

Court File No.

**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**

AFFIDAVIT OF NADIATOU FAGBEMI

I, Nadiatou Fagbemi, of the City of East York, in the Province of Ontario, MAKE OATH AND SAY:

INTRODUCTION

1. I Nadiatou Fagbemi am the Acting Senior Manager, Mortgage Broker Conduct, Special Situations in the Market Conduct Division at the Financial services Regulatory Authority of Ontario ("**FSRA**"). In this position I work regularly with senior compliance officers and other staff at FSRA to, among other things, examine and undertake regulatory proceedings relating to the regulated sectors defined in the *Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched.8 (the "**Act**"). I have held this position since June 26, 2019. Previously I was a Senior Compliance Officer at FSRA from April 3, 2017 to June 26, 2019. As such,

I 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. In preparing this affidavit I reviewed and relied upon the Affidavit of Brendan Forbes sworn April 19, 2018, in respect of an Application by the Superintendent of Financial Services (the "**Superintendent**"), which was sworn on or about April 19, 2018, to appoint FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**"), a licensed mortgage administrator under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the "**MBLAA**"), as trustee over the assets, undertakings and properties of Building & Development Mortgages Canada Inc. ("**BDMC**"), held on behalf of members of the public who had invested in syndicated mortgage investments ("**SMI(s)**") used to fund certain real estate development projects (collectively the "**BDMC Projects**"). A copy of the Affidavit of Brendan Forbes is attached as Exhibit A to my affidavit. I also met with, and reviewed and relied upon, materials provided to me by FSRA Staff, which have been appended to this Affidavit as referenced below.
3. Effective June 8th, 2019, the Chief Executive Officer ("**CEO**") of FSRA assumed the responsibilities of the Superintendent and FSRA assumed the responsibilities of the Financial Services Commission of Ontario ("**FSCO**") including in respect of the MBLAA.
4. The Act provides that the objects of FSRA include, *inter alia*, regulating and generally supervising the regulated sectors; contributing to public confidence in the regulated sectors; and cooperating and collaborating with other regulators where appropriate.
5. The mortgage brokering industry is one of the sectors identified as a regulated sector under the Act, and includes mortgage agents, mortgage brokers, mortgage brokerages and mortgage administrators, as defined in the MBLAA.

6. As set out in more detail below, FSCO previously investigated the activities of a number of related entities (the "**Fortress Network**") involved in offering SMIs to the public. The Fortress Network investigation included, BDMC, , and three lender brokerages: FMP Mortgage Investments Inc. ("**FMP**"), FFM Capital Inc. ("**FFM**") and FDS Broker Services Inc. ("**FDS**") (collectively the "**Lender Brokerages**").
7. The investigation did not include Fortress Real Developments Inc. ("**FRDI**") or Derek Sorrenti ("**Mr. Sorrenti**") although they were known to be part of the Fortress Network. FRDI and Mr. Sorrenti were not investigated as they were not licensed under the MBLAA. As a lawyer practising in the Province of Ontario and duly licensed by the Law Society of Ontario (the "**LSO**"), Mr. Sorrenti is exempt from the requirement to be licensed, when engaged in mortgage administration activities, pursuant to subsection 6(6) of the MBLAA and section 5 of O. Reg. 407/07. Mr. Sorrenti was therefore not required to provide information to FSCO in respect of its investigation into the Fortress Network.
8. FSCO was aware that Mr. Sorrenti and BDMC were, amongst other things, providing mortgage administration services to SMI investors. Mr. Sorrenti administered mortgages through Sorrenti Law Professional Corporation ("**SLPC**"). While FSCO, and now FSRA, do not have detailed information concerning the Fortress Network syndicated mortgage loans ("**SML(s)**") administered by SLPC, or the associated real estate development projects (collectively the "**Sorrenti Projects**"), I am not aware of any substantive differences in the nature of the BDMC Projects and the Sorrenti Projects, how they fit into the Fortress Network, or the framework of agreements within which these projects operate.
9. On January 31, 2018, FSCO entered into settlement agreements (the "**Settlement Agreement(s)**") with a number of the licensed entities and individuals in the Fortress Network, including the Lender Brokerages, BDMC, and certain individuals holding Mortgage Broker licences.

10. The Settlement Agreements with the individuals holding mortgage broker licences provided for their consent to the revocation or surrender of their mortgage broker licences. These individuals included Vincent Petrozza (one of the principals of FRDI), Ildina Galati-Ferrante (the principal broker for BDMC), and Michael Daramola, Glenn May-Anderson, and Rosalia Spadafora, the principal brokers of FMS, FDS, and FFM respectively.
11. The Settlement Agreement with BDMC included a requirement that BDMC enter into and comply with a management and administration agreement ("**MAA**") appointing FAAN Mortgage as the arm's length, independent, manager of BDMC's SMI administration business.
12. On April 19, 2018, the Superintendent brought an application for an order under section 37 of the MBLAA appointing FAAN Mortgage as trustee of BDMC's mortgage administration practice (the "**FAAN Trusteeship**") due to ongoing issues with BDMC's compliance with the MAA and additional complexities in the work required as a result of an investigation by the Royal Canadian Mounted Police into SMI fraud, which, included the execution of a search warrant at the BDMC offices on April 13, 2018. The order sought by the Superintendent was granted by the Ontario Superior Court of Justice and FAAN Mortgage remains, as of the date of this affidavit, as Trustee over the BDMC Projects ("**FAAN Appointment Order**"). A copy of the FAAN Appointment Order is available at Appendix 1 of the Pre-Filing Report of FAAN Mortgage (the "**Pre-Filing Report**")
13. The Sorrenti Projects are not subject to an MAA nor are they subject to an appointment order under section 37 of the MBLAA as Mr. Sorrenti's mortgage administration practice is exempt under the MBLAA. An appointment order under section 37 of the MBLAA is only available in relation to projects administered by individuals who are licensed or required to be licensed under the MBLAA.

14. Based on information collected by FSCO and FSRA, as well as information provided to FSRA by FAAN Mortgage, it appears that there are approximately eleven (11) known active Sorrenti Projects with approximately One Hundred Million Dollars (\$100,000,000) in advanced SMLs. A list of all SMLs known to be administered by Mr. Sorrenti and SLPC is found at Appendix 6 of the Pre-Filing Report.
15. FSCO received a number of complaints from investors regarding the administration of the Sorrenti Projects which are dealt with in more detail below. I understand that FAAN Mortgage and Representative Counsel for the BDMC Investors have also received complaints regarding the administration of the Sorrenti Projects. This occurs because, in practice, investors do not always distinguish as between BDMC Projects, which are subject to licensing oversight by FSRA, and for which FAAN Mortgage is Trustee, and the Sorrenti Projects, which are not subject to FSRA's oversight. FSRA does not regulate Mr. Sorrenti as he is exempt from the licensing requirements under the MBLAA and is not subject to the FAAN Trusteeship.
16. FSRA supports this application by the LSO for an order appointing a trustee and administrator over the Sorrenti Projects on the basis of the complaints received by FSCO, issues identified by FAAN Mortgage, and concerns regarding Mr. Sorrenti's capacity to carry out the obligations of a mortgage administrator as a sole practitioner. The investors in the Sorrenti Projects deserve the same level of protection already afforded to the investors in the BDMC Projects.

THE FINANCIAL SERVICES COMMISSION OF ONTARIO AND THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

17. On July 1, 1998, the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 ("**FSCO Act**") established FSCO as an arm's-length agency of the Ministry of Finance. FSCO regulated pension plans, insurance companies, loan and trust companies, credit unions, caisses populaires, co-operative corporations and mortgage brokering. The FSCO Act states that one of FSCO's purposes was "to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors".

18. The chief executive of FSCO was the Superintendent who was tasked with, among other duties, administering and enforcing the FSCO Act and every other statute that conferred powers on or assigned duties to the Superintendent, including the MBLAA, and generally supervising the regulated sectors, including the mortgage brokering industry.
19. As noted above, on June 8, 2019, the CEO and FSRA took over the responsibilities of the Superintendent and FSCO respectively, including supervision over the mortgage brokering industry and administration of the MBLAA.
20. The system of regulation created by the MBLAA and its regulations is designed to ensure that the public receives ethical, competent and knowledgeable services from those licensed under the MBLAA to carry on the business of dealing, trading or administering mortgages in the Province of Ontario. In order to carry on the business of dealing in, trading or administering mortgages in the Province of Ontario, an individual or entity must be licensed pursuant to the MBLAA, unless exempted from the requirement to do so.
21. Under the MBLAA and its regulations, once licensed, mortgage brokerages and administrators must comply with ongoing requirements, including minimum standards of practice; for example, disclosure of conflicts of interest, notice of material events relating to administered mortgages, suitability of the investment for each investor, and disclosure of material risks.
22. All of these requirements are designed to protect the public, as mortgages are often connected with complex financial transactions, which often involve significant amounts of borrowed money. As a result, financial transparency in mortgage transactions is essential.

23. Lawyers are exempted from the requirement to be licensed as mortgage administrators under the MBLAA, if they administer mortgages while acting in their professional capacity as a lawyer on behalf of a client.

SYNDICATED MORTGAGE INVESTMENTS

24. SMIs arise where there is a mortgage for which there is more than one lender, or in which more than one investor has made an investment. As with any mortgage, a charge is registered on the title to the relevant property.
25. The regulations made under the MBLAA provide that, in the case of SMIs, licensed mortgage brokers and mortgage administrators owe the duties imposed by the regulations, in respect of the mortgage, to each individual lender or investor in the SMI.
26. FSRA is of the view that certain types of SMIs can pose a significant risk to consumer investors. As set out in FSCO consumer communications posted on FSCO's website, several of the techniques that are frequently used to market SMIs to the investing public often belie the risk of SMIs. For instance, there is NOT a guaranteed high rate of return on SMIs, SMI investors can be subordinated to priority construction financing, and a 'secured' investment does not mean that it is guaranteed (i.e. the value of the land against which the mortgage is registered may be inadequate to fully repay the prior-ranking mortgagees and the investors' SMI).

THE FORTRESS NETWORK

27. The relationship between the entities that make up the Fortress Network are set out at paragraphs 23 through 51 of the Affidavit of Brendan Forbes at Exhibit "A". I adopt that description for the purposes of my affidavit.
28. BDMC played a number of functions beyond that of a mortgage administrator with respect to the Fortress SMIs. I am not able to determine if Mr. Sorrenti played similar functions as he is exempted from the requirement to be licensed under the MBLAA

and was not required to provide information on his activities to either FSCO or FSRA.

29. However, like BDMC, Mr. Sorrenti, through SLPC, is a mortgage administrator for Fortress SMLs. In its capacity as mortgage administrator, SLPC holds title to the mortgages underlying the Sorrenti SMLs on behalf of the Investors. SLPC also acts in a fiduciary capacity to administer and enforce the SMLs, again on behalf of the Investors.
30. The powers exercised by mortgage administrators on behalf of investors makes the administration of SMLs an essential part of protecting investor interests, which is why FSCO previously sought the appointment of FAAN Mortgage as Trustee over the BDMC Projects, and why FSRA supports the application by the LSO for the appointment of a trustee and administrator over the Sorrenti Projects.

THE KEY AGREEMENTS

31. The key agreements governing the relationship between BDMC and SMI investors in the BDMC Projects are discussed at paragraphs 52 through 70 of the Affidavit of Brendan Forbes at Exhibit "A".
32. Agreements, and portions thereof, in relation to the Sorrenti Projects, were provided to FSCO as part of the complaints received by FSCO (with the exception of the Development Consultant Agreements (DCA)). Copies of these agreements are attached as Exhibit B to this affidavit.
33. FSRA has copies of the first page of all of the key agreements (except the DCA). The first page of each of the key agreements from the Sorrenti Projects are substantially identical to the first page of the same key agreements in relation to the BDMC Projects (subject to names, dates etc.).

34. In addition FSRA has full copies of a Loan Agreement and an Acknowledgement and Consent Agreement from Sorrenti Projects. These two agreements are also substantially identical to the key agreements relating to the BDMC Projects. This suggests that the same template agreements were used in the Sorrenti Projects and the BDMC Projects. As referenced above, copies of these documents are attached as Exhibit B to this affidavit. The following provisions identified in the Affidavit of Brendan Forbes at Exhibit A also appear in these two relating to the Sorrenti Projects:

- a. Loan Agreements (between SLPC and Borrowers) which allow for, *inter alia*, the extension of the term of the SML, payments accruing but not being due to be repaid until the end of the term, the SML being secured by a mortgage which may rank behind other lenders, further postponement and subordination of the SML, and discharging of the SML even where this will not be sufficient funds to repay the SML;
- b. Acknowledgement and Consent Agreement, which applies to circumstances where the investor is using funds in a registered account to invest in an SML.

35. Based on the first pages of the Participation and Servicing Agreement and the Confirmation of Lender's Interest Agreement being identical in the BDMC and Sorrenti Project documents, I also assume that the following provisions are also substantially the same:

- a. Participation and Servicing Agreement which sets out the terms and conditions under which SLPC will administer the SML, including that SLPC is exclusively responsible for administering and servicing the SML on behalf of investors, rules around consultation and consent in respect of any renewal or any material amendment, modification or waiver of any of the

terms of the Loan Agreement, and a prohibition on investors contacting the Borrower;

- b. Confirmation of Lender's Interest which includes an obligation on SLPC to enforce the SML as would a prudent lender, having regard to the quantum of the SML and nature of the development against which the SML security is registered. This agreement also includes provision for the postponement and subordination of the investor's interest in the SML; and

36. These agreements grant the Mortgage Administrator significant authority, which can have a direct impact on the interests of investors. 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.

NON-COMPLIANCE WITH COURT ORDER IN TRUSTEESHIP PROCEEDINGS

37. As set out above, FAAN Mortgage was appointed as Trustee, without security, over all of the assets, undertakings and properties of BDMC.
38. FAAN Mortgage is required to make informed decisions by conducting a detailed review of relevant information in respect of the FAAN Trusteeship. To facilitate FAAN Mortgage's discharge of its mandate, the FAAN Appointment Order requires SLPC, identified as an entity 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 FAAN Mortgage, and to cooperate fully with FAAN Mortgage with respect to its mandate.
39. According to FAAN Mortgage, the following former SLPC projects had been transferred to BDMC:
 - a. The Colliers Project

- b. The Georgetown Project
 - c. The Kemp Project
 - d. The MM1 Project
 - e. The MM2 Project
 - f. The OML Project
 - g. The South Shore Project
 - h. The Treehouse Project
 - i. The Whitby Project
40. As set out in the Seventh Report of FAAN Mortgage dated May 10, 2019 (the “**Seventh Report**”), filed with the Court in respect of the FAAN Trusteeship and in accordance with the FAAN Appointment Order, FAAN Mortgage and its counsel contacted SLPC, both informally and formally, on numerous occasions, to request information critical to ensuring FAAN Mortgage was able to meet its mandate. The information included trust account records, full closing books for the applicable loan agreements and related transactions, diligence summaries and other relevant information. The requests were made over several months but SLPC failed to comply with any of the requests. A copy of the Seventh Report is found at Appendix 3 of the Pre-Filing Report.
41. SLPC advised FAAN Mortgage that it was unable to deliver the requested materials due to staffing issues, record storage complications and other obligations. Furthermore, several lawsuits have been commenced against Mr. Sorrenti. I am not familiar with the details of the lawsuits but understand from media articles that he is alleged to have provided independent legal advice to investors, failed to identify the significant risks with the transactions, and also failed to identify his links to the Fortress Network.
42. As a result of failing to respond to their requests, FAAN Mortgage obtained an order from the Court compelling SLPC to produce the requested information. A copy of the Order, dated May 23, 2019, is found at Appendix 1 of the Pre-Filing Report. The

Pre-Filing Report provides that as of the date of this affidavit, SLPC has not complied in any substantial way with the requirements of this order.

INVESTOR COMPLAINTS

43. FSCO received several complaints from the public regarding Mr. Sorrenti and SLPC.

Sorrenti & SLPC Complaint #1

44. On June 8, 2017, FSCO received a complaint forwarded by the Ontario Securities Commission ("**OSC**"). A copy of the complaint is attached as Exhibit C to this affidavit.

45. The complainant ("**Complainant #1**") expressed concern regarding their former partner's \$100,000 investment in an SMI to fund the Masonry (Station West) real estate development project at 101 Masonry Court, Burlington. The borrower/developer was ADI Developments (Masonry) Inc. ("**ADI Developments**"). OSC Staff provided FSCO Staff with information concerning the SMI involving ADI Developments and SLPC.

46. Complainant #1 reported that their former partner was ill, had limited income and was living in a nursing home.

47. Email correspondence submitted with the complaint reveals that Complainant #1 contacted Mr. Sorrenti on their former partner's behalf, in an attempt to terminate the \$100,000 investment in the ADI Development project in light of mounting debt and long-term care expenses. When this failed, the complainant contacted the Halton Regional Police Service ("**HRPS**") who were initially unsuccessful in attempting to recover the investment. Mr. Sorrenti responded to the HRPS advising that the investment was "illiquid" and funds would not be available until the project is completed. Mr. Sorrenti indicated that he directed the inquiry to FRDI for possible resolution. I understand that the funds were eventually released back to the complainant.

48. Amongst the documents submitted to FSCO with the complaint was an authorization letter which indicated that investor inquiries were to be directed to SLPC's "Syndicated Mortgage Administration Department" located at 310-3300 Highway #7 Vaughn, Ontario. A copy of the authorization letter is attached as Exhibit # to this affidavit.
49. Complainant #1 reported that although quarterly annual interest payments were being issued by ADI Developments through an SLPC trust account, they never met with Mr. Sorrenti or anyone at SLPC.

Sorrenti & SLPC Complaint #2

50. On April 30, 2018, FSCO received a complaint from an SMI investor ("**Complainant #2**") in various projects managed by BDMC that were the subject of the FAAN Mortgage Appointment Order. A copy of the complaint is attached as Exhibit D to this affidavit.
51. Complainant #2 expressed concern regarding the "Solotex Project" located at 1648-1682 Victoria Park, in Toronto.
52. In the complaint, Complainant #2 advised FSCO Staff that they contacted FFM seeking information as to why the Solotex Project was not subject to the FAAN Mortgage Appointment Order and was advised, at that time, that the SML was being managed by SLCP.
53. Complainant #2 advised FSCO Staff that they had only ever received communications from BDMC regarding the Solotex Project since the beginning of 2015. Complainant #2 had not received any correspondence from SLPC. Furthermore, Complainant #2 advised FSCO Staff that they attempted to contact SLPC but their calls were never answered.

Sorrenti & SLPC Complaint #3

54. On September 25, 2018, FSCO received a complaint from regarding FDS, SLPC and Mr. Sorrenti. A copy of the complaint is attached as Exhibit E to this affidavit.
55. The complainant ("**Complainant #3**") advised FSCO Staff that in 2014, they invested \$30,000 into an SMI for phase 1 development costs related to a project entitled "Project Manor". Complainant #3 wished to withdraw their investment in the project but could not get a response from the project administrator. Complainant #3 advised FSCO Staff that the loan agreement, which was not provided to FSCO, provided that they could exit the mortgage on August 10, 2015.
56. Complainant #3 advised that they attempted to contact their mortgage agent at FDS in July of 2018. FDS advised them that the mortgage agent had left the brokerage, and that any questions should be directed to SLPC. Complainant #3 advised FSCO Staff that they attempted to contact SLPC and Mr. Sorrenti on numerous occasions by telephone and email. Complainant #3 reported that despite leaving phone messages and emails indicating that they wished to determine whether their investment could be withdrawn, they did not receive a response from Mr. Sorrenti or SLPC.

Sorrenti & SLPC Complaint #4

57. On October 11, 2018, FSCO received a complaint regarding an SMI and SLPC. The complainant ("**Complainant #4**") advised FSCO Staff that they had attempted to call SLPC in relation to an SMI but could not reach anyone who worked there.

Sorrenti & SLPC Complaint #5

58. On February 6, 2018, FSCO received a complaint regarding Mr. Sorrenti. The complainant ("**Complainant #5**") provided FSCO Staff with an email they sent to Mr. Sorrenti expressing their concern regarding a possible conflict of interest between SLPC and the ADI Developments (Link) Project. Complainant #5 attached a letter from ADI Developments, forwarded by Olympia Trust Company to Complainant #5, as provided to them by Mr. Sorrenti. A copy of the complaint is attached as Exhibit F to this affidavit.

59. FSCO staff responded to each complainant advising them that SLPC was not regulated by FSCO and provided the complainants with contact information for the LSO.
60. Investors in the Fortress Network SMLs continue to express concern regarding their investments as illustrated in the protest by a group of investors identifying themselves as Victims of Syndicated Mortgage Investments on Friday, September 13, 2019, outside Osgoode Hall in Toronto, Ontario.

ISSUES WITH SORRENTI PROJECTS

61. As stated above, although Mr. Sorrenti and SLPC are not required to be licensed under the MBLAA, FSCO and FSRA received information regarding various SMLs administered by SLPC, and the related projects, that raise concerns regarding Mr. Sorrenti and SLPC's capacity to administer the Sorrenti SMLs.
62. I have reviewed the Pre-Filing Report summarizing what is known to FAAN Mortgage to be the remaining active projects being administered by Mr. Sorrenti as of mid-August 2019. FAAN Mortgage identified a total of eleven (11) projects. Based on a review of the materials available to FSRA these projects involve a total of approximately One Hundred Million Dollars (\$100,000,000) in advanced SMLs.
63. I am aware, from materials filed by FAAN Mortgage in the FAAN Trusteeship, that FAAN Mortgage obtained the Court's authorization to execute a direction from the Court in respect of a development project located known as the "Bayview Project" located at 5, 7, 9, 11 and 15 Kenaston Gardens and 577 Sheppard Ave., Toronto, authorizing counsel for the borrower in the Bayview Project to pay approximately Eighteen Million Dollars (\$18,000,000) to SLPC in respect of an SML.

64. FAAN Mortgage advised FSRA Staff that despite the direction there were significant delays by SLPC in distributing the funds and gaps in SLPC's reporting to the SMI investors in respect of the distribution of funds. A more detailed reporting of the issues concerning the Bayview Project SML distributions to investors is found in the Pre-Filing Report.

CONCERNS REGARDING INVOLVEMENT BY THE FORTRESS NETWORK

65. In its the seventh report to the Court in the FAAN Trusteeship, FAAN Mortgage describes borrowers (many of whom are connected to the Fortress Network) and FRDI bringing forward proposed refinancing, sale, payout and other restructuring proposals for FAAN Mortgage's approval, that would result in less than full recoveries for the SMI investors. FAAN Mortgage reported that these proposed transactions are put forth as the only viable option to allow projects to continue and the best options for recoveries for investors, even though investors would suffer a substantial shortfall.
66. FAAN Mortgage reported facing challenges testing these assertions, as despite its appointment in the FAAN Trusteeship, FAAN Mortgage does not have any control over the sale or refinancing process conducted by the borrowers on the real estate development projects (FAAN represents the interests of BDMC as a subordinate lender on those projects).
67. In order to limit the amount of compensation paid to any Fortress Network party in connection with proposed sale transactions for any of the BDMC Projects, FAAN Mortgage obtained Court approval for a process to standardize any consideration being provided to the Fortress Network, or a related party, in connection with the aforementioned transactions.
68. In light of FSCO's investigation into the Fortress Network, that resulted in the FAAN Mortgage Appointment Order, and FAAN Mortgage's reports of the Fortress Network's ongoing involvement in the FAAN Trusteeship, FSRA Staff are concerned

that investors in the Sorrenti SMLs may be subjected to further influence by members of the Fortress Network, and related entities, particularly given that SLPC was originally selected by the Fortress Network to act as Mortgage Administrator and given the limited resources available to SLPC's in managing the administration of the Sorrenti SMLs.

CONCLUSION

69. Based on a review of the information available, FSRA Staff have identified the following issues which give rise to concerns for the protection of investors in the Sorrenti Projects:

- i. Complaints from investors and reports by FAAN Mortgage regarding SLPC's failure to respond to investor inquiries;
- ii. Concerns regarding SLPC's capacity to manage its mortgage administration activities as supported by the investor complaints and its failure to produce documents as required under the FAAN Trusteeship;
- iii. Substantial delays in the payout to investors in at least one project, (Bayview); and
- iv. The principals of FRDI continue to seek to play a role in projects under the FAAN Trusteeship. Their role could be exacerbated in the Sorrenti Projects given the lack of resources available to SLPC to administer those projects.

70. Based on the foregoing, FSRA supports the LSO's Application in order to preserve, protect and maintain control of the interests of SMI investors in the Sorrenti Projects. FSRA is of the view that this Application is in the public interest.

71. I make this affidavit in support of the LSO's 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, for an order appointing the LSO as Trustee, and FANN

Mortgage as the agent administrator, over the mortgage administration practice of Mr. Sorrenti and SLPC, and for no other or improper purpose.

SWORN before me at the City of Toronto
In the Province of Ontario, this 30th day of
September, 2019.



Commissioner for Taking Affidavits

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NADIATOU FAGBEMI

Attached is Exhibit "A"
Referred to in the
Affidavit of Nadiatou Fagbemi
Sworn Before Me
this 30th Day of September, 2019

A handwritten signature in blue ink, appearing to read "Taw Hason", written over a horizontal line.

Commissioner for Taking Affidavits, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

AFFIDAVIT OF BRENDAN FORBES

**I, BRENDAN FORBES, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:**

INTRODUCTION

1. I am Legal Counsel at the Ministry of the Attorney General Civil Law Division, FSCO Branch. In this role, I work regularly with senior compliance officers and other staff at the Financial Services Commission of Ontario ("FSCO") to, among other things, prosecute regulatory proceedings relating to the regulated sectors defined in the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, chap. 28 (the "FSCO Act"). I have held this position from August 2016 until March 2017, and again between

June 2017 and the present. Prior to this, I was an Articling Student with FSCO from July 2015 to June 2016.

2. 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 *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the "MBLAA").
3. As set out in greater detail below, FSCO investigated the Respondent, Building & Development Mortgages Canada Inc. ("BDMC"), for potential breaches of the MBLAA and its associated regulations. Prior to February 1, 2018, BDMC brokered and administered investments in syndicated mortgage loans ("SML(s)") sold to the investing public, principally relating to development projects in which Fortress Real Capital Inc. ("FRCI") or Fortress Real Developments Inc. ("FRDI" and, together with FRCI, "Fortress") are involved (the "BDMC SML(s)"). Fortress's involvement is either as development consultant, or certain related or subsidiary corporations to Fortress are the owners or co-owners of the development projects. The individual investors who are the lenders under the the BDMC SMLs are referred to herein as the "Investors".
4. Over \$600 million has been invested in BDMC SMLs by over 11,000 individual Investors, many of whom have invested significant portions of their savings in these loans. FSCO has 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. As a result of its investigations, FSCO is of the view that there are serious regulatory issues associated with BDMC SMLs.
5. FSCO's investigation ultimately resulted in the Superintendent and BDMC entering into a settlement agreement executed on January 31, 2018 (the "Settlement Agreement"). A

key condition of the Settlement Agreement was that BDMC enter into and comply with a management and administration agreement ("**MAA**") appointing FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**") as the arm's length, independent manager of BDMC's SML administration business ("**BDMC's Administration Business**"). FAAN Mortgage is a licensed mortgage administrator under the MBLAA.

6. FAAN Mortgage assumed the role of arm's length, independent manager of BDMC's Administration Business on February 7, 2018, but I am advised by FAAN Mortgage that the transition has not been smooth. BDMC has struggled to comply with certain terms of the MAA from its inception. Given that books and records relating to the development projects that are required for BDMC's Administration Business are either stored on servers maintained by FRDI or Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), or are in the possession of those parties. Notwithstanding that FRDI and CDCM have advised FAAN Mortgage that they would transfer all of the books and records to FAAN Mortgage, to date this has not occurred. As such, FAAN Mortgage has had difficulty performing its responsibilities as it remains dependent on representatives of CDCM and others to provide it with the required information. In addition, and on at least one occasion, CDCM has interfered with FAAN Mortgage's duties by sending a notice directly to Investors, and FAAN Mortgage has not been provided with administrator access to BDMC's email accounts that were in existence as at the date of FAAN Mortgage's appointment and thereafter.
7. As set out in more detail below, it is apparent that a number of the SML borrowers are facing financial distress. Further, I have been advised by FAAN Mortgage that BDMC is also in financial distress and has been struggling to make a number of important payments, including payroll, rent and payments due under the MAA.

8. On April 13, 2018, the RCMP executed search warrants at BDMC's offices. According to media reports, five other locations were also searched pursuant to issued search warrants. The RCMP reportedly advised The Globe and Mail that it was investigating "syndicated mortgage fraud". The police searches were widely reported in the media and have resulted in a significant increase in the distress faced by BDMC. Attached hereto as Exhibit A is a copy of The Globe and Mail article on the searches dated April 13, 2018. There have been many subsequent media reports.
9. I am advised by FAAN Mortgage that the RCMP investigation has had three immediate effects on FAAN Mortgage's management of BDMC's Administration Business: (i) Investor inquiries and concerns have increased exponentially; (ii) SML borrowers and other parties have markedly increased the pressure on FAAN Mortgage to execute various documents to postpone the Investors' interests to those of other lenders; and (iii) FAAN Mortgage has determined that it is not prepared to continue to act without court protection and direction, as required.
10. In light of the RCMP investigation and FAAN Mortgage's difficulties in obtaining and verifying the accuracy of certain information, I am advised by FAAN Mortgage that it is concerned about compliance with its obligation under s. 10.1 of the *Mortgage Administrator Standards of Practice*, O. Reg. 189/08, under the MBLAA (the "Standards"), which requires a mortgage administrator not to take or omit to take any action that facilitates dishonesty, fraud, crime or illegal conduct. Section 10.1 of the Standards provides: "A mortgage administrator shall not act, or do anything or omit to do anything, in circumstances where the mortgage administrator ought to know that by acting, doing the thing or omitting to do the thing, the mortgage administrator is being used by a borrower, lender, investor or any other person to facilitate dishonesty, fraud,

crime or illegal conduct". Accordingly, as described below, FAAN Mortgage has terminated the MAA effective upon the granting of the proposed order.

11. FAAN Mortgage has advised that a number of events of default under the MAA (the "BDMC Events of Default") have occurred and that FAAN Mortgage has reason to believe that additional BDMC Events of Default have occurred or will occur in the near term. FAAN Mortgage advises that it has lost all confidence in BDMC's ability to comply with the MAA.
12. If FAAN Mortgage terminates the MAA and the order sought herein is not granted, there will be no independent third party to perform mortgage administration functions and protect the Investors' interests. This situation is untenable and puts the 11,000 individual Investors and their investments at risk. As such, it is critical that an order appointing FAAN Mortgage as trustee pursuant to section 37 of the MBLAA be granted forthwith. FAAN Mortgage has been closely involved with the Investors, BDMC, and BDMC's Administration Business to date, and has intimate knowledge of BDMC's business structure.
13. I have been involved in the investigation of BDMC by FSCO. The investigation involved the collection of a large volume of documentation provided by the Respondent and other parties, and the examination of the principal of BDMC, Ildina Galati, and of Fortress, Vince Petrozza. I also have been involved throughout the attempted implementation of the Settlement Agreement. Accordingly, I have knowledge of the matters to which I hereinafter depose. To the extent that I have relied on the information and advice of others, I have identified the source of such information and advice and verily believe that information to be true. In particular, where I identify information that has been provided to me by FAAN Mortgage, that information has been collected and conveyed by one or

more of the three FAAN Mortgage representatives who are working on the BDMC mandate, being Naveed Manzoor, Daniel Sobel and Lana Bezner.

THE FINANCIAL SERVICES COMMISSION OF ONTARIO

14. On July 1, 1998, the FSCO Act established FSCO as an arm's-length agency of the Ministry of Finance. FSCO regulates pension plans, insurance companies, loan and trust companies, credit unions, caisses populaires, co-operative corporations and mortgage brokers and administrators licensed under the MBLAA. The FSCO Act states that one of FSCO's purposes is *"to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors"*.
15. The chief executive of FSCO is the Superintendent of Financial Services (the **"Superintendent"**), who is tasked with, among other duties, administering and enforcing the FSCO Act and every other statute that confers powers on or assigns duties to the Superintendent, including the MBLAA, and generally supervising the regulated sectors, including the mortgage brokering industry.
16. The system of regulation created by the MBLAA and its regulations is designed to ensure that the public receives ethical, competent and knowledgeable services from those licensed under the MBLAA to carry on the business of dealing, trading or administering mortgages in the Province of Ontario. In order to carry on the business of dealing in, trading or administering mortgages in the Province of Ontario, an individual or entity must be licensed pursuant to the MBLAA.
17. Under the MBLAA and its regulations, once licensed, mortgage brokerages and administrators must comply with ongoing requirements, including minimum standards of practice such as the Standards; for example, disclosure of conflicts of interest, notice of

material events relating to administered mortgages, information regarding the suitability of the investment for each investor, and disclosure of material risks.

