

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

APPLICATION RECORD

September 30, 2019

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Respondent

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(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

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on September 30, 2019, before a judge presiding over the Commercial List at 330 University Avenue, 9th Floor, Toronto ON, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve

serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
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APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR AN ORDER, *inter alia*:
 - (a) appointing FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”) as trustee (in such capacity, the “**Trustee**”) pursuant to section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8 (“*Law Society Act*”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“*CJA*”), without security, of all of the assets, undertakings and properties that is in the possession, power or control 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**”) (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 Respondent (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;

- (b) if necessary, abridging the time for service and filing of this Notice of Application and the Application Record, validating service, substituting service, and/or dispensing with service upon the Respondents, if required;
- (c) that any party affected by this Order may apply to Court under section 49.51 of the *Law Society Act* to vary or discharge this Order;
- (d) if required on an interim basis pending the Trustee's appointment, an order under section 49.46 of the *Law Society Act* that all of the Property that is in the possession or control of the Respondents relating to the Syndicated Mortgage Loan Administration Business shall not be paid out or dealt with by any person without leave of the court (the "**Freezing Order**"); and
- (e) such further and other relief as counsel may advise and this Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

- (a) the Respondents carry on professional business as trustee and mortgage administrator with respect to a number of syndicated mortgage investments in projects affiliated with Fortress;
- (b) 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;

- (c) on April 20, 2018, the Superintendent of Financial Services (the “**Superintendent**”) obtained an Order (the “**Appointment Order**”) under section 37 of *MBLAA* and section 101 of the *CJA* appointing FAAN Mortgage as trustee of all of the assets, undertakings and properties of Building and Development Mortgages Canada Inc. (“**BDMC**”) (the “**BDMC Proceeding**”);
- (d) since that time, FAAN Mortgage has acted as the Trustee over the assets, undertakings and properties of BDMC, including in relation to syndicated mortgages in Fortress projects;
- (e) as a result of the exemption under *MBLAA*, the mortgages administered by the Respondents are not subject to the BDMC Proceeding or to the Appointment Order;
- (f) the Respondents are the trustee and mortgage administrator for syndicated mortgage loans in at least 10 Fortress projects involving a total of approximately \$100,000,000 in advance syndicated mortgage loans, as follows:
 - (i) Gotham
 - (ii) Harmony Village Sheppard
 - (iii) Maplevue/Julian Court
 - (iv) SoBa

-8-

- (v) The Sutton/Link Condos + Towns
 - (vi) Wismer 3
 - (vii) Lotus/Bayview Village
 - (viii) Victoria Park Place/Vic Towns
 - (ix) Progress/TEN88
 - (x) Uptowns of Unionville/UnionVillas
- (g) FAAN Mortgage, the Financial services Regulatory Authority of Ontario (“FSRA”) and Representative Counsel for the investors in the BDMC Proceeding have received a number of complaints from investors regarding the Respondents’ Syndicated Mortgage Loan Administration Business;
- (h) the Respondents are unable to manage the volume of investors to whom they are responsible;
- (i) the Respondents currently have only 1 part-time staff member in addition to Mr. Sorrenti working in his office;
- (j) Mr. Sorrenti has paid himself mortgage administration fees that have not been disclosed to investors;
- (k) 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;

- (l) the Respondents have received a distribution funds relating to one of the Sorrenti Projects (the Bayview Project) which is understood to total \$18 million, however not all funds have been distributed;
- (m) the Respondents have received an urgent request to discharge syndicated mortgages from one of the Sorrenti projects (the Unionvillas Project);
- (n) the powers exercised by mortgage administrators on behalf of investors makes the administration of syndicated mortgage loans an essential part of protecting investor interests;
- (o) the Respondents' mortgage administration business deserves the same level of protection already afforded to the investors in the in the Fortress projects currently subject to the Appointment Order;
- (p) FAAN Mortgage already possesses significant experience with and understanding of the Fortress projects;
- (q) FAAN Mortgage has consented to being appointed as Trustee, without security of all of the assets, undertakings and properties of the Respondents in relation to their Syndicated Mortgage Loan Administration Business;
- (r) FSRA supports the Application;

- (s) there are reasonable grounds for believing that circumstances exist regarding the Respondents that make an Order under section 49.46 and/or section 49.47(1) necessary to protect the public;
- (t) there are no reasonable alternatives to the Order requested that would prevent the risk posed;
- (u) such further and other grounds as the lawyers may advise;
- (v) sections 4.1(a), 4.2(3), 5(2), and 49.44-49.52 of the *Law Society Act*, RSO 1990, c L.8;
- (w) Rules 1.04, 14.05(2), 16.04, 16.08, 38.01, 38.02, and 38.09 of the *Rules of Civil Procedure*.

3. THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

- (a) the Affidavit of Nadia Musclow, sworn September 30, 2019;
- (b) the Affidavit of Nadiatou Fagbemi, sworn September 30, 2019;
- (c) the *Law Society Act*, RSO 1990, C L.8, as amended, sections 4.1(a), 4.2(3), 5(2), 49.44-49.52;
- (d) the *Rules of Civil Procedure*, Rules 1.04, 14.05(2), 16.04, 16.08, 38.01, 38.02, and 38.09; and

- (e) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 30, 2019

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Lawyers for the Applicant

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-and- DEREK SORRENTI et al
Respondents

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PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

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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**.

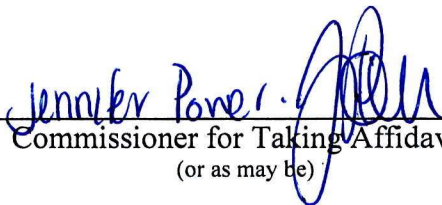
47. On September 29, 2019, Mr. Sorrenti forwarded a further email he had received from Vince Petrozza of Fortress highlighting Mr. Sorrenti's obligations under the Loan Agreement and Subordination Agreements in respect of the UnionVillas project. A copy of that email and the agreements is attached hereto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

This is Exhibit "1" referred to in the
Affidavit of Nadia Musclow, sworn September 30th 2019



Commissioner for Taking Affidavits

Court File No. CV-●

**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**

PRE-FILING REPORT OF THE PROPOSED TRUSTEE

FAAN MORTGAGE ADMINISTRATORS INC.

SEPTEMBER 29, 2019



FAAN Mortgage Administrators Inc.
Proposed Trustee of the Respondents

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INTRODUCTION

1. FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**” or the “**Proposed Trustee**”) has been advised that the Law Society of Ontario (“**LSO**” or the “**Applicant**”) intends to make an application 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* seeking the appointment of FAAN Mortgage as trustee, without security, 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 (“**SMLs**”) in projects affiliated with Fortress Real Developments Inc. and certain related entities (collectively, “**Fortress**”).
2. The purpose of this report is to provide this Honourable Court and the Respondent's stakeholders with information regarding the following, together with the Proposed Trustee's comments as appropriate:
 - (a) Background information concerning FAAN Mortgage’s involvement in Court-proceedings involving Building and Development Mortgages Canada Inc. (“**BDMC**”) (the “**BDMC Proceeding**”) in respect of SMLs that, as discussed further below, are related to the SML’s currently being administered by Sorrenti;
 - (b) FAAN Mortgage’s dealings, in its capacity as trustee (the “**BDMC Trustee**”) over all of the assets, undertakings and properties of BDMC, with Sorrenti, including an update on document production requests made to Sorrenti in respect of critical information concerning the SMLs that were previously administered by Sorrenti and currently administered by the BMDC Trustee;
 - (c) The status of a recent partial distribution that Sorrenti made to investors in a specific SML that is currently being administered by Sorrenti;

- (d) Complaints made to the BDMC Trustee by investors in SMLs administered by Sorrenti;
and
- (e) A list of SMLs, including a list of the underlying projects, that appear to be currently administered by Sorrenti.

SCOPE AND TERMS OF REFERENCE

3. In preparing this report, the Proposed Trustee has relied upon unaudited financial and other information obtained from publicly available sources and/or from, *inter alia*, the books and records of BDMC, Sorrenti, investors and/or individuals who have contacted the BDMC Trustee.
4. While the Proposed Trustee has reviewed the various information that it has obtained, the Proposed 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 Proposed Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.
5. This report has been prepared for the use of this Court and Sorrenti's stakeholders as general information relating to the SMLs that are administered by Sorrenti and to assist the Court with respect to the LSO's application for relief. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose.
6. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

7. On April 20, 2018, the Superintendent of Financial Services (the “**Superintendent**”) obtained an Order under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29 and section 101 of the *Court of Justice Act, R.S.O. 1990 c. C.43* appointing FAAN Mortgage as trustee over all of the assets, undertakings and properties of BDMC. A copy of the Order dated April 20, 2018 in the BDMC Proceeding (the “**Appointment Order**”) is attached hereto as **Appendix “1”**.
8. The BDMC Trustee has filed 10 reports to Court in the BDMC Proceeding. Those reports and other court materials related to the BDMC Proceeding are accessible on the BDMC Trustee’s website at www.faanmortgageadmin.com.
9. BDMC was the principal mortgage broker and administrator used in recent years by Fortress to raise initial financing through SMLs from the investing public for early stage real estate developments. Fortress and its affiliates are development consultants or borrowers with respect to various real property development projects.
10. As set out in the affidavit filed by the Superintendent in support of the Appointment Order, since 2013, BDMC has acted as mortgage administrator for approximately 60% to 70% of the development projects involving Fortress. The other 30% to 40% of SMLs that relate to Fortress projects are administered by lawyers who operate under the MBLAA’s exemption from licensing requirements applicable to lawyers.¹
11. It is the BDMC Trustee’s understanding that Derek Sorrenti, an Ontario lawyer, through his professional corporation, Sorrenti Law Professional Corporation acted as administrator with respect to a number of SMLs made in respect of Fortress related projects. Certain of these loans are still administered by Sorrenti

¹ Affidavit of Brendan Forbes Affidavit sworn April 19, 2018 (“Forbes Affidavit”), Application Record of the Superintendent of Financial Services, para 33.

(the “**Sorrenti Projects**”) and others were transferred to BDMC by Sorrenti prior to the BDMC Trustee’s involvement (the “**Transferred Projects**”). The Sorrenti Projects are not part of the BDMC Trustee’s mandate and are not subject to the BDMC Proceeding, while the Transferred Projects are part of the BDMC Trustee’s mandate and are subject to the BDMC Proceeding.²

SORRENTI DOCUMENT PRODUCTION REQUESTS

12. The Appointment Order requires, among other things, that 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 BDMC Trustee and to cooperate fully with the BDMC Trustee with respect to its mandate.³ Sorrenti did not comply with the BDMC Trustee’s information requests. Accordingly, as set out below, the BDMC Trustee sought and obtained an Order requiring Sorrenti to comply with the Appointment Order and to provide the Trustee with a detailed list of all information related to the Transferred Projects. A copy of the Omnibus Order in the BDMC Proceeding (including paragraphs 6 and 7 related to Sorrenti) dated May 23, 2019 is attached hereto as **Appendix “2”**. A copy of the BDMC Trustee’s Seventh Report (without appendices other than Appendix “9”), which, among other things, describes the circumstances leading up to the Omnibus Order is attached hereto as **Appendix “3”**.
13. The BDMC Trustee’s mandate requires that the BDMC Trustee understand each project and the status of each syndicated mortgage loan, to enable it to make informed decisions regarding the administration of those loans in order to protect the investors in the BDMC projects. The BDMC Trustee can only make informed decisions where it has conducted a detailed review of the relevant information, and a significant amount of relevant information was not in BDMC’s possession on the date the BDMC Trustee was

² Seventh Report of the Trustee dated May 10, 2019 (“Seventh Report”), para 135

³ Order of Justice Hailey dated April 20, 2018 (“Appointment Order”), paras 4-7

appointed. To facilitate the BDMC Trustee's discharge of its mandate, the Appointment Order (and in particular paragraphs 4 to 7 thereof) required 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 BDMC Trustee.⁴

14. The BDMC Trustee and its counsel formally contacted Sorrenti on numerous occasions for over six months to request critical information related to the Transferred Projects. This followed several months of more informal requests for information by BDMC (at the request of the BDMC Trustee). Among other things, the BDMC Trustee has requested trust account records, full closing books for the applicable loan agreements and related transactions, diligence summaries and other relevant information. The BDMC Trustee needs access to this information to properly assess settlement offers, postponement requests and structured sale proposals with respect to the Transferred Projects and to discharge its court-ordered mandate.⁵
15. Sorrenti did not comply with the BDMC Trustee's information requests. Sorrenti advised the BDMC Trustee that staffing issues, record storage complications and other obligations delayed the delivery of the requested materials.⁶
16. The BDMC Trustee was concerned that Sorrenti had not made any material efforts to provide the BDMC Trustee's requested information. Accordingly, the BDMC Trustee advised Sorrenti that it intended to seek a production order. In response to this notice, Sorrenti contacted the BDMC Trustee to advise that he would commence providing information, including the trust account records.⁷

⁴ Appointment Order, paras 4-7; Seventh Report, para 140

⁵ Seventh Report, para 141

⁶ Seventh Report, para 142

⁷ Seventh Report, para 142

17. Sorrenti did not deliver this information. Selected copies of the BDMC Trustee's correspondence with Sorrenti are attached as Appendix 9 to the Seventh Report.
18. Accordingly, the BDMC Trustee sought and obtained an Order requiring Sorrenti to comply with the Appointment Order and to provide the BDMC Trustee with a detailed list of all information related to the Transferred Projects, along with a plan and proposed schedule for the delivery of such documents, records and information to the BDMC Trustee, within 30 days of the date of the Order.⁸
19. Sorrenti was provided with a copy of the Omnibus Order shortly after its issuance. He did not comply with the terms of the order requiring him to provide the plan and required schedule within 30 days. Sorrenti advised that staff shortages and other administrative issues made it difficult for him to comply with the BDMC Trustee's information requests.
20. In order to facilitate obtaining information from Sorrenti, the BDMC Trustee suggested that a representative of the BDMC Trustee attend at Sorrenti's office to obtain the materials it required to fulfill its mandate. The BDMC Trustee's representative attended at Sorrenti's offices on July 3, 2019 and was provided with some of the information that the BDMC Trustee had requested including certain trust account details for the Transferred Projects from Sorrenti's 'PC Law' accounting software (in excel spreadsheet format). The BDMC Trustee had requested all emails related to the Transferred Projects and copies of Sorrenti's bank statements. This information was not made available on July 3, 2019 but Sorrenti agreed that the BDMC Trustee's representative could re-attend at a later date to obtain this information.
21. The BDMCs Trustee's subsequent review of the information obtained resulted in additional inquiries as the information provided appeared incomplete including, among other things, unexplained remaining balances in the relevant PC Law accounting ledgers.

⁸ Omnibus Order

22. The BDMC Trustee requested numerous times to schedule a re-attendance at Sorrenti's office to obtain the missing information; however, Sorrenti ultimately did not permit the BDMC Trustee to re-attend at his office citing, among other things, staff shortages, solicitor-client privilege issues and that the information requested still had to be located and organized.

THE BAYVIEW PROJECT

23. As part of its motion to obtain the Omnibus Order (and as also described in the Seventh Report), the BDMC Trustee obtained the Court's authorization to sign a direction with respect to a project located at 5, 7, 9, 11 and 15 Kenaston Gardens and 577 Sheppard Ave., Toronto, known as the "**Bayview Project**". The requested direction authorizes counsel to the borrower, Pine Ridge Building Corp. ("**Pine Ridge**"), to pay approximately \$18 million to Sorrenti in respect of a syndicated mortgage loan made to Pine Ridge and administered by Sorrenti ("**Direction to Pay**").⁹
24. The BDMC Trustee had been advised that Pine Ridge required it to execute the Direction to Pay before it would distribute any funds to Sorrenti because BDMC remained the named lender that is party to the loan agreement with Pine Ridge in respect of the syndicated mortgage loan to the Bayview Project ("**Pine Ridge Loan Agreement**"). The BDMC Trustee investigated matters related to the Bayview Project. The underlying documentation related to the Bayview Project contained several inconsistencies. However, based on, among other things, an affidavit sworn by Mr. Sorrenti, the BDMC Trustee determined that Sorrenti was the acting administrator of the Pine Ridge Loan Agreement.¹⁰

⁹ Seventh Report, para 136

¹⁰ Seventh Report, paras 137-138

25. Although the Bayview Project is outside the Trustee's mandate, the BDMC Trustee brought a motion to seek relief from the Court to obtain the requested authorization in order to assist the individual SML investors in the Bayview Project in recovering at least a portion of their investment.
26. Mr. Sorrenti swore an Affidavit in connection with the Trustee's application for the Direction to Pay. In his Affidavit, Mr. Sorrenti explained that he expected approximately \$18 million to become available for repayment: "I am advised that the Initial Loan Repayment to be paid to Sorrenti pursuant to the Direction to Pay is approximately \$18,000,000.00, less mortgage administration-related expenses which will not exceed \$90,000.00 and the costs with respect to this motion which will not exceed \$25,000.00, As such, there will be an aggregate distribution of approximately \$17,885,000.00 which shall be paid to the remaining 505 Bayview Project investors / lenders pro rata in accordance with the applicable agreements between Sorrenti and each individual investor / lender".¹¹
27. Sorrenti also undertook to distribute the funds: "I confirm and undertake, that any and all funds received by Sorrenti from Pine Ridge or its lawyer William Friedman in respect of the repayment of the Loan, shall, after payment of mortgage administration-related expenses, be distributed, pro rata, to all individual investors lenders in accordance with the applicable agreements between Sorrenti and each individual investor lender."¹²
28. This order was granted by the Court on May 23, 2019. However, it appears that the distribution was not made until several months after due to, among other things, staffing issues of Sorrenti. The BDMC Trustee received from an investor a copy of a memorandum from Sorrenti dated August 12, 2019 which it understands was distributed to the Bayview Village syndicated mortgage investors. In the memorandum, Sorrenti advises that his office had recently received a significant portion of the amount due to be repaid

¹¹ Affidavit of Derek Sorrenti sworn April 25, 2019, Motion Record of the Trustee dated May 10, 2019 ("Sorrenti Affidavit") at para 21

¹² Sorrenti Affidavit at para 20

to the syndicated mortgage investors. He indicates that, for “cash”, “non-registered” or registered Olympia Trust Company investors, a cheque is provided representing their pro-rata distribution of 90.5% of the original investment amount. The BDMC Trustee notes that the memorandum does not provide a breakdown of the monies received by Sorrenti, the amount paid to all Bayview Village syndicated mortgage investors and any deductions made therefrom. In addition, the memorandum does not provide any information relating to amounts remaining with Sorrenti, if any.

29. Regarding payment of additional funds from the Bayview Project, including the balance of the principal and accrued interest, Sorrenti advises that the borrower’s lawyer indicated that payment of the balance would still take some time as the Tarion Warranty had 1.5 years remaining and the technical audit is outstanding. Sorrenti indicates that it is therefore not in a position to provide any additional information about the timing of additional principal or interest payments associated with the loan. A copy of the memorandum is attached hereto as **Appendix “4”**.
30. As discussed in paragraph 33 below, on September 26, 2019, representatives of FAAN Mortgage attended a meeting at Sorrenti’s office with the LSO, its legal counsel and Mr. Sorrenti to gain a better understanding of the various projects that are currently being administered by Sorrenti. In that meeting Mr. Sorrenti advised that due to, among others, issues he was facing in locating addresses for a significant number of investors, he was still in the process of distributing the remaining Bayview Project funds. At that meeting, Mr. Sorrenti was unable to confirm the quantum of the Bayview Projects Funds remaining in Sorrenti’s possession.

INVESTOR COMPLAINTS RE: SORRENTI ADMINISTERED PROJECTS

31. The BDMC Proceeding has been the subject of numerous court hearings and has received significant media coverage as have issues regarding Fortress generally. As a result, the BDMC Trustee has received numerous inquiries from investors in Fortress projects, including the Sorrenti Projects. It has become clear to the BDMC Trustee that there is confusion among the Fortress syndicated mortgage lenders as to whether or not their investment is covered by the BDMC Proceeding. Part of that confusion can be explained by the fact that many investors made loans with respect to both BDMC projects and Sorrenti Projects. As a result, despite the Sorrenti Projects not being part of its mandate, the BDMC Trustee is frequently contacted by investors on projects for which Sorrenti is the administrator, including some of the investors in the Bayview Project described above.
32. By way of example, on August 16, 2019, the Trustee received an email from an investor attaching an email exchange with Sorrenti in relation to an investment. In response to the investor's email requesting an update about the Sutton Drive project, Sorrenti responded that his office "simply does not have the capacity to deal with the volume of calls and drop ins we receive from investors in many Fortress syndicated mortgages each and every day...Obviously, this is an untenable situation to which no one has been able to provide a solution". A copy of the email exchange (redacted to protect investor privacy) is attached hereto as **Appendix "5"**.

SORRENTI PROJECTS

33. Based on information in its possession, information obtained from publicly available sources, and a meeting amongst representatives of the LSO, LSO legal counsel, FAAN Mortgage and Mr. Sorrenti on September 26, 2019, FAAN Mortgage has prepared a list of the current underlying projects that were funded by SMLs and are currently administered by Sorrenti, which is set out below. FAAN Mortgage

notes that the list may not be complete and only lists those SMLs that appear to be active; however, it has prepared the list to assist the investors in identifying the SMLs currently administered by Sorrenti.

	Project Name(s)	Street Address of Lands	Borrower Name(s)
1.	Gotham	324, 326, 328 Gloucester St & 226 Lyon St., Ottawa, Ontario	Bel Ottawa Inc.
2.	Harmony Village Shepard	3260 Sheppard Avenue East, Scarborough, Ontario	Harmony Village-Sheppard Inc.
3.	Mapleview Commons	9891 & 9869 Keele St. Vaughan, Ontario	Empire Pace (Maple) Ltd.
4.	Progress Manors	1088 Progress Avenue, Scarborough, Ontario	Empire Pace (1088) Progress Ltd.
5.	Residences of Bayview/Lotus	5,7,9,11,15 Kenaston & 577 Sheppard Avenue East, Toronto Ontario	Pine Ridge Building Corp.
6.	Soba	203 Catherine Street Ottawa, Ontario	Soba Ottawa Inc.
7.	Solotex/Victoria Park Place	1650-1682 Victoria Park Avenue, Toronto, Ontario	1682 Victoria Park Avenue Inc.
8.	The Sutton/The Link	5236,5226,5218,5210 Dundas Street, 2500 Burloak Drive, Burlington, Ontario	ADI Development Sutton Inc., ADI Developments (LINK) Inc.
9.	Wismer/Eldin	Block 27, Plan 65M 4071 Markham, Ontario	1839314 Ontario Inc. Name Changed to: Pace Developments (The Mark) Inc. Great Eldin Investments
10.	Unionvillas/Uptowns of Unionville	4116, 4128, & 4142 Highway 7 East, on the north side of Highway 7, east of Birchmount Road, Ontario	Sunrise Acquisitions (Hwy 7) Inc.

34. While FAAN Mortgage has some knowledge with respect to the status of these projects based on the meeting with Mr. Sorrenti and from other sources, it does not have sufficient details to comment on their viability or specific details of their status at this time.

CONCLUSION

35. FAAN Mortgage understands that the Law Society of Ontario brings this Application to appoint FAAN Mortgage as the trustee for the purposes of administering the Sorrenti Projects. FAAN Mortgage is a licensed mortgage administrator pursuant to the *Mortgage Brokerages, Lenders, and Administrators Act, 2006*. Furthermore, FAAN Mortgage believes that the knowledge it has gained and the processes it has

implemented in its capacity as the BDMC Trustee will assist in making this proceeding streamlined and efficient. FAAN Mortgage therefore has consented to acting as the trustee in this capacity and has reviewed the Law Society's proposed Order in this Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of September, 2019.

FAAN Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.,
SOLEY IN ITS CAPACITY AS PROPOSED TRUSTEE
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**

This is Exhibit "2" referred to in the
Affidavit of Nadia Musclow, sworn September 20th..... 2019



Commissioner for Taking Affidavits

[4] The RCMP commenced an investigation into Fortress and its principals based on complaints from investors. The RCMP alleged in the ITO that Fortress defrauded investors by knowingly misrepresenting the appraised value of various development properties. The RCMP further alleged in the ITO 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 also alleged in the ITO that the investment funds were not used for the purposes that were disclosed to the investors.

[5] After the warrant was executed Crown counsel and the various parties exchanged correspondence. Among the parties was the CBC. The CBC wished to have access to the ITO, which was sealed. The Crown initially provided to the Court a draft order and proposed redactions. The Crown claimed that the redactions were based on investigative privilege and the protection of innocent third parties. The Crown also provided a chart. The chart identified those redactions that were based on investigative privilege; and those which were based on protecting the interests of innocent persons. Crown counsel provided further elaboration on July 6, 2018.

[6] The application came before me in order to determine whether the redactions could be justified. On July 31, 2018 I provided a chart to Crown counsel. I did not share the chart with the other parties. The purpose of the chart was for me to flag those redactions that I believed Crown counsel was required to justify. There were also redactions that, to me, were self-evidently justified on the face of the ITO. Crown counsel then released almost all of the redactions that I set out in my chart. Crown counsel held back references to innocent persons and to a person referenced in paragraph 90 and following of the ITO. On August 9, 2018, Crown counsel, Ms. Lai, and Mr. Gilliland, for the CBC, made further submissions in relation to the rest of the redactions. The Crown took the position that no further parts of the ITO should be unsealed. The Crown relied on an affidavit of Constable Williamson. Constable Williamson also swore the ITO. In the affidavit he set out a justification for the remaining redactions. Mr. Gilliland argued that the evidence that he was aware of did not justify keeping the rest of the ITO sealed.

ISSUES AND ANALYSIS

[7] Mr. Gilliland argued that the remainder of the ITO should be unsealed. He argued that the justifications put forward by Crown counsel for the redactions are inadequate. Specifically, he focussed on two main areas: what he called Crown counsel's general assertion of secrecy; and the protection of so-called innocent third parties.

[8] In my view, the CBC's arguments can be boiled down to two issues of mixed fact and law:

- (a) Is the Crown merely relying on a generalized assertion of secrecy?
- (b) Would revealing the names of third parties prejudice the interests of innocent third parties?

[9] Before dealing with the substance of Mr. Gilliland's points, I have five general observations about modern criminal investigations, and in particular modern investigations of alleged financial crime (and these comments should not be taken to say anything one way or the other about this particular case):

- First, these investigations have grown ever more complicated. This case is an example. The police have seized over 4.2 terabytes of information. They searched several locations. The ITO is well over 100 pages. There are many different financial transactions involved. The RCMP requires outside expertise. These sorts of cases often have international aspects and may require mutual legal assistance treaty requests.
- Second, these investigations are invariably intertwined with civil proceedings. The parties and witnesses in those civil proceedings are usually witnesses or targets of the police investigation. The targets of the criminal investigation are discoverable and compellable in civil litigation. Individuals who are parties to the civil litigation but not targets of the criminal investigation may be reluctant to talk to the police.
- Third, there may be related litigation over the search itself. For example, in this case, a claim of solicitor-client privilege has been made and that laborious process must play itself out.
- Fourth, as Zuker J. observed in a different context in *R. v. Lubbell* (1973), 1973 CanLII 1488 (ON SC), 11 C.C.C. (2d) 188 (Ont.H.C.), a search warrant is an investigative tool. It is carried out at an early stage of the proceeding. The authorities often don't know what they have until they carry out a review of the seized material. In this case, they cannot even do that review just yet as much of the seized material is still sealed.

Finally, there are situations where delayed disclosure properly balances society's often conflicting interests in proper law enforcement and the open court principle: *Toronto Star v. Ontario*, 2005 SCC 41 (CanLII), [2005] 2 S.C.R. 188, 2005 S.C.C. 41 at para. 31. In this case the Crown has not asserted a class privilege, such as informant privilege. The Crown has only asserted litigation privilege. That means that the ITO is unlikely to be sealed forever. I realize that it is not satisfactory to be told "be patient, you'll get the information eventually" but that is sometimes a realistic response to competing interests.

[10] Some of these factors militate in favour of greater openness, and some militate in favour of protecting the sources and methods used by law enforcement. Each case obviously turns on its own facts in that regard. But these are some of the factors at play in modern investigations that a court must balance.

[11] With those comments in mind, I turn to the two issues raised by the CBC.

(a) Is the Crown merely relying on a generalized assertion of secrecy?

[12] Mr. Gilliland argues that the Crown is relying on a generalized assertion of secrecy. The Crown must justify specific redactions and set out the basis for them. Here, the Crown has not specified the basis for its redactions. The CBC is left in the dark about the basis for sealing. More than a simple assertion is required: *Toronto Star* at para. 38.

