

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

BETWEEN

THE LAW SOCIETY OF ONTARIO

Applicant

- and -

DEREK SORRENTI AND SORRENTI LAW PROFESSIONAL CORPORATION

Respondents

**APPLICATION UNDER
SECTION 49.47 OF THE LAW SOCIETY ACT, R.S.O. 1990. C. L.8
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C. 43**

FIRST REPORT OF THE TRUSTEE

JANUARY 22, 2020



FAAN Mortgage Administrators Inc.
Court-Appointed Trustee of the
Respondents in respect of the Syndicated
Mortgage Loan Administration Business

TABLE OF CONTENTS

INTRODUCTION 1
PURPOSE OF THE FIRST REPORT 4
SCOPE AND TERMS OF REFERENCE 7
OVERVIEW OF THE GOTHAM LOAN OBLIGATIONS..... 8
BACKGROUND AND CURRENT STATUS OF THE GOTHAM PROJECT 8
OFFER AND FEEDBACK REQUEST 9
GOTHAM SETTLEMENT AGREEMENT..... 12
CONCLUSION AND RECOMMENDATION 14

INDEX OF APPENDICES

Appendix 1	Appointment Order dated September 30, 2019
Appendix 2	Affidavit of Nadia Musclow sworn on September 30, 2019 (without exhibits)
Appendix 3	Gotham Feedback Request dated January 7, 2020
Appendix 4	Offer and Gotham Settlement Agreement

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN

THE LAW SOCIETY OF ONTARIO

Applicant

- and -

DEREK SORRENTI AND SORRENTI LAW PROFESSIONAL CORPORATION

Respondents

APPLICATION UNDER
SECTION 49.47 OF THE *LAW SOCIETY ACT*, R.S.O. 1990. C. L.8 AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C. 43

FIRST REPORT OF THE TRUSTEE

January 22, 2020

INTRODUCTION

1. On September 30, 2019, pursuant to an order ("**Appointment Order**") of the Honourable Mr. Justice Hailey 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 in the possession, power or control of Derek Sorrenti or Sorrenti Law Professional Corporation (collectively, "**Sorrenti**") relating to Sorrenti's trusteeship and administration of syndicated mortgage loans ("**Sorrenti SMLs**") in projects affiliated with Fortress Real Developments Inc. ("**FRDI**") and all of its direct or indirect affiliates, and any entity under common control with FRDI (collectively, "**Fortress**") ("**SML Administration Business**"), including, without limitation, all of the assets in the possession or under the control of Sorrenti, its counsel (if any), agents and/or assignees relating to the SML Administration Business but held on behalf of any other party, including, but not limited to, lenders under any Sorrenti SML ("**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 referred to as “**Property**”). The Trustee’s appointment resulted from an application made by the Law Society of Ontario (“**LSO**”) under Section 49.47 of the *Law Society Act, R.S.O. 1990. c. L.8*, as amended (“**Law Society Act**”), and section 101 of the *Courts of Justice Act, R.S.O. 1990, C. C. 4, as amended*. Mr. Sorrenti consented to the Trustee’s appointment. A copy of the Appointment Order is attached as **Appendix “1”**.

2. In addition to appointing the Trustee, the Appointment Order, *inter alia*:
 - (a) empowered and authorized the Trustee to, among other things:
 - (i) take possession and control of the Property and all proceeds, receipts and disbursements arising out of or from the Property;
 - (ii) receive, preserve, protect and maintain control of the Property, including but not limited to, the holding of mortgage security in trust and administering of the mortgages;
 - (iii) manage, operate, and carry on the SML Administration Business;
 - (iv) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time to assist with the exercise of the Trustee’s powers and duties;
 - (v) receive and collect all monies and amounts now owed or hereafter owing to Sorrenti in connection with the SML Administration Business and to exercise all remedies of Sorrenti in collecting such monies;
 - (vi) settle, extend or compromise any indebtedness owing to Sorrenti in connection with the SML Administration Business;
 - (vii) 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;

- (viii) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business; and
 - (ix) restructure the Property in a manner that the Trustee consider reasonable;
- (b) appointed Chaitons LLP as representative counsel ("**Representative Counsel**") to represent the collective interests of the Investors under the Sorrenti SMLs;
- (c) established certain interim stabilization measures that require the Trustee to:
 - (i) hold, until further Order of the Court, in a separate account all: (1) funds from the SML Administration Business that were in Sorrenti's possession, or that may come into Sorrenti or the Trustee's possession, in each case as a result of a repayment (in whole or in part) of principal on any Sorrenti SML, whether or not (i) secured by any real property charges, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (2) all interest paid or payable to Sorrenti or the Trustee in connection with the SML Administration Business at the time such repayment (in whole or in part) of principal is made (collectively "**Realized Property**") and report to the Court with a recommendation regarding next steps with respect to the Realized Property; and
 - (ii) hold in a separate account all funds (other than Realized Property) that were in Sorrenti's possession on or prior to the date of the Appointment Order as well as any amounts (other than Realized Property) paid or payable to Sorrenti or the Trustee after the date of the Appointment Order, including in respect of interest where principal is not repaid, fees, expenses or other amounts, (collectively "**Estate Property**") and use such Estate Property as set out in the Appointment Order, including to pay operating and professional costs associated with the SML Administration Business. (Realized Property and Estate Property are both included

within the definition of "Property" as set out in the Appointment Order).

- (d) ordered that, with the exception of any ongoing, pending or future regulatory proceedings by the LSO under the *Law Society Act*: (1) no proceeding against or in respect of Sorrenti in connection with the SML Administration Business, or the Property shall be commenced or continued except with the written consent of the Trustee or with leave of the Court; and (2) any and all proceedings currently under way against or in respect of any of the SML Administration Business or the Property are stayed and suspended pending further Order of the Court;
 - (e) provided the Trustee and its counsel with a first ranking charge on the Property ("**Trustee's Charge**") to secure their reasonable fees and disbursements in connection with the Trustee's mandate under the Appointment Order; and
 - (f) provided Representative Counsel with a charge on the Property ranking immediately subordinate to the Trustee's Charge to secure its reasonable fees and disbursements in connection with its mandate under the Appointment Order;
3. The affidavit of Nadia Musclow, Manager, Trustee Services of the LSO, sworn on September 30, 2019, was filed in connection with the LSO's application for the Appointment Order ("**Musclow Affidavit**"). The Musclow Affidavit contains background information regarding Sorrenti and the SML Administration Business. A copy of the Musclow Affidavit is attached as **Appendix "2"** (without exhibits).

PURPOSE OF THE FIRST REPORT

4. The purpose of this report ("**First Report**") is to provide the Court and stakeholders with the Trustee's recommendation regarding the Gotham Project (as defined below) based on Investor feedback, and to support the Trustee's request for an Order ("**Gotham Settlement Approval Order**") that, among other things:
- (a) (i) approves the Settlement Agreement ("**Gotham Settlement Agreement**"), including the late payment fee contemplated by Section 4 thereof, if any ("**Late Payment Fee**"), among Bel-Ottawa Inc. ("**Gotham**

Borrower”), Olympia Trust Company (“**OTC**”), and the Trustee, with such minor amendments as the Trustee and the other parties to the Gotham Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) directs the Gotham Borrower to pay \$1,420,590 forthwith to the Trustee in accordance with the terms of the Gotham Settlement Agreement (such funds, the “**Gotham Realized Property**”); and (iii) approves and ratifies the execution of the Gotham Settlement Agreement by the Trustee and OTC and authorizes and directs the Trustee and OTC to comply with all of their obligations under the Gotham Settlement Agreement;

- (b) releases, extinguishes, expunges and discharges all of the Gotham Borrower’s obligations to Derek Sorrenti, in trust (as bare trustee) (“**Sorrenti Lender**”), OTC, and the individual Investors (“**Gotham Individual Lenders**”) under various loan agreements entered into with the Gotham Borrower that are administered by Sorrenti Lender and secured by the Charge (as defined in the Gotham Settlement Agreement) (collectively, as amended, supplemented or otherwise modified, the “**Gotham Loan Agreement**”)¹ and related security, agreements and instruments delivered pursuant thereto, including the Charge (collectively, the “**Gotham Loan Obligations**”) and all security interests granted to Sorrenti Lender, OTC or the Gotham Individual Lenders in and to the assets of the Gotham Borrower to secure the Gotham Loan Obligations, including the Charge (“**Loan Encumbrances**”) upon the delivery to the Gotham Borrower and filing with the Court of a copy of the Trustee’s certificate confirming, among other things, the Trustee’s receipt of the \$1,420,590 payment (“**Trustee’s Certificate**”), and ordering that none of the Trustee, Sorrenti Lender, OTC or any Gotham Individual Lenders have any claim against the Gotham Borrower in respect of the Gotham Loan Obligations or the Loan

¹ The Gotham Settlement Agreement describes the Gotham Loan Agreement as a single loan agreement between Sorrenti Lender and the Gotham Borrower. However, upon further examination of Sorrenti’s books and records, the Trustee discovered that, as a technical matter, loan advances were made pursuant to a number of individual loan agreements that together constitute the Gotham Loan Agreement. Accordingly, the Gotham Settlement Approval Order contains a provision deeming the description of the Gotham Loan Agreement contained in the Gotham Settlement Agreement to be modified to the extent necessary to render it consistent with the term “Loan Agreement” as defined in paragraph 4 of the Gotham Settlement Approval Order.

Encumbrances; provided, however, that the Gotham Borrower is not released from any obligations under the Gotham Settlement Agreement; and

- (c) declares that the release agreement (“**Release Agreement**”) to be given to the Trustee, Sorrenti, OTC, and each Gotham Individual Lender who loaned funds to the Gotham Borrower pursuant to the Gotham Loan Agreement and all related loan documents, each of their respective officers, directors, legal counsel, agents, employees, and each of their respective successors and assigns (collectively, the “**Releasees**”) by the Gotham 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**”) shall be binding and effective on the Releasors in favour of the Releasees upon the delivery of the Trustee’s Certificate to the Gotham Borrower and the filing of a copy of the Trustee’s Certificate with the Court.

5. In support of the Trustee’s request for the Gotham Settlement Approval Order, this First Report describes the following matters:

- (a) An overview of the Gotham Project;
- (b) The details of the Gotham Loan Obligations;
- (c) The details of the settlement offer received by the Trustee and the Gotham Settlement Agreement; and
- (d) Information that supports the Trustee’s recommendation that the Gotham Settlement Agreement be approved.

6. The Trustee intends to report back to the Court prior to the end of February 2020 to give the Court, Investors, borrowers, brokers and other stakeholders further information regarding, among other things, Sorrenti and the SML Administration Business (including projected cash flows), details regarding the funds held in Sorrenti’s trust account utilized for the Sorrenti SMLs as of the date of Trustee’s appointment, details regarding funds received by the Trustee following its appointment, the Trustee’s activities, updates regarding the status of the Sorrenti SMLs, proposed next steps in these proceedings

regarding Realized Property and distributions to be made to the Gotham Individual Lenders from the Gotham Realized Property.