18. All of these requirements are designed to protect the public. Mortgages are often connected with complex financial transactions, which often involve significant amounts of borrowed money. As a result, financial transparency in mortgage transactions is essential.

SYNDICATED MORTGAGE LOANS

19. An SML is a mortgage for which there is more than one lender, or in which more than one investor has made an investment. As with any mortgage, a charge is registered on the title to the relevant property.
20. The regulations made under the MBLAA provide that, in the case of SMLs, licensed mortgage brokers and mortgage administrators owe the duties imposed by the MBLAA and the regulations thereto in respect of the mortgage to each individual lender or investor in the SML.
21. FSCO is of the view that SMLs are high risk investments. As set out in FSCO consumer communications posted on FSCO's website, FSCO is of the view that several of the techniques that are frequently used to market SMLs to the investing public often belie the risk of SMLs. For instance, there is NOT a guaranteed high rate of return on SMLs, SML investors are often subordinated to priority construction financing, and a 'secured' investment does not mean that it is guaranteed (i.e. the value of the land against which the mortgage is registered may be inadequate to fully repay the prior-ranking mortgagees and the investors' SML). A copy of a consumer communication in respect of SMLs posted on FSCO's website are attached hereto as **Exhibit B**.

22. These concerns are among the reasons that led FSCO to investigate the BDMC SMLs, as described in greater detail below.

THE PARTIES

(a) *BDMC*

23. BDMC is an Ontario corporation with its head office located at 25 Brodie Drive, Suite #8, Richmond Hill, Ontario. It is wholly owned by Ildina Galati, who is also its sole director and officer. Up until December 2015, BDMC was known by the name Centro Mortgage Inc. ("Centro"). In or around January 2016, it changed its name to BDMC. A copy of BDMC's corporation profile report is attached hereto as **Exhibit C**.
24. Prior to February 1, 2018, BDMC held both a mortgage brokerage (licence #10102) and a mortgage administrator (licence #12304) licence under the MBLAA. Ms. Galati held a mortgage broker licence (licence #M08003912) under the MBLAA, and acted as the principal broker for BDMC.
25. Pursuant to an order issued by FSCO on February 1, 2018 (the "**BDMC Suspension and Penalty Order**"), BDMC's mortgage brokerage licence was revoked, on consent. Ms. Galati agreed to surrender her mortgage broker licence effective February 5th, 2018.
26. The circumstances in which the BDMC Suspension and Penalty Order was issued are described in greater detail below.
27. BDMC continues to hold its mortgage administrator licence. A copy of BDMC's licence status is attached hereto as **Exhibit D**.
28. In addition to Ms. Galati, the following Fortress executives and employees held mortgage broker and/or mortgage agent licences under the MBLAA, and were authorized to deal in mortgages on behalf of BDMC:

- (a) Vince Petrozza, Director, Vice-President and Secretary (licence #M08007162);
 - (b) Ben Myers, Senior Vice President - Marketing Research and Analytics (licence #M13001264);
 - (c) Mark Fogliato, Director, Acquisitions & Portfolio Management (licence #M14002065);
 - (d) Paul Demczak, Account Manager, Development Planning & Project Management (licence #M15002344); and
 - (e) Michelle Ross, Event Co-ordinator (licence #14002011).
29. Upon the issuance of the BDMC Suspension and Penalty Order, each of these individuals' licences were also suspended, with the exception that the licence held by Mr. Petrozza was revoked (as opposed to suspended) as described below. These licence suspensions were effected pursuant to section 17(3)(b) of the MBLAA which states that the licences of each broker and agent authorized to deal in mortgages on behalf of a brokerage are suspended upon the revocation, suspension or surrender of the sponsoring brokerage licence.
- (b) Fortress**
30. FRCI is a Federal corporation with its head office located at 25 Brodie Drive, Suite #1, Richmond Hill, Ontario. Its sole director and shareholder is Mr. Petrozza. A copy of FRCI's corporation profile report is attached hereto as **Exhibit E**.
31. FRDI is an Ontario corporation with its head office located at 25 Brodie Drive, Suite #1, Richmond Hill, Ontario. Its officers and directors are Mr. Petrozza and Jawad Rathore (together, the "**Fortress Principals**"). FRDI is owned by Mr. Petrozza, who holds a 20%

interest, and Mr. Rathore, who holds an 80% interest. FRDI's corporation profile report is attached hereto as **Exhibit F**.

32. Fortress and/or the Fortress Principals are involved in a substantial number of the real estate development projects which underlie the BDMC SMLs (the "**Fortress/BDMC Project(s)**"). In some cases, Fortress acts as the development consultant for the project. In other cases, the Fortress Principals, wholly or partially, own the special purpose corporation which acts as the developer for the project and is the borrower under the relevant BDMC SML (the "**Fortress Borrower(s)**"). In cases where Fortress acts solely as a development consultant, the borrowers under BDMC SMLs are not Fortress Borrowers.

(c) Relationship between BDMC, FRDI and the Fortress Borrowers

33. BDMC plays a number of functions in respect of BDMC SMLs. Up until the issuance of the BDMC Suspension and Penalty Order, BDMC was the exclusive brokerage on behalf of the Fortress Borrowers. 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/BDMC projects are administered by lawyers who operate under the MBLAA's exemption from licensing requirements applicable to lawyers.
34. In its capacity as mortgage administrator, BDMC holds title to the mortgages underlying the BDMC SMLs on behalf of the Investors. BDMC also acts in a fiduciary capacity to administer and enforce the BDMC SMLs, again on behalf of the Investors.
35. Prior to the issuance of the BDMC Suspension and Penalty Order, BDMC also performed or assisted in the performance of certain MBLAA-mandated tasks which would typically be performed by the brokerages who represent the lenders/investors in

an SML. In the case of the BDMC SMLs, one of three brokerages acted on behalf of Investors: FMP Mortgage Investments Inc. ("FMP"), FFM Capital Inc. ("FFM") or FDS Broker Services Inc. ("FDS" and, collectively with FMP and FFM, the "**Investor Brokerages**"). The functions that would typically have been performed by the Investor Brokerages, but which were in fact performed by BDMC, included, without limitation; conducting project due diligence reviews and drafting required written disclosures, including the statutorily mandated FSCO disclosure forms (Form 1 - Investor/Lender Disclosure Statement for Brokered Transactions ("**Form 1**") and Form 1.1 - Investor/Lender Disclosure Statement for Brokered Transactions: Addendum for Construction and Development Loans ("**Form 1.1**")).

36. BDMC also obtained valuations of the properties underlying the Fortress/BDMC Projects (the "**Development Property(ies)**") for the purposes of providing disclosure to the Investors concerning the value of the properties and the resulting loan to value ("**LTV**") ratios, including disclosures on the applicable Forms 1 and 1.1.

(d) The Investor Brokerages

37. The Investor Brokerages broker BDMC SMLs on behalf of the Investors. In this capacity, they market BDMC SMLs as investment opportunities to members of the public. The Investor Brokerages typically contact Investors through mortgage brokers or agents authorized to deal or trade in mortgages on behalf of the Investor Brokerages, and/or through unlicensed persons or entities operating under referral arrangements with an Investor Brokerage. These salespeople market and, ultimately, sell the SML investment(s) to the Investor. Under the MBLAA, Investor Brokerages have a statutory duty to ensure compliance with certain point of sale requirements, which are prescribed under O. Reg. 153/15, the *Mortgage Brokerages: Standards of Practice*.

38. Prior to early 2013, the functions currently performed by the Investor Brokerages were performed by BDMC. In early 2013, certain personnel formerly associated with BDMC created the Investor Brokerages at the direction of Ms. Galati, and transferred the relevant functions from BDMC to the Investor Brokerages. FSCO staff understand that, in so directing, Ms. Galati intended to provide some degree of separation as between the brokerage for the Fortress Borrower and the brokerage for the Investor. Most of the shareholders and principal brokers of the Investor Brokerages, as described in more detail below, formerly worked for BDMC. The specific details concerning the three Investor Brokerages are set out below.

(i) *FFM*

39. FFM is an Ontario corporation with its registered head office located at 81 Zenway Boulevard, Suite 4, Vaughan, Ontario. Its directors are Yvonne Ferguson, Krish Kochhar, and Tony Mazzoli. Mr. Mazzoli is a former employee of BDMC. Ms. Ferguson is its sole officer. Mr. Mazzoli and Mr. Kochhar are FFM's shareholders. A copy of FFM's corporation profile report is attached hereto as **Exhibit G**.

40. FFM holds a mortgage brokerage licence (licence #12391) under the MBLAA. Prior to the issuance of the Suspension and Penalty Orders (defined and described below), Rosalia Spadafora (licence #M8007218) was the principal broker of FFM. Ms. Spadafora's mortgage broker's licence was revoked on consent under the Suspension and Penalty Orders. The current principal broker of FFM is Yvonne Ferguson.

41. According to the 2016 Annual Information Return ("AIR") filed by FFM, FFM brokered 39 SMLs totaling \$33,212,701 during the one-year period covered by the AIR. A copy of the FFM AIR is attached hereto as **Exhibit H**.

(ii) FMP

42. FMP is an Ontario corporation with its registered head office located at 930 The East Mall, Toronto, Ontario. Its sole director is Tonino Amendola, and its officers were Mr. Amendola and David Hysen. Mr. Amendola is also FMP's sole shareholder. Both Mr. Amendola and Mr. Hysen are former employees of BDMC. A copy of FMP's corporation profile report is attached hereto as **Exhibit I**.
43. FMP holds a mortgage brokerage licence (licence #12373 under the MBLAA). Prior to the issuance of the Suspension and Penalty Orders, Michael Daramola (licence #M08003647) was the principal broker of FMP, and was formerly one of its officers. Mr. Daramola's mortgage broker's licence was revoked on consent under the Suspension and Penalty Orders. The current principal broker of FMP listed within FSCO's system is David Hysen. However, I have been informed by FAAN Mortgage that Mr. Hysen had resigned this position.
44. According to the 2016 AIR filed by FMP, FMP brokered 1097 SMLs totaling \$52,553,868 during the one year period covered by the AIR. A copy of the FMP AIR is attached hereto as **Exhibit J**.

(iii) FDS

45. FDS is an Ontario corporation with its registered head office located at 1604 Spring Road, Mississauga, Ontario. Its sole director, officer and shareholder is Zafar Khawaja, who is a former employee of BDMC. A copy of FDS' corporation profile report is attached hereto as **Exhibit K**.
46. FDS holds a mortgage brokerage licence under the MBLAA (licence #12367) under the MBLAA. Prior to the issuance of the Suspension and Penalty Orders, Glenn May-

Anderson (Licence #M08008875) was the principal broker of FDS, and was formerly one of its officers. The current principal broker of FDS is Zafar Khawaja.

47. According to the 2016 AIR filed by FDS, FDS brokered 1502 SMLs totaling \$67,509,565 during the one year period covered by the AIR. A copy of the FDS AIR is attached hereto as Exhibit L.

(e) *Trust Companies*

48. Many Investors deployed funds held in various types of registered savings vehicles under the *Income Tax Act* (the "ITA") to make investments in BDMC SMLs. In order to do so, a financial institution who is prepared to facilitate the SML transactions and enjoys the required status under the ITA must hold the registered account. Until August 2017, Olympia Trust Company ("Olympia"), a trust company based and licensed in the Province of Alberta (but not licensed in the Province of Ontario), handled the vast majority of BDMC SML transactions involving registered accounts. As of August 2017, Olympia announced that it would no longer accept new SML business from Ontario lenders. I am advised by FAAN Mortgage that, since that date, Computershare Trust Company of Canada ("Computershare") has facilitated the investments in BDMC SMLs by Investors who wish to invest funds held in registered accounts.

(f) *Canadian Development Capital & Mortgage Services Inc.*

49. CDCM is a Federal corporation with its registered head office located at 25 Brodie Drive, Suites #2 and #8, Richmond Hill, Ontario. Its sole director is Julie Galati, who is Ms. Galati's mother.

50. CDCM holds a mortgage brokerage licence (licence #12979) under the MBLAA. Julie Galati (licence #M08007025) is the principal broker of CDCM. A copy of Ms. Galati's licence status is attached hereto as **Exhibit M**.
51. Following the execution of the Settlement Agreement, CDCM has been brokering BDMC SMLs on behalf of the Fortress Borrowers and other borrowers. CDCM has assumed the role that was previously carried out by BDMC as borrower's broker, and many of BDMC's former employees are now employed by CDCM.

THE LOAN STRUCTURE

52. The BDMC SMLs are governed by a number of key agreements. Although specific terms vary from project to project, the loan structure described below is generally applicable to BDMC SMLs for all Fortress/BDMC Projects where BDMC has acted as a mortgage administrator.
- (a) ***Development Consultant Agreement***
53. A development consultant agreement ("DCA(s)") is entered into as between Fortress (identified as the "**Development Consultant**" in the DCA) and the relevant Fortress Borrower or other borrower. Each DCA references an SML which is referred to as the "loan" in the DCA. A copy of a sample DCA is attached hereto as **Exhibit N**.
54. A recital within the DCA indicates that Fortress "*arranged for the Loan*" and "*will be providing consulting services as contemplated in the Loan Agreement*". As a general matter, the terms of the DCA relate almost exclusively to Fortress's role in respect of the applicable BDMC SML. There are virtually no provisions which relate to real estate development consulting services apart from Fortress's involvement with the BDMC SMLs.

55. A number of the DCAs provided to FSCO staff all contain an acknowledgment by the relevant Fortress Borrower or other borrower which states that BDMC's "*supervisory and monitoring obligations*" are delegated to Fortress, and that the Fortress Borrower or other borrower acknowledges that "*it will be dealing with Fortress in all of these matters as agent*" for BDMC. The provision contemplates that Fortress will complete a "*review of the initial due diligence materials*" provided by the Fortress Borrower or other borrower and that other reports to be received by BDMC under the applicable Loan Agreement (defined below) will be delivered to Fortress. Similar provisions are found in some of the Loan Agreements.
56. The DCAs also provide that Fortress may arrange additional loan amounts to accommodate increased project size, cost overruns or excess equity requirements insisted on by the priority construction lender.
57. The DCAs provide that Fortress shall be entitled to 50% of the project profit, subject to potential deductions relating to interest paid under the BDMC SMLs and certain other upfront fees. Additionally, the profit share payment is reduced according to a prescribed formula in the event that the full amount of the BDMC SML is not advanced.
58. The development consulting fee (the "*DC Fee*") is defined in the DCAs as a lump sum amount which generally appears to be equal to approximately 35% of the principal amount of the BDMC SML. The DCA states that the DC Fee "*shall be paid in part to salespersons for commissions relating to raising investors funds, in part to Fortress (to cover, inter alia, all professional costs and fees to be paid by Fortress) and as well, to pay certain payments owing to investors herein.*" The DCAs contemplate that the applicable percentage (i.e. typically 35%) of each loan advance shall be deducted from

- the loan advance to pay the DC Fee, which "*shall be payable concurrently with each advance.*"
59. While the DCA is not entirely clear, FSCO staff understand that the DC Fee is used to fund the payment of fees and commissions to intermediaries involved in the BDMC SML transactions, including such amounts payable to the brokerages and individual agents, brokers and unlicensed persons involved in the sale and brokering of BDMC SMLs. The amount of the DC Fee paid to Fortress is the residue amount left over after these payments are made, but is not specifically defined in the DCA. Based on information provided to FSCO staff by Mr. Petrozza, the Fortress portion of the DC Fee typically amounts to 2% to 5% of total project costs. CDCM staff have communicated to FAAN Mortgage that the Fortress portion of the DC Fee may be as high as 12%.
60. The DCAs also provide for priority of payment assigned to certain obligations or parties, which are paid out of the revenues generated by the project. The priority schedule for the distribution of funds is referred to as the "**Waterfall**" in the DCA. Notably, it appears that the Waterfall provides that the repayment of the principal amount of the BDMC SML (less the amount of the DC Fee) ranks *pari passu* with the repayment of "cash equity advances" made by the Fortress Borrower or other borrower. Further, the repayment of the remaining amount of the BDMC SML principal attributable to the DC Fee purportedly ranks below the repayment of the equity advances made by the Fortress Borrower or other borrower.
61. The Investors are not parties to the DCAs, although the terms of the documents appear to affect the Investors' interests, including with respect to the priority of their claims to the proceeds from the Fortress/BDMC Projects under the Waterfall provisions, and the fact

that BDMC's supervisory and monitoring functions are delegated to Fortress. Despite this fact, a copy of the relevant DCA is not provided to the Investors.

62. The substance of the Waterfall provision of the DCA is generally disclosed to the Investors, but, in my experience, the Waterfall provision is drafted in a highly ambiguous manner, definitions of material defined terms used in the Waterfall are not provided to Investors and the text of the disclosure appears not to meet the clarity requirements set out in section 33 of Ontario Regulation 188/08 ("Reg. 188/08"). In my view, it is highly unlikely that Investors understand the legal effect of the Waterfall provision or its impact on their recoveries under an SML.

(b) Loan Agreement

63. BDMC (in certain cases under its former name, Centro) entered into a separate loan agreement with each relevant Fortress Borrower or other borrower (each, a "Loan Agreement"). The parties to each Loan Agreement are BDMC (or Centro),¹ in trust, as "Lender", and the applicable Fortress Borrower or other borrower, as "Borrower". Although the persons for whom BDMC is acting in trust are not specifically identified in the Loan Agreements, FSCO staff understand that this provision is intended to refer to the individual Investors under the BDMC SMLs. The Investors are not parties to the Loan Agreements, although a copy of the applicable Loan Agreement is typically included in the materials disclosed to the Investors. A copy of a sample Loan Agreement is attached hereto as Exhibit O.

64. The specific provisions of the Loan Agreements vary from project to project; however, the following provisions are generally included:

¹ In some cases BDMC took over the administration of the loans from another party, so BDMC is the

- (a) the term of the BDMC SML is at least two years;
- (b) the term may be extended at the relevant Fortress Borrower's or other borrower's option, for one year or more;
- (c) a force majeure provision that allows the Fortress Borrower or other borrower to extend the term of the loan for an additional two years following the occurrence of a broad range of events beyond the narrow "acts of God" which force majeure provisions usually cover, including, without limitation, delays in obtaining permits or in ability to obtain supplies or services;²
- (d) the principal, interest, and all other amounts owing under the Loan Agreement are required to be repaid at the end of the term, or on demand if there is an unremedied default (but subject to the Waterfall provision discussed above and the subordination provisions described below);
- (e) there is no requirement to make payments against the principal prior to the end of the term;
- (f) interest payments will be paid out of a reserve fund created by a holdback from the initial loan advance (if any), or will accrue but will not be repaid until the end of the term;
- (g) the loan is to be secured by a mortgage on the applicable Development Property (the "SML Charge"), which typically begins as a second-ranking or third-ranking mortgage registered behind charges in favour of other lenders and may be

lender pursuant to an assignment of the relevant loan documents. This distinction is not important for present purposes.

² In some cases the force majeure or adverse development condition is contained in the PSA (defined below).

further subordinated thereafter as a result of the postponement and subordination provisions described immediately below. Copies of an example of an SML Charge and parcel register for the applicable Development Property are attached hereto as Exhibit P;

- (h) BDMC is required to postpone and subordinate the SML Charge to "First-Ranking Construction Loan Security", as defined in the Loan Agreement. The definition of "First-Ranking Construction Loan Security" is broadly drafted to include security for any "construction loans", which term is frequently not defined or is defined using very broad language. In practice, BDMC regularly postponed and subordinated SML Charges in favour of loans advanced by non-financial institution lenders, to pay for, among other things, a wide variety of soft costs and fees that may not typically be included in the industry-standard definition of "construction financing";
- (i) BDMC is also required to postpone and subordinate the SML Charge to various "Bridge Lenders" and "Replacement Lenders" if BDMC is unable to raise sufficient funds from Investors to fully fund the loan;
- (j) BDMC is required to discharge the SML Charge where all or any part of the Development Property is being sold, including where there will not be sufficient funding to repay the SML in full; and
- (k) BDMC is required to discharge the SML Charge in respect of any part of the Development Property which is not material to the development and/or the market value of the Development Property, or which is required by any municipal or governmental authority, in each case without requirement for payment or prepayment of any part of the BDMC SML.

(c) Participation and Servicing Agreement

65. BDMC (in certain cases under its former name, Centro) entered into a participation and servicing agreement (each, a "PSA") with each Investor, pursuant to which the Investor agreed to participate in the applicable BDMC SML. Each PSA relates to a specific BDMC SML, in relation to a specific Fortress/BDMC Project, and sets out the terms and conditions under which BDMC will administer the applicable BDMC SML.
66. Although the specific provisions of each PSA vary, the following provisions are generally included:
- (a) BDMC is exclusively responsible for implementing, processing, administering and servicing the BDMC SML on behalf of the Investor and other participants, including obtaining and administering the security documents. BDMC is required to exercise these functions in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account;
 - (b) BDMC is required to consult with the Investor prior to agreeing to any renewal or any material amendment, modification or waiver (each, a "Change") of any of the terms of the Loan Agreement, the security documents (i.e. the SML Charge), or any agreement or document relating thereto. However, if BDMC requests the Investor's consent to any such action, the Investor shall be deemed to have consented to the proposed Change unless it responds to BDMC within ten business days of the mailing, delivery or emailing of BDMC's request for consent. Further, if BDMC receives the written consent or agreement to the proposed Change from Investors holding at least 50.1% of the amount of the applicable BDMC SML, the remaining Investors are deemed to consent to such Change.

The documents obtained during the course of FSCO's examination disclose cases where BDMC sent out requests for consent that did not give Investors an option to refuse to grant consent or any clear method to express such a refusal; and

- (c) Investors are prohibited from directly or indirectly contacting the relevant Fortress Borrower or other borrower, or any other person, with respect to the servicing of the BDMC SML or the enforcement of the SML Charge, without the consent of BDMC.

A copy of a sample PSA is attached hereto as **Exhibit Q**.

- 67. Taken together, and in light of BDMC's obligation under the Loan Agreement to postpone and subordinate the SML Charges to broadly-defined "construction loans" and other financing sources, the PSAs give BDMC very broad authority to effect changes to the BDMC SMLs and related SML Charges, that could have the effect of prejudicing the Investors' potential recovery under the BDMC SMLs.

(d) Confirmation of Lender's Interest

- 68. In addition to the PSA, each of the Investor, BDMC, and the relevant Fortress Borrower would execute a Confirmation of Lender's Interest (each, a "Confirmation"). Pursuant to the Confirmation, BDMC (in certain cases under its former name, Centro),

- (a) confirms that it is holding the Investor's interest in the BDMC SML, in trust;
- (b) covenants to provide the Investor with notice of any material default by the relevant Fortress Borrower or other borrower; and

- (c) agrees to enforce the BDMC SML *"as would a prudent lender, having regard to the quantum of the Loan and nature of the development against which the Loan security is registered"*.

69. In addition, the Investor covenants and agrees:

- (a) to postpone and subordinate its interest in the BDMC SML in favour of one or more construction loans in favour of arm's-length lenders, including bridge lenders and lenders under mezzanine financing, in an aggregate principal amount not to exceed a prescribed sum;
- (b) to postpone and subordinate its interest in the BDMC SML in favour of each financial and non-financial encumbrance which is reasonable for a development such as the relevant Fortress/BDMC Project, and which individually does not materially adversely affect the market value of the Development Property; and
- (c) to discharge its interest in the BDMC SML in respect of any part of the Development Property which is not material to the development and/or the market value of the Development Property, or which is required by any municipal or governmental authority, without requirement for payment or prepayment of any part of the BDMC SML.

A copy of a sample Confirmation is attached hereto as **Exhibit R**.

(e) Acknowledgement and Consent Agreement – Lender

70. As referenced above, in order for the Investor to invest in a BDMC SML using funds held in a registered account (including an RRSP, RESP, or TFSA account), the registered account has to be held at a financial institution which would administer the investment in

the BDMC SML. In cases where the registered account was held by Olympia (which was the case for almost all registered accounts prior to August 2017), Olympia required the Investor to execute an Acknowledgement and Consent Agreement – Lender (each, a “LAC”). Each of the Investor, BDMC (or its predecessor, Centro), Olympia, and Fortress, were parties to each LAC. A copy of a sample LAC is attached hereto as **Exhibit S**.

THE SETTLEMENT AGREEMENT AND MAA

71. In or around December 2015, FSCO began an investigation into Fortress, BDMC, and the Investor Brokerages, arising from, among other things, certain concerns it had identified regarding the administration of the BDMC SMLs.
72. On or about August 15, 2016, counsel to FRDI, on FRDI's behalf, retained FAAN Advisors Group Inc. (“**FAAN Advisors**”) to assist, among other things, with liaising with regulatory bodies, including FSCO. FAAN Advisors is an affiliate of FAAN Mortgage.
73. FSCO's investigation ultimately resulted in the Superintendent and BDMC entering into a the Settlement Agreement. A copy of the Settlement Agreement is attached hereto as **Confidential Exhibit A**.
74. In accordance with the Settlement Agreement, among other things:
 - (a) BDMC agreed to the revocation of its mortgage brokerage licence, while its mortgage administrator's licence was not revoked;
 - (b) BDMC agreed to pay administrative penalties in the amount of \$400,000;
 - (c) FSCO issued the BDMC Suspension and Penalty Order, which formalized the above licence revocation and penalty. In addition, it issued seven other orders,

on consent, also dated February 1, 2018 (collectively with the BDMC Suspension Order, the "**Suspension and Penalty Orders**"), as follows:

- (i) requiring each of FFM, FMP, and FDS to pay an administrative penalty in the amount of \$235,000 (i.e. totaling \$705,000); and
 - (ii) revoking the mortgage broker licences of Mr. Petrozza, Ms. Spadafora (i.e. the principal broker of FFM), Mr. Daramola (i.e. the principal broker of FMP), and Mr. May-Anderson (i.e. the principal broker of FDS). Copies of the Suspension and Penalty Orders are collectively attached hereto as **Exhibit T**;
- (d) BDMC agreed to execute the MAA appointing FAAN Mortgage, as an independent, arm's-length party, to manage and direct BDMC's Administration Business; and
 - (e) BDMC agreed that, upon the termination of the MAA for any reason other than the completion of the BDMC SMLs, it would consent to an order of this Court under section 37 of the MBLAA appointing a receiver, receiver and manager, trustee and/or liquidator of the property in the possession or under the control of BDMC, including the BDMC SMLs.
75. The Settlement Agreement expressly provides that its terms and any related documents, information or records are to remain confidential and subject to settlement privilege, except in certain limited circumstances.
76. On or about February 7, 2018, BDMC and FAAN Mortgage executed the MAA. A copy of the MAA is attached hereto as **Confidential Exhibit B**.

77. On the same day, the engagement of FAAN Advisors was terminated. A copy of the termination agreement is attached hereto as **Confidential Exhibit C**.
78. As a result of having entered into the Settlement Agreement, BDMC is no longer permitted to operate as a mortgage brokerage. Since the date of the Settlement Agreement, FSCO staff has been advised that CDCM has been brokering BDMC SMLs on behalf of the Fortress Borrowers and other borrowers, having assumed the role that was previously carried out by BDMC as borrower's brokerage. Many former BDMC staff are now employed by CDCM.

FAAN MORTGAGE'S EXPERIENCE UNDER THE MAA

79. Following the execution of the MAA, and in accordance with its terms, FAAN Mortgage began providing the services that comprise BDMC's Administration Business.
80. I am advised by FAAN Mortgage that it spent the initial weeks following its engagement attending to urgent matters in an effort to normalize BDMC's business and administration operations, including addressing enforcement actions by senior lenders on Fortress/BDMC Projects and responding to a great deal of pent-up Investor frustration concerning the status of their loans and progress of the various Fortress/BDMC Projects.
81. FAAN Mortgage began administering approximately 66 BDMC SMLs, in relation to approximately 45 Fortress/BDMC Projects. Attached hereto as **Exhibit U** is a table identifying the BDMC SMLs and briefly describing the outstanding enforcement actions that have been taken to date in respect of the related Fortress/BDMC Projects by other parties.

82. Since its appointment, I am advised by FAAN Mortgage that it has received hundreds of calls and emails from concerned Investors who require clarification and/or information concerning the BDMC SMLs in which they are invested, and the underlying Fortress/BDMC Projects. FAAN Mortgage has been communicating regularly with Investors to, among other things, provide updates on Fortress/BDMC Projects (to the extent that information is made available to FAAN Mortgage by CDCM on behalf of the Fortress Borrowers, or other borrowers) and respond to questions generally regarding their investments. FAAN Mortgage also established a website (www.faanmortgageadmin.com), an information email address (info@faanmortgageadmin.com) and a toll free number to communicate with Investors. A copy of the letter provided by FAAN Mortgage as Manager of BDMC advising Investors of its role and contact information is attached hereto as **Exhibit V**.
83. Regrettably, the MAA has proven to be unworkable. BDMC did not retain a full complement of staff, contrary to the provisions of the MAA. Many key staff members moved to CDCM, where they were not under the supervision of FAAN Mortgage. One critical staff member has not been paid.
84. FAAN Mortgage has not been granted full and unfettered access to BDMC's documents, servers or records. I am advised by FAAN Mortgage that requests for documents and information must go through CDCM and Mr. Petrozza, where they have often been met with resistance and demands for explanations to justify the information requests. FAAN Mortgage has been required to explain that it needs to review the documents to form an independent view of whether certain documents should be executed or other steps taken (including, without limitation, providing notices to Investors) so that FAAN Mortgage can perform its duties to the Investors and comply with the Standards.

85. CDCM has also attempted to influence FAAN Mortgage's communications with Investors. CDCM controls the servers and software that are used to send Investor communications, and maintains a record of all BDMC Investors and their contact information. On more than one occasion, Investor notices have been delayed while CDCM attempts to negotiate the content of the notice with FAAN Mortgage.
86. In addition, I am advised by FAAN Mortgage that on or about March 21, 2018, CDCM or its representatives deprived FAAN Mortgage of access to Investor information maintained by CDCM. I am advised by FAAN Mortgage that CDCM took this action as a result of FAAN Mortgage, in accordance with its duties under the MAA, having advised Olympia that Olympia should only be taking direction from a FAAN Mortgage representative in respect of BDMC's affairs.
87. On or about March 26, 2018, CDCM sent communications directly to Investors to seek their consent to certain matters related to a Fortress/BDMC Project, effectively assuming BDMC's Administration Business and usurping FAAN Mortgage's role. FAAN Mortgage had expressly advised CDCM not to send any such communications, but was ignored. CDCM subsequently retracted the communication at FAAN Mortgage's request. A copy of the notice sent by CDCM is attached as Exhibit W.
88. I am further advised by FAAN Mortgage that CDCM and FRDI staff have instructed FAAN Mortgage on certain occasions that neither FAAN Mortgage nor its counsel should contact borrowers or lenders directly (unless expressly authorized to do so), because any such action could have a detrimental impact on the negotiations with such parties or that certain information is confidential and should not be disclosed. FAAN Mortgage has been advised that such unauthorized contact might be grounds for litigation being commenced against FAAN Mortgage by a third party.

89. Notwithstanding the lack of information or ability to consult with key stakeholders, I am advised by FAAN Mortgage that it has been under significant and, in some cases, inappropriate, pressure from parties involved in the various Fortress/BDMC Projects, including, among others, co-developers and senior lenders, to sign various documents in order to facilitate refinancings, sales and other matters. FAAN Mortgage is provided with a very short period to review such documents. FAAN Mortgage frequently faces complaints regarding the length of time it takes FAAN Mortgage to execute documents, including in circumstances where FAAN Mortgage's requests for further information have been delayed and/or FAAN Mortgage has advised that it wishes to consult with its legal counsel and that legal counsel needs time to review documents.
90. I am advised by FAAN Mortgage that it has been working to complete its due diligence as fast as possible and to respond to the various requests made on it in accordance with its duties under the MAA and the Standards, but the events of April 13, 2018, described below, have caused FAAN Mortgage to have heightened concern regarding BDMC's business, particularly given FAAN Mortgage's difficulties in getting information to date in a timely manner.

