

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 Chloe Nanfara sworn January 19, 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.

A handwritten signature in black ink, appearing to read 'McE T.', is written above a horizontal line.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

31 Jan 22

Order to go as per the draft filed and signed. It is unopposed.
Although properly served Fortress, Fong and the Kemp Borrower have not responded.
The proposed pari passu distribution is fair and reasonable and supported by representative counsel.
The fees and activities are approved.
A sealing order shall also go as the Sierra Club criteria have been met.



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

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
of Building & Development Mortgages Canada
Inc.**