

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

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***

FIFTEENTH REPORT OF THE TRUSTEE

FEBRUARY 24, 2020



FAAN Mortgage Administrators Inc.
Court-Appointed Trustee of the Respondent

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FIFTEENTH REPORT OF THE TRUSTEE

February 24, 2020

INTRODUCTION

1. On April 20, 2018, pursuant to an order (“**Appointment Order**”) of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (“**Court**”), FAAN Mortgage Administrators Inc. was appointed as trustee (“**Trustee**”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under syndicated mortgage loans (“**Investors**”), brokers, or borrowers, in each case whether or not such property was or is held in trust or was or is required to be held in trust. The Appointment Order was issued following an application made by the Superintendent of Financial Services pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), as amended, and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the Appointment Order is attached as **Appendix “1”**.

2. On October 30, 2018, this Court issued an Order (“**Realized Property Order**”) that, among other things,
 - (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness administered by BDMC on behalf of Investors (including funds originally obtained with respect to the Victoria Medical SML Loans), whether or not (i) secured by any Real Property Charges in the name of BDMC or an RRSP Trustee, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (II) all interest paid or payable to BDMC or the Trustee at the time such repayment (in whole or in part) of principal is made (collectively, “**Realized Property**”);
 - (b) required the Trustee to retain 30% of all Realized Property; and
 - (c) authorized the Trustee to use the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considered necessary or desirable for the administration of the estate, including in respect of those matters set out in paragraph 17 of the Interim Stabilization Order made in these proceedings on June 26, 2018.

A copy of the Realized Property Order is attached as **Appendix “2”**.

3. On November 28, 2018, the Court issued the Braestone Settlement Approval Order, which approved, among other things, an amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 80% of all Realized Property to Investors
4. On December 20, 2018, the Court issued the Harlowe Settlement Approval Order, which approved, among other things, a further amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors. A copy of the Harlowe Settlement Approval Order is attached as **Appendix “3”**.
5. The Trustee has, in total, delivered fourteen reports to Court (collectively, the “**Reports**”) detailing, among other things, the Trustee’s activities during these proceedings and

providing updates to stakeholders on various projects. Notably, on November 22, 2019, the Trustee submitted its thirteenth report in these proceedings, which provided a comprehensive update on the Trustee's activities and a status update for each project.

6. The Trustee indicated in its previous Reports that it continues to seek to maximize recoveries for Investors and to advance potential transactions related to various projects. In particular, the Trustee continues to engage in negotiations with certain borrowers regarding potential payouts of the applicable loans. As a result of these negotiations, the Trustee has reached, subject to Court approval, a settlement agreement with respect to the obligations owing by Lamb Bauhaus Inc. ("**Bauhaus Borrower**") to BDMC under a loan agreement dated August 15, 2016 (as amended and/or supplemented, "**Bauhaus Loan Agreement**") pursuant to which BDMC provided a syndicated mortgage loan ("**Bauhaus Loan**") to the Bauhaus Borrower secured by a charge on real property located at 284 King St. E., Toronto, Ontario ("**Bauhaus Project**" or "**Property**").
7. Capitalized terms not otherwise defined in this fifteenth report ("**Fifteenth Report**") have the meanings ascribed to them in previous Reports filed by the Trustee. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee's website at: www.faanmortgageadmin.com ("**Trustee's Website**"). The Trustee intends to maintain the Trustee's Website for the duration of these proceedings and will be updating it as appropriate.

PURPOSE OF THE FIFTEENTH REPORT

8. The purpose of this Fifteenth Report is to provide the Court and stakeholders with the Trustee's recommendation regarding the Bauhaus Project based on feedback received from the syndicated mortgage lenders that advanced funds to BDMC in respect of the Bauhaus Project ("**Bauhaus Individual Lenders**") and to support the Trustee's request for an Order ("**Bauhaus Settlement Approval Order**") that, among other things:
 - (a) (i) approves the Settlement Agreement dated as of February 14, 2020 ("**Bauhaus Settlement Agreement**"), including the Daily Interest contemplated by Section 4 thereof, if any, and the late payment fee contemplated by Section 5 thereof, if any (the "**Late Payment Fee**") among the Bauhaus Borrower, Olympia Trust Company ("**OTC**"), Computershare Trust Company of Canada ("**Computershare**") and the

Trustee, with such minor amendments as the Trustee and the other parties to the Bauhaus Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) directs the Bauhaus Borrower to pay \$6,734,798 (the "**Settlement Amount**")¹ forthwith to the Trustee in accordance with the terms of the Bauhaus Settlement Agreement (such funds, the "**Bauhaus Realized Property**"); and (iii) approves and ratifies the execution of the Bauhaus Settlement Agreement by the Trustee, Computershare and OTC and authorizes and directs the Trustee, Computershare and OTC to comply with all of their obligations under the Bauhaus Settlement Agreement;

(b) releases, extinguishes, expunges and discharges all of the Bauhaus Borrower's obligations to BDMC, Computershare, OTC, and the Bauhaus Individual Lenders and related security and other loan documents contemplated by the Bauhaus Loan Agreement (collectively, the "**Bauhaus Loan Obligations**") and all security interests granted to BDMC, Computershare, OTC or the Bauhaus Individual Lenders in and to the assets of the Bauhaus Borrower to secure the Bauhaus Loan Obligations ("**Loan Encumbrances**") upon the delivery to the Bauhaus Borrower and filing with the Court, a copy of a Trustee's certificate confirming, among other things, the Trustee's receipt of the \$6,734,798 payment ("**Trustee's Certificate**"), and ordering that none of the Trustee, BDMC, Computershare, OTC or any Bauhaus Individual Lender have any claim against the Bauhaus Borrower in respect of the Bauhaus Loan Obligations or the Loan Encumbrances; provided, however, that the Bauhaus Borrower is not released from any obligations under the Bauhaus Settlement Agreement;

(c) declares that the release agreement ("**Release Agreement**") to be given to the Trustee, BDMC, Computershare, OTC, and each Bauhaus Individual Lender who loaned funds through BDMC, Computershare or OTC to the Bauhaus Borrower pursuant to the Bauhaus 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 Bauhaus Borrower

¹ The net amount owing to the Trustee, on behalf of BDMC, pursuant to the Bauhaus Settlement Agreement, is \$6,534,798, which reflects the Settlement Amount less the \$200,000 Deposit (as defined below). The Deposit was received by the Trustee's counsel on February 19, 2020.

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**”) shall be binding and effective on the Releasors in favour of the Releasees upon the delivery of the Trustee’s Certificate to the Bauhaus Borrower and the filing of a copy of the Trustee’s Certificate with the Court; and

(d) authorizes the Trustee to make a distribution to the Bauhaus Individual Lenders, upon the delivery of the Trustee’s Certificate to the Bauhaus Borrower and following the filing of the Trustee’s Certificate with the Court, in an amount equal to 85% of the Bauhaus Realized Property received by the Trustee, *pro rata* to the Bauhaus Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.

9. In support of the Trustee’s request for the Bauhaus Settlement Approval Order, this Fifteenth Report describes the following matters:

- (a) Details of the Bauhaus Loan Agreement;
- (b) A notice issued by the Bauhaus Borrower to the Bauhaus Individual Lenders;
- (c) An overview of the Bauhaus Project;
- (d) Details of the settlement offer received by the Trustee;
- (e) Details of the Bauhaus Settlement Agreement; and
- (f) Information that supports the Trustee’s recommendation that the Bauhaus Settlement Agreement be approved.

SCOPE AND TERMS OF REFERENCE

10. In preparing this Fifteenth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. (“**Fortress**”), Canadian Development Capital & Mortgages Services Inc. (“**CDCM**”), the Bauhaus Borrower and certain other individual borrowers who have borrowed funds from BDMC under various syndicated mortgage loans administered by BDMC. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the projects, including the Bauhaus Project and the

administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, Fortress, CDCM, and applicable borrowers (including, among other things, unaudited internal information, appraisals and financial projections), the Trustee's review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.

11. Some of the information used and relied upon in preparing this Fifteenth Report consists of financial projections and other information received from various third parties, including appraisals and project cost information. The Trustee cautions that the projections and other information used and relied upon are generally based upon assumptions and estimates about future events and/or market conditions that are not ascertainable or that could change. As such, the information presented in this Fifteenth Report may vary from the projections and information used to prepare this Fifteenth Report and the actual results may differ both from the results projected therein and herein. Even if the assumptions relied upon therein or herein materialize, the variations from the projections could be significant. The Trustee's review of the future oriented information used to prepare this Fifteenth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
12. This Fifteenth Report has been prepared for the use of this Court and BDMC's stakeholders as general information relating to BDMC and the Bauhaus Project and to assist the Court with respect to the Trustee's request for the proposed Bauhaus Settlement Approval Order. Accordingly, the reader is cautioned that this Fifteenth Report may not be appropriate for any other purpose.
13. All references to dollars are in Canadian currency.

OVERVIEW OF THE BAUHAUS LOAN

14. The total principal amount due to the Bauhaus Individual Lenders is approximately \$5.6 million. Total accrued interest on the Bauhaus Loan through to January 31, 2020 is

approximately \$1.06 million². The Bauhaus Loan was made to the Bauhaus Borrower pursuant to the Bauhaus Loan Agreement, which matures on September 15, 2021 (“**Maturity Date**”).

15. In addition to the Bauhaus Loan, there is a first priority mortgage registered on title to the Property in favour of Firm Capital Corporation (“**Firm**”) in the amount of approximately \$10 million. The Firm indebtedness is the only known indebtedness on the Bauhaus Project that ranks in priority to the Bauhaus Loan on title to the Property.

NOTICE ISSUED BY BAUHAUS BORROWER

16. On December 20, 2019, the Bauhaus Borrower sent a vote solicitation and feedback request to the Bauhaus Individual Lenders (“**Bauhaus Borrower Notice**”). The Bauhaus Borrower Notice, was sent without consulting the Trustee or Representative Counsel, and solicited the feedback of the Bauhaus Individual Lenders in respect of a \$2.2 million settlement offer submitted by the Bauhaus Borrower to the Trustee (“**Original Offer**”). The Original Offer reflected a recovery of only approximately 39% of the outstanding principal balance of the Bauhaus Loan (and no payment of any accrued interest).
17. On December 23, 2019, the Trustee sent a notice to the Bauhaus Individual Lenders (“**Trustee’s Notice**”) in response to the Bauhaus Borrower Notice. The Trustee’s view, which was outlined in the Trustee’s Notice, was that the Original Offer was not fair or reasonable in the circumstances or in the best interests of the Bauhaus Individual Lenders. The Original Offer allowed the Bauhaus Borrower to continue to maintain control of the Bauhaus Project, and ultimately be the beneficiary of any profits from its development, while causing the Bauhaus Individual Lenders to crystallize a significant loss. The Trustee also advised that it would not be acting upon any votes from the Bauhaus Individual Lenders made in response to the Bauhaus Borrower Notice. A copy of the Bauhaus Borrower Notice and the Trustee’s Notice are attached as **Appendix “4”** and **Appendix “5”**, respectively.

² Per diem interest since January 31, 2020 is \$1,236.52.

BACKGROUND AND OVERVIEW OF THE CURRENT STATUS OF THE BAUHAUS PROJECT

18. The Bauhaus Borrower proposes to develop a 30-storey mixed-use building, which will contain 205 residential units and 177 square meters of grade-related commercial uses on King Street East in downtown Toronto.
19. The Bauhaus Borrower Notice advised that in September 2019, the Bauhaus Borrower attended a 10-day municipal hearing before the Local Planning Appeal Tribunal (“**LPAT**”) for both a zoning by-law amendment and site plan approval, which would be required to develop the Bauhaus Project as proposed, and further noted that a decision from the LPAT was not expected to be released until 2021. The Bauhaus Borrower Notice cited the delay in obtaining development approvals as one of the factors ‘crippling’ the Bauhaus Project and one of the reasons why the Original Offer provided only a limited repayment of principal.
20. On January 3, 2020, the LPAT released its decision and ruled in favour of the Bauhaus Borrower’s application. The favourable LPAT decision allows the Bauhaus Borrower to proceed with the Bauhaus Project as proposed, thereby crystalizing the saleable gross floor area, eliminating the existing development uncertainty and reducing the timeline to complete the Bauhaus Project by at least 12 months.

FINAL OFFER AND FEEDBACK REQUEST

21. Upon receipt of the favourable LPAT decision, the Bauhaus Borrower reengaged in discussions with the Trustee regarding payment of the amounts due to BDMC under the Bauhaus Loan Agreement.
22. As part of the discussions between the parties, the Bauhaus Borrower presented the Trustee with a revised irrevocable offer of \$6,734,798, or approximately \$4.5 million more than the Original Offer, in full satisfaction of the amounts due under the Bauhaus Loan Agreement (“**Bauhaus Final Offer**”). The Bauhaus Final Offer also incorporated certain other components negotiated by the Trustee, as further detailed below. The Bauhaus Final Offer is open for acceptance until 5:00 p.m. on February 28, 2020.
23. The Bauhaus Final Offer reflects a recovery of 100% of the outstanding principal balance of the Bauhaus Loan and 100% of the accrued interest through to February 28, 2020. The return is calculated as follows:

Principal outstanding (A)	\$	5,641,600
Interest owing to February 28, 2020 (B)	\$	1,093,198
Total proposed payments (C= A+B)	\$	<u>6,734,798</u>
Principal repayment	\$	5,641,600
Recovery on principal		100%
Interest payment	\$	1,093,198
Recovery on accrued interest		100%
Recovery on principal (C/A) ³		119%

24. The Trustee is in receipt of a deposit of \$200,000 (“**Deposit**”) from the Bauhaus Borrower that is being held in trust by the Trustee’s counsel pending the outcome of the hearing of the Trustee’s motion for the Bauhaus Settlement Approval Order.
25. As noted above, the Bauhaus Settlement Agreement includes the Late Payment Fee, which provides that, in the event the Bauhaus Borrower fails to pay any portion of the Settlement Amount within 14 calendar days from the date of the granting of the Bauhaus Settlement Approval Order, the Bauhaus Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 5% of the Settlement Amount less the amount of the Deposit. In addition, should the actual closing date occur after February 28, 2020 (the “**Anticipated Closing Date**”), the Bauhaus Borrower has agreed to pay to the Trustee, on behalf of BDMC, the full amount of the total accrued interest, calculated at a *per diem* rate of \$1,236.52 for each day following the Anticipated Closing Date until the actual closing date.
26. The Trustee consulted with Representative Counsel regarding the Bauhaus Final Offer, and, with the support of Representative Counsel, presented the Bauhaus Final Offer to the Bauhaus Individual Lenders by delivering a notice to those lenders on February 14, 2020, which requested their feedback, whether for or against the acceptance of the Bauhaus Final Offer, and any other general feedback (“**Bauhaus Feedback Request**”). The Trustee recommended that the Bauhaus Individual Lenders accept the Bauhaus Final

³ This figure represents the overall recovery on the outstanding BDMC principal balance of \$5,641,600. Individual realizations will vary by Bauhaus Individual Lender depending on when each syndicated mortgage lender advanced their funds to the Bauhaus Project.

