

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 5TH
)
JUSTICE HAINEY) DAY OF NOVEMBER, 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**

NOBLETON NORTH SETTLEMENT APPROVAL ORDER

THIS MOTION, made by Nobleton North Holdings Inc. (the "**Borrower**"), for an Order, *inter alia*, approving the Settlement Agreement dated as of October 30, 2019 (the "**Nobleton Settlement Agreement**") signed by the Borrower and open for acceptance 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. ("**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, and Olympia Trust Company (“OTC”), with such minor amendments as the parties to the Nobleton Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby, and for certain other relief as set out in the Borrower’s Notice of Motion, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Affidavit of David Forgione sworn November 1, 2019 (the “**Forgione Affidavit**”) and the Eleventh Report of the Trustee dated October 31, 2019 (the “**Eleventh Report**”), and on hearing the submissions of counsel for the Borrower, 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 Sean Stidwill sworn October 31, 2019, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record of the Borrower and the Eleventh 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 Eleventh Report and the Nobleton Settlement Agreement as applicable.

APPROVAL OF THE NOBLETON SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Nobleton Settlement Agreement be and is hereby approved in its entirety, including without limitation the Late Payment Fee contemplated by Section 4 thereof, with such minor amendments as the Trustee and the other parties to the Nobleton Settlement Agreement may agree upon to permit the completion of the transactions contemplated thereby; (ii) the Trustee and OTC are authorized and directed to execute the Nobleton Settlement Agreement and to comply with all of their obligations under the Nobleton Settlement Agreement; and (iii) the Borrower is hereby obligated to pay the Settlement Payment (as defined in the

Nobleton Settlement Agreement) in accordance with the Nobleton Settlement Agreement (such funds, the “**Nobleton Realized Property**”).

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 BDMC, OTC, and the individual lenders (the “**Nobleton Individual Lenders**”) under the Loan Agreement effective as of December 13, 2013 and executed as of June 10, 2014 (as amended, the “**Loan Agreement**”) between BDMC and the Borrower, including, for greater certainty, the Obligations and the Charge (each as defined in the Nobleton Settlement Agreement) (collectively, the “**Nobleton Loan Obligations**”), any and all security interests granted to BDMC, OTC or the Nobleton Individual Lenders in and to the assets of the Borrower to secure the Nobleton Loan Obligations and related registrations on title, including the Charge and the Other Security (each as defined in the Nobleton Settlement Agreement) (the “**Loan Encumbrances**”) and any and all interests or claims the Trustee, on behalf of BDMC, OTC and the Nobleton Individual Lenders may have in respect of the Project (as defined in the Settlement Agreement) and the Property (as defined in the Settlement Agreement) are hereby released, waived, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC or any Nobleton Individual Lender shall have any claim against the Borrower in respect of the Nobleton Loan Obligations or the Loan Encumbrances; provided, however, that the Borrower shall not be released from any obligations under the Nobleton Settlement Agreement.

5. **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 to the Borrower.

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee’s Certificate to the Borrower, the Nobleton 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 Nobleton Individual Lenders’ rights and claims under the Loan Agreement, the Charge and the Other Security shall attach to the Nobleton Realized Property and shall have the same nature and priority as they had prior to the consummation of the Nobleton

Settlement Agreement, including pursuant to the Order of this Court dated April 20, 2018 appointing FAAN Mortgage as Trustee and the Interim Stabilization Order.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region (No. 65) of an Application to Amend Based on Court 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 ordered and directed to amend the parcel register for the real property identified in Schedule "B" hereto (the "**Real Property**") by discharging, deleting, ruling off and expunging from title to the Real Property all of the Loan Encumbrances listed in Schedule "C" hereto.

8. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate to the Borrower, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, and each Nobleton 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.

REALIZED PROPERTY

9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate to the Borrower and the filing of a copy of the Trustee's Certificate with the Court, the Trustee shall make a distribution to Nobleton Individual Lenders in an amount equal to 85% of the Nobleton Realized Property, *pro rata* to the Nobleton 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.

10. **THIS COURT ORDERS** that in the event that the Closing Date does not occur by the Outside Closing Date (each as defined in the Nobleton Settlement Agreement) by reason of a

breach by the Borrower of its obligations under the Nobleton Settlement Agreement, then the full amount of the Deposit (as defined in the Nobleton Settlement Agreement) shall become the property of and be retained by the Trustee in accordance with the terms of the Nobleton Settlement Agreement, on behalf of BDMC, and shall constitute Realized Property as defined in the Interim Stabilization Order. Conversely, if all of the conditions precedent set out in Section 12 of the Nobleton Settlement Agreement have been satisfied and the Closing Date does not occur on or before the Outside Closing Date and the Borrower is not in breach of its obligations under the Nobleton Settlement Agreement, then the Deposit, and if applicable, any amounts in excess of the Deposit, received by Representative Counsel or the Trustee (or its counsel, in trust) in respect of the Settlement Payment shall be returned to the Borrower upon written demand by the Borrower or its solicitors in accordance with the terms of the Nobleton Settlement Agreement.

