

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

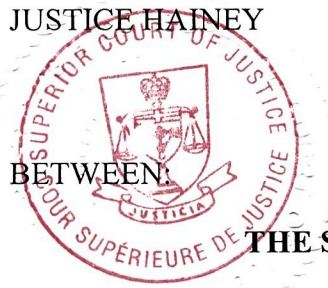
THE HONOURABLE MR. )

WEDNESDAY, THE 11<sup>TH</sup>

JUSTICE HAINES )

DAY OF SEPTEMBER, 2019

BETWEEN



**THE SUPERINTENDENT OF FINANCIAL SERVICES**

**Applicant**

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

**Respondent**

**APPLICATION UNDER SECTION 37 OF THE  
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,  
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

**HUMBERSTONE 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 August 23, 2019 (the “**Humberstone Settlement Agreement**”) among Worthington Homes (Humberstone) Inc. (the “**Borrower**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering the Borrower to pay the Settlement Payments, the Late Payment Fees, and the Expense Reimbursement (as each such term is defined in the Humberstone Settlement Agreement), as applicable, to the Trustee pursuant to the Humberstone Settlement Agreement; (iii) ordering the Borrower, the Trustee and OTC to comply with the Humberstone Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below), make certain distributions of Humberstone Realized Property to Humberstone Individual Lenders (each as defined below), was heard this day at 330 University Avenue, Toronto, Ontario;

**ON READING** the Tenth Report of the Trustee dated September 4, 2019 (the “**Tenth 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 Sean Stidwill sworn September 4, 2019, filed;

#### **SERVICE AND INTERPRETATION**

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

#### **APPROVAL OF THE HUMBERSTONE SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (i) the Humberstone Settlement Agreement be and is hereby approved in its entirety, including without limitation the Late Payment Fees and Expense Reimbursement contemplated by Sections 6 and 7 thereof, respectively, with such minor amendments as the Trustee and the other parties to the Humberstone Settlement Agreement may

agree upon to permit the completion of the transactions contemplated thereby; (ii) the Borrower is hereby directed to pay \$1,750,000 forthwith upon the closing of the MZ Financing Transaction (as defined in the Humberstone Settlement Agreement) to the Trustee in accordance with the terms of the Humberstone Settlement Agreement; (iii) the Borrower is hereby directed to pay the Second Settlement Payment amount forthwith to the Trustee upon the Residential Sale Completion Date, Construction Financing Date, or Alternative Payment Date, as applicable, in accordance with the terms of the Humberstone Settlement Agreement (such funds received under paragraphs 3(ii) and 3(iii) together, the “**Humberstone Realized Property**”), and (iv) the execution of the Humberstone 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 Humberstone 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**”), all of the Borrower’s obligations to Building & Development Mortgages Canada Inc. (“**BDMC**”), OTC, and the individual lenders (the “**Humberstone Individual Lenders**”) under the Loan Agreement dated December 1, 2015 between BDMC and the Borrower (as amended, the “**Loan Agreement**”), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Humberstone Loan Obligations**”) and all security interests granted to BDMC, OTC or the Humberstone Individual Lenders in and to the assets of the Borrower to secure the Humberstone 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 Humberstone Individual Lender shall have any claim against the Borrower in respect of the Humberstone Loan Obligations or the Loan Encumbrances; provided that, notwithstanding the foregoing, the releases, discharges, and other matters contained or described in this paragraph shall not in any way affect the Borrower’s obligations under, or any rights acquired by the Trustee in connection with, the Humberstone Settlement Agreement, including the Borrower’s obligation to make the Second Settlement Payment, including any Late Payment Fee related thereto, and to deliver the Security (as defined in the Humberstone Settlement Agreement) to the Trustee in accordance with the terms thereof.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the Humberstone 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 Humberstone Individual Lenders' rights and claims under the Loan Agreement, the Security (as defined in the Loan Agreement) and the Loan Documents shall attach to the Humberstone Realized Property and shall have the same nature and priority as they had prior to the consummation of the Humberstone 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 Halton (#20) 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.
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 Humberstone Individual Lender who loaned funds through BDMC or OTC to the Borrower pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "**Releasees**") by the Borrower on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the "**Releasers**") shall be binding and effective on the Releasers in favour of the Releasees.
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, with respect to the First Settlement Payment, upon the delivery of the Trustee's Certificate, and with respect to the Second Settlement Payment, upon receipt by the Trustee of such funds, the Trustee shall make a distribution to Humberstone Individual Lenders in an amount equal to 85% of such Humberstone Realized Property, *pro rata* to the Humberstone 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**

