

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**2502461 ONTARIO LTD.**

Applicant

- and -

**PORTOFINO CORPORATION**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**MOTION RECORD  
(RETURNABLE NOVEMBER 27, 2018)**

November 14, 2018

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the court-appointed Receiver of  
Portofino Corporation

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**INDEX**

<b><u>TAB</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO.</u></b>
1	Notice of Motion returnable November 27, 2018	1 – 11
2	Tenth Report to the Court dated November 13, 2018 and the appendices thereto	12 – 35
<b>APPENDICES</b>		
A	Appointment Order dated October 29, 2013	36 – 52
B	Omnibus Approval and Vesting Order dated May 2, 2014	53 – 73
C	Order dated July 26, 2016	74 – 84
D	Ninth Report to the Court dated April 23, 2018 (without appendices)	85 – 106
E	Order dated May 8, 2018	107 – 111
F	Order of Justice Gates dated June 29, 2007	112 – 116
G	Reasons for Judgment of Justice Quinn dated May 3, 2012	117 – 121
H	Letter from Jerry Goldberg to Steve Cherniak dated May 21, 2014	122 – 128
I	Letter from Tony Van Klink to Jerry Goldberg dated May 26, 2014	129 – 131

<b><u>TAB</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO.</u></b>
J	Letter from Gino Morga to Miller Canfield dated May 27, 2014	132 – 134
K	Letter from Jerry Goldberg to Portofino dated February 14, 2017	135 – 138
L	E-mail from Tony Van Klink to Jerry Goldberg dated February 24, 2017	139 – 140
M	Letter from Donald Leschied to Tony Van Klink dated March 13, 2017	141 – 143
N	General Security Agreement dated October 27, 2005	144 – 149
O	Statement of Receipts and Disbursements	150 – 151
P	Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn November 8, 2018	152 – 169
Q	Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn November 9, 2018	170 – 190
R	Legal Opinion of Miller Thomson LLP dated July 11, 2016	191 – 198
S	Legal Opinion of Miller Thomson LLP dated November 7, 2016	199 – 200
T	Legal Opinion of Miller Thomson LLP dated August 17, 2017	201 – 202
U	Legal Opinion of Miller Thomson LLP dated April 4, 2018	203 – 204
V	Legal Opinion of Miller Thomson LLP dated November 13, 2018	205 – 213
W	2502461 Ontario Ltd. loan schedule at October 12, 2018	214 – 215
3	Draft Order	216 – 219

**TAB 1**

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**2502461 ONTARIO LTD.**

Applicant

-and-

**PORTOFINO CORPORATION**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**NOTICE OF MOTION  
(RETURNABLE NOVEMBER 27, 2018)**

BDO CANADA LIMITED (“BDO”), in its capacity as court-appointed receiver (the “Receiver”) of the assets, undertakings and properties of Portofino Corporation (“Portofino” or the “Debtor”) pursuant to the Order of The Honourable Mr. Justice Thomas dated October 29, 2013 (the “Appointment Order”) will make a motion to the Court on Tuesday, November 27, 2018 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order as follows:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Tenth Report of the Receiver dated November 13, 2018 and all appendices thereto (the “Tenth Report”), and directing that any further service of same be dispensed with such that this motion is properly returnable on November 27, 2018;

- (b) approving the Tenth Report and the activities and conduct of the Receiver described therein;
- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to October 12, 2018 (the "Statement of Receipts and Disbursements");
- (d) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees");
- (e) approving and authorizing the distribution of \$1,400,000 to Windsor Family Credit Union ("WFCU") from the funds on hand;
- (f) for advice and directions of the Court with respect to the sum of \$85,000.45, plus interest (the "Trust Funds") held by Miller, Canfield, Paddock and Stone, LLP ("Miller Canfield") at the date of the making of the receivership order and applied by Miller Canfield after the date of the receivership against outstanding invoices of Portofino for the pre-receivership period;
- (g) such orders as are necessary to give effect to the advice and directions provided by the Court with respect to the Trust Funds; and
- (h) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Approval of the Tenth Report, the Receiver's Activities and the Statements of Receipts and Disbursements

1. The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
2. The Receiver seeks approval of the Tenth Report and the Receiver's activities detailed therein;
3. The particulars of the receipts and disbursements reflected in the Statement of Receipts and Disbursements are detailed in the Tenth Report;

Approval of Professional Fees

4. Pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property, as defined in the Appointment Order, as security for the Professional Fees, both before and after the making of the Appointment Order;
5. Pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice;
6. The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
7. It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and its legal counsel in connection with these receivership proceedings;

Interim Distribution to WFCU

8. The Receiver has received an Opinion from its independent legal counsel, Miller Thomson LLP, that, subject to the customary assumptions and qualifications, the security granted by the Debtor to Bank of Montreal, which security has been assigned to WFCU, over the assets realized upon by the Receiver to date is valid and enforceable and in priority to all other registered interests.

Advice and Directions with respect to the Trust Funds

9. Prior to the Receiver's appointment Portofino terminated its agreement with Valente Real Estate under which Valente Real Estate was to act as Portofino's agent on the sale of the condominium units. Valente Real Estate sued Portofino for unpaid commissions and damages, including the commissions attributable to the extras, upgrades, parking spaces and storage units included in sales of condominium units. On June 29, 2007 Justice Gates made an order which required the real estate commissions attributable to the extras, upgrades, parking spaces and storage units to be held in trust by Portofino's solicitors pending the trial of the action (the "Gates Order");

10. The Trust Funds were deposited by Portofino with Miller Canfield pursuant to the Gates Order;
11. On or about April 26, 2013 Portofino signed a Direction (the "Direction") in favour of Miller Canfield which authorized Miller Canfield to use the Trust Funds to pay Portofino's outstanding invoices upon Miller Canfield being advised of the settlement of the action or a change in the Gates Order;
12. The action remained outstanding and Miller Canfield continued to hold the Trust Funds in trust at the date of the Receiver's appointment;
13. The claim of Valente Real Estate was settled by the Receiver in November, 2016 for \$630,000. At that point, any claim which Valente Real Estate had to the Trust Funds, as unpaid commissions, ceased;
14. In February, 2017, the Receiver was advised by Jerry Goldberg, one of the three remaining partners of Miller Canfield, that the sum of \$89,184.77 was being applied from the Trust Funds against Portofino's outstanding invoices with Miller Canfield;
15. Miller Canfield took the position that it was entitled to apply the Trust Funds against the outstanding invoices by virtue of the Direction and because it was entitled to a solicitors' lien against the Trust Funds;
16. The Trust Funds had not been applied and could not have been applied against the Miller Canfield invoices under the Direction at the date of the Receivership Order. At the date of the receivership, the Trust Funds remained the property of Portofino and, accordingly, were required to be dealt with according to the priorities of the creditors in the receivership. At the date of the receivership the Trust Funds formed part of the collateral over which Bank of Montreal held a security interest;
17. A solicitors' lien is a retaining lien only and could not be used by Miller Canfield to apply the Trust Funds against its invoices in priority to the claims of Portofino's secured creditors; and
18. A solicitor may not set off trust funds against unpaid invoices, as trust funds are the property of the client, not a debt owing to the client by the solicitor.



Other

1. Appointment Order;
2. Section 101 of the CJA;
3. Section 243 of the BIA;
4. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;
5. Rules 1.04, 1.05, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
6. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Tenth Report;
2. The fees Affidavit of Stephen N. Cherniak sworn November 8, 2018 and the exhibits attached thereto;
3. The fees Affidavit of Sherry Kettle sworn November 9, 2018 and the exhibits attached thereto;
4. All other pleadings and materials previously filed in these proceedings; and
5. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 14, 2018

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2502461 ONTARIO LTD. and PORTOFINO CORPORATION  
Applicant Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**NOTICE OF MOTION  
(RETURNABLE NOVEMBER 27, 2018)**

**MILLER THOMSON LLP**

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Lawyers for BDO Canada Limited, the Court-  
Appointed Receiver of Portofino Corporation

**TAB 2**



Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**2502461 ONTARIO LTD.**

**Applicant**

- and -

**PORTOFINO CORPORATION**

**Respondent**

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**TENTH REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED,  
AS RECEIVER OF PORTOFINO CORPORATION**

**November 13, 2018**

**Table of Contents**

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1. Introduction and Background .....	1
2. Terms of Reference .....	4
3. Purpose of the Receiver's Tenth Report .....	5
4. Receiver's Activities .....	6
5. Statement of Receipts and Disbursements of the Receiver .....	15
6. Fees and Disbursements of the Receiver and Counsel to the Receiver.....	17
7. Distribution.....	19
8. Recommendations.....	21

## Appendices

- Appendix A** - Appointment Order dated October 29, 2013
- Appendix B** - Omnibus Approval and Vesting Order dated May 2, 2014
- Appendix C** - Order dated July 26, 2016
- Appendix D** - Ninth Report to the Court dated April 23, 2018 (without appendices)
- Appendix E** - Order dated May 8, 2018
- Appendix F** - Order of Justice Gates dated June 29, 2007
- Appendix G** - Reasons for Judgment of Justice Quinn dated May 3, 2012
- Appendix H** - Letter from Jerry Goldberg to Steve Cherniak dated May 21, 2014
- Appendix I** - Letter from Tony Van Klink to Jerry Goldberg dated May 26, 2014
- Appendix J** - Letter from Gino Morga to Miller Canfield dated May 27, 2014
- Appendix K** - Letter from Jerry Goldberg to Portofino dated February 14, 2017
- Appendix L** - E-mail from Tony Van Klink to Jerry Goldberg dated February 24, 2017
- Appendix M** - Letter from Donald Leschied to Tony Van Klink dated March 13, 2017
- Appendix N** - General Security Agreement dated October 27, 2005
- Appendix O** - Statement of Receipts and Disbursements
- Appendix P** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn November 8, 2018
- Appendix Q** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn November 9, 2018
- Appendix R** - Legal Opinion of Miller Thomson LLP dated July 11, 2016
- Appendix S** - Legal Opinion of Miller Thomson LLP dated November 7, 2016
- Appendix T** - Legal Opinion of Miller Thomson LLP dated August 17, 2017
- Appendix U** - Legal Opinion of Miller Thomson LLP dated April 4, 2018
- Appendix V** - Legal Opinion of Miller Thomson LLP dated November 13, 2018
- Appendix W** - 2502461 Ontario Ltd. loan schedule at October 12, 2018

# 1. Introduction and Background

---

## Introduction

- 1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver (“**BDO**” or the “**Receiver**”) of the assets, undertakings and properties of Portofino Corporation (“**Portofino**” or the “**Company**”) acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof (the “**Property**”).
- 1.2 On application of Bank of Montreal (“**BMO**”), BDO was appointed as receiver by the Order of Mr. Justice Thomas dated October 29, 2013 (the “**Appointment Order**”). A copy of the Appointment Order is attached as **Appendix A** to this report.

## Background

- 1.3 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as “Portofino” (the “**Portofino Condominium**” or the “**Project**”), located at 1225 Riverside Drive West in the City of Windsor, Ontario. Dr. Dante Capaldi (“**Capaldi**”) is the principal of Portofino.
- 1.4 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 (“**ECC 122**”) was registered and the closing of sales of units commenced in July, 2007.
- 1.5 At the time of the appointment of the Receiver, Portofino owned:
- 1.6 fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the “**Unsold Condominium Units**”);
- 1.7 thirty-eight (38) parking units, including four (4) surface-level covered parking units and thirty-four (34) surface-level uncovered parking units (the “**Unsold Parking Units**”); and
- 1.8 two (2) storage units (the “**Unsold Storage Units**”)
- 1.9 (collectively, the “**Unsold Units**”).

- 1.10 Since 2005, there had been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Portofino, among others, in Court Action No. 05-CV-5864CM (the "**Valente Court Action**"). As outlined in the Receiver's Seventh Report to the Court dated February 7, 2017 (the "**Seventh Report**") and its Eighth Report to the Court dated August 22, 2017 (the "**Eighth Report**"), the Valente Court Action is now concluded.
- 1.11 Portofino was also involved in litigation commenced by Dede Dalfidan carrying on business as Fidan Enterprise Contracting ("**Dalfidan**" and the "**Dalfidan Action**"). As outlined in the Eighth Report and the Receiver's Ninth Report to the Court dated April 23, 2018 (the "**Ninth Report**"), the Dalfidan Action is also now concluded.
- 1.12 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 51 Unsold Condominium Units and the settlement of the Valente Court Action and Dalfidan Action. To date, ten reports, including the within report, have been filed by the Receiver in these proceedings wherein these activities, transactions and litigation are described in greater detail.
- 1.13 As part of its Third Report to the Court, the Receiver sought prospective approval for future sales of the Unsold Units and the vesting of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain conditions, in the applicable Purchaser.
- 1.14 By Order dated May 2, 2014 (the "**Omnibus Approval and Vesting Order**"), Mr. Justice Campbell prospectively approved the sales transactions in respect of the Unsold Units and vested all of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain terms and conditions, in the Purchaser. A copy of the Omnibus Approval and Vesting Order is attached as **Appendix B**.
- 1.15 In June 2015, BMO sold to RREF II BHB IV PORTOFINO LLC ("**RREF**") its loans with Portofino and the security held for those loans, including the mortgage held by BMO over the Project (the "**BMO Mortgage**").
- 1.16 In May 2016, RREF, in turn, sold those loans and security, including the BMO Mortgage, to 2502461 Ontario Ltd. ("**250 Ontario**"). 250 Ontario subsequently assigned those loans and security to Windsor Family Credit Union ("**WFCU**") by

way of security for amounts owing by 250 Ontario to WFCU.

- 1.17 By order dated July 26, 2016 (the “**July 26, 2016 Order**”) Mr. Justice Campbell, among other things, approved certain amendments to the Omnibus Approval and Vesting Order. A copy of the July 26, 2016 Order is attached as **Appendix C**.
- 1.18 The July 26, 2016 Order also approved the interim distribution of \$4.0 million to WFCU from the net receipts from the sale of units and collection of rents. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.
- 1.19 By order dated November 29, 2016 (the “**November 29, 2016 Order**”) Mr. Justice Bondy, among other things, approved the further interim distribution of \$2.4 million to WFCU. On November 30, 2016 the Receiver paid \$2.4 million to WFCU.
- 1.20 By order dated September 19, 2017 (the “**September 19, 2017 Order**”) Mr. Justice Patterson, among other things, approved the further interim distribution of \$1.7 million to WFCU. On September 20, 2017 the Receiver paid \$1.7 million to WFCU
- 1.21 The Receiver submitted its Ninth Report in support of a motion for, among other things, approval and authorization of a further distribution to WFCU. A copy of the Ninth Report (without appendices) is attached as **Appendix D**.
- 1.22 By order dated May 8, 2018 (the “**May 8, 2018 Order**”) Mr. Justice Verbeem, among other things, approved the further interim distribution of \$1.7 million to WFCU. A copy of the May 8, 2018 Order is attached as **Appendix E**. On May 9, 2018 the Receiver paid \$1.7 million to WFCU bringing the total distributed by the Receiver to WFCU, as assignee for 250 Ontario, to \$9.8 million.
- 1.23 The Receiver is presently holding net receipts of approximately \$1,670,000 from the sale of units and the collection of rents. The Receiver wishes to make a further interim distribution of \$1,400,000 from those funds.

## 2. Terms of Reference

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- 2.1 In preparing this Tenth Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from Portofino's books and records and discussions with management and staff (the "**Information**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

### 3. Purpose of the Receiver's Tenth Report

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- 3.1 This constitutes the Receiver's Tenth Report to the Court (the "**Tenth Report**") in this matter and is filed:
- (a) To provide the Court with information on:
    - (i) the Receiver's activities since the date of the Ninth Report;
  - (b) In support of an order of the Court:
    - (i) Approving the Tenth Report and the activities and conduct of the Receiver described herein;
    - (ii) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to October 12, 2018 (the "**Statement of Receipts and Disbursements**");
    - (iii) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
    - (iv) Approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**");
    - (v) Approving and authorizing the distribution of \$1,400,000 to WFCU from the funds on hand; and
    - (vi) For advice and directions of the Court with respect to trust funds held by Miller, Canfield, Paddock and Stone, LLP ("Miller Canfield") and applied by Miller Canfield after the date of the receivership against outstanding invoices of Portofino for the pre-receivership period.



## 4. Receiver's Activities

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- 4.1 In its Ninth Report, the Receiver reported to the Court on its activities through April 23, 2018.
- 4.2 In this, the Tenth Report, the Receiver reports on its activities since the date of the Ninth Report.

### **Sale of the Unsold Units**

- 4.3 The Fourth Report provided a detailed report of the Receiver's sale process for the Unsold Units and the results achieved to April 15, 2016.
- 4.4 Subsequent reports have provided updates on further sales of the Unsold Units.
- 4.5 Since the Ninth Report, the Receiver has completed the sales of units 101, 1201, 1402, 1505 and 1601.
- 4.6 To date, the Receiver has sold 51 of the 52 Unsold Condominium Units, including the 9 unfinished units.
- 4.7 The Receiver has sold six (6) of the Unsold Parking Units, consisting of four surface level covered parking spaces and two surface level uncovered parking spaces.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, one unit remains unsold, which is fully finished. In addition, 32 parking units and two basement level storage units remain unsold. A summary of the sales completed to date of the Unsold Condominium Units and the remaining Unsold Condominium Units is provided on the following page:

**Condominium units sold by Receiver**

Unit No.		Size (Sq. ft.)	Sale date
1108	Finished	1,151	05-May-14
704	Finished	1,282	30-Jun-14
904	Finished	1,602	31-Oct-14
804	Finished	1,282	04-Dec-14
1102	Finished	1,547	09-Jan-15
1104	Finished	1,602	12-Feb-15
803	Finished	1,217	29-May-15
1404	Finished	2,233	30-Jun-15
701	Finished	1,150	24-Jul-15
402	Finished	1,062	30-Jul-15
1105	Finished	1,547	31-Jul-15
1002	Finished	1,547	14-Aug-15
508	Finished	1,150	03-Sep-15
805	Finished	1,282	23-Sep-15
203	Finished	1,062	23-Oct-15
1303	Finished	2,450	16-Nov-15
901	Finished	1,593	20-Nov-15
903	Finished	1,602	20-Nov-15
1403	Finished	2,450	01-Dec-15
603	Finished	1,217	03-Dec-15
906	Finished	1,593	11-Dec-15
1503	Unfinished	2,450	25-Jan-16
1008	Finished	1,151	19-Feb-16
401	Finished	1,150	08-Mar-16
1001	Finished	1,593	24-Mar-16
708	Finished	1,150	16-May-16

Unit No.		Size (Sq. ft.)	Sale date
1101	Finished	1,593	05-Jul-16
1202	Unfinished	2,450	13-Jul-16
103	Finished	1,282	15-Jul-16
304	Finished	1,282	02-Aug-16
601	Finished	1,150	05-Aug-16
105	Finished	1,062	30-Aug-16
1501	Finished	2,233	20-Sep-16
104	Finished	1,217	03-Oct-16
408	Finished	1,150	03-Oct-16
309	Finished	1,151	02-Nov-16
806	Finished	1,217	06-Jan-17
1401	Finished	2,233	17-Feb-17
1301	Finished	2,233	31-Mar-17
204	Finished	1,150	16-Jun-17
1603	Finished	2,450	22-Jun-17
1302	Unfinished	2,450	25-Sep-17
1502	Finished	2,450	03-Oct-17
102	Finished	2,081	08-Jan-18
1602	Unfinished	2,450	31-Jan-18
1605	Finished	1,718	29-Mar-18
1402	Unfinished	2,450	23-Apr-18
1201	Unfinished	2,233	23-May-18
1601	Unfinished	2,233	22-Jun-18
101	Unfinished	2,036	13-Jul-18
1505	Unfinished	1,718	22-Aug-18

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 84,787
**Remaining unit**

Unit No.		Size (Sq. ft.)
106	Finished	1,150

**Tarion Warranty Corporation**

4.9 The Receiver's Third, Fourth and Eighth Reports to the Court reported on Portofino's status with Tarion Warranty Corporation ("**Tarion**"), which administers the Ontario New Home Warranties Plan Act. The Receiver has continued to pay premiums to Northbridge General Insurance Corporation ("**Northbridge**") on a bond, in the amount of \$640,000, posted as security for Tarion.

4.10 In March 2018 Tarion advised the Receiver that the security required by Tarion had been reduced to \$140,000. The Receiver advised legal counsel to Northbridge and

the bond, and corresponding bond premium has been reduced accordingly.

- 4.11 The Receiver understands the security required by Tarion is partly determined by the number of unfinished units still owned by Portofino. The Receiver continues to advise Tarion, as unfinished units are sold and new owners take possession. With all unfinished units now sold, the Receiver will request a further reduction in the security.

### **Property Management**

- 4.12 M.F. Arnsby Property Management Ltd. ("**MF Arnsby**") continues to act as the property manager for ECC 122 and the Portofino condominium.
- 4.13 The Receiver has retained M.F. Arnsby as its property manager with respect to the remaining Unsold Units, including the Unsold Parking Units.
- 4.14 At this point the Receiver has no tenants. As noted, there is one remaining finished unit, namely ground floor unit number 106. Unit 106 had issues with water entering the unit, and currently remains vacant and unsold while ECC 122 completes re-grading and drainage work to address these issues. Once exterior re-grading and interior repairs have been completed, unit 106 will be sold.

### **Other Matters**

#### **Dalfidan Funds**

- 4.15 As noted in the Ninth Report the Dalfidan Action was settled and the lien bond posted by Portofino with the Accountant of the Ontario Superior Court of Justice as security was cancelled. There was additional security in the form of funds held in trust with Strosberg Sasso Sutts LLP ("**SSS**"). These funds, in the amount of \$31,368.69, were paid to the Receiver.

#### **Unit 503 Vendor Take Back Mortgage**

- 4.16 Portofino holds a mortgage, in the principal amount of \$30,000, over unit 503. The mortgage was a vendor take back ("**VTB**") mortgage originating from the sale of unit 503 from Portofino to the original buyer on August 10, 2007. The mortgage was due on February 10, 2008 but was neither repaid nor re-financed. Accordingly, it is the Receiver's view that interest has continued to accrue at the interest rate specified in the original mortgage, which was 10.0 per cent.

- 4.17 In September 2017 the mortgagor contacted the Receiver regarding the VTB mortgage. The Receiver provided the mortgagor with a mortgage statement as of October 4, 2017, but has had no further dialogue with the mortgagor. The mortgage will need to be either paid out on the sale of unit 503, or repaid/re-financed by the mortgagor on terms satisfactory to the Receiver. In the event this does not occur a the Receiver would appear to have the right to commence power of sale proceedings on the unit.

#### **VTB Mortgage on LaSalle Property**

- 4.18 In 2017 the Receiver learned of a VTB mortgage in the amount of \$220,000 in favour of Portofino, and registered against certain development lands in LaSalle, Ontario (the "**LaSalle Property**"). The LaSalle Property was acquired by Portofino (under a previous corporate name) in 2004. In 2011 Portofino transferred the LaSalle Property to its current owner, Westview Park Luxury Gardens (2006) Inc. ("**Westview**"). The consideration included a VTB mortgage to Portofino in the amount of \$220,000 (the "**Westview VTB Mortgage**").
- 4.19 In January 2018 Westview Park requested the Receiver discharge the mortgage on the basis that there were was no consideration given by Portofino for the mortgage and that the mortgage should have been made in favour of other related companies rather than Portofino.
- 4.20 The Receiver and its legal counsel reviewed the documents provided by Westview Park and an affidavit sworn by its principal, Capaldi, and were not satisfied with the position being taken by Westview. In order for Westview to proceed with development of the LaSalle Property it was agreed by the Receiver, Westview and their respective legal counsel that Westview would pay \$220,000 to the Receiver, to be held in a separate, interest bearing trust account, pending resolution of the issue, and the Receiver would discharge the Westview VTB Mortgage.
- 4.21 The Receiver is currently holding \$220,637.75 in trust. These funds are not included in the Statement of Receipts and Disbursements since the entitlement to the funds has not yet been determined. The discussions with Westview and its lawyers regarding this issue are continuing.

### **Funds in Court Re: Betschel's Kitchen Centre Inc**

- 4.22 Betschel's Kitchen Centre Inc. ("**BKC**") registered a lien against the Portofino Condominium on June 4, 2007. In order for BKC to vacate the lien, Portofino paid funds to the Accountant of the Ontario Superior Court in the amount of \$116,514.11 and Mr. Justice Patterson issued an order vacating the lien. Portofino filed a defence to the BKC claim and a counter-claim for an overpayment. The Receiver determined that a trial record was filed in 2009, but it could not be located. BKC is no longer operating and a corporate search indicates that the corporation was cancelled. Inquiries made by the Receiver's legal counsel to Portofino's lawyer of record in the action have not assisted in shedding any light on the status of the action.
- 4.23 The Receiver confirmed that funds are still held with Accountant of the Ontario Superior Court, in the amount of \$147,897.54 at November 30, 2016. The Receiver will be bringing a motion on notice to BKC and the lawyers of record in the action to seek an order for the payment of the funds out of Court.

### **Miller Canfield Trust Funds**

- 4.24 The Receiver has reported to the Court previously on what is referred to in this receivership as the "Valente Court Action". Valente Real Estate was retained by Portofino to act as its agent on the sale of the condominium units. Portofino terminated its agreement with Valente Real Estate. Valente Real Estate made a claim against Portofino for unpaid commissions and damages.
- 4.25 One of the issues in the Valente Court Action was whether amounts paid by purchasers for extra and upgrades to their units, parking spaces and storage units were to be added to the purchase price for the purpose of calculating the commission payable to Valente Real Estate. Justice Gates made a pre-trial order on June 29, 2007 (the "Gates Order") which required the real estate commission attributable to the extras, upgrades, parking spaces and storage units to be held in trust by Portofino's solicitors. A copy of the Gates Order is attached as **Appendix F**.
- 4.26 The Valente Court Action was tried by Justice Brockenshire in 2007/08. Justice Brockenshire's decision was overturned on appeal, necessitating a further trial.

After Justice Brockenshire's decision was overturned on appeal, on May 3, 2012 Justice Quinn made an Order (the "Quinn Order") that the only security which was required to be maintained thereafter for the Valente Court Action was a \$2 million letter of credit which had been posted by Portofino with the Court. A copy of the Reasons for Judgment of Justice Quinn are attached as **Appendix G**.