[13] I agree with Mr. Gilliland that the Crown cannot rely on a generalized assertion of secrecy. With respect, however, I cannot say that the Crown is doing so in this case. In my view, there is evidence that further disclosure poses a risk to the integrity of the investigation. There are law enforcement techniques that have been used and are or may still be used that must not be revealed. The evidence in support is set out in the affidavit of Constable Williamson as well as in the body of the ITO itself.

[14] The statutory framework for determining access to the contents of an ITO is set out in s. 487.3 of the *Criminal Code*.

[15] A justice or a judge may make an order prohibiting access to the ITO on the ground that the ends of justice would be subverted by disclosure: s. 487.3(1)(a). The justice or judge must balance whether subversion of the ends of justice outweighs in importance access to the contents of the ITO: s. 487.3(1)(b). The statute itself sets out the factors that a judge must balance when he or she evaluates whether the ends of justice would be subverted by disclosure:

487.3 (2) For the purposes of paragraph (1)(a), an order may be made under subsection (1) on the ground that the ends of justice would be subverted by the disclosure

(a) if disclosure of the information would

- (i) compromise the identity of a confidential informant,
- (ii) compromise the nature and extent of an ongoing investigation,
- (iii) endanger a person engaged in particular intelligence-gathering techniques and thereby prejudice future investigations in which similar techniques would be used, or
- (iv) prejudice the interests of an innocent person; and

(b) for any other sufficient reason.

[16] The key provisions at issue in this case are whether the ends of justice would be subverted by compromising the nature and extent of an ongoing investigation; or by prejudicing the interests of an innocent person.

[17] The issuing judge or justice may order that all or part of the ITO, the warrants, and the application materials be placed in a sealed packet. The sealed packet is then to be deposited in a place to which the public has no access. The issuing justice or judge has a wide discretion as to the limits on access, partial disclosure, and duration of the order: s. 487.3(3) of the *Criminal Code*.

[18] An application to terminate or vary the sealing order may be made to the justice or judge who made the order, or a judge of any court where proceedings arising out of the investigation may be held. This is a common law power was codified in s. 487.3(4) of the *Criminal Code*.

[19] Once the warrant is executed the presumption of openness applies – for the obvious reason that the target will know about the warrant and there will be no opportunity to destroy or hide evidence. The burden shifts to the person seeking to justify the redaction or the secrecy: *Toronto Star* at para. 18; *Attorney General of Nova Scotia v. MacIntyre*, 1982 CanLII 14 (SCC), [1982] 1 S.C.R. 175.

[20] That said, the number and type of investigative tools available to the authorities has changed significantly since 1982. That has obviously required a change in the approach mandated by *MacIntyre*. In 1982 there were no general warrants, tracking warrants, or digital number warrants. The purpose of a general warrant that authorized a surreptitious “sneak and peak” would surely be frustrated if the presumption of secrecy shifted immediately upon execution.

[21] The test for balancing whether subversion of the ends of justice outweighs in importance access to the contents of the ITO is commonly known as the *Dagenais/Mentuck* test: *Dagenais v. Canadian Broadcasting Corporation*, [1993] 3 S.C.R. 835; *R. v. Mentuck*, [2001] 3 S.C.R. 442, 2001 SCC 76 (CanLII). Lamer C.J.C. first set out the test in *Dagenais*. *Dagenais* dealt with the question of whether a fictional television program about child sexual abuse in the Catholic Church would prejudice the fair trial rights of four priests. The priests were about to go on trial. Iacobucci J. reformulated the test in *Mentuck*. *Mentuck* involved publicising the details of some police techniques. The test now applies to all discretionary court orders involving publication bans and sealing orders: *Toronto Star* at para. 7. Iacobucci J. set out the test as follows at para. 32 of *Mentuck*:

The *Dagenais* test requires findings of (a) necessity of the publication ban, and (b) proportionality between the ban's salutary and deleterious effects. However, while *Dagenais* framed the test in the specific terms of the case, it is now necessary to frame it more broadly so as to allow explicitly for consideration of the interests involved in the instant case and other cases where such orders are sought in order to protect other crucial aspects of the administration of justice. In assessing whether to issue common law publication bans, therefore, in my opinion, a better way of stating the proper analytical approach for cases of the kind involved herein would be:

A publication ban should only be ordered when:

- (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

[22] The Court must apply the *Dagenais/Mentuck* test to determine whether continuing redaction is justified: *Toronto Star* at para. 7. That said, as Fish J. also pointed out in *Toronto Star*, the *Dagenais/Mentuck* test is a flexible one. The Court must have regard for the circumstances under which the Crown, or some other interested person, seeks to delay disclosure.

[23] Mr. Gilliland initially mentioned that there is no evidence that the investigation would crumble if I ordered disclosure. He rightly conceded, however, that the Crown is not required to show that the investigation would crumble in the event of public disclosure of some details. I agree. That bar is much too high. That would amount to the functional equivalent of beyond a reasonable doubt. That is the ultimate burden the Crown bears in a criminal proceeding, not the burden that the Crown bears at the investigative stage. Indeed, as Fish J. put it at para. 39 of *Toronto Star*, “the party seeking confidentiality must at the very least allege a serious and specific risk to the integrity of the investigation.”

[24] Public disclosure of an ongoing law enforcement technique that would compromise the investigation is clearly a serious and specific risk to the integrity of the investigation. As Mr. Gilliland quite properly conceded, the information about that technique could come from the ITO itself. Fish J. noted in *Toronto Star* that the test is contextual and flexible. He also stated at paras. 32-33:

In *Vancouver Sun*, the Court recognized that the evidentiary burden on an application to hold an investigative hearing in camera cannot be subject to the same stringent standard as applications for a publication ban at trial:

Even though the evidence may reveal little more than reasonable expectations, this is often all that can be expected at that stage of the process and the presiding judge, applying the *Dagenais/Mentuck* test in a contextual manner, would be entitled to proceed on the basis of evidence that satisfies him or her that publicity would unduly impair the proper administration of justice.

Similar considerations apply to other applications to limit openness at the investigative stage of the judicial process.

[25] Quite simply, that is the case here. Without suggesting in any way what any of the techniques might be in this case, I illustrate the problem with an example that I discussed with counsel during submissions. There are often investigations where the police intercept private communications. The intercepts are used as grounds to obtain search warrants while the police still have authority to intercept. The targets of the intercepts could become aware of the investigation because of the execution of the warrants. The ITO's are redacted to prevent the targets from learning of the existence of the interceptions. Indeed, sometimes the police execute warrants or conduct arrests in order to stimulate conversations among the targets. If the existence of the interceptions were revealed in the ITO's then the targets would stop communicating. That would deprive the police of a legitimate and valuable source of evidence. There is no way that a judge, on an application to unseal, could explain the basis for the redaction of the intercepts without revealing the existence of the wiretap authorization.

[26] Ultimately, then, this is one of those situations where the public is denied access, and I cannot reveal the basis upon which access is denied. To do so would inevitably compromise the utility of the investigative technique. This answer, of course, is highly unsatisfactory: I am reduced to simply saying: "I've looked at the confidential parts and you're just going to have to trust me when I say they can't be released." "Trust me" is rarely a satisfactory answer when it comes from the government. I sympathize with Mr. Gilliland's dilemma, which is the dilemma of any counsel faced with evidence that cannot be accessed. And yet, when there is a clash of values, we often delegate authority to judges to evaluate evidence that some parties just cannot see. In fact, Parliament has created several different procedures where a judge determines whether information can be disclosed based on representations from the Attorney General or other entities. See, for example, the complex scheme for the prohibition of access to information that might cause injury to Canada's international relations: s. 38 of the *Canada Evidence Act*. See also the *Garofoli* "Step Six" procedure. A judge may see information provided by a confidential informant and then make decisions about what may, or may not be disclosed to the defence: *R. v. Crevier*, 2015 ONCA 619 (CanLII).

[27] I have read the ITO here, as well as the affidavit of Constable Williamson. I am satisfied that public disclosure of the law enforcement technique or techniques that are still redacted could pose a serious and specific risk to the integrity of the investigation. Regrettably, I can say no more at this point.

(b) Would revealing the names of innocent persons prejudice their interests?

[28] Mr. Gilliland argues that the Crown had failed to justify the redactions of the names of individuals in the ITO. He argues that the Crown has tried to justify the redaction of only one person's identity. That person is named at paragraph 90 and the following paragraphs of the ITO. The justification, set out in the affidavit of Constable Williamson, is inadequate. Mere embarrassment or prejudice to financial interests is not enough, he argues.

[29] I am satisfied that the Crown has shown a sufficient basis upon which to redact the names of innocent persons. The legislation itself contemplates that prejudicing the rights of an innocent person is a basis upon which to redact: *Criminal Code* s. 487.3(2)(a)(iv). Furthermore, I am also satisfied that there is a sufficient basis set out in the ITO and the affidavit to justify the redactions in respect of the person named in paragraph 90 and following.

[30] Mr. Gilliland relies on the decision of Nordheimer J. (as he then was) in *R. v. Canadian Broadcasting Corporation*, 2013 ONSC 6983 (CanLII). The investigation in that case involved the controversial late Mayor of Toronto, Rob Ford. Some of Mayor Ford's associates, including one Alessandro Lisi, faced drug and extortion charges. Although Nordheimer J. canvassed several issues in that case, the one that we are most concerned with here relates to the identities of third parties. The Crown sought to keep most of them secret. The Crown wished to do so in order to prevent reputational harm. The Crown also pointed out that most of the material related to the Mayor, not to the people actually charged.

[31] Nordheimer J. rejected those arguments. He quoted Iacobucci J. in *Mentuck*, that the danger must be to the integrity of the investigation. A mere advantage to law enforcement is not sufficient to maintain the redactions. He observed that the Crown's reliance on a generalized assertion of reputational harm was insufficient. There was no actual evidence about the nature of that harm. Further, Nordheimer J. also rejected the notion that mere embarrassment could trump the principle of open-ness.

[32] I certainly agree with all of Nordheimer J.'s observations. This case, however, can be distinguished. Here, the Crown has made a very specific argument and provided evidence about the person mentioned in paragraph 90 and following. The Crown's evidence is that this person would suffer a specific financial harm. I accept that evidence. There is also justification for that position in the ITO itself.

[33] The Crown's argument is more problematic when it comes to the other third parties. The balance is much less clear. Nonetheless, I am satisfied that the balance falls on the side of continuing to redact the identities of

[34] There are two critical differences between this case and Nordheimer J.'s decision in *CBC* in respect of the third parties. The first difference is that there are no charges laid here. The investigation is still going on. The police had charged Mr. Lisi in *CBC*. It is true that the Crown and the police can continue to investigate after charges are laid (and usually do). The expectation of privacy of third parties is, however, substantially reduced at that point. A third party can reasonably anticipate that defence counsel will know who they are. A third party can also reasonably anticipate that he or she will be a witness. Their identities will no longer be secret. That is not yet the case here. It is not a major reason (at least in the circumstances here) for maintaining secrecy but it is a factor. Those innocent third parties can therefore expect some measure of privacy – for now.

[35] The second critical difference is that much of the seized material in this case remains under seal, and the volume of the evidence means that the police have not yet had a chance to fully analyze the material that they do have (which is voluminous). Much of the seized material is subject to an application in respect of solicitor-client privilege. Thus, the Crown and the police do not know fully know what they have. There was no equivalent in the earlier *CBC* case.

[36] Why does it matter much of the seized material remains under seal? Let me say first where I do not agree with Crown counsel. I do not agree that as a general rule ITO's must remain sealed to preserve the evidence of the witnesses. The evidence is preserved when witnesses give their statements. They are free to speak out and defend themselves, as Justice Nordheimer observed in the first *CBC* case. I also do not accept that as a general rule mere publication of the fact of cooperation with the police will prejudice future cooperation. It might. People might be willing to cooperate with the police only where they do not believe that the fact of cooperation is unknown. Such an assertion would require specific evidence – such as in the case of a person fearing physical harm in a gang-related case. There is no such specific evidence here.

[37] I do, however, agree with Crown counsel that it is important that so much material remains either under seal or un-examined. I do not think that I need specific evidence to draw this obvious inference – and it is an inference available to anyone with experience in the investigation, prosecution, or defence of criminal offences: the police will very likely need to re-interview many third parties based on the seized material. Indeed, the position of some of these people may change from witness to target or from target to witness. The interests of those third parties may be at stake in other ways that are difficult to know until the material is unsealed and analyzed. Accordingly, I find that the balance favours keeping the identities of the third parties private – again, for now.

DISPOSITION

[38] The redactions are justified. I will not order further unsealing.

R.F. Goldstein J.

Released: September 5, 2018

CITATION: R. v. Canadian Broadcasting Corp., 2018 ONSC 5167
COURT FILE NO.: CR-18-00000142-00MO

DATE: 20180905

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN

– and –

CANADIAN BROADCASTING CORP.
ET AL

Respondent

**REASONS FOR JUDGMENT –
APPLICATION TO UNSEAL
SEARCH WARRANT**

R.F. Goldstein J.

This is Exhibit "3" referred to in the
Affidavit of Nadia Musclow, sworn September 20th..... 2019



Commissioner for Taking Affidavits



INVESTIGATION

Inside the fall of Fortress

Fortress Real Developments raised \$920-million from 14,000 Canadians who thought they were getting low-risk, steady income. Now, as the company comes under the pressure of an RCMP investigation and faltering projects, some face the prospect of devastating losses

JANET MCFARLAND > REAL ESTATE REPORTER
PUBLISHED DECEMBER 14, 2018
UPDATED DECEMBER 18, 2018



Mario Narciso and Fernanda Cortes at their home in Vaughan, Ont., on Nov. 16, 2018.

CHRISTOPHER KATSAROV/GLOBE AND MAIL

By the time the RCMP raided the offices of Fortress Real Developments Inc. on April 13, Mario Narciso and his wife, Fernanda Cortes, had already started to worry they'd made a bad investment.

Four years ago, Mr. Narciso was framing a roof in Toronto when he fell several metres, breaking his spine and leaving him partially

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acquaintance introduced them to an adviser well-known in Toronto's Portuguese community, who suggested one of their best options

was to invest in a so-called syndicated mortgage, a pool of funds that would help finance early-stage real estate projects.

The adviser, whom the couple did not want identified, recommended a condominium and retail development in Barrie, Ont., known as Collier Centre. Investors in the Fortress-led project could earn 8-per-cent annual interest and would receive their principal back within a maximum of two years, making it a safe investment with a fixed return, the adviser told them. Plus, their loan would be secured by a mortgage against the property, so they would have a registered claim on the land. That was the pitch, anyway.

“He said that the only way it could go wrong was if the real estate market collapsed, which was extremely unlikely at that point,” recalls Ms. Cortes, 35.

In 2015, the couple agreed to hand over their whole \$500,000 settlement, joining 600 other investors who would collectively pool \$36-million for the Collier Centre project.

What Mr. Narciso and Ms. Cortes didn't know was that Collier Centre was just emerging from bankruptcy protection and that a group of earlier syndicated mortgage investors still had not been repaid the \$16.9-million they'd put up back in 2012.

“If we had any warning of risk anywhere, we wouldn't have put all our money into this,” says Ms. Cortes, who is expecting a new baby in the spring.

They are far from alone. Between 2008 and 2017, Fortress – based in Richmond Hill, Ont., just north of Toronto – raised a staggering \$920-million from 14,000 retail investors to fund mortgages for an array of developments, including a dozen condo projects by well-known developer Brad Lamb and Winnipeg's SkyCity, initially billed as the tallest building between Calgary and Toronto.

At its peak, Fortress was Canada's largest syndicated mortgage company. It also led the transformation of what had once been a high-risk investment vehicle for wealthy investors into a mainstream one sold to ordinary Canadians. And as more people handed over their life savings to Fortress and other syndicated mortgage firms – many of which adopted Fortress's retail-investor focus – the provincial mortgage regulator, the Financial Services Commission of Ontario (FSCO), did little to protect them.

Now, Fortress is crumbling. Many of its biggest projects have faltered, and senior lenders are moving to put some of them into receivership. In April, the RCMP searched the company's offices, prompted by complaints from investors about heavy losses on Fortress investments and the fact that they had not been given accurate information on the risky deals.

For its part, Fortress says it has broken no laws, and investors have always been fully informed about all the terms of the investments and their risks. Neither of the company's founders agreed to be interviewed for this story, but in an e-mailed statement, Fortress's lawyer Scott Fenton said: “Fortress is a substantive business with a track record of considerable success led by respected leaders who are committed to bringing maximum value to all investors.”

Nonetheless, it looks increasingly likely that Fortress could become Canada's largest syndicated mortgage failure – leaving thousands of investors like Mr. Narciso and Ms. Cortes wondering whether they'll ever see their money again.

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Fortress founder and CEO Jawad Rathore is seen leaving the company's office in Richmond Hill, Ont., on Dec. 11, 2018.

FRED LUM/GLOBE AND MAIL

Jawad Rathore is, by all accounts, hard to forget. Tall and bearded, with a shaved head, Fortress's 42-year-old founder, Chief Executive Officer and majority owner likes to spend his money on flashy luxuries. He favours tailored three-piece suits and expensive cars; among his collection are a Ferrari California, a Porsche 911, a Rolls-Royce Ghost Series II and a Range Rover, according to a lien search.

The father of six is also immensely charming, a natural salesman who is most comfortable in front of an audience. At a Fortress professional development event at Toronto's Winter Garden Theatre in 2015, Mr. Rathore busted a quick dance move as he wended his way through the Toronto Raptors dance squad, which he'd hired for the occasion, arriving at the front of the stage as the music ended.

Mr. Rathore began selling investments in 1997, after attending York University. In 2002, he set up his own mutual fund sales firm under the sponsorship of a larger registered company, Independent Planning Group Inc. But the partnership didn't last long. Later that same year, IPG terminated Mr. Rathore after discovering he was operating another financial firm at the same time – a fact he hadn't disclosed, according to Canada's mutual fund regulator, the Mutual Fund Dealers Association of Canada (MFDA). Three years later, the MFDA slapped him with a lifetime ban from working in the sector because of the breach.

That other financial firm – which lay outside the grasp of the MFDA – was called Phoenix Pension Services, which Mr. Rathore launched in 2002 with Vince Petrozza, a fellow connoisseur of cars, couture and basketball. (He's now Fortress's chief operating officer and owns 20 per cent of the company; Mr. Rathore owns the other 80 per cent.) Phoenix and related company Phoenix Credit Risk Management helped clients unlock funds from registered retirement accounts – a process that includes applying to the federal government citing financial need – in order to repay personal debts. Many of its clients were vulnerable people referred there by collection agencies.

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Vince Petrozza, chief operating officer of Fortress Real Developments, arrives at the company offices in Richmond Hill, Ont., in November of 2017.

CHRIS HELGREN

In 2007, Mr. Rathore and other Phoenix Credit Risk employees started to encourage their clients to use their unlocked retirement funds to buy shares in two tiny oil and gas companies that traded on the TSX Venture Exchange. Both penny stocks were controlled by B.C.-based investor Thalbinder Poonian, who paid Phoenix employees, including Mr. Rathore, large commissions for each referral – up to 28 per cent, in some cases.

Within two years, Phoenix clients had invested \$16.5-million in the two companies, netting Mr. Rathore and his colleagues roughly \$3-million in commissions. Unfortunately for investors, Mr. Poonian was running a market-manipulation scheme. When he and other insiders liquidated their positions in 2009, Phoenix clients were left holding worthless paper.

Mr. Poonian was eventually fined \$10-million by the British Columbia Securities Commission. As for Mr. Petrozza and Mr. Rathore, they reached a voluntary settlement with the Ontario Securities Commission (OSC) in 2011 that stated Phoenix's clients didn't know anyone at the company was receiving a commission for referring them to Mr. Poonian's stocks. The statement also said Phoenix helped clients open brokerage accounts to make their purchases, and in many cases, those clients were told the share prices would rise. Neither Mr. Rathore nor Mr. Petrozza admitted any wrongdoing, but they agreed to pay an administrative penalty of \$250,000 and "disgorge" a further \$2.7-million, which was used to pay back victims of the scheme. Both men were also banned from working as registrants in the securities industry for 15 years.

There are parallels between Phoenix and their next business venture: Fortress Real Developments Inc.

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The Fortress Real Developments office is seen in Richmond Hill, Ont., in September, 2017.

MARK BLINCH/GLOBE AND MAIL

Mr. Rathore and Mr. Petrozza spotted a gap in the real estate financing market a decade ago, while they were still recommending penny stocks via Phoenix. Developers, and condo builders in particular, have traditionally struggled to access early-stage financing – money to cover “soft costs” such as design and engineering work – from mainstream lenders. After all, the development business is risky; there’s always a chance a project will fail to get zoning approval or find buyers. That means the small number of private firms willing to lend to early-stage projects often charge high interest rates – well over 20 per cent annually.

Mr. Rathore and Mr. Petrozza had been promoting syndicated mortgages to wealthy investors – the traditional target for these products – since 2002, but they decided there was an even bigger untapped market among regular retail investors. These loans, typically provided by a pool of individuals, can be used for any type of real estate deal, including residential home purchases, but are often used to finance larger-scale property developments, including new condominiums.

Fortress’s role would be to match regular Canadians with the builders looking for early-stage financing. In their promotional materials, they called their approach “mainstreeting” and “mainstreaming” of syndicated mortgages. In a 2012 interview with real estate website BuzzBuzzHome.com, Mr. Rathore said Canadian real estate lending had never been available for direct investment by the general public, “so we saw a really interesting and exciting niche opportunity.”

Much like Phoenix, Fortress encouraged retail investors to tap into their RRSP savings, typically asking for a minimum syndicated mortgage investment of just \$30,000. The low threshold prompted thousands of less wealthy investors – many of them targeted through ethnic radio stations, newspapers and websites – to jump aboard.

Fortress’s other key innovation was its commission structure. By law, only licensed mortgage brokers can sell syndicated mortgage products, and commissions typically range from 2 to 4 per cent. Fortress was offering an alluring 15 per cent. Word spread quickly among not just brokers, but also investment advisers and insurance agents, who would refer their clients to the brokers for a share of the commission.

“There were a lot of hungry people out there who jumped on that,” says Mitchell Wine, a Toronto lawyer who, along with Kevin Sherkin, has launched four class-action lawsuits against Fortress on behalf of investors in four projects.

Getting those investment advisers and insurance brokers on board was key to the success of Fortress’s fundraising, says Mr. Sherkin. Most ordinary investors would have balked had a stranger pitched them such an unfamiliar investment option. It worked because these mortgages were being recommended by advisers they knew and trusted.

“They preyed on people who had a tremendous amount of trust and were unsophisticated,” says Mr. Sherkin.

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'My money is probably all gone': The people fretting over Fortress payments

Three investors in syndicated mortgages tell their stories.

[Read the article](#)

The heart of the operation was Fortress's in-house mortgage brokerage firm, initially known as Centro Mortgage and later renamed Building & Development Mortgages Canada Inc. (BDMC). It was located in the same building in Richmond Hill and owned by mortgage broker Ildina Galati. Mr. Petrozza and several other Fortress executives also worked as licensed brokers for BDMC, which means they were raising money from retail investors while also assisting the developers borrowing the funds. That's a potential conflict of interest: Ontario rules require mortgage brokers to tell investors about any relationships the brokerage firm has with all parties involved in a mortgage transaction and to disclose any conflicts.

To create more distance between investors and borrowers, BDMC began in 2011 to spin out three arm's-length brokerage firms (FDS Broker Services Inc., FFM Capital Inc. and FMP Mortgage Investments Inc.) that set up offices in strip malls around the Greater Toronto Area. In theory, they were independent firms, but most of the owners and principal brokers were former BDMC or Fortress employees who had set up the affiliates under the direction of Ms. Galati. An RCMP search warrant application filed in court in April said it appeared that two of the CEOs of the affiliate brokerages, Tony Amendola and Zafar Khawaja, also worked as vice-presidents at Fortress Real Capital, the company's investment arm. (Neither Mr. Amendola nor Mr. Khawaja responded to requests for comment.)

Bill Vasiliou, who oversaw regulation of Ontario's mortgage sector for 16 years as the province's registrar of mortgages, believes Fortress created the web of brokerages to give investors the impression they were offering independent advice about third-party Fortress deals.

"They set up non-arm's-length brokerages with their senior people as agents of those brokerages and straw individuals as principal brokers," says Mr. Vasiliou.

Fortress lawyer's, Mr. Fenton, disagrees, saying the brokerages were separate legal entities independent of the company.

Fortress's affiliated brokers advertised aggressively, highlighting the low-risk nature of syndicated mortgages and the 8-per-cent annual

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In reality, Fortress was selling low-ranking, pre-construction loans that were far less secure than your average home mortgage or even first-ranking construction loans typically offered by banks or other real estate financing firms. “You’re getting a second mortgage at a lower rate than the first mortgage, with no guarantees,” says Mr. Franklin, who is representing several aggrieved investors. “And yet, investors would go in because they didn’t understand that.” (Mr. Fenton counters that brokers were clear with investors about the riskiness of the loans.)

The affiliates held dozens of seminars and dinners across Canada each year, inviting potential investors, financial advisers and independent mortgage brokers to hear Mr. Rathore and other Fortress executives tout their projects. Many events featured pitches from developers like Mr. Lamb, whose Lamb Development Group has worked with Fortress on at least 12 projects. Mr. Lamb would not comment for this article, but at the black-tie Fortress Choice Awards in February, 2015, held at Toronto’s Liberty Grand, he told a huge crowd: “I’ve got to say that our little company would be nowhere today without Vince and Jawad helping us out.”

Advisers who referred a large number of clients to Fortress were invited to join Mr. Rathore at Toronto Raptors and Maple Leafs games at the Air Canada Centre, or flown on chartered planes to New York or Cleveland. At private events, he’d introduce them to sports stars like basketball great Steve Nash and NHLer Gary Leeman (a “brand ambassador” for one of the affiliate brokers). Toronto Blue Jays pitcher Marcus Stroman was hired as an inspirational speaker at a Fortress broker event in 2016.

The affiliate brokerages were enormously successful: BDMC raised about \$800-million for developers between 2012 and early 2017 through the network. In 2016, affiliate FDS alone raised \$68-million.

Not all mortgage brokers found the glitz alluring. Vincent Gaetano, who owns MonsterMortgage.ca Inc., steered clear of Fortress’s projects. The whole structure was unusual, he says, and the rich commissions should have been a warning to brokers, not a lure. “My red flag went up immediately – I was not interested,” says Mr. Gaetano. “My opinion is this is high-risk debt, and investors will eventually get slaughtered. I stay away from ‘too good to be true.’”

No one mentioned the high-risk nature of the Fortress investment to Mario Narciso and Fernanda Cortes. Everything they’d been told by their adviser and his mortgage-broker associate led them to believe they were being conservative with their money.

They were further reassured when, just as they were about to sign the documents – much of which the Portuguese-speaking couple didn’t understand – the broker suggested they speak to a lawyer who could give them “independent” advice on the deal.

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Mario Narciso at his home in Vaughan, Ont., on Nov. 16, 2018.

CHRISTOPHER KATSAROV/GLOBE AND MAIL

When they dialed up the lawyer, the connection was poor (he told them he was driving on the highway), and Ms. Cortes says he spoke very fast. She didn't even catch his name. But not once did he mention any significant risks with the Fortress project, she says.

Four other investors who talked to *The Globe and Mail* also spoke to supposedly independent lawyers. What they didn't know was that some of those lawyers also worked for Fortress and were paid by the developers, creating potential conflicts of interest when it came to offering advice on the merits of the deals.

Derek Sorrenti, who runs his own law firm in Vaughan, north of Toronto, advised many Fortress investors. He has also acted often for Fortress in real estate transactions and was the trustee overseeing many of the syndicated mortgage loans. Mr. Sorrenti, who did not reply to requests to comment for this article, is named in several investor lawsuits filed against Fortress. The suits claim he failed to flag significant risks in the transactions and did not divulge his links to Fortress. Arlene McDowall, an investor who's suing both Fortress and Mr. Sorrenti, says that according to her investment documents, he was paid \$2,500 for a 20-minute phone call with her.

Mr. Franklin says that in May, 2015, he filed a complaint with the Law Society of Ontario about the quality of legal work provided to many Fortress investors. But as of today, there are no regulatory proceedings against Mr. Sorrenti, according to the law society's website.