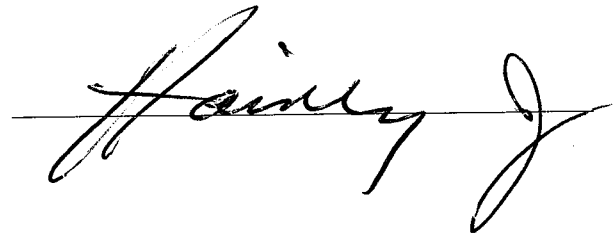
10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, 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 A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

SEP 11 2019

PER / PAR: 



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 Hainey of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (the "**Trustee**") of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. ("**BDMC**").

B. Pursuant to an Order of the Court made on September 11, 2019 (the "**Humberstone Settlement Approval Order**"), the Court approved and ratified the Settlement Agreement dated as of August 23, 2019 (the "**Humberstone Settlement Agreement**") among Worthington Homes (Humberstone) Inc. (the "**Borrower**"), the Trustee and Olympia Trust Company ("**OTC**") and ordered that all of the Borrower's obligations to BDMC, OTC, and the individual

lenders (“**Humberstone Individual Lenders**”) under the Loan Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Humberstone Loan Obligations**”) and all security interests granted to BDMC, OTC or the Humberstone Individual Lenders in and to the assets of the Borrower to secure the Humberstone Loan Obligations (the “**Loan Encumbrances**”) to be released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Humberstone Individual Lender shall have any claim against the Borrower in respect of the Humberstone Loan Obligations or the Loan Encumbrances (provided that, notwithstanding the foregoing, such releases shall not in any way affect the Borrower’s obligations under, or any rights acquired by the Trustee in connection with, the Humberstone Settlement Agreement, including the Borrower’s obligation to make the Second Settlement Payment, including any Late Payment Fee related thereto, and to deliver the Security (as defined in the Humberstone Settlement Agreement) to the Trustee), and that the release of the Humberstone Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to the Borrower of a certificate confirming (i) the payment of \$1,750,000 to the Trustee by the Borrower; and (ii) that the conditions precedent to the Humberstone Settlement Agreement as set out in Section 14 of the Humberstone Settlement Agreement have been satisfied or waived by the Trustee.

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

THE TRUSTEE CERTIFIES the following:

1. The MZ Financing Transaction has closed;
2. The Security (as defined in the Humberstone Settlement Agreement) has been executed by the Borrower and delivered to the Trustee, on behalf of BDMC, and duly registered in all applicable offices on terms and conditions satisfactory to the Trustee in its sole discretion;
3. the Trustee and MarshallZehr have entered into an agreement, among other things, appointing MarshallZehr as administrator of the Security (as defined in the Humberstone Settlement Agreement) on behalf of the Trustee (the “**Mortgage Servicing Agreement**”) on terms and conditions satisfactory to the Trustee;
4. the Trustee, MarshallZehr, and Borrower, as applicable, have entered into or delivered such additional documents, instruments, assignments, and assurances as the Trustee

reasonably requires in connection with the Security (as defined in the Humberstone Settlement Agreement) and the Mortgage Servicing Agreement to effect the transactions contemplated thereby and by the Humberstone Settlement Agreement in accordance with their true intent;

5. The Order has been granted by the Court and no material objections (in the sole opinion of the Trustee) were raised by individual lenders or by any other part 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;
6. The Borrower has paid, and the Trustee has received, \$1,750,000 pursuant to the Humberstone Settlement Agreement on or before November 25, 2019;
7. The Borrower has provided the Release Agreement to the Releasees;
8. The Borrower has certified that all of the representations and warranties contained in the Humberstone Settlement Agreement continue to be true as of the Effective Date; and
9. The Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Humberstone Settlement Agreement.

This Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FAAN Mortgage Administrators Inc., solely  
in its capacity as Court-appointed Trustee of  
the assets, undertakings, and properties of  
Building & Development Mortgages Canada  
Inc., and in no other capacity**

Per: \_\_\_\_\_

Name:

Title:



**Schedule "B" – Real Property**

PIN 25032-1190 (LT)

PT LT 18, CON 8 ESQ; PARTS 1 & 2 PLAN 20R21345

### Schedule "C" – Loan Encumbrances

1. Instrument No. HR1359683 registered December May 26, 2016 being a Charge in favour of Building & Development Mortgages Canada Inc. to secure the original principal amount of \$4,735,000.
2. Instrument No. HR1359684 registered May 26, 2016 being a Postponement of the Charge registered as Instrument No. HR1324709 to the Charge registered as Instrument No. HR1359683.
3. Instrument No. HR1359689 registered May 26, 2016 being a Transfer of Charge registered as Instrument No. HR1359683 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
4. Instrument No. HR1360453 registered May 30, 2016 being a Transfer of Charge registered as Instrument No. HR1359683 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
5. Instrument No. HR1361442 registered June 1, 2016 being a Postponement of the Charge registered as Instrument No. HR1359683 to a Charge registered as Instrument No. HR1324710.
6. Instrument No. HR1365600 registered June 16, 2016 being a Transfer of Charge registered as Instrument No. HR1359683 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
7. Instrument No. HR1374970 registered July 18, 2016 being a Transfer of Charge registered as Instrument No. HR1359683 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
8. Instrument No. HR1394974 registered September 22, 2016 being a Land Registrar's Order to amend the parcel register correcting the remarks for Instrument No. HR1359684.
9. Instrument No. HR1402918 registered October 19, 2016 being a Notice of Agreement Amending Charge registered as Instrument No. HR1359683.
10. Instrument No. HR1402919 registered October 19, 2016 being a Transfer of Charge registered as Instrument No. HR1359683 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
11. Instrument No. HR1549121 registered June 14, 2018 being a Postponement of the Charge registered as Instrument No. HR1359683 to the Charge registered as Instrument No. HR1549120.
12. Instrument No. HR1639581 registered July 30, 2019 being a Postponement of the Charge registered as Instrument No. HR1359683 to the Charge registered as Instrument No. HR1639580.

## Schedule "D" – Release Agreement

[DATE]

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

AND TO: Olympia Trust Company ("OTC")

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

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated December 1, 2015 (the "Loan Agreement") between Worthington Homes (Humberstone) Inc. (the "Borrower") 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 August 23, 2019 among the Borrower, the Trustee and OTC (the "Settlement Agreement").

1. The Borrower hereby certifies that all of its representations and warranties contained in the Settlement Agreement are true and accurate in all material respects as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Settlement Agreement.
2. The Borrower has paid the Trustee \$1,750,000 pursuant to the Settlement Agreement and waives, and shall not assert, any right of set-off or any other defence to the payment of the Settlement Payments, the Expense Reimbursement, and the Late Payment Fees, as applicable (each such term as defined in the Settlement Agreement).
3. In consideration of the acceptance of \$1,750,000 in full and final satisfaction of Obligations (which, for greater certainty, does not include or affect the obligation to make the Second Settlement Payment (as defined in the Settlement Agreement), any Late Payment Fee related thereto, to deliver the Security (as defined in the Settlement Agreement) to the Trustee, or any of the rights acquired by the Trustee in connection the Settlement Agreement and the Mortgage Servicing Agreement) payable to BDMC by the Borrower under the Loan Agreement, which are in excess of \$5,959,182, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower (on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) (collectively, the "Releasers") hereby releases, discharges and acquits the Trustee, BDMC, OTC, and each lender or investor who loaned funds through BDMC or OTC to the Borrower pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "Releasees") from any and all

claims, demands, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any 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,

**WORTHINGTON HOMES  
(HUMBERSTONE) 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

**HUMBERSTONE 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.