

SETTLEMENT AGREEMENT

BETWEEN:

ARLENE McDOWELL, SAVERIO AVERSA, SANDRA MEDLAND,
and REBECCA SHAW, ESTATE ADMINISTRATOR of
THE ESTATE OF BRYAN MADRYGA

(Plaintiffs)

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC. (formerly carrying on
business as CENTRO MORTGAGE INC.), and ESTATE OF ILDINA GALATI,
deceased, by its Trustee in Bankruptcy CROWE SOBERMAN INC.

(Settling Parties)

The parties hereto agree to settle the Plaintiffs' and proposed class members' claims against the Defendants, Building & Development Mortgages Canada Inc. (formerly carrying on business as Centro Mortgage Inc.) ("BDMC" or the "Corporate Settling Party"), and the Estate of Ildina Galati, deceased, by its Trustee in Bankruptcy Crowe Soberman Inc. ("Galati") (together, the "Settling Parties"), in Ontario Superior Court of Justice (the "Court") File Nos.: CV-16-558165-00CP (Collier Centre), CV-16-560268-00CP (Progress/Ten88), CV-16-561293-00CP (Sutton/The Link), CV-16-565287-00CP (Harmony Simcoe/The Kemp), and CV-17-570361-00CP (Orchard) (together, the "Class Actions") on the following basis, subject to the approval of the Court:

1. The "Settling Parties" is defined to include, where applicable, BDMC and Galati's past and present directors, officers, employees, independent contractors (including individuals or personal corporations retained by BDMC under personal service contracts or personal service agreements), servants, administrators, affiliates, heirs, executors, successors, assigns, trustees, and personal representatives, but excluding any Defendants to the Class Actions other than BDMC and Galati. The "Settling Parties" is also defined to include BDMC and Galati's insurers, but only insofar as the insurer is the insurer of the Settling Parties and not to the extent that it is also the insurer of any Defendants in the Class Actions other than BDMC and Galati.
2. The "Settled Projects" is defined to include the construction projects known by the names Collier Centre, Progress/Ten88, Sutton/The Link, Harmony Simcoe/The Kemp, and Orchard, which are the subject of the Class Actions.
3. The Settling Parties agree to pay to the Plaintiffs the sum of CAD eight million dollars (CAD \$8,000,000.00), inclusive of legal fees, disbursements, HST, interest, and notice, administrative, and all other expenses (the "Settlement

Fund”), in full and final settlement of any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Parties in the Class Actions, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of the Class Actions (the “Settled Claims”).

4. The Settlement Fund shall be paid to MSTW Professional Corporation (“MSTW”), in trust, no later than 30 days after this Settlement Agreement is approved by the Court, to be held in a separate and interest-bearing trust account pending return to counsel for the Settling Parties upon termination of this Settlement Agreement in accordance with paragraph 18 hereof, or if not terminated, pending any further order of the Court with respect to its distribution.
5. Following execution of this Settlement Agreement, the Plaintiffs and the Settling Parties will apply to the Court for a hearing in each of the Class Actions for the purpose of approving the Settlement Agreement (the “Settlement Approval Hearing”), at which the Plaintiffs will seek orders in each of the Class Actions approving this Settlement Agreement, certifying these actions as class proceedings as against the Settling Parties on consent and for settlement purposes only, and barring all claims against the Settling Parties, substantially in the form attached hereto as Schedule A, or as may be amended with the written consent of the Settling Parties (the “Settlement Approval Orders”).
6. The Class Actions shall be certified as class proceedings as against the Settling Parties, on consent and without costs, on the following basis, or as otherwise approved by the Court.

a. Representative Plaintiffs

Arlene McDowell and Saverio Aversa shall be the representative plaintiffs with respect to CV-16-558165-00CP (Collier Centre).

Arlene McDowell shall be the representative plaintiff with respect to CV-16-560268-00CP (Progress/Ten88).

Sandra Medland shall be the representative plaintiff with respect to CV-16-561293-00CP (Sutton/The Link).

Rebecca Shaw, Estate Administrator of the Estate of Bryan Madryga shall be the representative plaintiff with respect to CV-16-565287-00CP (Harmony Simcoe/The Kemp).

Arlene McDowell and Rebecca Shaw, Estate Administrator of the Estate of Bryan Madryga shall be the representative plaintiffs with respect to CV-17-570361-00CP (Orchard).

b. Common Issues

The common issues to be certified as against the Settling Parties will be:

- i. Did BDMC breach its contracts with the Class members? If so, how?
- ii. Did BDMC owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did BDMC breach its fiduciary duty owed to the Class members, and if so, how?
- iii. Did BDMC and/or Galati owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- iv. If BDMC and/or Galati owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- v. If BDMC and/or Galati owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did BDMC and/or Galati breach the applicable standard of care? If so, how?
- vi. Did BDMC make fraudulent misrepresentations to the Class members, and, if so, is BDMC liable to the Class with respect thereto?
- vii. Did BDMC conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- viii. Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

c. Class Definitions

The Classes will be defined as:

i. For CV-16-558165-00CP (Collier Centre):

All persons in Canada who invested prior to January 30, 2015 in a syndicated mortgage in respect of the Collier Centre Project No. 1, registered against title to lands located at 90 Collier Street and 55 Mulcaster Street, Barrie, Ontario, as Instrument SC1005953.

ii. For CV-16-560268-00CP (Progress/Ten88):

All persons in Canada who invested in a syndicated mortgage in respect of the Ten88 (Progress) Project, registered against title to lands located at 1088 Progress Avenue, Toronto, Ontario as Instrument AT3101004.

iii. CV-16-561293-00CP (Sutton/The Link):

All persons in Canada who invested in a syndicated mortgage in respect of the Sutton/The Link Project, registered against title to lands located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario as Instruments HR1062915, HR1163232, or HR1174204.

iv. For CV-16-565287-00CP (Harmony Simcoe/The Kemp):

All persons in Canada who invested in a syndicated mortgage in respect of the Harmony Simcoe Project, registered against title to lands located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario, as Instrument SC983678.

v. CV-17-570361-00CP (Orchard):

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

7. Notice of Certification of the Class Actions as against the Settling Parties and Notice of Approval of this Settlement Agreement will be substantially in accordance with the Notice Protocol in Schedule B or as otherwise ordered by the Court. Schedule B shall not form part of this Settlement Agreement, and Court approval of the Settlement Agreement will not depend on the Court's approval of the content of Schedule B, which may be modified by the Court as it deems fit.
8. The plan for distribution of the Settlement Fund does not form part of this Settlement Agreement, and the Court's approval of the Settlement Agreement shall not be contingent on either the presentation or approval of any plan for distribution of the Settlement Fund.
9. MSTW and Waddell Phillips Professional Corporation (collectively, "Class Counsel") may seek Court approval of class counsel fees and disbursements, and Plaintiffs' honoraria, either at the same time as, or subsequent to the Settlement Approval Hearing. Court approval of the Settlement Agreement will not depend on approval of class counsel fees and disbursements, or Plaintiffs' honoraria. The

Settling Parties will take no position with respect to Class Counsel's motion for approval of class counsel fees and disbursements, and Plaintiffs' honoraria.

10. BDMC and Galati confirm that their documents relating to the issues in these Class Actions were seized by FAAN Mortgage Administrators Inc. ("FAAN"), which is the trustee of the assets, undertakings and properties of BDMC. In the event the Plaintiffs seek a Court order for production of BDMC or Galati's documents from FAAN, the Settling Parties will consent to such order being granted.
11. The Class Actions will be dismissed as against the Settling Parties, with prejudice, and on consent and without costs.
12. The dismissal of the Class Actions shall not relieve the Settling Parties from their obligations under this Settlement Agreement.

Bar Orders:

13. The Plaintiffs and the Settling Parties agree that the Settlement Approval Orders shall contain a bar order, which shall include the following provisions:
 - (a) all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Settled Claims, which were or could have been brought in these Class Actions or that have been, or that could have been asserted by a separate action by any Non-Settling Defendant or by any other person or party against any of the Settling Parties, or by the Settling Parties against any Non-Settling Defendant, shall be forever barred, prohibited and enjoined;
 - (b) all claims of all members of the Classes against the Settling Parties of any nature whatsoever arising out of or relating in any way to the Settled Claims, which could have been brought in the Class Actions or in a separate proceeding shall be forever barred, prohibited and enjoined;
 - (c) A full and final release in favour of the Settling Parties in respect of the Settled Claims, by all Class Members resident in Canadian jurisdictions where the release of a joint tortfeasor does not result in a release of all joint tortfeasors;
 - (d) If a Non-settling Defendant or any other person or party would have the right to make a claim for contribution and indemnity against any of the Settling Parties in the Class Actions or in any other proceedings:
 - (i) the Plaintiffs and/or Class Members shall not claim or be entitled to recover from the Non-Settling Defendants or any other person that portion of any loss, damages, costs, expense, or other amount awarded that corresponds to the proportionate liability of any of the Settling Parties in relation to the Settled Claims and/or Settled

Projects as proven at trial in the Class Actions or in any other proceedings; and

- (ii) the Court shall have full authority to determine the proportionate liability of the Settling Parties at the trials or other disposition of the Class Actions or other proceedings involving the Settled Projects as if the Settling Parties were parties to the Class Actions or other proceedings and any such finding by the Court in respect of the Settling Parties' proportionate liability in any of the Class Actions or other proceedings shall only apply in the said Class Action or other proceeding in which the liability was determined and shall not be binding upon the Settling Parties in any other proceedings.
14. The Bar Order to be obtained in each of the Settlement Approval Orders shall specifically bar Olympia Trust Company ("Olympia") from pursuing its Third Party Claim bearing Court file no. CV-20-00643593-0A52 issued October 1, 2021 as against BDMC in respect of the Settled Claims, in relation to the action Raponi v. Olympia Trust Company issued July 8, 2020 in the Ontario Superior Court of Justice bearing Court file no. CV-20-00643593-00CP (the "Raponi Action"), and bar any future claims which could be asserted by Olympia against the Settling Parties in respect of the Settled Claims.
15. For greater certainty, to the extent that the Settling Parties are found to have any liability to any of the Non-Settling Defendants or to Olympia for contribution or indemnity arising from or related to amounts for which the Non-Settling Defendants or Olympia are found liable to any of the Classes in the Class Actions or the Raponi Action, the Class Members' recovery from the Non-Settling Defendants or Olympia shall be reduced by the amount(s) for which the Settling Parties are found liable to the Non-Settling Defendants or Olympia.
16. For greater certainty, the Plaintiffs hereby agree to indemnify the Settling Parties and hold them harmless in the event that there is a finding that the Settling Parties are liable to pay any amounts to any Non-Settling Defendant pursuant to any claims brought against them by any Non-Settling Defendant for contribution and indemnity in the Class Actions, or in the event that there is a finding that the Settling Parties or any of them are liable to pay any amounts to Olympia in the Third Party Claim by Olympia in the Raponi Action in respect of the Settled Projects.
17. Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Class Members against any person other than the Settling Parties.
18. If any one of the following events occurs:
 - a. the Settlement Approval Orders are not granted in each of the Class Actions;



- b. any of the Settlement Approval Orders are reversed or modified on appeal, and remain so after the exhaustion or exercise of all rights of appeal;

then:

- i. this Settlement Agreement shall be automatically terminated upon the happening thereof, and shall have no further force and effect with respect to the parties, save and except for paragraphs 4, 18 and 19 of this Settlement Agreement, which shall survive termination;
 - ii. all orders made pursuant to this Settlement Agreement shall be null and void, and shall have no further force and effect;
 - iii. this Settlement Agreement shall not be offered in evidence or used in any litigation for any purpose other than to enforce the terms of this Settlement Agreement that survive termination;
 - iv. MSTW shall return the Settlement Fund forthwith to counsel for the Settling Parties, together with all accrued interest; and
 - v. all parties shall be returned to the position they were in immediately before executing this Settlement Agreement.
19. The Plaintiffs hereby acknowledge that this Settlement Agreement does not constitute any admission whatsoever of liability on the part of any of the Settling Parties, and that no liability shall be imputed to the Settling Parties as a result of entering into this Settlement Agreement.
 20. The Plaintiffs and the Settling Parties represent and warrant that they have had a reasonable opportunity to review and consider this Settlement Agreement prior to executing it, have had the opportunity to obtain independent legal advice in respect thereto, and understand the significance of this Settlement Agreement, including their obligations and rights hereunder, and they are under no incapacity of any nature at the time that it was executed and explained to them. The Settling Parties acknowledge that Class Counsel have not provided them with legal advice.
 21. Class Counsel warrants that they are fully authorized to execute this Settlement Agreement on behalf of the Plaintiffs and to execute and legally bind the Plaintiffs to this Settlement Agreement.
 22. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement Agreement must be made by application to the Court.
 23. This Settlement Agreement shall be construed under and governed by the laws of the Province of Ontario.

