

**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**

**SUPPLEMENT TO THE SECOND REPORT OF THE TRUSTEE IN RESPECT OF A CLAIM  
TO CERTAIN PROCEEDS FROM THE HARMONY VILLAGE PROJECT BY FORTRESS  
REAL DEVELOPMENTS INC.**

**APRIL 13, 2020**



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

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## INTRODUCTION AND PURPOSE

1. On September 30, 2019, pursuant to an order (“**Appointment Order**”) of the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (“**Court**”), FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”) was appointed as trustee (“**Trustee**”) over all of the assets, undertakings and properties in the possession, power or control of Derek Sorrenti or Sorrenti Law Professional Corporation (collectively, “**Sorrenti**”) relating to Sorrenti’s trusteeship and administration of syndicated mortgage loans (“**Sorrenti SMLs**”) in projects affiliated with Fortress Real Developments Inc. (“**FRDI**”) and all of its direct or indirect affiliates, and any entity under common control with FRDI (collectively, “**Fortress**”) (“**SML Administration Business**”), including, without limitation, all of the assets in the possession or under the control of Sorrenti, its counsel (if any), agents and/or assignees relating to the SML Administration Business but held on behalf of any other party, including, but not limited to, lenders under any Sorrenti SML (“**Investors**”), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust. The Trustee’s appointment resulted from an application made by the Law Society of Ontario (“**LSO**”) under Section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended. Sorrenti consented to the Trustee’s appointment. The Appointment Order also appointed Chaitons LLP as representative counsel to represent the common interests of the Investors under the Sorrenti SMLs.
2. FRDI and certain related Fortress entities are development consultants or borrowers with respect to various real estate development projects. The principal mortgage broker and administrator used by Fortress to raise initial financing from the investing public for early stage real estate developments was Building & Development Mortgages Canada (“**BDMC**”). Over \$600 million had been invested in syndicated mortgage loans administered by BDMC by over 11,000 individual investors. In addition to BDMC, Sorrenti often acted as administrator with respect to an earlier group of syndicated mortgage loans associated with Fortress. As at September 30, 2019, Sorrenti administered approximately \$95 million of syndicated mortgages loans in connection with Fortress related projects, which funds were advanced by approximately 2,900 individual Investors.

3. On April 20, 2018, the Superintendent of Financial Services obtained an Order of the Court under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 and section 101 of the *Court of Justice Act*, R.S.O. 1990, c. C.43 appointing FAAN Mortgage as the trustee of BDMC in proceedings under Court File Number CV-18-596204-00CL. Prior to obtaining this Order, the Financial Services Commission of Ontario (now the Financial Services Regulatory Authority of Ontario) (“**FSCO**”) investigated BDMC following numerous complaints from investors regarding BDMC’s activities and the performance of their investments in BDMC compared to the promises that the investors say were made to them at the time they invested. As a result of its investigations, FSCO concluded that there were significant regulatory issues associated with BDMC’s syndicated mortgages activities.
4. On September 30, 2019, as set out above, the Court granted an Order commencing these proceedings relating to Sorrenti’s trusteeship and administration of the Sorrenti SMLs. The Trustee’s appointment in these proceedings was precipitated, in part, by complaints received by the LSO from Investors.
5. As a result, FAAN Mortgage is the Trustee in two separate court proceedings related to approximately \$700 million of investments made by approximately 14,000 investors in syndicated mortgage loans associated with Fortress projects.
6. On March 6, 2020, the Trustee submitted its second report to Court in the Sorrenti estate, which provided the Trustee’s first comprehensive update since the commencement of these proceedings (“**Second Report**”). A copy of the Second Report (without appendices) is attached hereto as **Appendix “1”**. The purpose of the Second Report was, *inter alia*, to provide the Court and Sorrenti’s stakeholders with a detailed update on the Trustee’s activities since the date of the Appointment Order and to obtain approval to distribute certain funds held by the Trustee to certain Investors. As detailed in the Second Report, the Trustee is seeking an Order from the Court (“**Omnibus Order**”), among other things, authorizing it to distribute 50% of the Realized Property received to date by the Trustee or approximately \$3.4 million to Investors in three Sorrenti SMLs, including to the Bayview Individual Investors, the Gotham Investors and the HVS Investors (as defined below).
7. Also on March 6, 2020, the Trustee served its Motion Record in respect of the relief outlined in the Second Report (“**Motion Record**”), including the approval of the Investor distributions noted above, which was returnable at a hearing scheduled for March 17,

2020. Due to the COVID-19 pandemic, the Court suspended all regular operations effective March 17, 2020 and, accordingly, the hearing was adjourned. The Trustee and its legal counsel intend to work with the Court to reschedule the hearing while respecting the protocols established by the Court during the COVID-19 pandemic.

8. The purpose of this report (“**Supplemental Report**”) is to:
  - (a) Advise the Court and the HVS Investors of correspondence received by the Trustee from FRDI after the service of the Motion Record, wherein FRDI advised the Trustee that: (i) FRDI claims it is owed approximately \$1.3 million in priority to any amounts that the Trustee is seeking to distribute to the HVS Investors (“**Fortress Claim**”); and (ii) given that the Trustee does not agree with the Fortress Claim, FRDI will oppose the Trustee’s motion in respect of the relief sought with respect to the proposed distribution to the HVS Investors; and
  - (b) Supplement the information provided in the Second Report with respect to the Trustee’s intended distribution of the Remaining Funds (as defined below), subject only to the proposed Administrative Holdback, to the HVS Investors, including background information on the receivership proceedings that were commenced in 2016 involving the HVS Project (as defined below).

## **SCOPE AND TERMS OF REFERENCE**

9. In preparing this Supplemental Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, Sorrenti, Fortress and the HVS Receiver (as defined below). In addition, the Trustee has reviewed publicly available information in respect of the receivership of the HVS Borrower (as defined below). However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the HVS Project and the SML Administration Business. While the Trustee reviewed various documents provided to it, the Trustee’s review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards (“**GAAS**”), Generally Accepted Accounting Principles (“**GAAP**”), or International Financial Reporting Standards (“**IFRS**”). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.

10. This Supplemental Report has been prepared for the use of the Court and Sorrenti's stakeholders to supplement the information contained in the Second Report to assist the Court with respect to the relief sought by the Trustee therein. Accordingly, the reader is cautioned that this Supplemental Report may not be appropriate for any other purpose and the Trustee will not assume responsibility for losses incurred by the reader as a result of circulation, publication, reproduction or use of this Supplemental Report contrary to the provisions of this paragraph.
11. Materials filed with the Court with respect to these proceedings (other than confidential materials filed under seal) are accessible at a section dedicated to these Sorrenti proceedings on the Trustee's website at: [www.faanmortgageadmin.com](http://www.faanmortgageadmin.com).
12. Capitalized terms not otherwise defined in this Supplemental Report have the meanings ascribed to them in the Second Report and the Appointment Order, as applicable.
13. All references to dollars are in Canadian currency.

#### **BACKGROUND INCLUDING THE HVS RECEIVERSHIP PROCEEDINGS**

14. As set out in the Second Report, certain Investors ("**HVS Investors**") participated in a Sorrenti SML ("**HVS SML**") with respect to a real estate development property located at 3260 Sheppard Avenue East in Toronto, Ontario ("**HVS Project**"). There are 541 HVS Investors. Commencing in December 2011, the HVS Investors advanced approximately \$28.79 million<sup>1</sup> to Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP, the borrower under the HVS SML ("**HVS Borrower**"), in connection with the HVS Project. Based on its review of publicly available documents and Sorrenti's records, the Trustee does not believe that the HVS Borrower is a Fortress related entity. The HVS SML is comprised of individual separate loan agreements for each of the 541 HVS Investors.
15. As set out in the Second Report, significant portions of the sums advanced by Investors through Sorrenti were used to pay various fees and charges. The fees and charges that were paid from the Investor advance(s) generally represent an aggregate amount equal to approximately 35% of the principal amount advanced under the applicable Sorrenti

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<sup>1</sup> Interest continues to accrue at a per diem rate of \$2,094.15. As at the date of the Second Report, accrued interest owing to the HVS Investors was approximately \$4.9 million.

SML. A portion of these fees and charges (approximately 50%) would be paid to (i) the Investors' brokers; (ii) BDMC in its capacity as the borrower's broker; and (iii) Sorrenti as administrator. The balance, net of any ancillary costs, would generally and ultimately be paid to Fortress.

16. Based on Sorrenti's records available to the Trustee in respect of the HVS Project, 26.3% (approximately \$7.6 million) of the approximately \$28.79 million advanced by the HVS Investors was paid directly by Sorrenti to various parties, as follows:

(a) Approximately \$3.08 million to Fortress as consulting fees;

(b) Approximately \$3.4 million as referral fees to the Fortress related brokers and other referring parties;

(c) Approximately \$864,000 as a broker fee to BDMC in its capacity as mortgage broker (i.e. not as mortgage administrator), 90% of which was then paid to Paza Service Corp., an entity owned by one of the principals of Fortress, Vince Petrozza; and

(d) Approximately \$205,000 to Sorrenti in respect of administration fees. This amount was generally calculated as \$113 per investor per year multiplied by the number of years under administration.

17. The Trustee understands that the difference between the 26.3% and the 35% (or approximately \$2.5 million) would have been paid directly by the HVS Borrower to Fortress. However, the Trustee notes that it does not have the books and records of the HVS Borrower or other information to verify the occurrence of the additional payment(s) to Fortress.

18. The HVS Project failed and, after first being privately appointed as receiver in 2016, on January 20, 2017, Rosen Goldberg Inc. was appointed by the Court as receiver ("**HVS Receiver**") of the HVS Borrower and City Core Developments Inc., a company that guaranteed certain of the HVS Borrower's debts ("**HVS Receivership Proceedings**"), pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended. A copy of the Order of the Honourable Mr. Justice Hainey appointing the HVS Receiver in the HVS

Receivership Proceedings (“**Receivership Order**”) is attached as **Appendix “2”**. Based on its review of court-filed materials in the HVS Receivership Proceedings, including the HVS Receiver’s Seventh Report (as defined below), the Trustee understands that at the time of the appointment of the HVS Receiver, the HVS Borrower had pre-sold 223 of the 291 planned units, although it had not yet commenced construction on the HVS Project.

19. The Receivership Order also approved a stalking horse sale process pursuant to which Fortress Sheppard (2016) Inc. (“**Fortress Sheppard**”), an entity related to FRDI, was the stalking horse bidder. However, the Trustee understands that Fortress Sheppard subsequently advised the HVS Receiver that it would not complete the purchase of the HVS Project pursuant to its stalking horse bid. On April 7, 2017, as a result of a motion by the HVS Receiver, this Honourable Court issued an Order terminating the stalking horse sale process and ordered that the deposit paid by Fortress Sheppard of \$350,000 be forfeited to the HVS Receiver (“**April 2017 Order**”). A copy of the April 2017 Order of the Honourable Mr. Justice Myers is attached as **Appendix “3”**.
20. The HVS Receiver continued to market the HVS Project after the termination of the stalking horse sale process. Fortress Sheppard participated in the extended sale process and submitted another offer to the HVS Receiver in accordance with such process.
21. On June 9, 2017, the HVS Receiver served court materials in connection with a motion for an order, among other things, approving a sale of the HVS Project to Pinnacle International Sheppard Lands Inc. (“**Pinnacle**”) and authorizing a distribution of the sale proceeds, which was returnable on June 19, 2017. FRDI and Fortress Sheppard were served with the HVS Receiver’s motion.
22. In response, on June 16, 2017, counsel to FRDI and Fortress Sheppard filed a motion (“**Fortress Motion**”) also returnable on June 19, 2017, seeking an order, among other things, directing the HVS Receiver to enter into an agreement with Fortress Sheppard for the sale of the HVS Project. Mr. Petrozza, a principal of both FRDI and Fortress Sheppard, swore an affidavit dated June 16, 2017 (“**Petrozza Affidavit**”) in support of the responding motion. The Petrozza Affidavit did not include any reference to any amounts allegedly owed to FRDI (including the Fortress Claim) and, in fact, specifically acknowledges that there were three mortgages registered on title to the HVS Project, the third being the mortgage registered by Sorrenti in favour of the HVS Investors. Notably, the Petrozza

Affidavit did not raise any concerns or objections regarding the proposed distribution order being sought by the HVS Receiver, which provided for the distribution of the net proceeds of sale to the three mortgagees registered on title in accordance with their priority following payment of approximately \$40,338.46 to the Accountant of the Court to the credit of a lien action. A copy of the Petrozza Affidavit (without exhibits) is attached hereto as **Appendix “4”**.

23. Notwithstanding the competing Fortress Motion, and based on the HVS Receiver’s report to Court dated June 9, 2017 (“**HVS Receiver’s Fourth Report**”), on June 19, 2017, the HVS Receiver obtained an order of the Court (“**Sale Approval and Distribution Order**”), *inter alia*:

- (a) approving the terms of a sale transaction for the sale of the HVS Project to Pinnacle; and
- (b) directing the HVS Receiver to distribute the net proceeds from the sale of the HVS Project in accordance with the following waterfall:
  - (i) first, the sum of \$36,000 to Marcus Silbert in full satisfaction of the lien action noted above;
  - (ii) second, to Downing Street Financial Inc., in Trust, (“**DSFI**”) in full satisfaction of the HVS Borrower’s obligations under DSFI’s first ranking charge, subject to the HVS Receiver being satisfied with the calculation of the amount owing;
  - (iii) third, to JYR Capital Mortgage Investment Corporation and Li Ruixia in full satisfaction of the HVS Borrower’s obligations under their second ranking charge, subject to the HVS Receiver being satisfied with the calculation of the amount owing; and
  - (iv) fourth, to the holders of the third ranking charge (i.e. Sorrenti and Olympia Trust Company on behalf of the HVS Investors) in partial satisfaction of the HVS Borrower’s obligations thereunder.

24. Copies of the Sale Approval and Distribution Order of the Honourable Mr. Justice Hainey and the HVS Receiver's Fourth Report (without appendices) are attached hereto as **Appendices "5" and "6"**, respectively.
25. At no time during the entirety of the HVS Receivership Proceedings, including in the period leading up to or at the hearing of the motion seeking the Sale Approval and Distribution Order, did FRDI or Fortress Sheppard object to the approval of the distribution of the remainder of the net sale proceeds to Sorrenti on behalf of the HVS Investors.
26. On June 21, 2017, FRDI and Fortress Sheppard filed a notice of appeal with the Court of Appeal for Ontario ("**Court of Appeal**") with respect to the Sale Approval and Distribution Order ("**Fortress Notice of Appeal**"). The Fortress Notice of Appeal requested that the Sale Approval and Distribution Order be set aside and that an order be granted, among other things, directing the HVS Receiver to enter into an agreement with Fortress Sheppard for the sale of the HVS Project. The grounds of appeal set out in the Fortress Notice of Appeal allege that the Court made various palpable and overriding errors of fact and law, including that the Court erred in, among other things, (i) accepting the HVS Receiver's recommendation that the Pinnacle bid was the best offer from the point of view of the majority of stakeholders, and (ii) holding that Fortress Sheppard's competing offer was not preferable (and therefore dismissing the competing Fortress Motion). However, the Fortress Notice of Appeal **did not** raise any concerns with or allege that the Court made any errors relating to the scheme of distribution approved by the Court in the Sale Approval and Distribution Order. The Fortress Notice of Appeal is attached as **Appendix "7"**.
27. On June 27, 2017, the HVS Receiver filed a motion challenging the basis on which FRDI and Fortress Sheppard sought to appeal the Sale Approval and Distribution Order. This motion was heard by the Honourable Mr. Justice Tulloch of the Court of Appeal on June 29, 2017, who granted the motion with reasons to follow, thereby ending FRDI and Fortress Sheppard's appeal. A copy of the written endorsement of the Court of Appeal dated July 20, 2017 is attached as **Appendix "8"**.
28. The transaction approved by the Sale Approval and Distribution Order was completed on June 30, 2017. Pursuant to the Sale Approval and Distribution Order, the HVS Receiver subsequently distributed \$19.51 million to Sorrenti, on behalf of the HVS Investors, which



represents a return of approximately 67.6% of the principal amount advanced under the HVS SML. After that payment, approximately \$9.28 million of principal plus accrued interest remained outstanding under the HVS SML. Based upon the Trustee's review of Sorrenti's records, Sorrenti distributed approximately \$19.41 million of the \$19.51 million to the HVS Investors. As noted in the Second Report, the Trustee has contacted Sorrenti to request documentation with respect to the amount withheld by Sorrenti from the distribution to the HVS Investors.

29. At no time did Fortress object to these payments to Sorrenti on behalf of the HVS Investors, nor claim any priority to any distributions made by the HVS Receiver, despite purportedly having a priority claim to these funds that was not disclosed to this Court during the HVS Receivership Proceedings. To the contrary, the materials submitted by FRDI and Fortress Sheppard to this Court specifically acknowledged Sorrenti's priority claim to the proceeds of sale. Moreover, the Fortress Claim involves costs incurred between September 2016 and August 2017 and were therefore known at the time of Fortress' involvement in the hearing and appeal concerning the Sale Approval and Distribution Order.
30. Shortly after the Trustee's appointment on September 30, 2019, the Trustee contacted the HVS Receiver to determine the status of the HVS Receivership Proceedings and to see if there would be further funds available for the HVS Investors. The HVS Receiver advised that it intended to make a further distribution to the Trustee, on behalf of the HVS Investors, of \$1.06 million ("**Remaining Funds**"), which represents the net proceeds of a development deposit that was provided by the HVS Borrower to the City of Toronto and recovered by the HVS Receiver. The HVS Receiver also advised the Trustee that there may be a further nominal and final amount to be distributed by the HVS Receiver to the Trustee in 2020 from certain tax refunds totalling up to \$80,000.
31. On October 8, 2019, the HVS Receiver served a motion ("**Discharge Motion**") seeking an order ("**Discharge Order**"), *inter alia*, discharging it as receiver of the HVS Borrower and City Core Developments Inc. and approving the HVS Receiver's Seventh Report. In connection with the Discharge Motion, the HVS Receiver filed its seventh report to Court dated October 8, 2019 ("**HVS Receiver's Seventh Report**"), a copy of which is attached hereto as **Appendix "9"** (without appendices). In the HVS Receiver's Seventh Report, starting at paragraph 28, the HVS Receiver specifically advised the Court that it intended

to distribute the Remaining Funds to the Trustee, on behalf of Sorrenti and the HVS Investors, in accordance with the Sale Approval and Distribution Order.

32. The HVS Receiver's Discharge Motion was served on FRDI and Fortress Sheppard. No party, including FRDI and Fortress Sheppard, objected to the Discharge Motion, including the approval of the HVS Receiver's activities, which included the intended distribution of the Remaining Funds to the Trustee, on behalf of Sorrenti and the HVS Investors.
33. The Court issued the Discharge Order on October 15, 2019, which, among other things, granted the requested discharge and approved the HVS Receiver's Seventh Report and the HVS Receiver's activities. The Remaining Funds were distributed by the HVS Receiver to the Trustee on October 16, 2019 ("**HVS Realized Property**"). A copy of the Discharge Order is attached as **Appendix "10"**.
34. Should the HVS Realized Property be distributed to the HVS Investors as proposed by the Trustee, the HVS Investors would recover an additional return of principal of approximately 3.7%, which, when combined with previous repayments, results in a total recovery of approximately 71.4% (before any Administrative Holdback).
35. The Trustee again notes that during the entirety of the HVS Receivership Proceedings, at no time did FRDI or Fortress Sheppard object to the approval of the distribution of funds to Sorrenti on behalf of the HVS Investors. Further, at no time has FRDI or any Fortress entity held a charge registered on title to the HVS Project or otherwise been the beneficiary of a postponement registered on same. A recent PIN search (including deleted instruments) in respect of the lands underlying the HVS Project is attached as **Appendix "11"**.

#### **FORTRESS' CORRESPONDENCE WITH THE TRUSTEE**

36. At 4:55 pm on Friday, March 13, 2020, a week after service of the Second Report and associated Motion Record, the Trustee was surprised to receive an email ("**March 13 Email**"), a copy of which is attached as **Appendix "12"**, from a Fortress representative which claimed, among other things, that FRDI is owed \$1,290,362.16 by the HVS Borrower and that such amount ranks in priority to the amount due to Sorrenti on behalf of the HVS Investors.

37. In the March 13 Email and in support of its position, FRDI claims that it “*had full rights for security in priority to the Derek Sorrenti/Sorrenti Law Professional Corporation (“SLPC”) syndicate mortgage holders prior to the power of sale<sup>[2]</sup> taking place*” and “cuts and pastes” certain provisions from two ancillary documents purportedly entered into by one or more HVS Investors. No executed copies of any documents in respect of any of the advances made by the HVS Investors were provided to the Trustee by FRDI in the March 13 Email. Further, no reference is made by FRDI to any provisions of the 541 separate loan agreements entered into by the HVS Investors and the HVS Borrower, which are administered by Sorrenti and, collectively, comprise the HVS SML, or any of the related security documents. Finally, no reference was made to the matters that occurred in the HVS Receivership Proceedings summarized above.
38. In the March 13 Email, and based solely on the support cited above, FRDI also requested that the Trustee send the HVS Realized Property that it proposed to distribute to the HVS Investors to FRDI, as a payment towards the Fortress Claim. If the Trustee was not agreeable to the distribution to Fortress, in the alternative, FRDI requested that the portion of the motion related to the distribution to the HVS Investors (which, as set out above, was scheduled for Tuesday, March 17, 2020) be set aside to allow time for effective discussions and potential resolution of this matter. Finally, FRDI advised that if the Trustee was not agreeable to either of those options, that FRDI “*will request an adjournment of the portion of the March 17 motion so that it can deliver reply materials and submit its position to the court on a mutually convenient hearing date*”.
39. As noted previously, due solely to the COVID-19 pandemic and related suspension of regular operations by the Court and not due to the position being advanced by Fortress, the hearing originally scheduled for March 17, 2020 was adjourned.
40. The Trustee is of the view that: (i) the March 13 Email is in direct contradiction to the evidence submitted in the Petrozza Affidavit; and, in any event, (ii) the Sale Approval and Distribution Order and the Discharge Order issued in the HVS Receivership Proceedings, which was made on notice to FRDI and Fortress Sheppard, fully, finally and conclusively dealt with the distribution of amounts recovered by the HVS Receiver in the HVS

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<sup>2</sup> The Trustee believes that FRDI meant “receivership” not “power of sale” as the HVS Borrower was subject to receivership, not power of sale, proceedings.

Receivership Proceedings, including the proceeds from the sale of the HVS Project and the Remaining Funds.

41. The Trustee also notes that the proposed distribution of HVS Realized Property to HVS Investors is a matter that is distinct and separate from the prior court-ordered distribution of the net proceeds of sale from the HVS Project and other amounts to parties that had or potentially had claims to such funds and the priority between them, which has already been settled by the Court in the Sale Approval and Distribution Order granted in 2017 and upheld by the Court of Appeal and in the Discharge Order. Rather, as part of the Omnibus Order, the Trustee is seeking authorization to effect a transfer of funds from a mortgage administrator to investors, which would have happened in the normal course but for the granting of the Appointment Order (including the interim stabilization measures contained therein), and is necessary to ensure that the HVS Investors continue to receive distributions in accordance with the final Orders rendered in the HVS Receivership Proceedings.
42. On March 20, 2020, the Trustee formally advised FRDI that the Trustee disagrees that FRDI has a valid claim to the HVS Realized Property in priority to the HVS Investors. Further, the Trustee advised FRDI that:
  - (a) the HVS Receiver was granted two distribution orders, which approved distributions to Sorrenti on behalf of the HVS Investors;
  - (b) FRDI was served with both motions in connection with the two distributions to Sorrenti and, despite actively participating in the HVS Receivership Proceedings, never objected to the distributions;
  - (c) the Orders issued in the HVS Receivership Proceedings are now final and binding Orders of the Court and any claim that FRDI may have had to the Remaining Funds (which the Trustee contests) is barred by the operation of those Orders; and
  - (d) if Fortress did not confirm that it did not intend to object to the requested distribution order, the Trustee would seek costs from FRDI with respect to whatever additional steps it deems necessary to obtain the distribution order for the benefit of the HVS Investors.

A copy of the Trustee's email to Fortress dated March 20, 2020 is attached as **Appendix "13"**.

43. On March 24, 2020, FRDI advised that it will oppose the Trustee's motion to distribute funds to the HVS Investors. On March 25, 2020, the Trustee responded by advising that the Trustee would proceed with its motion as soon as practicable and reminded FRDI that should the Trustee's motion be successful, the Trustee will be asking the Court to grant costs on a full indemnity basis against FRDI for all of the additional costs incurred by the Trustee to obtain the distribution order with respect to the HVS Investors, including the filing of any supplemental reports and/or materials.
44. A copy of the above noted email correspondence between FRDI and the Trustee dated March 24 and 25, 2020 is attached hereto as **Appendix "14"**.

## **CONCLUSION**

45. As part of the Omnibus Order, the Trustee is seeking the Court's authorization to distribute the HVS Realized Property to HVS Investors, subject only to the proposed Administrative Holdback. Just a few days prior to the hearing of the Trustee's motion, FRDI asserted that it was entitled to such funds in priority to the HVS Investors.
46. FRDI has been aware that the Trustee was in possession of the Remaining Funds since October 2019 and failed to make any inquiries with the Trustee regarding such funds or to provide any satisfactory evidence of an entitlement to them. Further, the issue of priority to such funds has already been conclusively dealt with in the context of the HVS Receivership Proceedings by the Sale Approval and Distribution Order, which was issued by this Court and upheld by the Court of Appeal and by the Discharge Order.
47. Fortress was an active participant in the HVS Receivership Proceedings. The time for Fortress to object to the distribution from the HVS Receiver was three years ago in June 2017 or in October 2019. They did not. Once Sorrenti or the Trustee received the distributions from the HVS Receiver in accordance with final and binding orders of this Court, it is now not open to Fortress to make a collateral attack on those orders to the further detriment of the HVS Investors and claim the Remaining Funds for itself. The only reason that the HVS Realized Property has not yet been distributed to the HVS Investors is due to the interim stabilization measures imposed by the Appointment Order.
48. Accordingly, any claim that Fortress may have had to the Remaining Funds is barred and the Fortress Claim should be summarily dismissed. As a result, it is the Trustee's view that incurring further professional costs to debate the merits of the substance of the

Fortress Claim, which it disagrees with and objects to separate and apart from the matters relating to the HVS Receivership Proceedings discussed herein, including reviewing the 541 loan agreements and ancillary documents for each of the HVS Investors is not warranted in the circumstances.

49. In light of the foregoing and as a result of the additional costs and expenses incurred by the Trustee and its counsel in responding to the Fortress Claim, the Trustee will be seeking an Order directing Fortress to reimburse the Trustee for such costs on a full indemnity basis.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13<sup>th</sup> day of April, 2020.

*Faan Mortgage Administrators Inc.*

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

**Appendix 1:**

**Trustee's Second Report to Court dated March 6, 2020 (without appendices)**

Court File No. CV-19-628258-00CL

**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**

**SECOND REPORT OF THE TRUSTEE**

**(COMPREHENSIVE UPDATE)**

**March 6, 2020**



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



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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

SECOND REPORT OF THE TRUSTEE

(COMPREHENSIVE UPDATE)

March 6, 2020

INTRODUCTION

1. On September 30, 2019, pursuant to an order ("**Appointment Order**") of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) ("**Court**"), FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**") was appointed as trustee ("**Trustee**") over all of the assets, undertakings and properties in the possession, power or control of Derek Sorrenti or Sorrenti Law Professional Corporation (collectively, "**Sorrenti**") relating to Sorrenti's trusteeship and administration of syndicated mortgage loans ("**Sorrenti SMLs**") in projects affiliated with Fortress Real Developments Inc. ("**FRDI**") and all of its direct or indirect affiliates, and any entity under common control with

FRDI (collectively, “**Fortress**”) (“**SML Administration Business**”), including, without limitation, all of the assets in the possession or under the control of Sorrenti, its counsel (if any), agents and/or assignees relating to the SML Administration Business but held on behalf of any other party, including, but not limited to, lenders under any Sorrenti SML (“**Investors**”), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively referred to as “**Property**”). The Trustee’s appointment resulted from an application made by the Law Society of Ontario (“**LSO**”) under Section 49.47 of the *Law Society Act*, R.S.O. 1990. c. L.8, as amended (“**Law Society Act**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended. Mr. Sorrenti consented to the Trustee’s appointment. A copy of the Appointment Order is attached hereto as **Appendix “1”**.