In October, 2017, however, the law society issued a bulletin, saying it had "become aware of instances" of investors sustaining significant losses on syndicated mortgages. It reminded lawyers of their obligation to avoid conflicts of interest and be "honest and candid with the client." Among the situations that would put a lawyer in breach of the rules would be representing a client investing in a syndicated mortgage while also having other interests in the same deal, the bulletin said.

Mr. Franklin says the guidance came too late to help most investors: "They believed the lawyers would tell them if there was any risk."

Investors – and even some external brokers – were also kept in the dark about management fees paid to Fortress. Investors said they were told there were none. At a seminar organized by one of Fortress's affiliated brokerages in 2016, Mr. Rathore stood on stage with the words "No Management Fees" projected on a white screen behind him.

But there *were* fees, and they were high.

Fortress typically took 35 per cent of the investments raised from syndicated lenders up front to pay fees and commissions, court filings show. Those included commissions for the brokers who sold the investments and a fee to BDMC for co-ordinating each loan.

Fortress also kept part of the money itself for consulting on the deals and was sometimes paid a share of the project's anticipated profits up front, even before the projects were built. For example, Fortress kept \$5.9-million, or 35 per cent, of the \$16.9-million provided by the first group of syndicated lenders on the Collier Centre project in 2012. The money went to pay fees to brokers, and included \$2.28-million in payments to Fortress for co-development fees and profits, according to court filings.

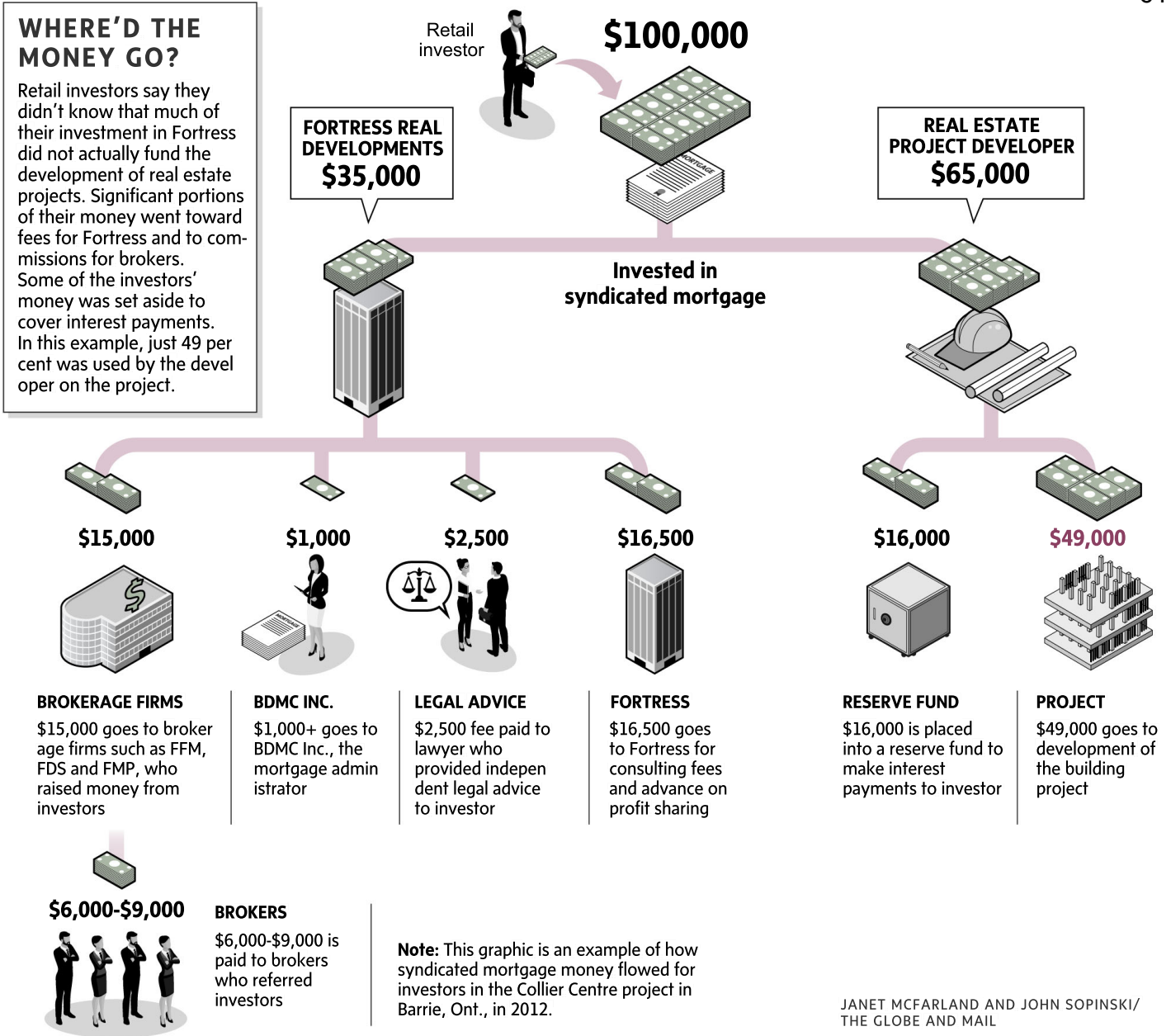
In some syndicated deals, a further portion of the investment was also set aside by the developer to pay interest to the syndicated

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Mr. Fenton rejects investor complaints that they weren't told about Fortress's fees and commissions, saying mortgage brokers informed investors about the company's potential profit participation as required under mortgage regulations. Furthermore, he adds, all legal advice to investors came from reputable counsel "whose conduct has not, to Fortress's knowledge, ever been impugned."

Had investors known about the massive fees, however, Mr. Wine believes many of them would have backed away from Fortress deals. "They were told they were investing money to allow the developers to move forward with the projects," he says. "Why would they invest in something when one half of their money never got to the developers?"

No one else was able to warn investors. Fortress aggressively threatened or launched legal action against several people who commented or tweeted about the company, including Mr. Franklin and housing analyst Ben Rabidoux of boutique research firm North Cove Advisors. Fortress hit Mr. Rabidoux with a lawsuit in 2016 after he tweeted that he was concerned about risky syndicated mortgage loans. In one tweet, for example, he predicted the OSC would take control of syndicated mortgages and "slam the door" on

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...saddest results of the long legal action is that it silenced those who could have warned investors. If Ben had been allowed to speak

freely – had he not been bullied into taking his tweets down – how many people would have seen that?” Mr. Zvulony asks. “Would they have thought twice about investing in these syndicated mortgages?”

As for the brokers, many were new to the industry, with little experience selling residential mortgages, let alone sophisticated financial products. According to a search warrant application filed in court as part of the RCMP investigation, one FDS broker who spoke to the police said he was coached to say the developer paid the fees and commissions from separate funds – not from investors’ own money. He adds that “everyone” at affiliate brokerage FDS told him Fortress only got paid when a project was completed.

Another broker who began recommending Fortress mortgages to clients in 2011 says he knew nothing about how much the company was earning on each deal. The broker initially received a 6-per-cent commission on each investment, paid by one of Fortress’s affiliated brokerage firms. Those commissions rose over time as he referred more clients – as high as 12 per cent of clients’ funds.

He says he thought Fortress’s syndicated mortgages were a great alternative to low-yielding bonds and GICs. “It was a way for clients to actually start making a reasonable rate of return,” he says.

But two years in, he decided he didn’t like the people he was working with and stopped recommending Fortress mortgages. Losing those fat commissions was “devastating” to his finances. “It was a hard thing to make a change, because you were being very well paid,” he says. “And the market was still very robust.” Fortress raised hundreds of millions of dollars after he stopped selling the products, he says.

Years later, some of his clients still haven’t seen their loans repaid. “You feel very badly about that,” he says. “Morally, if you care, you’re so mad. It didn’t have to be this way.”

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The commercial portion of Collier Centre in Barrie, Ont., on Nov. 13, 2018.

RYAN CARTER/THE GLOBE AND MAIL

Real estate developments often face unexpected delays before construction even starts, and Fortress's projects were no exception. Even in the company's early years, many dismayed retail investors received notices saying their projects were running behind. Some were told their promised monthly or quarterly interest payments would be suspended and instead accrue until the project was completed.

There was little they could do but wait, since their mortgage agreements required they extend the loans when requested. That meant investors couldn't seize the property when loans weren't paid on schedule, like traditional mortgage lenders can.

But Fortress soon had bigger problems. In late 2014, one of its most important development partners, Mady Development Corp., halted work on several major projects funded by Fortress syndicated mortgages, including Collier Centre, SkyCity and the Brookdale condo project in Toronto. Mady would later file for bankruptcy, and in 2015, Fortress took over its three biggest projects, promising to complete construction itself and repay investors. To that end, it raised an additional \$36-million in syndicated loans for Collier Centre, including the \$500,000 investment from Mario Narciso and Fernanda Cortes.

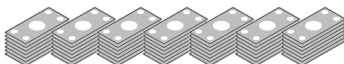


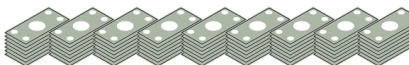
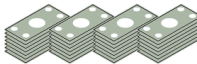
Meanwhile, the earliest group of syndicated investors were still owed nearly \$16.9-million, a loan that ranked behind the \$30-million owed to primary lender Laurentian Bank.

FIRST TO INVEST, LAST IN LINE

Regular investors funded syndicated mortgage loans for new development projects, including the Collier Centre in downtown Barrie, Ont. But as the troubled project raised more financing, new lenders got first priority on any prospective claims, and the syndicated mortgage loans were pushed down the priority list.

Mortgage loans registered on the property

Ranked in order of priority claim on the land, in millions of dollars

Rank	Lender	Amount of loans	Total: \$89.62-million
1ST	Morrison Financial Services	 \$29.6 (33%)	
2ND	Jaekel Capital	 \$4 (4.5%)	
3RD	Magnetic Capital Group	 \$3.1 (3.5%)	
4TH	Second round of syndicated investors	 \$36 (40%)	
5TH	Original round of syndicated investors	 \$16.9 (19%)	


JANET MCFARLAND AND JOHN SOPINSKI/THE GLOBE AND MAIL
SOURCE: FAAN MORTGAGE ADMINISTRATORS

But as it turns out, there simply wasn't enough value in the project to cover Laurentian (which ended up losing \$6-million on the deal), let alone the syndicated investors.

The way Fortress valued its properties, in its efforts to persuade investors to hand over their money, has become a central issue in the RCMP's investigation.

In a search warrant application filed in April, investigators allege investors were given inflated land valuations for several Fortress projects, which persuaded them their mortgage loans would be safely cushioned by the real value of the property. For instance, Mady

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math reassured investors that the loans were low-risk.

The \$21.8-million figure came from an “opinion of market value” prepared by property valuers Cushman & Wakefield, which noted that it does not constitute a legal appraisal. The RCMP alleges in a search warrant application that it is improper to give investors an opinion of value and describe it as a current market value, and claims it has found similar valuation issues on other projects, including SkyCity in Winnipeg, Harmony Village Sheppard in Toronto and Crates Landing in Keswick, Ont.

However, Fortress lawyer Scott Fenton says investors were fully advised in writing of the assumptions and methodologies used by industry valuers to create “opinions of value” for the projects, Mr. Fenton said in a statement adding that the opinions of value clearly stated they were not appraisals.

The valuation issue has also raised potential tax problems for investors, many of whom used RRSP funds to invest in Fortress’s syndicated mortgages. According to tax law, Canadians cannot hold a mortgage investment within an RRSP account when the value of the loan exceeds 100 per cent of the value of the property. As a result, the RCMP search warrant alleged mortgage brokers misled investors when they told them their loans were RRSP-eligible.

Mr. Fenton disagrees, saying Fortress got a legal opinion that each mortgage was RRSP-eligible. The RCMP, he says, is “relying on the musings of a police constable based on things he read on the Internet.”

As for the Collier Centre project, Fortress’s problems continue. With Fortress acting as developer, the residential tower was completed, but the office tower remains empty after tenants withdrew, and Fortress has applied to convert it into condos. Syndicated lenders, meanwhile, can only be repaid once the project is 100 per cent done.

Fortress also secured a new senior lender, Morrison Financial, when it took over Collier Centre in 2015. Morrison is currently owed \$30-million in mortgage debt, and earlier this year, it filed notice that Fortress’s loan is in default. It has issued a notice of sale for the property and hired a real estate agent to look for buyers. The receiver controlling BDMC has warned the Collier sale could result in “significant losses” for syndicated investors, who rank behind Morrison.

Fortress has also been unable to complete the Brookdale project; it was put into receivership in June and sold in October and they have yet to disclose the sale price. As for SkyCity, it has seven mortgages registered on the land totaling \$39-million and has been indefinitely postponed. Despite all the financing raised for the project, the site remains an undeveloped parking lot.

The promise

The reality

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SkyCity was envisioned as the tallest building between Calgary and Toronto. The project has been indefinitely postponed, and the site remains a parking lot.

(Left: Fortress Real Developments brochure; right: John Woods/The Globe and Mail)

FSCO, the provincial body that regulates the mortgage industry, started receiving complaints – ultimately dozens of them – around 2011, according to a former FSCO employee who was granted anonymity by The Globe and Mail because the person was never authorized to speak about the investigations. Some of these grievances, which came from a mix of industry insiders, investors and anonymous sources, targeted Fortress itself; others pointed fingers at BDMC and its affiliated brokerage firms.

The former FSCO employee says many of the complaints were passed along to more senior staff for investigation, but nothing ever seemed to happen. In fact, the lack of action became a source of internal stress among front-line compliance staff. “These were serious complaints – there was ample evidence to move this forward to the investigations level,” says the former staffer. “I found it very frustrating.”

FSCO says it did conduct “a thorough and complex investigation into Fortress syndicated mortgages,” according to an emailed statement. “Such investigations take time, and disciplinary actions must follow due process.” The regulator also says it did not receive any consumer complaints about Fortress investments until 2014. But the former FSCO employee says there were earlier complaints about the sales practices of brokers selling the mortgages, if not necessarily about Fortress itself.

Nonetheless, the regulator didn’t start a 60-day review of BDMC until the spring of 2017, which culminated in a voluntary settlement deal this past February.

To anyone unfamiliar with the Fortress structure, that agreement would be hard to understand. It outlines no allegations of wrongdoing. It simply lists a series of negotiated penalties for a group of brokerage firms whose relationship to one another is not explained. The deal also fails to explain why penalties were being levied in the first place and contains no admission of wrongdoing by any of the parties. BDMC lost its mortgage brokerage licence, as did Mr. Petrozza and the three principal brokers at BDMC’s affiliated firms: Rosalie Spadafora, Michael Daramola and Glenn May-Anderson. (Mr. Rathore is not a registered mortgage broker.)

BDMC voluntarily agreed to be supervised by an independent mortgage management firm, FAAN Mortgage Administrators Inc., but FAAN soon ended up with complete control of the company after complaining that BDMC and Fortress weren’t co-operating when it came to accessing information about outstanding mortgages. BDMC’s three brokerage affiliates were allowed to keep operating, though two of them went out of business months later. The third, FFM – which was originally called Fortress Financial Management Inc. – recently shut down its website but is still licensed by the province.

As for Fortress, it wasn’t part of the February settlement – FSCO said it has no authority over real estate developers. But in late August, the regulator notified Fortress that it was proposing to impose a \$300,000 penalty against the company for violating the province’s mortgage brokers act. (Mr. Fenton says Fortress asked for a hearing to challenge the penalty because it was “unilaterally imposed by FSCO without a hearing or evidence.”)

FSCO won’t provide information about what Fortress is alleged to have done wrong, but says the public can attend a hearing before the Financial Services Tribunal. A date for that hearing has yet to be scheduled.

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A model of the Collier Centre, and a temporary office in an unfinished commercial portion of the Collier Centre in Barrie, on Nov. 13, 2018.

RYAN CARTER/THE GLOBE AND MAIL

Since 2015, FSCO says it has taken enforcement action against 20 parties involved in various syndicated mortgage investments and has issued six warning notices on its website alerting consumers to the high risk of these investment products. It also says it has increased training and continuing education requirements for mortgage brokers selling them.

Coincidentally, in 2015, the Ontario government appointed an expert panel to review financial regulation in the province. The three-member panel found there has been inconsistent regulation, depending on the type of financial product being sold. The sale of securities, for instance, receives more oversight from the OSC than insurance or mortgage products do from FSCO.

“To the consumer or the investor, I think it comes as a great surprise that the products they thought looked and felt like ordinary securities products are all regulated in a different way, within a less robust regime,” says panel member Larry Ritchie, a former vice-chair of the OSC. The panel recommended replacing FSCO with a new, independent regulator, called the Financial Services Regulatory Authority (FSRA), expected to launch in 2019. Mr. Ritchie has agreed to join the board.

The panel also recommended that oversight of syndicated mortgages shift to the OSC, which would bring Ontario in line with other provinces. Though no date has been set for the move, the OSC has published proposed new guidelines if or when the switch is flipped. The rules would allow syndicated mortgages to be sold to retail investors with an “offering memorandum,” or OM – a stripped-down disclosure document that would have to include an official land appraisal and a clear risk assessment. Only exempt market dealers registered with the OSC would be allowed to sell them, and they would be required to do suitability assessments for each investor.

In the meantime, FSCO has announced its own reforms. As of July 1, 2018, investors in Ontario can’t put more than \$60,000 into most types of syndicated mortgages in any 12-month period unless they are “designated” investors with higher income and assets. And mortgage brokers must give investors written disclosure of the material risks of an investment, as well as an official land appraisal.

Critically, there is also a clearer requirement that mortgage brokers assess a client’s objectives, risk tolerance and financial circumstances to ensure an investment is suitable for the investor. Mr. Ritchie believes there’s still more to do, including rethinking how much training mortgage brokers should have before they’re allowed to sell these products and whether they should be able to assess

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rules.”

Fortress problems

Troubled projects funded by syndicated mortgage loans arranged by Fortress. (Note: Dollar amounts are total value of all syndicated mortgage loans registered on the property. Do not include loans from senior lenders.)

Project: Brookdale, Toronto

Status: Seized by senior lender, sale of property approved in October

Amount of mortgage: \$25.3-million

Project: Capital Pointe, Regina

Status: Construction ceased, borrowers plan to restart by next spring

Amount of mortgage: \$33.3-million

Project: Collier Centre; Barrie, Ont.

Status: Senior lender has issued power of sale notice and has listed the property for sale

Amount of mortgage: \$52.9-million

Project: Glens of Halton Hills; Georgetown, Ont.

Status: Filed insolvency notice as lenders moved to seize land, sale process under way

Amount of mortgage: \$14.4-million

Project: Harmony Village Sheppard, Toronto

Status: Sold under receivership

Amount of mortgage: \$31-million original amount, \$19.5-million repaid

Project: Old Market Lane; Vaughan, Ont.

Status: Power of sale notice issued by lender in September

Amount of mortgage: \$13.3-million

Project: SkyCity, Winnipeg

Status: Construction has halted and condo buyer deposits returned

Amount of mortgage: \$32.2-million

Project: The Kemp; Barrie, Ont.

Status: Property up for sale, has conditionally sold several times but deals have not closed

Amount of mortgage: \$18-million

Project: Triple Creek, Calgary

Status: Lenders have issued notice of sale, sale process not started yet

Amount of mortgage: \$15.4-million

Project: Union Waterfront; St. Catharines, Ont.

Status: Senior lender put project into receivership, sale process launched

Amount of mortgage: \$16.8-million

The RCMP had also been receiving complaints from distraught investors claiming they hadn't been repaid and were misled about the terms of Fortress projects. By April 13, 2018, officers in its Integrated Market Enforcement Team, which investigates major frauds, had secured warrants to search Fortress's head office, along with those of BDMC and its affiliates.

Fortress employees were just settling in for the day when a parade of RCMP vehicles, including one marked cruiser, pulled up in front of its building in an industrial park in Richmond Hill shortly after 9 a.m. A team of officers marched inside the low building, where they presented a search warrant, asked startled employees to leave, and set about photographing and searching each desk.

One senior employee, Charene Bunnett, challenged officers when they approached her office, asking to read the warrant before she was escorted out of the area. The RCMP was later granted a new search warrant to stop and search her car, telling a judge they had received

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spend three days inside the building, removing dozens of boxes of materials. At the same time, more than a dozen officers were

searching five other Fortress-related sites.

Eight months later, the RCMP are still investigating Fortress and have laid no charges in the case. Investigators are only just starting to look at electronic documents and emails seized in the April search. (Before that process could begin, the Crown and counsel for Fortress had to agree on a protocol for the RCMP to review the material, which was then approved by a judge.)

Fortress, meanwhile, complains that everyone is focusing on its problems and ignoring its successes. It says syndicated mortgage investors have received payouts in 27 of about 80 projects, totaling \$196-million in principal and \$42.5-million in interest.

“Beyond any question, these statistics reflect a track record of considerable success by Fortress in a competitive industry,” Mr. Fenton, Fortress’s lawyer, said.

However, some investors only received partial payouts. The Harmony Village Sheppard condo project in Toronto, for instance, was never completed and was sold under receivership last year. Syndicated lenders, owed \$31-million, were repaid \$19.5-million from the proceeds after the receiver found a buyer for the land, according to receiver Brahm Rosen. He says syndicated investors should get another \$1-million when the final funds are distributed. About \$10.5-million in principal will not be repaid.

Another 10,000 investors are still waiting for news on how much of their money they’ll get back. There are still almost 50 Fortress projects with outstanding syndicated mortgage loans worth more than \$700-million. That total includes \$560-million of loans now under the administration of FAAN and additional loans under the control of other trustees – primarily Mr. Sorrenti.

With all the company’s recent legal problems, spooked lenders are calling loans and refusing to refinance. Many of the projects have been delayed for years, which means they could sell for little more than the vacant land value.

The company’s long-stalled Union Waterfront project in St. Catharines was put into receivership in August, as was the similarly moribund Glens of Halton Hills project in Georgetown. And lenders have filed intentions to seize and sell at least 10 other projects. It’s impossible to estimate how much investors could lose.

That has Fernanda Cortes and her husband deeply worried about their future.

Initially, the couple thought their investment was going well – they received two years of interest payments. But eventually, Fortress extended their loan, and the interest began to accrue. Then came news of the RCMP investigation, followed by numerous project defaults. The most worrying report came in October, when Ms. Cortes heard that Morrison Financial was taking control of the Collier Centre project and had hired a real estate agent to look for a buyer.

Troubled by the implications of the potential sale, she phoned her mortgage broker to ask what was happening. At first, she said, he denied that the site was under power of sale – the media was hyping fake news about the project. But he later acknowledged the property was under seizure and said there was little he could do to help.

The couple haven’t seen a dime of their principal, and it’s still unknown whether Morrison can raise enough money via a sale of Collier Centre to pay back anything to lower-ranking syndicated investors.

“It seems hopeless because everyone is saying that nothing can be done,” says Ms. Cortes, who has launched an “Investors of Fortress Developments” Facebook page to share information with other Fortress investors. “I’m left in a nightmare I cannot wake up from.”

Although FSCO revoked BDMC’s mortgage brokerage licence in February, it allowed a new brokerage, Canadian Development Capital and Mortgage Services Inc. (CDCM), to set up in its place.

The provincial regulator maintains that CDCM is different from BDMC. While it also brokers syndicated mortgages for developers, the regulator says the new entity is not an administrator for those mortgages and doesn’t perform any services directly for investors. FSCO

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Editor's note: An earlier version of this story stated that investigators are just starting to look at electronic documents and emails seized in the April search because of a legal challenge by Fortress's lawyers. The story has been corrected to note that counsel for Fortress and the Crown in fact agreed on a protocol for the RCMP to examine the material, which was then approved by a judge.

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351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1

Phillip Crawley, Publisher

This is Exhibit "4" referred to in the
Affidavit of Nadia Musclow, sworn September ^{30th}..... 2019



Commissioner for Taking Affidavits

George Benchetrit

From:
Sent: Monday, July 16, 2018 9:30 PM
To: bdmc@chaitons.com
Subject: BDMC Syndicated Mortgage Loans

Hello,

As an investor in these mortgage loans I am reaching out to your as per July 3, 2018 dated notice indicating you are the legal firm who will be representing us and hope you can help me understand what is going on with my investments and what to expect regarding next steps.

To date my attempts to get an understanding of the status of my projects have been mixed as I do not have a broker.

My current situation -

- Am involved in two different projects - Ten 88 Progress and Harmony Village Lake Simcoe Inc.
- each of the projects seem to be overseen by different bodies ie Ten 88 is by FAAN and told Harmony Village is overseen by Sorrenti Law
- While FAAN has been responsive, Sorrenti Law has not been very responsive to emails and voice messages asking for help to understand the status of the project and how it impacts my investment (their phone answering system goes around in circles without ever connecting to an actual person, no replies to my emails to contact provided in earlier communication by BDMC as eric@sorrentilaw.com)
- after much sleuthing i found a contact name and emailed Jessica@sorrentilaw.com
- June 15 received a reply email to my query from Jessica DeFilippis containing a very vague letter and have yet to receive a reply for clarification.
- the broker who facilitated the investment is no longer in the business and since learned she was not licensed at the time of investing

I look forward to your help. please confirm receipt of this email.

Best regards,

George Benchetrit

From:
Sent: Wednesday, July 17, 2019 10:37 AM
To: George Benchetrit
Subject: Update request for the Syndicated Mortgage Investment re: Residence of Bayview (also known as Lotus)

Hi George,

Re: Residence of Bayview (also known as Lotus).

Please see email correspondence below from Derek Sorrenti, Lawyer from Sorrenti Law.

Derek indicated in his email on February 13th, 2019 that they (Sorrenti Law) "require a signature from FAAN Mortgage Administrators as the result of Centro/BDMC's prior involvement in the transaction."

Is this still the case or requirement?

I have tried contacting Derek Sorrenti via email several times but unsuccessful. His office's voice mailbox was also full too.

Any update regarding the aforesaid matter is much Appreciated.

Sincerely,

Director,
Cell:
Email:

This e-mail contains information that may be privileged and/or confidential. If you are not the intended recipient, any disclosure, distribution, copying or other use of this e-mail or the information contained herein or attached hereto is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify this sender immediately and delete this e-mail without reading, printing, copying or forwarding it to anyone.

Begin forwarded message:

From:
Date: June 12, 2019 at 13:57:42 EDT
To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>

George Benchetrit

From:
Sent: Sunday, July 22, 2018 11:49 PM
To: bdmc@chaitons.com
Subject: BDMC mortgage LINKS2

I have 4 separate investments with Fortress/BDMC. Two investments are on the list of mortgages that FAAN is managing. However my other two mortgages that are called LINKS2, loaned to ADI developments, is not on the FAAN list. The mortgage was supposed to exit July 2018.

I have not heard a word from anyone including the trustee/ the lawyer Derek Sorrenti. He never answers emails or phone calls.

Anyone info on this would be strongly appreciated.

Thanks

George Benchetrit

From:
Sent: Wednesday, October 10, 2018 5:24 PM
To: bdmc@chaitons.com
Subject: Fw: URGENT!
Attachments: _Sorrenti Memo UOU - July 2018 - Update FINAL.pdf; {d3c8cf46-c7f6-410d-9627-486c547fb8ea}_UOU_Postponement_CNP_April_2017.pdf; {ef39bcfc-8873-4042-a1b8-70ff2e41ac04}_UOU_Postponement_Memo_CNP_April_2017.pdf

----- Forwarded Message -----

From:
To: info@faanmortgageadmin.com <info@faanmortgageadmin.com>
Sent: Wednesday, October 10, 2018, 4:49:57 PM EDT
Subject: URGENT!

I am a lender of Syndicate Mortgage Loan of "Uptowns of Unionville" project. For detail information, see attached email I from BDMC in May 1st, 2017.

The reason for me to write to you is this project suppose to be finished in Aug 20, 2017 and got an extension to Aug 20, 2018.

My understand from the letter of Sorrenti Law in July 2018, (document attached), the loan will be pay back to me in Q3 of 2018.

And I understand that the payout for my principal and accrued interest will be proceed after the extension which is AUG 20, 2018.

Since July 2018, I didn't receive any information from Sorrenti Law nor BMDC, I am so worry what is going on, facts are I left many voice mail and email to Sorrenti Law office in Aug 2018, I got NO RESPONSE at all.

Last week, I even went to Sorrenti Law Mississauga office which is on their website <http://www.dslaw.ca> scared me out that is a travel agency office and people told me many people like me, went to this office and looking for Sorrenti Law, and people found out this place never been a Sorrenti Law office, it is too scary. People in travel agency told me some people even cried.

