

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE HAINÉY)
)

MONDAY, THE 16th
DAY OF MARCH, 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**

DANFORTH 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. 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 dated as of February 27,

2020 (the “**Danforth Settlement Agreement**”) among 1177 Danforth Avenue Ltd. (the “**Borrower**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering the Borrower to pay \$7,000,000 (the “**Settlement Payment**”) and, if applicable, the Late Payment Fee (as defined in the Danforth Settlement Agreement) to the Trustee pursuant to the Danforth Settlement Agreement; (iii) ordering the Borrower, the Trustee and OTC to comply with the Danforth Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery to the Borrower and filing with the Court of a copy of the Trustee’s Certificate (as defined below), make a distribution of an amount equal to 85% of the Danforth Realized Property to Danforth Individual Lenders (each as defined below) *pro rata* to the Danforth Individual Lenders entitled to such funds, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Sixteenth Report of the Trustee dated March 10, 2020 (the “**Sixteenth 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 Jake Schmidt sworn March 11, 2020, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Sixteenth 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 Sixteenth Report or the Danforth Settlement Agreement, as applicable.

APPROVAL OF THE DANFORTH SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Danforth Settlement Agreement be and is hereby approved in its entirety, including without limitation, the Late Payment Fee as contemplated by Section 4 thereof, if applicable, with such minor amendments as the Trustee and the other parties to the Danforth Settlement Agreement may agree upon to permit the completion of the transactions

contemplated thereby; (ii) the Borrower is hereby directed to pay the Settlement Payment forthwith to the Trustee, on behalf of BDMC, in accordance with the terms of the Danforth Settlement Agreement (such funds, the “**Danforth Realized Property**”); and (iii) the execution of the Danforth 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 Danforth 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**”) and the filing of a copy of the Trustee’s Certificate with the Court, all of the Borrower’s obligations to Building & Development Mortgages Canada Inc. (formerly known as Centro Mortgage Inc.) (“**BDMC**”), OTC and the individual lenders (the “**Danforth Individual Lenders**”) under the Loan Agreement dated October 8, 2014 between BDMC and the Borrower (as amended and/or supplemented, the “**Loan Agreement**”) the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Danforth Loan Obligations**”) and all security interests granted to BDMC, OTC or the Danforth Individual Lenders in and to the assets of the Borrower to secure the Danforth Loan Obligations and related registrations on title, including the Charge (as defined in the Danforth Settlement Agreement) (the “**Loan Encumbrances**”) are hereby released, waived, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC or any Danforth Individual Lender shall have any claim against the Borrower in respect of the Danforth Loan Obligations or the Loan Encumbrances; provided, however, that: (i) the Borrower shall not be released from any obligations under the Danforth Settlement Agreement; and (ii) nothing shall affect the Turnover Obligation (as defined in the Danforth 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 and the filing of a copy of the Trustee’s Certificate with the Court, the Danforth 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

Danforth Individual Lenders' rights and claims under the Loan Agreement and related security shall attach to the Danforth Realized Property and shall have the same nature and priority as they had prior to the consummation of the Danforth Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for 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.

8. **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 release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, and each Danforth 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, as of the date of this Order, the full amount of the Deposit (as defined in the Danforth Settlement Agreement) constitutes Realized Property as defined in the Interim Stabilization Order and shall be retained by the Trustee in accordance with the terms of the Danforth Settlement Agreement, on behalf of BDMC.

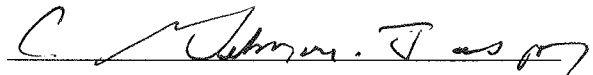
10. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate to the Borrower and the filing of a copy of the Trustee's Certificate with the Court, the Trustee shall

make a distribution to Danforth Individual Lenders in an amount equal to 85% of the Danforth Realized Property, *pro rata* to the Danforth 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

11. **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.

12. **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.