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

terms and conditions of sale as the Trustee in its discretion may deem appropriate;

- (viii) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business; and
  - (ix) restructure the Property in a manner that the Trustee consider reasonable;
- (b) appointed Chaitons LLP as representative counsel (“**Representative Counsel**”) to represent the common interests of the Investors under the Sorrenti SMLs;
- (c) established certain interim stabilization measures that require the Trustee to:
- (i) hold, until further Order of the Court, in a separate account all: (1) funds from the SML Administration Business that were in Sorrenti’s possession, or that may come into Sorrenti’s or the Trustee’s possession, in each case as a result of a repayment (in whole or in part) of principal on any Sorrenti SML, whether or not (i) secured by any real property charges, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (2) all interest paid or payable to Sorrenti or the Trustee in connection with the SML Administration Business at the time such repayment (in whole or in part) of principal is made (collectively, “**Realized Property**”) and report to the Court with a recommendation regarding next steps with respect to the Realized Property; and
  - (ii) hold in a separate account all funds (other than Realized Property) that were in Sorrenti’s possession on or prior to the date of the Appointment Order as well as any amounts (other than Realized Property) paid or payable to Sorrenti or the Trustee after the date of the Appointment Order, including in respect of interest where principal is not repaid, fees, expenses or other amounts, (collectively, “**Estate Property**”) and use such Estate Property as set out in the Appointment Order, including to pay operating and professional costs associated with the SML Administration Business. (Realized Property and Estate Property are both included within the definition of “Property” as set out in the Appointment Order)
- (d) ordered that, with the exception of any ongoing, pending or future regulatory proceedings by the LSO under the Law Society Act: (1) no proceeding against or

in respect of Sorrenti in connection with the SML Administration Business, or the Property shall be commenced or continued except with the written consent of the Trustee or with leave of the Court; and (2) any and all proceedings currently under way against or in respect of any of the SML Administration Business or the Property are stayed and suspended pending further Order of the Court;

(e) provided the Trustee and its counsel with a first ranking charge on the Property (“**Trustee’s Charge**”) to secure their reasonable fees and disbursements in connection with the Trustee’s mandate under the Appointment Order; and

(f) provided Representative Counsel with a charge on the Property ranking immediately subordinate to the Trustee’s Charge to secure its reasonable fees and disbursements in connection with its mandate under the Appointment Order.

3. The affidavit of Nadia Musclow, Manager, Trustee Services of the LSO, sworn on September 30, 2019, was filed in connection with the LSO’s application for the Appointment Order (“**Musclow Affidavit**”). The Musclow Affidavit contains background information regarding Sorrenti and the SML Administration Business. A copy of the Musclow Affidavit is attached hereto as **Appendix “2”** (without exhibits).
4. In its capacity as proposed Trustee, FAAN Mortgage filed a report to Court dated September 29, 2019 (“**Pre-Filing Report**”). A copy of the Pre-Filing Report is attached hereto as **Appendix “3”** (without appendices).
5. On January 22, 2020, the Trustee submitted its first report in these proceedings (“**First Report**”). The First Report provided the Court and stakeholders with the Trustee’s recommendation in favour of a settlement agreement with Bel-Ottawa Inc. (“**Gotham Borrower**”) relating to a 242-unit condominium tower in Ottawa, Ontario (“**Gotham Project**”) that provided for a payout to the Investors under various loan agreements entered into with the Gotham Borrower that were administered by Derek Sorrenti, in trust (as bare trustee) and secured by the Gotham Project (“**Gotham Settlement Agreement**”). The Order approving the Gotham Settlement Agreement was issued on January 30, 2020 (“**Gotham Settlement Approval Order**”). Pursuant to the Gotham Settlement Approval Order, the Gotham Realized Property (as defined below) was deemed to be Realized Property, though no order was made at that time authorizing or directing the Trustee to

distribute such funds. Accordingly, the Gotham Realized Property is currently being held by the Trustee in accordance with the terms of the Appointment Order.

6. Materials filed with the Court with respect to these proceedings (other than confidential materials filed under seal), including the Musclow Affidavit, the LSO's application record, motion materials, Court reports and the Orders and endorsements issued by the Court, are accessible at a section dedicated to these Sorrenti proceedings on the Trustee's website at: [www.faanmortgageadmin.com](http://www.faanmortgageadmin.com) ("**Trustee's Website**").
7. Capitalized terms not otherwise defined in this second report of the Trustee ("**Second Report**") have the meanings ascribed to them in the Appointment Order.

#### **PURPOSE OF THE SECOND REPORT**

8. This is the Trustee's first comprehensive report to Court since the commencement of the Sorrenti proceedings. The purpose of this Second Report is to provide the Court and Sorrenti's stakeholders with a detailed update on the Trustee's activities since the date of the Appointment Order and to support the Trustee's request for:
  - (a) an Order ("**First Omnibus Order**"), *inter alia*:
    - (i) approving certain amendments to the interim stabilization measures set out in paragraph 14 of the Appointment Order to, *inter alia*,
      - (1) authorize the Trustee to distribute 50% of the Realized Property (as defined in the Appointment Order) to the applicable Investors, including, without limitation, authorizing and directing the Trustee to effect a distribution:
        - (A) to Bayview Individual Investors (defined herein) in an amount equal to 50% of the Bayview Realized Property;
        - (B) to Gotham Investors (defined below) in an amount equal to 50% of the Gotham Realized Property; and

- (C) to the HVS Investors (defined herein) in an amount equal to 50% of the HVS Realized Property;
    - (2) authorize the Trustee to use the retained Realized Property as an administrative holdback to fund the cost of these proceedings, including to pay operating and professional costs associated with the SML Administration Business; and
  - (ii) approving the First Report and this Second Report, as well as the Trustee's activities described therein and herein, and the Trustee's fees and disbursements, including the fees and disbursements of its counsel, for the period from September 30, 2019 to January 31, 2020, as more fully described herein and in the fee affidavits attached hereto;
  - (iii) sealing the Confidential Manzoor Exhibit and the Confidential De Lellis Exhibit (each as defined below); and
  - (b) an Order ("**LRO Direction Order**"), *inter alia*, directing the applicable Land Registry Office to, upon the filing by the Trustee of one or more certificate(s) with the Court, expunge and delete the Appointment Order from title to the property(ies) identified in such certificate(s).
9. In support of the Trustee's request for the above noted relief, this Second Report describes the following matters:
- (a) certain background information concerning the SML Administration Business;
  - (b) the Trustee's activities to date and updates regarding the status of the various real estate development projects associated with the active Sorrenti SMLs;
  - (c) details regarding the funds held in Sorrenti's trust account utilized for the SML Administration Business as of the date of Trustee's appointment, and details regarding funds received by the Trustee following its appointment; and



- (d) the projected cash flows for the SML Administration Business (“**Cash Flow Projection**”) from March 1, 2020 through to October 31, 2020 (“**Cash Flow Period**”).
10. The Trustee intends to report back to the Court on or about October 31, 2020 with a further comprehensive update regarding these proceedings. The report to be filed will give the Court, Investors, borrowers and other stakeholders further information regarding the Sorrenti SMLs and information regarding the Trustee’s activities during that period.
  11. The Trustee anticipates that it will likely be necessary to prepare shorter project specific reports during the intervening period and may be required to attend before the Court to seek relief or advice and directions from the Court regarding such project specific issues.

#### **SCOPE AND TERMS OF REFERENCE**

12. In preparing this Second Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, Sorrenti, Building & Development Mortgages Canada Inc. (“**BDMC**”), Fortress, certain Investors and certain of the borrowers who have borrowed funds under the Sorrenti SMLs. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the projects described herein and the SML Administration Business. While the Trustee reviewed various documents provided to it (including, among other things, unaudited internal information, appraisals and financial projections), the Trustee’s review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards (“**GAAS**”), Generally Accepted Accounting Principles (“**GAAP**”), or International Financial Reporting Standards (“**IFRS**”). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.
13. Some of the information used and relied upon in preparing this Second Report consists of financial projections and other information received from various third parties, including appraisals and project cost information. The Trustee cautions that the projections and other information used and relied upon are generally based upon assumptions and estimates about future events and/or market conditions that are not ascertainable or that could change. As such, the information presented in this Second Report may vary from the projections and information used to prepare this Second Report and the actual results

may differ both from the results projected therein and herein. Even if the assumptions relied upon therein or herein materialize, the variations from the projections could be significant. The Trustee's review of the future oriented information used to prepare this Second Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

14. This Second Report has been prepared for the use of the Court and Sorrenti's stakeholders as general information relating to the SML Administration Business and to assist the Court with respect to the relief sought by the Trustee. Accordingly, the reader is cautioned that this Second Report may not be appropriate for any other purpose and the Trustee will not assume responsibility for losses incurred by the reader as a result of circulation, publication, reproduction or use of this Second Report contrary to the provisions of this paragraph.
15. All references to dollars are in Canadian currency.

## **BACKGROUND**

### Overview

16. On April 20, 2018, the Superintendent of Financial Services obtained an Order of the Court under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 ("**MBLAA**") and section 101 of the *Court of Justice Act*, R.S.O. 1990 c. C.43 appointing FAAN Mortgage as the trustee of BDMC (in such capacity, the "**BDMC Trustee**") in proceedings under Court File Number CV-18-596204-00CL ("**BDMC Proceedings**").
17. BDMC was the principal mortgage broker used in recent years by Fortress to raise initial financing from the investing public through syndicated mortgage loans ("**SMLs**") for early stage real estate developments. FRDI and its affiliates are development consultants or borrowers with respect to various real property development projects. The real property in question often consisted of vacant lands or projects taken over from other developers, including, in some cases, projects that were facing financial difficulties.
18. In their earliest form, the Trustee understands that certain SMLs involving Fortress utilized BDMC as the mortgage broker and Sorrenti as the mortgage administrator. Sorrenti operated as a mortgage administrator pursuant to a licensing exemption available for lawyers in the MBLAA.

19. The Trustee understands that starting in or around 2012, BDMC commenced acting as both mortgage broker and mortgage administrator for new SML's involving Fortress projects. The Trustee further understands that in 2016, a process was commenced to transfer 8<sup>1</sup> of the Sorrenti-administered SMLs to BDMC for administration ("**Transferred SMLs**"). The Transferred SMLs are not part of the Trustee's mandate in the Sorrenti proceedings and are instead subject to the BDMC Proceedings. The Trustee understands that the real estate development projects that are associated with the Sorrenti SMLs that had relatively shorter estimated completion timeframes were not included as part of the Transferred SMLs. Information on the Transferred SMLs has been included in reports filed by the BDMC Trustee in the BDMC Proceedings.
20. As of the date of the Appointment Order, the Trustee understands that Sorrenti was administering approximately \$95 million of SMLs, which funds were advanced by approximately 2,900 individual Investors. These funds were advanced in connection with 10 different real estate projects that are in various stages of development. To the best of the Trustee's knowledge, Sorrenti had previously administered 15 other SMLs that were not active at the time of the Trustee's appointment.
21. The Trustee has been advised by the LSO that on February 19, 2020, the Law Society Tribunal – Hearing Division (the "**Tribunal**") issued an order which provides that, on an interim interlocutory basis:
  - (a) Sorrenti shall not engage in the practice of mortgage administration in syndicated mortgage loans/investments or act as trustee in respect of syndicated mortgage loans/investments; and
  - (b) Sorrenti shall not engage, directly or indirectly, including by instructing another lawyer or non-lawyer or by providing legal services or advice or by registering instruments, in the practice of law in relation to major development proposals known as syndicated mortgage investments (collectively, the "**Tribunal Order**").

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<sup>1</sup> The BDMC Trustee previously reported in its seventh report to Court dated May 10, 2019, that there were 10 SMLs that comprise the Transferred SMLs, but upon review of Sorrenti's records, it appears that two of the SMLs that were previously thought to have been transferred to BDMC's administration were never in fact administered by Sorrenti.

22. The Trustee has been in communication with the LSO regarding the Tribunal's proceedings and has provided requested information to the LSO regarding Sorrenti's SML Administration Business. The Trustee understands that the next Tribunal hearing in this matter is scheduled for April 1-2, 2020. A copy of the Tribunal Order is attached as **Appendix "4"**.
23. The following table summarizes the status of the active SMLs that were administered by Sorrenti as at the date of the Appointment Order.

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SML/Project Name	Project Status	Remaining SML Principal Outstanding (\$000s)
Progress/Ten88	Pre-construction	17,327
Victoria Park Place	Pre-construction	12,641
Bayview	Exited	1,879
Gotham	Complete (Exited <sup>2</sup> )	1,245
Harmony Village Sheppard	Exited	9,424
Wismer/The Mark/Eldin	Complete	6,621
Sutton/Link	Complete	19,591
Soba	Construction	10,316
Mapleview/Julien Court	Construction	8,100
Unionvillas	Construction	8,000
Total		<u>95,144</u>

24. To assist Investors in understanding the status of their particular Sorrenti SML and the applicable real estate development project associated with it, the Trustee has created, and continues to periodically update, a chart that provides, to the best of the Trustee's knowledge, the capital structure and development status of each project and other project-specific information ("**Project Analysis Summary**"). The Project Analysis Summary has been separately posted to the Trustee's Website. A copy of the Project Analysis Summary dated as of March 4, 2020 is attached hereto as **Appendix "5"**.

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<sup>2</sup> As described in paragraph 54, below, the Trustee executed and obtained Court approval of a settlement agreement with respect to the Gotham Project and the settlement transaction contemplated therein has been completed.

### Sorrenti Loan Structure

25. The funds loaned by Investors through the Sorrenti SMLs were generally advanced for the stated purpose of providing financing for the early stages of a real estate development project. The use of proceeds from these loans was represented to include repaying vendor take back mortgages and bridge loans, obtaining initial development approvals, funding various consultants involved in conceiving and commencing a real estate development and other “soft costs” associated with the development. These funds were also often used to pay interest on other third-party priority loans made to the applicable borrower in question.
26. According to Sorrenti’s records, significant portions of the sums advanced by Investors through Sorrenti were used to pay “development consultant fees”. The development consultant fees that were paid from the initial advance(s) generally represent an aggregate amount equal to approximately 35% of the principal amount advanced under the applicable Sorrenti SML. The Trustee understands that a portion of this fee (approximately 50%) would be paid to (i) the Investors’ brokers; (ii) BDMC in its capacity as the borrower’s broker; and (iii) Sorrenti. The balance, net of any additional fees, would be paid to Fortress. The amount paid to Sorrenti was typically calculated as \$100 per Investor plus HST, per year of loan term in the applicable SML, and paid in advance as the funds were raised from Investors. Further, the Trustee understands that, as more particularly described below, Sorrenti appears to have charged additional administration fees from time to time on certain SMLs that does not appear to have been specified in any agreement.
27. Although the funds advanced through the Sorrenti SMLs are secured by mortgages held by Sorrenti on the related real property and certain other security, in many cases, the Sorrenti SMLs rank second or lower in priority in respect of the specific real property in issue, and behind the mortgages securing the sums owing to senior lenders, in amounts that are often significant.

### Promissory Notes

28. The Trustee understands that starting in approximately 2011, certain Fortress entities (“**Fortress P-Note Lenders**”) began issuing promissory notes (“**Promissory Notes**”) to individual investors (“**Fortress P-Note Investors**”) for investment in real estate

development projects. The Trustee understands that exempt market dealers may have been involved in the issuance of the Promissory Notes to Fortress P-Note Investors.

29. The Trustee further understands that Promissory Notes were utilized by Fortress P-Note Lenders to advance funds to borrowers in connection with real estate development projects that were already being used as collateral to secure SMLs. It appears that one of the reasons for the use of Promissory Notes may have been that the applicable borrowers were unable to borrow additional funds through SMLs at the time. Based upon the information available to the Trustee, Promissory Notes were issued by Fortress P-Note Lenders in respect of the Gotham Project, Wismer Project (defined below) and Soba Project (defined below), in amounts totalling approximately \$7.6 million.
30. Based on a review of the land title registries, it appears that certain of the applicable Fortress P-Note Lenders registered a charge on title to the applicable properties and that such charges were registered on title subsequent to the charges registered by Sorrenti in respect of the Sorrenti SMLs.
31. The Trustee has received inquiries from several Fortress P-Note Investors (including from certain Gotham Fortress P-Note Investors, as described below) regarding the status of their investment and has been advised by certain of those investors that they have not received substantive or timely updates or communications from the applicable Fortress P-Note Lender. The Trustee notes that the Appointment Order provides for an appointment solely with respect to the Sorrenti SMLs and the SML Administration Business.
32. Where appropriate, as a Court Officer, the Trustee has provided certain information to Fortress P-Note Investors that may be of assistance to them in response to the inquiries that it received. However, as part of those responses, the Trustee also advised the applicable Fortress P-Note Investors that the Trustee is not appointed to represent their interests except to the extent that any such investors are also Investors in a Sorrenti SML. To prevent any confusion about the scope of the Trustee's mandate pursuant to the Appointment Order, the Trustee has developed a standard form communication to Fortress P-Note Investors to advise them of the foregoing ("**P-Note Notice**"). The P-Note Notice will be substantially in the form attached hereto as **Appendix "6"**.

33. Going forward, the Trustee intends to send the P-Note Notice to any Fortress P-Note Investor who contacts the Trustee with respect to their investment.<sup>3</sup>

## ACTIVITIES OF THE TRUSTEE

### General

34. Since the date of the Appointment Order, the Trustee has familiarized itself with the Sorrenti SMLs and the related real estate development projects and engaged with borrowers and other stakeholders regarding the Investors' interests. The Trustee has conducted a preliminary analysis of each project and the Sorrenti SMLs made in respect of each project in order to, *inter alia*, understand the potential recovery for Investors in each of those SMLs. Among other things, the Trustee's project specific analysis generally consists of an analysis of:
- (a) the status and, if applicable, the milestones for, and progress of, each project;
  - (b) the capital structure, debt obligations and available documents related thereto;
  - (c) the relative priorities of the debt obligations;
  - (d) the potential impact on Investor recoveries of specific terms of the relevant Sorrenti loan documents;
  - (e) the current value of the project (including in some cases, by reviewing and analyzing existing appraisals or commissioning new appraisals); and
  - (f) the alternatives available for Investors in the circumstances.
35. As part of its analysis, the Trustee has sought to obtain an understanding of the material terms of the senior loans secured on each of the projects and the other financing sources relied upon by the applicable borrowers, postponements previously executed by Sorrenti and Sorrenti's relative rights and obligations in respect of the Sorrenti SMLs that were made to finance the projects. The Trustee continues to communicate with and seek

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<sup>3</sup> Where appropriate, the Trustee may include project specific information in the P-Note Notice.

information from the borrowers, senior lenders and other stakeholders with respect to these matters.

36. The Trustee is working with its legal counsel and other advisors, in consultation with Representative Counsel, to develop strategies in an effort to maximize recoveries for Investors on each project and, where appropriate, communicating with Investors regarding the Sorrenti SMLs. The Trustee is in frequent communication with Representative Counsel with respect to the status of the Sorrenti SMLs.
37. The Trustee has also been working with certain borrowers to discuss opportunities for the Sorrenti SMLs to exit projects where an exit is feasible and, in the Trustee's view, in the best interests of the Investors. As many of the projects involving the Sorrenti SMLs are considerably advanced or complete, it is possible that repayment transactions for certain of the Sorrenti SMLs will occur later in 2020 and into 2021. However, certain of the projects may require a longer timeframe to complete the administration of the applicable Sorrenti SMLs.
38. The Trustee's review of the Sorrenti SMLs is ongoing and its understanding of the projects continues to develop as, among other things, milestones are achieved or missed, additional information is obtained from stakeholders, and other material developments arise. In light of the foregoing, it is not yet appropriate for the Trustee to make final recommendations with respect to a number of the Sorrenti SMLs. The Trustee will continue to monitor the development of the projects and will present recommendations as and when appropriate.

#### Investor Communications

39. The Trustee has been engaging with Investors since its appointment. The Trustee provided Investors with notice of the Trustee's and Representative Counsel's appointment, notice of significant developments on certain of the projects that are the subject of their investments and has responded to a number of telephone calls and email correspondence from Investors regarding the Trustee's appointment and the status of the Sorrenti SMLs and the related projects. Investor communications have been and will remain a critical and time-consuming part of the Trustee's mandate.



## Other Matters

40. In addition to the activities described above, since the Trustee's appointment, the Trustee's activities have included, among other things:
- (a) engaging with parties involved in the SML Administration Business, including Derek Sorrenti and Fortress;
  - (b) engaging with borrowers regarding their particular real estate development project and Sorrenti SML by seeking detailed updates on the progress on the projects and associated financial reporting;
  - (c) commissioning appraisals for certain projects, where appropriate;
  - (d) sending notice of the Trustee's and Representative Counsel's appointment on October 4, 2019 ("**October 2019 Investor Notice**") to all Investors for whom the Trustee had contact information in accordance with the Appointment Order. A copy of the October 2019 Investor Notice is attached hereto as **Appendix "7"**;
  - (e) sending an update notice on December 2, 2019 to all Investors with respect to additional activities undertaken by the Trustee since delivery of the October 2019 Investor Notice ("**December 2019 Investor Notice**"). A copy of the December 2019 Investor Notice is attached hereto as **Appendix "8"**;
  - (f) drafting the First Report and attending at Court in respect of the Gotham Settlement Agreement approval motion;
  - (g) engaging with the LSO and its legal counsel, including responding to inquiries made by the LSO in respect of the SML Administration Business, Sorrenti's records related to the SML Administration Business and the Trustee's ongoing activities;
  - (h) engaging with Sorrenti's bank regarding the Trustee's appointment, and obtaining control of the bank account utilized by Sorrenti to conduct the SML Administration Business, as discussed below;

- (i) establishing post-appointment bank accounts to hold the Estate Property and Realized Property in accordance with the Appointment Order (as described further below); and
- (j) in accordance with the provisions of the Appointment Order, obtaining access to certain of Sorrenti's banking, accounting and other records.

## PROJECT SPECIFIC UPDATES

41. As noted above, to assist Investors in understanding the status of their particular Sorrenti SML, the Trustee has prepared a Project Analysis Summary and posted same to the Trustee's Website (see **Appendix "5"**). Additional details regarding each of the projects related to the Sorrenti SMLs are provided below.

### Completed/Exited Projects

42. Bayview Project: Certain Investors ("**Bayview Investors**") participated in a Sorrenti SML in the principal amount of approximately \$19.8 million ("**Bayview SML**") with respect to a completed 234-unit condominium development project located in Toronto, Ontario ("**Bayview Project**"). Registration for the condominium occurred in 2018. As set out in the Pre-Filing Report, on May 23, 2019, the BDMC Trustee appeared before the Court seeking an Order in the BDMC Proceedings that, among other things, authorized the BDMC Trustee to execute a direction authorizing Pine Ridge Building Corp.'s ("**Bayview Borrower**") legal counsel to pay Sorrenti approximately \$18 million ("**Bayview Funds**") representing funds realized from the Bayview Project ("**Direction to Pay**"). As the Bayview Project is not part of the BDMC Proceedings, the Court granted the requested Order, which was limited to authorizing the BDMC Trustee to execute the Direction to Pay in order to assist in facilitating a payment to Sorrenti, in its capacity as administration of the Bayview SML. The BDMC Trustee subsequently executed the Direction to Pay. According to Sorrenti's records, Sorrenti received the Bayview Funds on June 25, 2019.
43. Based on the Trustee's review of Sorrenti's records, it appears that Sorrenti commenced distributing the Bayview Funds in August 2019, net of \$111,700 held back by Sorrenti for administration costs. As at the date of the Appointment Order, 409 of 504 Bayview Investors received a distribution of the Bayview Funds. Mr. Sorrenti advised the Trustee that due to issues he was facing in confirming contact information for the remaining 95 Bayview Investors ("**Bayview Individual Investors**"), as of the date of the Appointment

Order, he was still in the process of distributing a portion of the Bayview Funds to those Investors. Based upon the Trustee's review of Sorrenti's books and records, as of the date of the Appointment Order, approximately \$4.2 million of the Bayview Funds remained ("**Bayview Realized Property**") to be distributed by Sorrenti to the Bayview Individual Investors.

44. As discussed further starting at paragraph 104 below, immediately prior to the issuance of the Appointment Order, Mr. Sorrenti made four payments from the Sorrenti SML Account (defined below) to his general account. The Trustee notes that one of these payments was for \$111,700 of administration costs in respect of the Bayview SML. As discussed below, this amount is currently held in the Sorrenti SML Account and constitutes Estate Property pursuant to the Appointment Order.
45. Following its appointment by the Court, the Trustee has located contact information for the Bayview Individual Investors in Sorrenti's records and cross-checked the Bayview Individual Investors' addresses against the BDMC investor database. On December 2, 2019, the Trustee sent a notice ("**Bayview Notice**") to the Bayview Individual Investors regarding the Trustee's intended next steps, including with respect to making distributions at a future date subject to an administrative holdback in an amount to be approved by the Court. A copy of the Bayview Notice is attached hereto as **Appendix "9"**.
46. As discussed in further detail starting at paragraph 125 below, the Trustee is seeking an Order authorizing and directing the Trustee to make a distribution of the Bayview Realized Property to the Bayview Individual Investors on a *pro rata* basis in an amount equal to 50% of the Bayview Realized Property. The proposed Administrative Holdback (defined below) on distributions of Realized Property generally is discussed later in this Second Report, along with certain of the factors that the Trustee will take into account when determining its recommended allocation of the costs of administering these proceedings among the Investors.
47. There is approximately \$1.9 million of outstanding principal plus associated accrued and accruing interest due under the Bayview SML. Counsel to the Bayview Borrower recently advised the Trustee that: (i) the Bayview Borrower has a \$1 million bond outstanding with Tarion Warranty Corporation, (ii) a technical audit has not yet been completed, and (iii) certain deficiencies have been identified and such deficiencies may be material. The

Trustee continues to communicate with counsel to the Bayview Borrower regarding the outstanding amounts due in respect of the Bayview SML.

48. Gotham Project: The Gotham Borrower was the borrower under a Sorrenti SML (“**Gotham SML**”) with respect to the Gotham Project. The total principal amount advanced by Investors in the Gotham SML (“**Gotham Investors**”) was approximately \$6.6 million (“**Total Principal Amount**”). Construction is complete and the condominium was registered in 2016, at which time approximately \$5.35 million of the Total Principal Amount was repaid (along with accrued interest to that date). At the time of the Trustee’s appointment, the total remaining principal due in respect of the Gotham SML was \$1,245,590 (“**Reduced Principal Amount**”), plus accrued interest.
49. Since its appointment, the Trustee had been in discussions with the Gotham Borrower regarding, among other things, the timing of repayment of the Gotham SML (which had already matured) and the use of funds by the Gotham Borrower in respect of the Gotham Project.
50. As described in the First Report, the Trustee negotiated and ultimately received an irrevocable settlement offer (“**Gotham Offer**”) from the Gotham Borrower that provided for a payment to the Trustee, on behalf of the Gotham Investors, in an amount equal to 100% of the Reduced Principal Amount plus \$175,000 of the outstanding accrued interest for a total payment of \$1,420,590, which would result in the Gotham Investors recovering an average of 141% of the Total Principal Amount when previously paid principal and interest is taken into account (“**Gotham Settlement**”). The Gotham Settlement was conditional upon Court approval and a release of all future obligations of the Gotham Borrower with respect to the Gotham SML.
51. The Trustee presented the Gotham Offer to the Gotham Investors by sending a notice on January 7, 2020 (“**Gotham Feedback Request**”). The Gotham Feedback Request recommended acceptance of the Gotham Offer and requested that the Gotham Investors provide their feedback, whether for or against the acceptance of such offer, and provide any other general feedback. A copy of the Gotham Feedback Request was attached as Appendix “3” to the First Report, which is available on the Trustee’s Website.
52. The Trustee received a response rate of approximately 58% in number and 58% in value of the Gotham SML. Of those responses, 100% in number of those Investors who voted

and 100% in value of the loans held by those Investors who voted, voted in favour of the Trustee accepting the Gotham Offer.

53. Accordingly, the Trustee proceeded to execute the settlement agreement with respect to the Gotham Offer and, on January 22, 2020, the Trustee issued the First Report and served a motion seeking Court approval of the Gotham Settlement. A copy of the First Report is attached hereto as **Appendix “10”** without appendices.
54. The Court issued the Gotham Settlement Approval Order approving the Gotham Settlement on January 30, 2020. A copy of the Gotham Settlement Approval Order is attached hereto as **Appendix “11”**.
55. The Gotham Settlement transaction closed on January 31, 2020, and the Trustee is in receipt of the settlement amount of \$1,420,590 (**“Gotham Realized Property”**).
56. At the time the Gotham Realized Property was received, the Trustee was required to hold it pursuant to the terms of the Appointment Order, pending a recommendation to the Court regarding next steps with respect to Realized Property. As such, subject to the Court’s approval of the Administrative Holdback, the Trustee is seeking an Order allowing it to make a distribution of 50% of the Gotham Realized Property to the Gotham Investors. The proposed Administrative Holdback on distributions of Realized Property is discussed later in this Second Report.
57. As referred to above, the Trustee notes that it has received certain inquiries from Fortress P-Note Investors in relation to the Gotham Project (**“Gotham Fortress P-Note Investors”**) regarding the Gotham Settlement Agreement, the Gotham Settlement Approval Order, and their impact on such Gotham Fortress P-Note Investors’ Promissory Note investment.
58. The Trustee notes that the Gotham Settlement Agreement does not compromise amounts that the applicable Fortress P-Note Lender, Fortress Gotham 2011 Limited (**“Fortress Gotham”**), may be owed by the Gotham Borrower or the priority of any underlying investment made by the Gotham Fortress P-Note Investors. To the best of the Trustee’s knowledge based solely on a review of title to the Gotham Project, the charge registered in favour of Fortress Gotham (on behalf of the Gotham Fortress P-Note Investors) was registered subsequent to the charge in favour of Sorrenti (on behalf of the Gotham Investors) and was postponed by Fortress Gotham in favour of a charge granted to BJI Properties Inc. (**“BJI”**). The Trustee has been advised by BJI that the amount owing to

BJL as at October 10, 2019 was approximately \$6.3 million. As a result of the postponement executed by Fortress Gotham in favour of BJL, it appears that any future proceeds from the Gotham Project may be paid to BJL in priority to the Gotham Fortress P-Note Investors.