I urge you to help me about this if you could, all I need to know are:

- 1. the information about the payout date and how it's going to process**
- 2. could you please confirmed with the related parties if they have my correct email address**

If you need any further information, please feel free contact me. I appreciated

**Subject: Re: Update request for the Syndicated Mortgage Investment
re: Residence of Bayview (also known as Lotus)**

Hi Derek,

Any update re: Residence of Bayview will be Much Appreciated.

Sincerely,

Cell:

This e-mail contains information that may be privileged and/or confidential. If you are not the intended recipient, any disclosure, distribution, copying or other use of this e-mail or the information contained herein or attached hereto is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify this sender immediately and delete this e-mail without reading, printing, copying or forwarding it to anyone. Thank you for your co-operation.

On Feb 13, 2019, at 12:17, Derek Sorrenti
<derek.sorrenti@sorrentilaw.com> wrote:

Thank you for your email regarding the change in directors of the investor corporation. We will make a note of this in our file.

Please see below for an update re: the Bayview/Lotus project.

The lawyer for Pine Ridge, the borrower, has advised us that they have nearly \$18 million of the approximately \$22 million owing to investors, and they are waiting to send those funds to Sorrenti Law.

In order to send those funds to our office the borrower's lawyer advised that they require a signature from FAAN Mortgage Administrators as the result of Centro/BDMC's prior involvement in the transaction.

Our office asked FAAN to sign the necessary documents provided by Pine Ridge's lawyer in mid-December.

In mid-January we received a request from the lawyers for FAAN to provide them with significant amounts of the documentation related to the origination of this transaction for their review.

After completing their review, FAAN's lawyers advised us in late January that it is their opinion that a Court Order is required due to certain gaps in the

documentation in order to authorize FAAN to sign off on our office receiving funds.

FAAN's lawyers then asked that I provide them with an affidavit which answered various questions that they had about the original loan documents that were negotiated between Pine Ridge and Centro/BDMC.

I recently provided FAAN with the affidavit they requested and I am waiting for FAAN's lawyers to attend Court and obtain the Court Order they believe is required.

It is my opinion that such an Order is not necessary, but unfortunately it is not within my authority to argue with FAAN or their lawyers.

Once we receive the Court Order or the necessary documents executed by FAAN, our office expects to be in a position to start distributing the available funds that we receive to all investors shortly thereafter.

I am hopeful that we will receive funds in the next few weeks, but the timing is not within my control.

Additional funds are also apparently going to be available to our office from the borrower upon the completion of project accounting later in 2019.

Please feel free to contact our office by email if you have any additional questions, but please note that our response times will not always be immediate, as our office was not designed, and is not being paid, to perform communication duties to investors.

Communication with respect to the status of various Fortress syndicated mortgage investments has historically occurred via the mortgage brokerages and agents who sold these investments to investors. As you are likely aware, most of the brokerages and agents have recently disbanded or disappeared, leaving our office to handle the inquiries of thousands of investors on various projects where our office was merely supposed to act as the administrator of interest payments and principal repayments.

We did not foresee answering thousands of investor inquiries as being our role in this situation, but we can appreciate that investors are entitled to as much information as we can provide.

We are doing the best we can with the resources we have. Therefore, your patience in the circumstances is appreciated.

Derek F. Sorrenti, H.B.A., LL.B.
Managing Principal
Sorrenti Law Professional Corporation

310 - 3300 Highway #7
Vaughan, ON L4K 4M3
Tel 905-264-6414 ext. 400
Fax 905-264-6413
Web www.sorrentilaw.com

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Derek F. Sorrenti, H.B.A., LL.B.
Managing Principal
Sorrenti Law Professional Corporation
310 - 3300 Highway #7
Vaughan, ON L4K 4M3

<image001.jpg>

Tel 905-264-6414 ext. 400
Fax 905-264-6413
Web www.sorrentilaw.com

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From:

Sent: Wednesday, February 13, 2019 11:32 AM

To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>

Subject: Fwd: Update request for the Syndicated Mortgage Investment re: Residence of Bayview (also known as Lotus)

To whom this may concern:

Re: Syndicated Mortgage Investment: Residence of Bayview (also known as "Lotus").

I have sent the following email to Sorrenti Law Professional Corporation on January 22nd, 2019, but I have not heard back from anyone yet.

Today, I found an alternate email address for your law firm in one of the original syndicated mortgage investment documents.

Please see the enclosed email.

I look forward to hearing from you!

----- Forwarded message -----

From:

Date: Tue, Jan 22, 2019 at 10:44 AM

Subject: Update request for the Syndicated Mortgage Investment re: Residence of Bayview (also known as Lotus)

To: <eric@sorrentilaw.com>

To whom this may concern:

I am the Director of the company: 2396905 Ontario Incorporated and as a Syndicated Mortgage Lender would like to request for an update on the project named "Residence of Bayview" (also known as "Lotus").

When will be the exit date?

What is the accrued interest amount?

Sincerely,

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<7902-20180704-ltr Sorrenti-ec.pdf>

Disclaimer:

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This is Exhibit "5" referred to in the
Affidavit of Nadia Musclow, sworn September 30th 2019



Commissioner for Taking Affidavits

Carla Frutuoso

From: [REDACTED]
Sent: March 26, 2019 12:25 PM
To: [REDACTED]
Subject: FW: Request for COMPLETE copy of my COMPLETE Investment Contract

For your record.

Mirka Adamsky-Rackova | Executive Assistant to the CEO | Law Society of Ontario
 130 Queen Street West, Toronto, ON M5H 2N6 | Tel 416-947-3309 | Email MAAdamsky@lso.ca

From: Derek Sorrenti [mailto:derek.sorrenti@sorrentilaw.com]
Sent: March 26, 2019 12:15 PM
To: [REDACTED]
Cc: Diana Miles <DMiles@lso.ca>
Subject: RE: Request for COMPLETE copy of my COMPLETE Investment Contract

I have previously emailed you to advise that my clerk who will handle your request for information is on vacation until next week.

She will forward the information to you as soon as possible upon her return.

I will not be responding to you any further in relation to your multiple requests.

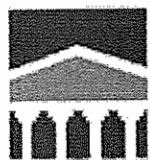
Our office is inundated with similar requests from many of the over 3000 syndicate mortgage investors who have been thrust into our purview.

The Law Society is very well aware of the situation my office finds itself in with respect to the administration of these remaining mortgages.

We will respond to all requests we receive as quickly as possible.

Your co-operation is expected, and your patience is appreciated.

Thank you.



SORRENTI LAW
 PROFESSIONAL CORPORATION

Derek F. Sorrenti, H.B.A., LL.B.
 Managing Principal
 Sorrenti Law Professional Corporation
 # 310 - 3300 Highway #7
 Vaughan, ON L4K 4M3

Tel 905-264-6414 ext. 400

Fax 905-264-6413

Web www.sorrentilaw.com

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confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

From: [REDACTED]
Sent: Tuesday, March 26, 2019 11:55 AM

This is Exhibit "6" referred to in the
Affidavit of Nadia Musclow, sworn September ^{30th} 2019



Commissioner for Taking Affidavits

Michelle O'Donoghue

From: Joseph DiPietro
Sent: May 6, 2019 8:29 PM
To: Derek Sorrenti
Cc: Stephen McClyment; Michelle O'Donoghue
Subject: RE: Case No. 2019-228886 - Fortress Related Complaint(s)

Mr. Sorrenti,

I have yet to receive a list of the civil actions and Statements of Claim where you are listed as a defendant.

Please forward the same by Monday, May, 13, 2019.

Joseph DiPietro, CPA, CMA, CFE
 Forensic Auditor, Investigation Services

Law Society of Ontario
 393 University Avenue, STE 1100
 Toronto, ON, M5G 1E6
 (416) 947-3300 x 2234
 (416) 947-3990 fax
jdipietr@lso.ca



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From: Derek Sorrenti [mailto:derek.sorrenti@sorrentilaw.com]
Sent: April 9, 2019 11:42 AM
To: David Cass <DCass@lso.ca>; Stephen McClyment <SMcClyme@lso.ca>; Joseph DiPietro <JDipietr@lso.ca>
Subject: RE: Case No. 2019-228886 - Fortress Related Complaint(s)

Mr. Cass:

Thank you for your numerous emails today. I appreciate that you have a job to do in forwarding these multitude of "complaints" to my attention.

I have previously made all the representations, in respect of the entire "Fortress" situation, that I have to make, on multiple occasions both in writing and in person, to Mr. McClyment and Mr. DiPietro on multiple previous occasions. Please refer to my previous comments in answer to the issues raised in these "complaints"

I have also provided the Law Society with my entire catalogue of Fortress syndicated mortgage related material approximately 2-3 years ago. Mr. McClyment can attest to this if necessary.

I have requested a meeting with the Law Society, through Mr. McClyment, in my most recent meeting with him last month, to attempt to devise a realistic solution to the unprecedented situation that I find myself in, in being tasked to respond to the inquiries of over 3000 syndicate mortgage investors, in the wake of the bankruptcies of the mortgage brokerages which previously acted as the primary point of contact for these investors.

My 2 ½ person (including myself) staff is doing ITS BEST under the circumstances, an on an unpaid basis to attempt to address the issues raised by these investors.

On top of what we are trying to do on a daily basis, I do not now, on top of all of this, have the time to address (or re-address) all of the “complaints” you have sent me today, and which I expect, may continue to in the future.

I would like to meet with someone at the Law Society who has the ability to hopefully assist me in dealing with this unprecedented situation at a “global” level.

I have had conversations in this regard with my counsel that is assisting with my defence in various of the claims that have been issued on these Fortress matters and they have not been able to assist in finding a reasonable path forward.

At the end of the day, one person cannot reasonably be expected to service 3,000 people (on an unpaid basis) when at one time dozens or hundreds of people (through the mortgage brokerages) were doing so (and being paid handsomely for their efforts).

My situation, as I outlined to Mr. McClyment, is unsustainable.

I am willing to continue to do whatever is reasonably possible to assist all investors with the limited resources that I have available to me.

I did not ever expect or anticipate that I would be placed into the situation that I am presently in. Again, my office is doing its best; and while I understand the frustrations these investors are expressing, what you are seeing as the “complaints” through your office about me is a TINY FRACTION of what my office is ACTUALLY dealing with on a daily basis (again all in exchange for \$0). I refuse to be castigated by anyone for my efforts.

I am open to ANY suggestions that anyone at the Law Society might have and I re-iterate a request for a meeting with somebody at the Law Society who might have the ability to assist me.

I look forward to the reply of someone at the LSO. I hope to hear from someone soon.

Those are the representations that I have to make on all of the matters you have forwarded to me.



SORRENTI LAW
PROFESSIONAL CORPORATION

Derek F. Sorrenti, H.B.A., LL.B.
Managing Principal
Sorrenti Law Professional Corporation
310 - 3300 Highway #7
Vaughan, ON L4K 4M3

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Fax 905-264-6413

Web www.sorrentilaw.com

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confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

From: David Cass <DCass@lso.ca>

Sent: Tuesday, April 09, 2019 10:43 AM

To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>

Subject: Case No. 2019-228886

Dear Mr. Sorrenti:

Please see the attached complaint from Annette Ethel Thornton.

Please provide me with your representations in response to Ms Thornton's complaint.

Thank you for your anticipated co-operation.

Yours truly,

David W. Cass
Intake and Resolution Counsel
Law Society of Ontario
1100-393 University Avenue
Toronto, Ontario
M5G 1E6
Tel.: (416) 947-3300 x2440
1-800-668-7380 x2440
Fax: (416) 947-3382

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This is Exhibit "7" referred to in the
Affidavit of Nadia Musclow, sworn September 30th 2019



Commissioner for Taking Affidavits

September 20, 2019

J. Thomas Curry
Direct line: 416-865-3096
Direct fax: 416-865-2879
Email: tcurry@litigate.com

**VIA COURIER, FACSIMILE
& EMAIL (derek.sorrenti@sorrentilaw.com & derek.sorrenti@dslaw.ca)**

Derek F. Sorrenti
Sorrenti Law Professional Corporation
310-3300 Highway 7
Concord, ON L4K 4M3

Dear Mr. Sorrenti:

**RE: Law Society of Ontario
File No. 51823**

We are counsel to the Law Society of Ontario. We write to advise that we have been retained to commence an application under section 49.47 of the *Law Society Act* to obtain a trusteeship order in respect of your administration of mortgages in Fortress Developments and Fortress Real Capital projects.

We encourage you to obtain legal representation. If you are being represented by a lawyer, please have them contact us as soon as possible. We anticipate seeking a hearing date as early as September 24, 2019 and therefore request that you or your counsel please get in touch with us today so that we can discuss your position with respect to our proposed application.

Yours truly,



J. Thomas Curry

JTC/slz

c. Jaan Lilles
Kelly Hayden
Jennifer Power

DATE 9/20/2019	(905) 738-6448	(905) 738-6474	CONFIRMATION NO. 584144
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UNITED MESSENGERS LTD.

FROM LENCZNER SLAGHT ROYCE		TO SORRENTI LAW PROFESSIONAL CORP		ATTN OF. DEREK F SORRENTI	
ADDRESS 130 ADELAIDE ST W #2500		ADDRESS 310-3300 HIGHWAY 7			
CITY TORONTO	POSTAL CODE M5H3P5	CITY CONCORD	POSTAL CODE L4K4M3		
SHIPPERS SIGNATURE		PHONE NUMBER (416) 865-9500	RECEIVED IN GOOD ORDER *		PLEASE PRINT SIGNATURE
COMMENTS/COST CENTRE Cost Centre: Reference No.: 51823-KTH SIGNATURE REQUIRED		ACCOUNT NO. LENC1T	SERVICE LEVEL 90 MINS.	VEHICLE CAR	WEIGHT 1
		BROKER'S NUMBER	PIECES 1	RETURN No	AFTER HRS No
				WAIT TIME 0	TOTAL CHARGES

FOLD AND CAREFULLY TEAR OFF HERE

OTHER COPY

DATE 9/20/2019	(905) 738-6448	(905) 738-6474	CONFIRMATION NO. 584144
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UNITED MESSENGERS LTD.

FROM LENCZNER SLAGHT ROYCE		TO SORRENTI LAW PROFESSIONAL CORP		ATTN OF. DEREK F SORRENTI	
ADDRESS 130 ADELAIDE ST W #2500		ADDRESS 310-3300 HIGHWAY 7			
CITY TORONTO	POSTAL CODE M5H3P5	CITY CONCORD	POSTAL CODE L4K4M3		
SHIPPERS SIGNATURE		PHONE NUMBER (416) 865-9500	RECEIVED IN GOOD ORDER *		PLEASE PRINT SIGNATURE
COMMENTS/COST CENTRE Cost Centre: Reference No.: 51823-KTH SIGNATURE REQUIRED		ACCOUNT NO. LENC1T	SERVICE LEVEL 90 MINS.	VEHICLE CAR	WEIGHT 1
		BROKER'S NUMBER	PIECES 1	RETURN No	AFTER HRS No
				WAIT TIME 0	TOTAL CHARGES

This is Exhibit "8" referred to in the
Affidavit of Nadia Musclow, sworn September ^{30th}..... 2019



Commissioner for Taking Affidavits

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Sent: Tuesday, September 24, 2019 10:54 AM
To: Kelly Hayden
Cc: csinclair@goldblattpartners.com; Jaan Lilles; Jennifer Power; Tom Curry
Subject: Re: Law Society of Ontario / Sorrenti - Your File No. 51823 [IWOV-LSRSGDOCS.FID541274]

For high level status updates on the below matters see below...

On Sep 23, 2019, at 7:16 PM, Derek Sorrenti <derek.sorrenti@sorrentilaw.com> wrote:

In advance of our call tomorrow see the following links containing details of the projects still under administration by Sorrenti Law. Some of these are inactive, but are technically still under administration. Further details will be provided tomorrow.

Gotham

<https://fortressrealdevelopments.com/projects/gotham/>

Investors were repaid approximately 85% of their principal investment back in 2016 by virtue of an inventory loan on this project taken out by the developer, Brad Lamb. Our office has been advised that when the kids expected sale of the few remaining units to third-party purchasers occurs over the course of the next few months it is anticipated that all investors will receive a return of 100% of their principal investment.

Investors also received 8% annual interest over the first 3+ years this investment which I believe commenced in 2012 or 2013. Due to various cost and time overruns it is unlikely that Investors will recover the interest that has accrued since the last payment was made.

Harmony Village Sheppard

<https://fortressrealdevelopments.com/projects/harmony-village-sheppard/>

The property in this project was sold pursuant to a receivership order by a prior mortgagee in 2016, I believe. Investors received approximately 65% of their principal investment pursuant to that sale at that time. Investors also received interest at 8% for approximately three years of this investment.

There is approximately \$1 million still being held by the city of Toronto on account of various security payments that were made by the borrower. The receiver has been advising our office for over one year that when those funds are released they will also be available to the syndicate mortgage holders.

This will equate to approximately a return of another 5% of the principal amount invested by investors.

There is also potential recovery against the personal guarantor, the principle of the borrower. However at this time there is no money available to find such an action. I have been waiting for the receipt of the \$1 million being held by the city in order to retain counsel in this regard the borrowers prefer to do so

Mapleview

<https://fortressrealdevelopments.com/projects/julien-court/>

I am advised by the borrower that the custom homes being built in this project are currently under construction. I have been advised that there will be a substantial return available to investors pursuant to this mortgage investment, but despite numerous requests for detailed information the borrower has not provided our office with a detailed analysis of exactly how much of a return investors can expect to see.

Sutton

<https://fortressrealdevelopments.com/projects/the-link-condos-towns/>

I will forward updates that I have received directly from the borrower on this project on a separate email.

Lotus/Bayview Village

<https://fortressrealdevelopments.com/projects/residences-of-lotus/>

Our office is in the process of distributing approximately 90.5% of the principal invested by investors in this project. Investors also earned 8% interest annually for approximately 3 1/2 years of this investment. I have been advised by the borrower's counsel that once the limitation period for Tarion warranties and other development matters have passed in late 2020, it is expected that additional monies will be available for distribution to the investors.

SoBa

<https://fortressrealdevelopments.com/projects/soba2/>

Approximately 150 to 210 units in this building have been sold to third-party purchasers and are currently occupied. It is expected that registration of this project in the city of Ottawa will occur in early to mid 2020. The developer, Brad Lamb, advises that his focus in the city of Ottawa is presently on completing the Gotham project. Once that is done he advises that a strong push will be made to sell the remaining Soba inventory, which we have been advised is expected to be sufficient to return 100% of principal monies invested to all investors, in addition these investors have earned 8% interest annually on their funds from 2012 to 2015.

Progress / TEN88

<https://fortressrealdevelopments.com/projects/progress-manors-ten88/>

This project is presently the subject of a negotiated structured sale by the present owners. Fortress has been involved in negotiating with a third-party purchaser who has made an offer to the investors which appears to be a much better option than what would otherwise be available by virtue of power of sale proceedings by the prior mortgage. Some time should be spent today discussing this particular project.

Wismer

<https://fortressrealdevelopments.com/projects/the-mark-mount-joy-wismer-3/>

The units in this development have almost been sold out. This project is the subject of some infighting and litigation amongst the various partners in it, including Fortress. Pursuant to a court order, a discharge of the two syndicated mortgages on this project were registered on the residential component of it. We are advised that a return of a substantial amount of principal invested pursuant to the first syndicated mortgage is expected from the sale of the commercial component of this project. It is unknown what, if any, return will be available to the holders of the second syndicated mortgage. Our office did not administer the second indicated mortgage on this project.

Uptowns of Unionville / UoU

<https://fortressrealdevelopments.com/projects/union-villas/>

Despite previously being advised by the borrower that the sale of the units in this project would result in a full return of principal to investors, our office has recently been advised that a full return is unlikely. Again, despite multiple requests for detailed information, the borrower has not provided us with any. The information I have been given is that approximately 70%-80% of the principal invested by investors can be expected to be returned in the near future, together with approximately three years worth of previous interest payment which were received by investors at the rate of 8% per year. I am told that the reason for the shortfall is various development related issues related to the quality of the construction of the project by the developer/builder.

Victoria Park Place

<http://www.solotexcorporation.com/CurrentRelease>

The borrower/developer of this project has been in regular communication directly with my office for approximately 12 to 18 months. He advises that while the project is located in an ideal geographical location, and he has reached a pre-sale target of 70%, he has been unable to secure construction financing due to the current litigation environment surrounding Fortress projects. We have together explored various potential options to try to resolve this situation, so far to no avail. A prior mortgagee recently met with me to advise that they were contemplating issuing a notice of sale, which would result in an uncertain return for these investors. They had made a "goodwill" offer of approximately \$3 million of the \$14 million outstanding to the investors as part of our discussions. When I informed Fortress of this offer they suggested that it was way too low and that they would be able to find the investors a better deal. So far no such better offer has been presented, which leaves me with limited other options at this point as far as I am able to determine.

I hope that the above summary has been helpful to you. I look forward to discussing this matter in further detail later today.

Sent from my iPhone

This is Exhibit "9" referred to in the
Affidavit of Nadia Musclow, sworn September ^{20th}..... 2019



Commissioner for Taking Affidavits

September 27, 2019

Kelly Hayden
Direct line: 416-865-3734
Direct fax: 416-865-3708
Email: khayden@litigate.com

PRIVATE AND CONFIDENTIAL

VIA EMAIL

Derek Francesco Sorrenti
Sorrenti Law Professional Corporation
310-3300 Highway 7
Vaughan, ON L4K 4M3

Dear Mr. Sorrenti:

Re: Subject: Derek Francesco Sorrenti
Complainants: Various
Case Nos.: Various

I write further to our meeting yesterday.

As discussed, at this time we ask that you please provide a list of the investors for each project you are administering and the amount owed under each. We understand you keep this information in a spreadsheet which is an acceptable format. We intend to provide this information to FAAN Mortgage.

We also request that, in light of the impending trusteeship proceeding, you refrain from taking any of the following actions in respect of the syndicated mortgages you are administering without first consulting us:

1. Issuing or releasing any further payments (including distributing cheques in relation to the Bayview project);
2. Utilizing any of the monies in the mortgage administration trust account, including in order to pay your own mortgage administration fees; and
3. Taking any action/making any decisions in respect of the projects which would bind investors.

We look forward to hearing from you and receiving the requested information. We anticipate seeking to have the trustee appointed early next week and will be in touch to provide details shortly.

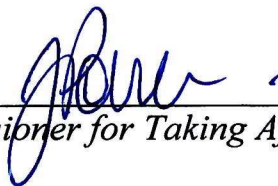
Yours very truly,

A handwritten signature in black ink, appearing to read 'K. Hayden', written over a light grey circular stamp.

Kelly Hayden

c. Tom Curry, Jaan Lilles, Jennifer Power

This is Exhibit "10" referred to in the
Affidavit of Nadia Musclow, sworn September ^{30th}..... 2019



Commissioner for Taking Affidavits

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Sent: Friday, September 27, 2019 4:34 PM
To: Kelly Hayden
Cc: Tom Curry; Jaan Lilles; Jennifer Power
Subject: FW: UnionVillas - 25 units discharge
Attachments: Direction re funds - Sep 27 2019.pdf; 2265_001.pdf

See below and attached in relation to the UoU file which may well be placed into receivership by the prior mortgagee if the requested discharges are not provided today.

Please contact Norm Winter's office immediately as I was about to execute the discharges in the best interests of the investors.

Furthermore please note that I have, by Court Order been permitted to take fees in relation to the Bayview project, I will be taking those fees pursuant to said Order.

We can discuss the remaining matters next week. The fees which have been earned but which have not yet been taken out of trust have been properly earned and I require that we have an immediate discussion in respect of same.

I will be in touch in Monday.



Derek F. Sorrenti, H.B.A., LL.B.
 Managing Principal
 Sorrenti Law Professional Corporation
 # 310 - 3300 Highway #7
 Vaughan, ON L4K 4M3

Tel 905-264-6414 ext. 400

Fax 905-264-6413

Web www.sorrentilaw.com

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otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

From: Norman Winter <nw@nwinlaw.com>
Sent: Friday, September 27, 2019 4:08 PM
To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Cc: Nerissa <nerissa@nwinlaw.com>; Loredana Iannacchino <loredana@sorrentilaw.com>; Alina Ramos <alina@nwinlaw.com>
Subject: RE: UnionVillas - 25 units discharge

Hi Derek,

Please see my responses below, in red, as well as the attached referenced in my replies. I understand that you have spoken to my clients about this as well.

Please advise if you are now in position to provide the required discharges as well as letter confirming that no payments are required for those lots being discharged.

Thank you,
Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964.0325 | F. 416.964.2494

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>

Sent: September 27, 2019 10:55 AM

To: Norman Winter <nw@nwinlaw.com>

Cc: Nerissa <nerissa@nwinlaw.com>; Loredana Iannacchino <loredana@sorrentilaw.com>

Subject: RE: UnionVillas - 25 units discharge

PRIVATE AND CONFIDENTIAL

Good morning Norm:

Further to my conversations with your clients yesterday and today, I am glad to see that it appears, based on their representations to me, that there will be sufficient proceeds available from the sale of the 10 lots in Block 5 to repay the syndicate mortgage loan in full.

I understand 6 of the 10 properties are the subject of firm APS, and your clients advise that the remaining 4 are *anticipated* to sell for *approximately* the same amount as the 6 sold properties.

I acknowledge that until the 4 remaining units are actually sold, there is some small degree of uncertainty as to the total amount of money to be received from the sale of Block 5.

Assuming the above is accurate, what I require from your office in order to execute the discharges on the 25 lots as requested by you, is as follows:

1. A copy of Kingsett's discharge statement, together with evidence that the proceeds from the 25 lots is sufficient to payout and discharge the Kingsett mortgage in full. **WILL NOT BE PROVIDED. KINGSETT PROVIDES DISCHARGE STATEMENTS ON A LOT BY LOT BASIS. SEE ATTACHED FROM MY CLIENT THE 'GLOBAL' STATEMENT THEY RECENTLY RECEIVED FROM KINGSETT.**
2. Confirmation from you in writing that the syndicated mortgage I administer is the next secured creditor to be paid from the proceeds of the sales of the subject properties. **I CAN ONLY SAY THAT BASED ON RECENT SUBSEARCHES OF APPROXIMATELY 6 OR 8 LOTS, SORRENTI/OLYMPIA'S MORTGAGE IS REGISTERED AFTER KINGSETT'S SECURITY. AS YOU ARE AWARE, KINGSETT HAS FIRST AND SECOND CHARGES AND RELATED SECURITY REGISTERED AHEAD OF YOUR MORTGAGE.**
3. Confirmation from you in writing that you have no reason to believe that the documents which I have received from your client yesterday (attached hereto), which anticipate the availability of an estimated \$9,896,000.00 from the proceeds of the sale of the 10 Block 5 properties, to be inaccurate to any significant extent, subject to the proviso re: the 4 unsold lots. **I CANNOT AND WILL NOT PROVIDE ANY SUCH CONFIRMATION.**
4. That you will personally undertake to pay the said estimated net proceeds of \$9,896,000.00 **TO AND ONLY TO the order of "Sorrenti Law Professional Corporation, in Trust"** and that you will accept no other direction from your clients or any other party, other than a court of competent jurisdiction, with respect to the payment of these funds until the syndicated mortgage has been repaid in full. **PLEASE SEE SIGNED DIRECTION FROM MY CLIENT ATTACHED. I WILL ABIDE BY THAT DIRECTION.**

Upon receipt and satisfactory review of the foregoing I anticipate that I will be in a position to execute the discharge on the 25 lots as requested.

Please also note that the payout statement for the syndicate mortgage which was provided to you earlier was calculated with an effective date of September 30, 2019.

It appears, based on the attached document that the sales of the Block 5 lots are anticipated to occur on November 30, 2019 or later. **Please therefore advise your client that interest and administration fees will continue to accrue until such time as the loan has been repaid and the mortgage discharged in full.**

Please let me know if you have any questions in relation to the above.



Derek F. Sorrenti, H.B.A., LL.B.
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Sent: Thursday, September 26, 2019 5:32 PM
To: Charene Bunnett <charene@fortressrdi.com>; Derek Sorrenti <derek.sorrenti@sorrentilaw.com>; Samantha Johnson <JohnsonS@olympiustrust.com>
Cc: Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>
Subject: RE: UnionVillas - 25 units discharge

Hi Charene,

Nerissa will send tomorrow morning.

Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964.0325 | F. 416.964.2494

From: Charene Bunnett <charene@fortressrdi.com>
Sent: September 26, 2019 4:38 PM
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Cc: Norman Winter <nw@nwinlaw.com>; Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>
Subject: RE: UnionVillas - 25 units discharge

Norman, Can you please provide a few title searches? Olympia has requested them in review of the discharge.

