

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

TUESDAY, THE 29TH

JUSTICE HAINES)

DAY OF JANUARY, 2019

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

SPEERS SETTLEMENT APPROVAL ORDER

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



ratifying the Settlement Agreement dated as of January 22, 2019 (the “**Speers Settlement Agreement**”) among Kingridge Development Corporation (“**Kingridge**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering Kingridge to pay \$1,950,000 to the Trustee pursuant to the Speers Settlement Agreement; (iii) ordering Kingridge, the Trustee and OTC to comply with the Speers Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below), make a distribution of Speers Realized Property to Speers Individual Lenders, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Fifth Report of the Trustee dated January 23, 2019 (the “**Fifth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to Kingridge and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Justine Erickson sworn January 23, 2019, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fifth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Fifth Report and the Speers Settlement Agreement.

APPROVAL OF THE SPEERS SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Speers Settlement Agreement be and is hereby approved in its entirety, with such minor amendments as the Trustee and the other parties to the Speers Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) Kingridge is hereby directed to pay \$1,950,000 forthwith to the Trustee in accordance with the terms of the Speers Settlement Agreement (such funds the “**Speers Realized Property**”); and (iii) the execution of the Speers Settlement Agreement by the Trustee and OTC is hereby ratified and approved, and the Trustee and OTC are hereby

authorized and directed to comply with all of their obligations under the Speers Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to Kingridge substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**"), all of Kingridge's obligations to Building & Development Mortgages Canada Inc. ("**BDMC**"), OTC, and the individual lenders (the "**Speers Individual Lenders**") under the Loan Agreement dated as of September 18, 2013 between BDMC and Kingridge (the "**Loan Agreement**"), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**Speers Loan Obligations**") and all security interests granted to BDMC, OTC or the Speers Individual Lenders in and to the assets of Kingridge to secure the Speers Loan Obligations and related registrations on title (the "**Loan Encumbrances**") are hereby released, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC or any Speers Individual Lender shall have any claim against Kingridge in respect of the Speers Loan Obligations or the Loan Encumbrances; provided, however, that Kingridge shall not be released from any obligations under the Speers Settlement Agreement.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the Speers Realized Property is and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that all of the Speers Individual Lenders' rights and claims under the Loan Agreement, the Security and the Loan Documents shall attach to the Speers Realized Property and shall have the same nature and priority as they had prior to the consummation of the Speers Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Registry Division of Halton (#20) of an Application to Register an Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") all of the Loan Encumbrances listed in Schedule "C" hereto.

7. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, and each Speers Individual Lender who loaned funds through BDMC or OTC to Kingridge pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "**Releasees**") by Kingridge on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the "**Releasers**") shall be binding and effective on the Releasers in favour of the Releasees.

8. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, as soon as practicable after delivery thereof.

REALIZED PROPERTY

9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the Trustee shall make a distribution to Speers Individual Lenders in an amount equal to 85% of the Speers Realized Property, *pro rata* to the Speers Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

AID AND RECOGNITION OF FOREIGN COURTS

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

11. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

A handwritten signature in cursive script, appearing to read "Haidley".

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

JAN 30 2019

PER / PAR: *RW*

Schedule “A” – Form of Trustee’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
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TRUSTEE’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (the “**Trustee**”) of the undertaking, property and assets of Building & Development Mortgages Canada Inc. (“**BDMC**”).

B. Pursuant to an Order of the Court dated ● (the “**Speers Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement made as of January 22, 2019 (the “**Speers Settlement Agreement**”) among Kingridge Development Corporation (“**Kingridge**”), the Trustee and Olympia Trust Company (“**OTC**”) and ordered that all of Kingridge’s obligations to BDMC, OTC, and the individual lenders (“**Speers Individual Lenders**”) under

the Loan Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Speers Loan Obligations**”) and all security interests granted to BDMC, OTC or the Speers Individual Lenders in and to the assets of Kingridge to secure the Speers Loan Obligations (the “**Loan Encumbrances**”) are hereby released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Speers Individual Lender shall have any claim against Kingridge in respect of the Speers Loan Obligations or the Loan Encumbrances; provided, however, that Kingridge shall not be released from any obligations under the Speers Settlement Agreement; and that the release of the Speers Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to Kingridge of a certificate confirming (i) the payment of \$1,950,000 to the Trustee by Kingridge; (ii) that the conditions precedent to the Speers Settlement Agreement as set out in section 9 of the Speers Settlement Agreement have been satisfied or waived by the Trustee; and (iii) the settlement has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Speers Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. Kingridge has paid and the Trustee has received \$1,950,000 pursuant to the Speers Settlement Agreement;
2. Kingridge has provided the Release Agreement to the Releasees;
3. Kingridge has paid all applicable fees and costs to the Trustee in accordance with the terms of the Speers Settlement Agreement;
4. Kingridge has certified that all of the representations and warranties contained in this Speers Settlement Agreement continue to be true as of the Effective Date;
5. Kingridge continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Speers Settlement Agreement;
6. The other conditions set out in the Speers Settlement Agreement have been satisfied or waived by the Trustee; and
7. The settlement has been completed to the satisfaction of the Trustee.