59. The Trustee is aware that representatives of Fortress have advised certain Gotham Fortress P-Note Investors that, as a result of the Gotham Settlement Agreement, any proceeds that would have been due to Fortress Gotham will instead be sent by the Gotham Borrower to the Trustee for distribution to the Gotham Investors. The Trustee notes that as a result of the terms of the Gotham Settlement Agreement (as approved in the Gotham Settlement Approval Order), Sorrenti on behalf of the Gotham Investors continues to be entitled to recover in priority to any Fortress-related entity only up to the amount of approximately \$168,000.
60. Harmony Village Sheppard Project: Certain Investors ("**HVS Investors**") participated in a Sorrenti SML ("**HVS SML**") with respect to a real estate development property in Toronto, Ontario ("**HVS Project**"), which is subject to a receivership proceeding that commenced in 2016. HVS Investors advanced approximately \$28.84 million to the borrower of the HVS SML in connection with the HVS Project.
61. On January 20, 2016, Rosen Goldberg Inc. was appointed by the Court as receiver of the HVS Project ("**HVS Receiver**"). At the time of the appointment of the HVS Receiver, construction had not yet commenced on the HVS Project.
62. In the context of the receivership proceedings, the land comprising the HVS Project was sold in 2017 pursuant to a Court-approved sale process and the obligations secured by mortgages on the HVS Project that were registered on title to the property in priority to the HVS Investors' charge were repaid. As part of this transaction, the charge securing the HVS SML was discharged from title. The HVS Receiver subsequently distributed approximately \$19.5 million to Sorrenti on behalf of the HVS Investors, which represents a return of approximately 67% of the original principal advanced under the HVS SML. After this payment, approximately \$9.4 million of principal remained outstanding under the HVS SML. Based upon the Trustee's review of Sorrenti's records, Sorrenti distributed approximately \$19.4 million of the \$19.5 million to the HVS Investors. The Trustee has contacted Sorrenti to request documentation with respect to the amount withheld from the distribution to the HVS Investors.

63. Shortly after the Trustee's appointment, the Trustee contacted the HVS Receiver to understand the status of the receivership and to determine if there would be further funds available for the HVS Investors. The HVS Receiver advised that it intended to make a further distribution to the Trustee of \$1.06 million, which represents the proceeds of a development deposit that was provided by the borrower of the HVS SML to the City of Toronto and recovered by the HVS Receiver. This amount was received by the Trustee on October 16, 2019 ("**HVS Realized Property**").
64. Subject to the Court's approval of the Administrative Holdback, the Trustee is seeking an Order allowing it to make a distribution of 50% of the HVS Realized Property to the HVS Investors.
65. The HVS Receiver has also advised the Trustee that there may be a further nominal and final amount to be distributed by the HVS Receiver to the Trustee in 2020 from certain tax refunds totalling up to \$80,000. The Trustee will advise whether any further monies are received from the HVS Receiver in a subsequent report.
66. The Mark and Mount Joy/Wismer/Eldin Project: Sorrenti administered two separate SMLs in the amounts of approximately \$3.8 million and \$2.8 million ("**Wismer SMLs**") made in connection with a real estate development in Markham, Ontario that consists of one 220-unit condominium tower ("**The Mark**") and 44 townhomes ("**Mount Joy**") (collectively, the "**Wismer Project**").<sup>4</sup>
67. The Trustee understands that the Mount Joy phase of the Wismer Project commenced in 2012 and that sales in respect of all townhouse units closed in 2014. The Trustee further understands that Sorrenti provided discharges as against the Mount Joy portion of the Wismer Project in connection with such sales. There were no amounts paid to Sorrenti from the proceeds of the Mount Joy phase to reduce the amounts owing under the Wismer SMLs.
68. The Trustee understands that The Mark phase of the Wismer Project commenced in 2012, that construction was completed in 2019, and that sales in respect of most residential condominium units also closed in 2019. The Trustee further understands that Sorrenti

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<sup>4</sup> Sorrenti's records with respect to the Wismer SMLs appear to be incomplete. Accordingly, this section of the Second Report represents the Trustee's current understanding of the Wismer Project and the Wismer SMLs and is subject to material change.

provided discharges as against these residential condominium units in connection with such closings. There were no amounts paid to Sorrenti from the proceeds of these residential condominium unit closings available to reduce the amounts owing under the Wismer SMLs.

69. The Trustee understands from 1839314 Ontario Inc. (name changed to Pace Developments (The Mark) Ltd.) ("**Wismer Borrower**") that the only remaining assets are certain units in The Mark that remain unsold ("**Remaining Units**"), which continue to be subject to charges in favour of Sorrenti.
70. Based on a recent search of title to The Mark, MarshallZehr Group Inc. ("**MarshallZehr**") currently has a charge registered against the Remaining Units that is registered on title to such properties in priority to the charge securing the Wismer SMLs. The Trustee understands from MarshallZehr that it provided construction financing for the construction of The Mark. MarshallZehr has further advised that an amount in excess of \$19 million remains owing to it by the Wismer Borrower in respect of such construction financing.
71. MarshallZehr has requested that the Trustee provide partial discharges of the charges securing the Wismer SMLs in conjunction with sales of the Remaining Units, which the Trustee is reviewing. MarshallZehr has advised the Trustee that it anticipates that after the Remaining Units are sold, MarshallZehr will incur a shortfall in respect of its advances made in respect of The Mark. Accordingly, the Trustee's current understanding is that there is unlikely to be any recovery for Investors in connection with the Wismer SML.
72. In addition, the Trustee is aware that:
  - (a) the Wismer Borrower and ECMI GP Inc., the construction manager of The Mark, are involved in litigation that relates to delays and construction quality issues; and
  - (b) 1839392 Ontario Limited, a partner in the Wismer Project, applied for and obtained an Order from the Court dated July 16, 2019 appointing the Fuller Landau Group Inc. as Inspector of the Wismer Borrower pursuant to section 161(2) of the *Business Corporations Act*, R.S.O. 1900, c. B-16, as amended. The Trustee understands that the Inspector's mandate is to investigate the affairs of 1839314 Ontario Inc. and the Wismer Project and to report to the Court on its findings.



73. The Trustee intends to continue to investigate matters relating to the Wismer Project, including the aforementioned proceedings. The Trustee intends to provide further updates regarding these matters in a subsequent report to the Court.
74. Sutton/The Link Project: Sorrenti administered two SMLs ("**Sutton SMLs**") in connection with four low rise condominiums with approximately 13,300 square feet of ground floor commercial space located in Burlington, Ontario ("**Sutton Project**"). The Sutton SMLs consist of approximately \$11.6 million of debt secured by a second ranking charge on title to the Sutton Project and approximately \$8 million secured by a third ranking charge on title to the Sutton Project. The Trustee understands that Adi Development Group Inc., an entity related to the borrower under the Sutton SMLs ("**Sutton Borrower**"), has provided guarantees in connection with each of the Sutton SMLs.
75. The Trustee also understands that (i) the construction lender for the Sutton Project has been repaid in full, and (ii) Aviva Insurance Company of Canada is the only remaining party that holds a charge registered on title to the Sutton Project in priority to charges registered in favour of the Sutton SMLs.
76. The Sutton Borrower requested the Trustee to provide partial discharges of the Sutton SMLs in conjunction with the sale of six condominium units to third party purchasers. The Trustee requested and reviewed information related to the sales including the applicable agreements of purchase and sale, the statement of adjustments and the Sutton Borrower's proposed use of funds. The Trustee agreed to provide the requested discharges on the condition that the Sutton Borrower's legal counsel hold the net closing proceeds (net of HST, commissions and legal costs) in trust pending the consent of the Trustee to release same. Legal counsel to the Sutton Borrower presently holds approximately \$2.75 million in its trust account from the above noted sale proceeds.
77. The Trustee further understands that (i) other than 2 parking and 4 locker units, all residential units have been sold and closed, and (ii) all 12 commercial units remain unsold.
78. The Trustee has requested and has received from the Sutton Borrower, among other things: (i) a pro forma for the projected proceeds from the remaining unsold assets, and (ii) financial records relating to the Sutton Project, including cost consultant reports, in order to understand the uses of funds. In addition, the Trustee has commissioned an appraisal on the commercial units. Furthermore, the Trustee intends to continue to engage

with the Sutton Borrower and other parties to discuss the distribution of the \$2.75 million noted above, the sale of the remaining assets, and the repayment of amounts due under the Sutton SMLs.

#### Pre-construction Projects

79. Victoria Park Project: Sorrenti administered an SML ("**Victoria Park SML**") made in connection with a 1.9-acre real estate development in Toronto, Ontario ("**Victoria Park Project**"), which consists of approximately \$12.6 million of debt secured by a third-ranking charge on title to the Victoria Park Project. The site is approved for 147 stacked townhomes and is currently in the pre-construction phase.
80. Since its appointment, the Trustee had been in discussions with 1682 Victoria Park Avenue Inc., the borrower under the Victoria Park SML, ("**Victoria Park Borrower**") and representatives of Findev Inc. ("**Findev**"), who holds a second-ranking charge on title to the Victoria Park Project, regarding a potential transaction involving the Victoria Park SML. The Trustee understands that prior to its appointment, Sorrenti had been in discussions with the Victoria Park Borrower and Findev regarding a similar transaction. The most recent form of the transaction discussed with the Trustee would have resulted in the Victoria Park Borrower remaining in control of the Victoria Park Project and an entity related to the Victoria Park Borrower obtaining an absolute assignment of the Victoria Park SML.
81. In connection with a review of the proposed transaction, the Trustee requested from the Victoria Park Borrower, among other things, additional information regarding the uses of amounts advanced to the Victoria Park Borrower, including significant payments and loans made to parties related to the Victoria Park Borrower ("**Victoria Park Related Party Transactions**"). Given that the Victoria Park Borrower was unable to provide satisfactory explanations and documentation to support the foregoing payments and loans, the Trustee had concerns with the proposed transaction that would have precluded any ability for the Trustee to further investigate the Victoria Park Related Party Transactions.
82. On December 3, 2019, Findev issued a demand for repayment to the Victoria Park Borrower and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* and, on December 23, 2019, Findev issued a Notice of Sale Under Mortgage ("**Notice of Sale**"). The Notice of Sale stated that unless the full

amount of the outstanding debt owing to Findev (stated to total \$5,568,522.71 including interest and fees through December 19, 2019) was paid by the Victoria Park Borrower on or before January 24, 2020, Findev would sell the subject property.

83. In addition to the amount owing to Findev, the Trustee understands that the Victoria Park Borrower owes approximately \$7.5 million to CMLS Financial Ltd., who holds a first-ranking charge registered on title to the subject property.
84. Following the issuance of the Notice of Sale, the Trustee reached out separately to Findev and the Victoria Park Borrower to discuss next steps with respect to the Victoria Park Project, including but not limited to obtaining details regarding any planned sales or marketing process. On January 9, 2020, the Trustee's counsel wrote to counsel to Findev (i) confirming that the Trustee has an interest in the Victoria Park Project, (ii) advising that the Trustee's Court-ordered mandate includes protecting Investors' interests, (iii) requesting the details of Findev's plans for realizing upon the property, and (iv) offering to explore options that could be mutually beneficial and to participate in any realization process undertaken by Findev so as to maximize value.
85. On January 28, 2020, counsel to Findev advised, among other things, that Findev had appointed RSM Canada Limited as private receiver of the Victoria Park Project ("**Victoria Park Receiver**"). The Trustee subsequently contacted the Victoria Park Receiver to request the details of its planned realization process, including, among other things, the method of marketing, the marketing timeline and the information to be disclosed to prospective purchasers. The Victoria Park Receiver advised that the Victoria Park Project will be listed for sale with a commercial real estate broker and would provide the Trustee with details of the planned process when they are determined.
86. The Trustee intends to remain in contact with the Victoria Park Borrower and the Victoria Park Receiver regarding the Victoria Park Project in order to discuss various options that the Trustee believes may increase the recovery from the sale of the property.
87. Ten88/Progress Project: Sorrenti administered an SML ("**Progress SML**") in connection with a real estate development located at 1088 Progress Avenue in Toronto, Ontario ("**Progress Project**"), which consists of approximately \$17.3 million of debt secured by a second ranking charge on title to the Progress Project. The Trustee understands that the first phase of the Progress Project, which is comprised of 105 stacked townhomes, has

been completed and all townhomes have been sold and closed. The Trustee is advised that Sorrenti subsequently discharged its charge securing the Progress SML from the real property comprising phase one of the Progress Project and that there were no proceeds available to the Progress Investors. Based on the information provided to date to the Trustee, it appears that the proceeds from Phase one were used, at least in part, to pay down prior ranking loans. As Sorrenti's records in the possession of the Trustee do not contain information on the Progress Borrower's (defined below) use of such funds, the Trustee has requested such information from the Progress Borrower.

88. Phase two is currently in pre-construction, which the Trustee understands is intended to be comprised of both residential apartments and ground floor retail space ("**Progress Phase 2**").
89. The Trustee understands from Sorrenti that, in early 2019, Empire Pace (1088 Progress) Ltd., the borrower under the Progress SML, ("**Progress Borrower**") approached Sorrenti with a proposal to sell the real estate underlying Progress Phase 2, which would result in, among other things, Sorrenti agreeing to discharge its mortgage on Progress Phase 2, though Sorrenti, on behalf of the Investors in the Progress SML, would retain a continued interest in the commercial portion of the project.
90. Sorrenti provided the Trustee with a copy of a non-binding letter of intent dated February 5, 2019 ("**LOI**") from Everest Group of Companies ("**Everest**") The LOI indicates an interest in purchasing Progress Phase 2 and has the following key terms:
  - (a) the LOI required the discharge of the Progress SML;
  - (b) no cash proceeds were contemplated to be paid to the Investors in the Progress SML ("**Progress Investors**");
  - (c) the Progress Investors would retain an interest in only the commercial/retail portion of Progress Phase 2, which Everest would build and deliver to the Progress Investors prior to it being leased or sold;
  - (d) the Progress Investors would not retain an interest in the residential component of Progress Phase 2;
  - (e) the LOI was conditional on due diligence to be performed by Everest; and
  - (f) the LOI would expire by its terms on February 11, 2019.

91. Sorrenti advised that on or about August 13, 2019, approximately six months after the LOI expired, Sorrenti issued a notice to the Progress Investors recommending their approval of the LOI and providing a copy of the LOI ("**Progress Notice**"). A copy of the Progress Notice is attached hereto as **Appendix "12"**. The deadline for responses set out in the Progress Notice was August 23, 2019. Sorrenti advised the Trustee that the majority of the Progress Investors that provided feedback were in support of the LOI, however, Sorrenti's records do not appear to contain a full set of responses from Investors.
92. The Trustee has been advised by Sorrenti that the proposed transaction was not completed prior to the issuance of the Appointment Order due to, among other things, the need to determine a process by which the commercial/retail portion of Progress Phase 2 would be sold once construction is commenced and completed by the Progress Borrower.
93. Shortly after its appointment, the Trustee's counsel was contacted by counsel to the Progress Borrower regarding the LOI and to arrange a meeting with the Trustee regarding same. Contemporaneously, the Trustee wrote to the Progress Borrower (with attention to the principal of Pace Developments Inc. ("**PDI**")) to request information pertaining to the Progress Project. After the passage of several weeks, a representative of the Progress Borrower advised the Trustee that PDI was no longer involved with the Progress Project and advised the Trustee to contact Empire Communities, a developer that is one of the project partners through one of its related companies.
94. In advance of the proposed meeting with the Progress Borrower and its counsel, the Trustee requested certain information from the Progress Borrower for the Trustee to assess the status of Progress Phase 2 and the LOI. The Trustee's information requests included, among other things, the identity of the principals of the Progress Borrower, financial statements for the Progress Borrower, the uses of funds in the Progress Project, information related to the LOI and Everest, and prior appraisals of the Progress Project in the possession of the Progress Borrower.
95. The Trustee was provided with some but not all the information requested. Notwithstanding the outstanding information required by the Trustee, on January 31, 2020, the Trustee attended a telephone call with the shareholders of the Progress Borrower, being representatives of PDI, MMS Enterprise Holdings Inc. (an Empire Communities company), Fortress, and the Progress Borrower's legal counsel. The call was constructive, and the Trustee again requested information concerning the Progress Project, which the

Progress Borrower undertook to provide. To date, the Trustee has not yet received the information requested.

96. The Trustee continues to attempt to assess the status of the Progress Project and the options available to the Progress Investors.

#### Construction Projects

97. Mapleview Commons/Julien Court Project: Sorrenti administered two SMLs (together, the “**Maple SMLs**”) in connection with a 16-unit low rise residential development in Maple, Ontario (“**Maple Project**”), which consist of approximately \$6 million of Sorrenti SML debt secured by a second ranking charge on title to the Maple Project and approximately \$2.1 million of Sorrenti SML debt secured by a third ranking charge on title to the Maple Project. Construction is nearing completion and the borrower under the Maple SMLs (“**Maple Borrower**”) has advised the Trustee that the marketing of the units is expected to commence in early 2020, with closings anticipated in mid to late 2020. The Trustee has been in communication with the Maple Borrower and is monitoring the progress of the Maple Project.
98. The only charge registered on title to the Maple Project in priority to the charge securing the Maple SMLs is registered in favour of MarshallZehr and Firm Capital Mortgage Funding Inc. The Trustee understands that the outstanding obligations secured by such charge are in the amount of approximately \$13.5 million. Based upon the information and advice provided to the Trustee by the Maple Borrower and the Trustee’s review of same, Realized Property may be available for Investors from the Maple Project.
99. Unionvillas Project: Sorrenti administered an SML (“**Unionvillas SML**”) in connection with a 52-unit townhouse development in Markham, Ontario (“**Unionvillas Project**”), which consists of approximately \$8 million of debt secured by a third ranking charge on title to the Unionvillas Project. Construction is nearly complete and there are 10 residential units remaining that are subject to the Unionvillas SML charge.
100. Since the Trustee’s appointment, Sunrise Acquisitions (HWY 7) Inc., the borrower under the Unionvillas SML, (“**Unionvillas Borrower**”) requested partial discharges of the Unionvillas SML in conjunction with the sale of 17 completed residential homes to third party purchasers. The Trustee requested and reviewed information related to the sales including the applicable agreement of purchase and sale, the statement of adjustments

and the Unionvillas Borrower's proposed use of funds, which included paying certain construction trades that were completing the Unionvillas Project and repaying senior construction financing and granted the requested discharges. Once the Unionvillas Borrower's construction financing is repaid in full, the proceeds from the sale of the remaining homes are expected to be paid to the Trustee, on behalf of the Investors under the Unionvillas SML. Based upon the information and advice provided to the Trustee by the Unionvillas Borrower, the Trustee anticipates that Investors in the Unionvillas SML may recover a substantial portion (or potentially all) of their principal advances to the Unionvillas Borrower made through the Unionvillas SML.

101. Soba Project: Sorrenti administered an SML ("**Soba SML**") in connection with a 209-unit condominium development located in Ottawa, Ontario that is currently under construction ("**Soba Project**"). There is approximately \$10.3 million<sup>5</sup> of Soba SML debt secured by a fifth ranking charge registered on title to the Soba Project. According to Soba Ottawa Inc., the borrower under the Soba SML, ("**Soba Borrower**") the Soba Project is expected to be completed and registered in 2020. The Trustee understands that 32 condominium units remain unsold.
102. Based upon the Trustee's review of Sorrenti's records and a title search of the subject property, in November 2018, Sorrenti postponed its charges in favour of the Soba SML to a charge in the principal amount of \$10.9 million in favour of B JL, which the Trustee understands is a company related to the Soba Borrower and controlled by Mr. Brad Lamb. The Trustee understands from Mr. Lamb that B JL advanced funds to the Soba Borrower in order to continue construction and service priority debt obligations related to the Soba Project. The Trustee and its counsel are in the process of reviewing the postponement, the advances purported to have been made by B JL, and the impact of same on the Soba Project and the interests of the Investors under the Soba SML.
103. The Trustee has made requests of the Soba Borrower to provide financial information pertaining to the Soba Project to the Trustee, including, but not limited to, up to date financial statements, cost consulting reports, information related to uses of funds on the project and residential unit pre-sale data. To date, the Soba Borrower has provided certain

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<sup>5</sup> Based upon the Trustee's review of Sorrenti's records, it appears that there was an additional SML for approximately \$6.9 million advanced to the Soba Borrower that was administered by Sorrenti, which was repaid in 2015. The Trustee understands that this SML ranked in priority to the Soba SML.

information to the Trustee but has indicated that the Soba Project is projected to incur significant losses. The Trustee continues to engage with the Soba Borrower to obtain the remaining information that it has requested to evaluate the Soba Project and the potential recoveries to Investors under the Soba SML.

## **SORRENTI SML BANK ACCOUNT AND POST-APPOINTMENT BANKING**

104. As at the date of the Appointment Order, the Trustee understands from Sorrenti that it maintained one trust bank account at the Royal Bank of Canada (“**Bank**”) for, among other things, the purposes of administering the Sorrenti SMLs (“**Sorrenti SML Account**”). Upon issuance of the Appointment Order, the Trustee secured control of the Sorrenti SML Account, which at that time had a balance of \$5,479,649.
105. In accordance with the Appointment Order, the Trustee requested that the Bank change the signing authorities on the Sorrenti SML Account to be only representatives of the Trustee, and the Bank implemented the Trustee’s request.
106. The Trustee immediately reviewed the recent activity in the Sorrenti SML Account and noted that on September 30, 2019 (the date of the Appointment Order), four cheques payable to Sorrenti Law Professional Corporation had cleared the Sorrenti SML Account (“**Reversed Cheques**”), which are summarized below:

<b>Cheque Number</b>	<b>Cheque Date</b>	<b>Date Cleared</b>	<b>Project</b>	<b>Amount (\$)</b>
21723	Sept. 27/19	Sept. 30/19	Sutton	250,000
21721	Sept. 27/19	Sept. 30/19	Unknown	12,381
21722	Sept. 27/19	Sept. 30/19	King Charlotte	12,500
21720	Sept. 27/19	Sept. 30/19	Bayview	111,700
<b>Total</b>				<b>386,581</b>

Upon inquiry from the Trustee, Mr. Sorrenti advised that on September 27, 2019, Sorrenti issued the Reversed Cheques from the Sorrenti SML Account and that he deposited them into his general account on September 30, 2019. By September 27, 2019, Sorrenti was aware of the LSO’s pending application for the Appointment Order.

107. As a result of the issuance of the Appointment Order, which, as described above, provided a stay of proceedings, implemented certain interim stabilization measures, and appointed FAAN Mortgage as Trustee over the Property, the Trustee immediately contacted the



Bank regarding the Reversed Cheques that Sorrenti deposited into his general account after the Appointment Order became effective. The Trustee provided the Bank with the Appointment Order, and the Reversed Cheques were reversed by the Bank. The amounts subject to the Reversed Cheques were returned to the Sorrenti SML Account, such that the balance increased to \$5,866,230.

108. On October 4, 2019, Mr. Sorrenti emailed the Trustee to attempt to provide support for fees charged in respect of the Bayview SML and, among other things, requested the return of the funds subject to the Reversed Cheques.
109. On October 10, 2019, the Trustee responded to Mr. Sorrenti's email of October 4, 2019, denying his request and advising of the stay of proceedings and the interim stabilization measures imposed by the Appointment Order.
110. A summary of the changes to the Sorrenti SML Account balance from the time of the Trustee's appointment to October 16, 2019, is as follows:

	<b>Amount (\$)</b>
Balance as of September 30, 2019	5,479,649
Plus: Reversed Cheques	386,581
Balance as of October 1, 2019	5,866,230
Payment from HVS Receiver	1,060,000
<b>Sorrenti SML Account Balance as at October 16, 2019</b>	<b><u>6,926,230</u></b>

111. The Trustee established post-appointment bank accounts for purposes of carrying out its duties under the Appointment Order ("**Post-Appointment Accounts**") and transferred the balance in the Sorrenti SML Account of \$6,926,230 to the Post-Appointment Accounts.
112. On January 30, 2020, the Trustee received the Gotham Settlement proceeds of approximately \$1.42 million and deposited these funds into one of the Post-Appointment Accounts.
113. A breakdown of the allocation of the balance in the Post-Appointment Accounts is provided below, which has been prepared by the Trustee based upon the books and records of Sorrenti available to the Trustee. The Trustee continues to review Sorrenti's records and accordingly this summary is subject to revision and the revisions may be material.

<b>Sorrenti SML</b>	<b>Nature of Funds</b>	<b>Estate/Realized Property</b>	<b>Amount (\$)</b>
<b>1. Realized Property</b>			
Bayview	Repayment from Bayview Borrower	Realized	4,210,085
Harmony Village Sheppard	Repayment from HVS Receiver	Realized	1,060,000
Gotham	Proceeds of Gotham Settlement	Realized	1,420,590
Various inactive Sorrenti SMLs (Note 1)	Repayment of principal from borrowers	Realized	79,906
<b>Total Realized Property (A)</b>			<b>6,770,581</b>
<b>2. Estate Property</b>			
Various active Sorrenti SMLs	Interest and fees	Estate	720,405
Various inactive Sorrenti SMLs	Interest and fees	Estate	310,455
<b>Total Estate Property (B) (Note 2)</b>			<b>1,030,860</b>
<b>3. Other</b>			
Various amounts	(Note 3)	To be determined	316,097
BDMC administered SMLs (Note 4)	Funds held by Sorrenti in respect of certain of the Transferred SMLs	To be determined	229,282
<b>Total Property to be determined as Estate or Realized Property (C)</b>			<b>545,379</b>
<b>Cash balance before administrative disbursements (A+B+C)</b>			<b>8,346,820</b>
Administrative disbursements			(39,721)
<b>Cash balance as at February 29, 2020 (Note 5)</b>			<b>8,307,099</b>

Note 1 – These funds appear to relate 15 Investors that had uncashed cheques from SMLs that were paid out prior to the Trustee's appointment. As this amount constitutes Realized Property, the Trustee intends to distribute 50% of this amount to these Investors should the Omnibus Order be granted.

Note 2 – Includes \$386,581, which is the amount of the Reversed Cheques.

Note 3 – These funds appear to have been held by Sorrenti for certain individuals or companies, though the purpose and terms thereof are not known at this time. The Trustee continues to review Sorrenti's records and inquire of Sorrenti in respect of these amounts.

Note 4 – At the time of the Trustee's appointment, Sorrenti held funds for certain of the Transferred SMLs. The Trustee is reviewing information related to these funds and, at a future date, anticipates making a recommendation to the Court regarding such funds.

Note 5 – Prior to payment of certain costs that have accrued but not yet been paid (certain appraisal costs and all professional costs), which are included in the Cash Flow Projection.

## CASH FLOW PROJECTION AND FUNDING OF THESE PROCEEDINGS

114. In accordance with the Appointment Order, the Trustee continues to engage in the activities described in the foregoing sections to carry out its Court-ordered mandate to protect the interests of the Investors. These activities are complicated, time-consuming, and are being carried out in circumstances where the SML Administration Business has no revenue.
115. Pursuant to the interim stabilization measures implemented in the Appointment Order, the Trustee has access to certain limited amounts constituting Estate Property, however the Trustee currently has no access to any funds other than the Estate Property. In accordance with the Appointment Order, the Trustee has been using the Estate Property to pay certain costs and expenses so that the Trustee can continue to discharge its Court-ordered mandate for the benefit of the Investors. However, the Estate Property is projected to be exhausted during the Cash Flow Period and, accordingly, the Trustee is seeking the Court's authorization to use a portion of the Realized Property in connection with the administration of the Sorrenti SMLs. A similar authorization was granted by the Court in the BDMC Proceedings. Absent such authorization, the Trustee will not have sufficient funds available to carry out its mandate during the Cash Flow Period, and Investor interests would likely be significantly prejudiced. The Trustee's recommendation with respect to the use of Realized Property in connection with these proceedings is set out further below.
116. The Trustee prepared the Cash Flow Projection on a monthly basis for the Cash Flow Period, which ends on October 31, 2020. The Cash Flow Projection has been prepared by the Trustee based upon: (i) the Trustee's review of Sorrenti's records, (ii) its own analysis, and (iii) third-party estimates. The Cash Flow Projection is attached hereto as **Appendix "13"**.
117. A summary of the Cash Flow Projection is provided in the following table:

	Amount (000s)
Receipts	-
Disbursements	
Personnel costs	85
Office, IT and other	38
Total Operating Disbursements	123
Appraisal fees	41
Professional fees	2,456
Total disbursements	2,620
Net cash flow	(2,620)
Opening Cash – Estate Property <sup>6</sup>	990
Net cash flow	(2,620)
Projected Closing Cash – Estate Property	(1,630)

118. As has been the case in the cash flow projections presented in the BDMC Proceedings, there are no cash receipts from the SML Administration Business projected during the Cash Flow Period. Historically, Sorrenti's primary source of revenue was funds raised from Investors in the form of an administration fee of \$100.00 per Investor per year of the term of the applicable loan. These funds were generally collected at the time of the initial advance of the funds from the Investors. The Trustee understands that from time to time Sorrenti would also charge SML borrowers for certain activities (e.g. execution and delivery of discharges and postponements) and, in some cases, for the administration fee of \$100.00 per Investor per year with respect to periods beyond the original term of the applicable Sorrenti SML.
119. The Trustee notes that no interest has been paid by the borrowers under the Sorrenti SMLs since the Trustee's appointment (other than the interest paid under the Gotham Settlement Agreement).
120. The Cash Flow Projection estimates total operating disbursements of approximately \$123,000. Further, it is contemplated that the professional fees of the Trustee, its counsel, and Representative Counsel will be paid during the Cash Flow Period, including the fees that are accrued and unpaid as at January 31, 2020.

<sup>6</sup> The Opening Cash – Estate Property amount is net of approximately \$39,000 of disbursements to date.