- 4.27 The sum of \$85,000.45 (that sum, plus accrued interest, is hereafter referred to as the "Trust Funds") was deposited by Portofino with Miller Canfield to be held in trust by Miller Canfield pursuant to the Gates Order. Attached as **Appendix H** is a letter dated May 21, 2014 from Portofino's solicitor, Jerry Goldberg, which includes a schedule showing the amounts deposited by Portofino with Miller Canfield pursuant to the Gates Order. As set out in Mr. Goldberg's letter, as of May, 2014, the Trust Funds had been invested for more than five years and were in excess of \$100,000.
- 4.28 In his May 21, 2014 letter, Mr. Goldberg took the position that Miller Canfield had a solicitors' lien on the Trust Funds. On May 26, 2014 MT, the lawyers for the Receiver, wrote to Miller Canfield regarding the Trust Funds, expressing doubt that Miller Canfield was entitled to a solicitors' lien on the Trust Funds and requesting that the Trust Funds be paid over to the Receiver. A copy of the letter (without attachments) is attached as **Appendix I**.
- 4.29 In his May 21, 2014 letter, Mr. Goldberg indicates that Miller Canfield was owed \$94,212.85 by Portofino for unpaid invoices. Mr. Goldberg indicates in his letter that he had asked Portofino's lawyer in the Valente Court Action (Werner Keller of Sutts Strosberg) to address the effect of the Quinn Order on the Trust Funds so that the outstanding Miller Canfield invoices might be paid from the Trust Funds. It is the Receiver's understanding that the requested confirmation was never provided and that the lawyer for Valente Real Estate, Gino Morga, took the position that the obligation to hold the Trust Funds pursuant to the Gates Order was unaffected by the Quinn Order. That understanding is based on information provided by Mr. Goldberg to MT as confirmed in the e-mail dated February 24, 2017 sent by MT to Mr. Goldberg, the particulars of which are set out in paragraph 4.34 below.
- 4.30 The further trial in the Valente Court Action had not yet occurred at the date of the Receiver's appointment (October 29, 2013). The Trust Funds continued to be held in trust by Miller Canfield at the date of the Receiver's appointment. Mr. Morga was

provided with a copy of Miller Thomson's May 26, 2014 letter to Mr. Goldberg regarding the Trust Funds. In response to that letter, Mr. Morga sent a letter dated May 27, 2014 to Miller Canfield, a copy of which is attached as **Appendix J**. In that letter Mr. Morga disputed that the Trust Funds were part of the security which was the subject of the Quinn Order and, as such, maintained that the Trust Funds should continue to be held pending further order by the Court.

- 4.31 As reported to the Court in the Seventh Report, the Valente Court Action was settled by the Receiver in November, 2016 for \$630,000. At that point, any claim which Valente Real Estate had to the Trust Funds as unpaid commissions ceased, that claim having been satisfied by the payment of the settlement amount.
- 4.32 Subsequent to the settlement of the Valente Court Action, by letter dated February 14, 2017, Mr. Goldberg advised that \$89,184.77 was being applied from the Trust Funds against the outstanding Miller Canfield invoices. A copy of that letter is attached as **Appendix K**.
- 4.33 Included with Mr. Goldberg's February 14, 2017 letter was a Direction dated April 26, 2013 (the "Direction") signed by Portofino. The Direction referred to the funds which were being held in trust by Miller Canfield and which could not be applied by Miller Canfield on account of amounts owed by "Portofino and Capaldi related corporations" as a result of a Court order in the Valente Court Action. The Direction then states,
- "We hereby irrevocably authorize and direct Miller Canfield to immediately upon being advised of the settlement of the above action and/or change of the Court order to apply the trust funds to payment of the outstanding receivables attached hereto as Schedule "A"."
- 4.34 MT responded to Mr. Goldberg's February 14, 2017 letter in an e-mail dated February 24, 2017, a copy of which is attached as **Appendix L**. In that e-mail, MT indicated that the Trust Funds remained the property of Portofino at the date of the receivership and, accordingly, were to be paid over to the Receiver to be dealt with according to the priorities of the creditors in the receivership.
- 4.35 Donald Leschied, one of the three remaining partners of Miller Canfield (together with Mr. Goldberg and Jeff Slopen) responded to MT's February 24, 2017 e-mail by letter dated March 13, 2017, a copy of which is attached as **Appendix M**. In his

letter, Mr. Leschied asserts that Miller Canfield had a right to a solicitors' lien on the Trust Funds for its unpaid invoices. Mr. Leschied also states that the Quinn Order varied the security required to be maintained by Portofino for the Valente Court Action, thus permitting payment of the Miller Canfield invoices from the Trust Funds under the Direction.

4.36 With respect to whether Miller Canfield was entitled to pay its invoices from the Trust Funds after the date of the Receiver's appointment under the Direction, the Receiver notes the following:

- Miller Canfield, through Mr. Goldberg, sought confirmation that as a result of the Quinn Order, the Trust Funds were no longer required to be held in trust. That confirmation was not provided and was disputed by the lawyer for Valente Real Estate – in his May, 2014 letter on the issue Mr. Morga noted that the Trust Funds were not security at all. Rather, the Trust Funds were commissions to which Valente Real Estate claimed an entitlement, and which were being held pending the determination of that issue;
- The Direction is dated April 26, 2013, after the date of the Quinn Order, suggesting that Portofino did not regard the requirement under the Gates Order for the Trust Funds to be held in trust by Miller Canfield as being affected by the Quinn Order;
- The Trust Funds continued to be held in trust and were only applied against the Miller Canfield invoices in February, 2017, after the Valente Court Action was settled. That the Trust Funds were not applied earlier, despite the Quinn Order, suggests that both Portofino and Miller Canfield considered the conditions in the Direction under which the Trust Funds could be applied as remaining unfulfilled at the date of the Receiver's appointment; and
- Portofino's assets, including the Trust Funds, are subject to a security interest granted by Portofino to Bank of Montreal pursuant to a General Security Agreement dated October 27, 2005 (the "GSA"), a copy of which is attached as **Appendix N**. The GSA has been subsequently assigned and is presently held by WFCU, as security. The security comprised by the GSA was enforceable at the date of the Receiver's appointment. Any payment after that



date of the Miller Canfield invoices from the Trust Funds under the Direction was not an ordinary course payment by Portofino. Rather, it was a payment made from a fund which formed part of the collateral under the GSA.

## 5. Statement of Receipts and Disbursements of the Receiver

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5.1 The Receiver maintains an account at BMO in London, Ontario. Attached as **Appendix O** is the Statement of Receipts and Disbursements. Full details of the Receiver's receipts and disbursements to April 4, 2018 were provided in the Ninth Report. Detail of any line items that have materially changed since the Ninth Report are as follows:

### 5.2 Receipts

- a) *Sale of units and surface parking (\$15,691,095.64)* — The Receiver received net proceeds of \$15,691,095.64 from the sale of the Unsold Units. Proceeds received are net of amounts paid on closing for condominium fee arrears, real estate commissions inclusive of HST, and HST collected on the sale of Unsold Parking Units and unfinished Unsold Condominium Units.
- b) *Parking rent collected (\$36,834.69)* — The Receiver collected \$36,834.69 from the rental of Unsold Parking Units.
- c) *Interest (\$23,359.95)* — The Receiver received \$23,359.95 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates (“**GIC**”) that matured or were redeemed. Interest is recognized as it is received.

### 5.3 Disbursements

- a) *Property taxes (\$3,050,329.66)* — The Receiver has paid property taxes to the City of Windsor of \$3,050,329.66. This amount represents property tax arrears, interest and penalties to August 2015, current installment payments for the balance of 2015, 2016, and 2017, and the first five installments of 2018.
- b) *Receiver's fees (\$1,039,628.71)* – BDO's accounts for the period July 19, 2013 to March 29, 2018 in the amount of \$1,003,577.83, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim account for the

period April 2, 2018 to July 24, 2018 in the amount of \$36,050.88 and is seeking approval of the Court for this invoice.

- c) *Condominium common fees (\$777,652.30)* — The Receiver has paid \$777,652.30 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$396,709.81)* – MT’s accounts for the period September 9, 2013 to March 29, 2018 in the amount of \$386,811.42, excluding HST, were previously approved by the Court and paid. The Receiver paid MT’s interim accounts for the period March 30, 2018 to June 25, 2018 in the amount of \$9,898.39, and is seeking approval of the Court of these invoices.
- e) *HST paid (\$236,106.13)* – The Receiver has paid \$236,106.13 in HST on its disbursements.
- f) *HST remitted (\$250,138.22)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has remitted \$250,138.22 to date. This amount represents the HST collected, less any eligible input tax credits.
- g) *Insurance (\$9,596.88)* — The Receiver paid \$9,596.88 to Hub International for premiums on the Receiver’s liability insurance policy.

## 6. Fees and Disbursements of the Receiver and Counsel to the Receiver

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- 6.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted 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 as security for payment of the Professional Fees.
- 6.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 6.3 Attached as **Appendix P** is the fee affidavit of Stephen N. Cherniak sworn November 8, 2018 containing BDO's interim account as Receiver for the following period:
- April 2, 2018 to July 24, 2018
- 6.4 The Receiver's fees to July 24, 2018, exclusive of HST, are as follows:
- |                                       |   |                              |
|---------------------------------------|---|------------------------------|
| Fees paid and Court approved          | - | \$ 1,003,577.83              |
| Fees paid, but not yet Court approved | - | 36,050.88                    |
| Fees neither paid, nor Court approved | - | <u>                    </u>  |
|                                       |   | <u><u>\$1,039,628.71</u></u> |
- 6.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 6.6 Attached as **Appendix Q** is the fee affidavit of Sherry Kettle, sworn November 9, 2018 containing the interim accounts of MT for the period March 30, 2018 to August 31, 2018.
- 6.7 MT's fees to August 31, 2018, exclusive of HST, are as follows:
- |                              |   |              |
|------------------------------|---|--------------|
| Fees paid and Court approved | - | \$386,811.42 |
|------------------------------|---|--------------|

Fees paid, but not yet Court approved	-	\$ 11,708.95
Fees neither paid, nor Court approved	-	\$ 0
		<u>\$398,520.37</u>

6.8 The Valente Court Action has been concluded. The fees of SSS, exclusive of HST, are as follows:

Fees paid and Court approved	-	<u>\$73,662.72</u>
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6.9 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

## 7. Distribution

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- 7.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the “**July 11<sup>th</sup> Opinion**”) indicating that, subject to the customary assumptions and qualifications, the BMO Mortgage is valid and enforceable in accordance with its terms and has priority over all other registered charges. A copy of the independent legal opinion of MT was attached as Appendix G to the Receiver’s Fifth Report to the Court and is attached hereto as **Appendix R**.
- 7.2 MT confirmed that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from July 11, 2016 to November 2, 2016. A copy of this letter was attached as Appendix H to the Receiver’s Sixth Report to the Court and is attached hereto as **Appendix S**. MT confirmed that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from November 3, 2016 to August 14, 2017. A copy of this letter was attached as Appendix N to the Eighth Report and is attached hereto as **Appendix T**.
- 7.3 MT has confirmed that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from August 15, 2017 to March 29, 2018. A copy of this letter is attached hereto as **Appendix U**.
- 7.4 MT has confirmed that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from March 30, 2018 to August 22, 2018. A copy of this letter is attached hereto as **Appendix V**.
- 7.5 Based on the materials filed by BMO on the receivership application, as of September, 2013 BMO was owed approximately \$11.8 million by Portofino for principal and interest, including a \$2.0 million letter of credit posted by BMO on behalf of Portofino in the Valente Court Action.
- 7.6 As set out above, the BMO Mortgage was assigned to RREF, 250 Ontario and, most recently, WFCU. 250 Ontario has provided the Receiver with an irrevocable Direction directing the Receiver to make payment to WFCU of all amounts otherwise payable to 250 Ontario under the BMO Mortgage.

- 7.7 As set out in paragraphs 1.17 – 1.22 of this Report, to date the Receiver has distributed \$9.8 million to WFCU on account of the secured claim under the BMO Mortgage.
- 7.8 At the Receiver's request, 250 Ontario provided the Receiver with a loan statement at August 8, 2017. The Receiver conducted a preliminary review of the statement and was satisfied that 250 Ontario's indebtedness exceeded the distributions to that date, plus the proposed distributions totaling \$3.4 million to be made pursuant to the Eighth Report and Ninth Report.
- 7.9 The Receiver requested additional information from 250 Ontario in support of its loan statement and was supplied with additional documentation, including a BMO loan account statement as at March 31, 2015. The Receiver has reviewed the loan statement provided by 250 Ontario and is satisfied that the loan balance at August 8, 2017 is not overstated.
- 7.10 The Receiver has updated the 250 Ontario loan statement to October 12, 2018 and calculated the balance outstanding at this date to be \$1,903,454.59. A copy of the updated loan schedule prepared by the Receiver is attached as **Appendix W**.
- 7.11 The Receiver has sufficient funds on hand to distribute a further \$1,400,000.
- 7.12 The Receiver seeks an Order authorizing it to distribute \$1,400,000 to WFCU from the funds on hand.

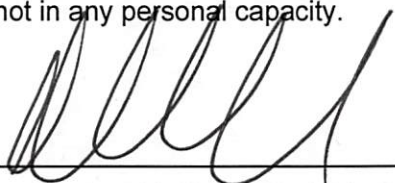
## 8. Recommendations

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- 8.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Approving the Tenth Report and the activities and conduct of the Receiver described herein;
  - (b) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to October 12, 2018;
  - (c) Approving the Professional Fees;
  - (d) Approving and authorizing the distribution of \$1,400,000 to WFCU from the funds on hand; and
  - (e) Providing advice and directions with respect to the Trust Funds and such orders as are necessary to give effect to such advice and directions.

All of which is Respectfully Submitted this 13th day of November, 2018.

BDO Canada Limited in its capacity as Court Appointed Receiver of Portofino Corporation and not in any personal capacity.



Per: Stephen N. Cherniak, CPA, CA, CIRP  
Licensed Insolvency Trustee  
Senior Vice President



# APPENDIX “A”

Court File No. CV-13-19866

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 29th  
JUSTICE B. THOMAS ) DAY OF OCTOBER, 2013

**BANK OF MONTREAL**

Applicant

- and -

**PORTOFINO CORPORATION**

Respondent

**ORDER**

THIS APPLICATION made by the Applicant, Bank of Montreal, ("BMO") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing BDO Canada Limited as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 245 Windsor Avenue, Windsor, Ontario.

ON READING the affidavit of Greg Fedoryn sworn September 6, 2013 and the Exhibits thereto and on hearing the submissions of counsel for BMO, Essex Condominium Corporation 122 ("ECC 122"), the Estate of Patrick D'Amore, Portofino Corporation and Dante Capaldi, Remo Valente Real Estate (1990) Limited and Sutts Strosberg LLP, no one appearing for Lombard General Insurance Company of Canada (now Northbridge General Insurance

- 2 -

Corporation) or Royal Bank of Canada, although duly served and on reading the consent of BDO Canada Limited to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service 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 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

### **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

- 3 -

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor, and to complete any minor repairs or construction as may be required to release and/or reduce security held for the Debtor's obligations under the Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31, as amended;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) 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 Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

- 4 -

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) 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 Receiver in its discretion may deem appropriate; In marketing the Property, the Receiver will consult with ECC 122; however the advice and opinions of ECC 122 will not be binding upon the Receiver;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each 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, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (m) 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;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- 5 -

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) 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 Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

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

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

- 6 -

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

#### **REPORT TO COURT AND STAKEHOLDERS**

7. THIS COURT ORDERS that the Receiver will deliver its first report to the Court on notice to BMO, Dante Capaldi, the Estate of Patrick D'Amore, Osvaldo Rizzo, Northbridge General Insurance Corporation, Remo Valente Real Estate (1990) Limited, Sutts Strosberg LLP;

- 7 -

Royal Bank of Canada, Essex Condominium Corporation no.122 and the City of Windsor (collectively, the "Stakeholders") within 45 days following its appointment.

8. THIS COURT ORDERS that the Receiver will report to the Stakeholders on a quarterly basis, prorated for 2013, such that the first such report is not required until the end of the first quarter of 2014.

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

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

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

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Leave of the Court is hereby granted to continue the Proceeding known as *Remo Valente Real Estate (1990) Limited v. Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante Capaldi*, Court file 05-CV-5864CM.

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

11. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.



- 8 -

**NO INTERFERENCE WITH THE RECEIVER**

12. 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 Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

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

- 9 -

**EMPLOYEES**

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

**PIPEDA**

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

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

- 10 -

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

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

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

#### **RECEIVER'S ACCOUNTS**

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

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

- 11 -

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

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

22. THIS COURT ORDERS that the Receiver 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 \$250,000 (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 Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

- 12 -

**GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
30. THIS COURT ORDERS that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

- 13 -

J. S. V. Powers

ENTERED AT WINDSOR	
In Back No.	24
re Document No.	1485
on	NOV 21 2013
by	J

**SCHEDULE "A"****RECEIVER CERTIFICATE**

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

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

32. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the \_\_\_\_\_ of \_\_\_\_\_, 2013 (the "Order") made in an action having Court file number \_\_\_\_\_ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

33. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of Montreal from time to time.

34. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

35. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

36. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

- 2 -

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 2013.

BDO Canada Limited, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:



**Bank of Montreal**  
*Applicant*

**-and- Portfolio Corporation**  
*Respondent*

Court File No. CV-13-19866

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
WINDSOR

**ORDER**

**ROBINS APPELBY & TAUB LLP**  
Barristers & Solicitors  
2600 - 120 Adelaide Street West  
Toronto ON M5H 1T1

**David A. Taub**  
LSUC No. 33518M  
Tel: (416) 360-3354  
Fax: (416) 868-0306

Lawyers for the Applicant, Bank of Montreal

# APPENDIX “B”

Court File No. CV-13-19866

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.	)	
	)	FRIDAY, THE 2ND
JUSTICE CAMPBELL	)	DAY OF MAY, 2014

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

**OMNIBUS APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of all of the assets, undertakings and properties of Portofino Corporation ("**Portofino**") pursuant to the Order of The Honourable Justice Thomas dated October 29, 2013 (the "**Receiver**"), for an order:

- (a) prospectively authorizing the Receiver to accept an offer or offers to purchase any or all of the unsold units (the "**Unsold Units**") provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;
- (b) prospectively authorizing the execution of an agreement of purchase and sale in respect of each Unsold Unit by the Receiver, as vendor, and the purchaser of each Unsold Unit (each purchaser hereinafter referred to as the "**Purchaser**") substantially in the form of the Form of Unsold Unit Sale Agreement attached as Schedule "A" to the Sale Agreement Order, together with any amendments or

modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as an "Unsold Unit Sale Agreement");

- (c) prospectively approving the sale transactions (each such transaction, a "Transaction" and together, the "Transactions") in respect of the Unsold Units, more particularly described on Schedule "A" to this Order; and
- (d) providing that, upon the delivery by the Receiver to a Purchaser of a Receiver's Certificate substantially in the form attached as Schedule "B" to this Order (the "Receiver's Certificate"), all of Portofino's right, title and interest in and to the Unsold Unit(s) described in each applicable Unsold Unit Sale Agreement (the "Purchased Assets") will vest in and to the applicable Purchaser, free and clear of any and all claims and encumbrances including those listed on Schedule "C" and in paragraph 3 of this Order, save and except for those encumbrances listed on Schedule "D" of this Order,

was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Third Report of the Receiver dated April 21, 2014 and all appendices thereto (the "Third Report"), and the Confidential Supplement to the Third Report and all appendices thereto (the "Confidential Supplement") and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn April 22, 2014, filed:

1. THIS COURT ORDERS that the Receiver is hereby prospectively authorized to accept an offer or offers to purchase any or all of the Unsold Units provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino.
2. THIS COURT ORDERS AND DECLARES that each Transaction is hereby prospectively approved, and the execution of each applicable Unsold Unit Sale Agreement by the Receiver is hereby authorized and approved, with any amendments or modifications thereto deemed necessary by the Receiver. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for

the completion of any Transaction and for the conveyance of the Purchased Assets to each applicable Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto, all of Portofino's right, title and interest in and to the Purchased Assets described in the applicable Unsold Unit Sale Agreement and listed on Exhibit "A" of the applicable Receiver's Certificate in respect of such Unsold Unit Sale Agreement shall vest absolutely in and to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Thomas dated October 29, 2013; (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; (iii) any Claims filed in respect of or affecting the Purchased Assets, which Claims are filed on or after the date of the granting of this Order, including without limitation, Claims in respect of the *Construction Lien Act* (Ontario); (iv) those Claims listed on **Schedule "C"** hereto in relation to the Purchased Assets (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** in relation to the Purchased Assets) and, for greater certainty, this Court orders that upon delivery of the applicable Receiver's Certificate all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets.

4. THIS COURT DIRECTS that the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) (the "**Land Registry**") shall register a copy of this Order along with the applicable fully completed and executed Receiver's Certificate in respect of the Purchased Assets once the Land Registrar is in receipt of same.

5. THIS COURT ORDERS that upon the registration in the Land Registry of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* (which will include a copy of this Order and the fully completed and executed Receiver's Certificate in respect of the Purchased Assets), the Land Registrar is hereby directed to enter the Purchaser named in the applicable Receiver's Certificate as the owner of the

Purchased Assets listed in Exhibit "A" to the Receiver's Certificate in fee simple, and is hereby directed to delete and expunge from title to the Purchased Assets all of the Claims listed in Schedule "C" hereto and in paragraph 3 of this Order.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate in respect of an applicable Unsold Unit Sale Agreement, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of each Receiver's Certificate, forthwith after delivery thereof, and in any event no later than thirty (30) days after the date of the closing of the Transaction detailed in each applicable Unsold Unit Sale Agreement.

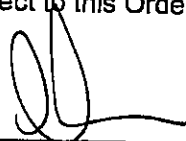
8. THIS COURT ORDERS that, notwithstanding:

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

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

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

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



Justice, Superior Court of Justice

ENTERED AT WINDSOR	
In Book No. 25	
Document No. 572	
DATE May 2	14
by DP	

### Schedule "A" – Unsold Units

#### Legal Description

**Description:** Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, PI 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 PI 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LT) (LRO#12)

Unsold Condominium Units					
Unit	Level		PIN		
1	1		01872	-	0001
2	1		01872	-	0002
3	1		01872	-	0003
4	1		01872	-	0004
5	1		01872	-	0005
6	1		01872	-	0006
3	2		01872	-	0052
4	2		01872	-	0053
4	3		01872	-	0058
9	3		01872	-	0063
1	4		01872	-	0065
2	4		01872	-	0066
8	4		01872	-	0072
8	5		01872	-	0082
1	6		01872	-	0085
3	6		01872	-	0087
1	7		01872	-	0095
4	7		01872	-	0098



Unsold Condominium Units					
Unit	Level		PIN		
8	7		01872	-	0102
3	8		01872	-	0107
4	8		01872	-	0108
5	8		01872	-	0109
6	8		01872	-	0110
1	9		01872	-	0115
3	9		01872	-	0117
4	9		01872	-	0118
6	9		01872	-	0120
1	10		01872	-	0123
2	10		01872	-	0124
8	10		01872	-	0130
1	11		01872	-	0131
2	11		01872	-	0132
4	11		01872	-	0134
5	11		01872	-	0135
1	12		01872	-	0139
2	12		01872	-	0140
1	13		01872	-	0145
2	13		01872	-	0146
3	13		01872	-	0147
1	14		01872	-	0151
2	14		01872	-	0152
3	14		01872	-	0153

Unsold Condominium Units					
Unit	Level		PIN		
4	14		01872	-	0154
1	15		01872	-	0157
2	15		01872	-	0158
3	15		01872	-	0159
5	15		01872	-	0161
1	16		01872	-	0162
2	16		01872	-	0163
3	16		01872	-	0164
5	16		01872	-	0166

Unsold Parking Units					
Unit	Level		PIN		
7	1		01872	-	0007
8	1		01872	-	0008
12	1		01872	-	0012
13	1		01872	-	0013
16	1		01872	-	0016
17	1		01872	-	0017
18	1		01872	-	0018
19	1		01872	-	0019
20	1		01872	-	0020
21	1		01872	-	0021
22	1		01872	-	0022
23	1		01872	-	0023

Unsold Parking Units					
Unit	Level		PIN		
24	1		01872	-	0024
25	1		01872	-	0025
26	1		01872	-	0026
27	1		01872	-	0027
28	1		01872	-	0028
29	1		01872	-	0029
30	1		01872	-	0030
31	1		01872	-	0031
32	1		01872	-	0032
33	1		01872	-	0033
34	1		01872	-	0034
35	1		01872	-	0035
36	1		01872	-	0036
37	1		01872	-	0037
38	1		01872	-	0038
39	1		01872	-	0039
40	1		01872	-	0040
41	1		01872	-	0041
42	1		01872	-	0042
43	1		01872	-	0043
44	1		01872	-	0044
45	1		01872	-	0045
46	1		01872	-	0046
47	1		01872	-	0047

Unsold Parking Units					
Unit	Level		PIN		
48	1		01872	-	0048
49	1		01872	-	0049

Unsold Storage Units					
Unit	Level		PIN		
2	A		01872	-	0168
1	A		01872	-	0167

**Schedule "B" – Form of Receiver's Certificate**

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Thomas of the Ontario Superior Court of Justice (the "Court") dated October 29, 2013, BDO Canada Limited ("BDO") was appointed as the receiver (the "Receiver") of all of the assets, undertakings and properties Portofino ("Portofino").

B. Pursuant to an Order of the Court dated May 2, 2014, the Court granted an omnibus approval and vesting order (the "Omnibus Approval and Vesting Order"), providing for among other things:

- (a) the Court's approval of this Transaction in respect of the Purchased Assets (as defined below) as described in the Sale Agreement (as defined below);
- (b) the Court's authorization of the Receiver entering into the Agreement of Purchase and Sale made as of \_\_\_\_\_ [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver and \_\_\_\_\_ [NAME OF PURCHASER] (the "Purchaser"); and
- (c) the vesting in and to the Purchaser all of Portofino's right, title and interest in and to the lands and premises legally described on Exhibit "A" to this Receiver's Certificate (the "Purchased Assets"), with such vesting to be effective in respect of the Purchased

Assets upon the delivery by the Receiver to the Purchaser of this certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent that such conditions could be waived, have been waived by the Receiver and the Purchaser; and (iii) the transaction described in the Sale Agreement (the "Transaction") has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Omnibus Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on closing pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent such conditions could be waived, have been waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver;
4. In accordance with the provisions of the Omnibus Approval and Vesting Order, upon delivery by the Receiver of this Receiver's Certificate to the Purchaser, the Transaction is approved and the Purchaser is vested with all of Portofino's right, title and interest in and to the Purchased Assets; and
5. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO CANADA LIMITED** solely in its capacity  
as Court-appointed receiver of Portofino  
Corporation and not in its personal capacity

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

Name:

Title:

**Exhibit "A" to Form of Receiver's Certificate – Purchased Assets**

**(INSERT LEGAL DESCRIPTION AND MUNICIPAL ADDRESS FOR EACH UNSOLD UNIT  
COMPRISING THE PURCHASED ASSETS SUBJECT TO THE APPLICABLE UNSOLD UNIT  
SALE AGREEMENT)**

**BANK OF MONTREAL**  
Plaintiff

and

**PORTOFINO CORPORATION**  
Defendant

Court File No: CV-13-19866

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSUC#: 29008M  
Tel: 519.931.3509  
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Email: skettle@millerthomson.com

Lawyers for BDO Canada Limited, Court-Appointed  
Receiver of Portofino Corporation



**Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units**

<b>Description:</b>	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, Pl 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 Pl 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
<b>Unsold Condominium Units (See Schedule "A" for individual unit descriptions)</b>	
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	<p>Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</p> <p>Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.</p> <p>Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.</p> <p>Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</p> <p>Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.</p> <p>Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</p> <p>Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</p> <p>Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.</p> <p>Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.</p> <p>Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal,</p>

- registered on July 22, 2013.
13. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
  14. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
  15. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
  16. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
  17. Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
  18. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
  19. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
  20. Instrument No. CE592122 – Application Court Order registered on November 28, 2013.

**Unsold Parking Units (See Schedule "A" for individual unit descriptions)**

1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation,

registered on March 1, 2012.