24. This Settlement Agreement may be executed either by original signature, or electronically, including by PDF signature attached to an e-mail, or by facsimile signature, and may be executed by the parties in one or more counterparts, each of which when so executed and delivered, shall be an original and such counterparts shall together constitute one and the same instrument, notwithstanding their date of actual execution.

Dated this 18th day of November, 2022

 _____ Dolden Wallace Folick LLP, lawyers for the Settling Parties
 _____ MSTW Professional Corporation, and Waddell Phillips Professional Corporation, Lawyers for Arlene McDowell, Saverio Aversa, Sandra Medland, and Rebecca Shaw, and the Estate Administrator of the Estate of Bryan Madryga

**Schedule A to BDMC Settlement Agreement
(Collier Centre)**

Court File No. CV-16-558165-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THE
)
JUSTICE P. PERELL) DAY OF JANUARY, 2023

B E T W E E N:

(Court Seal)

ARLENE MCDOWELL and SAVERIO AVERSA
Plaintiffs

-and-

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC.,
CENTRO MORTGAGE INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy
CROWE SOBERMAN INC, FFM CAPITAL INC., ROSALIA SPADAFORA, SAUL
PERLOV, DEREK SORRENTI, and SORRENTI LAW PROFESSIONAL CORPORATION
Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants Building & Development Mortgage Canada Inc. (“BDMC”) and the Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc. (“Galati”) (collectively, the “Settling Defendants”), and approving the settlement agreement between the Plaintiffs and the Settling Defendants, approving the form and content of the notice of certification and hearing for settlement approval, and approving the notice

of settlement approval and counsel fee approval (the “Notices”), and the method of dissemination of the Notices, and dismissing this action as against the Settling Defendants with prejudice and without costs, was heard this day by judicial videoconference at the court house, Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5.

ON READING the materials filed, including the settlement agreement dated as of [DATE] attached to this Order as **Appendix A** (the “Settlement Agreement”), and on hearing the submissions of the Plaintiffs and the Settling Defendants;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions in the Settlement Agreement apply to, and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who invested prior to January 30, 2015 in a syndicated mortgage in respect of the Collier Centre Project No. 1 (the “Collier Centre Project”), registered against title to lands located at 90 Collier Street and 55 Mulcaster Street, Barrie, Ontario, as Instrument SC1005953.

5. **THIS COURT ORDERS** that Arlene McDowell and Saverio Aversa are appointed as the representative plaintiffs.
6. **THIS COURT ORDERS** that MSTW Professional Corporation and Waddell Phillips Professional Corporation are appointed as Class Counsel.
7. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Settlement Class:
 - (a) breach of contract;
 - (b) breach of fiduciary duty;
 - (c) negligence;
 - (d) negligent misrepresentation;
 - (e) fraudulent misrepresentation; and
 - (f) conspiracy.
8. **THIS COURT DECLARES** that the relief sought by the Settlement Class is declarations, general damages, punitive damages, interest, and costs.
9. **THIS COURT ORDERS** that the following issues are common to the Settlement Class:
 - (a) Did BDMC breach its contracts with the Class members? If so, how?
 - (b) Did BDMC owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did BDMC breach its fiduciary duty owed to the Class members, and if so, how?

- (c) Did BDMC and/or Galati owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- (d) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- (e) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- (f) Did BDMC make fraudulent misrepresentations to the Class members, and, if so, is BDMC liable to the Class with respect thereto?
- (g) Did BDMC conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- (h) Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. **THIS COURT DECLARES** that a class proceeding is the preferable procedure for the resolution of the common issues as against the Settling Defendants.

11. **THIS COURT ORDERS** that FAAN Mortgage Administrators Inc. is appointed as the Claims Administrator to deliver the Notices and to disseminate the Settlement Funds to the Settlement Class Members.

12. **THIS COURT ORDERS** that the Plaintiffs shall give notice of the certification of this action and the opt-out process, and notice of the approval of the Settlement Agreement to the Settlement Class Members in substantially the form set out in **Appendix B** hereto and in the manner set out in the Notice Protocol attached as **Schedule B** to the Settlement Agreement.

13. **THIS COURT ORDERS** that no information regarding this Action other than the Notices may be disseminated by any Defendant during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court.

14. **THIS COURT ORDERS** that Settlement Class Members may opt out of this class proceeding by following the opt-out process set out in the Notices, by no later than 5 pm E.T. on **[date 60 days after the date of the Order]** (the “Opt-Out Deadline”).

15. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notices and paragraph 14 of this order shall be excluded from the Settlement Class and excluded from the action.

16. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants and the Court a report containing the name of each person who has validly and timely opted out of the proceeding.

17. **THIS COURT ORDERS** that the dismissal of this Action as against the Settling Defendants shall not relieve the Settling Defendants from their obligations under the Settlement Agreement.

18. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Settling Defendants, FAAN Mortgage Administrators Inc., counsel for the Settling

Defendants or Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any matter in any way relating to the implementation of this Order or the Settlement Agreement, except with leave of this Court.

19. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action as against the Settling Defendants for settlement purposes only, the definition of the Settlement Class, and the certified Common Issues, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with this Action and, without restricting the generality of the foregoing, may not be relied on by any person to establish the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.

20. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendants in accordance with the terms hereof, and upon each member of the Settlement Class who does not validly opt out of this action, including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 are dispensed with in respect of the Action.

21. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

22. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented and enforced in accordance with its terms.

23. **THIS COURT ORDERS** that, on the date on which any appeal of this Order is finally disposed of, or the time to bring any appeal of this Order, if any, has expired (the “Effective Date”) each Settlement Class Member and any of their past and current successors, heirs, executors, administrators, trustees, or assigns (“Releasors”) releases and shall be conclusively deemed to have forever and absolutely released the Settling Defendants and their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, insurers, beneficiaries and assigns (“Releasees”) from any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Defendants in this Action, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of this Action (the “Released Claims”).

24. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand of any nature whatsoever against any Releasee, or against any other person who may claim contribution or indemnity or other claims over relief from any Releasee, arising out of, in respect of or relating in any way to any Released Claim, and all such claims are hereby forever barred, prohibited and enjoined. .

25. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who

are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

26. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in this Action or any other actions, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or by any other person or party against a Releasee, including Olympia Trust Company (“Olympia”), or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Action).

27. **THIS COURT ORDERS** that, for greater certainty, the claims made by Olympia Trust Company as against the Settling Defendants in respect of the Collier Centre Project in its Third Party Claim issued October 1, 2021 in the *Raponi v. Olympia Trust Company* action, bearing Court File No. CV-20-006453593-0A52, and all future claims which could be asserted by Olympia against the Settling Defendants arising out of or relating to the Collier Centre Project are forever barred, prohibited and enjoined.

28. **THIS COURT ORDERS** that, for greater certainty, all claims of the Settlement Class members of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of the Settling Defendants relating to or arising from the syndicated mortgage loans that are the subject of this Action, and which could have been brought in this Action or in a separate proceeding are barred, prohibited and enjoined.

29. **THIS COURT ORDERS** that, for greater certainty, this Order does not preclude the Settlement Class from continuing this action against any Non-Settling Defendant or named or unnamed alleged co-conspirators that are not Releasees, or the continuation of the claims asserted in this Action on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee, nor continuing the action *Raponi v. Olympia Trust Company*, Court file No. CV-20-00643593-00CP, provided that no relief is sought against any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other party in those proceedings for or arising from any Released Claims.

30. **THIS COURT ORDERS** that, if this Court ultimately determines that a claim by any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other person for contribution and indemnity or other claim over against any Releasee, whether in equity or in law, by statute or otherwise, is a legally recognized claim:

- (a) the Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiffs and Settlement Class Members shall limit their claims against any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person to include only, and shall only seek to recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person, such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-

Settling Defendant, named or unnamed alleged co-conspirator or other person to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Defendant(s), named or unnamed alleged co-conspirator and/or any other person or party that is not a Releasee, if any, if permitted by law; and

- (c) this Court shall have full authority to determine the proportionate liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees remain in the action or appear at the trial or other disposition, and the proportionate liability of the Releasees shall be determined as if the Releasees are parties to the action and any determination by this Court in respect of the proportionate liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceeding.

31. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs or judgment against them in favour of the Settlement Class Members in the action or the rights of the Plaintiffs and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

32. **THIS COURT ORDERS** that, for greater certainty, to the extent that the Settling Defendants are found to have any liability to any of the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person for contribution or indemnity arising from or

related to amounts for which the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person are found liable to the Class, the Class Members' recovery from the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person.

33. **THIS COURT ORDERS** that, for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

34. **THIS COURT ORDERS** that, without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

35. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class have or may have in the action against any Non-Settling Defendant(s) or named or unnamed co-conspirators who are not Releasees.

36. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

37. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

38. **THIS COURT ORDERS** that, upon the Effective Date, this Action is hereby dismissed as against all Settling Defendants, without costs and with prejudice.

39. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice P. Perell

**Schedule A to BDMC Settlement Agreement
(Harmony Simcoe)**

Court File No. CV-16-565287-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE P. PERELL) THE
 DAY OF JANUARY, 2023

B E T W E E N:

(Court Seal)

THE ESTATE of BRYAN MADRYGA, BY HIS ESTATE
ADMINISTRATOR REBECCA SHAW

Plaintiff

-and-

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., FORTRESS
KEMPENFELT BAY DEVELOPMENTS INC., HARMONY VILLAGE-LAKE SIMCOE
INC., CITY CORE DEVELOPMENTS INC., BUILDING & DEVELOPMENT MORTGAGES
CANADA INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy CROWE
SOBERMAN INC., DEREK SORRENTI, SORRENTI LAW PROFESSIONAL
CORPORATION, GRANT EDWARDH APPRAISERS AND CONSULTANTS LTD.
and IAN G. MCLEAN

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants Building & Development Mortgage Canada Inc. (“BDMC”) and the Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc. (“Galati”) (collectively, the “Settling Defendants”), and approving the

settlement agreement between the Plaintiff and the Settling Defendants, approving the form and content of the notice of certification and hearing for settlement approval, and approving the notice of settlement approval and counsel fee approval (the “Notices”), and the method of dissemination of the Notices, and dismissing this action as against the Settling Defendants with prejudice and without costs, was heard this day by judicial videoconference at the court house, Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5.

ON READING the materials filed, including the settlement agreement dated as of [DATE] attached to this Order as **Appendix A** (the “Settlement Agreement”), and on hearing the submissions of the Plaintiff and the Settling Defendants;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions in the Settlement Agreement apply to, and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who invested in a syndicated mortgage in respect of the Harmony Village Simcoe Project/The Kemp (the “Harmony Simcoe Project”),

registered against title to lands located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario as Instrument SC983678.