Offer in the Bauhaus Feedback Request for the reasons summarized below. A copy of the Bauhaus Feedback Request is attached as **Appendix “6”**.

27. As of the filing of this Fifteenth Report, the Trustee has received 69 formal votes in response to the feedback request, representing a response rate of approximately 62.73% in number and approximately 65.07% in value of the Bauhaus Loan. 69 of the Bauhaus Individual Lenders, representing 100% in number and 100% in value of such loans voting, voted in favour of the Trustee accepting the Bauhaus Final Offer.
28. Acceptance of the Bauhaus Final Offer by the Trustee would result in the Bauhaus Individual Lenders foregoing potential interest payments to the Maturity Date (being September 15, 2021) of approximately \$700,000, which would otherwise continue to accrue should the Bauhaus Loan remain outstanding until the Maturity Date and then be repaid on that date.
29. As set out in the Bauhaus Feedback Request, the following additional considerations were taken into account by the Trustee in completing its assessment of the Bauhaus Final Offer:
 - (a) The Bauhaus Final Offer results in a return of 100% of the principal and 100% of the interest owed in respect of the Bauhaus Loan as at February 28, 2020;
 - (b) The Bauhaus Final Offer provides for the Deposit to be held in trust. The Deposit shall be non-refundable to the Bauhaus Borrower in the event of a default under the Bauhaus Settlement Agreement by the Bauhaus Borrower;
 - (c) The Bauhaus Borrower has also provided a commitment letter (“**Commitment Letter**”) from its lender confirming that the Bauhaus Borrower will be able to fund the Settlement Amount less the Deposit in order to complete the Bauhaus settlement transaction. The Commitment Letter contains certain conditions which the Bauhaus Borrower has advised will be satisfied prior to the closing of the Bauhaus settlement transaction;
 - (d) The Bauhaus Final Offer provides for an early exit for the Bauhaus Individual Lenders; and
 - (e) The Bauhaus Offer provides certainty regarding the amount and time frame for the repayment of the Bauhaus Loan.

30. Given the above considerations, and the receipt of only positive feedback from the Bauhaus Individual Lenders, the Trustee has accepted the Bauhaus Final Offer and executed the Bauhaus Settlement Agreement. The Bauhaus Settlement Agreement requires the Trustee to use commercially reasonable efforts to seek the Bauhaus Settlement Approval Order, but the remaining terms of the Bauhaus Settlement Agreement are only binding on the Trustee, BDMC, Computershare and OTC should the agreement be approved and ratified by the Court.

BAUHAUS SETTLEMENT AGREEMENT

31. The Bauhaus Final Offer is conditional, among other things, upon the release and discharge of all Bauhaus Loan Obligations and all Loan Encumbrances, and a Court order being obtained providing that none of the Trustee, BDMC, Computershare, OTC or any Bauhaus Individual Lenders have any claim against the Bauhaus Borrower in respect of the Bauhaus Loan Obligations or the Loan Encumbrances (though the Bauhaus Borrower is not to be released from any obligations under the Bauhaus Settlement Agreement) in consideration of the payment due under the Bauhaus Settlement Agreement.
32. The Bauhaus Settlement Agreement also provides that the Bauhaus Borrower is to deliver a Release Agreement to the Trustee providing that the Bauhaus Borrower, on behalf of itself and the other Releasors, releases all of the Releasees (namely, the Trustee, BDMC, Computershare, OTC, and each Bauhaus Individual Lender who loaned funds through BDMC, Computershare or OTC to the Bauhaus Borrower pursuant to the Bauhaus Loan Agreement and all related loan documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns) from all obligations under such loan documents.
33. The Bauhaus Borrower has also made certain representations and warranties and has agreed to provide such further assurances as are necessary to effectuate the transaction set out in the Bauhaus Final Offer. These representations and warranties include, among other things, that, to the best of the Bauhaus Borrower's knowledge, none of Fortress or any of its affiliates: (a) has or shall have any ongoing involvement in the Bauhaus Project; (b) is party to any agreement or other arrangement relating to the Bauhaus Project; or (c) is or will become entitled to receive any consideration from the Property ("**Fortress Consideration**"). Further, the Bauhaus Settlement Agreement contains a covenant in favour of the Trustee that should the Bauhaus Borrower or any of its affiliates come into

the possession or control of any Fortress Consideration, such Fortress Consideration will be paid to the Trustee (until all amounts that would have otherwise been payable to BDMC under the Bauhaus Loan Agreement have been paid in full).

34. If the Court issues the proposed Bauhaus Settlement Approval Order, then the settlement transaction set out therein will be effective upon the issuance by the Trustee of the Trustee's Certificate certifying that the conditions precedent set out in the Bauhaus Settlement Agreement are satisfied. The Trustee therefore executed the Bauhaus Settlement Agreement and has brought a motion seeking this Court's approval of the Bauhaus Settlement Agreement and the issuance of the Bauhaus Settlement Approval Order.
35. Further, if the Bauhaus Settlement Approval Order is granted, the Trustee intends to make a distribution to the Bauhaus Individual Lenders upon the delivery of the Trustee's certificate to the Bauhaus Borrower and following the filing of the Trustee's Certificate with the Court certifying, among other things, the receipt by the Trustee of the Bauhaus Realized Property, in an amount equal to 85% of the Bauhaus Realized Property, *pro rata* to the Bauhaus Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.
36. A copy of the Bauhaus Final Offer, including the form of Bauhaus Settlement Agreement executed by the Trustee, is attached as **Appendix "7"**.

CONCLUSION AND RECOMMENDATION

37. The Trustee recommends that the proposed Bauhaus Settlement Approval Order be granted by the Court. The Trustee obtained only positive responses to the Bauhaus Final Offer from the Bauhaus Individual Lenders as 100% in number and 100% in value voting favoured acceptance of the Bauhaus Final Offer. The Bauhaus Settlement Agreement contemplates the payment of 100% of the principal amount due and 100% of the accrued interest up to February 28, 2020 under the Bauhaus Loan Agreement. If implemented, the Bauhaus Settlement Agreement will result in \$6,734,798 of Bauhaus Realized Property in the near term, which will permit the Trustee to make a distribution of Bauhaus Realized Property *pro rata* to the Bauhaus Individual Lenders who are entitled to same. The Trustee is of the view that it is in the interest of the Bauhaus Individual Lenders to obtain the

Bauhaus Realized Property now (net of the 15% administrative holdback required in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order) rather than to wait for an uncertain result in the future. Further, Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Bauhaus Settlement Approval Order.

38. The process undertaken by the Trustee for approval of the Bauhaus Settlement Agreement is substantially similar to the other settlement processes followed in this proceeding. The Trustee believes that this payout process provides certainty for Investors and borrowers, and accordingly, where appropriate, the Trustee intends to continue to follow a similar approval process with respect to other potential future settlement opportunities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24 day of February, 2020.

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.,
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.,
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**

Appendix 1:
Appointment Order dated April 20, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

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**

APPOINTMENT ORDER

THIS APPLICATION, made by The Superintendent of Financial Services (the "**Superintendent**"), for an Order, *inter alia*, pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the "**MBLAA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), appointing FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**") as trustee (in such capacity, the "**Trustee**"), without security, of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the affidavit of Brendan Forbes sworn April 19, 2018 and the exhibits thereto (the "**Supporting Affidavit**") and the consent of FAAN Mortgage to act as the Trustee,

and on hearing the submissions of counsel for the Superintendent, counsel for FAAN Mortgage 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 Miranda Spence sworn April 19, 2018, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 37 of the MBLAA and section 101 of the CJA, FAAN Mortgage is hereby appointed Trustee, without security, of all of the assets, undertakings and properties of the Respondent, including, without limitation, all of the assets in the possession or under the control of the Respondent, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage ("**Investors**"), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively, the "**Property**"), which Property, for greater certainty, includes any and all real property charges in favour of the Respondent (the "**Real Property Charges**"), including, without limitation, any and all monetary and non-monetary entitlements in respect to the assets and values thereunder, the period of which appointment shall run from 12:01 a.m. on the date hereof until such date that all assets under all syndicated mortgage loans have been realized and all Property has been distributed to those entitled to it.

TRUSTEE'S POWERS

3. **THIS COURT ORDERS** that the Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the holding of mortgage security in

trust on behalf of Investors, the administering of the mortgages, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Respondent, including, without limitation, the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent, including, without limitation, such security held on behalf of Investors;
- (g) to settle, extend or compromise any indebtedness owing to the Respondent;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Trustee's name or in the name and on behalf of the Respondent for any purpose pursuant to this Order, including, without limitation, any documents in connection with any registration, discharge, partial discharge, transfer, assignment or similar dealings in respect of any mortgage ("**Land Title Document**") and, for greater certainty, the applicable land registry office, registrar or other official under the *Land Registration Reform Act* (Ontario), the *Land Titles Act* (Alberta), or any other comparable legislation in any other jurisdiction be and is hereby directed, upon being presented with a certified

true copy of this Order and such Land Title Document, to register, discharge, partially discharge, transfer or otherwise deal with such mortgage in accordance with such Land Title Document without any obligation to inquire into the propriety of the execution or effect of such Land Title Document;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent, the Property or the Trustee, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Trustee in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) with the approval of this Court, to restructure the Property in a manner that the Trustee considers reasonable, including, without limitation, the conversion, in whole or in part, of the Property or any part or parts thereof, out of the ordinary course of business, into an alternative or different interest in the capital structure of the Property or any part or parts thereof, including, without limitation, an ownership interest therein;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property and the

Trustee's mandate, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Respondent;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Respondent may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, without interference from any other Person and without regard to any arrangement in existence as of the date hereof between the Respondent and Investors as to how and when such actions or steps are to be taken. For greater certainty, the Trustee shall be and is empowered to take such actions or steps without seeking instructions from Investors where the Trustee determines, in its sole discretion, that it is necessary and appropriate to do so (having regard for the interests of Investors), and in all other cases, the Trustee is specifically authorized to continue to comply with the existing arrangements, including any deemed consent provisions contained therein.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

4. **THIS COURT ORDERS** that: (i) the Respondent; (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) all other individuals, firms, corporations,

Canadian Development Capital & Mortgage Services Inc. ("CDCM")

governmental bodies or agencies, or other entities having notice of this Order, including, without limitation, Tsunami Technology Group Inc., Fortress Real Developments Inc. ("FRDI"), all of its direct or indirect affiliates, and any entity under common control with FRDI (collectively with FRDI, the "Fortress Entities"), any entity that is a joint venture among a Fortress Entity and another entity, and each director, officer, employee and agent of any Fortress Entity (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Trustee, and shall deliver all such Property to the Trustee upon the Trustee's request.

GH

or CDCM

GH

5. **THIS COURT ORDERS** that, pursuant to and without limiting the generality of paragraph 4 of this Order, all Persons shall, unless otherwise instructed by the Trustee: (i) deliver to the Trustee (or, in the case of RRSP or other registered funds administered by Olympia Trust Company ("OTC") or Computershare Trust Company of Canada ("Computershare"), not release to any Person without further Order of this Court) any and all monies held in trust that are related to the Respondent or its business (collectively, the "Trust Funds"), which Trust Funds, for greater certainty, include any and all monies in any OTC or Computershare account that are purported to be held in trust for the Investors in or beneficiaries under any of the Real Property Charges, including, without limitation, all monies held by way of interest reserves to satisfy interest payments to such Investors or beneficiaries, which Trust Funds are to be held or used by the Trustee in accordance with the terms of this Order and any further Order of this Court; and (ii) upon the Trustee's request, provide an accounting of all funds received from or on behalf of the Respondent or its associated businesses.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, emails, user accounts, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information, including copies of any previously performed electronic back ups (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or

provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Trustee for the purpose of allowing the Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information. Paragraphs 6 and 7 of this Order do not apply to any materials obtained by the Royal Canadian Mounted Police pursuant to any warrant issued under the *Criminal Code*, R.S.C. 1985, c. C-46.

8. **THIS COURT ORDERS** that the Trustee shall provide each of the relevant landlords with notice of the Trustee's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Trustee's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Trustee, or by further Order of this Court upon application by the Trustee on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE TRUSTEE

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Trustee except with the written consent of the Trustee or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

10. **THIS COURT ORDERS** that, with the exception of the Suspension and Penalty Orders (as such term is defined in the Supporting Affidavit): (i) no Proceeding against or in respect of any of the Respondent, the Property or the Superintendent (in the last case, with respect to any matters arising from the Respondent or the Property) shall be commenced or continued except with the written consent of the Trustee or with leave of this Court; and (ii) any and all Proceedings currently under way against or in respect of any of the Respondent or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that, with the exception of the Suspension and Penalty Orders, all rights and remedies against the Respondent, the Trustee, or affecting the Property (including, without limitation, pursuant to any arrangement in existence as of the date hereof between the Respondent and Investors as to how and when the actions or steps contemplated by paragraph 3 of this Order are to be taken), are hereby stayed and suspended except with the written consent of the Trustee or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and further provided that nothing in this paragraph shall: (i) empower the Trustee or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on; (ii) exempt the Trustee or the Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; (iv) prevent the registration of a claim for lien; or (v) prevent the filing and service of a statement of claim solely to permit the perfection of a lien, provided that no further proceedings on such statement of claim shall be permitted other than pursuant to paragraph 10.

NO INTERFERENCE WITH THE TRUSTEE

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondent, without written consent of the Trustee or leave of this Court, including, for greater certainty, any licenses granted to the Respondent to act as an administrator of or lender under or administer syndicated mortgage loans under the MBLAA, *The Mortgage Brokers Act* (Manitoba), *The Mortgage Brokerages and Mortgage*

Administrators Act (Saskatchewan), the *Real Estate Act* (Alberta), the *Mortgage Brokers Act* (British Columbia) or any other comparable legislation in any other jurisdiction where the Respondent is currently licensed.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Respondent, or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services (including, for greater certainty, all goods and/or services provided by Tsunami Technology Group Inc. in respect of the Respondent), centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

TRUSTEE TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more accounts controlled by the Trustee or, if the Trustee determines it is advisable, new accounts to be opened by the Trustee (the "**Post Trusteeship Accounts**") and the monies standing to the credit of such Post Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Respondent shall remain the employees of the Respondent until such time as the Trustee, on the Respondent's behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Trustee may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

Water Resources Act, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE TRUSTEE'S LIABILITY

18. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Trustee by section 14.06 of the BIA or by any other applicable legislation.

TRUSTEE'S ACCOUNTS

19. **THIS COURT ORDERS** that the Trustee and counsel to the Trustee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, which fees and disbursements shall be added to the indebtedness secured by the Real Property Charges and that the Trustee and counsel to the Trustee shall be entitled to and are hereby granted a charge (the "**Trustee's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Trustee's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Trustee or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE APPOINTMENT

22. **THIS COURT ORDERS** that the Trustee be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Trustee's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Trustee's Charge and the charges as set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Trustee's Borrowings Charge nor any other security granted by the Trustee in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Trustee is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Trustee's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Trustee's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, the service

of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.faanmortgageadmin.com.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Respondent's creditors or other interested parties at their respective addresses as last shown on the records of the Respondent and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. **THIS COURT ORDERS** that the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Trustee from acting as a trustee in bankruptcy of the Respondent.

