<sup>14</sup> Supp. Auciello Affidavit, paras. 58 & 61, Application Record, Vol II, Tab 3, p. 17

<sup>15</sup> Twelfth Report of the Trustee, para. 23, Application Record, Vol III, Tab 7-App.4, p. 104

*subject to certain deductions; or (ii) listing the Property for sale with a reputable commercial real estate agent and then distributing the proceeds from the sale in accordance with the End of Term Process.”*

23. In its Twelfth Report to the Court, FAAN also confirmed that, based on its own independent appraisal of the Project, if the settlement was not approved, Emerald had the right to trigger the End of Term Event, which would result in a lower payout than the settlement amount, after repayment of the priority indebtedness. FAAN's Twelfth Report also indicated that FAAN had engaged a planning consultant who confirmed that the Project would not be completed until 2025 or later. Its Report also confirmed that the investors' Representative Counsel also supported the settlement, as did 76% of the individual investors who funded over 72% of the Loan.<sup>16</sup>

24. Just prior to the return of the motion to approve the settlement, FAAN requested an adjournment and subsequently sought to delay the motion further without any indication as to when it would be prepared to proceed with the settlement motion.<sup>17</sup>

25. Given the same, Emerald terminated the settlement agreement, and on December 6, 2019, Emerald notified FAAN of its intention to proceed with the End of Term Event at section 14 of the Loan Agreement.<sup>18</sup>

26. Pursuant to section 14(i)(A) of the Loan Agreement, each party was required to obtain an appraisal of the Vacant Lands using an accredited AACI appraiser within 60 days of the Maturity Date to determine the repayment amount required to obtain a discharge of the Security.<sup>19</sup>

27. To date, all the lands of the Property remain Vacant Lands, as defined in the End of Term Event at section 14 of the Loan Agreement.<sup>20</sup> The Property is situated within (and forms a very small part of) the Secondary Plan Area 47 in Brampton, which area is

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<sup>16</sup> *Id.*, at paras. 30, 33-34 & 45, Application Record, Vol III, Tab 7-App.4, pp. 105-07 & 109-10

<sup>17</sup> Supp. Auciello Affidavit, paras. 66-67, Application Record, Vol. II, Tab 3, p. 18

<sup>18</sup> Auciello Affidavit, para 15, and Exhibit "F" to Auciello Affidavit, Application Record, Vol. I, Tabs 2 & 2F, pp. 22 & 107-08

<sup>19</sup> Auciello Affidavit, para 10, Application Record, Vol. I, Tab 2, p. 21

<sup>20</sup> Auciello Affidavit, para. 9, Application Record, Vol. I, Tab 2, p. 21

the subject of ongoing planning appeals of the Secondary Plan and Block Plan. Until those developmental hurdles are resolved, Emerald will not be able to submit applications for Draft Plan of Subdivision or Zoning By-Law Amendments. Accordingly, no construction has ever commenced at the Property. Emerald and FAAN's planning expert now believe that the Project will not be completed before 2025.<sup>21</sup>

28. On January 7, 2020, in accordance with the End of Term Event, Emerald obtained an appraisal from CBRE, which appraised the value of the Vacant Lands at \$ [REDACTED].<sup>22</sup> Shortly thereafter, Emerald provided the said appraisal to FAAN, as well as a Waterfall calculation of \$9,124,574 due to FAAN on behalf of BDMC/Olympia pursuant to the End of Term and Waterfall provisions of the Loan Agreement.<sup>23</sup>

29. On February 14, 2020, more than 60 days from both the Maturity Date and from when Emerald notified FAAN of its intention to proceed with the End of Term Event, FAAN provided an appraisal of the Property conducted by Jones Lang LaSalle Real Estate Services, Inc. in the amount of \$ [REDACTED].<sup>24</sup>

30. In March 2020, FAAN filed its Seventeenth Report in which it suddenly took the position that Emerald was not entitled to exercise the End of Term Event in the Loan Agreement, without advising of the reasons for the same or why it and Representative Counsel were suddenly reversing their said position as set out in its Twelfth Report.<sup>25</sup>

31. The Loan Agreement was heavily negotiated over a period of about one year by commercial parties who were at arm's length throughout. The Loan Agreement went through over 20 draft versions before it was finalized. The parties were represented by separate senior commercial legal counsel. Centro/BDMC/Fortress were represented by

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<sup>21</sup> Supp. Auciello Affidavit, paras. 38-43, Application Record, Vol. II, Tab 3, pp. 14-15; Twelfth Report of the Trustee, paras. 16-20 & 30, Application Record, Vol III, Tab 7-App.4, pp. 102-03 & 105

<sup>22</sup> Auciello Affidavit, para 16, and Exhibit "G" to Auciello Affidavit, Application Record, Vol. I, Tabs 2 & 2G, pp. 23 & 114-82

<sup>23</sup> Auciello Affidavit, paras 17 & 20, and Exhibits "H", "J" & "K" to Auciello Affidavit, Application Record, Vol. I, Tabs 2, 2H, 2J & 2K, pp. 23-24, 184-86, 192 & 198-99