9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
15. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
16. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

**Unsold Storage Units (See Schedule "A" for individual unit descriptions)**

1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to

- Royal Bank of Canada, registered on December 20, 2011.
8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
  9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
  10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
  11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
  12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
  13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
  14. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
  15. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Unsold Units (Unsold Condominium Units, Unsold Parking Units and  
Unsold Storage Units)**

**(unaffected by the Omnibus Approval and Vesting Order)**

- (i) Instrument No. CE98338 – Notice from the Corporation of the City of Windsor to Portofino Riverside Tower Inc.
- (ii) Instrument No. CE191717 – Notice from the Corporation of the City of Windsor to Portofino Corporation
- (iii) Instrument No. CE278123 – Declaration Condo
- (iv) Instrument No. ECP122 – Plan Condominium
- (v) Instrument No. CE279560 – Condo By-Law/98 (By-Law No. 1)
- (vi) Instrument No. CE279561 – Condo By-Law/98 (By-Law No. 2)
- (vii) Instrument No. CE279607 – Condo By-Law/98 (By-Law No. 3)
- (viii) Instrument No. CE279624 – Condo By-Law/98 (By-Law No. 4)
- (ix) Instrument No. CE279635 – Condo By-Law/98 (By-Law No. 5)
- (x) Instrument No. CE279643 – Condo By-Law/98 (By-Law No. 6)

**BANK OF MONTREAL**

Applicant

and

**PORTOFINO CORPORATION**

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**OMNIBUS APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**  
One London Place  
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Lawyers for BDO Canada Limited, Court-Appointed  
Receiver of Portofino Corporation

# APPENDIX “C”

Court File No.: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE

*Scott J. Dapassin*

)  
)  
)

TUESDAY, THE 26<sup>TH</sup>

DAY OF JULY, 2016

BETWEEN:

2502461 ONTARIO LTD.

Applicant

-and-

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**ORDER**

**THIS MOTION**, made by BDO Canada Limited ("BDO"), in its capacity as court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation pursuant to the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 for an order:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Fifth Report of the Receiver dated July 13, 2016 and all appendices thereto (the "Fifth Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on July 26, 2016;
- (b) amending Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014;



- 2 -

- (c) deleting instrument numbers CE664524, CE715152, CE715154, CE715155, CE7157156, CE715157, CE715158, CE715159 and CE715282 from title to the condominium units comprised by property identifier numbers 01872-0131, 01872-0140 and 01872-0003;
- (d) approving the Fifth Report and the activities and conduct of the Receiver described therein;
- (e) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to June 30, 2016 (the "Statement of Receipts and Disbursements");
- (f) approving the professional fees and disbursements of BDO as Receiver;
- (g) approving the professional fees and disbursements of Miller Thomson LLP and Sutts Strosberg LLP, counsel to the Receiver;
- (h) approving and authorizing the distribution of \$4,000,000 to Windsor Family Credit Union from the funds on hand; and
- (i) such further and other relief as counsel may advise and this Honourable Court may deem just.

was heard this day at 245 Windsor Avenue, Windsor, Ontario.

**ON READING** the Fifth Report and on hearing the submissions of counsel for the Receiver, no one else appearing from the service list, although duly served as appears from the affidavit of Julie Los sworn July 14, 2016, filed:

1. **THIS COURT ORDERS** that the time for and method of service of all motion confirmation forms, the motion record, including the notice of motion and the Fifth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof;
2. **THIS COURT ORDERS** that Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014 be and is hereby amended and replaced by the Schedule

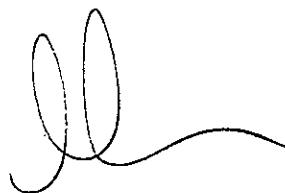
- 3 -

"C" – Claims to be deleted and expunged from title to the Unsold Units attached to this Order;

3. **THIS COURT ORDERS** that the following instruments are to be deleted and expunged from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003 and the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) is hereby directed to delete and expunge the following instruments from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003:
- (a) instrument number CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015;
  - (b) instrument number CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016;
  - (c) instrument number CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (d) instrument number CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (e) instrument number CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (f) instrument number CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (g) instrument number CE715158 - Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (h) instrument number CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016; and

- 4 -

- (i) instrument number CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Ltd. registered on May 31, 2016.
4. **THIS COURT ORDERS** that the Fifth Report and the activities and conduct of the Receiver described in the Fifth Report are hereby approved;
5. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved;
6. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP and Sutts Strosberg LLP, as described in the fee affidavits of Steven Cherniak sworn July 11, 2016, Tony Van Klink sworn July 13, 2016 and William Sasso sworn July 13, 2016 be and the same are hereby approved; and
7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to distribute to Windsor Family Credit Union the sum of \$4,000,000 from the funds being held by the Receiver.



ENTERED AT WINDSOR	
In Book No.	27
re Document No.	9644
on	JUL 26 2016
by	HK

**Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units**

<b>Description:</b>	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, PI 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 PI 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
<b>Unsold Condominium Units (See Schedule "A" for individual unit descriptions)</b>	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.
4.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
6.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
7.	Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.
8.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
9.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
10.	Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
11.	Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.
12.	Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
13.	Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.

14. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
15. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
16. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
17. Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
18. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
19. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
20. Instrument No. CE592122 – Application Court Order registered on November 28, 2013.
21. Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
22. Instrument No. CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
24. Instrument No. CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
25. Instrument No. CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
26. Instrument No. CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016 (save and except PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).
27. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
28. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Limited registered on May 30, 2016.
29. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
30. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016 (PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).

<b>Unsold Parking Units (See Schedule "A" for individual unit descriptions)</b>	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
8.	Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
9.	Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10.	Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11.	Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12.	Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13.	Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14.	Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
15.	Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
16.	Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

- 8 -

17.	Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
18.	Instrument No. CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016.
19.	Instrument No. CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
20.	Instrument No. CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
21.	Instrument No. CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
22.	Instrument No. CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
23.	Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
24.	Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
25.	Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
<b>Unsold Storage Units (See Schedule "A" for individual unit descriptions)</b>	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
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8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
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12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
15. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
16. Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
17. Instrument No. CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016.
18. Instrument No. CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
19. Instrument No. CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
20. Instrument No. CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
21. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
22. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
24. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016



2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

**ORDER**

**MILLER THOMSON LLP**  
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Lawyers for BDO Canada Limited, Court-  
Appointed Receiver of Portofino Corporation

# **APPENDIX “D”**

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**2502461 ONTARIO LTD.**

**Applicant**

**- and -**

**PORTOFINO CORPORATION**

**Respondent**

**NINTH REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED,  
AS RECEIVER OF PORTOFINO CORPORATION**

**April 23, 2018**

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**Table of Contents**

1. Introduction and Background .....	1
2. Terms of Reference .....	4
3. Purpose of the Receiver's Ninth Report .....	5
4. Receiver's Activities .....	6
5. Litigation .....	9
6. Statement of Receipts and Disbursements of the Receiver .....	10
7. Fees and Disbursements of the Receiver and Counsel to the Receiver .....	14
8. Distribution .....	16
9. Recommendations .....	18

## Appendices

- Appendix A** - Appointment Order dated October 29, 2013
- Appendix B** - Omnibus Approval and Vesting Order dated May 2, 2014
- Appendix C** - Order dated July 26, 2016
- Appendix D** - Eighth Report to the Court dated August 22, 2017 (without appendices)
- Appendix E** - Order dated September 19, 2017
- Appendix F** - Statement of Receipts and Disbursements
- Appendix G** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn April 10, 2018
- Appendix H** - Fee affidavit of Tony Van Klink for the interim accounts of Miller Thomson LLP sworn April 23, 2018
- Appendix I** - Legal Opinion of Miller Thomson LLP dated July 11, 2016
- Appendix J** - Legal Opinion of Miller Thomson LLP dated November 7, 2016
- Appendix K** - Legal Opinion of Miller Thomson LLP dated August 17, 2017
- Appendix L** - Legal Opinion of Miller Thomson LLP dated April 4, 2018
- Appendix M** - 2502461 Ontario Ltd. loan schedule at April 6, 2018

# 1. Introduction and Background

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## 1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("BDO" or the "Receiver") of the assets, undertakings and properties of Portofino Corporation ("Portofino" or the "Company") acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof (the "Property").
- 1.1.2 On application of Bank of Montreal ("BMO"), BDO was appointed as receiver by the Order of Mr. Justice Thomas dated October 29, 2013 (the "Appointment Order"). A copy of the Appointment Order is attached as **Appendix A** to this report.

## 1.2 Background

- 1.2.1 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as "Portofino" (the "Portofino Condominium" or the "Project"), located at 1225 Riverside Drive West in the City of Windsor, Ontario. Dr. Dante Capaldi ("Capaldi") is the principal of Portofino.
- 1.2.2 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 ("ECC 122") was registered and the closing of sales of units commenced in July, 2007.
- 1.2.3 At the time of the appointment of the Receiver, Portofino owned:
- (a) fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the "Unsold Condominium Units");
  - (b) thirty-eight (38) parking units, including four (4) surface-level covered parking units and thirty-four (34) surface-level uncovered parking units (the "Unsold Parking Units"); and
  - (c) two (2) storage units (the "Unsold Storage Units")
- (collectively, the "Unsold Units").

- 1.2.4 Since 2005, there had been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Portofino, among others, in Court Action No. 05-CV-5864CM (the "**Valente Court Action**"). As outlined in the Receiver's Seventh Report to the Court dated February 7, 2017 (the "**Seventh Report**") and its Eighth Report to the Court dated August 22, 2017 (the "**Eighth Report**"), the Valente Court Action is now concluded.
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 48 Unsold Condominium Units and the settlement of the Valente Court Action. To date, nine reports, including the within report, have been filed by the Receiver in these proceedings wherein these activities, transactions and litigation are described in greater detail.
- 1.2.6 As part of its Third Report to the Court, the Receiver sought prospective approval for future sales of the Unsold Units and the vesting of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain conditions, in the applicable Purchaser.
- 1.2.7 By Order dated May 2, 2014 (the "**Omnibus Approval and Vesting Order**"), Mr. Justice Campbell prospectively approved the sales transactions in respect of the Unsold Units and vested all of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain terms and conditions, in the Purchaser. A copy of the Omnibus Approval and Vesting Order is attached as **Appendix B**.
- 1.2.8 In June 2015, BMO sold to RREF II BHB IV PORTOFINO LLC ("**RREF**") its loans with Portofino and the security held for those loans, including the mortgage held by BMO over the Project (the "**BMO Mortgage**").
- 1.2.9 In May 2016, RREF, in turn, sold those loans and security, including the BMO Mortgage, to 2502461 Ontario Ltd. ("**250 Ontario**"). 250 Ontario subsequently assigned those loans and security to Windsor Family Credit Union ("**WFCU**") by way of security for amounts owing by 250 Ontario to WFCU.
- 1.2.10 By order dated July 26, 2016 (the "**July 26, 2016 Order**") Mr. Justice Campbell, among other things, approved certain amendments to the Omnibus Approval and Vesting Order. A copy of the July 26, 2016 Order is attached as **Appendix C**.

- 1.2.11 The July 26, 2016 Order also approved the interim distribution of \$4.0 million to WFCU from the net receipts from the sale of units and collection of rents. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.
- 1.2.12 By order dated November 29, 2016 (the "November 29, 2016 Order") Mr. Justice Bondy, among other things, approved the further interim distribution of \$2.4 million to WFCU. On November 30, 2016 the Receiver paid \$2.4 million to WFCU.
- 1.2.13 By order dated February 28, 2017 (the "February 28, 2017 Order") Mr. Justice Monroe, among other things, authorized the Receiver to take no further steps with respect to certain litigation, as set out in the Seventh Report, but make the actions available to any creditor of Portofino to pursue at their own risk and expense.
- 1.2.14 The Receiver submitted its Eighth Report in which it advised that the actions outlined in the Seventh Report were abandoned, and motions for the scheduling of status hearings withdrawn. The Eighth Report was also submitted in support of a motion authorizing the Receiver to settle litigation between Dede Dalfidan carrying on business as Fidan Enterprise Contracting ("Dalfidan") as plaintiff, and Portofino and another party, as defendants, in Court File No. 07-CV-8478 and Court File No. 06-CV-8228 (collectively, the "Dalfidan Action"). A copy of the Eighth Report (without appendices) is attached as **Appendix D**.
- 1.2.15 By order dated September 19, 2017 (the "September 19, 2017 Order") Mr. Justice Patterson, among other things, authorized the Receiver to enter into a settlement agreement with Dalfidan, and approved the further interim distribution of \$1.7 million to WFCU. A copy of the September 19, 2017 Order is attached as **Appendix E**. On September 20, 2017 the Receiver paid \$1.7 million to WFCU, bringing the total distributed by the Receiver to WFCU, as assignee for 250 Ontario, to \$8.1 million.
- 1.2.16 The Receiver is presently holding net receipts of approximately \$1,852,000 from the sale of units and the collection of rents. The Receiver wishes to make a further interim distribution of \$1,700,000 from those funds.



## 2. Terms of Reference

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- 2.1 In preparing this Ninth Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from Portofino's books and records and discussions with management and staff (the "Information"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

### **3. Purpose of the Receiver's Ninth Report**

---

- 3.1 This constitutes the Receiver's Ninth Report to the Court (the "Ninth Report") in this matter and is filed:
- (a) To provide the Court with information on:
    - (i) the Receiver's activities since the date of the Eighth Report;
  - (b) In support of an order of the Court:
    - (i) Approving the Ninth Report and the activities and conduct of the Receiver described herein;
    - (ii) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to April 4, 2018 (the "Statement of Receipts and Disbursements");
    - (iii) Approving the professional fees and disbursements of BDO as Receiver ("BDO Fees");
    - (iv) Approving the professional fees and disbursements of Miller Thomson LLP ("MT"), counsel to the Receiver ("MT Fees" and collectively with the BDO Fees, the "Professional Fees"); and
    - (v) Approving and authorizing the distribution of \$1,700,000 to WFCU from the funds on hand.

## 4. Receiver's Activities

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- 4.1 In its Eighth Report, the Receiver reported to the Court on its activities through August 22, 2017.
- 4.2 In this, the Ninth Report, the Receiver reports on its activities since the date of the Eighth Report.

### **Sale of the Unsold Units**

- 4.3 The Fourth Report provided a detailed report of the Receiver's sale process for the Unsold Units and the results achieved to April 15, 2016.
- 4.4 Subsequent reports have provided updates on further sales of the Unsold Units.
- 4.5 Since the Eighth Report, the Receiver has completed the sales of units 1302, 1502, 102, 1602 and 1605. In addition the Receiver has entered into firm Agreements of Purchase and Sale for units 1201 and 1601, with scheduled closing dates of May 23, 2018 and May 30, 2018 respectively.
- 4.6 To date, the Receiver has sold 48 of the Unsold Condominium Units, including six (6) unfinished units.
- 4.7 The Receiver has sold six (6) of the Unsold Parking Units, consisting of four surface level garages and two surface level parking spaces.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 4 units remain unsold, 1 of which is fully finished and 3 are unfinished. In addition, 32 parking units and two basement level storage units remain unsold. A summary of the sales completed to date of the Unsold Condominium Units and the remaining Unsold Condominium Units is provided on the following page:

## Condominium units sold by Receiver

Unit No.		Size (Sq. ft.)	Sale date	Unit No.		Size (Sq. ft.)	Sale date
1108	Finished	1,151	05-May-14	1001	Finished	1,593	24-Mar-16
704	Finished	1,282	30-Jun-14	708	Finished	1,150	16-May-16
904	Finished	1,602	31-Oct-14	1101	Finished	1,593	05-Jul-16
804	Finished	1,282	04-Dec-14	1202	Unfinished	2,450	13-Jul-16
1102	Finished	1,547	09-Jan-15	103	Finished	1,282	15-Jul-16
1104	Finished	1,602	12-Feb-15	304	Finished	1,282	02-Aug-16
803	Finished	1,217	29-May-15	601	Finished	1,150	05-Aug-16
1404	Finished	2,233	30-Jun-15	105	Finished	1,062	30-Aug-16
701	Finished	1,150	24-Jul-15	1501	Finished	2,233	20-Sep-16
402	Finished	1,062	30-Jul-15	104	Finished	1,217	03-Oct-16
1105	Finished	1,547	31-Jul-15	408	Finished	1,150	03-Oct-16
1002	Finished	1,547	14-Aug-15	309	Finished	1,151	02-Nov-16
508	Finished	1,150	03-Sep-15	806	Finished	1,217	06-Jan-17
805	Finished	1,282	23-Sep-15	1401	Finished	2,233	17-Feb-17
203	Finished	1,062	23-Oct-15	1301	Finished	2,233	31-Mar-17
1303	Finished	2,450	16-Nov-15	204	Finished	1,150	16-Jun-17
901	Finished	1,593	20-Nov-15	1603	Finished	2,450	22-Jun-17
903	Finished	1,602	20-Nov-15	1302	Unfinished	2,450	25-Sep-17
1403	Finished	2,450	01-Dec-15	1502	Finished	2,450	03-Oct-17
603	Finished	1,217	03-Dec-15	102	Finished	2,081	08-Jan-18
906	Finished	1,593	11-Dec-15	1602	Unfinished	2,450	31-Jan-18
1503	Unfinished	2,450	25-Jan-16	1605	Finished	1,718	29-Mar-18
1008	Finished	1,151	19-Feb-16	1201	Unfinished	2,233	23-May-18
401	Finished	1,150	08-Mar-16	1601	Unfinished	2,233	30-May-18

78,583

## Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
106	Finished	1,150
1402	Unfinished	2,450
1505	Unfinished	1,718

7,354

## Tarion Warranty Corporation

4.9 The Receiver's Third Report to the Court, Fourth Report to the Court and the Eighth Report reported on Portofino's status with Tarion Warranty Corporation ("Tarion"), which administers the Ontario New Home Warranties Plan Act. The Receiver has continued to pay premiums to Northbridge General Insurance Corporation ("Northbridge") on a bond, in the amount of \$640,000, posted as security for Tarion.

- 4.10 In the Eight Report the Receiver reported that "in view of the small number of remaining deficiencies, and the sale of two of the unfinished units, the Receiver expects the amount of bond required by Tarion to be significantly reduced"
- 4.11 In November 2017 the Receiver confirmed with a representative of Tarion that the amount of security required was under review.
- 4.12 In March 2018 Tarion advised the Receiver that the security required by Tarion had been reduced to \$140,000. The Receiver advised legal counsel to Northbridge and expects the bond, and corresponding bond premium to be reduced accordingly.

#### **Property Management**

- 4.13 In October 2017 Capaldi Investment Holdings Inc. ("Capaldi Holdings") resigned as the property manager for ECC 122, who has retained M.F. Arnsby Property Management Ltd. ("MF Arnsby") as the property manager for the Portofino condominium.
- 4.14 Effective December 31, 2017 the Receiver terminated its property management agreement with Capaldi Holdings. The Receiver has retained M.F. Arnsby as its property manager with respect to the remaining unsold units.
- 4.15 The tenants of unit 1605 vacated their unit as of March 10, 2018 and the sale of the of the unit was completed on March 29, 2018. At this point the Receiver has no tenants. There is one remaining finished unit, namely unit 106, which will remain vacant until sold.

#### **Other Matters**

- 4.16 The Receiver worked with the Company's external accountant, Mr. Michael Greenaway CPA, in preparing annual financial statements for Portofino. Financial statements have been prepared, and income tax returns filed for the fiscal years through July 1, 2017.
- 4.17 At the Annual General Meeting of ECC 122 on October 18, 2017, Mr. Stephen Cherniak of the Receiver did not seek reappointment to the Board of Directors of ECC 122.

## 5. Litigation

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### Dalfidan

- 5.1 As authorized by the September 19, 2017 the Receiver paid \$80,000 to Dalfidan's legal counsel in full and final settlement of the Dalfidan Action.
- 5.2 Following the execution of settlement documents, and on application by Dalfidan, the Court ordered that the lien bond posted by Portofino as security with the Accountant of the Ontario Superior Court of Justice be delivered to the Receiver's counsel for cancellation. On November 29, 2017, the Receiver's counsel instructed Northbridge, formerly Lombard General Insurance Company of Canada, through their legal counsel, to cancel the lien bond.

## 6. Statement of Receipts and Disbursements of the Receiver

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6.1 The Receiver maintains an account at BMO in London, Ontario. Attached as Appendix F is the Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements are as follows:

### 6.2 Receipts

- a) *Sale of units and surface parking (\$13,977,550.96)* — The Receiver received net proceeds of \$13,977,550.96 from the sale of the Unsold Units. Proceeds received are net of amounts paid on closing for condominium fee arrears, real estate commissions inclusive of HST, and HST collected on the sale of Unsold Parking Units and unfinished Unsold Condominium Units.
- b) *Condominium rent collected (\$1,978,587.60)* — The Receiver collected \$1,978,587.60 from the rental of the Unsold Condominium Units.
- c) *Lawsuit (\$119,789.96)* — Portofino was involved in litigation arising from the original construction of the Project. The Receiver collected \$119,789.96, being the balance of holdback funds held in the lawyer's trust account, after distribution to sub-contractors in settlement of the litigation.
- d) *Reimbursement of Letter of Credit Costs (\$64,408.22)* — As required by the Orders of the Court of Appeal and Justice Quinn, Valente Real Estate reimbursed the costs of maintaining the letter of credit in the Valente Court Action.
- e) *Parking rent collected (\$34,314.69)* — The Receiver collected \$33,314.69 from the rental of Unsold Parking Units.
- f) *Interest (\$20,624.61)* — The Receiver received \$20,624.61 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates ("GIC") that matured or were redeemed. Interest is recognized as it is received.

- g) *HST refund (\$7,971.76)* — Upon filing the outstanding corporate income tax returns, the Receiver received \$7,971.76 in HST refunds accruing from prior to the appointment of the Receiver.

### 6.3 Disbursements

- a) *Property taxes (\$3,040,059.66)* — The Receiver has paid property taxes to the City of Windsor of \$3,040,059.66. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015, 2016, 2017 and the first two installments of 2018.
- b) *Receiver's fees (\$969,559.89)* – BDO's accounts for the period July 19, 2013 to May 17, 2017 in the amount of \$836,448.52, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim accounts for the period May 18, 2017 to January 10, 2018 in the amount of \$129,111.37 and is seeking approval of the Court for these invoices.
- c) *Condominium common fees (\$769,837.82)* — The Receiver has paid \$769,837.82 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$380,600.92)* – MT's accounts for the period September 9, 2013 to July 26, 2017 in the amount of \$367,424.24, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim accounts for the period July 27, 2017 to November 28, 2017 in the amount of \$13,176.68, and is seeking approval of the Court of these invoices.
- e) *Repairs and Maintenance (\$237,427.74)* – The Receiver has paid \$237,427.74 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, installation of rooftop air conditioning units and construction of a demising wall between units 1601 and 1602.
- f) *HST paid (\$224,315.22)* – The Receiver has paid \$224,315.22 in HST on its disbursements.
- g) *HST remitted (\$168,062.62)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has



remitted \$168,062.72. This amount represents the HST collected, less any eligible input tax credits.

- h) *Settlement of Dalfidan litigation (\$80,000.00)* — The Receiver paid \$80,000.00 in full and final settlement of the Dalfidan Action.
- i) *Legal fees – Sutts Strosberg (\$78,662.72)* – The Receiver engaged Sutts Strosberg LLP ("SS") to provide an initial review and chronology of the Valente Court Action for the Receiver's counsel, and subsequently to continue the litigation on behalf of Portofino Corporation. The litigation is now concluded.
- j) *Property management fees (\$70,000.00)* — The Receiver has paid \$70,000.00 to Capaldi Holdings for property management of the Unsold Units.
- k) *Bond premiums (\$49,755.00)* — The Receiver paid \$49,755.00 to Northbridge for the premiums on bonds posted as security for: i) Tarion Warranty Corporation; and ii) the Portofino litigation with Dalfidan.
- l) *Advertising (\$40,346.72)* — The Receiver paid \$40,346.72 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- m) *BMO Letter of credit fees (\$39,074.26)* — The Receiver paid \$39,074.26 to BMO for fees to maintain the \$2.0 million Letter of Credit in connection with the Valente Court Action.
- n) *Utilities (\$38,602.37)* — The Receiver paid \$38,602.37 for utilities on vacant Unsold Units and leased condominium units where utilities were paid by the Landlord.
- o) *Valente litigation – Costs Award (\$30,393.34)* — The Receiver paid \$30,393.34 in legal costs awarded to Valente Real Estate in the Valente Court Action.
- p) *Appraisal fees (\$15,014.50)* — The Receiver paid \$15,014.50 to Metrix Realty Group for an appraisal of the Unsold Condominium Units on an individual unit basis.

- q) *Insurance (\$7,372.08)* — The Receiver paid \$7,372.08 to Hub International for premiums on the Receiver's liability insurance policy.
- r) *Accounting fees (\$5,250.00)* — The Receiver has paid \$5,250.00 to Michael Greenaway Professional Corporation for the preparation of 2013 through 2017 financial statements and corporate income tax returns.
- s) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the former property manager to assist in the leasing of vacant Unsold Units.
- t) *Tarion Warranty Corporation fees (\$2,500.00)* — The Receiver has paid \$2,500.00 in Tarion annual renewal fees.
- u) *Other professional fees (\$1,972.00)* — The Receiver has paid \$1,972.00 in other professional fees.

## 7. Fees and Disbursements of the Receiver and Counsel to the Receiver

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- 7.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted 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 as security for payment of the Professional Fees.
- 7.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 7.3 Attached as **Appendix G** is the fee affidavit of Stephen N. Cherniak sworn April 10, 2018 containing BDO's interim accounts as Receiver for the following periods:
- o May 18, 2017 to August 14, 2017
  - o August 15, 2017 to October 19, 2017
  - o October 20, 2017 to January 10, 2018
  - o January 11, 2018 to March 29, 2018
- 7.4 The Receiver's fees to date, exclusive of HST, are as follows:
- |                                       |   |                       |
|---------------------------------------|---|-----------------------|
| Fees paid and Court approved          | - | \$ 836,448.52         |
| Fees paid, but not yet Court approved | - | 129,111.37            |
| Fees neither paid, nor Court approved | - | <u>38,017.94</u>      |
|                                       |   | <u>\$1,003,577.83</u> |
- 7.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 7.6 Attached as **Appendix H** is the fee affidavit of Tony Van Klink, sworn April 23, 2018 containing the interim accounts of MT for the period July 27, 2017 to March 29, 2018.

7.7 MT's fees to date, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 367,424.24
Fees paid, but not yet Court approved	-	13,176.68
Fees neither paid, nor Court approved	-	<u>6,210.50</u>
		<u>\$386,811.42</u>

7.8 The Valente Court Action has been concluded. The fees of SS, exclusive of HST, are as follows:

Fees paid and Court approved	-	<u>\$73,662.72</u>
------------------------------	---	--------------------

7.9 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

## 8. Distribution

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- 8.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the "**July 11<sup>th</sup> Opinion**") indicating that, subject to the customary assumptions and qualifications, the BMO Mortgage is valid and enforceable in accordance with its terms and has priority over all other registered charges. A copy of the independent legal opinion of MT was attached as Appendix G to the Receiver's Fifth Report to the Court and is attached hereto as **Appendix I**.
- 8.2 MT confirmed that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from July 11, 2016 to November 2, 2016. A copy of this letter was attached as Appendix H to the Receiver's Sixth Report to the Court and is attached hereto as **Appendix J**. MT confirmed that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from November 3, 2016 to August 14, 2017. A copy of this letter was attached as Appendix N to the Eighth Report and is attached hereto as **Appendix K**.
- 8.3 MT has confirmed that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from August 15, 2017 to March 29, 2018. A copy of this letter is attached hereto as **Appendix L**.
- 8.4 Based on the materials filed by BMO on the receivership application, as of September, 2013 BMO was owed approximately \$11.8 million by Portofino for principal and interest, including a \$2.0 million letter of credit posted by BMO on behalf of Portofino in the Valente Court Action.
- 8.5 As set out above, the BMO Mortgage was assigned to RREF, 250 Ontario and, most recently, WFCU. 250 Ontario has provided the Receiver with an irrevocable Direction directing the Receiver to make payment to WFCU of all amounts otherwise payable to 250 Ontario under the BMO Mortgage.
- 8.6 The July 26, 2016 Order authorized the Receiver to distribute \$4,000,000 to WFCU. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.