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Sent: Thursday, September 26, 2019 2:07 PM
To: Samantha Johnson <JohnsonS@olympiustrust.com>

Cc: Charene Bunnett <charene@fortressrdi.com>; Norman Winter <nw@nwinlaw.com>; Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>
Subject: FW: UnionVillas - 25 units discharge

Samantha:

The attached discharge documentation has been sent to me by the lawyer for the Unionvillas (Uptowns of Unionville) project.

Please review it, and if acceptable to Olympia Trust, have the appropriate personnel execute it and return it directly to either Norm Winter's office (the lawyer for the borrower) or via Charene.

If Olympia Trust requires any information in order to execute the discharge **please advise Charene or Nerissa, Norm Winter's assistant.**

Thank you.



Derek F. Sorrenti, H.B.A., LL.B.
 Managing Principal
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From: Nerissa <nerissa@nwinlaw.com>

Sent: Thursday, September 26, 2019 11:28 AM

To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Norman Winter <nw@nwinlaw.com>; Sajjad Hussain <shussain@sunrisehomes.ca>

Subject: RE: UnionVillas - 25 units discharge

Hi Derek:

Further to our telephone conversation yesterday and your email below, please advise if the Lenders are willing to provide the discharges for the sale of the first 25 Lots. On the assumption that they are, and as discussed, we have prepared and are attaching the Ereg Acknowledgement and Direction, with draft Discharge of Charge annexed thereto for 25 lots, for your review. If it is satisfactory, please have same signed on behalf of each Lender and email it back to us. Please also provide us with a letter confirming that no payment is required for discharges of the Lenders' mortgage on the closing of the said 25 Lots.

If you have any questions or require further information, please do not hesitate to contact us.

Regards,
 Nerissa

N. H. WINTER LAW, PROFESSIONAL CORPORATION**1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964-0325 | F. 416.964.2494**

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From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>**Sent:** September-25-19 10:40 AM**To:** Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Norman Winter <nw@nwinlaw.com>; Nerissa <nerissa@nwinlaw.com>; Sajjad Hussain <shussain@sunrisehomes.ca>**Subject:** RE: UnionVillas - 25 units discharge

I've spoken to Nerissa at Norm's office this morning, and I understand she will be providing draft discharges of the 25 lots for review by my office and by Olympia Trust in the near future.

As best as I can interpret the information provided it does not:

- indicate what the anticipated payment will be to the syndicated mortgage holders from the remaining lots (which I think the investors are entitled to know) or
- breakdown the \$787,749 line item categorized as "Cashflows to pay trades / contractors / payables and holdbacks"

I expect that further information regarding the actual recipients of these funds / recipients will be required.



SORRENTI LAW
PROFESSIONAL CORPORATION

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Managing Principal
Sorrenti Law Professional Corporation
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Vaughan, ON L4K 4M3

Tel 905-264-6414 ext. 400**Fax** 905-264-6413**Web** www.sorrentilaw.com

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protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

From: Vince Petrozza <vince@fortressrdi.com>**Sent:** Wednesday, September 25, 2019 9:49 AM**To:** Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Derek Sorrenti <derek.sorrenti@sorrentilaw.com>**Cc:** Jawad Rathore <jawad@fortressrdi.com>; Sajjad Hussain <shussain@sunrisehomes.ca>**Subject:** RE: UnionVillas - 25 units discharge

Derek, please advise if anything else is needed

Thanks, Vince Petrozza COO
Fortress Real Developments Inc.



www.fortressrealdevelopments.com

office: 905-787-9266 x229

cell: 416-450-8692

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From: Muzammil Kodwavi [<mailto:mkodwavi@sunrisehomes.ca>]

Sent: Tuesday, September 24, 2019 8:45 PM

To: Vince Petrozza <vince@fortressrdi.com>; derek.sorrenti@sorrentilaw.com

Cc: Jawad Rathore <jawad@fortressrdi.com>; Sajjad Hussain <shussain@sunrisehomes.ca>

Subject: RE: UnionVillas - 25 units discharge

Hello Derek,

Re: UnionVillas – Hwy 7, Markham. We require discharges for 25 lots, as requested by Norm’s office. As closings are mostly scheduled for September 30th. However, the senior lender (KingSett) is in urgent need of these by Sept 25th. I’m sure that you do understand.

Regards,

Muzammil Y Kodwavi

COO

Sunrise Homes Ltd.

50 West Wilmot Street, Suite 100

Richmond Hill, ON, L4B 1M5

T: 905-597-3333

F: 905-597-3334

www.sunrisehomes.ca

From: Vince Petrozza [<mailto:vince@fortressrdi.com>]

Sent: Tuesday, September 24, 2019 3:52 PM

To: 'derek.sorrenti@sorrentilaw.com'

Cc: Jawad Rathore; Muzammil Kodwavi; 'shussain@sunrisehomes.ca'

Subject: FW: UnionVillas - 25 units discharge

Derek,

See attached, can we do a conference call at 430 please?

We can use our conference line:

1-877-343-2259

Code in 8883417

Thanks, Vince Petrozza COO

Fortress Real Developments Inc.



www.fortressrealdevelopments.com

office: 905-787-9266 x229

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From: Muzammil Kodwavi [mailto:mkodwavi@sunrisehomes.ca]

Sent: Tuesday, September 24, 2019 3:47 PM

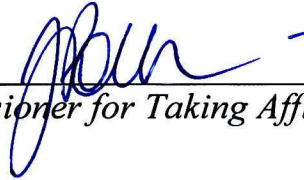
To: Jawad Rathore <jawad@fortressrdi.com>; Vince Petrozza <vince@fortressrdi.com>

Cc: Sajjad Hussain <shussain@sunrisehomes.ca>

Subject: Re: UnionVillas - 25 units discharge

Muzammil

This is Exhibit "11" referred to in the
Affidavit of Nadia Musclow, sworn September 30th..... 2019



Commissioner for Taking Affidavits

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Sent: Friday, September 27, 2019 5:17 PM
To: Kelly Hayden
Subject: Fwd: Discharges -

Sent from my iPhone

Begin forwarded message:

From: Sajjad Hussain <shussain@sunrisehomes.ca>
Date: September 27, 2019 at 5:06:14 PM EDT
To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Cc: Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>, Norman Winter <nw@nwinlaw.com>
Subject: Discharges -

Hello Derek –

WE have read your email in regards to the discharges and you mentioned that you are not in the position to sign those discharges due to the fact that you have been prohibited by the law society. I can tell you that this will jeopardise the whole project as we have buyers who will walk out of the deal if we don't close these homes Monday that they have been very patient with us, We have been after this for days and have provided with sufficient documents to proof that there is enough money in the project to payoff the syndicate funds.

WE will be needing these signed discharges by 6:00 pm today and if we do not get these, we will have no choice but to file legal action.

Regards,

Sajjad Hussain.
CEO
Sunrise Homes Ltd.
50 West Wilmot Street,
Suite 100, Richmond Hill,
Ontario, L4B 1M5
T:905-597-3333
F:905-597-3334
www.sunrisehomes.ca

This is Exhibit "12" referred to in the
Affidavit of Nadia Musclow, sworn September 30th 2019



Commissioner for Taking Affidavits

From: Derek Sorrenti [mailto:derek.sorrenti@sorrentilaw.com]
Sent: Friday, September 27, 2019 5:18 PM
To: Kelly Hayden
Subject: Fwd: UnionVillas - 25 units discharge

Sent from my iPhone

Begin forwarded message:

From: Norman Winter <nw@nwinlaw.com>
Date: September 27, 2019 at 5:09:58 PM EDT
To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Cc: Nerissa <nerissa@nwinlaw.com>, Alina Ramos <alina@nwinlaw.com>
Subject: RE: UnionVillas - 25 units discharge

Hi Derek,

As you are aware, our client has set closing dates with purchasers on the 25 lots and has run out of any right to extend the closings. Pursuant to the terms of the loan agreement to which your registered security pertains, you are required to provide the discharges without payment for these 25 lots. If we don't get the discharges, the entire project will likely fall apart, meaning, given today's market for new housing, we'd lose the sale transactions, my client's first and second mortgage loans will be called, my client will suffer significant reputational and monetary damages and your mortgagees/investors would likely lose significant if not all their monies. My client, of course, would look to the mortgagees and all responsible parties to recover its full damages.

I kindly ask you, indeed urge you, to provide the required discharges, as that is your legal obligation, and also in everyone's best interest. As you know, my clients believe that your mortgagees/investors stand to recover their full loan amounts if the project proceeds in the normal course.

Please govern yourself accordingly.
Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964.0325 | F. 416.964.2494

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>

Sent: September 27, 2019 4:37 PM

To: Norman Winter <nw@nwinlaw.com>

Subject: RE: UnionVillas - 25 units discharge

As of this 4:01 this afternoon the Law Society has instructed me to refrain from taking any further action on any matters that would bind investors without first consulting them.

I will be in further touch with you once I have received instructions on this matter from them.

I suggest you write a letter to me advising of your client's position on this matter.

I will forward same to the Law Society.



Derek F. Sorrenti, H.B.A., LL.B.
 Managing Principal
 Sorrenti Law Professional Corporation
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 Vaughan, ON L4K 4M3

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Cc: Nerissa <nerissa@nwinlaw.com>; Loredana Iannacchino <loredana@sorrentilaw.com>; Alina Ramos <alina@nwinlaw.com>

Subject: RE: UnionVillas - 25 units discharge

Hi Derek,

My email below had an incorrect 'global' statement. Please discard and refer to this one.

Thanks,
 Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

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Subject: RE: UnionVillas - 25 units discharge

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Please see my responses below, in red, as well as the attached referenced in my replies. I understand that you have spoken to my clients about this as well.

Please advise if you are now in position to provide the required discharges as well as letter confirming that no payments are required for those lots being discharged.

Thank you,
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Subject: RE: UnionVillas - 25 units discharge

PRIVATE AND CONFIDENTIAL

Good morning Norm:

Further to my conversations with your clients yesterday and today, I am glad to see that it appears, based on their representations to me, that there will be sufficient proceeds available from the sale of the 10 lots in Block 5 to repay the syndicate mortgage loan in full.

I understand 6 of the 10 properties are the subject of firm APS, and your clients advise that the remaining 4 are *anticipated* to sell for *approximately* the same amount as the 6 sold properties. I acknowledge that until the 4 remaining units are actually sold, there is some small degree of uncertainty as to the total amount of money to be received from the sale of Block 5.

Assuming the above is accurate, what I require from your office in order to execute the discharges on the 25 lots as requested by you, is as follows:

1. A copy of Kingsett's discharge statement, together with evidence that the proceeds from the 25 lots is sufficient to payout and discharge the Kingsett mortgage in full. **WILL NOT BE PROVIDED. KINGSETT PROVIDES DISCHARGE STATEMENTS ON A LOT BY LOT BASIS. SEE ATTACHED FROM MY CLIENT THE 'GLOBAL' STATEMENT THEY RECENTLY RECEIVED FROM KINGSETT.**
2. Confirmation from you in writing that the syndicated mortgage I administer is the next secured creditor to be paid from the proceeds of the sales of the subject properties. **I CAN ONLY SAY THAT BASED ON RECENT SUBSEARCHES OF APPROXIMATELY 6 OR 8 LOTS, SORRENTI/OLYMPIA'S MORTGAGE IS REGISTERED AFTER KINGSETT'S SECURITY. AS YOU ARE AWARE, KINGSETT HAS FIRST AND SECOND CHARGES AND RELATED SECURITY REGISTERED AHEAD OF YOUR MORTGAGE.**

3. Confirmation from you in writing that you have no reason to believe that the documents which I have received from your client yesterday (attached hereto), which anticipate the availability of an estimated \$9,896,000.00 from the proceeds of the sale of the 10 Block 5 properties, to be inaccurate to any significant extent, subject to the proviso re: the 4 unsold lots. **I CANNOT AND WILL NOT PROVIDE ANY SUCH CONFIRMATION.**
4. That you will personally undertake to pay the said estimated net proceeds of \$9,896,000.00 **TO AND ONLY TO the order of "Sorrenti Law Professional Corporation, in Trust"** and that you will accept no other direction from your clients or any other party, other than a court of competent jurisdiction, with respect to the payment of these funds until the syndicated mortgage has been repaid in full. **PLEASE SEE SIGNED DIRECTION FROM MY CLIENT ATTACHED. I WILL ABIDE BY THAT DIRECTION.**

Upon receipt and satisfactory review of the foregoing I anticipate that I will be in a position to execute the discharge on the 25 lots as requested.

Please also note that the payout statement for the syndicate mortgage which was provided to you earlier was calculated with an effective date of September 30, 2019.

It appears, based on the attached document that the sales of the Block 5 lots are anticipated to occur on November 30, 2019 or later. **Please therefore advise your client that interest and administration fees will continue to accrue until such time as the loan has been repaid and the mortgage discharged in full.**

Please let me know if you have any questions in relation to the above.



Derek F. Sorrenti, H.B.A., LL.B.
Managing Principal
Sorrenti Law Professional Corporation
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Cc: Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>

Subject: RE: UnionVillas - 25 units discharge

Hi Charene,

Nerissa will send tomorrow morning.

Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

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Sent: Thursday, September 26, 2019 2:07 PM
To: Samantha Johnson <JohnsonS@olympiustrust.com>
Cc: Charene Bunnett <charene@fortressrdi.com>; Norman Winter <nw@nwinlaw.com>; Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>
Subject: FW: UnionVillas - 25 units discharge

Samantha:

The attached discharge documentation has been sent to me by the lawyer for the Unionvillas (Uptowns of Unionville) project.

Please review it, and if acceptable to Olympia Trust, have the appropriate personnel execute it and return it directly to either Norm Winter's office (the lawyer for the borrower) or via Charene.

If Olympia Trust requires any information in order to execute the discharge **please advise Charene or Nerissa, Norm Winter's assistant.**

Thank you.



Derek F. Sorrenti, H.B.A., LL.B.
 Managing Principal
 Sorrenti Law Professional Corporation
 # 310 - 3300 Highway #7
 Vaughan, ON L4K 4M3

Tel 905-264-6414 ext. 400

Fax 905-264-6413

Web www.sorrentilaw.com

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From: Nerissa <nerissa@nwinlaw.com>
Sent: Thursday, September 26, 2019 11:28 AM

To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Norman Winter <nw@nwinlaw.com>; Sajjad Hussain <shussain@sunrisehomes.ca>
Subject: RE: UnionVillas - 25 units discharge

Hi Derek:

Further to our telephone conversation yesterday and your email below, please advise if the Lenders are willing to provide the discharges for the sale of the first 25 Lots. On the assumption that they are, and as discussed, we have prepared and are attaching the Ereg Acknowledgement and Direction, with draft Discharge of Charge annexed thereto for 25 lots, for your review. If it is satisfactory, please have same signed on behalf of each Lender and email it back to us. Please also provide us with a letter confirming that no payment is required for discharges of the Lenders' mortgage on the closing of the said 25 Lots.

If you have any questions or require further information, please do not hesitate to contact us.

Regards,
 Nerissa

NERISSA SHAGEER-MOHAMMED, Law Clerk | 416.964.0325, ext. 240 | nerissa@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964-0325 | F. 416.964.2494

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From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>

Sent: September-25-19 10:40 AM

To: Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Norman Winter <nw@nwinlaw.com>; Nerissa <nerissa@nwinlaw.com>; Sajjad Hussain <shussain@sunrisehomes.ca>

Subject: RE: UnionVillas - 25 units discharge

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From: Vince Petrozza <vince@fortressrdi.com>
Sent: Wednesday, September 25, 2019 9:49 AM
To: Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Cc: Jawad Rathore <jawad@fortressrdi.com>; Sajjad Hussain <shussain@sunrisehomes.ca>
Subject: RE: UnionVillas - 25 units discharge

Derek, please advise if anything else is needed

Thanks, Vince Petrozza COO
 Fortress Real Developments Inc.



www.fortressrealdevelopments.com

office: 905-787-9266 x229

cell: 416-450-8692

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From: Muzammil Kodwavi [<mailto:mkodwavi@sunrisehomes.ca>]
Sent: Tuesday, September 24, 2019 8:45 PM
To: Vince Petrozza <vince@fortressrdi.com>; derek.sorrenti@sorrentilaw.com
Cc: Jawad Rathore <jawad@fortressrdi.com>; Sajjad Hussain <shussain@sunrisehomes.ca>
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Regards,
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 COO
 Sunrise Homes Ltd.
 50 West Wilmot Street, Suite 100

Richmond Hill, ON, L4B 1M5

T: 905-597-3333

F: 905-597-3334

www.sunrisehomes.ca

From: Vince Petrozza [mailto:vince@fortressrdi.com]
Sent: Tuesday, September 24, 2019 3:52 PM
To: 'derek.sorrenti@sorrentilaw.com'
Cc: Jawad Rathore; Muzammil Kodwavi; 'shussain@sunrisehomes.ca'
Subject: FW: UnionVillas - 25 units discharge

Derek,

See attached, can we do a conference call at 430 please?

We can use our conference line:
1-877-343-2259
Code in 8883417

Thanks, Vince Petrozza COO
Fortress Real Developments Inc.



www.fortressrealdevelopments.com
office: 905-787-9266 x229
cell: 416-450-8692

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From: Muzammil Kodwavi [mailto:mkodwavi@sunrisehomes.ca]
Sent: Tuesday, September 24, 2019 3:47 PM
To: Jawad Rathore <jawad@fortressrdi.com>; Vince Petrozza <vince@fortressrdi.com>
Cc: Sajjad Hussain <shussain@sunrisehomes.ca>
Subject: Re: UnionVillas - 25 units discharge

Muzammil

This is Exhibit "13" referred to in the
Affidavit of Nadia Musclow, sworn September 20th 2019



Commissioner for Taking Affidavits

To: 'Kelly Hayden' <khayden@litigate.com>; tcurry@litigate.com; 'Jlilles@litigate.com' <Jlilles@litigate.com>

Subject: FW: IMPORTANT!! -Sorrenti

FYI

Lesley Cameron

Executive Director, Professional Regulation

Law Society of Ontario

393 University Avenue, 11th Floor, Toronto, ON M5G 1E6

t. 416-947-5229 or 1-800-668-7380 x 5229

e. lcameron@lso.ca



This communication is intended for use by the individual(s) to whom it is specifically addressed and should not be read by, or delivered to, any other person. Such communication may contain privileged or confidential information. If you have received this communication in error, please notify the sender and permanently delete the communication. Thank you for your co-operation.

From: Diana Miles

Sent: September 27, 2019 6:10 PM

To: Lesley Cameron <LCameron@lso.ca>; Anne-Marie Kearney <AKearney@lso.ca>

Subject: IMPORTANT!! -Sorrenti

See below

Diana Miles

Chief Executive Office

Law Society of Ontario

416-947-3328 | dmiles@lso.ca

Begin forwarded message:

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>

Date: September 27, 2019 at 6:05:21 PM EDT

To: "dmiles@lso.ca" <dmiles@lso.ca>

Cc: "csinclair@goldblattpartners.com" <csinclair@goldblattpartners.com>

Subject: Fwd: UnionVillas - 25 units discharge

Ms Miles,

Please see below.

I believe signing the requested discharges is in the best interests of the investors in this syndicated mortgage.

This request is time sensitive and requires the immediate attention of the law society in the circumstances on this transaction and given the recent directive (received at 4:01PM this afternoon) that its consent is required prior to me taking any action on any matter which would bind the investors.

In my opinion a failure to execute these documents as requested immediately may cause irreparable harm to the investors in this project (approx \$10M dollar recovery anticipated).

May I please hear from someone at the law society in this regard **immediately**. I have forwarded the email below to Law Society counsel earlier this evening but I have yet to receive a reply.

Sent from my iPhone

Begin forwarded message:

From: Norman Winter <nw@nwinlaw.com>
Date: September 27, 2019 at 5:09:58 PM EDT
To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Cc: Nerissa <nerissa@nwinlaw.com>, Alina Ramos <alina@nwinlaw.com>
Subject: RE: UnionVillas - 25 units discharge

Hi Derek,

As you are aware, our client has set closing dates with purchasers on the 25 lots and has run out of any right to extend the closings. Pursuant to the terms of the loan agreement to which your registered security pertains, you are required to provide the discharges without payment for these 25 lots. If we don't get the discharges, the entire project will likely fall apart, meaning, given today's market for new housing, we'd lose the sale transactions, my client's first and second mortgage loans will be called, my client will suffer significant reputational and monetary damages and your mortgagees/investors would likely lose significant if not all their monies. My client, of course, would look to the mortgagees and all responsible parties to recover its full damages.

I kindly ask you, indeed urge you, to provide the required discharges, as that is your legal obligation, and also in everyone's best interest. As you know, my clients believe that your mortgagees/investors stand to recover their full loan amounts if the project proceeds in the normal course.

Please govern yourself accordingly.
 Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964.0325 | F. 416.964.2494

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Sent: September 27, 2019 4:37 PM
To: Norman Winter <nw@nwinlaw.com>
Subject: RE: UnionVillas - 25 units discharge

As of this 4:01 this afternoon the Law Society has instructed me to refrain from taking any further action on any matters that would bind investors without first consulting them.

I will be in further touch with you once I have received instructions on this matter from them.

I suggest you write a letter to me advising of your client's position on this matter.

I will forward same to the Law Society.



Derek F. Sorrenti, H.B.A., LL.B.
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From: Norman Winter <nw@nwinlaw.com>
Sent: Friday, September 27, 2019 4:31 PM
To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Cc: Nerissa <nerissa@nwinlaw.com>; Loredana Iannacchino <loredana@sorrentilaw.com>; Alina Ramos <alina@nwinlaw.com>
Subject: RE: UnionVillas - 25 units discharge

Hi Derek,

My email below had an incorrect 'global' statement. Please discard and refer to this one.

Thanks,
 Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964.0325 | F. 416.964.2494

From: Norman Winter
Sent: September 27, 2019 4:08 PM
To: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Cc: Nerissa <nerissa@nwinlaw.com>; Loredana Iannacchino <loredana@sorrentilaw.com>; Alina Ramos <alina@nwinlaw.com>
Subject: RE: UnionVillas - 25 units discharge

Hi Derek,

Please see my responses below, in red, as well as the attached referenced in my replies. I understand that you have spoken to my clients about this as well.

Please advise if you are now in position to provide the required discharges as well as letter confirming that no payments are required for those lots being discharged.

Thank you,
Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

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1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964.0325 | F. 416.964.2494

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Sent: September 27, 2019 10:55 AM
To: Norman Winter <nw@nwinlaw.com>
Cc: Nerissa <nerissa@nwinlaw.com>; Loredana Iannacchino <loredana@sorrentilaw.com>
Subject: RE: UnionVillas - 25 units discharge

PRIVATE AND CONFIDENTIAL

Good morning Norm:

Further to my conversations with your clients yesterday and today, I am glad to see that it appears, based on their representations to me, that there will be sufficient proceeds available from the sale of the 10 lots in Block 5 to repay the syndicate mortgage loan in full.

I understand 6 of the 10 properties are the subject of firm APS, and your clients advise that the remaining 4 are *anticipated* to sell for *approximately* the same amount as the 6 sold properties.

I acknowledge that until the 4 remaining units are actually sold, there is some small degree of uncertainty as to the total amount of money to be received from the sale of Block 5.

Assuming the above is accurate, what I require from your office in order to execute the discharges on the 25 lots as requested by you, is as follows:

1. A copy of Kingsett's discharge statement, together with evidence that the proceeds from the 25 lots is sufficient to payout and discharge the Kingsett mortgage in full. **WILL NOT BE PROVIDED. KINGSETT PROVIDES DISCHARGE STATEMENTS ON A LOT BY LOT BASIS. SEE ATTACHED FROM MY CLIENT THE 'GLOBAL' STATEMENT THEY RECENTLY RECEIVED FROM KINGSETT.**
2. Confirmation from you in writing that the syndicated mortgage I administer is the next secured creditor to be paid from the proceeds of the sales of the subject properties. **I CAN ONLY SAY THAT BASED ON RECENT SUBSEARCHES OF APPROXIMATELY 6 OR 8 LOTS, SORRENTI/OLYMPIA'S MORTGAGE IS**

REGISTERED AFTER KINGSETT'S SECURITY. AS YOU ARE AWARE, KINGSETT HAS FIRST AND SECOND CHARGES AND RELATED SECURITY REGISTERED AHEAD OF YOUR MORTGAGE.

3. Confirmation from you in writing that you have no reason to believe that the documents which I have received from your client yesterday (attached hereto), which anticipate the availability of an estimated \$9,896,000.00 from the proceeds of the sale of the 10 Block 5 properties, to be inaccurate to any significant extent, subject to the proviso re: the 4 unsold lots. **I CANNOT AND WILL NOT PROVIDE ANY SUCH CONFIRMATION.**
4. That you will personally undertake to pay the said estimated net proceeds of \$9,896,000.00 **TO AND ONLY TO the order of "Sorrenti Law Professional Corporation, in Trust"** and that you will accept no other direction from your clients or any other party, other than a court of competent jurisdiction, with respect to the payment of these funds until the syndicated mortgage has been repaid in full. **PLEASE SEE SIGNED DIRECTION FROM MY CLIENT ATTACHED. I WILL ABIDE BY THAT DIRECTION.**

Upon receipt and satisfactory review of the foregoing I anticipate that I will be in a position to execute the discharge on the 25 lots as requested.

Please also note that the payout statement for the syndicate mortgage which was provided to you earlier was calculated with an effective date of September 30, 2019.

It appears, based on the attached document that the sales of the Block 5 lots are anticipated to occur on November 30, 2019 or later. **Please therefore advise your client that interest and administration fees will continue to accrue until such time as the loan has been repaid and the mortgage discharged in full.**

Please let me know if you have any questions in relation to the above.



Derek F. Sorrenti, H.B.A., LL.B.
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Cc: Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>
Subject: RE: UnionVillas - 25 units discharge

Hi Charene,

Nerissa will send tomorrow morning.

Norm

NORMAN H. WINTER | 416.964.0325, ext. 280 | nw@nwinlaw.com

N. H. WINTER LAW, PROFESSIONAL CORPORATION

1 St. Clair Avenue East, Suite 801, Toronto, Ontario M4T 2V7 Canada | T. 416.964.0325 | F. 416.964.2494

From: Charene Bunnett <charene@fortressrdi.com>

Sent: September 26, 2019 4:38 PM

To: 'Derek Sorrenti' <derek.sorrenti@sorrentilaw.com>; Samantha Johnson <JohnsonS@olympiatrust.com>

Cc: Norman Winter <nw@nwinlaw.com>; Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>

Subject: RE: UnionVillas - 25 units discharge

Norman, Can you please provide a few title searches? Olympia has requested them in review of the discharge.

From: Derek Sorrenti [<mailto:derek.sorrenti@sorrentilaw.com>]

Sent: Thursday, September 26, 2019 2:07 PM

To: Samantha Johnson <JohnsonS@olympiatrust.com>

Cc: Charene Bunnett <charene@fortressrdi.com>; Norman Winter <nw@nwinlaw.com>; Nerissa <nerissa@nwinlaw.com>; Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>; Sajjad Hussain <shussain@sunrisehomes.ca>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>

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NERISSA SHAGEER-MOHAMMED, Law Clerk | 416.964.0325, ext. 240 | nerissa@nwinlaw.com

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Cc: Jawad Rathore <jawad@fortressrdi.com>; Sajjad Hussain <shussain@sunrisehomes.ca>

Subject: RE: UnionVillas - 25 units discharge

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Thanks, Vince Petrozza COO
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office: 905-787-9266 x229

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 Muzammil Y Kodwavi
 COO
 Sunrise Homes Ltd.
 50 West Wilmot Street, Suite 100

Richmond Hill, ON, L4B 1M5

T: 905-597-3333

F: 905-597-3334

www.sunrisehomes.ca

From: Vince Petrozza [<mailto:vince@fortressrdi.com>]
Sent: Tuesday, September 24, 2019 3:52 PM
To: 'derek.sorrenti@sorrentilaw.com'
Cc: Jawad Rathore; Muzammil Kodwavi; 'shussain@sunrisehomes.ca'
Subject: FW: UnionVillas - 25 units discharge

Derek,

See attached, can we do a conference call at 430 please?

