

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**

FOURTH REPORT OF THE TRUSTEE

JANUARY 14, 2022



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

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INTRODUCTION

1. On September 30, 2019, pursuant to an order ("**Appointment Order**") of the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (Commercial List) ("**Court**"), FAAN Mortgage Administrators Inc. ("**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 (“**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 over the SML Administration Business, the Appointment Order, among other things, appointed Chaitons LLP as representative counsel (“**Representative Counsel**”) to represent the common interests of the Investors under the Sorrenti SMLs and established certain interim stabilization measures.
3. On March 6, 2020, the Trustee submitted its second report to Court in these proceedings (“**Second Report**”), which provided, among other things, background information concerning the SML Administration Business, a comprehensive update on the Trustee’s activities since its appointment, a status update for each project, recommendations regarding the use of Realized Property and distributions to Investors and further support for the relief proposed to be granted in the First Omnibus Order (described and defined below).
4. As set out in the Second Report, the Court previously granted an order commencing trusteeship proceedings in respect of Building & Development Mortgages Canada Inc. (“**BDMC**”) in Court File Number CV-18-596204-00CL (the “**BDMC Proceedings**”). BDMC was the principal mortgage broker used in more recent years by Fortress to raise initial financing from the investing public through syndicated mortgage loans (“**SMLs**”) for early-stage real estate developments. 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 *Mortgage Brokerage Lenders and Administrators Act, 2006*.
5. On May 5, 2020, the Court issued an Order (“**First Omnibus Order**”) that, among other things:

- (a) required 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 equal to 50% of the Bayview, Gotham, and HVS Realized Property; and
 - (b) authorized the Trustee to use the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, including to pay operating and professional costs associated with the SML Administration Business (“**Administrative Holdback**”).
- 6. On April 23, 2021, the Trustee submitted its third report in these proceedings (“**Third Report**”). The Third Report provided a further comprehensive update on the Trustee’s activities undertaken since the date of the Second Report, including a detailed description of the in-depth analysis the Trustee is conducting with respect to each real estate development project and a status update for each of those projects.
- 7. As described in the Third Report, the Trustee continues to attempt to maximize recoveries for Investors and to advance potential transactions related to various real estate projects involving the Sorrenti SMLs. In this regard, the Trustee has worked collaboratively with Empire Pace (1088 Progress) Ltd. (“**Progress Borrower**”) who has entered into and executed an agreement of purchase and sale (“**APS**”) in respect of phase 2 of the property located at 1088 Progress Avenue, Scarborough, Ontario (“**Progress Property**”); phases 1 and 2 collectively are referred to as the “**Progress Project**”).
- 8. The Progress Borrower and Derek Sorrenti (in Trust as first lender) and Olympia Trust Company (“**OTC**”) (in Trust as second lender), are parties to a loan agreement in respect of phases 1 and 2 of the Progress Project dated July 31, 2012 (“**Loan Agreement**”). The loan made pursuant to the Loan Agreement shall be referred to as the “**Progress Loan**”. Pursuant to the Progress Loan, which is discussed below, Sorrenti provided a syndicated mortgage loan to the Progress Borrower. The Loan Agreement is secured by a mortgage registered on title to the Progress Project, including the Progress Property (“**Progress Mortgage**”).
- 9. Capitalized terms used but not otherwise defined in this fourth report (“**Fourth Report**”) have the meanings ascribed to them in previous reports of the Trustee (“**Reports**”). Materials filed with the Court with respect to these proceedings, including the Reports and

the various Court orders issued in these proceedings, are accessible on the Trustee's website at: www.faanmortgageadmin.com ("**Trustee's Website**"). The Trustee intends to maintain the Trustee's Website for the duration of these proceedings and will be updating it as appropriate.

PURPOSE OF THE FOURTH REPORT

10. The purpose of this Fourth Report is to provide the Court and stakeholders with the Trustee's recommendation that, in the circumstances, it supports the proposed sale of the Progress Property ("**Progress Sale Transaction**") by the Progress Borrower to a third-party purchaser, Everest Development Group of Companies Inc. ("**Purchaser**"¹), pursuant to the APS. A copy of the APS, with certain confidential information redacted, is attached hereto as **Appendix "2"**.
11. As is set out below, the APS requires the Trustee and OTC to discharge the Progress Mortgage registered on title to the Progress Property upon receipt of, or arrangements satisfactory to the Trustee made for the receipt of, the portion of the purchase price set out in the APS that is in excess of: (i) the amounts owed under the Cameron Stephens Mortgage (defined herein), (ii) amounts owed in respect of the FG Payment (defined herein), and (iii) reasonable and documented costs properly incurred to effect the closing of the Progress Sale Transaction (the "**Sorrenti Discharge Payment**"). The Fourth Report supports the Progress Borrower's request for an Order ("**Progress Vesting and Approval Order**") that, among other things:
 - (a) Confirms and approves the Trustee and OTC discharging the Progress Mortgage registered on title to the Progress Property in respect of the Progress Loan in connection with the Progress Sale Transaction upon receipt of the Sorrenti Discharge Payment and authorizes the Trustee, OTC, the Progress Borrower, and the Purchaser to take any other steps necessary to facilitate the closing of the Progress Sale Transaction, in their sole discretion;
 - (b) Vests all of the Debtor's right, title and interest in and to the Purchased Assets described in the APS in the Purchaser, free and clear of and from any and all Claims including any encumbrances or charges created by the Order of the

¹ The Purchaser has requested to assign its rights under the APS to Lawrence Towers LP, pursuant to section 6.5 of the APS. The documentation related to this request is in progress.

Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated September 30, 2019 in these proceedings; (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 to the Progress Approval and Vesting Order and, for greater certainty, orders that all of the Encumbrances (as defined in the Progress Approval and Vesting Order) affecting or relating to the Progress Property are expunged and discharged as against the Progress Property; and

- (c) Seals **Confidential Appendix “1”** to this Fourth Report, as discussed further herein, until further order of the Court.
12. In support of the Progress Borrower’s request for the Progress Vesting and Approval Order, this Fourth Report describes the following matters:
- (a) an overview of the Progress Project and the underlying Sorrenti SML pursuant to which certain of the Investors loaned money in respect of the Progress Project (“**Progress Individual Lenders**”);
 - (b) the details of the Progress Sale Transaction;
 - (c) the details of the marketing process conducted for the Progress Property;
 - (d) information that supports the Trustee’s recommendation to discharge the Progress Mortgage in connection with the Progress Sale Transaction upon receipt of the Sorrenti Discharge Payment, and to take any other steps necessary to facilitate the closing of the Progress Sale Transaction, in its sole discretion; and
 - (e) a confidential appendix that includes an unredacted copy of the APS and provides, among other things, a summary of the offers received for the Progress Property, the financial details of the Progress Sale Transaction and the estimated Realized Property available for distribution to the Progress Individual Lenders.

SCOPE AND TERMS OF REFERENCE

13. In preparing this Fourth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, Sorrenti, Fortress, and the Progress Borrower. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the projects, including the Progress Project and

the administration business of Sorrenti. While the Trustee reviewed various documents provided by Sorrenti and the Progress Borrower, (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.

14. Some of the information used and relied upon in preparing this Fourth 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 Fourth Report may vary from the projections and information used to prepare this Fourth 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 Fourth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
15. This Fourth Report has been prepared for the use of this Court and Sorrenti's stakeholders as general information relating to Sorrenti and the Progress Project and to assist the Court with respect to the Progress Borrower's request for the proposed Progress Approval Order. Accordingly, the reader is cautioned that this Fourth Report may not be appropriate for any other purpose.
16. All references to dollars are in Canadian currency.

OVERVIEW OF THE PROGRESS PROJECT

17. The Progress Project is a real estate development project located at the south-west corner of Sheppard Avenue East and Progress Avenue in Toronto, Ontario. The project consists of two phases. The first phase of the Progress Project ("**Phase 1**"), located on the south side of the Progress Property and comprised of 105 stacked townhomes, was completed

in 2018 and the sale transactions for all of the Phase 1 townhomes closed prior to the Trustee's appointment. In 2018, Sorrenti discharged its charge in respect of the Progress Mortgage from the real property comprising Phase 1. There were no proceeds paid to the Progress Individual Lenders from Phase 1 as it appears that the proceeds were used primarily to repay prior ranking loans, including construction loans.

18. Phase two of the Progress Project ("**Phase 2**"), an approximately one-acre parcel of vacant land, is proposed to be a high density 18 storey residential condominium with a retail component on the ground floor. The Progress Mortgage remains registered on title to Phase 2 of the Progress Project. While development approvals appear to be advanced, all approvals have not yet been received.

OVERVIEW OF THE PROGRESS LOAN

19. According to Sorrenti's records, as at December 31, 2021, the total amount owing to the Progress Individual Lenders in connection with the Loan Agreement was approximately \$25.5 million (comprised of approximately \$17.3 million in principal and approximately \$8.2 million in accrued interest). Sorrenti and OTC hold charges registered on title to the Progress Property in second position.
20. The Progress Borrower made interest payments of approximately \$3.3 million through to March 2016, after which interest began, and continues, to accrue.² A statement setting out the amount of principal (\$17,327,000) and interest outstanding (\$8,202,327.13) on the Loan Agreement as at January 14, 2022, is attached as **Appendix "3"**.
21. Based on Sorrenti's records, there are 364 Progress Individual Lenders.
22. In addition to the Progress Loan, there is a first priority mortgage registered on title to the Progress Property in favour of Cameron Stephens Mortgage Capital ("**Cameron Stephens**") that, as at December 31, 2021, totaled \$7 million of principal with interest being up to date ("**Cameron Stephens Mortgage**"). The Trustee understands that Cameron Stephens advanced \$7 million to the Progress Borrower in 2018 to refinance the then existing secured debt as well as to provide working capital for the Progress Borrower. In connection with such refinancing, Sorrenti, on behalf of the Progress Individual Lenders executed a postponement in favour of Cameron Stephens, which was registered on title

² Per diem interest on the Progress Loan is \$3,850.44.

to the Progress Property. The Cameron Stephens Mortgage is the only known charge that is registered on title to the Progress Property in priority to the Progress Loan. Cameron Stephens has been included in the service list for the purposes of the motion seeking the Progress Vesting and Approval Order. A statement from Cameron Stephens setting out the amount of principal (\$7 million) and accrued interest (\$21,191.78) as at January 14, 2022, is attached as **Appendix “4”**. A copy of the parcel register for PIN 06177-0643(LT) (i.e., Phase 2 of the Progress Property) is attached as **Appendix “5”**.

23. The Cameron Stephens Mortgage had an original two-year term. At the completion of the two-year term, Cameron Stephens and the Progress Borrower agreed to extend the term of the Cameron Stephens Mortgage on multiple occasions; the most recent extension matured on December 1, 2021. To further extend its mortgage, Cameron Stephens required an extension fee to be paid. The Progress Borrower advised the Trustee that it had funded the December 1, 2021 interest payment to Cameron Stephens but that by doing so it had exhausted substantially all of its remaining cash flow and accordingly was unable to pay the extension fee required by Cameron Stephens or any future interest payments. To prevent Cameron Stephens from potentially taking steps to enforce on its mortgage in light of the pending sale transaction, FG Corp. (“**FG**”), a company controlled by certain of the principals of the Progress Borrower, paid \$73,867.25 to Cameron Stephens in respect of the loan extension fee and the interest payment for December, 2021 that was due on January 1, 2022 (“**FG Payment**”). As a result of the FG Payment, the Cameron Stephens Mortgage is currently in good standing. The Trustee agreed that FG would be entitled to be repaid the FG Payment from the proceeds of the sale of the Progress Property in priority to amounts that would otherwise be payable to the Trustee in respect of the Progress Mortgage, as such amounts would have otherwise been payable to Cameron Stephens in priority to the Trustee.
24. In addition to obtaining a title search of the Progress Property, the Trustee also obtained an Ontario Personal Property Security Act (“**PPSA**”) search of the Progress Borrower. A copy of the PPSA search is attached as **Appendix “6”**. The PPSA search discloses that Aviva Insurance Company of Canada (“**Aviva**”) registered a security interest against the Progress Borrower in all deposits and any interest earned thereon plus any excess closing proceeds as defined in a deposit trust agreement dated May 13, 2013. As the title search discloses, Aviva used to hold a charge on the Progress Project, but that security was discharged. To the best of the Trustee’s knowledge, there are no amounts owing to Aviva.

Regardless, Aviva has been added to the service list for the purposes of the motion seeking the Progress Approval Order.

CLASS ACTION PROCEEDINGS

25. Sorrenti is a named defendant in five proposed class actions commenced in 2016 and 2017 related to various Fortress related real estate development projects including the Progress Project. The Progress Borrower is also a named defendant in the proposed class action related to the Progress Project (Court File No. CV-16-560268-00CP) ("**Progress Class Action**"). The Trustee has consulted with Class Counsel to advise them, on a confidential basis, of the terms of the Progress Sale Transaction, and understands that Class Counsel takes no position in respect of the Progress Sale Transaction. Class Counsel has been included in the service list for the motion seeking the Progress Approval Order.
26. The Trustee notes that the Progress Sale Transaction does not contemplate a release of the Progress Borrower.