RCMP EXECUTION OF SEARCH WARRANTS ON APRIL 13, 2018

91. On April 13, 2018, at approximately 9:30 a.m., several RCMP officers arrived at BDMC's premises. The officers presented Lana Bezner, an employee of FAAN Mortgage who was on site to manage BDMC's Administration Business, with a copy of a search warrant dated April 10, 2018, permitting officers to search and retrieve documents from the BDMC premises (the "**Search Warrant**"). A copy of the Search Warrant is attached hereto as **Confidential Exhibit D**.

92. Media reports indicated that the RCMP executed five other search warrants at five other locations also on April 13, 2018.
93. In light of the Search Warrant, FAAN Mortgage has been placed in an extremely difficult position. I am advised by FAAN Mortgage that it is receiving large volumes of inquiries from Investors, who are concerned that their investments are at risk. Further, FAAN Mortgage is continuously receiving requests, in some cases accompanied by threats of litigation, to execute documents to postpone the SML Charges to mortgages to be granted to other lenders and to take other substantive steps to continue to operate BDMC's Administration Business. However, FAAN Mortgage continues to be operating without access to sufficient data and with limited opportunities to speak to relevant stakeholders, which delays FAAN Mortgage's ability to complete proper diligence to satisfy itself that it is appropriate to accede to any given request.
94. Accordingly, FAAN Mortgage is of the view that it cannot take any steps to continue to operate BDMC's Administration Business without the supervision, direction and protection of this Court.

EVENTS OF DEFAULT UNDER MAA

95. BDMC failed to adhere to a number of its obligations under the MAA. Among other things, BDMC has failed to meet its funding requirements. Funding of FAAN Mortgage is an important component of the MAA for FSCO. As such, the MAA included an obligation on BDMC to fund and maintain a reserve fund to pay FAAN Mortgage's costs for a period of time. FRDI and certain of its affiliates (collectively the "Contributing Entities") provided a guarantee and indemnity to FAAN Mortgage in respect of BDMC's funding obligations under the MAA.

96. As a result of BDMC's failure to comply with the MAA, FAAN Mortgage has issued default and other notices to BDMC, which are set out below.
97. On March 28, 2018, FAAN Mortgage issued to BDMC a notice of default in respect of CDCM's communications with Investors described above (the "**March 28 Notice of Default**"). Also as described above, CDCM subsequently advised Investors that it was withdrawing the notice. A copy of the March 28 Notice of Default is attached hereto as **Exhibit X**.
98. On April 3, 2018, FAAN Mortgage issued to a notice of default (the "**April 3 Notice of Default**") in respect of BDMC's failure to make required payments to the reserve fund (as established under the MAA), and to pay FAAN Mortgage's invoices when due, constituting BDMC Events of Default pursuant to sections 8.3(a)(iv) and (ii) of the MAA. A copy of the April 3 Notice of Default is attached hereto as **Exhibit Y**.
99. On April 3, 2018, FAAN Mortgage issued a demand to pay to FRDI and the Contributing Entities. A copy of the demand is attached hereto as **Exhibit Z**.
100. In addition, on April 3, 2018, FAAN Mortgage issued to BDMC a "Notice of Withdrawal from Reserve Fund" in accordance with section 9.3(d) of the MAA (the "**Notice of Withdrawal**"), a copy of which is attached hereto as **Exhibit AA**. As set out in the Notice of Withdrawal, FAAN Mortgage advised BDMC that the reserve fund established pursuant to section 9.3 of the MAA (the "**Reserve Fund**") had reached a balance of \$0, and required BDMC to deposit \$100,000 into the Reserve Fund immediately. FAAN Mortgage further advised that if an additional \$100,000 was not deposited within five days of the date of the Notice of Withdrawal (i.e. by April 8, 2018), this would constitute a further BDMC Event of Default under section 8.3(a)(iii) of the MAA.

101. BDMC did not cure the defaults identified in the April 3 Default Notice within the prescribed five day period following delivery of the notices, as required pursuant to section 8.3(b) of the MAA, and failed to deposit the \$100,000 into the Reserve Fund as required.
102. On April 19, 2018, FAAN Mortgage issued to BDMC an additional notice of default and termination (the "April 19 Notice of Default") advising of the following defaults:
 - (a) BDMC has not cured the BDMC Events of Default specified in the April 3 Notice of Default in respect of FAAN Mortgage's outstanding invoices and reimbursable expenses;
 - (b) Several additional BDMC Events of Default have occurred since April 3, 2018, including:
 - (i) BDMC is in default of its obligations to fund the reserve fund to a minimum of \$300,000 by April 15, 2018, as required by section 9.3(b) of the MAA;
 - (ii) BDMC is in default of its obligations to pay into the reserve fund a minimum of \$100,000 to replenish the Reserve Fund Balance to \$100,000 within five days of the Notice of Withdrawal from Reserve Fund dated April 3, 2018, as required by section 9.3(d) of the MAA;
 - (iii) BDMC is insolvent;
 - (iv) FRDI and the Contributing Entities have failed to make the payments required under such agreement, including the payments demanded on April 3, 2018; and

- (v) FAAN Mortgage has reason to believe that additional BDMC Events of Default have occurred or will occur in the near term and has lost all confidence in BDMC's ability to comply with the MAA.

103. The April 19 Termination Notice provides that the MAA will be terminated pursuant to section 8.3(b) of the MAA effective as of the date an order is issued appointing a trustee over BDMC pursuant to section 37 of the MBLAA and that FAAN Mortgage reserved all of its rights under the MAA and other related agreements, including the right to terminate the MAA immediately should FAAN Mortgage determine, in its sole discretion, that circumstances so warrant.

A copy of the April 19 Termination Notice is attached hereto as **Exhibit BB**.

104. As set out above, BDMC has already consented to the appointment of a trustee upon the termination of the MAA, and the existing defaults in the MAA entitle FAAN Mortgage to terminate the MAA, which it gave notice of on April 19, 2018, effective on the issuance of an order of this court under section 37 of the MBLAA. The events of April 13, 2018, together with the pressure being applied to FAAN Mortgage by various parties, heighten the need to obtain the relief requested in this application.

THE TRUSTEE MUST BE APPOINTED URGENTLY

105. FAAN Mortgage has advised that it has lost all confidence in BDMC's ability to comply with the MAA, is not willing to continue its mandate under the MAA in the circumstances and requires the protection and direction of a court order if it is to continue to manage BDMC's Administration Business.
106. If FAAN Mortgage terminates the MAA and the order sought herein is not granted, there will be no independent third party to perform mortgage administration functions and

protect the Investors' interests. This situation is untenable and puts the 11,000 individual Investors and their investments at risk. As such, it is critical that an order appointing a trustee pursuant to section 37 of the MBLAA be granted forthwith.

107. FAAN Mortgage's involvement with the Investors, BDMC and BDMC's Administration Business and its intimate knowledge of the business structure makes FAAN Mortgage uniquely positioned to fulfill a mandate to protect the interests of the Investors. Further, a court order can alleviate a number of the issues that FAAN Mortgage has encountered in attempting to fulfill its mandate.

108. In light of the concerns identified herein with regard to:

- (a) the provisions of the agreements that underpin the structure of the BDMC SMLs, which grant broad powers to BDMC and/or Fortress, to the potential prejudice of the Investors;
- (b) the need to continue to operate BDMC's Administration Business, in light of the current status of the various Fortress/BDMC Projects; and
- (c) the existence of the RCMP investigation,

FSCO is of the view that the immediate appointment of the trustee is necessary to adequately protect the Investors' interests, and that such an appointment is therefore in the public interest.

109. As more fully described below, the order sought will give FAAN Mortgage the required protection and better equip FAAN Mortgage to attempt to stabilize BDMC's Administration Business, including by facilitating unfettered access to servers, documents, and electronic data systems as well as providing a clear mandate and path

for FAAN Mortgage to engage with relevant borrower and lender stakeholders without interference, in each case as initially contemplated under the MAA.

THE ORDER SOUGHT

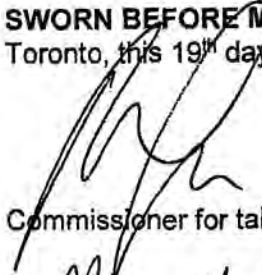
110. The proposed form of Order (the "**Proposed Order**") is based on the model receivership order used in this Court, with certain modifications to reflect the particular circumstances of the proposed appointment.
111. The Proposed Order will allow FAAN Mortgage, in its capacity as trustee of BDMC (in such capacity, the "**Trustee**") to receive, preserve, protect and maintain control of all of BDMC's property, including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to Investors, brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust, including the SML Charges (collectively, the "**Property**"), and to administer the BDMC SMLs on behalf of Investors. In this regard, the Proposal Trustee will be empowered to execute documents in place of BDMC, including documents in connection with registrations in the applicable land registry office.
112. The Proposed Order will allow the Trustee to sell the Property and to restructure the Property, with Court approval. This will permit the Trustee to deal with the Property in a manner that it believes is in the best interests of the Investors, subject to the protections inherent in requiring Court approval of such steps.
113. The Proposed Order will ensure that all of the registered funds that were raised from Investors and are being administered by Olympia or Computershare, will be protected.

114. The Proposed Order includes a stay of proceedings, as is commonly found in insolvency proceedings, which will have the effect of ensuring that all creditors are treated equally, without affording any undue advantage to any party.
115. The Proposed Order will ensure the continuation of services by requiring all persons who supply goods and/or services to BDMC to continue to do so in accordance with normal payment practices.
116. Perhaps most crucially in the circumstances, the Proposed Order will empower the Trustee to gain unfettered access to BDMC's information, documents, and electronic data systems, and to deal directly with the various parties involved, including the Fortress Borrowers and other borrowers under the BDMC SMLs, and the Investors. Currently, as set out above, CDMC, Fortress, and/or the Fortress Principals have at times interfered with FAAN Mortgage's efforts to access this information and communicate with these parties, to the detriment of FAAN Mortgage's ability to manage and direct BDMC's Administration Business.

CONCLUSION

117. Based on the foregoing, FSCO staff are of the opinion that FAAN Mortgage should be appointed as Trustee.
118. I make this affidavit in support of the Superintendent's application pursuant to section 37 of the MBLAA and section 101 of the *Courts of Justice Act* for an order appointing FAAN Mortgage as trustee over the property, assets and undertakings of BDMC, and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, this 19th day of April, 2018.



Commissioner for taking affidavits

Miranda Spence

)
)
)
)
)
)
)
)



BRENDAN FORBES

Tab A

Attached is Exhibit "B"
Referred to in the
Affidavit of Nadiatou Fagbemi
Sworn Before Me
this 30th Day of September, 2019

A handwritten signature in blue ink, appearing to read "T. J. Harris", is written over a horizontal line.

Commissioner for Taking Affidavits, etc.

Date: Nov. 23, 2018

To: *FSCO – Financial Services Commission of Ontario
Attn: Licensing & Market Conduct Division

RECEIVED
NOV 28 2018
LICENSING & MARKET CONDUCT
DIVISION

[Redacted]

Re: Complaint regarding Collier Centre Project, 55 Mulcaster St & 90 Collier St, Barrie, Ontario.
Fortress Real Developments, 25 Brodie Dr, Richmond Hill, ON L4B 3K7 & Affiliated Companies

Dear Sir or Madam,

We're sending this Complaint regarding the bad reputations of Collier Centre in Barrie, Ontario. Regarding our documents between us (Syndicated Mortgage Lender) and the Borrowers, we want to prove that Fortress Real Developments and affiliated companies did not sign back on several agreements and documents prepared by them and in their favors after receiving and cashed our certified cheque in the amount of \$50,000.

Please see copies of agreements and documents & copy of the TD certified cheque.

We believe that, according to the Law, if an Agreement without a sign back acceptance and both parties didn't receive full signed copies, that document became NULL and VOID. After several meetings with Fortress officers and letters sending to them, they did not respond to our request and there was no refund of our money. Is it a Scam and a Fraud? PLEASE HELP US!

As you knew that this project was directed by Fortress Real Developments and their affiliated companies such as Derek Sorrenti, Mady Collier Centre, David Mady Investments, Mady Holdings Inc. and many other Mortgages Companies. They made a trap to catch a lot of inexperienced and old investors like us (over 300). They want to collect as much as money they could. Then they pocketed for themselves large sums. They didn't want to take responsibilities to pay back monies. They created excuses in order to delay and default of payments. They used the investors' money to pay interest for the first 2 years then they stopped since Jan. 2015. Despite that they went ahead with their plans.

Would you please look at the above matter and have an action to protect and help our case. They were misleading us and the public with 8% interest, safe and secured investments, they didn't keep their promises. They misused the term "Mortgage" and "Syndicated Mortgage". At that time in 2012, we didn't know anything about the high risk of Syndicated Mortgage.

In waiting for your actions, we're hoping to get back our principal amount (\$ 50,000) only with your help and your interventions.

Thank you in advance and God Bless You.

Sincerely yours,

[Redacted signature and name]

LETTER OF AUTHORIZATION

Date: Nov. 24, 2018

To: FSCO, Licensing and Market Conduct Division

RE: Authorization to [REDACTED]
[REDACTED]

I hereby authorize your Department to contact my Daughter and my Husband when needed and they can act on my behalf regarding the Complaint about Fortress Collier Centre Project in Barrie Ontario.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: May-31-17 1:43 PM
To: [REDACTED]
Subject: FW: Scan from a Xerox WorkCentre
Attachments: DOC.PDF

Good afternoon [REDACTED]

What I have done with the attached is to just scan first page of each of the various sets of documents in the package. I have numbered them and, based on what you would like to see more of, I could scan the remaining pages. What I have not touched is the approx. 40 page description of the property itself.

Re it being a syndicated mortgage, this is confirmed on pages 1 and 3.

Re Fortress, they appear at page 7. There is reference to a Darius Juknevičius of FMP on page 2, but I don't know if FMP has any relationship with Fortress.

Unfortunately page 2 is the only page of that "set" of documents.

It may be worth mentioning that Lorraine was persuaded to invest in this project by her friend Bert Hiebert. His e-mail address is [REDACTED]. He may be able to fill in the information gaps that I don't have.

If you do decide to contact him you may not find him overly cooperative as I have been putting pressure on him to reimburse [REDACTED] funds he either borrowed or persuaded her to invest in risky ventures.

I hope this helps.

Regards
[REDACTED]

11



400 - 3800 Steeles Avenue West
Vaughan, ON L4L 4G9
Tel 905-264-6414
Fax 905-264-6413
Web www.sorrentilaw.com

DIRECTION RE: ELECTRONIC FUNDS TRANSFER / DIRECT DEPOSIT

TO: SORRENTI LAW PROFESSIONAL CORPORATION, MORTGAGE ADMINISTRATOR
AND TO: DEREK SORRENTI, BARRISTER AND SOLICITOR, IN TRUST
RE: ELECTRONIC FUNDS TRANSFER AUTHORIZATION - SYNDICATE MORTGAGE
 INVESTMENT - "FORTRESS - _____ PROJECT"

The undersigned syndicate mortgage participant hereby:

- 1) authorizes and directs the mortgage administrator named above to deposit any and all interest payments and/or principal repayments due and payable pursuant to the above-captioned syndicate mortgage investment by direct deposit and/or electronic funds transfer;
- 2) confirms that the account information to which the mortgage administrator is authorized to deposit any such payments is: (Please print LEGIBLY)

Name(s) of Account Holder(s) _____

Name of Financial Institution: _____

Transit Number: _____

Account Number: _____

- 3) confirms that the address and contact information to which the mortgage administrator is authorized to send correspondence is: (Please print LEGIBLY)

Street Address

Apt/Suite #

City

Province

Postal Code

Telephone

Investor email Address

(2)



Date: Nov-03-2014

To: [REDACTED]

Project: Masonry

Investment Type & Amount: Non Registered, \$100,000.00

[REDACTED]

Attached is your documentation set that is to be signed for The Masonry Project that you are considering for investment.

After reviewing the documents and before signing please contact your licensed mortgage agent Darlus Juknevičius at FMP Mortgage Investment Inc. license # M12001266, by phone at 416-726-7430

Ensure to have this package ready for your visit with the Notary.

The pages requiring signature in your package have been highlighted by a tab.

- Investor/Lender Disclosure Statement for brokered transactions **(THIS MUST BE SIGNED AND DATED 2 DAYS BEFORE THE REST OF THE DOCUMENTATION)**
- Statutory Declaration – will be completed with the Notary
- Investment Authority – Form 9D – Certificate of Independent Legal Advice
- Confirmation of Lenders Interest
- Loan Agreement
- Lender Acknowledgement & Consent
- Participation & Servicing Agreement
- Licensed Agent/Broker Memo
- Client Suitability Form
- Direct Deposit Forms (not required for registered investments)
- Authorization (not required for non-registered investments)
- Mortgage investment direction and indemnity agreement (not required for non-registered investments)
- Solicitors certificate of disclosure and undertaking regarding arms-length mortgages (not required for non-registered investments)

3

LETTER OF AUTHORIZATION

To: Sorrenti Law Professional Corporation
 310 – 3300 Highway #7
 Vaughan, Ontario
 L4K 4M3
 Attention: Syndicate Mortgage Administration Department
 Phone: (905) 264 – 6414
 Fax: (905) 264 – 6413
mortgageadmin@sorrentilaw.com

By completing this form and executing below, I acknowledge and agree that I am authorizing another individual to obtain personal and financial information about me which information is currently held by Sorrenti Law Professional Corporation ("SLPC"). This Letter of Authorization shall apply to all syndicate mortgage investment(s) which SLPC may administer on my behalf.

I hereby authorize SLPC to provide the following individual(s) or corporation(s) all requested personal and financial information relating to my syndicate mortgage investment(s) administered by SLPC, and I further authorize SLPC to grant the following individual(s) or corporation(s) access to view my investment(s) via the mortgage administration website maintained by SLPC:

 (Name of Individual(s) or Corporation(s))

I acknowledge and agree that this Letter of Authorization will continue to be valid and in full force and effect until I provide written instructions to SLPC to terminate or otherwise modify this Letter of Authorization

 Date

 Investor Name

 Investor Address

 Investor Signature

*****The information collected on this form will be used by Sorrenti Law Professional Corporation to process your request to authorize a third party to be authorized to obtain personal and financial information about you which is currently held by SLPC. All personal information collected by SLPC may otherwise be subject to Solicitor-Client privilege. By executing this document you are hereby agreeing to a limited waiver of said Solicitor-Client privilege for the purposes described above.**

TERMINATION OF EXISTING LETTER OF AUTHORIZATION

I hereby terminate the Letter of Authorization previously provided to SLPC which gave the following individual(s) or corporation(s) the ability to obtain personal or financial information about me from SLPC or to have access to view my investments via the mortgage administration website maintained by SLPC:

 (Name of Individual(s) or Corporation(s))

 Date

 Investor Name

 Investor Address

 Investor Signature

④

Investment Authority – Form 9D

To: **Sorrenti Law Professional Corporation**
 3300 Highway #7 Suite #310
 Vaughan, Ontario, L4K 4M3
 Attention: **Derek Sorrenti, Barrister & Solicitor**
 (905) 264-6414
 derek.sorrenti@sorrentilaw.com

I, [REDACTED], hereby instruct you to act on my behalf, on my mortgage investment of \$100,000.00, the details, conditions and disclosures of which are set below.

Details about the investment:

1. Name and Address of the Borrower: **ADI Developments (masonry) Inc.**
 4411 Millcroft Park Drive
 Burlington, Ontario

2. Municipal Address and Legal Description of the real property (ies)
 101 Masonry Court, Burlington, Ontario
 PT LT 6, CON 1 PTS 1 & 6 ON
 20R17228; BURLINGTON. T/W 472251
 & 851086. S/T 771631. T/W EASMENT
 OVER PT LOT 4 ON 20R17228 AS IN
 HR570883. PIN 07114-0192 (LT)

3. Type of property: **Residential Townhome Construction**

4. Principal amount of mortgage/charge: **\$6,450,000.00** – (increasing to a Maximum of **\$30,000,000.00**), see paragraph 20.

5. Amount of loan to be advanced: **\$100,000.00.**

6. Rank of mortgage or charge: **A Second ranking Charge/Mortgage (The ranking of the mortgage can change at any time over the duration of the term) – subject to paragraph 21, see below.**

7. Encumbrances: **First ranking Charge/Mortgage will be registered in priority of this mortgage investment, see below.**

Balance 1st mortgage \$10,125,000.00 to the first mortgagee.

Please refer to paragraph 21, below for details on future postponements to construction financing and development agreements.

8. My investment of **\$100,000.00** represents **1.55%** of the total loan to the borrower.

5

U

Certificate of Independent Legal Advice

TO: Centro Mortgage Inc. (Centro)
AND TO: _____ (Administrator on Project)

On the date below stated, I was consulted by _____ (the Lender) in his/her presence alone as to the effect of him/her executing the Investment Authority- Form 9D with respect to the following project:

- Borrower/Developer Name: _____ (Project)
- Project Address: _____

I explained to him/her the nature of the document described above and confirmed his/her understanding of material terms stated in the document. I also advised him/her of certain risks involved in his/her investment by way of the syndicated mortgage product (Fortress Real Capital) as presented by Centro.

He/she has informed that he/she understands the nature and effect of executing the document and that in executing the document he/she is acting freely and voluntarily and not under any undue influence.

I have given this advice to _____ (the Lender) as his/her solicitor and in his/her interest only and without regard to or consideration for the interest of any other parties. I am not acting on behalf of the Borrower, Centro or any other persons in connection with this matter. I have confirmed that the person whose signature is witnessed below and to whom I provided independent legal advice is the same person referred to in this Certificate as having received advice.

DATED at _____ this ____ day of _____, 2013.

Lawyer Signature

CONFIRMATION

I, the undersigned, hereby acknowledge that all of the statements made in this certificate are true and that _____ (Lawyers Name) in advising me herein, was consulted by me as my personal solicitor and in my interest only.

DATED at _____, this ____ day of _____, 2013.

Witness

Client Signature

Client Name

6



Financial Services
Commission
of Ontario
5160 Yonge Street,
Box 85
Toronto ON M2N 6L9

Licensing and
Market Conduct
Division

Investor/Lender Disclosure Statement For Brokered Transactions

Mortgage Brokerages, Lenders and Administrators Act

Transaction N° 11367

Important – New Disclosure Duties Effective January 1, 2009

In addition to providing the information in this form, effective January 1, 2009, mortgage brokerages and administrators are also required to provide a lender or investor with additional information in connection with this transaction.

A brokerage must:

1. Advise you if the brokerage cannot verify the identity of another party to the transaction.
2. Disclose whether the brokerage is acting for the lender, the borrower, or both the borrower and lender.
3. Disclose to a lender the brokerage's relationship with each borrower, and disclose to an investor the brokerage's relationship with each party to the transaction.
4. Disclose whether the brokerage is receiving a fee or remuneration for referring you to a person or entity, and disclose the relationship with that person or entity.
5. Disclose material risks about the transaction that you should consider.
6. Disclose actual or potential conflicts of interest that may arise from this transaction.

An Administrator must:

1. Disclose the relationship, if any, between the administrator and each borrower.
2. Disclose whether the administrator may receive, or may pay, any fees or other remuneration in connection with the administration of the mortgage, the basis for calculating them and the payor's identity.
3. Disclose whether it is receiving a fee or other remuneration for referring you to a person or entity, and disclose the administrator's relationship with that person or entity.
4. Disclose actual or potential conflicts of interest that may arise from the transaction.

You must receive these disclosures in writing and acknowledge receipt of them. You should keep a copy for your records.

Important: This form is required by law and will provide the prospective investor/ lender with important information.

This information must be disclosed at least two business days before you commit to lend/invest, i.e. two business days before the earliest of the following events: when the brokerage receives or enters an agreement to receive money from you; when you enter into a mortgage agreement or an agreement to trade in a mortgage; when money is advanced to the borrower; and the trade completion date.



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ACKNOWLEDGEMENT AND CONSENT AGREEMENT -
LENDER
Registered Plans & TFSA Division

This Agreement made and effective as of the 02 day of June, 2014.

BETWEEN:

FORTRESS REAL DEVELOPMENTS INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called "Fortress")

-AND-

CENTRO MORTGAGE INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called the "Broker")

-AND-

SORRENTI LAW PROFESSIONAL CORPORATION, a corporation incorporated under the laws of the Province of Ontario, (hereinafter called the "Administrator")

-AND-

OLYMPIA TRUST COMPANY, a corporation incorporated under the laws of the Province of Alberta (hereinafter called "Olympia")

-AND-

The undersigned individual Lender that has advanced funds to the Borrower and has agreed to be a party hereto (hereinafter called the "Lender")

WHEREAS ADI DEVELOPMENTS [MASONRY] INC. (the "Borrower") is borrowing up to \$30,000,000.00 from the undersigned Lender pursuant to certain loan agreements (collectively referred to herein as the "Loan Agreements");

AND WHEREAS the loan from the Lender to the Borrower ranks *pari passu* with other borrowings by the Borrower pursuant to similar Loan Agreements with other individual lenders (collectively referred to herein with the Lender as the "Junior Secured Lenders") and such loans are collectively secured by a mortgage (the "Mortgage") on the Borrower's lands described as PIN G7114-0192 LT as amended or substituted from time to time (the "Lands");

AND WHEREAS the Lender and the Junior Secured Lenders have agreed to postpone their loans to one or more construction loans obtained by the Borrower up to \$175,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$30,000,000.00 if required (the "First Priority Construction Loans"), whereby the collective indebtedness of the Junior Secured Lenders would rank junior to the First Priority Construction Loans;

AND WHEREAS the Lender is lending the Borrower funds from his or her registered savings plan accounts ("RRSP Account") and is holding the Mortgage granted by the Borrower in such account as security for payment;

AND WHEREAS the RRSP Account is administered by Olympia pursuant to a trust account agreement with the Lenders;

AND WHEREAS the RRSP Account is subject to the requirements of the *Income Tax Act* (Canada) and the regulations thereunder;

AND WHEREAS the Lender is a client of Fortress and/or the Broker and has been introduced to the Borrower by either Fortress or the Broker;

2200, 125 - 9 Avenue SE, Calgary, AB T2G 0P6
Mailing Address: PO Box 2581, STN Central, Calgary, AB T2P 1C8
Phone 403.770.0001 Toll Free 1.877.565.0001

⑧

MEMORANDUM OF UNDERSTANDING

TO: Referral Agent/Licensed Mortgage Agent or Broker/Centro Mortgage Inc.

RE: Referral of a syndicate mortgage product.

FROM: [REDACTED] (the "Lender")

DATED: November 3, 2014

This memorandum is to acknowledge and confirm that:

- 1) Fortress Real Capital products are syndicated mortgages evidenced by charges on real property;
- 2) These mortgages are offered by persons or companies that are either licensed under the Ontario Mortgage Brokerages, Lenders and Administrators Act, 2006 (the "MBLAA"), in respect of real property located in Ontario, or licensed or registered under comparable legislation in other Canadian provinces or territories, in respect of real property located in any of those provinces or territories;
- 3) Fortress Real Capital is a product and NOT a mortgage brokerage;
- 4) Purchases can be initiated by a referral through an eligible party, but the actual transaction is handled, sold, and closed by a registered/licensed mortgage professional;
- 5) Each transaction will specifically note and name the mortgage agent and mortgage brokerage handling the transaction as well as their FSCO license number;
- 6) A person or entity that makes a simple referral is exempt from the requirement to be licensed as a mortgage brokerage, broker or agent;
- 7) A referral is a simple referral when only basic information about the potential borrower and lender is provided;
- 8) the person making a simple referral may provide the prospective borrower with only the basic information about the prospective lender, broker or agent, the name, address, telephone number, fax number, e-mail address or website address

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robapp\2731788.4

PARTICIPATION AND SERVICING AGREEMENT

THIS AGREEMENT made as of the 2nd day of June, 2014

BETWEEN:

[Redacted]

(hereinafter called "Investor")

OF THE FIRST PART

- and -

Sorrenti Law Professional Corporation, in Trust
(Mortgage Administrator & Solicitor)

(hereinafter called "Sorrenti")

OF THE SECOND PART

WHEREAS:

1. pursuant to the Loan Agreement, Sorrenti has agreed to provide the Borrower various loan facilities totalling Six Million Four Hundred and Fifty Thousand (\$6,450,000.00) Dollars (the "Loan") for the purposes of refinancing existing debt, and financing the development and the construction of residential homes on the Lands, to be secured by the Security Documents;
2. Investor has agreed to participate in the Loan to the extent of \$100,000.00 upon the terms and subject to the conditions of the Lender Acknowledgement & Consent dated June 2nd, 2014 (the "LAC"); and
3. Investor has agreed that Sorrenti will administer the Investment on behalf of Investor in accordance with the terms and subject to the conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of these presents and the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1.00 - INTERPRETATION

1.1 Defined Terms

The following words and phrases shall have the meanings attributed thereto when used in this Agreement:

"Borrower" means ADI Developments (masonry) Inc.;

"Force Majeure" shall mean any event or series of events beyond the control of the Borrower such as strikes, walkouts, labour troubles, inability to procure materials or services or construction financing, power failures, restrictive governmental laws or regulations or the orders or directions of any administrative board, governmental department, officer or other authority, riots, insurrections, war, sabotage, rebellion or acts of God, material changes or delays in market conditions affecting sales or closings, delays in obtaining governmental approvals, permits, rezoning or similar regulatory requirements, none of which is the fault of the Borrower.

"Investment" means the investment in the Loan of the Investor as set out in the LAC and the 2nd recital hereof;

"Lands" means those lands more particularly described and charged pursuant to the Security Documents including without limitation all buildings, fixtures and



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Project Fact Sheet- The Masonry

Developer Name:

ADI Development Group
<http://adidevelopments.com>

Project Address

101 Masonry Court, Burlington, Ontario
 Legal Description: PT LT 6, CON 1 PTS 1 & 6 ON 20R17228; BURLINGTON. T/W 472251 & 851086. S/T 771631. T/W EASMENT OVER PT LOT 4 ON 20R17228 AS IN HR570883. PIN 07114-0192 (LT)

Anticipated Closing Dates:

On or before August 28th 2014.

Borrower Name:

ADI Developments (masonry) Inc. Tariq Adi is the signing officer for this corporation.

Valuation:

An AACI Appraisal dated June 2nd 2014 was authored by Matthew Bruchkowsky AACI, Colliers International which reflected a current value for the parcel of \$19,500,000.00.

USE OF FUNDS:

The purposes of the monies raised via this syndicated mortgage is to assist in addressing various funding requirements related to all elements of the project's progress, especially prior to the commencement of construction. These requirements include, however are not limited to: Land acquisition, initial soft costs for planning & initial marketing expenses, remediation of contaminated soil located on the site (estimated and budgeted at \$1,000,000.00) and the sales center.

Face Value of the Syndicate mortgage:

\$6,450,000.00 is the initial registered face value for the project with an anticipated funding date on or before August 28th, 2014, the face value will increase to a maximum of \$30,000,000.00 (based on senior lender requirements) over the duration of the project. Please see funding schedule below for a detailed explanation.

Loan to Value:

85% based on a value as above and a face amount as above.
 1st Mortgage: \$10,125,000.00 to the first mortgagee.

(11)

LOAN AGREEMENT**THIS AGREEMENT** made as of the 2nd day of June, 2014,**BETWEEN:****SORRENTI LAW PROFESSIONAL CORPORATION, IN TRUST**

(called the "Lender")

- and -

ADI DEVELOPMENTS (MASONRY) 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 Adi Developments (masonry) Inc. and its successors and permitted assigns;
- (c) "Bridge Lender" shall have the meaning attributed thereto in Section 3(c);
- (d) "Bridge Loan" shall have the meaning attributed thereto in Section 3(c);
- (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;

THE BACK OF THIS DOCUMENT CONTAINS A TD-LOGO WATERMARK. DOCUMENT VOID IF MISSING

The Toronto-Dominion Bank

5707 Dufferin Street
Thornhill, ON L4J 0A2

DATE 2012 02 15

Transit-Serial No. [REDACTED]

Pay to the Order of Dele. Grinnant, LP TRUST

\$ 50,000.00

TO CANADA TRUST **50,000.00**

Canadian Dollars

Authorized signature required for amounts over CAD \$5,000 (X)

Re

The Toronto-Dominion Bank
Toronto, Ontario
Canada M5K 1A2

Authorized Office [REDACTED] number

Countersigned *[Signature]*

OUTSIDE CANADA NEGOTIABLE BY CORRESPONDENTS AT THEIR BUYING RATE FOR DEMAND DRAFTS ON CANADA

⑈60744892⑈ ⑆09612⑈004⑆

⑈3808⑈

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 the Loan in favour of each 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 condominium deposits, 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 partially discharge the Loan for sales of all condominium units or the office/retail/parking components, without charge, provided the proceeds of sale are used to pay off the First-Ranking and Second-Ranking Construction Loan Security and/or trade creditors;
- (d) to provide non-disturbance agreements upon request from any tenants of the office/retail/parking components of the Project; and
- (e) discharge 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 governmental authority, without requirement for payment or prepayment of any part of the Loan.