SCOPE AND TERMS OF REFERENCE

7. In preparing this First Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, Sorrenti, Fortress, and the Gotham Borrower. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the Gotham Project and the SML Administration Business. While the Trustee reviewed various documents provided by Sorrenti, Fortress, the Gotham Borrower and other third parties (including, among other things, unaudited internal information 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.
8. 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 First Report may vary from the projections and information used to prepare this First Report and the actual results may differ both from the results projected therein. 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 First Report did not constitute an audit or review of such information under GAAS, GAAP, IFRS or any other guidelines.
9. This First Report has been prepared for the use of this Court and Sorrenti's stakeholders as general information relating to the SML Administration Business and the Gotham Project and to assist the Court with respect to the Trustee's request for the proposed Gotham Settlement Approval Order. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose.
10. All references to dollars are in Canadian currency unless otherwise noted.

OVERVIEW OF THE GOTHAM LOAN OBLIGATIONS

11. The Trustee understands that the total principal advanced by the Gotham Individual Lenders pursuant to the Gotham Loan Agreement (“**Gotham Loan**”) was approximately \$6.6 million (“**Total Principal Amount**”). The Trustee understands further that approximately \$5.35 million of the Total Principal Amount was repaid by the Gotham Borrower in 2016. As at November 30, 2019, the total remaining principal due to the Gotham Individual Lenders was \$1,245,590 (“**Current Principal Amount**”), plus accrued interest of \$326,621.²
12. The Gotham Loan Agreement was scheduled to mature on July 5, 2014. The Gotham Loan Agreement contains, at the option of the Gotham Borrower, the ability to extend the term of the Gotham Loan for up to 12 additional months. The Gotham Borrower exercised this option and, accordingly, the Gotham Loan matured on July 5, 2015 and is in default.
13. There is no debt registered on title to the Gotham Project in priority to the Gotham Loan.

BACKGROUND AND CURRENT STATUS OF THE GOTHAM PROJECT

14. The Gotham Loan Agreement was entered into in connection with the Gotham Borrower’s development of a 242-unit condominium tower in Ottawa, Ontario (“**Gotham Project**”). Construction of the Gotham Project is complete and the condominium was registered in 2016, at which time the Gotham Borrower repaid approximately \$5.35 million of the principal amount owing in respect of the Gotham Loan (“**Previously Paid Principal**”), leaving the Current Principal Amount outstanding. However, at that time approximately 72 units remained unsold despite the Gotham Borrower’s marketing efforts. The Gotham Borrower advised the Trustee that the Ottawa market has been unfavourable and that while it was able to sell sufficient units to fully repay the priority debt that ranked ahead of the Gotham Loan, as of December 2019, 14 units remained to be sold by the Gotham Borrower (“**Remaining Units**”), the proceeds of which would be necessary for repayment of the Gotham Loan. The Gotham Borrower has also advised that it could take until mid-2020 or later to sell the Remaining Units.
15. Since its appointment, the Trustee has been in discussions with the Gotham Borrower regarding, among other things, the sale of the Remaining Units, the timing of repayment of the Gotham Loan, and the use of funds by the Gotham Borrower in respect of the

² Per diem interest, which has continued to accrue since November 30, 2019, is \$276.80.

Gotham Project. During this time, the Gotham Borrower has also requested that the Trustee provide the Gotham Borrower with partial discharges of the mortgage registered on title to the Gotham Project securing the Gotham Loan in conjunction with the sale of several condominium units to third party purchasers.

16. Prior to delivering any such discharges, the Trustee requested and reviewed information related to such sales, including the applicable agreements of purchase and sale, any amendments thereto, the statements of adjustments, and the Gotham Borrower's proposed use of proceeds. Following its review and once the requested documentation was in an acceptable form, the Trustee agreed to provide the requested discharges on the condition that the Gotham Borrower's legal counsel hold the net closing proceeds (net of HST, commissions, and legal costs) in trust pending the consent of the Trustee to the release of same. Legal counsel to the Gotham Borrower advised that it holds \$1,605,036.07 in its trust account from the above noted sale proceeds.
17. The Gotham Borrower has provided information to the Trustee that indicates that the Gotham Project has been unprofitable. The Gotham Borrower has advised the Trustee that certain of the Gotham Borrower's affiliates have provided additional funding to the Gotham Project to complete construction, service priority debt obligations, and fund the carrying costs of any unsold units. The Trustee has been advised by the Gotham Borrower that the total outstanding amount of such advances is in excess of \$5 million. The Trustee understands that these advances are secured by charges on the Gotham Project that were registered on title subsequent to the charge registered by Sorrenti Lender and, as such, are subordinate to the Gotham Loan. In addition, the Trustee understands that certain additional amounts were raised by the Gotham Borrower pursuant to promissory notes. Based on a review of title to the Gotham Project, the Trustee understands that these amounts are secured by a charge that was registered on title subsequent to the charge registered in favour of Sorrenti Lender securing the Gotham Loan.

OFFER AND FEEDBACK REQUEST

18. The Gotham Borrower has presented the Trustee with an irrevocable offer in the form of the Gotham Settlement Agreement, which was negotiated by the Trustee, that provides for the payment by the Gotham Borrower of \$1,420,590 ("**Offer**") in advance of the Remaining Units being sold. The Offer represents a repayment equal to 100% of the Current Principal Amount plus an additional payment of \$175,000 on account of the

outstanding accrued interest. When previously paid interest of \$2,547,360 (“**Previously Paid Interest**”) is factored into the analysis, the Offer plus the Previously Paid Interest and Previously Paid Principal would result in a return of approximately 141% of the Total Principal Amount.³ The recovery is calculated as follows:

Total Principal Amount (A)	\$ 6,595,600
Previously Paid Principal	5,350,010
Previously Paid Interest	2,547,360
Principal repayment per the Offer	1,245,590
Interest payment per the Offer	175,000
Total payments (B)	\$ <u>9,317,960</u>
Recovery percentage on Total Principal Amount (B/A)	141%

19. The Gotham Borrower has provided the Trustee with evidence of sufficient available funds to make the \$1,420,590 payment. If the Gotham Settlement Agreement is approved by the Court, such payment is expected to be made by the Gotham Borrower to the Trustee shortly following Court approval.
20. As noted above, the Gotham Settlement Agreement includes the Late Payment Fee, which provides that, in the event the Gotham Borrower fails to pay any portion of the Offer within 14 calendar days from the date of the Gotham Settlement Approval Order, the Gotham Borrower shall pay a late payment fee to the Trustee, on behalf of Sorrenti Lender, in an amount equal to 10% of the Offer.
21. The Trustee consulted with Representative Counsel regarding the Offer, and, following that consultation, presented the Offer to the Gotham Individual Lenders by delivering a notice to those lenders on January 7, 2020. This notice requested that such lenders consider the Offer and provide their feedback, whether for or against the acceptance of the Offer, and provide any other general feedback (“**Gotham Feedback Request**”). A copy of the Gotham Feedback Request is attached as **Appendix “3”**.

³ The percentage recovery represents an overall recovery on the Total Principal Amount of approximately \$6.595 million. Individual realizations will vary by Gotham Individual Lender depending on when each Gotham Individual Lender advanced funds to the Gotham Borrower.

22. It should be noted that the Gotham Feedback Request stated that the overall recovery to the Investors, when Previously Paid Principal and Previously Paid Interest is factored into the analysis, was approximately 111% (versus the 141% noted above). The Gotham Feedback Request was prepared by the Trustee based upon Sorrenti's records. After the issuance of the Gotham Feedback Request, the Trustee determined that there was an error in Sorrenti's records resulting from a misallocation between interest and principal and, as a result, the original principal amount of the Gotham Loan was overstated while the interest paid to date by the Gotham Borrower was understated. The updated recovery analysis herein results in an improvement to the overall percentage recovery for the Gotham Individual Lenders as compared to the recovery stated in the Gotham Feedback Request. Given that the updated recovery analysis does not impact the Gotham Settlement Agreement, including the payment thereunder, the Trustee did not revise and reissue the Gotham Feedback Request.
23. As of the filing of this First Report, the Trustee had received 87 formal votes in response to the Gotham Feedback Request, representing a response rate of approximately 58% in number and approximately 58% in value of the Gotham Loan. 87 of the Gotham Individual Lenders, representing 100% in number and 100% in value of such loans voting, voted in favour of the Trustee accepting the Offer.
24. Acceptance of the Offer would result in the Gotham Individual Lenders foregoing additional accrued interest of approximately \$151,000, which would otherwise be due on the Gotham Loan (assuming the Gotham Loan was repaid on or about November 30, 2019⁴).
25. Pursuant to the Gotham Loan Agreement, under certain circumstances, the Gotham Individual Lenders could also be entitled to a deferred lender fee. Based on the Trustee's review of the financial information provided by the Gotham Borrower and the Gotham Loan Agreement, the minimum deferred lender fee requirements under the Gotham Loan Agreement will likely not be met and, accordingly, the deferred lender fee set out in the Gotham Loan Agreement would likely not be payable to the Gotham Individual Lenders.
26. As set out in the Gotham Feedback Request, the following considerations were taken into account by the Trustee in completing its assessment of the Offer:

⁴ As noted above, since November 30, 2019, additional interest has continued to accrue at a per diem rate of \$276.80.

- (a) The Offer provides certainty regarding the amount and a time frame for the repayment of the Gotham Loan;
- (b) The Gotham Borrower has advised that absent the Offer, it will discontinue funding the cash flows required to maintain the Remaining Units. If the Gotham Borrower does not continue to fund such costs, the Trustee may be required to take enforcement or other protective steps, increasing the recovery related costs and extending the timeline for the Gotham Loan to be repaid (if at all). The Trustee is of the view that the potential costs and risks associated with such a scenario outweigh the added benefit that may be obtained by the Trustee by not accepting the Offer (i.e. the potential for additional interest of approximately \$151,000 as at November 30, 2019); and
- (c) The Offer results in a return on the Gotham Loan of approximately 141% of the Total Principal Amount when Previously Paid Interest and Previously Paid Principal is taken into account.

27. Given the above considerations, and the feedback received from the Gotham Individual Lenders, the Trustee has accepted the Offer, as described below, and executed the Gotham Settlement Agreement. The Gotham Settlement Agreement requires the Trustee to use commercially reasonable efforts to seek the Gotham Settlement Approval Order, but the remaining terms of the Gotham Settlement Agreement are only binding on the Trustee, Sorrenti Lender and OTC should the agreement be approved and ratified by the Court.

GOTHAM SETTLEMENT AGREEMENT

28. The Offer is conditional, among other things, upon the release and discharge of all Gotham Loan Obligations and all Loan Encumbrances, and a Court order being obtained providing that none of the Trustee, Sorrenti Lender, OTC or any Gotham Individual Lenders have any claim against the Gotham Borrower in respect of the Gotham Loan Obligations or the Loan Encumbrances (though the Gotham Borrower is not to be released from any obligations under the Gotham Settlement Agreement) in consideration of the payment due under the Gotham Settlement Agreement.

