

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

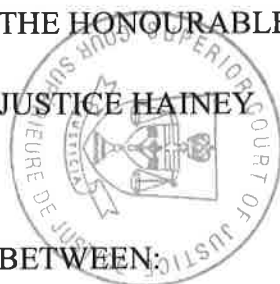
THE HONOURABLE MR. )

THURSDAY, THE 23<sup>RD</sup>

JUSTICE HAINEY )

DAY OF MAY, 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***

**CRESTVIEW 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 May 6, 2019 (the “**Crestview Settlement Agreement**”) among Carlyle Communities (Crestview) Inc. (the “**Borrower**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering the Borrower to pay \$4,475,000 to the Trustee pursuant to the Crestview Settlement Agreement; (iii) ordering the Borrower, the Trustee and OTC to comply with the Crestview Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below), make a distribution of Crestview Realized Property to Crestview Individual Lenders (each as defined below), was heard this day at 330 University Avenue, Toronto, Ontario;

**ON READING** the Eighth Report of the Trustee dated May 17, 2019 (the “**Eighth 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 May 21, 2019, filed;

#### **SERVICE AND INTERPRETATION**

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

#### **APPROVAL OF THE CRESTVIEW SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (i) the Crestview Settlement Agreement be and is hereby approved in its entirety, with such minor amendments as the Trustee and the other parties to the Crestview Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) the Borrower is hereby directed to pay \$4,475,000 forthwith to the Trustee in accordance with the terms of the Crestview Settlement Agreement (such funds the “**Crestview Realized Property**”); and (iii) the execution of the Crestview 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 Crestview 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 "**Crestview Individual Lenders**") under the Loan Agreement dated October 18, 2013 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 "**Crestview Loan Obligations**") and all security interests granted to BDMC, OTC or the Crestview Individual Lenders in and to the assets of the Borrower to secure the Crestview 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 Crestview Individual Lender shall have any claim against the Borrower in respect of the Crestview Loan Obligations or the Loan Encumbrances; provided, however, that the Borrower shall not be released from any obligations under the Crestview Settlement Agreement.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the Crestview 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 Crestview Individual Lenders' rights and claims under the Loan Agreement, the Security and the Loan Documents shall attach to the Crestview Realized Property and shall have the same nature and priority as they had prior to the consummation of the Crestview 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 Peel (#43) 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 Crestview 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**

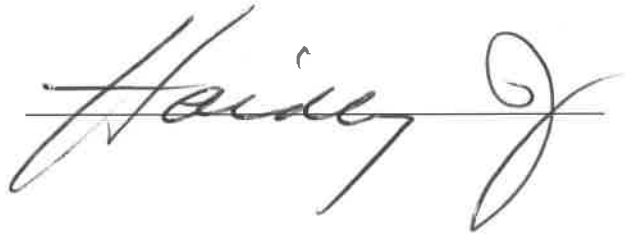
9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the Trustee shall make a distribution to Crestview Individual Lenders in an amount equal to 85% of the Crestview Realized Property, *pro rata* to the Crestview Individual Lenders entitled to such funds, in accordance with paragraph 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,

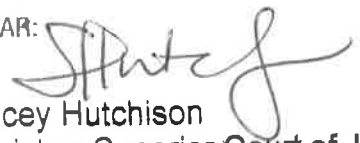
for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

A large, stylized handwritten signature in black ink, appearing to read "Haidy J".

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

MAY 23 2019

PER / PAR:

A handwritten signature in black ink, appearing to read "Stacey Hutchison".

Stacey Hutchison  
Registrar Superior Court of Justice

**Schedule “A” – Form of Trustee’s Certificate**

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

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- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**

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**APPLICATION UNDER SECTION 37 OF THE  
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**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 May 23, 2019 (the “**Crestview Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement dated as of May 6, 2019 (the “**Crestview Settlement Agreement**”) among Carlyle Communities (Crestview) 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 (“**Crestview Individual**

**Lenders**”) under the Loan Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Crestview Loan Obligations**”) and all security interests granted to BDMC, OTC or the Crestview Individual Lenders in and to the assets of the Borrower to secure the Crestview Loan Obligations (the “**Loan Encumbrances**”) are hereby released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Crestview Individual Lender shall have any claim against the Borrower in respect of the Crestview Loan Obligations or the Loan Encumbrances; provided, however, that the Borrower shall not be released from any obligations under the Crestview Settlement Agreement; and that the release of the Crestview 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 \$4,475,000 to the Trustee by the Borrower; (ii) that the conditions precedent to the Crestview Settlement Agreement as set out in section 9 of the Crestview 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 Crestview Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. The Borrower has paid and the Trustee has received \$4,475,000 pursuant to the Crestview 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 Crestview Settlement Agreement continue to be true as of the Effective Date;
4. The Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Crestview Settlement Agreement;
5. The other conditions set out in the Crestview 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 assets, undertakings, and properties of  
Building & Development Mortgages Canada  
Inc., and in no other capacity**

