



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE 14TH

JUSTICE MCEWEN

)

DAY OF NOVEMBER, 2022

)

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**

**ORDER
(Eden Resolution and Distribution Order)**

THIS MOTION, made by FAAN Mortgage Administrators Inc., 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. (“**BDMC**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, 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 and Mutual Release dated as of August 2, 2022 (the “**Eden Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and the other parties thereto; (ii) ordering that the Settlement Payments (as defined in the Eden Settlement Agreement) be made to the Trustee pursuant to and in accordance with the Eden Settlement Agreement; and (iii) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below) in accordance with the Eden Settlement Agreement, make a distribution of Eden Realized Property (as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-Ninth Report of the Trustee dated November 4, 2022 (the “**Twenty-Ninth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the 2309918 Ontario Inc. (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 Blair McRadu sworn November 9, 2022, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Ninth 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 Twenty-Ninth Report or the Eden Settlement Agreement, as applicable.

APPROVAL OF THE EDEN SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Eden Settlement Agreement be and is hereby approved and ratified in its entirety; (ii) the following payments are directed to be made to the Trustee, on behalf of BDMC and OTC, in accordance with the terms of the Eden Settlement Agreement and in each case prior to the Payment Deadline, (a) \$500,000 by Pace, (b) \$875,000 by

Mr. Chong (or LawPro, on behalf of Mr. Chong), and (c) \$875,000 by the May 2019 Purchaser Plaintiffs and/or the August 2019 Purchaser Plaintiffs and/or the Additional 2019 Purchasers (or one or more of the Title Insurers, on behalf of such parties); and (iii) the execution of the Eden Settlement Agreement by the Trustee, OTC, and Representative Counsel is hereby ratified and approved, and the Trustee, OTC, and Representative Counsel are hereby authorized and directed to comply with all of their respective obligations under the Eden Settlement Agreement, as applicable.

4. **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 in accordance with the Eden Settlement Agreement.

5. **THIS COURT ORDERS** that, only as contemplated by the Eden Settlement Agreement, upon the registration in the Land Registry Office for York Region (#65) 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**") the Lender's Mortgage/Charge listed in Schedule "C" hereto.

REALIZED PROPERTY

6. **THIS COURT ORDERS AND DECLARES** that only upon the delivery of the Trustee's Certificate in accordance with the Eden Settlement Agreement, the Settlement Payments (the "**Eden Realized Property**") are 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 the rights and claims of the Individual SMLs in respect of the Loan Agreements and related security shall attach to the Eden Realized Property and shall have the same nature and priority as they had prior to the consummation of the Eden Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

7. **THIS COURT ORDERS** that, as soon as is practicable, the Trustee shall make a distribution to the Individual SMLs in an amount equal to 85% of the Eden Realized Property, *pro*

rata to the Individual SMLs 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.

RELEASES

8. **THIS COURT ORDERS** that, as of the Closing Date:

- (i) none of the Borrower, BDMC, and OTC shall have any further rights or obligations in connection with the Obligations, the Loan Agreements, the Lender's Mortgage/Charge, and the other Security;
- (ii) the Loan Agreements shall have no further force or effect; and
- (iii) BDMC and OTC shall have no further rights to any further payments that may become payable under the Loan Agreements, the Lender's Mortgage/Charge, and the other Security.

9. **THIS COURT ORDERS** that the Borrower and its shareholders, agents, directors, officers, employees, and their respective successors and assigns, hereby forever release and discharge the Trustee, BDMC, OTC, the May 2019 Purchaser Plaintiffs, the August 2019 Purchaser Plaintiffs, the Additional 2019 Purchasers, the Title Insurers, Mr. Chong and LawPro (and each of their respective officers, directors, agents, employees, and each of their respective successors and assigns, as applicable) from any and all claims, demands, rights, liabilities, and causes of action, whether at law or in equity, known or unknown, existing up to the date hereof, in any way connected with, arising out of or relating to the matters raised, or which might have been raised, in respect of the Loan, the Loan Agreements, the Lender's Mortgage/Charge and any and all other Security, and the Purchaser Litigation (which, for greater certainty, includes the Third Party Claim).

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 dark ink, appearing to read 'McEwen', is written over a horizontal line.