29. The Gotham Settlement Agreement also provides that the Gotham Borrower is to deliver a Release Agreement to the Trustee providing that the Gotham Borrower, on behalf of itself and the other Releasers, releases all of the Releasees (namely, the Trustee, Sorrenti, OTC, and each Gotham Individual Lender⁵ who loaned funds to the Gotham Borrower pursuant to the Gotham 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.
30. The Gotham 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 Offer. These representations and warranties include, among other things, that to the best of the Gotham Borrower's knowledge, none of Fortress or any of its affiliates is or will become entitled to receive any consideration from the Gotham Project ("**Fortress Consideration**"). Further, the Gotham Settlement Agreement contains a covenant in favour of the Trustee that, among other things, should the Gotham 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 Sorrenti Lender under the Gotham Loan Agreement have been paid in full).
31. If the Court issues the proposed Gotham Settlement Approval Order, then the settlement set out therein will be effective upon the delivery to the Gotham Borrower by the Trustee of the Trustee's Certificate certifying that the conditions precedent set out in the Gotham Settlement Agreement are satisfied and the filing of the Trustee's Certificate with the Court. The Trustee therefore executed the Gotham Settlement Agreement and has brought a motion seeking this Court's approval of the Gotham Settlement Agreement and the issuance of the Gotham Settlement Approval Order.
32. Further, if the Gotham Settlement Approval Order is granted, the Trustee will thereafter work with the Gotham Borrower to complete the settlement transaction and intends to subsequently seek Court approval to make one or more distributions of the Gotham Realized Property to the Gotham Individual Lenders net of an administrative holdback to

⁵ Certain Gotham Individual Lenders originally advanced funds through B2B Trust. The Trustee understands that these accounts are now held at OTC and that B2B Trust does not have a charge on the Property.

be retained by the Trustee. The Trustee intends to make a recommendation to the Court regarding the quantum of the administrative holdback prior to the end of February.

33. A copy of the Gotham Offer, including the form of Gotham Settlement Agreement, is attached as **Appendix “4”**.

CONCLUSION AND RECOMMENDATION

34. The Trustee recommends that the proposed Gotham Settlement Approval Order be granted by the Court. The Gotham Settlement Agreement contemplates receipt of amounts equal to 100% of the Current Principal Amount due under the Gotham Loan as well as an additional payment of \$175,000 on account of outstanding accrued interest, which together with the Previously Paid Interest and Previously Paid Principal, results in a return on the Gotham Loan of approximately 141% of the Total Principal Amount. If implemented, the Gotham Settlement Agreement will result in approximately \$1.42 million of Gotham Realized Property in the near term, which, subject to Court authorization at a subsequent hearing, would permit the Trustee to make a distribution of a portion of the Gotham Realized Property to the Gotham Individual Lenders. The Trustee obtained only positive responses to the Gotham Offer from affected Gotham Individual Lenders as 100% in number and 100% in value voting favoured acceptance of the Offer. Further, Representative Counsel has advised the Trustee that it supports the Trustee’s motion seeking the Gotham Settlement Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of January, 2020.

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.,
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF
DEREK SORRENTI AND SORRENTI LAW
PROFESSIONAL CORPORATION IN RESPECT OF
THE SYNDICATED MORTGAGE LOAN
ADMINISTRATION BUSINESS, AND NOT
IN ITS PERSONAL OR ANY OTHER CAPACITY**

Appendix 1:

Appointment Order dated September 30, 2019

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRÉSENT ATTEST QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVÊTUE DU SCEAU DE LA COUR SUPÉRIEURE DE JUSTICE A TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS 1st DAY OF October 20 19
FAIT A TORONTO LE 1er JOUR DE Octobre 20 19


REGISTRAR C. Irwin GREFIER-Registral

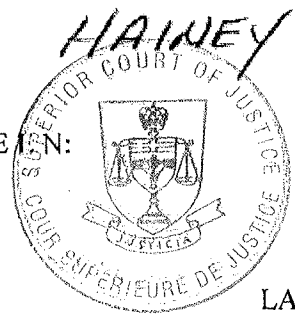
Court File No. CV-19-628258-0002

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE HAINES)

Monday, the 30th
DAY OF SEPTEMBER, 2019

BETWEEN:
(Court Seal)



LAW SOCIETY OF ONTARIO

Applicant

and

DEREK SORRENTI and
SORRENTI LAW PROFESSIONAL CORPORATION

Respondents

APPLICATION UNDER section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

ORDER

THIS APPLICATION, made by the Law Society of Ontario (the "Law Society") for an Order pursuant to section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 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 Derek Sorrenti or Sorrenti Professional Law Corporation ("Respondents") relating to the Respondents' trusteeship and administration of syndicated

mortgage loans in projects affiliated with Fortress Real Developments Inc. (“**FRDI**”) and all of its direct or indirect affiliates, and any entity under common control with FRDI (collectively, “**Fortress**”), was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the Notice of Application, the Affidavit of Nadia Musclow, the Affidavit of Nadiatou Fagbemi, the Pre-Filing Report of FAAN Mortgage, the consent of FAAN Mortgage to act as Trustee, the consent of the Respondents, and on hearing the submissions of the lawyer(s) for the parties,

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 49.47 of the *Law Society Act* and section 101 of the *Courts of Justice Act*, FAAN Mortgage is hereby appointed as Trustee, without security, of all of the assets, undertakings and properties in the possession, power or control of the Respondents relating to the Respondents’ professional business (as defined in the *Law Society Act*) of trusteeship and administration of syndicated mortgage loans in Fortress projects (the “**Syndicated Mortgage Loan Administration Business**”), including, without limitation, all of the assets in the possession or under the control of the Respondents, its counsel (if any), agents and/or assignees relating to the Syndicated Mortgage Loan Administration Business but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage loans (“**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 referred to as “**Property**”), which Property, for greater certainty, includes any and all real property charges in favour of the Respondents (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 related to the Syndicated Mortgage Loan Administration Business have been realized and all Property has been distributed to those entitled to it.

3. THIS COURT ORDERS that nothing in this Order in any way interferes with or alters the terms of the Appointment Order dated April 20, 2018 granted by this Court in court file number CV-18-596204-00CL (the “**BDMC Proceeding**”), or any other Order made in the BDMC Proceeding.

IDENTIFICATION OF THE PROPERTY

4. THIS COURT ORDERS that in order to protect the privilege and confidentiality of the documents and information pertaining to that portion of the Respondents’ professional business that is unrelated to the Syndicated Mortgage Loan Administration Business, the Law Society is hereby authorized, without bond, to review all of the information and documents in the possession of the Respondents, including client files, corporate records and seals, financial books and records, electronic data, email accounts and any electronic devices containing any client information or client data, trust funds, general accounts, practice related materials and client property of any kind that is in the possession, power or control of the Respondents, for the purpose of identifying the Property and separating it

from all other property of the Respondents, including client files, corporate records and seals, documents, financial books and records, electronic data, email accounts and any electronic devices containing any client information or client data, trust funds, general accounts, law practice related materials and client property of any kind that is in the possession, power or control of the Respondents that does not relate to the Syndicated Mortgage Loan Administration Business (the “**Excluded Property**”), and to take possession of the Excluded Property (the foregoing being referred to herein as the “**Identification**”).

5. THIS COURT ORDERS that the duty to provide access and cooperation as set out in paragraphs 9-13 below shall apply equally to the Law Society in respect of the Identification process.
6. THIS COURT ORDERS that following the Identification, the Law Society shall provide the Property to the Trustee.
7. THIS COURT ORDERS that in the event that the Trustee is provided with any Excluded Property, the Trustee shall inform the Law Society upon becoming aware of its possession of any Excluded Property and return such Excluded Property to it. Such disclosure to the Trustee shall not be interpreted as a waiver of solicitor-client privilege that may exist as between the Respondents and the clients referenced in the Excluded Property.

TRUSTEE’S POWERS

8. 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 with respect to the Property:

- a. subject to paragraphs 4-7 above, 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. subject to paragraphs 4-7 above, 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 Syndicated Mortgage Loan Administration Business, 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 Syndicated Mortgage Loan Administration Business, or cease to perform any contracts of the Respondents related to the Syndicated Mortgage Loan Administration Business;
- 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 Respondents' Syndicated Mortgage Loan Administration Business or any part or parts thereof;
- f. to receive and collect all monies and accounts now owed or hereafter owing to the Respondents in connection with the Syndicated Mortgage Loan Administration Business and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents, including, without limitation, such security held on behalf of Investors;
- g. to settle, extend or compromise any indebtedness owing to the Respondents in connection with the Syndicated Mortgage Loan Administration Business;
- h. 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 Respondents in connection with the Syndicated Mortgage Loan Administration Business, 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;
- i. 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;

- j. 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;
- k. 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;
- l. 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;
- m. 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 Trustees deems advisable;
- n. to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- o. to apply for any permits, licences, approvals or permissions with respect to the Syndicated Mortgage Loan Administration Business 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 Respondents;

- p. to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondents;
- q. to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have with respect to the Property or the Syndicated Mortgage Loan Administration Business; and
- r. 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 Respondents, without interference from any other Person and without regard to any arrangement in existence as of the date hereof between the Respondents 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. Nothing in this paragraph is intended to limit the Law Society's ability to carry out the Identification.

DUTY TO PROVIDE ACCESS AND COOPERATION TO THE TRUSTEE

9. THIS COURT ORDERS that, for the purpose of conducting the Identification described in paragraph 4 above, the Respondents shall provide the Law Society with access to their business premises at 310-3300 Highway 7, Vaughan, Ontario, and any other premises or storage facilities maintained by the Respondents in connection with their professional business that contain Property or Excluded Property, during customary business hours at the Law Society's request.

10. THIS COURT ORDERS that (i) the Respondents; (ii) all of their 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, governmental bodies or agencies or other entities having notice of this Order, including, without limitation, Fortress, any entity that is a joint venture among a Fortress entity and another entity, and each director, officer, employee and agent of Fortress (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.

11. THIS COURT ORDERS that, pursuant to and without limiting the generality of the foregoing, 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**"), Computershare Trust Company of Canada ("**Computershare**") or any other person acting for Investors in respect of investments held through RRSPs or other registered accounts or funds (each an "**RRSP Trustee**"), not release to any Person

without further Order of this Court) any and all monies held in trust that are related to the Syndicated Mortgage Loan Administration Business (collectively, the "**Trust Funds**"), which Trust Funds, for greater certainty, include any and all monies in any OTC, Computershare or other RRSP Trustee 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 Respondents related to the Syndicated Mortgage Loan Administration Business.