This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

**FAAN Mortgage Administrators Inc., solely
in its capacity as Court-appointed Trustee of
the undertaking, property and assets of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

Schedule "B" – Real Property

PIN 25964-0003 (LT)

UNIT 3, LEVEL 1, HALTON STANDARD CONDOMINIUM PLAN NO. 662 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1421839; TOWN OF OAKVILLE

Schedule "C" – Loan Encumbrances

1. Instrument No. HR1142238 registered October 23, 2013 being a Charge in favour of Centro Mortgage Inc. to secure the original principal amount of \$4,000,000.
2. Instrument No. HR1145154 registered November 4, 2013 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
3. Instrument No. HR1147176 registered November 14, 2013 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
4. Instrument No. HR1151113 registered December 2, 2013 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
5. Instrument No. HR1153559 registered December 12, 2013 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
6. Instrument No. HR1161237 registered January 27, 2014 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
7. Instrument No. HR1176617 registered April 24, 2014 being a Notice of Amending Agreement between Kingridge (Speers) Inc. and Centro Mortgage Inc. and Olympia Trust Company.
8. Instrument No. HR1182245 registered May 21, 2014 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
9. Instrument No. HR1186205 registered June 4, 2014 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
10. Instrument No. HR1194911 registered July 8, 2014 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
11. Instrument No. HR1264677 registered May 8, 2015 being a Notice of Amending Agreement between Kingridge (Speers) Inc. and Centro Mortgage Inc. and Olympia Trust Company.
12. Instrument No. HR1265181 registered May 11, 2015 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
13. Instrument No. HR1270994 registered June 4, 2015 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
14. Instrument No. HR1271907 registered June 8, 2015 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.

15. Instrument No. HR1289465 registered August 10, 2015 being a Postponement of the Charge registered as Instrument No. HR1142238 to the Charge registered as Instrument No. HR1289444.
16. Instrument No. HR1296822 registered September 3, 2015 being a Transfer of Charge to Centro Mortgage Inc. and Olympia Trust Company.
17. Instrument No. HR1380113 registered August 3, 2016 being a Postponement of the Charge registered as Instrument No. HR1142238 to the Easement registered as Instrument No. HR1380112.

Schedule "D" – Release Agreement

[Date]

TO: FAAN Mortgage Administrators Inc. (the "Trustee")

AND TO: Olympia Trust Company ("OTC")

Re: Release granted in connection with repayment and settlement of the Obligations pursuant to Speers Settlement Agreement

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated as of September 18, 2013 (the "Loan Agreement") between Kingridge Development Corporation ("Kingridge") and Building & Development Mortgages Canada Inc. ("BDMC") and the related Security and Loan Documents. All capitalized terms used in this agreement (the "Release Agreement") shall, unless otherwise defined herein, have the same meanings given to them in the Loan Agreement or the Settlement Agreement dated as of January 22, 2019 among Kingridge, the Trustee and OTC (the "Settlement Agreement").

1. Kingridge hereby certifies that all of the representations and warranties contained in the Settlement Agreement are true and accurate as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Settlement Agreement.
2. Kingridge has paid the Trustee \$1,950,000 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$1,950,000 in full and final satisfaction of Obligations payable to BDMC by Kingridge under the Loan Agreement in excess of \$2,340,124 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Kingridge (on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) (collectively, the "Releasers") hereby releases, discharges and acquits the Trustee, BDMC, OTC, and each lender or investor who loaned funds through BDMC or OTC to Kingridge pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "Releasees") from any and all claims, demands, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any Releaser, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees directly or indirectly arising out of or in any way related to the Loan Agreement, the Loan Documents, the proceedings initiated by the Order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018, or any transactions hereunder or thereunder.

This Release Agreement shall be effective immediately upon the delivery of the Trustee's Certificate and may be relied upon by any of the Releasees, whether or not such Releasee is a party to this Release Agreement or the Settlement Agreement.

This Release Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, and may be executed and delivered by facsimile or .pdf file transmitted by email, and all such counterparts, .pdf files and facsimiles when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same Release Agreement.

This Release Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

Yours truly,

KINGRIDGE DEVELOPMENT CORPORATION

By:

Name:

Title:

Accepted and agreed to by:

FAAN MORTGAGE ADMINISTRATORS INC., solely in its capacity as Court-appointed Trustee of Building & Development Mortgages Canada Inc. and in no other capacity

By:

Name:

Title:

OLYMPIA TRUST COMPANY

By:

Name:

Title:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA
INC.**

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

SPEERS SETTLEMENT APPROVAL ORDER

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in its capacity as Court-appointed Trustee