

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 30TH
)
JUSTICE HAINEY) DAY OF JANUARY, 2020
)

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**

PETER RICHMOND ASSIGNMENT AGREEMENT APPROVAL 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 Assignment Agreement dated as of December

17, 2019 (the “**Peter Richmond Assignment Agreement**”) among Carlyle Communities Inc. (the “**Assignee**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering the Assignee to pay the Assignment Price (less the Deposit) forthwith to the Trustee pursuant to the Peter Richmond Assignment Agreement; (iii) ordering the Assignee, the Trustee and OTC to comply with the Peter Richmond Assignment Agreement; and (iv) sealing Confidential Appendix 1 to the Fourteenth Report (as defined below) pending further Order of this Court, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Fourteenth Report of the Trustee dated January 23, 2020 (the “**Fourteenth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the Assignee 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 24, 2020, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourteenth 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 Fourteenth Report and the Peter Richmond Assignment Agreement.

APPROVAL OF THE PETER RICHMOND ASSIGNMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Peter Richmond Assignment Agreement be and is hereby approved in its entirety, including without limitation the Late Payment Fee contemplated by section 2 thereof, if any, with such minor amendments as the Trustee and the other parties to the Peter Richmond Assignment Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) the Assignee is hereby directed to pay the Assignment Price (less any Deposit previously received by the Trustee) forthwith to the Trustee in accordance with the terms of the Peter Richmond Assignment Agreement (such funds, including

the Deposit, being the “**Peter Richmond Realized Property**”); and (iii) the execution of the Peter Richmond Assignment 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 Peter Richmond Assignment Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee’s certificate to the Assignee substantially in the form attached as Schedule “A” hereto (the “**Trustee’s Certificate**”): (i) all of the right, title and interest (both legal and equitable), powers and privileges and other benefits of any nature whatsoever of BDMC, OTC, and the individual lenders (the “**Peter Richmond Individual Lenders**”) in and to the Indebtedness of Fortress Carlyle Peter St. Inc., the Loan Agreements, the Agency Agreement, the Charges and the BDMC Personal Property Security (each as defined in the Peter Richmond Assignment Agreement, and, collectively, the “**Peter Richmond Loan Obligations**”) now owing, together with all monies that may hereafter become due or owing, in respect of the Peter Richmond Loan Obligations, including, without limitation, all rights to receive principal, interest, fees, expenses, damages, penalties and other amounts in respect of or in connection with the Peter Richmond Loan Obligations, are hereby sold, assigned, transferred, set over, delivered and conveyed to the Assignee, and (ii) all rights and obligations of the Trustee, BDMC, OTC and the Peter Richmond Individual Lenders to any person or party in respect of the Peter Richmond Loan Obligations shall be released, extinguished, expunged, discharged and deleted; provided, however, that: (i) the Trustee, BDMC and OTC shall not be released from any obligations under the Peter Richmond Assignment Agreement, and (ii) nothing shall affect the Turnover Obligation (as defined in the Peter Richmond Assignment Agreement).

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee’s Certificate, the Peter Richmond Realized Property is and shall be deemed to be “Realized Property” as defined in the Order of this Court dated June 26, 2018, as amended (the “**Interim Stabilization Order**”) and that all of the Peter Richmond Individual Lenders’ rights and claims under the Peter Richmond Loan Obligations shall attach to the Peter Richmond Realized Property and shall have the same nature and priority as they had prior to the consummation of

the Peter Richmond Assignment 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 the City 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 transfer from title to the real property identified in Schedule "B" hereto (the "**Real Property**") all of the Charges listed in Schedule "C" hereto, into the name of the Assignee.

7. **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.

SEALING

8. **THIS COURT ORDERS** that Confidential Appendix 1 to the Fourteenth Report 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 a sealed envelope attached to a notice that sets 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

9. **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.

10. **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:
JAN 30 2020

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be 'Jainey'.

PER / PAR: C.D.