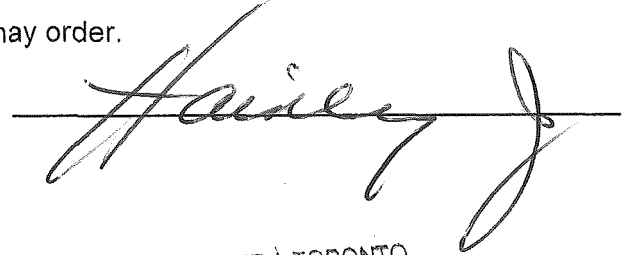
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

31. **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.

32. **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.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice, or such shorter period of time as the Court may permit, to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 20 2018

PER / PAR:



SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that FAAN Mortgage Administrators Inc., the Trustee (in such capacity, the "**Trustee**") of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), including, without limitation, all of the assets in possession or under the control of the Respondent, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage ("**Investors**"), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 20th day of April, 2018 (the "**Order**") made in an application having Court file number CV-18-596204-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$<*>, being part of the total principal sum of \$<*> which the Trustee is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the <*> day of each month] after the date hereof at a notional rate per annum equal to the rate of <*> per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Trustee to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Trustee does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2018.

FAAN MORTGAGE ADMINISTRATORS INC.,
solely in its capacity as Trustee of the Property (as
defined in the Order), and not in its personal
capacity

Per: _____
Name:
Title:

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

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Lawyers for The Superintendent of Financial Services

Appendix 2:
Realized Property Order dated October 30, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 30th DAY
JUSTICE HAINEY) OF OCTOBER, 2018

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**

REALIZED PROPERTY 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. (the “**Respondent**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) requiring the Trustee to distribute certain Realized Property, as more fully set out herein; and (ii) authorizing the Trustee to utilize certain Realized Property to fund the Required Trustee Activities (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Second Report of the Trustee dated October 23, 2018 (the “**Second Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel for The Superintendent of Financial Services, 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 Jacob Schmidt sworn October 24, 2018, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that any capitalized terms used but not defined herein shall have the meanings given in the Order of the Court in respect of the Respondent dated June 26, 2018 (the “**Interim Stabilization Order**”) or in the Second Report.

REALIZED PROPERTY

3. **THIS COURT ORDERS** that the Trustee shall:

- (a) distribute a further amount equal to 20% of the Realized Property obtained with respect to the Victoria Medical SML Loans *pro rata* to the Investors entitled to such funds, such that, when combined with the distribution made pursuant to the Interim Stabilization Order, 70% of such funds shall have been distributed on a *pro rata* basis; and
- (b) distribute 70% of all other Realized Property obtained *pro rata* to the Investors entitled to such funds, whether received before or after the date of this Order.

4. **THIS COURT ORDERS** that the Trustee is hereby authorized to use all or any portion of the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considers necessary or desirable

for the administration of the estate, including those matters set out in paragraph 17 of the Interim Stabilization Order (collectively, the “**Required Trustee Activities**”).

5. **THIS COURT ORDERS** that the Trustee shall report to the Court by no later than April 30, 2019 regarding the Required Trustee Activities undertaken following the date of this Order.

GENERAL

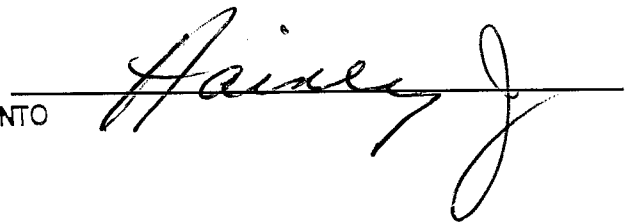
6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

7. **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:

OCT 30 2018

PER / PAR:



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

REALIZED PROPERTY ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)
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Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc., in its
capacity as Court-appointed Trustee

Appendix 3:

Harlowe Settlement Approval Order dated December 20, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 20TH

JUSTICE HAINEY

)

DAY OF DECEMBER, 2018

)

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**

HARLOWE 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. (the "**Respondent**") pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the "**MBLAA**"), 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 November 6, 2018 (the “**Harlowe Settlement Agreement**”) among The Harlowe Inc. (“**Harlowe**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering Harlowe to pay \$15,562,896.38 to the Trustee pursuant to the Harlowe Settlement Agreement; (iii) ordering Harlowe, the Trustee and OTC to comply with the Harlowe Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below), make a further distribution of Realized Property to Investors, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Fourth Report of the Trustee dated December 13, 2018 (the “**Fourth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to Harlowe 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 December 14, 2018, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourth 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 Fourth Report and the Harlowe Settlement Agreement.

APPROVAL OF THE HARLOWE SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Harlowe Settlement Agreement be and is hereby approved in its entirety, with such minor amendments as the Trustee and the other parties to the Harlowe Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) Harlowe is hereby directed to pay \$15,562,896.38 forthwith to the Trustee in accordance with the terms of the Harlowe Settlement Agreement (such funds the “**Harlowe Realized Property**”); and (iii) the execution of the Harlowe 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 Harlowe Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to Harlowe substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**"), all of Harlowe's obligations to Building & Development Mortgages Canada Inc. ("**BDMC**"), OTC, and the individual lenders (the "**Harlowe Individual Lenders**") under the Loan Agreement dated as of June 10, 2013 between BDMC and Harlowe (the "**Loan Agreement**"), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**Harlowe Loan Obligations**") and all security interests granted to BDMC, OTC or the Harlowe Individual Lenders in and to the assets of Harlowe to secure the Harlowe Loan Obligations and related registrations on title (the "**Loan Encumbrances**") are hereby released, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC or any Harlowe Individual Lender shall have any claim against Harlowe in respect of the Harlowe Loan Obligations or the Loan Encumbrances; provided, however, that Harlowe shall not be released from any obligations under the Harlowe Settlement Agreement.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the Harlowe 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 Harlowe Individual Lenders' rights and claims under the Loan Agreement, the Security and the Loan Documents shall attach to the Harlowe Realized Property and shall have the same nature and priority as they had prior to the consummation of the Harlowe Settlement 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 Toronto (#66) of an Application for Vesting 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.

7. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, and each Harlowe Individual Lender who loaned funds through BDMC or OTC to Harlowe 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 Harlowe 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.

8. **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.

REALIZED PROPERTY

9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the Trustee shall make a further distribution to Investors in an amount equal to 5% of the Realized Property held on or received after the date of the Appointment Order, including the Realized Property obtained with respect to the Victoria Medical SML Loans, *pro rata* to the Investors entitled to such funds, such that, when combined with the distributions made pursuant to the Interim Stabilization Order, the Order of this Court dated October 30, 2018 ("**Realized Property Order**") and the Order of this Court dated November 28, 2018, 85% of such funds shall have been distributed on a *pro rata* basis to the Investors entitled to such funds.

10. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, paragraph 3(b) of the Realized Property Order is hereby further amended to provide that the Trustee shall distribute 85% of all other Realized Property obtained, including the Harlowe Realized Property, *pro rata* to the Investors entitled to such funds, whether received before or after the date of this Order.

Schedule “A” – Form of Trustee’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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***

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

B. Pursuant to an Order of the Court dated [DATE] (the “**Harlowe Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement made as of November 6, 2018 (the “**Harlowe Settlement Agreement**”) among The Harlowe Inc. (“**Harlowe**”), the Trustee and Olympia Trust Company (“**OTC**”) and ordered that all of Harlowe’s obligations to BDMC, OTC, and the individual lenders (“**Harlowe Individual Lenders**”) under the Loan

Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Harlowe Loan Obligations**”) and all security interests granted to BDMC, OTC or the Harlowe Individual Lenders in and to the assets of Harlowe to secure the Harlowe Loan Obligations (the “**Loan Encumbrances**”) are hereby released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Harlowe Individual Lender shall have any claim against Harlowe in respect of the Harlowe Loan Obligations or the Loan Encumbrances; provided, however, that Harlowe shall not be released from any obligations under the Harlowe Settlement Agreement; and that the release of the Harlowe Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to Harlowe of a certificate confirming (i) the payment of \$15,562,896.38 to the Trustee by Harlowe; (ii) that the conditions precedent to the Harlowe Settlement Agreement as set out in section 9 of the Harlowe Settlement Agreement have been satisfied or waived by the Trustee; and (iii) the settlement 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 Harlowe Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. Harlowe has paid and the Trustee has received \$15,562,896.38 pursuant to the Harlowe Settlement Agreement;
2. Harlowe has provided the Release Agreement to the Releasees;
3. Harlowe has certified that all of the representations and warranties contained in this Harlowe Settlement Agreement continue to be true as of the Effective Date;
4. Harlowe continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Harlowe Settlement Agreement;
5. The other conditions set out in the Harlowe Settlement Agreement have been satisfied or waived by the Trustee; 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 undertaking, property and assets of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

Schedule "B" – Real Property

PIN 21239-0519 (LT)

PART OF LOTS 21 TO 26 PLAN D111, PARTS 1, 3, 4, 5, 6, 7 AND 8 PLAN 66R29958; SUBJECT TO AN EASEMENT AS IN AT3640549; SUBJECT TO AN EASEMENT IN FAVOUR OF LOT 8 PLAN D111 AS IN AT4127651; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 66R29958 IN FAVOUR OF PART OF LOTS 21 TO 26 PLAN D111, PART 2 PLAN 66R29958 AS IN AT4939549; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 21 TO 26 PLAN D111, PART 2 PLAN 66R29958 AS IN AT4939549

Schedule "C" – Loan Encumbrances

Registration No.	Date	Type of Instrument
AT3428381	October 10, 2013	Charge
AT3428575	October 10, 2013	Transfer of Charge
AT3436925	October 24, 2013	Transfer of Charge
AT3439420	October 28, 2013	Transfer of Charge
AT3485881	December 20, 2013	Transfer of Charge
AT3497057	January 13, 2014	Transfer of Charge
AT3530200	February 28, 2014	Notice of Amending Agreement
AT3530201	February 28, 2014	Transfer of Charge
AT3537271	March 13, 2014	Transfer of Charge
AT3561924	April 22, 2014	Transfer of Charge
AT3624957	July 4, 2014	Notice of Amending Agreement
AT3671510	August 26, 2014	Transfer of Charge
AT3706643	October 3, 2014	Transfer of Charge
AT3728529	October 31, 2014	Transfer of Charge
AT3738320	November 12, 2014	Transfer of Charge
AT3749625	November 26, 2014	Transfer of Charge
AT3763762	December 11, 2014	Transfer of Charge
AT3783153	January 9, 2015	Transfer of Charge
AT3811062	February 13, 2015	Notice of Amending Agreement
AT3812523	February 18, 2015	Transfer of Charge
AT3945778	July 14, 2015	Notice of Amending Agreement
AT3945995	July 14, 2015	Transfer of Charge
AT3974731	August 12, 2105	Transfer of Charge
AT4014833	September 21, 2015	Notice of Amending Agreement
AT4020009	September 28, 2015	Transfer of Charge
AT4095416	December 15, 2015	Transfer of Charge
AT4127132	January 26, 2016	Postponement
AT4138805	February 5, 2016	Postponement
AT4166503	March 14, 2016	Transfer of Charge
AT4197452	April 20, 2016	Transfer of Charge
AT4224419	May 24, 2016	Transfer of Charge
AT4233310	June 1, 2016	Transfer of Charge
AT4271518	July 7, 2016	Transfer of Charge
AT4282089	July 18, 2016	Transfer of Charge
AT4483560	February 9, 2017	Transfer of Charge
AT4486694	February 14, 2017	Transfer of Charge

Schedule "D" – Release Agreement

[Date]

TO: FAAN Mortgage Administrators Inc. (the "Trustee")

AND TO: Olympia Trust Company ("OTC")

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

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated as of June 10, 2013 (the "Loan Agreement") between The Harlowe Inc. ("Harlowe") and Building & Development Mortgages Canada Inc. ("BDMC") and the related Security and Loan Documents. 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 November 6, 2018 among Harlowe, the Trustee and OTC (the "Settlement Agreement").

1. Harlowe hereby certifies that all of the representations and warranties contained in the Settlement Agreement are true and accurate as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Settlement Agreement.
2. Harlowe has paid the Trustee \$15,562,896.38 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$15,562,896.38 in full and final satisfaction of Obligations payable to BDMC by Harlowe under the Loan Agreement in excess of \$20,779,460 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Harlowe (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 Harlowe 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,

THE HARLOWE 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

HARLOWE SETTLEMENT APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)
Patrick Riesterer (LSUC# 60258G)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee

Appendix 4:

Bauhaus Borrower's Notice Dated December 20, 2019



L A M B D E V E L O P M E N T C O R P

December 20, 2019

Dear Lender:

Re: Syndicated Mortgage Loan made to Lamb Bauhaus Inc. (the “Borrower”) pursuant to the loan agreement dated August 15, 2016 (“Loan Agreement”) regarding the property located at 284 King Street East, Toronto, ON the (“Property”)

Request for approval regarding the settlement of the Syndicated Mortgage Loan to the Borrower

We are writing to you in our capacity as the Borrower of the syndicate loan made to Lamb Bauhaus Inc. You have been identified as a Syndicate Mortgage Lender (“SML”) in this project.

We understand, on April 20, 2018, FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**” or the “**Trustee**”) was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“**BDMC**”) your original Mortgage Administrator, under a court order (“**Appointment Order**”) issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*.

We further understand by order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“**Representative Counsel**”).

We have made numerous attempts over the last 18 months to work with FAAN Mortgage to settle the priority issues as it relates to the Replacement Lender (as set out below) and settle the debt owing to the SML’s. The Replacement Lender is an entity related to and controlled by Lamb, who has been funding the project costs. We have made several attempts to come to an agreement with FAAN Mortgage and have yet to come to a mutually agreed upon priority or settlement. For circumstances set out below we are making the settlement terms available directly to the SML’s to ensure they are aware of the recovery being made available to them through our proposed settlement.

The Borrower understands BDMC ceased funding the Bauhaus project due to changes in the industry, regulatory changes initiated in July of 2018 by the Minister of Finance and Financial Service Commission of Ontario that rendered it impossible for BDMC to raise further syndicate funds, thus removing the funds BDMC committed to us that were planned to bring the project to fruition.

The principal amount owing to the syndicated mortgage lenders (“**Bauhaus SMLs**”) as at December 9, 2019 is approximately \$5.64 million. BDMC holds a second ranking mortgage registered against title to the Property in respect of the BDMC Loan.

The BDMC loan is subordinate to a first ranking charge to Firm Capital Corporation in the amount of \$10 million.

The Loan Agreement called for BDMC to advance funds between \$11.1 million and \$16.1 million, BDMC failed to advance over half of the loan and ceased funding all together in February 2018.



L A M B D E V E L O P M E N T C O R P

Due to the fact that BDMC failed to advance the loan in full, as it committed to under the Loan Agreement, the Borrower engaged Replacement Financing to keep the project stabilized and moving forward. The Replacement Financing was provided by a Corporation related to Lamb Development Corporation.