- 8.7 The November 29, 2016 Order authorized the Receiver to distribute \$2,400,000 to WFCU. On November 30, 2016 the Receiver paid \$2.4 million to WFCU
- 8.8 At the Receiver's request, 250 Ontario provided the Receiver with a loan statement at August 8, 2017. The Receiver conducted a preliminary review of the statement and was satisfied that 250 Ontario's indebtedness exceeded the distributions to that date, plus the distribution proposed in the Eighth Report of \$1,700,000.
- 8.9 The September 19, 2017 Order authorized the Receiver to distribute \$1,700,000 to WFCU. On September 20, 2017 the Receiver paid \$1.7 million to WFCU.
- 8.10 The Receiver requested additional information from 250 Ontario in support of its loan statement and was supplied with additional documentation, including a BMO loan account statement as at March 31, 2015. The Receiver has reviewed the loan statement provided by 250 Ontario and is satisfied that the loan balance at August 8, 2017 is not overstated.
- 8.11 The Receiver has updated the 250 Ontario loan statement to April 6, 2018 and calculated the balance outstanding at this date to be \$3,541,213. A copy of the updated loan schedule prepared by the Receiver is attached as **Appendix M**.
- 8.12 The Receiver has sufficient funds on hand to distribute a further \$1,700,000.
- 8.13 The Receiver seeks an Order authorizing it to distribute \$1,700,000 to WFCU from the funds on hand.

## 9. Recommendations

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- 9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Approving the Ninth Report and the activities and conduct of the Receiver described herein;
  - (b) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to April 4, 2018;
  - (c) Approving the Professional Fees; and
  - (d) Approving and authorizing the distribution of \$1,700,000 to WFCU from the funds on hand.

All of which is Respectfully Submitted this 23<sup>rd</sup> day of April, 2018.

BDO Canada Limited in its capacity as Court Appointed Receiver of Portofino Corporation and not in any personal capacity.



Per: Stephen N. Cherniak, CPA, CA, CIRP  
Licensed Insolvency Trustee  
Senior Vice President

# APPENDIX “E”



Court File No.: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

TUESDAY, THE 8<sup>TH</sup>

JUSTICE

*G. J. VERBEEK*

)

)

DAY OF MAY, 2018

BETWEEN:

**2502461 ONTARIO LTD.**

Applicant

- and -

**PORTOFINO CORPORATION**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**ORDER**

**THIS MOTION**, made by BDO Canada Limited ("BDO"), in its capacity as court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation ("Portofino") pursuant to the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 for an order:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Ninth Report of the Receiver dated April 23, 2018 and all appendices thereto (the "Ninth Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on May 8, 2018;
- (b) approving the Ninth Report and the activities and conduct of the Receiver described therein;

- 2 -

- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to April 4, 2018 (the "**Statement of Receipts and Disbursements**");
- (d) approving the professional fees and disbursements of the Receiver and its legal counsel (the "**Professional Fees**");
- (e) approving and authorizing the distribution of \$1,700,000 to Windsor Family Credit Union ("**WFCU**") from the funds on hand; and
- (f) such further and other relief as counsel may advise and this Honourable Court deems just.

was heard this day at 245 Windsor Avenue, Windsor, Ontario.

**ON READING** the Ninth Report and on hearing the submissions of counsel for the Receiver, no one else appearing from the service list, although duly served as appears from the affidavit of Susan Jarrell sworn April 23, 2018, filed:

1. **THIS COURT ORDERS** that the time for and method of service of all motion confirmation forms, the motion record, including the notice of motion and the Ninth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Ninth Report and the activities and conduct of the Receiver described in the Ninth Report are hereby approved.
3. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.
4. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the fee affidavits of Stephen N. Cherniak sworn April 10, 2018 and Tony Van Klink sworn April 23, 2018, be and the same are hereby approved.

5. **THIS COURT ORDERS** the distribution of \$1,700,000 to WFCU from the funds on hand.

  
\_\_\_\_\_  
Justice, Ontario Superior Court of Justice

FILED AT WINDSOR  
No. 29  
Document No. 513  
May 8 2018  
BY: HK

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

**ORDER**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511  
Email: tvanklink@millerthomson.com

**Sherry A. Kettle**, LSUC #53561B  
Tel: 519.931.3534  
Fax: 519.858.8511  
Email: skettle@millerthomson.com

Lawyers for BDO Canada Limited, Court-  
Appointed Receiver of Portofino Corporation

# APPENDIX “F”

Court File No. 05-CV-005864 CM

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.  
JUSTICE RICHARD GATES

Fri...DAY, THE 21<sup>st</sup>  
DAY OF JUNE, 2007

B E T W E E N:

*(Court Seat)*

REMO VALENTE REAL ESTATE (1990) LIMITED

Plaintiff

and

PORTOFINO RIVERSIDE TOWER INC., WESTVIEW  
PARK GARDENS (2004) INC., PORTOFINO  
CORPORATION and DANTE CAPALDI

Defendants

**ORDER**

THIS MOTION, made by the defendants, without notice was heard this day at 245 Windsor Avenue, Windsor, Ontario.

ON READING the consent of the parties, and in the presence of counsel for defendants appearing,

1. THIS COURT ORDERS THAT notwithstanding the interim order of Justice Mary Jo Nolan pronounced December 6, 2005 restraining the defendants, or any of them, from encumbering certain lands ("Lands") or transferring any shares in the capital stock of Portofino Riverside Tower Inc., leave be and the same is hereby granted to Portofino Corporation to do all acts and things necessary or desirable to cause a declaration and description to be registered against the title to the Lands in accordance with and for the purposes of section 2 of the *Condominium Act, 1998* (Ontario).

-2-

2. THIS COURT ORDERS THAT leave be and the same is hereby granted to Portofino Corporation to proceed to complete the existing pre- and post-construction agreements of purchase and sale (as to all, "Agreements of Purchase and Sale") in respect of the units and purchasers identified in Schedule A to this order.

3. THIS COURT ORDERS THAT, pending further order, forthwith upon the completion of each of the Agreements of Purchase and Sale, whether or not procured by the plaintiff,

- (a) Portofino Corporation shall provide the plaintiff with full particulars of
  - (i) the purchase price ("Purchase Price") disclosed by the agreement (including each and every amendment thereto), and
  - (ii) all charges to the purchaser on account of upgrades, extras or additional parking or storage units;
- (b) Portofino Corporation, without prejudice to the plaintiff's claims to additional commissions identified at paragraph 4 hereof, shall remit or cause to be remitted to the plaintiff on each of the Agreements of Purchase and Sale it procured from the balance due on its closing the commission due to the plaintiff determined by reference to the Purchase Price, together with any exigible goods, services and sales taxes ("GST") on such commission;
- (c) the plaintiff, without prejudice to its claims to additional commissions identified at paragraph 4 hereof, shall provide its invoice to Portofino Corporation to support the payment of the commission and GST paid pursuant to subparagraph (b) of this paragraph, and

-3-

(d) Portofino Corporation shall cause its solicitors to retain at interest in a segregated and not in a mixed trust account from the balance due on each such closing, an amount equal to the commission rate applied against the price of any

- (i) upgrades,
- (ii) extras,
- (iii) parking units, and
- (iv) storage units

charged to the purchaser(s) together with an allowance for GST thereon pending the final determination of plaintiff's commission right thereto, if any.

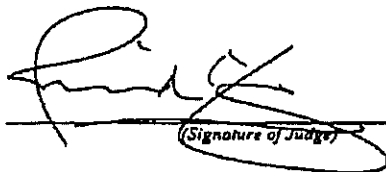
4. THIS COURT ORDERS THAT the following issues are directed to be tried:

- (a) the plaintiff claims and the defendants deny that
  - (i) where a pre- or post-construction agreement of purchase and sale gives rise to a commission payable to the plaintiff on the Purchase Price stated in such agreement, commissions are also payable pursuant to the exclusive listing agreement ("Exclusive Listing Agreement") between the plaintiff and the defendant Portofino Riverside Tower Inc. on the price charged to purchasers for
    - (1) upgrades,
    - (2) extras,



-4-

- (3) parking units, and
  - (4) storage units; and
- (ii) commissions are payable pursuant to the Exclusive Listing Agreement on each pre-construction agreements of purchase and sale arising from the letting of a contract for the furnishing of services or materials to the improvement of the Lands ("Contractor/Supplier Sales");
- (b) the parties shall exchange affidavits of documents and attend and submit to examinations for discovery in accordance with the Rules of Civil Procedure; and
- (c) the issues directed to be tried shall be tried by a judge without a jury at Windsor on a date to be fixed by the registrar.



(Signature of Judge)

RCP-E 59A (November 1, 2005)

ENTERED AT WINDSOR.
In Book No. <u>18</u>
re Document No. <u>1099</u>
on <u>JUN 29 2007</u>
by <u>[Signature]</u>

# APPENDIX “G”

May. 4. 2012 3:38PM

No. 1058 P. 2/5

CITATION: Valente v. Portofino, 2012 ONSC 2721  
 COURT FILE NO.: 05-CV-5864CM  
 DATE: 20120504

## ONTARIO

## SUPERIOR COURT OF JUSTICE

BETWEEN:

Remo Valente Real Estate (1990) Limited

Plaintiff

Gino Morga, for the Plaintiff

- and -

Portofino Riverside Tower Inc., Westview  
 Park Gardens (2004) Inc. Portofino  
 Corporation and Dante J. Capaldi

Defendants

Werner H. Keller, for the Defendants

HEARD: May 3, 2012

## REASONS FOR JUDGMENT

JOSEPH G. QUINN:

- [1] Plaintiff brings this motion for the following relief:
- a) A trial date;
  - b) An order amending the title of proceedings and the pleadings to add Capaldi General Partner Corporation and Portofino (2005) Limited Partnership as defendants;
  - c) An order continuing the past security order, namely a \$2,000,000 letter of credit, a third mortgage and that the Miller Canfield trust account funds related to this matter be maintained.
  - d) Directions with regard to the trial.
- [2] The parties have agreed that the trial will start January 7, 2013. The trial estimate is five to seven days. The trial date is accordingly fixed for January 7, 2013.
- [3] The parties have also agreed to the amendment requested. An order will go for the amendment requested in the Notice of Motion.

May. 4. 2012 3:38PM

No. 1058 P. 3/5

Page: 2

- [4] The parties have also agreed to a trial management meeting. I have fixed November 16, 2012 at 10:00 a.m. for a trial management meeting. This meeting is designed to shorten and streamline the trial by factual agreements and defining issues.
- [5] The issue of security was contested. Security, as a general rule, is not ordered in contract actions. The exception to this rule is where the court is persuaded that there is a real risk that the defendant will dispose of his assets in a manner not consistent with normal business practice.
- [6] The defendant Dante J. Capaldi transferred the assets of Portofino Riverside Tower Inc. to other corporations. The trial judge, after listening to the evidence of Dante J. Capaldi, concluded that:

*Capaldi did not make out a clear business reason for transferring out and locking up the legal title to Portofino I in a revocable trust while transferring the equitable title to a limited partnership controlled by Capaldi other than that suggested by the plaintiffs - to avoid the commission agreement.*

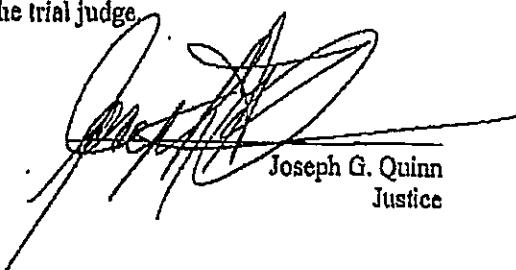
- [7] The appellate courts set aside the trial judgment but not on the basis of this finding. Justice Brockenshire's finding is at the very least persuasive evidence that there is a risk that the defendant Dante J. Capaldi may dispose of his assets to avoid the possible consequences of this litigation.
- [8] I find, therefore, that the plaintiff has demonstrated the need for a security order. The courts, to date, in this matter to achieve security, have ordered a third mortgage, indemnity agreements, funds to be held in trust and a letter of credit. In my judgment the only security that is required is a letter of credit. The only issue with the letter of credit is the quantum.
- [9] The trial judge set the letter of credit security at \$2,000,000. There are in total 120 condominiums. Plaintiff, I understand, has sold 50 condominiums. The ancillary commissions claimed may not succeed as contract damages. There may be a prejudgment interest claim. The trial judge unfortunately did not do any calculations.
- [10] Respondent's record, Tab A, contains the only helpful accounting on this project. In general terms it would appear plaintiff sold \$14,411,956 worth of condominiums and extras, and earned approximately \$640,000 in commissions. There are roughly \$29,000,000 worth of condominiums either sold by others or left to be sold. These sales would attract commissions of roughly twice what plaintiff has already sold or \$1,000,000. There would also be a prejudgment interest claim on any amount awarded. It is also unlikely that plaintiff will succeed on commissions for all of the units.
- [11] In conclusion, based on the information available on this motion, I would order security by way of the Bank of Montreal letter of credit in the amount of \$2,000,000. Plaintiff should continue to bear the cost of this security. The trial judge can award this cost to plaintiff or defendant. I would assume that the terms of the letter of credit have been resolved by now.

May. 4. 2012 3:38PM

No. 1058 P. 4/5

Page: 3

[12] Costs of today fixed at \$2,500 and reserved to the trial judge.



Joseph G. Quinn  
Justice

Released: May 4, 2012



May. 4. 2012 3:38PM

No. 1058 - P. 5/5

CITATION: Valente v. Portofino, 2012 ONSC 2721

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Remo Valente Real Estate (1990) Limited

Plaintiff

- and -

Portofino Riverside Tower Inc., Westview Park Gardens  
(2004) Inc. Portofino Corporation and Dante J. Capaldi

Defendants

---

REASONS FOR JUDGMENT

---

Joseph G. Quinn  
Justice

Released: May 4, 2012

# APPENDIX “H”



**SHIBLEY RIGHTON** LLP  
*Barriers and Solutions*

Jerry Lee Goldberg  
Direct Line 1-519-361-7408  
Direct Fax 519-969-8045  
goldberg@shibleyrighton.com

**WINDSOR OFFICE:**  
2510 Ouellette Avenue, Suite 301, Windsor, Ontario, N8X 1L4  
Main 519 969-9844 Toll Free 1-866-422-7988  
Facsimile 519 969-8045

**TORONTO OFFICE:**  
250 University Avenue, Suite 700, Toronto, Ontario, M5H 3E5  
Main 416 214-5200 Toll free 1-877-214-5200  
Facsimile 416 214-5400

www.shibleyrighton.com

Please reply to the WINDSOR OFFICE

May 21, 2014

File No. 2140523

**BY FAX: 1.519.439.4351**  
**PRIVATE AND CONFIDENTIAL**

BDO Canada Limited  
252 Pall Mall Street, Suite 103  
London, ON  
N6A 5P6

Attention: Steven Cherniak

Dear Sirs/Mesdames:

**RE: Portofino Corporation**

Further to our recent telephone discussion, I enclose the following:

1. Schedule showing the amount of funds held back on various sales of condominium units totalling \$85,000.45. Each amount shown in the far right column represents additional commissions allegedly owed by Portofino to Valente Real Estate as a result of extras provided by the builder. The amounts have been invested for over 5 years at Scotia Bank and now is in excess of \$100,000.00.

The writer provided an undertaking to Valente that the amounts would be held back until the parties met and resolved the issue; as you are aware, a lawsuit was commenced alleging breach of contracts and the writer has continued to hold the funds in trust notwithstanding the fact that the Divisional Court ordered Valente to pay the Plaintiff costs fixed in excess of \$300,000.00 (which has not been paid) and the decision of Mr. Justice Quinn rendered May 3, 2012, paragraph 8 stating "in my judgment the only security that is required is a letter of credit". The writer had asked Werner Keller to address this issue so that I could pay the receivables owed by Portofino to Miller Canfield.

I enclose a statement showing receivables totalling \$94,212.85.





- 2 -

It is the view of my former law firm, Miller Canfield, that we have a solicitor's lien on the funds being retained, and we intend to proceed with an application to have the funds transferred out of trust to pay the receivables, with any amounts remaining to be forwarded to your offices.

Yours truly

**SHIBLEY RIGHTON LLP**

Jerry Lee Goldberg  
JLG/cb

Encl.

MAY-22-2014 10:20

From: 5199698045

<u>PORTOFINO CORPORATION INVESTMENT CERTIFICATES</u>	<u>MC CLIENT/MATTER #</u>	<u>INVEST. AMOUNT</u>
s/t Ranvir Singh Jalf - Unit #705	129020-00100	1,188.78
s/t Perica/Goldstein - Unit #707	129020-00098	2,225.00
s/t James Bowman - Unit #1604	129020-00057	1,431.00
s/t Dr. Donald and Nancy Allen - Unit #1504	129020-00059	3,516.26
s/t Rina Tonin - Unit #1204	129020-00069	2,913.18
s/t Paul and Patricia Speight - Unit #1304	129020-00065	5,308.78
s/t Bruce Blair - Unit #202	129020-00005	6,111.85
s/t Sol Sigal - Unit #905	129020-00083	5,969.31
s/t Izzy Sigal - Unit #1005	129020-00082	6,001.11
s/t Jorge & Stella Latoni - Unit #807	129020-00089	1,490.31
s/t Chen Shwu Ying - Unit #810	129020-00086	1,970.40
s/t James White - Unit #706	129020-00099	2,927.15
s/t Denise Lacey - Unit #507	129020-00051	1,201.47
s/t Lukasevich/Touignant - Unit #703	129020-00056	1,907.13
s/t Dana and Louis Davis - Unit #907	129020-00080	1,343.74
s/t Carla Tonucci - Unit #506	129020-00052	1,253.97
s/t Kelly Sheardown - Unit #609	129020-00053	1,363.90
s/t Sarah Bowman - Unit #1206	129020-00067	3,837.38
s/t Gabriella Bonn - Unit #605	129020-00047	5,033.52
s/t Dr. Liang - Unit #608	129020-00043	1,550.12
s/t Gloria & Walter Yaworsky - Unit #505	129020-00039	2,591.38
s/t Elio Colavita - Unit #502	129020-00036	1,796.89
s/t Donald and Luella Surgent	129020-00022	1,110.58
s/t Marvin Lee - Unit #305	129020-00020	1,111.54
s/t Helen Fontaine - Unit #306	129020-00021	1,059.68
s/t Thomas and Joyce Robson - Unit #406	129020-00006	3,204.47
s/t Gino Greco - Unit #205	129020-00018	1,913.14
s/t Chris Campbell/Mentag - Unit #302	129020-00019	1,208.74
s/t Claude and Laurine Boulais - Unit #902	129020-00093	12,459.67
		<u>85,000.45</u>

PLEASE NOTE:  
THESE AMOUNTS DO NOT  
INCLUDE INTEREST EARNED

# MCPS Account Receivable Report

End Period: 201310

Region: CANADA

Bill Number	Bill Date	Cur	Write Off	Total
2618 - Goldberg, Jerry L.	129020 - Portofino Corporation	00058 - s/t Dino Villalta and Tina Villalta, Uni		
		1072293	07/29/2010 CAD Client A/R	3,698.60
		1098242	01/14/2011 CAD Client A/R	1,131.98
		<b>Matter Total</b>		<b>4,830.58</b>
		00073 - s/t Steven Hearn, Unit 1105 - 1225 River		
		996116	02/12/2009 CAD Client A/R	1,426.69
		<b>Matter Total</b>		<b>1,426.69</b>
		00074 - s/t Karamjit Jeji, Unit 1104 - 1225 Rive		
		1023113	08/14/2009 CAD Client A/R	1,719.78
		1090185	11/26/2010 CAD Client A/R	6,415.97
		<b>Matter Total</b>		<b>8,135.75</b>
		00076 - s/t Marc Kobrosli, Unit 1008 - 1225 Rive		
		1010998	05/20/2009 CAD Client A/R	290.85
		<b>Matter Total</b>		<b>290.85</b>
		00085 - s/t Dave Betschel, Unit 903 - 1225 River		
		1075736	08/13/2010 CAD Client A/R	3,812.16
		1157282	04/10/2012 CAD Client A/R	2,198.81
		<b>Matter Total</b>		<b>6,010.97</b>
		00091 - s/t Kaveh Mobin, Unit 805 - 1225 Riversi		
		1010991	05/20/2009 CAD Client A/R	305.29
		<b>Matter Total</b>		<b>305.29</b>
		00092 - s/t Tony Darvishian, Unit 804 - 1225 Riv		
		1010997	05/20/2009 CAD Client A/R	295.58
		<b>Matter Total</b>		<b>295.58</b>
		00101 - s/t Cornel Rizea, Unit 704 - 1225 Rivers		
		988923	12/12/2008 CAD Client A/R	1,424.66
		<b>Matter Total</b>		<b>1,424.66</b>
		00105 - s/t Michal Chlumecky, 908 - 1225 Riversi		
		997919	02/27/2009 CAD Client A/R	182.98
		<b>Matter Total</b>		<b>182.98</b>
		00107 - s/t Alphonse Schlehauf, 1108-1225 River		
		988921	12/12/2008 CAD Client A/R	1,378.65
		1023685	08/26/2009 CAD Client A/R	1,435.88
		1070526	07/13/2010 CAD Client A/R	4,857.44

**MCPS Account Receivable Report**

End Period: 201310

Region: CANADA

	Bill Number	Bill Date	Cur	Write Off	Total	
2618 - Goldberg, Jerry L.	129020 - Portofino Corporation	00107 - s/t Alphonse Schleihauf, 1108- 1225 River	<b>Matter Total</b>			<b>7,671.97</b>
		00112 - s/t Melnik, Rozalia, 1505-1225 Riverside	1075997	08/16/2010	CAD Client A/R	567.26
			<b>Matter Total</b>			<b>567.26</b>
		00114 - Potential Breach of Contract with Betsch	949526	04/21/2008	CAD Client A/R	7,765.12
			1090221	11/29/2010	CAD Client A/R	14,809.37
			<b>Matter Total</b>			<b>22,574.49</b>
		00118 - Registration of Condominium Declaration	914462	09/14/2007	CAD Client A/R	9,731.25
			<b>Matter Total</b>			<b>9,731.25</b>
		00120 - Corporate Records Maintenance	1072233	07/27/2010	CAD Client A/R	452.00
			<b>Matter Total</b>			<b>452.00</b>
		00121 - ats. Michael Hablb - breach of contract	1055365	03/31/2010	CAD Client A/R	4,740.76
			1067938	06/24/2010	CAD Client A/R	1,937.64
			<b>Matter Total</b>			<b>6,678.40</b>
		00123 - Appeal Matters with Remo Valente Real Es	948170	04/10/2008	CAD Client A/R	10,313.10
			<b>Matter Total</b>			<b>10,313.10</b>
		00124 - Application v. Designers Kitchen for pos	1098245	01/14/2011	CAD Client A/R	447.10
			<b>Matter Total</b>			<b>447.10</b>
		00131 - Review of Forbearance Agreement with the	1101244	02/09/2011	CAD Client A/R	1,019.38
			<b>Matter Total</b>			<b>1,019.38</b>
		00133 - Transfer to Westview Park Luxury Gardens	1118808	06/17/2011	CAD Client A/R	616.60
			<b>Matter Total</b>			<b>616.60</b>

### MCPS Account Receivable Report

End Period: 201310

Region CANADA

			Bill Number	Bill Date	Cur	Write Off	Total
2618 - Goldberg, Jerry L.	129020 - Portofino Corporation	00138 - Portofino Corporation - Security to Sutt	1126757	08/19/2011	CAD	Client A/R	1,007.94
		<b>Matter Total</b>					<b>1,007.94</b>
		00143 - Revision of Security to Sutt's Strosberg	1192357	01/15/2013	CAD	Client A/R	956.41
		<b>Matter Total</b>					<b>956.41</b>
		00145 - Mortgage Amending Agreement - Bank of Mo	1214636	07/31/2013	CAD	Client A/R	903.42
		<b>Matter Total</b>					<b>903.42</b>
		<b>Total for Portofino Corporation</b>					<b>94,212.85</b>

# APPENDIX “I”



MILLER THOMSON LLP  
MILLERTHOMSON.COM

ONE LONDON PLACE + 255 QUEENS AVENUE, SUITE 2010  
LONDON, ON + N6A 5R8 + CANADA

T 519.931.3500  
F 519.858.8511

May 26, 2014

**Delivered Via Facsimile (1.519.946.2133)**

Miller Canfield  
Barristers and Solicitors  
Suite 1300  
100 Ouellette Avenue  
Windsor, ON N6A 6T3

**Tony Van Klink**  
Direct Line: 519.931.3509  
tvanklink@millerthomson.com

File: 082873.0012

Attention: Managing Partner

Dear Sir/Madam:

**Re: Portofino Corporation**

We are the lawyers for BDO Canada Limited, the court-appointed receiver ("Receiver") of Portofino Corporation ("Portofino").

Attached for your reference is a copy of the Order of Justice Thomas dated October 29, 2013 by which the Receiver was appointed as receiver of Portofino.

We understand that pursuant to paragraph 3(d) of the Order of Justice Gates dated June 29, 2007 (the "Gates Order"), a copy of which is attached, Miller Canfield is holding in trust \$85,000.45, plus accrued interest thereon. Attached is a schedule received by the Receiver from Jerry Goldberg which sets out the amount being held and your file number to which those funds relate.

Pursuant to the Gates Order, the funds were to be held pending a final determination of the rights of Remo Valente Real Estate (1990) Limited ("Valente Real Estate") thereto. Subsequently in reasons for judgment dated May 3, 2012, Justice Quinn determined that the only security that was required in connection with the litigation between Valente Real Estate and Portofino was a letter of credit which had been posted with the Court. A copy of the Reasons for Judgment of Justice Quinn are attached.

Pursuant to section 3(a) of the Receivership Order, the Receiver is empowered and authorized to take possession of and exercise control of the Property, as defined in paragraph 2 of the Receivership Order. The Property includes the funds being held in trust by Miller Canfield.

On behalf of the Receiver, we require that the funds being held in trust by Miller Canfield, together with all accrued interest thereon, be remitted to the Receiver at this time.

We understand that Miller Canfield has unpaid accounts owing to it by Portofino totalling approximately \$92,000 and that Miller Canfield may be asserting a solicitor's lien against the funds which it is holding in trust. Based on information provided to the Receiver by Mr. Goldberg, we understand that the unpaid accounts which Portofino has with Miller Canfield are on files other than the files on which the funds are being held in trust. Although we doubt whether Miller Canfield is entitled to assert a solicitor's lien against funds which it is holding in trust as a stakeholder only, even if it can do so, that lien would only extend to unpaid accounts on those files to which the funds relate. There are no unpaid accounts on those files. Just as a construction lien claimant cannot tack an unpaid invoice onto a different construction project with the same owner, a lawyer cannot tack a lien for an unpaid account to funds it is holding for the client on an unrelated matter. For a solicitor's lien to exist, there must be a link between the work performed by the lawyer and the funds in question. We understand that Miller Canfield has been paid, in full, for the services which it provided in connection with the sales from which the funds being held in trust originated.