12. 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 Respondents related to the Syndicated Mortgage Loan Administration Business, 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, subject to paragraph 7 above, shall provide to the Trustee or the Law Society or permit the Trustee or the Law Society 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 12 or in paragraph 13 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.

13. 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.

INTERIM STABILIZATION MEASURES

14. THIS COURT ORDERS that the Trustee shall:

- a. hold, until further Order of the Court, in a separate account all (1) funds from the Syndicated Mortgage Loan Administration Business that are currently in the Respondents' possession, or that may come into the Respondents' or Trustee's possession, in each case as a result of a repayment (in whole or in part) of principal

on any loan or other indebtedness owing to or administered by the Respondents on behalf of Investors in connection with the Syndicated Mortgage Loan Administration Business, whether or not (i) secured by any Real Property Charges in the name of the Respondents or in the name of OTC, Computershare or any other RRSP Trustee, (ii) received before or after the date of this Order, or (iii) paid or payable in trust, plus (2) all interest paid or payable to the Respondents or the Trustee in connection with the Syndicated Mortgage Loan Administration Business at the time such repayment (in whole or in part) of principal is made (collectively "**Realized Property**") and shall report to the Court with a recommendation regarding next steps with respect to the Realized Property, including any potential distribution of any Realized Property to the Investors; and

- b. hold in a separate account all funds (other than Realized Property) that were in the Respondents' possession on or prior to the date of this Order as well as any amounts (other than Realized Property) paid or payable to the Respondents or the Trustee (in trust or otherwise) after the date of this Order, including in respect of interest where principal is not repaid, fees, expenses or other amounts, (collectively "**Estate Property**") and shall be authorized to use such Estate Property as set out in this Order and as further clarified herein.
- c. For greater certainty, Realized Property and Estate Property shall be included within the definition of "Property" as set out in this Order.

15. THIS COURT ORDERS and confirms that, with the exception of Realized Property, the Trustee is hereby empowered and authorized, but not obligated, to use any Property

(including for greater certainty Estate Property) to aid the Trustee in complying with this Order and carrying out its mandate, as the Trustee, in its sole discretion, considers necessary or desirable for the effective administration of the estate including, without in any way limiting the generality of the foregoing, to do any of the following:

- d. to provide a retainer for and to pay the professional fees, expenses and disbursements of the Trustee, its counsel, and any experts or other advisors retained by the Trustee pursuant to this Order, whether incurred prior to or after the date of this Order;
- e. to pay expenses of the Respondents that the Trustee reasonably believes are necessary to carry out the Syndicated Mortgage Loan Administration Business, including, without limitation, payroll, rent, utilities, taxes and other statutory remittances;
- f. to pay expenses incurred in the administration of any loan or indebtedness administered by the Respondents in connection with the Syndicated Mortgage Loan Administration Business, including, without limitation, in connection with obtaining new appraisals of any property or, if necessary, taking any enforcement action;
- g. to make protective disbursements to or on behalf of a borrower or in respect of a mortgaged project, provided that any such disbursement shall be an advance made to the applicable borrower in respect of such project and the amount of such advance plus any applicable expenses incurred in connection therewith shall be

added to the sum owing by the borrower and shall be added to the Real Property Charge in respect of same; or

h. to pay general expenses of the Respondents or the Trustee, in that capacity, not covered by the foregoing,

in each case without interference from any other Person and without regard to any arrangement in existence as of the date hereof between the Respondents, any borrower, any Investor or any other person.

16. THIS COURT ORDERS that, in using any Property in accordance with this Order, the Trustee shall keep detailed records regarding the source and use for such payments and shall report to the Court from time to time regarding same.

17. THIS COURT ORDERS that the Trustee is authorized, but not required, to apply for any licenses as the Trustee determines are necessary or desirable for it to hold in connection with its mandate.

REPRESENTATIVE COUNSEL

18. THIS COURT ORDERS that Chaitons LLP is hereby appointed as counsel ("**Representative Counsel**") for all Investors in respect of these proceedings (including, without limitation, all those persons who are Investors as a result of having investments held through registered retirement savings plans ("**RRSPs**") or other registered accounts or funds with RRSP Trustees regarding their common interests in the loans and other indebtedness administered by the Respondents in their Syndicated Mortgage Loan Administration Business, including the common interests of Investors in any particular

loan or other indebtedness administered by the Respondents, unless and until written notice is provided by a particular Investor to Representative Counsel that such Investor does not wish to be represented by Representative Counsel.

19. THIS COURT ORDERS that, in fulfilling its mandate under Paragraph 18, Representative Counsel shall act in the best interests of the Investors and shall take such necessary and appropriate steps or actions as Representative Counsel deems fit from time to time, including, where appropriate, to give such consents on behalf of Investors that may be necessary or desirable in the circumstances, provided however that Representative Counsel shall not be obligated to take any step or action where Representative Counsel determines (in consultation with the Trustee) that the best interests of Investors would not be served by any such step or action.

20. THIS COURT ORDERS that Representative Counsel shall have no obligation to consult with, follow the instructions of, or provide an opinion to, any individual Investor in connection with the discharge of its duties under this Order.

21. THIS COURT ORDERS that, subject to paragraphs 4-7 above, the Law Society or the Trustee shall provide to Representative Counsel, without charge to the Investors, the following information, documents and data (including personal information), to the extent such information, documents or data is in the Law Society and/or Trustee's possession or control in respect of these proceedings (the "**Information**"):

- a. the names, last known addresses and last known email addresses (if any) of the Investors (the "**Investor Contact Information**"); and

- b. such additional information, documents and data (including personal information) as may be reasonably requested in writing by Representative Counsel and which is (i) relevant to the Investors' participation in these proceedings and (ii) reasonably necessary for Representative Counsel to fulfill its mandate in these proceedings, or as ordered by the Court,

provided that the Law Society and its counsel or the Trustee and its counsel may recover their time and expenses for so doing at their standard rates. This Order shall be sufficient legal authority for the Law Society or the Trustee to disclose the Information to Representative Counsel under the *Personal Information Protection and Electronic Documents Act* (Canada), other applicable privacy legislation, or any other applicable law without the knowledge or consent of the individual Investors or any other person, the Law Society and/or Trustee are not required to obtain any consent from any Investor or any other person to authorize disclosure of the Information to Representative Counsel, and the Law Society and Trustee shall have no liability whatsoever for making such disclosures in accordance with the terms hereof.

22. THIS COURT ORDERS that notice of the granting of this Order shall be sent by Representative Counsel (or by the Law Society or Trustee on behalf of Representative Counsel) to each Investor by electronic or regular mail at the address for such Investor provided within seven business days of the date of receipt by Representative Counsel of the Investor Contact Information, and that the notice shall also be posted on the Trustee's website at www.faanmortgageadmin.com.

23. THIS COURT ORDERS that any Investor who does not wish to be represented by Representative Counsel in these proceedings shall notify the Trustee and Representative

Counsel, in writing, that he, she or it is opting out of representation by delivering a notice by electronic or regular mail and such Investor shall thereafter not be bound by the actions of Representative Counsel and shall represent himself, herself or itself or be represented by any counsel that he, she or it may retain exclusively at his, her or its own expense.

24. THIS COURT ORDERS that Representative Counsel may communicate with any Investor who has not opted out pursuant to Paragraph 23 hereof by electronic or regular mail at the addresses provided pursuant to Paragraph 21(a) or such other addresses provided by the applicable Investor to Representative Counsel.

25. THIS COURT ORDERS that Representative Counsel shall have no liability as a result of its appointment or the performance of its duties or in carrying out the provisions of this Order and any subsequent Orders in these proceedings, save and except for any gross negligence or willful misconduct on its part.

26. THIS COURT ORDERS that, subject to prior approval by the Trustee or further Order of the Court, Representative Counsel shall be paid its reasonable fees and disbursements, at its standard rates and charges, and shall be entitled to and is hereby granted a charge (the "**Representative Counsel Charge**") on the Property as security for its fees and disbursements in respect of these proceedings, both before and after the making of this Order, and that the Representative Counsel Charge shall form a charge on the Property ranking immediately subordinate in priority to the Trustee's Charge (as defined below) but ranking in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

27. THIS COURT ORDERS that, subject to prior approval by the Trustee or further Order of the Court, Representative Counsel is entitled to be paid its fees and disbursements from any distributions to be made to the Investors in these proceedings.
28. THIS COURT ORDERS that all reasonable professional fees and disbursements that may be incurred by Representative Counsel, whether incurred prior to or after the date of this Order, will form part of the indebtedness owing to the Investors.
29. THIS COURT ORDERS that Representative Counsel shall be given notice of all motions in these proceedings, and that the giving of notice to Representative Counsel shall constitute service on all of the Investors who have not opted out pursuant to Paragraph 23 hereof.
30. THIS COURT ORDERS that Representative Counsel shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the performance or variation of its powers and duties.

LAND TITLE DOCUMENTS

31. In addition to any other powers granted to the Trustee in this Order, the Trustee is hereby empowered:
- a. to direct the applicable land registry office, registrar, other official or similar government authority under *The Land Titles Act* (Ontario), the *Land Registration Reform Act* (Ontario), or any other comparable legislation in any province ("**Real Property Authority**") to register a copy of this Order and any other Orders in respect of the Property, notwithstanding the requirements of s. 191 of the *Land Titles Act*, RSA

2000, c L-4, or the provisions of any other similar provincial enactment, and notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is, for the purposes of this paragraph 31, expressly waived, and for such purposes the Trustee shall be treated as if it were a receiver appointed pursuant to the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 (“**BIA**”); and

b. 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 Respondents for any purpose pursuant to this Order, including, without limitation, any documents in connection with any registration, discharge, partial discharge, transfer, assignment, postponement, subordination or similar dealings in respect of any mortgage or interest in land (each, a "**Land Title Document**") and, for greater certainty, the applicable Real Property Authority is hereby directed, following (i) registration of this Order or being presented with a certified true copy of this Order and (ii) being presented with such Land Title Document, to register such Land Title Document to register, discharge, partially discharge, transfer, assign, postpone, subordinate 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.

NO PROCEEDINGS AGAINST THE TRUSTEE

32. 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 RESPONDENTS OR THE PROPERTY

33. THIS COURT ORDERS that, with the exception of any ongoing, pending or future regulatory proceedings by the Law Society under the *Law Society Act*: (i) no Proceeding against or in respect of any of the Respondents in connection with the Syndicated Mortgage Loan Administration Business, 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 Respondents' Syndicated Mortgage Loan Administration Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

34. THIS COURT ORDERS that all rights and remedies against the Respondents in connection with the Syndicated Mortgage Loan Administration Business, the Trustee, or affecting the Property (including, without limitation, pursuant to any arrangement in existence as of the date hereof between the Respondents and any other Person in relation to the Syndicated Mortgage Loan Administration Business and Investors), 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 BIA, and further provided that nothing in this paragraph shall: (i) empower the Trustee or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on; (ii) exempt the Trustee or the Respondents 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 33.