We can use our conference line:
 1-877-343-2259
 Code in 8883417

Thanks, Vince Petrozza COO
 Fortress Real Developments Inc.



www.fortressrealdevelopments.com

office: 905-787-9266 x229

cell: 416-450-8692

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From: Muzammil Kodwavi [mailto:mkodwavi@sunrisehomes.ca]

Sent: Tuesday, September 24, 2019 3:47 PM

To: Jawad Rathore <jawad@fortressrdi.com>; Vince Petrozza <vince@fortressrdi.com>

Cc: Sajjad Hussain <shussain@sunrisehomes.ca>

Subject: Re: UnionVillas - 25 units discharge

Muzammil

This is Exhibit "14" referred to in the
Affidavit of Nadia Musclow, sworn September 20th 2019



Commissioner for Taking Affidavits

September 27, 2019

Kelly Hayden
Direct line: 416-865-3734
Direct fax: 416-865-3708
Email: khayden@litigate.com

PRIVATE AND CONFIDENTIAL

VIA EMAIL

Derek Francesco Sorrenti
Sorrenti Law Professional Corporation
310-3300 Highway 7
Vaughan, ON L4K 4M3

Dear Mr. Sorrenti:

Re: Subject: Derek Francesco Sorrenti
Complainants: Various
Case Nos.: Various

Thank you for your emails of this afternoon including your email directly to the Law Society of Ontario.

Further to Mr. Curry's voicemail of this evening, as you know the Law Society has not been appointed as a trustee and is in no position to make determinations with respect to this transaction. As you are also aware the Law Society has expressed its intention to appoint a trustee over that aspect of your practice pertaining to the administration of mortgages associated with Fortress. In that context we have requested that you refrain from taking steps in respect of these projects.

In anticipation of the contemplated trusteeship appointment application, please provide all documents and correspondence in respect of the UnionVillas project so that we may provide it to FAAN Mortgage.

Yours very truly,



Kelly Hayden

c. Tom Curry, Jaan Lilles, Jennifer Power

This is Exhibit "15" referred to in the
Affidavit of Nadia Musclow, sworn September 30th 2019



Commissioner for Taking Affidavits

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Sent: Sunday, September 29, 2019 10:09 PM
To: Kelly Hayden
Cc: Tom Curry; Jaan Lilles; Jennifer Power
Subject: Re: [REDACTED]

Good evening all.

[REDACTED]

[REDACTED]

I have a number of closings scheduled for tomorrow (being month end) but I will be available for a brief period shortly after 10:00am.

Can we schedule a call to discuss? Say 10:30?

Additionally, I will be sending you an email to you on the Unionvillas matter. It contains various excerpts from various agreements which indicate the necessity of executing the mortgage discharges being requested.

I understand that neither your office nor FAAN has been heavily involved to date in this matter, however, based on my prior experience in dealing with these types of requests, and in respect of the urgency of this matter specifically, all the evidence and correspondence I have received leads me to conclude that the immediate execution of the requested discharges by Norm Winter's office is proper and in the best interests of the investors in the circumstances.

Sent from my iPhone

On Sep 29, 2019, at 8:47 PM, Kelly Hayden <khayden@litigate.com> wrote:

Hi Derek,

[REDACTED]

[REDACTED]

Thanks,



Kelly Hayden*

T 416-865-3734
F 416-865-3708
khayden@litigate.com

130 Adelaide St W
Suite 2600
Toronto, ON
Canada M5H 3P5
www.litigate.com

|

This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght Royce Smith Griffin LLP.



<LTR to D. Sorrenti Sep 29 19.pdf>

This is Exhibit "16" referred to in the
Affidavit of Nadia Musclow, sworn September 20th..... 2019



Commissioner for Taking Affidavits

From: Derek Sorrenti <derek.sorrenti@sorrentilaw.com>
Sent: Sunday, September 29, 2019 10:12 PM
To: Kelly Hayden; Jaan Lilles; Jennifer Power; Tom Curry
Cc: csinclair@goldblattpartners.com
Subject: Fwd: UnionVillas - Hwy 7, Markham
Attachments: image003.jpg; ATT00001.htm; 2243_001.pdf; ATT00002.htm; CONFIRMATION OF LENDERS INTEREST - UOU.doc; ATT00003.htm; Loan Agreement v4.pdf; ATT00004.htm; MOR11865 SUNRISE ACQUISITIONS (HWY 7) INC .2.pdf; ATT00005.htm

See below and attached.

Sent from my iPhone

Begin forwarded message:

From: Vince Petrozza <vince@fortressrdi.com>
Date: September 23, 2019 at 11:39:39 AM EDT
To: "'derek.sorrenti@sorrentilaw.com'" <derek.sorrenti@sorrentilaw.com>
Cc: Jawad Rathore <jawad@fortressrdi.com>, Muzammil Kodwavi <mkodwavi@sunrisehomes.ca>, "'shussain@sunrisehomes.ca'" <shussain@sunrisehomes.ca>
Subject: **FW: UnionVillas - Hwy 7, Markham**

Derek see below from Sunrise and a lot description attached (2243 001.pdf)– Jawad spoke to you about this earlier

As discussed, the 25 lots that pay all items in priority and fits within the requirements of the

- Loan Agreement
- Confirmation of Lender Interest
- Subordination Agreements.

I have pulled relevant sections and also attached the agreements.

From the LA (Loan Agreement v4.pdf)

(c) to discharge the Loan Documents in respect of any part of the Property which is not material to the Project and/or the market value of the Property or which is required by any governmental authority, without requirement for payment or prepayment of any part of the Loan;

(d) if applicable, to provide partial discharges of the Loan Documents in respect of all Project unit sales to third parties and in respect of all Project sales to third parties, without compensation, provided that the full proceeds thereof shall be used immediately to first pay down the First-Ranking Construction Loan Security and pay down other Project trade creditors;

From the Confirmation of Lenders interest (CONFIRMATION OF LENDERS INTEREST – UOU.doc)

to discharge its interest in the Loan in respect of any part of the Mortgaged Property which is not material to the development and/or the market value of the Mortgaged Property or which is required by any municipal or governmental authority, without requirement for payment or prepayment of any part of the Loan.

From the Subordination Agreement (MOR11865 SUNRISE...pdf)

From the Subordination Agreement

Free Partial Discharges and Postponements. The Subordinate Lender covenants and agrees that it will, at no expense to the Lender and regardless of default under or maturity of the Subordinate Security:

- execute such postponements and partial discharges of its security as may be required to convey any part of the Property to bona fide purchasers of lots/units comprising the Property or to convey and/or grant easements over the project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender in respect of the project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided however, that any monies received by the Borrower from such purchasers or governmental authorities in connection therewith shall be remitted to the Lender until the Prior Indebtedness is discharged; and

In the event for any reason the Subordinate Lender does not complete and register, without payment of principal, interest or any other amounts, a partial discharge of the Subordinate Security upon completion of a sale of a lot/unit on the Property, then the Lender shall be entitled to and the Subordinate Lender hereby irrevocably authorizes and directs the Lender and its counsel to execute and register from time to time partial discharges of the Subordinate Security for each lot/unit of the Property upon completion of a sale of a lot/unit in order to validly and fully discharge any such lot/unit from the Subordinate Security without payment of any principal, interest or any other amounts to the Subordinate Lender, provided that all net proceeds from each sale are paid to the Lender to reduce the Loan. Upon the Prior Indebtedness being fully satisfied, this direction and authorization shall be of no further force and effect.

Thanks, Vince Petrozza COO
Fortress Real Developments Inc.

of the Loan and nature of the development against which the Loan security is registered (the “**Mortgaged Property**”); and

4. the Mortgage Investor covenants and agrees as follows:

- (a) to postpone and subordinate its interest in the Loan in favour of one or more secured Mortgaged Property construction loans, in favour of arm’s-length lenders, in an aggregate principal amount not to exceed \$50,000,000.00 plus a 10% contingency if required ranking *pari passu* or with stated priority between them (in the case of multiple loans), and all related security/documentation;
- (b) to postpone and subordinate its interest in the Loan in favour of each financial and non-financial encumbrance which is reasonable for a development such as the Mortgaged Property and which individually does not materially adversely affect the market value of the Mortgaged Property (including, without limitation, encumbrances pertaining to purchaser’s deposits, Tarion Bond, roads, sidewalks, easements, rights-of-way, subdivision agreements, site plan control agreements, development agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants); and
- (c) to discharge its interest in the Loan in respect of any part of the Mortgaged Property which is not material to the development and/or the market value of the Mortgaged Property or which is required by any municipal or governmental authority, without requirement for payment or prepayment of any part of the Loan.

##First Name## ##Last Name##
[Mortgage Investor]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Sorrenti Law Professional Corporation, in Trust
[Lender]

Per: _____
Name: Derek Sorrenti
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

Sunrise Acquisitions (Hwy 7) Inc.. **[Borrower]**

Per: _____
Name: Sajjad Hussein
Title: President

I/We have the authority to bind the Corporation.

**LOAN AGREEMENT
(TO BE ATTACHED)**

LOAN AGREEMENT

THIS AGREEMENT made as of the 6th day of August, 2015,

B E T W E E N:

SORRENTI LAW PROFESSIONAL CORPORATION, in Trust

(called the "**Lender**")

- and -

SUNRISE ACQUISITIONS (HWY 7) INC.

(called the "**Borrower**")

WHEREAS the Lender has agreed to advance the Loan to the Borrower on the basis set forth herein;

AND WHEREAS the Loan will be secured by a second-ranking mortgage against the Property;

AND WHEREAS the balance of the terms of the Loan are set out in this Agreement;

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Defined Terms**

Unless expressly stated otherwise, the following capitalized terms shall have the meanings indicated:

- (a) "**Agreement**" means this agreement and all amendments thereof;
- (b) "**Borrower**" means Sunrise Acquisitions (Hwy 7) Inc. and its successors and permitted assigns;
- (c) "**Bridge Lender**" shall have the meaning attributed thereto in Section 3(c) hereof;
- (d) "**Bridge Loan**" shall have the meaning attributed thereto in Section 3(c) hereof;
- (e) "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (f) "**Conditions Precedent**" shall have the meaning attributed thereto in Section 12 hereof;

- (g) “**Default**” means an event or condition, the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default;
- (h) “**Deferred Lender Fee**” shall have the meaning attributed thereto in Section 9 hereof;
- (i) “**Development Consultant Agreement**” means the agreement between Fortress and the Borrower of even date relating to the provision of certain services to the Borrower for the Project;
- (j) “**Development Fees**” means any and all development management fees or construction management fees payable by the Borrower or any related parties in connection with the Project;
- (k) “**Early Repayment**” shall have the meaning attributed thereto in Subsection 17(f) hereof;
- (l) “**Event of Default**” shall have the meaning attributed thereto in Section 16 hereof;
- (m) “**First-Ranking Construction Loan**” means collectively, one or more secured Project construction loans, in favour of arm’s-length lender(s), in an aggregate principal amount not to exceed \$55,000,000 ranking *pari passu* or with stated priority between them (in the case of multiple loans), with usual cost-to-complete advances and related security/documentation;
- (n) “**First-Ranking Construction Loan Security**” means the security to be provided to the Senior Lender to service the First-Ranking Construction Loan;
- (o) “**Fortress**” means Fortress Real Developments Inc.;
- (p) “**Hazardous Substances**” means all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to environmental laws and shall include “contaminants”, “dangerous substances”, “hazardous materials”, “hazardous substances”, “hazardous wastes”, “industrial wastes”, “liquid wastes”, “pollutants” and “toxic substances”, all as defined in, referred to and/or contemplated in environmental laws, but exclude all cleaning and related products used in the usual operation and maintenance of property;
- (q) “**Interest Reserve**” means the amount of monies actually raised from investors and included in the Loan to cover interest payments on the Net Equity advanced under the Loan;
- (r) “**Lender**” means Sorrenti Law Professional Corporation, in trust, for and on behalf of certain persons/entities, and their respective successors and assigns;

- (s) “**Loan**” shall have the meaning attributed thereto in Section 3 hereof;
- (t) “**Loan Documents**” means this Agreement, the Security, all other documentation delivered in connection with the Loan and all amendments thereof;
- (u) “**Maturity Date**” shall have the meaning attributed thereto in Section 4 hereof;
- (v) “**Net Equity**” means a portion of the principal amount of the Loan advanced to the Borrower, from time to time, excluding: (1) the Interest Reserve; (2) all other accrued interest; (3) the Deferred Lender Fee (if applicable); and (4) the amounts raised and paid out on account of interest payments, all fees paid by the Borrower to Fortress under the Development Consultant Agreement as Development Consultant Fees / Costs, as defined therein;
- (w) “**Notice**” shall have the meaning attributed thereto in Subsection 18(b) hereof;
- (x) “**Permitted Encumbrances**” means the First-Ranking Construction Loan Security, a mortgage to secure any insurer providing bonding to the Tarion Warranty Corporation or providing excess deposit insurance to purchasers of condo units and such non-financial encumbrances as shall be reasonable for a development such as the Project (including, without limitation, encumbrances pertaining to easements, rights-of-way, subdivision agreements, condominium development or related agreements, site plan control agreements, Development Consultant Agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants);
- (y) “**Pledge of Shares**” shall have the meaning attributed thereto in Section 10(g) hereof;
- (z) “**Project**” means an approximately 52 unit residential development to be constructed on the Property, comprised of lands located at Warden Road and Highway 7, Markham, Ontario;
- (aa) “**Project Budget**” means the Project budget attached hereto as Schedule “B”;
- (bb) “**Project Cost Consultant**” means an arm’s-length cost consultant approved by the Lender, acting reasonably;
- (cc) “**Property**” means the lands municipally and legally described in Schedule “A” attached hereto, together with all personal, intellectual and other property and all contracts relating thereto or associated therewith;
- (dd) “**Purchase Agreement**” means the Agreement of Purchase and Sale between _____ as purchaser and _____ as vendor;
- (ee) “**Security**” shall have the meaning attributed thereto in Section 10 hereof;

- (ff) "**Senior Lender(s)**" means the arm's length recognized financial institution providing the First-Ranking Construction Loan for the Project and receiving the First-Ranking Construction Loan Security, all as approved by the Lender, acting reasonably;
- (gg) "**Substantial Completion**" shall have the meaning attributed thereto pursuant to the *Construction Lien Act* (Ontario);
- (hh) "**Term**" shall have the meaning attributed thereto in Section 4 hereof; and
- (ii) "**Waterfall**" has the meaning attributed thereto under Schedule "C".

2. Schedules

The following are the schedules attached to and forming part of this Agreement:

- (a) Schedule "A" - Municipal and Legal Description of the Property
- (b) Schedule "B" - Project Budget
- (c) Schedule "C" - Waterfall

3. Loan

- (a) The Lender hereby establishes a non-revolving loan (the "**Loan**") in favour of the Borrower in an amount not exceeding \$12,000,000.00 to provide funding for the Borrower's costs related to the acquisition of the Property, as set out in Schedule "B" attached hereto (the "**Project Budget**") including, without limitation, funding to repay, if any, the Bridge Loan, other reasonable closing costs of the Purchase Agreement and reasonable soft costs incurred or to be incurred prior to construction financing and to provide for any shortfall in required equity (as determined by the Senior Lender in its sole, absolute and unfettered discretion) prior to the first advance of the First-Ranking Construction Loan, all as set out in the Project Budget, but specifically excluding Development Fees which must be funded by the Senior Lender;
- (b) If, for any reason whatsoever and notwithstanding any other provision hereof, the Lender is unable to fund the full Loan for the Project, as and when required, as per the Schedule shown in the Project Budget as approved by the Lender, as amended from time to time, with consent of both the Lender and Borrower within ninety (90) days of being required to do so, then the security for the Loan funded shall be postponed and subordinated in favour of any and all security required by a lender providing the loan for the shortfall (the "**Replacement Lender**") and shall be postponed and subordinated in favour of the Security held by the Replacement Lender for advances to the Project. Either the Lender or the Borrower shall have the right to obtain a Replacement Lender on the best commercial terms available; and

- (c) Notwithstanding any other provision hereof, in the event that, for any reason whatsoever, less than the principal amount of the Loan is arranged for ultimate advance to the Borrower, as and when required as set out herein, then the Lender may, in its sole, absolute and unfettered discretion, agree to arrange a financing of the shortfall through an additional loan ("**Bridge Loan**") from a third party lender ("**Bridge Lender**"). The Bridge Loan shall rank in priority to the Loan and the Loan Documents and rank behind the First-Ranking Construction Loan Security (if applicable), and the Borrower and Lender agree to execute and deliver all reasonable documentation to provide required Security and related documents to the Bridge Lender as it may reasonably require to secure the Bridge Loan, and reflect such priority/ranking. The Bridge Loan shall provide for usual cost-to-complete advances and be secured by all usual security/documentation similar to the Security herein.

4. **Term**

- (a) Twenty-Four (24) months, commencing on the date of first advance and ending on the final day of such period (the "**Maturity Date**"). At the Borrower's option (to be exercised in writing not less than three (3) months prior to the Maturity Date), the Borrower may extend the Maturity Date for 6 additional months.

The first advance (the "**First Advance**") shall be made within sixty (60) days following the execution of this Loan Agreement, delivery of the Security and satisfaction of all Conditions Precedent.

Failing the first advance being completed as aforesaid, the Lender at its option, may terminate this Agreement and be relieved of all liability hereunder.

5. **Interest Rate**

Eight Percent (8%) per annum.

Notwithstanding any other provision hereof, the aggregate fees, donations, interest, share of profits, penalties and all other payments pursuant to the Loan (in addition to the repayment of Loan principal) shall be deemed not to exceed an effective annual rate of interest of 59% (calculated in accordance with generally accepted actuarial practices and principles).

6. **Interest Payment**

Calculated annually, not in advance, and payable quarterly, not in advance, both before and after default, first payment thereof to be made on the 20th day of November, 2015 and then on the first day of every third month following.

An interest reserve may be raised by the Lender, or failing same, interest shall be accrued to the Maturity Date.

7. **Method of Payment of Monthly Interest Payment**

If an interest reserve is raised, the Borrower shall subscribe to the “pre-authorized payment” system to allow monthly instalments to be withdrawn automatically, to be advanced from the Interest Reserve to the extent raised by the Lender (or the Lender is directed to make necessary advances from the Interest Reserve to make the monthly interest payments as and when due).

8. **Prepayment/Repayment of Principal**

- (a) The Borrower may prepay the Loan, in whole but not in part, upon two (2) Business Days’ prior written notice to the Lender and without bonus, but the obligations to pay the Deferred Lender Fee and any payments to Fortress under the Development Consultant Agreement shall continue;
- (b) The outstanding Loan principal together with accrued interest owing and all other amounts due and owing, if any, pursuant to the Loan Documents shall become wholly due and payable on the earlier of Maturity Date or the occurrence of an unremedied Event of Default;
- (c) In the event that the Senior Lender requires less equity than has already been advanced by the Lender, or to the extent the Project is refinanced, to the extent that such equity can be repatriated to the Borrower, same shall be paid to the Lender to pay down the Loan or at the option of the Lender, held in a separate trust account and pledged to the Lender to secure and be used to fund the Interest Reserve and interest payments; and
- (d) Repayment of the Loan shall be subject to and in accordance with the provisions of the "Waterfall" in Schedule “C”.

9. **Project Completion – Deferred Lender Fee:**

In addition to the above and not later than thirty (30) days following substantial completion of the Project, the Borrower shall pay to the Lender a Project completion fee/deferred lender fee (“**Deferred Lender Fee**”) as set forth below and which fees shall be secured under the Security:

- (a) in the event that the Project Profit is less than \$7,650,000 there will be no Deferred Lender Fee;
- (b) in the event that the Project Profit exceeds \$7,650,000.01 the Deferred Lender Fee would be equal to 2% of the Loan principal;

Project Profit shall be determined in accordance with GAAP upon completion of the Project and 95% residential sales having been completed with a projection on the value of the remaining 5%, but shall exclude all fees payable to Fortress pursuant to the Development Consultant Agreement. The Lender’s Security shall remain in full force and effect until the project completion fee is paid in full.

10. **Security**

The security for the Loan (as amended, hereinafter the “**Security**”) shall be as follows, subject only to the Permitted Encumbrances:

- (a) Property mortgage executed by the Borrower in the principal amount of \$12,000,000;
- (b) if the Property beneficial owner is not the Borrower, then a direction, acknowledgement and security agreement executed by the beneficial owner, Borrower and Lender, including confirmation of a second ranking charge of the beneficial owner’s interest in the Property and a direction by the beneficial owner to the Borrower to execute the Loan Documents to which the Borrower is a party, such direction to be duly acknowledged by the Borrower;
- (c) a general security agreement executed by the Borrower charging the personal property and undertaking of the Borrower, present and future, used in connection with the Property including, without limitation, all accounts, equipment, goods, inventory, chattel paper, documents of title, intangibles, securities and proceeds therefrom;
- (d) an indemnity from the Borrower indemnifying the Lender from and against all losses, demands, claims, liabilities, costs, actions, penalties, obligations and expenses imposed upon the Lender and arising in connection with the Lender being a lender hereunder in respect of the Property and all assets relating thereto, save and except in respect of matters arising and caused by the gross negligence of the Lender during any period in which the Lender shall be in exclusive possession of the Property and/or arising and caused after a completed foreclosure proceeding or sale proceeding pursuant to the Security and/or caused by the gross negligence of the Lender; such indemnity shall survive the full payment and discharge of the Loan including *inter alia*, an appropriate indemnity for all environmental matters;
- (e) a completion guarantee from the Borrower;
- (f) an undertaking by the Borrower and the sponsors to obtain construction financing from the Senior Lender for all approved Project costs as described in the Project Budget, save for the equity to be advanced by way of the Loan Amounts under this Loan Agreement, on commercially reasonable terms to be approved by the Lender, acting reasonably;
- (g) a first pledge of all the voting shares of the Borrower and any beneficial owner of the Project; and
- (h) such further and/or other security relating to the Property as the Lender shall reasonably require.

11. **Deliveries to Lender**

The Borrower shall deliver, within five (5) Business Days following execution of this Agreement, a copy of each of the following:

- (a) the Property parcel pages, existing registered encumbrances and existing surveys thereof;
- (b) the appraisal and professional reports described in Section 12 hereof;
- (c) the financial statements and Project Budget described in Section 12 hereof;
- (d) the off-title search results and corporate/personalty search results described in Section 12 hereof;
- (e) evidence of liability insurance in satisfactory amounts, with the Lender included as a named insured;
- (f) all material Project contracts;
- (g) all Project plans and specifications and all periodic Project development reports issued to date;
- (h) all architectural and engineering documents and any other consultant or internally generated developments reports with respect to the Project, together with the draft plan, zoning analysis, traffic study, sanitary study, water study, storm-water study, utility study and road study, if available;
- (i) a copy of the Purchase Agreement and closing statement of adjustments; and
- (j) all other information and/or documentation in respect of the Project, the Property and/or the Borrower as the Lender may request, acting reasonably.

12. **Conditions Precedent to Advance**

Each advance pursuant to the Loan shall be conditional upon the Lender's receipt of the following (the "**Conditions Precedent**"), which Conditions Precedent are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part:

- (a) the Security, duly registered and perfected (as the case may be) together with all other documentation relating to the Loan, the Property, the Project and the Borrower required by the Lender, acting reasonably;
- (b) title insurance from a title insurance company approved by the Lender, acting reasonably;
- (c) an opinion from Borrower's counsel confirming the subsistence, power and authority of the Borrower, the due authorization, execution, delivery and enforceability (subject to customary assumptions and qualifications) of the Loan Documents and such other matters as the Lender shall reasonably require;

- (d) a mortgage statement from a Permitted Encumbrance mortgagee(s) confirming that the relevant mortgage loan is in good standing and the terms thereof;
- (e) certificate from the Borrower certifying no Event of Default or default, the truth of all representations and warranties, the satisfaction of all conditions and compliance with all covenants set out in the Loan Documents;
- (f) an appraisal indicating completed Project value of not less than \$22,000,000
- (g) satisfactory environmental report, geotechnical report, mechanical engineering report, structural engineering report and zoning report, prepared by the appropriate professionals (with reliance letters in favour of the Lender;
- (h) confirmation that realty taxes have been paid to the relevant date;
- (i) satisfactory financial statements in respect of the Borrower and a satisfactory summary of Borrower share ownership;
- (j) satisfactory Project Budget, duly approved by the Lender;
- (k) satisfactory insurance coverage for the Project, duly approved by the Lender's insurance consultant (if any) and the Lender;
- (l) all relevant consents pursuant to the Loan Documents;
- (m) certificate from the Borrower certifying that there have been no material changes affecting the Property and/or the Borrower since the later of the date of execution of this Agreement and the immediately prior advance hereunder and;
- (n) confirmation of investors' interest – the Borrower acknowledges that the Lender will be syndicating this loan to individual investors, either through cash investments or RRSP investments and that each investor will have an individual beneficial interest in the Loan Amount proportionate to the overall contributions. As part of the syndication process, the Borrower agrees to execute a confirmation of Lender's interest in the Lender's standard form with each of the investors to confirm their individual Loan Amounts.

13. **Reporting & Default Mechanisms**

13.1 Reporting Mechanisms

The Borrower hereby covenants and agrees to deliver and provide the following with respect to the Project on a monthly basis including:

- (a) copies of the Project Cost Consultant's reports with each advance, as well as any preliminary or supplementary reports including the last version issued by the Project Cost Consultant;
- (b) a monthly report as to the status of all zoning and planning approvals;

- (c) a monthly status report as to revisions to the Budget, negotiations with Senior Lender, as well as updated plans and specifications for the Project. To the extent such plans and specifications materially change from those received and are approved by the Lender at the outset, same will require the approval of the Lender, acting reasonably;
- (d) financial reporting as to loan advances, sales reports, project expense reports and such other reasonable reporting requirements of the Lender and consistent with those to be provided to the Project Cost Consultant and the Senior Lender;
- (e) advice as to any material deviations to the Project Budget;
- (f) all preliminary and final plans for the design, layout, suite mix and proposed pricing of the Project and the units, any any other Project specifications required by the Lender, as amended from time to time, all to be approved by the Lender, acting reasonably; and
- (g) such other reasonable requirements of the Lender consistent with the terms of this Loan Agreement and industry practice for similar types of equity/loans.

The Borrower acknowledges that Fortress will be delegated the responsibilities of monitoring the Project and receiving all reports from the Borrower as contemplated in the Loan Agreement including completing the due diligence with respect to the funding obligation of the Lender under the Loan Agreement and providing approvals where required for the Lender.

13.2 Default Mechanisms

In the event that there is an Event of Default and the Lender exercises any of its remedies under its Security, Fortress will be delegated all responsibilities of determining the best course of action for enforcement, including managing the affairs of the Borrower pursuant to the exercise of the pledge of shares of the Borrower and any beneficial owner of the Project in order to maximize the recovery of the Loan for the Lender and its underlying investors.