Although we are of the view that Miller Canfield is not entitled to a solicitor's lien against the funds, the funds must be paid over to the Receiver even if Miller Canfield is entitled to a solicitor's lien. If Miller Canfield is entitled to a solicitor's lien, the Court may give effect to that lien in the receivership proceeding.

If you wish, the Receiver will add Miller Canfield to the service list so that it receives notice of all further steps, including any motions to distribute funds to the creditors of Portofino.

Yours truly,



Tony Van Klink  
TVK/sj  
Encl.

c. Stephen Cherniak (w/o encl.)  
c: Jerry Goldberg (w/o encl.)  
c: Gino Morgia (w/o encl.)  
11678466.1



# APPENDIX “J”

**Gino Morga Q.C.**  
Barristers and Solicitors

Gino Morga Q.C.  
email: gmorga@morgalaw.com

Michelle D. Reynolds, B.A. LL.B.  
email: mreynolds@morgalaw.com

104 - 2485 Ouellette Avenue  
Windsor, Ontario N8X 1L5  
Phone: 519-561-7413  
Fax: 519-971-0577

May 27, 2014

BY FACSIMILE ONLY (519-946-2133)

Managing Partner  
Miller Canfield  
Barristers & Solicitors  
Suite 1300  
100 Ouellette Avenue  
Windsor, Ontario N6A 6T3

Dear Sir/Madam:

Re: Portofino Corporation

I have been copied with Mr. Van Klink's letter of May 26, 2014.

As you will note from Justice Gate's Order, there are a number of Defendants in the action. I take the position that the monies held in trust by your firm were for the benefit of the action and for of all of the Defendants. All of the Defendants are jointly and severally liable.

While I can confirm that Justice Quinn's Order provides that only the Letter of Credit is needed for security, these monies being held in trust by you were never part of the security, but were rather monies paid to the credit of the action until the issues were sorted out. Accordingly, in my view, they are monies belonging to my client for work done and commissions earned and are not the property of Portofino Corporation.

In any event, these issues are currently before the Court because of the Receiver's attempt to strike out the Letter of Credit, and I would respectfully suggest that you hold the monies pending further Order by the Court.

I should tell you that the motions relating to the Letter of Credit and other issues are now returnable on August 12, 2014.

Page 2

Yours truly,

A handwritten signature in dark ink, appearing to read "Gino Morga". The signature is somewhat stylized and has a grainy, high-contrast appearance.

GINO MORGA

GM/sf

c.c. Mr. Tony Van Klink (519-858-8511)

c.c. Mr. Jerry Goldberg (519-969-8045)

# APPENDIX “K”



SHIBLEY RIGHTON LLP  
*Business and Securities*

Jerry L. Goldberg  
 Direct Line 1-519-561-7408  
 Direct Fax 1-519-969-8045  
 goldberg@sibleyrighton.com

WINDSOR OFFICE:  
 2510 Ouellette Avenue, Suite 301, Windsor, Ontario, N8X 1L4  
 Main 519 969-9844 Toll Free 1-866-422-7988  
 Facsimile 519 969-8045

TORONTO OFFICE:  
 250 University Avenue, Suite 700, Toronto, Ontario, M5H 3E5  
 Main 416 214-5200 Toll Free 1-877-214-5200  
 Facsimile 416 214-5400

www.sibleyrighton.com

Please reply to the WINDSOR OFFICE

February 14, 2017

File No. 2151419

*Via Email – drcapaldi@bell.net*

Portofino Corporation  
 697 Front Road North  
 Amherstburg, ON N9V 2V6

Attention: Dr. Dante Capaldi

Dear Sir:

**Re: Remo Valente Real Estate (1990) Limited – Settlement**

---

Pursuant to the Irrevocable Direction received, copy enclosed, we have are in the process of applying the trust funds totalling \$89,184.77 against the outstanding receivables and have written off any other balances.

Yours truly  
**SHIBLEY RIGHTON LLP**

By:

*J.L. Goldberg*  
 Jerry L. Goldberg

/s

Encl.

*(dictated, signed in the writer's absence)*

LEXWORK  
 LAW CORPORATION

MULTILAW  
 A Division of  
 King, McLeod & Co. Inc.

IRREVOCABLE DIRECTION

TO: Jerry L. Goldberg

AND TO: Miller, Canfield, Paddock and Stone, LLP

RE: Portofino Corporation et al ats Remo Valente Real Estate (1990) Limited  
Court File No. 05-CV-5864CM

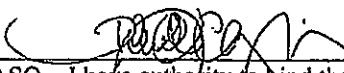
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Portofino Corporation acknowledges that Miller, Canfield, Paddock and Stone, LLP ("Miller Canfield") retains in its trust account approximately \$210,000.00 which monies Miller, Canfield has not been able to apply on account of receivables owed by Portofino Corporation and Capaldi related corporations as result of a Court Order issued in the above action.

We hereby irrevocably authorize and Direct Miller, Canfield to immediately upon being advised of the settlement of the above action and/or change of the Court Order to apply the trust funds to payment of the outstanding receivables attached hereto as Schedule "A".

DATED at Windsor, Ontario this 26<sup>th</sup> day of April, 2013.

**PORTOFINO CORPORATION**

per:   
ASO – I have authority to bind the corporation.

SCHEDULE "A"

96  
19

CAPALDI ACCOUNTS RECEIVABLE REPORT

Bill #	Date	Client	Matter	Portofino Corporation	Total Billed	Total AR
914462	9/14/2007	129020	118	Registration of Condominium Declaration	32,154.54	9,731.25
949526	4/21/2008	129020	114	Potential Breach of Contract with Betsch	8,146.12	7,765.12
988921	12/12/2008	129020	107	s/t Alphonse Schleihauf, 1108-1225 River	1,378.65	1,378.65
988923	12/12/2008	129020	101	s/t Cornel Rizea, Unit 704 - 1225 Rivers	1,424.66	1,424.66
996116	2/12/2009	129020	73	s/t Steven Hearn, Unit 1105 - 1225 River	1,426.69	1,426.69
997919	2/27/2009	129020	105	s/t Michal Chlumecky, 908 - 1225 Riversi	1,471.48	182.98
1010991	5/20/2009	129020	91	s/t Kaveh Mobin, Unit 805 - 1225 Riversi	305.29	305.29
1010998	5/20/2009	129020	92	s/t Tony Darvishian, Unit 804 - 1225 Riv	295.58	295.58
1012803	6/4/2009	129020	76	s/t Marc Kobrosli, Unit 1008 - 1225 Rive	290.58	290.85
1023113	8/14/2009	129020	1	Loan with Bank of Montreal 1225 Riversid	1,001.12	1,001.12
1023665	8/26/2009	129020	74	s/t Karamjit Jeji, Unit 1104 - 1225 Rive	1,719.78	1,719.78
1054733	3/29/2010	129020	107	s/t Alphonse Schleihauf, 1108-1225 River	1,435.88	1,435.88
1055365	3/31/2010	129020	50	s/t Richard R. Loucks, Unit 508 - 1225 R	5,337.89	3,910.60
1067938	6/24/2010	129020	121	ats. Michael Habib - breach of contract	4,740.76	4,740.76
948170	4/10/2008	129020	121	ats. Michael Habib - breach of contract	1,937.64	1,937.64
1070526	7/13/2010	129020	123	Appeal Matters with Remo Valente Real Es	11,476.54	10,313.10
1072233	7/27/2010	129020	107	s/t Alphonse Schleihauf, 1108-1225 River	5,467.58	5,467.58
1072298	7/29/2010	129020	120	Corporate Records Maintenance	452.00	452.00
1075736	8/13/2010	129020	58	s/t Dino Villalta and Tina Villalta, Uni	3,698.60	3,698.60
1075997	8/16/2010	129020	85	s/t Dave Betschel, Unit 903 - 1225 River	3,812.16	3,812.16
1090185	11/26/2010	129020	112	s/t Melnik, Rozalia, 1505-1225 Riverside	567.26	567.26
1090221	11/29/2010	129020	74	s/t Karamjit Jeji, Unit 1104 - 1225 Rive	6,415.97	6,415.97
1098240	1/14/2011	129020	114	Potential Breach of Contract with Betsch	14,809.37	14,809.37
1098242	1/14/2011	129020	50	s/t Richard R. Loucks, Unit 508 - 1225 R	3,458.46	3,458.46
1098245	1/14/2011	129020	58	s/t Dino Villalta and Tina Villalta, Uni	1,131.98	1,131.98
1101244	2/9/2011	129020	124	Application v. Designers Kitchen for pos	447.10	447.10
1118808	6/17/2011	129020	131	Review of Forbearance Agreement with the	1,019.38	1,019.38
1126757	8/19/2011	129020	133	Transfer to Westview Park Luxury Gardens	927.70	616.60
1157282	4/10/2012	129020	138	Portofino Corporation - Security to Suft	1,007.94	1,007.94
1192357	1/15/2013	129020	85	s/t Dave Betschel, Unit 903 - 1225 River	2,198.81	2,198.81
			143	Revision of Security to Sufts Strosberg	956.41	956.41
					<b>93,919.57</b>	



# APPENDIX “L”



**Van Klink, Tony**

---

**From:** Van Klink, Tony  
**Sent:** Friday, February 24, 2017 6:18 PM  
**To:** goldberg@shibleyrighton.com  
**Cc:** Cherniak, Stephen N  
**Subject:** Portofino - Miller Canfield trust funds [MTDMS-Legal.FID6661972]

Jerry, further to our telephone conversation of this afternoon and your letter of February 14, I have given some consideration to this matter.

You have advised that the funds held in trust by Miller Canfield came from the sale of units by Portofino. As part of Justice Brockenshire's decision in the Valente litigation, the funds were to be held as part of the security for the claims made in that litigation. Justice Brockenshire's decision was later set aside. On May 4, 2012 Justice Quinn made an Order that the only security which was to remain in place was the \$2 million letter of credit – all other security was to be discharged. From that point on there was no court order of which I am aware which prohibited Portofino from using the funds in the trust account to pay the Miller Canfield invoices.

On April 26, 2013 Portofino provided an Irrevocable Direction with respect to the trust funds. The Irrevocable Direction refers to a court order in the Valente litigation prohibiting the funds from being applied against Miller Canfield's invoices and authorizes the funds to be applied as soon as the court order is removed or the litigation settled. As mentioned, I am unaware of any court order prohibiting the funds from being applied at the time the Direction was signed. Once Justice Quinn made his Order that only the LC was to remain as security, the trust funds were available to be used by Portofino. You indicated that you sought that confirmation from Sutts Strosberg at the time, but it was never provided. You also indicated that Mr. Morga took the position that the trust funds could not be released and had to continue to be held.

The funds were not applied and continued to be held in the Miller Canfield trust account until the date of the receivership. In my view, at any time prior to the date of the receivership Miller Canfield could have applied the funds. It appears that was not done as Miller Canfield and Portofino were under the mistaken impression that there was a court order prohibiting the funds from being applied.

The trust funds, never having been applied against the Miller Canfield invoices, remained the property of Portofino at the date of the receivership. The Irrevocable Direction is a form of security. Following the receiver's appointment, Miller Canfield's rights to the trust funds under the Irrevocable Direction have to be considered relative to the rights of other secured creditors of Portofino. I am not sure without reviewing the file further whether there are other secured creditors of Portofino which may have a security interest in the funds. If there are, it becomes a question of the relative priorities between the claims of the competing security interests in the funds. I will review that next week and get back to you.

In the meantime, as the funds remained the property of Portofino at the date of the receivership, they are subject to the Receivership Order and must be paid over to the Receiver. The funds will then be dealt with in the receivership according to the relative priorities of the creditors.

**TONY VAN KLINK**

Partner

**Miller Thomson LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, Ontario N6A 5R8  
**Direct Line:** +1 519.931.3509

# APPENDIX “M”



**SHIBLEY RIGHTON** LLP  
Barristers and Solicitors

Donald W. Leschied  
Direct Line 1-519-561-7412  
Direct Fax 1-519-969-8045  
[Don.leschied@shibleyrighton.com](mailto:Don.leschied@shibleyrighton.com)

WINDSOR OFFICE:  
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Facsimile 519 969-8045

TORONTO OFFICE:  
250 University Avenue, Suite 700, Toronto, Ontario, M5H 3E5  
Main 416 214-5200 Toll free 1-877-214-5200  
Facsimile 416 214 5400  
[www.shibleyrighton.com](http://www.shibleyrighton.com)

Please reply to the WINDSOR OFFICE

*Via email to [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)*

March 13, 2017

MILLER THOMSON  
Lawyers  
One London Place  
#2010 – 255 Queens Avenue  
LONDON, Ontario  
N6A 5R8

**Attention: Tony Van Klink**

Dear Sir:

**RE: Portofino ats. Miller Canfield LLP**  
**Solicitors Lien / Direction to Pay**

Let me acknowledge yours of February 24<sup>th</sup> last, further to Mr. Goldberg's February 14<sup>th</sup> letter and your conference call with him on February 24<sup>th</sup>.

Mr. Goldberg, Jeff Slopen and I are the remaining partners and owners of Miller Canfield LLP.

Our firm had the right to a Solicitors' Lien on assets of Portofino recovered through the firms' legal services to satisfy unpaid legal bills to Portofino on its sale of property between September 2007 and January 15, 2013, totalling some \$94,000.00, plus accrued interest, the largest of which claims included Condominium Declarations and litigation defending claims made by Portofino's Listing Agent, Remo Valente, and breach of contract actions by Betsch.

The assets recovered by Miller Canfield LLP totalled some \$210,000.00 and a conditional Letter of Direction was signed by Portofino on April 26, 2013: conditional on substituting a Letter of Credit for the assets in Trust held by Miller Canfield LLP and a variation of the Court Order by Justice Brockenshire on the settlement of the largest Creditor, Valente Real Estate, at which point the Letter of Direction became irrevocable.

Justice Quinn varied the previous Order, permitting a \$2,000,000.00 Bank Letter of Credit from Scotia Bank to stand as security for the Valente claim. The Lien by Miller Canfield LLP became unconditional and its unpaid fees were paid, with a shortfall of interest on the unpaid accounts.

The claims by Valente were recently settled by Judgment and fully paid by the Letter of Credit.





I believe you have these Court Orders and Judgment.

In fact, our firm transferred the balance, in trust, of excess funds, to your firm on March 4, 2014, as Counsel to the Receiver, in the sum of \$119,789.96.

I read these cases that fully support the right to the Solicitors' Lien and in priority to any claims by the Receiver, one of which – Robson and Sovran v. Thorne, Earnest & Whinney, 1991 – went to the Court of Appeal, in part from the changing Order I and my firm recovered at trial in this litigation that was upheld on Appeal.

I attach these decisions:

1. Re: Tots and Teens (1976)  
11 O.R. (2d) 103
2. Robson and Sovran v. Thorne, Earnest & Whinney (OCA)
3. King Insurance Finance (Wines) Inc., 2012

Should you be instructed to challenge our firm's lawful right to a Solicitors' Lien given the irrevocable Letter of Direction that became unconditional and the payment from our account to satisfy Portofino's legal accounts, I will accept service of your Application and retain Counsel to defend and challenge it.

Yours very truly,

SHIBLEY RIGHTON LLP

DONALD W. LESCHIED

:pb

c.c. - *Jerry L. Goldberg*  
*Jeffrey Slopen*

# APPENDIX “N”

## Ontario Personal Property

## Bank of Montreal

## Security Act Security Agreement

## SECURITY AGREEMENT

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). This Security Agreement is entered into pursuant to and is governed by the Personal Property Security Act (Ontario) insofar as it affects personal property located in Ontario.

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations in Ontario:

Lands and premises municipally known as 1225 Riverside Dr. W., Windsor, Ontario

List all premises and asset locations, by schedule, if necessary

2. The Debtor hereby

- (a) mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment and any proceeds therefrom, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired and any equipment specifically listed or otherwise described in any Schedule hereto;
- (b) mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory and any proceeds therefrom, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;
- (c) assigns, transfers and sets over to the Bank and grants to the Bank a security interest in, all its present and future intangibles and any proceeds therefrom, including, without limiting the generality of the foregoing, all its present and future book debts and other accounts receivable, chattel paper, contract rights and other choses in action of every kind or nature now due or hereafter to become due, including insurance rights arising from or out of the assets referred to in sub-clauses (a) and (b) above; and
- (d) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, moveable or immovable, of whatsoever nature and kind both present and future other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and to the exceptions hereinafter contained). For the purposes of this Security Agreement, the equipment, inventory, intangibles, undertaking and all other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes collectively called the "Collateral".

Attach a schedule, if equipment is to be listed

3. The Collateral is on the date hereof primarily situate or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places while in transit to and from such locations and premises; and the Collateral may from time to time be situate or located at any other place when on lease or consignment to any lessee or consignee from the Debtor.

4. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be excepted out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid upon trust to assign and dispose of the same as any purchaser of such term of years shall direct. There shall also be excluded from the security created by this Security Agreement any property of the Debtor that constitutes consumer goods for the personal use of the Debtor.
5. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral other than that described in sub-clause (b) of clause 2 above which may be sold only in the ordinary course of business and for the purpose of carrying on the same; and if the amounts of any of the intangibles referred to in sub-clause (c) of clause 2 above or any proceeds arising from the Collateral described in sub-clauses (a) and (b) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank. The Debtor shall not without the prior written consent of the Bank create any liens upon or assign or transfer as security or pledge or hypothecate as security or create a security interest in the Collateral except to the Bank. The Debtor agrees that the Bank may require any account debtor of the Debtor to make payment to the Bank and the Bank may take control of any proceeds referred to in sub-clauses (a), (b) and (c) of clause 2 hereof and may hold all amounts received from any account debtors and any proceeds as cash collateral as part of the Collateral and as security for the Obligation of the Debtor to the Bank.
6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the property and assets hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement.
7. The Debtor shall at all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and seasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.
8. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of inventory and equipment and lists of accounts receivable showing the amounts owing upon each account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the account.
9. The Debtor shall be in default under this Security Agreement upon the occurrence of any one of the following events:
  - (a) the Debtor shall default under any of the Obligations;
  - (b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not and including any covenant or undertaking set out in any Schedule to this Security Agreement;
  - (c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;

- (d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be bona fide opposed by the Debtor;
  - (e) the Debtor shall cease to carry on business.
10. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, the Bank may enter upon and lease or sell the whole or any part or parts of the Collateral. The Debtor agrees that considering the nature of that part of the Collateral that is not perishable it will be commercially reasonable to sell such part of the Collateral:

- (a) as a whole or in various lots;
- (b) by a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
- (c) by private sale after the receipt by the Bank of at least two offers from prospective purchasers who may include persons related to or affiliated with the Debtor or other customers of the Bank.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

- 11. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this Security Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.
- 12. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in the preparation, perfection and enforcement of this Security Agreement and the payment of such expenses shall be secured hereby.



- 13. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or the rights resulting therefrom.
- 14. The Debtor warrants and acknowledges that the Debtor and the Bank intend each of the security interests in this Security Agreement to attach upon the execution of this Security Agreement and that value has been given and that the Debtor has rights in the Collateral.
- 15. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Obligations of the Debtor shall at any time or from time to time be fully satisfied or paid.
- 16. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Bank.
- 17. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.
- 18. This Security Agreement is a security agreement within the meaning of the Personal Property Security Act (Ontario) and does not constitute an acknowledgement of any particular indebtedness or liability of the Debtor to the Bank.
- 19. In construing this Security Agreement, terms herein shall have the same meaning as defined in the Personal Property Security Act (Ontario), unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

Insert date of execution

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor on the 27 day of October, 2005.

To be signed by Debtor; if Debtor is corporation, affix corporate seal and insure signatures are authorized; Debtor's name should be typed

PORTOFINO CORPORATION

Per: [Signature]  
Name: Dante J. Capaldi  
Title: President

I have authority to bind the Corporation.

CORPORATE AUTHORIZING RESOLUTION

Required only for corporation

"WHEREAS it is in the interests of the Company to enter into a security agreement with the Bank of Montreal as security for its present and future obligations to the Bank of Montreal and therein mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future property and assets;

- 5 -

## NOW THEREFORE BE IT RESOLVED THAT:


1. the Company do enter into, execute and deliver to the Bank of Montreal a security agreement substantially in the form of the draft security agreement presented to the directors, subject to such alterations, amendments or additions to which the President or Secretary of the Company may agree;
2. the Company do mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future equipment, inventory, intangibles, undertaking and other property and assets as security for its present and future obligations to the Bank of Montreal, all as provided in the said draft security agreement;
3. the execution by any officer of the Company of the said security agreement shall be conclusive proof of her agreement to any amendments, alterations or additions incorporated therein;
4. any officer of the Company be and she is hereby authorized to execute and deliver the security agreement aforesaid on behalf of the Company and any officer of the Company is hereby authorized to execute all such other documents and writings and to do such other acts and things as may be necessary for fulfilling the Company's obligations under the said security agreement."

## CERTIFICATE

I am the President of Portofino Corporation

and I hereby certify that:

1. the foregoing is a true copy of a resolution duly and properly passed or consented to by the board of directors of the said Company on the 27 day of October, 2005;
2. the attached Security Agreement is in the form of the draft security agreement referred to in the resolution and has been duly and properly executed by the proper officers of the Company under its corporate seal; and
3. the Company is subject to the Business Corporations Act of Ontario and the resolution was consented to by the signatures of all the directors of the Company on the date aforesaid in accordance with the Business Corporations Act).

  
 \_\_\_\_\_ C.S.  
 Dante J. Capaldi - President

# APPENDIX “O”

**BDO Canada Limited Court Appointed Receiver of  
Portofino Corporation  
Statement of Receipts and Disbursements  
October 29, 2013 through October 12, 2018**

**Receipts:**

Sale of units & surface parking	\$ 16,547,509.00	
Less: real estate commissions (incl HST)	(636,202.77)	
Less: property tax arrears	(424,295.35)	
Less: ECC No. 122 common fees	(36,959.02)	
Less: closing adjustments	(19,502.10)	
Add: HST collected on parking and unfinished units	<u>260,545.88</u>	
		\$ 15,691,095.64
Unit rental income		1,978,587.60
Holdback funds re: Portofino sub-trades		119,789.96
Reimbursement of Letter of Credit costs		64,408.22
Parking space rental		36,834.69
Security re Dalfidan Action		31,368.69
Interest		23,359.95
HST refund		7,971.76
Miscellaneous litigation		<u>497.88</u>
		<u>17,953,914.39</u>

**Disbursements:**

City of Windsor - property taxes	3,050,329.66	
Receiver's fees	1,039,628.71	
ECC No. 122 - common fees	777,652.30	
Miller Thomson LLP - Receiver's legal fees	396,709.81	
HST remitted	250,138.22	
Repairs & maintenance	237,682.74	
HST paid on disbursements	236,106.13	
Settlement of Dalfidan litigation	80,000.00	
Sutts, Strosberg LLP- legal fees	78,662.72	
Property management fees	70,000.00	
Bond premiums	49,859.00	
Advertising	40,346.72	
Utilities	39,246.47	
BMO - Letter of Credit fees re Valente litigation	39,074.26	
Valente litigation - costs award	30,393.34	
Appraisal fees	15,014.50	
Insurance	9,596.88	
Accounting fees	5,250.00	
Commission paid re rentals	3,650.00	
Tarion Warranty Corporation fees	2,500.00	
Other professional fees	1,972.00	
Corporate income tax	695.14	
Miscellaneous expenses	667.98	
Valente litigation - interest on settlement	628.36	
Bank charges	602.50	
Receiver General - receivership filing fee	<u>70.00</u>	
		6,456,477.44

**Excess receipts over disbursements**\$ 11,497,436.95**Represented by:****Payments to Secured Creditors**

2502461 Ontario Ltd. / WFCU \$ 9,800,000.00

**Funds Held by Receiver**

Guaranteed Investment Certificate re: City of Windsor	27,450.00	
Guaranteed Investment Certificate	1,250,000.00	
Balance in Receiver's account at October 12, 2018	<u>419,986.95</u>	
		1,697,436.95
		<u>\$ 11,497,436.95</u>

# APPENDIX “P”

**ONTARIO SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF PORTOFINO CORPORATION

**AFFIDAVIT OF STEPHEN N. CHERNIAK**

I, **Stephen N. Cherniak**, of the City of London, in the Province of Ontario, **MAKE OATH AND SAY:**

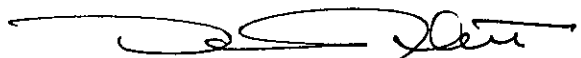
1. I am a Senior Vice-President of BDO Canada Limited, the Receiver of Portofino Corporation, (“Portofino”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated October 29, 2013 BDO Canada Limited was appointed as Receiver of Portofino (the “Receiver”).
3. The Receiver’s First Report to the Court was approved by Mr. Justice Thomas on December 13, 2013. The first account of the Receiver for the period July 19, 2013 to November 28, 2013 was also approved by the Order of Justice Thomas on December 13, 2013.
4. The Receiver’s Second Report to the Court was submitted to the Court on February 28, 2014.
5. The Receiver’s Third Report to the Court was approved by Mr. Justice Campbell on May 2, 2014. The second account of the Receiver for the period November 28, 2013 to April 9, 2014 was also approved by the Order of Justice Campbell on May 2, 2014.
6. The Receiver’s Fourth Report to the Court was approved by Mr. Justice Desotti on May 17, 2016. The third account of the Receiver for the period April 10, 2014 to March 10, 2016 was also approved by the Order of Justice Desotti on May 17, 2016.
7. The Receiver’s Fifth Report to the Court was approved by Mr. Justice Campbell on July 26, 2016. The fourth account of the Receiver for the period March 11, 2016 to June 14, 2016 was also approved by the Order of Justice Campbell on July 26, 2016.

8. The Receiver's Sixth Report to the Court was approved by Mr. Justice Bondy on November 29, 2016. The fifth account of the Receiver for the period June 15, 2016 to September 26, 2016 was also approved by the Order of Justice Bondy on November 29, 2016.
9. The Receiver's Seventh Report to the Court was approved by Mr. Justice Monroe on February 28, 2017. The sixth account of the Receiver for the period September 27, 2016 to January 13, 2017 was also approved by the Order of Justice Monroe on February 28, 2017.
10. The Receiver's Eighth Report to the Court was approved by Mr. Justice Patterson on September 19, 2017. The seventh account of the Receiver for the period January 14, 2017 to May 17, 2017 was also approved by the Order of Justice Patterson on September 19, 2017.
11. The Receiver's Ninth Report to the Court was approved by Mr. Justice Verbeem on May 8, 2018. The eighth account of the Receiver for the period May 18, 2017 to March 29, 2018 was also approved by the Order of Justice Verbeem on May 8, 2018.
12. Since the date of the Receiver's last account the Receiver has been engaged in the following:
  - Prepare the Ninth Report of the Receiver and attend Court hearing on May 8, 2018;
  - Negotiate the sale of units 1402 and 1505 through the Receiver's agent;
  - Complete the sale of condominium units 101, 1201, 1402 and 1601;
  - Correspond with S. Nevicato of Tarion regarding the sale of unfinished units and certificates of completion and possession;
  - Review of various documents and correspond with Essex Condominium Corporation No. 122 ("ECC #122") and its legal counsel, and Receiver's legal counsel regarding ECC #122 action;
  - Prepare working schedules and correspond with external accountant regarding July 1, 2018 financial statements;
  - Prepare HST New Housing Rebate application for buyers of units 1202 and 1602;

- Direct Receiver's Property Manager to complete various repairs to condominium units prior to sale completion, as agreed to by the Receiver under Agreements of Purchase and Sale;
  - Telephone calls and correspondence with Property Manager for ECC #122 regarding maintenance, repairs, fire department inspections, parking space rental, and other issues; and
  - Various telephone calls and correspondence with the stakeholders and their respective counsel
13. In the course of performing the duties pursuant to the Order and as set out above at paragraph 12, and since the date of the Ninth Report the Receiver's staff expended 104.2 hours for the period of April 2, 2018 through July 24, 2018. Attached hereto and marked as Exhibit "A" to this my Affidavit are the accounts of the Receiver together with a summary sheet.
14. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
15. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
16. Although the assets of Portofino are located in Windsor and the Receiver's primary office is located in London the Receiver has not charged for travel time or travel expenses.
17. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
18. This Affidavit is sworn in support of the motion for approval of the Receiver's fees and disbursements and for no other or improper purposes.



