

**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 JANUARY 10, 2023)**

December 14, 2022

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Portofino Corporation

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TAB 1

Court File No. CV-13-00019866-0000

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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 JANUARY 10, 2023)**

BDO CANADA LIMITED (“**BDO**”), in its capacity as court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) 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, January 10, 2023 at 10:00 a.m. or as soon after that time as the motion can be heard.

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

- In writing under subrule 37.12.1(1) because it is made without notice
- In writing as an opposed motion under subrule 37.12.1(4)
- In person
- By telephone conference
- By video conference

at the following location:

Zoom video conference link to be advised by the Court.

THE MOTION IS FOR:

- (a) if necessary, an order abridging the time for service and filing and validating the method of service of the Motion Record, including the Notice of Motion and the Eleventh Report of the Receiver dated December 13, 2022 and all appendices thereto (the “**Eleventh Report**”), and all motion confirmation forms, and directing that any further service of same be dispensed with such that this motion is properly returnable on January 10, 2023;
- (b) an order approving the Eleventh Report and the activities and conduct of the Receiver described therein;
- (c) an order authorizing the Receiver to transfer the Westview Trust Funds, as defined in section 6 of the Report, together with the accrued interest thereon, to the general trust account for the receivership;
- (d) advice and directions of the Court with respect to the sum of \$85,000.45, plus interest (the “**Miller Canfield Trust Funds**”) held by Miller, Canfield, Paddock and Stone, LLP (“**Miller Canfield**”) at the date of the receivership order as to whether (i) Miller Canfield had a solicitors’ lien against the Miller Canfield Trust Funds, and (ii) Miller Canfield was entitled to apply the Miller Canfield Trust Funds after the date of the receivership order against outstanding invoices owing by Portofino to Miller Canfield for the

pre-receivership period or whether the Miller Canfield Trust Funds are required to be paid over to the Receiver to be distributed to the secured creditors of Portofino in accordance with their priority under their security;

- (e) such orders as are necessary to give effect to the advice and directions provided by the Court with respect to the Miller Canfield Trust Funds;
- (f) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to November 15, 2022 (the "**Statement of Receipts and Disbursements**");
- (g) approving the professional fees and disbursements of the Receiver and its legal counsel (the "**Professional Fees**");
- (h) subject to the payment of the Professional Fees and other residual costs and expenses incurred in the administration of the receivership estate, approving and authorizing the distribution of the balance of the funds held by the Receiver, including the Westview Trust Funds and any amounts to be paid to the Receiver from the Miller Canfield Trust Funds, as follows:

- (A) to pay \$636,270.29, plus per diem interest, to Windsor Family Credit Union ("**WFCU**") in full satisfaction of its secured claim against the Property; and

- (B) to pay the balance of the funds, if any, to Strosberg Sasso Sutts LLP ("**SSS**") on account if its secured claim against the Property up to the amount owed to SSS.

- (i) subject to the determination by the court of the relief sought in paragraphs (c), (d) and (e) above, discharging the Receiver as receiver of the Property and releasing BDO from any and all liability, save and except for any gross negligence or wilful misconduct on the Receiver's part; and
- (j) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Approval of the Eleventh 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 Eleventh 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 Eleventh 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 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;

Transfer of Westview Trust Funds to General Receivership Trust Account

8. At the date of the Receivership Order, Portofino was the holder of a \$220,000 vendor take back mortgage (the "**VTB Mortgage**") registered against development lands in LaSalle, Ontario (the "**LaSalle Property**"). Portofino's principal, Dante Capaldi ("**Capaldi**"), advised the Receiver that the VTB Mortgage, although registered in Portofino's name, was held in trust by Portofino for other corporations controlled by Capaldi. There is no trust deed or any indication on the face of the VTB Mortgage evidencing a trust.
9. Capaldi provided the Receiver with an affidavit for an unissued court application to purportedly rectify title to the LaSalle Property by discharging the VTB Mortgage, or, in the alternative, a declaration that Portofino held the VTB Mortgage as a trustee for other Capaldi companies. That court application has never been initiated. The affidavit indicates the following:
 - (a) Portofino acquired the LaSalle Property in June, 2004 for a purchase price of \$600,000;

- (b) the \$30,000 deposit under the purchase agreement for the LaSalle Property was paid by Capaldi Corporation, another corporation controlled by Capaldi;
- (c) Capaldi Corporation assigned the agreement of purchase and sale to acquire the LaSalle Property to Portofino shortly before closing;
- (d) on closing, the amount payable to the vendor was satisfied by a cash payment of \$90,096.87 and a \$480,000 vendor take back mortgage;
- (e) the \$90,096.87 paid on closing came from another corporation controlled by Capaldi;
- (f) no security was provided by Portofino to the other Capaldi companies for the \$30,000 deposit or the \$90,096.87 paid on closing;
- (g) in November 2005, the \$480,000 vendor take back mortgage was refinanced by way of a new \$380,000 mortgage and a further \$140,000 advanced by Capaldi Corporation without security; and
- (h) in June 2011, the LaSalle Property was transferred from Portofino to Westview Park Luxury Gardens (2006) Inc. ("**Westview**"). The land transfer tax affidavit sets out the consideration for the transfer as being the assumption of the \$380,000 first mortgage and the granting of the VTB Mortgage to Portofino in the amount of \$220,000.

10. The Capaldi affidavit does not support the existence of a trust.

11. The LaSalle Property was transferred by Portofino to Westview in June 2011 while an appeal by Portofino from a judgment obtained against it was pending before the Court of Appeal. The contents of Portofino's solicitor's file suggest that the LaSalle Property was transferred because of concerns arising from that litigation if the LaSalle Property remained an asset of Portofino and potentially subject to the judgment.

Advice and Directions with respect to the Miller Canfield Trust Funds

12. Valente Real Estate was retained by Portofino to act as its agent on the sale of the units in the condominium development. Portofino terminated the agency agreement. Litigation ensued between Portofino and Valente Real Estate over the payment of real estate commissions.
13. One of the issues in the litigation was whether amounts paid by purchasers for extras 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 by Portofino's solicitors in a segregated trust account pending the final determination of Valente Real Estate's right thereto. In essence, the solicitors were to act as a stakeholder for the disputed commissions.
14. A total of \$85,000.45 was retained from the proceeds of sale of 29 condominium units on account of the disputed commissions. That amount, plus accrued

interest thereon, (the “**Miller Canfield Trust Funds**”) was being held in trust by Miller Canfield pursuant to the Gates Order at the date of the Receiver’s appointment;

15. Prior to the receivership, Portofino had signed a Direction (the “**Direction**”) in favour of Miller Canfield which authorized Miller Canfield to use the Miller Canfield Trust Funds to pay outstanding invoices owing by Portofino to Miller Canfield upon Miller Canfield being advised of the settlement of the litigation or a change in the Gates Order;
16. The action remained outstanding and the Direction had not been acted upon at the date of the Receiver’s appointment;
17. 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 Miller Canfield Trust Funds, as unpaid commissions, ceased;
18. 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 Miller Canfield Trust Funds against Portofino’s outstanding invoices with Miller Canfield;
19. Miller Canfield took the position that it was entitled to apply the Miller Canfield Trust Funds against the outstanding invoices by virtue of the Direction and because it was entitled to a solicitors’ lien against the Miller Canfield Trust Funds;

20. The Miller Canfield 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 Receiver's appointment, the Miller Canfield 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.
21. A solicitors' lien is a retaining lien only and could not be used by Miller Canfield to apply the Miller Canfield Trust Funds against its invoices in priority to the claims of Portofino's secured creditors;
22. The Direction signed by Portofino in favour of Miller Canfield was a form of security for its unpaid invoices, and, as such, is subject to the priority rules under the *Personal Property Security Act* ("**PPSA**") vis-à-vis the rights of Portofino's other secured creditors;
23. WFCU and SSS each hold perfected security interests in the Miller Canfield Trust Funds under the *PPSA* in priority to the rights of Miller Canfield under the Direction;
24. If Miller Canfield had a right to a solicitors' lien against the Miller Canfield Trust Funds, pursuant to s. 31 of the *PPSA* that lien would have priority over the security interests held by WFCU and SSS. However, if Miller Canfield did not have a right to a solicitors' lien, its right to apply the Miller Canfield Trust Funds against its outstanding invoices under the Direction are subordinate to the rights of the security interests held by WFCU and SSS;

25. 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; and
26. The Receiver seeks advice and directions from the Court on the following: (i) whether Miller Canfield had a right to a solicitors' lien against the Miller Canfield Trust Funds, and (ii) whether Miller Canfield was entitled by virtue of the Direction to apply the Miller Canfield Trust Funds against its outstanding invoices or whether the Miller Canfield Trust Funds are required to be paid over to the Receiver to be distributed to the other secured creditors of Portofino in accordance with their priority under their security.

Distributions

27. The Receiver has received an independent legal opinion confirming the validity and enforceability of the security held by WFCU and SSS over the Property.
28. The Court has previously approved interim distributions totaling \$11.2 million under the first ranking security held by WFCU. The balance owing under the WFCU security is \$636,270.29, plus accruing per diem interest.
29. SSS is the second ranking secured creditor and is entitled to any funds remaining after repayment of the amount secured under the WFCU security.

Discharge of Receiver

30. All known assets of the Debtor have been realized upon by the Receiver. Subject to the determination of the Outstanding Matters, as defined in the Report, the administration of the receivership will be complete and it is appropriate that BDO be discharged as Receiver and released from any further liability.

Other

1. Appointment Order;
2. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;
3. Rules 1.04, 1.05, 2.03, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
4. 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 Eleventh Report;
2. The fee affidavit of Stephen N. Cherniak sworn November 24, 2022 and the exhibits attached thereto;
3. The fee affidavit of Michael Prosia sworn December 12, 2022 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.

December 14, 2022

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2502461 ONTARIO LTD. and PORTOFINO CORPORATION
Applicant Respondent

Court File No: CV-13-00019866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

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(RETURNABLE JANUARY 10, 2023)**

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

December 13, 2022

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- Appendix V** - Legal Opinion of Miller Thomson LLP dated November 21, 2022 respecting the personal property security
- Appendix W** - Loan statement of amount secured under the BMO Security

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:
 - (i) fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the “**Unsold Condominium Units**”);
 - (ii) 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
 - (iii) two (2) storage units (the “**Unsold Storage Units**”)(collectively, the “**Unsold Units**”).