5. **THIS COURT ORDERS** that the Estate of Bryan Madryga, by his Estate Administrator Rebecca Shaw, is appointed as the representative plaintiff.

6. **THIS COURT ORDERS** that MSTW Professional Corporation and Waddell Phillips Professional Corporation are appointed as Class Counsel.

7. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Settlement Class:

- (a) breach of contract;
- (b) breach of fiduciary duty;
- (c) negligence;
- (d) negligent misrepresentation;
- (e) fraudulent misrepresentation; and
- (f) conspiracy.

8. **THIS COURT DECLARES** that the relief sought by the Settlement Class is declarations, general damages, punitive damages, interest, and costs.

9. **THIS COURT ORDERS** that the following issues are common to the Settlement Class:

- (a) Did BDMC breach its contracts with the Class members? If so, how?
- (b) Did BDMC owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did BDMC breach its fiduciary duty owed to the Class members, and if so, how?

- (c) Did BDMC and/or Galati owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- (d) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- (e) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- (f) Did BDMC make fraudulent misrepresentations to the Class members, and, if so, is BDMC liable to the Class with respect thereto?
- (g) Did BDMC conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- (h) Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. **THIS COURT DECLARES** that a class proceeding is the preferable procedure for the resolution of the common issues as against the Settling Defendants.

11. **THIS COURT ORDERS** that FAAN Mortgage Administrators Inc. is appointed as the Claims Administrator to deliver the Notices and to disseminate the Settlement Funds to the Settlement Class Members.

12. **THIS COURT ORDERS** that the Plaintiff shall give notice of the certification of this action and the opt-out process, and notice of the approval of the Settlement Agreement to the Settlement Class Members in substantially the form set out in **Appendix B** hereto and in the manner set out in the Notice Protocol attached as **Schedule B** to the Settlement Agreement.

13. **THIS COURT ORDERS** that no information regarding this Action other than the Notices may be disseminated by any Defendant during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court.

14. **THIS COURT ORDERS** that Settlement Class Members may opt out of this class proceeding by following the opt-out process set out in the Notices, by no later than 5 pm E.T. on **[date 60 days after the date of the Order]** (the “Opt-Out Deadline”).

15. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notices and paragraph 14 of this order shall be excluded from the Settlement Class and excluded from the action.

16. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants and the Court a report containing the name of each person who has validly and timely opted out of the proceeding.

17. **THIS COURT ORDERS** that the dismissal of this Action as against the Settling Defendants shall not relieve the Settling Defendants from their obligations under the Settlement Agreement.

18. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Settling Defendants, FAAN Mortgage Administrators Inc., counsel for the Settling

Defendants or Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any matter in any way relating to the implementation of this Order or the Settlement Agreement, except with leave of this Court.

19. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action as against the Settling Defendants for settlement purposes only, the definition of the Settlement Class, and the certified Common Issues, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with this Action and, without restricting the generality of the foregoing, may not be relied on by any person to establish the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.

20. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendants in accordance with the terms hereof, and upon each member of the Settlement Class who does not validly opt out of this action, including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 are dispensed with in respect of the Action.

21. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

22. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented and enforced in accordance with its terms.

23. **THIS COURT ORDERS** that, on the date on which any appeal of this Order is finally disposed of, or the time to bring any appeal of this Order, if any, has expired (the “Effective Date”) each Settlement Class Member and any of their past and current successors, heirs, executors, administrators, trustees, or assigns (“Releasers”) releases and shall be conclusively deemed to have forever and absolutely released the Settling Defendants and their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, insurers, beneficiaries and assigns (“Releasees”) from any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Defendants in this Action, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of this Action (the “Released Claims”).

24. **THIS COURT ORDERS** that, upon the Effective Date, each Releaser shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand of any nature whatsoever against any Releasee, or against any other person who may claim contribution or indemnity or other claims over relief from any Releasee, arising out of, in respect of or relating in any way to any Released Claim, and all such claims are hereby forever barred, prohibited and enjoined. .

25. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who

are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

26. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in this Action or any other actions, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or by any other person or party against a Releasee, including Olympia Trust Company (“Olympia”), or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Action).

27. **THIS COURT ORDERS** that, for greater certainty, the claims made by Olympia Trust Company as against the Settling Defendants in respect of the Harmony Simcoe Project in its Third Party Claim issued October 1, 2021 in the *Raponi v. Olympia Trust Company* action, bearing Court File No. CV-20-006453593-0A52, and all future claims which could be asserted by Olympia against the Settling Defendants arising out of or relating to the Harmony Simcoe Project are forever barred, prohibited and enjoined.

28. **THIS COURT ORDERS** that, for greater certainty, all claims of the Settlement Class members of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of the Settling Defendants relating to or arising from the syndicated mortgage loans that are the subject of this Action, and which could have been brought in this Action or in a separate proceeding are barred, prohibited and enjoined.

29. **THIS COURT ORDERS** that, for greater certainty, this Order does not preclude the Settlement Class from continuing this action against any Non-Settling Defendant or named or unnamed alleged co-conspirators that are not Releasees, or the continuation of the claims asserted in this Action on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee, nor continuing the action *Raponi v. Olympia Trust Company*, Court file No. CV-20-00643593-00CP, provided that no relief is sought against any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other party in those proceedings for or arising from any Released Claims.

30. **THIS COURT ORDERS** that, if this Court ultimately determines that a claim by any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other person for contribution and indemnity or other claim over against any Releasee, whether in equity or in law, by statute or otherwise, is a legally recognized claim:

- (a) the Plaintiff and Settlement Class Members shall not be entitled to claim or recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and Settlement Class Members shall limit their claims against any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person to include only, and shall only seek to recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person, such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-

Settling Defendant, named or unnamed alleged co-conspirator or other person to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Defendant(s), named or unnamed alleged co-conspirator and/or any other person or party that is not a Releasee, if any, if permitted by law; and

- (c) this Court shall have full authority to determine the proportionate liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees remain in the action or appear at the trial or other disposition, and the proportionate liability of the Releasees shall be determined as if the Releasees are parties to the action and any determination by this Court in respect of the proportionate liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceeding.

31. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs or judgment against them in favour of the Settlement Class Members in the action or the rights of the Plaintiff and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

32. **THIS COURT ORDERS** that, for greater certainty, to the extent that the Settling Defendants are found to have any liability to any of the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person for contribution or indemnity arising from or

related to amounts for which the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person are found liable to the Class, the Class Members' recovery from the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person.

33. **THIS COURT ORDERS** that, for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

34. **THIS COURT ORDERS** that, without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

35. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class have or may have in the action against any Non-Settling Defendant(s) or named or unnamed co-conspirators who are not Releasees.

36. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

37. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

38. **THIS COURT ORDERS** that, upon the Effective Date, this Action is hereby dismissed as against all Settling Defendants, without costs and with prejudice.

39. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice P. Perell

**Schedule A to BDMC Settlement Agreement
(Orchard)**

Court File No: CV-17-570361-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE P. PERELL) THE
 DAY OF JANUARY, 2023

B E T W E E N:

(Court Seal)

ARLENE MCDOWELL and THE ESTATE OF BRYAN MADRYGA,
BY HIS LITIGATION ADMINISTRATOR REBECCA SHAW

Plaintiffs

- and -

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., JAWAD RATHORE, VINCENZO PETROZZA, LAMB CALGARY INC., ORCHARD CALGARY INC., BUILDING & DEVELOPMENT MORTGAGES CANADA INC., ILDINA GALATI, FFM CAPITAL INC., ROSALIA SPADAFORA, FMP MORTGAGE INVESTMENTS INC., MICHAEL DARAMOLA, TONINO AMENDOLA, GRAHAM MCWATERS, DEREK SORRENTI, GRANT MORGAN, and SORRENTI LAW PROFESSIONAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants Building & Development Mortgage Canada Inc. (“BDMC”) and Ildina Galati (“Galati”) (collectively, the “Settling

Defendants”), and approving the settlement agreement between the Plaintiffs and the Settling Defendants, approving the form and content of the notice of certification and hearing for settlement approval, and approving the notice of settlement approval and counsel fee approval (the “Notices”), and the method of dissemination of the Notices, and dismissing this action as against the Settling Defendants with prejudice and without costs, was heard this day by judicial videoconference at the court house, Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5.

ON READING the materials filed, including the settlement agreement dated as of [DATE] attached to this Order as **Appendix A** (the “Settlement Agreement”), and on hearing the submissions of the Plaintiffs and the Settling Defendants;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions in the Settlement Agreement apply to, and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project (the “Orchard Project”), registered against title to lands located at

602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

5. **THIS COURT ORDERS** that Arlene McDowell and the Estate of Bryan Madryga, by his Litigation Administrator Rebecca Shaw, are appointed as the representative plaintiffs.

6. **THIS COURT ORDERS** that MSTW Professional Corporation and Waddell Phillips Professional Corporation are appointed as Class Counsel.

7. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Settlement Class:

- (a) breach of contract;
- (b) breach of fiduciary duty;
- (c) negligence;
- (d) negligent misrepresentation;
- (e) fraudulent misrepresentation; and
- (f) conspiracy.

8. **THIS COURT DECLARES** that the relief sought by the Settlement Class is declarations, general damages, punitive damages, interest, and costs.

9. **THIS COURT ORDERS** that the following issues are common to the Settlement Class:

- (a) Did BDMC breach its contracts with the Class members? If so, how?
- (b) Did BDMC owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did BDMC breach its fiduciary duty owed to the Class members, and if so, how?

- (c) Did BDMC and/or Galati owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- (d) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- (e) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- (f) Did BDMC make fraudulent misrepresentations to the Class members, and, if so, is BDMC liable to the Class with respect thereto?
- (g) Did BDMC conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- (h) Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. **THIS COURT DECLARES** that a class proceeding is the preferable procedure for the resolution of the common issues as against the Settling Defendants.

11. **THIS COURT ORDERS** that FAAN Mortgage Administrators Inc. is appointed as the Claims Administrator to deliver the Notices and to disseminate the Settlement Funds to the Settlement Class Members.

12. **THIS COURT ORDERS** that the Plaintiffs shall give notice of the certification of this action and the opt-out process, and notice of the approval of the Settlement Agreement to the Settlement Class Members in substantially the form set out in **Appendix B** hereto and in the manner set out in the Notice Protocol attached as **Schedule B** to the Settlement Agreement.

13. **THIS COURT ORDERS** that no information regarding this Action other than the Notices may be disseminated by any Defendant during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court.

14. **THIS COURT ORDERS** that Settlement Class Members may opt out of this class proceeding by following the opt-out process set out in the Notices, by no later than 5 pm E.T. on **[date 60 days after the date of the Order]** (the “Opt-Out Deadline”).

15. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notices and paragraph 14 of this order shall be excluded from the Settlement Class and excluded from the action.

16. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants and the Court a report containing the name of each person who has validly and timely opted out of the proceeding.

17. **THIS COURT ORDERS** that the dismissal of this Action as against the Settling Defendants shall not relieve the Settling Defendants from their obligations under the Settlement Agreement.

18. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Settling Defendants, FAAN Mortgage Administrators Inc., counsel for the Settling

Defendants or Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any matter in any way relating to the implementation of this Order or the Settlement Agreement, except with leave of this Court.

19. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action as against the Settling Defendants for settlement purposes only, the definition of the Settlement Class, and the certified Common Issues, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with this Action and, without restricting the generality of the foregoing, may not be relied on by any person to establish the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.

20. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendants in accordance with the terms hereof, and upon each member of the Settlement Class who does not validly opt out of this action, including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 are dispensed with in respect of the Action.

21. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

22. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented and enforced in accordance with its terms.

23. **THIS COURT ORDERS** that, on the date on which any appeal of this Order is finally disposed of, or the time to bring any appeal of this Order, if any, has expired (the “Effective Date”) each Settlement Class Member and any of their past and current successors, heirs, executors, administrators, trustees, or assigns (“Releasers”) releases and shall be conclusively deemed to have forever and absolutely released the Settling Defendants and their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, insurers, beneficiaries and assigns (“Releasees”) from any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Defendants in this Action, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of this Action (the “Released Claims”).

24. **THIS COURT ORDERS** that, upon the Effective Date, each Releaser shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand of any nature whatsoever against any Releasee, or against any other person who may claim contribution or indemnity or other claims over relief from any Releasee, arising out of, in respect of or relating in any way to any Released Claim, and all such claims are hereby forever barred, prohibited and enjoined. .

25. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who

are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

26. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in this Action or any other actions, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or by any other person or party against a Releasee, including Olympia Trust Company (“Olympia”), or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Action).

27. **THIS COURT ORDERS** that, for greater certainty, the claims made by Olympia Trust Company as against the Settling Defendants in respect of the Orchard Project in its Third Party Claim issued October 1, 2021 in the *Raponi v. Olympia Trust Company* action, bearing Court File No. CV-20-006453593-0A52, and all future claims which could be asserted by Olympia against the Settling Defendants arising out of or relating to the Orchard Project are forever barred, prohibited and enjoined.

28. **THIS COURT ORDERS** that, for greater certainty, all claims of the Settlement Class members of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of the Settling Defendants relating to or arising from the syndicated mortgage loans that are the subject of this Action, and which could have been brought in this Action or in a separate proceeding are barred, prohibited and enjoined.

29. **THIS COURT ORDERS** that, for greater certainty, this Order does not preclude the Settlement Class from continuing this action against any Non-Settling Defendant or named or unnamed alleged co-conspirators that are not Releasees, or the continuation of the claims asserted in this Action on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee, nor continuing the action *Raponi v. Olympia Trust Company*, Court file No. CV-20-00643593-00CP, provided that no relief is sought against any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other party in those proceedings for or arising from any Released Claims.

30. **THIS COURT ORDERS** that, if this Court ultimately determines that a claim by any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other person for contribution and indemnity or other claim over against any Releasee, whether in equity or in law, by statute or otherwise, is a legally recognized claim:

- (a) the Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiffs and Settlement Class Members shall limit their claims against any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person to include only, and shall only seek to recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person, such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-

Settling Defendant, named or unnamed alleged co-conspirator or other person to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Defendant(s), named or unnamed alleged co-conspirator and/or any other person or party that is not a Releasee, if any, if permitted by law; and

- (c) this Court shall have full authority to determine the proportionate liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees remain in the action or appear at the trial or other disposition, and the proportionate liability of the Releasees shall be determined as if the Releasees are parties to the action and any determination by this Court in respect of the proportionate liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceeding.

31. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs or judgment against them in favour of the Settlement Class Members in the action or the rights of the Plaintiffs and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

32. **THIS COURT ORDERS** that, for greater certainty, to the extent that the Settling Defendants are found to have any liability to any of the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person for contribution or indemnity arising from or

related to amounts for which the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person are found liable to the Class, the Class Members' recovery from the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person.

33. **THIS COURT ORDERS** that, for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

34. **THIS COURT ORDERS** that, without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

35. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class have or may have in the action against any Non-Settling Defendant(s) or named or unnamed co-conspirators who are not Releasees.

36. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

37. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

38. **THIS COURT ORDERS** that, upon the Effective Date, this Action is hereby dismissed as against all Settling Defendants, without costs and with prejudice.

39. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice P. Perell

**Schedule A to BDMC Settlement Agreement
(Progress)**

Court File No.: CV-16-560268-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE P. PERELL) , THE
 DAY OF JANUARY, 2023

B E T W E E N:

(Court Seal)

ARLENE MCDOWELL
Plaintiff

- and -

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., EMPIRE
PACE (1088 PROGRESS) LTD., BUILDING & DEVELOPMENT MORTGAGES CANADA
INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy CROWE SOBERMAN
INC., DEREK SORRENTI, SORRENTI LAW PROFESSIONAL CORPORATION and
MICHAEL CANE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants Building & Development Mortgage Canada Inc. (“BDMC”) and the Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc. (“Galati”) (collectively, the “Settling Defendants”), and approving the settlement agreement between the Plaintiff and the Settling Defendants, approving the form and

content of the notice of certification and hearing for settlement approval, and approving the notice of settlement approval and counsel fee approval (the “Notices”), and the method of dissemination of the Notices, and dismissing this action as against the Settling Defendants with prejudice and without costs, was heard this day by judicial videoconference at the court house, Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5.

ON READING the materials filed, including the settlement agreement dated as of [DATE] attached to this Order as **Appendix A** (the “Settlement Agreement”), and on hearing the submissions of the Plaintiff and the Settling Defendants;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions in the Settlement Agreement apply to, and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who invested in a syndicated mortgage in respect of the Progress/Ten88 Project (the “Progress Project”), registered against title to lands

located at 1088 Progress Avenue in Toronto, Ontario as Instrument AT3101004 or AT3127137.

5. **THIS COURT ORDERS** that Arlene McDowell is appointed as the representative plaintiff.

6. **THIS COURT ORDERS** that MSTW Professional Corporation and Waddell Phillips Professional Corporation are appointed as Class Counsel.

7. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Settlement Class:

- (a) breach of contract;
- (b) breach of fiduciary duty;
- (c) negligence;
- (d) negligent misrepresentation;
- (e) fraudulent misrepresentation; and
- (f) conspiracy.

8. **THIS COURT DECLARES** that the relief sought by the Settlement Class is declarations, general damages, punitive damages, interest, and costs.

9. **THIS COURT ORDERS** that the following issues are common to the Settlement Class:

- (a) Did BDMC breach its contracts with the Class members? If so, how?

- (b) Did BDMC owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did BDMC breach its fiduciary duty owed to the Class members, and if so, how?
- (c) Did BDMC and/or Galati owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- (d) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- (e) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- (f) Did BDMC make fraudulent misrepresentations to the Class members, and, if so, is BDMC liable to the Class with respect thereto?
- (g) Did BDMC conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- (h) Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. **THIS COURT DECLARES** that a class proceeding is the preferable procedure for the resolution of the common issues as against the Settling Defendants.

11. **THIS COURT ORDERS** that FAAN Mortgage Administrators Inc. is appointed as the Claims Administrator to deliver the Notices and to disseminate the Settlement Funds to the Settlement Class Members.
12. **THIS COURT ORDERS** that the Plaintiff shall give notice of the certification of this action and the opt-out process, and notice of the approval of the Settlement Agreement to the Settlement Class Members in substantially the form set out in **Appendix B** hereto and in the manner set out in the Notice Protocol attached as **Schedule B** to the Settlement Agreement.
13. **THIS COURT ORDERS** that no information regarding this Action other than the Notices may be disseminated by any Defendant during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court.
14. **THIS COURT ORDERS** that Settlement Class Members may opt out of this class proceeding by following the opt-out process set out in the Notices, by no later than 5 pm E.T. on **[date 60 days after the date of the Order]** (the “Opt-Out Deadline”).
15. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notices and paragraph 14 of this order shall be excluded from the Settlement Class and excluded from the action.
16. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants and the Court a report containing the name of each person who has validly and timely opted out of the proceeding.

17. **THIS COURT ORDERS** that the dismissal of this Action as against the Settling Defendants shall not relieve the Settling Defendants from their obligations under the Settlement Agreement.

18. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Settling Defendants, FAAN Mortgage Administrators Inc., counsel for the Settling Defendants or Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any matter in any way relating to the implementation of this Order or the Settlement Agreement, except with leave of this Court.

19. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action as against the Settling Defendants for settlement purposes only, the definition of the Settlement Class, and the certified Common Issues, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with this Action and, without restricting the generality of the foregoing, may not be relied on by any person to establish the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.

20. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendants in accordance with the terms hereof, and upon each member of the Settlement Class who does not validly opt out of this action, including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 are dispensed with in respect of the Action.

21. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

22. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented and enforced in accordance with its terms.

23. **THIS COURT ORDERS** that, on the date on which any appeal of this Order is finally disposed of, or the time to bring any appeal of this Order, if any, has expired (the “Effective Date”) each Settlement Class Member and any of their past and current successors, heirs, executors, administrators, trustees, or assigns (“Releasors”) releases and shall be conclusively deemed to have forever and absolutely released the Settling Defendants and their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, insurers, beneficiaries and assigns (“Releasees”) from any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Defendants in this Action, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of this Action (the “Released Claims”).

24. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand of any nature whatsoever against any Releasee, or

against any other person who may claim contribution or indemnity or other claims over relief from any Releasee, arising out of, in respect of or relating in any way to any Released Claim, and all such claims are hereby forever barred, prohibited and enjoined. .

25. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

26. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in this Action or any other actions, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or by any other person or party against a Releasee, including Olympia Trust Company (“Olympia”), or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Action).

27. **THIS COURT ORDERS** that, for greater certainty, the claims made by Olympia Trust Company as against the Settling Defendants in respect of the Progress Project in its Third Party Claim issued October 1, 2021 in the *Raponi v. Olympia Trust Company* action, bearing Court File No. CV-20-006453593-0A52, and all future claims which could be asserted by Olympia against the Settling Defendants arising out of or relating to the Progress Project are forever barred, prohibited and enjoined.

28. **THIS COURT ORDERS** that, for greater certainty, all claims of the Settlement Class members of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of the Settling Defendants relating to or arising from the syndicated mortgage loans that are the subject of this Action, and which could have been brought in this Action or in a separate proceeding are barred, prohibited and enjoined.

29. **THIS COURT ORDERS** that, for greater certainty, this Order does not preclude the Settlement Class from continuing this action against any Non-Settling Defendant or named or unnamed alleged co-conspirators that are not Releasees, or the continuation of the claims asserted in this Action on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee, nor continuing the action *Raponi v. Olympia Trust Company*, Court file No. CV-20-00643593-00CP, provided that no relief is sought against any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other party in those proceedings for or arising from any Released Claims.

30. **THIS COURT ORDERS** that, if this Court ultimately determines that a claim by any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other person for contribution and indemnity or other claim over against any Releasee, whether in equity or in law, by statute or otherwise, is a legally recognized claim:

- (a) the Plaintiff and Settlement Class Members shall not be entitled to claim or recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;

- (b) the Plaintiff and Settlement Class Members shall limit their claims against any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person to include only, and shall only seek to recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person, such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-Settling Defendant, named or unnamed alleged co-conspirator or other person to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Defendant(s), named or unnamed alleged co-conspirator and/or any other person or party that is not a Releasee, if any, if permitted by law; and
- (c) this Court shall have full authority to determine the proportionate liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees remain in the action or appear at the trial or other disposition, and the proportionate liability of the Releasees shall be determined as if the Releasees are parties to the action and any determination by this Court in respect of the proportionate liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceeding.

31. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and

costs or judgment against them in favour of the Settlement Class Members in the action or the rights of the Plaintiff and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

32. **THIS COURT ORDERS** that, for greater certainty, to the extent that the Settling Defendants are found to have any liability to any of the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person for contribution or indemnity arising from or related to amounts for which the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person are found liable to the Class, the Class Members' recovery from the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person.

33. **THIS COURT ORDERS** that, for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

34. **THIS COURT ORDERS** that, without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

35. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class have or may have in the action

against any Non-Settling Defendant(s) or named or unnamed co-conspirators who are not Releasees.

36. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

37. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

38. **THIS COURT ORDERS** that, upon the Effective Date, this Action is hereby dismissed as against all Settling Defendants, without costs and with prejudice.

39. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice P. Perell

**Schedule A to BDMC Settlement Agreement
(Sutton/The Link)**

Court File No. CV-16-561293-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE P. PERELL) DAY OF, 2022

B E T W E E N:

(Court Seal)

SANDRA MEDLAND

Plaintiff

-and-

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., ADI DEVELOPMENTS (LINK) INC., ADI DEVELOPMENT GROUP INC., BUILDING & DEVELOPMENT MORTGAGES CANADA INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy CROWE SOBERMAN INC., FFM CAPITAL INC., ROSALIA SPADAFORA, SAUL PERLOV, DEREK SORRENTI, and SORRENTI LAW PROFESSIONAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants Building & Development Mortgage Canada Inc. (“BDMC”) and the Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc. (“Galati”) (collectively, the “Settling Defendants”), and approving the settlement agreement between the Plaintiff and the Settling Defendants, approving the form and

content of the notice of certification and hearing for settlement approval, and approving the notice of settlement approval and counsel fee approval (the “Notices”), and the method of dissemination of the Notices, and dismissing this action as against the Settling Defendants with prejudice and without costs, was heard this day by judicial videoconference at the court house, Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5.

ON READING the materials filed, including the settlement agreement dated as of [DATE] attached to this Order as **Appendix A** (the “Settlement Agreement”), and on hearing the submissions of the Plaintiff and the Settling Defendants;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions in the Settlement Agreement apply to, and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who invested in a syndicated mortgage in respect of the Sutton/The Link Project (the “Sutton/The Link Project”), registered against title to lands located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario as Instruments HR1062915, HR1163232, or HR1174204.

5. **THIS COURT ORDERS** that Sandra Medland is appointed as the representative plaintiff.
6. **THIS COURT ORDERS** that MSTW Professional Corporation and Waddell Phillips Professional Corporation are appointed as Class Counsel.
7. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Settlement Class:
 - (a) breach of contract;
 - (b) breach of fiduciary duty;
 - (c) negligence;
 - (d) negligent misrepresentation;
 - (e) fraudulent misrepresentation; and
 - (f) conspiracy.
8. **THIS COURT DECLARES** that the relief sought by the Settlement Class is declarations, general damages, punitive damages, interest, and costs.
9. **THIS COURT ORDERS** that the following issues are common to the Settlement Class:
 - (a) Did BDMC breach its contracts with the Class members? If so, how?
 - (b) Did BDMC owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did BDMC breach its fiduciary duty owed to the Class members, and if so, how?
 - (c) Did BDMC and/or Galati owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?

- (d) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- (e) If BDMC and/or Galati owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- (f) Did BDMC make fraudulent misrepresentations to the Class members, and, if so, is BDMC liable to the Class with respect thereto?
- (g) Did BDMC conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- (h) Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. **THIS COURT DECLARES** that a class proceeding is the preferable procedure for the resolution of the common issues as against the Settling Defendants.

11. **THIS COURT ORDERS** that FAAN Mortgage Administrators Inc. is appointed as the Claims Administrator to deliver the Notices and disseminate the Settlement Funds to the Settlement Class Members.

12. **THIS COURT ORDERS** that the Plaintiff shall give notice of the certification of this action and the opt-out process, and notice of the approval of the Settlement Agreement to the

Settlement Class Members in substantially the form set out in **Appendix B** hereto and in the manner set out in the Notice Protocol attached as **Schedule B** to the Settlement Agreement.

13. **THIS COURT ORDERS** that no information regarding this Action other than the Notices may be disseminated by any Defendant during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court.

14. **THIS COURT ORDERS** that Settlement Class Members may opt out of this class proceeding by following the opt-out process set out in the Notices, by no later than 5 pm E.T. on **[date 60 days after the date of the Order]** (the “Opt-Out Deadline”).

15. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notices and paragraph 13 of this order shall be excluded from the Settlement Class and excluded from the action.

16. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants and the Court a report containing the name of each person who has validly and timely opted out of the proceeding.

17. **THIS COURT ORDERS** that the dismissal of this Action as against the Settling Defendants shall not relieve the Settling Defendants from their obligations under the Settlement Agreement.

18. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Settling Defendants, FAAN Mortgage Administrators Inc., counsel for the Settling Defendants or Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors,

successors, beneficiaries or assigns for any matter in any way relating to the implementation of this Order or the Settlement Agreement, except with leave of this Court.

19. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action as against the Settling Defendants for settlement purposes only, the definition of the Settlement Class, and the certified Common Issues, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with this Action and, without restricting the generality of the foregoing, may not be relied on by any person to establish the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.

20. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendants in accordance with the terms hereof, and upon each member of the Settlement Class who does not validly opt out of this action, including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 are dispensed with in respect of the Action.

21. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

22. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented and enforced in accordance with its terms.

23. **THIS COURT ORDERS** that, on the date on which any appeal of this Order is finally disposed of, or the time to bring any appeal of this Order, if any, has expired (the “Effective Date”) each Settlement Class Member and any of their past and current successors, heirs, executors, administrators, trustees, or assigns (“Releasers”) releases and shall be conclusively deemed to have forever and absolutely released the Settling Defendants and their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, insurers, beneficiaries and assigns (“Releasees”) from any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Defendants in this Action, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of this Action (the “Released Claims”).

24. **THIS COURT ORDERS** that, upon the Effective Date, each Releaser shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand of any nature whatsoever against any Releasee, or against any other person who may claim contribution or indemnity or other claims over relief from any Releasee, arising out of, in respect of or relating in any way to any Released Claim, and all such claims are hereby forever barred, prohibited and enjoined. .

25. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who

are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

26. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in this Action or any other actions, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or by any other person or party against a Releasee, including Olympia Trust Company (“Olympia”), or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Action).

27. **THIS COURT ORDERS** that, for greater certainty, the claims made by Olympia Trust Company as against the Settling Defendants in respect of the Sutton/The Link Project in its Third Party Claim issued October 1, 2021 in the *Raponi v. Olympia Trust Company* action, bearing Court File No. CV-20-006453593-0A52, and all future claims which could be asserted by Olympia against the Settling Defendants arising out of or relating to the Sutton/The Link Project are forever barred, prohibited and enjoined.

28. **THIS COURT ORDERS** that, for greater certainty, all claims of the Settlement Class members of any nature whatsoever arising out of or relating in any way to the professional services provided by, or any actions or omissions of the Settling Defendants relating to or arising from the syndicated mortgage loans that are the subject of this Action, and which could have been brought in this Action or in a separate proceeding are barred, prohibited and enjoined.

29. **THIS COURT ORDERS** that, for greater certainty, this Order does not preclude the Settlement Class from continuing this action against any Non-Settling Defendant or named or unnamed alleged co-conspirators that are not Releasees, or the continuation of the claims asserted in this Action on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee, nor continuing the action *Raponi v. Olympia Trust Company*, Court file No. CV-20-00643593-00CP, provided that no relief is sought against any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other party in those proceedings for or arising from any Released Claims.

30. **THIS COURT ORDERS** that, if this Court ultimately determines that a claim by any Non-Settling Defendant, named or unnamed alleged co-conspirator, or other person for contribution and indemnity or other claim over against any Releasee, whether in equity or in law, by statute or otherwise, is a legally recognized claim:

- (a) the Plaintiff and Settlement Class Members shall not be entitled to claim or recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and Settlement Class Members shall limit their claims against any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person to include only, and shall only seek to recover from any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person, such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-

Settling Defendant, named or unnamed alleged co-conspirator or other person to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Defendant(s), named or unnamed alleged co-conspirator and/or any other person or party that is not a Releasee, if any, if permitted by law; and

- (c) this Court shall have full authority to determine the proportionate liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees remain in the action or appear at the trial or other disposition, and the proportionate liability of the Releasees shall be determined as if the Releasees are parties to the action and any determination by this Court in respect of the proportionate liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceeding.

31. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which any Non-Settling Defendant, named or unnamed alleged co-conspirator or other person may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs or judgment against them in favour of the Settlement Class Members in the action or the rights of the Plaintiff and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

32. **THIS COURT ORDERS** that, for greater certainty, to the extent that the Settling Defendants are found to have any liability to any of the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person for contribution or indemnity arising from or

related to amounts for which the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person are found liable to the Class, the Class Members' recovery from the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants, named or unnamed alleged co-conspirator or other person.

33. **THIS COURT ORDERS** that, for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

34. **THIS COURT ORDERS** that, without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

35. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class have or may have in the action against any Non-Settling Defendant(s) or named or unnamed co-conspirators who are not Releasees.

36. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

37. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

38. **THIS COURT ORDERS** that, upon the Effective Date, this Action is hereby dismissed as against all Settling Defendants, without costs and with prejudice.

39. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice P. Perell

Appendix B to Certification and Settlement Approval Orders

Notices of Certification and Settlement Approval

Long Form Notice

NOTICE OF CLASS ACTION CERTIFICATION and APPROVAL OF PARTIAL SETTLEMENT

Fortress Syndicated Mortgages Class Actions in respect of:

Collier Centre, Barrie

Harmony Simcoe/The Kemp, Barrie

Orchard, Calgary

Sutton/The Link, Burlington

Ten88 Progress, Toronto

You are receiving this notice because you invested in one or more of the following “Fortress” syndicated mortgage loans in respect of five Development Projects:

- the **Collier Centre Project First Syndicated Mortgage only**, located at 90 Collier Street and 55 Mulcaster Street, Barrie, Ontario, in respect of the charge registered as Instrument SC1005953;
- the **Harmony Simcoe/The Kemp Project**, located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario, in respect of the charge registered as Instrument SC983678.
- the **Sutton/The Link Project**, located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario in respect of the charges registered as Instruments HR1062915, HR1163232, or HR1174204;
- the **Orchard Project** located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta in respect of the charge registered as Registration Number 141 112 373; or
- the **Progress/Ten88 Project**, located at 1088 Progress Avenue, Toronto, Ontario in respect of the charge registered as Instrument AT3101004.

Class actions have been commenced in respect of these five Development Projects:

- *Arlene McDowell and Saviero Aversa v. Fortress Real Capital Inc. and others* CV-16-558165-00CP (Collier Centre)
- *The Estate of Bryan Madryga by his Estate Administrator Rebecca Shaw v. Fortress Real Capital Inc. and others* CV-16-565287-00CP (Harmony Simcoe/The Kemp)
- *Arlene McDowell and The Estate of Bryan Madryga by his Estate Administrator Rebecca Shaw v. Fortress Real Capital Inc. and others* CV-17-570361-00CP (Orchard)
- *Arlene McDowell v. Fortress Real Capital Inc. and others* CV-16-560268-00CP (Progress/Ten88)
- *Sandra Medland v. Fortress Real Capital Inc. and others* CV-16-561293-00CP (Sutton/The Link)

(together, the “Class Actions”)

This notice provides you with important information about the Class Actions that you need to be aware of because there are **two important developments** that can impact your legal rights.

1. The Class Actions have been Certified for Settlement Purposes

The Class Actions brought in respect of each of these five Development Projects have been certified as class proceedings as against the Defendants, Building & Development Mortgages Canada Inc. (formerly carrying on business as Centro Mortgage Inc.) (“BDMC”), and the Estate of Ildina Galati, deceased, by its Trustee in Bankruptcy Crowe Soberman Inc. (“Galati”) (together, the “BDMC Defendants”).