[Redacted signature]

Per: [Redacted signature]
Name:
Title:

Per: _____
Name:
Title:

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Mady Collier Centre Ltd. (Borrower)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

**David Mady Investments (2008) Inc.
(Guarantor)**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

D. Mady Holdings Inc. (Guarantor)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

LOAN AGREEMENT

THIS AGREEMENT made as of the 26th day of July, 2012,

BETWEEN:

Derek Sorrenti, in trust, as first lender, and Olympia Trust Company, in trust, as second lender

- and -

Mady Collier Centre Ltd., as borrower

- and -

David Mady Investments (2008) Inc. and D. Mady Holdings Inc., as guarantor

WHEREAS the Lender agreed to advance the Loan to the Borrower;

AND WHEREAS the Loan will be secured by a third-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 Mady Collier Centre Ltd. and its successors and permitted assigns;
- (c) **"Business Day"** means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (d) **"Conditions Precedent"** shall have the meaning attributed thereto in Section 12 hereof;
- (e) **"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;
- (f) **"Event of Default"** shall have the meaning attributed thereto in Section 15 hereof;

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- (g) **"First Lender"** means Derek Sorrenti, in trust, for and on behalf of certain persons/entities, and their respective successors and assigns;
- (h) **"First-Ranking and Second-Ranking Construction Loan Security"** means one or more secured Project construction loans, in favour of arm's-length lenders, in an aggregate principal amount not to exceed \$56,000,000, 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;
- (i) **"Guarantor"** means David Mady Investments (2008) Inc. and D. Mady Holdings Inc. and its successors and permitted assigns;
- (j) **"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;
- (k) **"Lender"** means the First Lender and the Second Lender;
- (l) **"Loan"** shall have the meaning attributed thereto in Section 3 hereof;
- (m) **"Loan Documents"** means this Agreement, the Security, all other documentation delivered in connection with the Loan and all amendments thereof;
- (n) **"Maturity Date"** shall have the meaning attributed thereto in Section 4 hereof;
- (o) **"Notice"** shall have the meaning attributed thereto in Subsection 17(b) hereof;
- (p) **"Permitted Encumbrances"** means the First-Ranking and Second-Ranking Construction Loan Security, the fourth charge in favour of the City of Barrie and such non-financial encumbrances as shall be reasonable for a development such as the Project (including, without limitation, encumbrances pertaining to condominium deposits, 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);
- (q) **"Project"** means the development to be constructed on the Property, comprised of 86,249 sq. ft. of land area on which the following will be built; 62,781 sq. ft. of multi-residential, 70,786 sq. ft. of retail and 97,140 sq. ft. of office space.
- (r) **"Project Budget"** means the Project budget attached hereto as Schedule "B";

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- (s) **"Project Cost Consultant"** means an arm's-length cost consultant approved by the Lender, acting reasonably;
- (t) **"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;
- (u) **"Second Lender"** means Olympia Trust Company, in trust, for and on behalf of certain persons/entities, and their respective successors and assigns;
- (v) **"Security"** shall have the meaning attributed thereto in Section 10 hereof; and
- (w) **"Term"** shall have the meaning attributed thereto in Section 4 hereof.

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

3. Loan

Non-revolving loan in an amount up to and including the sum of \$16,923,077.00 (the "**Loan**"), to provide for the Borrower's land, hard and soft costs to be incurred prior to the construction financing of the Project.

④ **Term** (received ^{letter} Mark on April 23, 2014)

2 (two) years (the "**Term**"), commencing on August 1, 2012 and ending on the earlier of the final day of such period or extended period, and the date of full disposition of the entire Project (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 up to 6 (six) additional months.

Extend the maturity date by 6 months

5. Interest Rate

Eight Percent (8%) per annum.

6. Interest Payment

Calculated and payable monthly, not in advance, with the first payment thereof to be made on September 1, 2012.

7. Method of Payment of Monthly Interest Payment

The Borrower shall subscribe to the "pre-authorized payment" system to allow monthly instalments to be withdrawn automatically.

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8. Prepayment/Repayment of Principal

The Borrower may prepay the Loan, in whole but not in part, upon two (2) Business Days' prior written notice to the Lender.

The outstanding Loan principal together with accrued interest and all other amounts due and owing, if any, pursuant to the Loan Documents shall become wholly due and payable on the earlier of the Maturity Date and the date of full disposition of the entire Project.

9. Project Completion Fee (Deferred Lender Fee (DLF))

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 equal to 6% of the Loan principal, subject to increases/decreases relating to final Project profit. If final Project profit is less than the sum of \$16,604,875 then the percentage of \$16,604,875 by which it is less, shall be deducted from the Project completion fee. If final Project profit is more than the sum of \$16,604,875, then the percentage of \$16,604,875 by which it is more, shall be added to the Project completion fee.

10. Security

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

- (a) Third-ranking Property mortgage executed by the Borrower in a principal amount equal to 16,923,077.00;
- (b) if the Property beneficial owner is not the Borrower but a Guarantor, then a direction, acknowledgement and security agreement executed by the beneficial owner/Guarantor, Borrower and Lender, including confirmation of a third-ranking charge of the beneficial owner's/Guarantor's interest in the Property and a direction by the beneficial owner/Guarantor 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 third-ranking 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) a guarantee agreement executed by the Guarantor guaranteeing the Borrower's payment and performance of its obligations pursuant to the Loan Documents;
- (e) an indemnity from each of the Borrower and the Guarantor indemnifying the Lender from and against all reasonable 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

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and all assets relating thereto, save and except in respect of matters arising and caused by the wilful acts or material non-disclosure to Lender's investors or gross negligence of the Lender; and

- (f) 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 obtained by the Borrower at its time of purchase of the Property, and corporate/personal search results described in Section 12 hereof;
- (e) evidence of reasonable Property and construction insurance coverage;
- (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 together with the draft plan, zoning analysis, traffic study, sanitary study, water study, storm-water study, utility study and road study; and
- (i) all other information and/or documentation in respect of the Project, the Property, the Borrower and/or the Guarantor 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 by the Lender's counsel and perfected (as the case may be) together with all other documentation relating to the Loan, the Property, the Project, the Borrower and the Guarantor required by the Lender, acting reasonably;
- (b) a satisfactory title insurance policy from First Canadian Title, or, at the Borrower's option, an opinion from Borrower's counsel confirming the

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Borrower's good, valid and marketable title to the Property, subject only to Permitted Encumbrances, specified off-title search results, specified corporate/personal search results and specified third party consent requirements (or alternatively, for some or all of the said opinion, 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 each of the Borrower and the Guarantor, the due authorization, execution and delivery (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 confirming that the relevant mortgage loan is in good standing;
- (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 Opinion Letter from Cushman Wakefield Global Real Estate Solutions indicating aggregate land contribution from the 3 categories (multi-residential, retail and office) of not less than \$21,840,090.00;
- (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 owing have been paid to the relevant date;
- (i) satisfactory financial statements in respect of both the Borrower and the Guarantor and a satisfactory summary of Borrower and Guarantor share ownership;
- (j) satisfactory Project Budget, duly approved by the Project Cost Consultant and 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; and
- (m) certificate from the Borrower certifying that there have been no material changes affecting the Property, the Borrower and/or the Guarantor since the later of the date of execution of this Agreement and the immediately prior advance hereunder.

13. Representations and Warranties

The Borrower represents and warrants as follows:

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- (a) each of the Borrower and the Guarantor 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) each of the Borrower and the Guarantor 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 each of the Borrower and the Guarantor 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 any of the Borrower and/or the Guarantor 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 that are in its possession or control;
- (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 or Guarantor (as applicable) 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;

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- (f) the Security granted by each of the Borrower and the Guarantor constitutes assignments, fixed and specific mortgages and charges, floating charges or security, as applicable, on such party's undertaking and 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 and 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) neither of the Borrower or the Guarantor is 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) each of the Borrower and the Guarantor 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;

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- (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 or the Guarantor; 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, 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 has 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.

14. 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

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- 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) [deleted – see 12(a)];
 - (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

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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 multi-residential, office and retail purposes and parking 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 and does not remedy such failure within the applicable period of time following receipt of written notice from the Lender, the Lender may, after giving concurrent written 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

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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 Property 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, Guarantor 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 at its' sole cost and expense 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/or the Guarantor), 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 and/or the Guarantor;
- (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, the Guarantor and/or in respect of the Property;
- (s) the Borrower shall obtain and maintain during the Term the following Property insurance coverage:
 - (i) fire 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 and landlord improvements 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) 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;

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- (iii) general liability insurance covering damages in an amount of not less than \$5,000,000.00 per occurrence;
 - (iv) environmental liability and remediation insurance covering damages in an amount of not less than \$5,000,000.00 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; the Guarantor shall deliver to the Lender, within one hundred and twenty (120) days following the Guarantor's fiscal year, unaudited financial statements in respect of the Guarantor, 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, each of the Borrower and the Guarantor covenant 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, the Borrower and/or the Guarantor; the Lender reserves the right to disclose to third parties any financial information concerning the Property, the Borrower and/or the Guarantor, 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:

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- (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; and
- (iii) all registration, recording and filing fees and transfer and mortgage taxes; and
- (x) the Borrower shall not sell, transfer, lease, licence or otherwise convey an interest in the Property or any part thereof, without the Lender's prior written consent, not to be unreasonably withheld, provided the Lender's prior written consent shall not be required for any: (i) sales of condominium units to the purchasers thereof, (ii) leases of portions of the office/retail/parking components of the Project in the ordinary course of business, or (iii) sales of the office/retail/parking components of the Project in the ordinary course of business.

15. **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; or
- (b) if the Borrower fails to pay all principal on the Maturity Date; or
- (c) 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
- (d) 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
- (e) 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 a material manner, 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

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- (f) 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
- (g) if any material provision in the Loan Documents shall for any reason cease to be valid, binding and enforceable in accordance with its terms due to any act or negligence of the Borrower or Guarantor, or the Borrower and/or the Guarantor 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 due to any act or negligence of the Borrower or Guarantor; or
- (h) 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
- (i) if all or any material part of the Property is expropriated; or
- (j) if one or more final judgments for the payment of money (whether or not covered by insurance) shall be rendered against the Guarantor and the Guarantor shall fail to discharge the same within thirty (30) days from the date of notice of entry thereof or if one or more final judgments for the payment of money (which is not covered by insurance) shall be rendered against the Borrower; or
- (k) if any writ, attachment, execution, enforcement, sequestration, extent, distress or any other similar process shall become enforceable against the Borrower or the Guarantor, or if a distress or any analogous process is levied against any properties or assets of the Borrower or the Guarantor, and is not lifted or removed within fifteen (15) days after the Lender delivers written notice thereof to the Borrower; or
- (l) if the Borrower or the Guarantor shall suspend or cease or threaten to suspend or cease its business; or
- (m) if the Borrower or the Guarantor 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 or Guarantor (financial or otherwise); or

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- (n) 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
- (o) if the Borrower or the Guarantor 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
- (p) if any proceeding is instituted for the winding up of the Borrower or the Guarantor 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
- (q) if ownership control of one or both of the Borrower and the Guarantor shall be transferred without the Lender's approval, which approval may be withheld in the Lender's sole, absolute and unfettered discretion, it being acknowledged that transfers within the Mady family shall not be an Event of Default.

16. **Postponement and Subordination**

Each of the First Lender and the Second Lender covenants and agrees as follows:

- (a) to postpone and subordinate the Loan Documents in favour of First-Ranking and Second-Ranking Construction Loan Security and to enter into such standstill agreements as the holders thereof may require;
- (b) to postpone and subordinate the Loan Documents in favour of each non-financial encumbrance 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 condominium deposits, 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);
- (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) to provide partial discharges of its Security for sales of all condominium units or the office/retail/parking components, without charge, provided the proceeds of

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sale are used to pay off the First-Ranking and Second-Ranking Construction Loan Security and/or trade creditors; and

- (e) to provide non-disturbance agreements upon request from any tenants of the office/retail/parking components of the Project.

17. **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. If the Guarantor 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 Guarantor pursuant to this Agreement.
- (b) All notices, directions, service, correspondence and communications (collectively "Notice") between the parties hereunder shall be in writing and delivered, sent by prepaid registered mail or electronically communicated by telecopier; 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 17(b).
- (c) Neither the Borrower nor the Guarantor shall 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

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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, the successors and permitted assigns of the Guarantor 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), and to any other parties having a financial interest in the Property, including without limitation, the City of Barrie and the holders of the First-Ranking and Second-Ranking Construction Loan Security.
- (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.
- (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 14(x) hereof, or if the Borrower shall mortgage or otherwise encumber an interest in the Property or any part thereof, other than the Permitted Encumbrances, 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.

Derek Sorrenti in Trust[**first lender**]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

 We have the authority to bind the Corporation.

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Olympia Trust Company in Trust [second lender]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have the authority to bind the Corporation.

Mady Collier Centre Ltd. [Borrower]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have the authority to bind the Corporation.

David Mady Investments (2008) Inc. [**Guarantor**]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have the authority to bind the Corporation.

D. Mady Holdings Inc. [**Guarantor**]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have the authority to bind the Corporation.

SCHEDULE "A" TO LOAN AGREEMENT

MUNICIPAL AND LEGAL DESCRIPTION OF THE PROPERTY

SCHEDULE "B" TO LOAN AGREEMENT

PROJECT BUDGET



Financial Services
Commission
of Ontario
5160 Yonge Street,
Box 85
Toronto ON M2N 6L9

Licensing and
Market Conduct
Division

Investor/Lender Disclosure Statement For Brokered Transactions

Mortgage Brokerages, Lenders and Administrators Act

Transaction N°

Important – New Disclosure Duties Effective January 1, 2009

In addition to providing the information in this form, effective January 1, 2009, mortgage brokerages and administrators are also required to provide a lender or investor with additional information in connection with this transaction.

A brokerage must:

1. Advise you if the brokerage cannot verify the identity of another party to the transaction.
2. Disclose whether the brokerage is acting for the lender, the borrower, or both the borrower and lender.
3. Disclose to a lender the brokerage's relationship with each borrower, and disclose to an investor the brokerage's relationship with each party to the transaction.
4. Disclose whether the brokerage is receiving a fee or remuneration for referring you to a person or entity, and disclose the relationship with that person or entity.
5. Disclose material risks about the transaction that you should consider.
6. Disclose actual or potential conflicts of interest that may arise from this transaction.

An Administrator must:

1. Disclose the relationship, if any, between the administrator and each borrower.
2. Disclose whether the administrator may receive, or may pay, any fees or other remuneration in connection with the administration of the mortgage, the basis for calculating them and the payor's identity.
3. Disclose whether it is receiving a fee or other remuneration for referring you to a person or entity, and disclose the administrator's relationship with that person or entity.
4. Disclose actual or potential conflicts of interest that may arise from the transaction.

You must receive these disclosures in writing and acknowledge receipt of them. You should keep a copy for your records.

Important: This form is required by law and will provide the prospective investor/ lender with important information.

This information must be disclosed at least two business days before you commit to lend/invest, i.e. two business days before the earliest of the following events: when the brokerage receives or enters an agreement to receive money from you; when you enter into a mortgage agreement or an agreement to trade in a mortgage; when money is advanced to the borrower; and the trade completion date.

Caution

All mortgage investments carry a risk. You should very carefully assess the risk of this mortgage investment before making a commitment.

In general, the higher the rate of return, the higher the risk of the investment.

Inexperienced investors are not advised to enter into mortgage investments.

X/ You are strongly advised to obtain independent legal advice before committing to invest.

- This mortgage investment is not insured by the Government of Ontario.

- This mortgage investment cannot be guaranteed by the mortgage brokerage. If you are not prepared to risk a loss, you should not consider mortgage investments.

The mortgage brokerage cannot make payments to you except from payments of principal and interest made by the borrower under the mortgage. Therefore, the mortgage brokerage cannot continue mortgage payments to you if the borrower defaults.

If this investment is for a mortgage to fund a development, construction or commercial project, the repayment of this investment may depend on the successful completion of the project, and its successful leasing or sale.

X/ If you are one of several investors in this mortgage, you may not be able to enforce repayment of your investment on your own if the borrower defaults.

X/ You should inspect the property or project and the surrounding area before investing.

The attached declarations and disclosure summary are not intended to be a comprehensive list of factors to consider in making a decision concerning this investment. You should satisfy yourself regarding all factors relevant to this investment before you commit to invest.

X/ _____
Date

10102

Licence number of Mortgage Broker

X/ _____
Signature of Mortgage Broker

Ildina Galati

Print name of person signing

Acknowledgement

I, _____
Print Name

_____ of _____

acknowledge receipt of this Caution, signed by a mortgage broker.

Aug 24/12

Lender/ Investor

* _____

Declaration by the Mortgage Brokerage

1. For the purpose of this declaration, two persons are "related" if they share any relationship other than an arm's length business relationship. For example, a shareholder, director, officer, partner or employee of a mortgage brokerage is related to a mortgage broker or agent authorized to deal or trade in mortgages on behalf of the mortgage brokerage.
2. This declaration is made by Ildina Galati, 90 Wings Road, Unit 10, Woodbridge, ON L4L 6A9. LIC # 10102
Name, address and licence number of mortgage brokerage
3. The mortgage brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf does / does not [choose one] have or expect to have a direct or indirect interest in the property that is the subject of this mortgage loan or investment
EXPLAIN: Does; The broker of record may receive additional earnings based on the development of the subject property and indexed on a percentage of profit.
4. A person related to the mortgage brokerage or to any broker or agent authorized to deal or trade in mortgages on its behalf does / does not [choose one] have or expect to have a direct or indirect interest in the property that is the subject of this mortgage loan or investment
EXPLAIN: Does; Some of the parties referring investors may receive additional earnings based on the development of the subject property and indexed on a percentage of profit..
5. The borrower is / is not [choose one] related to the mortgage brokerage or to any broker or agent authorized to deal or trade in mortgages on its behalf.
EXPLAIN: Is; The borrower includes entities to which both the broker and some of the referring parties have a material interest.
6. The borrower is / is not [choose one] related to an officer, director, partner, employee or shareholder of the mortgage brokerage.
EXPLAIN: IS NOT
7. The individual or company that appraised the property is / is not [choose one] related to the mortgage brokerage or to any broker or agent authorized to deal or trade in mortgages on its behalf.
EXPLAIN: IS NOT
8. The proceeds of this investment will / will not [choose one] be used to refinance, pay out, redeem or reduce an existing mortgage on this property.
EXPLAIN: WILL NOT
9. If this investment is a purchase of an existing mortgage or a portion of an existing mortgage, the mortgage is / is not [choose one] now in default and has / has not [choose one] been in default in the preceding twelve months
EXPLAIN: NO
10. The mortgage brokerage or any broker or agent authorized to deal or trade in mortgages on its behalf does / does not [choose one] expect to gain any interest or benefit from this transaction other than the fees disclosed in Part D of the attached Information Disclosure Summary.
EXPLAIN: Does; brokers, agents or related parties may receive remuneration from net equity return and indexed on a percentage of profit and may be paid in advance of the completion of the project.
11. The mortgage brokerage has fully complied with all requirements of the *Mortgage Brokerages, Lenders and Administrators Act* and its regulations. I have fully completed the above *Declaration by the Mortgage Brokerage* in accordance with the *Mortgage Brokerages, Lenders and Administrators Act* and its regulations and declare it to be accurate in every aspect.

10/10/12
Date
10102
Licence number of Mortgage Broker

Ildina Galati
Signature of Mortgage Broker
Ildina Galati
Print name of person signing

ACKNOWLEDGEMENT

[Redacted]
Print name

acknowledge receipt of this Declaration by the Mortgage Brokerage, signed by a mortgage broker

Aug 14/12
Dated by Lender/ Investor

* [Redacted]

Information Disclosure Summary

Part E of this summary lists documents that must accompany this summary and that must be provided to you at least two business days before the closing of the transaction.

Part A. Property/Security To Be Mortgaged

1. Legal and Municipal address of the property
55 Mulcaster Street and 90 Collier Street, Barrie, Ontario; All of Lot 81 and Part of Lot 82, North side of Collier Street, Part of the Market Block, All of Lots 98, 99 and 100 and Part of Lot 97 on the South Side of Worsley Street, Plan 2, desi

2. Type of Property:

- Property with existing buildings
 - Single family residential
 - One-to-four unit residential
 - Five or more unit residential
 - Commercial
 - Industrial
 - Other _____

Vacant land, development or construction project. Detail of project/proposed use: Soft Costs & Pre-Construction Financing

Other: _____

3. Property Taxes:

Annual property taxes: \$ 40,493.00

Are taxes in arrears?

- No
- Yes Amount in arrears \$ _____

4. Zoning

Is the zoning on the property appropriate for the proposed use?

- Yes
- No If "No", details _____

5. Appraisal:

- No appraisal has been done on the property OR
- An appraisal has been done on the property For all properties, appraised "as is" value: \$ 21,840,090.00

For development and construction projects projected market value when project is complete. \$ _____

Date of appraisal: July 17, 2012

Name and address of appraiser: John Filice, Cushman & Wakefield Ltd.

Part B. Mortgage Particulars

1. Type of Mortgage:

Your investment represents:

- the entire mortgage OR
- a portion of the mortgage Your portion represents 0.29 % of the total 43 other parties have an interest in this mortgage.

In what name will the mortgage be registered: LENDER

Initials	<u>ME</u>	Date	<u>Aug 6/12</u>
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Part B. Mortgage Particulars (continued)

2. Existing or New Mortgage

- An existing registered mortgage or portion of an existing registered mortgage is being purchased. OR
 Your investment will fund a new mortgage or portion of a new mortgage that has not yet been registered

3. Administered Mortgage

Will the mortgage be administered for you?

 No YesIf "Yes", name and address of administrator: Derek Sorrenti In Trust3800 Steeles Avenue West, Suite 400, Vaughan, Ontario

4. Terms of the Mortgage:

Amount of your investment: \$ 50,000.00Term: 2 yr(+6)Face value of the mortgage: \$ 6,153,846.00Amortization: NAInterest rate is fixed at 8.00 % per annum OR
Interest rate is variable. Explain:Maturity Date: Aug 1 2014 (2/1/15)Balance on maturity: 50,000.00Borrower's first payment due: September 1 2012

Terms and conditions of repayment:

Interest Only, Principle due on maturity PAYMENTS
ARE MADE MONTHLYCompounding Period: AnnuallyMonthly payments by borrower: \$ 333.33 ✓Monthly payments to you: \$ 333.33 ✓
(See Part D for fees charged to you)

5. Rank of Mortgage (according to information from borrower)

The mortgage to be purchased/advanced is/will be a:

 First Second Third Other: _____

Prior encumbrances (existing or anticipated)

 None ORa) Priority: 1st Face Amount: \$ 4,000,000.00
Amount Owing \$ 1,651,392.00b) Priority: TBD Face Amount: \$ 52,000,000.00
Amount Owing \$ 0.00In default? yes noIn default? yes noName of Mortgage: Aviva Ins.(will Postpone to new 1st)Name of Mortgage: FUTURE CONSTRUCTIONOther: NOTE LTV IS CALCULATED BASED ON MAXIMUM FACE VALUE OF THE 3rd MORTGAGE & BALANCE of 1st

6. Loan to value ratio (according to information from borrower):

Total of prior encumbrances:	\$	<u>1,651,392.00</u>	
Amount of this mortgage:	\$	<u>16,923,077.00</u>	
Total amount of mortgages: (a + b)	\$	<u>18,574,469.00</u>	
Appraised "as is" value: (from Part A)	\$	<u>21,840,090.00</u>	
Loan to "as is" value: (c/d X 100)		<u>85.00</u>	%
Projected value: (where appropriate)	\$		
Loan to "projected value" ratio: (c/f X 100)		<u>85.00</u>	%

Initials

*

Date

* Aug 11

Part C. The Borrower

1. Name and Address of Borrower:
 Mady Collier Centre Ltd, 8791 Woodbine Ave, Suite 100, Markham, ON, L3R 0P4

Important: Financial Information about the borrower's ability to meet the mortgage payments must be attached to this disclosure summary.

Part D. Fees

1. Fees and charges payable by the lender/investor:

Mortgage brokerage fee/commission/other costs.	\$ 0.00
Approximate legal fees and disbursements:	\$ 0.00
Administration fees (where applicable)	\$ 0.00
Any other charges:	\$ 0.00

Specify _____

TOTAL \$ 0.00

2. Fees and costs payable by the borrower:

Amount	Paid to	Purpose
\$ 2,500.00	Derek Sorrenti In Trust	LEGAL FEE
\$ 1,500.00	Centro Mortgage Inc	BROKER FEE
\$ 2,500.00	Centro Mortgage Inc (Altaview LK)	REFERAL FEE
\$ _____		
\$ _____		
\$ _____		

Part E. Attached Documents

Important: You should review the following documents carefully and assess the risks of this investment before committing to invest. You should check that all documents are consistent with this disclosure summary. The following documents must be attached:

1. If the statement concerns an existing mortgage, a copy of the mortgage
2. If an appraisal of the property has been done in the preceding twelve months and is available to the mortgage brokerage, a copy of the appraisal.
3. If an agreement of purchase and sale in respect of the property has been entered into in the preceding twelve months and is available to the mortgage brokerage, a copy of the agreement of purchase and sale.
4. If a copy of an appraisal of the property is not delivered to you, documentary evidence of the property's value, other than an agreement of purchase and sale
5. Documentary evidence respecting the borrower's ability to meet the mortgage payments, such as a credit bureau report or a letter from an employer disclosing the borrower's earnings.
6. If you request, a copy of the borrower's application for a mortgage
7. If the mortgage is a new mortgage, documentary evidence of any down payment made by the borrower for the purchase of the property
8. A copy of any agreement that you may be asked to enter into with the mortgage brokerage.

Important: The mortgage brokerage is also required to provide you with all other information an investor of ordinary prudence would consider to be material to a decision whether to lend money on the security of the property, so that you can make an informed decision before you commit to invest. This information might include the following:

1. If the mortgage is for a construction or development project,
 - i. a detailed description of the project,
 - ii. a schedule of the funds that have been advanced or are to be advanced to the borrower, and
 - iii. the identity of any person who will monitor the disbursements of funds to the borrower and the use of those funds by the borrower.
2. If the property is rental property, details of leasing arrangements and vacancy status
3. Environmental considerations affecting the value of the property

Initials	Date
[REDACTED]	AUG 14 / 12

Part F. Certification

This Information Disclosure Summary has been completed by:

CENTRO MORTGAGE INC, Ildina Galati, 90 Wings Road, Unit 10, Woodbridge, ON L4L 6A9 LICENCE #10102

Name, address and licence number of mortgage brokerage

I have fully completed the above Information Disclosure Summary in accordance with the *Mortgage Brokerages, Lenders and Administrators Act* and its regulations and declare it to be accurate in every respect.

X _____
Dated

X _____
Signature of Mortgage Broker

10102
Licence number of Mortgage Broker

Ildina Galati
Print name of person signing

ACKNOWLEDGEMENT

I, _____ of _____
Address

acknowledge receipt of this Information Disclosure Summary, signed by a mortgage broker.

I understand that the mortgage brokerage cannot accept any money from me or require me to enter into an agreement to receive money from me until at least two business days after receipt by me of this form

AUG 14/12
Dated by Lender/ Investor

Signature

One copy of this form must be provided to the prospective lender/ investor, and one copy must be retained by the mortgage brokerage

**DECLARATION OF BARE TRUST
MADY COLLIER CENTRE LTD.
SYNDICATED MORTGAGE**

THIS DECLARATION dated as of the ___ day of _____, 2012.

BETWEEN:

**Derek Sorrenti., In Trust
(the "Bare Trustee")**

OF THE FIRST PART

- and -



OF THE SECOND PART

WHEREAS:

The Beneficiary, has agreed to lend \$50,000.00 (the "Loan") to MADY COLLIER CENTRE LTD. (the "Borrower"), for the purpose of participating in a syndicated mortgage loan registered in the name of the Bare Trustee to the Borrower pursuant to a mortgage commitment executed on the ___ day of _____, 2012, (hereinafter called the "Syndicated Mortgage");

AND WHEREAS:

The Bare Trustee has agreed to hold all right, title and interest in and to the Syndicated Mortgage IN TRUST as bare trustee for the Beneficiary on the terms and conditions set out below;

NOW THEREFORE the parties hereby agree as follows:

1. As and from the date first above written the Bare Trustee shall be seized of the Syndicated Mortgage and any and all amendments thereto as Bare Trustee for the Beneficiary.
2. Any and all income and/or losses in relation to the Beneficiary's participation in the Syndicated Mortgage shall be only for the Beneficiary's account.
3. The Bare Trustee shall deal with the Syndicated Mortgage or any portion thereof as directed by the Beneficiary. The Bare Trustee shall execute and deliver such documents in respect of the Syndicated Mortgage as directed by the Beneficiary without delivering proof to any person (including any other party to the documents) of its authority to do so.

4. No person dealing with the Bare Trustee is required to determine or inquire into the Bare Trustee's authority or power and is entitled to rely on the Bare Trustee's authority and power as set out herein to bind the Beneficiary.

5. The Bare Trustee will accept such alterations, revocations and amendments to its powers set out herein as the Beneficiary may determine at any time and from time to time. Such alterations, revocations and amendments will be reduced to writing as and when convenient but will be in force notwithstanding that they have not been reduced to writing.

6. The Bare Trustee shall not be liable to the Beneficiary for any losses, damages or costs incurred as a result of the Beneficiary's investment in the Syndicated Mortgage.

7. This Declaration will ensure to the benefit of and be binding on the parties and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Declaration on the date first above written.

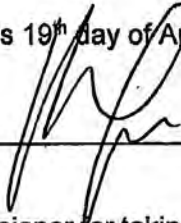
BARE TRUSTEE

[Redacted signature]

Per: _____

[Redacted signature]

Attached is Exhibit "O"
Referred to in the
Affidavit of Brendan Forbes
Sworn before me
this 19th day of April, 2018



Commissioner for taking Affidavits, etc

LOAN AGREEMENT

THIS AGREEMENT made as of the 27th day of May, 2015,

BETWEEN:

BUILDING & DEVELOPMENT MORTGAGES CANADA INC., in Trust

(called the "Lender")

- and -

FORTRESS BROOKDALE 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 third-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 Fortress Brookdale Inc. and its successors and permitted assigns;
- (c) "Bridge Lender" shall have the meaning attributed thereto in Section 3(c);
- (d) "Bridge Loan" shall have the meaning attributed thereto in Section 3(c);
- (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 11 hereof;

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- (g) **"Co-Tenancy Agreement"** between Fortress Avenue Road (2015) Inc., Fernbrook Homes (Brookdale) Limited, Fortress Brookdale Inc. and Dominus Construction (2005) Corporation dated May 25, 2015;
- (h) **"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;
- (i) **"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;
- (j) **"Event of Default"** shall have the meaning attributed thereto in Section 16 hereof;
- (k) **"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 \$110,000,000.00 (plus a 10% contingency) 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;
- (l) **"First-Ranking Construction Loan Security"** means the security to be provided to the Senior Lender to service the First-Ranking Construction Loan;
- (m) **"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;
- (n) **"Lender"** means Building & Development Mortgages Canada Inc., in trust, for and on behalf of certain persons/entities, and their respective successors and assigns;
- (o) **"Lender Charge"** shall have the meaning attributed thereto in Section 10(a);
- (p) **"Loan"** shall have the meaning attributed thereto in Section 3 hereof;
- (q) **"Loan Documents"** means this Agreement, the Security, all other documentation delivered in connection with the Loan and all amendments thereof;
- (r) **"Maturity Date"** shall have the meaning attributed thereto in Section 4 hereof;
- (s) **"Net Equity"** means a portion of the principal amount of the Loan advanced to the Borrower, from time to time, excluding: (1) all other accrued interest; and (2) the amounts raised and paid out on account of interest payments, all fees paid by the

- 3 -

Borrower to Fortress under the Development Consultant Agreement as Development Consultant Fees / Costs, as defined therein;

- (t) **"Notice"** shall have the meaning attributed thereto in Subsection 18(b) hereof;
- (u) **"Permitted Encumbrances"** means the First-Ranking Construction Loan Security, a second mortgage of \$6,600,000.00 (to be reduced to \$4,000,000.00 from proceeds of the Loan) in favour of RW Fortress Inc., 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, a fourth ranking charge in favour of prior unsecured bond holders who provided equity financing to the Project, fully subordinate to the Security and the First Ranking Construction Loan and as such 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);
- (v) **"Pledge of Shares"** shall have the meaning attributed thereto in Section 10(g) hereof;
- (w) **"Project"** means residential condominium development to be constructed on the Property, comprised of the lands located on the Property and any adjacent lands to the current or future parcels;
- (x) **"Project Budget"** means the Project budget attached hereto as Schedule "B";
- (y) **"Project Cost Consultant"** means an arm's-length cost consultant approved by the Lender, acting reasonably;
- (z) **"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;
- (aa) **"Security"** shall have the meaning attributed thereto in Section 10 hereof;
- (bb) **"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;
- (cc) **"Substantial Completion"** shall have the meaning attributed thereto pursuant to the *Construction Lien Act* (Ontario);
- (dd) **"Term"** shall have the meaning attributed thereto in Section 4 hereof; and

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- (ee) "Waterfall" has the meaning attributed thereto under Section 5 of the Development Consultant Agreement.