- 1.6 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 and its Eighth Report to the Court dated August 22, 2017, the Valente Court Action is now concluded.
- 1.7 Portofino was also involved in litigation commenced by Dede Dalfidan carrying on business as Fidan Enterprise Contracting (the "**Dalfidan Action**"). As outlined in the Eighth Report dated August 22, 2017 and the Receiver's Ninth Report to the Court dated April 23, 2018, the Dalfidan Action is also now concluded.
- 1.8 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of all of the Unsold Units and the settlement of the Valente Court Action and the Dalfidan Action. To date, eleven 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.
- 1.9 The realization of the assets of Portofino by the Receiver has been completed. The Receiver has previously distributed \$11.2 million to the first ranking security holder under previous orders made by the court approving those distributions. The Receiver is presently holding net receipts of approximately \$719,000 from the sale of Unsold Units, collection of rents and other sources plus an additional \$220,000, plus accrued interest, in a segregated trust account.
- 1.10 There are two outstanding matters (the "**Outstanding Matters**") in the receivership:
- (a) The Receiver is holding \$220,000, plus accrued interest, in a segregated trust account from the proceeds of a mortgage as discussed below in Section 6 of this Report. The Receiver seeks to transfer those funds from the segregated trust account to the general trust account of the receivership so that those funds may be distributed to the secured creditors of Portofino according to their priorities; and
 - (b) After the date of the Receiver's appointment, the Miller Canfield law firm applied \$89,184.77 which it was holding in trust for Portofino against unpaid

invoices owing to it by Portofino. The Receiver is seeking advice and directions from the Court whether Miller Canfield was entitled to do so or whether those funds formed part of the Property over which the Receiver was appointed and should be paid over to the Receiver to be distributed to the secured creditors of Portofino according to their priorities.

- 1.11 The Receiver wishes to have the Outstanding Matters determined by the Court, make a final distribution of all remaining funds and to be discharged as receiver.

2. Terms of Reference

- 2.1 In preparing this Eleventh 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 Eleventh Report

- 3.1 This constitutes the Receiver's Eleventh Report to the Court (the "**Eleventh 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 Tenth Report;
 - (b) In support of an order of the Court:
 - (i) Approving the Eleventh Report and the activities and conduct of the Receiver described herein;
 - (ii) Authorizing the Receiver to transfer the Westview Trust Funds, as defined in Section 5 of this report, in the amount of \$220,000, plus accrued interest thereon, to the Receiver's general trust account for this receivership;
 - (iii) for advice and directions with respect to the \$89,184.77 of trust funds held by Miller Canfield and applied by it after the date of the Receiver's appointment against unpaid invoices owing to it by Portofino and such orders as may be necessary to give effect to such advice and directions;
 - (iv) Approving the Receiver's Statement of Receipts and Disbursements for the period October 29, 2013 to November 15, 2022 (the "**Statement of Receipts and Disbursements**");
 - (v) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (vi) 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**");

- (vii) Approving and authorizing the distribution of the balance of funds held by the Receiver, including the Westview Trust Funds and any amounts to be received from Miller Canfield LLP, as follows:
 - (A) to pay the unpaid Professional fees;
 - (B) to pay up to \$636,270.29, plus per diem interest, to Windsor Family Credit Union (“**WFCU**”) in full satisfaction of the indebtedness secured under the first ranking security held by it over the Property; and
 - (A) to pay the balance of the funds, if any, to Strosberg Sasso Sutts LLP (“**SSS**”) on account of its secured claim over the Property up to the amount owed to SSS.
- (viii) Discharging BDO as Receiver and thereupon releasing BDO from any and all liability.

4. Receiver's Activities

- 4.1 In its Tenth Report, the Receiver reported to the Court on its activities through November 13, 2018.
- 4.2 In this, the Eleventh Report, the Receiver reports on its activities since the date of the Tenth Report.
- 4.3 For reference purposes, copies of the Receiver's first ten reports, without appendices, are attached as **Appendix B**.

Sale of the Unsold Units

- 4.4 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.
- 4.5 Subsequent reports have provided updates on further sales of the Unsold Units.
- 4.6 Since the Tenth Report, the Receiver has completed the sale of unit 106 on April 8, 2020 on an 'as is' basis, and has now sold all of the 52 Unsold Condominium Units, including the 9 unfinished units. Full details of the Receiver's sales of the Unsold Condominium Units, are attached as **Appendix C**.
- 4.7 Since the Tenth Report, the Receiver has completed the sale of the remaining 32 Unsold Parking Units and two basement level Unsold Storage Units.
- 4.8 The Receiver has now sold all of the Unsold Units. No Unsold Units remain.

Tarion Warranty Corporation

- 4.9 The Receiver's Third, Fourth and Eighth Reports to the Court reported on Portofino's status with Tarion, which administers the Ontario New Home Warranties Plan Act ("**ONHWPA**").
- 4.10 Lombard General Insurance Company of Canada, now called Northbridge General Insurance Corporation ("**Northbridge**") and Portofino jointly issued bond number 3500177 in the amount of \$2,640,000 (the "**Tarion Bond**") in favour of Tarion as

security for Portofino's obligations under the ONHWPA. A copy of the Tarion Bond is attached as **Appendix D**.

- 4.11 Throughout the receivership, the Receiver had continued to pay premiums to Northbridge on the Tarion Bond.
- 4.12 In March 2018, Tarion advised the Receiver that the security required by Tarion had been reduced to \$140,000. The corresponding Tarion Bond premium was reduced accordingly. The Receiver has continued to pay the Tarion Bond premium in the amount of \$583.00 every 4 months.
- 4.13 In October and November 2022, the Receiver had discussions with Tarion regarding any outstanding obligations of Portofino under the ONHWPA and inquired whether the Tarion Bond could be further reduced or cancelled. Tarion has advised the Receiver that there are unresolved deficiencies in certain of the common elements of the condominium development which could result in a claim being made by ECC 122 under the ONHWPA, although no claim has been made to date. Accordingly, Tarion declined to further reduce or cancel the Tarion Bond.
- 4.14 Portofino is required to indemnify Northbridge for any amounts which it is called upon to pay under the Tarion Bond. As security for that obligation, Portofino granted Northbridge a second ranking mortgage over the Project and a security interest in the deposits paid by purchasers to Portofino.
- 4.15 As discussed below in Section 8 of this report (Distribution), the net proceeds realized through the receivership from the Unsold Units in the Project are insufficient to fully satisfy the secured indebtedness owing under the first ranking mortgage over the Project and no deposits from purchasers have been received by the Receiver. Accordingly, no funds are available for Northbridge under its security in the event that a claim for payment is made against it under the Tarion Bond.

Other Matters

Unit 503 Vendor Take Back Mortgage

- 4.16 As outlined in the Tenth Report, Portofino held a \$30,000 vendor take back mortgage over unit 503 from the sale of that unit on August 10, 2007 (the "**Unit 503 VTB**

Mortgage). The Unit 503 VTB Mortgage was due on February 10, 2008 but was neither repaid nor re-financed. Accordingly, and absent any other arrangements, it was the Receiver's view that interest continued to accrue at the interest rate specified in the original mortgage, which was 10.0 per cent.

- 4.17 In September 2017, the owner of unit 503, Mr. James Bravo, contacted the Receiver regarding the Unit 503 VTB Mortgage. The Receiver provided Mr. Bravo with a mortgage statement as of October 4, 2017, but no resolution was reached at that time.
- 4.18 In August 2020, Mr. Bravo made re-financing arrangements for Unit 503 and the Receiver was contacted by the new mortgagee. After some negotiations, the Receiver and Mr. Bravo agreed to an amount of \$47,500 in full payment of the Unit 503 VTB Mortgage principal and accumulated interest. This amount approximates the outstanding mortgage balance based on The Bank of Canada average one year mortgage rate over the period since 2008.
- 4.19 In September 2020 Mr. Bravo paid \$47,500 to the Receiver and the VTB Mortgage was discharged from title.

Funds in Court Re: Betschel's Kitchen Centre Inc

- 4.20 As outlined in the Tenth Report, Betschel's Kitchen Centre Inc. ("**BKC**") registered a lien against the Portofino Condominium on June 4, 2007. Portofino paid \$116,514.11 into court to vacate the lien from title. A trial record was filed in 2009, but the action did not proceed to trial.
- 4.21 On March 1, 2022, the Receiver brought a motion in the lien action for an order directing the Accountant of the Superior Court of Justice to pay out of Court to the Receiver the sum of \$116,514.11, plus all accrued interest.
- 4.22 By order dated March 1, 2022, Mr. Justice Carey granted the relief sought by the Receiver (the "**BKC Order**"). A copy of the BKC Order is attached as **Appendix E**.
- 4.23 On July 20, 2022, the sum of \$159,530.86 was paid out of court to the Receiver.

5. The Miller Canfield Trust Funds

- 5.1 The Valente Court Action was a dispute over the payment of real estate commissions. Valente Real Estate was retained by Portofino to act as its agent on the sale of the condominium units. Portofino terminated the agency agreement. Valente Real Estate made a claim against Portofino for unpaid commissions and damages.
- 5.2 One of the issues in the Valente Court Action was whether amounts paid by purchasers for extras 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 by Portofino’s solicitors in a segregated trust account pending the final determination of Valente Real Estate’s right thereto. In essence, the solicitors were to act as a stakeholder for the disputed commissions. A copy of the Gates Order is attached as **Appendix F**.
- 5.3 A total of \$85,000.45 was retained from the proceeds of sale of 29 condominium units on account of the disputed commissions. That amount, plus accrued interest thereon, (the “**Trust Funds**”) was held in trust by Portofino’s solicitors, Miller Canfield, pursuant to the Gates Order. Attached as **Appendix G** is a copy of a letter dated May 21, 2014 from Jerry Goldberg of the Miller Canfield firm¹ which includes a schedule showing the amounts retained from the condominium sales and held in trust by Miller Canfield pursuant to the Gates Order.
- 5.4 Portofino signed a Direction dated April 26, 2013 authorizing Miller Canfield to apply trust funds which it was holding for Portofino (which included the Trust Funds) against unpaid legal bills totalling \$93,919.57 owing by Portofino to Miller Canfield upon Portofino advising Miller Canfield of the settlement of the Valente Court Action and/or change of the Gates Order. A copy of the Direction is attached as **Appendix H**.
- 5.5 The Valente Court Action was first tried by Justice Brockenshire in 2007/08. Justice

¹ The letter is on the letterhead of Shibley Righton, Mr. Goldberg’s current firm.

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 I**.