SWORN BEFORE ME at the City of  
London in the Province of Ontario  
on the 8<sup>th</sup> day of November, 2018

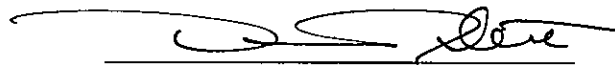


Commissioner for Taking Affidavits

David Randall Flett, a  
Commissioner, etc., Province of Ontario,  
For BDO Canada Limited and BDO Canada LLP.  
Expires April 20, 2019.

  
STEPHEN N. CHERNIAK, CPA, CA, CIRP

Attached is Exhibit A  
To the Affidavit of Stephen N. Cherniak  
Sworn the 8<sup>th</sup> day of November 2018.



A Commissioner, Etc

David Randall Flett, a  
Commissioner, etc., Province of Ontario,  
For BDO Canada Limited and BDO Canada LLP.  
Expires April 20, 2019.



EXHIBIT "A"

Invoice # 89507616  
 Portofino Corporation  
 HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
 245 Windsor Ave  
 Windsor, ON N9A 1J2

July 25, 2018

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**Re: Portofino Corporation**

For professional services rendered for the period April 2, 2018 through July 24, 2018 as per the attached detail:

Our Fee	\$36,000.00
Disbursements (courier)	<u>50.88</u>
Sub total	36,050.88
HST	4,686.61
	<hr/>
Total	<u>\$40,737.49</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
 100-633 Colborne Street  
 London, ON N6B 2V3

Invoice #	89507616
Amount	\$40,737.49

July 25, 2018

For professional service rendered

Staff	Date	Time	Narrative
Flett, D	2-Apr-18	0.2	Email with Miller Thomson re: conditional sale of 1402; email to N Bear.
Cherniak, S	2-Apr-18	0.2	Review of emails to Miller Thomson re closing and to property manager re removal of items from 1201.
Flett, D	3-Apr-18	2.7	Review Shibley Righton T5 and forward to M. Greenaway; call with J. McClelland to update on 1402, 1505 enquiries, other issues; review future distribution, property management issues; update 9th report and schedule of units sold and remaining; review 2502461 Ontario, Miller Thomson letter to Cohen Highley; review additional 2502461 Ontario loan documentation, BMO statement and review; update 2502461 Ontario mortgage balance calculation
Finnegan, M	3-Apr-18	0.5	Deposit sale funds
Hooper, L	3-Apr-18	0.1	Banking
Cherniak, S	3-Apr-18	0.7	Call with Miller Thomson re letters from Cohen Highly re ECC 122. Review Miller Thomson response to Cohen Highley. Email to D'Amore re outstandings. Review response and discussion thereto.
Finnegan, M	4-Apr-18	0.5	File HST return and remit HST owing on sale of unit 1602.
Flett, D	4-Apr-18	1.5	Review R&D to be updated, review future distributions and timing; continue with 9th report - Tarion update, 2502461 Ontario loan balance and proposed distribution; update 2502461 Ontario loan statement to April 8/16; review Betchel Kitchen correspondence and Superior Court statement re funds in court; email to Miller Thomson re; status of Betchel funds in court;
Cherniak, S	4-Apr-18	0.3	Discuss report. Review of email re old lawsuit and follow up to Miller Thomson.
Flett, D	5-Apr-18	2.2	Review liability insurance renewal and premium; review S. D'Amore, emails re: Westview mortgage; review updated R&D; updates and revisions to 9th report and finalize draft; start fee affidavit for 9th report.
Finnegan, M	5-Apr-18	0.5	File administration and update court report R & D.
Cherniak, S	5-Apr-18	0.3	Review email from S. D'Amore re mortgage on Westview respond. Review of Miller Thomson independent legal opinion.
Flett, D	6-Apr-18	2.5	Emails with Miller Thomson re: 1402 closing date, response to 1402 conditional buyer lawyer queries and Arnsby report; call with J. McClelland re: 1402 status, buyer enquiry; further email with Miller Thomson re: 1402 buyer lawyer request for price reduction; continue with and finalize fee affidavit for 9th report
Cherniak, S	6-Apr-18	0.7	Review of ninth report. Review of emails re 1402 closing and request for price reduction. Review of Arnsby list of issues at building.

Staff	Date	Time	Narrative
Flett, D	9-Apr-18	2.2	Review 1402 notice of fulfillment; emails with Miller Thomson and N Bear re: sale of 1402; forward 1402 documents to Miller Thomson; update sales and unsold unit schedules for 1402 sale; email to J. McClelland re: 1505 mls listing; review fee affidavit and finalize draft; review, edit 1505 mls listing agreement and return signed to J. McClelland; review previously prepared 1505 HST rebate illustration.
Cherniak, S	9-Apr-18	0.5	Update on 1402. Review of emails to/from Miller Thomson. Execute listing agreement for 1505. Review of email to Arnsby re 1402. Update on report.
Flett, D	10-Apr-18	1.1	Email with Miller Thomson re: commission statements on unfinished unit closings and review 1201, 1402, 1602 commission statements; review 1505 mls listing, resale listings; brief review of original BMO Motion Record re: secured creditor amounts and ranking; call with J. McClelland re: 1402 closing, 1402 unsuccessful offeror, 1505 showings; email to N. Bear re: 1602.
Cherniak, S	10-Apr-18	0.1	Deal with Reliance collection notice.
Flett, D	11-Apr-18	0.2	Review property expense, reliance billing issue.
Finnegan, M	11-Apr-18	0.3	Call to collection agency re Reliance o/s for unit 204
Cherniak, S	11-Apr-18	0.1	Discussion of Reliance bills and Capaldi involvement.
Finnegan, M	12-Apr-18	0.2	File HST return.
Hooper, L	12-Apr-18	0.1	Banking.
Finnegan, M	13-Apr-18	0.5	Pay bills.
Finnegan, M	16-Apr-18	0.5	Pay property tax installment.
Hooper, L	16-Apr-18	0.1	Banking.
Flett, D	16-Apr-18	0.7	Email with Miller Thomson re: 9th report; call with J. McClelland re: 1505 showings, maintenance issue and general update; call with Miller Thomson re: 9th report, Dalfidan funds at Sutts Strosberg, court date and review; email to Miller Thomson confirming court date and correspondence to Sutts.
Cherniak, S	16-Apr-18	0.3	Discussion re Miller Thomson issues re report. Discuss writing to Strosberg and requesting funds.
Flett, D	17-Apr-18	1.4	Review 1402 closing statements and email with J Cook of Miller Thomson; review 1602 signed Tarion CCP and forward to S. Nevicato; review correspondence regarding Westview Park mortgage; review Westview Park funds banking; call with J. McClelland re: 1402, 1202 HST rebate status, 1505 showing; email to N Bear re; 1505 cleaning, repairs; review Northridge Tarion bond status; review annual insurance invoice from HUB;
Cherniak, S	17-Apr-18	0.3	Review of email on 1402 closing. Review of email to Arnsby. Review of email to Tarion re 1602.
Flett, D	18-Apr-18	1.2	Emails and call with Miller Thomson re: 1402 status certificate, Receiver April common fee payment; email with S. Nevicato of Tarion re unfinished CCP's; review Reliance account issue;
Hooper, L	18-Apr-18	0.1	Banking
Finnegan, M	18-Apr-18	0.6	Pay bills. Prepare and send sale documents for unit 1402
Cherniak, S	18-Apr-18	0.5	Review and execute 1402 closing docs. Review of correspondence re 1402 condo fee arrears. Clear up

Staff	Date	Time	Narrative
			discrepancy. Review of email from Tarion. Update on Reliance arrears.
Finnegan, M	19-Apr-18	0.3	Pay bill.
Flett, D	19-Apr-18	0.4	Review May ECC 122 common fee payment and sign cheque; update unit 503 vtb balance; update unsold unit summary.
Flett, D	20-Apr-18	0.7	Review fee affidavit, 9th report status; call with J. McClelland re: 1402 walk through, closing arrangements; email to Miller Thomson re: 1402 closing keys, fob; email Miller Thomson re: Sutts Strosberg trust funds.
Cherniak, S	20-Apr-18	0.4	Email from Miller Thomson re fee affidavit. Send fee affidavit. Email to Miller Thomson re update on report. Review response.
Flett, D	23-Apr-18	1.8	Review 9th report motion record status, Betschel Kitchen status; review Miller Thomson revisions to 9th report and Miller Thomson fee affidavit; emails with Miller Thomson re finalizing 9th report and serving; sign report signature page; email with Miller Thomson re: 1402 closing; call with J. McClelland re; 1402 closing; email to D. Capaldi re: 1402 Tarion CCP form; update sales and unsold unit summaries for 1402 closing.
Finnegan, M	23-Apr-18	0.2	Send court report and appendices to Miller Thomson.
Cherniak, S	23-Apr-18	0.2	Emails and call re ninth report finalization.
Finnegan, M	24-Apr-18	0.5	Deposit sales funds.
Flett, D	24-Apr-18	0.7	Email with D. Capaldi re: 1402 Tarion CCP; review 9th report motion record; email with N. Bear re service for ECC 122; email to S Jarrell of Miller Thomson re: edits to service list and re-serve ECC 122.
Cherniak, S	24-Apr-18	0.4	Review of edits to report. Discuss edits to the service list. Review of email to Capaldi and response.
Flett, D	25-Apr-18	0.3	Email with Miller Thomson and N Bear re: Motion Record service; voice mail from F. Bisson re: building repair issues.
Hooper, L	25-Apr-18	0.1	Banking.
Cherniak, S	25-Apr-18	0.3	Email from Miller Thomson re service list. Review message from F. Bisson. Discuss with D. Flett.
Finnegan, M	26-Apr-18	0.2	Bill payment.
Flett, D	26-Apr-18	1.5	Lengthy call with N. Bear re: status of building repairs, receivership status and distributions, Tarion and motion record for 9th report; review Portofino issues and call from F. Bisson; review Tarion PATS report and ESCC 122 correspondence re: roof repairs; review of receiver general ledger; review parking rentals and deposits.
Cherniak, S	26-Apr-18	0.4	Update on call with Neil Bear and discussion re building deficiencies. Set up call with Frank Bisson. Review of letter to Sutts re funds.
Flett, D	27-Apr-18	0.4	Email with N Bear and forward 1402 Tarion CCP for signing; review F. Bisson enquiries.
Finnegan, M	27-Apr-18	0.2	Adding Motion Record to website
Hooper, L	27-Apr-18	0.1	Banking

Staff	Date	Time	Narrative
Cherniak, S	27-Apr-18	0.7	Emails re Tarion form. Execute same. Long call with Frank Bisson re problems at condo. Updated. Flett on call.
Flett, D	30-Apr-18	0.4	Review Miller Thomson email re: Strosberg Sasso funds in trust; call with J. McClelland re: 1505 showings, 101 grading and closing date.
Cherniak, S	30-Apr-18	0.2	Review of email from Miller Thomson re conversation and email from Sasso re trust monies.
Flett, D	1-May-18	0.1	Review Miller Thomson letter re: Dalfidan funds in trust;
Cherniak, S	1-May-18	0.2	Review of letter from Miller Thomson to Northbridge re Sutts account.
Finnegan, M	2-May-18	0.3	Deposit
Cherniak, S	2-May-18	0.2	Review of confirmation of motion and discussion with Miller Thomson re providing info to ECC 122.
Flett, D	3-May-18	0.3	Call with J. McClelland re; 101, 1201 buyer name amendments, other 1201 issues; email to Miller Thomson re: 1201 buyer change.
Cherniak, S	3-May-18	0.1	Review email to Miller Thomson re 1201.
Cherniak, S	4-May-18	0.1	Execute amendment.
Flett, D	7-May-18	0.2	Emails with J. McClelland, Miller Thomson re: 1201 buyer amendment.
Flett, D	8-May-18	0.4	Review April HST return; voice mail from/email to J. McClelland re: 1201 amendment; call with J. McClelland re 1201, 1505 showings; review order of Justice Verbeem.
Finnegan, M	8-May-18	0.5	File HST return.
Cherniak, S	8-May-18	1.2	Attend court for Portofino motion. Call with Miller Thomson re providing info for ECC#122.
Finnegan, M	9-May-18	0.6	Adding court order to BDO Website. Remit HST payment. Prepare and send cheque to WFCU.
Hooper, L	9-May-18	0.1	Banking.
Flett, D	9-May-18	2.2	Update 2502461 Ontario loan statement schedule for Justice Verheem authorized payment; review draft ECC 122/ Cohen Highley correspondence and Notice of Application; review approach to respond; review schedule A to Notice and mark-up for unit, parking ownership status and sale date; review ECC 122 requested documents and prepare memo re: limited documents in Receiver's possession.
Cherniak, S	9-May-18	0.7	Review of materials for ECC 122 materials re claim. Discussion re same. Call with D'Amore re update.
Flett, D	10-May-18	3.1	Continue and finalize memo re: documents requested in ESCC #122 application, renovation contracts on file; edits to Schedule A re: unit and parking status; update unsold unit summary for distribution, other assets, estimated realization and secured creditor position; call with J. McClelland re: 101 amendment and listing extension; brief review parking register and receipts and email to N. Bear re: April, May rents.
Cherniak, S	10-May-18	0.4	Review schedule re condos. Draft response to Miller Thomson. Call to Miller Thomson re same.
Flett, D	11-May-18	0.4	Forward 101 listing extension to J. McClelland; review SC email with Miller Thomson re: ECC 122 application; email with

Staff	Date	Time	Narrative
			N. Bear re: parking; review Miller Thomson email re: Dalifidan funds at Sutts Strosberg.
Cherniak, S	11-May-18	0.6	Finalize email re response to ECC #122 request. Send to Miller Thomson. Call with Miller Thomson re same. Review of fire inspection report. Review of Calderwood email to Sasso and Miller Thomson to Sasso re funds.
Flett, D	14-May-18	0.4	Review letter from Cohen Highley, fire inspection order; email to N. Bear re: fire inspection invoice; call with J. McClelland re: 1505 showing; receive 101 listing extension
Hooper, L	14-May-18	0.1	Banking
Finnegan, M	14-May-18	0.5	Pay bills
Cherniak, S	14-May-18	0.2	Review of invoice re fire inspection. Review email to Arnsby.
Hooper, L	15-May-18	0.1	Banking
Flett, D	15-May-18	0.2	Call with J. McClelland re: 1601 closing date, pre-closing inspections.
Cherniak, S	15-May-18	0.2	Review of letter from Sasso re Dalifidan funds. Respond.
Flett, D	16-May-18	0.5	Review 1201 draft closing statements and email with Miller Thomson; update unsold unit and unrealized asset summary schedule; review 1201 HST self-assessment documents and revised closing statements; further email with Miller Thomson on HST and closing arrangements.
Cherniak, S	16-May-18	0.2	Emails re 1201 closing.
Flett, D	17-May-18	0.9	Call with J. McClelland and email with JM, N Bear re: 1602 HST rebate; review 1201 closing documents; call with J. McClelland re; 1602 HST rebate application; detailed email to 1602 buyer and S Merry of BDO re: prepare HST new housing rebate and information to be provided.
Finnegan, M	17-May-18	0.5	Prepare and send to Miller Thomson sale documents for unit 1201.
Cherniak, S	17-May-18	0.3	Execute 1201 docs. Review emails re HST rebate on unit.
Flett, D	18-May-18	0.4	Call with J. McClelland, and emails with N. Bear re: 1201 closing arrangements.
Cherniak, S	22-May-18	0.1	Review Miller Thomson account.
Finnegan, M	23-May-18	0.5	Receipt of construction lien bond refund and deposit same
Hooper, L	23-May-18	0.1	Banking
Flett, D	23-May-18	1.5	Review June common fee payment and email to N. Bear re: July 1 increase; call with J. McClelland re: 1601 closing extension request, 1201 closing arrangements; email to Miller Thomson re: 1601 closing date, June common fees paid; email with Miller Thomson, text message with J. McClelland re: 1201 closing; email to N. Bear re: 1201 closing; update unsold unit summary for 1201; email to D. Capaldi re 1201 Tarion CCP;
Cherniak, S	23-May-18	0.3	Review of emails re closings of 1601 and 1201.
Flett, D	24-May-18	0.7	Review 1601 closing extension terms; email with Miller Thomson re: 1601 closing extension request, additional carrying costs; email with N. Bear re: Tarion CCP for 1201, 1601 closing; call with J. McClelland re: 1601, 1505 showings



Staff	Date	Time	Narrative
Cherniak, S	24-May-18	0.4	Email from Capaldi re Tarion. Emails and discussion re 1601 extension. Review of email to Miller Thomson.
Flett, D	25-May-18	0.8	Review Miller Thomson prepared statements of adjustment and draft letter to 1601 buyer lawyer; email with Miller Thomson; email from D. Capaldi re: 1201 Tarion CCP and review, edit; further email with Miller Thomson re: 1601 requisition date.
Flett, D	28-May-18	1.5	Review Tarion CCP and forward signed form to N. Bear with comments; updates to unsold unit summary schedule; review Tarion/Northbridge correspondence and email re bond premium overpayment recovery; call with J. McClelland re: 1601 closing, 1505 showings, 101/106; email with Miller Thomson and review executed closing extension documents; review Miller Thomson email, condominium declaration and ESC 122 documents on file re: ESCC 122 notice of application and memo;
Hooper, L	28-May-18	0.1	Banking
Cherniak, S	28-May-18	0.8	Execute Tarion doc. Review of correspondence re 1601 extension and terms. Review of email from Miller Thomson re revised order from ECC# 122 counsel. Discuss what turnover documents we have.
Finnegan, M	29-May-18	0.5	File administration and bill payments.
Flett, D	30-May-18	0.5	Emails with N. Bear, J. McClelland re: empty unit for 1201 buyer; call with J. McClelland re: 1201 buyer query, 1505 showings; review funds on hand and review investment.
Cherniak, S	30-May-18	0.3	Review of emails re 1201. Deal with GIC issue.
Flett, D	31-May-18	0.2	Review Miller Thomson letter to L. Glithero re ESCC 122 application; email to N. Bear re: 101
Jokanovic, I	31-May-18	1.0	Owner built rebate.
Cherniak, S	1-Jun-18	0.1	Review of email to ECC 122 counsel.
Flett, D	4-Jun-18	0.4	Review prior emails, invoices re AC condensers, HVAC, ESA; calls with J. McClelland re 1201 buyer AC condenser issues, 1505 showings.
Hooper, L	4-Jun-18	0.1	Banking
Flett, D	5-Jun-18	0.3	Voice mail from, and call with J. McClelland re: 101 a/c condenser issue, 101 conditional sale status, 1505 showings and list price.
Flett, D	7-Jun-18	0.3	Call with J. McClelland re: 1505 enquiry, verbal offer, comparable Palmero sales; email from N Bear re: Tarion 1201
Flett, D	8-Jun-18	0.8	Emails with N Bear, S. Nevicato of Tarion re: 1402, 1201 CCP forms; review 1505 offer and email with J. McClelland re: no counter, comparable sales; forward 1402 CCP to S. Nevicato; call with J. McClelland re; 1505 showings, interested parties.
Cherniak, S	8-Jun-18	0.2	Review of email to Tarion. Review of email to/from J. McClelland re offer on 1505.
Jokanovic, I	11-Jun-18	1.0	Unit 1602 – rebate.
Hooper, L	12-Jun-18	0.1	Banking.
Finnegan, M	13-Jun-18	0.5	Bill payments.
Cherniak, S	13-Jun-18	0.3	Update BMO on file. Discuss 101 sale.
Jokanovic, I	13-Jun-18	3.0	Construction work sheet GST HST rebate, Unit 16020

Staff	Date	Time	Narrative
Finnegan, M	14-Jun-18	0.5	Prepare and send sales documents to Miller Thomson
Flett, D	14-Jun-18	1.1	Review draft 1601 closing documents and email with Miller Thomson re: adjustment date; review revised documents and confirm net amount payable to Receiver; call with J. McClelland re: 1505 showings and possible offerors, 101 agreement, closing date and amendment; call with N Bear re: 101, 106 grading project status and estimated completion, receiver sale of 101; call with JM re: 101 sale, revised closing date;
Cherniak, S	14-Jun-18	0.3	Deal with 1601 closing.
Flett, D	15-Jun-18	1.7	Prepare summary of 2018 parking rents, amounts due and forward to N Bear with comments. Questions; email with N. Bear re: common fees effective July 1; call with J. McClelland re: 101 conditional sale, closing date extension; review estimated future realizations; email to J. McClelland summarizing seller terms for 101 closing on July 12;
Cherniak, S	15-Jun-18	0.2	Update on 106. Review of Miller Thomson bill.
Flett, D	18-Jun-18	0.8	Email and call with J. McClelland re: 101 amendment conditions, grading timetable and pricing concession; draft amendment wording for 101 and forward to J. McClelland; email to N Bear re 101 closing.
Cherniak, S	18-Jun-18	0.2	Update on 101. Review proposed amendment.
Flett, D	19-Jun-18	1.1	Review 101 status; email with N. Bear, J. McClelland re: 101 amendment; call with J. McClelland re: 101 amendments; email to N. Bear re: 101 door trim kit; email with N. Bear, Miller Thomson re: 1601 closing; review further emails from J Cook re: 1601 closing.
Cherniak, S	19-Jun-18	0.1	Update on 101. Review email from ECC# 122.
Flett, D	20-Jun-18	1.4	Call with J. McClelland re: 101 amendments and HST, 1505 showings; review revised 1601 closing documents, HST self-assess and email with Miller Thomson; email to N. Bear re revised common fees; review 101 amendments, listing extension and review; call with J. McClelland confirming 101 amendments; forward signed 101 amendments to J. McClelland.
Cherniak, S	20-Jun-18	0.3	Review of amendments for 101 deal. Execute.
Jokanovic, I	20-Jun-18	0.8	Missing info email, complete construction worksheet.
Flett, D	21-Jun-18	2.7	Review letters re: July 1-18 condo common fees increase, update unsold unit schedule; emails with N. Bear re: 101 closing, repair and letter from ESCC 122; email to Miller Thomson re: 101 sale, with accepted offer, several amendments and comments; review 1505 offer and conditions; call with J. McClelland re: 1505 offer, closing date, timing of conditions, other party interest; email memo summarizing 1505 offer, market considerations and suggested counter; further email with Miller Thomson re 101 and forward additional amendments; prepare 1505 counter offer and forward to J. McClelland; updates to unsold unit summary schedule.
Finnegan, M	21-Jun-18	0.3	Update new condo fee payment schedule.
Cherniak, S	21-Jun-18	0.3	Review of email to ECC 122. Email re 1505 offer. Respond.

Staff	Date	Time	Narrative
Flett, D	22-Jun-18	2.4	Review 1505 buyer counter offer; lengthy call with J. McClelland re: 1505 counter, hot water tank issue, additional initials required; emails with Miller Thomson re: 1601 closing, keys, property management; email/text messages with N. Bear, J. McClelland re: 1601 closing; update unsold unit and sales schedules for 1601 closing; review amended 1505 offer and prepare counter offer; forward 1505 counter offer to J. McClelland; text messages with J. McClelland re: further 1505 showing; email re: 1505 offer status.
Finnegan, M	25-Jun-18	0.5	Deposit sales proceeds unit 1601
Hooper, L	25-Jun-18	0.1	Banking
Cherniak, S	25-Jun-18	0.4	Emails re offer on 1505 and update on 101 closing.
Hooper, L	26-Jun-18	0.1	Banking
Flett, D	26-Jun-18	0.4	Call with J. McClelland re 1505 counter offer status; email to D. Capaldi re 1601 Tarion CCP form;; email to N. Bear re ESCC 122 letter re unit 101.
Finnegan, M	27-Jun-18	0.2	Pay bill
Cherniak, S	27-Jun-18	0.1	Update on cash on hand.
Jokanovic, I	27-Jun-18	1.0	1602-1225 Riverside finalize rebates for review using new info received.
Finnegan, M	28-Jun-18	0.4	Pay condo fees.
Hooper, L	28-Jun-18	0.1	Banking.
Flett, D	28-Jun-18	0.8	Review July common fee payment; review 2018 final tax bills and update unsold unit summary schedule; forward 1601 tax bill to J. McClelland with comments; forward 101 tax bill to Miller Thomson with comments; voice mail from JM re: 1601, 1505 showings.
Merry, S	28-Jun-18	0.3	Review Lozon rebate application.
Flett, D	29-Jun-18	0.5	Emails with Miller Thomson and J. McClelland re: 101 closing date, payment of July tax installment, closing adjustment; advise MF re: July property taxes; call with J. McClelland re: 101 conditions, 1505 showing; email re: 101 status, ESC 122 letter.
Finnegan, M	29-Jun-18	0.4	Update property tax payment schedule
Jokanovic, I	29-Jun-18	0.3	1602-1225 Riverside
Hooper, L	3-Jul-18	0.1	Banking.
Cherniak, S	3-Jul-18	0.2	Review of response to N. Bear re 101.
Finnegan, M	4-Jul-18	0.3	Bill payment.
Finnegan, M	5-Jul-18	0.5	Pay property tax installment.
Finnegan, M	6-Jul-18	0.5	Prepare sale documents for unit 101 and send executed documents to Miller Thomson.
Cherniak, S	6-Jul-18	0.3	Review emails and revised SOA re 101 sale.
Flett, D	7-Jul-18	0.5	Review draft closing statements for unit 101 and email with Miller Thomson re: common fees adjustment, HST self-assessment; email to MF re: July common fees; review revised statement of adjustments Miller Thomson email re: HST

Staff	Date	Time	Narrative
Flett, D	9-Jul-18	1.3	Review 101 status; emails with N. Bear and J. McClelland re: unit 101 letter from ESCC 122; email with D. Capaldi re 1601 Tarion CCP form and forward signed form to N. Bear; review Tarion security, Northbridge bond renewal premium and credit for Tarion reduction.
Cherniak, S	9-Jul-18	0.4	Emails re Tarion. Execute doc. Email re letter from condo corp re 101.
Flett, D	10-Jul-18	3.2	Further review of Tarion bond billing statement and emails with K. Ghokasin of Northbridge; call with N. Bear re: 101 letter, parking revenue and deposit; review Tarion CCP form status for unfinished units; review 1402 property tax payments and emails with Miller Thomson re: buyer enquiry; review draft letter from ESCC 122 re 101 and email with N. Bear; prepare F2018 sales summary, updated 2502461 loan balance at Jul 1/18 and other schedules for F2018 financial statements; finalize 101 letter with N. Bear and forward to J. McClelland; call with J. McClelland re: 101 conditions, 1505 showings.
Cherniak, S	10-Jul-18	0.4	Review of ECC 122 letter re 101. Update on parking. Update on Northridge billing. Review emails re same.
Flett, D	11-Jul-18	0.2	Email with Miller Thomson re: 101 closing, letter from ESCC 122
Cherniak, S	11-Jul-18	0.4	Review of email to Miller Thomson and response. Review of email to accountant. Review of Miller Thomson bill.
Jokanovic, I	11-Jul-18	1.5	Update rebate schedules as per client changes.
Flett, D	12-Jul-18	0.5	Call with J. McClelland re: 101 closing arrangements, 1505 showings and schedule; emails with Miller Thomson and N. Bear re: 101 closing; update 25002461 Ontario loan schedule for increase in BMO prime rate.
Flett, D	13-Jul-18	0.7	Emails with Miller Thomson re: 101 closing; email/text msg with J. McClelland, N. Bear re: 101 closing; update sales and unsold unit summary schedules; review 101 banking; email to D. Capaldi re: Tarion CCP for unit 101.
Finnegan, M	13-Jul-18	0.4	HST returns.
Flett, D	16-Jul-18	0.3	Email with D. Capaldi re Tarion CCP for unit 101; forward Tarion CCP form to N. Bear with comment; review 101 funds and GIC.
Hooper, L	16-Jul-18	0.2	Deposit.
Cherniak, S	16-Jul-18	0.2	Review and execute Tarion warranty for 101. Discuss GIC.
Cherniak, S	17-Jul-18	0.4	Review of correspondence from Cohen Highley re redrafted materials for ECC 122 motion. Review and approve consent.
Flett, D	18-Jul-18	0.6	Call with J. McClelland re: 1505 showings, enquiries, expected offers and irrevocable date timing; further call with J. McClelland re: 1505 multiple offers anticipated.
Cherniak, S	18-Jul-18	0.4	Review of correspondence to Cohen Highley. Call from Gino Greco. Discuss potential offers on 1505.
Jokanovic, I	18-Jul-18	0.6	Emails with client.