The Loan Agreement outlines the priority granted to any Replacement Loan's obtained in the case of a Short Fall of funding under the BDMC Loan Agreement. That provision is as follows:

*"If, for any reason whatsoever and notwithstanding any other provision hereof, the Lender is unable to fund the full Loan for the Project, as and when required, as per the Schedule shown in the Project Budget as approved by the Lender, as amended from time to time, with consent of both the Lender and Borrower within ninety (90) days of being required to do so, then the security for the Loan funded shall be postponed and subordinated in favour of any and all security required by a lender providing the loan for the shortfall (the "**Replacement Lender**") and shall be postponed and subordinated in favour of the Security held by the Replacement Lender for advances to the Project. Either the Lender or the Borrower shall have the right to obtain a Replacement Lender on the best commercial terms available; and"*

Due to this provision the SML's are also subordinate to the Replacement lender.

We have attempted to secure the Replacement Lender on title per the provision in the Loan Agreement in the summer of 2018 and FAAN Mortgage has not replied in an appropriate timeframe further putting the project at risk as the Replacement Lender is not getting the security they are entitled to risked no further funding injections which would have arrested the project.

By the end of December 2019 the Borrower will have borrowed \$3,732,000.00 in Replacement financing that the Loan Agreement outlines will rank in advance of the BDMC Loan. The priority of debt would be as follows;

\$10,000,000.00 First Mortgagee Firm Capital Corporation
\$3,732,000.00 Replacement Financing (maybe add a note that this is expected to register in priority before the settlement is completed)
\$5,641,600.00 BDMC loan
\$19,373,600.00 Total debt

The Replacement Financing debt will continue to grow at a minimum of \$100k per month.

We obtained a 3rd party Appraisal that valued the property on an "as-is" basis for \$16,100,000.00. We have been advised that FAAN Mortgage has also obtained an appraisal that is for more the \$16,100,000.00. We do not have access or confirmation of any of the information contained within the appraisal FAAN Mortgage obtained.

We have offered to settle the SML for a total payout to the SML's of \$2.2M. This represents nearly 100% of the appraised value at this time. The calculation for determining the amount to the SML's is as follows:

\$16,100,000.00 appraised value
-\$10,000,000.00 First Mortgage to Firm Capital Corporation
-\$3,732,000.00 Replacement Financing



L A M B D E V E L O P M E N T C O R P

-\$2,200,000.00 BDCM Settlement

If the appraisal FAAN Mortgage obtained was even \$1M more than the appraisal report we obtained the settlement would still represents 98.9% of the appraised value at this time.

We understand this was not the originally planned outcome for this site. The proposed plan was to exit a fully funded syndicate from a complete building as the Borrower affiliates have done successfully several times in Toronto. The short funded BDMC loan led to extensive additional costs for bridge funding and replacement lender financing that was not originally projected for in the project budget. This combined with the challenges we have faced with approvals have crippled the project.

In addition to these challenges, we have also been unable to obtain any commercially reasonable construction financing commitments from senior lenders so long as the BDMC loan remains on title. This challenge is not unique to Lamb Development, as cited by FAAN Mortgage in their 13th report to court other borrowers are facing the same challenge, FAAN Mortgage reported *"The Trustee has been advised by potential lenders, borrowers and other parties that senior lenders are, in many cases, no longer willing to provide additional financing to further advance the respective projects while a BDMC charge remains registered on title."*

FAAN Mortgage reports this as a specific consideration when reviewing settlements with other borrowers, they comment in one instance: *"Further, the Trustee understands that Atrium was unwilling to do so while any portion of the charge in favour of BDMC securing the Crestview Loan remained on title."* And in another instance: *"the Borrower has advised that it has been unable to obtain the required construction financing with the BDMC charge registered on title."*

The development approvals are still required for the Bauhaus Project. In September 2019 we attended at a Local Planning Appeal Tribunal ("**Tribunal**") hearing for both a zoning by-law amendment and site plan approval. A decision is expected to be released by the Tribunal in 2021.

The BDMC loan is scheduled to mature in the summer of 2021, the project realistically is at least 6 years from completion.

The combination of these challenges have left us in a position to either settle the BDMC debt or allow the project to come to a standstill. From our experience, once the project comes to a standstill the First Mortgagee will have the right to commence a power of sale, these proceedings will likely yield a sale price of less than the value the appraisal determined and therefore potentially result in a lower recovery to the SML's.

As stated at the commencement of this communication, we have delivered this offer to settle to FAAN Mortgage. We have been working on the priority rights under the contract for 18 months, we are not prepared to wait for similar periods of time for a response on our settlement offer. Furthermore, we understand several other Borrowers have made similar offers and in many (if not all cases) FAAN Mortgage wrote to those SML's asking them to vote for or against the proposed settlement. To our knowledge and for reasons unbeknownst to us, FAAN Mortgage has not notified the SML's of our offer.

Our original offer to settle was made for \$1,700,000.00 in October to FAAN Mortgage to review. This was based on the appraisal we obtained for \$16.1M that funded up to 92% of that value.



L A M B D E V E L O P M E N T C O R P

We attempted to follow up with them to negotiate the terms of the settlement without success. FAAN advised verbally they had a higher appraisal but would give no details as to that amount.

In good faith, we further amended our offer increasing it by \$500,000.00 in December to FAAN Mortgage, and subsequently followed up with no success. That amount is 100% of the appraisal we obtained of \$16.1M. If FAAN had an appraisal that was significantly higher (10% higher even), this offer would still be 90% of the value of the site.

Our Development Corporation has extensive experience in the development and real estate markets, we have had considerable successes in our previous locations like The King Charlotte, Brant Park and East 55. These 3 sites we also partially financed by SML, with this established track record, its evidence that when a project is completely funded, they results are favorable. These favourable returns were:

Project	Total Return to SML's
The King Charlotte	148%
The Brant Park	147%
East 55	124%

We have also seen challenges on other sites since the changes and the court appointment over BDMC of FAAN Mortgage. Two of these sites included The James and Harlowe, in those cases, as we are doing here with Bauhaus, we identified a settlement offers to yield the maximum recoveries to the SML's using similar methodology.

Although contacting SML's directly is not an undertaking we prefer to exercise, at this time we have been unable to finalize any settlement directly with FAAN Mortgage. We believe the SML's will benefit from knowledge of the proposed settlement and should have the opportunity to consider the same.

We ask you review the offer we are making a respond to us by returning the instruction for attached here as Schedule "A" indicating your interest in settlement we are proposing.

Please reply by email to: connect@lambdevcorp.com
Please subject your response: Bauhaus Settlement Proposal Response

Regards,

Bradley J. Lamb
Lamb Bauhaus Inc.



L A M B D E V E L O P M E N T C O R P

Schedule "A"

Bauhaus Instruction Form

Re: Bauhaus Project Request for Feedback & Notice

TO: Lamb Bauhaus Inc. ("Borrower")

RE: Settlement of the BDMC Loan made to Lamb Bauhaus Inc. ("Borrower")

I, _____ (Lender Name) have received a request for the following: my

preferred course of action is to:

- (i) Accept the \$2,200,000.00 settlement offer made by the Borrower as full and final repayment of the loan advanced by BDMC to the Borrower under the Loan Agreement dated August 15, 2016 ("Loan Agreement"), which would include a release of all BDMC Debt, security and all rights and obligations under the Loan Agreement and related documents; or

- (ii) Reject the settlement offer and await the outcome, which will likely be a sale of the Property and the results of potential recovery to Lenders in unknown.

The undersigned hereby provides the following feedback with respect to all of its interest in the Loan Agreement as described above (mark one only):

- Yes, I prefer the settlement; or

- No, I object to both the settlement described above and understand as a result the Property will likely be listed for sale and the results of any potential recover to Lenders is unknown.

If you have additional feedback with respect to the settlement, please provide full details regarding the nature of your feedback, question or concern below:



L A M B D E V E L O P M E N T C O R P

Certification:

By returning this instruction form and signing below, I certify that (a) I have full power and authority to give my feedback with respect to the proposed settlement and its effect on my investment under the Loan Agreement; (b) I have read this Notice and Request for Feedback and the Settlement proposal from Lamb Bauhaus Inc. to Lenders dated December 12, 2019; (c) I have obtained such independent legal advice as I believe is necessary in the circumstances; and (d) I hold the following interest in debt administered by BDMC under the Loan Agreement:

Debt in the amount of \$_____.

Name_____

Signature_____

Date_____

Please return this form using one of the following methods:

- i) if by email: connect@lambdevcorp.com Subject line "Bauhaus Settlement Notice & Feedback Form"

- ii) if by mail to the following address:
Lamb Bauhaus Inc.
778 King St West
Toronto, ON
M5V 1N6

Attention: Bauhaus Feedback Form

- iii) if by fax: _____, attention Bauhaus Feedback

Appendix 5:

Trustee's Notice dated December 23, 2019



December 23, 2019

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Lamb Bauhaus Inc. (the “Borrower”) pursuant to the loan agreement dated August 15, 2016 (“Loan Agreement”) regarding the property located at 284 King St. E., Toronto, ON (“Bauhaus Project” or the “Property”)

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) over Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) issued under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* as amended, and section 101 of the *Courts of Justice Act*, as amended (the proceedings commenced thereby, the “**BDMC Proceedings**”). By order of the Court dated June 26, 2018, Chaitons LLP was appointed as representative counsel to, among other things, represent the common interests of investors in syndicated mortgage loans administered by BDMC (“**Representative Counsel**”).

It has come to the Trustee’s attention that the syndicated mortgage lenders that advanced funds for the BDMC Loan (the “**Bauhaus SMLs**”) may have received a vote solicitation and feedback request form from Mr. Brad Lamb, signed on behalf of the Borrower, dated December 20, 2019 (“**Notice**”). Please be advised that the Notice was sent by the Borrower without consulting the Trustee or Representative Counsel and without authorization from the Court and, in the Trustee’s view, likely contravenes the Orders of the Court in the BDMC Proceedings.

The Trustee’s Court-ordered mandate is to protect the interests of all lenders in syndicated mortgage loans administered by BDMC, including the Bauhaus SMLs. The Trustee continues to work diligently in furtherance of this objective and in consultation with Representative Counsel. As is stated by the Borrower in the Notice, the Trustee’s efforts have already resulted in material increases to the offers previously presented to the Trustee by the Borrower. However, notwithstanding these increases, the Trustee is of the view that accepting the latest offer presented by the Borrower to the Trustee would not be fair and reasonable in the circumstances or in the best interests of the Bauhaus SMLs. In the Trustee’s view, the offer provided for in the Notice allows the Borrower to continue to maintain control of the Bauhaus Project, and ultimately be the beneficiary of any profits from its development, while causing the Bauhaus SMLs to crystallize a substantial loss today (as discussed further below).

As stated in the Notice and as described in the Trustee’s previous notice to the Bauhaus SMLs dated October 8, 2019, the Borrower recently received financing from a third-party lender in the amount of \$10 million. The Trustee has always and continues to act in good faith in its dealing with the Borrower and agreed to postpone the BDMC charge on the Bauhaus Project in favour of the third-party lender in part to facilitate ongoing discussions and negotiations between the Borrower and the Trustee. Furthermore, the BDMC Loan is not set to mature until 2021.

The Notice also includes a number of self-serving statements and material omissions, including, among other things: (i) the value of the settlement offer in relation to the appraised values of the Property; (ii) the returns realized by lenders in other projects; and (iii) **a failure to disclose that the offer represents a return of only approximately 33% of what is currently owed to the Bauhaus SMLs (or 39% of principal)**. In addition, the Notice includes both legal conclusions and statements that the Trustee and Representative Counsel disagree with, including with respect to the priority and quantum

of the BDMC Loan and the Trustee's conduct.

In particular, the Borrower cites clause 3(b) of the Loan Agreement (the "**Replacement Lender Clause**"), which would allow the Borrower to find new financing in certain specified circumstances (including that the new loan must be "on the best commercial terms available") and to grant security that would rank in priority to the BDMC Loan in such circumstances. The Replacement Lender Clause requires advance consent of both BDMC and the Borrower prior to the making of any replacement loan. While the Trustee has been in ongoing communication with the Borrower regarding the Replacement Lender Clause, to date, no such consent has been provided by the Trustee on behalf of BDMC, as the Trustee has significant concerns including, among others, the characterization, nature, quantum and priority of the amounts that a related entity, which is owned by Mr. Lamb, is attempting to secure ahead of the Bauhaus SMLs.

It is very unfortunate that on the eve of the holiday season, Mr. Lamb, on behalf of the Borrower that owes the Bauhaus SMLs approximately \$6.6 million (inclusive of approximately \$5.6 million of principal and approximately \$1 million of accrued interest, as at December 20, 2019), sent you a notice offering to pay you 33 cents on the dollar for your BDMC Loan. As the Notice was not authorized by the Trustee or the Court, and represents a material deviation from the process followed by the Trustee in seeking Court approval of similar settlement offers in the BDMC Proceedings, the Trustee will not be acting upon any votes made in response to the Notice.

The Trustee has advised the Borrower of the foregoing and will continue to ensure the Bauhaus SMLs are kept informed of material developments that occur in respect of the Bauhaus Project, including with respect to future discussions between the Trustee and the Borrower.

Should you have any questions at this time, our contact information is below (if you are contacting us by email, please use the subject line **Bauhaus Project**).

Email: Info@FAANMortgageAdmin.com
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, their contact information is below (if you are contacting Representative Counsel by phone or email, please reference **Bauhaus Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
AND IN NO OTHER CAPACITY**

Appendix 6:

Bauhaus Feedback Request Dated February 14, 2020



February 14, 2020

Dear Lender:

Re: Syndicated Mortgage Loan (“BDMC Loan”) made to Lamb Bauhaus Inc. (the “Borrower”) pursuant to the loan agreement dated August 15, 2016 (“Loan Agreement”) regarding the property located at 284 King St. E., Toronto, ON (“Bauhaus Project” or the “Property”)

Request for approval regarding the Syndicated Mortgage Loan to Lamb Bauhaus Inc.

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. (the “Trustee”) was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“BDMC”) under a court order (“Appointment Order”) issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended. By order of the Ontario Superior Court of Justice (Commercial List) (“Court”) dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“Representative Counsel”). Notices have previously been sent to you regarding the appointment of FAAN Mortgage Administrators Inc. as Trustee and of Chaitons LLP as Representative Counsel.

We are writing to you in our capacity as Trustee regarding the Bauhaus Project and further to: (i) the December 20, 2020 vote solicitation and feedback request that you may have received from Mr. Lamb, signed on behalf of the Borrower, (“Borrower Notice”); and (ii) the December 23, 2020 notice sent to you by the Trustee in response to the Borrower Notice (“Trustee’s Notice”).

Current Status of the BDMC Loan

As was advised in the Trustee’s Notice, pursuant to the BDMC Loan, the total amount owing to the syndicated mortgage lenders that advanced funds through BDMC in respect of the Bauhaus Project (“Bauhaus SMLs”) is approximately \$6.6 million, which reflects a principal balance of approximately \$5.6 million and accrued interest of approximately \$1 million (as at December 31, 2019)¹. The BDMC Loan has a second ranking mortgage registered against title to the Property and matures on September 15, 2021 (“Maturity Date”).

