

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.
JUSTICE HAINES

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TUESDAY, THE 22ND
DAY OF SEPTEMBER, 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**

**ORDER
(Orchard Discharge Approval)**

THIS MOTION, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the "Trustee"), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. 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)

confirming and approving the Trustee discharging the mortgages registered as instrument numbers 141 112 373 and 161 293 854 with the Alberta Land Titles Office, together with any related instruments and personal property security registrations (collectively, the “**Orchard Discharges**”), in connection with the Orchard Sale Transaction (as defined in the Nineteenth Report (as defined below)) upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the BDMC Discharge Payment in accordance with the terms of this Order, and to take any other steps necessary to facilitate the closing of the Orchard Sale Transaction, in its sole discretion, (ii) authorizing the Trustee to make a distribution of an amount equal to 85% of the Orchard Realized Property (as defined below) to the Orchard Individual Lenders (as defined in the Nineteenth Report) *pari passu* to the Orchard Individual Lenders entitled to such funds, (iii) sealing Confidential Appendix “1” to the Nineteenth Report, and (iv) approving the Nineteenth Report and the activities of the Trustee set out therein, was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Nineteenth Report of the Trustee dated September 15, 2020 (the “**Nineteenth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, 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 17, 2020, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, and the Nineteenth 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 Nineteenth Report.

ORCHARD DISCHARGES

3. **THIS COURT ORDERS** that execution and delivery by the Trustee, on behalf of BDMC, and Olympia Trust Company of the Orchard Discharges to Lamb Calgary Inc. or its counsel in

connection with the Orchard Sale Transaction upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the BDMC Discharge Payment is hereby approved, and that the Trustee and Olympia Trust Company are authorized to take any other steps necessary to facilitate the closing of the Orchard Sale Transaction, in their sole discretion, and further confirms that the Trustee is permitted to take any of the foregoing actions or steps pursuant to the Order of this Court dated April 20, 2018.

4. **THIS COURT ORDERS** that Lamb Calgary Inc. shall make the BDMC Discharge Payment to the Trustee, on behalf of BDMC, concurrently with or, if concurrent payment is not possible, as soon as is practicable following the closing of the Orchard Sale Transaction.

ORCHARD REALIZED PROPERTY

5. **THIS COURT ORDERS** that upon receipt by the Trustee, on behalf of BDMC, of the BDMC Discharge Payment, such funds are and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Orchard Realized Property**").

6. **THIS COURT ORDERS** that, as soon as is practicable upon receipt of the Orchard Realized Property, the Trustee shall make a distribution to the Orchard Individual Lenders in an amount equal to 85% of the Orchard Realized Property, *pari passu* to the Orchard 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.

SEALING

7. **THIS COURT ORDERS** that Confidential Appendix "1" of the Nineteenth Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

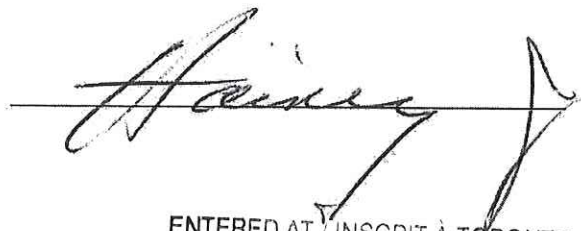
APPROVAL OF NINETEENTH REPORT AND ACTIVITIES

8. **THIS COURT ORDERS** that the Nineteenth Report and the Trustee's activities described therein are hereby approved.

AID AND RECOGNITION OF FOREIGN COURTS

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.



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

SEP 23 2020

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

**ORDER
(Orchard Discharge Approval)**

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