- 5.6 In his May 21, 2014 letter (Appendix F), Mr. Goldberg indicates 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 the Receiver's lawyers as confirmed in an e-mail dated February 24, 2017, a copy of which is attached as **Appendix J**.
- 5.7 In a letter dated May 27, 2014, the lawyer for Valente Real Estate, Gino 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. A copy of that letter is attached as **Appendix K**.
- 5.8 The Trust Funds continued to be held in trust by Miller Canfield at the date of the Receiver's appointment.
- 5.9 The Valente Court Action was settled by the Receiver in November, 2016 for \$630,000. The settlement amount was satisfied by Valente Real Estate drawing on the \$2 million letter of credit which had been posted by Portofino with the Court and a small cash payment by the Receiver. At that point, any claim which Valente Real Estate had to the Trust Funds for any unpaid commissions owing to it ceased.
- 5.10 Subsequent to the settlement of the Valente Court Action, Miller Canfield applied the Trust Funds totalling \$89,184.77 against its unpaid invoices. Attached as **Appendix L** is a copy of a letter dated February 14, 2017 from Mr. Goldberg advising of same.

- 5.11 The Receiver's lawyers responded to Mr. Goldberg's February 14, 2017 letter in the e-mail dated February 24, 2017 attached as Appendix J. 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.
- 5.12 In his May 21, 2014 letter (Appendix I), Mr. Goldberg took the position that Miller Canfield had a solicitors' lien on the Trust Funds. On May 26, 2014, Receiver's counsel wrote to Miller Canfield regarding the Trust Funds and Miller Canfield's right to a solicitors' lien. A copy of that letter is attached as **Appendix M**. The letter reads, in part, as follows:

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.

- 5.13 Donald Leschied, one of the three remaining partners of Miller Canfield (together with Mr. Goldberg and Jeff Slopen) by letter dated March 13, 2017 has also asserted that Miller Canfield had a right to a solicitors' lien on the Trust Funds for its unpaid invoices. A copy of that letter is attached as **Appendix N**.
- 5.14 In his letter, Mr. Leschied. 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.
- 5.15 The Receiver, and its counsel, have formed the view that because the Trust Funds were being held by Miller Canfield as a stakeholder pursuant to the Gates Order, no

solicitors' lien or right of set off could be asserted by Miller Canfield against the Trust Funds. Miller Canfield's right to apply the Trust Funds against its unpaid invoices derive solely from the Direction.

5.16 With respect to whether Miller Canfield was entitled to pay its invoices from the Trust Funds pursuant to the Direction after the date of the Receiver's appointment, 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 the commissions to which Valente Real Estate claimed an entitlement, and which were being held pending the final 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 continue to be held in trust by Miller Canfield as being affected by the Quinn Order;
- The Trust Funds continued to be held in trust at the date of the Receiver's appointment 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
- The Direction is a form of security. Portofino had previously granted security over its personal property (which would include Portofino's interest in the Trust Funds) in favour of BMO and Sutts Strosberg LLP. Miller Canfield's rights under the Direction vis-à-vis Portofino's other secured creditors are to be determined by applying the priority rules under the *Personal Property Security Act*.

5.17 It is the Receiver's understanding that if Miller Canfield had a right to a solicitors' lien

against the Trust Funds, pursuant to s. 31 of the *Personal Property Security Act*, that lien would have priority over the security interests granted by Portofino in favour of BMO and Sutts Strosberg LLP. However, if Miller Canfield did not have a right to a solicitors' lien, its right to apply the Trust Funds against its outstanding invoices under the Direction are subordinate to the rights of Portofino's other secured creditors.

- 5.18 The Receiver seeks advice and directions from the Court on (i) whether Miller Canfield had a right to a solicitors' lien against the Trust Funds, and (ii) whether Miller Canfield was entitled by virtue of the Direction to apply the Trust Funds against its outstanding invoices or whether the Trust Funds are required to be paid over to the Receiver to be distributed to the other secured creditors of Portofino in accordance with their priority under their security.

6. The Westview Trust Funds

- 6.1 The Tenth Report outlined details 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**”). At the time of the transfer, a \$220,000 VTB mortgage was given by Westview to Portofino (the “**VTB Mortgage**”).
- 6.2 In January 2018, Westview requested the Receiver to discharge the VTB Mortgage. An affidavit sworn by Capaldi on February 12, 2018 (the “**Capaldi Affidavit**”) for an unissued court application was provided to the Receiver. A copy of the Capaldi Affidavit is attached as **Appendix O**.
- 6.3 The Receiver agreed to discharge the VTB Mortgage upon payment to the Receiver of \$220,000 to be held in a separate, interest bearing trust account, (the “**Westview Trust Funds**”) pending resolution of the issue. The Westview Trust Funds were paid to the Receiver on in April 2018 and the VTB Mortgage was discharged.
- 6.4 The Westview Trust Funds continue to be held by the Receiver in a segregated trust account. The Receiver seeks authorization to transfer the Westview Trust Funds from the segregated trust account to the Receiver’s general receivership trust account and to distribute those funds, together with the remaining funds in the receivership trust account, as set forth in Section 9 of this report.
- 6.5 The Capaldi Affidavit indicates the following:
- (a) Portofino acquired the LaSalle Property in June, 2004 for a purchase price of \$600,000;
 - (b) the \$30,000 deposit under the purchase agreement for the LaSalle Property was paid by Capaldi Corporation, another corporation controlled by Capaldi;

- (c) Capaldi Corporation assigned the agreement of purchase and sale to acquire the LaSalle Property to Portofino shortly before closing;
 - (d) on closing, the amount payable to the vendor was satisfied by a cash payment of \$90,096.87 and a \$480,000 vendor take back mortgage;
 - (e) the \$90,096.87 paid on closing came from another corporation controlled by Capaldi;
 - (f) no security was provided by Portofino to the other Capaldi companies for the \$30,000 deposit or the \$90,096.87 paid on closing;
 - (g) in November 2005, the \$480,000 vendor take back mortgage was refinanced by way of a new \$380,000 mortgage and a further \$140,000 advanced by Capaldi Corporation without security; and
 - (h) in June 2011, the LaSalle Property was transferred from Portofino to Westview. The land transfer tax affidavit sets out the consideration for the transfer as being the assumption of the \$380,000 first mortgage and the granting of the VTB Mortgage to Portofino in the amount of \$220,000.
- 6.6 The Capaldi Affidavit suggests that the VTB Mortgage was held by Portofino in trust for the other Capaldi controlled corporations that had provided the \$30,000 deposit, the \$90,086.87 paid on closing and the \$140,000 provided at the time of the refinancing of the vendor take back mortgage. There is no trust deed or any indication on the face of the VTB Mortgage that Portofino held the VTB Mortgage as a trustee for those corporations.
- 6.7 The Capaldi Affidavit purports to be sworn in support of an application to rectify title to the LaSalle Property by discharging the VTB Mortgage, or, in the alternative, a declaration that the VTB Mortgage is held by Portofino in trust for Westview.
- 6.8 The Capaldi Affidavit asserts that no consideration was given to Westview for the VTB Mortgage. The consideration, of course, was the transfer of the LaSalle Property from Portofino to Westview. That consideration was provided by Portofino as the registered owner of the LaSalle Property.
- 6.9 That funds were advanced by other Capaldi companies to pay the deposit and other

amounts does not, by itself, cause a trust to be created in favour of those companies in respect of the VTB Mortgage. The Capaldi Affidavit confirms that the amounts advanced by the other Capaldi companies were provided on an unsecured basis.

- 6.10 The Capaldi Affidavit states that it was sworn in support of an application to rectify title to the LaSalle Property by discharging the VTB Mortgage (which suggests that no amount was owing under the VTB Mortgage, not that it was held in trust) or, alternatively, a declaration that the VTB Mortgage was held in trust for Westview as the owner of the LaSalle Property. The affidavit does not state that the relief to be sought includes a declaration that the VTB Mortgage was held in trust for the other Capaldi corporations that provided funds.
- 6.11 The Receiver's counsel was provided with a copy of the Miller Canfield file for the transfer of the LaSalle Property to Westview and the registration of the VTB in favour of Portofino. The contents of that file do not support the existence of a trust in respect of the VTB Mortgage. To the contrary, the file documents are consistent with the VTB Mortgage being the sole property of Portofino and suggest that the LaSalle Property was transferred because of concerns arising from the Valente Court Action if the LaSalle Property remained an asset of Portofino. The LaSalle Property was transferred by Portofino to Westview in June 2011 while an appeal by Portofino from the judgment obtained against it in the Valente Court Action was pending before the Court of Appeal.
- 6.12 The intended court application for which the Capaldi Affidavit was sworn has never been brought.

7. Statement of Receipts and Disbursements of the Receiver

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

7.2 Receipts

- a) *Sale of units and surface parking (\$16,088,294.75)* — The Receiver received net proceeds of \$16,088,294.75 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) *Funds in court (\$159,530.86)* — The Receiver collected \$159,530.86 in funds that were paid into Court by Portofino in the BKC litigation.
- d) *Holdback funds (\$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.
- e) *Letter of Credit cost reimbursement (\$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 in the amount of \$64,408.22.
- f) *VTB Mortgage payout (\$47,500.00)* — The Receiver collected \$47,500.00 from the VTB mortgage on Unit 503 owned by Mr. Bravo.

- g) *Parking rent collected (\$41,914.69)* — The Receiver collected \$41,914.69 from the rental of Unsold Parking Units.
- h) *Security re: Dalfidan Action (\$31,368.69)* — Following the settlement of the Dalfidan Action, the Receiver collected additional security in the form of funds in the amount of \$31,368.69, that were held in trust with SSS.
- i) *Interest earned (\$27,322.75)* — The Receiver earned \$27,322.75 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates (“GIC”) that matured or were redeemed. Interest was recognized as it was received.
- j) *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.

7.3 Disbursements

- a) *Property taxes (\$3,060,155.01)* — The Receiver paid property taxes to the City of Windsor of \$3,060,155.01. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments through to the completion of the sale of the Unsold Units in April 2020.
- b) *Receiver’s fees (\$1,140,078.41)* – BDO’s accounts for the period July 19, 2013 to July 24, 2018 in the amount of \$1,039,628.71, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO’s interim accounts for the period July 25, 2018 to May 31, 2022 in the amount of \$100,420.00 and is seeking approval of the Court for these invoices.
- c) *Condominium common fees (\$786,233.64)* — The Receiver paid \$786,233.64 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$433,933.51)* – MT’s accounts for the period September 9, 2013 to August 31, 2018 in the amount of \$398,520.37, excluding HST, were previously approved by the Court and paid. The Receiver paid MT’s interim accounts for the period September 1, 2018 to April 30, 2022 in the amount of \$35,413.14, and is seeking approval of the Court of these invoices.