In addition to the BDMC Loan, there is a first priority mortgage registered on title to the Property in favour of Firm Capital Corporation (“Firm”) in the amount of approximately \$10 million. The Firm mortgage is the only known charge registered on title to the Property in priority to the BDMC Loan.

¹ Per diem interest since December 31, 2019 is \$1,236.52

The Borrower Notice

The Borrower Notice, which was sent without consulting the Trustee or Representative Counsel, solicited the feedback of the Bauhaus SMLs in respect of a \$2.2 million settlement offer submitted by the Borrower to the Trustee (“**Original Offer**”). The Original Offer reflected a recovery of approximately 39% of the outstanding principal balance of the BDMC Loan (and no payment of any accrued interest).

The Trustee’s view, which was outlined in the Trustee’s Notice, was that the Original Offer was not fair or reasonable in the circumstances or in the best interests of the Bauhaus SMLs. The Original Offer allowed the Borrower to continue to maintain control of the Bauhaus Project, and ultimately be the beneficiary of any profits from its development, while causing the Bauhaus SMLs to crystallize a significant loss. The Trustee also advised that it would not be acting upon any votes from the Bauhaus SMLs made in response to the Borrower Notice.

Development Approvals

The Borrower is proposing a 30-storey mixed use building containing 205 residential units and 177 square meters of grade-related commercial uses on King Street East in downtown Toronto, Ontario.

The Borrower’s Notice advised that in September 2019, the Borrower attended a 10-day municipal hearing before the Local Planning Appeal Tribunal (“**LPAT**”) for both a zoning by-law amendment and site plan approval, which would be required to develop the Bauhaus Project as proposed, and further noted that a decision from the LPAT was not expected to be released until 2021. The Borrower’s Notice cited the delay in obtaining development approvals as one of the factors ‘crippling’ the Bauhaus Project and one of the reasons it was offering only a limited repayment of principal at that time.

On January 3, 2020, the LPAT released its decision and ruled in favour of the Borrower’s application. The favourable LPAT decision allows the Borrower to proceed with the Bauhaus Project as proposed, thereby crystalizing the saleable gross floor area, eliminating the existing development uncertainty and reducing the timeline to project completion by at least 12 months.

The Final Offer

Given the above and following further discussions between the Borrower and the Trustee, the Borrower has presented the Trustee with a revised offer to settle the BDMC Loan. The revised offer provides for payment by the Borrower of approximately \$6.735 million (“**Final Offer**”), or approximately \$4.5 million more than the Original Offer. The Final Offer reflects a recovery of 100% of the outstanding principal balance of the BDMC Loan (\$5.6 million) and 100% of accrued interest through to February 28, 2020 (\$1.1 million), which date is the



Borrower’s anticipated closing date should the Final Offer be accepted by the Bauhaus SMLs and approved by the Court.

The Final Offer is conditional upon Court approval and a release of all future obligations of the Borrower with respect to the Loan Agreement and the BDMC Loan. In the event that the Borrower fails to pay any portion of the Final Offer within two weeks of Court approval of a definitive settlement agreement in respect of the Final Offer, to be executed by the Trustee, Olympia Trust Company, Computershare Trust Company of Canada and the Borrower (“**Settlement Agreement**”), the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 5% of the Final Offer. In addition, should the actual closing date occur after February 28, 2020, the Borrower has agreed to pay to the Trustee, on behalf of BDMC, the full amount of the total accrued interest, calculated at a rate of \$1,236.52 per day, for each day following the anticipated closing date until the actual closing date.

The Final Offer also includes the extinguishment of all further rights and obligations of BDMC and the Bauhaus SMLs under the Loan Agreement, related documents and the associated mortgage on the Property. If approved, payment is expected to be made by the Borrower to the Trustee shortly following Court approval.

The Final Offer reflects the following recovery with respect to the BDMC Loan:

Principal outstanding (A)	\$5,641,600
Interest owing to February 28, 2020 (B)	\$1,093,198
Total proposed payments (C = A+B)	<u>\$6,734,798</u>
Proposed principal repayment per the Final Offer	\$5,641,600
Total recovery on principal outstanding	100%
Proposed Interest Payment per Final Offer	\$1,093,198
Total recovery on accrued interest	100%
Overall recovery on principal (C/A) ²	<u>119%</u>

A copy of the Final Offer and Settlement Agreement executed by the Borrower is attached hereto as Schedule “A”.

The amount distributed to the Bauhaus SMLs from the Final Offer will be net of an administrative holdback of 15% (“**Holdback**”) to be retained by the Trustee in accordance

² Please note that this figure represents the overall recovery on the outstanding BDMC Loan principal balance of \$5,641,600. Individual realizations will vary by Bauhaus SML depending on when each syndicated mortgage lender advanced funds to the Bauhaus Project.



with the Court orders issued in these proceedings. The Bauhaus SMLs may receive a portion of the Holdback in the future; however, the timing and amount, if any, is unknown at this time.

Assessment of the Final Offer and Recommendation

For the reasons set out below, the Trustee recommends accepting the Final Offer in full satisfaction of all amounts due or that may become owing to you under the Loan Agreement and is requesting your feedback in advance of accepting the Final Offer.

Acceptance of the Final Offer by the Trustee would result in the Bauhaus SMLs foregoing potential interest payments of approximately \$700,000, which would otherwise continue to accrue should the BDMC Loan remain outstanding until the Maturity Date and then be paid on that date.

The following considerations were taken into account by the Trustee in completing its assessment of the Final Offer:

- The Final Offer provides for a recovery of 100% of the principal and 100% of the interest owed in respect of the BDMC Loan to February 28, 2020;
- The Final Offer provides for a good faith deposit of \$200,000 (“**Deposit**”) to be held in trust by the Trustee’s counsel, pending the outcome of this voting request and obtaining Court approval of the Final Offer. The Deposit shall be non-refundable to the Borrower in the event of a default under the Settlement Agreement by the Borrower.
- The Borrower has also provided a commitment letter (“**Commitment Letter**”) from its lender confirming that the Borrower will be able to fund the Final Offer less the Deposit upon closing of the settlement transaction. The Commitment Letter contains certain conditions which the Borrower has advised will be satisfied prior to the closing of the settlement transaction;
- The Final Offer provides for an early exit for the Bauhaus SMLs; and
- The Final Offer provides certainty regarding the amount and time frame for the repayment of the BDMC Loan.

Given the above considerations, the choice before the Bauhaus SMLs is as follows:

- 1) Accept the Final Offer and the Settlement Agreement, which includes a release by BDMC, the Trustee and the Bauhaus SMLs with respect to all rights and obligations under the Loan Agreement and related documents; or



- 2) Not accept the Final Offer and the Settlement Agreement in which case the outcome is not known at this time. The BDMC Loan would still be outstanding (and in term) and the Trustee would have to reengage with the Borrower to determine next steps.

Next Steps

At this time, you should review this notice and the Final Offer carefully and arrange to obtain independent legal advice regarding these matters. If desired, you can consult with Chaitons LLP, in its capacity as Representative Counsel. Representative Counsel's contact information is provided below.

Attached as Schedule "B" hereto is an instruction letter to the Trustee that gives you an opportunity to indicate whether you are in favour of or against the acceptance of the Final Offer in full satisfaction of your investment under the BDMC Loan.

If you have any objections to the acceptance of the Final Offer described herein, you should return the instruction letter to us by mail, email, or fax, within ten (10) days. If you agree with the Trustee's recommendation to accept the Final Offer, please also return the instruction letter to us by mail, email, or fax, within ten (10) days to indicate your agreement.

After ten (10) days, the Trustee, in consultation with Representative Counsel, will decide whether to accept the Final Offer by an exercise of the discretion granted to the Trustee under the Appointment Order. Any acceptance by the Trustee of the Final Offer would not be binding on the Trustee or the Bauhaus SMLs until the Final Offer is approved by the Court. In the event that the Trustee accepts the Final Offer, copies of the Court materials will be served upon you prior to the proposed Court date.

A prompt response is required in the circumstances.

(Intentionally left blank – please see next page.)



Should you have any questions of the Trustee, our contact information is below (if you are contacting us by phone or email, please reference **Bauhaus Project**).

Email: Info@FAANMortgageAdmin.com
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, their contact information is below (if you are contacting Representative Counsel by phone or email, please reference **Bauhaus Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
AND IN NO OTHER CAPACITY**

Schedule "A"

(Offer to Settle and Settlement Agreement)

OFFER TO SETTLE

DATE: FEBRUARY 14th, 2020

**TO: FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS
CAPACITY AS COURT-APPOINTED TRUSTEE OF BUILDING &
DEVELOPMENT MORTGAGES CANADA INC. AND IN NO OTHER
CAPACITY**

- and -

OLYMPIA TRUST COMPANY

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

Lamb Bauhaus Inc. (the “**Borrower**”), hereby presents this offer to settle (the “**Offer**”) on the terms and conditions set forth in the Settlement Agreement enclosed herewith, as full and final consideration for all obligations owing by the Borrower under that certain Loan Agreement dated August 15, 2016 (the “**Loan Agreement**”) with Building & Development Mortgages Canada Inc., in trust (“**BDMC**”), as lender, and all related security documentation in respect thereof (the “**Security**”) on the terms and conditions set forth in the Settlement Agreement enclosed herewith. BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“**Olympia**”) and Computershare Trust Company of Canada (“**Computershare**”) each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare.

The Borrower understands that FAAN Mortgage Administrators Inc. was appointed as trustee of BDMC (the “**Trustee**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018 under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC, and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to BDMC, and any actions involving BDMC with respect to this Offer shall be directed to and executed by the Trustee.

The Borrower further understands that, as this Offer represents a compromise of debt and a release of all parties’ obligations pursuant to the Loan Agreement, the Security and related documents (provided that such release shall not in any way affect the Borrower’s obligations under this Offer and the Settlement Agreement enclosed herewith), the Trustee (on behalf of BDMC) intends to reach out to the individual lenders forming the syndicate under the Loan Agreement with respect to this Offer. As such, the Borrower acknowledges that seeking feedback with respect to the Offer from the individual lenders forming the syndicate under the Loan Agreement, or their proxy, is a condition precedent to the ability of the Trustee to exercise its discretion to execute the Settlement Agreement enclosed herewith. Therefore, the Borrower hereby agrees that this Offer, and its signature on the Settlement Agreement enclosed herewith, shall be irrevocable by the Borrower

and shall remain open for acceptance by providing counter-signed copies of the Settlement Agreement enclosed herewith to the Borrower until 5:00 p.m. Toronto time on February 28, 2020 (or such other date as may be agreed by the Borrower in writing). Failure to accept the Offer by each of the Trustee (on behalf of BDMC), Olympia and Computershare by such date shall result in this Offer being revoked.

In connection with this Offer, the Borrower will, within one (1) business day after the date of this Offer, provide to the Trustee's solicitor, in trust, a cash Deposit in the amount of \$200,000 (as defined in the Settlement Agreement). The Borrower hereby agrees that the Deposit is being provided in accordance with Section 11 of the Settlement Agreement and shall not be refundable under any circumstances other than as set out in Sections 11 and 15 of the Settlement Agreement. Pursuant to the terms of Sections 11 and 15 of the Settlement Agreement, or if the Settlement Agreement is not executed by the Trustee (on behalf of BDMC), Olympia and Computershare on or before 5:00 pm on February 28, 2020 (or such later date as may be agreed by the Borrower in writing), the Deposit shall forthwith upon written demand by the Borrower or the Borrower's solicitor be refunded to the Borrower's solicitor, in trust, and this Offer and the transactions contemplated by the Settlement Agreement shall be deemed to be revoked and/or terminated, as applicable.

The Borrower has also provided written confirmation of financing evidencing that it has secured sufficient financing to pay the Settlement Payment together with the submission of this Offer.

This Offer replaces and supersedes any and all previous offers submitted by the Borrower which are now null and void. In the event that this Offer is rejected or revoked as outlined above, the Loan Agreement shall remain unaffected and shall continue and survive in full force and effect in accordance with its terms.

The Borrower looks forward to your response.

LAMB BAUHAUS INC.

By: _____

Name:

Title:

SETTLEMENT AGREEMENT
(dated as of ●____, 2020)
(the "Settlement Agreement")

B E T W E E N:

LAMB BAUHAUS INC.

- and -

**FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF BUILDING & DEVELOPMENT MORTGAGES
CANADA INC.**

- and -

OLYMPIA TRUST COMPANY

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

WHEREAS Lamb Bauhaus Inc. (the "**Borrower**") is the borrower under a Loan Agreement dated August 15, 2016 (the "**Loan Agreement**") with Building & Development Mortgages Canada Inc., in trust ("**BDMC**"), as lender, whereby BDMC issued a loan to the Borrower;

AND WHEREAS the sum of \$5,641,600 (the "**Loan**") was actually funded by BDMC pursuant to the Loan Agreement as of the date hereof;

AND WHEREAS BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company ("**Olympia**") and Computershare Trust Company of Canada ("**Computershare**") each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare (collectively, the "**BDMC Individual Lenders**");

AND WHEREAS on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee of the assets, properties and undertakings of BDMC (in such capacity, the "**Trustee**") pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC;

AND WHEREAS the Loan Agreement was entered into with respect to a proposed residential condominium development to be constructed on the property located at 284 King Street East, Toronto, Ontario, which land, for greater certainty, is represented by PIN 21091-0223 (LT) (the "**Property**", and such development, the "**Project**");

AND WHEREAS in connection with the Loan, BDMC, Olympia and Computershare were granted a charge on title to the Property as evidenced by Charge No. AT4485812 registered

on February 13, 2017 in the principal amount of \$6,700,000, as subsequently amended to decrease the charge to \$6,160,000 as per a Notice Amending the Charge (the “**Charge**”);

AND WHEREAS in connection with the Loan, the Borrower delivered certain other agreements, instruments, documents, and a General Security Agreement to BDMC, Olympia and Computershare, and a related registration has been made pursuant to Ontario’s *Personal Property Security Act* to evidence and secure payment of the obligations owing under the Loan Agreement (the “**Personal Property Security**”);

AND WHEREAS the initial maturity date under the Loan Agreement is September 15, 2021, as such maturity date may be extended by the Borrower in accordance with the terms of the Loan Agreement to September 15, 2022 (the “**Maturity Date**”);

AND WHEREAS there is currently \$5,641,600 in principal outstanding under the Loan as of the date hereof;

AND WHEREAS, as of February 28, 2020 (the “**Anticipated Closing Date**”) there will be approximately \$1,093,197.68 of accrued interest payable to BDMC under the Loan;

AND WHEREAS, on or about February 14, 2020, the Borrower provided a good faith deposit of \$200,000 to the Trustee’s counsel (the “**Deposit**”), to be held in trust and released in accordance with the terms hereof;

AND WHEREAS the Settlement Payment (as defined below) provides for the full repayment of all Obligations (as defined below) owing to BDMC under the Loan Agreement as of the Anticipated Closing Date;

AND WHEREAS the Borrower provided, and the Trustee received, written confirmation of financing evidencing that it has secured sufficient financing to pay the Settlement Payment (as defined below), subject to certain conditions that the Borrower has advised will be satisfied by the Anticipated Closing Date;

AND WHEREAS the Trustee consulted with the BDMC Individual Lenders with respect to the proposed Settlement Agreement and, following such consultation, determined that it is in the best interests of the BDMC Individual Lenders to enter into this Settlement Agreement;

AND WHEREAS the parties hereto wish to enter into this Settlement Agreement in full satisfaction of the obligations owing by the Borrower to BDMC, Olympia, Computershare and the BDMC Individual Lenders under the Loan Agreement and all related security documentation in respect thereof (“**Security**”);

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Each party represents and warrants to the others that to the best of its knowledge, the recitals to this Settlement Agreement are accurate.
2. The parties hereto represent and warrant that the total amount of principal and interest that

would be payable under the Loan Agreement is, in aggregate, \$6,734,797.68, as of the Anticipated Closing Date (the "**Obligations**"), which amount is comprised of:

- (a) Current principal outstanding in the amount of \$5,641,600; and
- (b) Interest owing up to the Anticipated Closing Date in the amount of \$1,093,197.68.