NO INTERFERENCE WITH THE TRUSTEE

35. 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 Respondents in respect of the Syndicated Mortgage Loan Administration Business, without written consent of the Trustee or leave of this Court, including, for greater certainty, any authority granted to the Respondents to act as an administrator or trustee of syndicated mortgage loans. Nothing in this paragraph is intended to constrain the ability of the Law Society to complete the Identification as described above.

CONTINUATION OF SERVICES

36. THIS COURT ORDERS that all Persons having oral or written agreements with the Respondents in relation to the Syndicated Mortgage Loan Administration Business, or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents that is used (in whole or in part) by the Respondents in connection with the Syndicated Mortgage Loan Administration Business 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 Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided that such continued use by the Trustee does not interfere with the operation of that portion of the Respondents' professional business that does not include the Mortgage Administration Business and 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 Respondents 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

37. 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 relating to the Syndicated Mortgage Loan Administration Business, 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

38. THIS COURT ORDERS that all employees of the Respondents in connection with the Syndicated Mortgage Loan Administration Business shall remain the employees of the Respondents until such time as the Trustee, on the Respondents' 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* ("WEPP").

PIPEDA

39. 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 Respondents, and

shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

40. 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

41. THIS COURT ORDERS THAT (a) FAAN Mortgage shall incur no liability or obligation relating to or arising from any activities undertaken by it prior to the date of this Order in respect of the Respondents or the Syndicated Mortgage Loan Administration Business,

including, without limitation, activities undertaken by FAAN Mortgage to assist the Law Society in its application for this Order and to gain a better understanding of the projects currently being administered by the Respondents; and (b) the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, in each case, 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 WEPP. 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

42. 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*.

43. 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 the Commercial List of the Ontario Superior Court of Justice.

44. 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

45. 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, the Representative Counsel Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

46. 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.

47. THIS COURT ORDERS that the Trustee is at liberty and authorized to issue Trustee certificates for any amount borrowed by it pursuant to this Order.

48. 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

49. 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 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.

50. 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 Respondents' creditors in relation to the Syndicated Mortgage Loan Administration Business or other interested parties at their respective addresses as last shown on the records of the Respondents 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

51. 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.
52. 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 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 may be necessary or desirable to give effect to this Order or to assist in carrying out the terms of this Order.
53. 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.
54. 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.

55. THIS COURT ORDERS that this Order is without prejudice to the Respondents' ability to apply to this Court for a determination in respect of his administration fees or other monies to which he claims an entitlement up until the date of this Order, further to the notice requirements set out in paragraph 54.


Signature

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

SEP 30 2019

PER / PAR: 

LAW SOCIETY OF ONTARIO
Applicant

-and- DEREK SORRENTI et al
Respondents

CV-19-628258-0001
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

J. Thomas Curry (25740V)

Tel: (416) 865-3096

Fax: (416) 865-9010

Email: tcurry@litigate.com

Jaan E. Lilles (49598O)

Tel: (416) 865-3552

Fax: (416) 865-2846

Email: jlilles@litigate.com

Kelly Hayden (69997P)

Tel: (416) 865-3734

Fax: (416) 865-3708

Email: khayden@litigate.com

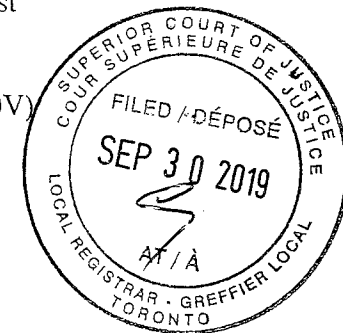
Jennifer Power

Tel: (416) 865-9963

Fax: (416) 865-6760

Email: jpower@litigate.com

Lawyers for the Applicant



Appendix 2:

Affidavit of Nadia Musclow sworn on September 30, 2019 (without exhibits)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

LAW SOCIETY OF ONTARIO

Applicant

and

DEREK SORRENTI and
SORRENTI LAW PROFESSIONAL CORPORATION

Respondents

APPLICATION UNDER section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

AFFIDAVIT OF NADIA MUSCLOW

I, Nadia Musclow, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Manager, Trustee Services of the Law Society of Ontario (the “Law Society”) and, as such, have knowledge of the matters contained in this Affidavit. Where my knowledge is based on information and belief, I state the source of such knowledge and believe it to be true.
2. Derek Sorrenti, is a lawyer, licensed to practise law by the Law Society of Ontario, and presently carrying on his professional business as Sorrenti Law Professional Corporation. Derek Sorrenti and Sorrenti Law Professional Corporation are hereinafter referred to collectively as the “Respondents”.

3. The Law Society seeks to have FAAN Mortgage Administrators Inc. (“FAAN Mortgage” or the “Proposed Trustee”), a professional mortgage administrator, appointed as trustee of that portion of the Respondent’s professional business where he is acting in the capacity of mortgage administrator for Fortress Real Developments and certain related entities (collectively, “Fortress”) with respect to a number of syndicated mortgage investments (hereinafter referred to as the Respondents’ “Mortgage Administration Business”). FAAN Mortgage is currently acting as Trustee over Building and Development Mortgages Canada Inc. (“BDMC”), previously Centro Mortgage Inc (“Centro”), in respect of Fortress projects (the “BDMC Proceeding”).

4. In preparing this Affidavit, I have reviewed the Pre-Filing Report of the Proposed Trustee (attached hereto as **Exhibit 1**), the Affidavit of Nadiatou Fagbemi (the “Fagbemi Affidavit”) as well as various court documents posted on the FAAN Mortgage website which describe the proceeding by which FAAN Mortgage came to be appointed as Trustee in the BDMC Proceeding.

Background

5. The Respondents operate a professional business from premises located at 310-3300 Highway 7 in Vaughan, Ontario (the “Business Premises”).

6. The Respondents’ Mortgage Administration Business is that portion of their professional business wherein they have provided independent legal advice to investors obtaining syndicated mortgages in Fortress projects, brokered by BDMC and Centro, and have been acting as a bare trustee and mortgage administrator for investors in syndicate mortgages brokered by BDMC/Centro through the syndicate mortgage product marketed as Fortress.

7. As Derek Sorrenti is a lawyer, he is able to administer mortgages under the exemption in the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29 (the “MBLAA”) from licencing requirements applicable to lawyers.

8. In his capacity as mortgage administrator, Mr. Sorrenti holds title to the mortgages underlying the syndicated mortgage loans on behalf of investors, and acts in a fiduciary capacity to administer and enforce the syndicated mortgage loans on behalf of the investors. His function is, among other things, to accept invested funds provided by investors, to ensure the investor’s investment is registered, to disburse the mortgage loan proceeds, to request interest and principal repayments when required, to disburse payments to the investors, and to report to all investors as required.

9. As a result of complaints received from investors, the Law Society has initiated investigations into Mr. Sorrenti’s conduct arising out of his mortgage administration practice.

RCMP Investigation

10. I understand from reviewing the *R v Canadian Broadcasting Corp.*, 2018 ONSC 5167 decision and various news articles that the RCMP commenced an investigation into Fortress and its principals based on complaints from investors. Copies of the *R v Canadian Broadcasting Corp* decision and several Globe and Mail articles are attached hereto as **Exhibits 2 and 3**.

11. On April 13, 2018, the RCMP executed several search warrants in relation to Fortress and associated entities. The RCMP alleged in the information to obtain (“ITO”) the search warrants that Fortress and some of its principals engaged in investor fraud, specifically, that Fortress defrauded investors by knowingly misrepresenting the appraised value of various development properties. The RCMP further alleged that the loan ratios were in excess of 100%, which meant

that the investments were not RRSP eligible – something that was also misrepresented to investors. The RCMP further alleged that the investment funds were not used for the purposes disclosed to the investors.

BDMC Proceeding

12. As part of its role, the Financial Services Regulatory Authority (“FSRA”), formerly the Financial Services Commission of Ontario (“FSCO”) prosecutes regulatory proceedings relating to the regulated sectors defined in the in the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, chap. 28 (the “FSCO Act”). The mortgage brokering industry is one of the regulated sectors defined in the FSCO Act, and includes mortgage agents, mortgage brokers, mortgage brokerages and mortgage administrators, as defined in the MBLAA.

13. Beginning in 2015, FSCO investigated BDMC for potential breaches of MBLAA and its associated regulations. Prior to February 1, 2018, BDMC brokered and administered investments in syndicated mortgage loans sold to the investing public, principally relating to development projects in which Fortress and related entities are involved.

14. Over \$600 million has been invested in BDMC by over 11,000 individual investors. As of April 19, 2018, FSCO had received numerous complaints from investors regarding BDMC’s activities and the performance of their investments in BDMC compared to the promises made to them at the time they invested.

15. As a result of its investigations, FSCO was of the view that there are serious regulatory issues associated with BDMC syndicated mortgage loans.

16. On January 31, 2018, FSCO entered into a settlement agreement with a number of the licensed entities and individuals in the Fortress network, including BDMC, and certain individuals holding Mortgage Broker licences (the “Settlement Agreement”). Among other things, the Settlement Agreement required BDMC to enter into and comply with a management and administration agreement appointing FAAN Mortgage as the independent manager of BDMC’s syndicated mortgage administration business.

17. On February 1, 2018, FSCO obtained an order suspending BDMC’s mortgage brokerage licence on consent.

18. FAAN Mortgage assumed the role as independent manager on February 7, 2018. However, BDMC failed to comply with certain terms of the Settlement Agreement, making it difficult for FAAN Mortgage to perform its responsibilities. These difficulties were made worse by the RCMP investigation into BDMC for syndicated mortgage fraud.¹ Ultimately, FAAN Mortgage lost confidence in BDMC’s ability to comply with the settlement agreement.

19. On April 20, 2018, the Superintendent of Financial Services (the “Superintendent”) brought an Application to the Superior Court of Justice - Commercial List under section 37 of the MBLAA and section 101 of the Court of Justice Act, R.S.O. 1990 c. C.43 for an order appointing FAAN Mortgage as trustee of all of the assets, undertakings and properties of BDMC (the “BDMC Proceeding”). The Application Record contains an Affidavit from Brendan Forbes, legal counsel at the Ministry of the Attorney General Civil Law Division, FSCO Branch sworn April 19, 2018, which is attached as Exhibit A to the Fagbemi Affidavit.

¹ Forbes Affidavit, paras 8-9.

20. The Honourable Justice Hainey granted the Application by Order dated April 20, 2018 (“the Appointment Order”), a copy of which is attached as Appendix 1 to the Pre-Filing Report of the Proposed Trustee.

21. Among other things, the Appointment Order empowers the Trustee to take possession of all assets, undertakings and properties of BDMC, to exercise control over such property, manage and carry on BDMC’s business, to enter into agreements with any trustee in bankruptcy appointed in respect of BDMC, and to receive and collect all monies owing to BDMC.