- e) *HST paid (\$254,954.58)* – The Receiver has paid \$254,954.58 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) *Repairs and Maintenance (\$237,927.74)* – The Receiver paid \$237,927.74 for 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.
- 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 LLP (\$78,662.72)* – The Receiver engaged SSS 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 paid \$70,000.00 to Capaldi Holdings for property management of the Unsold Units.
- k) *Bond premiums (\$55,689.00)* — The Receiver paid \$55,689.00 to Northbridge for the premiums on bonds posted as security for: i) Tarion Warranty Corporation; and ii) the Portofino litigation with Dalfidan.
- l) *Utilities (\$41,559.74)* — The Receiver paid \$41,559.74 for utilities on vacant Unsold Units and leased condominium units where utilities were paid by the Landlord.
- m) *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.

- n) *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.
- 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 (\$12,021.48)* — The Receiver paid \$12,021.48 to Hub International for premiums on the Receiver's liability insurance policy.
- r) *Accounting fees (\$11,050.00)* — The Receiver paid \$11,050.00 to Michael Greenaway Professional Corporation for the preparation of 2013 through 2022 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.

8. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 8.1 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.
- 8.2 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.
- 8.3 Attached as **Appendix Q** is the fee affidavit of Stephen N. Cherniak sworn November 24, 2022 containing BDO's accounts for the following periods. BDO's final account includes an estimate to complete its duties as Receiver:
- July 25, 2018 to July 15, 2019
 - July 16, 2019 to December 10, 2019
 - December 11, 2019 to May 31, 2022
 - June 1, 2022 to November 21, 2022
- 8.4 The Receiver's fees to November 21, 2022 exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|-----------------------|
| Fees paid and Court approved | - | \$1,039,628.71 |
| Fees paid, but not yet Court approved | - | \$ 100,420.00 |
| Fees neither paid, nor Court approved | - | \$ 48,045.00 |
| | | <u>\$1,188,093.71</u> |
- 8.5 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.

8.6 Attached as **Appendix R** is the fee affidavit of Michael Prosia sworn December 12, 2022 containing the interim accounts of MT for the period September 1, 2018 to November 30, 2022.

8.7 MT's fees to November 30, 2022, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$398,520.37
Fees paid, but not yet Court approved	-	\$ 35,413.24
Fees neither paid, nor Court approved	-	\$ 16,315.00
		<u>\$450,248.61</u>

8.8 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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8.9 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.

9. Distribution

- 9.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the “**Real Property Security Opinion**”) confirming that, subject to the customary assumptions and qualifications, the mortgage security and assignment of rents held by BMO over the Unsold Units and the rental income from same was valid and enforceable in accordance with its terms and that the BMO Security had priority over all other registered charges and encumbrances to the net receipts realized by the Receiver from the sale of the Unsold Units and the collection of rents. 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 S**.
- 9.2 MT previously confirmed that the opinions expressed in the Real Property Security Opinion apply to the net receipts from sales of Unsold Units sold by the Receiver from July 11, 2016 to August 22, 2018. Copies of those letters were filed with the Court previously and are attached as **Appendix T**.
- 9.3 MT has confirmed that the opinions expressed in the Real Property Security Opinion apply to the net receipts from sales of Unsold Units sold by the Receiver from August 23, 2018 to April 8, 2020, being the date on which the last Unsold Unit was sold by the Receiver. A copy of this letter is attached hereto as **Appendix U**.
- 9.4 The Receiver obtained an independent legal opinion of MT dated November 21, 2022 (the “**Personal Property Security Opinion**”) confirming that, subject to the customary assumptions and qualifications, each of BMO and SSS hold valid and effective security over the personal property of Portofino, ranking in a first and second priority position, respectively. A copy of the Personal Property Security Opinion is attached as **Appendix V**.
- 9.5 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.
- 9.6 BMO assigned its security and related indebtedness (the “**BMO Security**”) over the

Property to RREF II BHB IV Portofino, LLC ("**RREF**"). RREF then further assigned the BMO Security to 2502461 Ontario Ltd. ("**250 Ontario**"). As security for amounts owed by it to WFCU, 250 Ontario granted security to WFCU in the BMO Security and 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 Security.

- 9.7 Pursuant to previous orders made by the Court in this proceeding approving same, to date the Receiver has distributed \$11.2 million to WFCU on account of the secured claim under the BMO Security.
- 9.8 The Receiver has calculated that as of November 15, 2022, \$636,270.29, plus accruing interest, remained owing under and secured by the BMO Security. Attached as **Appendix W** is a statement prepared by the Receiver showing the calculation of that amount. As of November 15, 2022, the per diem rate of interest on the amount owing under the BMO Security was \$138.01.
- 9.9 The Receiver is presently holding net receipts of approximately \$721,000 from the sale of Unsold Units, collection of rents and other sources.
- 9.10 As the realization of the assets is complete, other than the Westview Trust Funds and the Miller Canfield trust funds, the Receiver is not anticipating any further recoveries.
- 9.11 The breakdown of the various amounts realized by the Receiver during the receivership is set out in Section 7 above. As set out in that section, the Receiver has realized \$430,569.49 from sources other than the sale of Unsold Units and the collection of rents from the Project. As the indebtedness remaining owing under the BMO Security is approximately \$636,000 and the Receiver is presently holding approximately \$721,000, but for the recovery of the \$430,569.49 from those other sources, the net proceeds realized from the Project alone, i.e. the real property security, would have been insufficient to fully repay the amount secured under the BMO first mortgage against the Project.
- 9.12 As such, there are no funds available for distribution to Northbridge under its second ranking mortgage against the Project.
- 9.13 The Receiver has been provided with a copy of a promissory note dated October 31,

2012 in the amount of \$524,312.50 signed by Portofino in favour of SSS. SSS has confirmed that the amount of \$524,312.50, plus interest thereon in accordance with the promissory note, remains owing to SSS by Portofino.

- 9.14 SSS holds the second ranking security behind the BMO Security over the personal property assets of Portofino.
- 9.15 As set out in the Real Property Security Opinion and the Personal Property Security Opinion, BMO (now WFCU) holds the first ranking security over the real property and the personal property. Northbridge holds the second ranking security over the real property and SSS holds the second ranking security over the personal property. There are no funds available for distribution to Northbridge under its second ranking position against the real property. Any surplus remaining after payment of the amounts secured under the BMO Security flow to SSS under its second ranking security against the personal property.
- 9.16 The Receiver is seeking approval and authorization to distribute the balance of the funds held by the Receiver, including the Westview Trust Funds and any amounts hereafter received in respect of the Miller Canfield trust funds, after payment of the Unpaid Professional Fees, as follows:
- (a) up to \$636,270.29, plus accruing interest thereon, to WFCU in full satisfaction of the remaining amount secured under the BMO Security; and
 - (b) the remainder of the funds, if any, and any residual funds that flow into the estate to SSS, up to the amount owed to SSS.

10. Discharge of BDO as Receiver

- 10.1 BDO was appointed Receiver by the Order of Justice Thomas dated October 29, 2013.
- 10.2 Subject to the determination by the Court of the Outstanding Matters, the duties of BDO as Receiver have been completed and on this basis the Receiver requests an Order for the discharge of BDO as Receiver of Portofino Corporation.

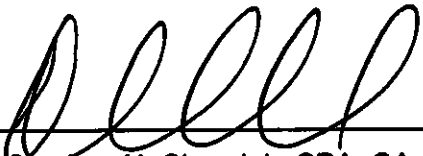
11. Recommendations

11.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:

- (c) Approving the Eleventh Report and the activities and conduct of the Receiver described herein;
- (d) Authorizing the Receiver to pay the Westview Trust Funds to the Receiver's general trust account for this receivership;
- (e) providing advice and directions with respect to the Trust Funds;
- (f) Approving the Receiver's Statement of Receipts and Disbursements for the period October 29, 2013 to November 15, 2022;
- (g) Approving the Professional Fees;
- (h) Approving and authorizing the distribution of the balance of funds held by the Receiver as set forth above; and
- (i) Discharging BDO as Receiver and thereupon releasing BDO from any and all liability.

All of which is Respectfully Submitted this 13th day of December, 2022.

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
JUSTICE B. THOMAS

) TUESDAY, THE 29th
)
) 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

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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

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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

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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;

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- (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.

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;

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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.

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.

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

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.

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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.

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.

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A handwritten signature in black ink, appearing to read "J. S. Jones", is written over a horizontal line.

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

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.

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:

68
Applicant Bank of Montreal

Respondent -and- Portofino Corporation

Court File No. CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDSOR

ORDER

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Lawyers for the Applicant, Bank of Montreal

APPENDIX “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

December 6, 2013

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- Appendix S** Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn December 6, 2013

1. Introduction and Background

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**", "**Portofino 2**" 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 the Honourable 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 (the "**Lands**").
- 1.2.2 Portofino Condominium was originally a partnership comprised of Dr. Dante Capaldi ("**Capaldi**") and three (3) other parties as partners. On or about January 1, 2005, Capaldi bought out his former partners and acquired two (2) new partners, namely Mr. Patrick D'Amore ("**D'Amore**") and Mr. Ozvaldo Rizzo ("**Rizzo**") who invested in the project.
- 1.2.3 Since 2005, there has been ongoing litigation commenced by one (1) of the original partners, Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**") as plaintiff against Capaldi, Portofino, Portofino Riverside Tower Inc. ("**Portofino 1**")

and Westview Park Gardens (2004) Inc. ("**Westview Park**"), as defendants in Court Action No. 05-CV-5864CM (the "**Valente Court Action**").

- 1.2.4 BMO provided construction financing to the Project under a commitment letter dated August 3, 2005 (the "**Commitment Letter**"). The financing consisted of demand loan facilities totalling \$27,325,000 (the "**BMO Credit Facility**").
- 1.2.5 As security for the BMO Credit Facility, Portofino granted to BMO, among other security a first mortgage over the Lands and a General Security Agreement. In addition, Capaldi, D'Amore and Rizzo provided their personal guarantees.
- 1.2.6 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. At the time of the Receiver's appointment on October 29, 2013, nine (9) units remained unfinished.
- 1.2.7 Portofino appears to have over-estimated the demand for luxury condominium units in the Windsor, Ontario market. In addition, the economic downturn in 2008 and appreciation of the Canadian dollar relative to the U.S. dollar negatively impacted sales. As at the date of this First Report, fifty-two (52) condominium units remain unsold and owned by Portofino (the "**Unsold Units**").
- 1.2.8 In view of the difficulty in selling the Unsold Units and Portofino's ability to repay the BMO Credit Facility, BMO amended the BMO Credit Facility on January 8, 2008, March 5, 2009, December 30, 2010, October 17, 2011, February 28, 2012, March 19, 2013 and April 15, 2013.
- 1.2.9 Portofino failed to pay property taxes to the City of Windsor over a period of several years and has accumulated tax arrears exceeding \$2.1 million (the "**Tax Arrears**").