3. The Borrower hereby agrees to pay to the Trustee (on behalf of BDMC), on the Effective Date (as defined below) the amount of \$6,734,797.68 (the "**Settlement Payment**"), which shall be satisfied by (a) a lump-sum payment in the amount of \$6,534,797.68 and (b) the release and crediting of the Deposit against the Settlement Payment. The Borrower agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Settlement Payment and, if applicable, the Daily Interest and the Late Payment Fee (both as defined below) save and except as provided in Section 11 below.

4. Should the actual closing date be after the Anticipated Closing Date, the Borrower shall pay to the Trustee (on behalf of BDMC) *per diem* interest of \$1,236.52 for each day following the Anticipated Closing Date until the Closing Date (the "**Daily Interest**").

5. In the event that the Borrower fails to pay any portion of the Settlement Payment within fourteen calendar days from the Effective Date, the Borrower shall also pay a late payment fee to the Trustee (on behalf of BDMC) of 5% of the Settlement Payment less the Deposit (the "**Late Payment Fee**").

6. The Borrower shall, upon the Effective Date, execute and deliver a full and final release in favour of the Trustee, BDMC, Olympia and Computershare and their related entities (including the BDMC Individual Lenders) (collectively, the "**Releasees**") in respect of, *inter alia*, any and all obligations under the Loan Agreement and all other documents between the Borrower and BDMC, Olympia, Computershare and/or the BDMC Individual Lenders in a form customarily provided to secured lenders and in the form reasonably agreed to by the Releasees (the "**Release**"). The Release shall not be effective until the Closing Date (as defined below).

7. The Borrower hereby represents and warrants to the other parties hereto that, as of the date hereof, the Effective Date and the Closing Date:

- (a) It is solvent, has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Settlement Agreement, all of which have been duly authorized by all proper and necessary corporate action and it has duly executed and delivered this Settlement Agreement.
- (b) The execution of this Settlement Agreement will not violate or conflict with its organizational documents, any mortgage or other documentation it is party to relating to the Project or the Property, or any law, regulation or order or require any consent or approval that has not been obtained.
- (c) This Settlement Agreement is a legal, valid, and binding obligation of the Borrower, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally

and by equitable principles.

- (d) To the best of its knowledge, none of Fortress Real Developments Inc. or any of its affiliates (as such term is defined in the *Business Corporations Act* (Ontario)) or any other entity controlled by it (collectively, "**Fortress**") or their respective principals, agents or legal counsel (collectively, "**Fortress Representatives**"):
- (i) shall have any ongoing involvement in the Project;
 - (ii) is party to any ongoing agreement or other arrangement relating to the Project or the Property with the Borrower or any of its affiliates or their respective principals or agents; or
 - (iii) is or will become entitled to receive any consideration whatsoever in respect of or in any way relating to or arising from (directly or indirectly) the Property or the Project, whether from the Borrower, any lender, broker, purchaser, other person or any of their respective affiliates, principals or agents, including, without limitation, consideration in the form of money, instruments, investment property, debt, securities, options, mortgages, charges, guarantees, assets or any other form, and promptly upon the Borrower obtaining knowledge or otherwise becoming aware of any of the foregoing matters, whether before or after the Closing Date, it shall notify the Trustee of the nature and existence of such matters forthwith.
- (e) There are no arrangements between the Borrower or any of its affiliates, principals or agents involving Fortress or any Fortress Representatives whereby Fortress or any Fortress Representative would receive any consideration in respect of or in any way relating to or arising from the Property, the Project or the transactions contemplated by this Settlement Agreement, whether from the Borrower, any lender, broker, assignee, other person or any of their respective affiliates, principals or agents of which the Borrower has knowledge.

8. The Borrower covenants in favour of the Trustee (on behalf of BDMC), Olympia and Computershare, that should the Borrower or any of its affiliates or their respective principals or agents: (a) come into the possession or control of any such consideration described in Subsection 7(d)(iii) above that would otherwise be payable to Fortress or any Fortress Representative, or (b) permit or acquiesce to any such consideration being received by Fortress or any Fortress Representative, such consideration: (i) shall and shall be deemed to be held in trust, separate and apart from such person's other money, instruments, investment property, property or assets, for the benefit of the Trustee until the full amount of the Obligations that would have been payable to BDMC under the Loan Agreement as of the Effective Date of this Settlement Agreement has been paid to the Trustee in full, or (ii) shall be deemed to become an amount that is owed by the Borrower to the Trustee (on behalf of BDMC), as applicable. In each such instance, such person shall immediately inform the Trustee of such fact and take such steps to promptly transfer such consideration to the Trustee and pay any and all such amounts to the Trustee within two (2) Business Days of receipt of same (the "**Turnover Obligation**"). For greater certainty, the Turnover Obligation shall survive the closing of the transactions contemplated by this Settlement Agreement and shall not be affected by the releases contemplated herein.

9. The Trustee (on behalf of BDMC), Olympia and Computershare acknowledge that the Settlement Payment represents the full repayment of the principal and interest amounts owing under the Loan Agreement as at February 28, 2020 (excluding additional accrued interest to the Maturity Date and any amount that could potentially become owing under the Loan Agreement, the Charge, the Personal Property Security, and any other Security). The Trustee (on behalf of BDMC), Olympia and Computershare agree that, as of the Closing Date, they shall be deemed to accept the Settlement Payment, and, if applicable, the Daily Interest and the Late Payment Fee, in full satisfaction of the Obligations, and shall waive any rights to any further payments that may become payable to BDMC, Olympia and/or Computershare under the Loan Agreement, the Charge, the Personal Property Security and any other Security related to the Loan, provided that such agreement and waiver shall not in any way affect the Turnover Obligation under this Settlement Agreement.

10. The Trustee shall use commercially reasonable efforts to seek approval of the Settlement Agreement by way of an order substantially in the form agreed between the Borrower, the Trustee, Olympia and Computershare (which shall, for greater certainty, contain a full release and discharge of all obligations of the Borrower under the Loan Agreement, the Charge, the Personal Property Security and any other Security and a release under any and all other security instruments related to the Loan and include a release of any and all interests or claims that the Trustee (on behalf of BDMC), Olympia, Computershare and the BDMC Individual Lenders, may have in respect of the Project and the Property, provided that such release shall not be effective until the Closing Date as provided herein and shall not in any way affect the Borrower's obligations hereunder) (the "**Order**") issued by the Court. The parties hereto agree that this Settlement Agreement shall not be binding on the Trustee (on behalf of BDMC), Olympia or Computershare until the issuance of the Order, save and except for this Section 10 and Section 11 hereof, which sections shall be binding upon acceptance of this Settlement Agreement by all parties. On the date of the issuance of the Order (the "**Effective Date**"), the Borrower shall be required to pay the Settlement Payment (and, if applicable, the Daily Interest) and issue the Release as contemplated in Sections 3, 4 and 6 herein forthwith. The Release shall not be effective until the Closing Date and the delivery of the Trustee's Certificate (as defined below) to the Borrower.

11. The Deposit shall be refundable to the Borrower if the Effective Date has not occurred, due to no action or fault of the Borrower, Fortress or their respective affiliates, by March 31, 2020, unless otherwise agreed in writing by the parties hereto (the "**Outside Date**"). If the Effective Date has not occurred by the Outside Date due to no action or fault of the Borrower, Fortress or their respective affiliates, the Deposit shall, upon written demand by the Borrower or its solicitors, be refunded to the Borrower, or otherwise as the Borrower may in writing direct, and, upon the refund of the Deposit, this Settlement Agreement shall be deemed terminated and of no further force or effect (in which case the Loan, the Loan Agreement, the Charge and any other related security documentation and any obligation and liability thereunder shall remain unaffected and shall continue in favour of BDMC, Olympia and Computershare in accordance with their terms). The return of the Deposit shall be the Borrower's sole and exclusive remedy in respect of any termination of this Settlement Agreement.

12. The obligations of the Trustee (on behalf of BDMC), Olympia and Computershare contained in this Settlement Agreement, including, without limitation, the obligations set out in Sections 9 and 14 hereto (except for the obligations contained in Sections 10 and 11 hereto, which shall be effective as of the date that the Trustee, Olympia and Computershare execute this

Settlement Agreement) shall be subject to the issuance of a certificate to the Borrower by the Trustee in the form to be attached to the Order (the "**Trustee's Certificate**") and the filing of the Trustee's Certificate with the Court following the satisfaction of the conditions precedent set out in Section 13 herein (the "**Closing Date**").

13. The Trustee shall be required to issue the Trustee's Certificate to the Borrower upon the satisfaction of the following conditions precedent (which conditions may be waived by the Trustee in its sole discretion):

- (a) the Order has been granted by the Court and no material objections (in the sole opinion of the Trustee) were raised by the BDMC Individual Lenders or by any other party at the motion for approval of the Order, or, if any material objection is raised, the appeal periods in respect of the 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;
- (b) the Borrower has paid the Settlement Payment, and, if applicable, the total Daily Interest and the Late Payment Fee payable hereunder, to the Trustee or its counsel, in trust;
- (c) the Borrower has provided the Release to the Releasees;
- (d) the Borrower has certified that all of the representations and warranties contained in this Settlement Agreement continue to be true as of the Closing Date; and
- (e) the Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of this Settlement Agreement.

For greater certainty, the rights and obligations of each party as contained in the Loan Agreement and the security granted to BDMC, Olympia and Computershare (including without limitation the Charge) shall remain effective until the Closing Date.

14. As of the Closing Date: (i) the Borrower, the Trustee (on behalf of BDMC), Olympia and Computershare acknowledge and agree that they shall have no further rights or obligations in connection with the Obligations, the Loan Agreement and all security related thereto and the Loan Agreement and all security related thereto shall be terminated with no further force or effect; (ii) the Borrower shall be permitted to cause any and all security held by BDMC, Olympia and/or Computershare to secure the Obligations to be discharged, including the discharge of the Charge from title to the Property and the discharge of any registrations held by BDMC, Olympia and/or Computershare against the Borrower under the *Personal Property Security Act* (Ontario); (iii) the Borrower shall be permitted to release any interest the Trustee (on behalf of BDMC), Olympia and Computershare may have in any insurance policy(ies) relating to the Property; and (iv) pursuant to the Order, BDMC, Olympia, Computershare and the BDMC Individual Lenders shall be deemed to have released the Borrower and all other parties thereto from all obligations and security provided in connection with the Loan Agreement and such other security and covenants related thereto.

15. The Deposit shall be held by the Trustee's counsel, in trust, pending the completion of the settlement contemplated herein and the delivery of the Trustee Certificate to the Borrower and in

accordance with Section 11 hereof. If the settlement contemplated herein is completed, the Deposit shall be credited against the Settlement Payment. For clarity, the Deposit shall be non-refundable to the Borrower in the event of a default under this Settlement Agreement by the Borrower. In the event that the Trustee has not obtained the Order by the Outside Date, the Deposit may be returned to the Borrower in accordance with Section 11 hereof.

16. In this Settlement Agreement, "**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in Toronto, Ontario.

17. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

18. The parties agree and acknowledge that the terms of this Settlement Agreement may be disclosed to the BDMC Individual Lenders under the Loan and shall be included in the motion materials for approval of the Settlement Agreement, provided that such terms may be provided to the Court on a confidential basis and subject to a request for a sealing order at the Trustee's discretion.

19. Each party confirms it has received independent legal advice relating to this Settlement Agreement, and that it has voluntarily entered into this Settlement Agreement with the benefit of such advice for the purpose of making a full and final settlement of amounts outstanding under the Loan through this Settlement Agreement.

20. This Settlement Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings, representations and understandings between the parties. This Settlement Agreement shall further enure to the benefit of and be binding upon the parties and their respective successors, representatives and assigns.

21. This Settlement Agreement may be executed by the parties in counterparts, and may be executed and delivered by facsimile, PDF or e-mail and all the counterparts and facsimiles shall together constitute one and the same agreement.

22. This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada therein, and any dispute arising from this Settlement Agreement must be adjudicated before the Ontario Superior Court of Justice.

[Remainder of page intentionally left blank]

IN WITNESS OF WHICH the parties have duly executed this Agreement as of the date indicated above.

LAMB BAUHAUS INC.

By: _____

Name: BRAD J. LAMB

Title: PRESIDENT + OWNER

**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:

**COMPUTERSHARE TRUST COMPANY
OF CANADA**

By: _____

Name:

Title:



Schedule "B"

Bauhaus Project - Instruction Form

Re: Bauhaus Project Notice & Request for Approval

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

RE: Repayment of the BDMC loan made to Lamb Bauhaus Inc. ("Borrower")

I, _____ (Lender Name) have received a request for the following:

my authorization to the Trustee:

- (i) to accept the \$6,734,797.68 offer ("**Final Offer**") made by the Borrower for the repayment of the loan advanced by BDMC to the Borrower under the Loan Agreement dated August 15, 2016 ("**Loan Agreement**") in substantially the form attached as Schedule "**A**" to the Notice to Lenders dated February 14, 2020, which includes a release of BDMC, the Trustee and individual lenders with respect to all rights and obligations under the Loan Agreement and related documents; and
- (ii) to negotiate, on my behalf, matters related to the Final Offer and all agreements reasonably needed in connection with same.

((i) and (ii) above hereinafter collectively called the "**Proposal**".)

Acceptance of the Proposal:

The undersigned hereby provides the following feedback with respect to all of its interest in the Loan Agreement as described above (mark one only):

Yes, I agree with the Trustee's recommendation to accept the Proposal as described above; or

No, I object to the acceptance of the Proposal as described above.

If you have additional feedback with respect to the Proposal and the proposed acceptance thereof, please provide full details regarding the nature of your feedback, question or concern below:



Certification:

By returning this instruction form and signing below, I certify that (a) I have full power and authority to give instructions with respect to the Proposal and its effect on my investment under the Loan Agreement; (b) I have read this Notice & Request for Approval and the Trustee's notice to lenders dated February 14, 2020; (c) I have obtained such independent legal advice as I believe is necessary in the circumstances; and (d) I hold the following interest in debt administered by BDMC under the Loan Agreement:

Debt in the amount of \$ _____.