SALES AND MARKETING PROCESS UNDERTAKEN BY THE PROGRESS BORROWER

Background

27. Prior to the Trustee's appointment, the Trustee understands that the Progress Property was marketed for sale on an informal basis by the Progress Borrower and the Purchaser expressed interest in acquiring the Progress Property in or around 2019. At that time, the Trustee understands that the Progress Borrower approached Sorrenti with a proposal to sell the Progress Property to the Purchaser.
28. As set out in the Second Report, Sorrenti provided the Trustee with a copy of a non-binding letter of intent dated February 5, 2019 ("**LOI**") from the Purchaser to purchase Phase 2 which had the following key features:
 - (a) the LOI required the discharge of the Progress Mortgage;
 - (b) no cash proceeds were contemplated to be paid to the Progress Individual Lenders at the time of the closing of the proposed transaction;

- (c) \$1 million of cash proceeds would be paid to the Progress Borrower on closing and \$1 million would be payable to the Progress Borrower via a vendor takeback mortgage;
 - (d) the Progress Individual Lenders would retain an interest in only the commercial/retail portion of the undeveloped Phase 2, which the Purchaser intended to build, and such interest would be delivered to the Progress Individual Lenders once the Phase 2 development was completed (including the building of the residential component of Phase 2);
 - (e) the Progress Individual Lenders would not retain an interest in the residential component of Phase 2;
 - (f) the LOI was conditional on due diligence to be performed by the Purchaser; and
 - (g) the LOI expired on February 11, 2019.
29. Sorrenti advised that on or about August 13, 2019, approximately six months after the LOI expired and shortly before the making of the Appointment Order, Sorrenti issued a notice to the Progress Individual Lenders regarding the LOI and providing a copy of the LOI ("**Sorrenti Notice**"). Notwithstanding the terms of the LOI that required the full discharge of the Progress Mortgage, it appears that the Sorrenti Notice incorrectly advised the Progress Individual Lenders that the LOI required only a partial discharge and did not accurately convey the LOI's requirement to provide a full discharge of the Progress Mortgage at time of the closing of the transaction. The deadline for responses set out in the Sorrenti Notice was August 23, 2019. Sorrenti advised the Trustee that the majority of the Progress Individual Lenders that provided feedback were in support of the LOI.
30. The Trustee understands that, for a variety reasons, some of which have not been disclosed to the Trustee, Sorrenti did not act on the feedback obtained from the Progress Individual Lenders.
31. After reviewing the LOI, the Trustee had many concerns regarding the transaction proposed therein. These concerns included the following: (i) no cash proceeds on closing were to be paid to the Progress Individual Lenders despite the requirement to discharge their mortgage security, while cash proceeds were proposed to be paid on closing to the Progress Borrower; (ii) the Progress Individual Lenders would not retain any mortgage

security over the Progress Property and would only be conveyed ownership of the commercial space from the Purchaser if and when the commercial space could be severed and assigned a separate property identification number; (iii) the execution risk associated with successfully completing the project; (iv) the uncertainty related to the realizable value of the commercial space once completed; and (v) the required due diligence period set out in the LOI, which had expired in accordance with its terms.

32. Shortly after its appointment, the Trustee had discussions with the Progress Borrower, its counsel, and the Purchaser regarding the Trustee's concerns with the respect to the LOI and the possibility of advancing an acceptable transaction, however, such discussions did not result in an offer being submitted for the Progress Property at that time.

2021 Sale Process

33. In 2021, the Trustee had various discussions with the Progress Borrower regarding the status of the Progress Property. The Progress Borrower stated that it was unable and/or unwilling to continue the development of the Progress Property and that a sale of the Progress Property was the only option available as the Cameron Stephens Mortgage was maturing and the Progress Borrower was running out of funds to service the mortgage. As such, the Trustee and the Progress Borrower agreed that there needed to be a transparent and public process to sell the Progress Property and that the Trustee must be involved in that process. The Trustee was also of the view (and the Progress Borrower agreed) that a sale of the Progress Property by the Progress Borrower would likely yield a better recovery than a sale in an insolvency or enforcement process.
34. Accordingly, on June 18, 2021, following the Trustee's discussions with the Progress Borrower, the Progress Borrower and the Trustee entered into a listing agreement with Lennard Commercial Realty ("**Listing Agent**"), pursuant to which the Progress Property was listed for sale with no stated list price and with an offer deadline of July 21, 2021 ("**Offer Deadline**"), which was subject to extension by the Progress Borrower and the Trustee.
35. A notice was sent by the Trustee to the Progress Individual Lenders advising of the listing of the Progress Property on July 7, 2021 ("**July 2021 Investor Notice**"). The notice also advised that should a sale take place it is unknown what amounts will be available to satisfy the Progress Individual Lenders after repayment of the Cameron Stephens

Mortgage and any other priority amounts or necessary closing costs. A copy of the July 2021 Investor Notice is attached as **Appendix “7”**.

36. In 2019, shortly after its appointment the Trustee retained an independent real estate appraiser to provide the Trustee with an appraisal of the Progress Property. Concurrent with the listing of the Progress Property in 2021, the Trustee obtained an update to its appraisal of the Progress Property (collectively the “**Appraisals**”).
37. Following the marketing activity undertaken by the Listing Agent in June and July 2021, no offers were received by the Listing Agent by the Offer Deadline; however, shortly thereafter one formal offer and one verbal offer were submitted. Neither of the offers submitted were acceptable to the Progress Borrower nor were they supported by the Trustee as, among other things, the offers contained material conditions to closing.
38. Subsequent to the Offer Deadline, the Trustee requested the Progress Borrower to reengage with the Purchaser to determine if it was still interested in acquiring the Progress Property and the parties engaged in preliminary discussions regarding same.
39. Concurrent with these discussions, in an effort to obtain a higher sale price to maximize the recovery for the Progress Individual Lenders, the Progress Property was relisted for sale by the Listing Agent in September 2021.
40. During the period from September 2021 to December 2021, the Trustee and/or the Listing Agent received multiple additional offers including a formal offer from the Purchaser, which the Trustee considered to be the most favourable in the circumstances.
41. Based upon information and reporting received from the Listing Agent, the most recent approximately five-month sale process for the Progress Property (from July to December, 2021) conducted by the Listing Agent consisted of the following (“**Sale Process**”):
 - (a) Marketing through multiple channels including, among other things, six email campaigns advertising the Progress Property for sale to approximately 1,200 prospective purchasers, spanning both local and national markets;
 - (b) Two separate listings of the opportunity, one commencing in June 2021 and one commencing in September 2021;
 - (c) Direct solicitation of potential purchasers by telephone;

- (d) Advertising in the Globe & Mail newspaper; and
- (e) Physical signage on the Progress Property.

The Purchaser's Offer

42. The Purchaser's offer initially contained business terms similar to those contained in the LOI it submitted in 2019, including the Progress Individual Lenders only retaining an interest in the retail/commercial space once it was built by the Purchaser.
43. Following several discussions and negotiations with the Trustee and at the request of the Trustee, the Purchaser submitted a revised offer on November 1, 2021 that contemplated the payment of the balance of the purchase price after repayment of the Cameron Stephens Mortgage by way of two alternatives (i) an all-cash offer ("**Cash Alternative**") or (ii) the conversion of the Progress Mortgage into an equity interest in the future development ("**Equity Alternative**"). Under the Equity Alternative, the Progress Individual Lenders would become equity partners in the entire Phase 2 development, by entering into a limited partnership agreement with the Purchaser; however, the Progress Individual Lenders would not receive cash on the closing of the sale transaction and any recovery would depend on the timing and completion of the Progress Property. In addition, and importantly, notwithstanding the possibility of additional amounts that could be realized from being an equity partner in the Progress Property alongside the Purchaser should the Purchaser successfully complete the Progress Property (as compared to the Cash Alternative), the Equity Alternative did not address the issues that the Trustee had previously identified with the transaction contemplated by the LOI (as discussed above), that could significantly impact the ultimate timing and quantum of recoveries to the Progress Individual Lenders. Significantly, the concerns regarding security for the Progress Individual Investors were not addressed.
44. The Trustee analyzed both alternatives presented by the Purchaser. The Trustee noted that the Equity Alternative was an improvement over the Purchaser's initial offer submitted in the Sale Process as the Progress Individual Lenders would retain an unsecured interest in the entire Phase 2 development (both residential and commercial) rather than only the commercial/retail portion. Notwithstanding this improvement, the Trustee is of the view that the Cash Alternative is the best option in the circumstances for the Progress Individual Lenders for several reasons including that: (i) it provides a cash payout immediately upon

closing of the transaction; (ii) the recovery for the Progress Individual Lenders is certain and quantifiable; (iii) it removes the various risks that would exist for the Progress Individual Lenders in the Equity Alternative, including that under that alternative the ultimate recovery for the Progress Individual Lenders would depend on the successful development of the Progress Property, completion of which the Trustee understands is estimated to be at least 3 years away and in circumstances where construction financing has not yet been secured; and (iv) it provides finality for the Progress Individual Lenders whose loans have been outstanding for nearly 10 years.

45. The Trustee and the Purchaser continued their discussions regarding the Cash Alternative and ultimately agreed to various amendments to the Purchaser's revised offer, including that the balance of the purchase price would be payable in cash on closing and, the removal of all due diligence conditions in favour of the Purchaser. Thereafter the Purchaser submitted a further revised offer to the Trustee on December 3, 2021, which the Trustee provided to the Progress Borrower for its review and execution. The Progress Borrower and the Purchaser agreed to certain minor amendments and the APS was fully executed on December 13, 2021. The Trustee consulted with Representative Counsel throughout the negotiating process with the Purchaser.
46. The key terms of the APS (other than the purchase price, which is confidential and subject to a request for a sealing order for the reasons set out below) are as follows:
 - (a) The Purchaser was required to and has paid a deposit of \$1 million, which is being held in trust by the Trustee's counsel pending closing;
 - (b) The balance of the purchase price is due in cash on closing;
 - (c) Should the Purchaser fail to meet certain closing timelines set out in the APS, a late payment fee is payable by the Purchaser;
 - (d) The sale is being conducted on an 'as is, where is' basis, with limited representations and warranties of the Progress Borrower; and
 - (e) The only conditions to closing are the consent of the Trustee and the Court granting the Progress Approval Order.

Impact of the Progress Sale Transaction on the Progress Individual Lenders

47. Should the Progress Sale Transaction be approved, on closing, following payment of a commission to the Listing Agent of 1.25% of the purchase price, repayment of amounts owing under the Cameron Stephens Mortgage, the FG Payment, and other closing costs there will be certain proceeds available for distribution to the Progress Individual Lenders in the near term; however, there will still be a significant shortfall in respect of amounts due to the Progress Individual Lenders.
48. In light of the anticipated shortfall for the Progress Individual Lenders, the Trustee considered whether there were alternatives to the Progress Sale Transaction that could have a more favourable result. The Trustee is of the view that the only likely alternative would have been a long-term hold by the Progress Borrower until such time that the real estate market could potentially support a higher price for the Progress Property; however, the Trustee understands that option is not feasible as the Progress Borrower has no funds remaining to service the Cameron Stephens Mortgage and has advised it is not in a position to advance development of the Progress Property in the current circumstances.
49. As noted above, interest on the Cameron Stephens Mortgage is current and the Progress Borrower has no further funds to continue to service the mortgage. Should the Progress Sale Transaction not be completed, the Trustee understands that the Progress Property would likely be sold pursuant to an enforcement proceeding, a process which would likely result in a materially lower purchase price than that contemplated by the Progress Sale Transaction and, accordingly, a lower recovery for the Progress Individual Lenders. Further, interest and fees would continue to accrue on the Cameron Stephens Mortgage, which would further erode the recovery for the Progress Individual Lenders.
50. The Trustee notes that, while the purchase price in the APS is less than the value in the Appraisals³, after having considered: (i) the merits of the Progress Sale Transaction; (ii) the alternatives available including the Progress Borrower's inability to continue to advance the Progress Property or to service the Cameron Stephens Mortgage; and (iii) the Sales Process undertaken for the Progress Property by the Listing Agent, which spanned five months resulted in multiple conditional offers each lower than the

³ Due to the commercially sensitive nature of the information contained therein, the Appraisals, including the underlying assumptions, are discussed in **Confidential Appendix "1"**.

Purchaser's offer, the Trustee and Representative Counsel are of the view that the Progress Sale Transaction is appropriate and the best option in the circumstances. The Trustee and Representative Counsel recognize that although the Progress Sale Transaction only provides a partial recovery for the Progress Individual Lenders, it offers the greatest and most expedient opportunity for some recovery, and accordingly are of the view that it is appropriate to consent to discharging the Progress Mortgage registered on title to the Progress Property as part of the Progress Sale Transaction.

Future Distribution to Progress Individual Lenders

51. In accordance with the First Omnibus Order, the Administrative Holdback in respect of Realized Property is 50%. The Trustee has determined that should the proceeds payable to the Trustee from the Progress Sale Transaction be received, it will likely be appropriate at that time to recommend a further reduction to the Administrative Holdback. The Trustee is scheduled to return to Court for its next omnibus motion on February 28, 2022 ("**February Omnibus Hearing**") at which time the Trustee intends to seek an amendment to the First Omnibus Order reducing the quantum of the Administrative Holdback. As the February Omnibus Hearing is scheduled to take place shortly after the anticipated closing date for the Progress Sale Transaction, in order to avoid the cost of multiple distributions within a matter of weeks of one another, it is the Trustee's intention to make a *pro rata* distribution of the Realized Property from the Progress Sale Transaction to the Progress Individual Lenders net of the amended Administrative Holdback following the February Omnibus Hearing.

Investor Notice

52. Contemporaneous with the service of this Fourth Report, the Trustee sent a notice to the Progress Individual Lenders on January 14, 2022 ("**January 2022 Investor Notice**") summarizing certain of the matters described in this Fourth Report. While the January 2022 Investor Notice also did not disclose any of the financial details of the Progress Sale Transaction or the quantum of Progress Individual Lenders' recovery, it advised the Progress Individual Lenders of the Progress Borrower's intention to seek Court approval of the Progress Sale Transaction which would include the discharge of the Progress Mortgage and further advised that the Trustee provided Representative Counsel with all relevant financial and other information with respect to the Progress Sale Transaction and

that both the Trustee and Representative Counsel support the relief being sought by the Progress Borrower in the Progress Approval Order.

53. The January 2022 Investor Notice invited the Progress Individual Lenders to consult with Representative Counsel and to review the materials filed in support of the Progress Approval Order, which the Trustee intends to post on the Trustee's Website forthwith following the service of this Fourth Report. The Trustee also provided the Progress Individual Lenders with information concerning the hearing of the Progress Borrower's motion for the Progress Approval Order and the Trustee's intentions with respect to the timing of distribution of the amount to be received from the Progress Sale Transaction. A copy of the January 2022 Investor Notice is attached as **Appendix "8"**.