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

3. **Loan**

- (a) The Lender hereby establishes a non-revolving loan (the "Loan") in favour of the Borrower in an amount not exceeding \$16,600,000.00 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 pay down the RW Fortress Inc. second mortgage, 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-

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complete advances and be secured by all usual security/documentation similar to the Security herein.

4. **Term**

- (a) Two (2) years, 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 12 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**

Nine Percent (9%) 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 accrued added to the principal amounts of the Loan advanced and accrued until maturity when interest shall be payable, subject to Section 7(d).

7. **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 that 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

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and pledged to the Lender to secure and be used to fund Interest Reserves and interest payments;

- (d) Repayment of the Loan and discharge of the Security shall be subject to and in accordance with the provisions of Sections 3.3 and 4.2 of the Co-Tenancy Agreement, copies of which are attached hereto as Schedule "C".
- (e) It is acknowledged that the term "Existing Mortgages" and "Further Charges" shall include the Lender Charge;
- (f) The Lender further acknowledges that recovery of the balance of the Loan after distributions on account of the Further Charges including the Lender Charge, shall be made from available Cash Surplus pursuant to distributions to the Borrower under the Co-Tenancy Agreement in accordance with Section 4.2 of the Co-Tenancy Agreement;
- (g) The Lender further acknowledges that pursuant to Sections 3.3 and 4.2 of the Co-Tenancy Agreement, after distributions of Cash Flow are made in accordance with the provisions of Section 4.2 of the Co-Tenancy Agreement, to the extent there remain any monies owing under the Lender Charge, same shall be written off and a discharge of any remaining discharge of the Lender's Security shall be provided without further payment; and
- (h) The Lender further acknowledges and agrees to execute all documentation, postponements, partial discharges, consents, etc., as may be required pursuant to the provisions of Sections 3.3 and 4.2 of the Co-Tenancy Agreement in order to complete the registration of the Project as a condominium and to complete the transfers of the units once the Project has been completed and sold.

8. 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 \$16,600,000.00 ("Lender Charge");
- (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/third-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,

- 7 -

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; and
- (g) such further and/or other security relating to the Property as the Lender shall reasonably require.

9. **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;

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- (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; and
- (i) all other information and/or documentation in respect of the Project, the Property and/or the Borrower as the Lender may request, acting reasonably.

10. **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 opinion of value indicating completed Project value of not less than \$35,200,000.00 (received May 27, 2015);
- (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 (waived – new entity) 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;

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- (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;

11. 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 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.

12. 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 constating 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

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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.

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- (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 has 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.

13. 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

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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

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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

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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

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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 \$5,000,000.00 per occurrence; and
 - (iv) 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; and
- (w) 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.

14. **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 provisions of Section 8 hereof; or
- (c) 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
- (d) 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
- (e) 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
- (f) 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
- (g) 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
- (h) 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

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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

- (i) if all or any material part of the Property is expropriated; or
- (j) if one or more final judgments for the payment of money (which is not covered by insurance) shall be rendered against the Borrower; or
- (k) 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
- (l) if the Borrower shall suspend or cease or threaten to suspend or cease its business; or
- (m) 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
- (n) 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
- (o) 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
- (p) 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
- (q) 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

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- (r) 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
- (s) if the Borrower is in default of any Permitted Encumbrance for more than fifteen (15) days after receiving written notice of such default; or
- (t) 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).

15. **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;

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- (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) The investor hereby agrees that 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 investors in the Loan in the order of priority of advance by the applicable tranche in the original Loan, and then *pari passu* amongst the investors who had their share of the Loan funded within the same loan tranche.

16. **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:



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and a copy to: Fogler, Rubinoff LLP
 Toronto Office
 77 King St. W., Suite 3000
 P.O. Box 95, TD Centre North
 Toronto, Ontario M5K 1G8

Attention: Richard M. Rotchtin
 Fax No.: (416) 941-8852
 Email: rrotchtin@foglers.co

To the Borrower: Unit 1
 25 Brodie Drive
 Richmond Hill, Ontario L4B 3K7

Attention: Vince Petrozza
 Fax No.:
 Email: vince@fortressrdi.com

and a copy to: Robins Appleby LLP
 120 Adelaide Street West
 Suite 2600
 Toronto, Ontario M5H 1T1

Attention: John Fox/Leor Margulies
 Fax No.: (416) 868-0306

- (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.

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- (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.

**BUILDING & DEVELOPMENT MORTGAGES
CANADA INC., in Trust**

Per:



Name: Ildina Galati
Title: President

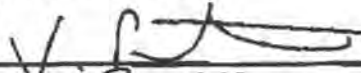
Per:

Name: _____
Title: _____

I/We have the authority to bind the Corporation.

FORTRESS BROOKDALE INC.

Per:



Name: Vincenzo Petrozza
Title: Vice President

Per:

Name: _____
Title: _____

I/We have the authority to bind the Corporation.

SCHEDULE "A"**MUNICIPAL AND LEGAL DESCRIPTION OF THE PROPERTY****PIN 10189-0860 (LT)**

FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640; SECONDLY; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; THIRDLY; PT LT 42A PL 2247 TWP OF YORK AS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FOURTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTHLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO

PIN 10189-0245 (LT)

LOT 32, PLAN 2371, TOWNSHIP OF YORK, TORONTO (NYORK), CITY OF TORONTO

MUNICIPAL ADDRESS & ASSESSMENT ROLL NUMBER

MUNICIPAL ADDRESS	ASSESSMENT ROLL NUMBER
1678 Avenue Road, Toronto	19-08-06-2-100-02700-0000-06
1682 Avenue Road, Toronto	19-08-06-2-100-02600-0000-03
1686 Avenue Road, Toronto	19-08-06-2-100-02500-0000-00
1688-1690 Avenue Road, Toronto	19-08-06-2-100-02400-0000-04
1694-1698 Avenue Road, Toronto	19-08-06-2-100-02200-0000-05
1700 Avenue Road, Toronto	19-08-06-2-100-02100-0000-02
1702 Avenue Road, Toronto	19-08-06-2-100-02001-0000-04
1704B Avenue Road, Toronto	19-08-06-2-100-01800-0000-00
412 Brookdale Avenue, Toronto	19-08-06-2-100-02800-0000-02
414 Brookdale Avenue, Toronto	19-08-06-2-100-02900-0000-05
375 Fairlawn Avenue, Toronto	19-08-06-2-100-01700-0000-04
377 Fairlawn Avenue, Toronto	19-08-06-2-100-01600-0000-01

SCHEDULE "B"
PROJECT BUDGET

SCHEDULE "C"**3.3 Acknowledgments re Related Party Mortgages and Further Charges**

- (a) Prior to the registration of any Further Charge, the holders of such mortgages shall acknowledge, both at the date of registration of any such mortgage or mortgages, as well as and when required by the Construction Lender and any insurance company providing security for purchaser deposits that:
- (i) the Priority of Distributions set out in Section 4.2 herein shall supersede any priority entitlement or recovery pursuant to the registration of the applicable charges;
 - (ii) they shall provide all postponements, standstill agreements, partial discharges and all other documents required by the Construction Lender and any insurance company providing security for purchaser deposits;
 - (iii) in the event of a transfer of any such mortgage or mortgages, they shall require the transferee to execute all documents as required herein;
 - (iv) all interest payments during the terms of such mortgages shall be either capitalized or funded by the holders of such mortgages and there shall be no default under such mortgages for non-payment of same during the terms thereof. The Co-Tenancy shall have the right to approve the length of the term and any options to extend the terms under such mortgages such that it shall be sufficient to meet the construction, marketing and sale schedules of the Project. In the event the Project is completed and sales revenues are insufficient to repay all such mortgages in accordance with the waterfall of payments set forth in the Priority of Distributions herein, partial discharges shall be provided to the Nominee in order to complete sales of units in the Project, whether or not full or partial payment will be made under such mortgages;
 - (v) the holders of all such mortgage shall also acknowledge that notwithstanding the priority registration of their mortgages, provided the Project is completed by the Nominee, the holders of such mortgages shall only be entitled to repayment of their mortgages in accordance with the Priority of Distributions; and
 - (vi) all such lenders shall acknowledge that their security and indebtedness shall be strictly non-recourse as against Cityzen, Dominus Construction (2005) Corporation and their successors and assigns.

4.2 Priority of Distributions

The cash surplus ("Cash Surplus") of the Co-Tenancy arising from the receipt of any Project revenue (save for approved reserves for warranty claims, deposit insurer security, unpaid Project Costs or other reserves approved by the Co-Tenancy) shall be distributed to the Members, as and when funds become available for distribution, in the priority and manner as follows (the "Priority of Distributions"), without duplication, no distribution being made in any category set forth below unless and until the preceding category has been satisfied in full, unless the Members otherwise agree in writing:

- (a) firstly, to the Construction Lender for the repayment of the Construction Loan;
- (b) secondly, unpaid Project Costs including the construction and development management fees herein set out (such amounts not funded by the Construction Lender) including any Excess Loans;
- (c) thirdly, any unpaid fees owing under the Project Management Agreement;
- (d) fourthly, to repay Cityzen Excess Loan(s) (if any) plus default interest;
- (e) fifthly, to repay the Existing Mortgages or to obtain a discharge of any Further Charges up to the Maximum Land Mortgages Amount, to the extent not previously repaid by the Construction Lender.
- (f) sixthly, to repay Related Party Mortgages or equity advances by Fortress with respect to approved Project Costs (only principal amounts and no interest or fees or Priority Advance Distributions or Incremental Environmental Costs);
- (g) seventhly, the balance, if any, to the extent such balance represents the net profits (as determined by the Project accountants using GAAP) of the Co-Tenancy but exclusive of any fees, or interest on such fees or Priority Advance Distributions paid as a result of Fortress arranging any of the Existing Mortgages or Further Charges, to the extent the total owing for same is greater than the Maximum Land Mortgages Amount (the "Actual Profit"), shall, be distributed as follows:

With respect to the amount of Actual Profit that is less than \$10,000,000.00:

Fortress:	75%
Cityzen:	25%

With respect to the amount of Actual Profit that equals or exceeds \$10,000,000.00:

Fortress:	40%
Cityzen	60%

- 3 -

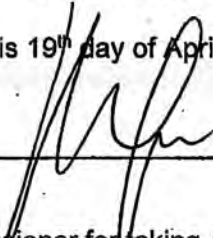
For clarity, all loan fees charged by Fortress or related parties as well as any interest costs arranging fees, loan fees, costs or Priority Advance Distribution included in or on the Existing Charges and the Further Charges or any Incremental Environmental Costs, as well as the Land Transfer Tax and all legal fees paid in connection with the Purchase Agreement increased by either Cityzen or Fortress, if any, shall be paid by Fortress and shall not be charged to the Project or constitute a Project Cost.

Notwithstanding the forgoing, 25% or 60% of the total Incremental Environmental Costs funded by the Construction Lender, if any and as the case may be, should be deducted from the Actual Profit payable to Fortress and paid to Cityzen.

Attached is Exhibit "Q"

Referred to in the
Affidavit of Brendan Forbes

Sworn before me
this 19th day of April, 2018



Commissioner for taking Affidavits, etc

robappl2731788.5

PARTICIPATION AND SERVICING AGREEMENT

THIS AGREEMENT made as of the 1st day of October, 2015

B E T W E E N:

[REDACTED]
(hereinafter called "Investor")

OF THE FIRST PART

- and -

Building & Development Mortgages Canada Inc.
(Mortgage Administration Licence No. 12304)

(hereinafter called "BDMC")

OF THE SECOND PART

WHEREAS:

1. pursuant to the Loan Agreement, BDMC has agreed to provide the Borrower various loan facilities totalling Eighteen Million (\$18,000,000.00) Dollars (the "Loan") for the purposes of refinancing existing debt, and financing the development and the construction of residential homes on the Lands, to be secured by the Security Documents;
2. Investor has agreed to participate in the Loan to the extent of \$30,000.00 upon the terms and subject to the conditions of the Lender Acknowledgement & Consent dated October 1, 2015 (the "LAC"); and
3. Investor has agreed that BDMC will administer the Investment on behalf of Investor in accordance with the terms and subject to the conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of these presents and the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1.00 - INTERPRETATION

1.1 Defined Terms

The following words and phrases shall have the meanings attributed thereto when used in this Agreement:

"Borrower" means 2301132 Ontario Inc. & 2309840 Ontario Inc. & 2491324 Ontario Inc. (on temporary security only);

"Force Majeure" shall mean any event or series of events beyond the control of the Borrower such as strikes, walkouts, labour troubles, inability to procure materials or services or construction financing, power failures, restrictive governmental laws or regulations or the orders or directions of any administrative board, governmental department, officer or other authority, riots, insurrections, war, sabotage, rebellion or acts of God, material changes or delays in market conditions affecting sales or closings, delays in obtaining governmental approvals, permits, rezoning or similar regulatory requirements, none of which is the fault of the Borrower.

"Investment" means the investment in the Loan of the Investor as set out in the LAC and the 2nd recital hercof;

"Lands" means those lands more particularly described and charged pursuant to the Security Documents including without limitation all buildings, fixtures and

improvements now or hereafter situate thereon and all easements, rights-of-way and other similar rights appurtenant to or used in connection therewith;

"Loan" means the financing of the Project by BDMC to the Borrower to assist in the construction of Residential and commercial condo construction, on the Lands, in the maximum principal amount of Eighteen Million (\$18,000,000.00) Dollars on the terms and subject to the conditions set out in the Loan Agreement and includes without limitation all Principal, Interest, interest on overdue Interest, fees, expenses, charges and such other amounts owing by the Borrower from time to time to BDMC pursuant to the Loan Agreement or any of the Security Documents in respect of Loan;

"Loan Agreement" means the Loan Agreement dated October 1, 2015, between BDMC and the Borrower in respect of the Loan;

"Mortgaged Property" means:

- (a) the Lands;
- (b) all rights, privileges, advantages and benefits whatsoever arising pursuant to all agreements regarding the development of, and the construction of improvements on, the Lands;
- (c) all personal property presently or in the future owned or acquired by or on behalf of the Borrower and all proceeds and renewals thereof, accretions thereto and substitutions therefore which are used in connection with the Lands;
- (d) all other personal property of the Borrower securing the Facilities; and

"Participants" means BDMC and the Investor and other investors acquiring interests in the Loan and "Participant" means any one of them;

"Person" means any individual, company, corporation, partnership, firm, trust, sole proprietorship, government, government agency, authority or entity however designated or constituted;

"Principal" means the principal amount of the Loan and all Interest, interest on overdue Interest, fees, expenses, charges and other amount owing by the Borrower to BDMC from time to time which may be added thereto or become part thereof pursuant to the Loan Agreement or the Security Documents;

"Project" means the property located at 13758 & 13764 Highway 7, 22 & 24 Dayfoot Drive, 8 Lindsay Court, Georgetown, Ontario and any adjacent lands to be added as future security;

"Proportionate Share" means the proportionate share of each of the Participants in the Loan as stipulated in each LAC entered into with each Participant;

"Security Documents" means:

- (e) all mortgages, charges, security agreements, instruments and documents executed and delivered by the Borrower to BDMC as security for the Facilities, from time to time, whether direct, indirect, primary or collateral, including without limitation any guarantees, charges, assignments and any other type of security agreement;
- (f) all policies of insurance relating to the Mortgaged Property as required under the Loan Agreement or under the Security Documents; and
- (g) all instruments and documents supplemental or ancillary to any of the foregoing.

Unless specifically defined herein, all capitalized terms shall have the meanings ascribed to them in the Loan Agreement.

- 1.2 **Applicable Law** This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 1.3 **Headings, etc.** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- 1.4 **Singular, Plural and Gender** Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.

ARTICLE 2.00 - LOAN ORIGATION AND PARTICIPATION

- 2.1 **Entering into of Loan** BDMC shall be exclusively responsible for the implementation of the Loan in accordance with the provisions of the Loan Agreement and to obtain and administer the Security Documents and the processing of the Loan in accordance with the provisions of the Loan Agreement. In connection therewith, it shall perform and attend to all matters and things necessary to administer and service the Loan in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account including, without limitation, the following:
- (a) acquire, assemble, record and process all the necessary information, data, applications and other forms and reports in connection with the Loan;
 - (b) retain solicitors to perform and carry out all instructions and requirements necessary to complete the Loan including, without limitation, the requisite title searches, the preparation, execution and delivery of the Security Documents and the registration and filing of the Security Documents or notices thereof as may be required to ensure the priority of the Security Documents subject only to such encumbrances and other qualifications permitted by the Loan Agreement;
 - (c) ensure that the Borrower has made satisfactory arrangements for insurance as may be required by the Loan Agreement;
 - (d) make the Advances in accordance with normal mortgage practice out of funds to be provided by the Participants, the provisions of the Loan Agreement, the LAC and the Construction Lien Act.
- 2.2 **Endorsement of Security Documents** All Security Documents shall be taken by BDMC in its name and such other trustees appointed by a Participant from time to time and shall hold the Investment as agent for the Participants according to their Proportionate Shares and upon and subject to the terms of this Agreement.

ARTICLE 3.00- SERVICING OF INVESTMENT

- 3.1 **Servicing Duties** BDMC shall hold, administer and service the Loan for the Investor and other Participants in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account and shall perform, without limiting the generality of the foregoing, the following duties:
- (a) make reasonable efforts to collect all payments due under the Loan, including without limitation, all Principal, Interest and interest on overdue Interest, taxes (if applicable), and any other monies or payments required by the Loan Agreement or the Security Documents;
 - (b) perform all necessary services with respect to the settlement of any loss under insurance policies in the event of damage to or destruction of the Mortgaged Property;
 - (c) settle with the Borrower and any expropriating authority the amount and disposition of any compensation payable in connection with any

expropriation of any part of or any interest in the Mortgaged Property;

- (d) pay out of payments of Interest or other monies received for the borrower by BDMC:
 - (i) when necessary, insurance premiums, taxes and any other amounts which BDMC is authorized to pay on behalf of the Borrower under any of the Security Documents;
 - (ii) the reasonable fees and expenses of any experts retained by BDMC pursuant to section 3.2;
 - (iii) any other reasonable expenses necessary to protect or preserve the Mortgaged Property approved by Investor; and
- (e) remit to Investor forthwith upon receipt, or as soon as is reasonably possible thereafter, the applicable pro rata portions of all payments on account of Principal received by BDMC (except to the extent any amount thereof has been solely funded by BDMC), together with a statement indicating the amount of each payment of Principal;
- (f) remit to Investor on or before the 1st Business Day of each month all payments of its Proportionate Share of Interest out of the Interest received by BDMC from the Borrower during the previous month, less any payments authorized by paragraph 3.1(e), together with a statement indicating the amount of each payment received and the deductions therefrom. It is the intention of BDMC that payments of Interest will be due on the first day of each month except as otherwise provided by the Loan Agreement and the Security Documents. If payments of Interest are received by BDMC on any other day, the balances of such payments shall be remitted to Investor on or before the 1st Business Day following receipt of the payment;
- (g) maintain proper records and accounts showing all receipts and disbursements in respect of the Investment and permit Investor, its auditors and agents, on reasonable notice to BDMC, to examine such records and accounts from time to time and provide such copies thereof as Investor may reasonably require at its expense relating to the Loan;
- (h) generally attend to the performance of such other things as a prudent lending institution would normally perform if the Loan was for its own account exclusively as per the Loan Agreement and the LAC including, inter alia, sign all postponements, standstill, subordination and partial discharges for any of the Security Documents as per the LAC and the Loan Agreement, or generally, as may arise from time to time in order to protect the interest of the Investor in the Loan;
- (i) in the event that BDMC, in its sole discretion, acting as approved Lender and administrator, determines that the Borrower, as a result of an act of *Force Majeure*, will not be able to complete the Project so as to repay the Loan on or before the maturity date on the Loan under the Loan Agreement (as it may be extended under the terms thereof), it shall have the authority to extend the term of the Loan for such period of time, not exceeding 24 months so as to permit the Borrower to complete the Project and its sales, and thereby repay the Loan. BDMC shall have the right to do so on one or more occasions but for a period of time not exceeding 24 months as aforesaid, without the consent of the investor;
- (j) give such notices to the Borrower and other Persons as BDMC may consider necessary;
- (k) take all reasonable steps to enforce performance of the obligations of the Borrower under the Loan or the Security Documents or to protect or preserve the Mortgaged Property;

- (l) if BDMC considers it necessary to accelerate repayment of the Loan and realize upon the Mortgaged Property including, inter alia, the appointment of a receiver, the exercise of powers of distress, the institution of foreclosure or power of sale proceedings and/or any other legal or equitable remedy. BDMC shall not be required to consult with Investor prior to determining what action BDMC should take to enforce its rights and exercise its remedies under the Security Documents or otherwise. BDMC shall not be required to take any action (or refrain from taking any action) that would result in BDMC being in default of any covenant, term, provision or condition of this Agreement, the Loan Agreement or the Security Documents or any obligation imposed on it by law including, without limitation, the obligation to act in a reasonable manner and in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account; and
- (m) to fulfill all obligations of the Investor under the Loan and any Loan arrangements including the LAC relating to the execution of all necessary postponements, discharges, standstill agreements and other documentation consistent with the foregoing.

3.2 Experts To assist in administering the Investment and carrying out its duties hereunder, BDMC may retain at the expense of the Borrower, or failing same, the Participants to be shared based on their respective Proportionate Shares, such solicitors, notaries, counsel, auditors, appraisers and other experts as BDMC may, acting reasonably.

3.3 No Warranties or Representations BDMC has given no warranty or representation with respect to the Investment and shall not be responsible for the observance or performance of any of the obligations of the Borrower or the Covenantors pursuant to the Loan Agreement or the Security Documents. Investor acknowledges that it has made its own decision to participate in the Investment without any inducement from or reliance upon BDMC with respect to the financial condition of the Borrower or the Covenantors or the sufficiency of the Mortgaged Property or the Security Documents.

3.4 Duty of Care BDMC shall not be liable for any error of judgment or any action taken or omitted to be taken by it under or in connection with this Agreement if it acts upon or relies on any advice received from any expert retained by BDMC pursuant to section 3.2 or otherwise acts in good faith.

3.5 Consent of Investor

- (a) Save as set out herein, BDMC shall not, without the prior written consent of Investor, acting reasonably, agree to any renewal or any material amendment, modification or waiver of any of the terms of the Loan Agreement, the Security Documents or any agreement or document relating thereto, nor consent to any action or failure to act by the Borrower or any other party, or exercise any rights that BDMC may have in respect thereof or any rights pursuant to Section 3.1(j) hereof;
- (b) If BDMC should request Investor's written consent to any of the action described in this paragraph and shall not receive Investor's consent or denial thereof in writing within ten (10) Business Days of the mailing, delivery or emailing of such request, Investor shall be deemed to have given its consent to such action; and
- (c) Notwithstanding anything contained herein, in the event that BDMC obtains the written consent or agreement of Investors holdings at least fifty-one percent (51%) of the amount of the Loan advanced from time-to-time to any renewal, or material amendment, modification or waiver of any of the terms (collectively, the "Change") of the Loan Agreement, the Security Documents or any agreement or document relating thereto, the consent of all of the Investors shall be deemed to have been given to the

Change and BDMC shall be deemed to be authorized to enter into any and all such agreements and documentation to give effect to the Change on behalf of all the Investors. By way of example, in the event that the authorized loan is \$20,000,000.00 and when the Change is being requested \$10,000,000.00 has been advanced, provided that BDMC obtains the written consent of Investors to the Change who have advanced at least \$5,000,001.00, BDMC shall be permitted to take advantage of the provisions of this Section 3.5(b) to proceed with the proposed Change.



Investor Initials

3.6 **Indemnity** Investor shall indemnify and hold harmless BDMC from its pro rata share of all claims, costs, losses, expenses and damages of every nature and kind with respect to the performance of BDMC's obligations in this Agreement, the Loan Agreement and the Security Documents, as same relates to the Loan save and except any such claim, cost, loss, expense or damage which results from:

- (a) the failure of BDMC to act as a prudent lending institution as required by Sections 2.1 and 3.1;
- (b) BDMC's failure to comply with its obligations under this Agreement; or
- (c) BDMC's negligence, fraud or any illegal act.

The obligations of Investor under this section shall survive the termination of this Agreement.

3.7 **Interest Accrual** Investor acknowledges that the Loan includes funds raised for an interest reserve to pay out regular Investor interest payments. In the event that such interest reserve is not fully funded to cover all interest payments to the Participants, interest payments may be delayed, reduced or be unpaid until maturity of the Loan. In such event, all such interest would continue to accrue and be recoverable as and when the interest reserves are replenished or the Loan matures and is fully repaid, assuming successful completion of the Project and full repayment of the Loan at that time.

It is anticipated that such interest reserves will be fully funded for the term of the Loan provided BDMC has raised all required funds contemplated under the Loan.

ARTICLE 4.00- GENERAL

4.1 **Meetings** Subject to any other provisions to this Agreement, either party may at any time on three (3) Business Days notice call a meeting with the other party to consider any matter related to this Agreement and, if requested by BDMC, to obtain the consent of Investor to any action proposed to be taken by BDMC.

4.2 **Notices** All notices, consents, approvals or communications required or permitted hereunder shall be in writing and shall be delivered by courier or sent by facsimile transmission and, if intended for BDMC, addressed as follows:

Building & Development Mortgages Canada Inc.
25 Brodie Drive
Unit 1A
Richmond Hill, ON L4B 3K7
Attention: Ildina Galati- Ferrante
Fax No. 905 508 3957

and, if intended for Investor, addressed as follows:

Attention:
Fax No.

Any such notice, consent, approval or communication delivered or sent as aforesaid shall be deemed to be received on the Business Day next following the day it is delivered or sent. Any party may change its address for the foregoing purposes within the Province of Ontario by giving the other party notice of such change of address as hereinbefore provided.

- 4.3 **Termination** Subject as hereafter provided, this Agreement shall remain in force until the earlier of the Loan having been paid in full and the Security Documents have been discharged or the Mortgaged Property has been realized and the proceeds of realization have been disbursed among the Participants in accordance with this Agreement. The indemnity provided in section 3.6 shall survive termination indefinitely.
- 4.4 **Effective Date of this Agreement** This Agreement shall not be effective until the date on which it is executed and delivered by BDMC and Investor.
- 4.5 **Relationship** Neither the execution of this Agreement, nor the sharing of the Investment nor any agreement to share in profits or losses arising as a result of the Investment is intended to be nor shall it be construed to be the formation of a partnership or a joint venture among the Participants.
- 4.6 **Publications or Registration of Interest** Investor shall not register this Agreement or notice thereof in any manner on the title to the Lands or with respect to any of the other Mortgaged Property.
- 4.7 **Dealings with Borrower**
- (a) Investor shall not contact or deal either directly or indirectly with the Borrower or the Covenantors or any other Person with respect to the servicing of the Investment or the enforcement of the Security without the consent of BDMC. Investor shall also not enter into any other agreement or take any other security with respect to this Agreement, the Investment or its Proportionate Share without the consent of BDMC.
 - (b) Investor shall not exercise any right of set-off, counter claim or any other claim it may have against the Borrower with respect to Contributory Advances or Contributory Payments to be made by it pursuant to this Agreement.
- 4.8 **Legal Capacity** Each Participant warrants and represents to the others that it has the legal capacity to enter into this Agreement and the Investment pursuant to its constituting documents and any applicable legislation and that this Agreement constitutes a valid and binding obligation of such Participant enforceable in accordance with its terms.
- 4.9 **Entire Agreement** This Agreement constitutes the entire agreement between the Participants with respect to the Investment and supersedes all prior proposals and agreements, whether oral or written, with respect to the Investment.
- 4.10 **Amendment** No term or provision of this Agreement may be amended, waived, discharged or terminated without the unanimous written consent of all of the parties.
- 4.11 **Binding, etc.** This Agreement shall enure to the benefit of and be binding upon the parties and their successors and permitted assigns.
- 4.12 **No Waiver** The failure of any party to insist upon the strict adherence to or performance of any of the covenants contained herein shall not be considered as a waiver of such covenant by that party. A waiver of any provision in this Agreement must be in writing and signed by the waiving party.

4.13 **Counterparts** This document may be executed in counterparts, each of which shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to be dated the date hereof.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first hereinabove written.

Per: _____

Name:
Title:

Per: _____

Name:
Title:

Building & Development Mortgages Canada Inc.

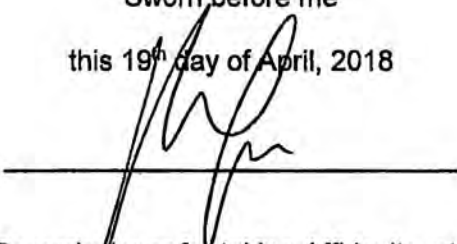
Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation

Attached is Exhibit "R"

Referred to in the
Affidavit of Brendan Forbes

Sworn before me
this 19th day of April, 2018



Commissioner for taking Affidavits, etc

CONFIRMATION OF LENDER'S INTEREST

TO:

_____ (the "Mortgage Investor")

_____ (insert address)

_____ (insert email address)

_____ (insert investment amount)

\$50,000.00

WHEREAS:

- A. Building & Development Mortgages Canada Inc., in trust (the "Lender"), acted as lender in respect of a loan (the "Loan") pursuant to a loan agreement dated November 30, 2017, 2301132 Ontario Inc. & 2309840 Ontario Inc.), as borrower, a copy of which loan agreement is attached hereto (the "Loan Agreement"); and
- B. the Lender is assigned an undivided 0.64% OR \$50,000.00 interest in the Loan pursuant to the Loan Agreement to Building & Development Mortgages Canada Inc., in trust (the "Assignee"), pursuant to an assignment and assumption agreement dated November 30, 2017; AND
- C. the Lender holds its remaining interest in the Loan Agreement and all related documentation/security, in trust, for a series of persons/entities;

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

1. the Lender confirms that it holds an undivided 0.64% OR \$50,000.00 in the Loan, in trust, for and on behalf of the Mortgage Investor; (based on a face value of \$7,800,000.00)
2. the Lender covenants to provide the Mortgage Investor with notice of any material default by the Borrower pursuant to the Loan;
3. the Lender covenants to enforce the Loan on behalf of the Mortgage Investor and in conjunction with the Assignee as would a prudent lender, having regard to the quantum 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 \$53,300,000.00 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.

[Redacted]

[Mortgage Investor]

[Redacted Signature]

Per:

Name:
Title:

Per:

Name:
Title:

Building & Development Mortgages Canada Inc., in Trust [Lender]

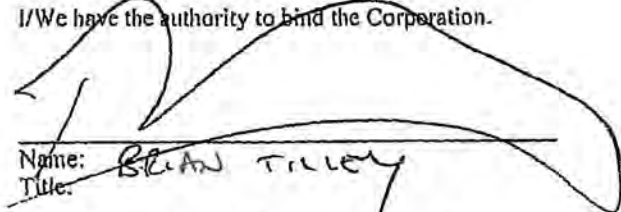
Per: 
Name: Ildina Galati- Ferrante
Title:

I/We have the authority to bind the Corporation.