121. Overall, there is a funding deficiency of approximately \$1.63 million through to the end of the Cash Flow Period. As the SML Administration Business has no projected cash receipts and no available funds other than the Estate Property, which, as noted above, is projected to be exhausted during the Cash Flow Period, the Trustee is seeking the Court's authorization to use a portion of the Realized Property in order to fund these proceedings, which will enable the Trustee to continue to carry out its Court-ordered mandate to protect the interests of the Investors.

#### **RECOMMENDATION REGARDING REALIZED PROPERTY**

122. The Trustee has received numerous communications from Investors detailing hardships that they are experiencing as a result of their investments in the Sorrenti SMLs (including, in many cases, delayed repayments, returns on investment below expectations and/or losses thereon) and has been advised by Representative Counsel that it has received similar communications. The Trustee understands the potentially detrimental impact that results from delays by the borrowers under Sorrenti SMLs in repaying their obligations thereunder, if at all, and related delays in the Trustee distributing any Realized Property to Investors.
123. Pursuant to the Appointment Order, the Court granted the Trustee a first-priority charge and Representative Counsel a second-priority charge over the Property, including Realized Property, as security for the payment of their respective professional fees and expenses. The Trustee, its legal counsel and Representative Counsel are incurring expenses to generate the maximum amount of Realized Property possible in the circumstances for the benefit of Investors.
124. Notwithstanding the Trustee's and Representative Counsel's charges over the Realized Property, the Trustee is recommending that a portion of the Realized Property in its possession be distributed to Investors at this time. The Trustee is also seeking authorization to retain a portion of those amounts that the Trustee reasonably expects may be required to fund the cost of these proceedings. The Trustee, its legal counsel and Representative Counsel are relying on the charges granted under the Appointment Order and the prospect of future Realized Property for the balance of their professional fees and for the work to be performed in the coming months.

125. Based on the Trustee's review of the Cash Flow Projection, the Trustee has determined that it is appropriate at this time to seek this Court's authorization to distribute an amount equal to 50% of any Realized Property, whether held as of the date of this Second Report or received in the future, to the Investors entitled to such funds on a *pro rata* basis and to retain the remaining Realized Property to fund the cost of these proceedings, including to pay operating and professional costs associated with the SML Administration Business ("**Administrative Holdback**"). This is the same structure that the Court approved in the BDMC Proceedings. The Trustee has consulted with Representative Counsel regarding this recommendation. The Trustee understands that Representative Counsel supports the Trustee's recommendation regarding the establishment and quantum of the Administrative Holdback. The Trustee is therefore seeking an Order authorizing it to distribute 50% of Realized Property to the Investors entitled to receive same and to retain 50% of Realized Property as an Administrative Holdback to fund the cost of these proceedings, including to pay operating and professional costs associated with the SML Administration Business. Accordingly, the Trustee is also seeking orders allowing it to distribute 50% of the Bayview Realized Property, the Gotham Realized Property, and the HVS Realized Property to the Investors entitled to receive such funds.
126. Should additional Realized Property be obtained with respect to certain of the Sorrenti SMLs in the coming months, it is possible that at a later date the Trustee will seek a further Order from the Court that, among other things, authorizes it to distribute a higher percentage of Realized Property. Further, as noted above, the Estate Property will be exhausted during the Cash Flow Period. As such, the Trustee is of the view that it must retain a portion of the Realized Property and utilize the Administrative Holdback to fund activities intended to maximize the recovery of additional Realized Property in the future.
127. The Trustee acknowledges that these proceedings may have a disproportionate impact on Investors. Accordingly, the Trustee intends to develop an allocation formula at the appropriate time to fairly and equitably allocate the cost of the administration of these proceedings among the Investors. The Trustee is particularly cognizant of the situation facing the Bayview Individual Investors (described above), which it will take into account and which will be a significant factor when determining the manner in which the costs of these proceedings will be shared among the Investors. This will ensure that Investors receive as much Realized Property as possible in the circumstances and are

compensated (to the extent possible) in a fair and equitable manner for any additional burdens imposed on such Investors as a result of these proceedings.

128. The exact terms of the allocation formula will need to be developed at a later date, when more Realized Property has been generated and the Trustee is in a better position to determine an appropriate allocation of the expenses associated with these proceedings among the different Sorrenti SMLs. The Trustee will consider a number of factors in connection with any such allocation, including the timing of receipt of the Realized Property, the size and length of time that a given loan remained outstanding during the proceeding, the key terms of the applicable loan agreement, and other relevant factors. The allocation formula may, if possible, also include some compensation to those Investors whose Realized Property is used to fund the proceedings. The purpose of the allocation formula is to ensure that Investors in particular Sorrenti SMLs do not bear a disproportionate share of the costs of these proceedings, and, as such, Investors in certain Sorrenti SMLs may receive a further distribution at a later date in accordance with the allocation formula.
129. Any Realized Property that is not utilized will continue to be held in an interest-bearing account and such interest earned shall be used to offset costs incurred in the administration of these proceedings.

#### **REPRESENTATIVE COUNSEL**

130. Pursuant to the Appointment Order, Chaitons LLP was appointed Representative Counsel to represent the common interests of the approximately 2,900 Investors who participate in Sorrenti SMLs, including the common interests of Investors in any particular Sorrenti SML.
131. Following the issuance of the Appointment Order, the Trustee provided Representative Counsel with extensive information regarding the Investors, including contact information for Investors and, where available, the applicable loan documentation entered into by each Investor and Sorrenti.
132. In the October 2019 Investor Notice, the Trustee notified all Investors of the Trustee's and Representative Counsel's appointments, provided Investors with Representative Counsel's contact information and the details regarding the process to opt out of representation by Representative Counsel. This information was also posted on the Trustee's Website.

133. To date, 3 Investors with a total of \$156,500 invested through Sorrenti have opted out of representation by Representative Counsel.
134. Representative Counsel has established a toll-free number and dedicated email address to facilitate Investor communications. The Trustee understands that Representative Counsel receives a large volume of calls and written correspondence and has been responding in a timely manner to such communications to the extent that the inquiries pertain to legal issues covered by Representative Counsel's mandate.
135. The Trustee also understands that Representative Counsel has been dealing with a large volume of inquiries from Investors regarding their rights and remedies and potential causes of action against third parties, including potential sources of recovery other than the borrowers under the various Sorrenti SMLs.
136. The Trustee has also consulted with Representative Counsel when appropriate, and the Trustee and its counsel are in regular contact with Representative Counsel, in particular with respect to significant decisions that would likely have a material impact on Investor recoveries.

#### **LAND TITLE OFFICES**

137. The Appointment Order authorizes the Trustee to register the Appointment Order on title to the projects where necessary or desirable. In certain instances, the applicable land registry offices ("**LROs**") have required that the Appointment Order be registered on title before the LROs will recognize the Trustee's authority to sign certain documents that are to be registered on title (such as postponements or discharges). However, the Trustee understands that certain LROs have stated that they will not remove a court order from title unless they are provided with another court order as authority for doing so. Since the Appointment Order is only relevant while the Trustee (on behalf of Sorrenti and the Investors) retains an interest in the property, there will be times when it will be necessary to have the Appointment Order removed from title.
138. One example of such an instance occurred in respect of the transaction involving the Gotham Project. To facilitate the execution and registration of partial discharges in favour of third-party purchasers of dwellings prior to the completion of the settlement transaction, the Appointment Order was registered on title to the Gotham Project. As discussed above, the Gotham Project has since been exited. However, the Appointment Order remains on



title, where it may cause issues for the Gotham Borrower and third-party unit purchasers as they seek to deal with their property in the ordinary course.

139. There are likely to be other instances where the Trustee determines that it is appropriate to have the Appointment Order registered on, and subsequently removed from, title to a project. As such, the Trustee is seeking the LRO Direction Order from this Court to give the Trustee the discretion to have the Appointment Order removed from title when the Trustee determines that it is necessary, which determination is proposed to be evidenced by the delivery of a Trustee's certificate to that effect. The issuance of the LRO Direction Order will permit the Trustee to continue to efficiently administer the syndicated mortgage loans and not incur unnecessary expenses in coming before the Court for removal of the Appointment Order on a case by case basis. A similar Order was sought and granted in the BDMC Proceedings.

#### **TRUSTEE FEES**

140. Pursuant to the terms of the Appointment Order, the Trustee and its legal counsel shall be paid their reasonable fees and disbursements and shall pass their accounts from time to time. The Trustee and its legal counsel are tracking their time by project. For certain tasks that affect all Investors, including general notices and the preparation of general reports to Court and the related Court materials, the time will be charged to a general account that will, at a later date once the totality of realizations are more clear, be allocated to the various projects based on appropriate considerations and in accordance with further Court Orders. The fees of the Trustee for the period between September 30, 2019 to January 31, 2020 total \$290,294.80, before HST; and HST applicable to such amount totals \$37,738.32, for an aggregate amount of \$328,033.12. Invoices for the fees of the Trustee, including summaries of the activities of the Trustee for the applicable period, are provided in the affidavit of Naveed Manzoor ("**Manzoor Affidavit**"), attached hereto as **Appendix "14"**. The average hourly rate for the Trustee over the referenced billing period was approximately \$436.24/hour.
141. Detailed docket information in respect of the fees and disbursements of the Trustee for this period will be included in the confidential exhibit to the Manzoor Affidavit that is being filed separately with the Court ("**Confidential Manzoor Exhibit**").

142. The Trustee is seeking a sealing order with respect to the Confidential Manzoor Exhibit due to the fact that the information contained in the Trustee's detailed invoices includes privileged and commercially sensitive information regarding the projects and the SML Administration Business generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings. Similar sealing Orders have been granted in the BDMC Proceedings.

#### **FEES OF THE TRUSTEE'S COUNSEL**

143. The fees of Osler, Hoskin & Harcourt LLP ("**Osler**") as counsel to the Trustee for the period between September 30, 2019 to January 31, 2020 total \$200,256.50; Osler incurred \$5,225.05 of disbursements during the period; and HST applicable to such amounts totals \$26,662.62, for an aggregate amount of \$232,144.17 (excluding disbursements and HST). Invoices for the fees, reimbursable expenses and applicable taxes of Osler, including summaries of Osler's activities in relation thereto, are provided in the affidavit of Michael De Lellis ("**De Lellis Affidavit**"), attached hereto as **Appendix "15"**. The average hourly rate for Osler over the referenced billing period was \$712.15/hour.
144. Detailed docket information in respect of the fees and disbursements of Osler for this period will be included in the confidential exhibit to the De Lellis Affidavit that is being separately filed with the Court ("**Confidential De Lellis Exhibit**").
145. The Trustee is seeking a sealing order with respect to the Confidential De Lellis Exhibit due to the fact that the information contained in Osler's detailed invoices includes privileged and commercially sensitive information regarding the projects and the SML Administration Business generally, and the disclosure of that privileged and/or commercially sensitive information could have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings. Similar sealing Orders have been granted in the BDMC Proceedings.
146. The Trustee is of the view that the hourly rates charged by Osler are consistent with the rates charged by major law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.

## CONCLUSION

147. The Trustee is working diligently to fulfill its mandate to protect the interests of the Investors and enhance the prospects that the Investors will recover amounts they advanced through the Sorrenti SMLs. Among other things, the Trustee continues to administer the Sorrenti SMLs, refine its analysis in respect of the Sorrenti SMLs and to make decisions, in consultation with Representative Counsel, that, in the circumstances, the Trustee believes are in the best interests of the Investors.
148. Based on the Trustee's review of the Cash Flow Projection, the Trustee has determined that it is appropriate at this time to seek this Court's authorization to distribute an amount equal to 50% of any Realized Property and to retain the balance as an Administrative Holdback. The Trustee has consulted with Representative Counsel regarding this recommendation and understands that Representative Counsel supports the Trustee's recommendation regarding the Administrative Holdback. The Trustee is hopeful that further Realized Property will be generated in the future allowing for a reduction in the percentage of the Administrative Holdback at a later date.
149. In light of the foregoing, the Trustee respectfully recommends that the Court issue the First Omnibus Order and the LRO Direction Order in the forms attached to the Trustee's motion record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of March, 2020.

*Faan Mortgage Administrators Inc.*

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

**Appendix 2:**  
**Receivership Order dated January 20, 2017 granted in  
connection with the Harmony Village Sheppard Project**



Court File No. CV-17-11669-00CL

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

THE HONOURABLE )  
MR JUSTICE *Hainey* )

FRIDAY THE 20<sup>th</sup>  
DAY OF JANUARY, 2016

**DOWNING STREET FINANCIAL INC., IN TRUST**

Applicant

- and -

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents

**APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act* and  
Section 101 of the *Courts of Justice Act***

**ORDER**  
**(appointing Receiver)**

THIS MOTION made by the Applicant for an Order (i) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Rosen Goldberg Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Harmony Village-Sheppard Inc., as general partner of Harmony Village Sheppard LP and City Core Developments Inc. (the "Respondents") acquired for, or used in relation to a business carried on by each of the Respondents (the "Debtors"), (ii) authorizing and directing the Receiver to enter into an Agreement of Purchase and Sale with

Fortress Sheppard (2016) Inc. (the “**Stalking Horse Agreement**”) (iii) approving a Stalking Horse Sale Process and (iv) sealing and treating as confidential the Appendices to the Receiver’s Pre-Filing Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Shiller sworn January 17, 2017 and the Exhibits thereto and reading the Receiver’s Pre-Filing Report dated January 17, 2017 and on hearing the submissions of counsel for the Applicant, Mr. Jack Pong appearing for the Respondents and no one else appearing although duly served as appears from the affidavit of service of Beverly Rusk sworn January 18, 2017 and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

### **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

- g) to settle, extend or compromise any indebtedness owing to the Debtors;
- h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof in accordance with paragraphs 32 to 34 hereof;
- k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, in accordance with paragraphs 32 to 34 hereof, and that notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.



- l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- s) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other

Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, including without limitation the right of Tarion to terminate and registrations held by the Debtors, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest or lien, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person, including without limitation, Tarion, shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.



19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise (from the Applicant or such other entity as the Receiver may select), such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

24. THIS COURT ORDERS that the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

25. THIS COURT ORDERS that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at [www.rosengoldberg.com/files](http://www.rosengoldberg.com/files).

### **GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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



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

30. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

#### **SALE PROCEDURE**

32. THIS COURT ORDERS that the Sale Procedure substantially in the form attached as **Schedule "B"** attached hereto is hereby approved.

33. THIS COURT ORDERS that the Receiver is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.

#### **STALKING HORSE AGREEMENT**

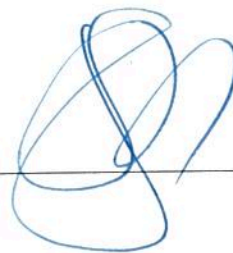
34. THIS COURT ORDERS that the execution by the Receiver of the Stalking Horse Agreement is hereby authorized, *nunc pro tunc*, provided that nothing herein approves the sale of the Purchased Assets (as defined therein) on the terms set out in the Stalking Horse Agreement, and that the approval of any sale of the Purchased Assets by the Court will be subject to a subsequent motion to be held in accordance with the Sale Procedure.

**SEALING OF THE CONFIDENTIAL APPENDICES**

35. THIS COURT ORDERS that Confidential Appendices to the Receiver's Pre-Filing Report be and are hereby sealed pending further Order of the Court

**DISCHARGE OF PRIVATE RECEIVER**

36. THIS COURT ORDERS that Rosen Goldberg Inc. is hereby discharged as the privately appointed receiver of HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF HARMONY VILLAGE-SHEPPARD LP.



*Jeanne Nicoara*

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

JAN 23 2017

PER / PAR: JN

## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Harmony Village-Sheppard Inc., as general partner of Harmony Village Sheppard LP and City Core Developments Inc. acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Rosen Goldberg, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

SCHEDULE "B"

**TERMS AND CONDITIONS OF SALE**

Attached hereto is an Agreement of Purchase and Sale dated January 17<sup>th</sup>, 2017 (the "**Agreement**") between ROSEN GOLDBERG INC. solely in its capacity receiver of HARMONY VILLAGE - SHEPPARD INC. as general partner of HARMONY VILLAGE - SHEPPARD LP, (the "**Vendor**") and not in its personal capacity and FORTRESS SHEPPARD (2016) INC. (the "**Purchaser**" or "**Stalking Horse Bidder**") whereby Purchaser has offered to acquire all of the right, title and interest of HARMONY VILLAGE - SHEPPARD INC. as general partner of HARMONY VILLAGE - SHEPPARD LP, if any, in and to the assets set out on Schedule "A" hereto, referred to herein as the "Purchased Assets".

By Order of the Court dated January 20, 2017 the Agreement, and in particular the Purchase Price which represents a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") was approved by the Court.

The terms and conditions as set out in the Agreement represent the terms upon which the Vendor is prepared to offer the assets described hereafter for sale, subject to the terms hereof.

The Agreement is subject to the completion of the sale process described therein, which the Vendor will conduct with the following timelines:

January 23, 2017	<ul style="list-style-type: none"><li>• Receiver to distribute to prospective purchasers identified by the Receiver a brief interest solicitation letter detailing the opportunity;</li><li>• Opportunity to be advertised in the <i>Globe and Mail</i> (National Edition) and <i>National Post</i></li></ul>
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Throughout the sale process	<ul style="list-style-type: none"> <li>• Brief information package to be distributed to interested parties who identify themselves to the Receiver;</li> <li>• Prospective purchasers to be given an opportunity to review additional information in an online 'data room'</li> <li>• Receiver will facilitate due diligence efforts by arranging site visits for <i>bona fide</i> prospective purchasers;</li> <li>• Prospective purchasers will be provided with a hard copy and soft copy of an Unconditional Offer to Purchase form (the "<b>Competing Bid</b>"), to be executed and submitted to the Receiver, if such prospective purchasers desire to submit an offer.</li> </ul>
March 14, 2017	<ul style="list-style-type: none"> <li>• The First, Second and Third mortgagees will provide the Receiver with a Mortgage payout statement which can be relied on by any purchaser (subject to the reasonable accrual of interest or costs) for the purpose of making a credit bid to assume any or all of those Mortgage as a component of any Competing Bid;</li> </ul>
March 21, 2017 (5:00pm EST)	<ul style="list-style-type: none"> <li>• Deadline for submission of Competing Bids</li> <li>• Competing Bids must be accompanied a duly executed Unconditional Offer to Purchase, blacklined against the Stalking Horse Bid, showing any and all variations from the Stalking Horse Bid, and a deposit payable by way of certified cheque or bank draft, which shall be the greater of \$350,000 or 1.0% of the cash component of the purchase price;</li> </ul>
March 24, 2017	<ul style="list-style-type: none"> <li>• If no qualifying Competing Bid is received within the time prescribed, the Receiver will file a certificate with this Honourable Court confirming that the Sale Process has come to an end, and will complete the transaction in accordance with the Initial Approval and Vesting Order</li> <li>• If more than one acceptable Superior Bid is received, the Receiver to determine whether to complete transaction with the Superior Bidder or hold an auction</li> </ul>

March 27, 2017	<ul style="list-style-type: none"> <li>• If two or more Superior Bids are received and auction to be held, the Receiver to distribute an invitation to auction to be held March 3, 2017</li> </ul>
April 3, 2017	<ul style="list-style-type: none"> <li>• Closed Bid Auction to be held</li> </ul>
On or before April 7, 2016	<ul style="list-style-type: none"> <li>• Approval and Vesting Order to be obtained</li> </ul>

### Bidding Procedure

Notwithstanding the existence of the Stalking Horse Bid, as per the above timeline, any other party is entitled to submit a bid to purchase the Purchased Assets. In order to be accepted by the Vendor, any such competing bid ("**Competing Bid(s)**") for the Purchased Assets must be on substantially the same terms and conditions as the terms and conditions contained in the Stalking Horse Bid, except with respect to price (any Competing Bid(s) that are accepted by the Vendor as superior bid(s) to the Stalking Horse Bid are referred to herein as the "**Superior Bid(s)**").

The Vendor is offering for sale all of the right, title and interest of the Respondents, if any, in the Purchased Assets.

All offers are subject to the approval of the Court and the issuance by the Court of an Order approving the offer and vesting the assets in the purchaser (the "Approval and Vesting Order").

The Purchase Price may be paid in part by the assumption of debt owing by the Respondents on the terms no less favourable than those set out in the Stalking Horse Bid.

In order for any Competing Bids to be accepted by the Vendor as Superior Bids to the Stalking Horse Bid, the Competing Bid must meet all of the following minimum criteria:

- (a) the Competing Bid must be received by the Vendor, in its entirety, by no later than 5:00 p.m. E.S.T. on March 21, 2017;
- (b) the Competing Bid must be accompanied by a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Bid, showing any and all variations from the form of Stalking Horse Bid, and a cash deposit equal to the greater of \$350,000 or 1.00% of the cash component of the Bid Price payable pursuant to the terms of the subject Competing Bid and which is

not subject to any encumbrances;

- (c) the Competing Bid must remain open for acceptance and completion until 11:59 p.m. on April 3, 2017;
- (d) the Competing Bid must be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Bid;
- (e) the Competing Bid must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder's obligation to close that are not otherwise contained in the Agreement;
- (f) the Competing Bid must be made by one or more bidders who can demonstrate, in the aggregate in the event that the Competing Bid is made by more than one bidder, the financial ability to consummate the transaction contemplated by the Competing Bid on the terms specified therein; and
- (g) the Competing Bid must be for an aggregate purchase price at least equal to the Purchase Price, as provided herein, plus a minimum overbid of \$200,000.

In the event that no Competing Bid meets the above criteria, the Stalking Horse Bidder will be the Winning Bidder and the agreement contemplated by the Stalking Horse Bid will proceed to close in accordance with its terms. In the event that a Competing Bid or Competing Bids meet all of the above criteria, the Vendor shall, in its sole discretion either:

- i. select one such Bidder as the Winning Bid pursuant to the Sale Process Order and proceed to close a transaction contemplated thereby in accordance with its terms and subject to the approval of the Court; or
- ii. provide any or all of the Competing Bids as the Vendor deems fit, in its sole and absolute discretion, the opportunity to submit a final Closed Bid for review of the Vendor on such terms as the Vendor determines to be reasonable at that time. The Vendor will then review that Closed Bid and advise the successful party that it has been selected as the Winning Bid. The Vendor will then proceed to complete the transaction contemplated thereby in accordance with its terms and subject to approval of the Court.

Thereafter, the Vendor will make a motion to the Court in order to obtain the Approval and Vesting Order. The Proposed Timeline of the sale process is as follows:

Bids must be received by the Vendor by no later than 5:00 p.m. E.S.T. on March 21, 2017



and must be sealed and marked "CONFIDENTIAL" and addressed to:

Rosen Goldberg Inc.  
5255 Yonge Street, Suite 804 Toronto,  
Ontario  
M2N 6P4  
Attention: Brahm Rosen

It is acknowledged and agreed that the Vendor shall have no personal or corporate liability under these Terms of Sale.

All stipulations herein as to time shall be of the essence.

Any notices, requests, demands or other communications to be given under this Agreement (herein referred to as "**Notice**") shall be in writing and shall be either hand delivered, or mailed (prepaid registered mail) and addressed as follows:

- i. As to any party who submitted a bid, at the address set forth in its bid.
- ii. As to the Vendor:
- iii. With a copy to:
- iv. Notice shall be effective upon the date of delivery.

Any term and condition herein which the Vendor might otherwise insist upon may be waived at the sole discretion of the Vendor, in whole or in part, and a purchaser will be bound by any such waiver.

Unless otherwise specifically stated herein, all obligations of the parties contained in these Terms and Conditions Sale shall survive the completion of the transaction contemplated in the Agreement.

The validity and interpretation of these Terms and Conditions of Sale, and of each provision and part thereof, and the Agreement shall be governed by the laws of the Province of Ontario, and the applicable laws of Canada.

**DOWNING STREET FINANCIAL INC., IN TRUST and**

Court File No.  
**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF HARMONY VILLAGE-SHEPPARD LP et al.**

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
  
Proceeding commenced at TORONTO

**ORDER**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5  
  
**David T. Ullmann** (LSUC #423571)  
Tel: (416) 596-4289  
Fax: (416) 594-2437  
  
Lawyers for the Applicant

**Appendix 3:**  
**Order dated April 7, 2017 granted in connection**  
**with the Harmony Village Sheppard Project**

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

THE HONOURABLE ) FRIDAY, THE 7<sup>TH</sup>  
JUSTICE *MYERS* )  
 ) DAY OF APRIL, 2017

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

**BETWEEN:**

**DOWNING STREET FINANCIAL INC., IN TRUST,**

Applicant

- and -

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents

**ORDER**

THIS MOTION, made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP (the "Debtor") and City Core Developments Inc. for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Fortress Sheppard (2016) Inc. ("Fortress") dated January 2017 and appended to the Report of the Receiver dated March 31, 2017 (the "Report"), and vesting in Fortress (the "Purchaser") the



Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the Receiver's Supplementary Report dated April 6, 2017 and on hearing the submissions of counsel for the Receiver, Counsel for Fortress, Counsel for the Applicant and Counsel for Marcus Silbert, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Laura Micoli sworn March 31, 2017 and April 6, 2017 filed:

1. THIS COURT ORDERS AND DECLARES that the time for service of the Notice of Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Agreement be and is hereby terminated and the Deposit (as defined in the Agreement) is forfeited to the Receiver.



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

APR 07 2017

PER / PAR: 

**DOWNING STREET FINANCIAL INC., IN TRUST**  
Applicant

-and-  
Respondents

**HARMONY VILLAGE-SHEPPARD INC. et al.**

Court File No. CV-17-11669-00CL

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

**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**DAVID P. PREGER (36870L)**

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Lawyers for the Receiver,  
Rosen Goldberg Inc.

**Appendix 4:**  
**Affidavit of Vince Petrozza dated June 16, 2017 (without exhibits)**

Court File No.: CV-17-11669-00CL

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

**IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990 C. c.43, AS AMENDED**

**BETWEEN:**

**DOWNING STREET FINANCIAL INC., IN TRUST**

Applicant

-and-

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF HARMONY  
VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents

**AFFIDAVIT OF VINCE PETROZZA**

I, **VINCE PETROZZA** of the City of Toronto, in the Province of Ontario, **MAKE  
OATH AND SAY:**

1. I am an Officer and Director of Fortress Real Developments Inc. ("**FRD**") and Fortress Sheppard (2016) Inc. ("**Fortress**") and 2510129 Ontario Limited ("**Trustee**"), as such, I have knowledge of the matters contained in this Affidavit. Where any portion of this Affidavit is made on information and belief, I have stated the source of that information and I believe it to be true.

2. FRD and its related companies, including Fortress, are principally in the business of real



estate development consulting and arranging financing for real estate development projects. FRD, and its related companies, partner with real estate builders and developers. One of FRD's roles is to locate sources of funding which it does through its relationship with mortgage brokers and investment dealers who bring investors' funds to these projects in the form of syndicated mortgages, bonds and promissory notes that are loaned to real estate developers. Following the closing of project sales, the loans are repaid to the investors. FRD's various projects are all stand-alone deals. A syndicated mortgage was arranged to finance the Property of the Debtor, with 542 investors, which mortgage was held by in trust by Derek Sorrenti and Olympia Trust Company (collectively, "**Sorrenti**") as described in paragraph 4 below.

### **Background**

3. Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP (the "**Debtor**") is the owner of the property municipally known as 3260 Sheppard Ave East, Toronto, Ontario (the "**Property**").

4. There are 3 mortgages registered on title to the Property by the following mortgagees:

- (a) the first mortgage of Downing Street Financial Inc., in Trust ("**DSFI**");
- (b) the second mortgage of JYR Real Capital Mortgage Investment Corporation and Li Ruixia, as Tenants in Common (collectively, "**JYR**"); and
- (c) the third mortgage of Sorrenti.

5. The Debtor had been developing the Property as a residential condominium project, marketed to seniors. The first phase of the project was to be comprised of 291 units in 2 towers. According to the Receiver's reports, the Debtor had presold 223 units to purchasers (the "**Purchasers**"), although construction had not yet begun.

6. The DSFI loan went into default and DSFI brought this Receivership Application. Pursuant to the Order of the Honourable Mr. Justice Hainey, dated January 20, 2017 (the "**Appointment Order**"), Rosen Goldberg Inc. was appointed as Receiver (the "**Receiver**") of all of the assets, undertakings and properties of the Debtor and City Core Developments Inc. (the "**Guarantor**"), including the Property.

7. Pursuant to paragraph 10 of the Receiver's First Report dated March 10, 2017, the following were the amounts due under the above-noted mortgages as set out in the payout statements provided to the Receiver (although the Receiver expressed concerns regarding the amount alleging owing under the JYR mortgage):

- (a) DSFI: \$19,629,744 as of February 21, 2017, plus daily interest of \$5,710.38 until paid;
- (b) JYR: \$2,333,338 as of April 15, 2017; and
- (c) Sorrenti: \$31,064,787.81 as of March 1, 2017.

8. As described in more detail below, Fortress has been actively engaged in pursuing the purchase of the Property from the Receiver in order to protect the Sorrenti investors by maximizing Sorrenti's recovery in this Receivership.

9. Pursuant to the Appointment Order, the Court approved a sale procedure to be conducted by the Receiver with respect to the Property, and authorized the Receiver to enter into an agreement of purchase and sale with Fortress in respect of the Property (the "**Stalking Horse Bid**") which was entered into by the Receiver and Fortress in January 2017. The Stalking Horse Bid established a baseline minimum purchase price for the Property, and the Receiver was directed to canvass the market and invite prospective purchasers to submit competing bids for the Property prior to the deadline of March 21, 2017. The Stalking Horse Bid was effectively a

credit bid by Fortress which would ensure a price that would be equal to the amounts owing under all three mortgages referred to in paragraph 4 above, plus Receiver costs. A copy of the Stalking Horse Bid is attached as **Confidential "Exhibit A"**.