CONFIDENTIAL APPENDIX

54. As the Trustee is concerned about the effect on any future sales process that would need to be implemented for the Progress Property should the Progress Sale Transaction not close for whatever reason, the Trustee is not publicly disclosing the purchase price at this time. As a result, it is also not possible for the Trustee to publicly disclose the estimated recovery for the Progress Individual Lenders from the Progress Sale Transaction. The Trustee has provided all relevant financial and other information concerning the Progress Sale Transaction and Investor recovery to Representative Counsel, who has confirmed its support for the proposed transaction and Progress Approval Order.
55. A summary of all the offers received for the Progress Property in the Sale Process, a copy of the unredacted APS, copies of the Appraisals and information detailing the estimated recovery for Progress Individual Lenders, should this Honourable Court grant the Progress Vesting and Approval Order, is included as **Confidential Appendix "1"** to this Fourth Report and is subject to a request for a sealing order. Given the commercially sensitive information in the APS and the Appraisals, and the competitive nature of the marketing process that culminated in the APS, as well as the estimated recovery to Progress Individual Lenders, the Trustee is concerned that public disclosure of the information contained in **Confidential Appendix "1"** prior to Court approval and the closing of a transaction may jeopardize the proposed transaction and the recoveries to the Progress Individual Lenders. As such, the Trustee is requesting that **Confidential Appendix "1"** be sealed pending further Order of the Court.

THE PROGRESS VESTING AND APPROVAL ORDER

56. The Trustee has reviewed the proposed Progress Vesting and Approval Order, which is based on the Commercial List Model Approval and Vesting Order. As both the title search and the PPSA search make clear, only Cameron Stephens and the Trustee have a registered secured interest in respect of the Progress Property subject to the APS. Therefore, only Cameron Stephens and the Trustee are entitled to receive the proceeds of the Progress Sale Transaction. As a result, the Progress Approval Order contemplates that, in accordance with the terms of the APS, the proceeds of the Progress Sale Transaction will be distributed first to Cameron Stephens, and second to the Trustee (other than the FG Payment described above). All entities with a potential security interest in the Progress Property or against the personal property of the Progress Borrower have been served with this motion.

CONCLUSION AND RECOMMENDATION

57. For the reasons noted above, the Trustee and Representative Counsel are of the view that, in light of the available alternatives and the robust Sales Process, the discharge of the Progress Mortgage from the Progress Property and the Progress Approval Order are in the best interests of the Progress Individual Lenders in the circumstances. Accordingly, the Trustee recommends that the proposed Progress Approval Order be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of January, 2022.

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

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

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

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

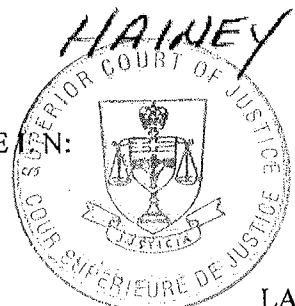
REGISTRAR *C. Irwin*
GREFIER-Registral

Court File No.

CV-19-628258-0002

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE)
)



Monday, THE *30th*
DAY OF *SEPTEMBER*, 2019

BETWEEN:
(Court Seal)

LAW SOCIETY OF ONTARIO

Applicant

and

DEREK SORRENTI and
SORRENTI LAW PROFESSIONAL CORPORATION

Respondents

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

ORDER

THIS APPLICATION, made by the Law Society of Ontario (the "Law Society") for an Order pursuant to section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 appointing FAAN Mortgage Administrators Inc. ("FAAN Mortgage") as trustee (in such capacity, the "Trustee"), without security, of all of the assets, undertakings and properties of Derek Sorrenti or Sorrenti Professional Law Corporation ("Respondents") relating to the Respondents' trusteeship and administration of syndicated

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

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

SERVICE

1. THIS COURT ORDERS that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 49.47 of the *Law Society Act* and section 101 of the *Courts of Justice Act*, FAAN Mortgage is hereby appointed as Trustee, without security, of all of the assets, undertakings and properties in the possession, power or control of the Respondents relating to the Respondents’ professional business (as defined in the *Law Society Act*) of trusteeship and administration of syndicated mortgage loans in Fortress projects (the “**Syndicated Mortgage Loan Administration Business**”), including, without limitation, all of the assets in the possession or under the control of the Respondents, its counsel (if any), agents and/or assignees relating to the Syndicated Mortgage Loan Administration Business but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage loans (“**Investors**”), brokers, or

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borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively referred to as “**Property**”), which Property, for greater certainty, includes any and all real property charges in favour of the Respondents (the “**Real Property Charges**”), including, without limitation, any and all monetary and non-monetary entitlements in respect to the assets and values thereunder, the period of which appointment shall run from 12:01 a.m. on the date hereof until such date that all assets under all syndicated mortgage loans related to the Syndicated Mortgage Loan Administration Business have been realized and all Property has been distributed to those entitled to it.

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

IDENTIFICATION OF THE PROPERTY

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

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

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

TRUSTEE’S POWERS

8. THIS COURT ORDERS that the Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Trustee is hereby expressly empowered and authorized to

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do any of the following where the Trustee considers it necessary or desirable with respect to the Property:

- a. subject to paragraphs 4-7 above, to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b. subject to paragraphs 4-7 above, to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the holding of mortgage security in trust on behalf of Investors, the administering of the mortgages, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c. to manage, operate, and carry on the Syndicated Mortgage Loan Administration Business, including, without limitation, the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Syndicated Mortgage Loan Administration Business, or cease to perform any contracts of the Respondents related to the Syndicated Mortgage Loan Administration Business;
- d. to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including, without limitation, those conferred by this Order;

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- e. to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Respondents' Syndicated Mortgage Loan Administration Business or any part or parts thereof;
- f. to receive and collect all monies and accounts now owed or hereafter owing to the Respondents in connection with the Syndicated Mortgage Loan Administration Business and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents, including, without limitation, such security held on behalf of Investors;
- g. to settle, extend or compromise any indebtedness owing to the Respondents in connection with the Syndicated Mortgage Loan Administration Business;
- h. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondents in connection with the Syndicated Mortgage Loan Administration Business, the Property or the Trustee, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- i. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Trustee in its discretion may deem appropriate;

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- j. with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in such case notice under subsection 63(4) of the *Ontario Personal Property Security Act* or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required;
- k. to restructure the Property in a manner that the Trustee considers reasonable, including, without limitation, the conversion, in whole or in part, of the Property or any part or parts thereof, out of the ordinary course of business, into an alternative or different interest in the capital structure of the Property or any part or parts thereof, including, without limitation, an ownership interest therein;
- l. to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- m. to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property and the Trustee's mandate, and to share information, subject to such terms as to confidentiality as the Trustees deems advisable;
- n. to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- o. to apply for any permits, licences, approvals or permissions with respect to the Syndicated Mortgage Loan Administration Business as may be required by any

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governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Respondents;

- p. to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondents;
- q. to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have with respect to the Property or the Syndicated Mortgage Loan Administration Business; and
- r. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so to the exclusion of all other Persons (as defined below), including the Respondents, without interference from any other Person and without regard to any arrangement in existence as of the date hereof between the Respondents and Investors as to how and when such actions or steps are to be taken. For greater certainty, the Trustee shall be and is empowered to take such actions or steps without seeking instructions from Investors where the Trustee determines, in its sole discretion, that it is necessary and appropriate to do so (having regard for the interests of Investors), and in all other cases, the Trustee is specifically authorized to continue to comply with the existing arrangements, including any deemed consent provisions contained therein. Nothing in this paragraph is intended to limit the Law Society's ability to carry out the Identification.

DUTY TO PROVIDE ACCESS AND COOPERATION TO THE TRUSTEE

9. THIS COURT ORDERS that, for the purpose of conducting the Identification described in paragraph 4 above, the Respondents shall provide the Law Society with access to their business premises at 310-3300 Highway 7, Vaughan, Ontario, and any other premises or storage facilities maintained by the Respondents in connection with their professional business that contain Property or Excluded Property, during customary business hours at the Law Society's request.
10. THIS COURT ORDERS that (i) the Respondents; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) all other individuals, firms, corporations, governmental bodies or agencies or other entities having notice of this Order, including, without limitation, Fortress, any entity that is a joint venture among a Fortress entity and another entity, and each director, officer, employee and agent of Fortress (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Trustee, and shall deliver all such Property to the Trustee upon the Trustee's request.
11. THIS COURT ORDERS that, pursuant to and without limiting the generality of the foregoing, all Persons shall, unless otherwise instructed by the Trustee (i) deliver to the Trustee (or, in the case of RRSP or other registered funds administered by Olympia Trust Company ("**OTC**"), Computershare Trust Company of Canada ("**Computershare**") or any other person acting for Investors in respect of investments held through RRSPs or other registered accounts or funds (each an "**RRSP Trustee**"), not release to any Person

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without further Order of this Court) any and all monies held in trust that are related to the Syndicated Mortgage Loan Administration Business (collectively, the "**Trust Funds**"), which Trust Funds, for greater certainty, include any and all monies in any OTC, Computershare or other RRSP Trustee account that are purported to be held in trust for the Investors in or beneficiaries under any of the Real Property Charges, including, without limitation, all monies held by way of interest reserves to satisfy interest payments to such Investors or beneficiaries, which Trust Funds are to be held or used by the Trustee in accordance with the terms of this Order and any further Order of this Court; and (ii) upon the Trustee's request, provide an accounting of all funds received from or on behalf of the Respondents related to the Syndicated Mortgage Loan Administration Business.

12. THIS COURT ORDERS that all Persons shall forthwith advise the Trustee of the existence of any books, emails, user accounts, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondents related to the Syndicated Mortgage Loan Administration Business, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information, including copies of any previously performed electronic back ups (the foregoing, collectively, the "**Records**") in that Person's possession or control, and, subject to paragraph 7 above, shall provide to the Trustee or the Law Society or permit the Trustee or the Law Society to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to

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the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Trustee for the purpose of allowing the Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

INTERIM STABILIZATION MEASURES

14. THIS COURT ORDERS that the Trustee shall:

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

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

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

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

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

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

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

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

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

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

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

REPRESENTATIVE COUNSEL

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

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

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

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

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

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

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

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

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

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

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

24. THIS COURT ORDERS that Representative Counsel may communicate with any Investor who has not opted out pursuant to Paragraph 23 hereof by electronic or regular mail at the addresses provided pursuant to Paragraph 21(a) or such other addresses provided by the applicable Investor to Representative Counsel.
25. THIS COURT ORDERS that Representative Counsel shall have no liability as a result of its appointment or the performance of its duties or in carrying out the provisions of this Order and any subsequent Orders in these proceedings, save and except for any gross negligence or willful misconduct on its part.
26. THIS COURT ORDERS that, subject to prior approval by the Trustee or further Order of the Court, Representative Counsel shall be paid its reasonable fees and disbursements, at its standard rates and charges, and shall be entitled to and is hereby granted a charge (the "**Representative Counsel Charge**") on the Property as security for its fees and disbursements in respect of these proceedings, both before and after the making of this Order, and that the Representative Counsel Charge shall form a charge on the Property ranking immediately subordinate in priority to the Trustee's Charge (as defined below) but ranking in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

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

LAND TITLE DOCUMENTS

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

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

b. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Trustee's name or in the name and on behalf of the Respondents for any purpose pursuant to this Order, including, without limitation, any documents in connection with any registration, discharge, partial discharge, transfer, assignment, postponement, subordination or similar dealings in respect of any mortgage or interest in land (each, a "**Land Title Document**") and, for greater certainty, the applicable Real Property Authority is hereby directed, following (i) registration of this Order or being presented with a certified true copy of this Order and (ii) being presented with such Land Title Document, to register such Land Title Document to register, discharge, partially discharge, transfer, assign, postpone, subordinate or otherwise deal with such mortgage in accordance with such Land Title Document without any obligation to inquire into the propriety of the execution or effect of such Land Title Document.

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

33. THIS COURT ORDERS that, with the exception of any ongoing, pending or future regulatory proceedings by the Law Society under the *Law Society Act*: (i) no Proceeding against or in respect of any of the Respondents in connection with the Syndicated Mortgage Loan Administration Business, or the Property shall be commenced or continued except with the written consent of the Trustee or with leave of this Court; and (ii) any and all Proceedings currently under way against or in respect of any of the Respondents' Syndicated Mortgage Loan Administration Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

34. THIS COURT ORDERS that all rights and remedies against the Respondents in connection with the Syndicated Mortgage Loan Administration Business, the Trustee, or affecting the Property (including, without limitation, pursuant to any arrangement in existence as of the date hereof between the Respondents and any other Person in relation to the Syndicated Mortgage Loan Administration Business and Investors), are hereby stayed and suspended except with the written consent of the Trustee or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Trustee or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on; (ii) exempt the Trustee or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a

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security interest; (iv) prevent the registration of a claim for lien; or (v) prevent the filing and service of a statement of claim solely to permit the perfection of a lien, provided that no further proceedings on such statement of claim shall be permitted other than pursuant to paragraph 33.

NO INTERFERENCE WITH THE TRUSTEE

35. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents in respect of the Syndicated Mortgage Loan Administration Business, without written consent of the Trustee or leave of this Court, including, for greater certainty, any authority granted to the Respondents to act as an administrator or trustee of syndicated mortgage loans. Nothing in this paragraph is intended to constrain the ability of the Law Society to complete the Identification as described above.

CONTINUATION OF SERVICES

36. THIS COURT ORDERS that all Persons having oral or written agreements with the Respondents in relation to the Syndicated Mortgage Loan Administration Business, or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents that is used (in whole or in part) by the Respondents in connection with the Syndicated Mortgage Loan Administration Business are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or

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terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided that such continued use by the Trustee does not interfere with the operation of that portion of the Respondents' professional business that does not include the Mortgage Administration Business and provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

38. THIS COURT ORDERS that all employees of the Respondents in connection with the Syndicated Mortgage Loan Administration Business shall remain the employees of the Respondents until such time as the Trustee, on the Respondents' behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Trustee may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* ("WEPP").