<b>Staff</b>	<b>Date</b>	<b>Time</b>	<b>Narrative</b>
Flett, D	19-Jul-18	0.8	Review 1505 offer and call with J. McClelland re offer; prepare counter offer and review; email to J. McClelland re 1505 listing taxes and common fees; email to N. Bear re 101; emails re 1202, 1602 HST rebate applications.
Cherniak, S	19-Jul-18	0.5	Discussion, review and counter to offer on 1505. Review of email re HST claim for purchasers.
Flett, D	23-Jul-18	0.4	Voice mail from J. McClelland re; 1505 offer and email reply; call with J. McClelland re: 1505 counter offer and 1202 HST rebate application.
Cherniak, S	23-Jul-18	0.4	Call and email from S. D'Amore re update. Review file. Respond.
Flett, D	24-Jul-18	0.9	Review 1505 counter offer, comparables; forward accepted offer to J. McClelland; update sales schedule and unsold unit summary for 1505; email with N. Bear, Miller Thomson re 1505 conditional sale, closing date; emails with J. McClelland re 1505 financing condition date.
Cherniak, S	24-Jul-18	0.3	Discuss 1505 counter. Execute acceptance.
		<b>104.2</b>	<b>Total Time</b>

<b>Staff</b>	<b>Position</b>	<b>Office</b>	<b>Rate</b>	<b>Time</b>
Cherniak, S	Sr. Vice President	London	\$495	19.3
Finnegan, M	Administrative	London	\$175	12.9
Flett, D	Vice President	London	\$375	60.5
Hooper, L	Estate Administrator	London	\$145	1.9
Jokanovic, I	Administration – Tax	Cambridge	\$125	9.6
				104.2

**Summary of Receiver's Accounts for the period  
April 2, 2018 to July 24, 2018**

<b>Invoice Date</b>	<b>Hours Expended</b>	<b>Fees &amp; Disbursements</b>	<b>HST</b>	<b>Invoice Total</b>
July 25, 2018	104.3	\$36,050.88	\$4,686.61	\$40,737.49

# APPENDIX “Q”

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**AFFIDAVIT OF SHERRY A. KETTLE**

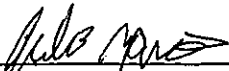
I, SHERRY A. KETTLE, of the City of London, County of Middlesex, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner with the law firm of Miller Thomson LLP ("MT"), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the "Receiver") of the property, assets and undertakings of Portofino Corporation and, as such, have knowledge of the matters to which I hereinafter depose.
2. I make this Affidavit in support of the Receiver's motion for, among other things, having the fees and disbursements of MT, as legal counsel to the Receiver, approved.
3. Attached hereto to this my Affidavit and marked as Exhibit "A" are copies of the invoices (the "Invoices") rendered by MT to the Receiver for fees and disbursements of MT for the period March 30, 2018 through to August 31, 2018 (the "Period"). I affirm that the Invoices accurately reflect the services provided by MT during the Period and the fees and disbursements claimed by them. During the Period, the total fees and disbursements billed were \$10,878.50 and \$830.45 respectively. The HST billed was \$1,501.37. Attached hereto to this my Affidavit and marked as Exhibit "B" is a statement summarizing MT's fees for the Period. Lawyers and staff at MT have collectively expended a total of 36.30 billable hours in connection with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".





Attached are Exhibits "A" and "B" to the  
Affidavit of Sherry A. Kettle sworn the  
9th day of November, 2018

  
\_\_\_\_\_  
*A Commissioner, Etc.*

**Julia Christina Zanetti, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires June 12, 2020.**



**MILLER THOMSON**  
AVOCATS | LAWYERS

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ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
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**May 15, 2018**

Invoice Number 3183347

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3  
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

**Re: Portofino Corporation**  
**Our File No. 0082873.0012**

<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
04/03/2018	AVK	Telephone call with Mr. Cherniak; letter to Cohen Higley	0.30
04/03/2018	SK	Prepare letter to agent re filing receiver's certificate for unit 1605; Review and finalize reporting letter re unit 1605;	0.20
04/04/2018	SK	Prepare opinion;	0.60
04/04/2018	JC	Obtain parcel registers for Opinion Letter;	0.30
04/06/2018	JC	Telephone conference with purchaser's lawyer; email correspondence with client and purchaser's lawyer;	0.40
04/06/2018	ASR	Attend to request for amendments;	0.20
04/06/2018	SK	E-mail correspondence from Ms. Balzer re Unit 1402; E-mail correspondence from Ms. Cook re same; Telephone conference with Ms. Cook re same;	0.20
04/09/2018	JC	Email correspondence with client regarding waiver of conditions;	0.10
04/16/2018	SK	Review and revise draft Ninth report of the Receiver; Telephone conference with Mr. Flett re same; E-mail	1.20



<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
		correspondence from Mr. Flett;	
04/16/2018	AVK	Receive correspondence from Mr. Goldberg; correspondence to Mr. Cherniak	0.20
04/17/2018	JC	Review of requisition letter; draft response to requisitions and ancillary documents; prepare and send request for discharge statement; draft Teraview documents and message to other solicitor; various e- mail correspondence;	1.60
04/17/2018	ASR	Attend to response to requisitions;	0.20
04/18/2018	JC	Email correspondence with purchaser's lawyer and client regarding arrears of common expenses; telephone conference with client;	0.40
04/19/2018	SK	Work on motion materials;	0.10
04/20/2018	SK	E-mail correspondence with client; Review and revise draft receiver's report, fee affidavit and motion materials;	1.20
04/20/2018	JC	E-mail correspondence with client and vendor's solicitor regarding keys and amendments to Application;	0.20
04/23/2018	JC	Prepare closing package to purchaser's solicitor; various e-mail correspondence; attend to various matters to facilitate closing; finalize report to client;	0.90
04/23/2018	AVK	Reviewing and swearing affidavit	0.10
04/23/2018	SK	Finalize motion materials; E-mail correspondence to and from receiver re same; Prepare service letter and provide instructions; Prepare letter to agent re filing;	0.40
04/23/2018	ASR	Attend to closing;	0.30
04/25/2018	SK	Prepare letter to agent re filing receiver's certificate for unit 1402; Review and finalize reporting letter re unit 1402; Finalize letter to Mr. Sasso;	0.30
04/30/2018	SK	Voice message from Mr. Sasso; E-mail correspondence from Mr. Sasso; E-mail correspondence to client; Prepare letter to Mr. Calderwood;	0.60



**Total Hours** **10.00**

**Our Fee:** **2,907.00**

<b>TK ID</b>	<b>Initials</b>	<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Amount</b>
05212	ASR	A. Roth	Partner	\$435.00	0.70	\$304.50
05403	AVK	A. Van Klink	Partner	\$585.00	0.60	\$351.00
05767	JC	J. Cook	Paraprofession al	\$165.00	3.90	\$643.50
05715	SK	S. Kettle	Partner	\$335.00	4.80	\$1,608.00

**Taxable Disbursements**

Delivery	70.06	
Agent's Fees	75.00	
Online Searches - Teranet	184.20	
<b>Total Taxable Disbursements</b>	<b>329.26</b>	<b>\$329.26</b>

**Non-Taxable Disbursements**

Issue Notice of Motion	160.00	
<b>Total Non-Taxable Disbursements</b>	<b>160.00</b>	<b>\$160.00</b>

**Total Fees and Disbursements** **\$3,396.26**

**Ontario HST 13% (R119440766)**

On Fees	\$377.91
On Disbursements	\$42.81

**Total Amount Due** **\$3,816.98**

E.&O.E.





**MILLER THOMSON**  
AVOCATS | LAWYERS

MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
CANADA

T 519.931.3500  
F 519.858.8511

MILLERTHOMSON.COM

**June 13, 2018**

Invoice Number 3194952

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3  
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

**Re: Portofino Corporation**  
**Our File No. 0082873.0012**

<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
05/02/2018	AVK	Telephone call with Mr. Cherniak	0.20
05/02/2018	AVK	Telephone call with lawyer for condo corp.	0.10
05/07/2018	SK	Prepare for hearing of motion re Ninth Report of Receiver;	0.30
05/08/2018	SK	Travel to and from Windsor; Attend motion re Ninth Report of Receiver; Attend Court office to issue and enter Order; Prepare service letter;	6.50
05/08/2018	AVK	Reviewing correspondence and draft Notice of Application from ESCC 122 and consider issues raised therein; telephone calls with Cohen Highley and Mr. Cherniak; e-mail to Mr. Cherniak	2.20
05/11/2018	AVK	Reviewing correspondence from Mr. Sasso and respond to same; e-mails with Mr. Greene; telephone call with Receiver	0.50
05/11/2018	AVK	Telephone call with Mr. Cherniak	0.20
05/11/2018	AVK	E-mail to Mr. Cherniak re Fire Inspection Order	0.10



<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
05/11/2018	SK	E-mail correspondence from and to Mr. Calderwood; E-mail correspondence to Mr. Sasso; E-mail correspondence to Mr. Cherniak;	0.20
05/15/2018	SK	Review letter from and to Mr. Sasso; E-mail correspondence from Mr. Cherniak;	0.20
05/16/2018	JC	Review of requisition letter; draft and revise response to requisitions and ancillary documents; Teraview documents and message to other solicitor; various e-mail correspondence; telephone conference with purchaser's lawyer;	1.70
05/17/2018	JC	Email correspondence with purchaser's solicitor; revise Application;	0.10
05/17/2018	JC	Telephone conference with purchaser's lawyer regarding Unit 1601;	0.10
05/23/2018	JC	Prepare closing package to purchaser's solicitor; update Closing Agenda; various e-mail correspondence; attend to various matters to facilitate closing; finalize report to client; prepare payout letters; attend to HST registry search;	0.70
05/24/2018	SK	Prepare letter to agent re filing receiver's certificate for Unit 1201; Review, revise and finalize reporting letter re sale of Unit 1201; Review letter from Ms. Papp; E-mail correspondence to Ms. Cook re same;	0.20
05/24/2018	JC	Review of faxed correspondence regarding extension of closing date for Unit 1601; compose email to client regarding same;	0.20
05/25/2018	JC	Draft Statements of Adjustments; prepare extension letter; various telephone conferences with the Purchaser's lawyer; various email correspondence with client and purchaser's lawyer;	0.60
05/25/2018	ASR	Attend to extension of closing;	0.20
05/28/2018	JC	Email correspondence with client and purchaser's solicitor regarding extension; prepare trust receipt;	0.20
05/28/2018	AVK	Reviewing revised Notice of Application (ESCC 122); e-mails with Mr. Cherniak regarding document production	0.40





<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
05/31/2018	AVK	E-mail to Ms. Glithero (lawyer for ESCC No. 122) regarding application to obtain turnover documents	0.40
<b>Total Hours</b>			<b>15.30</b>

**Our Fee: 5,558.50**

<b>TK ID</b>	<b>Initials</b>	<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Amount</b>
05212	ASR	A. Roth	Partner	\$435.00	0.20	\$87.00
05403	AVK	A. Van Klink	Partner	\$585.00	4.10	\$2,398.50
05767	JC	J. Cook	Paraprofession al	\$165.00	3.60	\$594.00
05715	SK	S. Kettle	Partner	\$335.00	7.40	\$2,479.00

**Taxable Disbursements**

Delivery	35.32	
Agent's Fees	15.00	
Mileage/Parking Expenses	173.89	
<b>Total Taxable Disbursements</b>	<u>224.21</u>	<b>\$224.21</b>

**Total Fees and Disbursements \$5,782.71**

**Ontario HST 13% (R119440766)**

On Fees	\$722.61
On Disbursements	\$29.15

**Total Amount Due \$6,534.47**

E.&O.E.





**MILLER THOMSON**  
AVOCATS | LAWYERS

MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
CANADA

T 519.931.3500  
F 519.858.8511

MILLERTHOMSON.COM

**June 30, 2018**

Invoice Number 3204699

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3  
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

**Re: Portofino Corporation**  
**Our File No. 0082873.0012**

<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
06/14/2018	JC	Review of requisition letter; draft response to requisitions and ancillary documents; draft Teraview documents and message to other solicitor; various e-mail correspondence;	1.40
06/14/2018	ASR	Attend to response to requisitions;	0.20
06/19/2018	JC	Email correspondence with client regarding key delivery and purchaser's solicitor regarding documents;	0.20
06/20/2018	JC	Review of email correspondence; update Statement of Adjustments and Statement of Trust; various email correspondence;	0.40
06/22/2018	JC	Prepare closing package to purchaser's solicitor; various e-mail correspondence; attend to various matters to facilitate closing; finalize report to client; prepare payout letters; attend to HST registry search;	0.90
06/25/2018	SK	Prepare letter to agent re filing receiver's certificate for Unit 1601; Review and finalize reporting letter re Unit 1601;	0.30



**Total Hours** **3.40**

**Our Fee:** **666.00**

<b>TK ID</b>	<b>Initials</b>	<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Amount</b>
05212	ASR	A. Roth	Partner	\$435.00	0.20	\$87.00
05767	JC	J. Cook	Paraprofession al	\$165.00	2.90	\$478.50
05715	SK	S. Kettle	Partner	\$335.00	0.30	\$100.50

**Taxable Disbursements**

Delivery	28.42
Agent's Fees	25.00

Total Taxable Disbursements	53.42	\$53.42
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**Total Fees and Disbursements** **\$719.42**

**Ontario HST 13% (R119440766)**

On Fees	\$86.58
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On Disbursements	\$6.94
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<b>Total Amount Due</b>	<b>\$812.94</b>
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E.&O.E.





**MILLER THOMSON**  
AVOCATS | LAWYERS

MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
CANADA

T 519.931.3500  
F 519.858.8511

MILLERTHOMSON.COM

**August 31, 2018**

Invoice Number 3229614

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3  
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

**Re: Portofino Corporation**  
**Our File No. 0082873.0012**

<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
07/05/2018	JC	Review of requisition letter; draft response to requisitions and ancillary documents; draft Teraview documents and message to other solicitor; various e-mail correspondence;	1.60
07/06/2018	JC	Email correspondence with client and purchaser's solicitor; revise documents;	0.30
07/09/2018	JC	Review of Parcel Register; revise Application for Vesting Order; email correspondence with Purchaser's solicitor regarding same;	0.30
07/10/2018	JC	Email correspondence with Purchaser's lawyer and client regarding property tax arrears for Unit 1402;	0.30
07/11/2018	JC	Email correspondence with client regarding letter from Condo Corporation for repairs;	0.20
07/12/2018	JC	Email correspondence with client and purchaser's lawyer regarding keys;	0.20
07/13/2018	JC	Prepare closing package to purchaser's solicitor; update Closing Agenda; various e-mail	0.80



<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
		correspondence; attend to various matters to facilitate closing; finalize report to client; prepare payout letters; attend to HST registry search;	
07/13/2018	ASR	Attend to unit closing;	0.30
07/13/2018	AVK	Reviewing draft Notice of Application for proceeding to be commenced by ESCC 122 and making revisions to same, e-mail to lawyer for ESCC 122	0.30
07/16/2018	SK	Prepare letter to agent re filing receiver's certificate for Unit 101; Review and revise reporting letter re Unit 101;	0.20
07/17/2018	AVK	Reviewing revised Notice of Application on behalf of ESCC No. 122 and e-mail to Mr. Cherniak thereon; sign Consent; letter to counsel for ESCC No. 122	0.40
07/31/2018	AVK	Review issued Application Record; e-mails to Mr. Cherniak and Cohen Highley	0.20
08/02/2018	JC	Email correspondence with client regarding upcoming closing;	0.10
08/13/2018	JC	Telephone conference with real estate agent regarding change to Purchaser's solicitor;	0.20
08/14/2018	JC	Telephone conference with purchaser's lawyer regarding closing requirements;	0.20
08/16/2018	JC	Draft closing documents and Application for Vesting Order; prepare Statement of Adjustments and Statement of Trust compose email to client and purchaser's solicitor with draft documents;	0.60
08/20/2018	JC	Revise documents; email correspondence with client and purchaser's solicitor;	0.20
08/21/2018	JC	Review of parcel register; update Application for Vesting Order; email correspondence with Purchaser's solicitor;	0.30
08/21/2018	JC	Prepare outgoing correspondence for closing;	0.40
08/22/2018	JC	Various e-mail correspondence; attend to various matters to facilitate closing; prepare payout letters and accounting forms; attend to HST registry search;	0.50



**Total Hours** **7.60**

**Our Fee:** **1,747.00**

<b>TK ID</b>	<b>Initials</b>	<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Amount</b>
05212	ASR	A. Roth	Partner	\$435.00	0.30	\$130.50
05403	AVK	A. Van Klink	Partner	\$585.00	0.90	\$526.50
05767	JC	J. Cook	Paraprofession nal	\$165.00	6.20	\$1,023.00
05715	SK	S. Kettle	Partner	\$335.00	0.20	\$67.00

**Taxable Disbursements**

Delivery	38.56
Agent's Fees	25.00

Total Taxable Disbursements	63.56	\$63.56
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**Total Fees and Disbursements** **\$1,810.56**

**Ontario HST 13% (R119440766)**

On Fees	\$227.11
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On Disbursements	\$8.26
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<b>Total Amount Due</b>	<b>\$2,045.93</b>
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E.&O.E.





**EXHIBIT "B"**  
**Miller Thomson's Fees**

Hours	Year of Call	Rate 2018	Inv. #3183347 May 15, 2018	Inv. #3194952 June 13, 2018	Inv. #3204699 June 30, 2018	Inv. #3229614 August 31, 2018	Total Invoices
S. Kettle	2007	\$335.00	4.80	7.40	0.30	0.20	12.70
T. Van Klink	1988	\$585.00	0.60	4.10	0.00	0.90	5.60
A. Roth	2004	\$435.00	0.70	0.20	0.20	0.30	1.40
J. Cook - clerk	N/A	\$165.00	3.90	3.60	2.90	6.20	16.60
			10.00	15.30	3.40	7.60	36.30
<b>Total \$</b>			\$1,608.00	\$2,479.00	\$100.50	\$67.00	\$4,254.50
S. Kettle	2007	\$335.00	\$351.00	\$2,398.50	\$0.00	\$526.50	\$3,276.00
T. Van Klink	1988	\$585.00	\$304.50	\$87.00	\$87.00	\$130.50	\$609.00
A. Roth	2004	\$435.00	\$643.50	\$594.00	\$478.50	\$1,023.00	\$2,739.00
J. Cook - clerk	N/A	\$165.00	\$2,907.00	\$5,558.50	\$666.00	\$1,747.00	\$10,878.50
<b>Summary</b>			\$2,907.00	\$5,558.50	\$666.00	\$1,747.00	\$10,878.50
Fees			\$489.26	\$224.21	\$53.42	\$63.56	\$830.45
Disbursements			\$420.72	\$751.76	\$93.52	\$235.37	\$1,501.37
HST			\$3,816.98	\$6,534.47	\$812.94	\$2,045.93	\$13,210.32
Total							

2502461 ONTARIO LTD.

and

PORTOFINO CORPORATION

Court File No. CV-13-19866

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**AFFIDAVIT OF SHERRY A. KETTLE  
SWORN NOVEMBER 9, 2018**

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Sherry A. Kettle**, LSO#: 53561B  
skettle@millerthomson.com  
Tel: 519.931.3534  
Fax: 519.858.8511

Lawyers for BDO Canada Limited,  
Court-Appointed Receiver of  
Portofino Corporation

# APPENDIX “R”



MILLER THOMSON LLP  
MILLERTHOMSON.COM

ONE LONDON PLACE + 255 QUEENS AVENUE, SUITE 2010  
LONDON, ON + N6A 5R8 + CANADA

T 519.931.3500  
F 519.858.8511

July 11, 2016

**Delivered Via E-mail (Original by Mail)**

BDO Canada Limited  
252 Pall Mall Street, Suite 103  
London, ON N6A 5P6

Attention: Stephen N. Cherniak, CPA, CA,  
CIRP

**Tony Van Klink**  
Direct Line: 519.931.3509  
tvanklink@millerthomson.com

File: 082873.0012

Dear Sir:

**Re: Portofino Corporation (the "Debtor")**

By Order of Mr. Justice Thomas dated October 29, 2013, BDO Canada Limited (the "Receiver") was appointed as receiver of the assets, undertakings and properties of the Debtor.

Prior to the receivership the Debtor constructed a 123 unit high-rise condominium building at 1225 Riverside Drive West, Windsor (the "Project"). At the date of the Receiver's appointment, the Debtor owned 52 apartment units, 38 parking units and 2 storage units (collectively, the "Units") in the Project. Since its appointment the Receiver has undertaken efforts to sell the Units and has been collecting the rents (the "Rents") for those Units which have been rented to tenants.

The following is our report to you and our opinion on the validity and enforceability of the security granted by the Debtor to Bank of Montreal ("BMO") against the Project, including the net receipts realized by the Receiver from the sale of the Units and the collection of Rents (collectively, the "Net Receipts").

#### **ASSUMPTIONS AND QUALIFICATIONS**

The opinions expressed in this letter are subject to the qualifications and assumptions set forth on Schedule "A" to this letter.

#### **SEARCHES**

We have conducted the following searches:

1. Corporation Profile Report – we obtained a corporation profile report from the Ministry of Government Services for the Province of Ontario with respect to the Debtor dated

- July 5, 2016 which confirms that the Debtor was incorporated under the name "Westview Park Gardens (2004) Inc." on May 27, 2004. The Debtor changed its name to its present name "Portofino Corporation" on July 20, 2005;
2. Certificate of Status – we obtained a certificate of status from the Ministry of Government Services for the Province of Ontario with respect to the Debtor which confirms that the Debtor had not been dissolved as of July 6, 2016;
  3. Land Titles – we performed subsearches of the Units sold by the Receiver to date. Those subsearches disclosed the following registrations against some or all of the Units immediately prior to the sale thereof:
    - (a) six registered charges, the particulars of which are as follows:
      - (i) charge in the principal amount of \$30,000,000 in favour of BMO registered on November 28, 2005 as instrument number CE185236 (the "BMO Charge");
      - (ii) charge in the principal amount of \$4,200,000 in favour of Lombard General Insurance Company of Canada ("Lombard") registered on November 29, 2005 as instrument number CE185421 ("Lombard Charge");
      - (iii) charge in the principal amount of \$1,000,000 in favour of Remo Valente Real Estate (1990) Limited registered on October 12, 2007 as instrument number CE297353 (the "Valente Charge");
      - (iv) charge in the principal amount of \$400,000 in favour of Sutts Strosberg LLP registered on August 9, 2011 as instrument number CE482047 ("Sutts Strosberg Charge No. 1");
      - (v) charge in the principal amount of \$1,540,000 in favour of Royal Bank of Canada registered on December 20, 2011 as instrument number CE500568 ("Royal Bank Charge"); and
      - (vi) charge in the principal amount of \$524,312 in favour of Sutts Strosberg LLP registered on January 10, 2013 as instrument number CE551002 (Sutts Strosberg Charge No. 2").

The BMO Charge, Lombard Charge and Royal Bank Charge were registered against all Units. The Valente Charge, Sutts Strosberg Charge No. 1 and Sutts Strosberg Charge No. 2 were not registered against the four parking units included among the Units sold by the Receiver.

- (b) Four construction liens and two certificates of action (together, the "Construction Liens and Certificates of Action"), the particulars of which are as follows:



- (i) construction lien in the amount of \$875,000 in favour of Dante J. Capaldi and 1287678 Ontario Inc. registered on September 30, 2013 as instrument number CE584310;
  - (ii) construction lien in the amount of \$3,000,000 in favour of Andreolli Investments Inc. registered on September 30, 2013 as instrument number CE584311;
  - (iii) construction lien in the amount of \$3,000,000 in favour of Dante J. Capaldi and 1287678 Ontario Inc. registered on October 25, 2013 as instrument number CE587801;
  - (iv) construction lien in the amount of \$875,000 in favour of Andreolli Investments Inc. and Wilma Capaldi registered on October 25, 2013 as instrument number CE587802;
  - (v) certificate of action registered on November 1, 2013 as instrument number CE588864 with respect to the construction lien registered as instrument number CE587801; and
  - (vi) certificate of action registered on November 1, 2013 as instrument number CE588865 with respect to the construction lien registered as instrument number CE587802.
- (c) a lien by Essex Standard Condominium Corporation No. 122 ("ESCC 122") on October 29, 2013 as instrument number CE588099 (the "Condo Lien"); and
  - (d) a Notice of Assignment of Rents in favour of Royal Bank of Canada registered on December 20, 2011 as instrument number CE500569.
4. *Personal Property Security Act (Ontario)* (the "PPSA") – we obtained a search of registrations against the Debtor under the PPSA which search was current as of July 4, 2016. The registrations disclosed by that search are summarized on Schedule "B" to this letter.

#### The BMO Charge

The BMO Charge is the first registered charge against each of the Units. The BMO Charge was registered electronically. The registered BMO Charge indicates that it was signed by Dante J. Capaldi, as president of the Debtor. We have been provided with a copy of an acknowledgment and direction dated October 27, 2005 signed by Mr. Capaldi on behalf of the Debtor authorizing the electronic registration of the BMO Charge.

The BMO Charge is a collateral charge securing all present and future indebtedness and liability of the Debtor to BMO. Standard charge terms 200821 which form part of the BMO Charge includes an assignment of leases and rents by which the Debtor has assigned, transferred and set over to BMO all of its rights and interest in all existing and future leases and tenancy agreements as security for the payment of all present and future indebtedness and liability of the Debtor to BMO.



### PPSA registrations

The *PPSA* registrations outstanding against the Debtor as of July 4, 2016 are summarized on Schedule "B".