The Court has also certified the actions involving the Collier Centre, Orchard, and Sutton/The Links Development Projects as against the Defendants FFM Capital Inc., Rosalia Spadafora and Saul Perlov (together, the “FFM Defendants”). (The FFM Defendants were only sued in the actions involving these three Development Projects.)

The BDMC Defendants and the FFM Defendants, together, are referred to as the “Settling Defendants”.

The Class Actions have not been certified as against any of the remaining (Non-Settling) Defendants. A further notice will be sent to you if the Class Actions are certified against the Non-Settling Defendants. The court hearing for the opposed certification motion will be scheduled in 2023.

2. The Court has Approved Settlements with the BDMC Defendants and the FFM Defendants

The Ontario Superior Court of Justice has approved a settlement with the BDMC Defendants that will fully and finally resolve the Class Members' claims against the BDMC Defendants in all five actions. The **BDMC Defendants will pay \$8 million** inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class.

The Court has also approved a settlement with the FFM Defendants that will fully and finally resolve the Class Members' claims against the FFM Defendants in the Collier Centre, Orchard, and Sutton/The Links actions. The **FFM Defendants will pay \$2.375 million** inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members in these three actions.

In both Settlements, the Settlement Funds are being paid by the Settling Defendants' insurers. The Court has determined that the Settlements are fair, reasonable and in the best interests of these Classes.

No settlement has been reached with the Non-Settling Defendants. If any future settlement is achieved, you will receive another notice to tell you about that.

What Do I Need to Know?

Please read the following **Part I** and **Part II** to understand how the certification and settlement approval impact your legal rights, including your right to "opt out" of the Class Actions and the Settlements if you do not want to participate in these Class Actions.

If you take no action and do not submit an opt out notice, then you are automatically included as a Class Member in the Class Actions involving the Development Projects in which you invested. You will be bound by all court orders in the Class Action(s) to which you are a Class Member, and you will not have an opportunity to opt out at a later time. As a Class Member you will be unable bring your own lawsuit against any of the Defendants with respect to your investment in the Fortress syndicated mortgage loans that are the subjects of these Class Actions.

If you opt out and exclude yourself from the Class Action(s), you will not participate in the BDMC and FFM Settlements, any future settlements or any trial judgment. If you do decide to opt out, you should be aware that there are limitation periods and bankruptcy proceedings that can impact your ability to recover against the Defendants, and we recommend that you consult with a lawyer to make an informed decision.

You do not have to pay any legal fees out of your own pocket to participate in the Class Action(s). Class Counsel are paid on a contingency fee basis from the Settlement Funds, as explained below. You are also not at risk to pay any court costs. Only the Representative Plaintiffs are liable for any adverse court costs, and Class Counsel has provided them with an indemnity.

For more information about the Class Actions, please visit: www.fortressclassaction.ca

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT

<p style="text-align: center;">DO NOTHING</p> <p style="text-align: center;">[Stay in the Class Action(s)]</p>	<ul style="list-style-type: none"> • If you do nothing, you will automatically be included as a member of the Class in the Class Action(s) related to the Development Project(s) in which you invested. You do not need to take any further action now to stay in the Class Action(s). • Receive a portion of the BDMC Settlement Funds. • Also receive a portion of the FFM Settlement Funds only if you invested in the Collier Centre, Orchard, and Sutton/The Links Development Projects. • You will be deemed to have provided a comprehensive release to the Settling Defendants. • Await the outcome of the claims against the Non-Settling Defendants. You will be bound by any future settlements that the Court approves, and by any other Court decisions. • Give up certain rights, such as the right to pursue your own lawsuit against any of the Defendants.
<p style="text-align: center;">OPT OUT</p> <p style="text-align: center;">(Remove yourself from the Class Action lawsuit)</p>	<p>If you choose to Opt out of the Class Action(s), then you will not be bound by any Court orders. This means you will get no payments or benefits from the Settlements with the Settling Defendants. This also means you will not be bound to any negative results in respect of the remaining parts of the Class Actions.</p> <p>If you Opt Out, you keep the right to sue any of the Defendants on your own - however, you should be aware that there are limitation periods and bankruptcy proceedings that apply to your claim, and you should seek legal advice to determine your right to bring an individual action.</p> <p>To Opt Out you must notify Class Counsel in writing by no later than [60 days after the date of the Order].</p> <p>To validly Opt Out you must send an Opt Out Notice to Class Counsel that includes:</p> <ul style="list-style-type: none"> • your full name and contact information; • the Development Project(s) in which you invested; • a written statement that says that you do not wish to participate in the Class Action(s), and are choosing to Opt Out; and

	<ul style="list-style-type: none"> • your signature or electronic equivalent • Opt Out Notices may be sent to Class Counsel by mail, email, fax, or courier to one of the addresses set out below, and must be received, and in the case of Canada Post mail, post-marked, by no later than 5 pm E.T. on [date]
--	--

For more information, including details about the Class Actions or the Settlements, visit www.fortressclassaction.ca, or contact Class Counsel at:

<p>Waddell Phillips Professional Corporation Barristers 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 reception@waddellphillips.ca Tel: 1-888-684-5545 (toll-free) Fax: 416-477-1657</p>	<p>MSTW Professional Corporation Barristers and Solicitors 1301- 20 Adelaide Street E Toronto, ON M5C 2T6 mwine@mstwlaw.com Tel: 416-477-5524 Fax: 416-777-2050</p>
--	--

**Your Rights and Options are explained in this Notice.
Please Read the Following Pages**

THIS NOTICE CONTAINS:

Part I: Certification of the Actions against BDMC and FFM

BASIC INFORMATION

1.	What is a class action lawsuit	p. 8
2.	What is the lawsuit about	p. 8
3.	What are the allegations	p. 8
4.	How do the Defendants respond to these allegations	p. 9
5.	Has the Court decided who's right	p. 9

CERTIFICATION INFORMATION

6.	Why did I get this Notice	p. 9
7.	What is Certification and why is it necessary	p. 10
8.	Who is a Class Member	p. 10
9.	What are the Common Issues	p. 11
10.	Are there risks involved in being a Class Member	p. 13
11.	What If I Don't Want to be Involved in the Class Action(s) (Opt out)	p. 13
12.	What happens if I do nothing	p. 14

Part II: Approval of the Settlements with BDMC and FFM

SETTLEMENT AGREEMENT INFORMATION

13.	What are the terms of the Settlement Agreements	p. 14
14.	Who are the Settling Defendants	p. 15
15.	What does a Partial Settlement mean	p. 15
16.	How do I get paid from the Settlements	p. 16

THE LAWYERS REPRESENTING YOU

17.	Do I have a lawyer	p. 16
18.	Do I have to pay any legal fees or court costs	p. 16

ADDITIONAL INFORMATION

19.	What if I have more questions	p. 16
-----	-------------------------------	-------

Part I: Certification of the Actions Against BDMC and FFM

BASIC INFORMATION

1. What is a Class Action?

A class action is a unique type of lawsuit. It allows many people to sue someone who hurt or injured them in a similar way. For example, in this case the investors in each of the syndicated mortgage loans on each Development Project are called the “Class” and each individual investor is a “Class Member”.

Because the number of people in a class can be large, one or more class members act as “representative plaintiffs”. These class members chose to bring the action on behalf of everyone who was affected by the defendants. Here, the Representative Plaintiffs are pursuing these Class Actions for the benefit of everyone who invested in a syndicated mortgage loan relating to one or more of the five Development Projects. The lawyers for the Representative Plaintiffs and the Classes are called “Class Counsel”.

In a class action, the court decides the issues about what happened and the legal questions that are common to the whole class. These are called “Common Issues”, and when they are decided at trial, they are decided for everyone in the class.

2. What is the lawsuit about?

The Representative Plaintiffs in these Class Action are seeking to recover the losses they and the Class Members suffered as a result of their investments in the Fortress syndicated mortgage loans secured on the five Development Projects. The claims do not relate to investors losses from their investments in any other syndicated mortgage loans on any other developments.

The Defendants in all five of the Class Actions include Fortress Real Capital Inc., Fortress Real Developments Inc., Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.), The Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc., Derek Sorrenti, and Sorrenti Law Professional Corporation.

In the Collier Centre, Sutton/The Link and Orchard Class Actions, the Defendants also include FFM Capital Inc., Rosalia Spadafora and Saul Perlov.

The developers and certain other companies and individuals are also named in the Statements of Claim. The claims allege that all of the Defendants’ conduct caused or contributed to the Classes’ losses.

3. What are the allegations?

The Class Actions allege that the Class Members suffered investment losses as a result of the misconduct of the Defendants.

The Class Actions raise several different causes of action against the Defendants. The legal terms for these allegations are: violations of statutory duties as per the *Financial Services of Ontario Act*, breach of fiduciary duties, fraudulent and negligent misrepresentations, negligence, conspiracy to injure, and breach of contract.

If you would like to read more, copies of the Statements of Claim can be viewed under the documents tab at: www.fortressclassaction.ca .

4. How do the Defendants respond to these allegations?

None of the Defendants have defended the Class Actions, yet.

None of the allegations made against the Settling Defendants has been proven in court, and the Settling Defendants deny all the allegations that have been made against them. If a settlement had not been reached, the Settling Defendants would be defending the Class Actions and opposing the certification of these actions as class proceedings. The settlement is a compromise of the parties' positions and is not an admission of liability or fault by the Settling Defendants.

5. Has the Court decided who is right?

No decision has been made about whether the Class or the Defendants are right. This will not happen unless the matter goes to trial against the Non-Settling Defendants.

While the Settling Defendants have negotiated Settlements, the Court has not, and will not decide if any of the Settling Defendants are at fault.

CERTIFICATION INFORMATION

6. Why did I get this Notice?

You received this Notice because, according to the records of BDMC and/or Sorrenti Law, you invested in one or more of the syndicated mortgage loans that are the subject of these Class Actions, and you are, therefore, a Class Member.

The Notice lets you know that the Plaintiffs have reached Settlements with the Settling Defendants. As part of the Settlements, the Settling Defendants have consented to the actions being certified as class proceedings as against them.

This Notice tells you that the Class Actions have been certified, and the Court has approved the Settlements. It tells you that, unless you decide to exclude yourself from the Class Actions, you will be bound by the Settlements and any by future court orders involving the Class Actions. As part of the Settlements, the Class Members will be providing full and final releases to the Settling Defendants. They will also be limiting their claims against the Non-Settling Defendants to the Non-Settling Defendants' proportionate share of liability as determined at trial.

If you do not wish to be included in the Class Actions or participate in the Settlements, you have a choice to exclude yourself from the Class Actions ("Opt Out"). The Opt Out process is described, below at #11 on p. 13.

If you Opt out, you will not be bound by any Court decision in the Class Actions, and will not be able to participate in the Settlement. If you Opt Out, you cannot later chose to opt back in, and you will not be able to participate in any future settlements or trial judgments.

7. What is "Certification" and why is it necessary?

In order for the Court to decide if the Settlement Agreement is fair, reasonable, and in the best interests of Class Members, the Court must first decide if the Actions are suitable to be prosecuted

as class actions. It must appoint the representative plaintiff(s) to allow the representative(s) to pursue the action on behalf of the Class, and it must decide who the Class Members are. The Court does this through a process called “certification”. Without certification, the lawsuits could not be prosecuted for the benefit of the Classes, and each investor would have to make claims for their losses individually.

8. Who is a Class Member?

The Class Members in each of the Class Actions are:

For CV-16-558165-00CP (Collier Centre):

All persons in Canada who invested prior to January 30, 2015 in a syndicated mortgage in respect of the Collier Centre Project No. 1, registered against title to lands located at 90 Collier Street and 55 Mulcaster Street, Barrie, Ontario, as Instrument SC1005953.

Please note that anyone who invested in a syndicated mortgage loan for Collier Centre after January 30, 2015 is not included in the Class or the Class Action.