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

40. THIS COURT ORDERS that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE TRUSTEE'S LIABILITY

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

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including, without limitation, activities undertaken by FAAN Mortgage to assist the Law Society in its application for this Order and to gain a better understanding of the projects currently being administered by the Respondents; and (b) the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, in each case, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the WEPP. Nothing in this Order shall derogate from the protections afforded the Trustee by section 14.06 of the BIA or by any other applicable legislation.

TRUSTEE'S ACCOUNTS

42. THIS COURT ORDERS that the Trustee and counsel to the Trustee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, which fees and disbursements shall be added to the indebtedness secured by the Real Property Charges and that the Trustee and counsel to the Trustee shall be entitled to and are hereby granted a charge (the "**Trustee's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Trustee's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.
43. THIS COURT ORDERS that the Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Trustee and its legal counsel are hereby referred to the Commercial List of the Ontario Superior Court of Justice.

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

FUNDING OF THE APPOINTMENT

45. THIS COURT ORDERS that the Trustee be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Trustee’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Trustee’s Charge, the Representative Counsel Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

48. THIS COURT ORDERS that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Trustee's Certificates.

SERVICE AND NOTICE

49. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, the service of documents made in accordance with the Protocol shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

50. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Respondents' creditors in relation to the Syndicated Mortgage Loan Administration Business or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be

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received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

51. THIS COURT ORDERS that the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
52. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee as may be necessary or desirable to give effect to this Order or to assist in carrying out the terms of this Order.
53. THIS COURT ORDERS that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
54. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice, or such shorter period of time as the Court may permit, to the Trustee, and to any other party likely to be affected by the order sought.

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



Signature

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

SEP 30 2019

PER / PAR: 

LAW SOCIETY OF ONTARIO
Applicant

-and- DEREK SORRENTI et al
Respondents

CN-19-628258-0001
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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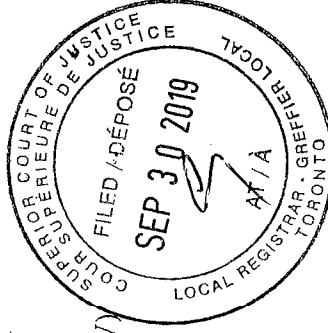
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Lawyers for the Applicant



Appendix 2

PURCHASE AND SALE AGREEMENT

PURCHASER: EVEREST DEVELOPMENT GROUP OF COMPANIES INC.
VENDOR: EMPIRE PACE (1088 PROGRESS) LTD.
PROPERTY: 1088 PROGRESS AVENUE, TORONTO, ON

PURCHASE AND SALE AGREEMENT

- A. **EVEREST DEVELOPMENT GROUP OF COMPANIES INC.** (the “**Purchaser**”) hereby agrees to purchase the Lands (hereafter defined) from the Vendor, subject to and upon the terms and conditions set forth herein and the Vendor, upon acceptance hereof agrees to sell the Lands to the Purchaser on the terms and subject to the conditions of this Purchase and Sale Agreement.

INTERPRETATION

- 1.1 *Definitions.* Certain words and phrases which are used in this Agreement have the meanings which are ascribed to them, respectively, in this section.
- 1.1.1 “**Affiliate**” has the meaning ascribed to it in the *Ontario Business Corporations Act*;
- 1.1.2 “**Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Purchase and Sale agreement to Buy and the attached Schedules, as amended from time to time, and “**Article**”, “**Section**”, “**Subsection**”, “**Paragraph**”, “**Subparagraph**” and “**Schedule**” followed by a number or letter refer to the specified article, section, subsection, paragraph, subparagraph or schedule, as the case may be, of this Agreement;
- 1.1.3 “**Approval and Vesting Order**” means an Order of the Court in substantially the form and substance acceptable to the Purchaser and the Vendor approving the sale of the Lands to the Purchaser pursuant to this Agreement, which shall, among other things, contain (a) approval of the consummation of the transactions contemplated by this Agreement, and (b) vesting title in the Lands to the Purchaser, subject only to the Permitted Encumbrances;
- 1.1.4 “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- 1.1.5 “**Cameron Stephens**” means Cameron Stephens Mortgage Capital, the senior mortgagee in respect of the subject property located at 1088 Progress Avenue, Scarborough, Ontario;
- 1.1.6 “**Cameron Stephens Solicitors**” means the lawyers(s) so identified by Cameron Stephens to act on behalf of Cameron Stephens in relation to the transaction contemplated herein;
- 1.1.7 “**Claims**” means, collectively, all actions, causes of action, claims, losses, demands, damages, liabilities, penalties, costs and expenses of every nature and kind suffered or incurred by a party;
- 1.1.8 “**Closing**” means the completion of the purchase and sale of the fee simple interest in the Lands to the Purchaser as contemplated by this Agreement;

- 1.1.9 “**Closing Date**” means two (2) Business Days following the Condition Date;
- 1.1.10 “**Condition Date**” means the date on which mutual conditions of the Purchaser and the Vendor contained in Section 3.1 are waived or satisfied;
- 1.1.11 “**Deposit**” means collectively, the Initial Deposit and the Additional Deposit as set out in Subsection 2.3.1;
- 1.1.12 “**Final Form**” means the Approval and Vesting Order when the appeal periods in respect of the Approval and Vesting Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
- 1.1.13 “**Lands**” means those lands legally described in Schedule A hereto;
- 1.1.14 “**Notice**” has the meaning set out in Section 6.2;
- 1.1.15 “**Permitted Encumbrances**” means those encumbrances provided in Schedule “B”;
- 1.1.16 “**Person**” means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;
- 1.1.17 “**Purchase Price**” means the purchase price for the Lands as set out in Section 2.2;
- 1.1.18 “**Purchaser’s Solicitors**” means the lawyers(s) so identified by the Purchaser to act on behalf of the Purchaser in relation to the transaction contemplated herein;
- 1.1.19 “**Syndicated Mortgage Loan**” means the loan made to Empire Pace (1088 Progress) Ltd. pursuant to an agreement dated July 31, 2012 in respect to the subject property located at 1088 Progress Avenue, Scarborough Ontario;
- 1.1.20 “**Trustee**” means FAAN Mortgage Administrators Inc. only in its capacity as court appointed Trustee of Derek Sorrenti and Sorrenti Law Professional Corporation in respect of its Syndicated Mortgage Loan Administration Business;
- 1.1.21 “**Trustee’s Solicitors**” means the lawyers(s) so identified by the Trustee to act on behalf of the Trustee in relation to the transaction contemplated herein;
- 1.1.22 “**Vendor**” means Empire Pace (1088 Progress) Ltd.; and
- 1.1.23 “**Vendor’s Solicitors**” means the solicitors identified by the Vendor to act on behalf of the Vendor in relation to the transaction contemplated herein.
- 1.2 *Extended Meanings.* Words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter genders.

- 1.3 *Headings.* The insertion into this Purchase and Sale Agreement of headings and the inclusion of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Purchase and Sale agreement.
- 1.4 *Schedules.* The following schedules attached to this Agreement shall for all purposes be deemed to be a part of this Agreement:

Schedule A - Legal description of the "Lands"

Schedule B - Permitted Encumbrances

PURCHASE AND SALE

- 2.1 *Purchase and Sale.* The Purchaser hereby agrees to purchase from the Vendor and the Vendor, upon acceptance, agrees to sell to the Purchaser the Lands for the Purchase Price, such purchase and sale to be completed on the Closing Date, on the terms and subject to the conditions contained in this Agreement.
- 2.2 *Purchase Price.* The Purchase Price for the Lands, subject to adjustments as herein provided, shall be the sum of [REDACTED], exclusive of any applicable taxes, in lawful monies of Canada.
- 2.3 *Payment of Purchase Price.* The Purchase Price shall be paid to the Vendor as follows:
- 2.3.1 \$250,000 of the Purchase Price (the "**Initial Deposit**") to be paid to the Trustee's Solicitors within 2 Business Days of execution and delivery of this Agreement by both the Vendor and the Purchaser. An Additional Deposit of the Purchase Price (the "**Additional Deposit**") in the amount of \$750,000 to be paid within 10 Business Days of the execution and delivery of this Agreement by both the Vendor and the Purchaser. The Initial and Additional Deposits shall be held in an interest-bearing account for the benefit of the Purchaser in trust pending closing subject to the terms hereof; and
- 2.3.2 as to the balance of the Purchase Price, on the Closing Date, by wire transfer: i) to Cameron Stephens' Solicitors, in an amount sufficient to repay the Vendor's obligations due to Cameron Stephens, and ii) the balance of the Purchase Price to the Trustee's Solicitor.

If either of the conditions contained in Section 3.1 are not satisfied, the Deposit shall be returned to the Purchaser with interest and without deduction and without any further right or recourse by one party against the other.

In the event that the conditions contained in Section 3.1 are satisfied and the Vendor is prepared to close but Purchaser has not paid the entire Purchase Price as contemplated by this Section 2.3, the Closing Date will be extended for another thirty (30) days, and the Purchaser shall be obligated to pay the balance of the Purchase Price on the extended Closing Date, together with a late payment fee which equals 2% of the Purchase Price on

the last day of each period of fifteen (15) Business Days that elapses starting on the fifteenth (15) day after the Closing Date (the “**Late Payment Fee**”). If the Closing does not occur on or before the expiry of the aforesaid 30-day period, the Vendor shall have the right (but not obligation) to extend the Closing Date for another fifteen (15) days with the Late Payment Fee continuing to apply during such extension. If the Closing does not occur on or before the expiry of the aforesaid 30 day period or the 45 day period, as the case may be, this Agreement shall be terminated and the Deposit and any interest accrued thereon, together with any portion of the remaining Purchase Price and the Late Payment Fee, if paid, shall be paid to the Vendor as a genuine pre-estimate of damages without limiting the Vendor’s other rights and claims at law or equity against the Purchaser.

2.4 *Adjustments.*

2.4.1 All adjustments customarily made with respect to the sale of real property in Ontario will be made between the Vendor and the Purchaser as of the Closing Date, including without limitation real property taxes, local improvement charges, utilities charges, utility deposits (if any). Except as otherwise expressly provided in this Agreement, the Vendor shall be responsible for all expenses and entitled to receive all income related to the Lands prior to the Closing Date, and the Purchaser shall be responsible for all expenses and entitled to receive all income related to the Property from and including the Closing Date. A statement of adjustments in respect of the Lands shall be prepared by the Vendor and delivered to the Purchaser prior to Closing and shall be subject to approval by the Purchaser.

2.4.2 If any items subject to adjustment cannot be determined prior to Closing, the parties will estimate such amounts, acting reasonably, based upon the best evidence available at the time of Closing as to what the final amounts of such items will be, and a final adjustment will be made, and paid to the appropriate party, when the actual amounts for such items can be determined. All claims for readjustment or errors or omissions in respect of such estimated items or other items subject to adjustment must be made on or before the first anniversary of the Closing Date, following which date, the adjustments made by the parties will be final and binding.

This provision shall survive Closing.

CONDITIONS

3.1 *Mutual Conditions of the Purchaser and the Vendor.*

The obligation of each of the Vendor and the Purchaser to complete the purchase and sale of the Lands as contemplated herein shall be conditional upon:

3.1.1 the Trustee’s consent to this Agreement having been obtained; and

3.1.2 the Approval and Vesting Order in Final Form having been obtained.

If the conditions set out herein are not satisfied on or before 80 Business Days from execution by both the Vendor and the Purchaser, the Deposit will be returned to the Purchaser in accordance with Section 2.3 and, thereafter, this Agreement shall automatically terminate, and both parties hereto shall be released from all of their liabilities and obligations under this Agreement (other than those obligations which are expressly stated to survive termination of this Agreement).

COVENANTS, REPRESENTATIONS AND WARRANTIES

- 4.1 *Representations of the Vendor.* The Vendor on acceptance hereof represents and warrants to and in favour of the Purchaser that, as of the date of acceptance of the Purchase and Sale agreement or such other date as may be specified:
- 4.1.1 **Ownership.** The Vendor is the sole legal and beneficial owner of the Lands;
 - 4.1.2 **Corporate Authorization.** The transactions and other agreements contemplated by this Purchase and Sale agreement will by the Closing Date have been duly and validly authorized by all requisite corporate proceedings and will constitute legal, valid and binding obligations of the Vendor;
 - 4.1.3 **Residence.** The Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
 - 4.1.4 **Historical Resources Act.** As of the date of execution of this Agreement by the Vendor, the Vendor has not received notice that the Lands has been designated as an historical resource or area; and
 - 4.1.5 **No Expropriation.** As of the date of execution of this Agreement by the Vendor, the Vendor has not received any notice contemplated expropriation proceedings or other similar public or private proceedings affecting the Lands or any part of the Lands.
- 4.2 *Representations of the Purchaser.* The Purchaser represents and warrants to and in favour of the Vendor that, as of the date of this Purchase and Sale agreement and upon completion of the transaction hereunder:
- 4.2.1 **Corporate Status.** The Purchaser is a corporation duly incorporated and subsisting under the laws of the Province of Alberta and has the corporate power, authority, right and capacity to enter into, execute and deliver this Agreement and to carry out the transactions and enter into the agreements contemplated by this Agreement in the manner contemplated by this Agreement;
 - 4.2.2 **Corporate Authorization.** The transactions and other agreements contemplated by this Purchase and Sale agreement will by the Closing Date have been duly and validly authorized by all requisite corporate proceedings and will constitute legal, valid and binding obligations of the Purchaser.