Name _____

Signature _____

Date _____

Please return this form using one of the following methods:

- i) if by email: info@faanmortgageadmin.com, subject line **"Bauhaus Approval Form"**
- ii) if by mail to the following address:

Building & Development Mortgages Canada Inc.
c/o FAAN Mortgage Administrators Inc.
920-20 Adelaide St. E.
Toronto, ON M5C 1H6

Attention: **Bauhaus Approval Form**
- iii) if by fax: **1-833-495-3338** (toll free), attention **Bauhaus Approval Form**

Appendix 7:

Bauhaus Final Offer and Bauhaus Settlement Agreement

OFFER TO SETTLE

DATE: FEBRUARY 14th, 2020

**TO: FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS
CAPACITY AS COURT-APPOINTED TRUSTEE OF BUILDING &
DEVELOPMENT MORTGAGES CANADA INC. AND IN NO OTHER
CAPACITY**

- and -

OLYMPIA TRUST COMPANY

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

Lamb Bauhaus Inc. (the “**Borrower**”), hereby presents this offer to settle (the “**Offer**”) on the terms and conditions set forth in the Settlement Agreement enclosed herewith, as full and final consideration for all obligations owing by the Borrower under that certain Loan Agreement dated August 15, 2016 (the “**Loan Agreement**”) with Building & Development Mortgages Canada Inc., in trust (“**BDMC**”), as lender, and all related security documentation in respect thereof (the “**Security**”) on the terms and conditions set forth in the Settlement Agreement enclosed herewith. BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“**Olympia**”) and Computershare Trust Company of Canada (“**Computershare**”) each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare.

The Borrower understands that FAAN Mortgage Administrators Inc. was appointed as trustee of BDMC (the “**Trustee**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018 under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC, and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to BDMC, and any actions involving BDMC with respect to this Offer shall be directed to and executed by the Trustee.

The Borrower further understands that, as this Offer represents a compromise of debt and a release of all parties’ obligations pursuant to the Loan Agreement, the Security and related documents (provided that such release shall not in any way affect the Borrower’s obligations under this Offer and the Settlement Agreement enclosed herewith), the Trustee (on behalf of BDMC) intends to reach out to the individual lenders forming the syndicate under the Loan Agreement with respect to this Offer. As such, the Borrower acknowledges that seeking feedback with respect to the Offer from the individual lenders forming the syndicate under the Loan Agreement, or their proxy, is a condition precedent to the ability of the Trustee to exercise its discretion to execute the Settlement Agreement enclosed herewith. Therefore, the Borrower hereby agrees that this Offer, and its signature on the Settlement Agreement enclosed herewith, shall be irrevocable by the Borrower

and shall remain open for acceptance by providing counter-signed copies of the Settlement Agreement enclosed herewith to the Borrower until 5:00 p.m. Toronto time on February 28, 2020 (or such other date as may be agreed by the Borrower in writing). Failure to accept the Offer by each of the Trustee (on behalf of BDMC), Olympia and Computershare by such date shall result in this Offer being revoked.

In connection with this Offer, the Borrower will, within one (1) business day after the date of this Offer, provide to the Trustee's solicitor, in trust, a cash Deposit in the amount of \$200,000 (as defined in the Settlement Agreement). The Borrower hereby agrees that the Deposit is being provided in accordance with Section 11 of the Settlement Agreement and shall not be refundable under any circumstances other than as set out in Sections 11 and 15 of the Settlement Agreement. Pursuant to the terms of Sections 11 and 15 of the Settlement Agreement, or if the Settlement Agreement is not executed by the Trustee (on behalf of BDMC), Olympia and Computershare on or before 5:00 pm on February 28, 2020 (or such later date as may be agreed by the Borrower in writing), the Deposit shall forthwith upon written demand by the Borrower or the Borrower's solicitor be refunded to the Borrower's solicitor, in trust, and this Offer and the transactions contemplated by the Settlement Agreement shall be deemed to be revoked and/or terminated, as applicable.

The Borrower has also provided written confirmation of financing evidencing that it has secured sufficient financing to pay the Settlement Payment together with the submission of this Offer.

This Offer replaces and supersedes any and all previous offers submitted by the Borrower which are now null and void. In the event that this Offer is rejected or revoked as outlined above, the Loan Agreement shall remain unaffected and shall continue and survive in full force and effect in accordance with its terms.

The Borrower looks forward to your response.

LAMB BAUHAUS INC.

By: _____

Name:

Title:

February
SETTLEMENT AGREEMENT
(dated as of ● 14, 2020)
(the "Settlement Agreement")

BETWEEN:

LAMB BAUHAUS INC.

- and -

**FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF BUILDING & DEVELOPMENT MORTGAGES
CANADA INC.**

- and -

OLYMPIA TRUST COMPANY

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

WHEREAS Lamb Bauhaus Inc. (the "**Borrower**") is the borrower under a Loan Agreement dated August 15, 2016 (the "**Loan Agreement**") with Building & Development Mortgages Canada Inc., in trust ("**BDMC**"), as lender, whereby BDMC issued a loan to the Borrower;

AND WHEREAS the sum of \$5,641,600 (the "**Loan**") was actually funded by BDMC pursuant to the Loan Agreement as of the date hereof;

AND WHEREAS BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company ("**Olympia**") and Computershare Trust Company of Canada ("**Computershare**") each act as trustee for a subset of such lenders who have self-directed accounts with either Olympia or Computershare (collectively, the "**BDMC Individual Lenders**");

AND WHEREAS on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee of the assets, properties and undertakings of BDMC (in such capacity, the "**Trustee**") pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC;

AND WHEREAS the Loan Agreement was entered into with respect to a proposed residential condominium development to be constructed on the property located at 284 King Street East, Toronto, Ontario, which land, for greater certainty, is represented by PIN 21091-0223 (LT) (the "**Property**", and such development, the "**Project**");

AND WHEREAS in connection with the Loan, BDMC, Olympia and Computershare were granted a charge on title to the Property as evidenced by Charge No. AT4485812 registered

on February 13, 2017 in the principal amount of \$6,700,000, as subsequently amended to decrease the charge to \$6,160,000 as per a Notice Amending the Charge (the “**Charge**”);

AND WHEREAS in connection with the Loan, the Borrower delivered certain other agreements, instruments, documents, and a General Security Agreement to BDMC, Olympia and Computershare, and a related registration has been made pursuant to Ontario’s *Personal Property Security Act* to evidence and secure payment of the obligations owing under the Loan Agreement (the “**Personal Property Security**”);

AND WHEREAS the initial maturity date under the Loan Agreement is September 15, 2021, as such maturity date may be extended by the Borrower in accordance with the terms of the Loan Agreement to September 15, 2022 (the “**Maturity Date**”);

AND WHEREAS there is currently \$5,641,600 in principal outstanding under the Loan as of the date hereof;

AND WHEREAS, as of February 28, 2020 (the “**Anticipated Closing Date**”) there will be approximately \$1,093,197.68 of accrued interest payable to BDMC under the Loan;

AND WHEREAS, on or about February 14, 2020, the Borrower provided a good faith deposit of \$200,000 to the Trustee’s counsel (the “**Deposit**”), to be held in trust and released in accordance with the terms hereof;

AND WHEREAS the Settlement Payment (as defined below) provides for the full repayment of all Obligations (as defined below) owing to BDMC under the Loan Agreement as of the Anticipated Closing Date;

AND WHEREAS the Borrower provided, and the Trustee received, written confirmation of financing evidencing that it has secured sufficient financing to pay the Settlement Payment (as defined below), subject to certain conditions that the Borrower has advised will be satisfied by the Anticipated Closing Date;

AND WHEREAS the Trustee consulted with the BDMC Individual Lenders with respect to the proposed Settlement Agreement and, following such consultation, determined that it is in the best interests of the BDMC Individual Lenders to enter into this Settlement Agreement;

AND WHEREAS the parties hereto wish to enter into this Settlement Agreement in full satisfaction of the obligations owing by the Borrower to BDMC, Olympia, Computershare and the BDMC Individual Lenders under the Loan Agreement and all related security documentation in respect thereof (“**Security**”);

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Each party represents and warrants to the others that to the best of its knowledge, the recitals to this Settlement Agreement are accurate.
2. The parties hereto represent and warrant that the total amount of principal and interest that

would be payable under the Loan Agreement is, in aggregate, \$6,734,797.68, as of the Anticipated Closing Date (the "**Obligations**"), which amount is comprised of:

- (a) Current principal outstanding in the amount of \$5,641,600; and
- (b) Interest owing up to the Anticipated Closing Date in the amount of \$1,093,197.68.

3. The Borrower hereby agrees to pay to the Trustee (on behalf of BDMC), on the Effective Date (as defined below) the amount of \$6,734,797.68 (the "**Settlement Payment**"), which shall be satisfied by (a) a lump-sum payment in the amount of \$6,534,797.68 and (b) the release and crediting of the Deposit against the Settlement Payment. The Borrower agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Settlement Payment and, if applicable, the Daily Interest and the Late Payment Fee (both as defined below) save and except as provided in Section 11 below.

4. Should the actual closing date be after the Anticipated Closing Date, the Borrower shall pay to the Trustee (on behalf of BDMC) *per diem* interest of \$1,236.52 for each day following the Anticipated Closing Date until the Closing Date (the "**Daily Interest**").

5. In the event that the Borrower fails to pay any portion of the Settlement Payment within fourteen calendar days from the Effective Date, the Borrower shall also pay a late payment fee to the Trustee (on behalf of BDMC) of 5% of the Settlement Payment less the Deposit (the "**Late Payment Fee**").

6. The Borrower shall, upon the Effective Date, execute and deliver a full and final release in favour of the Trustee, BDMC, Olympia and Computershare and their related entities (including the BDMC Individual Lenders) (collectively, the "**Releasees**") in respect of, *inter alia*, any and all obligations under the Loan Agreement and all other documents between the Borrower and BDMC, Olympia, Computershare and/or the BDMC Individual Lenders in a form customarily provided to secured lenders and in the form reasonably agreed to by the Releasees (the "**Release**"). The Release shall not be effective until the Closing Date (as defined below).

7. The Borrower hereby represents and warrants to the other parties hereto that, as of the date hereof, the Effective Date and the Closing Date:

- (a) It is solvent, has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Settlement Agreement, all of which have been duly authorized by all proper and necessary corporate action and it has duly executed and delivered this Settlement Agreement.
- (b) The execution of this Settlement Agreement will not violate or conflict with its organizational documents, any mortgage or other documentation it is party to relating to the Project or the Property, or any law, regulation or order or require any consent or approval that has not been obtained.
- (c) This Settlement Agreement is a legal, valid, and binding obligation of the Borrower, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally

and by equitable principles.

- (d) To the best of its knowledge, none of Fortress Real Developments Inc. or any of its affiliates (as such term is defined in the *Business Corporations Act* (Ontario)) or any other entity controlled by it (collectively, "**Fortress**") or their respective principals, agents or legal counsel (collectively, "**Fortress Representatives**"):
- (i) shall have any ongoing involvement in the Project;
 - (ii) is party to any ongoing agreement or other arrangement relating to the Project or the Property with the Borrower or any of its affiliates or their respective principals or agents; or
 - (iii) is or will become entitled to receive any consideration whatsoever in respect of or in any way relating to or arising from (directly or indirectly) the Property or the Project, whether from the Borrower, any lender, broker, purchaser, other person or any of their respective affiliates, principals or agents, including, without limitation, consideration in the form of money, instruments, investment property, debt, securities, options, mortgages, charges, guarantees, assets or any other form, and promptly upon the Borrower obtaining knowledge or otherwise becoming aware of any of the foregoing matters, whether before or after the Closing Date, it shall notify the Trustee of the nature and existence of such matters forthwith.
- (e) There are no arrangements between the Borrower or any of its affiliates, principals or agents involving Fortress or any Fortress Representatives whereby Fortress or any Fortress Representative would receive any consideration in respect of or in any way relating to or arising from the Property, the Project or the transactions contemplated by this Settlement Agreement, whether from the Borrower, any lender, broker, assignee, other person or any of their respective affiliates, principals or agents of which the Borrower has knowledge.

8. The Borrower covenants in favour of the Trustee (on behalf of BDMC), Olympia and Computershare, that should the Borrower or any of its affiliates or their respective principals or agents: (a) come into the possession or control of any such consideration described in Subsection 7(d)(iii) above that would otherwise be payable to Fortress or any Fortress Representative, or (b) permit or acquiesce to any such consideration being received by Fortress or any Fortress Representative, such consideration: (i) shall and shall be deemed to be held in trust, separate and apart from such person's other money, instruments, investment property, property or assets, for the benefit of the Trustee until the full amount of the Obligations that would have been payable to BDMC under the Loan Agreement as of the Effective Date of this Settlement Agreement has been paid to the Trustee in full, or (ii) shall be deemed to become an amount that is owed by the Borrower to the Trustee (on behalf of BDMC), as applicable. In each such instance, such person shall immediately inform the Trustee of such fact and take such steps to promptly transfer such consideration to the Trustee and pay any and all such amounts to the Trustee within two (2) Business Days of receipt of same (the "**Turnover Obligation**"). For greater certainty, the Turnover Obligation shall survive the closing of the transactions contemplated by this Settlement Agreement and shall not be affected by the releases contemplated herein.

9. The Trustee (on behalf of BDMC), Olympia and Computershare acknowledge that the Settlement Payment represents the full repayment of the principal and interest amounts owing under the Loan Agreement as at February 28, 2020 (excluding additional accrued interest to the Maturity Date and any amount that could potentially become owing under the Loan Agreement, the Charge, the Personal Property Security, and any other Security). The Trustee (on behalf of BDMC), Olympia and Computershare agree that, as of the Closing Date, they shall be deemed to accept the Settlement Payment, and, if applicable, the Daily Interest and the Late Payment Fee, in full satisfaction of the Obligations, and shall waive any rights to any further payments that may become payable to BDMC, Olympia and/or Computershare under the Loan Agreement, the Charge, the Personal Property Security and any other Security related to the Loan, provided that such agreement and waiver shall not in any way affect the Turnover Obligation under this Settlement Agreement.

10. The Trustee shall use commercially reasonable efforts to seek approval of the Settlement Agreement by way of an order substantially in the form agreed between the Borrower, the Trustee, Olympia and Computershare (which shall, for greater certainty, contain a full release and discharge of all obligations of the Borrower under the Loan Agreement, the Charge, the Personal Property Security and any other Security and a release under any and all other security instruments related to the Loan and include a release of any and all interests or claims that the Trustee (on behalf of BDMC), Olympia, Computershare and the BDMC Individual Lenders, may have in respect of the Project and the Property, provided that such release shall not be effective until the Closing Date as provided herein and shall not in any way affect the Borrower's obligations hereunder) (the "**Order**") issued by the Court. The parties hereto agree that this Settlement Agreement shall not be binding on the Trustee (on behalf of BDMC), Olympia or Computershare until the issuance of the Order, save and except for this Section 10 and Section 11 hereof, which sections shall be binding upon acceptance of this Settlement Agreement by all parties. On the date of the issuance of the Order (the "**Effective Date**"), the Borrower shall be required to pay the Settlement Payment (and, if applicable, the Daily Interest) and issue the Release as contemplated in Sections 3, 4 and 6 herein forthwith. The Release shall not be effective until the Closing Date and the delivery of the Trustee's Certificate (as defined below) to the Borrower.