22. As noted above, Mr. Sorrenti is not licenced as a mortgage administrator. Under the MBLAA, lawyers are not required to hold a licence in order to trade in, deal in or administer mortgages. FSRA is of the view that the Respondents are therefore outside FSRA’s jurisdiction to prosecute regulatory issues under MBLAA. Accordingly, the Respondents’ Mortgage Administration Business is not part of the Appointment Order and is outside of FAAN Mortgage’s current mandate under the Appointment Order.

Sorrenti Document Production Requests

23. The Appointment Order requires all persons with property, funds, records, documents or information related to the business and affairs of BDMC to provide such property, funds, records, documents and information to the Trustee and to cooperate fully with the Trustee with respect to its mandate.

24. As set out in paragraphs 12-22 of the Pre-Filing Report of the Proposed Trustee, I understand that the Trustee and its counsel formally contacted the Respondents on numerous occasions for over six months to request information in relation to Fortress projects on which the

mortgage administrator duties had transferred from the Respondents to BDMC (“the Transferred Projects”). The Respondents did not comply with the Trustee’s information requests.

25. Accordingly, the Trustee sought and obtained an Order requiring the Respondents to comply with the Appointment Order and to provide the Trustee with a detailed list of all information related to the Transferred Projects and with a plan and proposed schedule for the delivery of such documents, records and information to the Trustee, within 30 days of the date of the Order (the “Omnibus Order”). A copy of the Omnibus Order is attached as Appendix 2 to the Pre-Filing Report of the Proposed Trustee.

26. I understand from FAAN Mortgage that the Respondents were provided with a copy of the Omnibus Order shortly after it was obtained but that FAAN Mortgage has continued to experience difficulty obtaining information from the Respondents.

Concerns of FSRA re Sorrenti Projects

27. As set out in the Fagbemi Affidavit, FSRA has a number of concerns relating to the Respondents’ Mortgage Administration Business. Although FSRA does not regulate the Respondents, it has received a number of complaints from investors regarding the administration of the Respondents’ Mortgage Administration Business. In addition, FSRA has received information as part of its investigation into the Fortress networks which relates to the Respondents’ Mortgage Administration Business.

28. Based on its review of the available information, FSRA staff is concerned that:

- (a) The Respondents have failed to respond to investor inquiries and to produce documents as required by the FAAN Trusteeship;

- (b) The Respondents do not have the capacity to manage its mortgage administration activities;
- (c) The Respondents have failed to distribute all of the funds they have received in respect of the Bayview Project (\$18 million); and
- (d) The principals of Fortress and related entities continue to seek to play a role in projects under the FAAN Trusteeship. This influence could be exacerbated in the Respondents' Mortgage Administration Business given the lack of resources available to the Respondents to administer those projects.

29. I understand also from FRSA that they have received the first page of a number of key agreements governing the relationship between the Respondents and syndicated mortgage investors, and that the first page of the agreements are identical to the key agreements relating to the BDMC Projects. The agreements grant the mortgage administrator significant authority, which can have a direct impact on investor interests. Accordingly, FSRA is of the view that "It is essential that these powers be exercised by a mortgage administrator whose sole loyalty is to investors and who has the expertise and capacity to undertake this work in a timely and competent manner. FSRA believes that the appointment of a trustee will support these criteria."²

30. As a result of their concerns, FSRA supports the Law Society's Application. It is the view of FSRA that investors related to the Respondents' Mortgage Administration Business deserve the same level of protection already afforded to the investors in the in the Fortress projects currently subject to the Appointment Order.

² Fagbemi Affidavit, para 36.

Investor Complaints to the BDMC Trustee and Representative Counsel to the Investors re the Respondents' Mortgage Administration Business

31. Since its appointment, as set out in paragraphs 31-32 and Appendix 5 of the Pre-Filing Report of the Proposed Trustee, FAAN Mortgage has received numerous calls and emails from concerned investors who require clarification and/or information concerning the syndicated mortgage loans in which they are invested, and the underlying Fortress/BDMC projects. I understand FAAN Mortgage is frequently contacted by investors on projects for which the Respondents are the mortgage administrator, including some of the investors in relation to the Bayview Project referenced above.

32. I understand from representative counsel to the investors in the BDMC Proceeding, Chaitons LLP, that it also frequently receives communications from concerned investors seeking clarification and/or information concerning the syndicated mortgage loans administered by the Respondents in which they are invested, and the underlying Fortress/BDMC projects. Examples of these communications, redacted to protect investor privacy, are attached hereto as **Exhibit 4**.

33. These communications indicate that investors have had difficulty obtaining responses to their emails and calls to the Respondents, and are unable to determine the status of their investments despite the projects having completed some time ago.

Concerns of the Law Society

34. The Law Society does not have independent information concerning the status of the Fortress project syndicated mortgage loans being administered by the Respondents. However, Mr. Sorrenti has advised the Law Society that he is presently administering syndicated mortgage loans in respect of the following 10 Fortress projects:

- (a) Gotham
- (b) Harmony Village Sheppard
- (c) Mapleview/Julian Court
- (d) SoBa
- (e) The Sutton/Link Condos + Towns
- (f) Wismer 3
- (g) Lotus/Bayview Village
- (h) Victoria Park Place/Vic Towns
- (i) Progress/TEN88
- (j) Uptowns of Unionville/UnionVillas

35. There may be additional projects of which the Law Society is presently unaware.

36. The Law Society has learned that, in response to some investor requests, the Respondents' have advised that Mr. Sorrenti will not be responding to further requests as his office does not have the capacity to deal with the volume of mortgage investors with an interest in the syndicated mortgages he is administering. Specifically, Mr. Sorrenti has advised that he is "inundated with similar requests from many of the over 3000 syndicate mortgage investors who have been thrust into our purview." Attached as **Exhibit 5** is an example of a communication from Mr. Sorrenti to one of the investors dated March 26, 2019, redacted.

37. Mr. Sorrenti also advised the Law Society that it is “unsustainable” for the Respondents to continue to act as administrator for all of the syndicated mortgage investors. He explained that at that time, he had only 1.5 staff members in addition to himself, and could not service the 3000 syndicated mortgage investors who were at one time serviced by the mortgage brokerages. A copy of Mr. Sorrenti’s email dated April 9, 2019 is attached hereto at **Exhibit 6**.

38. On September 20, 2019, counsel to the Law Society sent a letter to Mr. Sorrenti advising him that it had been retained to commence an application under section 49.47 of the *Law Society Act* to obtain a trusteeship order in respect to the administration of mortgages related to Fortress projects. A copy of that letter is attached hereto at **Exhibit 7**.

39. On September 24, 2019, Mr. Sorrenti sent an email to the Law Society’s counsel (attached hereto as **Exhibit 8**) advising of the names and status of the Fortress projects he is administering. That evening, myself and several individuals from the Law Society, as well as the Law Society’s counsel, had a telephone call with Mr. Sorrenti at which time he provided further information regarding the status of the projects.

40. On September 26, 2019, I attended at the Respondents’ Business Premises together with another Law Society staff member, counsel for the Law Society, and employees of FAAN Mortgage to conduct a meeting with Mr. Sorrenti. During that meeting, I learned that:

- (a) The Respondents currently have only 1 part-time staff member in addition to Mr. Sorrenti working in his office;
- (b) The Respondents are unable to manage the volume of investors to whom they are responsible;

- (c) Mr. Sorrenti has paid himself mortgage administration fees that have not been disclosed to investors;
- (d) The Respondents do not have access to tools that would assist them in administering the mortgages, such as “Mortgage Office” software, or funds that would allow them to obtain independent appraisals of the projects in which the syndicated mortgages have invested; and
- (e) The Respondents maintain both electronic and paper records related to the Mortgage Administration Business, some of which is stored in an offsite storage facility.

41. Based on the information collected as part of its trusteeship of BDMC, and during the meeting with Mr. Sorrenti on September 26, 2019, FAAN Mortgage prepared a chart reflecting the current status of the projects which appears at paragraph 33 of the Pre-Filing Report of the Proposed Trustee.

42. On September 27, 2019, counsel to the Law Society sent a letter to Mr. Sorrenti requesting a list of each investor for each project Mr. Sorrenti is administering. Further, Mr. Sorrenti was requested to refrain from taking the following actions without first consulting counsel to the Law Society:

- (a) Issuing or releasing any further payments (including distributing cheques in relation to the Bayview project);
- (b) Utilizing any of the monies in the mortgage administration trust account, including in order to pay your own mortgage administration fees; and

- (c) Taking any action/making any decisions in respect of the projects which would bind investors.

A copy of that letter is attached hereto as **Exhibit 9**.

43. Shortly after the above noted letter was sent, Mr. Sorrenti forwarded several emails to the Law Society and its counsel, as follows:

- (a) Mr. Sorrenti forwarded an exchange between him and Norman Winter regarding the discharge of the 25 UnionVillas mortgages. Mr. Sorrenti requested that counsel for the Law Society contact Mr. Winter's office as Mr. Sorrenti was about to discharge the syndicated mortgages. Mr. Sorrenti also indicated that he is authorized to distribute funds in relation to the Bayview project as per Court Order, and requested an immediate discussion regarding fees Mr. Sorrenti feels are properly earned. A copy of that email exchange is attached hereto as **Exhibit 10**;
- (b) Mr. Sorrenti forwarded an email that he had received from Sajjad Hussain of Sunrise Homes regarding the discharge of 25 mortgages on the UnionVillas project. Mr. Hussain stated that failure to discharge the mortgages would jeopardize the project as the sales on the 25 homes are set to close on September 30, 2019. A copy of that email correspondence is attached hereto as **Exhibit 11**;
- (c) Mr. Sorrenti sent an email to counsel to the Law Society advising that he had received a further email from Mr. Winter requesting the urgent discharge of mortgages on 25 units relating to a project called "UnionVillas". A copy of that email correspondence is attached hereto as **Exhibit 12**; and

- (d) Mr. Sorrenti sent an email to the CEO of the Law Society, Diana Mills, advising of the urgent request on the Unionvillas project and requesting the immediate attention of the Law Society in relation to the project. A copy of that letter is attached hereto as **Exhibit 13**.

44. I understand from my counsel that following receipt of these emails, counsel to the Law Society telephoned Mr. Sorrenti and left a voicemail requesting that he call back to discuss his emails. I understand from my counsel that Mr. Sorrenti did not return the call.

45. Following the voicemail message, counsel to the Law Society wrote to Mr. Sorrenti to confirm that the Law Society had not been appointed as a trustee and cannot make determinations with respect to the proposed transaction, but had requested that he refrain from taking steps in respect of the Fortress projects in light of its intention to appoint a trustee. Counsel also requested that, in anticipation of the contemplated trusteeship appointment application, Mr. Sorrenti provide all documents and correspondence in respect of the UnionVillas project. A copy of that letter is attached hereto as **Exhibit 14**.