Schedule "A" – Form of Trustee's Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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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 January ●, 2020 (the "**Peter Richmond Assignment Agreement Approval Order**"), the Court approved and ratified the Assignment Agreement dated as of December 17, 2019 (the "**Peter Richmond Assignment Agreement**") among Carlyle Communities Inc. (the "**Assignee**"), the Trustee and Olympia Trust Company ("**OTC**") and ordered that, among other things: (i) all of the right, title and interest (both legal

and equitable), powers and privileges and other benefits of any nature whatsoever of BDMC, OTC, and the individual lenders (the “**Peter Richmond Individual Lenders**”) in and to the Indebtedness owing by Fortress Carlyle Peter St. Inc., the Loan Agreements, the Agency Agreement, the Charges and the BDMC Personal Property Security (each as defined in the Peter Richmond Assignment Agreement, and, collectively, the “**Peter Richmond Loan Obligations**”) now owing, together with all monies that may hereafter become due or owing in respect of the Peter Richmond Loan Obligations, including, without limitation, all rights to receive principal, interest, fees, expenses, damages, penalties and other amounts in respect of or in connection with the Peter Richmond Loan Obligations, are hereby sold, assigned, transferred, set over, delivered and conveyed to the Assignee, and (ii) all rights and obligations of the Trustee, BDMC, OTC and the Peter Richmond Individual Lenders to any person or party in respect of the Peter Richmond Loan Obligations shall be released, extinguished, expunged, discharged and deleted; provided, however, that: (a) the Trustee, BDMC and OTC shall not be released from any obligations under the Peter Richmond Assignment Agreement, and (b) nothing shall affect the Turnover Obligation (as defined in the Peter Richmond Assignment Agreement); and provided that the assignment and release of the Peter Richmond Loan Obligations to the Assignee is to be effective upon the delivery by the Trustee to the Assignee of a certificate confirming, among other things, (x) the payment of the Assignment Price (as defined in the Peter Richmond Assignment Agreement) to the Trustee by the Assignee; (y) that the conditions precedent to the Peter Richmond Assignment Agreement as set out in Section 15 of the Peter Richmond Assignment Agreement have been satisfied or waived by the Trustee; and (z) the assignment 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 Peter Richmond Assignment Agreement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. The Assignee has paid and the Trustee has received the Assignment Price and the Late Payment Fee (each as defined in the Peter Richmond Assignment Agreement), if any, pursuant to the Peter Richmond Assignment Agreement;
2. The Assignee has certified that all of the representations and warranties contained in the Peter Richmond Assignment Agreement continue to be true as of the Closing Date;

3. The Assignee continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Peter Richmond Assignment Agreement;
4. The other conditions set out in the Peter Richmond Assignment Agreement have been satisfied or waived by the Trustee (except for the Turnover Obligation (as defined in the Peter Richmond Assignment Agreement), which, for greater certainty, shall remain an ongoing obligation of the Assignee); and
5. The assignment 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 assets, undertakings, and properties of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____
Name:
Title:

Schedule “B” – Real Property

- 122 & 124 Peter Street, Toronto (PIN 21412-0139 (LT))
- 126 Peter Street, Toronto (PIN 21412-0140 (LT))
- 128 Peter Street, Toronto (PIN 21412-0141 (LT))
- 357 Richmond Street, Toronto (PIN 21412-0142 (LT))
- 359 Richmond Street, Toronto (PIN 21412-0143 (LT))

Schedule "C" – Charges

BDMC Charge and Related Registrations

With respect to the following Properties: (i) 122 & 124 Peter Street, Toronto (PIN 21412-0139 (LT)); (ii) 126 Peter Street, Toronto (PIN 21412-0140 (LT)); (iii) 128 Peter Street, Toronto (PIN 21412-0141 (LT)); and (iv) 357 Richmond Street, Toronto (PIN 21412-0142 (LT))

