



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 14<sup>TH</sup>  
JUSTICE MCEWEN ) DAY OF DECEMBER, 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  
(6th & 10th Settlement Approval and Distribution)**

**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. 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 and Mutual Release Agreement dated as of December 5,

2022 (the “**6th & 10th Settlement Agreement**”) among the Trustee, Olympia Trust Company, Bel-Calgary Inc., Lamb Development Corporation and B JL Properties Inc.; and (ii) authorizing the Trustee to, upon receipt of the 6th & 10th Realized Property (as defined below), make a distribution of the 6th & 10th Realized Property to the 6th & 10th Investors (as defined in the Thirtieth Report), 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 Thirtieth Report of the Trustee dated December 5, 2022 (the “**Thirtieth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Blair McRadu sworn December 7, 2022, filed;

#### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Thirtieth 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 Thirtieth Report or the 6th & 10th Settlement Agreement.

#### **APPROVAL OF THE 6th & 10th SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (i) the 6th & 10th Settlement Agreement be and is hereby approved in its entirety, including the releases contemplated by Section 6 thereof, with such minor amendments as the Trustee and the other parties thereto may agree upon; and (ii) the execution of the 6th & 10th Settlement Agreement by the Trustee is hereby ratified and approved, and the Trustee is hereby authorized and directed to comply with all of its obligations under the 6th & 10th Settlement Agreement.

#### **RESIDUAL PROCEEDS DISTRIBUTIONS**

4. **THIS COURT ORDERS** that Goldman Sloan Nash & Haber LLP (the “**Escrow Agent**”) is hereby authorized to make the Distributions in accordance with the terms of the 6th & 10th

Settlement Agreement, and further that, in addition to the protections afforded to the Escrow Agent in the 6th & 10th Settlement Agreement, the Escrow Agent shall have no liability whatsoever in connection with the Distributions and the Residual Proceeds.

### **REALIZED PROPERTY**

5. **THIS COURT ORDERS** that (i) the amount of \$2.3 million distributed to the Trustee pursuant to the 6th & 10th Settlement Agreement (the “**6th & 10th Realized Property**”) and (ii) any Further Consideration, whether received by the Trustee prior to or following the date of this Order, is and shall be deemed to be “Realized Property” as defined in the Order of this Court dated June 26, 2018.


6. **THIS COURT ORDERS** that, as soon as is practicable upon receipt by the Trustee of the 6th & 10th Realized Property, the Trustee shall make a distribution to the 6th & 10th Investors in an amount equal to 85% of the 6th & 10th Realized Property, *pro rata* to the 6th & 10th Investors 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**

7. **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.

8. **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.

CU-18-596204-00CL re: The 6<sup>th</sup> and 10<sup>th</sup>  
Settlement Approval and Dist order dated Dec 14/22



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THE SUPERINTENDENT OF FINANCIAL SERVICES - and - BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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14 Dec 22

The order shall go as per the drafted filed & signed. It is proposed. I have reviewed the amount and method of distribution - both are fair and reasonable -

*Pro Z*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

BROOKDALE DISTRIBUTION ORDER

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in its capacity as Court-appointed Trustee of  
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