46. On September 29, 2019 Mr. Sorrenti responded to this letter indicating that he had read the draft order appointing FAAN as trustee but that the urgency of the matter has lead him to conclude that the immediate execution of the requested discharges by Norman Winter's office is proper. A copy of that email is attached hereto as **Exhibit 15**.

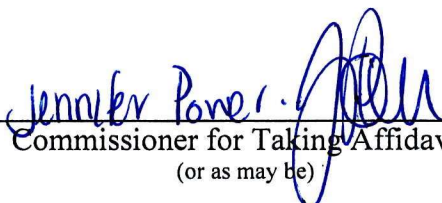
47. On September 29, 2019, Mr. Sorrenti forwarded a further email he had received from Vince Petrozza of Fortress highlighting Mr. Sorrenti's obligations under the Loan Agreement and Subordination Agreements in respect of the UnionVillas project. A copy of that email and the agreements is attached hereto as **Exhibit 16**.

The Proposed Order


48. Based on the above, the Law Society is of the opinion that a trusteeship order over the Respondents' Mortgage Administration Business is necessary for the protection of the public, specifically in order to protect the 3,000 syndicated mortgage investors whose mortgages are currently being administered by the Respondents. It appears that Mr. Sorrenti has neglected this aspect of his professional business without making adequate provision for the protection of investor interests.

49. In light of all of the circumstances set out above, I believe that FAAN Mortgage is the appropriate party to act as Trustee of the Respondents' Mortgage Administration Business. This would allow for all of the known Fortress projects to be managed by a single administrator, who already possesses significant experience with and understanding of the Fortress projects.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on September 30..., 2019



Jennifer Power
Commissioner for Taking Affidavits
(or as may be)

}


NADIA MUSCLOW

Appendix 3:

Gotham Feedback Request dated January 7, 2020



January 7, 2020

Dear Lender:

Re: Syndicated Mortgage Loan made to Bel-Ottawa Inc. (“Borrower”) pursuant to the loan agreement dated June 28, 2011 (as amended, “Loan Agreement”) regarding the property located at 324, 326, 328 Gloucester Street & 224 Lyon Street, Ottawa, ON (“Gotham Project” or “Property”)

Request for approval regarding the Syndicated Mortgage Loan to Bel-Ottawa Inc.

As you are aware, on September 30, 2019, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) (the “**Appointment Order**”), FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) of all of the assets, undertakings and properties of Derek Sorrenti or Sorrenti Professional Law Corporation (collectively, “**Sorrenti**”) relating to Sorrenti’s trusteeship and administration of syndicated mortgage loans (“**Sorrenti SMLs**”) in projects affiliated with Fortress Real Developments Inc. and certain related entities. The Trustee’s appointment resulted from an application made by the Law Society of Ontario under Section 49.47 of the *Law Society Act, R.S.O. 1990. c. L.8*, and section 101 of the *Courts of Justice Act*, each as amended. The Appointment Order also appointed Chaitons LLP as representative counsel to persons who made loans through the Sorrenti SMLs (“**Representative Counsel**”).

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you as a syndicated mortgage lender to the Borrower in respect of the Gotham Project pursuant to the Loan Agreement between Sorrenti and the Borrower (“**Sorrenti Loan**”), and the various associated documents.

The total principal advanced by the syndicated mortgage lenders on the Gotham Project (“**Gotham SMLs**”) pursuant to the Loan Agreement was approximately \$8.148 million. As at November 30, 2019, the total remaining principal due to the Gotham SMLs is \$1,245,590 (“**Current Principal Amount**”), plus accrued interest of \$326,621.¹ To the Trustee’s knowledge, there is no debt registered on title to the Property in priority to the Sorrenti Loan.

¹ Per diem interest, which has continued to accrue since November 30, 2019, is \$276.80.



Overview of Current Status of the Gotham Project

The Borrower has built a 242 unit condominium tower in Ottawa. Construction is complete and the condominium was registered in 2016, at which time the Borrower repaid \$6,902,710 of the principal amount owing in respect of the Sorrenti Loan, leaving the Current Principal Amount outstanding. However, at that time approximately 72 units remained unsold despite the Borrower's marketing efforts. The Borrower advised the Trustee that the Ottawa market has been unfavourable and that while it was able to sell units in order to fully repay the priority debt that ranked ahead of the Sorrenti Loan, as of December 2019, 14 units remain to be sold by Borrower (the "**Remaining Units**"). The Borrower advises that it could take until mid-2020 or later to sell the Remaining Units.

The Offer

The Borrower has presented the Trustee with an offer, which was negotiated by the Trustee, that provides for the payment by the Borrower of \$1,420,590 (the "**Offer**"), which represents 100% of the outstanding principal balance of the Sorrenti Loan plus \$175,000 of the outstanding accrued interest in advance of the Remaining Units being sold. When previously paid interest of approximately \$707,928 ("**Previously Paid Interest**") is factored into the analysis, the Offer plus the Previously Paid Interest would result in a return of approximately 111% of the original principal amount of the Sorrenti Loan.² The Offer is conditional upon Court approval and a release of all future obligations of the Borrower with respect to the Loan Agreement and the Sorrenti Loan.

The Offer also includes the extinguishment of all further rights and obligations of Sorrenti and the Gotham 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.

A copy of the Offer is attached as Schedule "A".

² Please note that this figure represents the overall recovery on the outstanding Sorrenti Loan original principal balance of approximately \$8.148 million. The percentage of individual realizations will vary by Gotham SML depending on when each syndicated mortgage lender advanced funds to the Gotham Project.



The recovery is calculated as follows:

Original Principal Amount (A)	8,148,300
2016 Principal Repayment	6,902,710
Previously Paid Interest	707,928
Proposed Principal Repayment per the Offer	1,245,590
Proposed Interest Payment Per the Offer	175,000
Total Payments (B)	<u>9,031,228</u>
% recovery on original principal (B/A)	111%

The ultimate distribution to the Gotham SMLs from the Offer will be net of an administrative holdback to be retained by the Trustee. The Gotham SMLs may receive a portion of the administrative holdback amount in the future; however, the timing and amount, if any, is unknown at this time. The Trustee intends to make a recommendation to the Court regarding the quantum of the administrative holdback at an omnibus Court hearing in respect of the Sorrenti proceedings to be held in early 2020. If the Gotham SMLs support the Offer, it is the Trustee's intention to seek approval of the Offer at a hearing to be scheduled as soon as practicable following receipt of feedback from the Gotham SMLs. The Trustee would subsequently seek Court approval of the administrative holdback and a distribution to the Gotham SMLs at the omnibus Court hearing.

For the reasons set out below, the Trustee recommends accepting the 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 offer.

Assessment of the Offer and Recommendation

Acceptance of the Offer by the Trustee would result in the Gotham SMLs foregoing additional accrued interest of approximately \$151,000, which would otherwise be due on the Sorrenti Loan (assuming the Sorrenti Loan was repaid on or about November 30, 2019³).

Pursuant to the Loan Agreement, under certain circumstances, the Gotham SMLs could also be entitled to a deferred lender fee. Based on the Trustee's review of the financial information provided by the Borrower and the Loan Agreement, the minimum deferred lender fee requirements under the Loan Agreement will likely not be met and, accordingly, the deferred lender fee set out in the Loan Agreement would likely not be payable to the Gotham SMLs.

³ Since November 30, 2019, additional interest has continued to accrue and would be payable on the date that the Sorrenti Loan would be repaid.



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

- The Offer provides certainty regarding the amount and a time frame for the repayment of the Sorrenti Loan;
- Absent the acceptance of the Offer, the Borrower has advised that it will discontinue funding the cash flows required to maintain the Remaining Units. If the Borrower does not continue to fund such costs, the Trustee may be required to take enforcement or other protective steps, increasing the recovery related costs and extending the timeline for the Sorrenti Loan to be repaid (if at all). The Trustee is of the view that the potential costs and risks associated with such a scenario outweigh the added benefit that may be obtained by the Trustee by not accepting the Offer (i.e. the potential for additional interest of approximately \$151,000); and
- The Offer results in a return on the Sorrenti Loan of approximately 111% of the original principal amount when Previously Paid Interest is taken into account.

Given the above, the choice before the Gotham SMLs is for the Trustee to:

- 1) Accept the Offer made by the Borrower for the repayment of the Sorrenti Loan, which includes a release of Sorrenti, the Trustee and individual lenders with respect to all rights and obligations under the Loan Agreement and related documents; or
- 2) Not accept the Offer, in which case the Trustee may be required to take steps to realize on the Remaining Units through an enforcement or other proceeding, with the timing and quantum of recovery being uncertain.

Next Steps

At this time, you should review this notice and the Offer carefully and arrange to obtain independent legal advice regarding these matters. If desired, you can consult with Representative Counsel. Representative Counsel's contact information is 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 Offer in full satisfaction of your investment under the Sorrenti Loan and to provide any additional feedback.

If you have any objections to the acceptance of the 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 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 Offer by an exercise of the discretion granted to the Trustee under the Appointment Order. Any acceptance by the Trustee of the Offer would not be binding on the Trustee or the Gotham



SMLs until the Offer is approved by the Court. In the event that the Trustee accepts the Offer, copies of the motion materials filed in support of an Order of the Court approving the Offer will be posted to the Trustee's website at <http://faanmortgageadmin.com/> prior to the proposed Court date.

A prompt response is required in the circumstances. Should you have any questions of the Trustee, our contact information is below (if you are contacting us by phone or email, please reference **Gotham 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 **Gotham Project**).

Email: Sorrentiinvestors@chaitons.com
Toll-Free Telephone Number: **1-833-777-0037**

Yours very truly,

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED TRUSTEE
OF THE SYNDICATED MORTGAGE LOAN ADMINISTRATION PRACTICE OF
DEREK SORRENTI OR SORRENTI LAW PROFESSIONAL CORPORATION
AND IN NO OTHER CAPACITY**

Appendix 4:

Offer and Gotham Settlement Agreement

OFFER TO SETTLE

DATE: DECEMBER 17, 2019

**TO: FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS
CAPACITY AS COURT-APPOINTED TRUSTEE OF DEREK SORRENTI
OR SORRENTI LAW PROFESSIONAL CORPORATION AND IN NO
OTHER CAPACITY**

- and -

OLYMPIA TRUST COMPANY

Bel-Ottawa 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 consideration for all obligations owing by the Borrower under that certain Loan Agreement dated June 28, 2011 (as amended, the “**Loan Agreement**”) with Derek Sorrenti, in trust (as bare trustee) (“**Sorrenti**), as lender. Sorrenti entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company (“**Olympia**”) acts as trustee for a subset of such lenders who have self-directed accounts with Olympia.

The Borrower understands that FAAN Mortgage Administrators Inc. was appointed as trustee of Sorrenti (in such capacity, the “**Trustee**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated September 3, 2019 under section 49.47 of the *Law Society Act*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by Sorrenti, and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to Sorrenti and any actions involving Sorrenti 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 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 and Olympia intend to reach out to the individual lenders forming the syndicate under the Loan Agreement with respect to this Offer. 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 Sorrenti, and Olympia, by such date shall result in this Offer being revoked. 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.