14. Representations and Warranties

The Borrower represents and warrants as follows:

- (a) the Borrower is duly constituted and validly subsisting under the laws of the Province of Ontario, has all necessary power and authority to own its properties and assets and to carry on its business as now conducted and is duly licensed or registered or otherwise qualified in all jurisdictions wherein the nature of its assets or the business transacted by it makes such licensing, registration or qualification necessary;

- (b) the Borrower has full power and capacity to enter into, deliver and perform its obligations under the Loan Documents to which it is a party and all other instruments contemplated hereunder to which it is a party;
- (c) the execution and delivery and performance by the Borrower of the Loan Documents to which it is a party and all obligations contained herein and therein, and all other instruments contemplated hereunder to which it is a party and the consummation of the transactions contemplated hereby and thereby:
 - (i) have been duly authorized by all necessary action;
 - (ii) do not and will not conflict with, result in any breach or violation of, or constitute a default under any such party's constituting documents or by-laws, or any applicable laws or judgment presently in effect and applicable to it, or of any material Project agreement to which any such party is bound;
 - (iii) do not (except for the Security) result in or require the creation of any security interest or encumbrance upon or with respect to which the Borrower is bound; and
 - (iv) do not require the consent or approval (other than those consents or approvals already obtained and copies of which have been delivered to the Lender and other than those consents which, if not obtained, would not adversely affect any material component of the Security, the value of the Property or the operation of the business of the Borrower at the Property) of, or registration or filing with (except as contemplated herein), any other person, including any public authority.
- (d) the Borrower has provided to the Lender accurate and complete copies of all material Project agreements;
- (e) each Loan Document and all other instruments contemplated hereunder are, or when executed and delivered to the Lender will be, legal, valid and binding obligations enforceable against the Borrower in accordance with their respective terms, subject to the limitations with respect to enforcement imposed under law in connection with bankruptcy, insolvency, liquidation, reorganization and other laws affecting the enforcement of creditors' rights generally and subject to the availability of equitable remedies which are only available in the discretion of the court from which they are sought;
- (f) the Security granted by the Borrower constitutes an assignment, a fixed and specific mortgage and charge, a floating charge and security on its undertaking, property and assets purported to be assigned, mortgaged, charged or subjected to the Security thereby and ranks in priority to all other security interests upon such undertaking, property and assets other than Permitted Encumbrances;

- (g) subject to any limitations stated therein, all financial statements which were furnished to the Lender hereunder, fairly present the financial condition of the relevant party as at the date thereof, and no material adverse change has occurred since the date of such delivery;
- (h) no event has occurred and is continuing, and no circumstance exists which has not been waived, which:
 - (i) constitutes a default or Event of Default; or
 - (ii) constitutes a default or event of default under any Permitted Encumbrance which may materially adversely affect the value of the Property or impair the validity or enforceability of the Security.
- (i) the Borrower is not in violation of any terms of its constating documents or, in any material respect, of any applicable law (including, without limitation, all building, zoning, planning, development, construction, construction lien, environmental and occupation laws);
- (j) the Borrower owns all intellectual property used and/or to be used in connection with the Project, free from all encumbrances;
- (k) the Borrower is solvent and will not become insolvent after giving effect to the transactions contemplated in this Agreement;
- (l)
 - (i) each material Project agreement is in full force and effect and has not been modified or supplemented;
 - (ii) the Borrower is not in default under any material Project agreement, and to the knowledge of the Borrower, no other party to any such material Project agreement is in default of any material obligation thereunder; and in each such case, no event has occurred which, with the giving of notice or the lapse of time, or both, would constitute such a default; and
 - (iii) no notice or other written or oral communication has been provided by or to the Borrower to or from any party under any material Project agreement which alleges that, as of the date hereof, either a default exists or with the passage of time will exist under the provisions of such material Project agreement.
- (m) the Property has full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the normal operation of the Property and the Borrower has no knowledge of any fact or condition that would result in the interruption or termination of such access;
- (n) all public utilities required for the normal operation of the Property connect into the Property through adjoining public highways or if they pass through adjoining

private land, do so in accordance with valid registered easements and are sufficient for the operation of the Property;

- (o) no legal action or other proceeding has been instituted or, to the best of its knowledge after making diligent enquiry, threatened against the Borrower; the Borrower has not received notice of any work orders, deficiency notices or notices of violation pertaining to the Property;
- (p) to the best of its knowledge, and save as otherwise disclosed to the Lender in the reports provided by the Borrower, including without limitation the potential presence of methane, the Property complies with all laws regarding environmental matters; the Property has never been used as a land fill site or to store Hazardous Substances either above or below ground, in storage tanks or otherwise; no Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at, on or near the Property; and there are no outstanding directions, writs, injunctions, orders or judgments issued pursuant to environmental laws in respect of the Property;
- (q) the Borrower will on the closing of the Purchase Agreement, have good, valid and marketable title to the Property, free from all encumbrances except the Permitted Encumbrances; and
- (r) the Borrower has filed or caused to be filed in a timely manner all tax returns, reports and declarations required to be filed under law; all information in such tax returns, reports and declarations is complete and accurate in all material respects; the Borrower has paid all taxes due and payable.

15. **Covenants**

The Borrower covenants and agrees as follows:

- (a) to defend its right, title and interest in the Property for the benefit of the Lender against all claims and demands whatsoever of all persons/entities, other than holders of Permitted Encumbrances;
- (b) not to create or suffer to exist any encumbrance of any nature (whether prior to, *pari passu* with or subordinate to the Security) upon the Property or any part thereof other than Permitted Encumbrances;
- (c) to preserve, repair and keep in good order, condition and repair or cause to be preserved, repaired and kept in good order, condition and repair the Property and all appurtenances thereto and all properties and assets used in connection with the Property, to the standard of a prudent owner of similar property, and the Borrower shall carry on and conduct, or cause to be carried on and conducted, the operation of the Property in a prudent manner so as to preserve and protect the Property; the Borrower shall keep the Property in good condition and order, or shall cause the Property to be put and kept in good condition and order, and shall promptly make, or cause to be made, all needed repairs and replacements thereto, including such

repairs and replacements to implement the recommendations which a prudent owner of a property similar to the Property would deem appropriate or necessary from time to time; the Borrower shall at any and all reasonable times, upon the prior written request of the Lender, permit the Lender to inspect the Property or any part thereof during normal business hours;

- (d) to carry on or cause to be carried on and conduct or cause to be conducted the operation of the Property in a prudent manner so as not to materially impair the value of the Property or the use of the Property for the purpose for which it is held;
- (e) to duly and punctually pay, or cause to be paid, to the Lender the principal of and interest accrued on the Loan, any premium of the Loan and all other amounts owing in respect of the Loan on the dates, at the places, in the monies, and in the manner mentioned herein and in the Loan, in strict conformity therewith, and shall faithfully observe and perform all the conditions, covenants and requirements of all Loan Documents;
- (f) to pay or cause to be paid, on or before the due date thereof, all taxes, rates, levies, duties and assessments, general and special, ordinary and extraordinary, of every nature and kind whatsoever, including local improvement taxes which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower or any other person on account thereof, and shall from time to time as the same are paid, at the written request of the Lender produce for inspection by the Lender, satisfactory evidence that all such taxes have been paid when due (together with such further supporting information or documentation reasonably required by the Lender);
- (g) the Lender shall be entitled to register or file or cause to be registered or filed the Security (or a notice or financing statement in respect hereof) without delay at every public office of record in the Province of Ontario and in any other jurisdiction where the Borrower is "located" for the purposes of perfecting a security interest pursuant to the *Personal Property Security Act* (Ontario), in each case, where the registration or filing thereof is, in the opinion of the Lender, required to preserve, perfect and/or protect the security hereby or thereby created; and the Lender shall be entitled to renew or cause to be renewed any such registrations or filings as may be necessary from time to time to so preserve, perfect and/or protect the security hereby or thereby created;
- (h) the Borrower shall fully and effectively maintain and keep the Security or cause the Security to be maintained and kept as valid and effective security at all times while the Loan is outstanding and shall not permit or suffer the registration of any lien whatsoever, whether of workmen, builders, contractors, engineers, architects or suppliers of material, upon or in respect of any of the Property, which would rank subsequent to, *pari passu* with or prior to the security of the Security other than Permitted Encumbrances;

- (i) the Borrower shall cooperate fully with the Lender with respect to any proceedings before any court, board or other public authority which may in any way materially and adversely affect the rights of the Lender hereunder or any rights obtained by it under any of the Loan Documents and, in connection therewith, shall keep the Lender fully advised of the status of all such proceedings and shall allow the Lender and its counsel at its election to attend meetings in respect of such proceedings; the Borrower shall cooperate with the Lender in obtaining for the Lender the benefits of any insurance proceeds lawfully or equitably payable in connection with the Property to the extent that the Lender is entitled to the same under the terms of the Loan Documents, and the Lender shall be reimbursed for any actual out-of-pocket expenses incurred in connection therewith (including, without limitation, legal fees and disbursements, and the payment by the Borrower of the expense of an appraisal on behalf of the Lender in case of a fire or other casualty affecting the Property or any part thereof) out of such insurance proceeds;
- (j) the Borrower shall cause the Property to be used only for Project purposes and for no other purpose, and the Borrower will do, observe and perform or cause to be done, observed and performed, in all material respects, all of its obligations and all matters and things necessary or expedient to be done, observed or performed under or by virtue of all applicable laws;
- (k) the Borrower shall do, observe and perform, or cause to be done, observed and performed, in all material respects, all of the obligations and things necessary or expedient to be done, observed or performed by the Borrower under or by virtue of all Permitted Encumbrances and material Project agreements; for greater certainty, this covenant regarding Permitted Encumbrances applies to all prior-ranking financial encumbrances which are Permitted Encumbrances;
- (l) if the Borrower shall fail to perform any covenant on its part contained in this Agreement the Lender may, after giving concurrent notice to the Borrower, itself perform (but shall not be obliged to perform), any of such covenants provided no payment or expenditure of funds is required in connection therewith, or, if a default has occurred, and if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds, or with money borrowed by or advanced to it for such purpose; all sums so expended or advanced shall be payable by the Borrower together with interest thereon which shall accrue, until paid, at the interest rate applicable to the Loan from the date of such expenditure or advance until repayment but no such performance or payment shall be deemed to relieve the Borrower from any default hereunder;
- (m) the Borrower shall encumber or cause to be encumbered in favour of the Lender, as part of the Security, all additional improvements, licenses, easements and rights of way which, in any way or manner, it shall hereafter acquire in connection with the Property, and the Borrower shall make or cause to be made all requisite registrations required by this Agreement with respect thereto; any and all times the Borrower will do, execute, acknowledge and deliver or will cause to be done,

executed, acknowledged and delivered all and every such further acts, deeds and assurances in law as the Lender shall reasonably require, for the purpose of giving the Lender a valid encumbrance of the nature herein specified upon all such property (subject only to Permitted Encumbrances) for the better encumbering unto the Lender all and singular the lands and premises, and property encumbered under the Security, or intended so to be or which the Borrower may hereafter become bound to encumber or cause to be encumbered in favour of the Lender;

- (n) so long as the Loan or any portion thereof remains outstanding the Borrower shall not cancel or materially amend any material Project agreements without the Lender's consent;
- (o) the Borrower shall give prompt notice to the Lender upon the occurrence of any default or any Event of Default or any event, circumstance or matter which may reasonably be expected to have a material adverse effect on the financial condition of the Borrower and/or the Property; the Borrower shall not create, assume, incur or suffer to exist any security interest in or upon any of its undertakings, properties, rights or assets secured by the Security except for Permitted Encumbrances;
- (p) upon two (2) Business Days' prior written notice or at any time in an emergency as reasonably determined by the Lender, the Borrower shall permit the Lender to have reasonable access at all reasonable times and from time to time, to the Property and to all related records (including records pertaining to the Borrower), and shall permit the Lender, acting reasonably, to make copies of and abstracts from such records;
- (q) the Borrower shall give to the Lender prompt written notice of any material adverse change in the condition of the business, financial or otherwise, of the Borrower;
- (r) the Borrower shall give to the Lender prompt written notice of all actions, suits, litigation or other proceeding commenced or threatened against the Borrower and/or in respect of the Property;
- (s) the Borrower shall obtain and maintain during the Term the following Property insurance coverage:
 - (i) prior to commencing construction, all risk builder's insurance with extended coverage for all other risks and perils in, representing an amount equal to 100% of the gross replacement cost of all buildings located on the Property, without deduction for foundations or footings; the proceeds payable under such policy shall be payable to the Lender as mortgage creditor, pursuant to a standard mortgage clause approved by the Insurance Bureau of Canada;
 - (ii) if applicable and prior to commencement of construction, broad form boiler insurance with coverage on all electrical equipment, mechanical

equipment and pressure vessels; such policy shall contain a standard mortgage clause approved by the Canadian Boiler and Machinery Underwriters Association, or an equivalent clause, with proceeds payable thereunder to the Lender as mortgage creditor;

- (iii) general liability insurance covering damages in an amount of not less than \$2,000,000.00 per occurrence;
 - (iv) environmental liability and remediation insurance covering damages in an amount of not less than \$2,000,000.00 per occurrence; such coverage shall include third party pollution liability claims and first party on-site remediation expenses; and
 - (v) such other insurance as shall be requested by the Lender, acting reasonably.
- (t) the Borrower shall deliver to the Lender, within one hundred and twenty (120) days following the Borrower's fiscal year, unaudited financial statements in respect of the Property and unaudited financial statements in respect of the Borrower, prepared internally by a qualified person in accordance with generally accepted accounting principles, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information; in addition to the above financial statements, the Borrower covenants to provide to the Lender, from time to time, upon request, any further financial information then still undisclosed and reasonably required, pertaining to the Property and/or the Borrower; the Lender reserves the right to disclose to third parties any financial information concerning the Property and/or the Borrower, provided that such third parties shall be limited to potential assignees of part or all of the Loan, the Lender's auditors, the Lender's solicitors, the Lender's bankers, the Lender's other advisors and persons to whom such information is ordinarily disclosed in a mortgage securitization or mortgage syndication;
- (u) the Borrower covenants to develop and construct and/or cause the development and construction of the Property in accordance with the delivered plans and specifications using only new materials and not Hazardous Substances, without defect in construction, installation and/or materials;
- (v) the Borrower covenants not to materially amend the delivered plans and specifications or fail to construct in accordance with the delivered plans and specifications without the Lender's prior written consent, which consent shall not be unreasonably withheld;
- (w) the Borrower shall pay, regardless of whether any part of the Loan shall be advanced, all reasonable third party costs, fees and expenses incurred by the Lender in connection with the transaction hereunder including, without limitation:
- (i) all costs incurred in connection with a survey, an appraisal, an engineering review, an architectural review, an environmental review, other

professional consultant review, a credit review, a lease review and an insurance review;

- (ii) all legal fees and disbursements of the Lender's solicitors for enforcement only; and
- (iii) all registration, recording and filing fees and land transfer and mortgage taxes, if applicable.
- (x) the Borrower shall not sell, transfer, lease, license or otherwise convey an interest in the Property or any part thereof, save and except as contemplated for the staging and completion of the Project or to an entity approved by the Lender, in its sole, absolute and unfettered discretion.
- (y) the Borrower agrees to establish a Project-specific bank account with a Schedule I Bank of the Lender's choosing, to which the Borrower shall give the Lender access for the purpose of monitoring the account activity from time to time and at any time.

16. **Events of Default**

Events of Default ("**Events of Default**") shall be as follows:

- (a) if the Borrower fails to pay interest, principal or other amount owing hereunder on a due date during the Term and such default remains outstanding for ten (10) days; or
- (b) if the Borrower fails to pay all principal on the Maturity Date, subject to the Waterfall; or
- (c) if the Borrower fails to complete all obligations it may have under the Purchase Agreement; or
- (d) if the Borrower fails to pay, or cause to be paid, taxes, rates, levies, duties, public utility charges and assessments, general and special, ordinary and extraordinary, of any nature or kind whatsoever, including local improvement taxes, which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower, on account thereof and any such default shall continue either for a period of five (5) Business Days after written notice to the Borrower from the Lender or for such shorter period as would, if continued, render the Property, or any part thereof, liable to forfeiture or sale; or
- (e) if the Borrower creates, permits or suffers to exist, any encumbrance against the Property or any part thereof, other than Permitted Encumbrances and, in the case of encumbrances which have not been created by the Borrower, the same continue to exist for a period of ten (10) days after written notice thereof has been given to the Borrower by the Lender or for such shorter period as would, if continued, render the Property or any part thereof, liable to forfeiture or sale; or

- (f) if any representation or warranty in any of the Loan Documents or any financial statements delivered pursuant thereto, is (or, at the time it was given or repeated, was) false or erroneous in any material respect and such false or erroneous condition shall continue for a period of ten (10) days following the Borrower's receipt of written notice thereof from the Lender; or
- (g) if the Borrower shall fail to comply with any covenant/agreement in any of the Loan Documents and such non-compliance shall continue for a period of ten (10) days following the Borrower's receipt of written notice thereof from the Lender, or such longer cure period as may be reasonable in the circumstances, provided the Borrower takes diligent and commercially reasonable steps to cure such default as soon as possible; or
- (h) if any material provision in the Loan Documents shall for any reason cease to be valid, binding and enforceable in accordance with its terms or the Borrower shall so assert in writing; or any security interest created under any of the Loan Documents shall cease to be a valid and perfected security interest having the priority in any of the collateral purported to be covered thereby; or
- (i) if the Borrower does, or fails to do, anything which would entitle an insurer to cancel or not renew a policy of insurance on the Property required hereunder which is not rectified within fifteen (15) days following the Borrower becoming aware of such entitlement to cancel or not renew, and in any event not later than ten (10) days prior to the termination or expiry of such policy, or if any policy of insurance is cancelled, expires or terminates and is not replaced in accordance with the requirements of this Agreement; or
- (j) if all or any material part of the Property is expropriated; or
- (k) if one or more final judgments for the payment of money (which is not covered by insurance) shall be rendered against the Borrower; or
- (l) if any writ, attachment, execution, enforcement, sequestration, extent, distress or any other similar process shall become enforceable against the Borrower, or if a distress or any analogous process is levied against any properties or assets of the Borrower; or
- (m) if the Borrower shall suspend or cease or threaten to suspend or cease its business; or
- (n) if the Borrower shall breach any law which results in a notice or control order or cancellation of any license or certificate or approval that results in any material disruption of the business at the Property or that could reasonably be expected to have a material adverse effect on the Security, the repayment of the Loan, the Lender's rights under the Loan Documents, the Property or the business operations, prospect or condition of the Borrower (financial or otherwise); or

- (o) if any environmental order is issued by any public authority against the Property and such environmental order has not been satisfied or discharged within the shorter of time allowed for in such environmental order and within thirty (30) days after the date such environmental order was received by the Borrower; or
- (p) if the Borrower shall admit its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency or if an order shall be made or an effective resolution passed for the winding up of such entity or if such entity shall make an assignment for the benefit of its creditors or if a receiver or a liquidator or a trustee in bankruptcy of such entity shall be appointed or if such entity shall make a proposal to its creditors under a bankruptcy act including, without limitation, the *Companies' Creditors Arrangement Act* (Canada); or
- (q) if any proceeding is instituted for the winding up of the Borrower or a petition in bankruptcy be presented against such entity under a bankruptcy act and if in either case such proceeding or petition shall not have been dismissed or withdrawn within twenty (20) days of the commencement of the proceeding or petition; or
- (r) if ownership control of the Borrower shall be transferred without the Lender's approval, which approval may be withheld in the Lender's sole, absolute and unfettered discretion; or
- (s) if the Borrower shall sell, transfer, lease, license or otherwise convey an interest in the Property or any part thereof in contravention of Subsection 15(x) hereof, or if the Borrower shall mortgage or otherwise encumber an interest in the Property or any part thereof in contravention of this Agreement, then the Lender may, in its sole, absolute and unfettered discretion, demand immediate repayment of the Loan principal in full together with all accrued interest and all other amounts due hereunder; or
- (t) if the Borrower is in default of any Permitted Encumbrance for more than fifteen (15) days after receiving written notice of such default; or
- (u) in the event that the Lender determines in its sole discretion and in conjunction with the consultations with the Project Cost Consultant, if any, that the Borrower is substantially in default of meeting the Project development and construction schedule including, inter alia, development approvals, servicing and sale of units, or if there are substantial cost overruns occurring (excluding causes beyond the reasonable control of the Borrower or its construction manager).

17. **Postponement and Subordination and Partial Discharge**

The Lender covenants and agrees as follows:

- (a) to postpone and subordinate the Loan Documents in favour of First-Ranking Construction Loan Security and to enter into such standstill agreements as shall be reasonable in the circumstances;

- (b) to postpone and subordinate the Loan Documents in favour of each non-financial encumbrance, as well as any deposit insurer security, if applicable, which is reasonable for a development such as the Project and which individually does not materially adversely affect the market value of the Property (including, without limitation, encumbrances pertaining to roads, sidewalks, easements, rights-of-way, subdivision agreements and/or condominium agreements, site plan control agreements, development agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants);
- (c) to discharge the Loan Documents in respect of any part of the Property which is not material to the Project and/or the market value of the Property or which is required by any governmental authority, without requirement for payment or prepayment of any part of the Loan;
- (d) if applicable, to provide partial discharges of the Loan Documents in respect of all Project unit sales to third parties and in respect of all Project sales to third parties, without compensation, provided that the full proceeds thereof shall be used immediately to first pay down the First-Ranking Construction Loan Security and then to pay down other Project trade creditors;
- (e) if applicable, to enter into a non-disturbance agreement, upon request, with any Project; such non-disturbance agreement shall provide for the tenant's postponement and subordination of its lease in favour of the Loan Documents and the tenant's agreement to attorn to the Lender and its successors and assigns upon an Event of Default; and
- (f) In the event there is an early repayment of the Loan by the Borrower (excluding receipts from enforcement or sale of Project units) ("**Early Repayment**"), same shall be paid to the Lender, who will pay and discharge investors in the Loan in the order of priority of advance by the applicable tranche in the original Loan, pari passu, amongst the investors who had their share of the Loan funded within the same loan tranche.

18. **General**

- (a) If the Borrower shall be comprised of more than one person/entity, then such persons/entities shall be jointly and severally liable for all of the obligations of the Borrower pursuant to this Agreement.
- (b) All notices, directions, service, correspondence and communications ("**Notice**") between the parties hereunder shall be in writing and delivered, sent by prepaid registered mail or electronically communicated by telecopier or e-mail as set forth below; delivered Notices shall be deemed to have been delivered on the day of delivery, if delivered at or before 5:00 p.m. (Toronto time) on a Business Day, or on the next Business Day if delivered after that time; Notices sent by prepaid registered mail shall be deemed to have been received on the third (3rd) Business Day following the date of mailing (notwithstanding the date of actual receipt and

the fact that it may not have then been received), except in the event of interruption of postal service during which period Notices shall not be mailed; Notices electronically communicated by telecopier shall be deemed to have been delivered on the day of communication with confirmation of transmission, if communicated at or before 5:00 p.m. (Toronto time), or on the next Business Day if communicated after that time; any party may provide Notice of a change of its address and/or telefax number, provided that the Notice is communicated in accordance with this Subsection 18(b):

To the Lender: Sorrenti Law Professional Corporation, in
Trust
Suite 310, 3300 Highway 7, Vaughan, ON
L4K 4M3

Attention: Derek Sorrenti

To the Borrower: [TBA]

[Address]

Attn: Signing Officer

- (c) The Borrower shall not assign its rights and obligations pursuant to this Agreement, in whole or in part, without the Lender's prior written consent, which consent may be withheld in the Lender's sole, absolute and unfettered discretion.
- (d) The Lender shall be entitled to assign all or part of its right, title and interest pursuant to this Agreement to one or more assignees, by way of simple assignment, syndication, securitization and/or other method of assignment.
- (e) All Loan Documents shall be governed by and interpreted in accordance with the laws in effect within the Province of Ontario.
- (f) The terms and conditions contained in this Agreement are inserted for the exclusive benefit of the Lender and may be waived, in whole or in part, by the Lender at any time or times. In the event of inconsistency or conflict between the provisions of this Agreement and the provisions of the Security, this Agreement shall prevail to the extent of such inconsistency or conflict.
- (g) This Agreement and the Loan Documents constitute the entire agreement between the parties hereto pertaining to the subject-matter hereof and supersede all prior agreements, negotiations, understandings and discussions, whether written or oral.
- (h) If any obligation contained in this Agreement or any other Loan Document or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement or such Loan Document and the application of such obligation to persons or circumstances other than those to

whom/which it is held invalid or unenforceable, shall not be affected thereby and each obligation contained in this Agreement and each other Loan Document shall be separately valid and enforceable to the fullest extent permitted by law.

- (i) All amendments of this Agreement and any other Loan Document shall be in writing.
- (j) Time shall be of the essence of this Agreement and each other Loan Document.
- (k) This Agreement and each other Loan Document shall enure to the benefit of and be binding upon the successors and permitted assigns of the Borrower and the successors and assigns of the Lender.
- (l) Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender and words importing persons shall include firms and corporations, and vice versa. Similarly, all references to any party or parties herein shall be read with such changes in number as the context or reference may require. References to any statute herein includes such statute as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (m) In the event that any day on which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the first Business Day thereafter.
- (n) Any legal action or proceeding with respect to this Agreement shall be brought in the courts of the Province of Ontario and such courts shall have exclusive jurisdiction to deal with all matters relating to the interpretation of, or enforcement of rights under all Loan Documents and each of the parties hereto hereby irrevocably attorns to the jurisdiction of such courts.
- (o) Unless specifically otherwise provided herein, all references to dollar amounts herein or other money amounts herein are expressed in terms of lawful money of Canada.
- (p) The Borrower shall, at all times during the Term and for a period of two (2) years thereafter, maintain as confidential this Agreement and all related matters, except as required under law and except as disclosed to advisors and/or employees (who shall be bound by the same obligation).
- (q) The failure of any party hereto to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy contained herein, shall not be construed as a waiver or relinquishment of such provision/right/remedy, which provision/right/remedy shall remain in full force and effect.
- (r) This Agreement may be executed in counterparts.

SIGNATURE PAGE FOLLOWS

**SORRENTI LAW PROFESSIONAL CORPORATION,
in Trust**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

SUNRISE ACQUISITIONS (HWY 7) INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

SCHEDULE "A" TO LOAN AGREEMENT

MUNICIPAL AND LEGAL DESCRIPTION OF THE PROPERTY

Municipal Address: _____

Legal Description: _____

SCHEDULE "B" TO LOAN AGREEMENT

PROJECT BUDGET

PROJECT ECONOMICS	Total	Per Unit	Per F.F.	%
Serviced Lot Transfer Value	\$ 23,600,250	\$ 453,851	\$ 23,887	100.00%
Serviced Lot Value	\$ 23,600,250	\$ 453,851	\$ 23,887	100.00%
Total Costs				
Land Acquisition Costs	\$ 13,500,000	\$ 259,615	\$ 13,664	57.20%
Land Closing Costs	\$ 550,000	\$ 10,577	\$ 557	2.33%
Land Acquisition Costs	\$ 14,050,000	\$ 270,192	\$ 14,221	59.53%
External Servicing Works	\$ 2,000,000	\$ 38,462	\$ 2,024	8.47%
Internal Servicing Works	\$ 700,000	\$ 13,462	\$ 709	2.97%
Servicing Costs	\$ 2,700,000	\$ 51,923	\$ 2,733	11.44%
Development Charges	\$ 4,000,000	\$ 76,923	\$ 4,049	16.95%
Soft Costs	\$ 400,000	\$ 7,692	\$ 405	1.69%
Interest	\$ 1,965,000	\$ 37,788	\$ 1,989	8.33%
Commitment Fees	\$ 485,250	\$ 9,332	\$ 491	2.06%
Total Costs	\$ 23,600,250	\$ 453,851	\$ 23,887	100.00%
Total Profit	\$ -	\$ -	\$ -	0.00%

PROJECT ECONOMICS	Total	Per Unit	Per S.F.	%
Unit Revenue	\$ 50,960,000	\$ 980,000	\$ 408	107.65%
Upgrade Revenue	\$ 780,000	\$ 15,000	\$ 6	1.65%
Less: H.S.T.	\$ 4,399,252	\$ 84,601	\$ 35	9.29%
Net Sales Revenue	\$ 47,340,748	\$ 910,399	\$ 379	100.00%
Serviced Land Cost	\$ 23,600,250	\$ 453,851	\$ 189	49.85%
Hard Construction Costs	\$ 13,104,000	\$ 252,000	\$ 105	27.68%
Soft Costs	\$ 2,700,000	\$ 51,923	\$ 22	5.70%
Total Costs	\$ 39,404,250	\$ 757,774	\$ 316	83.24%
Total Gross Profit	\$ 7,936,498	\$ 152,625	\$ 64	16.76%
Fortress Management Fee	\$ 1,187,084	\$ 22,829	\$ 10	2.51%
Total Net Profit	\$ 6,749,414	\$ 129,796	\$ 54	14.26%

SCHEDULE "C" TO LOAN AGREEMENT**WATERFALL**

1. to pay the principal and interest under First-Ranking Construction Loan;
2. to repay to the Lender principal loan advances made directly to the Borrower (excluding interest and Development Consultant Fee/Costs) (the "**Principal Equity Advances**") currently estimated to be \$3,900,000;
3. a priority profit payment to the Development Consultant in an amount equal to the Development Consultant Fee/Costs (estimated to be \$2,762,862);
4. to pay to the Development Consultant an amount equal to the interest raised by the Lender and used to make interest payments or otherwise accrued (estimated to be \$1,460,585);
5. a profit payment to the Borrower in an amount equal to the sum of (3) & (4) multiplied by the Borrower Profit Share and divided by the Fortress Profit Share (estimated to be \$2,898,723); and
6. then to pay the balance of profit to each of the Borrower and the Development Consultant on a 40.7%/59.3% *pari passu* basis.