- 4.3 *“As is, where is”*. The Purchaser acknowledges and agrees that the Purchaser is experienced in the ownership and development of properties similar to the Lands and that the Purchaser has inspected the Lands, zoning and other matters to its satisfaction and is qualified to make such inspections. The Purchaser acknowledges that it is fully relying on the Purchaser’s (or the Purchaser’s representatives’) inspections of the Lands and not upon any statements or due diligence documents (oral or written) which may have been made or provided by or may be made (or purportedly made) by the Vendor or any of its representatives other than the representations and warranties of the Vendor set forth in section 4.1 of this Agreement. The Purchaser acknowledges that the Purchaser has made such examinations to the extent deemed necessary by the Purchaser in order to enable the Purchaser to evaluate the condition of the Lands and all other aspects of the Lands (including, but not limited to, the environmental condition and zoning of the property), and the Purchaser acknowledges that the Purchaser is relying solely upon its own (or its representatives’) inspection, examination and evaluation of the Lands and the Purchaser hereby agrees to accept the Lands on the Closing date in its “as is”, “where is” condition, with all faults, and without representations and warranties of any kind, express or implied, or arising by operation of law, save and except for those representations and warranties on the Vendor set forth in Section 4.1. The provisions of this paragraph shall survive the Closing.
- 4.4 *Risk*. The Lands shall be at the risk of the Vendor until the closing of the transaction contemplated by this Purchase and Sale agreement. In the event that prior to the Closing Date any material part of the Lands constituting 25% or more of the Lands by area is expropriated or notice of expropriation is issued by any governmental authority, the Vendor shall forthwith advise the Purchaser thereof by notice in writing and the Purchaser shall have the following options exercisable by written notice to be given to the Vendor within seven (7) Business Days of the receipt of such Notice from the Vendor: (a) terminate this Agreement by Notice in writing to the Vendor's Solicitors, in which case this Agreement shall be terminated, and both parties hereto shall be released from all of their liabilities and obligations under this Agreement (other than those obligations which are expressly stated to survive termination of this Agreement) and the Purchaser shall be entitled to the return of the Deposit without deduction and with accrued interest thereon; or (b) elect to complete the transaction of purchase and sale herein constituted in which event all compensation for expropriation shall be payable to the Purchaser and all right and claim of the Vendor to such amounts shall be assigned to the Purchaser. In the event that prior to the Closing Date any part of the Property that is not material (being less than 25% of the area of the Lands) is expropriated the Purchaser shall not have any right to terminate this Agreement and all compensation for expropriation shall be payable to the Purchaser and all right and claim of the Vendor to such amounts shall be assigned to the Purchaser.
- 4.5 *Commissions*. The Purchaser shall have no liability to pay commissions or fees to any real estate agents or others relating to the transaction contemplated herein. The Purchaser represents that it has not engaged any broker or agent in respect of the transaction contemplated herein, and it shall indemnify and save harmless the Vendor with respect to any and all such commissions or fees. This section 4.5 survives Closing or termination of this Agreement.

CLOSING ARRANGEMENTS

- 5.1 *Documents of the Vendor.* On or before the Closing Date, the Vendor shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:
- 5.1.1 **Registration of the Approval and Vesting Order;**
 - 5.1.2 **Certificate of the Vendor.** A certificate of a senior officer of the Vendor certifying (without personal liability to such officer) that the Vendor is not non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada); and
 - 5.1.3 **Undertaking to Re-adjust.** An undertaking by the Vendor to re-adjust the adjustments in accordance with the terms of this Agreement.
- 5.2 *Documents of the Purchaser.* On or before the Closing Date, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor the following:
- 5.2.1 the balance of the Purchase Price, payable to Cameron Stephens and the Trustee, as described in Section 2.3 above;
 - 5.2.2 an undertaking by the Purchaser to re-adjust the adjustments in accordance with the terms of this Agreement;
 - 5.2.3 a certificate and indemnity with respect to H.S.T., in accordance with Section 5.4;
- 5.3 *HST and Fees.* The Purchaser shall be responsible for any sales tax payable pursuant to the *Excise Tax Act* (Canada) (“HST”) in connection with the transaction contemplated herein. Each party shall pay its own legal fees with respect to this transaction.
- 5.4 *Purchaser HST Registrant.* With respect to the purchase of the Lands, the Purchaser hereby represents and warrants to the Vendor that:
- 5.4.1 it is or will on the Closing Date be registered for the purposes of HST imposed under the *Excise Tax Act* and will provide its registration number;
 - 5.4.2 if required to do so, it will remit directly to the Receiver General of Canada the HST payable and file the prescribed form pursuant to the *Excise Tax Act* in connection with the purchase of the Lands; and
 - 5.4.3 the Purchaser shall protect, indemnify and save harmless the Vendor for any HST, penalties, and all costs in connection therewith, which the Vendor is required to remit to the Receiver General as a result of the foregoing warranty and representation being incorrect or untrue.

The parties acknowledge that; accordingly, the Vendor is not required to collect HST in respect of the transfer of the Lands to the Purchaser pursuant to Section 221(2) of the *Excise Tax Act*.

MISCELLANEOUS

- 6.1 *Tender.* Notwithstanding anything contained in this Agreement or in any document registration agreement (“**DRA**”), it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the “**Tendering Party**”) upon the other party (in this Section called the “**Receiving Party**”) when the solicitor for the Tendering Party has:
- 6.1.1 delivered all applicable closing documents to the Receiving Party’s solicitor in escrow (to the extent that the Receiving Party’s solicitor has executed the DRA and has delivered same to the Tendering Party’s solicitor, the escrow terms shall be as set out in the DRA; otherwise, all such documents shall be deemed to be held in trust by the Receiving Party’s solicitor for the Tendering Party);
 - 6.1.2 if applicable, provided evidence that the Tendering Party’s solicitor is in funds in such amounts as agreed to by the parties, or in the absence of such agreement, as reasonably determined by the Tendering Party and/or its solicitor, by (i) providing a copy of a bank draft or certified cheque issued by a Schedule I Canadian chartered bank in the said amounts, or (ii) providing written confirmation by Tendering Party’s solicitor that said amounts are in the Tendering Party’s solicitor’s trust account available for release if and when the DRA is executed, delivered and complied with by the Receiving Party’s solicitor, or (iii) providing copy of a commitment by a Schedule I Canadian chartered bank to wire transfer the said amounts using the Large Value Transfer System, pending execution and delivery of the DRA by the Receiving Party’s solicitor to the Tendering Party’s solicitor;
 - 6.1.3 advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - 6.1.4 completed all steps required by the electronic registration system to complete this transaction that can be performed or undertaken by the Tendering Party’s solicitor without the cooperation or participation of the Receiving Party’s solicitor, and specifically when the Tendering Party’s solicitor, where applicable, has granted “access” to the Receiving Party’s solicitor (but without the Tendering Party’s solicitor releasing them for registration by the Receiving Party’s solicitor), without the necessity of personally attending upon the Receiving Party or the Receiving Party’s solicitor with the documents and/or funds, and without any requirements to have an independent witness evidencing the foregoing.
- 6.2 *Notices.* Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a “**Notice**”) shall be in writing and shall be

given by personal delivery or written electronic communication which results in a written or printed notice being given to the applicable address set forth below:

6.2.1 in the case of the Purchaser addressed to:

Everest Group of Companies Inc.
10 Kingsbridge Garden Circle,
Mississauga, ON, L5R 3K6

With a copy to:

Dentons Canada LLP
2500 Stantec Tower 10220-103 Avenue
Edmonton, AB T5J 0K4

Attention: Dick (Richard) J. Cotter, Q.C.
Tel: (780) 423-7316
[Email: richard.cotter@dentons.com](mailto:richard.cotter@dentons.com)

6.2.2 and in the case of the Vendor addressed to:

Empire Pace (1088 Progress) Ltd.
125 Villarboit Crescent
Vaughan, ON, L4K 4K2

With a copy to:

Borden Ladner Gervais LLP
Bay Adelaide Centre East Tower,
22 Adelaide St. W.
Toronto, ON M5H 4E3

Attention: Xue Yan
Tel: (416) 367-6322
[Email: Xyan@blg.com](mailto:Xyan@blg.com)

6.2.3 and in the case of Cameron Stephens addressed to:

Cameron Stephens Mortgage Capital
25 Adelaide Street East, Suite 600
Toronto, ON M5C 3A1

Attention: Jason Devera
[Email: jdevera@cameronstephens.com](mailto:jdevera@cameronstephens.com)

With a copy to legal counsel to be determined by Cameron Stephens.

6.2.4 and in the case of the Trustee addressed to:

FAAN Mortgage Administrators Inc.
20 Adelaide Street East, Suite 920,
Toronto, ON M5C 2T6

Attention: Naveed Manzoor and Daniel Sobel
Tel: 416-258-6145/647-272-8383
[Email: naveed@faanmortgageadmin.com/daniel@faanadvisors.com](mailto:naveed@faanmortgageadmin.com/daniel@faanadvisors.com)

With a copy to:

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Attention: Michael De Lellis and Jeremy Dacks
Tel: (416) 862-5997/(416) 862-4923
[Email: mdelellis@osler.com](mailto:mdelellis@osler.com)
[Email: jdacks@osler.com](mailto:jdacks@osler.com)

- 6.2.5 Any Notice, if delivered between the hours of 8:30 am and 4:00 p.m. Toronto time, shall be deemed to have been validly and effectively given and received on the date of delivery. Any notice, if sent by electronic communication, shall be deemed to have been validly and effectively given and received on the date of transmission, if received on that party's fax machine at the specified fax number.
- 6.2.6 By giving to the other party at least 10 days' Notice, any party may, at any time and from time to time, change its delivery or communication for the purposes of this Section 6.2.
- 6.3 *Further Assurances.* Each of the parties shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this Agreement.
- 6.4 *Lawyers as Agents.* Notices, approvals, waivers and other documents permitted, required or contemplated by this Agreement may be given or delivered by the parties or by their respective solicitors on their behalf.
- 6.5 *Assignment.* The Purchaser shall be entitled to assign its interests hereunder or appoint a nominee with the prior written consent of the Vendor, which consent may be arbitrarily withheld.
- 6.6 *Non-Merger.* None of the provisions of this Agreement shall merge in the deed or transfer of the Lands or any other document delivered on the Closing Date and the provisions of this Agreement, other than Article Four, shall survive the Closing Date.

- 6.7 *Planning Act.* This Agreement shall be effective to create an interest in the Lands only if the subdivision control provisions of the Planning Act (Ontario), as amended are complied with prior to Closing.
- 6.8 *Entire Agreement.* This Purchase and Sale agreement, upon acceptance, constitutes the entire agreement between the parties with respect to the sale of the Lands to the Purchaser and, except as stated in this Agreement and in the instruments and documents to be executed and delivered pursuant to this Agreement, contains all of the representations, undertakings and agreements of the parties. The Agreement arising on acceptance of this Purchase and Sale agreement supersedes all prior negotiations or agreements between the parties, whether written or verbal, with respect to the subject matter of this Agreement.
- 6.9 *Currency.* Unless otherwise expressly stated in this Purchase and Sale agreement, all references to money shall refer to Canadian funds.
- 6.10 *Severability.* If any provision contained in this Purchase and Sale agreement or its application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Purchase and Sale agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Purchase and Sale agreement shall be determined by a Court to be separately valid and enforceable to the fullest extent permitted by law.
- 6.11 *Governing Law.* This Purchase and Sale agreement and the Agreement arising on acceptance of the Purchase and Sale agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada. References to statutes shall be deemed to be references to such statutes as they exist on the date of this Agreement. The Courts having jurisdiction in the Province of Ontario shall have exclusive jurisdiction in relation to any legal proceedings arising in connection with this Agreement.
- 6.12 *Time.* Time shall be of the essence of this Purchase and Sale agreement. Except as expressly set out in this Purchase and Sale agreement, the computation of any period of time referred to in this Purchase and Sale agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Purchase and Sale agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Purchase and Sale agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors who are hereby expressly appointed in that regard.
- 6.13 *Successors and Assigns.* The Agreement arising on acceptance of this Purchase and Sale agreement shall enure to the benefit of and shall be binding upon the parties, shall be binding upon their respective successors and permitted assigns and shall enure to the benefit of and be enforceable only by such successors and permitted assigns that have succeeded or which have received such assignment in the manner permitted by this Purchase and Sale agreement.

- 6.14 *Execution in Counterpart.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. It shall not be necessary that any single counterpart hereof be executed by all parties to this Agreement so long as at least one counterpart is executed by each such party. For the purposes of this Agreement any person who has acknowledged in writing that he has signed a counterpart of this Agreement shall be conclusively deemed to have executed same.
- 6.15 *Delivery by Facsimile.* This Agreement and any other agreement, document or instrument required or permitted hereby shall be deemed to be validly executed and delivered by a party when a copy thereof has been executed by that party and transmitted by facsimile to each of the remaining parties. A party delivering this Agreement or any such other agreement, document or instrument by facsimile as aforesaid covenants to promptly deliver to each of the remaining parties an originally executed copy of thereof by ordinary mail or by courier.
- 6.16 *Acceptance.* This Purchase and Sale agreement shall remain open 5 (five) Business Days following the date of execution set forth below and may be accepted by execution and return hereof to the Purchaser or the Purchaser's Solicitors.

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IN WITNESS WHEREOF, the Purchaser has executed this Agreement.

Dated this 13th day of December, 2021.

**EVEREST DEVELOPMENT GROUP OF
COMPANIES INC.**

Per: 
 Name: Zafir Rashid
 Title: CEO

Per: _____
 Name: _____
 Title: _____
 I/We have authority to bind the corporation.

ACCEPTANCE

This Agreement is hereby accepted this ____ day of December, 2021.

EMPIRE PAGE (1088 PROGRESS) LTD.Per: 

Name: Daniel Guizzetti

Title: Director

Per: 

Name: Jawad Rathore

Title: Director

I/We have authority to bind the corporation.