- 1.2.10 The provision of the personal guarantee of D'Amore, in the amount of \$27,325,000, was a condition of the Commitment Letter (the "**D'Amore Guarantee**"). D'Amore passed away on July 11, 2011.
- 1.2.11 On July 13, 2013, Mr. Scott D'Amore ("**Scott**") in his capacity as Estate Trustee of the Estate of Patrick D'Amore, delivered notice to BMO of the Estate's intention to revoke the D'Amore Guarantee.
- 1.2.12 The failure to pay property taxes and the revocation of the D'Amore Guarantee are breaches of the BMO Credit Facility and constitute Events of Default. Accordingly, on July 26, 2013, BMO made demand for repayment of the BMO Credit Facility.
- 1.2.13 As at September 6, 2013, Portofino was indebted to BMO in the approximate amount of \$11,841,000 including the Letter of Credit in the amount of \$2,000,000 posted by BMO in connection with the Valente Court Action (the "**Letter of Credit**").
- 1.2.14 An application was brought by BMO for the appointment of BDO as Receiver and Manager of Portofino to ensure that the Unsold Units are sold in an orderly fashion and that their sale is not prevented or delayed by litigation proceedings.
- 1.2.15 As noted above, on October 29, 2013, the Honourable Mr. Justice Thomas granted the relief sought by BMO and issued the Appointment Order.
- 1.2.16 Among other things, the Appointment Order empowers but does not obligate the Receiver to:
- (a) 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) receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company, and to complete minor repairs or construction as may be required to release and/or reduce security held for the Company's obligations under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. 0.31, as amended;
- (d) receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (e) in consultation with ECC 122, 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, with the opinions of ECC 122 not being binding upon the Receiver; and
- (f) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business 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 with the approval of the Court in which the purchase price exceeds these monetary thresholds.

2. Terms of Reference

- 2.1 In preparing this First Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from the Portofino's books and records and discussions with former 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 First Report

3.1 This constitutes the Receiver's First Report to the Court (the "**First Report**") in this matter and is filed:

- (a) To provide this Court with information on, among other things:
 - (i) the Receiver's activities since its appointment;
 - (ii) the arrangements in place for the ongoing property management of the Portofino Condominium;
 - (iii) the status of the property tax arrears of Portofino;
 - (iv) the status of condominium fees payable by Portofino to ECC 122; and
 - (v) The Receiver's proposed plan for the marketing and sale of the Unsold Units;
- (b) In support of:
 - (i) the advice and direction of the Court with respect to issues relating to the Letter of Credit in favour of Valente Real Estate as security for any judgment obtained by Valente Real Estate in the Valente Court Action, including:
 - (A) whether Valente Real Estate is contractually entitled to security for any judgment obtained in the Valente Court Action arising from the Defendant, Portofino's breach of the Exclusive Listing Agreement?
 - (B) whether in the context of these receivership proceedings there remains any risk to Valente Real Estate that the property, assets and undertaking of Portofino will be dissipated or disposed of pending a trial of the remaining issues in the Valente Court Action?
 - (C) whether maintaining the Letter of Credit in favour of Valente Real Estate as security for any judgment is contrary to public

policy as it has the effect of reordering priorities among secured creditors of Portofino in a manner not provided for at law?

- (ii) in the event this Court orders that the Letter of Credit be cancelled, the advice and direction of the Court as to the Receiver's future involvement in the trial of the Valente Court Action and the defence of the Valente Court Action;
- (iii) in the event this Court orders that the Letter of Credit be cancelled, whether the Valente Court Action should be subject to the stay of proceedings created by the Appointment Order and whether the trial of the Valente Court Action, scheduled to take place in February, 2014, be adjourned until such time as the Court determines that funds remain after satisfaction of the secured claims to satisfy, in whole or in part, the claims of unsecured creditors;
- (iv) an Order, substantially in the form appended as Schedule "A" to the Notice of Motion:
 - (A) approving the First Report and activities and conduct of the Receiver described therein;
 - (B) authorizing and directing the Receiver to enter into a property management agreement with Capaldi Investment Holdings Inc. ("**Capaldi Holdings**") with respect to the unsold units on terms to be negotiated between the Receiver and Capaldi Holdings;
 - (C) authorizing and directing the Receiver to negotiate and enter into a payment arrangement with the City of Windsor with respect to the payment of property tax arrears;
 - (D) approving the Receiver's proposed sale process for the unsold units as set out in Section 5 of the First Report (the "**Sale Process**"), and authorizing the Receiver to carry out the Sale Process;
 - (E) discharging the mortgage registered in favour of Valente Real Estate as instrument number CE297353 in the Land Registry Office (Essex) No. 12 on October 12, 2007 in the amount of \$1,000,000 (the "**Mortgage**") and directing the Land Registrar to expunge the Mortgage from title to the real property listed on Schedule "B" to the Notice of Motion (the "**Real Property**");
 - (F) directing Valente Real Estate to reimburse Portofino the costs paid by Portofino to maintain the Letter of Credit in the amount

of \$31,562.80 or such other amount as the Court determines is due to Portofino (the "**Letter of Credit Costs**");

- (G) approving the Receiver's interim Statement of Receipts and Disbursements for Portofino for the period October 29, 2013 to November 28, 2013 (the "**Statement of Receipts and Disbursements**");
- (H) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**"); and
- (I) 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**").

4. Receiver's Activities

- 4.1 At the time of the Receiver's appointment, Capaldi Holdings had been retained by ECC 122 as the property manager of the Portofino Condominium under a Property Management Agreement between ECC 122 and Capaldi Holdings dated June 1, 2008. This agreement is unaffected by the appointment of the Receiver.
- 4.2 Capaldi Holdings was also acting as the property manager and leasing agent for the 52 units owned by Portofino. There is no formal written agreement in place between Portofino and Capaldi Holdings. As property manager, Capaldi Holdings was responsible for the leasing of vacant units, collection of rents and supervision of maintenance and repairs to the leased units.
- 4.3 Following its appointment, representatives of the Receiver met with Capaldi Holdings and obtained information relating to the business operations and current status of Portofino. At that time, it was expressly stated by the Receiver to Capaldi Holdings that Capaldi Holdings (a) had been retained by the Receiver; (b) would report only to the Receiver; and (c) has no authority to make decisions or execute documents on behalf of or as agent for Portofino and/or BDO in its capacity as Receiver, without the prior approval of the Receiver.
- 4.4 Under the current arrangement in place between Portofino and Capaldi Holdings, there is no remuneration paid to Capaldi or Capaldi Holdings. Capaldi resides in Unit 1603 on a rent free basis, the market value of which is approximately \$3,250 per month.
- 4.5 In view of Capaldi's knowledge and experience with the Portofino Condominium, the Receiver recommends that Capaldi Holdings continue as property manager and leasing agent of the Unsold Units. The Receiver seeks authorization to enter into a property management agreement with Capaldi Holdings on terms to be negotiated between the Receiver and Capaldi Holdings.
- 4.6 Capaldi Holdings has four (4) employees whose duties include maintenance and labour at Portofino Condominium. These employees will continue to provide services to Portofino Condominium, with their hours for these services to be tracked

separately and invoiced to the Receiver.

- 4.7 As required by the terms of the Appointment Order, the Receiver opened a bank account at BMO.
- 4.8 Of the 52 Unsold Units, all but 2 of the 43 finished units are currently leased. The majority of tenants pay rent on the first of the month, with the exception of a few who pay mid-month. A rent roll for Unsold Units is attached as **Appendix B**.
- 4.9 For leasing purposes, Capaldi Holdings utilizes the standard form Ontario Real Estate Association Residential Lease supplemented by a schedule of additional terms and ECC 122 condominium rules. The current residential lease agreement is attached as **Appendix C**. Some tenants have completed their initial lease period and are renting on a 'month to month' basis.
- 4.10 The Receiver's legal counsel will prepare a standard residential lease agreement, with terms and conditions necessary for a Receiver, which will be utilized as Unsold Units become vacant and are re-leased. The Receiver will not enter into any lease agreement for a period exceeding one year.
- 4.11 At the time of the Receiver's appointment, all rents due on October 1, 2013 had been paid in full. Rents due on November 1, 2013 were collected by Capaldi Holdings, delivered to the Receiver and deposited to the Receiver's bank account for Portofino established with BMO.
- 4.12 Property taxes on the Unsold Units owned by Portofino have not been regularly paid and there are significant Tax Arrears dating back several years. At July 13, 2013, the outstanding property taxes owed to the City of Windsor were \$2,126,661.25.
- 4.13 The Receiver recommends that it be authorized to enter into a payment arrangement with the City of Windsor to address the property tax arrears.
- 4.14 The Receiver determined that insurance coverage for Portofino Condominium, including liability coverage, is carried by ECC 122. The Receiver obtained a copy of the policy declarations and renewal for the period August 9, 2013 to August 9, 2014.

- 4.15 Condominium common fees payable to ECC 122 by Portofino on the Unsold Units are currently \$15,857.00 per month. A schedule of the monthly common fees is attached as **Appendix D**. Portofino has accumulated significant arrears of the condominium fees and the outstanding balance at the time of the Receiver's appointment was approximately \$100,000. This balance includes legal fees and disbursements for ECC 122 to register liens against each of the Unsold Units.
- 4.16 The Receiver has paid the monthly common fees for November, 2013 and intends to pay the monthly common fees on a current basis going forward.
- 4.17 Pursuant to Section 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (the "BIA"), on November 11, 2013, the Receiver sent notice of its appointment, in the prescribed form, to all known creditors of Portofino, the Superintendent of Bankruptcy and to Portofino.

5. Receiver's Proposed Sale Process

- 5.1 The Unsold Units are comprised of 43 units that are fully finished (the "**Finished Units**") and 9 units that have not been completed. (the "**Unfinished Units**").
- 5.2 A schedule of the Unsold Units with list prices, as of July, 2013, is attached as **Appendix E**. This schedule includes Units 1601 and 1602, which are also unsold.
- 5.3 The Unfinished Units require substantial work to complete, including flooring, trim, kitchen cabinetry, appliances and other fixtures. The Receiver has no funding to complete the Unfinished Units and, given the sizeable inventory of Finished Units, the Receiver does not intend to complete the Unfinished Units at this time.
- 5.4 Portofino Condominium contains 13 different floor plans of varying sizes from 1,062 square feet to 2,450 square feet. The prices of units sold to date and the current list price of the Unsold Units depends on the floor plan, floor and direction of view. In general, a premium is charged for a higher floor and a view of the Detroit River.
- 5.5 Several of the Finished Units are currently listed for sale. However, since January, 2009 only three (3) Finished Units have been sold.
- 5.6 The Receiver obtained an appraisal of the Unsold Units prepared for Portofino by Finlay Appraisal and Consultation Service in August, 2013 (the "**Finlay Appraisal**"). In addition, the Receiver has commissioned a second appraisal of the Unsold Units by Metrix Realty Group (the "**Metrix Appraisal**"). The Receiver expects the Metrix appraisal to be completed in late December, 2013. Depending on the consistency of the two appraisals obtained, the Receiver will consider the need for a third appraisal.
- 5.7 The Receiver does not intend to sell the Unsold Units on an en bloc basis at discounted prices. The Receiver believes this would not be in the best interests of the stakeholders.
- 5.8 Notwithstanding the slow pace of recent sales, the Receiver is of the view that listing the Unsold Units with an experienced real estate agent(s) and exposing the units through the Multiple Listing Service is the most effective method for the sale of the

Unsold Units.