- Instrument No. AT3945104 registered July 14, 2015 being a Charge in favour of Centro Mortgage Inc. and Olympia Trust Company to secure the original principal amount of \$6,400,000.
 - Centro Mortgage becomes Building & Development Mortgages Canada Inc. by Articles of Amendment Instrument No. AT4136473 registered February 3, 2016.
 - Amended by:
 - Instrument No. AT3953571 registered July 22, 2015,
 - Instrument No. AT4110878 registered January 7, 2016,
 - Instrument No. AT4234431 registered June 1, 2016,
 - Instrument No. AT4303985 registered August 9, 2016, and
 - Instrument No. AT4377721 registered October 21, 2016 to increase the principal amount to \$35,000,000.
 - Postponed by Instrument No. AT5069052 registered February 1, 2019 to Instrument No. AT5068883 registered February 1, 2019 being a Charge in favour of PTI Developments Inc. to secure the original principal amount of \$3,500,000.
 - Transfers of Charge:
 - Instrument No. AT3953578 registered July 22, 2015
 - Instrument No. AT3964755 registered July 31, 2015
 - Instrument No. AT3972810 registered August 10, 2015
 - Instrument No. AT3993206 registered August 28, 2015
 - Instrument No. AT4030963 registered October 7, 2015
 - Instrument No. AT4050646 registered October 29, 2015
 - Instrument No. AT4083883 registered December 2, 2015
 - Instrument No. AT4110879 registered January 7, 2016
 - Instrument No. AT4139848 registered February 8, 2016
 - Instrument No. AT4152841 registered February 25, 2016
 - Instrument No. AT4182336 registered April 1, 2016
 - Instrument No. AT4196675 registered April 19, 2016
 - Instrument No. AT4215906 registered May 11, 2016
 - Instrument No. AT4249744 registered June 16, 2016
 - Instrument No. AT4266876 registered July 4, 2016
 - Instrument No. AT4313543 registered August 8, 2016
 - Instrument No. AT4377722 registered October 21, 2016
 - Instrument No. AT4400069 registered November 15, 2016
 - Instrument No. AT4449132 registered January 5, 2017
 - Instrument No. AT4463884 registered January 19, 2017
 - Instrument No. AT4488730 registered February 16, 2017
 - Instrument No. AT4508371 registered March 10, 2017
 - Instrument No. AT4527611 registered April 3, 2017

- Instrument No. AT4541255 registered April 20, 2017
 - Instrument No. AT4578133 registered May 26, 2017
 - Instrument No. AT4602600 registered June 20, 2017
 - Instrument No. AT4635855 registered July 25, 2017
 - Instrument No. AT4654573 registered August 15, 2017
- Instrument No. AT5068868 registered February 1, 2019 being a Charge in favour of Building & Development Mortgages Canada Inc. to secure the original principal amount of \$35,000,000.
 - Postponed by Instrument No. AT5069054 registered February 1, 2019 to Instrument No. AT5068883 registered February 1, 2019 being a Charge in favour of PTI Developments Inc. to secure the original principal amount of \$3,500,000.

With respect to the following Property: 359 Richmond Street, Toronto (PIN 21412-0143 (LT))

- Instrument No. AT5068868 registered February 1, 2019 being a Charge in favour of Building & Development Mortgages Canada Inc. to secure the original principal amount of \$35,000,000
 - Postponed by Instrument No. AT5069054 registered February 1, 2019 to Instrument No. AT5068883 registered February 1, 2019 being a Charge in favour of PTI Developments Inc. to secure the original principal amount of \$3,500,000.

LH2 Charge and Related Registrations

With respect to the following Property: 122 & 124 Peter Street, Toronto (PIN 21412-0139 (LT))

- Instrument No. AT3677585 registered August 29, 2014 in favour of Wenvor Technologies Inc. to secure the original principal amount of \$4,913,052.
 - Transferred to B2B Trust, The Bank of Nova Scotia Trust Company, Olympia Trust Company and Centro Mortgage Inc. by Transfer of Charge registered as Instrument No. AT3677586 on August 29, 2014.
 - Centro Mortgage becomes Building & Development Mortgages Canada Inc. by Articles of Amendment Instrument No. AT4136473 registered February 3, 2016.
 - Postponed by Instrument No. AT5069053 registered February 1, 2019 to Instrument No. AT5068883 registered February 1, 2019 being a Charge in favour of PTI Developments Inc. to secure the original principal amount of \$3,500,000.
 - Transfers of Charge:
 - Instrument No. AT3677586 registered August 29, 2014.
 - Instrument No. AT4021630 registered September 29, 2015.
 - Instrument No. AT4143423 registered February 11, 2016.
 - Instrument No. AT4171906 registered March 21, 2016.
 - Instrument No. AT4285689 registered July 21, 2016.
 - Instrument No. AT4450512 registered January 6, 2017.
 - Instrument No. AT4456549 registered January 12, 2017.
 - Instrument No. AT4628846 registered July 17, 2017.
 - Instrument No. AT5046845 registered January 4, 2019.

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

**PETER RICHMOND ASSIGNMENT
AGREEMENT APPROVAL ORDER**

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