Schedule “A” – Form of Trustee’s Certificate

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

RECITALS

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

B. Pursuant to an Order of the Court made on ● (the “**Eden Resolution and Distribution Order**”), the Court approved and ratified the Settlement Agreement and Mutual Release dated as of August 2, 2022 (the “**Eden Settlement Agreement**”) among the Trustee, Olympia Trust Company (“**OTC**”), and certain other parties.

C. The releases contemplated in the Eden Settlement Agreement and the Eden Resolution and Distribution Order are not effective until the Trustee issues the Trustee’s Certificate to the other parties to the Eden Settlement Agreement in accordance with the terms thereof.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Eden Resolution and Distribution Order or the Eden Settlement Agreement, as applicable.

THE TRUSTEE CERTIFIES the following:

1. The Eden Resolution and Distribution Order has been granted by the Court and either no material objections (in the sole opinion of the Trustee) were raised by any person at the motion for the Eden Resolution and Distribution Order or the appeal periods in respect of the Eden Resolution and Distribution Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
2. Each of the Settlement Payments has been paid directly to, and actually received by, the Trustee at the Trustee's Account;
3. The May 2019 Purchaser Litigation (which, for greater certainty, includes the Third Party Claim) has been dismissed on a with prejudice and without costs basis;
4. The August 2019 Purchaser Litigation has been dismissed on a with prejudice and without costs basis; and
5. The Trustee has received a signed acknowledgment from the Bankruptcy Trustee, on behalf of the Borrower, in form and substance satisfactory to the Trustee, in its sole discretion, acknowledging and confirming that:
 - (i) it is aware of the terms of this Settlement Agreement;
 - (ii) the Borrower and its estate have no interest in the Settlement Payments and such payments do not constitute property or proceeds of the Borrower or its bankruptcy estate;
 - (iii) the Bankruptcy Trustee, on behalf of 230 Ontario, consents to a dismissal of the May 2019 Purchaser Litigation (including the Third Party Claim) and of the August 2019 Purchaser Litigation, in each case on a with prejudice and without costs basis, and authorizes the lawyers for the applicable plaintiffs to execute a consent in respect of the applicable dismissal; and
 - (iv) the Bankruptcy Trustee will, as soon as is practicable following the Closing Date, but subject to completion of the administration of the estate and its statutory duties under the BIA, seek a discharge of the Borrower from, and termination of, the Bankruptcy Proceedings.

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 assets, undertakings, and properties of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____
Name:
Title:

Schedule "B" – Real Property

No.	PIN	Legal Description
1.	PIN 03372-0919 (LT)	LOT 1, PLAN 65M4514; TOWNSHIP OF KING
2.	PIN 03372-0920 (LT)	LOT 2, PLAN 65M4514; TOWNSHIP OF KING
3.	PIN 03372-0921 (LT)	LOT 3, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
4.	PIN 03372-0922 (LT)	LOT 4, PLAN 65M4514; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, 65R36537 AS IN YR2539216; TOWNSHIP OF KING
5.	PIN 03372-0923 (LT)	LOT 5, PLAN 65M4514; TOWNSHIP OF KING
6.	PIN 03372-0924 (LT)	LOT 6, PLAN 65M4514; TOWNSHIP OF KING
7.	PIN 03372-0925 (LT)	LOT 7, PLAN 65M4514; TOWNSHIP OF KING
8.	PIN 03372-0926 (LT)	LOT 8, PLAN 65M4514; TOWNSHIP OF KING
9.	PIN 03372-0927 (LT)	LOT 9, PLAN 65M4514; TOWNSHIP OF KING
10.	PIN 03372-0928 (LT)	LOT 10, PLAN 65M4514; TOWNSHIP OF KING
11.	PIN 03372-0929 (LT)	LOT 11, PLAN 65M4514; TOWNSHIP OF KING
12.	PIN 03372-0930 (LT)	LOT 12, PLAN 65M4514; TOWNSHIP OF KING
13.	PIN 03372-0980 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 15, 16, 17 AND 18 ON 65R-37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 17 ON 65R-37241 AS IN YR2539216; TOGETHER WITH AN EASEMENT OVER PART 14 PLAN 65R37241 AS IN YR2867635; SUBJECT TO AN EASEMENT OVER PART 15 PLAN 65R37241 IN FAVOUR OF PARTS 13 & 14 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
14.	PIN 03372-0981 (LT)	PART LOT 16, PLAN 65M-4514, PARTS 13 AND 14 ON 65R-37241; SUBJECT TO AN EASEMENT OVER PART 14 PLAN 65R37241 IN FAVOUR OF PARTS 15, 16, 17 & 18 PLAN 65R37241 AS IN YR2867635; TOGETHER WITH AN EASEMENT OVER PART 15 PLAN 65R37241 AS IN YR2867636; TOWNSHIP OF KING
15.	PIN 03372-0982 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 32 & 33 PLAN 65R37241; TOWNSHIP OF KING
16.	PIN 03372-0983 (LT)	PART LOT 19 PLAN 65M4514 DESIGNATED AS PARTS 34 & 35 PLAN 65R37241; TOWNSHIP OF KING
17.	PIN 03372-0984 (LT)	PART LOT 13, PLAN 65M4514, PARTS 3 AND 4 PLAN 65R37241; TOWNSHIP OF KING
18.	PIN 03372-0985 (LT)	PART OF LOT 13, PLAN 65M4514, PARTS 1 & 2 PLAN 65R37241; TOWNSHIP OF KING
19.	PIN 03372-0986 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 36, 37, PLAN 65R37241; TOWNSHIP OF KING
20.	PIN 03372-0987 (LT)	PART LOT 20, PLAN 65M4514 DESIGNATED AS PARTS 38, 39, 40, PLAN 65R37241; SUBJECT TO AN EASEMENT IN GROSS OVER PART 40, PLAN 65R37241 AS IN YR2760258; TOWNSHIP OF KING
21.	PIN 03372-0988 (LT)	PART LOT 15, PLAN 65M4514, PARTS 9 & 10, PLAN 65R37241; TOWNSHIP OF KING
22.	PIN 03372-0989 (LT)	PART LOT 15, PLAN 65M4514, PARTS 11 & 12, PLAN 65R37241; TOWNSHIP OF KING

23.	PIN 03372-0990 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 19 AND 20, 65R37241; TOWNSHIP OF KING
24.	PIN 03372-0991 (LT)	PART OF LOT 17 PLAN 65M4514 PARTS 21, 22, 23, 24 & 25, 65R37241 SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 23, 24 & 25 65R37241 AS IN YR2539230; TOWNSHIP OF KING
25.	PIN 03372-0992 (LT)	PT LT 18 PL 65M4514 BEING PTS 26, 27, 28 & 29 ON 65R-37241; S/T EASE IN GROSS OVER PT 5 PL 65R-36537 AS IN YR2539230; TOWNSHIP OF KING
26.	PIN 03372-0993 (LT)	PT LT 18 PL 65M4514 BEING PTS 30 & 31 ON PL 65R-37241; TOWNSHIP OF KING
27.	PIN 03372-0994 (LT)	PART LOT 14 PLAN 65M4514, PARTS 7 & 8 65R37241; TOWNSHIP OF KING
28.	PIN 03372-0995 (LT)	PART LOT 14 PLAN 65M4514, PARTS 5 & 6 65R37241; TOWNSHIP OF KING

Schedule “C” – Lender’s Mortgage/Charge

Registration Instrument No. YR1797496 registered on March 20, 2012, as:

- transferred by Instrument Nos. YR1798016, YR1833808, YR1833809, YR1886635, YR1958951, YR1958955, YR2099174, YR2136733, YR2136734, and YR2438713;
- transferred from Sanjay Soni to Building & Development Mortgages Canada Inc. by Instrument No. YR2443820;
- transferred from Olympia Trust Company to Building & Development Mortgages Canada Inc. by Instrument No. YR2456227;
- amended by Inst. Nos. YR1893548, YR2087780, YR2182638, and YR2321166;
- postponed by Instrument Nos. YR2323109, YR2323111, YR2391969, YR2510935, YR2540057, and YR2714813; and
- modified by names changes by Instrument Nos. YR1816457 (Vanguard Law Group LLP, in Trust to Sanjay Soni) and YR1833806 (Olympia Trust to Olympia Trust Company).

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- and -

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INC.**

Applicant

Respondent

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**EDEN RESOLUTION AND DISTRIBUTION
ORDER**

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