- 5.9 The Receiver will seek marketing proposals from three (3) to five (5) Windsor area real estate agents or teams experienced in selling higher end condominium units. In selecting agents to submit proposals, the Receiver will draw on its own professional experience as well as the input of the stakeholders of Portofino.
- 5.10 The Receiver intends to list only ten (10) to fifteen (15) units for sale at one time, with a variety of lower and upper level units and floor plans.
- 5.11 The Receiver will select one real estate agent or team based on, but not limited to, the following criteria: (a) professional experience and sales history; (b) depth and credibility of the proposed marketing plan; (c) commission structure; and (d) marketing cost proposal;
- 5.12 In listing the Unsold Units for sale, the marketing of the Unsold Units should be reviewed and enhanced from its current state. In addition, the current list prices should be reviewed relative to recent sales, market conditions, the Finlay Appraisal, the Metrix Appraisal and the input of the selected real estate agent.
- 5.13 In the event a potential purchaser expresses interest in an Unsold Unit that is not listed for sale, the Receiver will attempt to negotiate and complete a sale on commercially reasonable terms.
- 5.14 As noted above, pursuant to paragraph 3(k) of the Appointment Order, the Receiver is required to consult with ECC 122 in respect to marketing the Property. However, the advice and opinions of ECC 122 are not binding on the Receiver.
- 5.15 The Receiver discussed the Sale Process with Dr. Paul Cassano, President of ECC 122, and he agrees with the Receiver's proposed Sale Process.

6. Valente Court Action

- 6.1 As noted above, there is ongoing litigation between Valente Real Estate, as plaintiff, and Capaldi, Portofino 1, Portofino 2 and Westview Park, as defendants. (the “**Defendants**”).
- 6.2 By way of background, Valente Real Estate entered into a listing agreement with Portofino 1 in November, 2002 to sell the condominium units to be built by Portofino 1 on land owned by it (the “**Listing Agreement**”). Attached hereto as **Appendix F** is a copy of the Listing Agreement and the amendment thereto.
- 6.3 Due to problems among the four shareholders of Portofino 1, Capaldi exercised his right under a shotgun clause in a shareholders’ agreement to purchase all of the shares of the other three shareholders. On or about January, 2005, Capaldi became the sole owner of Portofino 1.
- 6.4 On May 3, 2005, Portofino 1 reorganized by:
- (a) transferring legal title to the lands to Westview Park, now known as Portofino Corporation or Portofino 2, for nominal consideration;
 - (b) transferring the beneficial ownership of the lands and all other assets of Portofino 1 to Portofino (2005) Limited Partnership (the “**Limited Partnership**”).
- 6.5 The general partner of the Limited Partnership is I Capaldi General Partner Corporation (the “**General Partner**”). In addition to Portofino 1, Capaldi owned Portofino 2 and the General Partner.
- 6.6 On May 9, 2005, Portofino 2 locked Valente Real Estate’s agents out of the Project and retained another real estate agent.

- 6.7 By Agreement dated January 17, 2006, the Limited Partnership agreed to keep Portofino 1 fully protected, defended and indemnified against all amounts that Portofino 1 may be legally obligated to pay to Valente Real Estate, if any, in respect of real estate commissions payable pursuant to the Listing Agreement (the "**Indemnity**"). In addition, the Limited Partnership agreed to irrevocably direct its trustee, Portofino 2, to pay such amounts from the proceeds of the sale of the condominium units at issue in priority to any payment to the Limited Partnership (the "**Direction**"). Portofino 2 acknowledged the Direction. Attached hereto as **Appendix G** is a copy of the Indemnity and Direction.
- 6.8 Valente Real Estate sued the Defendants for, among other things, breach of contract in respect of the Listing Agreement and oppression. The trial judge addressed only the oppression claim, not the breach of contract claim. The trial judge concluded that Valente Real Estate was a creditor of Portofino 1 and thus was a "complainant" as that term is understood under the oppression remedy sections of the Ontario *Business Corporations Act*. Having found that the real reason that Portofino 1 was reorganized was to ensure that Portofino 1 was an empty shell so that Valente Real Estate would be unable to collect commissions owed to it, the trial judge concluded that the corporate restructuring constituted oppression and ordered immediate judgment against the Defendants in the amount of \$1 million (the "**Interim Judgment**"). Attached hereto as **Appendix H** is a copy of the Reasons for Judgment of Justice Brockenshire dated August 31, 2007 in respect of the Interim Judgment.
- 6.9 In the Interim Judgment dated August 31, 2007, the trial judge also ordered that the Defendants, jointly and severally, give security to the plaintiff against all of their assets in the amount of \$2 million for payment of further damages or loss to date for past, future and contingent commissions, accrued interest on unpaid accounts, prejudgment interest, costs and GST.
- 6.10 By order dated October 9, 2007 (the "**Security Order**"), the form of security was settled by the trial judge:
- (a) a Bank of Montreal Irrevocable Standby Letter of Credit No. BMT0191410OS in the total amount of \$2,000,000 (the "**Letter of Credit**"); and

- (b) a mortgage/charge registered by Portofino 2 in favour of the plaintiff against title to the Unsold Units in the principal amount of \$1,000,000 and interest thereon at 6% per year commencing on August 31, 2007, which mortgage is subject only to a first mortgage to BMO and a second mortgage to Lombard General Insurance Company of Canada and shall be enforceable only after Judgment, final from any appeal, as further security for the amounts found due to the plaintiff in the Judgment and may be found due to the plaintiff in the trial of issues in paragraph 4 of the Judgment

(collectively, the "**Security**"). Attached hereto as **Appendix I** is a copy of the Security Order of Mr. Justice Brockenshire.

- 6.11 The trial judge conducted a separate hearing for an accounting to determine the details needed to complete an assessment of damages against the Defendants. Justice Brockenshire issued Reasons for Decision dated May 13, 2008, a copy of which is attached hereto as **Appendix J**, in respect to his assessment of damages (the "**Accounting Judgment**").
- 6.12 On appeal to the Divisional Court, both the Judgment and the Accounting Judgment were set aside and Valente Real Estate's action was dismissed in its entirety. The Security was cancelled. Attached hereto as **Appendix K** is a copy of the Divisional Court Decision dated February 3, 2010.
- 6.13 The Court of Appeal dismissed the appeal in respect to the oppression claim, finding that it could not succeed. Having noted that it was unclear whether or not the Indemnification covers all obligations of Portofino 1 arising under the Listing Agreement, the Court of Appeal stated, at paragraphs 29 and 30:

"However, any lack of clarity was dispelled by the admissions of respondents' counsel in this court. They could not have been clearer. Counsel agreed that all three entities involved in the corporate restructuring – Portofino 1, Portofino 2 and the Limited Partnership – are bound by the exclusive listing agreement.

The consequence of these admissions is clear for the appellant's claim of oppression due to the corporate restructuring. The appellant can enforce any claim it properly has under the exclusive listing agreement against the same assets after the restructuring as before. It was not left by the restructuring to look only to an empty

shell. In these circumstances, its oppression claim cannot succeed.”

However, the Court of Appeal allowed the appeal in respect of the breach of contract claim only to the extent of remitting the breach of contract issue for trial. The Court of Appeal concluded that the trial judge did not address the findings of fact or the legal arguments that might be relevant to adjudicating Valente Real Estate’s breach of contract claim. Attached hereto as **Appendix L** is a copy of the Appeal Court Decision dated December 14, 2011.

- 6.14 By endorsement dated March 15, 2012, the Court of Appeal directed “that security should remain in place pending the outcome of the trial of the contract issue”. The court stated that “security” is an issue properly to be decided by the trial court in which the breach of contract issue will be heard. Accordingly, the Court of Appeal directed that the security remain in place temporarily to permit Valente Real Estate to move for security in the court below if so advised. Attached hereto as **Appendix M** is a copy of the Appeal Court Endorsement dated March 15, 2012.
- 6.15 On motion by Valente Real Estate in the Superior Court of Justice, the Honourable Mr. Justice Quinn heard arguments about the security issue. In his reasons, Justice Quinn notes that 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. Justice Quinn determined that there were good reasons to leave security in place in light of the defendants’ past conduct designed to avoid payment under the Listing Agreement. Justice Quinn also determined that the only security required is a letter of credit which remained at \$2,000,000 with Valente Real Estate directed to continue to bear the costs of the security. Attached hereto as **Appendix N** is a copy of reasons for judgment of Justice Quinn dated May 4, 2012 (the “**Quinn Decision**”).
- 6.16 Paragraph 8 of the Quinn Decision states:

“... 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.”

- 6.17 Portofino has complied with its obligations by maintaining the Letter of Credit and by registering the Mortgage.
- 6.18 Valente Real Estate is required by court order to pay the Letter of Credit Costs. Valente Real Estate has failed to pay all Letter of Credit Costs. The Letter of Credit Costs total \$31,562.80 as at December 6, 2013 comprised of out of pocket costs incurred to maintain the Letter of Credit, together with simple interest thereon calculated at the rate of 5% interest per annum. Attached hereto as **Appendix O** is a schedule provided to the Receiver by Bill Sasso, counsel for the Defendants, calculating the Letter of Credit Costs.
- 6.19 Counsel for the Receiver, Ms. Mitchell, has corresponded with counsel for Valente Real Estate, Mr. Morga, in respect to the Letter of Credit Costs. Despite the Receiver's request for payment of the Letter of Credit Costs, Valente Real Estate has failed to satisfy same.
- 6.20 The Receiver requests an Order directing Valente Real Estate to pay the balance of Letter of Credit Costs.
- 6.21 Despite being required by court order to discharge the Mortgage, Valente Real Estate has failed to do so. By e-mail dated November 29, 2013, Ms. Mitchell, sent an Application to Register Discharge of Charge ("**Application to Discharge Charge**") to Mr. Morga, and requested that Mr. Morga have his client execute and return the Application to Discharge Charge so that the mortgage currently registered against title to the Unsold Units can be discharged. Attached hereto as **Appendix P** is a copy of an e-mail string between Ms. Mitchell and Mr. Morga in respect to payment of the Letter of Credit Costs and the discharge of the Mortgage, including a copy of the Application to Discharge Charge provided by e-mail to Mr. Morga.
- 6.22 The executed Application to Discharge Charge has not been returned to counsel for the Receiver. The Receiver requests an Order discharging the Mortgage and directing the Land Registrar to expunge the Mortgage from title to the Real Property.
- 6.23 The Listing Agreement does not contain a provision granting security to Valente Real Estate for unpaid commissions and other amounts payable to Valente Real

Estate thereunder.