10. Further, pursuant to the Stalking Horse Bid, Fortress would assume the Debtor's agreements of purchase and sale with the Purchasers (the "**Purchasers' Agreements**").

### **Fortress' Dealings With Pinnacle**

11. Fortress always intended to find a developer to build out the project on the Property and ultimately negotiated the sale of the Property with a condominium builder, Pinnacle International One Lands Inc. ("**Pinnacle**"), pursuant to an Agreement of Purchase and Sale with Pinnacle dated January 4, 2017, attached as **Confidential Exhibit "B"** (the "**Pinnacle APS**"). The Pinnacle APS required Pinnacle to assume the terms of the Stalking Horse Bid and the parties would readjust amounts of the mortgages to JYR and Sorrenti, post-closing, to mirror financial terms of the Pinnacle APS which were less onerous than those of the Stalking Horse Bid.

12. Pursuant to ongoing discussions between Fortress' lawyer, Leor Margulies, and the Receiver, the Receiver was advised that Fortress intended to assign its agreement of purchase and sale for the Property to Pinnacle and would seek a vesting order in favour of Pinnacle. In response, the Receiver advised that it would not object to the assignment to Pinnacle as long as the purchase price in the Pinnacle APS was not more than the purchase price in the Stalking Horse Bid. The Receiver required Fortress to provide evidence of same by way of a statutory declaration or otherwise.

13. Pursuant to paragraph 10 of the Receiver's Third Report, no competing bids for the purchase of the Property were received by the Receiver by March 21, 2017.

14. The hearing of the Receiver's motion to approve the sale on the terms set out in the Stalking Horse Bid and to vest title of the Property in Fortress was scheduled to be heard on April 7, 2017 (the "**Vesting Motion**").

15. The Pinnacle APS was extended on a number of occasions but the Pinnacle APS remained conditional as at April 5, 2017. Between March 31, 2017 and April 5, 2017, at the request of Pinnacle, Fortress and Pinnacle negotiated (but did not settle) a replacement purchase agreement to:

- (a) incorporate the applicable terms of the original Pinnacle Agreement; and
- (b) incorporate a number of changes that had been discussed and the terms of the Stalking Horse Bid.

These changes were contemplated so that Pinnacle could close the Stalking Horse Bid as Purchaser, with the Receiver.

**Pinnacle's Induced Fortress to Terminate the Stalking Horse Bid and The New Offer**

16. On or about April 4, 2017, Pinnacle's counsel informed Fortress that it would not close the deal with the requirement that Pinnacle assume the Purchasers' Agreements in the existing project. Pinnacle advised that selling condominium units at prices set forth in the Purchaser's Agreements would render the proposed project significantly less financially attractive. While few of the communications were held directly between the lawyers themselves, I am informed by Mr. Margulies that he had a telephone conversation with Pinnacle's lawyers, Leonard Gangbar and Sean Zweig of Bennett Jones LLP, on April 4, 2017. On this call, Pinnacle confirmed that it could not proceed with the Pinnacle APS unless assumption of the Purchase Agreements as set out in Stalking Horse Bid were no longer a condition of closing.

17. Immediately upon learning of the Pinnacle position, Fortress sought the Receiver's agreement to permit it to amend the Stalking Horse Bid to exclude the requirement to assume the Purchasers' Agreements. I am informed by Mr. Margulies that David Preger, the Receiver's lawyer, replied that the Receiver could not amend without a Court Order as the exclusion of the Purchasers' Agreements would potentially prejudice the Purchasers. Mr. Preger informed Mr. Margulies that the Receiver was not prepared to go back to Court to have the Stalking Horse Bid amended and that Fortress should submit a new bid with the new terms. I am further informed by Mr. Margulies that Mr. Preger specifically advised him that Fortress would not be precluded from resubmitting an offer for the Property or from participating further in the sales process.

18. Based on Pinnacle's position as set out above, Fortress terminated the Stalking Horse Bid on April 6, 2017, and forfeited its deposit of \$300,000.00. The step of terminating the Stalking Horse Bid was taken with the understanding of both the Receiver and Pinnacle that Fortress would submit a new bid without the assumption of the Purchasers' Agreements immediately following the termination. A copy of Fortress' letter dated April 6, 2017, whereby Fortress terminated the Stalking Horse Bid and reserved its rights to submit a new offer to the Receiver to purchase the Property on different terms at a later date, is attached as **Exhibit "C"**.

19. At the time that Fortress terminated the Stalking Horse Bid, it was in possession of a financing commitment for the purchase of the Property in an amount of approximately \$20,000,000.00 ("the **Vector Commitment**") from Vector Financial Services Limited ("**Vector**"). The Vector Commitment had an outside date of funding of April 10, 2017. Fortress was under the impression that Vector would extend the funding date under the Vector Commitment upon request. Fortress was also in possession of an additional Commitment Letter from Magnetic Capital Group Inc. which would provide sufficient funds, together with those

funds being advanced by Vector under the Vector Commitment to complete the cash component of the Stalking Horse Bid.

20. At all material times during this period, Pinnacle led Fortress to believe that Pinnacle was still in the deal. Up until the point, Fab Appugliesi, a representative of Pinnacle engaged in direct and consistent communication with me and my lawyers addressing the issue of the Purchaser's Agreements. In addition, there were communications between Fortress and Pinnacle in respect of the deal via John Italiano, the agent who arranged the Pinnacle APS. Emails exchanged on April 5, 2017 between me and Mr. Appugliesi, just prior to the termination of the Stalking Horse Bid, are evidence of Pinnacle's continuing interest in pursuing the Pinnacle APS without the Purchaser Agreements. Copies of some of these emails, portions of which are redacted are attached as **Exhibit "D"**.

21. Based on all of the discussions, Fortress was led to believe that Pinnacle would enter into a replacement sale agreement for the Property following the termination of the Stalking Horse Bid.

22. On April 7, 2017, the Stalking Horse Bid was terminated by the Court.

23. As contemplated by the Receiver and Pinnacle, on April 13, 2017, Fortress submitted a new offer to purchase the Property from the Receiver for the same price as the previous Stalking Horse Bid (the "**New Offer**"). As part of the New Offer Fortress offered a higher deposit and its obligation to assume the Purchasers' Agreements was removed. A copy of the New Offer is attached as **Confidential Exhibit "E"**.

24. Concurrently with the submission of the new New Offer, Fortress prepared a new offer to Pinnacle dated April 18, 2017 (the "**Second Pinnacle APS**"), a copy of which is attached as

**Confidential Exhibit "F"**. The Second Pinnacle APS incorporated the terms of the Pinnacle APS and the draft purchase agreement submitted to Pinnacle on April 3, 2017. However, thereafter, there was complete silence on the part of Pinnacle and its counsel. I am informed by Mr. Margulies that, in fact, neither Pinnacle, nor its lawyers, responded to the correspondence and voicemail messages of Fortress and Mr. Margulies following Fortress' termination of the Stalking Horse Bid. Copies of several of the emails written by Mr. Margulies to Mr. Gangbar, dated April 18, 2017 (without attachment), April 25, 2017 and May 2, 2017, are attached collectively as **Exhibit "G"**.

25. In response to the New Offer, Mr. Preger informed Mr. Margulies by email dated April 13, 2017 that the Receiver required a substantially larger deposit and that the Receiver must be satisfied that Fortress has the financial ability to close. By his email dated April 18, 2017, Mr. Preger repeated that the deposit offered by Fortress was "too small". Copies of these emails, with portions redacted due to confidentiality, are attached collectively as **Exhibit "H"**.

26. By email dated April 19, 2017, with portions redacted due to confidentiality, is attached as **Exhibit "I"**, Mr. Margulies replied that there were more than sufficient funds in the 2 financing commitments Fortress had (on the expectation that the Vector Commitment would be extended) to cover the closing costs and the cash on closing. Mr. Margulies further wrote that since Fortress had put up \$800,000.00 of deposits since November, 2016, a further \$500,000 was a significant deposit and should be sufficient to merit consideration and approval by the Receiver. Mr. Margulies also offered to send copies of the financing commitments it had to the Receiver. Mr. Margulies then followed up by email dated April 20, 2017 to Mr. Preger, a copy of which is attached (without the loan commitment), with portions redacted due to confidentiality, as **Exhibit "J"**.

27. Subsequently, Vector advised that it would not extend the funding under the Vector Commitment unless an additional \$800,000.00 of fees and outstanding fees of \$300,000.00 were paid. These terms were not acceptable to Fortress.

28. By email dated April 24, 2017, Mr. Margulies informed the Receiver that Fortress was prepared to increase the deposit under its offer by \$100,000.00 to \$600,000.00. A copy of the email is attached as **Exhibit "K"**. Mr. Preger replied by email dated April 24, 2017, a copy of which is attached as **Exhibit "L"**, wherein he requested further information about Fortress' financing. Mr. Margulies replied by email dated April 24, 2017, a copy of which is attached as **Exhibit "M"**, wherein he informed Mr. Preger that he hoped to have the financing commitment available in the next couple of days.

29. By email dated April 24, 2017, a copy of which is attached as **Exhibit "N"**, Mr. Preger advised that the Receiver does not wish to be involved in the financing arrangements, but just wanted to know that all of the financing is in place and to receive a copy of the financing commitment.

#### **Pinnacle Attempts to Purchase the Property Directly From the Receiver**

30. During this time, I learned that there were ongoing discussions between Pinnacle and the Receiver at the same time as the New Offer was in play. These negotiations undermined Fortress' ability to complete the Second Pinnacle APS as Pinnacle believed that it was able to purchase the Property for less money directly from the Receiver.

31. During the previous negotiations and discussions with Pinnacle, Fortress disclosed confidential information in respect of its bid to purchase the Property from the Receiver. As a result, Pinnacle knew the exact terms of the Fortress bid and was able to use that information in



order to submit a lower bid. Further, Pinnacle also knew the terms of Fortress' New Offer as a copy of the New Offer was given to Pinnacle's lawyers by email dated April 18, 2017, a copy of which is previously attached as Exhibit "G".

32. By letter dated April 28, 2017, Fortress' lawyer, Dominique Michaud, wrote to the Receiver, advising that Fortress would oppose a sale of the Property to Pinnacle on the grounds that a sale to Pinnacle would be improper as it would constitute a breach of Pinnacle's fiduciary duty to Fortress not to take advantage of confidential information disclosed by Fortress to Pinnacle. A copy of the letter is attached as **Exhibit "O"**.

33. A copy of the Receiver's response to Mr. Michaud's April 28, 2017 letter is attached as **Exhibit "P"**.

34. By email dated April 28, 2017 to Mr. Gangbar, Mr. Margulies enclosed Mr. Michaud's letter dated April 28, 2017, and took issue with Pinnacle's misconduct and demanded that Pinnacle refrain from further discussions with the Receiver with respect to its intended acquisition of the Property. A copy of Mr. Margulies' email is attached as **Exhibit "Q"** and reads:

"Please find a letter sent by my litigation counsel to the receiver regarding the impropriety of the discussions that have been ongoing between the receiver and Pinnacle. For the reasons set out in the enclosed letter, both Pinnacle and the receiver have a duty of confidence which they are breaching by entering into discussions about a separate offer between Pinnacle and the receiver, whilst Fortress is pursuing the acquisition of the property and has an outstanding offer. These discussions are causing her [sic] client damage and impacting on its ability to finalize agreement with the receiver.

Please advise your client that until such time as Fortress advises that it is no longer participating in the sale process of the property, your client is not to have any discussions with the receiver relating to the acquisition of the subject property, without Fortress's consent.

It is now clear as to the reason why you and your client have not provided us with any response or input on the receiver's offer or the revised Pinnacle offer that we provided to

you last week."

35. By email dated May 3, 2017, a copy of which is attached as **Exhibit "R"**, the Receiver informed Mr. Margulies that it had accepted an offer to purchase the Property on May 2, 2017 which is subject to Court approval. The Receiver did not disclose the identity of the proposed purchaser.

36. Mr. Margulies replied by email dated May 3, 2017 wherein he requested a copy of the purchase agreement on the basis that his law firm and Fortress would sign a confidentiality agreement. The agreement to provide a confidentiality agreement was conditional upon Fortress not being precluded from bringing a motion to have its purchase offer, previously submitted, approved or to have the Court reject approval for this new offer. Mr. Margulies further stated that if the offer accepted by the Receiver) was from Pinnacle, it raised other issues relating the propriety of the sale for reasons previously outlined to the Receiver and Pinnacle. Mr. Margulies stated that if the offer was less than Fortress' offer, it would result in a loss to the third mortgagee, which would not be acceptable. A copy of Mr. Margulies' email is attached as **Exhibit "S"**.

37. While Fortress does not know the exact amount of the offer, I understand from the Fourth Report of Receiver dated June 9, 2017, that it is for significantly less than the New Offer and is insufficient to payout the Sorrenti mortgage in full. I also understand that this offer excludes the Purchasers' Agreements.

38. Essentially, Pinnacle used its negotiations with Fortress to induce the termination of the Stalking Horse Bid and acquire confidential information to create the opportunity for it to purchase the Property at a far lower amount, to the prejudice of Sorrenti investors, the Debtor

and Guarantor.

39. Fortress was transparent with the Receiver and Pinnacle in advance of terminating the Stalking Horse Bid and engaged in discussions with the Receiver with respect to its need to terminate the Purchasers' Agreements. The result is that Pinnacle has been able to use confidential information acquired from Fortress to exclude Fortress from the sale process to the detriment of the Sorrenti investors. It also induced Fortress to terminate the Stalking Horse Bid at a time when the Vector Commitment was still available to fund the cash component of the Stalking Horse Bid, on the expectation Pinnacle would still purchase the Property from Fortress as long as the Purchaser's Agreements were not to be assumed.

### **The Third Offer**

40. Fortress remains committed to purchase the Property.

41. A copy of Fortress' most recent offer to purchase the Property (the "**Third Offer**") is attached as **Confidential Exhibit "T"**. The Third Offer is substantially on the same terms as the New Offer save for that the Third Offer provides, amongst other things, that Fortress will provide a "friends and family VIP" event for the Purchasers. This event will take place prior to marketing of the units to anyone else, whereby Fortress will offer the Purchasers first access to units, the lowest pricing available which is generally 4% less than normal retail pricing and other benefits normally available to a friends and family VIP event.

42. The Third Offer is for a purchase price materially greater than the offer from Pinnacle being proposed for Court approval. The Third Offer is superior for the following reasons:

- (a) there is more money available for all of the stakeholders, including the Sorrenti investors, the Debtor and the Guarantor. If the Third Offer is accepted, the Sorrenti investors will retain the mortgage on the Property and have the

opportunity to recover their debt in full. Otherwise, there will be a shortfall causing a major loss to the Sorrenti investors; and

- (b) the Third Offer provides significant benefits to the Purchasers, as set out above, if Purchasers wish to stay in the Project going forward.

43. To support the Third Offer, Fortress has secured a financing commitment from MarshallZehr which will generate loan proceeds sufficient to pay the cash component of the Third Offer, all closing costs and the costs of the MarshallZehr financing.

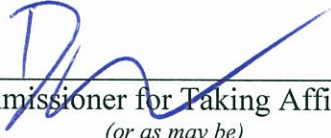
44. Fortress has also entered into a Joint Venture Agreement with an affiliate of the Cortel Group ("**Cortel**"). It is anticipated that the anticipated profits from the new project will be will result in the second mortgage (JYR) and third mortgage (Sorrenti) being fully repaid. This will protect the Sorrenti investors in the syndicated third mortgage. The terms of the Joint Venture Agreement entered into the Cortel are confidential at this time.

45. Pinnacle compromised the integrity of the sales process by inducing Fortress to terminate its Stalking Horse Bid and taking improper advantage of confidential information provided to it by Fortress. In the circumstances, Pinnacle should not profit from same at the expense of existing stakeholders.

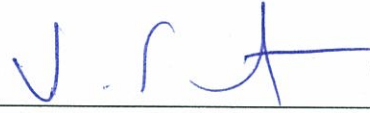
**Fortress Will Indemnify Pinnacle For Its Reasonable Costs**

46. Notwithstanding Pinnacle's improper conduct described above, if the Third Offer is approved by the Court, Fortress hereby agrees that it will indemnify Pinnacle for its reasonable costs incurred in respect of the submission of its offer to purchase the Property from the Receiver.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario on June  
16, 2017.



Commissioner for Taking Affidavits  
*(or as may be)*



VINCE PETROZZA

**DOMINIQUE MICHAUD**  
*Barrister & Solicitor*  
**A Notary Public and Commissioner of Oaths**  
**in and for the Province of Ontario, Canada**

**Appendix 5:**  
**Sale Approval and Distribution Order dated June 19, 2017**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

THE HONOURABLE

)

MONDAY, THE 19<sup>TH</sup>

JUSTICE

)

DAY OF JUNE, 2017

*HAINES*

)



BETWEEN:

**DOWNING STREET FINANCIAL INC., IN TRUST**

Applicant

- and -

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver (the “Receiver”) of the undertaking, property and assets of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP and City Core Developments Inc. (collectively, the “Debtors”) for an order approving the sale transaction (the “Transaction”) contemplated by an agreement of purchase and sale (the “Sale Agreement”) between the Receiver and Pinnacle International One Lands Inc. (the “Purchaser”) dated May 2, 2017 and appended as a confidential appendix to the Fourth Report of the Receiver dated June 9, 2017 (the

“Report”), vesting in Pinnacle International Sheppard Lands Inc. (the “Purchaser Designee”), the Receiver’s and the Debtors’ right, title and interest in and to the property municipally known as 3260 Sheppard Avenue East, Toronto (the “Property”) and other assets described in the Sale Agreement (the “Purchased Assets”), and other ancillary relief, was heard this day at 330 University Avenue, Toronto, Ontario.

*2/11*  
ON READING the Report, the Affidavit of Vince Petrozza sworn June 16, 2017, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for Fortress Real Developments, representative counsel for the purchasers (“Representative Counsel”) of residential condominium units that were to have been developed and constructed on the Property by the Debtors (the “Condo Buyers”) and counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Laura Micoli sworn June 9, 2017 filed, and Victoria Stewart sworn June 14, 2017 filed,

*The Affidavit of  
Laura Le  
sworn  
June 14, 2017*

1. THIS COURT ORDERS AND DECLARES that the time for service of the Notice of Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the time for service of the Responding Motion Record of the Representative Counsel is hereby abridged and validated and hereby dispenses with further service thereof.
3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser Designee.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “Receiver’s Certificate”), all of the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement, including those listed on Schedule “B” hereto, shall vest absolutely in the Purchaser Designee, free and clear of and from any and all agreements of purchase and sale entered into by any of the Debtors with the Condo Buyers, security interests



(whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Haaney dated January 20, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “D”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser Designee as the owner of the subject real property identified in Schedule “B” hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “C” hereto.

6. THIS COURT ORDERS that immediately after the delivery of the Receiver’s Certificate, the Receiver shall pay the net proceeds from the sale of the Purchased Assets as follows:

- (a) first, the sum of \$36,000.00 to Marcus Silbert in full satisfaction of his claims as Plaintiff in the action in Court File No. CV-17-568979, in Toronto;
- (b) second, to Downing Street Financial Inc., in Trust, (“DSFI”) in full satisfaction of the Debtor’s obligations under DSFI’s first ranking charge, subject to the Receiver being satisfied with the calculation of the amount owing to DSFI;
- (c) third, to JYR Capital Mortgage Investment Corporation and Li Ruixia in full satisfaction of the Debtor’s obligations under their second ranking charge, subject to the Receiver being satisfied with the calculation of the amount owing to them; and

(d) fourth, to the holders of the third ranking charge, in partial satisfaction of the Debtor's obligations thereunder.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any Debtor;

the vesting of the Purchased Assets in the Purchaser Designee pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any Debtor and shall not be void or voidable by creditors of any Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT ORDERS AND DECLARES that the Receiver's activities to date, and its proposed activities, as described in the Report are hereby approved.

11. THIS COURT ORDERS that confidential appendices 1 "A", 1"B" and 1"C" to the Report shall be sealed and kept confidential pending completion of the sale of the Purchased Assets.

12. THIS COURT ORDERS that immediately following delivery of the Receiver's Certificate, Harris Schaffer LLP shall forthwith refund to the Condo Buyers, or their assignees,

or their agents, the deposits it is holding in trust paid by each such Condo Buyer, or their assignees.

13. THIS COURT ORDERS that the actions, decisions and conduct of Minden Gross LLP in its capacity as Representative Counsel as set out in the affidavit of Lauren Lee, sworn June 14, 2017, are hereby authorized and approved.

14. THIS COURT ORDERS that the fees and disbursements of Minden Gross LLP in its capacity as Representative Counsel, as set out in the Affidavit of Timothy R. Dunn, sworn June 13, 2017, and the exhibits attached thereto, are hereby authorized and approved.

15. THIS COURT ORDERS that immediately following delivery of the Receiver's Certificate, the Receiver shall pay to Minden Gross LLP in its capacity as Representative Counsel its fees and disbursements.

16. THIS COURT ORDERS that upon payment of the amounts as set out in the Affidavit of Timothy R. Dunn, sworn June 13, 2017, and the exhibits attached thereto, by the Receiver to Minden Gross LLP in its capacity as Representative Counsel, and upon Minden Gross LLP in its capacity as Representative Counsel reporting to the Condo Buyers on the results of the within Motion, Minden Gross LLP shall be discharged from its duties as Representative Counsel, provided however that notwithstanding its discharge herein (a) Minden Gross LLP shall remain Representative Counsel for the performance of such incidental duties as may be required and (b) Minden Gross LLP shall continue to have the benefit of the provisions of all Orders made in this proceeding in favour of Minden Gross LLP in its capacity as Representative Counsel.

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

*Fainy J*

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

JUN 19 2017

PER / PAR:

*9*

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-17-11669-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

B E T W E E N:

**DOWNING STREET FINANCIAL INC., IN TRUST**

Applicant

- and -

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Haaney of the Ontario Superior Court of Justice (the “Court”) dated January 20, 2017, Rosen Goldberg Inc. was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP and City Core Developments Inc. (collectively, the “Debtors”)

B. Pursuant to an Order of the Court dated June 19, 2017, the Court approved the agreement of purchase and sale made as of May 2, 2017 (the “Sale Agreement”) between the Receiver and Pinnacle International One Lands Inc. (the “Purchaser”) and provided for the vesting in Pinnacle International Sheppard Lands Inc. (the “Purchaser Designee”) of the Receiver’s and the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with

respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ 2017.

**ROSEN GOLDBERG INC., in its capacity as Receiver of the undertaking, property and assets of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP and City Core Developments Inc., and not in its personal capacity**

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

Name: Brahm Rosen

Title: President

**Schedule "B" – Purchased Assets**

**DESCRIPTION OF PURCHASED ASSETS**

**LEGAL DESCRIPTION OF THE LANDS**

**PIN 06139-00175(LT)**

**PART OF LOT 3 PLAN 3591 SCARBOROUGH; PART OF LOT 4 PLAN 3591  
SCARBOROUGH; PART OF LOT 5 PLAN 3591 SCARBOROUGH; PART OF LOT 6 PLAN  
3591 SCARBOROUGH, BEING PART 1, PLAN 66R-27877.**

**SUBJECT TO AT1939845;**

**TORONTO, CITY OF TORONTO**

**Schedule "C" – Claims to be deleted and expunged from title to Real Property**

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
AT2938470	2012/02/03	CHARGE	\$7,400,000	HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK
AT2939682	2012/02/06	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT2940440	2012/02/07	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT2943420	2012/02/10	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT2950454	2012/02/22	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3014335	2012/05/11	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3073621	2012/07/13	NOTICE	\$9,826,000	HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK
AT3074225	2012/07/16	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3082839	2012/07/25	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3134422	2012/09/24	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3161109	2012/10/26	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3219664	2013/01/18	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3251856	2013/03/07	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3251907	2013/03/07	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3346081	2013/07/09	NOTICE	\$10,528,000	HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3369106	2013/08/02	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3386836	2013/08/23	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3433139	2013/10/18	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3462511	2013/11/26	NOTICE	\$16,028,000	HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY



AT3497532	2014/01/14	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3505668	2014/01/24	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3519811	2014/02/12	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3525668	2014/02/24	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3537852	2014/03/14	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3545747	2014/03/14	NOTICE	\$16,378,000	HARMONY VILLAGE- SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3546517	2014/03/27	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3567434	2014/04/28	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3585645	2014/05/21	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3612581	2014/06/20	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3660024	2014/08/13	NOTICE	\$20,000,000	HARMONY VILLAGE- SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3694284	2014/09/22	POST- PONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY	CITY OF TORONTO
AT3730532	2014/10/31	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3777959	2014/12/31	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3809199	2015/02/11	NOTICE	\$21,300,000	HARMONY VILLAGE- SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3830602	2015/03/11	CHARGE	\$19,000,000	HARMONY VILLAGE- SHEPPARD INC.	DOWNING STREET FINANCIAL INC.
AT3830603	2015/03/11	NO ASSGN RENT GEN		HARMONY VILLAGE- SHEPPARD INC.	DOWNING STREET FINANCIAL INC.
AT3830824	2015/03/12	POST- PONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY	DOWNING STREET FINANCIAL INC.
AT3865791	2015/04/24	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3904869	2015/06/04	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3945693	2015/07/14	NOTICE	\$27,700,000	HARMONY VILLAGE- SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT3964608	2015/07/31	TRANSFER OF		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK

		CHARGE			OLYMPIA TRUST COMPANY
AT3993606	2015/08/28	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4014244	2015/09/21	NOTICE	\$28,450,000	HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4014339	2015/09/21	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4034844	2015/10/13	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4039628	2015/10/19	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4084234	2015/12/02	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4112153	2016/01/08	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4135717	2016/02/02	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4151099	2016/02/23	NOTICE	\$30,000,000	HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4153650	2016/02/26	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4172526	2016/03/22	CHARGE	\$1,500,000	HARMONY VILLAGE-SHEPPARD INC.	JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA
AT4172527	2016/03/22	NO ASSGN RENT GEN		HARMONY VILLAGE-SHEPPARD INC.	JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA
AT4172528	2016/03/22	POST-PONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY	JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA
AT4184906	2016/04/05	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4216804	2016/05/12	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4316212	2016/08/19	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY
AT4426603	2016/12/06	CONSTRUCTION LIEN	\$149,702	MARC SILBERT OPERATING AS MARCUS CONSULTING SERVICE	
AT4482208	2017/02/08	CERTIFICATE		SILBERT, MARC OPERATING AS MARCUS CONSULTING SERVICES	HARMONY VILLAGE-SHEPPARD INC. DOWNING STREET FINANCIAL INC. DOWNING STREET FINANCIAL INC. IN TRUST DEREK SORRENTI OLYMPIA TRUST COMPANY JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA

AT4490786	2017/02/17	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	DOWNING STREET FINANCIAL INC.
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**Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

1. The reservations, limitations, provisions and conditions expressed in the original grant from the Crown and all unregistered rights, interests and privileges in favour of the Crown under or pursuant to any applicable statute or regulation.
2. The Transfer registered as Instrument No. AT11623809.
3. The Apl Absolute Title registered as Instrument No. AT3811349.
4. Any subdivision agreement, development agreement, servicing agreement, site plan agreement or any other agreement, document, regulation, subdivision control by-law or other instrument containing provisions relating to the Lands or the use, development, installation of services and utilities or the erection of buildings or other improvements in or on the Lands, including without limitation the Notice of Agreement registered as Instrument No. AT3694283.
5. All easements, licenses, rights-of-way, watercourses and rights (and all reference plans with respect thereto), whether registered or unregistered, including without limitation those for access or for the installation and maintenance of public and private utilities and other services including without limitation, telephone lines) hydro-electric lines, gas mains, water mains, sewers and drainage and other services or for the maintenance, repair or replacement of any adjoining building or lands, including any cost sharing agreement relating thereto, or any right of re-entry reserved by a predecessor in title, including without limitation the easement registered as Instrument No. AT1939845.
6. Any restrictive covenants and building restrictions affecting the Lands.
7. Any defects of title or encroachments by or onto the Lands, whether by gardens, fences, trees, buildings, foundations, or other structures or things, which may be revealed by any survey or reference plan of the Lands, whether now in existence or not.
8. Utility agreements, and other similar agreements with Authorities or private or public utilities affecting the Lands.
9. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
10. Undetermined, inchoate or statutory liens and charges (including, without limitation, the liens of public utilities, workers, suppliers of materials, contractors, subcontractors, architects and unpaid vendors of moveable property) incidental to any current operations of the Lands which have not been filed pursuant to any legal requirement or which relate to obligations not yet due or delinquent.
11. Zoning restrictions, restrictions on the use of the Lands or minor irregularities in title thereto.
12. The reservations, limitations, conditions and exceptions to title set out in the *Land Titles Act* (Ontario).

**DOWNING STREET FINANCIAL INC., IN TRUST**  
Applicant

-and-

**HARMONY VILLAGE-SHEPPARD INC., ET AL.**  
Respondents

Court File No. CV-17-11669-00CL

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

**PROCEEDING COMMENCED AT**  
**TORONTO**

**APPROVAL AND VESTING ORDER**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

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Fax: (416) 865-1398

Lawyers for the Receiver,  
Rosen Goldberg Inc.