2301132 Ontario Inc. & 2309840 Ontario Inc. [Borrower]

Per: 
Name: BRIAN TULLY
Title:

I/We have the authority to bind the Corporation.

Per: 
Name: BRIAN TULLY
Title:

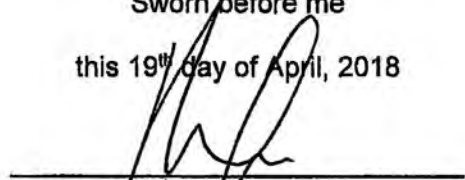
I/We have the authority to bind the Corporation.

Tab S

Attached is Exhibit "S"

Referred to in the
Affidavit of Brendan Forbes

Sworn before me
this 19th day of April, 2018



Commissioner for taking Affidavits, etc



**ACKNOWLEDGEMENT AND CONSENT
AGREEMENT - LENDER**
Registered Plans & TFSA Division

This Agreement made and effective as of the _____ day of _____, 201_____.

BETWEEN:

FORTRESS REAL DEVELOPMENTS INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called "Fortress")

-AND-

BUILDING & DEVELOPMENT MORTGAGES CANADA INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called the "Broker")

-AND-

BUILDING & DEVELOPMENT MORTGAGES CANADA INC. (The Mortgage Administrator License No. 12304), a corporation incorporated under the laws of the Province of Ontario, (hereinafter called the "Administrator")

-AND-

OLYMPIA TRUST COMPANY, a corporation incorporated under the laws of the Province of Alberta (hereinafter called "Olympia")

-AND-

The undersigned individual Lender that has advanced funds to the Borrower and has agreed to be a party hereto (hereinafter called the "Lender")

WHEREAS FORTRESS BROOKDALE INC. (the "Borrower") is borrowing up to \$16,600,000.00 from the undersigned lender pursuant to certain loan agreements (collectively referred to herein as the "Loan Agreements");

AND WHEREAS the loan from the Lender to the Borrower ranks *pari passu* with other borrowings by the Borrower pursuant to similar Loan Agreements with other individual lenders (collectively referred to herein with the Lender as the "Junior Secured Lenders") and such loans are collectively secured by a mortgage (the "Mortgage") on the Borrower's lands described as PIN 10189-0860 LT; 10189-0245 LT as amended or substituted from time to time (the "Lands");

AND WHEREAS the Lender and the Junior Secured Lenders have agreed to postpone their loans to one or more construction loans obtained by the Borrower up to \$110,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$16,600,000.00 if required (the "First Priority Construction Loans"), whereby the collective indebtedness of the Junior Secured Lenders would rank Junior to the First Priority Construction Loans;

AND WHEREAS the Lender is lending the Borrower funds from his or her registered savings plan accounts ("RRSP Account") and is holding the Mortgage granted by the Borrower in such account as security for payments;

AND WHEREAS the RRSP Account is administered by Olympia pursuant to a trust account agreement with the Lenders;

AND WHEREAS the RRSP Account is subject to the requirements of the *Income Tax Act* (Canada) and the regulations thereunder;

AND WHEREAS the Lender is a client of Fortress and/or the Broker and has been introduced to the Borrower by either Fortress or the Broker;

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ACKNOWLEDGEMENT AND CONSENT AGREEMENT - LENDER

Registered Plans & TFSA Division

AND WHEREAS the Broker has delivered to Olympia a legal opinion confirming that the Mortgage granted by the Borrower to the Lender is eligible for Investment by the RRSP Account provided the amount of the First Priority Construction Loans and the Mortgage granted to all of the Junior Secured Lenders do not exceed the fair market value of the Lands;

AND WHEREAS the above representations are being made by Fortress, the Broker and the Lender and not by Olympia or the Administrator;

NOW THEREFORE, IN CONSIDERATION OF the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged and confirmed, do hereby covenant and agree as follows:

1. The Lender acknowledges and confirms that he or she has loaned the Borrower \$ _____ pursuant to the Loan Agreement, whereby he or she has participating share in the Mortgage as at the date hereof.
2. The Lender hereby acknowledges and confirms that prior to entering into the Loan Agreement he or she was aware that: (i) certain provisions in the Loan Agreement allow for the postponement of the Mortgage in favor of additional construction and/or mezzanine or related Mortgage financing to a maximum of \$110,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$16,600,000.00 if required (the "Maximum Priority Financing Amount" or "MPFA"); and (ii) the Lender is required to postpone his or her interest in the Mortgage in favor of certain development agreements between the Borrower and certain governmental authorities (including but not limited to: city site plan, development plans, Planning Act requirements, mezzanine financing and/or insured deposit Mortgage security for AVIVA or other like insurance providers for purchaser's deposits and/or Condominium Act registrations), as such requirements are more particularly described in the Loan Agreement, in order to facilitate the development of the Lands.
3. The Lender confirms that he or she fully understands the effect of the terms of the Loan Agreement and that the Lender hereby reconfirms his or her instructions to proceed with the loan pursuant to the terms and conditions outlined in the Loan Agreement.
4. The Lender hereby agrees to postpone the Mortgage to an amount not to exceed the MPFA and/or to any required development agreements between the Borrower and the applicable government authority(ies) in order to facilitate the development of the Lands.
5. The Lender acknowledges that the MPFA may be advanced to the Borrower in multiple stages based on the achievement of certain construction milestones, and may be advanced by various parties and/or secured via multiple registrations on the Lands.
6. The Lender hereby acknowledges that he or she was advised that the face value of the Mortgage could be amended periodically during the term to increase the face value of the Mortgage to a maximum of \$16,600,000.00. The Lender hereby confirms that he or she fully understands the effect of this term of the Loan Agreement and that the Lender re-confirms his or her instructions to proceed with the investment.
7. The Lender understands that, as at the date hereof, pursuant to the Loan Agreement, the Mortgage securing the loan ranks subsequent to other registered Mortgages against the Lands in the amount of \$25,200,000.00. Further, the Lender understands that prior to further advances under the Mortgage the Borrower shall be required to provide an updated valuation of the Lands to the Administrator for the purpose of confirming that the combined value of all registered Mortgage security on the Lands does not exceed the most recent valuation of the Lands (which currently indicates an estimated value of \$35,200,000.00 for the Lands authored by KEVIN FERGUSON & JEFF CHEONG of LEGACY GLOBAL MERCANTILE PARTNERS LTD. dated as at DECEMBER 23, 2015, and is in accordance with the terms and provisions of the Loan Agreement).

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AGREEMENT - LENDER**
Registered Plans & TFSA Division

8. The Lender hereby acknowledges and confirms that the Mortgage he or she has an interest in is currently registered with a maturity date of MAY 27, 2017 (with the option to the Borrower to extend the maturity date an additional 12 months without penalty should they provide three (3) months written notice. Upon the original maturity date, the registration will be amended to reflect the new maturity date of MAY 27, 2018.) The Lender irrevocably authorizes and consents to the execution of any documents by Olympia and/or the Administrator on the Lender's behalf without further notice to, or approval by, the Lender for the purpose of granting this term extension of the Mortgage.
9. Should the Borrower choose to exercise the 12 months term extension, interest will continue to accrue at NINE PERCENT (9%) per annum (calculated ANNUALLY, not in advance) and the final year of accrued interest will be paid in full with all other accrued interest at the time of the "extended" maturity.
10. The Lender hereby agrees that in the event there is an early repayment of the loans pursuant to the Loan Agreements (collectively the "Loans") by the Borrower (excluding receipts from enforcement or sale of Project units, as defined in the Loan Agreements) ("Early Repayment"), same shall be paid to lenders of the Loans in the order of priority of advance by the applicable tranche in the original Loans, and shall rank *pari passu* amongst the lenders who had their share of the Loans funded within the same Loan tranche. The Lender hereby consents and agrees to the distribution of Early Repayments as aforesaid and authorizes Olympia and/or the Administrator to execute all documents and make all payments consistent with the provisions of this section.
11. I, the Lender, acknowledge and confirm that I have entered into a participation and servicing agreement ("PASA") with the Administrator, whereby I have retained the Administrator to provide certain administrative services relating to the Loan Agreement. I hereby irrevocably authorize and direct Olympia to execute any documents or agreements which the Administrator has requested Olympia execute (in writing) and has confirmed to Olympia pursuant to an officer's certificate that such documents or agreements are within the scope of authority granted to the Administrator in the PASA. I hereby agree that Olympia shall not have any obligation to review the terms, conditions or provisions of the PASA and shall be entitled to rely solely on the Administrator's officer's certificate to Olympia that such documents or agreements are within the scope of authority granted to the Administrator in the PASA. In the event that the Administrator was not entitled to cause Olympia to execute any document or agreement, my recourse shall be limited to the Administrator and I shall not have any claim for damages or otherwise against Olympia for executing the documents and agreements as directed by the Administrator.
12. THE LENDER HEREBY UNDERSTANDS, CONSENTS AND AGREES THAT OTHER CHARGES/MORTGAGES AND/OR DEVELOPMENT AGREEMENTS MAY BE REGISTERED IN PRIORITY TO THE MORTGAGE AGAINST THE LANDS DURING THE TERM OF THE MORTGAGE. THE LENDER HEREBY CONFIRMS THAT HE OR SHE UNDERSTANDS AND AGREES THAT THE MORTGAGE SHALL BE REQUIRED TO POSTPONE AND STANDSTILL TO PRIOR CHARGES/MORTGAGES TO A MAXIMUM OF \$137,600,000.00 IN PRIORITY FINANCING. THE LENDER ALSO UNDERSTANDS THAT PRIORITY FINANCING TO THE MORTGAGE IS EXPECTED TO PERIODICALLY INCREASE OVER THE TERM OF THE MORTGAGE AND THAT SUCH POSTPONEMENTS SHALL BE PERMITTED AND SHALL OCCUR ON THE BASIS OF COST CONSULTANT REPORTS PREPARED ON BEHALF OF THE BORROWER. THE LENDER UNDERSTANDS THAT ADDITIONAL PRIORITY FINANCING MAY BE REQUIRED IF THERE IS A SHORTFALL IN FUNDS PROVIDED BY OTHER INVESTORS PURSUANT TO THE TERMS OF THE MORTGAGE. IN THE EVENT OF A SHORTFALL IN THE FUNDING OF THE MORTGAGE, OTHER CHARGES/MORTGAGES MAY BE REGISTERED AGAINST THE LANDS TO FUND AND SECURE ANY SUCH SHORTFALL.

THE LENDER UNDERSTANDS THAT OLYMPIA AND/OR THE ADMINISTRATOR MAY BE REQUESTED BY THE BORROWER TO EXECUTE SUCH DOCUMENTS AS MAY BE REQUIRED TO PERMIT THE REGISTRATION OF CERTAIN DOCUMENTS OR AGREEMENTS FOR THE PURPOSE OF GRANTING SENIOR LENDERS PRIORITY TO THE

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ACKNOWLEDGEMENT AND CONSENT AGREEMENT - LENDER

Registered Plans & TFSA Division

MORTGAGE AND FACILITATING THE PLANNED DEVELOPMENT OF THE LANDS (EXAMPLES OF SUCH DOCUMENTS OR AGREEMENTS INCLUDE BUT ARE NOT LIMITED TO: PARTIAL DISCHARGES OF THE MORTGAGE, CITY SITE PLANS, DEVELOPMENT PLANS, PLANNING ACT REQUIREMENTS, MEZZANINE FINANCING, INSURED DEPOSIT MORTGAGE SECURITY FOR AVIVA OR OTHER LIKE INSURANCE PROVIDERS FOR PURCHASER'S DEPOSITS OR CONDOMINIUM REGISTRATION DOCUMENTS). THE LENDER HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS OLYMPIA TO EXECUTE ANY DOCUMENTS OR AGREEMENTS WHICH THE CORPORATION HAS REQUESTED OLYMPIA EXECUTE (IN WRITING) AND HAS ADVISED OLYMPIA (IN WRITING) THAT SUCH DOCUMENTS OR AGREEMENTS ARE: (I) REQUIRED BY SENIOR LENDERS OR ARE OTHERWISE REQUIRED TO DEVELOP THE LANDS; AND (II) PERMITTED PURSUANT TO THE TERMS OF THE LOAN AGREEMENT. THE PARTIES HEREBY AGREE THAT OLYMPIA SHALL NOT HAVE ANY OBLIGATION TO REVIEW THE TERMS, CONDITIONS OR PROVISIONS OF ANY SUCH DOCUMENTS OR AGREEMENTS (INCLUDING ANY PRIORITY AGREEMENTS) AND SHALL BE ENTITLED TO RELY SOLELY ON THE CORPORATION'S WRITTEN DIRECTION TO OLYMPIA THAT SUCH DOCUMENTS OR AGREEMENTS ARE PERMITTED TO BE EXECUTED UNDER THE LOAN AGREEMENT AND THAT SUCH DOCUMENTS OR AGREEMENTS ARE REQUIRED BY THE SENIOR LENDERS OR ARE OTHERWISE REQUIRED TO DEVELOP THE LANDS. FOR GREATER CERTAINTY, THE LENDER ACKNOWLEDGES AND AGREES THAT THE BORROWER WILL BE SOLELY RESPONSIBLE FOR NEGOTIATING THE TERMS OF ALL SUCH DOCUMENTS AND AGREEMENTS.

THE LENDER HEREBY RE-CONFIRMS HIS OR HER CONSENT AND AGREEMENT TO POSTPONE AND STANDSTILL TO ANY REQUIRED FINANCING OR DEVELOPMENT AGREEMENTS, AND TO PARTIALLY DISCHARGE THE MORTGAGE, WITHOUT PAYMENT, WITH RESPECT TO ANY LANDS SECURED BY THE MORTGAGE WHICH MAY BE REQUIRED FOR PUBLIC OR QUASI PUBLIC PURPOSES.

13. The Lender understands that additional priority financing may be required and may be registered against the Lands in priority to the Mortgage in the event there is a shortfall in funds provided by the Junior Secured Lenders. The maximum amount of funding that the Junior Secured Lenders will postpone to is \$110,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$16,600,000.00 if required. In the event that additional priority financing is required, the Lender hereby irrevocably authorizes and directs Olympia and/or the Administrator to execute any documents or agreements on the Lender's behalf without further notice to, or approval by the Lender to postpone and standstill to such additional priority financing provided that Olympia: (i) receives a written request from the Borrower to sign such documents or agreements; (ii) receives written confirmation from the Borrower that such documents or agreements are required by the senior lenders or are otherwise required to develop the Lands; and (iii) receives written confirmation from the Borrower that such documents or agreements are permitted pursuant to the Loan Agreement.
14. The Lender irrevocably authorizes and consents to the execution of any documents by Olympia or the Administrator on the Lender's behalf without further notice to, or approval by the Lender for the purpose of granting partial discharges of the Mortgage in the course of the development of the Lands during the term of the Loan Agreement as more particularly described in the Loan Agreement provided that Olympia and the Administrator: (i) receives a written request from the Borrower to sign such documents or agreements; (ii) receives written confirmation from the Borrower that such documents or agreements are required by the senior lenders or are otherwise required to develop the Lands; and (iii) receives written confirmation from the Borrower that such documents or agreements are permitted pursuant to the Loan Agreement. For greater certainty, the Lender agrees that Olympia and the Administrator shall be entitled to rely solely on the Borrower's written confirmation in (ii) and (iii) above without any further investigation or verification. In the event that the Borrower was not entitled to receive a partial discharge of the Mortgage and Olympia or the Administrator has partially discharged the Mortgage based on a written confirmation of the Borrower in accordance with (ii) and (iii) above, the Lender's recourse shall be limited to the Borrower and the Lender shall not have any claim for damages or otherwise against Olympia or the Administrator for partially discharging the Mortgage. The Lender hereby confirms his or her authorization and consent in this regard.

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**ACKNOWLEDGEMENT AND CONSENT
AGREEMENT - LENDER**
Registered Plans & TFSA Division

15. The Lender irrevocably authorizes and consents to the execution of any documents by Olympia or the Administrator on the Lender's behalf without further notice to, or approval by the Lender for the purpose of granting a full discharge of the Mortgage provided that Olympia and the Administrator: (i) receives a written request from the Borrower to sign such discharge documents or agreements; (ii) receives written confirmation from the Borrower that it has paid the Lender all such amounts owing under the Loan Agreement and that the discharge of the Mortgage is permitted pursuant to the Loan Agreement. For greater certainty, the Lender agrees that Olympia and the Administrator shall be entitled to rely solely on the Borrower's written confirmation in (ii) above without any further investigation or verification that all such amounts have actually been paid by the Borrower to the Lender as required by the Loan Agreement. In the event that the Lender has not been paid all amounts owing under the Loan Agreement and Olympia or the Administrator has discharged the Mortgage based on a written confirmation of the Borrower in accordance with (ii) above, the Lender's recourse shall be limited to the Borrower and the Lender shall not have any claim for damages or otherwise against Olympia or the Administrator for discharging the Mortgage. The Lender hereby confirms his or her authorization and consent in this regard.
16. The Lender understands that from time to time, as further advances are contemplated pursuant to the terms of the Loan Agreement, Olympia and/or the Administrator may be required to execute certain documents related to the provisions identified herein. The Lender hereby confirms that he or she continues to irrevocably authorize Olympia and/or the Administrator to execute any such required documentation on his or her behalf, provided that Olympia and/or the Administrator: (i) receives a written request from the Borrower to sign such documents or agreements; (ii) receives written confirmation from the Borrower that such documents or agreements are required by the senior lenders or are otherwise required to develop the Lands; and (iii) receives written confirmation from the Borrower that such documents or agreements are permitted pursuant to the Loan Agreement.
17. The Lender acknowledges and agrees that Olympia and/or the Administrator shall not be responsible for reviewing or negotiating any terms, conditions or provisions of any priority agreements, subordination agreements or other documents or agreements that may be required by senior lenders or as may otherwise be required to develop the Lands. The Lender acknowledges that the Borrower shall be solely responsible for reviewing and negotiating all such agreements and documents and that Olympia and/or the Administrator shall be entitled (without any further review or investigation) to execute and deliver such documents and agreements provided it receives the written confirmation from the Borrower as contemplated herein.
18. The Lender irrevocably authorizes and consents to the execution of any documents by the Trustee on the Lender's behalf without further notice to, or approval by the Lender, relating to default remedies provided that the Trustee: (i) receives a written request from the Administrator/Broker to sign such default related documents or agreements; (ii) receives written confirmation from the Administrator/Broker that such documents or agreements are required in order to protect the Lender's interest in the Mortgage; and (iii) receives written confirmation from the Administrator/Broker that such documents and agreements are permitted pursuant to the Loan Agreement. The Lender hereby confirms his or her authorization and consent in this regard.
19. The Lender hereby indemnifies and saves harmless Olympia and the Administrator and each of their directors, officers, employees, shareholders and agents for, and hold such persons harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, suit, settlement, cost or expense (including, without limitation, the fees and expenses of legal counsel), incurred without gross negligence, willful misconduct or fraud on the part of the indemnified person (each as determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by such indemnified person in connection with the exercise or performance of its duties hereunder, including without limitation, the costs and expenses of defending against any claim of liability hereunder, directly or indirectly. All indemnities, all limitations of

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**ACKNOWLEDGEMENT AND CONSENT
AGREEMENT - LENDER**
Registered Plans & TFSA Division

liability and all other provisions for the protection of Olympia and the Administrator and the other indemnified persons provided for in this Agreement shall survive the termination of this Agreement.

20. All parties hereto (including the Lender) have obtained independent legal advice (and if necessary independent tax advice) with regard to the Loan Agreement, the Mortgage and this Agreement.

21. Fortress, the Borrower and the Lender each acknowledge and agree that Olympia may be required to deem this mortgage to be a Non-Qualified Investment pursuant to the *Income Tax Act (Canada)* in the event that it is concluded that the First Priority Construction Loans and the mortgage granted to all of the Junior Secured Lenders exceeds the fair market value of the Lands. Further, the parties also acknowledge that Olympia may be required to deem this mortgage to be a Non-Qualified Investment pursuant to the *Income Tax Act (Canada)* in the event that the Borrower fails to provide Olympia with the requisite confirmation as to the value of the Lands as set out above. If the mortgage is deemed as a Non-Qualified Investment, a statement will be issued to the Lender and Canada Revenue Agency (hereinafter called "CRA") by Olympia, advising of the Non-Qualified Status, and the Lender will be required to complete and file certain forms with CRA, including an RC339, *Individual Return for Certain Taxes for RRSPs or RRIAs for Tax Year 20__* with CRA. The Lender acknowledges that a tax of 50% of the Loan Amount for the Lender at the time the mortgage was deemed Non-Qualified will need to be remitted to CRA with the RC339. The Borrower and the Lender acknowledge and agree that the Lender will suffer adverse tax consequences in the event that Olympia is required to deem the mortgage to be a Non-Qualified Investment in accordance with the *Income Tax Act (Canada)* and each of the Borrower agrees to use its commercially reasonable efforts to take such actions to avoid such result.

22. The parties hereto agree that this agreement shall be construed and enforced in accordance with the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as at the date first above written.

FORTRESS REAL DEVELOPMENTS INC.

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Per: _____

Per: _____

Per: _____

Per: _____

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

OLYMPIA TRUST COMPANY

Per: _____

Per: _____

Per: _____

Per: _____

Name of Lender (please print)

Signature of Lender

Name of Witness to Lender's Signature

Signature of Witness

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Phone 403.770.0001 Toll Free 1.877.565.0001

Tab T

Attached is Exhibit "C"
Referred to in the
Affidavit of Nadiatou Fagbemi
Sworn Before Me
this 30th Day of September, 2019

A handwritten signature in blue ink, appearing to read "Tro Hassan", written over a horizontal line.

Commissioner for Taking Affidavits, etc.



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 22^e étage
20, rue queen ouest
Toronto ON M5H 3S8

Telephone: 416-595-8782
Fax: 416-204-8956
E-mail: [REDACTED]

Web Site: www.osc.gov.on.ca
TDX 76
CDS-OSC

via email : [REDACTED]

June 8, 2017

Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85
Toronto ON M2N 6L9

Attention: [REDACTED],
Head of Investigations

Dear [REDACTED]

Re: ADI Developments (Masonry) Inc., and Derek Sorrenti

The staff ("Staff") of the Ontario Securities Commission (the "OSC") have recently become aware of certain information regarding ADI Developments (Masonry) Inc. ("ADI Masonry") and Derek Sorrenti of Sorrenti Law Professional Corporation (collectively, "SLPC") which may be of interest to the Financial Services Commission of Ontario ("FSCO").

Background:

Please find enclosed documents received from Det. Cst. [REDACTED] Halton Regional Police, and subsequent documents, from [REDACTED] regarding the investment his [REDACTED] ([REDACTED]), made in a syndicated mortgage investment based on a recommendation by Bert Hiebert ("Hiebert"). Specifically, Hiebert arranged for Lorraine to invest \$100,000 in ADI Masonry through SLPC in 2014. At this time, Lorraine was 72 years old, retired and had limited income.

Halton Regional Police referred this matter to the OSC as Hiebert had recommended several investments to [REDACTED] in or around 2011 and 2014 in which she failed to receive a return on her funds. Hiebert is not registered in any capacity with the OSC and FSCO. While [REDACTED] has received quarterly interest payments for this ADI Masonry investment from an SLPC trust account, Staff has concerns about the suitability of this investment as well as the fact that [REDACTED] claims [REDACTED] never met with Mr. Sorrenti personally. It is noted that [REDACTED] is currently suffering from [REDACTED] and is in a nursing home. [REDACTED] has reached out to Mr. Sorrenti to terminate this ADI Masonry investment so he can recover funds to pay for [REDACTED] long term care.

[REDACTED] recently provided documents to Staff which [REDACTED] received identifying SLPC as a "mortgage administrator" but a search of FSCO's website does not show SLPC as being licensed in this category.

[REDACTED] is aware that we are referring this information to FSCO and his contact information is as follows:

[REDACTED]
[REDACTED]

Thank you for your consideration. Should you have any questions or wish to discuss further please contact [REDACTED]@osc.gov.on.ca or [REDACTED]

Yours truly,

STAFF OF THE ONTARIO SECURITIES COMMISSION

AD
[REDACTED]
[REDACTED]

Manager, Case Assessment
Enforcement Branch

File #32514: FSCO vs Sorrenti Law Professional Corporation

workbasket cets file search my cets files file home fil This Site: File #32514: FSCO vs

File #32514: FSCO vs Sorrenti Law Professional Corporation > File Activity > Case Notes

File Activity: Case Notes

Alert Me | Version History

File Type Stream	Complaint
Process	File Review or Update
Activity	File Review/Update
Description	Case Notes
Activity Priority	(2) Normal
Start Date	6/20/2017
Due Date	
End Date	6/27/2017
Activity Status	Completed
Assigned/Referred to Area	Market Risk Assessment Unit
Assigned/Referred to Staff	
Assigned/Referred Date	6/20/2017

FYI

Activity Notes

Observation:

=====

1. On June 8/17, Investigator with the OSC, forwarded information about and his dealings with Derek Sorrenti of Sorrenti Law professional Corporation (collectively, "Sorrenti") and D/C Derek Gray (Halton Police) to (Head of Investigation) on the basis that it may be of interest to FSCO.

2. On June 14/17, e-mail and attachments to (Director, MRB), (Senior Mger, MRAU) and (Team Lead, MRAU).

a) proceeded to f/w e-mail to (Mger, MCCU) who assigned the file to SCO Steve (S is involved in a MCCU project whereby SMI investors/lenders, who allegedly bought an SMI from an unlicensed entity, are to be contacted to confirm same).

proceeded to have a CETS file set up by BSSU. The file was assigned to me yesterday (June 19/17).

NOTE: To avoid duplicate work, an agreement was reached with Mohammed and Steve. See below.

Background:

=====

- is .

- allegedly has a Power of Attorney over financial affairs.

9/23/2019

File Activity - Case Notes

- [REDACTED] is currently suffering from dementia, lives in a nursing home and is 72 y.o.
- In or about November 2014 and at the suggestion of Albert (Bert) Hievert of Burlington Ontario, Lorraine invested \$100,000 into a Fortress Project.
Borrower/Builder: ADI Development Group
Project: ADI Developments (Masonry) Inc.
Location of Project: 101 Masonry Court, Burlington
Brokerage (lenders): FMP Mortgage Investments Inc. (lic. #12373)
Investment Term: 5 years
Mortgage Rank: 2nd (based on doc. provided by Reg to the OSC)
Mortgage Administrator: Sorrenti Law Professional Corp.
- In 2015, Bert Hievert might have also arranged for Lorraine to invest \$100,000 in a South African Gold mining operation.
- Bert Hievert is not licensed with the OSC or FSCO. Mr. Hievert allegedly lives at [REDACTED].
- Bert Hievert might also have borrowed monies from Lorraine.
- It appears that [REDACTED] filed a report with Halton Regional Police.
Occurrence Report #: 2017-2165
D/C [REDACTED], Vulnerable Persons Team Burlington Elder Abuse/ Frauds [REDACTED]
- [REDACTED] contacted Sorrenti and was advised that the SMI was illiquid and a new investor/lender would need to be found to buy [REDACTED] out.
- [REDACTED] also contacted the OSC as some of the investments recommended by Bert Hiebert have failed to generate a return (note: SMI is providing [REDACTED] with a quarterly return of \$2,000).
- [REDACTED] might have dealt with Mortgage Agent Darius Juknevicus (lic. M12001266 - FMP Mortgage Investments Inc.) (doc. provided by Reg dated Nov. 2/14).

ANALYSIS:

=====

- FSCO cannot assist with the recovery of funds;
- Project appears to be viable;
- Given [REDACTED] current health condition, assessing her suitability for the SMI might be difficult.

Agreement between MCCU and MRAU:

See File e-mails.

To avoid duplicate work, SCO Steve will look into the potential unlicensed sale of the SMI by Bert Hiebert to Lorraine. He will contact Reg and document his findings in his own file.

I will proceed to contact [REDACTED] [REDACTED] at the OSC to advise her that:

- FSCO cannot assist with the recovery of funds (Reg needs to deal with Fortress and/or FMP and sell [REDACTED] SMI);
- The SMI appears to be viable;
- Someone will be in touch with Reg re: potential unlicensed sale by Bert Hiebert.

JUNE 21/17 - 10:33 - Called [REDACTED] Hammer at [REDACTED] Her v-mail said she would be away returning to the office on Monday, June 26/17. LM for her to cmb upon her return.

JUNE 26/17 - 1:45 - [REDACTED] call (lm at 1:30). Discussed complaint. [REDACTED] was introduced to Bert through his wife (attends the same church as Lorraine). He suggested 3 questionable investments to her. The OSC has closed its file (Inv'tments made 6 years ago - time barred + this is the only complaint they rec'd against Bert). The D/C in charge of this case will most likely not press charges against Bert (there may not be enough evidence to suggest fraud). Reg has retained a law firm to see if he can pursue Bert through the court system.

With respect to the SMI, explained to [REDACTED] that someone else will be in touch with [REDACTED] [REDACTED] in an attempt to obtain add. info. about the role Bert played in the SMI transaction (e.g. trying to determine if he violated the MBLAA).

Explained to [REDACTED] that we cannot assist [REDACTED] with the surrender of the SMI; the project appears viable and another investor/lender would need to buy Lorraine's SMI.

[REDACTED] went on about Sorrenti's role in administrating the SMI. She pointed out that [REDACTED] never met with anyone from the law firm. She asked if this would not constitute a violation of s. 5 of the MBLAA (licence required to administer mortgages). Explained to her that there is an exemption for lawyers to be licensed (s. 5 of Ont. Reg. 407/07. It reads: A lawyer is exempted ... if "The lawyer administers mortgages, acting in his ... professional capacity as a lawyer on behalf of a client." Told her it would be up to the Law Society of Upper Canada to determine if the lawyer was acting in the scope of his professional capacity as a lawyer (e.g. if there was a lawyer/client relationship)*.

Side note:

* confirmed with [REDACTED] [REDACTED] legal counsel with FSCO.

During our conversation, [REDACTED] mentioned that [REDACTED] does not have a signed copy of the SMI documents. Told her that someone must have a copy.

[REDACTED] file is close. She will no longer be speaking with [REDACTED] [REDACTED] is aware that his "complaint" was forwarded to FSCO. As a courtesy, I offered to contact [REDACTED] and advise him:

1. Someone will be contacting him to obtain more info about Bert's role in the sale of the SMI
2. FSCO cannot assist with the recovery or sale of [REDACTED] SMI. [REDACTED] can discuss the matter with Darius Juknevicus at FMP Mortgage Investment Inc. [REDACTED] (see Centro Mortgage's letter of Nov. 3/14 provided by the OSC).
3. He may wish to file a complaint with the Law Soc. of Upper Canada re: Sorrenti

JUNE 27/17 - 12:24 - Spoke to [REDACTED] and told him about above 1., 2. and 3. During the course of our discussion, he said that some of [REDACTED] SMI doc. are unsigned. Suggested to him to contact Darius and ask how he can get a full "investor booklet" (i.e. signed SMI doc.). I gave him my name and ph. no. and told him he could call me any time if he had add. questions.

JUNE 27/17 - 12:50 - Spoke to Team Lead [REDACTED] e: whether a closing letter was needed on this file given that no ack'ment was sent. We agreed that since "no formal complaint from Reg" was rec'd, my conv. with him was more about providing information, that an e-mail to [REDACTED] ack'g our tel. conv. and providing my contact info. will be sufficient.

Form Template

Form

Content Type: File Review or Update
Version: 8.0
Created at 6/20/2017 2:41 PM by [REDACTED]

File #32514: FSCO vs Sorrenti Law Professional Corporation

workbasket cets file search my cets files file home fil This Site: File #32514: FSCO vs [redacted] [search icon]

[File #32514: FSCO vs Sorrenti Law Professional Corporation](#) > [File Emails](#) > FW: Referral to FSCO from Ontario Securities Commission

File Emails: FW: Referral to FSCO from the Ontario Securities Commission

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From	[redacted]
To	'cets2-file32514@spprod.int' <cets2-file32514@spprod.int>
Cc	
Sent	Monday, June 19, 2017 3:18:16 PM
Subject	FW: Referral to FSCO from the Ontario Securities Commission
Title	FW: Referral to FSCO from the Ontario Securities Commission
Email Body	

From: [redacted]
Sent: Friday, June 16, 2017 9:16 AM
To: [redacted]
Subject: FW: Referral to FSCO from the Ontario Securities Commission

Please have this file set up in CETS.