SEALING

11. **THIS COURT ORDERS** that Confidential Appendix 1 to the Eleventh Report and confidential Supplemental Exhibit “B” to the Forgione Affidavit shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in sealed envelopes attached to notices that set out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

AID AND RECOGNITION OF FOREIGN COURTS

12. **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.

13. **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.



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

NOV 05 2019

PER / PAR: 

Schedule “A” – Form of Trustee’s Certificate

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

**ONTARIO
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THE SUPERINTENDENT OF FINANCIAL SERVICES

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- and -

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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 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 assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).

B. Pursuant to an Order of the Court made on November 5, 2019 (the “**Nobleton Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement dated as of October 30, 2019 (the “**Nobleton Settlement Agreement**”) signed by Nobleton North Holdings Inc. (the “**Borrower**”) and open for acceptance by the Trustee and Olympia Trust Company (“**OTC**”), with such minor amendments as the parties to the Nobleton Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby, and ordered that all of the

Borrower's obligations to BDMC, OTC, and the individual lenders ("**Nobleton Individual Lenders**") under the Loan Agreement (including, for greater certainty, the Obligations (as defined in the Nobleton Settlement Agreement), the Charge, and the Other Security (each as defined in the Nobleton Settlement Agreement) (collectively, the "**Nobleton Loan Obligations**") and all security interests granted to BDMC, OTC or the Nobleton Individual Lenders in and to the assets of the Borrower to secure the Nobleton Loan Obligations (the "**Loan Encumbrances**") and any and all interests or claims the Trustee, on behalf of BDMC, OTC and the Nobleton Individual Lenders may have in respect of the Project (as defined in the Settlement Agreement) and the Property (as defined in the Settlement Agreement) are to be released, waived, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Nobleton Individual Lender shall have any claim against the Borrower in respect of the Nobleton Loan Obligations or the Loan Encumbrances, provided, however, that the Borrower shall not be released from any obligations under the Nobleton Settlement Agreement, and that the release of the Nobleton Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to the Borrower of a certificate confirming, among other things, (i) the payment of the Settlement Payment (as defined in the Nobleton Settlement Agreement) to the Trustee (or its law firm, in trust) by the Borrower in accordance with the terms of the Nobleton Settlement Agreement; (ii) that the conditions precedent to the Nobleton Settlement Agreement, as set out in Section 12 of the Nobleton Settlement Agreement, have been satisfied or waived by the Trustee; and (iii) the settlement has been completed in accordance with the Nobleton Settlement Agreement.

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

THE TRUSTEE CERTIFIES the following:

1. The Nobleton Settlement Approval Order has been granted by the Court and no appeal has been filed or, if an appeal has been filed and a stay has been obtained, 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. The Borrower has paid the Settlement Payment, and, if applicable, the Late Payment Fee, to the Trustee's law firm, in trust;

3. The Borrower has provided the Release Agreement to the Releasees;
4. The Borrower has certified that all of the representations and warranties contained in the Nobleton Settlement Agreement continue to be true as of the Closing Date;
5. The Borrower continues to be in compliance with all of the terms of the Nobleton Settlement Agreement;
6. The other conditions set out in the Nobleton Settlement Agreement have been satisfied or waived by the Trustee; and
7. The settlement has been completed in accordance with the Nobleton Settlement Agreement.

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

PIN 03358-1214 (LT)

PT LT 10 CON 8 KING, PART 1 ON 65R36928; TOWNSHIP OF KING

Schedule "C" – Loan Encumbrances

1. Instrument No. YR2144079 registered June 23, 2014 being a Charge in favour of Centro Mortgage Inc., in Trust
2. Transfers of Charge:
 - (a) Instrument No. YR2144088 registered June 23, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (b) Instrument No. YR2146054 registered June 26, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (c) Instrument No. YR2163403 registered July 30, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (d) Instrument No. YR2178267 registered August 28, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (e) Instrument No. YR2191554 registered September 25, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (f) Instrument No. YR2200193 registered October 14, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (g) Instrument No. YR2207795 registered October 29, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (h) Instrument No. YR2225655 registered December 4, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (i) Instrument No. YR2236389 registered December 23, 2014 to Centro Mortgage Inc. and Olympia Trust Company
 - (j) Instrument No. YR2240265 registered January 7, 2015 to Centro Mortgage Inc. and Olympia Trust Company
 - (k) Instrument No. YR2243097 registered January 15, 2015 to Centro Mortgage Inc. and Olympia Trust Company
 - (l) Instrument No. YR2265473 registered March 11, 2015 to Centro Mortgage Inc. and Olympia Trust Company
 - (m) Instrument No. YR2273672 registered April 1, 2015 to Centro Mortgage Inc. and Olympia Trust Company
 - (n) Instrument No. YR2289081 registered May 11, 2015 to Centro Mortgage Inc. and Olympia Trust Company