**Appendix 6:**  
**Fourth Report to Court by the Receiver of the**  
**Harmony Village Sheppard Project dated June 9, 2017**  
**(without appendices)**

**IN THE MATTER OF THE RECEIVERSHIP OF**

**Harmony Village-Sheppard Inc., as General Partner of Harmony Village-Sheppard LP et al.**

Fourth Report of Rosen Goldberg Inc.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-17-11669-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

BETWEEN:

DOWNING STREET FINANCIAL INC., IN TRUST

Applicant

- and -

HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.

Respondents

FOURTH REPORT OF ROSEN GOLDBERG INC.

I. INTRODUCTION

1. By Order of Justice Hainey dated January 20, 2017 (the “**Order**”): (a) Rosen Goldberg Inc. was appointed receiver (the “**Receiver**”) of the assets of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP (the “**Debtor**”) and City Core Developments Inc.; and (b) a stalking horse sale process (the “**Stalking Horse Process**”) was approved with respect to real property municipally described as 3260 Sheppard Avenue East, in Toronto (the “**Property**”). In connection with Stalking Horse Process, an agreement of purchase and sale between the Receiver and Fortress Sheppard (2016), Inc. (“**Fortress 2016**”), as purchaser, was approved as the stalking horse bid (the “**Stalking Horse Bid**”) under the Order. A copy of the Order is attached as **Appendix A**.





ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING  
**II. PURPOSE OF THIS REPORT**

2. This report is filed in support of a Motion for an Order:
  - (a) approving the Receiver's activities to date, and its proposed activities, as hereinafter described;
  - (b) approving an agreement of purchase and sale of the Property entered into by the Receiver on May 2, 2017 and vesting title to the Property in the purchaser free and clear of encumbrances including, without limitation, free and clear of 223 agreements of purchase of sale of residential condominium units;
  - (c) sealing certain confidential appendices hereinafter referred to, pending completion of the sale of the Property;
  - (d) authorizing and directing the law firm Harris Schaffer LLP to refund purchasers' deposits it is holding in trust to purchasers, or their assignee(s), following the completion of sale of the Property; and
  - (e) authorizing the Receiver to distribute the net proceeds of sale as hereinafter set out.

**III. TERMS OF REFEREMCE**

3. In preparing this report, the Receiver has relied upon information from third party sources (collectively, the "**Information**"). Certain of the information contained herein may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Honourable Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance with respect to the Information.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING  
**IV. BACKGROUND**

4. The Property is located at the northeast corner of Sheppard Avenue East and Warden Avenue, in Toronto. The Debtor had been developing the Property as a residential condominium project, marketed to seniors. The first phase of the project was to comprise 291 units in two (2) towers. At the time of the Receiver's appointment, the Debtor had presold 223 units to purchasers (the "**Purchasers**"), although construction had not yet begun.
5. The Purchasers' deposits are held in trust by Harris Sheaffer LLP.
6. As reported in the Receiver's First Report dated March 10, 2017, a copy of which is attached (without exhibits) as **Appendix B**, the Property is subject to the following encumbrances:
  - (a) Downing Street Financial Inc. ("**DSFI**") holds the first ranking charge, which secures payment of approximately \$20 million;
  - (b) the second ranking charge, held by JYR Capital Mortgage Investment Corporation and Li Ruixia, as tenants in common, secures payment of approximately \$1,395,000; and
  - (c) the third ranking charge, registered in favour Derek Sorrenti and fractionally assigned to various assignees, secures payment of approximately \$31 million.
7. There is a construction lien registered against the Property for \$149,702 (the "**Lien**") which the Receiver believes has priority, to the extent of the deficiency in the holdback, over all of the charges hereinabove referred to. Assuming the Lien is valid, the Receiver believes that the deficiency in the holdback is \$35,338.46.
8. The Receiver understands that the second and third charges are controlled by Fortress Real Developments, a mortgage syndicator. Fortress 2016 is also controlled by Fortress Real Developments. For ease of reference, Fortress 2016 and Fortress Real Developments are hereinafter referred to interchangeably as "**Fortress**".



9. The Stalking Horse Bid was predicated upon Fortress assuming the Debtor's agreements of purchase and sale with the Purchasers. It was also, in part, a credit bid. Although DSFI was to have been paid in full on closing, the purchaser was to have assumed the existing debt secured under the second and third charges.

10. As reported in the Receiver's Second Report, dated March 31, 2017, a copy of which is attached (without exhibits) as **Appendix C**, although a number of interested parties surfaced during the Stalking Horse Process - which was widely publicized in the National Post and The Globe and Mail Report on Business - no competing bids were received by the bid deadline of March 21, 2017.

11. The hearing of the Receiver's motion to approve the sale on the terms set out in the Stalking Horse Bid and vest title to the Property in Fortress was scheduled to be heard on April 7, 2017.

12. As reported in the Receiver's Supplementary Report dated April 6, 2017, a copy of which is attached (without exhibits) as **Appendix D**, on the afternoon of April 6, 2017, the Receiver was advised that Fortress would not complete the purchase of the Property pursuant to the Stalking Horse Bid, as it no longer wished to assume the Purchasers' agreements of purchase and sale. As such, the Receiver reported that as a next step it would contact those parties who had expressed an interest in the Property during the Stalking Horse Process to invite them to submit offers.

13. On April 7, 2017, Justice Myers ordered the Stalking Horse Bid terminated and the deposit paid by Fortress thereunder of \$350,000 forfeited to the Receiver. A copy of the Order is attached as **Appendix E**.

#### V. SALES EFFORTS FOLLOWING REPUDIATION OF STALKING HORSE BID

14. As the Property had been widely exposed during the Stalking Horse Process and no competing offers had emerged, the Receiver did not believe that an extensive remarketing program would be accretive. Instead, it wrote to fifteen (15) parties who had signed



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

confidentiality agreements and obtained access to the Receiver's online data room during the Stalking Horse Process to notify them that the Property was available for sale.

15. Additionally, the Receiver met with Jack Pong, the principal of the Debtor, to discuss 2016's repudiation of the Stalking Horse Bid and to invite him to submit an offer. The Receiver was also contacted by six (6) parties who had not previously expressed interest in the Property, one (1) of whom signed a confidentiality agreement and was given access to the Receiver's online data room.

16. The Receiver's counsel also communicated extensively with counsel to Fortress regarding the terms under which the Receiver would consider entering into a new agreement of purchase and sale with Fortress.

## VI. OFFERS RECEIVED

17. The Receiver received three (3) offers in the course of its sales efforts after the Stalking Horse Process was terminated, each of which was conditional upon the Purchasers' rights under their agreements of purchase and sale being vested out on closing.

18. Given the commercial sensitivity of the offers, they are attached as **Confidential Appendices 1 "A", "B" and "C"**.

19. A copy of the first offer, submitted on April 13, 2017, by Fortress 2016 (the "**Fortress Offer**"), is attached as **Confidential Appendix 1 "A"**. The financial terms of the Fortress Offer were similar to the Stalking Horse Bid (i.e. DSFI would be paid in full and the second and third ranking charges would be assumed), except that it provided for a somewhat higher deposit being submitted upon acceptance. The Receiver nonetheless considered the deposit to be insignificant in view of the proposed purchase price.

20. A copy the second offer, submitted on April 24, 2017 by a well-known builder is attached as **Confidential Appendix 1 "B"**.

21. The third offer, a copy of which is attached as **Confidential Appendix 1 "C"**, was submitted to and accepted by the Receiver on the evening of May 2, 2017 (the "**Successful**



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Bid"). The purchaser under the Successful Bid is hereinafter referred to as the "Successful Bidder". The Successful Bidder is a reputable builder of large residential condominium projects, both in the Greater Toronto Area and outside of Ontario.

## VII. RECEIVER'S DEALINGS WITH FORTRESS

22. Prior to Fortress's repudiation of the Stalking Horse Bid, it emerged that Fortress planned to assign its rights under the Stalking Horse Bid to a builder/developer with whom the Receiver had not had prior dealings. Upon learning of this, the Receiver obtained assurance from counsel to Fortress that the assignment would not result in Fortress receiving a financial "lift" that would otherwise flow into the Debtor's estate if the Property were sold directly to the assignee.<sup>1</sup>

23. Given Fortress's repudiation of the Stalking Horse Bid and its prior plan to assign its rights as purchaser (which suggested that Fortress's control over completing a transaction may be limited), the Receiver, through its counsel, advised Fortress's counsel that a substantially larger deposit, in the range of 10% of the purchase price for the Property, would be required and the Receiver would need to be satisfied of Fortress's financial ability to close. A copy of the Receiver's counsel's email of April 13, 2017 is attached as **Appendix F**.

24. On April 19, 2017, Fortress's counsel responded by email that Fortress had loan commitments in place to finance the purchase of the Property, which it offered to disclose upon the Receiver agreeing to hold them in confidence. A partially redacted copy of the email is attached as **Appendix G**. In the email, the Receiver's request for an increased deposit was rejected.

25. On April 20, 2017, the Receiver was notified that Fortress's first mortgage financing commitment to purchase the Property had expired. A copy of a partially redacted email from Fortress's counsel is attached together with the enclosure thereto (also partially redacted) as **Appendix H**. In the email, Fortress's counsel urged the Receiver to accept the Fortress Offer as

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<sup>1</sup> As hereinafter explained in greater detail, the would-be assignee eventually proved to be the Successful Bidder after the Stalking Horse Process was terminated and the Property was re-marketed.



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Fortress had secured a mezzanine commitment for subordinate financing and expected to have replacement first mortgage financing arranged shortly.

26. On April 24, 2017, the Receiver was notified that Fortress was prepared to increase the deposit payable under the Fortress Offer by \$100,000.
27. On April 24 and 25, 2017, counsel for Fortress and the Receiver exchanged emails in which it became apparent that Fortress did not have the requisite financing in place. Copies of the partially redacted email threads between the lawyers are attached as **Appendix I**.
28. On April 27, 2017, the Receiver's counsel again requested evidence of Fortress's financial ability to complete the Fortress Offer. A copy of the email is attached as **Appendix J**. No such evidence was provided to the Receiver.
29. During the Receiver's efforts to assess the likelihood of Fortress completing the Fortress Offer, the Receiver was also communicating with the Successful Bidder regarding the Property.
30. On April 28, 2017, the Receiver's counsel received a heated letter from Fortress's counsel, a partially redacted copy of which is attached as **Appendix K**. In the letter, Fortress's counsel advised that it came to their attention that the Receiver was negotiating with the Successful Bidder, asserted that the negotiations were improper and amounted to a breach of confidence on the part of the Receiver. Counsel for the Receiver immediately responded in writing that the Receiver had not breached any duties, was taking reasonable steps to market the Property to all potential purchasers and reiterated that Fortress had not provided evidence of its financial ability to close. A partially redacted copy of the letter is attached as **Appendix L**.
31. Given Fortress's repudiation of the Stalking Horse Bid, its apparent inability to raise the necessary financing and its unwillingness (and perhaps its inability) to offer a significant deposit on account the purchase price, the Receiver was not prepared to accept the Fortress Offer. The Receiver was also concerned with the potential chilling effect that a second failure on the part of Fortress to complete a transaction could have on an eventual realization.

## VIII. SUCCESSFUL BID



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32. As noted above, the Successful Bid was accepted by the Receiver on the evening of May 2, 2017. The Successful Bid was the culmination of negotiations which began on April 27, 2017, when the Successful Bidder first presented an offer to the Receiver.

33. The Receiver is holding a substantial deposit under the Successful Bid in trust on account of the purchase price.

34. Apart from the purchase price, which the Receiver proposes to treat as confidential, the salient terms of the Successful Bid as compared to the Fortress Offer are as follows:

Salient Terms	Successful Bid	Fortress Offer
Manner of Payment	All cash on closing	Payment of priority payables and DSFI on closing, assumption of second and third ranking charges by way on new second and third mortgages, subordinate to financing required to satisfy priority payables and DSFI
Conditions	Purchasers' rights under their agreements of purchase and sale being vest out on closing	Purchasers' rights under their agreements of purchase and sale being vest out on closing
Closing	5 business days after Approval and Vesting Order	5 business days after Approval and Vesting Order

35. The Receiver recommends that the Successful Bid be approved by this Honourable Court for the following reasons;

- (a) although the Property was widely exposed to the market during the Stalking Horse Process, no competing offers were received;
- (b) all parties who expressed interest in the Property during the Stalking Horse Process were contacted by the Receiver and advised that the Property was available for sale;



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it is highly unlikely that a longer, more formal remarketing process would have yielded a superior outcome;

- (d) the accrual of interest under secured creditors' claims and the professional costs associated with a longer, more formal remarketing process would have been considerable;
- (e) given Fortress's inability to obtain the financing required to complete the Fortress Offer and its unwillingness (and possibly its inability) to submit a substantial deposit, the Receiver considered the Successful Bid to be the only credible offer;
- (f) the Successful Bid was open for acceptance by the Receiver until the evening of May 2, 2017. The Successful Bidder indicated that it would be unwilling to revive its offer following expiry;
- (g) the Successful Bidder is a reputable builder of large residential condominium projects and the deposit the Receiver is holding under the Successful Bid is substantial;
- (h) the purchase price under the Successful Bid is favourable as compared to the appraised values of the Property;<sup>2</sup>
- (i) DSFI, the first mortgagee, supports the Successful Bid.

## IX. VESTING OUT OF PURCHASERS' RIGHTS

36. For reasons articulated in the Receiver's Third Report, a copy of which is attached as **Appendix M** (without exhibits), on May 18, 2017 the Receiver obtained an Order of Justice Newbould appointing Minden Gross LLP as representative counsel to the Purchasers ("**Rep Counsel**"). A copy of the Order is attached as **Appendix N**. Rep Counsel was provided with the Purchasers' contact information and email addresses and is communicating with the Purchasers.

<sup>2</sup> "[A]ppraised values of the Property" refers the appraised values contained in the appraisals that were filed with the Receiver's Pre-Filing Report and ordered sealed by Justice Hainey on January 20, 2017.





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37. As set out above, at the time of the Receiver's appointment, the Debtor had presold 223 to Purchasers, although construction had not yet begun. The Purchasers' deposits are held in trust by Harris Sheaffer LLP.

38. The form of the agreements of purchase and sale between the Debtor and Purchasers are standard form agreements created by Harris Sheaffer LLP. A copy of the form of agreement is attached as **Appendix O**.

39. The relevant provisions of the Purchasers' agreements of purchase and sale are quoted below:

15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents...

...

16. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register or permit to be registered any encumbrance against the Property, Unit or the Condominium...

...

**Termination without Default**

20. In the event this Agreement is terminated through no fault of the Purchaser, all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser; provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser as an Occupancy Fee. The Vendor shall be entitled to require the Purchaser to execute a release of any surety, lender or any other third party requested by the Vendor in its discretion prior to the return of such monies. In no event shall the Vendor or its agents be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any loss of bargain, for any relocating costs, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor as a complete defence to any such claim.

40. If the Successful Bid is approved by this Honourable Court, the rights of Purchasers under their agreements will be vested out on closing and they will be entitled to the return of



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their deposits. As such, the Receiver seeks an Order directing Harris Sheaffer LLP to return the deposits to the Purchasers (or their assignees, if applicable). The process of refunding deposits will require notifications to be sent to Purchasers and Tarion. The Receiver intends to engage Harris Sheaffer LLP to undertake the necessary work in this regard.

41. The Receiver has considered the question of whether interest is payable on the deposits to be refunded to Purchasers. By virtue of the relevant provision in the *Condominium Act*<sup>3</sup> and the rate of interest prescribed under the applicable regulation<sup>4</sup>, interest is payable at 2 per cent per annum below the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to members of the Canadian Payments Association. The “Bank Rate” as that term is used by the Bank of Canada, refers to the minimum rate at which the Bank of Canada makes short-term advances to members of the Canadian Payments Association.<sup>5</sup> According to the Bank of Canada, Data and Statistics Office, since January of 2013, the Bank Rate has consistently stayed below 2 per cent per annum.<sup>6</sup> Therefore, Purchasers would not appear to be entitled to interest on their deposits.

## X. PROPOSED DISTRIBUTIONS UPON COMPLETION OF SUCCESSFUL BID

42. Upon completion of the Successful Bid, the Receiver proposes to distribute the net proceeds of sale as follows:

- (a) first, to DSFI in full satisfaction of the Debtor’s obligations under the first ranking charge (subject to DFSI delivering a payout statement and the Receiver being satisfied with the calculation of the amount owing);

<sup>3</sup> Subsection 82 (7) *Condominium Act*.

<sup>4</sup> Subsections 19(2) and 19(3) of O. Reg. 48/01 to the *Condominium Act*.

<sup>5</sup> “A Primer on the Implementation of Monetary Policy, in the LVTS Environment” Published by the Bank of Canada.

<sup>6</sup> Table of Historical Bank Rates, Data and Statistics Office.



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(b) second, to JYR Capital Mortgage Investment Corporation and Li Ruixia in full satisfaction of the Debtor's obligations under the second ranking charge (subject to the delivery of a payout statement and the Receiver being satisfied with the calculation of the amount owing); and

(c) third, to the holders of the third ranking charge, in partial satisfaction of the Debtor's obligations thereunder.

43. As reported in its Second Report, the Receiver previously obtained opinions from its independent counsel, Dickinson Wright LLP that the above-noted charges are valid, enforceable in accordance with their terms and rank in the priority hereinabove referred to.

44. As also reported in its Second Report, according to the opinion of the Receiver's independent counsel, assuming the Lien is valid, the Lien has priority over all of the above-noted charges to the extent of the deficiency in the holdback required by the *Construction Lien Act*. As the Lien holders invoices total \$353,384.60, the holdback would be \$35,338.46.

45. As the Receiver has been unable to satisfy Fortress regarding the validity of the Lien, the Receiver proposes to pay \$40,338.46 into Court to credit of the lien action, which sum represents the holdback and \$5,000 for legal costs.

## XI. RECEIVER'S ACTIVITIES

46. The Receiver's activities since its appointment, directly or through its independent counsel, have included:

- Taking possession of and safeguarding the Property;
- Preparing the required statutory reports;
- Implementing the Stalking Horse Process, including establishing an electronic data room, preparing a teaser and advertisements, communicating and meeting with prospective purchasers, preparing and compiling additional information for purchasers, site visits to the Property and following up with prospective purchasers;



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Consulting with, reviewing background information and working with its counsel to, among other things, assist it with formulating its opinion regarding the validity and relative priority of the security registered against the Property;

- Communicating and dealing with Jack Pong;
- Communicating extensively with Fortress's representatives;
- Communicating extensively with DSFI's representatives;
- Communicating extensively with and supplying information to the representative of the Lien holder, to assist the Lien holder in assessing the relative merit of its claim to priority over the mortgages registered against the Property;
- Regularly attending at the Property;
- Dealing with leased equipment, insurance and banking;
- Preparing reports to Court and attending in Court on Receiver's motions;
- Dealing with all matters relating to the remarketing of the Property including corresponding to and communicating with previously interested parties, and reviewing and negotiating offers;
- Communicating and meeting with Harris Sheaffer LLP;
- Communicating with numerous Purchasers; and
- Supplying information to and communicating with Rep Counsel.

47. The Receiver's interim statement of receipts and disbursements for the period January 20, 2017 to June 5, 2017 is attached as **Appendix P**.

## **XII. RECOMMENDATIONS**

48. On the basis of the forgoing, the Receiver recommends that this Honourable Court:



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(a) approve the Receiver's activities to date, and its proposed activities, as hereinabove described;

- (b) approve the Successful Bid and vest title to the Property in the Successful Bidder free and clear of the rights of Purchasers under their agreements of purchase and sale with the Debtor;
- (c) order that Confidential Appendices 1 "A", "B" and "C" be sealed, pending completion of the sale of the Property;
- (d) authorize and direct Harris Schaffer LLP to refund Purchasers' deposits without interest, following the completion of sale of the Property; and
- (e) authorize the Receiver to distribute the net proceeds of sale as hereinabove set out.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 9<sup>th</sup> day of June 2017.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER AND MANAGER OF  
HARMONY VILLAGE-SHEPPARD IN., AS GENERAL  
PARTNER OF HARMONY VILLAGE-SHEPPARD LP  
and CITY CORE DEVELOPMENTS INC.**

*Rosen Goldberg Inc.*

**Appendix 7:**  
**Fortress Notice of Appeal dated June 21, 2017**

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**DOWNING STREET FINANCIAL INC., IN TRUST**

Applicant  
(Respondent in Appeal)

-and-

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF HARMONY  
VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents  
(Respondents in Appeal)

**NOTICE OF APPEAL**

**THE APPELLANTS, FORTRESS SHEPPARD (2016) INC. FORTRESS REAL DEVELOPMENTS AND DEREK SORRENTI, APPEAL** to the Court of Appeal from the Approval and Vesting Order of Mr. Justice Hainey dated June 19, 2017 (the "**Vesting Order**") and the Order of Justice Hainey dated June 19, 2017 dismissing the motion brought by Derek Sorrenti (the "**Fortress Sale Order**") made in the Superior Court of Justice (Commercial List) at Toronto, Ontario.

**THE APPELLANTS ASK THAT:**

- a) that the Vesting Order and the Fortress Sale Order be set aside;
- b) that an Order be granted that:

- a. directs Rosen Goldberg Inc. (the "**Receiver**") as Receiver of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP (the "**Debtor**") and City Core Developments (the "**Guarantor**") to accept the offer of Fortress Sheppard (2016) Inc. ("**Fortress**") to purchase the property municipally known as 3260 Sheppard Ave East, Toronto, Ontario (the "**Property**") on the terms set out in the Agreement of Purchase and sale dated June 16, 2017 (the "**Fortress Offer**");
- b. approves the sale of the Property on the terms set out in Fortress Offer; and
- c. on closing, vests title to the Property in Fortress Sheppard (2016) Inc., free and clear of all claims, including the claims of the purchasers of the residential condominium units that were to have been developed and constructed on the Property by the Debtor.

**THE GROUNDS OF APPEAL ARE AS FOLLOWS:**

1. The learned motion's judge made palpable and overriding errors of fact and law resulting in the occurrence of a substantial wrong or miscarriage of justice.
2. The learned motion's judge erred in accepting that the Receiver's recommendation that offer to purchase the Property from Pinnacle International Sheppard Lands Inc. ("**Pinnacle Offer**") be approved as it was the best offer to purchase the Property from the point of view of the majority of stakeholders.
3. The learned motion's judge erred in holding that the Fortress Offer was not preferable to that of the Pinnacle Offer and therefore dismissing the motion brought by Sorrenti to direct the Receiver to accept the Fortress Offer (the "**Sorrenti Motion**").
4. The learned motion's judge erred in applying the proper legal test when approving the Pinnacle Offer and dismissing the Sorrenti Motion.
5. Sorrenti, as trustee for the investors in the syndicated third mortgagee, will incur a loss in



excess of \$10,000 should the Property be sold to Pinnacle pursuant to the Vesting Order. If the Sorrenti Motion had been granted and the Fortress Offer accepted, the investors in the syndicated third mortgagee would not incur a loss on the sale of the Property.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. Rule 31 of the Rules of the *Bankruptcy and Insolvency Act*;
2. Section 193(c) of the *Bankruptcy and Insolvency Act*;
3. Rule 61 of the *Rules of Civil Procedure*;
4. The Vesting Order and the Fortress Sale Order are final;
5. Leave to appeal is not required; and
6. There are no other facts relevant to establishing the jurisdiction of this Court.

June 21, 2017

**ROBINS APPLEBY LLP**  
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Lawyers for Fortress Sheppard (2016) Inc.,  
Fortress Real Developments and Derek Sorrenti

TO: **SERVICE LIST**

**DOWNING STREET FINANCIAL  
INC. IN TRUST**

**- AND-**

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP, ET AL.**

Court of Appeal File No.

Court File No.:CV-17-11669-00CL

**COURT OF APPEAL FOR ONTARIO**

**PROCEEDING COMMENCED AT  
TORONTO**

**NOTICE OF APPEAL**

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Lawyers for Fortress Sheppard (2016) Inc.,  
Fortress Real Developments and Derek Sorrenti

**Appendix 8:**  
**Written Endorsement of the Court of Appeal for Ontario**  
**dated July 20, 2017**

COURT OF APPEAL FOR ONTARIO

CITATION: Downing Street Financial Inc. v. Harmony Village-Sheppard Inc.,  
2017 ONCA 611  
DATE: 20170720  
DOCKET: M48044 (C63937)

Tulloch J.A. (In Chambers)

BETWEEN

Downing Street Financial Inc., in Trust

Applicant (Respondent in Appeal)

and

Harmony Village-Sheppard Inc., as General Partner of Harmony Village-Sheppard LP, and City Core Developments Inc.

Respondents (Respondents in Appeal)

David P. Preger and Michael J. Brzezinski, for the moving party, Court-appointed Receiver, Rosen Goldberg Inc.

Barbara Green, for the responding parties, Fortress Shepard (2016) Inc., Fortress Real Developments and Derek Sorrenti

Raymond M. Slattery, for the responding party, Purchasers

Mitchell Wine, for the responding party, Jozef Zubrzycki

Sean Zweig, for the responding party, the Successful Bidders

David T. Ullmann, for the responding party, Downing Street Financial Inc., in Trust

Heard: June 29, 2017

**Tulloch JA:**

**A. INTRODUCTION**

[1] The moving party on this motion was Rosen Goldberg Inc., the receiver in the underlying insolvency proceedings (the “Receiver”). The Debtor is Harmony Village-Sheppard LP. The responding parties on the motion were Fortress Shepard (2016) Inc., Fortress Real Developments and Derek Sorrenti (collectively, “Fortress”).

[2] The Receiver’s purpose in bringing this motion was to defeat Fortress’ appeal from a court order approving an asset sale (the “Approval Order”) and thereby to secure that sale, for which the closing date was June 30, 2017. Fortress had filed a Notice of Appeal in this court, dated June 21, 2017, in which it had sought to appeal the Approval Order, asserting that this court had jurisdiction solely based on s. 193(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”).

[3] I heard the motion on June 29, 2017, and, given its urgency, I granted the motion orally and notified the parties that written reasons would follow. These are my written reasons.

**B. BACKGROUND**

**(1) The Property and the Stakeholders**

[4] Before its insolvency proceedings, the Debtor had been developing some real estate in Toronto (the “Property”) as a residential condominium project,

marketed to seniors. At the time of the Receiver's appointment, the Debtor had pre-sold 223 units in this project to various purchasers (the "Unit Purchasers"), although construction had not yet begun.

[5] The Property is subject to three encumbrances. Downing Street Financial Inc. ("DSFI") holds the first in priority, securing payment of approximately \$20 million. The second in priority, held by JYR Capital Mortgage Investment Corp. and Li Ruixia as tenants in common, secures payment of approximately \$1,395,000. The third encumbrance is a syndicated mortgage involving 542 investors. According to Fortress, Sorrenti and a related company are the trustees of this syndicated mortgage.

**(2) The Approval Order**

[6] The Superior Court judge who reviewed the sale (the "motions judge") made the Approval Order on June 19, 2017, and issued a brief endorsement on the same date. The Approval Order, granted in response to a motion by the Receiver, approved the Receiver's sale of the Property to Pinnacle International One Lands Inc. ("Pinnacle").

[7] The sale to Pinnacle was the culmination of a court-approved sale process under the Receiver's supervision in which Pinnacle and Fortress had competed for the Property.

**(3) The “Stalking Horse Bid”**

[8] Pursuant to the Receiver’s appointment order, dated January 20, 2017, the Receiver conducted a “stalking horse” sale process, in which a sale agreement between the Receiver and Fortress would constitute the “stalking horse bid” (the “Stalking Horse Bid”). The Stalking Horse Bid would have required Fortress to assume the Debtor’s agreements of purchase and sale with the Unit Purchasers. The Stalking Horse Bid also was a credit bid. On closing, the first mortgagee, DSFI, would have been paid in full, while the purchaser would have assumed the existing debt secured under the second and third charges.

[9] The Receiver and Fortress each provided different explanations for why Fortress repudiated the Stalking Horse Bid. However, the parties agreed in their submissions that, beyond the deal discussed in the next paragraph, the “stalking horse” process did not attract any offers for the Property.

[10] According to Fortress, Fortress always had intended to find a developer to build the condo project, and it ultimately had negotiated a sale of the Property to Pinnacle (the “Pinnacle-Fortress APS”). The Pinnacle-Fortress APS required Pinnacle to assume the terms of the Stalking Horse Bid. Fortress advised the Receiver of its deal with Pinnacle, and the Receiver acquiesced on the condition that the sale price of the Pinnacle-Fortress APS would not exceed the Stalking

Horse Bid's sale price, so that Fortress' intermediary role would not cost the Debtor's estate any value.

[11] However, in Fortress' narrative, the Stalking Horse Bid failed because, on April 4, 2017, only three days before the court-approval hearing for the Pinnacle-Fortress APS, Pinnacle informed Fortress that it no longer was willing to assume the contracts with the Unit Purchasers. Fortress informed the Receiver of this problem, and the Receiver refused to save the deal by amending the requirements of the Stalking Horse Bid.

[12] In the Receiver's version, Fortress told the Receiver on April 6, 2017, the day before the hearing to approve the Pinnacle-Fortress APS, that Fortress would not complete the purchase of the Property pursuant to the Stalking Horse Bid because Fortress no longer was willing to assume the Unit Purchasers' contracts.