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

Name:

Title:



**Schedule "B" – Real Property**

PIN 13469-0348 (LT)

LOTS 89 90 & PART LOTS 91 & 92, PLAN 409, PART 1, 43R38042; CITY OF  
MISSISSAUGA

### **Schedule "C" – Loan Encumbrances**

1. Instrument No. PR2477314 registered December 13, 2013 being a Charge in favour of Centro Mortgage Inc. to secure the original principal amount of \$3,025,000.
2. Instrument No. PR2478725 registered December 18, 2013 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
3. Instrument No. PR2480002 registered December 19, 2013 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
4. Instrument No. PR2489724 registered January 20, 2014 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
5. Instrument No. PR2497095 registered February 7, 2014 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
6. Instrument No. PR2528499 registered April 30, 2014 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
7. Instrument No. PR2543006 registered June 2, 2014 being a Notice of Agreement Amending Charge registered as Instrument No. PR2477314.
8. Instrument No. PR2544046 registered June 3, 2014 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
9. Instrument No. PR2559484 registered July 3, 2014 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
10. Instrument No. PR2588673 registered August 26, 2014 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
11. Instrument No. PR2647039 registered December 12, 2014 being a Notice of Agreement Amending Charge registered as Instrument No. PR2477314.
12. Instrument No. PR2704864 registered April 30, 2015 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
13. Instrument No. PR2724434 registered June 5, 2015 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.

14. Instrument No. PR2737461 registered June 29, 2015 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
15. Instrument No. PR2786908 registered September 16, 2015 being a Notice of Agreement Amending Charge registered as Instrument No. PR2477314.
16. Instrument No. PR2822399 registered November 16, 2015 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company.
17. Instrument No. PR2826958 registered November 24, 2015 being a Transfer of Charge registered as Instrument No. PR2477314 to Centro Mortgage Inc. and Olympia Trust Company. Centro Mortgage Inc. name changed to Building & Development Mortgages Canada Inc. by Application to Change Name – Instrument registered as Instrument No. PR2863141 on February 3, 2016.
18. Instrument No. PR2876721 registered March 2, 2016 being a Notice of Agreement Amending Charge registered as Instrument No. PR2477314.
19. Instrument No. PR2877447 registered March 3, 2016 being a Transfer of Charge registered as Instrument No. PR2477314 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
20. Instrument No. PR2889079 registered March 30, 2016 being a Transfer of Charge registered as Instrument No. PR2477314 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
21. Instrument No. PR2905951 registered April 29, 2016 being a Notice of Agreement Amending Charge registered as Instrument No. PR2477314.
22. Instrument No. PR2905952 registered April 29, 2016 being a Transfer of Charge registered as Instrument No. PR2477314 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
23. Instrument No. PR2927105 registered June 8, 2016 being a Transfer of Charge registered as Instrument No. PR2477314 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
24. Instrument No. PR2961005 registered August 2, 2016 being a Transfer of Charge registered as Instrument No. PR2477314 to Building & Development Mortgages Canada Inc. and Olympia Trust Company.
25. Instrument No. PR3177161 registered August 2, 2017 being a Postponement of the Charge registered as Instrument No. PR2477314 to the Charge registered as Instrument No. PR3177155 in favour of Aviva Insurance Company of Canada.

## 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 Crestview Settlement Agreement**

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated October 18, 2013 (the "Loan Agreement") between Carlyle Communities (Crestview) 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 May 6, 2019 among the Borrower, the Trustee and OTC (the "Settlement Agreement").

1. The Borrower 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. The Borrower has paid the Trustee \$4,475,000 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$4,475,000 in full and final satisfaction of Obligations payable to BDMC by the Borrower under the Loan Agreement in excess of \$8,124,455 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 "Releasors") 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,

**CARLYLE COMMUNITIES  
(CRESTVIEW) 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

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

Proceedings commenced at Toronto

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**CRESTVIEW SETTLEMENT APPROVAL ORDER**

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**OSLER, HOSKIN & HARCOURT LLP**  
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Michael De Lellis (LSUC# 48038U)  
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Lawyers for FAAN Mortgage Administrators Inc.,  
in its capacity as Court-appointed Trustee of  
Building & Development Mortgages Canada Inc.