Thank you,

[redacted], CIP
 Team Lead, Market Risk Assessment
 Financial Services Commission of Ontario
 5160 Yonge St, 4th Floor, Toronto ON, M2N 6L9
 [redacted]

From: [redacted]
 [redacted] 14, 2017 8:23 AM
To: [redacted]
Subject: FW: Referral to FSCO from the Ontario Securities Commission

This information came in to me while I was on vacation and just finding it in my emails. There is reference to Sorrenti Law, ADI

9/24/2019

File Emails - FW: Referral to FSCO from the Ontario Securities...

Developments (Masonry) Inc.

For your review.

Terry

From: [REDACTED]@osc.gov.on.ca]

Sent: Thursday, June 8, 2017 10:57 AM

To: [REDACTED]@fSCO.gov.on.ca>

Subject: Referral to FSCO from the Ontario Securities Commission

Dear [REDACTED]

For your consideration, please find attached a referral letter and 4 attached documents regarding ADI Developments (Masonry) Inc. and Derek Sorrenti of Sorrenti Law Professional Corporation.

Feel free to contact me if you have any questions. Please note that I will be out of the office on June 9, 2017 and from June 15 to June 23, 2017 (inclusive).

Regards,

[REDACTED]

[REDACTED]

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Ontario Securities Commission

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Expires

Attachments

- [FW Referral to FSCO from the Ontario Securities Commission.eml](#)
- [LETTER TO FSCO 8JUNE2017 1.pdf](#)
- [SORRENTI 1 1.pdf](#)
- [SORRENTI 2 1.pdf](#)
- [SORRENTI 3 1.pdf](#)
- [SORRENTI 4 1.pdf](#)

[REDACTED]

File #32514: FSCO vs Sorrenti Law Professional Corporation

workbasket cets file search my cets files file home fil This Site: File #32514: FSCO vs [redacted] [x]

[File #32514: FSCO vs Sorrenti Law Professional Corporation](#) > [File Emails](#) > FW: Referral to FSCO from Ontario Securities Commission

File Emails: FW: Referral to FSCO from the Ontario Securities Commission

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From	[redacted]
To	'cets2-file32514@spprod.int' <cets2-file32514@spprod.int>
Cc	
Sent	Wednesday, June 21, 2017 10:47:41 AM
Subject	FW: Referral to FSCO from the Ontario Securities Commission
Title	FW: Referral to FSCO from the Ontario Securities Commission
Email Body	

From: [redacted]
Sent: June-20-17 2:41 PM
To: [redacted]

Subject: RE: Referral to FSCO from the Ontario Securities Commission

Thank you [redacted] I had a look at this one today with [redacted] We will be red flagging for [redacted] the name of the unlicensed agent who got her into this, but the request to have her removed from the power of attorney, will likely fall on deaf ears. Our understanding is that the project is viable. Typically the loan agreement spells out the fact that it is not liquid.

Because of her health issues, doing a proper investigation into suitability would be difficult.

Thanks

[redacted] Assessment
Financial Services Commission

File Emails - FW: Referral to FSCO from the Ontario Securities...

Market Regulation Branch
416-590-2093

From [redacted] 14, 2017 9:43 AM

Subject: FW: Referral to FSCO from the Ontario Securities Commission

Follow up from OSC.

From: [redacted]
Sent: Wednesday, June 14, 2017 9:25 AM
To: [redacted]
Subject: RE: Referral to FSCO from the Ontario Securities Commission

Thank you [redacted] for the update. If they have any questions, I am in the office today but will be away starting tomorrow and back on June 26th. I found [redacted] to be cooperative in my discussions with him and he may have some additional documents which could be helpful for their assessment.

Regards,

[redacted]

[redacted] Securities Commission | Enforcement Branch |
Investigator
20 Queen Street West, 22nd Floor | Toronto ON M5H 3S8
Please consider the environment before printing this e-mail

[redacted]
Referral to FSCO from the Ontario Securities Commission

Thank you [redacted] I have forwarded this information on to [redacted] of Market Regulation Branch and [redacted] Sr. Manager in that area for their review and attention.

[redacted]

[redacted] ties Commission

Dear [redacted]

For your consideration, please find attached a referral letter and 4 attached documents regarding ADI Developments (Masonry) Inc.

and Derek Sorrenti of Sorrenti Law Professional Corporation.

Feel free to contact me if you have any questions. Please note that I will be out of the office on June 9, 2017 and from June 15 to June 23, 2017 (inclusive).

Regards,

[Redacted signature]

[Redacted contact information]

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Ontario Securities Commission

Expires

[Redacted expiration date]

File #32514: FSCO vs Sorrenti Law Professional Corporation

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[File #32514: FSCO vs Sorrenti Law Professional Corporation](#) > [File Emails](#) > FW: Referral to FSCO from Ontario Securities Commission

File Emails: FW: Referral to FSCO from the Ontario Securities Commission

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From	[redacted]
To	'cets2-file32514@spprod.int' <cets2-file32514@spprod.int>
Cc	
Sent	Wednesday, June 21, 2017 10:48:23 AM
Subject	FW: Referral to FSCO from the Ontario Securities Commission
Title	FW: Referral to FSCO from the Ontario Securities Commission

Email Body

From: [redacted] a
Sent: June-20-17 3:44 PM
To: [redacted]
Subject: RE: Referral to FSCO from the Ontario Securities Commission

Thanks for getting everyone on the same page

[redacted] a>
Subject: RE: Referral to FSCO from the Ontario Securities Commission

[redacted] and [redacted] Thanks for talking to me and clarifying what is being done in MCCU.

[redacted] Since you were asked to review the unlicensed activity before me [redacted] I will let you continue to do that. I understand you will be contacting [redacted]

I, will contact [REDACTED] at the OSC (she is the one who forwarded the [REDACTED] correspondence to us) and I will add notes to my CETS File (CETS #32514).

[REDACTED]
Compliance Officer
MRAU
EXT. 7814

From: [REDACTED] <[REDACTED].gov.on.ca>
Cc: [REDACTED] <[REDACTED].gov.on.ca>; [REDACTED] <[REDACTED]@fSCO.gov.on.ca>
Subject: FW: Referral to FSCO from the Ontario Securities Commission

Hi [REDACTED]

[REDACTED] is the best person to ask, I have assigned this unlicensed entity file to him.

Just to make sure we are not duplicating work, have you already spoken to the investors? Are you already preparing an unlicensed entity examination of them. In that case we don't need to both be doing it.

[REDACTED]

[REDACTED]
Subject: FW: Referral to FSCO from the Ontario Securities Commission

Hi [REDACTED]
As a follow-up to [REDACTED] e-mail, can you tell me if you have [REDACTED] as an lender/investor for ADI Developments (Masonry) Inc. (Fortress SMI sold by FMP Mortgage Investments Inc. #12373). She invested \$100,000 (non-registered funds). The person who allegedly sold her this was Albert (Bert) Hiebert. He's not licensed with FSCO in any capacity.

Thanks,

[REDACTED]
Compliance Officer

MRAU
EXT. 7814

[Redacted]

Subject: RE: Referral to FSCO from the Ontario Securities Commission

Thank you [Redacted] I had a look at this one today with [Redacted] We will be red flagging for [Redacted] the name of the unlicensed agent who got her into this, but the request to have her removed from the power of attorney, will likely fall on deaf ears. Our understanding is that the project is viable. Typically the loan agreement spells out the fact that it is not liquid.

Because of her health issues, doing a proper investigation into suitability would be difficult.

Thanks

[Redacted] Assessment
Financial Services Commission
Market Regulation [Redacted]
[Redacted]

[Redacted]

Subject: FW: Referral to FSCO from the Ontario Securities Commission

Follow up from OSC.

[Redacted]

Subject: RE: Referral to FSCO from the Ontario Securities Commission

Thank you [Redacted] for the update. If they have any questions, I am in the office today but will be away starting tomorrow and back on June 26th. I found [Redacted] to be cooperative in my discussions with him and he may have some additional documents which could be helpful for their assessment.

Regards,

9/24/2019

File Emails - FW: Referral to FSCO from the Ontario Securities...

[Redacted]

[Redacted] | Ontario Securities Commission | Enforcement Branch |

[Redacted]

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[Redacted] es

Commission

Thank you [Redacted] I have forwarded this information on to [Redacted] Director of Market Regulation Branch and [Redacted] Sr. Manager in that area for their review and attention.

[Redacted]

[Redacted]

Subject: Referral to FSCO from the Ontario Securities Commission

Dear [Redacted]

For your consideration, please find attached a referral letter and 4 attached documents regarding ADI Developments (Masonry) Inc. and Derek Sorrenti of Sorrenti Law Professional Corporation.

Feel free to contact me if you have any questions. Please note that I will be out of the office on June 9, 2017 and from June 15 to June 23, 2017 (inclusive).

Regards,

[Redacted]

[Redacted]

osc.gov.on.ca

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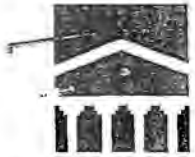
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Ontario Securities Commission

Expires





SORRENTI LAW
PROFESSIONAL CORPORATION

400 - 3800 Steeles Avenue West
Vaughan, ON L4L 4G9
Tel 905-264-6414
Fax 905-264-6413
Web www.sorrentilaw.com

December 14th, 2016

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

Re: ADI Developments (MASONRY) INC.
Mortgage Investment – Interest Payment
101 Masonry Court, Burlington, Ontario

Please find enclosed my trust cheque in the amount of \$2,000.00 representing your share of the quarter annual interest payment with respect to the above noted matter.

I trust the above to be satisfactory. Please do not hesitate to contact my office should you have any concerns.

Yours truly,

SORRENTI LAW PROFESSIONAL CORPORATION

Per:

Derek Sorrenti, H.B.A., LL.B., J.D.
Managing Principal

DS/ei

Encls.

SORRENTI LAW PROFESSIONAL CORPORATION

DATE : Dec/14/2016
CHE # : 019915
AMOUNT : \$2,000.00
ACCOUNT: TRUST - [REDACTED]
PAID TO: [REDACTED]

Masonry - Interest Payment - 140106-99

CLIENT: 140106 - ADI Development Group Inc.
MATTER: 140106-99

From: [REDACTED]mpatico.ca>
Sent: May-30-17 11:52 AM
To: [REDACTED]
Subject: FW: Forwarded Sorenti Law information.
Attachments: image002.jpg

Hi [REDACTED]
 Please see the response below from Derek Sorrenti.
 Regards
 [REDACTED]

-----Original Message-----

From: [REDACTED]@haltonpolice.ca]
Sent: Saturday, February 25, 2017 2:59 PM
To: [REDACTED]
Subject: Forwarded Sorenti Law information.

Hi [REDACTED]
 Please find forwarded email from Sorenti Law.
 [REDACTED]

From: Derek Sorrenti [derek.sorrenti@sorrentilaw.com]
Sent: February 24, 2017 2:14 PM
To: [REDACTED]
Subject: [REDACTED]

D, [REDACTED]

I have received a letter from [REDACTED] in relation to the matter we have been corresponding about in recent weeks.

I did not have a contact email address or phone number for him, or else I would have included him on this reply. If you have his contact information, please forward this email to him.

As I have previously mentioned to you, investments in syndicate mortgages for development projects such as this one, are illiquid by nature. Investors are expected to remain invested until such time as the project is completed and there are sufficient proceeds available from the sales of the built out property to pay the investors out.

Until the project is completed, there are no funds available to pay investors. Having said that, I have seen various investors who have experienced unexpected hardships who have been able to locate replacement investors who essentially "step into their shoes" and provide the necessary funds to buy the original investor out.

I have advised the customer service department at Fortress Real Developments Inc., who are the arrangers of this investment, of [REDACTED] current predicament.

I have asked them to use their network of brokers and agents to attempt to locate a replacement investor for [REDACTED]

There is no guarantee that a replacement investor will be found, however, I am advised that the project is in overall good shape and is moving forward (although slightly more slowly than originally expected). Given these facts I believe that the likelihood of a replacement investor being found for Lorraine is fairly good.

I will keep you apprised of any developments in this regard as I become aware of them.

Please contact me directly in the event you require any additional information.

Derek.

[image001]

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

<file:///\\D\SPSRVFS01\legal_DS%20LAW%20Admin\SorrentiLawSignatures\www.sorrentilaw.com>

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From: [REDACTED]@haltonpolice.ca]

Sent: Friday, January 20, 2017 3:08 PM

To: Derek Sorrenti

Subject: RE: Halton Police Assistance

Hi Mr. Sorrenti

Please find attached our Standard consent form for Halton Region for Lorraine Jordan. I am just figuring out our schedule for next week. I am looking at either Mon, Wed or Friday To schedule a short visit to pick up the information from you.

Thank you

D/Cst. #9284, [REDACTED].
 Vulnerable Persons Team Burlington
 Elder Abuse & Frauds
 3800 Constable Henshaw Blvd.
 Burlington, Ontario

[REDACTED]
Partner, D, [REDACTED]

From: Derek Sorrenti [mailto:derek.sorrenti@sorrentilaw.com]
Sent: Monday, January 09, 2017 12:02 PM
To: [REDACTED]
Subject: Re: Halton Police Assistance

I am in Florida until Wednesday. I will have my staff look into the mortgage aspect you refer to immediately and I will contact you with any information we can provide upon my return.

The information regarding an investment in a gold mining operation has nothing to do with my office.

Have you been able to obtain copies of the bank drafts? If you have copies of them it may help us in tracking some of this information down.

Please advise.

Thank you.
Sent from my iPhone

On Jan 9, 2017, at 11:31 AM, [REDACTED]@haltonpolice.ca<mailto:[REDACTED]@haltonpolice.ca>> wrote:
Hi [REDACTED] thanks for your help.

Occurrence number [REDACTED]

April 2015, a draft in the name of [REDACTED] from Royal Bank for \$100 000 was allegedly invested.

She lives in Burlington, [REDACTED].
[REDACTED]

She claimed that a Mr., Albert (Bert) HIEBERT invested her money in mortgage. His address on [REDACTED],
[REDACTED]

She claimed that a further \$100 000 was invested in South African Gold mining operations with (Bert) HIEBERT as well in 2015.

Thank you for your help in this matter.

[REDACTED] #9284 Vulnerable Persons Team Burlington Elder Abuse/ Frauds
3800 Constable Henshaw Blvd.
Burlington, Ontario
[REDACTED]
[REDACTED]

*** Ironport scanned this email for malicious content ***
*** Stripped attachments will be replaced with a text file beginning with ATT ***
*** IMPORTANT: Do not open attachments from unrecognized senders ***

[REDACTED]

From: [REDACTED].ca>
Sent: May-30-17 11:54 AM
To: [REDACTED]
Subject: [REDACTED]
Attachments: Sorrenti Investment Status Request Feb 2017.docx

Hi [REDACTED]
This is what I sent to [REDACTED], who forwarded to Derek Sorrenti.
Regards
[REDACTED]

From: [REDACTED]
Sent: Tuesday, February 21, 2017 10:54 AM
To: [REDACTED]>
Subject: [REDACTED]

Hi [REDACTED]
FYI. My earlier letter was RTS. I had sent to the address on the original documents from them. They have moved.
In this updated letter I am requesting terminating the entire investment contract as [REDACTED] debts continue to climb.
Regards
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
February 21, 2017

Mr. Derek Sorrenti
Sorrenti Law Professional Corporation
#310 – 3300 Highway 7
Vaughan, Ontario
L4L 4G9

Dear Mr. Sorrenti

ADI Developments (MASONRY) INC.: [REDACTED]
Mortgage Investment: [REDACTED]

I am [REDACTED]d. Due to unfortunate health and financial circumstances she is living with me while I work with CCAC and medical professionals to find her a place in a [REDACTED] facility.

The purpose of this letter is to request your assistance in terminating her investment in ADI Developments so that she can use the funds generated to clear her debts prior to going into long term care. My understanding, which may not be correct, is that the ADI investment is a REIT and any termination that is possible may take time and may come with some penalty. This would be unfortunate for her, but may be unavoidable.

I am working with D/Const. [REDACTED] of Halton Regional Police Elder Abuse Section to attempt to recover all or at least some of the funds that she has lost due to following the investment advice of her friends. From what [REDACTED] has found so far in his investigation, the outcome is probably going to be disappointing.

I am aware that he has had discussions with you on this matter and that [REDACTED] has signed the necessary documents for release of information. I want to personally thank you for your firm's professional handling of her investment. If only the other investments had turned out the same.

I have Power of Attorney over her financial affairs and can provide you with a copy if necessary. Proof can also be obtained via a call to our counsel [REDACTED]
[REDACTED].

[REDACTED] has counter-signed as proof of my involvement and her agreement thereto.

Hoping for a favourable response.

Yours truly

■■■■

I have read this letter and confirm that I asked■■■■ to make this request.

c.c. D/Const. ■■■■ Halton Regional Police

[REDACTED]

From: [REDACTED]
Sent: May-31-17 1:43 PM
To: [REDACTED]
Subject: FW: Scan from a Xerox WorkCentre
Attachments: DOC.PDF

Good afternoon [REDACTED]

What I have done with the attached is to just scan first page of each of the various sets of documents in the package. I have numbered them and, based on what you would like to see more of, I could scan the remaining pages. What I have not touched is the approx. 40 page description of the property itself.

Re it being a syndicated mortgage, this is confirmed on pages 1 and 3.

Re Fortress, they appear at page 7. There is reference to a Darius Juknevičius of FMP on page 2, but I don't know if FMP has any relationship with Fortress.

Unfortunately page 2 is the only page of that "set" of documents.

It may be worth mentioning that [REDACTED] was persuaded to invest in this project by her friend Bert Hiebert. His e-mail address is [REDACTED]. He may be able to fill in the information gaps that I don't have.

If you do decide to contact him you may not find him overly cooperative as I have been putting pressure on him to reimburse [REDACTED] for funds he either borrowed or persuaded her to invest in risky ventures.

I hope this helps.

Regards

[REDACTED]



SORRENTI LAW
PROFESSIONAL CORPORATION

400 - 3800 Steeles Avenue West
Vaughan, ON L4L 4G9
Tel 905-264-8414
Fax 905-264-8413
Web www.sorrentilaw.com

①

DIRECTION RE: ELECTRONIC FUNDS TRANSFER / DIRECT DEPOSIT

TO: SORRENTI LAW PROFESSIONAL CORPORATION, MORTGAGE ADMINISTRATOR
AND TO: DEREK SORRENTI, BARRISTER AND SOLICITOR, IN TRUST
RE: ELECTRONIC FUNDS TRANSFER AUTHORIZATION - SYNDICATE MORTGAGE
INVESTMENT - "FORTRESS - _____ PROJECT"

The undersigned syndicate mortgage participant hereby:

- 1) authorizes and directs the mortgage administrator named above to deposit any and all interest payments and/or principal repayments due and payable pursuant to the above-captioned syndicate mortgage investment by direct deposit and/or electronic funds transfer;
- 2) confirms that the account information to which the mortgage administrator is authorized to deposit any such payments is: (Please print LEGIBLY)
 Name(s) of Account Holder(s) _____
 Name of Financial Institution: _____
 Transit Number: _____
 Account Number: _____
- 3) confirms that the address and contact information to which the mortgage administrator is authorized to send correspondence is: (Please print LEGIBLY)

 Street Address Apt/Suite #

 City Province Postal Code

 Telephone Investor email Address

②



██████████
 ██████████
 Project: Masonry

Investment Type & Amount: Non Registered, \$100,000.00

Dear ██████████

Attached is your documentation set that is to be signed for The Masonry Project that you are considering for investment.

After reviewing the documents and before signing please contact your licensed mortgage agent Darius Juknevičius at FMP Mortgage Investment Inc. license # M12001266, by phone at 4██████████0

Ensure to have this package ready for your visit with the Notary.

The pages requiring signature in your package have been highlighted by a tab.

- Investor/Lender Disclosure Statement for brokered transactions **(THIS MUST BE SIGNED AND DATED 2 DAYS BEFORE THE REST OF THE DOCUMENTATION)**
- Statutory Declaration – will be completed with the Notary
- Investment Authority – Form 9D – Certificate of Independent Legal Advice
- Confirmation of Lenders Interest
- Loan Agreement
- Lender Acknowledgement & Consent
- Participation & Servicing Agreement
- Licensed Agent/Broker Memo
- Client Suitability Form
- Direct Deposit Forms (not required for registered investments)
- Authorization (not required for non-registered investments)
- Mortgage investment direction and indemnity agreement (not required for non-registered investments)
- Solicitors certificate of disclosure and undertaking regarding arms-length mortgages (not required for non-registered investments)

3

LETTER OF AUTHORIZATION

To: Sorrenti Law Professional Corporation
310 – 3300 Highway #7
Vaughan, Ontario
L4K 4M3
Attention: **Syndicate Mortgage Administration Department**
Phone: (905) 264 – 6414
Fax: (905) 264 – 6413
mortgageadmin@sorrentilaw.com

By completing this form and executing below, I acknowledge and agree that I am authorizing another individual to obtain personal and financial information about me which information is currently held by Sorrenti Law Professional Corporation ("SLPC"). This Letter of Authorization shall apply to all syndicate mortgage investment(s) which SLPC may administer on my behalf.

I hereby authorize SLPC to provide the following individual(s) or corporation(s) all requested personal and financial information relating to my syndicate mortgage investment(s) administered by SLPC, and I further authorize SLPC to grant the following individual(s) or corporation(s) access to view my investment(s) via the mortgage administration website maintained by SLPC:

(Name of Individual(s) or Corporation(s))

I acknowledge and agree that this Letter of Authorization will continue to be valid and in full force and effect until I provide written instructions to SLPC to terminate or otherwise modify this Letter of Authorization

Date

Investor Name

Investor Address

Investor Signature

*****The information collected on this form will be used by Sorrenti Law Professional Corporation to process your request to authorize a third party to be authorized to obtain personal and financial information about you which is currently held by SLPC. All personal information collected by SLPC may otherwise be subject to Solicitor-Client privilege. By executing this document you are hereby agreeing to a limited waiver of said Solicitor-Client privilege for the purposes described above.**

TERMINATION OF EXISTING LETTER OF AUTHORIZATION

I hereby terminate the Letter of Authorization previously provided to SLPC which gave the following individual(s) or corporation(s) the ability to obtain personal or financial information about me from SLPC or to have access to view my investments via the mortgage administration website maintained by SLPC:

(Name of Individual(s) or Corporation(s))

Date

Investor Name

Investor Address

Investor Signature

A

Investment Authority - Form 9D

To: **Sorrenti Law Professional Corporation**
 3300 Highway #7 Suite #310
 Vaughan, Ontario, L4K 4M3
 Attention: **Derek Sorrenti, Barrister & Solicitor**
 (905) 264-6414
 derek.sorrenti@sorrentilaw.com

I, [REDACTED], hereby instruct you to act on my behalf, on my mortgage investment of \$100,000.00, the details, conditions and disclosures of which are set below.

Details about the investment:

1. Name and Address of the Borrower: **ADI Developments (masonry) Inc.**
 4411 Millcroft Park Drive
 Burlington, Ontario

2. Municipal Address and Legal Description of the real property (ies)
 101 Masonry Court, Burlington, Ontario
 PT LT 6, CON 1 PTS 1 & 6 ON
 20R17228; BURLINGTON. T/W 472251
 & 851086. S/T 771631. T/W EASMENT
 OVER PT LOT 4 ON 20R17228 AS IN
 HR570883. PIN 07114-0192 (LT)

3. Type of property: **Residential Townhome Construction**

4. Principal amount of mortgage/charge: **\$6,450,000.00** – (increasing to a Maximum of **\$30,000,000.00**), see paragraph 20.

5. Amount of loan to be advanced: **\$100,000.00**.

6. Rank of mortgage or charge: **A Second ranking Charge/Mortgage (The ranking of the mortgage can change at any time over the duration of the term) – subject to paragraph 21, see below.**

7. Encumbrances: **First ranking Charge/Mortgage will be registered in priority of this mortgage investment, see below.**

Balance 1st mortgage \$10,125,000.00 to the first mortgagee.

Please refer to paragraph 21, below for details on future postponements to construction financing and development agreements.

8. My investment of **\$100,000.00** represents **1.55%** of the total loan to the borrower.



5

Certificate of Independent Legal Advice

TO: Centro Mortgage Inc. (Centro)
AND TO: _____ (Administrator on Project)

On the date below stated, I was consulted by _____ (the Lender) in his/her presence alone as to the effect of him/her executing the Investment Authority- Form 9D with respect to the following project:

- Borrower/Developer Name: _____ (Project)
- Project Address: _____

I explained to him/her the nature of the document described above and confirmed his/her understanding of material terms stated in the document. I also advised him/her of certain risks involved in his/her investment by way of the syndicated mortgage product (Fortress Real Capital) as presented by Centro.

He/she has informed that he/she understands the nature and effect of executing the document and that in executing the document he/she is acting freely and voluntarily and not under any undue influence.

I have given this advice to _____ (the Lender) as his/her solicitor and in his/her interest only and without regard to or consideration for the interest of any other parties. I am not acting on behalf of the Borrower, Centro or any other persons in connection with this matter. I have confirmed that the person whose signature is witnessed below and to whom I provided independent legal advice is the same person referred to in this Certificate as having received advice.

DATED at _____ this ____ day of _____, 2013.

Lawyer Signature

CONFIRMATION

I, the undersigned, hereby acknowledge that all of the statements made in this certificate are true and that _____ (Lawyers Name) in advising me herein, was consulted by me as my personal solicitor and in my interest only.

DATED at _____ this ____ day of _____, 2013.

Witness

Client Signature

Client Name



Financial Services
Commission
of Ontario
6180 Yonge Street,
Box 85
Toronto ON M2N 6L9

Licensing and
Market Conduct
Division

6

Investor/Lender Disclosure Statement For Brokered Transactions

Mortgage Brokerages, Lenders and Administrators Act

Transaction N° 11367

Important – New Disclosure Duties Effective January 1, 2009

In addition to providing the information in this form, effective January 1, 2009, mortgage brokerages and administrators are also required to provide a lender or investor with additional information in connection with this transaction.

A brokerage must:

1. Advise you if the brokerage cannot verify the identity of another party to the transaction.
2. Disclose whether the brokerage is acting for the lender, the borrower, or both the borrower and lender.
3. Disclose to a lender the brokerage's relationship with each borrower, and disclose to an investor the brokerage's relationship with each party to the transaction.
4. Disclose whether the brokerage is receiving a fee or remuneration for referring you to a person or entity, and disclose the relationship with that person or entity.
5. Disclose material risks about the transaction that you should consider.
6. Disclose actual or potential conflicts of interest that may arise from this transaction.

An Administrator must:

1. Disclose the relationship, if any, between the administrator and each borrower.
2. Disclose whether the administrator may receive, or may pay, any fees or other remuneration in connection with the administration of the mortgage, the basis for calculating them and the payor's identity.
3. Disclose whether it is receiving a fee or other remuneration for referring you to a person or entity, and disclose the administrator's relationship with that person or entity.
4. Disclose actual or potential conflicts of interest that may arise from the transaction.

You must receive these disclosures in writing and acknowledge receipt of them. You should keep a copy for your records.

Important: This form is required by law and will provide the prospective investor/ lender with important information.

This information must be disclosed at least two business days before you commit to lend/invest, i.e. two business days before the earliest of the following events: when the brokerage receives or enters an agreement to receive money from you; when you enter into a mortgage agreement or an agreement to trade in a mortgage; when money is advanced to the borrower; and the trade completion date.



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ACKNOWLEDGEMENT AND CONSENT AGREEMENT -
LENDER
Registered Plans & TFSA Division

This Agreement made and effective as of the 02 day of June, 2014.

BETWEEN:

FORTRESS REAL DEVELOPMENTS INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called "Fortress")

- AND -

CENTRO MORTGAGE INC., a corporation incorporated under the laws of the Province of Ontario (hereinafter called the "Broker")

- AND -

SORRENTI LAW PROFESSIONAL CORPORATION, a corporation incorporated under the laws of the Province of Ontario, (hereinafter called the "Administrator")

- AND -

OLYMPIA TRUST COMPANY, a corporation incorporated under the laws of the Province of Alberta (hereinafter called "Olympia")

- AND -

The undersigned individual Lender that has advanced funds to the Borrower and has agreed to be a party hereto (hereinafter called the "Lender")

WHEREAS ADI DEVELOPMENTS [MASONRY] INC. (the "Borrower") is borrowing up to \$30,000,000.00 from the undersigned Lender pursuant to certain loan agreements (collectively referred to herein as the "Loan Agreements");

AND WHEREAS the loan from the Lender to the Borrower ranks *pari passu* with other borrowings by the Borrower pursuant to similar Loan Agreements with other individual lenders (collectively referred to herein with the Lender as the "Junior Secured Lenders") and such loans are collectively secured by a mortgage (the "Mortgage") on the Borrower's lands described as PIN 07114-0192 LT as amended or substituted from time to time (the "Lands");

AND WHEREAS the Lender and the Junior Secured Lenders have agreed to postpone their loans to one or more construction loans obtained by the Borrower up to \$175,000,000.00 plus a 10% contingency plus the maximum Mortgage amount of up to \$30,000,000.00 if required (the "First Priority Construction Loans"), whereby the collective indebtedness of the Junior Secured Lenders would rank junior to the First Priority Construction Loans;

AND WHEREAS the Lender is lending the Borrower funds from his or her registered savings plan accounts ("RRSP Account") and is holding the Mortgage granted by the Borrower in such account as security for payment;

AND WHEREAS the RRSP Account is administered by Olympia pursuant to a trust account agreement with the Lenders;

AND WHEREAS the RRSP Account is subject to the requirements of the *Income Tax Act* (Canada) and the regulations thereunder;

AND WHEREAS the Lender is a client of Fortress and/or the Broker and has been introduced to the Borrower by either Fortress or the Broker;

2200, 125 - 9 Avenue SE, Calgary, AB T2G 0P6
Mailing Address: PO Box 2581, STN Central, Calgary, AB T2P 1C8
Phone 403.770.0001 Toll Free 1.877.565.0001

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MEMORANDUM OF UNDERSTANDING

TO: Referral Agent/Licensed Mortgage Agent or Broker/Centro Mortgage Inc.

RE: Referral of a syndicate mortgage product.

FROM: [REDACTED] (the "Lender")

DATED: November 3, 2014

This memorandum is to acknowledge and confirm that:

- 1) Fortress Real Capital products are syndicated mortgages evidenced by charges on real property;
- 2) These mortgages are offered by persons or companies that are either licensed under the Ontario Mortgage Brokerages, Lenders and Administrators Act, 2006 (the "MBLAA"), in respect of real property located in Ontario, or licensed or registered under comparable legislation in other Canadian provinces or territories, in respect of real property located in any of those provinces or territories;
- 3) Fortress Real Capital is a product and NOT a mortgage brokerage;
- 4) Purchases can be initiated by a referral through an eligible party, but the actual transaction is handled, sold, and closed by a registered/licensed mortgage professional;
- 5) Each transaction will specifically note and name the mortgage agent and mortgage brokerage handling the transaction as well as their FSCO license number;
- 6) A person or entity that makes a simple referral is exempt from the requirement to be licensed as a mortgage brokerage, broker or agent;
- 7) A referral is a simple referral when only basic information about the potential borrower and lender is provided;
- 8) the person making a simple referral may provide the prospective borrower with only the basic information about the prospective lender, broker or agent, the name, address, telephone number, fax number, e-mail address or website address

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mbapp12731788.4

PARTICIPATION AND SERVICING AGREEMENT

THIS AGREEMENT made as of the 2nd day of June, 2014

BETWEEN:

[Redacted]

(hereinafter called "Investor")

OF THE FIRST PART

- and -

Sorrenti Law Professional Corporation, in Trust
(Mortgage Administrator & Solicitor)

(hereinafter called "Sorrenti")

OF THE SECOND PART

WHEREAS:

1. pursuant to the Loan Agreement, Sorrenti has agreed to provide the Borrower various loan facilities totalling Six Million Four Hundred and Fifty Thousand (\$6,450,000.00) Dollars (the "Loan") for the purposes of refinancing existing debt, and financing the development and the construction of residential homes on the Lands, to be secured by the Security Documents;
2. Investor has agreed to participate in the Loan to the extent of \$100,000.00 upon the terms and subject to the conditions of the Lender Acknowledgement & Consent dated June 2nd, 2014 (the "LAC"); and
3. Investor has agreed that Sorrenti will administer the Investment on behalf of Investor in accordance with the terms and subject to the conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of these presents and the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1.00 - INTERPRETATION

1.1 Defined Terms

The following words and phrases shall have the meanings attributed thereto when used in this Agreement:

"Borrower" means ADI Developments (masonry) Inc.;

"Force Majeure" shall mean any event or series of events beyond the control of the Borrower such as strikes, walkouts, labour troubles, inability to procure materials or services or construction financing, power failures, restrictive governmental laws or regulations or the orders or directions of any administrative board, governmental department, officer or other authority, riots, insurrections, war, sabotage, rebellion or acts of God, material changes or delays in market conditions affecting sales or closings, delays in obtaining governmental approvals, permits, rezoning or similar regulatory requirements, none of which is the fault of the Borrower.