SCHEDULE "A"**LANDS****PIN 06177-0643(LT)**

PART OF BLOCK 2, PLAN 66M2300, DESIGNATED AS PARTS 2, 5 AND 6, PLAN 66R29675, SCARBOROUGH; SUBJECT TO AN EASEMENT OVER PARTS 2, 5 AND 6, PLAN 66R29675 IN FAVOUR OF ROGERS COMMUNICATIONS INC. AS IN AT3494813; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 5 AND 6, PLAN 66R29675 AS IN AT4765443; TOGETHER WITH AN EASEMENT OVER PART 4 ON PLAN 66R29675 AS IN AT4768814; TOGETHER WITH AN EASEMENT OVER PART 3 ON PLAN 66R29675 AS IN AT4768814; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2632 AS IN AT4768814; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS ON LEVEL 1 & A IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2632 AS IN AT4768814; SUBJECT TO AN EASEMENT AS IN E66209; CITY OF TORONTO

SCHEDULE "B"**PERMITTED ENCUMBRANCES****A. GENERAL**

1. Encumbrances, liens, charges or prior claims for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities (including levies or imposts for sewers and other municipal utility services) in connection with the Lands that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the Vendor.
2. Subdivision agreements, site plan control agreements, development agreements, servicing agreements, utility agreements and other similar agreements with governmental authorities or entities delivering, transmitting or supplying utilities that do not materially impair the use, operation or marketability of the Lands, provided the same have been complied with, and provided further that the Vendor shall not be obliged to provide any evidence of compliance.
3. Restrictive covenants, private deed restrictions, and other similar land use control agreements that do not materially impair the use, operation or marketability of the Lands, provided the same have been complied with, and provided further that the Vendor shall not be obliged to provide any evidence of compliance.
4. Encroachments by the Lands over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Lands by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that in either case do not materially impair the use, operation or marketability of the Lands, provided the same have been complied with, and provided further that the Vendor shall not be obliged to provide any evidence of compliance.
5. Any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown of any land (including, the Lands) or interests therein, reservations of under surface rights to mines and minerals of any kind such as, rights to coal, petroleum and minerals of any kind and rights to enter, prospect and remove the same whether or not such subsisting reservations, limitations, provisos, conditions or exceptions are reserved to or vested in any governmental authority by any applicable laws.
6. Any leases and any registrations or notices in respect thereof (including subleases, amendments to leases or assignments of leases or subleases) and any encumbrance of any nature whatsoever charging the interest of the tenant under any such lease (including subleases, amendments to leases or assignments of leases or subleases) and, any right of first refusal to lease registered against title to the Lands as of the Closing Date, registrations and notices with respect to leases, including any exclusivity provisions, restrictive covenants and

- other rights contained therein, and leasehold mortgages or security interests relating to any tenant secured by such tenant's interest in its lease.
7. The provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning such as airport zoning regulations, use, development and building by laws and ordinances.
 8. Any title defects or irregularities, which are of a minor nature and will not materially impair the use or marketability of the Lands for the purposes for which it is presently used.
 9. Any minor zoning or code non-compliance issues, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Lands as disclosed by the plan of survey, if any, of the Lands made available by the Vendor to the Purchaser.
 10. The exceptions and qualifications contained in paragraphs 2, 8, 9, 10 and 12 of Section 44(1) of the *Land Titles Act*.
 11. Any rights of expropriation, access or user or any other rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
 12. Any unregistered interest in the Lands (including without limitation, leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has notice by virtue of its due diligence.
 13. Any unregistered easements regarding the provision of utilities to the Lands.
 14. Permits, licenses, agreements, easements, rights of way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other persons or governmental authority (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) that do not materially impair the use, operation or marketability of the Lands.
 15. Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Lands in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Lands for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Lands.
 16. Undetermined or inchoate liens incidental to construction, renovation or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Act* (Ontario).

17. Any and all statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Lands and of which the Vendor does not have notice, claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other governmental authority under or pursuant to any applicable laws.
18. Any reference plans or plans registered pursuant to the *Boundaries Act*.
19. Any discrepancies, defects or encroachments which are disclosed by the existing survey and the encroachments specifically provided for in the legal descriptions of the Properties and the parcel registers.
20. Without limiting the generality of the foregoing, all information relating to the Lands disclosed to the Purchaser.
21. All encumbrances agreed to in writing by the Purchaser or expressly permitted by this Agreement.
22. Any PPSA registrations against the Vendor which are specifically stated in the general collateral description thereof to be specific to a property or properties other than the Lands.
23. 23. The rights reserved to or vested in any governmental authorities by any applicable laws.
24. All off-title compliance matters, including any work orders, open building permits, notices of violation, deficiency notices and other matters of non-compliance with the zoning of the Lands and other requirements of governmental authorities or with the terms and conditions of any Permitted Encumbrances.

B. SPECIFIC

1. All instruments registered as of the date of execution hereof in respect of the Lands including those noted in the thumbnail descriptions and those instruments registered following the Acceptance Date but agreed to by the Purchaser acting reasonably.

Appendix 3

SORRENTI MORTGAGE ADMINISTRATION

January 14, 2022

Empire Pace (1088 Progress) Ltd.
30 Wertheim Court, Unit 3, Bldg. A
Richmond Hill, Ontario L4B 1B9

Re: Empire Pace (1088 Progress) Ltd. loan from Sorrenti Law Professional Corporation, in Trust (the "Lender") secured by a charge/mortgage on 1088 Progress Avenue, Scarborough, Ontario

LOAN BALANCE STATEMENT

The loan balance as at **January 14th, 2022** is comprised of the following:

Principal	\$17,327,000.00
Accrued interest at 8%	8,202,327.13
<u>Amount payable to Lender</u>	<u>\$25,529,327.13</u>
Interest <i>per diem</i> rate is	\$3,850.44

E&OE

Appendix 4

Solicitor: Garfinkle Biderman

Attn: Avrom Brown

Issue Date: January 12, 2022

MORTGAGE STATEMENT FOR INFORMATION PURPOSES
AS AT January 14, 2022

Mortgage No. 3646-11

Maturity Date:
February 1, 2022

Name:

Empire Pace (1088 Progress) Ltd.

Rate: 8.50%
Per diem: \$1,630.14

Principal Balance	\$7,000,000.00
Interest Accrued January 1 - January 14, 2022 (13 days)	\$21,191.78
TOTAL AMOUNT OUTSTANDING	\$7,021,191.78

PLEASE NOTE:

- (1) This statement is for Information purposes only and should not be used for Discharge or Assumption purposes.
- (2) This statement will need to be revised if any further transactions occur on or after January 14, 2022.

Per: 

Antonio De Luca
Loan Servicing Officer

Per: 

Giuliana Mauro
VP, Loan Funding and Servicing

Appendix 5



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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REGISTRY
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06177-0643 (LTI)

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

PROPERTY DESCRIPTION:

PART OF BLOCK 2, PLAN 66M2300, DESIGNATED AS PARTS 2, 5 AND 6, PLAN 66R29675, SCARBOROUGH; SUBJECT TO AN EASEMENT OVER PARTS 2, 5 AND 6, PLAN 66R29675 IN FAVOUR OF ROGERS COMMUNICATIONS INC. AS IN AT3494813; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 5 AND 6, PLAN 66R29675 AS IN AT4765443; TOGETHER WITH AN EASEMENT OVER PART 4 ON PLAN 66R29675 AS IN AT4768814; TOGETHER WITH AN EASEMENT OVER PART 3 ON PLAN 66R29675 AS IN AT4768814; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2632 AS IN AT4768814; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS ON LEVEL 1 & A IN TORONTO STANDARD CONDOMINIUM PLAN NO. 2632 AS IN AT4768814; SUBJECT TO AN EASEMENT AS IN E66209; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
DIVISION FROM 06177-0580

PIN CREATION DATE:
2017/12/28

OWNERS' NAMES
EMPIRE PACE (1088 PROGRESS) LTD.

CAPACITY SHARE

** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2017/12/28 **

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
66M2300	1996/10/08	PLAN SUBDIVISION				C
		REMARKS: CERTIFICATES, CONSENTS & DEDICATIONS REGISTERED AS PLAN DOCUMENT INSTRUMENT NO. E35262.				
E40790	1996/11/06	NOTICE		ASPEN RIDGE HOMES (MARKHAM GARDENS) INC.	THE CORPORATION OF THE CITY OF SCARBOROUGH	C
		REMARKS: CONSENT OF THE MUNICIPALITY OF METROPOLITAN TORONTO				
E40791	1996/11/06	NOTICE		ASPEN RIDGE HOMES (MARKHAM GARDENS) INC.	THE CORPORATION OF THE CITY OF SCARBOROUGH	C
		REMARKS: CONSENT OF THE MUNICIPALITY OF METROPOLITAN TORONTO. THE LAND REGISTRAR IS AUTHORIZED TO DELETE THIS NOTICE OF E40790.			WITHOUT APPLICATION UPON DELETION	
		CORRECTIONS: THIS INSTRUMENT WAS DELETED FROM PROPERTY 12160-0139 IN ERROR AND WAS RE-INSTATED ON 2000/07/26 BY CHARLOTTE MCALMONT. THIS INSTRUMENT WAS DELETED FROM INSTRUMENT WAS DELETED FROM PROPERTY 12160-0280 IN ERROR AND WAS RE-INSTATED ON 2000/07/26 BY CHARLOTTE MCALMONT. THIS INSTRUMENT WAS DELETED FROM PROPERTY 12160-0281 IN ERROR AND WAS RE-INSTATED ON 2000/07/26 BY CHARLOTTE MCALMONT.				
E48470	1996/12/11	NOTICE		ASPEN RIDGE HOMES (MARKHAM GARDENS) INC.	THE MUNICIPALITY OF METROPOLITAN TORONTO	C
E66209	1997/03/07	TRANSFER EASEMENT		ASPEN RIDGE HOMES (MARKHAM GARDENS) INC.	THE CONSUMERS' GAS COMPANY LTD.	C
		CORRECTIONS: THIS INSTRUMENT WAS DELETED FROM PROPERTY 06177-0582 IN ERROR AND WAS RE-INSTATED ON 1998/09/21 BY BOB			MCKAIN.	
E239233	1999/04/07	NOTICE OF LEASE		ASPEN RIDGE HOMES (MARKHAM GARDENS)	CITY OF TORONTO	C
AT810804	2005/05/25	NOTICE	\$2	CITY OF TORONTO	ASPEN RIDGE HOMES (MARKHAM GARDENS) INC.	C
AT3100818	2012/08/14	TRANSFER	\$8,800,000	BALLANTRAY (MARKHAM GARDENS) INC.	EMPIRE PACE (1088 PROGRESS) LTD.	C
AT3101004	2012/08/15	CHARGE	\$7,476,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK	C
AT3127137	2012/09/13	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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LAND REGISTRY OFFICE #66

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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06177-0643 (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
AT3135378	2012/09/25	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3141332	2012/10/01	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3153267	2012/10/16	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3163116	2012/10/29	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3174547	2012/11/14	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3190531	2012/12/04	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3205052	2012/12/21	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT32230914	2013/02/01	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3245443	2013/02/27	NOTICE	\$10,476,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3245812	2013/02/28	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3263416	2013/03/26	TRANSFER OF CHARGE		SORRENTI, DEREK	SORRENTI, DEREK	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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ON 2022/01/10 AT 12:20:53

06177-0643 (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
AT3276083	2013/04/12	TRANSFER OF CHARGE REMARKS: AT3101004.		OLYMPIA TRUST COMPANY	OLYMPIA TRUST COMPANY	C
AT3304493	2013/05/21	TRANSFER OF CHARGE REMARKS: AT3101004. AT3101004		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3336513	2013/06/27	NOTICE REMARKS: AT3101004.	\$11,200,000	SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3339265	2013/06/28	TRANSFER OF CHARGE REMARKS: AT3101004.		EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3349596	2013/07/12	TRANSFER OF CHARGE REMARKS: AT3101004.		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3387443	2013/08/23	NOTICE		CITY OF TORONTO	EMPIRE PACE (1088 PROGRESS) LTD.	C
AT3387444	2013/08/23	POSTPONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY	CITY OF TORONTO	C
AT3415037	2013/09/25	TRANSFER OF CHARGE REMARKS: AT3101004 TO AT3387443		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3450663	2013/11/15	TRANSFER OF CHARGE REMARKS: AT3101004.		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3482754	2013/12/18	NOTICE REMARKS: RE:AT3101004	\$11,970,000	SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3482791	2013/12/18	TRANSFER OF CHARGE		EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT3494813	2014/01/09	TRANSFER EASEMENT	\$2	EMPIRE PACE (1088 PROGRESS) LTD.	ROGERS COMMUNICATIONS INC.	C
AT3504122	2014/01/22	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3528649	2014/02/27	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3558334	2014/04/14	NOTICE	\$12,355,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3579878	2014/05/12	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3588561	2014/05/23	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3588756	2014/05/23	NOTICE	\$13,020,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3605321	2014/06/12	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
AT3614675	2014/06/24	CHARGE		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	AVIVA INSURANCE COMPANY OF CANADA	
AT3621277	2014/06/30	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	AVIVA INSURANCE COMPANY OF CANADA	
AT3640736	2014/07/22	TRANSFER OF CHARGE		REMARKS: AT3101004 & AT3127137 TO AT3614675 AND DELETED BY B JAMBOR 2021/09/15 SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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06177-0643 (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
AT3645667	2014/07/29	CHARGE		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	MERIDIAN CREDIT UNION LIMITED	
AT3645668	2014/07/29	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT3645667.				
AT3646020	2014/07/29	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT364675 TO AT3645667 & AT3645668				
AT3646021	2014/07/29	POSTPONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY	MERIDIAN CREDIT UNION LIMITED	C
		REMARKS: AT3101004 & AT3640736 TO AT3645667 & AT3645668				
AT3651756	2014/08/01	NOTICE	\$13,350,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004				
AT3662500	2014/08/15	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004.				
AT3780029	2015/01/06	NOTICE	\$15,000,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004				
AT3782405	2015/01/08	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004.				
AT3792075	2015/01/21	NOTICE	\$2	CITY OF TORONTO	EMPIRE PACE (1088 PROGRESS) LTD.	C
		REMARKS: SITE PLAN AGREEMENT				
AT3801062	2015/01/30	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004.				
AT3807027	2015/02/09	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004.				

