

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

FRIDAY, THE 26TH

JUSTICE HAINEY

)

DAY OF APRIL, 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**

JAMES 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 Amended and Restated Settlement Agreement dated as of April 18, 2019 (the “**James Settlement Agreement**”) among L Richmond Corp. (the “**Borrower**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering the Borrower to pay \$4,842,541 to the Trustee pursuant to the James Settlement Agreement; (iii) ordering the Borrower, the Trustee and OTC to comply with the James Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below), make a distribution of James Realized Property to James Individual Lenders, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Sixth Report of the Trustee dated April 18, 2019 (the “**Sixth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the Borrower 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 April 22, 2019, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Sixth 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 Sixth Report and the James Settlement Agreement.

APPROVAL OF THE JAMES SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the James Settlement Agreement be and is hereby approved in its entirety, with such minor amendments as the Trustee and the other parties to the James Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) the Borrower is hereby directed to pay \$4,842,541 forthwith to the Trustee in accordance with the terms of the James Settlement Agreement (such funds the “**James Realized Property**”); and (iii) the execution of the James 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 James Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the Borrower substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**"), all of the Borrower's obligations to Building & Development Mortgages Canada Inc. ("**BDMC**"), OTC, and the individual lenders (the "**James Individual Lenders**") under the Loan Agreement dated June 1, 2016 between BDMC and the Borrower (the "**Loan Agreement**"), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**James Loan Obligations**") and all security interests granted to BDMC, OTC or the James Individual Lenders in and to the assets of the Borrower to secure the James 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 James Individual Lender shall have any claim against the Borrower in respect of the James Loan Obligations or the Loan Encumbrances; provided, however, that the Borrower shall not be released from any obligations under the James Settlement Agreement.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the James 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 James Individual Lenders' rights and claims under the Loan Agreement, the Security and the Loan Documents shall attach to the James Realized Property and shall have the same nature and priority as they had prior to the consummation of the James 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 Toronto (#66) 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 James Individual Lender who loaned funds through BDMC or OTC to the Borrower 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 the Borrower 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 James Individual Lenders in an amount equal to 85% of the James Realized Property, *pro rata* to the James 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, reading "Hainey J.", is written over a horizontal line.

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

APR 26 2019

PER / PAR: *Rv*

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
*MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
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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 made on April 26, 2019 (the “**James Settlement Approval Order**”), the Court approved and ratified the Amended and Restated Settlement Agreement dated as of April 18, 2019 (the “**James Settlement Agreement**”) among L Richmond Corp. (the “**Borrower**”), the Trustee and Olympia Trust Company (“**OTC**”) and ordered that all of the Borrower’s obligations to BDMC, OTC, and the individual lenders

(“**James Individual Lenders**”) under the Loan Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**James Loan Obligations**”) and all security interests granted to BDMC, OTC or the James Individual Lenders in and to the assets of the Borrower to secure the James Loan Obligations (the “**Loan Encumbrances**”) are hereby released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any James Individual Lender shall have any claim against the Borrower in respect of the James Loan Obligations or the Loan Encumbrances; provided, however, that the Borrower shall not be released from any obligations under the James Settlement Agreement; and that the release of the James Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to the Borrower of a certificate confirming (i) the payment of \$4,842,541 to the Trustee by the Borrower; (ii) that the conditions precedent to the James Settlement Agreement as set out in section 9 of the James 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 James Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. The Borrower has paid and the Trustee has received \$4,842,541 pursuant to the James Settlement Agreement;
2. The Borrower has provided the Release Agreement to the Releasees;
3. The Borrower has certified that all of the representations and warranties contained in the James Settlement Agreement continue to be true as of the Effective Date;
4. The Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the James Settlement Agreement;
5. The other conditions set out in the James Settlement Agreement have been satisfied or waived by the Trustee; and
6. 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 21239-0497 (LT)

LOT 10, PART LOT 9, PLAN D-89, PARTS 1 AND 2, PLAN 66R-29047; SUBJECT TO AN
EASEMENT AS IN AT4998958; CITY OF TORONTO

Schedule "C" – Loan Encumbrances

1. Instrument No. AT4379343 registered October 24, 2016 being a Charge in favour of Building and Development Mortgages Canada Inc. to secure the original principal amount of \$5,500,000.
2. Instrument No. AT4379353 registered October 24, 2016 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
3. Instrument No. AT4383222 registered October 26, 2016 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
4. Instrument No. AT4395075 registered November 8, 2016 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
5. Instrument No. AT4434990 registered December 15, 2016 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
6. Instrument No. AT4452336 registered January 9, 2017 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
7. Instrument No. AT4476219 registered February 1, 2017 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
8. Instrument No. AT4504065 registered March 7, 2017 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
9. Instrument No. AT4523780 registered March 30, 2017 being a Notice of Amending Agreement between L Richmond Corp. and Building & Development Mortgages Canada Inc. and Olympia Trust Company.
10. Instrument No. AT4553247 registered May 2, 2017 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
11. Instrument No. AT4574735 registered May 23, 2017 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
12. Instrument No. AT4608741 registered June 27, 2017 being a Transfer of Charge to Building & Development Mortgages Canada Inc. and Olympia Trust Company.

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 James Settlement Agreement

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated June 1, 2016 (the "Loan Agreement") between L Richmond Corp. (the "Borrower") 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 Amended and Restated Settlement Agreement dated as of April 18, 2019 among the Borrower, the Trustee and OTC (the "Settlement Agreement").

1. The Borrower 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. The Borrower has paid the Trustee \$4,842,541 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$4,842,541 in full and final satisfaction of Obligations payable to BDMC by the Borrower under the Loan Agreement in excess of \$6,700,025 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower (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 the Borrower 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,

L RICHMOND CORP.

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

JAMES SETTLEMENT APPROVAL ORDER

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in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.