HAINES, J.

due to COVID 19 crisis

Justice C.A. Gilmore

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

MAR 16 2020

PER / PAR: 

Schedule “A” – Form of Trustee’s Certificate

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

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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 (the “**Trustee**”) of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (formerly known as Centro Mortgage Inc.) (“**BDMC**”).

B. Pursuant to an Order of the Court made on March [17], 2020 (the “**Danforth Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement dated as of February 27, 2020 (the “**Danforth Settlement Agreement**”) among 1177 Danforth Avenue Ltd. (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 ("**Danforth Individual Lenders**") under the Loan Agreement dated as of October 8, 2014 (as amended and/or supplemented, the "**Loan Agreement**"), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**Danforth Loan Obligations**") and all security interests granted to BDMC, OTC or the Danforth Individual Lenders in and to the assets of the Borrower to secure the Danforth Loan Obligations (the "**Loan Encumbrances**") are hereby released, waived, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Danforth Individual Lender shall have any claim against the Borrower in respect of the Danforth Loan Obligations or the Loan Encumbrances, provided, however, that: (a) the Borrower shall not be released from any obligations under the Danforth Settlement Agreement, (b) nothing shall affect the Turnover Obligation (as defined in the Danforth Settlement Agreement), and (c) that the release of the Danforth 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 \$7,000,000 to the Trustee (on behalf of BDMC) by the Borrower in accordance with the terms of the Danforth Settlement Agreement; (ii) that the conditions precedent to the Danforth Settlement Agreement, as set out in Section 13 therein, have been satisfied or waived by the Trustee; and (iii) the settlement has been completed in accordance with the terms of the Danforth Settlement Agreement.

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

THE TRUSTEE CERTIFIES the following:

1. The Borrower has paid, and the Trustee has received, the Settlement Payment and the Late Payment Fee (as defined in the Danforth Settlement Agreement), if applicable, pursuant to the Danforth 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 Danforth Settlement Agreement continue to be true as of the Closing Date;
4. The Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Danforth Settlement Agreement;

5. The other conditions set out in the Danforth Settlement Agreement have been satisfied or waived by the Trustee (except for the Turnover Obligation (as defined in the Danforth Settlement Agreement), which, for greater certainty, shall remain an ongoing obligation of the Borrower); 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 assets, undertakings, and properties of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

Schedule "B" – Real Property

PIN 21047-1300 (LT)

PART LTS 27, 28, 29, 30 AND 31 PLAN 740, PARTS 1,4,5,6,7 & 8 66R30835; CITY OF TORONTO; SUBJECT TO AN EASEMENT AS IN AT4883755; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4918492; SUBJECT TO AN EASEMENT OVER PART 4 66R30835 AS IN AT5341156; SUBJECT TO AN EASEMENT IN FAVOUR OF PART LOTS 27,28,29,30 & 31 PLAN 740, PARTS 2 & 3 66R30835 AS IN AT5341156

Schedule "C" – Loan Encumbrances

1. Instrument No. AT3758743 registered December 4, 2014 being a Charge in favour of Centro Mortgage Inc. ("**Centro**") to secure the original principal amount of \$3,500,000 (the "**Centro Charge**").
2. Instrument No. AT3865868 registered April 27, 2015 being a Transfer of the Centro Charge to Centro and Olympia Trust Company ("**OTC**").
3. Instrument No. AT3869824 registered April 30, 2015 being a Transfer of the Centro Charge to Centro and OTC.
4. Instrument No. AT3907773 registered June 9, 2015 being a Transfer of the Centro Charge to Centro and OTC.
5. Instrument No. AT3952478 registered July 21, 2015 being a Notice of Agreement amending the Centro Charge to secure the principal sum of \$3,940,000.
6. Instrument No. AT3953977 registered July 22, 2015 being a Transfer of the Centro Charge to Centro and OTC.
7. Instrument No. AT3986553 registered August 24, 2015 being a Notice of Agreement amending the Centro Charge to secure the principal sum of \$5,700,000.
8. Instrument No. AT3986558 registered August 24, 2015 being a Transfer of the Centro Charge to Centro and OTC.
9. Instrument No. AT4034967 registered October 14, 2015 being a Transfer of the Centro Charge to Centro and OTC.
10. Instrument No. AT4059273 registered November 5, 2015 being a Transfer of the Centro Charge to Centro and OTC.
11. Instrument No. AT4085427 registered December 3, 2015 being a Transfer of the Centro Charge to Centro and OTC.
12. Instrument No. AT4125779 registered January 22, 2016 being a Transfer of the Centro Charge to Centro and OTC.
13. Instrument No. AT4230119 registered May 30, 2016 being a Transfer of the Centro Charge by Building & Development Mortgages Canada Inc. ("**BDMC**") and OTC to BDMC and OTC. Centro changed its name to BDMC by Articles of Amendment registered as Instrument No. AT4136473.
14. Instrument No. AT4487238 registered February 15, 2017 being a Notice of Agreement amending the Centro Charge to secure the principal sum of \$7,250,000.