11. The Deposit shall be refundable to the Borrower if the Effective Date has not occurred, due to no action or fault of the Borrower, Fortress or their respective affiliates, by March 31, 2020, unless otherwise agreed in writing by the parties hereto (the "**Outside Date**"). If the Effective Date has not occurred by the Outside Date due to no action or fault of the Borrower, Fortress or their respective affiliates, the Deposit shall, upon written demand by the Borrower or its solicitors, be refunded to the Borrower, or otherwise as the Borrower may in writing direct, and, upon the refund of the Deposit, this Settlement Agreement shall be deemed terminated and of no further force or effect (in which case the Loan, the Loan Agreement, the Charge and any other related security documentation and any obligation and liability thereunder shall remain unaffected and shall continue in favour of BDMC, Olympia and Computershare in accordance with their terms). The return of the Deposit shall be the Borrower's sole and exclusive remedy in respect of any termination of this Settlement Agreement.

12. The obligations of the Trustee (on behalf of BDMC), Olympia and Computershare contained in this Settlement Agreement, including, without limitation, the obligations set out in Sections 9 and 14 hereto (except for the obligations contained in Sections 10 and 11 hereto, which shall be effective as of the date that the Trustee, Olympia and Computershare execute this

Settlement Agreement) shall be subject to the issuance of a certificate to the Borrower by the Trustee in the form to be attached to the Order (the "**Trustee's Certificate**") and the filing of the Trustee's Certificate with the Court following the satisfaction of the conditions precedent set out in Section 13 herein (the "**Closing Date**").

13. The Trustee shall be required to issue the Trustee's Certificate to the Borrower upon the satisfaction of the following conditions precedent (which conditions may be waived by the Trustee in its sole discretion):

- (a) the Order has been granted by the Court and no material objections (in the sole opinion of the Trustee) were raised by the BDMC Individual Lenders or by any other party at the motion for approval of the Order, or, if any material objection is raised, the appeal periods in respect of the 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;
- (b) the Borrower has paid the Settlement Payment, and, if applicable, the total Daily Interest and the Late Payment Fee payable hereunder, to the Trustee or its counsel, in trust;
- (c) the Borrower has provided the Release to the Releasees;
- (d) the Borrower has certified that all of the representations and warranties contained in this Settlement Agreement continue to be true as of the Closing Date; and
- (e) the Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of this Settlement Agreement.

For greater certainty, the rights and obligations of each party as contained in the Loan Agreement and the security granted to BDMC, Olympia and Computershare (including without limitation the Charge) shall remain effective until the Closing Date.

14. As of the Closing Date: (i) the Borrower, the Trustee (on behalf of BDMC), Olympia and Computershare acknowledge and agree that they shall have no further rights or obligations in connection with the Obligations, the Loan Agreement and all security related thereto and the Loan Agreement and all security related thereto shall be terminated with no further force or effect; (ii) the Borrower shall be permitted to cause any and all security held by BDMC, Olympia and/or Computershare to secure the Obligations to be discharged, including the discharge of the Charge from title to the Property and the discharge of any registrations held by BDMC, Olympia and/or Computershare against the Borrower under the *Personal Property Security Act* (Ontario); (iii) the Borrower shall be permitted to release any interest the Trustee (on behalf of BDMC), Olympia and Computershare may have in any insurance policy(ies) relating to the Property; and (iv) pursuant to the Order, BDMC, Olympia, Computershare and the BDMC Individual Lenders shall be deemed to have released the Borrower and all other parties thereto from all obligations and security provided in connection with the Loan Agreement and such other security and covenants related thereto.

15. The Deposit shall be held by the Trustee's counsel, in trust, pending the completion of the settlement contemplated herein and the delivery of the Trustee Certificate to the Borrower and in

accordance with Section 11 hereof. If the settlement contemplated herein is completed, the Deposit shall be credited against the Settlement Payment. For clarity, the Deposit shall be non-refundable to the Borrower in the event of a default under this Settlement Agreement by the Borrower. In the event that the Trustee has not obtained the Order by the Outside Date, the Deposit may be returned to the Borrower in accordance with Section 11 hereof.

16. In this Settlement Agreement, "**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in Toronto, Ontario.

17. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

18. The parties agree and acknowledge that the terms of this Settlement Agreement may be disclosed to the BDMC Individual Lenders under the Loan and shall be included in the motion materials for approval of the Settlement Agreement, provided that such terms may be provided to the Court on a confidential basis and subject to a request for a sealing order at the Trustee's discretion.

19. Each party confirms it has received independent legal advice relating to this Settlement Agreement, and that it has voluntarily entered into this Settlement Agreement with the benefit of such advice for the purpose of making a full and final settlement of amounts outstanding under the Loan through this Settlement Agreement.

20. This Settlement Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings, representations and understandings between the parties. This Settlement Agreement shall further enure to the benefit of and be binding upon the parties and their respective successors, representatives and assigns.

21. This Settlement Agreement may be executed by the parties in counterparts, and may be executed and delivered by facsimile, PDF or e-mail and all the counterparts and facsimiles shall together constitute one and the same agreement.

22. This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada therein, and any dispute arising from this Settlement Agreement must be adjudicated before the Ontario Superior Court of Justice.

[Remainder of page intentionally left blank]

IN WITNESS OF WHICH the parties have duly executed this Agreement as of the date indicated above.

LAMB BAUHAUS INC.

By: _____

Name: BRAD J. LAMB

Title: PRESIDENT + OWNER

**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: Navdeep Z. Mann 2008

Title: President

OLYMPIA TRUST COMPANY

By: _____

Name:

Title:

**COMPUTERSHARE TRUST COMPANY
OF CANADA**

By: _____

Name:

Title:

TAB C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 28TH
)
JUSTICE HAINEY) DAY OF FEBRUARY, 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**

BAUHAUS 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 14,

Draft

2020 (the “**Bauhaus Settlement Agreement**”) among Lamb Bauhaus Inc. (the “**Borrower**”), the Trustee, Olympia Trust Company (“**OTC**”) and Computershare Trust Company of Canada (“**Computershare**”); (ii) ordering the Borrower to pay \$6,734,797.68 (the “**Settlement Payment**”) and, if applicable, the Late Payment Fee and the total Daily Interest (each as defined in the Bauhaus Settlement Agreement) to the Trustee pursuant to the Bauhaus Settlement Agreement; (iii) ordering the Borrower, the Trustee, OTC and Computershare to comply with the Bauhaus 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 Bauhaus Realized Property to Bauhaus Individual Lenders (each as defined below), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Fifteenth Report of the Trustee dated February 24, 2020 (the “**Fifteenth 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 ● sworn February ●, 2020, filed;

SERVICE AND INTERPRETATION

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

APPROVAL OF THE BAUHAUS SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Bauhaus Settlement Agreement be and is hereby approved in its entirety, including without limitation, the Daily Interest and the Late Payment Fee as contemplated by Sections 4 and 5 thereof, if any, with such minor amendments as the Trustee and the other parties to the Bauhaus 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 Bauhaus Settlement Agreement (such funds, the “**Bauhaus Realized Property**”); and (iii) the execution of the Bauhaus Settlement Agreement by the Trustee, OTC and Computershare is hereby ratified and approved, and the Trustee, OTC and Computershare are hereby authorized and directed to comply with all of their obligations under the Bauhaus 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. (“**BDMC**”), OTC, Computershare and the individual lenders (the “**Bauhaus Individual Lenders**”) under the Loan Agreement dated August 15, 2016 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 “**Bauhaus Loan Obligations**”) and all security interests granted to BDMC, OTC, Computershare or the Bauhaus Individual Lenders in and to the assets of the Borrower to secure the Bauhaus Loan Obligations and related registrations on title, including the Charge (as defined in the Bauhaus Settlement Agreement) (the “**Loan Encumbrances**”) are hereby released, waived, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC, Computershare or any Bauhaus Individual Lender shall have any claim against the Borrower in respect of the Bauhaus Loan Obligations or the Loan Encumbrances; provided, however, that the Borrower shall not be released from any obligations under the Bauhaus Settlement Agreement, and (ii) nothing shall affect the Turnover Obligation (as defined in the Bauhaus 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 Bauhaus 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

Bauhaus Individual Lenders' rights and claims under the Loan Agreement and related security shall attach to the Bauhaus Realized Property and shall have the same nature and priority as they had prior to the consummation of the Bauhaus 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, Computershare, and each Bauhaus Individual Lender who loaned funds through BDMC, OTC or Computershare 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 Bauhaus Individual Lenders in an amount equal to 85% of the Bauhaus Realized Property, *pro rata* to the Bauhaus 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

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.

Schedule “A” – Form of Trustee’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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**

TRUSTEE’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Haaney 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 February [28], 2020 (the “**Bauhaus Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement dated as of February 14, 2020 (the “**Bauhaus Settlement Agreement**”) among Lamb Bauhaus Inc. (the “**Borrower**”), the Trustee, Olympia Trust Company (“**OTC**”) and Computershare Trust Company of Canada (“**Computershare**”) and ordered that all of the Borrower’s obligations to BDMC, OTC,

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Computershare, and the individual lenders (“**Bauhaus Individual Lenders**”) under the Loan Agreement dated as of August 15, 2016 (as amended and/or supplemented, the “**Loan Agreement**”), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Bauhaus Loan Obligations**”) and all security interests granted to BDMC, OTC, Computershare or the Bauhaus Individual Lenders in and to the assets of the Borrower to secure the Bauhaus Loan Obligations (the “**Loan Encumbrances**”) are hereby released, waived, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC, Computershare or any Bauhaus Individual Lender shall have any claim against the Borrower in respect of the Bauhaus Loan Obligations or the Loan Encumbrances, provided, however, that: (a) the Borrower shall not be released from any obligations under the Bauhaus Settlement Agreement, (b) nothing shall affect the Turnover Obligation (as defined in the Bauhaus Settlement Agreement), and (c) that the release of the Bauhaus 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 \$6,734,797.68 to the Trustee (on behalf of BDMC) by the Borrower in accordance with the terms of the Bauhaus Settlement Agreement; (ii) that the conditions precedent to the Bauhaus 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 Bauhaus Settlement Agreement.

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

THE TRUSTEE CERTIFIES the following:

1. The Borrower has paid, and the Trustee has received, the Settlement Payment, the Daily Interest and the Late Payment Fee (each as defined in the Bauhaus Settlement Agreement), if any, pursuant to the Bauhaus 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 Bauhaus 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 Bauhaus Settlement Agreement;

5. The other conditions set out in the Bauhaus Settlement Agreement have been satisfied or waived by the Trustee (except for the Turnover Obligation (as defined in the Bauhaus 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:

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Schedule “B” – Real Property

PIN 21091-0223 (LT)

PT STOYELL'S BLOCK PLAN 7A (PL TOWN OF YORK) TORONTO (ALSO KNOWN AS TOWN LOTS 2 & 3 N/S KING ST & TOWN LOTS 2 & 3 S/S DUKE ST) AS IN CA7169; CITY OF TORONTO; TOGETHER WITH AN EASEMENT OVER PART BLOCK PLAN D-126, PART OF TOWN LOTS 2 & 3 S/S ADELAIDE STREET TOWN OF YORK TORONTO, PART 1 66R30368 AS IN AT5192392

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Schedule “C” – Loan Encumbrances

1. Instrument No. AT4485812 registered February 13, 2017 being a Charge in favour of Building & Development Mortgages Canada Inc. (“**BDMC**”) to secure the original principal amount of \$6,700,000 (the “**BDMC Charge**”).
2. Instrument No. AT4494266 registered February 24, 2017 being a Transfer of the BDMC Charge to BDMC and Olympia Trust Company (“**OTC**”).
3. Instrument No. AT4496357 registered February 27, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
4. Instrument No. AT4519118 registered March 24, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
5. Instrument No. AT4541514 registered April 20, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
6. Instrument No. AT4579727 registered May 29, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
7. Instrument No. AT4606094 registered June 23, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
8. Instrument No. AT4634600 registered July 24, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
9. Instrument No. AT4728018 registered November 8, 2017 being a Notice of Agreement Amending the BDMC Charge to secure the principal sum of \$6,160,000.
10. Instrument No. AT4728019 registered November 8, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
11. Instrument No. AT4732566 registered November 15, 2017 being a Transfer of the BDMC Charge to BDMC, OTC and Computershare Trust Company of Canada (“**CTCC**”).
12. Instrument No. AT4738223 registered November 21, 2017 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.
13. Instrument No. AT4744686 registered November 29, 2017 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.
14. Instrument No. AT4753971 registered December 7, 2017 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.
15. Instrument No. AT4764843 registered December 20, 2017 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.

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16. Instrument No. AT4771834 registered January 3, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.
17. Instrument No. AT4775063 registered January 8, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.
18. Instrument No. AT4784015 registered January 19, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.
19. Instrument No. AT4794764 registered February 1, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.
20. Instrument No. AT5258346 registered October 8, 2019 being a Postponement of the BDMC Charge to a Charge registered as Instrument No. AT5258274 in favour of Firm Capital Mortgage Fund Inc.

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”)

AND TO: Computershare Trust Company of Canada (“Computershare”)

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

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated as of August 15, 2016 (as amended and/or supplemented, the “**Loan Agreement**”) between Lamb Bauhaus Inc. (the “**Borrower**”) and Building & Development Mortgages Canada 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 14, 2020 among the Borrower, the Trustee, OTC and Computershare (the “**Bauhaus Settlement Agreement**”).

1. The Borrower hereby certifies that all of its representations and warranties contained in the Bauhaus 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 Bauhaus Settlement Agreement.
2. The Borrower has paid the Trustee (on behalf of BDMC) \$6,734,797.68 (being the Settlement Payment) and, if applicable, any Late Payment Fee and the total Daily Interest payable pursuant to the Bauhaus 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 and the total Daily Interest, 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, Computershare and each lender or investor who loaned funds through BDMC, OTC or Computershare 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

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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 Bauhaus 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,

LAMB BAUHAUS 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:

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Draft

OLYMPIA TRUST COMPANY

By:

Name:

Title:

**COMPUTERSHARE TRUST
COMPANY OF CANADA**

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

BAUHAUS SETTLEMENT APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.

Draft

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

**MOTION RECORD OF FAAN MORTGAGE
ADMINISTRATORS INC., IN ITS CAPACITY
AS COURT-APPOINTED TRUSTEE**

**(BAUHAUS SETTLEMENT
APPROVAL ORDER)**

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)

Jeremy Dacks (LSUC# 41851R)

Tel: (416) 362-2111

Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.