By virtue of section 4(1)(e) of the *PPSA*, the *PPSA* applies to the assignment of rents contained in the BMO Charge. BMO registered a financing statement under the *PPSA* on December 9, 2005. That registration is in proper form and perfects the security interest created by the assignment of rents contained in the BMO Charge.

As set forth on Schedule "B", Lombard's registration under the *PPSA* is prior in time to the BMO registration. The general collateral description portion of the Lombard registration has been completed to include the words "deposit trust agreement for purchasers' deposits". As such, by virtue of section 46(2.1) of the *PPSA*, the scope of the collateral in which Lombard may claim a perfected security interest is restricted to the collateral described in the general collateral classification and does not include the rents for the Units.

### Assignments of the BMO Charge

By a General Assignment dated May 5, 2015, BMO assigned to RREF II BHB IV Portofino, LLC ("RREF") its loans with the Debtor and the security held for those loans (together, the "BMO Loans and Security"), including the BMO Charge. A Transfer of Charge from BMO to RREF for the BMO Charge was registered on June 29, 2015 as instrument no. CE664524.

By a General Assignment dated May 27, 2016, RREF further assigned the BMO Loans and Security, including the BMO Charge, to 2502461 Ontario Ltd. ("250 Ontario"). A Transfer of Charge from RREF to 250 Ontario for the BMO Charge was registered on May 30, 2016 as instrument no. CE715152.

As security for amounts owing by it to Windsor Family Credit Union ("WFCU"), 250 Ontario has granted security to WFCU in the BMO Loans and Security. As part of that security, 250 Ontario has executed a Direction dated May 27, 2016 directing the Receiver to make payment to WFCU of all amounts payable to 250 Ontario under the BMO Charge. A Transfer of Charge from 250 Ontario to WFCU for the BMO Charge was registered on May 30, 2016 as instrument no. CE715282.

### Approval and Vesting Orders

By an Approval and Vesting Order dated May 2, 2014 and an Omnibus Approval and Vesting Order dated May 2, 2014, (together, the "Approval and Vesting Orders"), the Court approved the sale of the Units by the Receiver and vested title to the Units in the purchasers. The Approval and Vesting Orders provide that the proceeds from the sale of the Units are to stand in the place of the Units and that all encumbrances shall attach to the net proceeds from the sale of the Units with the same priority as they had with respect to the Units immediately prior to the sale thereof.

### Construction Liens and Certificates of Action

In the actions commenced with respect to the construction liens which have been registered on title to the Units, a claim for priority is made over the BMO Charge. Pursuant to an





Agreement made between the construction lien claimants and the estate trustee of the estate of Patrick D'Amore and postponements registered as instrument numbers CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 on May 30, 2016, the Construction Liens and Certificates of Action were postponed to the BMO Charge.

### The Condo Lien

You have advised that the Receiver has completed a settlement with ESCC 122 for the Condo Lien and that the Condo Lien has been satisfied. A discharge of the Condo Lien was registered on May 26, 2016 as instrument number CE714479. The discharge states that ESCC122 received payment of the Condo Lien.

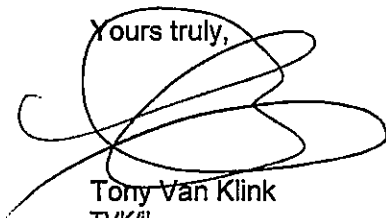
### OPINIONS

Subject to the qualifications and assumptions set forth on Schedule "A" to this letter, we are of the opinion that:

1. The BMO Charge is valid and enforceable security against the Units;
2. The assignment of rents contained within the BMO Charge is valid and perfected security in the Rents;
3. The BMO Charge has priority over all other registered charges and encumbrances against the Units;
4. The assignment of rents contained within the BMO Charge has priority over all other security interests which are perfected by registration under the *PPSA* as summarized on Schedule "B"; and
5. The BMO Charge has priority over all other registered charges, encumbrances and security interests in the Net Receipts.

Although we express no opinion on the validity or effectiveness of the various assignments of the BMO Loans and Security, there is no obvious defect in those assignments. Notice of any intended distribution of the Net Receipts should be given to BMO, RREF, 250 Ontario and WFCU so that if there is any issue relating to the assignments of the BMO Charge, the affected parties may appear on the motion.

Yours truly,



Tony Van Klink  
TVK/jl

Enclosure  
19059868.1



## SCHEDULE "A"

### **Genuineness and Authenticity**

We assume the genuineness of all signatures and the authenticity of all documents or copies thereof.

### **Equity and other Statutory Limitations**

The opinions herein expressed are subject to any equities between the parties of which we have no notice or knowledge.

### **Proper Corporate Authorization**

We assume that the security documents described in the attached letter have been executed by proper signing officers of the Debtor duly authorized.

### **Accuracy of PPSA Register and Public Records**

We have assumed the accuracy of all public records, indexes and filing systems which we have searched or have caused inquiries to be made. We also assume that the registrations disclosed by the PPSA search which we have conducted accurately reflects the contents of and all registrations affecting the Debtor made by all secured parties.

### **Laws of Ontario**

The opinions expressed herein, insofar as same relate to personal property, are limited to personal property located in the Province of Ontario. The opinions expressed herein are, as well, limited to the laws of the Province of Ontario and all federal laws applicable therein.

### **Consideration and Outstanding Indebtedness**

We assume that consideration was given by the secured parties to whom the security documents described in the attached letter were granted to support the granting of those security documents.



## SCHEDULE "B"

**ONTARIO PERSONAL PROPERTY SECURITY ACT SEARCH  
IN THE NAME OF PORTOFINO CORPORATION**

**FILE CURRENCY: JULY 4, 2016**

REGISTRATION NO.	SECURED PARTY	COLLATERAL CLASSIFICATION	PPSA (P)/ RSLA (R)
20051129 0933 1862 0485	Lombard General Insurance Company of Canada	Accounts, Other	P
20051209 1402 1462 8473	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	P
Renewal 20101005 1038 9011 1236			
Assignment 20150626 1609 1590 8709	RREF		
Renewal 20151021 1445 1530 1223			
Assignment 20160530 1641 1590 9955	250 Ontario		
Assignment 20160530 1641 1590 9956	WFCU		
20110919 1459 1862 9095	Sutts, Strosberg LLP	Consumer Goods, Inventory, Equipment, Accounts, Other	P



# APPENDIX “S”



**MILLER THOMSON**  
AVOCATS | LAWYERS

MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
CANADA

T 519.931.3500  
F 519.858.8511

MILLERTHOMSON.COM

November 7, 2016

**Delivered via E-mail (original by mail)**

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3

Attention: Stephen N. Cherniak, CPA, CA,  
CIRP

**Tony Van Klink**  
Direct Line: 519.931.3509  
tvanklink@millerthomson.com

File: 082873.0012

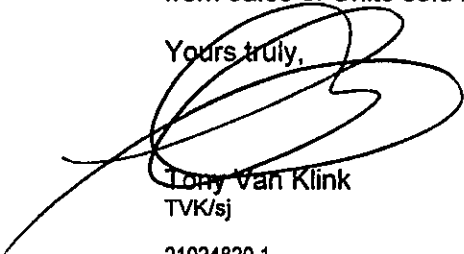
Dear Sir:

**Re: Portofino Corporation**

We refer to our opinion dated July 11, 2016 (the "July 11<sup>th</sup> Opinion"). Unless otherwise indicated, defined terms herein have the same meaning as in the July 11<sup>th</sup> Opinion.

We confirm that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Units sold by the Receiver from July 11, 2016 to November 2, 2016.

Yours truly,



Tony Van Klink  
TVK/sj

21024820.1

# APPENDIX “T”



**MILLER THOMSON**  
AVOCATS | LAWYERS

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MILLERTHOMSON.COM

August 17, 2017

**Delivered via E-mail (original by mail)**

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3

Attention: Stephen N. Cherniak, CPA, CA,  
CIRP

**Sherry A. Kettle**  
Direct Line: 519.931.3534  
skettle@millerthomson.com

File: 082873.0012

Dear Sir:

**Re: Portofino Corporation**

We refer to our opinions dated July 11, 2016 (the "July 11<sup>th</sup> Opinion") and November 7, 2016. Unless otherwise indicated, defined terms herein have the same meaning as in the July 11<sup>th</sup> Opinion.

We confirm that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Units sold by the Receiver from November 3, 2016 to August 14, 2017.

Yours truly,

MILLER THOMSON LLP

Per.

Sherry A. Kettle  
SAK/sj

26085420.1

# APPENDIX “U”





**MILLER THOMSON**  
AVOCATS | LAWYERS

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April 4, 2018

**Delivered via E-mail (original by mail)**

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3

Attention: Stephen N. Cherniak, CPA, CA,  
CIRP

**Sherry A. Kettle**  
Direct Line: 519.931.3534  
skettle@millerthomson.com

File: 082873.0012

Dear Sir:

**Re: Portofino Corporation**

We refer to our opinions dated July 11, 2016 (the "July 11<sup>th</sup> Opinion"), November 7, 2016 and August 17, 2017. Unless otherwise indicated, defined terms herein have the same meaning as in the July 11<sup>th</sup> Opinion.

We confirm that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Units sold by the Receiver from August 15, 2017 to March 29, 2018.

Yours truly,

MILLER THOMSON LLP

Per:

Sherry A. Kettle  
SAK/sj

30469448.1

# APPENDIX “V”



**MILLER THOMSON**  
AVOCATS | LAWYERS

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November 13, 2018

**Delivered via E-mail**

BDO Canada Limited  
633 Colborne Street  
Suite 100  
London, ON N6B 2V3

Attention: Stephen N. Cherniak, CPA, CA,  
CIRP

**Sherry A. Kettle**  
Direct Line: 519.931.3534  
skettle@millerthomson.com

File: 082873.0012

Dear Sir:

**Re: Portofino Corporation**

We refer to our opinions dated July 11, 2016 (the "July 11<sup>th</sup> Opinion"), November 7, 2016, August 17, 2017 and April 4, 2018. Unless otherwise indicated, defined terms herein have the same meaning as in the July 11<sup>th</sup> Opinion.

We confirm that the opinions expressed in the July 11<sup>th</sup> Opinion apply to the Net Receipts from sales of Units sold by the Receiver from March 30, 2018 to August 22, 2018.

Yours truly,

MILLER THOMSON LLP

Per:

  
Sherry A. Kettle  
SAK/sj

35392537.1



MILLER THOMSON LLP  
MILLERTHOMSON.COM

ONE LONDON PLACE + 255 QUEENS AVENUE, SUITE 2010  
LONDON, ON + N6A 5R8 + CANADA

T 519.931.3500  
F 519.858.8511

July 11, 2016

**Delivered Via E-mail (Original by Mail)**

BDO Canada Limited  
252 Pall Mall Street, Suite 103  
London, ON N6A 5P6

Attention: Stephen N. Cherniak, CPA, CA,  
CIRP

**Tony Van Klink**  
Direct Line: 519.931.3509  
tvanklink@millerthomson.com

File: 082873.0012

Dear Sir:

**Re: Portofino Corporation (the "Debtor")**

By Order of Mr. Justice Thomas dated October 29, 2013, BDO Canada Limited (the "Receiver") was appointed as receiver of the assets, undertakings and properties of the Debtor.

Prior to the receivership the Debtor constructed a 123 unit high-rise condominium building at 1225 Riverside Drive West, Windsor (the "Project"). At the date of the Receiver's appointment, the Debtor owned 52 apartment units, 38 parking units and 2 storage units (collectively, the "Units") in the Project. Since its appointment the Receiver has undertaken efforts to sell the Units and has been collecting the rents (the "Rents") for those Units which have been rented to tenants.

The following is our report to you and our opinion on the validity and enforceability of the security granted by the Debtor to Bank of Montreal ("BMO") against the Project, including the net receipts realized by the Receiver from the sale of the Units and the collection of Rents (collectively, the "Net Receipts").

#### **ASSUMPTIONS AND QUALIFICATIONS**

The opinions expressed in this letter are subject to the qualifications and assumptions set forth on Schedule "A" to this letter.

#### **SEARCHES**

We have conducted the following searches:

1. Corporation Profile Report – we obtained a corporation profile report from the Ministry of Government Services for the Province of Ontario with respect to the Debtor dated

July 5, 2016 which confirms that the Debtor was incorporated under the name "Westview Park Gardens (2004) Inc." on May 27, 2004. The Debtor changed its name to its present name "Portofino Corporation" on July 20, 2005;

2. Certificate of Status – we obtained a certificate of status from the Ministry of Government Services for the Province of Ontario with respect to the Debtor which confirms that the Debtor had not been dissolved as of July 6, 2016;
3. Land Titles – we performed subsearches of the Units sold by the Receiver to date. Those subsearches disclosed the following registrations against some or all of the Units immediately prior to the sale thereof:
  - (a) six registered charges, the particulars of which are as follows:
    - (i) charge in the principal amount of \$30,000,000 in favour of BMO registered on November 28, 2005 as instrument number CE185236 (the "BMO Charge");
    - (ii) charge in the principal amount of \$4,200,000 in favour of Lombard General Insurance Company of Canada ("Lombard") registered on November 29, 2005 as instrument number CE185421 ("Lombard Charge");
    - (iii) charge in the principal amount of \$1,000,000 in favour of Remo Valente Real Estate (1990) Limited registered on October 12, 2007 as instrument number CE297353 (the "Valente Charge");
    - (iv) charge in the principal amount of \$400,000 in favour of Sutts Strosberg LLP registered on August 9, 2011 as instrument number CE482047 ("Sutts Strosberg Charge No. 1");
    - (v) charge in the principal amount of \$1,540,000 in favour of Royal Bank of Canada registered on December 20, 2011 as instrument number CE500568 ("Royal Bank Charge"); and
    - (vi) charge in the principal amount of \$524,312 in favour of Sutts Strosberg LLP registered on January 10, 2013 as instrument number CE551002 (Sutts Strosberg Charge No. 2").

The BMO Charge, Lombard Charge and Royal Bank Charge were registered against all Units. The Valente Charge, Sutts Strosberg Charge No. 1 and Sutts Strosberg Charge No. 2 were not registered against the four parking units included among the Units sold by the Receiver.

- (b) Four construction liens and two certificates of action (together, the "Construction Liens and Certificates of Action"), the particulars of which are as follows:



- (i) construction lien in the amount of \$875,000 in favour of Dante J. Capaldi and 1287678 Ontario Inc. registered on September 30, 2013 as instrument number CE584310;
  - (ii) construction lien in the amount of \$3,000,000 in favour of Andreolli Investments Inc. registered on September 30, 2013 as instrument number CE584311;
  - (iii) construction lien in the amount of \$3,000,000 in favour of Dante J. Capaldi and 1287678 Ontario Inc. registered on October 25, 2013 as instrument number CE587801;
  - (iv) construction lien in the amount of \$875,000 in favour of Andreolli Investments Inc. and Wilma Capaldi registered on October 25, 2013 as instrument number CE587802;
  - (v) certificate of action registered on November 1, 2013 as instrument number CE588864 with respect to the construction lien registered as instrument number CE587801; and
  - (vi) certificate of action registered on November 1, 2013 as instrument number CE588865 with respect to the construction lien registered as instrument number CE587802.
- (c) a lien by Essex Standard Condominium Corporation No. 122 ("ESCC 122") on October 29, 2013 as instrument number CE588099 (the "Condo Lien"); and
  - (d) a Notice of Assignment of Rents in favour of Royal Bank of Canada registered on December 20, 2011 as instrument number CE500569.
4. *Personal Property Security Act (Ontario) (the "PPSA")* – we obtained a search of registrations against the Debtor under the PPSA which search was current as of July 4, 2016. The registrations disclosed by that search are summarized on Schedule "B" to this letter.

#### The BMO Charge

The BMO Charge is the first registered charge against each of the Units. The BMO Charge was registered electronically. The registered BMO Charge indicates that it was signed by Dante J. Capaldi, as president of the Debtor. We have been provided with a copy of an acknowledgment and direction dated October 27, 2005 signed by Mr. Capaldi on behalf of the Debtor authorizing the electronic registration of the BMO Charge.

The BMO Charge is a collateral charge securing all present and future indebtedness and liability of the Debtor to BMO. Standard charge terms 200821 which form part of the BMO Charge includes an assignment of leases and rents by which the Debtor has assigned, transferred and set over to BMO all of its rights and interest in all existing and future leases and tenancy agreements as security for the payment of all present and future indebtedness and liability of the Debtor to BMO.



### PPSA registrations

The *PPSA* registrations outstanding against the Debtor as of July 4, 2016 are summarized on Schedule "B".

By virtue of section 4(1)(e) of the *PPSA*, the *PPSA* applies to the assignment of rents contained in the BMO Charge. BMO registered a financing statement under the *PPSA* on December 9, 2005. That registration is in proper form and perfects the security interest created by the assignment of rents contained in the BMO Charge.

As set forth on Schedule "B", Lombard's registration under the *PPSA* is prior in time to the BMO registration. The general collateral description portion of the Lombard registration has been completed to include the words "deposit trust agreement for purchasers' deposits". As such, by virtue of section 46(2.1) of the *PPSA*, the scope of the collateral in which Lombard may claim a perfected security interest is restricted to the collateral described in the general collateral classification and does not include the rents for the Units.

### Assignments of the BMO Charge

By a General Assignment dated May 5, 2015, BMO assigned to RREF II BHB IV Portofino, LLC ("RREF") its loans with the Debtor and the security held for those loans (together, the "BMO Loans and Security"), including the BMO Charge. A Transfer of Charge from BMO to RREF for the BMO Charge was registered on June 29, 2015 as instrument no. CE664524.

By a General Assignment dated May 27, 2016, RREF further assigned the BMO Loans and Security, including the BMO Charge, to 2502461 Ontario Ltd. ("250 Ontario"). A Transfer of Charge from RREF to 250 Ontario for the BMO Charge was registered on May 30, 2016 as instrument no. CE715152.

As security for amounts owing by it to Windsor Family Credit Union ("WFCU"), 250 Ontario has granted security to WFCU in the BMO Loans and Security. As part of that security, 250 Ontario has executed a Direction dated May 27, 2016 directing the Receiver to make payment to WFCU of all amounts payable to 250 Ontario under the BMO Charge. A Transfer of Charge from 250 Ontario to WFCU for the BMO Charge was registered on May 30, 2016 as instrument no. CE715282.

### Approval and Vesting Orders

By an Approval and Vesting Order dated May 2, 2014 and an Omnibus Approval and Vesting Order dated May 2, 2014, (together, the "Approval and Vesting Orders"), the Court approved the sale of the Units by the Receiver and vested title to the Units in the purchasers. The Approval and Vesting Orders provide that the proceeds from the sale of the Units are to stand in the place of the Units and that all encumbrances shall attach to the net proceeds from the sale of the Units with the same priority as they had with respect to the Units immediately prior to the sale thereof.

### Construction Liens and Certificates of Action

In the actions commenced with respect to the construction liens which have been registered on title to the Units, a claim for priority is made over the BMO Charge. Pursuant to an



Agreement made between the construction lien claimants and the estate trustee of the estate of Patrick D'Amore and postponements registered as instrument numbers CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 on May 30, 2016, the Construction Liens and Certificates of Action were postponed to the BMO Charge.

### The Condo Lien

You have advised that the Receiver has completed a settlement with ESCC 122 for the Condo Lien and that the Condo Lien has been satisfied. A discharge of the Condo Lien was registered on May 26, 2016 as instrument number CE714479. The discharge states that ESCC122 received payment of the Condo Lien.

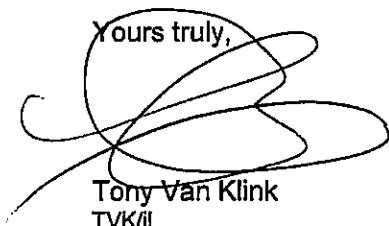
### OPINIONS

Subject to the qualifications and assumptions set forth on Schedule "A" to this letter, we are of the opinion that:

1. The BMO Charge is valid and enforceable security against the Units;
2. The assignment of rents contained within the BMO Charge is valid and perfected security in the Rents;
3. The BMO Charge has priority over all other registered charges and encumbrances against the Units;
4. The assignment of rents contained within the BMO Charge has priority over all other security interests which are perfected by registration under the *PPSA* as summarized on Schedule "B"; and
5. The BMO Charge has priority over all other registered charges, encumbrances and security interests in the Net Receipts.

Although we express no opinion on the validity or effectiveness of the various assignments of the BMO Loans and Security, there is no obvious defect in those assignments. Notice of any intended distribution of the Net Receipts should be given to BMO, RREF, 250 Ontario and WFCU so that if there is any issue relating to the assignments of the BMO Charge, the affected parties may appear on the motion.

Yours truly,



Tony Van Klink  
TVK/jl

Enclosure  
19059868.1





**SCHEDULE "A"****Genuineness and Authenticity**

We assume the genuineness of all signatures and the authenticity of all documents or copies thereof.

**Equity and other Statutory Limitations**

The opinions herein expressed are subject to any equities between the parties of which we have no notice or knowledge.

**Proper Corporate Authorization**

We assume that the security documents described in the attached letter have been executed by proper signing officers of the Debtor duly authorized.

**Accuracy of PPSA Register and Public Records**

We have assumed the accuracy of all public records, indexes and filing systems which we have searched or have caused inquiries to be made. We also assume that the registrations disclosed by the PPSA search which we have conducted accurately reflects the contents of and all registrations affecting the Debtor made by all secured parties.

**Laws of Ontario**

The opinions expressed herein, insofar as same relate to personal property, are limited to personal property located in the Province of Ontario. The opinions expressed herein are, as well, limited to the laws of the Province of Ontario and all federal laws applicable therein.

**Consideration and Outstanding Indebtedness**

We assume that consideration was given by the secured parties to whom the security documents described in the attached letter were granted to support the granting of those security documents.



## SCHEDULE "B"

ONTARIO PERSONAL PROPERTY SECURITY ACT SEARCH  
IN THE NAME OF PORTOFINO CORPORATION

FILE CURRENCY: JULY 4, 2016

REGISTRATION NO.	SECURED PARTY	COLLATERAL CLASSIFICATION	PPSA (P)/ RSLA (R)
20051129 0933 1862 0485	Lombard General Insurance Company of Canada	Accounts, Other	P
20051209 1402 1462 8473	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	P
Renewal 20101005 1038 9011 1236			
Assignment 20150626 1609 1590 8709	RREF		
Renewal 20151021 1445 1530 1223			
Assignment 20160530 1641 1590 9955	250 Ontario		
Assignment 20160530 1641 1590 9956	WFCU		
20110919 1459 1862 9095	Sutts, Strosberg LLP	Consumer Goods, Inventory, Equipment, Accounts, Other	P



# **APPENDIX “W”**

2502461 Ontario Ltd.

BMO Loan to Portofino Corporation assigned to 2502461 Ontario Ltd.

Statement at: 12-Oct-18

Prepared by Receiver

Date	Interest Rate (P+2)	Interest for period	Principal	Balance	Description	Note
08-Aug-17	4.95%			\$ 5,111,307.32	Mortgage Statement	(1)
07-Sep-17	5.20%	20,795.32		5,132,102.64	Interest to 07-Sep-17	(2)
20-Sep-17	5.20%	9,504.94	(1,700,000.00)	3,441,607.57	Interest to 20-Sep-17	(3)
18-Jan-18	5.45%	58,837.35		3,500,444.92	Interest to 18-Jan-18	(4)
10-May-18	5.45%	58,538.95	(1,700,000.00)	1,858,983.87	Interest to 10-May-18	(5)
01-Jul-18	5.45%	14,433.86		1,873,417.73	Interest to 01-Jul-18	
12-Jul-18	5.70%	3,077.02		1,876,494.76	Interest to 12-Jul-18	(6)
12-Oct-18	5.70%	26,959.83		1,903,454.59	Interest to 12-Oct-18	

#### Notes

- (1) 2502461 Ontario Ltd. ("250 Ontario") loan balance at Aug. 8, 2017, per Mortgage Statement provided to Receiver by 250 Ontario. Mortgage statement commences from "4/1/15 Opening Balance" of \$9,982,007.22, for which 250 Ontario has provided support in the form of BMO Loan account statement at March 31, 2015. Receiver has reviewed subsequent transaction dates and particulars, interest rates and interest calculations.
- (2) Increase in BMO prime rate to 3.20%, effective Sept. 7, 2017.
- (3) Distribution of \$1,700,000 as approved by Order of Justice Patterson dated Sept. 19, 2017.
- (4) Increase in BMO prime rate to 3.45%, effective Jan. 18, 2018.
- (5) Distribution of \$1,700,000 as approved by Order of Justice Verbeem dated May 8, 2018.
- (6) Increase in BMO prime rate to 3.70%, effective July 12, 2018.

**TAB 3**

Court File No.: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	TUESDAY, THE 27TH
	)	
JUSTICE	)	DAY OF NOVEMBER, 2018

BETWEEN:

**2502461 ONTARIO LTD.**

Applicant

- and -

**PORTOFINO CORPORATION**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**ORDER**

**THIS MOTION**, made by BDO Canada Limited (“BDO”), in its capacity as court-appointed receiver (the “Receiver”) of the assets, undertakings and properties of Portofino Corporation (“Portofino”) pursuant to the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 for an order:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Tenth Report of the Receiver dated November 13, 2018 and all appendices thereto (the “Tenth Report”), and directing that any further service of same be dispensed with such that this motion is properly returnable on November 27, 2018;
- (b) approving the Tenth Report and the activities and conduct of the Receiver described therein;

- 2 -

- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to October 12, 2018 (the "Statement of Receipts and Disbursements");
- (d) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees");
- (e) approving and authorizing the distribution of \$1,400,000 to Windsor Family Credit Union ("WFCU") from the funds on hand;
- (f) for advice and directions of the Court with respect to the sum of \$85,000.45, plus interest (the "Trust Funds") held by Miller, Canfield, Paddock and Stone, LLP ("Miller Canfield") at the date of the making of the receivership order and applied by Miller Canfield after the date of the receivership against outstanding invoices of Portofino for the pre-receivership period;
- (g) such orders as are necessary to give effect to the advice and directions provided by the Court with respect to the Trust Funds; and
- (h) such further and other relief as counsel may advise and this Honourable Court deems just.

was heard this day at 245 Windsor Avenue, Windsor, Ontario.

**ON READING** the Tenth Report and on hearing the submissions of counsel for the Receiver, no one else appearing from the service list, although duly served as appears from the affidavit of Julie Franchini sworn November 14, 2018, filed:

1. **THIS COURT ORDERS** that the time for and method of service of all motion confirmation forms, the motion record, including the notice of motion and the Tenth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Tenth Report and the activities and conduct of the Receiver described in the Tenth Report are hereby approved.
3. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.

- 3 -

4. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the fee affidavits of Stephen N. Cherniak sworn November 8, 2018 and Sherry Kettle sworn November 9, 2018, be and the same are hereby approved.
5. **THIS COURT ORDERS** that the distribution of \$1,400,000 to WFCU from the funds on hand is approved.

---

*Justice, Ontario Superior Court of Justice*



2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

**ORDER****MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSO#: 29008M

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skettle@millerthomson.com

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Fax: 519.858.8511

Lawyers for BDO Canada Limited, the Court-  
Appointed Receiver of Portofino Corporation

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No.: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD  
(RETURNABLE NOVEMBER 27, 2018)**

**MILLER THOMSON LLP**

One London Place  
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**Sherry A. Kettle** LSO#: 53561B  
skettle@millerthomson.com  
Tel: 519.931.3534  
Fax: 519.858.8511

Lawyers for BDO Canada Limited,  
the court-appointed Receiver of  
Portofino Corporation