For CV-16-565287-00CP (Harmony Simcoe/The Kemp):

All persons in Canada who invested in a syndicated mortgage in respect of the Harmony Simcoe Project, registered against title to lands located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario, as Instrument SC983678.

CV-17-570361-00CP (Orchard):

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

For CV-16-560268-00CP (Progress/Ten88):

All persons in Canada who invested in a syndicated mortgage in respect of the Ten88 (Progress) Project, registered against title to lands located at 1088 Progress Avenue, Toronto, Ontario as Instrument AT3101004.

CV-16-561293-00CP (Sutton/The Link):

All persons in Canada who invested in a syndicated mortgage in respect of the Sutton/The Link Project, registered against title to lands located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario as Instruments HR1062915, HR1163232, or HR1174204.

9. What are the Common Issues?

The common issues certified as against the BDMC Defendants are:

- i. Did BDMC breach its contracts with the Class members? If so, how?
- ii. Did BDMC owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did BDMC breach its fiduciary duty owed to the Class members, and if so, how?
- iii. Did BDMC and/or Galati owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- iv. If BDMC and/or Galati owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for the Settling Parties?
- v. If BDMC and/or Galati owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did BDMC and/or Galati breach the applicable standard of care? If so, how?
- vi. Did BDMC make fraudulent misrepresentations to the Class members, and, if so, is BDMC liable to the Class with respect thereto?
- vii. Did BDMC conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?

- viii. Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

The common issues certified as against the FFM Defendants are:

- i. Did FFM breach its contracts with the Class members? If so, how?
- ii. Did FFM owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did FFM breach its fiduciary duty owed to the Class members, and if so, how?
- iii. Did the Settling Parties who are current Defendants owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- iv. If the Settling Parties who are current Defendants owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for these Settling Parties?
- v. If the Settling Parties who are current Defendants owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did the Settling Parties breach the applicable standard of care? If so, how?
- vi. Did FFM make fraudulent misrepresentations to the Class members, and, if so, is FFM liable to the Class with respect thereto?
- vii. Did FFM conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Building & Development Mortgages Canada Inc., or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- viii. Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. Are there risks involved in being a Class Member?

Class Members are not responsible for any court costs that might be payable to the Non-Settling Defendants. Only the Representative Plaintiffs are at risk for any adverse cost awards, and they are being indemnified by Class Counsel.

Class Members do not have to pay any legal fees out of their own pockets. Class Counsel are working on a contingency fee basis, which means that they are only paid if the Class Action is successful, either through settlements or a trial judgment. Class Counsel's fees are paid from the settlement fund or trial judgment, and must first be approved by the Court.

Class Members cannot sue the Defendants on their own, and they are bound by the Court's decisions in the Class Actions - whether or not they are favourable to the Class.

11. What If I Don't Want to be Involved in the Class Action(s) (Opt Out)?

As the Class Actions have been certified you have an important decision to make about whether or not you wish to be included as a Class Member.

You do not have to do anything to stay in the Class Action(s), but if you do not want to participate in them, and you do not want to receive any of the Settlement Funds, you must take action to Opt Out. If you Opt Out, you will not be bound by any Court orders and you keep your right to sue the Defendants regarding the issues raised in these cases. You cannot change your mind later and opt back into the Class Actions.

<p>OPT OUT Exclude Yourself from the Class Action</p>	<p>If you choose to Opt Out of the Class Action(s), then you will not be bound by any Court orders. This means you will get no payments or benefits from the Settlements with the Settling Defendants, or any future settlements or trial judgment. This also means you will not be bound to any negative results in respect of the remaining parts of the Class Actions.</p> <p>If you Opt Out, you keep the right to sue any of the Defendants on your own - however, you should be aware that there are limitation periods and bankruptcy proceedings that apply to your claim, and you should seek legal advice as soon as possible to determine your right to bring an individual action.</p> <p>To Opt Out you must notify Class Counsel in writing by no later than [60 days after the date of the Order].</p> <p>To validly Opt Out you must send an Opt Out Notice that includes:</p> <ul style="list-style-type: none"> • your full name and contact information; • the Development Project(s) in which you invested;
--	---

	<ul style="list-style-type: none"> • a written statement that says that you do not wish to participate in the Class Action(s), and are choosing to Opt Out; and • your signature or electronic equivalent <p>Opt Out Notices may be sent to Class Counsel by mail, email, fax, or courier to one of the addresses set out below on p. 16, and must be received, and in the case of Canada Post mail, post-marked, by no later than 5 pm E.T. on [date]</p>
--	---

12. What happens if I do nothing?

Once the Opt Out period has expired, FAAN Mortgage Administration Inc. will distribute the net Settlement Funds to the Class Members in each Class Action in accordance with a distribution plan approved by the Court as part of the Settlement Approval. The net Settlement Funds is that amount of the Settlement Funds that remains after deduction of the court-approved Class Counsel legal fees and disbursements, the costs of delivering the Notices, and the Settlement administration costs.

As a Class Member, you will be legally bound by all Court orders and judgments, including a release to be granted in favour of the Settling Defendants. You will not be able to sue any of the Defendants on your own with respect to your syndicated mortgage loan investment losses.

Part II: Approval of the Settlements with BDMC and FFM

13. What are the terms of the Settlement Agreements?

The Ontario Superior Court of Justice has approved a settlement with the BDMC Defendants that will fully and finally resolve the Class Members' claims against the BDMC Defendants in all five Class Actions. The BDMC Defendants will pay \$8 million inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class.

BDMC no longer carries on business. Its mortgage administration and trustee services are being operated by FAAN under a court order. Ms. Galati has died, and her Estate is bankrupt. However, BDMC did have a policy of insurance that responded to the Class Actions, and the BDMC Settlement Funds are being paid by BDMC's insurer.

The Court has also approved a settlement with the FFM Defendants that will fully and finally resolve the Class Members' claims against the FFM Defendants in the Collier Centre, Orchard, and Sutton/The Links actions, which are the Actions in which they were sued. The FFM Defendants will pay \$2.375 million inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members in these three actions.

FFM Capital Inc. is bankrupt. However, FFM did have a policy of insurance that responded to the Class Actions, and the FFM Settlement Funds are being paid by FFM's insurer.

In exchange for payment of the Settlement Funds, all of the Class Members' claims against the Settling Defendants will be released on a full and final basis. The ongoing claims against the Non-

Settling Defendants will be limited to the Non-Settling Defendant's proportionate share of fault, if any, for the Class Members' losses.

14. Who are the "Settling Defendants"?

There are many defendants in these Class Actions. The Settling Defendants are:

- (i) Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.), a mortgage brokerage firm;
- (ii) The Estate of Ildina Galati by its Trustee in Bankruptcy, Crowe Soberman Inc., Ms. Galati was the principal broker of BDMC;
- (iii) FFM Capital Inc., a mortgage brokerage firm;
- (iv) Rosalia Spadafora, the principal broker of FFM from January 28, 2014 until February 1, 2018; and
- (v) Saul Perlov, the principal broker of FFM from approximately July 25, 2013 to October 30, 2013 .

15. What does a Partial Settlement mean?

The Court has approved the Settlements with the Settling Defendants. But that will not end the lawsuits. The Class Actions will be continued as against each of the Non-Settling Defendants. This will include bringing a motion for certification of the Class Actions as against each of the Non-Settling Defendants, and eventually holding a trial on the common issues, assuming that certification is granted. It is possible that there may be future settlements, and if there are you will be notified. You will also be notified about the outcome of any common issues trial.

16. How do I get paid from the Settlements?

The Court has determined that the Settlement Agreements are fair, reasonable, and in the best interests of Class Members in each of the Class Actions.

The Court has also approved a distribution plan for the payment of the net Settlement Funds to the Class Members. Because the Class Members are all known from the records, of BDMC and Sorrenti Law (the original mortgage administrators), FAAN will distribute the settlement funds directly to the Class Members in accordance with the distribution plan. There is no need to fill out any forms or to make any application to receive a payment.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer?

Waddell Phillips Professional Corporation and MSTW Professional Corporation are the lawyers for the Representative Plaintiffs and are referred to as Class Counsel.

18. Do I have to pay anything?

You do not have to pay any of the fees and expenses of Class Counsel, directly. Class Counsel's fees and expenses have been approved by the Court in the total amount of \$X, inclusive of disbursements and taxes for the BDMC Settlement and \$Y for the FFM Settlement. These amounts will be deducted from the Settlement Funds, along with FAAN's costs associated with providing the Notices and administering the Settlements, and the balance will then be paid out to the Class Members.

ADDITIONAL INFORMATION

19. What if I have more questions?

You can obtain additional information about these cases, including assistance in determining if you are a Class Member, or about the Opt Out process by contacting Class Counsel using the information below:

<p>Waddell Phillips Professional Corporation Barristers 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 reception@wadellphillips.ca Tel: 1-888-684-5545 (toll-free) Fax: 416-477-1657</p>	<p>MSTW Professional Corporation Barristers and Solicitors 1301- 20 Adelaide Street E Toronto, ON M5C 2T6 mwine@mstwlaw.com Tel: 416-477-5524 Fax: 416-777-2050</p>
--	--

This notice is a summary of the Settlement Approval order. If there is a conflict between this notice and the terms of the Settlement Approval order, the Settlement Approval order prevails. The Settlement Approval Order can be viewed in the documents tab at www.fortressclassaction.ca.

The Ontario Superior Court of Justice approved this notice, however, if you have questions or comments contact Class Counsel and not the Court.

Short Form Notice

**NOTICE OF CLASS ACTION CERTIFICATION and
APPROVAL OF PARTIAL SETTLEMENT**

Fortress Syndicated Mortgages Class Actions in respect of:

Collier Centre, Barrie

Harmony Simcoe/The Kemp, Barrie

Orchard, Calgary

Sutton/The Link, Burlington

Ten88 Progress, Toronto

You are receiving this notice because you invested in one or more of the following “Fortress” syndicated mortgage loans in respect of five Development Projects:

- the **Collier Centre Project First Syndicated Mortgage only**, located at 90 Collier Street and 55 Mulcaster Street, Barrie, Ontario, in respect of the charge registered as Instrument SC1005953;
- the **Harmony Simcoe/The Kemp Project**, located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario, in respect of the charge registered as Instrument SC983678.
- the **Sutton/The Link Project**, located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario in respect of the charges registered as Instruments HR1062915, HR1163232, or HR1174204;
- the **Orchard Project** located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta in respect of the charge registered as Registration Number 141 112 373; or
- the **Progress/Ten88 Project**, located at 1088 Progress Avenue, Toronto, Ontario in respect of the charge registered as Instrument AT3101004.

Class actions have been commenced in respect of these five Development Projects:

- *Arlene McDowell and Saviero Aversa v. Fortress Real Capital Inc. and others* CV-16-558165-00CP (Collier Centre)

- *The Estate of Bryan Madryga by his Estate Administrator Rebecca Shaw v. Fortress Real Capital Inc. and others* CV-16-565287-00CP (Harmony Simcoe/The Kemp)
- *Arlene McDowell and The Estate of Bryan Madryga by his Estate Administrator Rebecca Shaw v. Fortress Real Capital Inc. and others* CV-17-570361-00CP (Orchard)
- *Arlene McDowell v. Fortress Real Capital Inc. and others* CV-16-560268-00CP (Progress/Ten88)
- *Sandra Medland v. Fortress Real Capital Inc. and others* CV-16-561293-00CP (Sutton/The Link)

(together, the “Class Actions”)

This notice provides you with important information about the Class Actions that you need to be aware of because there are **two important developments** that can impact your legal rights.