#### **(4) Subsequent Offers and Negotiations**

[13] According to the Receiver, its subsequent efforts produced three offers for the Property. One of them, from an offeror whom the Receiver does not identify, which involved a price that the Receiver found unacceptably low. The other two offers were from Fortress and from Pinnacle, respectively. Fortress' offer, dated April 13, 2017, involved the same price as the Stalking Horse Bid and similar financial terms. The important differences were that Fortress would not assume the contracts with the Unit Purchasers, but that Fortress' deposit would be slightly



higher. Pinnacle communicated its offer to the Receiver several days later. The Receiver accepted Pinnacle's offer on May 2, 2017, and informed Fortress of this acceptance on May 3, 2017.

[14] The Receiver asserts that it had legitimate concerns regarding Fortress' financial capacity. The Receiver's motion record includes some e-mail correspondence raising such concerns. The correspondence suggests that Fortress was unwilling to provide a deposit large enough to satisfy the Receiver.

**(5) Fortress' Opposition to Pinnacle's Offer**

[15] Fortress advised the Receiver on April 28, 2017 that it would oppose any deal between the Receiver and Pinnacle. Fortress alleged that Pinnacle had improperly exploited its earlier negotiations with Fortress to develop its own direct offer to the Receiver.

[16] On June 16, 2017, several days before the scheduled hearing of the Receiver's motion for approval of Pinnacle's bid, Fortress submitted to the Receiver a new, third, offer to purchase the Property. This offer relied on a financing commitment from another party, MarshallZehr, to cover the cash component of Fortress' offer, all closing costs, and the costs of the financing. During the hearing of this motion, counsel for Fortress conceded that the Receiver had correctly identified several conditions of the MarshallZehr financing that would limit Fortress' ability to obtain additional financing from other parties. However,

counsel for Fortress asserted that such formal conditions would not be a practical obstacle to the Fortress offer's feasibility.

### **C. FORTRESS' APPEAL**

[17] After the granting of the Approval Order on June 19, 2017, Fortress filed a Notice of Appeal in this court, dated June 21, 2017. The relief that Fortress seeks from this court is the following: an order setting aside the Approval Order, and an order directing the Receiver to accept Fortress' June 16, 2017 offer that would also serve as an approval and vesting order for a sale on that offer's terms.

[18] Based on the Notice of Appeal and Fortress' submissions on this motion, the essence of Fortress' planned argument on appeal would seem to be that the motions judge did not apply the right legal test when making the Approval Order; his brief endorsement said that he approved Pinnacle's bid because it was "the best offer to purchase the Property from the point of view of the majority of stakeholders." In oral argument for this motion, counsel for Fortress suggested that this language in the motions judge's endorsement demonstrates that the motions judge did not correctly apply the relevant principles from *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.).

[19] The Notice of Appeal relies only on s. 193(c) of the *BIA* in support of this court's jurisdiction to hear the Appeal. Fortress explicitly disclaims reliance on s. 193(e), the provision for leave to appeal, by asserting in the Notice that it does not

require leave to appeal. Rule 31 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, precludes reliance by an appellant on s. 193(e) of the *BIA* when that appellant's Notice of Appeal does not include the relevant application for leave to appeal. Therefore, jurisdiction pursuant to s. 193(e) is unavailable in this case.

[20] Fortress chose to rely exclusively on s. 193(c) despite the clear direction in recent case law in favour of narrow construal of the rights to appeal in ss. 193(a) to (d) of the *BIA*: *Re Enroute Imports Inc.*, 2016 ONCA 247, 35 C.B.R. (6th) 1, at para. 5. As Brown J.A. explained in his chambers decision in *2403177 Ontario Inc. v. Bending Lake Iron Group Ltd.*, 2016 ONCA 225, 396 D.L.R. (4th) 365, at paras. 50-53, these automatic rights of appeal create disharmony between the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*") and the *BIA* because s. 13 of the *CCAA* imposes a leave requirement for all appeals from orders made under that statute. Therefore, the goal of regulatory harmony between these two major insolvency statutes favours narrow construal of the *BIA*'s automatic rights of appeal. This jurisprudential context, along with Fortress' strategic decision not to seek leave to appeal, informed my decision on s. 193(c).

#### **D. ANALYSIS**

##### **(1) Subsection 193(c) of the *BIA***

[21] Subsection 193(c) of the *BIA* provides a right to appeal to the Court of Appeal "if the property involved in the appeal exceeds in value ten thousand

dollars”. As Blair J.A., in chambers, noted in *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 17, a narrow construal of “property involved in the appeal” is necessary because otherwise the low quantum of this automatic right to appeal would make s. 193(e) practically redundant.

[22] In *Bending Lake*, at para. 53, Brown J.A., summarizing prior case law, identified three kinds of order from which s. 193(c) would not grant a right to appeal: (i) orders that are procedural in nature; (ii) orders that do not bring into play the value of the debtor’s property; and (iii) orders that do not result in a loss. I will consider only the third category because doing so will suffice to resolve the s. 193(c) analysis.

**(2) Does the Approval Order “Result in a Loss?”**

[23] As Brown J.A. explained at para. 61 of *Bending Lake*, for an order to “result in a loss” in the relevant sense, “the order in question must contain some element of a final determination of the economic interests of a claimant in the debtor.”

[24] Fortress is correct that, in *Bending Lake*, Brown J.A. relied on the fact that there was no competing bid for the disputed property, as well as the fact that there was an absence of any valuation of the debtor’s estate in the record before the motions judge: *Bending Lake*, at paras. 63-66. In contrast, in this case, there were competing bids with different purchase prices.

[25] Nevertheless, I do not accept that the Approval Order “resulted in a loss” in the relevant sense.

[26] Although some of the factors on which Brown J.A. relied do not apply in this case, these distinctions do not defeat the broader reasoning of *Bending Lake*. I quote from para. 64 of *Bending Lake* at length:

The determination of whether “the property involved in the appeal exceeds ten thousand dollars” is a fact-specific one. In order to bring itself within s. 193(c), the [appellant] must do more than make a bald allegation of improvident sale. This is real-time insolvency litigation in which delays in the proceeding can prejudice the amounts fetched by a receiver on the realization process. The [appellant] must demonstrate some basis in the evidentiary record considered by the motion judge that the property involved in the appeal would exceed in value \$10,000, in the sense that the granting of the Approval and Vesting Order resulted in a loss of more than \$10,000 because the Receiver could have obtained a higher sales price for the Debtor’s property. Bald assertion is not sufficient, otherwise a mere bald allegation of improvident sale in a notice of appeal could result in an automatic stay of a sale approval order under *BIA* s. 195 as the appellant pursues its appeal. [Emphasis added.]

[27] I focus here on the requirement for “some basis in the evidentiary record” to support an assertion that the impugned sale would cause a loss to the Debtor’s estate, as opposed to a “bald assertion” to that effect. In its submissions before me, the primary basis for Fortress’ assertion that the impugned order might “result in a loss” is the fact that the nominal purchase price in Fortress’ offer was higher than the nominal purchase price in Pinnacle’s offer.

[28] The passage that I have quoted from *Bending Lake* casts the issue as whether “the Receiver could have obtained a higher sales price for the Debtor’s property.” However, given the diversity among financing structures for commercial sale agreements, I do not think that I betray the spirit of Brown J.A.’s reasons by reading his comments to contemplate a more substantive assessment of competing offers than a mere comparison of formal prices.

[29] On this motion, Pinnacle presented compelling evidence to suggest that the practical value of its offer exceeded that of Fortress’ offer.

[30] First, the deposit in Pinnacle’s offer was much higher than the deposit in Fortress’ offer. This factor gains salience from the correspondence that demonstrates that, during the sale process, Fortress resisted the Receiver’s demands to increase the deposit in its offer substantially.

[31] Second, the Pinnacle offer was entirely in cash, whereas only approximately 40% of the Fortress offer was in cash. Fortress planned to fund the rest of its offer through credit. This factor gains salience from the structure of the Debtor’s pre-existing secured debt. Fortress explains in its submissions that Fortress (more specifically, Sorrenti), along with a related company, is trustee for the 542 investors who collectively hold the beneficial interest in the Debtor’s third encumbrance, a syndicated mortgage. Fortress further submits that its ordinary business is in “real estate consulting and arranging financing for real estate development projects”.

Fortress' submissions before me did not assuage the concern that the effect of the Fortress offer, if accepted, would have been to allow Fortress to preserve its business interest in the Property as a development project at the risk of providing less recovery for other creditors, including the investors for whom Sorrenti acts as trustee. Indeed, Fortress explained in its submissions that it entered into a Joint Venture Agreement with another firm in the hope, based on "anticipated profits", of providing full repayment of the second and third mortgages on the Property.

[32] Third, Fortress conceded in its submissions that its offer would not have involved assuming the Unit Purchasers' contracts. Instead, it promised a "friends and family VIP event" for the Unit Purchasers and opportunities for first access and special pricing. This concession undermines Fortress' assertion that the Stalking Horse Bid would have succeeded had it not been for Pinnacle's refusal to assume the Unit Purchasers' contracts.

[33] Fourth, the Receiver's Report states that the highest-ranking secured creditor, DSFI, supported Pinnacle's bid over Fortress', despite the fact that both offers purported to provide full recovery to DSFI.

[34] Fifth, Fortress does not dispute the Receiver's assertions that the "stalking horse" process attracted no bidders other than Fortress and Pinnacle and that the Receiver's subsequent efforts procured only one other offeror, who offered a price

that was unacceptably low and that caused concern that the market's valuation of the Property might be much lower than Pinnacle's.

[35] Although Fortress' argument for the application of s. 193(c) is slightly more plausible than that of the appellant in *Bending Lake*, Fortress has not demonstrated a sufficient basis in the record that was before the motions judge for me to conclude that there is an arguable case that the Receiver could have obtained a better deal than Pinnacle's.

[36] Therefore, s. 193(c) did not grant a right of appeal to Fortress because the impugned order did not "result in a loss or gain" in the relevant sense.

**(3) Leave to Appeal (s. 193(e))**

[37] As I noted earlier in these reasons, Fortress did not meet the procedural requirements for consideration of an application for leave to appeal. Therefore, what follows is *obiter dicta*. However, since both parties made alternative submissions on s. 193(e), I will address the issue briefly.

[38] Although leave to appeal pursuant to s. 193(e) is discretionary and "must be exercised in a flexible and contextual way", the prevailing considerations are whether the proposed appeal :

(i) raises an issue of general importance to the practice in insolvency matters or the administration of justice as a whole;

(ii) Is it *prima facie* meritorious; and



(iii) Would it unduly hinder the progress of the insolvency proceedings: *Enroute*, at para. 7.

[39] I will address the second criterion, i.e., the *prima facie* merit, first. As I mentioned above, the Notice of Appeal and Fortress' submissions on this motion suggested that the primary ground for Fortress' appeal was that the motions judge applied the law incorrectly when he approved Pinnacle's bid because it was "the best offer to purchase the Property from the point of view of the majority of stakeholders."

[40] The allegation was that the motions judge misapplied the criteria from *Soundair* for judicial review of a receiver's sale of property. *Soundair*, at p. 6, identifies four duties of a judge reviewing a receiver's sale. Those duties are to:

(1) "consider whether the receiver has made sufficient effort to get the best price and has not acted improvidently";

(2) "consider the interests of all parties";

(3) "consider the efficacy and integrity of the process by which offers are obtained"; and

(4) "consider whether there has been unfairness in the working out of the process." [Emphasis added.]

Furthermore, at p. 7, *Soundair* prescribes a deferential standard of review in this court.

[41] Given this framework and the facts of the sale process that I summarized above, the argument that the motions judge misinterpreted or misapplied the

*Soundair* test is implausible. The motions judge's comment that the Pinnacle offer was best "from the point of view of the majority of stakeholders" does not indicate a failure to have considered Fortress' interests. Therefore, the appeal was *prima facie* meritless.

[42] I will address the other factors more briefly. This appeal did not raise any issue of general importance to insolvency practice or the broader administration of justice; it was a fact-specific dispute about the propriety of a receiver's sale. Additionally, given the difficulty that the Receiver had faced in finding prospective purchasers other than Pinnacle and Fortress, a hearing of the appeal probably would have unduly hindered the Debtor's insolvency proceedings.

**E. DISPOSITION**

[43] These are my reasons for my granting of the Receiver's motion on June 29, 2017. The Receiver did not seek an order for costs of the motion.

Released:  JUL 20 2017



**Appendix 9:**  
**Seventh Report to Court by the Receiver of the**  
**Harmony Village Sheppard Project dated October 8, 2019**  
**(without appendices)**



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-17-11669-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

BETWEEN:

DOWNING STREET FINANCIAL INC., IN TRUST

Applicant

- and -

HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.

Respondents

SEVENTH REPORT OF ROSEN GOLDBERG INC.

I. INTRODUCTION

1. By Order of Justice Hainey dated January 20, 2017 (the “**Order**”) Rosen Goldberg Inc. was appointed receiver (the “**Receiver**”) of the assets of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP (the “**Debtor**”) and City Core Developments Inc. The asset subject to the Receiver’s administration was real property municipally described as 3260 Sheppard Avenue East, in Toronto (the “**Property**”). A copy of the Order is attached as **Appendix A**.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

## II. PURPOSE OF THIS REPORT

2. This report is filed in support of a Motion for an Order:
  - (a) Approving of the activities of the Receiver;
  - (b) Approving a distribution of the net surplus funds to the third ranking mortgagees;
  - (c) Approving the professional fees of the Receiver and its counsel; and
  - (d) Discharging the Receiver.

## III. TERMS OF REFERENCE

3. In preparing this report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain of the information contained herein may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Honourable Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance with respect to the Information.

## IV. BACKGROUND

4. The Property, which was subject to the receivership, is located at the northeast corner of Sheppard Avenue East and Warden Avenue, in Toronto. The Debtor had been developing the Property as a residential condominium project, marketed to seniors. The first phase of the project was to comprise 291 units in two (2) towers. At the time of the Receiver’s appointment,



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

the Debtor had presold 223 units to purchasers (the “**Purchasers**”), although construction had not yet begun.

5. Concurrent with the appointment of the Receiver, a Stalking Horse Sales Process was approved, in which Fortress Sheppard (2016) Inc. (“**Fortres**”) was Stalking Horse Bidder. The Stalking Horse Bid was predicated upon Fortress assuming the Debtor’s agreements of purchase and sale with the Purchasers. It was also, in part, a credit bid. Although Downing Street Financial Inc., the first ranking mortgagee, was to have been paid in full on closing, the purchaser was to have assumed the existing debt secured under the second and third charges.

6. As was reported in the Receiver’s Second Report, dated March 31, 2017, a copy of which is attached (without exhibits) as **Appendix B**, although a number of interested parties surfaced during the Stalking Horse Process - which was widely publicized in the National Post and The Globe and Mail Report on Business - no competing bids were received by the bid deadline of March 21, 2017.

7. The hearing of the Receiver’s motion to approve the sale on the terms set out in the Stalking Horse Bid and vest title to the Property in Fortress was scheduled to be heard on April 7, 2017.

8. As was reported in the Receiver’s Supplementary Report dated April 6, 2017, a copy of which is attached (without exhibits) as **Appendix C**, on the afternoon of April 6, 2017, the Receiver was advised that Fortress would not complete the purchase of the Property pursuant to the Stalking Horse Bid, as it no longer wished to assume the Purchasers’ agreements of purchase and sale. As such, the Receiver reported that as a next step it would contact those parties who had expressed an interest in the Property during the Stalking Horse Process to invite them to submit offers.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

9. On April 7, 2017, Justice Myers ordered the Stalking Horse Bid terminated and the deposit paid by Fortress thereunder of \$350,000 forfeited to the Receiver.

10. As the Property had been widely exposed during the Stalking Horse Process and no competing offers had emerged, the Receiver did not believe that an extensive remarketing program would be accretive. Instead, it wrote to fifteen (15) parties who had signed confidentiality agreements and obtained access to the Receiver's online data room during the Stalking Horse Process to notify them that the Property was available for sale. The Receiver was also contacted by a number of parties who expressed interest in the Property and invited Mr. Jack Pong, principal of the Debtor to submit an offer.

11. The Receiver's counsel also communicated extensively with counsel to Fortress regarding the terms under which the Receiver would consider entering into a new agreement of purchase and sale with Fortress.

12. On May 18, 2017, pursuant to an Order of the Honourable Mr. Justice Newbould, Minden Gross LLP was appointed as Representative Counsel to all the purchasers of the condominium units. A copy of the Order is attached as **Appendix D**. The Representative Counsel was appointed to communicate with the Purchasers in respect of the receivership administration and specifically, the fact that the Purchasers' sale agreements would be disclaimed and vested out in conjunction with a sales transaction.

13. On June 19, 2017, Justice Hainey granted an Order (the "**Approval and Vesting Order**") approving a sale transaction in respect of the Property pursuant to an agreement of purchase and sale dated May 2, 2017 between the Receiver and Pinnacle International One Lands Inc. ("**Pinnacle**"). A copy of the Approval and Vesting Order is attached as **Appendix E**.

14. On June 21, 2017, Fortress (2016) Real Developments and Derek Sorrenti filed a Notice of Appeal dated June 21, 2017 in respect to the Approval and Vesting Order.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

- 5 -

15. On June 29, 2017, the Court of Appeal heard the Receiver's motion for (i) a declaration that there is no automatic right of appeal with respect to the Approval and Vesting Order under section 193(c) of the *Bankruptcy and Insolvency Act* ("BIA"), (ii) a declaration that the Approval and Vesting Order is not stayed pursuant to section 195 of the BIA by the filing of the Notice of Appeal; and (iii) in the alternative, if the Approval and Vesting Order is stayed, an Order cancelling the stay so as to enable the sale transaction to be completed on June 30, 2017. Justice Tulloch of the Court of Appeal granted the relief sought by the Receiver. The reasons of Justice Tulloch are attached as **Appendix F**.

16. On June 30, 2017, the Receiver completed the sale transaction and the Property was transferred to Pinnacle International Sheppard Lands Inc., an affiliate of Pinnacle.

17. The Receiver has distributed the proceeds of sale in accordance with the June 9, 2017 Order of Justice Hainey referenced in paragraph 12 above.

18. The Receiver also arranged for the return of deposits paid by Purchasers in trust to Harris Sheaffer LLP in connection with the preconstruction sale of units at the Property.

19. The Receiver's statement of receipts and disbursements is attached as **Appendix G**.

## V. SECURITY HELD BY THE CITY OF TORONTO

20. Harmony posted cash security of \$920,000 with the City of Toronto (the "City") pursuant, *inter alia*, to its subdivision agreement ("Security Deposit"). This Security Deposit was excluded, by agreement, from the assets acquired by Pinnacle. We attach the Receiver's agreement with Pinnacle in respect of this security as **Appendix H**. The Receiver wrote to the City requesting that they refund the Security Deposit immediately. The City's response was that





ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

the Security Deposit would be held until Pinnacle's development plans were further advanced so that the City would be in a position to determine who would provide replacement security.

21. The Receiver and its counsel communicated with the legal department of the City on a regular basis to determine the status of the release of the funds. Ultimately, the Receiver, with the assistance of Pinnacle, fulfilled all requirements imposed by the City and on May 27, 2019, the Receiver received payment of the Security Deposit.

#### VI. RECEIVER'S ACTIVITIES

22. The Receiver's activities since its last report include, *inter alia*:

- Preparation of Sixth report to court;
- Dealing with all matters relating to recovery of security deposit;
- Dealing with statutory filings;
- Dealing with CRA regarding HST;
- Communications with investor's in Fortress mortgage;
- Ongoing consultations with legal counsel;
- Dealing with Harris Sheaffer LLP in respect of return of Purchaser's deposits.

#### VII. PROFESSIONAL FEES

23. In accordance with paragraph 18 of the Order, the Receiver and its counsel are required to pass its accounts.



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INSOLVENCY & RESTRUCTURING

- 7 -

24. The fees and disbursements of the Receiver from December 16, 2016 to October 7, 2019, exclusive of HST, amount to \$ 265,351. The affidavit of Brahm Rosen is attached as **Appendix I**.

25. The fees and disbursements of Dickinson Wright LLP, the Receiver's independent counsel, for the period January 20, 2017 to September 30, 2019 amount to \$305,530.66 inclusive of HST. The affidavit of David Preger is attached as **Appendix J**.

26. The fees of the Representative Counsel were previously approved as part of the Approval and Vesting Order referenced above.

27. The Receiver estimates that the professional fees to complete the administration will be \$40,000

#### VIII. DISTRIBUTION OF SURPLUS FUNDS

28. In accordance with the Approval and Vesting Order, the Receiver was authorized to distribute the proceeds in accordance with the priorities of the mortgagees. To date, the Receiver has paid the first and second ranking mortgagees in full and has made a payment of \$19,500,000 to the third mortgagees, who were owed in excess of \$30 million. The Receiver intends to pay the net surplus funds, after payment of the outstanding professional fees to the third mortgagees and seeks this Honourable Court's approval of the distribution.

29. At the time of the appointment of the Receiver, the third mortgage was administered and held in trust by Derek Sorrenti. The Receiver was advised on October 3, 2019 that FAAN Mortgage Administrators Inc. ("FAAN"), pursuant to an Order of the Honourable Mr. Justice Hainey dated September 30, 2019, was appointed as trustee of Mr. Sorrenti's mortgage administration business. We attach the Order as **Appendix K**. Accordingly, the Receiver intends to pay the funds to FAAN.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

## IX. DISCHARGE OF RECEIVER

30. Once the Receiver distributes the remaining funds, the only outstanding item will be to finalize certain HST matters which may potentially result in a refund. Should a refund be received, the Receiver will make a further distribution to the third mortgagees. Given the limited scope of this matter, the Receiver believes it is appropriate to seek its discharge at this time.

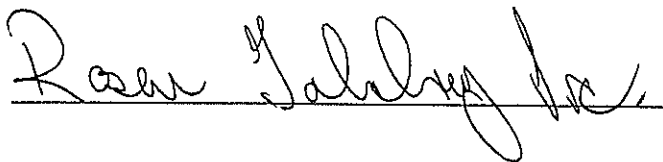
## VII. RECOMMENDATIONS

31. On the basis of the forgoing, the Receiver recommends that this Honourable Court provide the relief requested in paragraph 2 above.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 8<sup>th</sup> day of October 2019

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER AND MANAGER OF  
HARMONY VILLAGE-SHEPPARD IN., AS GENERAL  
PARTNER OF HARMONY VILLAGE-SHEPPARD LP  
and CITY CORE DEVELOPMENTS INC.**

  
\_\_\_\_\_

**Appendix 10:**  
**Order dated October 15, 2019 granted in connection**  
**with the Harmony Village Sheppard Project**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

*MAD*

THE HONOURABLE *Mr.* )  
JUSTICE *PENNY* )

TUESDAY, THE 15 TH  
DAY OF OCTOBER, 2019



BETWEEN:

**DOWNING STREET FINANCIAL INC., IN TRUST**

Applicant

- and -

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents

**ORDER**

**THIS MOTION**, made by Rosen Goldberg Inc., in its capacity as the Court-appointed receiver (the “**Receiver**”) of the assets, undertaking and property of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP, and City Core Developments Inc. (collectively, the “**Debtors**”), for an order:

1. approving the seventh report of the Receiver dated October 8, 2019 (the “**Seventh Report**”) and the activities of the Receiver described therein;
2. approving the fees and disbursements of the Receiver and its counsel;

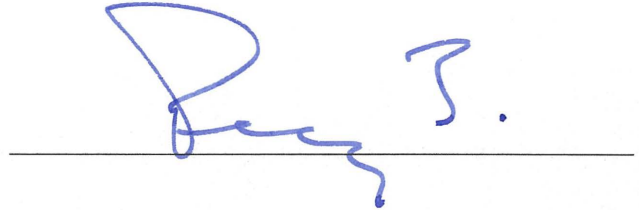
3. discharging Rosen Goldberg Inc. as Receiver; and
4. releasing Rosen Goldberg Inc., from any and all liability, as set out in paragraph 5 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Seventh Report, the affidavits of Brahm Rosen sworn October 8, 2019 and the affidavit of David Preger sworn October 8, 2019 (collectively, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver, no one else appearing although served;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, and the Seventh Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Seventh Report and the activities of the Receiver described therein are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Dickinson Wright LLP, as described in the Seventh Report and the Fee Affidavits, are hereby approved.
4. **THIS COURT ORDERS** that upon completion of its remaining administrative tasks, as set out in the Seventh Report, Rosen Goldberg Inc. shall be discharged as Receiver of the undertaking, property and assets of the Debtors, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Rosen Goldberg Inc., in its capacity as Receiver.
5. **THIS COURT ORDERS AND DECLARES** that Rosen Goldberg Inc. is hereby released and discharged from any and all liability that Rosen Goldberg Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Rosen

Goldberg Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Rosen Goldberg Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.



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

OCT 15 2019

PER / PAR: RW

**DOWNING STREET FINANCIAL INC., IN TRUST**  
Applicant

-and- **HARMONY VILLAGE-SHEPPARD INC., et al.**  
Respondents

Court File No. CV-17-11669-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors

199 Bay Street

Suite 2200, P.O. Box 447

Commerce Court Postal Station

Toronto, Ontario, M5L 1G4

**DAVID P. PREGER (36870L)**

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Tel: (416) 646-4608

Fax: (416) 865-1398

Lawyers for the Receiver



**Appendix 11:**  
**PIN Search in respect of the lands underlying the HVS Project**

PROPERTY DESCRIPTION: PT LTS 3, 4, 5 & 6 PL 3591 BEING PT 1 66R27877; S/T AT1939845; CITY OF TORONTO

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER, THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2015/02/17.

ESTATE/QUALIFIER: FEE SIMPLE  
LT ABSOLUTE PLUS

RECENTLY: RE-ENTRY FROM 06139-0060

PIN CREATION DATE:  
2015/02/17

OWNERS' NAMES PINNACLE INTERNATIONAL SHEPPARD LANDS INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2015/02/17 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
AT1163280	2006/06/09	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** W. J. SHANAHAN LIMITED	HARMONY VILLAGE-SHEPPARD INC.	
AT1939845	2008/10/31	TRANSFER EASEMENT		HARMONY VILLAGE-SHEPPARD INC.	ROGERS CABLE COMMUNICATIONS INC.	C
AT2907864	2011/12/29	CHARGE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	ROMSPEN INVESTMENT CORPORATION	
AT2907865	2011/12/29	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	ROMSPEN INVESTMENT CORPORATION	
REMARKS: AT2907864. AT2907864						
AT2938470	2012/02/03	CHARGE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK	
AT2938710	2012/02/03	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK	ROMSPEN INVESTMENT CORPORATION	
REMARKS: AT2938470 POSTPONES AT2907864 AND AT2907865						
AT2939682	2012/02/06	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
REMARKS: AT2938470.						
AT2940440	2012/02/07	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	

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LAND  
 REGISTRY  
 OFFICE #66

06139-0175 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT2943420	2012/02/10	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT2950454	2012/02/22	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3014335	2012/05/11	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3073621	2012/07/13	NOTICE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK	
AT3074225	2012/07/16	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3082839	2012/07/25	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3134422	2012/09/24	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3161109	2012/10/26	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3219664	2013/01/18	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT3251856	2013/03/07	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3251907	2013/03/07	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3346081	2013/07/09	NOTICE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3369106	2013/08/02	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3386836	2013/08/23	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3433139	2013/10/18	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3462511	2013/11/26	NOTICE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3497532	2014/01/14	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3505668	2014/01/24	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY ***		

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				SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		
AT3519811	2014/02/12	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		
AT3525668	2014/02/24	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		
AT3537852	2014/03/14	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		
AT3545747	2014/03/26	NOTICE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470		
AT3546517	2014/03/27	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		
AT3567434	2014/04/28	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		
AT3585645	2014/05/21	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		
AT3612581	2014/06/20	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
				REMARKS: AT2938470.		