15. Instrument No. AT4499511 registered March 1, 2017 being a Transfer of the Centro Charge to BDMC and OTC.
16. Instrument No. AT4520063 registered March 27, 2017 being a Transfer of the Centro Charge to BDMC and OTC.
17. Instrument No. AT4529717 registered April 4, 2017 being a Notice of Agreement amending the Centro Charge to secure the principal sum of \$8,500,000.
18. Instrument No. AT4560631 registered May 9, 2017 being a Transfer of the Centro Charge to BDMC and OTC.
19. Instrument No. AT4592274 registered June 8, 2017 being a Transfer of the Centro Charge to BDMC and OTC.
20. Instrument No. AT4607492 registered June 26, 2017 being a Transfer of the Centro Charge to BDMC and OTC.
21. Instrument No. AT4646818 registered August 3, 2017 being a Transfer of the Centro Charge to BDMC and OTC.
22. Instrument No. AT4736941 registered November 20, 2017 being a Postponement of the Centro Charge to a Charge in favour of Aviva Insurance Company registered as Instrument No. AT4736940.
23. Instrument No. AT4984302 registered October 18, 2018 being a Postponement of the Centro Charge to a Charge in favour of Cameron Stephens Financial Corporation registered as Instrument No. AT4983748.
24. Instrument No. AT5341161 registered January 15, 2020 being a Postponement of the Centro Charge to a Transfer of Easement to the City of Toronto registered as Instrument No. AT5341160.
25. Instrument No. AT5341165 registered January 15, 2020 being a Postponement of the Centro Charge to a Transfer of Easement to the City of Toronto registered as Instrument No. AT5341164.
26. Instrument No. AT5341335 registered January 15, 2020 being a Postponement of the Centro Charge to a Transfer to the City of Toronto registered as Instrument No. AT5341156.

Schedule "D" – Release Agreement

_____, 2020

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 Danforth Settlement Agreement

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated as of October 8, 2014 (as amended and/or supplemented, the "Loan Agreement") between 1177 Danforth Avenue Ltd. (the "Borrower") and Building & Development Mortgages Canada Inc. (formerly known as Centro Mortgage Inc.) ("BDMC") and the related Security and Loan Documents (each as defined in the Loan Agreement). 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 Settlement Agreement dated as of February 27, 2020 among the Borrower, the Trustee and OTC (the "Danforth Settlement Agreement").

1. The Borrower hereby certifies that all of its representations and warranties contained in the Danforth 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 Danforth Settlement Agreement.
2. The Borrower has paid the Trustee (on behalf of BDMC) \$7,000,000 (being the Settlement Payment) and, if applicable, any Late Payment Fee payable pursuant to the Danforth Settlement Agreement, and the Borrower 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 the Obligations payable to BDMC by the Borrower under the Loan Agreement, 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 Danforth 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,

1177 DANFORTH AVENUE LTD.

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

DANFORTH SETTLEMENT APPROVAL ORDER

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Building & Development Mortgages Canada Inc.