- 6.24 Portofino 2 is insolvent and the subject of the within receivership proceedings. The Receiver seeks the advice and direction of the Court as to whether maintaining the Letter of Credit in favour of Valente Real Estate would be contrary to public policy as it would have the effect of reordering priorities as among the unsecured and secured creditors of Portofino 2 in a manner not provided for at law. The Receiver is of the view that in the absence of the Letter of Credit secured by BMO's mortgage security, a judgment, if any, in respect of the Valente Real Estate's claim would be an unsecured claim in these receivership proceedings.
- 6.25 The Receiver takes the view that there is no prejudice to cancelling the Letter of Credit because the Receiver is in possession of the assets of Portofino 2 and there is no longer any concern about the dissipation of assets by Portofino's principals. On the contrary, there is prejudice to the other stakeholders of Portofino who may have claims in priority to or on equal footing with the otherwise unsecured claim of Valente Real Estate should the Letter of Credit be withdrawn, revoked, cancelled or set aside. Moreover, the effect of the Letter of Credit is to subordinate the mortgage security held by those secured creditors subordinate to BMO's mortgage security.

7. Statement of Receipts and Disbursements of the Receiver

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

7.2 Receipts

- a) *Condominium rent collected (\$73,683.00)* — The Receiver collected \$73,683.00 from the rental of the Unsold Units.
- b) *Parking rent collected (\$645.00)* — The Receiver collected \$645.00 from the rental of parking spaces.

7.3 Disbursements

- a) *Condominium common fees (\$15,857.00)* — The Receiver paid \$15,857.00 to ECC 122 for November, 2013 common fees.
- b) *Legal fees – Sutts Strosberg (\$5,000.00)* – The Receiver paid \$5,000 to Sutts Strosberg LLP to provide a review and chronology of the Valente Court Action for the Receiver's counsel.
- c) *HST paid (\$650.00)* – The Receiver has paid \$650.00 on its disbursements.

8. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 8.1 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 and 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 (the "**Receiver's Charge**").
- 8.2 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.
- 8.3 Attached as **Appendix R** is the fee affidavit of Stephen N. Cherniak sworn December 5, 2013 containing BDO's interim account as Receiver for the period, July 19, 2013 to November 28, 2013.
- 8.4 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.
- 8.5 Attached as **Appendix S** is the fee affidavit of Sherry A. Kettle, sworn December 6, 2013 containing the interim account of MT for the period September 9, 2013 to November 15, 2013.

8.6 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.

9. Recommendations

- 9.1. The Receiver recommends and respectfully requests:
- (a) the advice and direction of the Court with respect to issues relating to the Letter of Credit posted by BMO in the amount of \$2,000,000 in favour of Valente Real Estate as security for any judgment obtained by Valente Real Estate in the Valente Court Action, including:
 - (i) whether Valente Real Estate is contractually entitled to security for any judgment obtained in the Valente Court Action arising from the Defendant, Portofino's breach of the Exclusive Listing Agreement?
 - (ii) whether in the context of these receivership proceedings there remains any risk to Valente Real Estate that the property, assets and undertaking of Portofino will be dissipated or disposed of pending a trial of the remaining issues in the Valente Court Action?
 - (iii) whether maintaining the Letter of Credit in favour of Valente Real Estate as security for any judgment is contrary to public policy as it has the effect of reordering priorities among secured creditors of Portofino in a manner not provided for at law?
 - (b) in the event this Court orders that the Letter of Credit be cancelled, the advice and direction of the Court as to the Receiver's future involvement in the trial of the Valente Court Action and the defence of the Valente Court Action;
 - (c) in the event this Court orders that the Letter of Credit be cancelled, whether the Valente Court Action should be subject to the stay of proceedings created by the Appointment Order and whether the trial of the Valente Court Action, scheduled to take place in February, 2014, be adjourned until such time as the Court determines that funds remain after satisfaction of the secured claims to satisfy, in whole or in part, the claims of unsecured creditors;
 - (d) an Order, substantially in the form appended as Schedule "A" to the Notice of Motion:
 - (i) approving the First Report and activities and conduct of the Receiver described therein;
 - (ii) authorizing and directing the Receiver to enter into a property management agreement with Capaldi Holdings with respect to the

unsold units on terms to be negotiated between the Receiver and Capaldi Holdings;

- iii. authorizing and directing the Receiver to negotiate and enter into a payment arrangement with the City of Windsor with respect to the payment of property tax arrears;
- iv. approving the Receiver's proposed Sale Process and authorizing the Receiver to carry out the Sale Process;
- v. discharging the Mortgage and directing the Land Registrar to expunge the Mortgage from title to the Real Property;
- vi. directing Valente Real Estate to reimburse Portofino the Letter of Credit Costs;
- vii. approving the Statement of Receipts and Disbursements; and
- viii. approving the Professional Fees.

All of which is Respectfully Submitted this 6th day of December, 2013.

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
Senior Vice President

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Court File No. CV-13-29866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

February 28, 2014

Appendices

- Appendix A** - Lombard Mortgage
- Appendix B** - BMO Mortgage
- Appendix C** - Letter of Credit Invoices and Correspondence

1. 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**”) acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof.
- 1.2 Unless otherwise defined, capitalized terms in this report have the same meaning as in the Receiver’s First Report to the Court submitted December 6, 2013 (the “**First Report**”).
- 1.3 The Receiver brought a motion originally returnable on December 13, 2013 for, *inter alia*, the advice and directions of the Court with respect to the Letter of Credit in the amount of \$2,000,000 issued by BMO and posted by Portofino in the Valente Court Action as security for any judgment that might be obtained in that action by Valente Real Estate (the “**Advice and Directions Motion**”).
- 1.4 In the First Report, the Receiver provided the Court with information and background on the Valente Court Action.
- 1.5 By Order dated February 3, 2014 (the “**Timetable Order**”), Mr. Justice Thomas established a timetable for the Advice and Directions Motion.
- 1.6 In accordance with the Timetable Order, Valente Real Estate has delivered the affidavit of Peter Valente sworn February 14, 2014 (the “**Valente Affidavit**”) to respond to the Advice and Directions Motion.

2. Purpose of the Receiver's Second Report

- 2.1 The purpose of this, the Receiver's Second Report to the Court, is to provide the Court with additional information for the Advice and Directions Motion with respect to matters raised in the Valente Affidavit.

3. The Valente Affidavit

Registration of the Lombard Mortgage

- 3.1 Paragraphs 15 and 16 of the Valente Affidavit refer to the registration of the “Lombard Mortgage” and seem to suggest that the registration of that mortgage was prohibited by the terms of endorsements made by Mr. Justice Patterson and Madam Justice Nolan on November 29, 2005 and December 6, 2005, respectively, restraining Portofino from encumbering the Project.
- 3.2 Paragraph 15 of the Valente Affidavit indicates that the Lombard Mortgage was registered on December 6, 2005. That is incorrect. The Lombard Mortgage was registered at 9:39 a.m. on November 29, 2005. A copy of the Lombard Mortgage showing the date and time of registration is attached as **Appendix A**.
- 3.3 Paragraph 15 of the Valente Affidavit also refers to the registration of “other encumbrances” after the registration of the Lombard Mortgage notwithstanding the endorsements of Mr. Justice Patterson and Madam Justice Nolan restraining Portofino from encumbering the Project. The Receiver notes that the endorsements of Mr. Justice Patterson and Madam Justice Nolan were at no time registered against title to the Project.
- 3.4 The encumbrances registered against the Project were summarized in the affidavit of Gregory Fedoryn sworn September 6, 2013 (the “**Fedoryn Affidavit**”) and filed in support of the application by which the Receiver was appointed. To summarize, the registered encumbrances against the Project are as follows:

Chargee	Principal Amount of Charge	Date of Registration
Bank of Montreal	\$30,000,000	November 28, 2005
Lombard General Insurance Company of Canada	\$4,200,000	November 29, 2005
Remo Valente Real Estate (1990) Limited	\$1,000,000	October 12, 2007
Sutts Strosberg LLP	\$400,000	August 9, 2011

Chargee	Principal Amount of Charge	Date of Registration
Royal Bank of Canada	\$1,540,000	December 20, 2011
Sutts Strosberg LLP	\$524,312	January 10, 2013

- 3.5 The mortgage in the principal amount of \$1,000,000 registered on October 12, 2007 in favour of Remo Valente Real Estate (1990) Limited is the mortgage referenced in paragraph 6.10(b) of the First Report which was registered pursuant to the Order of Mr. Justice Brockenshire dated October 9, 2007 and which the Receiver now seeks to have discharged.
- 3.6 It is not clear to the Receiver that the endorsements of Mr. Justice Patterson and Madam Justice Nolan made on November 29, 2005 and December 6, 2005, respectively, remained in effect at the date of the registration of the mortgages in favour of Royal Bank of Canada and Sutts Strosberg LLP. The Receiver notes that although the endorsement of Mr. Justice Gates dated December 15, 2006 (a copy of which is attached as Exhibit "B" to the Valente Affidavit) suggested that the endorsements of Mr. Justice Patterson and Madam Justice Nolan should "stay in place in the interim", paragraph 6 of the Security Order made by Mr. Justice Brockenshire on October 9, 2007 (a copy of which is attached as Exhibit "G" to the Valente Affidavit and Appendix I to the First Report), pursuant to which the Letter of Credit was posted as security by Portofino, provides that certain provisions in previous orders made in respect of the business and affairs of Portofino, including the Order of Mr. Justice Gates dated December 15, 2006, were amended and varied. It may be that by virtue of same and because security had been posted by Portofino for the judgment (including the Letter of Credit) the prohibition against Portofino from encumbering the Project was no longer in effect.
- 3.7 Whether or not the subsequent charges were registered contrary to the endorsements of Mr. Justice Patterson and Madam Justice Nolan and, if so, the effect of same on the validity of those subsequent encumbrances is not before the Court on this motion. Nor is it necessary for the Court to determine that issue at this time. The validity, effectiveness and priority of all encumbrances against the Project will be

addressed on a distribution motion to be brought by the Receiver when funds are available to be distributed to the creditors.