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* 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
AT3816248	2015/02/23	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
	REMARKS: AT3101004.					
AT3872411	2015/05/01	NOTICE	\$16,900,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
	REMARKS: AT3101004					
AT3872687	2015/05/01	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
	REMARKS: AT3101004.					
AT3897563	2015/05/29	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
	REMARKS: AT3101004.					
AT3941125	2015/07/09	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
	REMARKS: AT3101004.					
AT3964816	2015/07/31	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
	REMARKS: AT3101004.					
AT4103311	2015/12/23	CHARGE		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	TERRA FIRMA CAPITAL CORPORATION	
AT4103312	2015/12/23	NO ASSIGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	TERRA FIRMA CAPITAL CORPORATION	
	REMARKS: AT4103311					
AT4103313	2015/12/23	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	TERRA FIRMA CAPITAL CORPORATION	
AT4111759	2016/01/08	NOTICE		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	MERIDIAN CREDIT UNION LIMITED	
	REMARKS: AT3645667					
AT4111844	2016/01/08	POSTPONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY	MERIDIAN CREDIT UNION LIMITED	C
	REMARKS: AT3101004, AT3245443, AT3336513, AT3482754, AT3558334, AT3588756, AT3651756, AT3780029, AT3872411 TO AT4111759					

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* 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
AT4111845	2016/01/08	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT3614675 TO AT4111759				
AT4111846	2016/01/08	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** TERRA FIRMA CAPITAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT4103311 TO AT3645667 AND AT4111759				
AT4198446	2016/04/20	NOTICE	\$17,327,000	EMPIRE PACE (1088 PROGRESS) LTD.	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004				
AT4285782	2016/07/21	TRANSFER OF CHARGE	\$17,327,000	SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004.				
AT4289394	2016/07/26	TRANSFER OF CHARGE	\$17,327,000	SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004.				
AT4329040	2016/08/31	TRANSFER OF CHARGE		SORRENTI, DEREK OLYMPIA TRUST COMPANY	SORRENTI, DEREK OLYMPIA TRUST COMPANY	C
		REMARKS: AT3101004.				
AT4482795	2017/02/08	CHARGE		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	MAGNETIC CAPITAL GROUP INC.	
AT4482796	2017/02/08	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	MAGNETIC CAPITAL GROUP INC.	
		REMARKS: AT4482795				
AT4482797	2017/02/08	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTI, DEREK OLYMPIA TRUST COMPANY	MAGNETIC CAPITAL GROUP INC.	
		REMARKS: AT3101004, AT4329040 TO AT4482795				
AT4483888	2017/02/09	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** MAGNETIC CAPITAL GROUP INC.	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT4482795, AT4482796 TO AT3645667, AT3645668, AT4111759				
AT4487754	2017/02/15	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** MAGNETIC CAPITAL GROUP INC.	MAGNETIC CAPITAL GROUP INC.	

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* 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
AT4563874	2017/05/11	CHARGE		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	EMPIRE COMMUNITIES CORP.	
AT4563875	2017/05/11	CHARGE		*** DELETED AGAINST THIS PROPERTY *** EMPIRE PACE (1088 PROGRESS) LTD.	PACE DEVELOPMENTS INC.	
AT4563897	2017/05/11	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTII, DEREK OLYMPIA TRUST COMPANY	EMPIRE COMMUNITIES CORP.	
AT4563898	2017/05/11	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** SORRENTII, DEREK OLYMPIA TRUST COMPANY	PACE DEVELOPMENTS INC.	
AT4566511	2017/05/12	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** PACE DEVELOPMENTS INC.	MERIDIAN CREDIT UNION LIMITED	
AT4566512	2017/05/12	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** EMPIRE COMMUNITIES CORP.	MERIDIAN CREDIT UNION LIMITED	
AT4592803	2017/06/08	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** MAGNETIC CAPITAL GROUP INC.	MAGNETIC CAPITAL GROUP INC.	
AT4736224	2017/11/20	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** MAGNETIC CAPITAL GROUP INC.	MAGNETIC CAPITAL GROUP INC.	
66R29671	2017/11/29	PLAN REFERENCE				C
66R29675	2017/12/04	PLAN REFERENCE				C
AT4765443	2017/12/20	TRANSFER EASEMENT	\$2	EMPIRE PACE (1088 PROGRESS) LTD.	CITY OF TORONTO	C
AT4765444	2017/12/20	POSTPONEMENT		SORRENTII, DEREK OLYMPIA TRUST COMPANY	CITY OF TORONTO	C
				REMARKS: AT3101004, AT3245443, AT3336513, AT3482754, AT3588756, AT3651756, AT3780029, AT4198446 & AT4329040 TO AT4765443		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT4765445	2017/12/20	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CITY OF TORONTO	
		REMARKS: AT3614675 TO AT4765443				
AT4765446	2017/12/20	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** MERIDIAN CREDIT UNION LIMITED DELETED BY L.O'NEILL ON JULY 28, 2020	CITY OF TORONTO	
		REMARKS: AT3645667, AT3645668, AT4111759 TO AT4765443				
AT4765447	2017/12/20	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** TERRA FIRMA CAPITAL CORPORATION	CITY OF TORONTO	
		REMARKS: AT4103311, AT4103312 TO AT4765443				
AT4765448	2017/12/20	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** MAGNETIC CAPITAL GROUP INC.	CITY OF TORONTO	
		REMARKS: AT4482795, AT4482796, AT4736224 TO AT4765443				
AT4765449	2017/12/20	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** EMPIRE COMMUNITIES CORP.	CITY OF TORONTO	
		REMARKS: AT4563874 TO AT4765443				
AT4765450	2017/12/20	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** PACE DEVELOPMENTS INC.	CITY OF TORONTO	
		REMARKS: AT4563875 TO AT4765443				
AT4766046	2017/12/21	POSTPONEMENT		ENBRIDGE GAS DISTRIBUTION INC.	CITY OF TORONTO	
		REMARKS: EE66209 TO AT4765443				
AT4775215	2018/01/08	NOTICE	\$2	EMPIRE PACE (1088 PROGRESS) LTD.	DANIELS ROSEBANK PARK CORPORATION	C
AT4793031	2018/01/31	DISCH OF CHARGE		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED		
		REMARKS: AT3645667.				
AT4795158	2018/02/01	CHARGE	\$7,000,000	EMPIRE PACE (1088 PROGRESS) LTD.	CAMERON STEPHENS FINANCIAL CORPORATION	C
AT4795511	2018/02/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** EMPIRE COMMUNITIES CORP.		
		REMARKS: AT4563874.				
AT4795512	2018/02/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** PACE DEVELOPMENTS INC.		
		REMARKS: AT4563875.				

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT4795677	2018/02/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** MAGNETIC CAPITAL GROUP INC.		
		REMARKS: AT4482795.				
AT4795683	2018/02/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** AVIVA INSURANCE COMPANY OF CANADA		
		REMARKS: AT3614675.				
AT4795730	2018/02/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** TERRA FIRMA CAPITAL CORPORATION		
		REMARKS: AT410311.				
AT4795870	2018/02/02	POSTPONEMENT		SORRENTI, DEREK OLYMPIA TRUST COMPANY	CAMERON STEPHENS FINANCIAL CORPORATION	C
		REMARKS: AT3101004, AT4329040 TO AT4795158				
AT4804952	2018/02/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** PACE DEVELOPMENTS INC.		
		REMARKS: AT4563875.				
AT4805306	2018/02/20	DISCH OF CHARGE		*** COMPLETELY DELETED *** EMPIRE COMMUNITIES CORP.		
		REMARKS: AT4563874.				
AT5471996	2020/07/13	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	FAAN MORTGAGE ADMINISTRATORS INC.	C

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Appendix 6

Enquiry Result

File Currency: 06JAN 2022

[Show All Pages](#)**Note: All pages have been returned.**

Type of Search	Business Debtor								
Search Conducted On	EMPIRE PACE (1088 PROGRESS) LTD.								
File Currency	06JAN 2022								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	688154724	1	2	1	4	27JUN 2023			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
688154724		001	3		20130627 1515 1590 3229	P PPSA	10		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	EMPIRE PACE (1088 PROGRESS) LTD.								
	Address				City	Province	Postal Code		
	125 VILLARBOIT CRESCENT				VAUGHAN	ON	L4K 4K2		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	AVIVA INSURANCE COMPANY OF CANADA								
	Address				City	Province	Postal Code		
	2200 EGLINTON AVENUE EAST				SCARBOROUGH	ON	M1L 4S8		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
				X	X				
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	SECURITY INTEREST IN ALL DEPOSITS (AS DEFINED IN THE DTA), TOGETHER WITH ALL INTEREST EARNED OR ACCRUED THEREON, PLUS ANY EXCESS CLOSING PROCEEDS (AS DEFINED IN THE DTA) PURSUANT TO A DEPOSIT TRUST								
Registering Agent	Registering Agent								
	BRATTYS LLP (AR/CS)								

	Address	City	Province	Postal Code
	7501 KEELE STREET, SUITE 200	VAUGHAN	ON	L4K 1Y2

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	EMPIRE PACE (1088 PROGRESS) LTD.								
File Currency	06JAN 2022								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	688154724	1	2	2	4	27JUN 2023			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
688154724		002	3		20130627 1515 1590 3229				
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	AGREEMENT (THE DTA) DATED MAY 31, 2013 BETWEEN THE DEBTOR AND THE SECURED PARTY WITH RESPECT TO A CONDOMINIUM PROJECT LOCATED AT 1088 PROGRESS AVENUE, SCARBOROUGH, ONTARIO, AND KNOWN AS TEN88, AND								
Registering Agent	Registering Agent								
	Address				City	Province	Postal Code		

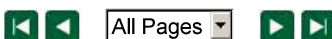
CONTINUED

Type of Search	Business Debtor								
Search Conducted On	EMPIRE PACE (1088 PROGRESS) LTD.								
File Currency	06JAN 2022								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	688154724	1	2	3	4	27JUN 2023			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
688154724		003	3		20130627 1515 1590 3229				
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Secured Party	Secured Party / Lien Claimant								
	Address			City	Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description PROPOSED TO INCLUDE APPROXIMATELY 105 RESIDENTIAL DWELLING UNITS.								
Registering Agent	Registering Agent								
	Address			City	Province	Postal Code			

END OF FAMILY


Type of Search	Business Debtor								
Search Conducted On	EMPIRE PACE (1088 PROGRESS) LTD.								
File Currency	06JAN 2022								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	735867387	2	2	4	4	23JAN 2023			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
735867387		01	001		20180123 1009 1462 4632	P PPSA	5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	EMPIRE PACE (1088 PROGRESS) LTD.					002334821			
	Address			City	Province	Postal Code			
	125 VILLARBOIT CRESCENT			VAUGHAN	ON	L4K4K2			
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Secured Party	Secured Party / Lien Claimant								
	CAMERON STEPHENS FINANCIAL CORPORATION								
	Address			City	Province	Postal Code			
	25 ADELAIDE STREET EAST, SUITE 600			TORONTO	ON	M5C3A1			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X				
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	GENERAL SECURITY AGREEMENT AND ASSIGNMENT OF CASH COLLATERAL RELATING TO THAT PROJECT KNOWN AS PHASE 2 - TEN88 - 1088 PROGRESS AVENUE, TORONTO, ONTARIO								
Registering Agent	Registering Agent								
	GARFINKLE, BIDERMAN LLP (AWB/CC - 6243-423)								
	Address			City	Province	Postal Code			
	1 ADELAIDE ST. EAST, SUITE 801			TORONTO	ON	M5C2V9			

LAST PAGE

Note: All pages have been returned.[BACK TO TOP](#)[Show All Pages](#)

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Appendix 7



July 2, 2021

Dear Lender:

Re: Syndicated Mortgage Loan made to Empire Pace (1088 Progress) Ltd. (“Borrower”) in respect of property located at 1088 Progress Avenue in Toronto, ON (“Progress Project”)

As you are aware, on September 30, 2019, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) (the “**Appointment Order**”), FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) of all of the assets, undertakings and properties of Derek Sorrenti or Sorrenti Law Professional Corporation (collectively, “**Sorrenti**”) relating to Sorrenti’s trusteeship and administration of syndicated mortgage loans in projects affiliated with Fortress Real Developments Inc. and certain related entities. The Trustee’s appointment resulted from an application made by the Law Society of Ontario under Section 49.47 of the *Law Society Act*, R.S.O. 1990. c. L.8, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, each as amended. The Appointment Order also appointed Chaitons LLP as representative counsel (“**Representative Counsel**”) to persons who made loans through the syndicated mortgage loans administered by Sorrenti.

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you and other syndicated mortgage lenders (collectively, “**Progress SMLs**”) to Sorrenti in respect of the Progress Project and further to our third report to Court dated April 23, 2021 (“**Third Report**”). A copy of the Third Report is available on the Trustee’s website at <http://faanmortgageadmin.com>.

The purpose of this notice is to advise of certain steps taken by the Borrower in furtherance of a sale of the real property (the “**Property**”) underlying the second phase of the Progress Project (“**Phase 2**”) since the date of the Third Report.

Secured Loans made to the Borrower

The Borrower is indebted to the Progress SMLs in the principal amount of \$17.3 million. As at May 31, 2021, the total amount owing to the Progress SMLs is approximately \$24.6 million (“**Progress Debt**”), including approximately \$7.3 million of unpaid interest.

In addition to the charge registered on title to the Property in favour of Sorrenti, securing the Progress Debt, there is one prior ranking charge registered in favour of Cameron Stephens Financial Corporation (“**Cameron Stephens**”) in the principal amount of \$7 million (“**Cameron Stephens Mortgage**”). The Trustee understands that (i) the full principal amount of the loan secured by the Cameron Stephens Mortgage remains outstanding; (ii) the Borrower is current with respect to its interest payments under such loan; and (iii) the Cameron Stephens Mortgage is currently set to mature on August 1, 2021. The Trustee further understands that the Borrower is working cooperatively with Cameron Stephens with respect to a sale process for the Property, which is described below.