<sup>24</sup> Auciello Affidavit, para 25, and Exhibits "M" & "N" to Auciello Affidavit, Application Record, Vol. I, Tabs 2, 2M & 2N, pp. 25, 204 & 210-58

<sup>25</sup> Supp. Auciello Affidavit, para 68, Application Record, Vol. II, Tab 3, p. 18

Leor Margulies of Robins Appleby LLP, and Emerald was represented by William Friedman of Friedman Law Professional Corporation.<sup>26</sup>

32. In his memorandum dated May 16, 2014, some two months before the Loan Agreement was signed, Mr. Margulies confirmed the intent of the End of Term Event as follows:<sup>27</sup>

**“4. Termination Process**

*We have agreed that the termination process would be equivalent to a third party sale. This means that...100% of the value of the land being sold gets thrown back into the Waterfall. Then we are in the same position as if the lands were sold to a third party and the funds came in and then had to go through the Waterfall. [Desi Auciello of Emerald] had agreed to that and I believe that will break the logjam at this point.”*

33. Throughout the time the Loan Agreement was negotiated and entered into, no investors existed as Centro/BDMC/Fortress raised their funds after the agreement was entered into.<sup>28</sup> FAAN became trustee for Centro/BDMC more than 3.5 years after the Loan Agreement was entered into.

34. Emerald is not in default of any obligations under the Loan Agreement.<sup>29</sup>

35. In April 2020, and as a result of FAAN’s refusal to comply with the End of Term Event in the Loan Agreement, Emerald was required to renew the existing first mortgage loan of \$10,500,000 from Cameron Stephens Financial Corporation and incur significant extension fees and ongoing interest charges. That mortgage ranks ahead of the entitlements that both Centro/BDMC and Emerald have *pari passu* for repayment according to the Waterfall.<sup>30</sup>

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<sup>26</sup> Supp. Auciello Affidavit, paras. 14, 17 & 19, Application Record, Vol. II, Tab 3, pp. 10-11

<sup>27</sup> Exhibit “A” to Supp. Auciello Affidavit, Application Record, Vol. II, Tab 3A, p. 22

<sup>28</sup> Supp. Affidavit of Auciello, para 35, Application Record, Vol. II, Tab 3, p. 13

<sup>29</sup> Auciello Affidavit, para. 32, Application Record, Vol. 1, Tab 2, p. 26

<sup>30</sup> Supp. Auciello Affidavit, paras. 70-71, and Exhibit “M” to Supp. Auciello Affidavit, Application Record, Vol. II, Tabs 3 & 3M, pp. 18-19 & 73-79

### **PART III – ISSUES AND THE LAW**

36. As indicated, the Loan Agreement repeatedly provides that the repayment obligations shall only be in accordance with the Waterfall at section 7.2. The Loan Agreement, at section 14, also clearly provides Emerald with a termination mechanism at the end of the term of the Loan by which Emerald could obtain a discharge of the Security on all the Vacant Lands by deeming a sale of the Vacant Lands at the time with a sale price to be established through appraisal(s), and applying the deemed sale proceeds according to the Waterfall. These were also fundamental terms of the Loan Agreement.

37. The said provisions in the Loan Agreement are clear and do not require the Court's assistance to construe their meaning. FAAN also had no difficulty describing their application in its Twelfth Report to the Court in its motion to approve the parties' settlement that was also supported by Representative Counsel for the investors.

38. In any event, when interpreting contracts, the court must look to the four corners of the document to ascertain the intention of the parties and give effect to their written agreements. It is not for the court to re-write the terms or create terms that are not contained in the contract.<sup>31</sup>

39. It is uncontradicted that the intention of the parties to the Loan Agreement at the time the agreement was entered into was as spelled out in the contract.

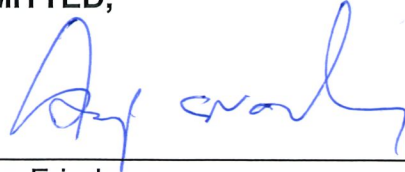
### **PART IV – ORDER REQUESTED**

40. For all the foregoing reasons, Emerald respectfully requests an Order declaring that the End of Term Event and Waterfall provisions in the Loan Agreement entitle Emerald to the relief sought in this application, and referring this matter for a hearing to resolve any dispute concerning the calculation of the amount to be paid by Emerald to BDMC/Centro pursuant to the said provisions.

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<sup>31</sup> [General Refractories Co. of Canada v. Venturedyne Ltd., 2002 CarswellOnt 36, at para.56](#)

**ALL OF WHICH IS RESPECTFULLY  
SUBMITTED,**

A handwritten signature in blue ink, appearing to read "W. Friedman", is written above a horizontal line.

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William Friedman,  
Judy Hamilton,  
Stephen C. Nadler,  
of counsel for the Applicant

**SCHEDULE "A"**

1. [General Refractories Co. of Canada v. Venturedyne Ltd., 2002 CarswellOnt 36](#)



**EMERALD CASTLE DEVELOPMENTS INC.**  
Applicant

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**FAAN MORTGAGE ADMINISTRATORS INC., et al.**  
Respondents  
Court File No. CV-20-00637238-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**FACTUM OF THE APPLICANT**

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