- (o) Instrument No. YR2300115 registered June 3, 2015 to Centro Mortgage Inc. and Olympia Trust Company
- (p) Instrument No. YR2324811 registered July 21, 2015 to Centro Mortgage Inc. and Olympia Trust Company
- (q) Instrument No. YR2334418 registered August 6, 2015 to Centro Mortgage Inc. and Olympia Trust Company
- (r) Instrument No. YR2342223 registered August 20, 2015 to Centro Mortgage Inc. and Olympia Trust Company
- (s) Instrument No. YR2365140 registered October 1, 2015 to Centro Mortgage Inc. and Olympia Trust Company
- (t) Instrument No. YR2383097 registered November 3, 2015 to Centro Mortgage Inc. and Olympia Trust Company
- (u) Instrument No. YR2398794 registered December 3, 2015 to Centro Mortgage Inc. and Olympia Trust Company
- (v) Instrument No. YR2412962 registered January 7, 2016 to Centro Mortgage Inc. and Olympia Trust Company
- (w) Instrument No. YR2436187 registered February 26, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company
- (x) Instrument No. YR2442786 registered March 11, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company
- (y) Instrument No. YR2468019 registered May 5, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company
- (z) Instrument No. YR2485750 registered June 10, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company
- (aa) Instrument No. YR2499766 registered July 4, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company
- (bb) Instrument No. YR2515581 registered July 29, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company
- (cc) Instrument No. YR2536382 registered September 1, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company
- (dd) Instrument No. YR2567454 registered October 27, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(ee) Instrument No. YR2580479 registered November 18, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(ff) Instrument No. YR2596640 registered December 15, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(gg) Instrument No. YR2602153 registered December 28, 2016 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(hh) Instrument No. YR2629901 registered February 24, 2017 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(ii) Instrument No. YR2655747 registered April 20, 2017 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(jj) Instrument No. YR2662650 registered May 3, 2017 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(kk) Instrument No. YR2664637 registered May 8, 2017 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

(ll) Instrument No. YR2711850 registered August 2, 2017 to Building & Development Mortgages Canada Inc. and Olympia Trust Company

3. Notices of Amendments of Charge:

(a) Instrument No. YR2224410 registered December 2, 2014

(b) Instrument No. YR2287355 registered May 6, 2015

(c) Instrument No. YR2321779 registered July 15, 2015

(d) Instrument No. YR2436186 registered February 26, 2016

(e) Instrument No. YR2468018 registered May 5, 2016

(f) Instrument No. YR2529134 registered August 23, 2016

Schedule "D" – Release Agreement

[DATE]

TO: FAAN Mortgage Administrators Inc., as Court-appointed Trustee of Building & Development Mortgages Canada Inc. (in such capacity, the "Trustee")

AND TO: Olympia Trust Company ("OTC")

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

Dear Sirs/Mesdames

Reference is made to the Loan Agreement effective as of December 13, 2013 and executed as of June 10, 2014 (the "**Loan Agreement**") between Nobleton North Holdings Inc. (the "**Borrower**") and Building & Development Mortgages Canada Inc. (formerly known as Centro Mortgage Inc.) ("**BDMC**") and the related Obligations, Charge, and Other Security (each as defined in the Settlement Agreement dated as of October 30, 2019 (the "**Settlement Agreement**")). All capitalized terms used in this agreement (the "**Release Agreement**") shall, unless otherwise defined herein, shall have the meanings ascribed to them in the Settlement Agreement.

1. The Borrower hereby certifies that all of its representations and warranties contained in the Settlement Agreement are true and accurate in all material respects 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 to the Trustee the Settlement Payment (as defined in the Nobleton Settlement Agreement) and, if applicable, the Late Payment Fee pursuant to the Settlement Agreement and waives, and shall not assert, any right of set-off or any other defence to the payment of such amounts.
3. In consideration of the acceptance of the Settlement Payment and, if applicable, the Late Payment Fee in full and final satisfaction of Obligations payable to BDMC and to OTC by the Borrower under the Loan Agreement, which are approximately \$21.95 million, 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 "**Releasors**") 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 Releasor, 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,

NOBLETON NORTH HOLDINGS INC.

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

**NOBLETON NORTH SETTLEMENT
APPROVAL ORDER**

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