Project Update and Sale Process

The first phase of the Progress Project (“**Phase 1**”), which is comprised of 105 stacked townhomes, was completed in 2018 and the sales transactions for all Phase 1 townhomes closed prior to the Trustee’s appointment. In 2018, Sorrenti discharged its charge securing the Progress Debt from the real property comprising Phase 1. There were no proceeds paid to the Progress SMLs from Phase 1 as it appears that the proceeds were used primarily to repay prior ranking loans, including construction loans. Phase 2 is zoned for two residential towers and ground floor retail space.

As set out in the Third Report, the Borrower was considering selling the Property to the Everest Group of Companies (“**Everest**”). However, discussions with Everest did not result in the execution of any formal agreement to sell the Property. Accordingly, after discussions with and input from the Trustee, on June 18, 2021, the Borrower and the Trustee entered into a listing agreement (“**Listing Agreement**”) with Lennard Commercial Realty (“**Listing Agent**”) with respect to a sale of the Property. The Property is listed on an unpriced basis and the Listing Agent is soliciting offers to be submitted on or after July 21, 2021. Pursuant to the terms of the Listing Agreement, the Borrower cannot enter into a purchase and sale agreement without the prior consent of the Trustee. The Trustee intends to work collaboratively with the Borrower and the Listing Agent to maximize the value of the Property through the foregoing sale process.

Should a sale of the Property be completed by the Borrower, it remains unknown at this time what proceeds will be available to satisfy amounts due to the Progress SMLs after repayment of the Cameron Stephens Mortgage and any other priority or other necessary closing costs.

We will keep you informed of material developments related to the sale process.

Should you have any further questions at this time, our contact information is shown below (if you contact us, please reference **Progress Project**).

Email: Info@FAANMortgageAdmin.com
 Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, its contact information is shown below (if you contact Representative Counsel, please reference **Progress Project**):

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

Yours very truly,

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.
 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 8



January 14, 2022

Dear Lender:

Re: Syndicated Mortgage Loan (“Progress Loan”) made to Empire Pace (1088 Progress) Ltd. (“Borrower”) pursuant to a loan agreement dated July 31, 2012 in respect of property located at 1088 Progress Avenue, Scarborough, ON (“Progress Project” or “Property”)

As you are aware, on September 30, 2019, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) (the “**Appointment Order**”), FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “**Trustee**”) of all of the assets, undertakings and properties of Derek Sorrenti or Sorrenti Law Professional Corporation (collectively, “**Sorrenti**”) relating to Sorrenti’s trusteeship and administration of syndicated mortgage loans in projects affiliated with Fortress Real Developments Inc. and certain related entities. The Trustee’s appointment resulted from an application made by the Law Society of Ontario under Section 49.47 of the *Law Society Act*, R.S.O. 1990. c. L.8, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, each as amended. The Appointment Order also appointed Chaitons LLP as representative counsel (“**Representative Counsel**”) to persons who made loans through the syndicated mortgage loans administered by Sorrenti.

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you and other syndicated mortgage lenders (collectively, “**Progress SMLs**”) to Sorrenti in respect of the Progress Project and further to our notice dated July 2, 2021 (“**Notice**”).

As advised in the Notice, the Borrower and the Trustee entered into a listing agreement with Lennard Commercial Realty (“**Listing Agent**”) with the respect to the sale of phase 2 of the Progress Project (“**Progress Property**”). The purpose of this notice is to advise that, following a comprehensive sale process conducted by the Listing Agent, the Borrower has entered into and executed an agreement of purchase and sale (“**APS**”) with a third-party purchaser, Everest Development Group of Companies¹, (“**Purchaser**”) in respect of the Progress Property.

The APS requires the Trustee and Olympia Trust Company (“**OTC**”) to discharge the Progress Mortgage (defined below) registered on title to the Progress Property upon receipt of the portion of the purchase price set out in the APS that is in excess of: (i) the amounts owed under the Cameron Stephens Mortgage (defined below)², and (ii) reasonable and documented costs

¹ The Purchaser has requested to assign its rights under the APS to Lawrence Towers LP, pursuant to section 6.5 of the APS. The documentation related to this request is in progress.

² The December interest and loan extension fees totaling approximately \$74,000 were paid by a company controlled by certain principals of the Borrower to keep the Cameron Stephens Mortgage in good standing. The Trustee agreed that this amount would be repaid from the proceeds of the sale of the Progress Property in priority to amounts that would otherwise be payable to the Trustee.



properly incurred to effect the closing of the sale transaction (“**Sale Transaction**”) in respect of the Progress Property (“**Sorrenti Discharge Payment**”).

Secured Loan made to the Borrower

The Borrower is indebted to the Progress SMLs in the principal amount of \$17.3 million. As at January 14, 2022 the total amount owing to the Progress SMLs is approximately \$25.5 million, including approximately \$8.2 million in unpaid interest (“**Progress Mortgage**”).

In addition to the Progress Loan, there is a first priority mortgage registered on title to the Progress Property in favour of Cameron Stephens Mortgage Capital (“**Cameron Stephens**”) that, as at December 31, 2021, totaled \$7 million of principal with interest being up to date (“**Cameron Stephens Mortgage**”). The Cameron Stephens Mortgage is the only known charge that is registered on title to the Progress Property in priority to the Progress Loan.

Borrower’s Motion

On January 14, 2022, the Borrower served motion materials in support of its request for an Order (“**Progress Approval and Vesting Order**”) that, among other things:

- a) Confirms and approves the Trustee and OTC discharging the Progress Mortgage in connection with the Sale Transaction upon receipt of the Sorrenti Discharge Payment;
- b) Vests all of the Borrower's right, title and interest in and to the Purchased Assets described in the APS in the Purchaser, free and clear of and from any and all claims; and
- c) Seals certain confidential information concerning the Sale Transaction and the sale process, until further order of the Court.

The motion is scheduled to be heard via a virtual Court hearing on **January 31, 2022 at 12:00 pm** (“**Progress Approval Motion**”). To the extent that you would like further information regarding the Progress Approval Motion please contact the Trustee directly at the contact information provided below.

The Trustee’s fourth report to Court (“**Fourth Report**”) filed in support of the Borrower’s request for the Progress Approval and Vesting Order, together with the Borrower’s motion materials, are available on the Trustee’s website: <http://faanmortgageadmin.com>. The Fourth Report describes the following matters:

- (a) an overview of the Progress Project and the Progress Loan;
- (b) a summary of the Sale Transaction including the comprehensive public sale and marketing process (“**Sale Process**”) conducted by the Listing Agent for the Progress Property;
- (c) information that supports the Trustee’s recommendation to discharge the Progress Mortgage in connection with the Sale Transaction upon receipt of the Sorrenti Discharge



Payment and to take any other steps necessary to facilitate the closing of the Sale Transaction; and

- (d) a confidential appendix that provides, among other things, a summary of the offers received for the Progress Property, the financial details of the Sale Transaction and the estimated Realized Property available for distribution to the Progress SMLs.

Purchaser's Offer

As you are aware, prior to the Trustee's appointment, the Borrower marketed the Progress Property for sale on an informal basis and the Purchaser expressed interest in acquiring the Progress Property, in 2019, by submitting a non-binding letter of intent ("**LOI**"). The key features of the LOI included, among other things: (i) the requirement to discharge the Progress Mortgage, (ii) no cash proceeds being paid to the Progress SMLs on closing, and (iii) the Progress SMLs would retain an interest in only the commercial/retail portion of the Progress Property. Sorrenti sought feedback, in August 2019, on the LOI from the Progress SMLs ("**Sorrenti Notice**"), and advised the Trustee that the majority of the Progress SMLs who provided feedback were in support of the LOI. For a variety of reasons, some of which have not been disclosed to the Trustee, Sorrenti did not act on that feedback. Notwithstanding the feedback of the Progress SMLs, and as detailed in the Fourth Report, the Trustee had concerns regarding the transaction proposed in the LOI and the Sorrenti Notice.

As no offers acceptable to the Trustee had been received during the Sale Process, in an effort to maximize value for the Progress SMLs, the Trustee requested the Borrower to reengage with the Purchaser to determine if it was still interested in the Progress Property and the parties engaged in preliminary discussions, resulting in an offer being submitted by the Purchaser. The Purchaser's offer initially contained business terms similar to those contained in the LOI, including the Progress SMLs only retaining an interest in the retail/commercial space, and did not address the Trustee's concerns regarding the lack of security for and the exposure of the Progress SMLs during the construction period.

Following several discussions and negotiations with the Trustee, and at the request of the Trustee, the Purchaser submitted a revised offer that contemplated the payment of the balance of the purchase price after repayment of the Cameron Stephens Mortgage by way of two alternatives (i) an all-cash offer ("**Cash Alternative**") or (ii) the conversion of the Progress Mortgage into an equity interest in the future development ("**Equity Alternative**"). Under the Equity Alternative, the Progress SMLs would become equity partners in the entire Phase 2 development, by entering into a limited partnership agreement with the Purchaser; however, the Progress SMLs would not receive cash on the closing of the sale transaction and any recovery would depend on the timing and completion of the Progress Property.

The Trustee analyzed both alternatives presented by the Purchaser. The Trustee noted that the Equity Alternative was an improvement over the Purchaser's initial offer submitted in the Sale Process as the Progress SMLs would retain an unsecured interest in the entire Phase 2 development (both residential and commercial) rather than only the commercial/retail



portion. Notwithstanding this improvement, the Trustee is of the view that the Cash Alternative is the best option in the circumstances for the Progress SMLs for several reasons including that: (i) it provides a cash payout immediately upon closing of the transaction; (ii) the recovery for the Progress SMLs is certain and quantifiable; (iii) it removes the various risks that would exist for the Progress SMLs in the Equity Alternative, including that under that alternative the ultimate recovery for the Progress SMLs would depend on the successful development of the Progress Property, completion of which the Trustee understands is estimated to be at least 3 years away and in circumstances where construction financing has not yet been secured; and (iv) it provides finality for the Progress SMLs whose loans have been outstanding for nearly 10 years.

The Trustee and the Purchaser continued their discussions regarding the Cash Alternative and ultimately agreed to various amendments to the Purchaser's revised offer, including that the balance of the purchase price would be payable in cash on closing and the removal of all due diligence conditions in favour of the Purchaser. The Trustee consulted with Representative Counsel throughout the negotiating process with the Purchaser.

The key terms of the APS (other than the purchase price, which is confidential, as discussed below) are as follows:

- a) The Purchaser was required to and has paid a deposit of \$1 million, which is being held in trust by the Trustee's counsel pending closing;
- b) The balance of the purchase price is due in cash on closing;
- c) Should the Purchaser fail to meet certain closing timelines set out in the APS, a late payment fee is payable by the Purchaser;
- d) The sale is being conducted on an 'as is, where is' basis, with limited representations and warranties of the Progress Borrower; and
- e) The only conditions to closing are the consent of the Trustee to the Sale Transaction and the Court granting the Progress Approval Order.

Impact of the Sale Transaction on the Progress SMLs

Should the Sale Transaction be approved, on closing, following payment of a commission to the Listing Agent, repayments of amounts due to Cameron Stephens and other costs payable on closing, there will be certain proceeds available for distribution to the Progress SMLs, however, there will still be a significant shortfall in respect of amounts due to the Progress SMLs.

Given the commercially sensitive nature of the Sale Transaction and other considerations (including if the Sale Transaction does not close for any reason), it is the view of both the Trustee and Representative Counsel that additional information (including the purchase price for the Progress Property and the details of the other offers received) should not be made public at this



time. Given that the information currently being provided to the Progress SMLs is limited, the Trustee will not be seeking lender feedback regarding the Sale Transaction prior to attending Court. Instead, the Trustee has provided Representative Counsel with all relevant financial and other information in its possession with respect to the Sale Transaction including, among other things, the unredacted APS and information concerning the other offers received, for its review and consideration.

The Trustee and Representative Counsel are of the view that the Sale Transaction offers the best option in the circumstances in light of: (i) the outcome of the Sale Process, which resulted in multiple conditional offers each lower than the Purchaser's offer; and (ii) the Borrower's inability to continue to advance the development of the Progress Property or to service the Cameron Stephens Mortgage, as further detailed in the Fourth Report.

Future Distributions to Progress SMLs

On May 5, 2020, the Court granted an order ("**First Omnibus Order**") that directed the Trustee to distribute 50% of Realized Property and retain 50% of Realized Property to fund the cost of the Sorrenti proceedings ("**Administrative Holdback**"). The Trustee has determined that should the proceeds payable to the Trustee from the Sale Transaction be received, it will likely be appropriate at that time to recommend a further reduction to the Administrative Holdback. The Trustee is scheduled to return to Court for its next omnibus motion on February 28, 2022 ("**February Omnibus Hearing**") at which time the Trustee intends to seek an amendment to the First Omnibus Order reducing the quantum of the Administrative Holdback. As the February Omnibus Hearing is scheduled to take place shortly after the anticipated closing date for the Sale Transaction, in order to avoid the cost of multiple distributions within a matter of weeks of one another, it is the Trustee's intention to make a *pro rata* distribution of the Realized Property from the Sale Transaction to the Progress SMLs net of the amended Administrative Holdback following the February Omnibus Hearing.

Next Steps

At this time, you should review this notice and the associated Court materials carefully including the Fourth Report, and, if desired, arrange to obtain independent legal advice regarding these matters. You can also consult Representative Counsel whose contact information is provided below.

Should you have any questions of the Trustee, our contact information is shown below (if you are contacting us by phone or email, please reference **Progress Project**).

Email: Info@FAANMortgageAdmin.com
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, their contact information is shown below (if you are contacting Representative Counsel by phone or email, please reference **Progress Project**).



Email:

Sorrentiinvestors@Chaitons.com

Toll-Free Telephone Number:

1-833-777-0037

Yours very truly,

**FAAN MORTGAGE ADMINISTRATORS INC.
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**