"Investment" means the investment in the Loan of the Investor as set out in the LAC and the 2nd recital hereof;

"Lands" means those lands more particularly described and charged pursuant to the Security Documents including without limitation all buildings, fixtures and



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Project Fact Sheet- The Masonry

Developer Name:

ADI Development Group
<http://adidevelopments.com>

Project Address

101 Masonry Court, Burlington, Ontario
 Legal Description: PT LT 6, CON 1 PTS 1 & 6 ON 20R17228; BURLINGTON. T/W 472251 & 851086. S/T 771631. T/W EASMENT OVER PT LOT 4 ON 20R17228 AS IN HR570883. PIN 07114-0192 (LT)

Anticipated Closing Dates:

On or before August 28th 2014.

Borrower Name:

ADI Developments (masonry) Inc. Tariq Adi is the signing officer for this corporation.

Valuation:

An AACI Appraisal dated June 2nd 2014 was authored by Matthew Bruchkowsky AACI, Colliers International which reflected a current value for the parcel of \$19,500,000.00.

USE OF FUNDS:

The purposes of the monies raised via this syndicated mortgage is to assist in addressing various funding requirements related to all elements of the project's progress, especially prior to the commencement of construction. These requirements include, however are not limited to: Land acquisition, Initial soft costs for planning & initial marketing expenses, remediation of contaminated soil located on the site (estimated and budgeted at \$1,000,000.00) and the sales center.

Face Value of the Syndicate mortgage:

\$6,450,000.00 is the initial registered face value for the project with an anticipated funding date on or before August 28th, 2014, the face value will increase to a maximum of \$30,000,000.00 (based on senior lender requirements) over the duration of the project. Please see funding schedule below for a detailed explanation.

Loan to Value:

85% based on a value as above and a face amount as above.
 1st Mortgage: \$10,125,000.00 to the first mortgagee.

(11)

LOAN AGREEMENT

THIS AGREEMENT made as of the 2nd day of June, 2014,

BETWEEN:

SORRENTI LAW PROFESSIONAL CORPORATION, IN TRUST

(called the "Lender")

- and -

ADI DEVELOPMENTS (MASONRY) 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 Adi Developments (masonry) Inc. and its successors and permitted assigns;
- (c) "Bridge Lender" shall have the meaning attributed thereto in Section 3(c);
- (d) "Bridge Loan" shall have the meaning attributed thereto in Section 3(c);
- (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;

Compliance and Enforcement Tracking System v.2

workbasket cets file search my cets files

This Site: Compliance and Enfo [redacted]

Compliance and Enforcement Tracking System v.2 > CETS Files > [redacted] emailed an inquiry re. S
re Sorrenti Law

CETS Files: [redacted] emailed an inquiry re. SMIs. I Sorrenti Law

Alert Me | Version History

CETS Content Type	MCAS File
File Group	MCAS Files
CETS File Type	Inquiry
CETS File Subtype	Product
Description	[redacted] emailed an inquiry re. SMIs, re Sorrenti Law
File Number	36267
Open Date	4/30/2018
Interim Response Date	
Physical Source	Phone
Referral Source	FSCO - MCCU
Inquiry Details	[redacted] emailed an inquiry re. SMIs.
Inquiry Response	Advised [redacted] in an email that if project was administered by a lawyer, contact should be made with the lawyer. In terms of complaints against the lawyer, referred to the Upper Law Society.
Initial Program Area	Market Conduct Compliance Unit
Initial Contact	[redacted]
FYI	
Sector	Mortgage Brokers

Complainant / Inquirer Type	Consumer	
Complainant Independent Individual		
Complainant Other	[REDACTED] emailed an inquiry re. SMIs.	
Representative Type	Not Applicable	
Representative Other		
Entity Type	Mortgage Administrator	
Entity Mortgage Brokerage		
Entity Other	Sorrenti Law	
General Inquiry	No	
Product - Level 1	Administration	
Product - Level 2	Not Applicable	
Product - Level 3	Not Applicable	
Cause - Level 1	Administration (MB)	
Cause - Level 2	Other	
Cause - Level 2 Comment	Syndicated Mortgage Investments. Project name is called Solotex located 1648-1682 Victoria Park, Toronto.	
Cause - Level 3		
Time Spent - Hours	1	
Time Spent - Minutes	30	
Risk Assessment Form Not Required	No	
File Status	Closed	
Status Date	4/30/2018	
File Notes	[REDACTED] (4/30/2018 2:05 PM): The email correspondence has been attached to this inquiry.	
File Priority	Normal	
File Due Date		
Attachments	emails re. BDMC Syndicate Mortgage Investments.msg	

Content Type: MCAS File
 Version: 1.0
 Created at 4/30/2018 2:05 PM by [REDACTED]
 Last modified at 4/30/2018 2:05 PM by [REDACTED]

[REDACTED]

From: [REDACTED] r
Sent: Monday, April 30, 2018 1:49 PM
To: [REDACTED]@rogers.com
Subject: RE: BDMC Syndicate Mortgage Investments

Hello [REDACTED],

Thank you for your inquiry.

Based on the information that you provided, it is important for you to first confirm who is your administrator for the project. Please confirm this fact by checking your legal documents that you signed, it should list the administrator. Some of the projects were administered by either a lawyer or a mortgage administrator. A mortgage administrator is a licensee to carry on the business of administering mortgages as oppose to a lawyer who is allowed to administer mortgages in their professional capacity.

If your administrator is Sorrenti Law, your complaints should be directed to the Law Society of Ontario. Please consult the following information if you choose to file a complaint against the lawyer:

Address: Complaints Services
 The Law Society of Upper Canada
 Osgoode Hall, 130 Queen Street West
 Toronto Ontario
 M5H 2N6
 Telephone: 416-947-3310
 Toll-free: 1-800-268-7568
 Fax: 416-947-5263
 Email: lsforms@lso.ca
 Website: <http://www.lsuc.on.ca/>

Best,

[REDACTED]
 Compliance Officer
 Licensing and Market Conduct Division
 Financial Services Commission of Ontario (FSCO)
 T: 416-325-2300
 E: [REDACTED]@fSCO.gov.on.ca
www.fSCO.gov.on.ca

Follow us
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-----Original Message-----

From: [REDACTED]@rogers.com>
 Sent: Friday, April 27, 2018 11:42 AM

To: Contact Centre <contactcentre@fscs.gov.on.ca>
Subject: BDMC Syndicate Mortgage Investments

Dear Sir / Madam:

I am a syndicate mortgage investor on various projects that were managed by BDMC now FAAN. I received a letter from FAAN dated April 25 with an Appendix A which states the projects that they are managing. One of my projects named Solotex at 1648-1682 Victoria Park, Toronto is not on that Schedule.

I asked my broker [REDACTED] as to why this project is not on the Schedule as managed by FAAN but he said "I know why but I cannot tell you because I have been directed not to say anything about it."

I called [REDACTED] at Fortress Financial Management and asked the same question. He said the project is not on the Schedule because it is managed by Sorrenti Law and not FAAN. However, I have been receiving letters and notifications from BDMC since 2015 and nothing from Sorrenti Law since May 2015. I tried calling Sorrenti Law but the voice messaging system just keeps directing me everywhere and nobody answers the telephone and the telephone does not take voice messages.

I need to know what is going on with this project and who to contact. There seems to be some secrecy about this project and I am worried as I invested a substantial amount of money on the project.

Would you please help me determine what is going on with this project and who is the manager for it.

Thank you very much.

If you have received this message in error, please notify me immediately and delete this e-mail and any attachments without copying, distributing or disclosing their contents.

Si vous avez reçu ce message par erreur, veuillez nous en aviser immédiatement et détruire ce courriel ainsi que toute pièce jointe en vous abstenant d'en faire une copie, d'en divulguer ou d'en diffuser le contenu.

Attached is Exhibit "E"
Referred to in the
Affidavit of Nadiatou Fagbemi
Sworn Before Me
this 30th Day of September, 2019

A handwritten signature in blue ink, appearing to read "Tere Ogunrin", is written over a horizontal line.

Commissioner for Taking Affidavits, etc.

Compliance and Enforcement Tracking System v.2

[workbasket](#) [cets](#) [file search](#) [my cets files](#)

This Site: Compliance and Enfor

Compliance and Enforcement Tracking System v.2 > CETS Files > [REDACTED] vs Derek Sorrenti

CETS Files: [REDACTED] vs Derek Sorrenti

File Activity (3) | File Documents (3) | File Emails (3) | Related Files (0) | cets2-file38022@spprod.int

Alert Me | Version History

CETS Content Type	MCAS File
File Group	MCAS Files
CETS File Type	Complaint
CETS File Subtype	Entity
Description	[REDACTED] vs Derek Sorrenti
File Number	38022
Open Date	9/25/2018
Physical Source	Letter
Referral Source	Consumer
No Initial Acknowledgement Letter	Yes
Initial Program Area	Market Risk Assessment Unit
Initial Contact	[REDACTED]
FYI	
Sector	Mortgage Brokers
Complainant / Inquirer Type	Consumer
Complainant Independent Individual	
Complainant Other	
Representative Type	
Consent	Yes
Consent / Authorization Date	9/25/2018
FSCO	No
Information Complete	No
Entity Type	Individual
Entity Individual	
Entity Other	Derek Sorrenti
Entity Representative	

Unlicensed	No
Red-Flagged	No
Product - Level 1	Mortgage
Product - Level 2	Syndicated
Product - Level 3	
Cause - Level 1	Fees / Payments
Cause - Level 2	
Cause - Level 3	
Risk Assessment Form Not Required	Yes
Closing Letter Not Required	Yes
Periodic Updates Not Required	Yes
Last Contacted Client / Complainant On	10/5/2018
File Status	Closed
Status Date	10/5/2018
Complaint Type	Business Practice
Policy / Reference Number	
Claim Number	
File Notes	No existing entries.
Analyst Risk Rating	Not Applicable
SABS / MB Risk Rating	
File Priority	Normal
File Due Date	

Content Type: MCAS File
Version: 2.0
Created at 9/28/2018 10:21 AM by [REDACTED]
Last modified at 10/5/2018 2:20 PM by [REDACTED]

**Financial Services
Commission
of Ontario**

Licensing and Market Conduct Division
5160 Yonge Street, 4th Floor
Box 85
Toronto ON M2N 6L9

Enquiries/Renseignements:
Toll Free/Sans frais:
Fax/Télécopieur:

**Commission des
services financiers
de l'Ontario**

Division de la délivrance des permis
et de la surveillance des pratiques de l'industrie
5160, rue Yonge, 4^{ième} étage, Boîte 85
Toronto ON M2N 6L9

(416) 250 6750
1-800-668-0128
(416) 590-8480



October 5, 2018

Sent via e-mail only to [REDACTED]@mail.com

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Re: File Number [REDACTED]

Thank you for your letter of complaint received on September 25, 2018 regarding your investment in the 1088 Progress Manor project.

The Financial Services Commission of Ontario (FSCO) is a regulatory agency of the Ministry of Finance that regulates mortgage brokering in Ontario. To protect consumers and enhance public confidence in the sectors it regulates, FSCO monitors, reviews, and when there is non-compliance with legislation and regulations, takes appropriate enforcement action against the sectors it regulates and persons who are illegally engaged in those sectors.

On February 2, 2018, FSCO announced that orders have been issued against eight parties involved with syndicated mortgage investments for real estate development in Ontario and elsewhere in Canada for projects in which Fortress Real Development Inc. was a developer or development consultant. Administrative Monetary Penalties have been issued of over one million dollars.

You indicated that you invested in a Fortress project. If you have specific questions about your investments, please contact the administrator named in the original document. Based on the information provided, it appears that Derek Sorrenti or Sorrenti Law may have been the administrator named in your document.

Page 2

██████████
October 5, 2018

If you would like to submit a complaint about Derek Sorrenti or Sorrenti Law, please contact the Law Society of Ontario. One of the Law Society's most important duties is responding to complaints about lawyers and paralegals. They also respond to information about illegal practitioners who are providing legal services. The Law Society's complaint process is explained in detail on their [website](#).

FSCO does not have the authority to offer restitution for financial losses related to investments or its enforcement actions. Investors are advised to obtain financial and legal advice with respect to their personal circumstances. We have provided links to information available on the FSCO's website with respect to the orders.

<http://www.fsco.gov.on.ca/en/pubs/News-Releases/Pages/2018-feb2-amp.aspx>

<http://www.fsco.gov.on.ca/en/pubs/News-Releases/Pages/2018-apr20-smi.aspx>

As a result of the enforcement action taken against these entities, your complaint is now closed. Thank you for bringing this matter to our attention.

Sincerely,

██████████
██████████

██████████ ██████████
Market Risk Assessment Unit
Licensing and Market Conduct Division

File #38022: [REDACTED] vs Derek Sorrenti[workbasket](#)[cets](#)[file search](#)[my cets files](#)[file home](#)

fil This Site: File # [REDACTED] [REDACTED] o ▼

[File # \[REDACTED\] vs Derek Sorrenti](#) > [File Emails](#) > Oct 8, 2018 E-mail from complainant requesting further information**File Emails: Oct 8, 2018 E-mail from complainant requesting further information** [Print Email in Outlook](#) [Alert Me](#)

From	[REDACTED]
To	'cets2-file38022@spprod.int' <cets2-file38022@spprod.int>
Cc	
Sent	Thursday, October 11, 2018 1:02:24 PM
Subject	Oct 8, 2018 E-mail from complainant requesting further information
Title	Oct 8, 2018 E-mail from complainant requesting further information
Email Body	

From: [REDACTED] >
Sent: Monday, October 8, 2018 11:09 AM
To: [REDACTED]@fSCO.gov.on.ca>
Subject: Re: Your FSCO Complaint File 38022 - [REDACTED]

Hello [REDACTED]

Thank you for your email! I am not sure what I should do in the current situation. My mortgage agent is [REDACTED], and she left FDS Broker services. The borrower is Empire Pace (1088 Progress) Ltd. The mortgage administrator is Sorrenti Law. When I talked Lulu Kwok, she referred me to Sorrenti Law. I sent several emails to Sorrenti Law, and they did not respond at all.

I know Administrative Monetary Penalties have been issued to Fortress Real Capital and FDS broker services have settled with FSCO, but can a compliant be made to FSCO about the mortgage administrator like Derek Sorrenti and/or the mortgage borrower like Empire Pace (1088 Progress), or a legal action should be commenced?

Sincerely,

[REDACTED]

On Fri, 5 Oct 2018 at 14:12, [REDACTED]

> wrote:

Hello [REDACTED]

The Financial Services Commission of Ontario is in receipt of your letter of complaint. Please see the attached letter.

Thank you for bringing this matter to our attention.

Kind Regards,

[REDACTED], Market Risk Assessment Unit
Licensing and Market Conduct Division
Financial Services Commission of Ontario (FSCO)

T: [REDACTED]

www.fSCO.gov.on.ca

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If you have received this message in error, please notify me immediately and delete this e-mail and any attachments without copying, distributing or disclosing their contents.

Si vous avez reçu ce message par erreur, veuillez nous en aviser immédiatement et détruire ce courriel ainsi que toute pièce jointe en vous abstenant d'en faire une copie, d'en divulguer ou d'en diffuser le contenu.

Expires

Created from e-mail at 10/11/2018 1:03 PM by [REDACTED]
Last modified at 10/11/2018 1:03 PM by [REDACTED]



Financial Services Commission of Ontario
 5160 Yonge Street, Box 85
 Toronto ON M2N 6L9

Licensing and Market Conduct Division

RECEIVED
MORTGAGE BUSINESS ACTIVITY COMPLAINT FORM SEP 25 2018

LICENSING & MARKET CONDUCT DIVISION

To assist our review, please complete and sign the form and ensure you have included the written response to your complaint provided by the brokerage/administrator and any relevant information and facts that support your complaint. You may attach a separate letter and other related documents. Please note that a review of your complaint may be delayed if you have not included a final response from the brokerage/administrator. Please return this form to the attention of the "Market Regulation Branch" by regular mail to the address above / by fax to 416 590-8480 / or by email to contactcentre@fSCO.gov.on.ca.

Mortgage Brokerages, Lenders and Administrators Act, 2006

GENERAL INFORMATION

<input checked="" type="checkbox"/> Mr.	Last name		First name	Middle name
<input type="checkbox"/> Mrs.	██████		██████	N/A
<input type="checkbox"/> Ms.	██████		██████	N/A
Street address				Apt./Unit
████████████████████				n/a
City		Province		Postal Code
Newmarket		Ontario		██████
Phone number		Ext.	Fax number	Email address
(██████) ████████			(██████) ████████	████████████████████
Preferred method of contact				
<input type="checkbox"/> Phone <input checked="" type="checkbox"/> Email <input type="checkbox"/> Letter				

COMPLAINT INFORMATION

Who is your complaint about?	
<input type="checkbox"/> Mortgage Broker	
<input checked="" type="checkbox"/> Mortgage Agent	
<input checked="" type="checkbox"/> Mortgage Administrator	
<input checked="" type="checkbox"/> Mortgage Brokerage	
<input checked="" type="checkbox"/> Mortgage Lender	

THE COMPLAINT IS AGAINST THE FOLLOWING INDIVIDUAL / BROKERAGE/ ADMINISTRATOR

Brokerage/Administrator Name				
FDS Broker Services/Sorrenti Law Professional Corporation				
Individual Name				
Derek Sorrenti/Eric Lannacchino				
Street address				Apt./Unit
3300 Highway 7				310
City		Province		Postal Code
Vaughan		Ontario		L4K4M3
Phone number		Ext.	Fax number	Email address
(██████) ████████			(██████) ████████	eric@sorrentilaw.com

COMPLAINT DETAILS

The date when you first became aware of the circumstances giving rise to your complaint (yyyy/mm/dd): 2018/02

Describe the nature of your complaint. Include facts and supporting documents where possible. Use a separate attachment if necessary.

I wanted the short term investment, and I was introduced to the 1088 Progress Manor Project by the Mortgage agent. I invested \$30,000 in the phase I of 1088 Progress Manor in 2014.

On the loan agreement, the end date for the exit of mortgage was scheduled August 10, 2015 with the option to extend to February 10, 2016. Later the project (phase I) was further extended and was completed in the summer of 2017

By October 2017, the phase I has been fully occupied, but the builder still hold the loan and not exit the loan by now.

The agreement will mail, or scan and email to you if needed

Extra sheets attached

Please provide the name and contact information of the person you attempted to resolve the matter with

Name of contact

Phone number

Ext.

Derek Sorrenti/Eric Lannacchino

([REDACTED]) [REDACTED]

Brief details of steps you have taken to date in order to try and resolve the matter.

In February to May 2018, I contacted my mortgage agent several times by phone about the date for the loan exit. She explained to me that the builder might need some time to prepare and return the investment. The builder was also seeking to sell the Phase II land.

When I called my mortgage agent in the early of July, I was told that she left FDS Broker Services, and any future questions should be sent to Sorrenti Law.

Since then I contacted Dereck Sorrenti twice and left two messages, he didn't return my call. Instead, I received an email with the attachment of builder's memo update from Eric on July 27. The update memo has nothing new and doesn't answer my concerns, so I emailed back to Eric three times on August 4, August 16 and September 3 about my questions and concerns. By now, I haven't received any response from Eric or Dereck Sorrenti.

Extra sheets attached

BROKERAGE/ADMINISTRATOR RESPONSE

The mortgage brokerage/administrator is required to provide you with a written response to your written complaint pursuant to Regulation 188/08 s. 9. (1) and Regulation 189/08 s. 8. (1)

I have attached the written response from the brokerage/administrator

I have NOT attached the written response from the brokerage/administrator

If you have NOT attached the written response from the brokerage/administrator please explain why.

The Sorrenti Law as the mortgage administrator didn't respond to my inquiry at all. I sent the emails on August 4, August 16 and September 3 with the following concerns and request:

1. When is the anticipated date for the return of my investment?
2. Since phase I has been fully occupied, is my name still on the title of the land? Does the builder have to exit the loan before the title transfer to occupants?
3. Also I would like them to let the builder know that I am not interested in Phase II. I would like to exit the loan

By now (September 20), I haven't received any response from Eric or Dereck Sorrenti

Extra sheets attached

LEGAL ACTION

Have you commenced legal action? Yes No
If yes, please explain.

Extra sheets attached

NOTIFICATION AND CONSENT

Personal information provided on this form is being collected by the Financial Services Commission of Ontario ("FSCO") under the authority of the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, s. 3(a) as part of FSCO's role as a financial services regulator protecting the public interest. Your personal information is necessary to review and/or investigate the matters in your complaint.

FSCO may need to disclose your information to third parties as part of its review or investigation. By signing below, you consent to FSCO disclosing the information contained on this form, and any additional information that you supply about your complaint, to the following parties:

1. The mortgage brokerage, mortgage broker, mortgage agent, mortgage lender and/or mortgage administrator named in your complaint;
2. Any government ministry, agency, board or commission;
3. Any self-regulatory agency or association; and
4. Any Canadian law enforcement agency.

If you have any questions about FSCO's collection and disclosure of your personal information, please contact:

Financial Services Commission of Ontario
5160 Yonge Street, 4th Floor, Box 85
Toronto, ON M2N 6L9
Telephone (416) 250-7250
Toll free 1-800-668-0128
Fax (416) 590-8480
TTY 1-800-387-0584
Email contactcentre@fSCO.gov.on.ca

I hereby authorize the Financial Services Commission of Ontario to disclose the information I have submitted about my complaint, including my personal information, to the mortgage brokerage, mortgage broker, mortgage agent, mortgage lender and/or mortgage administrator named in my complaint; to any government ministry, agency, board or commission; to any self-regulatory agency or association; and to any Canadian law enforcement agency as may be required for the purposes of further reviewing or investigating my complaint.

Name (please print)

Signature

Date (yyyy/mm/dd)

[Redacted Name]

[Redacted Name]

[Redacted Signature]

Sept 20, 2018

Attached is Exhibit "F"
Referred to in the
Affidavit of Nadiatou Fagbemi
Sworn Before Me
this 30th Day of September, 2019



Commissioner for Taking Affidavits, etc.

File [REDACTED] vs Sorrenti Law Professional Corporation

workbasket cets file search my cets files file home fil T [REDACTED] # [REDACTED] | [REDACTED]

File # [REDACTED] vs Sorrenti Law Professional Corporation > File Emails > NEW COMPLAINT

File Emails: NEW COMPLAINT - [REDACTED]

[Print Email in Outlook](#)

[Alert Me](#)

From [REDACTED]@fSCO.gov.on.ca>
To 'cets2-file39523@spprod.int' <cets2-file39523@spprod.int>
Cc
Sent Wednesday, February 06, 2019 4:52:32 PM
Subject NEW COMPLAINT - [REDACTED]
Title NEW COMPLAINT - [REDACTED]
Email Body

From: [REDACTED]@fSCO.gov.on.ca>
Sent: February 6, 2019 9:59 AM
To: [REDACTED]@fSCO.gov.on.ca>
Cc: [REDACTED]@fSCO.gov.on.ca>
Subject: ACTION -LOG: [REDACTED] vs. Sorrenti Law

From: [REDACTED]@fSCO.gov.on.ca>
Sent: February 01, 2019 2:33 PM
To: [REDACTED]@fSCO.gov.on.ca>
Subject: FW: [REDACTED] Adi Developments (Link) Inc.

Hi [REDACTED]

Please assign for file set up.

[REDACTED] vs. Sorrenti Law

Thanks
[REDACTED]

File Emails - NEW COMPLAINT - [REDACTED]

From: [REDACTED] <[REDACTED]@fSCO.gov.on.ca>
 Sent: Friday, February 1, 2019 2:27 PM
 To: [REDACTED] <[REDACTED]@fSCO.gov.on.ca>
 Subject: FW: [REDACTED] Adi Developments (Link) Inc.

From: Contact Centre <contactcentre@fSCO.gov.on.ca>
 Sent: Friday, February 01, 2019 2:23 PM
 To: [REDACTED] <[REDACTED]@fSCO.gov.on.ca>
 Subject: FW: [REDACTED] - Adi Developments (Link) Inc.

Good afternoon,

The following is forwarded for your review and action.

Contact Centre

From: [REDACTED]
 Sent: Friday, February 1, 2019 12:29 PM
 To: derek.sorrenti <derek.sorrenti@sorrentilaw.com>
 Cc: eric <eric@sorrentilaw.com>; Contact Centre <contactcentre@fSCO.gov.on.ca>; csmart <csmart@vanguardlg.ca>
 Subject: Fwd: [REDACTED] - Adi Developments (Link) Inc.

Hello Derek

I have received the attached document from Olympia Trust
 I have sent an email to Eric (our apparent contact) and have left
 a message on your answering machine
 I have gone over my papers since this matter started back
 in 2013 and feel there may be a conflict of interest in this
 situation

Please have someone contact me ASAP

Thank you

[REDACTED]

If you have received this message in error, please notify me immediately and delete this e-mail and any attachments without copying, distributing or disclosing their contents.

Si vous avez reçu ce message par erreur, veuillez nous en aviser immédiatement et détruire ce courriel ainsi que toute pièce jointe en vous abstenant d'en faire une copie, d'en divulguer ou d'en diffuser le contenu.

Expires

Attachments

[REDACTED] - Adi Developments (Link) Inc.eml

Created from e-mail at 2/6/2019 4:53 PM by [REDACTED]
 Last modified at 2/6/2019 4:53 PM by [REDACTED]

[REDACTED]

From: noreply@olympiatrust.com <noreply=olympiatrust.com@cmail20.com> on behalf of noreply@olympiatrust.com
Sent: Wednesday, January 16, 2019 5:30 PM
To: [REDACTED]
Subject: [REDACTED] - Adi Developments (Link) Inc.



Good afternoon,

Olympia Trust Company ("Olympia") has received correspondence from *Sorrenti Law Professional Corporation* regarding a mortgage currently held in your self-directed account (the "Account").

We are forwarding this correspondence directly to you for further review and consideration. Please click the link below to view the documents:

Documents

The documents that were received by Olympia Trust Company are as follows:

1. Link Investor Update

Olympia Trust Company has been named in this proceeding because the Mortgage held in your self-directed plan is registered in Olympia's name. Olympia does not intend to engage legal counsel or take any legal action in connection with this matter. You should consult with your own legal advisor as to whether you need to take any legal action. If you do decide to take legal action, you must advise us as to the lawyer representing you as you will require Olympia's consent to initiate legal proceedings.

If you have any questions regarding your investment, please contact Sorrenti Professional Corporation directly at:

- Local Telephone Number: [REDACTED]
- Email: eric@sorrentilaw.com

Sincerely,

 Services
Olympia Trust Company
RRSP & TFSA Division

If you are no longer interested you can unsubscribe instantly.



ADI
DEVELOPMENT GROUP

Confidential
Without Prejudice

Tuesday, December 18, 2018

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

Further to your inquiry, the Link project has on November 21, 2018 registered the second phase condominium of Link 2 made up of the final two buildings, Building B and C. The first phase of Link, Building A and D were registered back in November 2017. However, there were not enough proceeds from the sales to discharge the entire senior construction facility which left a senior "stub" loan in place until partial closings occurred in phase 2 in December 2018. This has occurred for a number of reasons mainly that, the first phase was burdened with more construction costs than phase 2 as it required the site servicing, roadworks and majority of underground and elevated courtyard to be mostly built with phase 1, and 2 and there remains approximately 14,000 square feet of retail commercial space that has not sold and is currently available for lease in Buildings A and D.

While phase 2 has registered as well and partial closing have occurred, the project has not seen a repayment of equity just yet including Adi's equity in the project. While condominium registration, partial closings and discharges all signal a project milestone, they do not by any means signal the completion of the project. There remains project liabilities and project completion costs that still need to be paid. The project is still very much under construction with approximately 15-18% cost to complete on the budget still to be incurred mainly made up of the following: outstanding site works on the east side, north and other parts of the property, lighting and landscaping in same said areas, statutory trade holdbacks to be released, completion of construction and furnishing of the amenity space, completion of the parking garage and other areas of the courtyard, completion of the façade including and not limited to balconies, letter of credit security, site construction staffing, construction management fees, development management fees, legal fees, customer service and warranty deficiency repairs, sales and coop broker commissions to name a few.

The closing proceeds from phase 2 that occurred in December 2018 will not be sufficient to cover all these costs, nor discharge the senior loan in its entirety. Due to the changing financial climate in the market and financing rules and stress testing imposed by the previous Liberal government, a handful of purchasers have defaulted on their purchases resulting in Adi taking the units back into inventory and releasing these purchasers. There are approximately 21 units available across buildings A, B and C that are aggressively and actively being marketed for sale. Adi has a fully built out model suite/presentation center with admin and sales staff on site, open 6 days a week marketing the remainder of the inventory units. We feel strongly these units will sell over time as they are beautifully appointed suites and are



ADI
DEVELOPMENT GROUP

priced in line with the market to sell. 2018 has proven to be a slower year across the board for the market, showing a reduction of 45% in year to date sales across the GTA compared to last year. This can be attributed to a few reasons and possibly due to a record year in 2017 causing some buyer fatigue to settle in, newly instated government mortgage finance changes including stress tests, making it more difficult for people to qualify for a mortgage at the higher rates. We feel these events have created a "soft landing" in the market for 2018 and we anticipate this to continue into 2019. We feel we would require the balance of the year in 2019 to aggressively sell the last of the units to provide closing proceeds to begin discharging the equity from the inventory units.

The other major portion of revenue to be allocated toward equity repatriation is the retail commercial component which remains unsold. Adi has been actively marketing the commercial space since the market launch of the project and successfully leased approximately 35% of the space during the pre-construction period. Adi is currently negotiating future lease opportunities and has since signed more tenants to the space and is anticipating having the space approximately 72% leased by Q1 of next year, with a forecast of the balance of the space leased through 2019 as other major tenants move in and more activity is generated on site. Three tenants have already moved in and are open for business, while the others will be in their tenant fit out period during the first half of 2019. The site offers a tremendous opportunity for retail tenants with ample parking on site and the ability to draw more customers from the 297 condominium units in the development. The strategy remains to lease the space with long term leases to 100% with qualified and carefully selected tenants and to position the asset for sale upon completion of the leasing phase. The asset provides high visibility on the well travelled Dundas street corridor and draws on 4 cities including Burlington, Hamilton, Oakville and Milton with over 55 thousand cars driving by daily which will make it an ideal location for any commercial retail tenants. We are confident this unique asset will be leased in 2019 and when positioned for sale will achieve superior capitalization rates compared to assets in the market to ensure maximum revenue recognition to the project.

As set out above, Adi anticipates being able to pay proceeds to the Syndicate mortgage from sale proceeds of the inventory units and the sale of the commercial component of the Link project. Adi is diligently working towards total project completion and will be providing quarterly updates to you moving forward into 2019.

Sincerely,


President/CEO
Adi Development Group Inc.

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

APPLICATION RECORD

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

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

J. Thomas Curry (25740V)

Tel: (416) 865-3096
Fax: (416) 865-9010
Email: tcurry@litigate.com

Jaan E. Lilles (49598O)

Tel: (416) 865-3552
Fax: (416) 865-2846
Email: jlilles@litigate.com

Kelly Hayden (69997P)

Tel: (416) 865-3734
Fax: (416) 865-3708
Email: khayden@litigate.com

Jennifer Power

Tel: (416) 865-9963
Fax: (416) 865-6760
Email: jpower@litigate.com

Lawyers for the Applicant