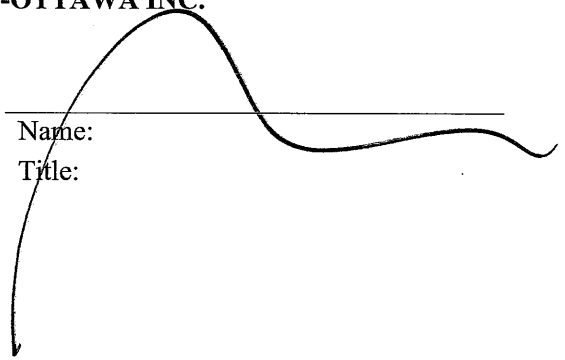
The Borrower looks forward to your response.

BEL-OTTAWA INC.

By: _____

Name:

Title:

A large, stylized handwritten signature in black ink that starts below the 'By:' line, loops up and over the 'Name:' and 'Title:' labels, and ends with a wavy tail on the right side.

SETTLEMENT AGREEMENT
(dated as of December 17, 2019)
(the "Settlement Agreement")

B E T W E E N:

BEL-OTTAWA INC.

- and -

**FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF DEREK SORRENTI OR SORRENTI LAW
PROFESSIONAL CORPORATION**

- and -

OLYMPIA TRUST COMPANY

WHEREAS, pursuant to a Loan Agreement dated June 28, 2011 (as amended, the "**Loan Agreement**"), Derek Sorrenti, in trust (as bare trustee) ("**Sorrenti**"), as lender, issued a loan (the "**Loan**") to Bel-Ottawa Inc. (the "**Borrower**"), as borrower.

AND WHEREAS Sorrenti entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company ("**Olympia**") acts as trustee for a subset of such lenders who have self-directed accounts with Olympia;

AND WHEREAS on September 3, 2019, FAAN Mortgage Administrators Inc. was appointed as trustee of the assets, properties and undertakings of Sorrenti (in such capacity, the "**Trustee**") pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under section 49.47 of the *Law Society Act*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by Sorrenti and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to Sorrenti;

AND WHEREAS the Borrower, Sorrenti and Olympia entered into the Loan Agreement in connection with the development of residential condominium units on property located at 324, 326, 328 Gloucester Street & 224 Lyon Street Ottawa, On. (the "**Property**", and such development, the "**Project**");

AND WHEREAS in connection with and as security for payment of the Loan and the performance of other obligations set out in the Loan Agreement, Sorrenti and Olympia were granted a charge on title to the Property registered as Instrument No. OC1254115 in the initial principal amount of \$3,400,000, which principal amount of the charge was subsequently increased to \$6,600,000 (the "**Charge**");

AND WHEREAS there is currently \$1,245,590 of principal outstanding under the Loan;

AND WHEREAS as of November 30, 2019, there was approximately \$326,621 of accrued interest payable to Sorrenti under the Loan, which continued to accrue at a per diem amount of \$276.80 since November 30, 2019;

AND WHEREAS pursuant to Section 3.01 and Schedule D of the Loan Agreement, the Borrower is required to pay to Sorrenti a Deferred Lender Fee (as defined in the Loan Agreement) in certain circumstances based on a percentage of the total amount loaned to the Borrower by the Lender and based on the current financial projections of the Borrower, it is anticipated that no Deferred Lender Fee would be payable to Sorrenti;

AND WHEREAS the initial maturity date under the Loan Agreement was July 5, 2014, and such date was extended in accordance with the terms of the Loan Agreement to July 15, 2015 (the "**Maturity Date**"), and, accordingly, the Loan is currently in default;

AND WHEREAS the Borrower has advised that it has experienced difficulty in selling the Project's remaining condominium units in order to repay the Loan in full;

AND WHEREAS the Borrower provided, and the Trustee received, proof of sufficient available funds to pay the Settlement Payment (as defined herein);

AND WHEREAS the Trustee consulted with individual lenders with respect to the proposed Settlement Agreement and, following such consultation, determined that it is in the best interests of the 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 Sorrenti under the Loan Agreement and the Charge and all other security granted by the Borrower with respect to the Obligations (as defined below);

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 that would be payable to Sorrenti and Olympia under the Loan Agreement and the Charge is \$1,572,211 (the "**Obligations**"), consisting of the following amounts, and that such amounts represent all of the monetary obligations owed by the Borrower to Sorrenti and Olympia under the Loan Agreement:
 - (a) Principal owing in the amount of \$1,245,590, payable on the Maturity Date; and
 - (b) Interest owing as of November 30, 2019 in the amount of \$326,621, plus any additional interest that would be accrued from such date until the date the Loan is repaid.
3. The Borrower hereby agrees to pay to the Trustee, on behalf of Sorrenti, and Olympia, upon the Effective Date of this Agreement, a lump-sum payment in the amount of **\$1,420,590** (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 Late Payment Fee (as defined below).

4. In the event that the Borrower fails to pay any portion of the Settlement Payment within fourteen calendar days from the date of the Order (as defined below), the Borrower shall pay a late payment fee to the Trustee, on behalf of Sorrenti, of 10% of the Settlement Payment (the "Late Payment Fee").

5. The Borrower shall, upon the Effective Date, execute and deliver a full and final release in favour of the Trustee, Sorrenti, Olympia and their related entities (including the individual lenders) (collectively, the "**Releasees**") in respect of, *inter alia*, any and all obligations under the Loan Agreement, the Charge, and all other documents between the Borrower and Sorrenti, 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); provided that such Release shall not in any way affect the Trustee's obligations under this Settlement Agreement.

6. The Borrower hereby represents and warrants to the other parties hereto that, as of the date hereof:

- (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 or similar 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) after reasonable inquiry and investigation, 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.
- (f) Neither the Borrower nor any of its affiliates, principals or agents has been in contact with, had discussions with, or been in negotiations with Fortress or any Fortress Representatives in respect of a potential transaction that would result in any consideration becoming payable in any way to Fortress or any Fortress Representative in connection with 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, including without limitation any potential transaction involving a settlement of the Obligations or an assignment of all or any part of the Obligations or the Charge to Fortress or any Fortress Representative.

7. The Borrower covenants in favour of the Trustee 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 Subsections 6(d)(i), 6(e), or 6(f), 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: (y) 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 Sorrenti under the Loan Agreement as of the Effective Date has been paid to the Trustee in full, or (z) shall be deemed to become an amount that is owed by the Borrower to the Trustee, 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.

8. The Trustee, on behalf of Sorrenti, acknowledges that the Settlement Payment represents \$151,000 less than the full amount of the principal and interest owing as at November 30, 2019 (excluding additional accrued interest to the ultimate date of repayment) and any amount that could potentially become owing under the Loan Agreement, including the Deferred Lender Fee, and the Charge. The Trustee, on behalf of Sorrenti, and Olympia agree that, as of the Closing Date (as defined herein), they shall be deemed to accept the Settlement Payment and, if applicable, the Late Payment Fee in full satisfaction of the Obligations and the performance of any obligations under the Loan Agreement and the Charge, and shall waive any rights to any further payments that may become payable to Sorrenti and/or Olympia under the Loan Agreement and the Charge, provided that such agreement and waiver shall not in any way affect the Turnover Obligation under this Settlement Agreement.

9. The Trustee shall use commercially reasonable efforts to seek approval of the Settlement Agreement by way of court order substantially in the form agreed between the Borrower, the Trustee, and Olympia (which shall, for greater certainty, contain a full release and discharge of all Obligations of the Borrower under the Loan Agreement and the Charge, provided that such release shall not be effective until the Closing Date as provided in Sections 10, 11 and 12 hereof and shall not in any way affect the Borrower's obligations hereunder) (the "**Order**") issued by the Court. The parties hereto agree that, except for the immediately preceding sentence and Section 11 hereof, this Settlement Agreement shall not be binding on any party until the issuance of the Order. Following 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 Late Payment Fee and to issue the Release as contemplated in Sections 3 and 5 herein.

10. The obligations of the Trustee, on behalf of Sorrenti, and Olympia contained in this Settlement Agreement (except for the obligation to seek Court approval pursuant to Section 9 hereto, which shall be effective as of the date that the Trustee and Olympia 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 11 herein (the "**Closing Date**").

11. The Trustee shall be required to issue the Trustee's Certificate to the Borrower and file the Trustee's Certificate with the Court promptly 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 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 Late Payment Fee to the Trustee;
- (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 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 Sorrenti and Olympia (including without limitation the Charge) shall remain effective until the Closing Date.

12. As of the Closing Date: (i) the Borrower, the Trustee, on behalf of Sorrenti, Olympia and all individual lenders acknowledge and agree that they shall have no further rights or obligations in connection with the Obligations, the Loan Agreement and the Charge, and that the Loan

Agreement shall automatically be terminated with no further force or effect; (ii) the Borrower shall be permitted to cause any and all security held by Sorrenti and/or Olympia to secure the Obligations to be discharged, including the discharge of the Charge from title to the Property; (iii) the Borrower shall be permitted to release any interest the Trustee, on behalf of Sorrenti, and Olympia may have in any insurance policy(ies) relating to the Property; and (iv) the individual lenders shall be deemed to have released the Borrower from all obligations and security provided in connection with the Loan Agreement; provided, however, that the releases, discharges, and other matters described in this Section shall not in any way affect the Borrower's obligations under this Settlement Agreement.

13. 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.

14. The parties agree that the terms of this Settlement Agreement shall be disclosed to the individual lenders under the Loan and shall be included in the motion materials for approval of the Settlement Agreement.

15. 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.

16. 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.

17. 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.

18. 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 Agreement must be adjudicated before the Ontario Superior Court of Justice.

[Remainder of page intentionally left blank]

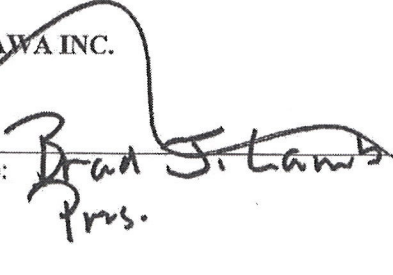
IN WITNESS OF WHICH the parties have duly executed this Agreement as of the date indicated above.

BEL-OTTAWA INC.

By:

Name:

Title:



Brad J. Lams
Pres.

FAAN MORTGAGE ADMINISTRATORS
INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF
DEREK SORRENTI OR SORRENTI LAW
PROFESSIONAL CORPORATION AND
IN NO OTHER CAPACITY

By:

Name:

Title:

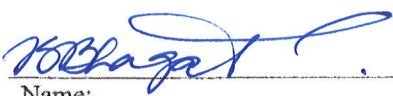

Naweed Z. Manzoor
President


OLYMPIA TRUST COMPANY

By:

Name:

Title:


Vibha Bhagat
Manager


Cora Domsis
Team Lead