

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

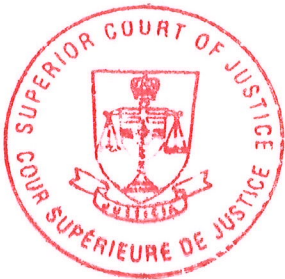
THE HONOURABLE MR.)

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,

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 Jake Schmidt sworn February 25, 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.

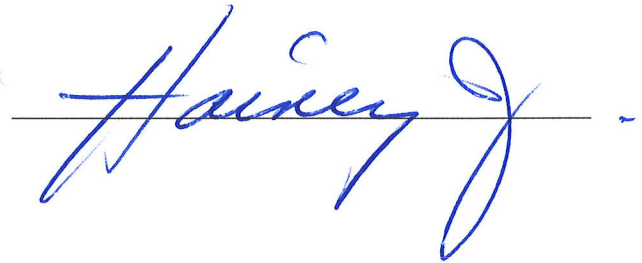
REALIZED PROPERTY

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.



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

FEB 28 2020

PER / PAR:



Schedule “A” – Form of Trustee’s Certificate

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

**ONTARIO
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THE SUPERINTENDENT OF FINANCIAL SERVICES

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**APPLICATION UNDER SECTION 37 OF THE
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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 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,

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:

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

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.

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

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:

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

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