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AT3660024	2014/08/13	NOTICE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470				
AT3681421	2014/09/05	NOTICE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	ROMSPEN INVESTMENT CORPORATION	
		REMARKS: AT2907864				
AT3684838	2014/09/10	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	ROMSPEN INVESTMENT CORPORATION	
		REMARKS: AT2938470 TO AT2907864, AT2907865				
AT3694283	2014/09/22	NOTICE		CITY OF TORONTO	HARMONY VILLAGE -SHEPPARD INC.	C
AT3694284	2014/09/22	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	CITY OF TORONTO	
		REMARKS: AT3612581 TO AT3694283				
AT3694285	2014/09/22	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** ROMSPEN INVESTMENT CORPORATION	CITY OF TORONTO	
		REMARKS: AT2907864 TO AT3694283				
AT3729884	2014/10/31	CHARGE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	QUINCY INVESTMENTS LIMITED 969592 ONTARIO LIMITED 969593 ONTARIO LIMITED 2307271 ONTARIO INC. 1212805 ONTARIO INC. FORT 1 INC. SASSO AUTO CONSULTING INC. DOUBILET, DAVID MARK GROSSI, ANGELO STAMATIOU, GUS	
AT3729885	2014/10/31	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	QUINCY INVESTMENTS LIMITED 969592 ONTARIO LIMITED 969593 ONTARIO LIMITED 2307271 ONTARIO INC.	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
					1212805 ONTARIO INC. FORT 1 INC. SASSO AUTO CONSULTING INC. DOUBILET, DAVID MARK GROSSI, ANGELO STAMATIOU, GUS	
AT3730532	2014/10/31	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	DEREK SORRENTI OLYMPIA TRUST COMPANY	
AT3777007	2014/12/30	CHARGE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	DOWNING STREET FINANCIAL INC., IN TRUST	
AT3777141	2014/12/30	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** QUINCY INVESTMENTS LIMITED 969592 ONTARIO LIMITED 969593 ONTARIO LIMITED 2307271 ONTARIO INC. 1212805 ONTARIO INC. FORT 1 INC. SASSO AUTO CONSULTING INC. DOUBILET, DAVID MARK GROSSI, ANGELO STAMATIOU, GUS	DOWNING STREET FINANCIAL INC.	
AT3777142	2014/12/30	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	DOWNING STREET FINANCIAL INC.	
AT3777959	2014/12/31	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT3809199	2015/02/11	NOTICE		*** DELETED AGAINST THIS PROPERTY *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
66R27877	2015/02/17	PLAN REFERENCE				C
AT3811349	2015/02/17	APL ABSOLUTE TITLE		HARMONY VILLAGE-SHEPPARD INC.	HARMONY VILLAGE-SHEPPARD INC.	C
AT3830602	2015/03/11	CHARGE		*** COMPLETELY DELETED *** HARMONY VILLAGE-SHEPPARD INC.	DOWNING STREET FINANCIAL INC.	
AT3830603	2015/03/11	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** HARMONY VILLAGE-SHEPPARD INC.	DOWNING STREET FINANCIAL INC.	
		REMARKS: AT3830602.				
AT3830790	2015/03/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** QUINCY INVESTMENTS LIMITED 969592 ONTARIO LIMITED 969593 ONTARIO LIMITED 2307271 ONTARIO INC. 1212805 ONTARIO INC. FORT 1 INC. SASSO AUTO CONSULTING INC. DOUBILET, DAVID MARK GROSSI, ANGELO STAMATIOU, GUS		
		REMARKS: AT3729884.				
AT3830802	2015/03/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** DOWNING STREET FINANCIAL INC., IN TRUST		
		REMARKS: AT3777007.				
AT3830803	2015/03/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROMSPEN INVESTMENT CORPORATION		
		REMARKS: AT2907864.				
AT3830824	2015/03/12	POSTPONEMENT		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	DOWNING STREET FINANCIAL INC.	
		REMARKS: AT2938470 TO AT3830602				
AT3865791	2015/04/24	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				

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AT3904869	2015/06/04	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT3945693	2015/07/14	NOTICE		*** COMPLETELY DELETED *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470				
AT3964608	2015/07/31	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT3993606	2015/08/28	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4014244	2015/09/21	NOTICE		*** COMPLETELY DELETED *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
AT4014339	2015/09/21	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4034844	2015/10/13	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4039628	2015/10/19	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4040662	2015/10/20	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** TRI-PHASE CONTRACTING INC.		
AT4062604	2015/11/10	CONSTRUCTION LIEN		*** COMPLETELY DELETED ***		

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PREPARED FOR LStorm01

ON 2019/10/17 AT 11:01:05

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4063178	2015/11/10	CONSTRUCTION LIEN		GEOSOURCE ENERGY INC.  *** COMPLETELY DELETED *** AEC CONSULTANTS LTD.		
AT4065105	2015/11/12	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** TRI-PHASE CONTRACTING INC.		
		REMARKS: AT4040662.				
AT4084210	2015/12/02	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** AEC CONSULTANTS LTD.		
		REMARKS: AT4063178.				
AT4084234	2015/12/02	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4084272	2015/12/02	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** GEOSOURCE ENERGY INC.		
		REMARKS: AT4062604.				
AT4112153	2016/01/08	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4135717	2016/02/02	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4151099	2016/02/23	NOTICE		*** COMPLETELY DELETED *** HARMONY VILLAGE-SHEPPARD INC.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470				
AT4153650	2016/02/26	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4172526	2016/03/22	CHARGE		*** COMPLETELY DELETED ***		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4172527	2016/03/22	NO ASSGN RENT GEN		HARMONY VILLAGE-SHEPPARD INC.  *** COMPLETELY DELETED *** HARMONY VILLAGE-SHEPPARD INC.	JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA  JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA	
		REMARKS: AT4172526.				
AT4172528	2016/03/22	POSTPONEMENT		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA	
		REMARKS: AT2938470, AT4153650 TO AT4172526				
AT4184906	2016/04/05	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4216804	2016/05/12	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPNAY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	
		REMARKS: AT2938470.				
AT4316212	2016/08/19	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPNAY	
		REMARKS: AT2938470.				
AT4426603	2016/12/06	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** MARC SILBERT OPERATING AS MARCUS CONSULTING SERVICES		
AT4482208	2017/02/08	CERTIFICATE		*** COMPLETELY DELETED *** SILBERT, MARC OPERATING AS MARCUS CONSULTING SERVICES	HARMONY VILLAGE-SHEPPARD INC. DOWNING STREET FINANCIAL INC. DOWNING STREET FINANCIAL INC. IN TRUST DEREK SORRENTI OLYMPIA TRUST COMPANY JYR REAL CAPITAL MORTGAGE INVESTMENT CORPORATION LI, RUIXIA	
		REMARKS: AT4426603				
AT4490786	2017/02/17	APL COURT ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	DOWNING STREET FINANCIAL INC.	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4615784	2017/06/30	APL VESTING ORDER	\$43,000,000	ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST	PINNACLE INTERNATIONAL SHEPPARD LANDS INC.	C
AT4720361	2017/10/31	CHARGE	\$85,000,000	PINNACLE INTERNATIONAL SHEPPARD LANDS INC.	THE BANK OF NOVA SCOTIA	C
AT4720362	2017/10/31	NO ASSGN RENT GEN		PINNACLE INTERNATIONAL SHEPPARD LANDS INC.	THE BANK OF NOVA SCOTIA	C
REMARKS: AT4720361						

**Appendix 12:**  
**Email from FRDI to the Trustee dated March 13, 2020**

**From:** Charene Bunnett <charene@fortressrdi.com>  
**Sent:** Friday, March 13, 2020 4:55 PM  
**To:** Naveed Manzoor; 'Daniel Sobel'  
**Cc:** Shelby Draper; 'Naomi Lieberman'; Vince Petrozza; Jawad Rathore  
**Subject:** Harmony Village Sheppard - FAAN's report to Court

Good Afternoon FAAN,

Fortress Real Developments Inc. ("FRDI") is writing to you in connection with FAAN Mortgage Administrators ("Trustee") Second Report (Comprehensive Update) to court dated March 6, 2020 in our capacity as a creditor as it relates to the Harmony Village Sheppard project.

We understand you are bringing a motion to obtain an order to release 50% of the funds you are holding from the receiver to the syndicate mortgage lenders.

FRDI is owed \$1,290,362.16 in project related costs that based on the loan contracts rank in priority over FAAN Mortgage Administrators Inc., in its capacity as Court-appointed Trustee of Derek Sorrenti and Sorrenti Law Professional Corporation.

Under the terms of the loan contracts, particularly the Lender Acknowledgement and Consent and the Authority Form 9D each syndicate mortgage lender agreed to postpone their interest to senior ranking debt related to the project.

Postponement terms are outlined in section 11 of the Lender acknowledgement and consent as follows:

*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 \$291,532,199.00 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 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.

**(EMPHASIS ADDED)**

Additional postponement terms are reiterated in section 22 of the Authority Form 9D as follows:

*I understand the Charge/Mortgage in which I have an interest is currently a second ranking Charge/Mortgage against the Property. I further acknowledge that a first ranking Charge/Mortgage against the Property in favour of Downing Street Financial Inc. currently exists. I understand that during the course of this investment the Borrower anticipates obtaining additional construction financing for the Property which is expected to replace the existing first Charge/Mortgage. I HEREBY UNDERSTAND, CONSENT AND AGREE THAT OTHER CHARGES/MORTGAGES AND/OR DEVELOPMENT AGREEMENTS MAY BE REGISTERED IN PRIORITY TO THE SECOND MORTGAGE AGAINST THE PROPERTY DURING THE TERM OF MY INVESTMENT IN THE SECOND MORTGAGE. I HEREBY CONFIRM THAT I UNDERSTAND AND AGREE THAT THE SECOND CHARGE/MORTGAGE IN WHICH I HAVE INVESTED SHALL BE REQUIRED TO POSTPONE AND STANDSTILL TO PRIOR CHARGES/MORTGAGES TO A MAXIMUM OF \$261,532,199.00 IN PRIORITY FINANCING TO THE PRIOR EXISTING CHARGE, SURETY. I UNDERSTAND THAT PRIORITY FINANCING TO THE SECOND CHARGE/MORTGAGE IS EXPECTED TO PERIODICALLY INCREASE OVER THE TERM OF THIS SECOND CHARGE/MORTGAGE AND THAT SUCH POSTPONEMENTS SHALL BE PERMITTED AND SHALL OCCUR ON THE BASIS OF COST CONSULTANT REPORTS PREPARED ON BEHALF OF THE BORROWER. I UNDERSTAND THAT PRIORITY FINANCING MAY BE REQUIRED IF THERE IS A SHORTFALL IN FUNDS PROVIDED BY OTHER INVESTORS TAKING SIMILAR SECURITY AS ME TO PROVIDE THE LOAN AMOUNT AND IF THAT OCCURS THEN I UNDERSTAND AND AGREE THAT OTHER CHARGES MAY BE REGISTERED AGAINST THE PROPERTY; I AGREE TO POSTPONE AND STANDSTILL TO FINANCING AND DEVELOPMENT AGREEMENTS, CONDOMINIUM REGISTRATIONS AGREEMENTS AND TO PARTIALLY DISCHARGE, WITHOUT PAYMENT WITH RESPECT TO LANDS REQUIRED FOR PUBLIC OR QUASI PUBLIC PURPOSES. I understand that save and except as outlined herein, there shall be no other postponements or encumbrances which affect the position or security afforded by the current second Charge/Mortgage.*

**(EMPHASIS ADDED)**

FRDI advanced various funds into the Project and incurred expenses between September 2016 and August 2017 to support moving the project forward. In addition to lending these funds to move the project forward, we also advanced them to save the project and attempts to stave off a forced sale. FRDI was of putting together a deal that would have resulted in full coverage to the syndicate, unlike the deal that was ultimately accepted by Pinnacle.

These costs total approximately \$1.29M and funded the following project costs:

Payee	Costs	Amount
Dowling Street Financial Inc. In Trust	Forebarance Fee	354,038.75
Sorrenti Law Professional Corporation	Mer Resolution	3,479.83
Vector Financial Services Ltd.	Earnest Fee to new 1st	10,000.00
Vector Financial Services Ltd.	Earnest Fee to new 1st	90,000.00
RDIA Inc.	Insurance	1,136.16
AIRD & BERJIS LLP In Trust	Legal	5,000.00
Beustelds Inc.	Planning Cost	680.76
Beustelds Inc.	Planning costs	1,000.00
Robirs Appleby LLP	Legal fees associated with First Mortgage	37,184.90
MarshallLehr Group Inc. in Trust	Commitment Deposit	90,000.00
Robirs Appleby LLP	Legal Fees	10,058.19
Beustelds Inc.	Planning costs	1,654.89
Robirs Appleby LLP	Legal Fees	19,151.90
Blake, Watlock, & Marshall Ltd.	Appraisal	21,476.00
Robirs Appleby LLP	Legal Fees	97,887.83
Robirs Appleby LLP	Legal Fees	7,814.00
Dowling Street Financial	Interest Payment to the 1st	359,805.51
Vector Financial	Earnest Fee	100,000.00
Vector Financial	Earnest Fee	100,000.00
<b>Total</b>		<b>1,290,362.16</b>

FRDI had full rights for security in priority to the Derek Sorrenti/Sorrenti Law Professional Corporation (“SLPC”) syndicate mortgage holders prior to the power of sale taking place. FRDI therefore is entitled to repayment of their claim at this time.

In addition to the contractual obligation of priority set out above, FRDI is aware the Trustee has opined on, favored with and obtained orders for similar priority claims from other parties in the past. In Trustee’s Seventh Report to Court dated May 10, 2019 the Trustee reported they were in favor of a postponement to an arms-length corporation on the Peter Richmond project as that corporation has injected funds (also to save the project) at a cost lower than the borrower could have obtained from 3<sup>rd</sup> party financiers.

FRDI is requesting the Trustee forward them the available funds they are holding in trust as a payment towards this claim.

Failing the Trustee’s agreement, we request that any portion of the motion being heard March 17<sup>th</sup>, 2020 related to the distribution of funds for the Harmony Village Sheppard project be set aside for now to allow time for effective discussions and potential resolution of this matter.

Should the trustee not be agreeable to either the claim, or setting aside this portion of the matter for a further date, please be advised FRDI will request an adjournment of the portion of the March 17 motion so that it can deliver reply materials and submit its position to the court on a mutually convenient hearing date.



**Appendix 13:**  
**Email from the Trustee to FRDI dated March 20, 2020**

**From:** Naveed Manzoor <naveed@faanmortgageadmin.com>  
**Sent:** Friday, March 20, 2020 9:40 PM  
**To:** Charene Bunnett; 'Daniel Sobel'  
**Cc:** 'Shelby Draper'; 'Naomi Lieberman'; Vince Petrozza; Jawad Rathore  
**Subject:** Re: Harmony Village Sheppard - FAAN's report to Court

Further to my discussion with Jawad earlier this week, the Trustee does not agree with FRDI's claim for priority to the funds that were distributed to the Trustee (the "HVS Proceeds") from the Court-appointed Receiver of the Harmony Village Sheppard Project (the "HVS Receiver"). Further, the HVS Receiver was granted two distribution Orders approving distributions to Sorrenti (and ultimately the Investors). FRDI was served with both motions, and despite actively participating in those court proceedings, never objected to those court orders. Those orders are now final and binding orders of the Court and any claim that FRDI may have had to the HVS Proceeds (which is denied) is barred by the operation of those orders.

As discussed, while the hearing scheduled for March 17, 2020 was adjourned due to the closure of the court caused by the COVID-19 situation, the Trustee intends to seek a distribution order (in the same form as you were previously served) as soon as practicable.

Please confirm by reply email that you do not intend to object to the distribution order. Otherwise, the Trustee will seek costs from FRDI with respect to whatever additional steps it deems necessary to obtain the distribution order with respect to the HVS Investors.

Regards,

Naveed  
(416) 258-6145

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**From:** Charene Bunnett <charene@fortressrdi.com>  
**Sent:** Tuesday, March 17, 2020, 9:14 a.m.  
**To:** 'Naveed Manzoor'; 'Daniel Sobel'  
**Cc:** 'Shelby Draper'; 'Naomi Lieberman'; Vince Petrozza; Jawad Rathore  
**Subject:** RE: Harmony Village Sheppard - FAAN's report to Court

Good Morning FAAN,

Can you please respond to our inquiry with FAANs position on our request?

Thanks  
Charene

---

**From:** Charene Bunnett  
**Sent:** Friday, March 13, 2020 4:55 PM  
**To:** Naveed Manzoor <naveed@faanmortgageadmin.com>; 'Daniel Sobel' <daniel@faanmortgageadmin.com>  
**Cc:** Shelby Draper <shelby@faanmortgageadmin.com>; 'Naomi Lieberman' <naomi@faanmortgageadmin.com>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>  
**Subject:** Harmony Village Sheppard - FAAN's report to Court

Good Afternoon FAAN,

Fortress Real Developments Inc. ("FRDI") is writing to you in connection with FAAN Mortgage Administrators ("Trustee") Second Report (Comprehensive Update) to court dated March 6, 2020 in our capacity as a creditor as it relates to the Harmony Village Sheppard project.

We understand you are bringing a motion to obtain an order to release 50% of the funds you are holding from the receiver to the syndicate mortgage lenders.

FRDI is owed \$1,290,362.16 in project related costs that based on the loan contracts rank in priority over FAAN Mortgage Administrators Inc., in its capacity as Court-appointed Trustee of Derek Sorrenti and Sorrenti Law Professional Corporation.

Under the terms of the loan contracts, particularly the Lender Acknowledgement and Consent and the Authority Form 9D each syndicate mortgage lender agreed to postpone their interest to senior ranking debt related to the project.

Postponement terms are outlined in section 11 of the Lender acknowledgement and consent as follows:

*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 \$291,532,199.00 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.***

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**(EMPHASIS ADDED)**

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These costs total approximately \$1.29M and funded the following project costs:

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Vector Financial Services Ltd.	Earnest Fee to new 1st	90,000.00
RDIA Inc.	Insurance	1,134.16
AIRD & BERJIS LLP in Trust	Legal	5,000.00
Beustelds Inc.	Planning Cost	680.26
Beustelds Inc.	Planning costs	1,000.00
Robirs Appleby LLP	Legal fees associated with First Mortgage	57,184.90
Marshall Zehr Group Inc. in Trust	Commitment Deposit	90,000.00
Robirs Appleby LLP	Legal Fees	10,058.19
Beustelds Inc.	Planning costs	1,654.89
Robirs Appleby LLP	Legal Fees	19,151.90
Blake, Macleod, & Marshall Ltd.	Appraisal	21,470.00
Robirs Appleby LLP	Legal Fees	97,887.05
Robirs Appleby LLP	Legal Fees	7,814.00
Downing Street Financial	Interest Payment to the 1st	359,805.51
Vector Financial	Earnest Fee	100,000.00
Vector Financial	Earnest Fee	100,000.00
<b>Total</b>		<b>1,740,362.16</b>

FRDI had full rights for security in priority to the Derek Sorrenti/Sorrenti Law Professional Corporation ("SLPC") syndicate mortgage holders prior to the power of sale taking place. FRDI therefore is entitled to repayment of their claim at this time.

In addition to the contractual obligation of priority set out above, FRDI is aware the Trustee has opined on, favored with and obtained orders for similar priority claims from other parties in the past. In Trustee's Seventh Report to Court dated May 10, 2019 the Trustee reported they were in favor of a postponement to an arms-length corporation on the Peter Richmond project as that corporation has injected funds (also to save the project) at a cost lower than the borrower could have obtained from 3<sup>rd</sup> party financiers.

FRDI is requesting the Trustee forward them the available funds they are holding in trust as a payment towards this claim.

Failing the Trustee's agreement, we request that any portion of the motion being heard March 17<sup>th</sup>, 2020 related to the distribution of funds for the Harmony Village Sheppard project be set aside for now to allow time for effective discussions and potential resolution of this matter.

Should the trustee not be agreeable to either the claim, or setting aside this portion of the matter for a further date, please be advised FRDI will request an adjournment of the portion of the March 17 motion so that it can deliver reply materials and submit its position to the court on a mutually convenient hearing date.

**Appendix 14:**  
**Email correspondence between the Trustee and FRDI**  
**dated March 24 and 25, 2020**

**From:** naveed@faanmortgageadmin.com  
**Sent:** Wednesday, March 25, 2020 3:13 PM  
**To:** 'Charene Bunnett'; 'Daniel Sobel'  
**Cc:** 'Shelby Draper'; 'Naomi Lieberman'; 'Vince Petrozza'; 'Jawad Rathore'  
**Subject:** RE: Harmony Village Sheppard - FAAN's report to Court

Charene,

As noted in my email below, the Trustee will be proceeding with its motion as soon as practicable in light of the COVID-19 situation and will advise when the hearing is rescheduled.

Given FRDI's position that it will oppose the Trustee's motion, as noted in my email below, should the Trustee's motion be successful, the Trustee will be asking the Court to also grant costs on a full indemnity basis against FRDI for all of the additional costs incurred by the Trustee to obtain the distribution order with respect to the HVS investors, including the filing of any supplemental reports and/or materials.

Please govern yourselves accordingly.

---

**From:** Charene Bunnett <charene@fortressrdi.com>  
**Sent:** March 24, 2020 3:37 PM  
**To:** 'Naveed Manzoor' <naveed@faanmortgageadmin.com>; 'Daniel Sobel' <daniel@faanmortgageadmin.com>  
**Cc:** 'Shelby Draper' <shelby@faanmortgageadmin.com>; 'Naomi Lieberman' <naomi@faanmortgageadmin.com>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>  
**Subject:** RE: Harmony Village Sheppard - FAAN's report to Court

Good Afternoon Naveed,

We strongly disagree with your position and response. We have rights under the contracts to recover our loans to the project which your response simply ignores. We have not objected to the previous orders. We are objecting to this order.

We will oppose the distribution you are intending to seek with your motion, unless of course we can come to a mutually agreed upon solution in advance of the next scheduled hearing date.

Regards,

---

**From:** Naveed Manzoor [<mailto:naveed@faanmortgageadmin.com>]  
**Sent:** Friday, March 20, 2020 9:40 PM  
**To:** Charene Bunnett <charene@fortressrdi.com>; 'Daniel Sobel' <daniel@faanmortgageadmin.com>  
**Cc:** 'Shelby Draper' <shelby@faanmortgageadmin.com>; 'Naomi Lieberman' <naomi@faanmortgageadmin.com>; Vince Petrozza <vince@fortressrdi.com>; Jawad Rathore <jawad@fortressrdi.com>  
**Subject:** Re: Harmony Village Sheppard - FAAN's report to Court

Further to my discussion with Jawad earlier this week, the Trustee does not agree with FRDI's claim for priority to the funds that were distributed to the Trustee (the "HVS Proceeds") from the Court-appointed Receiver of the Harmony Village Sheppard Project (the "HVS Receiver"). Further, the HVS Receiver was granted two distribution Orders approving distributions to Sorrenti (and ultimately the Investors). FRDI was served with both motions, and despite actively participating in those court proceedings, never objected to those court orders. Those orders are now final and binding orders of the Court and any claim that FRDI may have had to the HVS Proceeds (which is denied) is barred by the operation of those orders.

As discussed, while the hearing scheduled for March 17, 2020 was adjourned due to the closure of the court caused by the COVID-19 situation, the Trustee intends to seek a distribution order (in the same form as you were previously served) as soon as practicable.

Please confirm by reply email that you do not intend to object to the distribution order. Otherwise, the Trustee will seek costs from FRDI with respect to whatever additional steps it deems necessary to obtain the distribution order with respect to the HVS Investors.

Regards,

Naveed  
(416) 258-6145

---

**From:** Charene Bunnett <[charene@fortressrdi.com](mailto:charene@fortressrdi.com)>  
**Sent:** Tuesday, March 17, 2020, 9:14 a.m.  
**To:** 'Naveed Manzoor'; 'Daniel Sobel'  
**Cc:** 'Shelby Draper'; 'Naomi Lieberman'; Vince Petrozza; Jawad Rathore  
**Subject:** RE: Harmony Village Sheppard - FAAN's report to Court

Good Morning FAAN,

Can you please respond to our inquiry with FAANs position on our request?

Thanks  
Charene

---

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**Sent:** Friday, March 13, 2020 4:55 PM  
**To:** Naveed Manzoor <[naveed@faanmortgageadmin.com](mailto:naveed@faanmortgageadmin.com)>; 'Daniel Sobel' <[daniel@faanmortgageadmin.com](mailto:daniel@faanmortgageadmin.com)>  
**Cc:** Shelby Draper <[shelby@faanmortgageadmin.com](mailto:shelby@faanmortgageadmin.com)>; 'Naomi Lieberman' <[naomi@faanmortgageadmin.com](mailto:naomi@faanmortgageadmin.com)>; Vince Petrozza <[vince@fortressrdi.com](mailto:vince@fortressrdi.com)>; Jawad Rathore <[jawad@fortressrdi.com](mailto:jawad@fortressrdi.com)>  
**Subject:** Harmony Village Sheppard - FAAN's report to Court

Good Afternoon FAAN,

Fortress Real Developments Inc. ("FRDI") is writing to you in connection with FAAN Mortgage Administrators ("Trustee") Second Report (Comprehensive Update) to court dated March 6, 2020 in our capacity as a creditor as it relates to the Harmony Village Sheppard project.

We understand you are bringing a motion to obtain an order to release 50% of the funds you are holding from the receiver to the syndicate mortgage lenders.

FRDI is owed \$1,290,362.16 in project related costs that based on the loan contracts rank in priority over FAAN Mortgage Administrators Inc., in its capacity as Court-appointed Trustee of Derek Sorrenti and Sorrenti Law Professional Corporation.

Under the terms of the loan contracts, particularly the Lender Acknowledgement and Consent and the Authority Form 9D each syndicate mortgage lender agreed to postpone their interest to senior ranking debt related to the project.

Postponement terms are outlined in section 11 of the Lender acknowledgement and consent as follows:



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 \$291,532,199.00 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 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.

**(EMPHASIS ADDED)**

Additional postponement terms are reiterated in section 22 of the Authority Form 9D as follows:

*I understand the Charge/Mortgage in which I have an interest is currently a second ranking Charge/Mortgage against the Property. I further acknowledge that a first ranking Charge/Mortgage against the Property in favour of Downing Street Financial Inc. currently exists. I understand that during the course of this investment the Borrower anticipates obtaining additional construction financing for the Property which is expected to replace the existing first Charge/Mortgage. I HEREBY UNDERSTAND, CONSENT AND AGREE THAT OTHER CHARGES/MORTGAGES AND/OR DEVELOPMENT AGREEMENTS MAY BE REGISTERED IN PRIORITY TO THE SECOND MORTGAGE AGAINST THE PROPERTY DURING THE TERM OF MY INVESTMENT IN THE SECOND MORTGAGE. I HEREBY CONFIRM THAT I UNDERSTAND AND AGREE THAT THE SECOND CHARGE/MORTGAGE IN WHICH I HAVE INVESTED SHALL BE REQUIRED TO POSTPONE AND STANDSTILL TO PRIOR*

CHARGES/MORTGAGES TO A MAXIMUM OF \$261,532,199.00 IN PRIORITY FINANCING TO THE PRIOR EXISTING CHARGE, SURETY. I UNDERSTAND THAT PRIORITY FINANCING TO THE SECOND CHARGE/MORTGAGE IS EXPECTED TO PERIODICALLY INCREASE OVER THE TERM OF THIS SECOND CHARGE/MORTGAGE AND THAT SUCH POSTPONEMENTS SHALL BE PERMITTED AND SHALL OCCUR ON THE BASIS OF COST CONSULTANT REPORTS PREPARED ON BEHALF OF THE BORROWER. I UNDERSTAND THAT PRIORITY FINANCING MAY BE REQUIRED IF THERE IS A SHORTFALL IN FUNDS PROVIDED BY OTHER INVESTORS TAKING SIMILAR SECURITY AS ME TO PROVIDE THE LOAN AMOUNT AND IF THAT OCCURS THEN I UNDERSTAND AND AGREE THAT OTHER CHARGES MAY BE REGISTERED AGAINST THE PROPERTY; I AGREE TO POSTPONE AND STANDSTILL TO FINANCING AND DEVELOPMENT AGREEMENTS, CONDOMINIUM REGISTRATIONS AGREEMENTS AND TO PARTIALLY DISCHARGE, WITHOUT PAYMENT WITH RESPECT TO LANDS REQUIRED FOR PUBLIC OR QUASI PUBLIC PURPOSES. I understand that save and except as outlined herein, there shall be no other postponements or encumbrances which affect the position or security afforded by the current second Charge/Mortgage.

**(EMPHASIS ADDED)**

FRDI advanced various funds into the Project and incurred expenses between September 2016 and August 2017 to support moving the project forward. In addition to lending these funds to move the project forward, we also advanced them to save the project and attempts to stave off a forced sale. FRDI was of putting together a deal that would have resulted in full coverage to the syndicate, unlike the deal that was ultimately accepted by Pinnacle.

These costs total approximately \$1.29M and funded the following project costs:

Payee	Costs	Amount
Downing Street Financial Inc. In Trust	Forebearance Fee	354,036.75
Sorrenti Law Professional Corporation	Law Resolution	3,479.83
Vector Financial Serv Cos Ltd.	Earnest Fee to new 1st	10,000.00
Vector Financial Services Ltd.	Earnest Fee to new 1st	90,000.00
RDA Inc.	Insurance	1,136.16
AIRD & BERJIS LLP in Trust	Legal	5,000.00
Bousteads Inc.	Planning Cost	680.76
Bousteads Inc.	Planning costs	1,000.00
Robirs Appleby LLP	Legal fees associated with First Mortgage	57,184.96
MarshallZehr Group Inc. in Trust	Commitment Deposit	90,000.00
Robirs Appleby LLP	Legal Fees	10,058.19
Bousteads Inc.	Planning costs	1,654.89
Robirs Appleby LLP	Legal Fees	19,151.90
Blair, Macleod, & Marshall Ltd.	Appraisal	21,470.00
Robirs Appleby LLP	Legal Fees	97,887.65
Robirs Appleby LLP	Legal Fees	7,814.00
Downing Street Financial	Interest Payment to the 1st	359,805.51
Vector Financial	Earnest Fee	100,000.00
Vector Financial	Earnest Fee	100,000.00
<b>Total</b>		<b>1,290,362.16</b>

FRDI had full rights for security in priority to the Derek Sorrenti/Sorrenti Law Professional Corporation ("SLPC") syndicate mortgage holders prior to the power of sale taking place. FRDI therefore is entitled to repayment of their claim at this time.

In addition to the contractual obligation of priority set out above, FRDI is aware the Trustee has opined on, favored with and obtained orders for similar priority claims from other parties in the past. In Trustee's Seventh Report to Court dated May 10, 2019 the Trustee reported they were in favor of a postponement to an arms-length corporation on the Peter Richmond project as that corporation has injected funds (also to save the project) at a cost lower than the borrower could have obtained from 3<sup>rd</sup> party financiers.

FRDI is requesting the Trustee forward them the available funds they are holding in trust as a payment towards this claim.

Failing the Trustee's agreement, we request that any portion of the motion being heard March 17<sup>th</sup>, 2020 related to the distribution of funds for the Harmony Village Sheppard project be set aside for now to allow time for effective discussions and potential resolution of this matter.

Should the trustee not be agreeable to either the claim, or setting aside this portion of the matter for a further date, please be advised FRDI will request an adjournment of the portion of the March 17 motion so that it can deliver reply materials and submit its position to the court on a mutually convenient hearing date.