1. The Actions have been Certified for Settlement Purposes

The Class Actions brought in respect of each of these Development Projects have been certified as class proceedings as against the Defendants, Building & Development Mortgages Canada Inc. (formerly carrying on business as Centro Mortgage Inc.) (“BDMC”), and the Estate of Ildina Galati, deceased, by its Trustee in Bankruptcy Crowe Soberman Inc. (“Galati”) (together, the “BDMC Defendants”).

The court has also certified the actions involving the Collier Centre, Orchard, and Sutton/The Links Development Projects as against the Defendants FFM Capital Inc., Rosalia Spadafora and Saul Perlov (together, the “FFM Defendants”). [The FFM Defendants were only included as defendants in the actions involving these three Development Projects.]

The BDMC Defendants and the FFM Defendants, together, are referred to as the “Settling Defendants”.

2. The Court has Approved Settlements with the BDMC Defendants and the FFM Defendants

The Ontario Superior Court of Justice has approved a settlement with the BDMC Defendants that will fully and finally resolve the Class Members’ claims against the BDMC Defendants in all five actions. The BDMC Defendants will pay \$8 million inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class.

The Court has also approved a settlement with the FFM Defendants that will fully and finally resolve the Class Members’ claims against the FFM Defendants in the Collier Centre, Orchard, and Sutton/The Links actions. The FFM Defendants will pay \$2.375 million inclusive of all interest, court costs, administrative costs, and legal fees in exchange for a full and final release from the Class Members in these three actions.

The Court has approved legal fees payable to Class Counsel of \$2,593,750, which is equal to 25% of each of the settlement funds, plus HST and disbursements. Class Counsel have been retained on a contingency fee basis, and have paid all the expenses related to the actions, and have not been paid for their services since the Class Actions were started in 2016 and 2017.

This Notice only contains a summary of how the certification and settlement of these actions affect you. Go to www.fortressclassaction.ca to review the Long Form Notice for more details, or contact Class Counsel at the addresses below if you have any questions.

CERTIFICATION OF THE ACTIONS AGAINST THE SETTLING DEFENDANTS

The Court has granted orders certifying the five actions as class proceedings as against the BDMC Defendants, for the purpose of effecting the settlement, and naming the plaintiffs as the representative plaintiffs. The Court has also granted orders certifying the Collier Centre, Orchard, and Sutton/The Links actions as class proceedings as against the FFM Defendants, for the purpose of effecting that settlement.

There are other defendants in each of the five actions that have not settled, and the Class Actions will be continuing against those non-settling defendants.

The Class Members in each of the Class Actions are:

For CV-16-558165-00CP (Collier Centre):

All persons in Canada who invested prior to January 30, 2015 in a syndicated mortgage in respect of the Collier Centre Project No. 1, registered against title to lands located at 90 Collier Street and 55 Mulcaster Street, Barrie, Ontario, as Instrument SC1005953.

For CV-16-565287-00CP (Harmony Simcoe/The Kemp):

All persons in Canada who invested in a syndicated mortgage in respect of the Harmony Simcoe Project, registered against title to lands located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario, as Instrument SC983678.

CV-17-570361-00CP (Orchard):

All persons in Canada who invested in a syndicated mortgage in respect of the Orchard Project, registered against title to lands located at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta as Registration Number 141 112 373.

For CV-16-560268-00CP (Progress/Ten88):

All persons in Canada who invested in a syndicated mortgage in respect of the Ten88 (Progress) Project, registered against title to lands located at 1088 Progress Avenue, Toronto, Ontario as Instrument AT3101004.

CV-16-561293-00CP (Sutton/The Link):

All persons in Canada who invested in a syndicated mortgage in respect of the Sutton/The Link Project, registered against title to lands located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario as Instruments HR1062915, HR1163232, or HR1174204.

You have received this Notice because you have been identified by FAAN, the mortgage administrator, as a Class Member in one or more of these Class Actions.

What the Class Actions are About

In each of the five Class Actions, the Plaintiffs assert claims against the Settling Defendants for breach of contract, negligence, negligent misrepresentation, fraudulent misrepresentation, and conspiracy. The claims seek payment of damages (money) to the Class Members to compensate them for the losses that they have suffered from their investments in the syndicated mortgage loans for each of these Development Projects.

None of the allegations made against the Settling Defendants has been proven in court, and the Settling Defendants deny all the allegations that have been made against them. If a settlement had not been reached, the Settling Defendants would be defending the Class Actions and opposing the certification of these actions as class proceedings. The settlement is a compromise of the parties' positions and is not an admission of liability or fault by the Settling Defendants.

What you Need to Do Now

If you want to remain in the Class Action(s) and participate in the settlement(s), then you do not need to do anything. You are automatically included in the Class Action, if you meet the class definition. Your share of the settlement funds will be calculated by FAAN and distributed to you by it.

If you do not want to be involved in the Class Action(s), and you do not want to be paid a portion of the settlement funds, then you need to “Opt Out” of the Class Action(s).

How to OPT OUT	<p>If you choose to Opt Out of the Class Action(s), then you will not be bound by any Court orders. This means you will get no payments or benefits from the settlements with the Settling Defendants, or any future settlements or trial judgment. This also means you will not be bound to any negative results in respect of the remaining parts of the Class Actions.</p> <p>If you Opt Out, you keep the right to sue any of the Settling Defendants on your own - however, you should be aware that there are limitation periods and bankruptcy proceedings that apply to your claim, and you should seek legal advice as soon as possible to determine your right to bring an individual action.</p> <p>To Opt Out you must notify Class Counsel in writing by no later than [60 days after the date of the Order].</p>
---------------------------	---

	<p>To validly Opt Out you must send an Opt Out Notice that includes:</p> <ul style="list-style-type: none"> • your full name and contact information; • the Development Project(s) in which you invested; • a written statement that says that you do not wish to participate in the Class Action(s), and are choosing to Opt Out; and • your signature or electronic equivalent <p>Opt Out Notices may be sent to Class Counsel by mail, email, fax, or courier to one of the addresses set out below, and must be received, and in the case of Canada Post mail, post-marked, by no later than 5 pm E.T. on [date]</p>
--	--

For more information, including details about the Class Actions or the Settlements, visit www.fortressclassaction.ca , or contact Class Counsel at:

<p>Waddell Phillips Professional Corporation Barristers 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 reception@waddellphillips.ca Tel: 1-888-684-5545 (toll-free) Fax: 416-477-1657</p>	<p>MSTW Professional Corporation Barristers and Solicitors 1301- 20 Adelaide Street E Toronto, ON M5C 2T6 mwine@mstwlaw.com Tel: 416-477-5524 Fax: 416-777-2050</p>
--	--

The Ontario Superior Court of Justice approved this notice, however, if you have questions or comments contact Class Counsel and NOT the Court.

**Schedule B to Settlement Agreement
Notice Protocol**

**PLAINTIFFS' CERTIFICATION and SETTLEMENT APPROVAL
NOTICE PROTOCOL
(BUILDING & DEVELOPMENT MORTGAGES CANADA INC., FORMERLY
CARRYING ON BUSINESS AS CENTRO MORTGAGE INC., AND THE ESTATE OF
ILDINA GALATI BY ITS TRUSTEE IN BANKRUPTCY CROWE SOBERMAN INC.)**

The Plaintiffs' notice plan pursuant to s. 19 of the *Class Proceedings Act, 1992* to provide notice of the hearing for settlement approval, and notice of the certification of these actions as against the Defendants Building & Development Mortgages Canada Inc., formerly carrying on business as Centro Mortgage Inc. ("BDMC"), and the Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc. ("Galati") (collectively, the "Settling Defendants"), and the approval of the settlement with the Settling Defendants is set out below.

1. There are 361 individuals who participated in the first syndicated mortgage with respect to the Collier Centre Project No. 1.
2. There are 456 individuals who participated in the syndicated mortgages with respect to the Sutton/The Link development.
3. There are 382 individuals who participated in the syndicated mortgages with respect to The Orchard development.
4. There are 364 individuals who participated in the syndicated mortgages with respect to the Progress/Ten88 Progress development.
5. There are 360 individuals who participated in the syndicated mortgages in respect of the Harmony Simcoe/The Kemp project.
6. These syndicated mortgages are each being administered by FAAN Mortgage Administrators Inc. ("FAAN") as Trustee of both BDMC, and Derek Sorrenti and Sorrenti Law Professional Corporation (collectively, "Sorrenti"), pursuant to the Appointment Orders granted by the Ontario Superior Court of Justice in Court File No. CV-18-596204-

00CL and in Court File No. CV-19-628258-00CL, respectively (collectively, the “Trustee Proceedings”).

7. FAAN, in its capacity as Trustee, has access to the books and records of BDMC and Sorrenti, which contain the names and last known contact information for every member of the Settlement Classes (“Class Members”) (the “Master Class Member Lists”).
8. FAAN has agreed to act as Notice Administrator and Claims Administrator with respect to the settlement of these class proceedings with the Settling Defendants.
9. The Plaintiffs will apply to the court for an order appointing FAAN to act as Notice Administrator to provide notice to the putative Class Members of the motions for settlement approval in respect of the settlements with the Settling Defendants (the “Notice of Hearing for Settlement Approval”), and if the settlement agreement is approved, to provide notice of certification and the approval of the settlement with the Settling Defendants (the “Notice of Settlement Approval”), and to act as Claims Administrator to distribute the Settlement Funds in accordance with the court-approved distribution protocol.
10. Class Counsel will arrange for translation into French of both the Short-Form and Long-Form Notice of Hearing for Settlement Approval and of the Short-Form and Long-Form Notice of Settlement Approval in the forms approved by the Court (the “Notices”).
11. Upon FAAN’s appointment as the Notice Administrator and the court’s approval of the form of the Notice of Hearing for Settlement Approval, FAAN will email, and where no valid email exists, mail to the Class Members listed in the Master Class Member Lists, the Short-Form Notice of Hearing for Settlement Approval, in both English and French.
12. Upon the court’s certification of the Actions, FAAN will email, and where no valid email exists, mail to the Class Members listed in the Master Class Member Lists, the Short-Form Notice of Settlement Approval, in both English and French.
13. FAAN has a dedicated website in respect of the administration of the Trustee Proceedings on which it posts court documents and other materials related to the Trustee Proceedings

to inform the investors in Fortress syndicated mortgage loans of the status of their investments. FAAN will create a page on this website related to the Notices it is providing as Notice Administrator. FAAN will post the Short-Form and Long-Form Notices on this webpage, in both English and French. Class Members will be directed to contact Class Counsel with any questions regarding the Notices, including questions about how to opt out of the Class Actions, if they are certified.

14. Class Counsel, not FAAN will be responsible for receiving any opt outs and reporting to the Settling Defendants and to the court with respect to same.
15. Class Counsel has a dedicated page on its website for these Class Actions, on which is posted current information and key documents about these Class Actions. The Notices will be posted on this webpage, in both English and French, along with a narrative explaining the import of certification, the opt-out process, and the terms of the settlement. Specific directions will be included about how Class Members may opt out and the opt-out deadline.
16. Class Counsel's website includes a confidential portal through which Class Members can send messages directly to Class Counsel. Class Members can also email Class Counsel directly. Class Counsel also has a toll-free number available for Class Members to contact them by telephone. Class Counsel will continue to promptly return all communications from Class Members and will provide copies of the Settlement Agreement or other court documents to any Class Members who request hard copies.
17. Class Counsel will post a link to the English Short-Form Notice to their Twitter accounts.
18. Class Counsel will request that the administrator of the website VOSMI – Victims of Syndicated Mortgage Investments (www.vosmi.ca/wine-waddell) post an update on its website, on the page related to this action, advising of the partial certification and settlement approval, including a link to Class Counsel's website and the Short-Form Notices posted there.