Sunrise Acquisitions (Hwy 7) Inc. - Union Villas

Lot#	Civic Addresses	Model	Type	Final Closing dates
BLOCK: 3				
18	131 Lichfield Road	RT-4 mod		September 30th, 2019
19	129 Lichfield Road	RT-3	U22	September 30th, 2019
20	127 Lichfield Road	RT-3	U22	September 30th, 2019
21	125 Lichfield Road	RT-3	U22	September 30th, 2019
22	123 Lichfield Road	RT-2	U23	September 30th, 2019
23	121 Lichfield Road	RT-2	U23	September 30th, 2019
24	119 Lichfield Road	RT-2	U23	September 30th, 2019
25	117 Lichfield Road	RT-4	U24A	September 30th, 2019

KingSett
8 Units

26	113 Lichfield Road	RT-4	U24B	October 30th, 2019
27	111 Lichfield Road	RT-3	U22	October 30th, 2019
28	109 Lichfield Road	RT-3	U22	October 30th, 2019
29	107 Lichfield Road	RT-3	U22	October 30th, 2019
30	105 Lichfield Road	RT-3	U22	October 30th, 2019
31	103 Lichfield Road	RT-1	U21	October 30th, 2019
32	101 Lichfield Road	RT-2	U23	October 30th, 2019
33	99 Lichfield Road	RT-4	U24B	October 30th, 2019

KingSett
8 Units

BLOCK: 5				
34	4116 Hwy 7	RT-4	U24A	November 30th, 2019
35	4118 Hwy 7	RT-3	U22	November 30th, 2019
36	4120 Hwy 7	RT-2	U23	November 30th, 2019
37	4122 Hwy 7	RT-1	U21	November 30th, 2019
38	4124 Hwy 7	RT-2	U23	November 30th, 2019
39	4126 Hwy 7	RT-1	U21	November 30th, 2019
40	4128 Hwy 7	RT-2	U23	November 30th, 2019
41	4130 Hwy 7	RT-1	U21	November 30th, 2019
42	4132 Hwy 7	RT-3	U22	November 30th, 2019
43	4134 Hwy 7	RT-4	U24A	November 30th, 2019

Syndicate / Derek Sorrenti
10 Units

BLOCK: 6

44	4138 Hwy 7	RT-4	U24B	September 30th, 2019
45	4140 Hwy 7	RT-1	U21	September 30th, 2019
46	4142 Hwy 7	RT-2	U23	September 30th, 2019
47	4144 Hwy 7	RT-3	U22	September 30th, 2019
48	4146 Hwy 7	RT-2	U23	September 30th, 2019
49	4148 Hwy 7	RT-1	U21	September 30th, 2019
50	4150 Hwy 7	RT-2	U23	September 30th, 2019
51	4152 Hwy 7	RT-2	U23	September 30th, 2019
52	4154 Hwy 7	RT-4	U24B	September 30th, 2019

KingSett

9 Units

BLOCK: 3 KingSett

BLOCK: 4 KingSett

BLOCK: 5 Syndicate / Derek Sorrenti

BLOCK: 6 KingSett

August 14th, 2018

LAW OFFICES OF NORMAN H WINTER
1 ST CLAIR AVE E #801
TORONTO, ONTARIO M4T 2V7

ATTENTION: NORMAN H. WINTER

RE: **Mortgagor:** SUNRISE ACQUISITIONS (HWY 7) INC.
Legal Description: PIN: 02985 - 0544 (LT); PIN: 02985 - 0545 (LT); PIN: 02985 - 0548 (LT);
Our File: PIN: 02985 - 0549 (LT); PIN: 02985 - 0550 (LT); PIN: 02985 - 0552 (LT);
PIN: 02985 - 0553 (LT); PIN: 02985 - 0554 (LT); PIN: 02985 - 0555 (LT);
PIN: 02985 - 0556 (LT); PIN: 02985 - 0557 (LT)
MOR11865


Your File:

Please find enclosed the executed Subordination and Standstill Agreement for the above mentioned file.

The document(s) have been signed by Officers of our company.

Should you have any questions, please contact the undersigned.

Sincerely,



Mika Dragoescu
Review Officer, Syndicated Mortgages
Registered Plans and TFSA Division

Enclosure(s)

SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of the day of August, 2018 between KingSett Mortgage Corporation (the "**Lender**"), Sorrenti Law Professional Corporation and Olympia Trust Company (collectively the "**Subordinate Lender**") and Sunrise Acquisition (Hwy 7) Inc. (the "**Borrower**").

Whereas the Lender has made a loan (the "**Loan**") to the Borrower in the original principal sum of \$31,981,940.00 on the security of a first mortgage (the "**Mortgage**") of the lands and premises described in Schedule "A" hereto (the "**Lands**") and other property more particularly described in the Mortgage (collectively, the "**Property**") pursuant to a commitment letter entered into between the Borrower and the Lender dated the 5th day of May, 2015 (the "**Commitment Letter**"). All existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Lender from time to time pursuant to the Commitment Letter, including but not limited to the principal sum, all interest thereon, all future advances and all other amounts owing to the Lender thereunder from time to time, and including all reserves payable to the Lender relating to the Loan and all Cost Overrun Advances, as defined herein called the "**Prior Indebtedness**". "**Cost Overrun Advances**" means any loan advances made by the Lender to the Borrower as the Lender, in its sole discretion deems necessary, to complete the proposed project to be constructed on the Property or any other protective disbursements necessary for the preservation of the Property (collectively, "**Cost Overruns**") (which Cost Overruns are not available to be funded by the remaining undrawn portion of the Loan) and which Cost Overrun Advances are necessary in the event that the Borrower does not advance necessary funds from its own resources to meet such Cost Overruns. The Mortgage and all other additional or collateral security now or hereafter securing the Prior Indebtedness, including without limitation an assignment of all rents and leases from or relating to the Property and a general security agreement with respect to all equipment and other personal property of the Borrower located on, arising from, comprising or used in connection with the operation of the Property, are herein collectively called the "**Prior Security**".

And whereas the Subordinate Lender has made a loan or credit facility (the "**Subordinate Loan**") available to the Borrower in the original principal sum of \$8,000,000.00 and subsequently increased to \$9,873,262.00 (the Subordinate Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Subordinate Lender thereunder from time to time are herein called the "**Subordinate Indebtedness**"), which is secured by security described in Schedule "B" attached hereto (such security, including all other additional or collateral security now or hereafter securing the Subordinate Indebtedness, is herein called the "**Subordinate Security**");

And whereas it is a condition of the Lender making any advance to the Borrower that the Subordinate Lender and Borrower execute and deliver this Subordination and Standstill Agreement pursuant to which the Subordinate Security will at all times be postponed and subordinate to the Prior Security;

And whereas the Subordinate Lender has agreed to subordinate and postpone the Subordinate Loan and the Subordinate Security to and in favour of the Prior Indebtedness and the Prior Security. Reference herein to the Subordinate Indebtedness, Subordinate

Security, Prior Indebtedness and Prior Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

1. **Covenants, Representations and Warranties of Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security and covenants, represents and warrants to the Lender that (i) the Subordinate Indebtedness and the Subordinate Security are in good standing and the Borrower is not in default thereunder, (ii) it holds no security of any kind against the Property other than the Subordinate Security, (iii) it is the sole owner of the Subordinate Indebtedness and the Subordinate Security and has full power, authority and legal right to enter into this agreement, (iv) the total amount owing to the Subordinate Lender under the Subordinate Indebtedness is \$ _____ as of _____, and (v) the Subordinate Indebtedness bears interest at 8.00%, calculated quarterly, not in advance, and is due and payable to the Subordinate Lender as follows: on _____, and (vi) it will not allow the principal amount of the Subordinate Loan to exceed \$9,873,262.00 without the Lender's prior written consent. Upon request by the Lender from time to time, the Subordinate Lender shall provide to the Lender copies of the Subordinate Security or a statement of the Subordinate Indebtedness then outstanding.

2. **Subordination and Postponement.** The Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness, which shall be a second priority lien and charge against the Property, to the Prior Security and the Prior Indebtedness and agrees with the Lender that the Prior Security shall be a first priority lien and charge against the Property for the full amount of the Prior Indebtedness plus interest and costs. No discharge, release or waiver by the Lender of any of the Prior Security against or in respect of the Property or any person or any amendment, renewal, extension, replacement, modification, supplement or restatement of any Prior Indebtedness and/or the Prior Security shall require notice to or the consent of Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender. The Subordinate Lender agrees to execute and deliver, upon request by the Lender, such further instruments and agreements as may be reasonably required by the Lender to confirm and give effect to the provisions of this agreement and to register and record or file notice of this agreement and/or this subordination and postponement of the Subordinate Security in any office of public record as the Lender may consider necessary or desirable from time to time.

3. **Amendment.** Nothing in this Agreement nor in the Subordinate Security or in any other arrangements or agreements between the Borrower, the Subordinate Lender or any other person shall restrict, limit or otherwise prevent the Lender from taking any such action or making any other amendment, renewal, extension, replacement, modification, supplement or restatement of the Prior Indebtedness or the Prior Security without the consent of the Subordinate Lender and without otherwise affecting the subordination and postponement of the Subordinate Security and Subordinate Indebtedness hereby granted. The Subordinate Lender shall not amend, extend, renew, modify, replace, supplement or restate the Subordinate Indebtedness or the Subordinate Security without the prior written

consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion.

4. **Notices from Subordinate Lender.** The Subordinate Lender shall give to the Lender, contemporaneously with the giving thereof to the Borrower, copies of any notices given by it to the Borrower under the Subordinate Loan, including without limitation any notices of defaults, breaches or events of default or of events that with the giving of notice or the passage of time and failure to cure, would result in a default, breach or event of default under the Subordinate Loan.

5. **Payments.** The Subordinate Lender agrees that, until the Prior Indebtedness is paid in full, (i) all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property shall not be applied to any payment on account of the Subordinate Indebtedness and (ii) it shall not accept any payment on account of the Subordinate Indebtedness whether of principal, interest, fees, costs, expenses or any other amounts, and if any such payments are received, such monies shall be received and held by the Subordinate Lender in trust for the Lender and the Subordinate Lender shall immediately pay all such monies to the Lender. The Lender and the Subordinate Lender shall provide reasonable cooperation to each other to ensure the provisions of this section are complied with.

6. **Free Partial Discharges and Postponements.** The Subordinate Lender covenants and agrees that it will, at no expense to the Lender and regardless of default under or maturity of the Subordinate Security:

- (a) execute such postponements and partial discharges of its security as may be required to convey any part of the Property to bona fide purchasers of lots/units comprising the Property or to convey and/or grant easements over the project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender in respect of the project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided however, that any monies received by the Borrower from such purchasers or governmental authorities in connection therewith shall be remitted to the Lender until the Prior Indebtedness is discharged; and
- (b) execute any and all plans and documents required to facilitate development of the project and to re-zone the project, if necessary, and to co-operate in all respects (but without requirement to expend funds) to facilitate such registration and re-zoning including, without limitation, the execution of agreements with any relevant governmental authorities or utilities which may be required for such registration or rezoning.

In the event for any reason the Subordinate Lender does not complete and register, without payment of principal, interest or any other amounts, a partial discharge of the Subordinate Security upon completion of a sale of a lot/unit on the Property, then the Lender shall be entitled to and the Subordinate Lender hereby irrevocably authorizes and directs the Lender and its counsel to execute and register from time to time partial discharges of the Subordinate Security for each lot/unit of the Property upon completion of a sale of a lot/unit in order to validly and fully discharge any such lot/unit from the Subordinate Security without payment of any principal, interest or any other amounts to the Subordinate Lender, provided that all net proceeds from each sale are paid to the Lender to reduce the Loan. Upon the Prior Indebtedness being fully satisfied, this direction and authorization shall be of no further force and effect.

7. **Insurance Proceeds.** All insurance and expropriation proceeds received by the Subordinate Lender with respect to the Property shall be received and held by the Subordinate Lender in trust for the Lender and forthwith paid and delivered by the Subordinate Lender to the Lender, notwithstanding any provision to the contrary in the Subordinate Security or under applicable laws. All rights and entitlement of the Subordinate Lender to such proceeds are hereby postponed and subordinated to the rights of the Lender.

8. **Standstill.** The Subordinate Lender shall not take any Enforcement Action under or in respect of the Subordinate Security or the Subordinate Indebtedness with respect to all or any part of the Property or against the Borrower without reasonable prior notice to and the written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Lender under or in respect of the Prior Security or Prior Indebtedness against the Borrower or against all or any part of the Property. In this Section, “**Enforcement Action**” means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of Rents, taking possession or control of any property or undertaking, commencing, giving or making any demand for payment, any notice of intention to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, accelerating the principal payable under the Subordinate Security, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

9. **Assignment by Subordinate Lender.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Loan or the Subordinate Security to any person or persons (the “Assignee”) except with the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. If the Lender consents to any such sale, transfer, assignment or other disposition, such consent shall be conditional upon, among any other conditions that the Lender may impose, the Subordinate Lender causing each Assignee to enter into, concurrently with any such sale, transfer, assignment or other disposition, a subordination and standstill agreement with the Lender on the same terms and conditions as this agreement. The Lender may transfer or assign its interest in the Loan and this agreement without restriction and without prior notice to or the consent of the Subordinate Lender.

10. **Subordination Effective notwithstanding Registration Dates, etc.** The Prior Security shall have and be entitled to priority over the Subordinate Security in all respects and any mortgage, pledge, charge, assignment and any other security interest created by or pursuant to or granted for the obligations secured by the Subordinate Security to the full extent of the Prior Indebtedness from time to time, and the Subordinate Security shall in all respects rank subordinate and junior to the Prior Security. This priority shall be effective in all events and in all circumstances. Without limiting the generality of the foregoing, this priority shall be effective notwithstanding:

- (a) the respective dates of execution, delivery, attachment, registration, filing, perfection or enforcement of the Prior Security and the Subordinate Security;
- (b) the respective dates of any advances secured by the Prior Security or the Subordinate Security;
- (c) the respective dates of default under the Prior Security or the Subordinate Security;
- (d) any priority to which the Subordinate Security may otherwise be entitled by reason of the giving or failure to give any notice of the acquisition of any charge, lien or security interest, by reason of the failure to register or to register any renewal or by reason of any defect in any item constituting the Prior Security;
- (e) the provisions of the instruments creating the Prior Security and the Subordinate Security; and
- (f) any modification, extension, renewal, replacement, supplement or restatement of the Prior Security or the Prior Indebtedness.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province in which the Lands are located and the laws of Canada applicable therein.

12. **Successors.** The acknowledgements and agreements contained in this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

13. **Counterpart.** This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
14. **Further Assurances by the Borrower.** The Borrower hereby acknowledges this Agreement and the subordination of the priority of the Subordinate Security to the Prior Security to the same effect as if all monies secured or intended to be secured by the Prior Security were events prior to the creation and registration of the Subordinate Security and the advance of any monies secured by the Subordinate Security as have been or will be advanced, and the Borrower expressly agrees to perform its obligations to the Lender and the Subordinate Lender and hold and deal with the Property in accordance with the priorities set out in this Agreement and to execute any instruments giving effect to such subordination and postponement as may be required by the Lender from time to time for such purpose.
15. **No Rights Conferred on Borrower.** Nothing in this Agreement will be construed as conferring any rights upon the Borrower or any other third party. The terms and conditions hereof are and will be for the sole and exclusive benefit of the Lender and the Subordinate Lender.
16. **Amendment of Agreement.** No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Lender and the Subordinate Lender. The parties agree that the consent of the Borrower shall not be required for any such supplement, modification, waiver or termination.

Signatures appear on following page

IN WITNESS WHEREOF each of the parties have duly executed this agreement under seal.

KINGSETT MORTGAGE CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

SORRENTI LAW PROFESSIONAL CORPORATION

Per: David Sorrenti
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

OLYMPIA TRUST COMPANY

Per: _____
Name: Cora Dumais
Title: Team Lead

Per: _____
Name: Jason Wagner, Manager
Title:

I/We have the authority to bind the Corporation

SUNRISE ACQUISITION (HWY 7) INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

SCHEDULE "A"**Lands**

Part Block 1, Plan 65M4539, being Part 9, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 7, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 5, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 6, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 4, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 9, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 3, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 2, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 1, Plan 65R37439, City of Markham

Block 3, Plan 65M4539, City of Markham

Block 2, Plan 65M4539, City of Markham

SCHEDULE "B"**Security of Subordinate Lender**

1. Charge registered as Instrument No. YR2340877 as subsequently amended.

SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of the day of August, 2018 between KingSett Mortgage Corporation (the "**Lender**"), Sorrenti Law Professional Corporation and Olympia Trust Company (collectively the "**Subordinate Lender**") and Sunrise Acquisition (Hwy 7) Inc. (the "**Borrower**").

Whereas the Lender has made a loan (the "**Loan**") to the Borrower in the original principal sum of \$1,648,879.00, subsequently increased to \$4,000,000.00 and further subsequently increased to \$4,419,106.00 on the security of a second mortgage (the "**Mortgage**") having a face amount of \$5,500,000.00 ("**Mortgage Amount**") of the lands and premises described in Schedule "A" hereto (the "**Lands**") and other property more particularly described in the Mortgage (collectively, the "**Property**") pursuant to a commitment letter entered into between the Borrower and the Lender dated the 5th day of May, 2015 (the "**Commitment Letter**"). All existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Lender from time to time pursuant to the Commitment Letter, including but not limited to the Mortgage Amount, all interest thereon, all future advances and all other amounts owing to the Lender thereunder from time to time, and including all reserves payable to the Lender relating to the Loan and all Cost Overrun Advances, as defined herein called the "**Prior Indebtedness**". "**Cost Overrun Advances**" means any loan advances made by the Lender to the Borrower as the Lender, in its sole discretion deems necessary, to complete the proposed project to be constructed on the Property or any other protective disbursements necessary for the preservation of the Property (collectively, "**Cost Overruns**") (which Cost Overruns are not available to be funded by the remaining undrawn portion of the Loan) and which Cost Overrun Advances are necessary in the event that the Borrower does not advance necessary funds from its own resources to meet such Cost Overruns. The Mortgage and all other additional or collateral security now or hereafter securing the Prior Indebtedness, including without limitation an assignment of all rents and leases from or relating to the Property and a general security agreement with respect to all equipment and other personal property of the Borrower located on, arising from, comprising or used in connection with the operation of the Property, are herein collectively called the "**Prior Security**".

And whereas the Subordinate Lender has made a loan or credit facility (the "**Subordinate Loan**") available to the Borrower in the original principal sum of \$8,000,000.00 and subsequently increased to \$9,873,262.00 (the Subordinate Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Subordinate Lender thereunder from time to time are herein called the "**Subordinate Indebtedness**"), which is secured by security described in Schedule "B" attached hereto (such security, including all other additional or collateral security now or hereafter securing the Subordinate Indebtedness, is herein called the "**Subordinate Security**");

And whereas it is a condition of the Lender making any advance to the Borrower that the Subordinate Lender and Borrower execute and deliver this Subordination and Standstill Agreement pursuant to which the Subordinate Security will at all times be postponed and subordinate to the Prior Security;

And whereas the Subordinate Lender has agreed to subordinate and postpone the Subordinate Loan and the Subordinate Security to and in favour of the Prior Indebtedness

and the Prior Security. Reference herein to the Subordinate Indebtedness, Subordinate Security, Prior Indebtedness and Prior Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

1. **Covenants, Representations and Warranties of Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security and covenants, represents and warrants to the Lender that (i) the Subordinate Indebtedness and the Subordinate Security are in good standing and the Borrower is not in default thereunder, (ii) it holds no security of any kind against the Property other than the Subordinate Security, (iii) it is the sole owner of the Subordinate Indebtedness and the Subordinate Security and has full power, authority and legal right to enter into this agreement, (iv) the total amount owing to the Subordinate Lender under the Subordinate Indebtedness is \$ _____ as of _____, and (v) the Subordinate Indebtedness bears interest at 8.00%, calculated quarterly, not in advance, and is due and payable to the Subordinate Lender as follows: on _____, and (vi) it will not allow the principal amount of the Subordinate Loan to exceed \$9,873,262.00 without the Lender's prior written consent. Upon request by the Lender from time to time, the Subordinate Lender shall provide to the Lender copies of the Subordinate Security or a statement of the Subordinate Indebtedness then outstanding.

2. **Subordination and Postponement.** The Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness, which shall be a second priority lien and charge against the Property, to the Prior Security and the Prior Indebtedness and agrees with the Lender that the Prior Security shall be a first priority lien and charge against the Property for the full amount of the Prior Indebtedness plus interest and costs. No discharge, release or waiver by the Lender of any of the Prior Security against or in respect of the Property or any person or any amendment, renewal, extension, replacement, modification, supplement or restatement of any Prior Indebtedness and/or the Prior Security shall require notice to or the consent of Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender. The Subordinate Lender agrees to execute and deliver, upon request by the Lender, such further instruments and agreements as may be reasonably required by the Lender to confirm and give effect to the provisions of this agreement and to register and record or file notice of this agreement and/or this subordination and postponement of the Subordinate Security in any office of public record as the Lender may consider necessary or desirable from time to time.

3. **Amendment.** Nothing in this Agreement nor in the Subordinate Security or in any other arrangements or agreements between the Borrower, the Subordinate Lender or any other person shall restrict, limit or otherwise prevent the Lender from taking any such action or making any other amendment, renewal, extension, replacement, modification, supplement or restatement of the Prior Indebtedness or the Prior Security without the consent of the Subordinate Lender and without otherwise affecting the subordination and postponement of the Subordinate Security and Subordinate Indebtedness hereby granted. The Subordinate Lender shall not amend, extend, renew, modify, replace, supplement or restate the Subordinate Indebtedness or the Subordinate Security without the prior written

consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion.

4. **Notices from Subordinate Lender.** The Subordinate Lender shall give to the Lender, contemporaneously with the giving thereof to the Borrower, copies of any notices given by it to the Borrower under the Subordinate Loan, including without limitation any notices of defaults, breaches or events of default or of events that with the giving of notice or the passage of time and failure to cure, would result in a default, breach or event of default under the Subordinate Loan.

5. **Payments.** The Subordinate Lender agrees that, until the Prior Indebtedness is paid in full, (i) all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property shall not be applied to any payment on account of the Subordinate Indebtedness and (ii) it shall not accept any payment on account of the Subordinate Indebtedness whether of principal, interest, fees, costs, expenses or any other amounts, and if any such payments are received, such monies shall be received and held by the Subordinate Lender in trust for the Lender and the Subordinate Lender shall immediately pay all such monies to the Lender. The Lender and the Subordinate Lender shall provide reasonable cooperation to each other to ensure the provisions of this section are complied with.

6. **Free Partial Discharges and Postponements.** The Subordinate Lender covenants and agrees that it will, at no expense to the Lender and regardless of default under or maturity of the Subordinate Security:

- (a) execute such postponements and partial discharges of its security as may be required to convey any part of the Property to bona fide purchasers of lots/units comprising the Property or to convey and/or grant easements over the project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender in respect of the project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided however, that any monies received by the Borrower from such purchasers or governmental authorities in connection therewith shall be remitted to the Lender until the Prior Indebtedness is discharged; and
- (b) execute any and all plans and documents required to facilitate development of the project and to re-zone the project, if necessary, and to co-operate in all respects (but without requirement to expend funds) to facilitate such registration and re-zoning including, without limitation, the execution of agreements with any relevant governmental authorities or utilities which may be required for such registration or rezoning.

In the event for any reason the Subordinate Lender does not complete and register, without payment of principal, interest or any other amounts, a partial discharge of the Subordinate Security upon completion of a sale of a lot/unit on the Property, then the Lender shall be entitled to and the Subordinate Lender hereby irrevocably authorizes and directs the Lender and its counsel to execute and register from time to time partial discharges of the Subordinate Security for each lot/unit of the Property upon completion of a sale of a lot/unit in order to validly and fully discharge any such lot/unit from the Subordinate Security without payment of any principal, interest or any other amounts to the Subordinate Lender, provided that all net proceeds from each sale are paid to the Lender to reduce the Loan. Upon the Prior Indebtedness being fully satisfied, this direction and authorization shall be of no further force and effect.

7. **Insurance Proceeds.** All insurance and expropriation proceeds received by the Subordinate Lender with respect to the Property shall be received and held by the Subordinate Lender in trust for the Lender and forthwith paid and delivered by the Subordinate Lender to the Lender, notwithstanding any provision to the contrary in the Subordinate Security or under applicable laws. All rights and entitlement of the Subordinate Lender to such proceeds are hereby postponed and subordinated to the rights of the Lender.

8. **Standstill.** The Subordinate Lender shall not take any Enforcement Action under or in respect of the Subordinate Security or the Subordinate Indebtedness with respect to all or any part of the Property or against the Borrower without reasonable prior notice to and the written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Lender under or in respect of the Prior Security or Prior Indebtedness against the Borrower or against all or any part of the Property. In this Section, "**Enforcement Action**" means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of Rents, taking possession or control of any property or undertaking, commencing, giving or making any demand for payment, any notice of intention to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, accelerating the principal payable under the Subordinate Security, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

9. **Assignment by Subordinate Lender.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Loan or the Subordinate Security to any person or persons (the “Assignee”) except with the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. If the Lender consents to any such sale, transfer, assignment or other disposition, such consent shall be conditional upon, among any other conditions that the Lender may impose, the Subordinate Lender causing each Assignee to enter into, concurrently with any such sale, transfer, assignment or other disposition, a subordination and standstill agreement with the Lender on the same terms and conditions as this agreement. The Lender may transfer or assign its interest in the Loan and this agreement without restriction and without prior notice to or the consent of the Subordinate Lender.

10. **Subordination Effective notwithstanding Registration Dates, etc.** The Prior Security shall have and be entitled to priority over the Subordinate Security in all respects and any mortgage, pledge, charge, assignment and any other security interest created by or pursuant to or granted for the obligations secured by the Subordinate Security to the full extent of the Prior Indebtedness from time to time, and the Subordinate Security shall in all respects rank subordinate and junior to the Prior Security. This priority shall be effective in all events and in all circumstances. Without limiting the generality of the foregoing, this priority shall be effective notwithstanding:

- (a) the respective dates of execution, delivery, attachment, registration, filing, perfection or enforcement of the Prior Security and the Subordinate Security;
- (b) the respective dates of any advances secured by the Prior Security or the Subordinate Security;
- (c) the respective dates of default under the Prior Security or the Subordinate Security;
- (d) any priority to which the Subordinate Security may otherwise be entitled by reason of the giving or failure to give any notice of the acquisition of any charge, lien or security interest, by reason of the failure to register or to register any renewal or by reason of any defect in any item constituting the Prior Security;
- (e) the provisions of the instruments creating the Prior Security and the Subordinate Security; and
- (f) any modification, extension, renewal, replacement, supplement or restatement of the Prior Security or the Prior Indebtedness.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province in which the Lands are located and the laws of Canada applicable therein.

12. **Successors.** The acknowledgements and agreements contained in this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

13. **Counterpart.** This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
14. **Further Assurances by the Borrower.** The Borrower hereby acknowledges this Agreement and the subordination of the priority of the Subordinate Security to the Prior Security to the same effect as if all monies secured or intended to be secured by the Prior Security were events prior to the creation and registration of the Subordinate Security and the advance of any monies secured by the Subordinate Security as have been or will be advanced, and the Borrower expressly agrees to perform its obligations to the Lender and the Subordinate Lender and hold and deal with the Property in accordance with the priorities set out in this Agreement and to execute any instruments giving effect to such subordination and postponement as may be required by the Lender from time to time for such purpose.
15. **No Rights Conferred on Borrower.** Nothing in this Agreement will be construed as conferring any rights upon the Borrower or any other third party. The terms and conditions hereof are and will be for the sole and exclusive benefit of the Lender and the Subordinate Lender.
16. **Amendment of Agreement.** No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Lender and the Subordinate Lender. The parties agree that the consent of the Borrower shall not be required for any such supplement, modification, waiver or termination.

Signatures appear on following page

IN WITNESS WHEREOF each of the parties have duly executed this agreement under seal.

KINGSETT MORTGAGE CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

SORRENTI LAW PROFESSIONAL CORPORATION

Per: Dark Sorrenti
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

OLYMPIA TRUST COMPANY

Per: _____
Name: Cora Dumais
Title: Team Lead

Per: _____ *Jason Wagner, Manager*
Name:
Title:

I/We have the authority to bind the Corporation

SUNRISE ACQUISITION (HWY 7) INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

SCHEDULE "A"**Lands**

Part Block 1, Plan 65M4539, being Part 9, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 7, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 5, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 6, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 4, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 9, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 3, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 2, Plan 65R37439, City of Markham

Part Block 1, Plan 65M4539, being Part 1, Plan 65R37439, City of Markham

Block 3, Plan 65M4539, City of Markham

Block 2, Plan 65M4539, City of Markham

SCHEDULE "B"**Security of Subordinate Lender**

1. Charge registered as Instrument No. YR2340877 as subsequently amended.

LAW SOCIETY OF ONTARIO
Applicant

-and- DEREK SORRENTI et al
Respondents

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF NADIA MUSCLOW

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