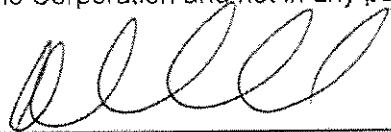
The Letter of Credit

- 3.8 In his Reasons for Judgment dated August 31, 2007, Mr. Justice Brockenshire required Portofino and the other defendants in the Valente Court Action to give security in the amount of \$2,000,000 for the payment of further damages to be quantified after an accounting was completed. Although it may simply be a question of wording, paragraph 22 of the Valente Affidavit seems to indicate that the Letter of Credit was provided by BMO as security and, in paragraph 32 of the Valente Affidavit, that funds from the sale of the condominium units were paid to BMO because BMO provided the Letter of Credit. Although BMO issued the Letter of Credit, the Letter of Credit was obtained and provided as security by Portofino, not BMO. Mr. Justice Brockenshire had ordered that the proceeds from future condominium sales be held in trust. Because BMO held the first mortgage against the Project, no sales could be completed without BMO providing partial discharges of its mortgage. Portofino obtained and caused the Letter of Credit to be posted with the Court as security so that further sales of the condominium units could be completed.
- 3.9 The Letter of Credit was originally posted by Portofino as security for the judgment to be given following the completion of the accounting as ordered by Mr. Justice Brockenshire. That judgment was later set aside following an appeal to the Divisional Court and a further appeal to the Court of Appeal.
- 3.10 Although the judgment for which the Letter of Credit was provided by Portofino as security was set aside, by order of Mr. Justice Quinn dated May 4, 2012, the Letter of Credit was ordered to remain in place because of the risk of assets being dissipated.
- 3.11 Paragraph 33 of the Valente Affidavit indicates that Valente Real Estate is not aware of what security, if any, had been posted for the Letter of Credit.
- 3.12 The mortgage held by BMO against the Project is a collateral mortgage securing all of the liabilities of Portofino to BMO to the maximum principal amount of \$30,000,000 (the "**BMO Mortgage**"). A copy of the BMO Mortgage was attached as Exhibit "9" to the Fedoryn Affidavit filed on the initial application by which the Receiver was appointed. A copy of the BMO Mortgage is attached as **Appendix B**.

- 3.13 If the Letter of Credit is called upon and BMO makes payment thereunder, Portofino will, in turn, be liable to BMO for the amounts paid by BMO under the Letter of Credit. That liability of Portofino to BMO will be secured by the BMO Mortgage. The effect of that will be to transform the claim of Valente Real Estate in the Valente Court Action from what would otherwise be an unsecured damage claim for a breach of contract into a secured claim against the Project and to give Valente Real Estate a priority over the claims of other creditors which, in an insolvency scenario, it may not otherwise have.
- 3.14 As noted in the First Report, the Listing Agreement under which Valente Real Estate is advancing its breach of contract claim, did not provide for security for the commissions payable to Valente Real Estate thereunder.
- 3.15 With the Receiver now in place, there is no longer any risk of Portofino dissipating its assets or any further need for the Letter of Credit to remain in place as security for any claim which Valente Real Estate may have. If Valente Real Estate is entitled to a priority over other creditors, it may assert that priority when there are funds in the receivership estate available for distribution to the creditors.
- 3.16 Paragraphs 28 and 29 of the Valente Affidavit make reference to the payment of the costs for maintaining the Letter of Credit. As noted in the First Report, Valente Real Estate is required by Court order to pay those costs. Attached as **Appendix C** are copies of the invoices for the costs of maintaining the Letter of Credit and correspondence between counsel for Portofino and Valente Real Estate regarding the payment of those costs.

All of which is Respectfully Submitted this 28th day of February, 2014.

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
Senior Vice President

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

April 21, 2014

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Appendices

- Appendix A** - Appointment Order dated October 29, 2013
- Appendix B** First Report to Court of Receiver dated December 6, 2013 (without appendices)
- Appendix C** Order dated December 13, 2013
- Appendix D** Order dated February 3, 2014
- Appendix E** Second Report to Court of Receiver dated February 28, 2014 (without appendices)
- Appendix F** Form of Unsold Unit Sale Agreement
- Appendix G** Statement of Receipts and Disbursements
- Appendix H** Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn April 17, 2014
- Appendix I** Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn April 14, 2014

1. Introduction and Background

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**", "**Portofino 2**" 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 the Honourable 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 present time, Portofino owns:
- (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 The Unsold Parking Units and Unsold Storage Units are not assigned to specific condominium units under the Condominium Declaration.
- 1.2.5 Since 2005, there has been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Capaldi, Portofino, Portofino Riverside Tower Inc. ("**Portofino 1**") and Westview Park Gardens (2004) Inc. ("**Westview Park**"), as defendants in Court Action No. 05-CV-5864CM (the "**Valente Court Action**"). Portofino 1 is a company which held title to the Project before it was transferred to Portofino. Westview Park is a previous name of Portofino.
- 1.2.6 An application was brought by BMO for the appointment of BDO as Receiver and Manager of Portofino to ensure that the Unsold Units are sold in an orderly fashion and that their sale is not prevented or delayed by litigation proceedings.
- 1.2.7 As noted above, on October 29, 2013, the Honourable Mr. Justice Thomas granted the relief sought by BMO and issued the Appointment Order.
- 1.2.8 Although the Appointment Order imposes a stay of proceedings in respect of Portofino (the "**Stay**"), leave of the Court was granted to continue the Valente Court Action.
- 1.2.9 The Receiver submitted its First Report to the Court dated December 6, 2013 ("**First Report**") in support of a motion for, among other things, the advice and direction of the court on issues relating to the letter of credit posted by Portofino with the Court as security in the Valente Court Action, the Receiver's future involvement in the trial and the defence of the Valente Court Action, whether or not the Valente Court Action

should continue to be exempted from the Stay and whether the trial of the Valente Court Action should be adjourned until such time as the Court determines that funds remain in the receivership proceeding after satisfaction of the secured claims to satisfy, in whole or part, the claims of unsecured creditors (the "**Remaining Issues**").

A copy of the First Report (without appendices) is attached as **Appendix B**.

1.2.10 By Order dated December 13, 2013 (the "**December Order**"), among other things, Mr. Justice Thomas approved the sales process for the Unsold Units. The Remaining Issues in respect of the December Motion were adjourned at the request of Valente Real Estate and on consent of the Receiver, in part, to a date to be agreed by counsel and scheduled by the Trial Coordinator. A copy of the December Order is attached as **Appendix C**.

1.2.11 By Order of Mr. Justice Thomas dated February 3, 2014 (the "**Timetable Order**"), a timetable was established and the hearing of the Remaining Issues scheduled for May 2, 2014. A copy of the Timetable Order is attached as **Appendix D**.

1.2.12 The Receiver submitted its Second Report to the Court dated February 28, 2014 (the "**Second Report**") to provide the Court with additional information with respect to matters raised in connection with the Valente Court Action. A copy of the Second Report (without appendices) is attached as **Appendix E**.

2. Terms of Reference

2.1 In preparing this Third Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from the Portofino's books and records and discussions with former 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 Third Report

3.1 This constitutes the Receiver's Third Report to the Court (the "**Third Report**") in this matter and is filed:

- (a) To provide this Court with information on:
 - (i) the Receiver's activities since the date of the First Report and the Receiver's activities as outlined therein;
 - (ii) the process undertaken by the Receiver in respect to the marketing and sale of the Unsold Units;
 - (iii) the Receiver's recommendation with respect to the sale of Unit 8, Level 11, Essex Standard Condominium Plan No. 122, Windsor (PIN 01872-0138 (LT)), municipally known as 1108-1225 Riverside Drive West, Windsor ("**Unit 1108**");
- (b) In support of an order of the Court (the "**Unit 1108 Approval and Vesting Order**"):
 - (i) sealing the Confidential Supplement to the Third Report dated April 21, 2014 and all appendices thereto (the "**Confidential Supplement**") filed with the Court from the public record until further order of the Court;
 - (ii) approving the agreement of purchase and sale dated February 15, 2014 with a closing date of May 5, 2014 (the "**Unit 1108 APS**") between the Receiver, as vendor, and Quan Shi ("**Shi**"), as purchaser, in respect of Unit 1108 and an Order authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Unit 1108 APS (the "**Unit 1108 Transaction**") and thereafter to file the Receiver's certificate;

- (iii) vesting in Shi all of Portofino's right, title and interest in and to Unit 1108 free and clear of any and all claims and encumbrances;
- (c) In support of an order of the Court (the "**Sale Agreement Order**"):
- (i) approving the Third Report, the Confidential Supplement and the activities and conduct of the Receiver described therein;
 - (ii) approving the form of Agreement of Purchase and Sale with respect to the sale of the Unsold Units, substantially in the form attached as **Appendix F** hereto (the "**Form of Unsold Unit Sales Agreement**") together with any amendments thereto deemed necessary and appropriate by the Receiver to be used by the Receiver on all future sales of the Unsold Units;
 - (iii) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to April 16, 2014 (the "**Statement of Receipts and Disbursements**");
 - (iv) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (v) 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**");
- (d) in support of an order of the Court (the "**Omnibus Approval and Vesting Order**"):
- (i) prospectively authorizing the Receiver 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;

- (ii) 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**");
- (iii) 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 the Omnibus Approval and Vesting Order; and
- (iv) 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 the Omnibus Approval and Vesting Order, 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 the Omnibus Approval and Vesting Order, save and except for those encumbrances listed on Schedule "D" of the Omnibus Approval and Vesting Order, in relation to the Purchased Assets.

4. Receiver's Activities

- 4.1 In its First Report, the Receiver reported to the Court on its activities for the period October 29, 2013 to December 6, 2013. As noted above, the Receiver's Second Report was prepared solely to provide the Court with additional information with respect to matters raised in the Valente Court Action. In this Third Report, the Receiver is reporting on its activities since the date of the First Report.
- 4.2 The Receiver has prepared a draft Property Management Agreement between the Receiver and Capaldi Holdings and provided it to Capaldi Holdings for review. The agreement has not yet been finalized.
- 4.3 With the assistance of the property manager, the Receiver continued to collect rents from the Unsold Units on a monthly basis. As Unsold Units have become vacant, the Receiver entered into leases with new tenants for terms not exceeding one year. As at the date of this report, only one of the 43 finished Unsold Condominium Units is vacant.
- 4.4 The Receiver is paying \$30,000 per month for property taxes to the City of Windsor. This amount is sufficient to pay current property taxes and make some modest reduction to the property tax arrears.
- 4.5 The Receiver is paying monthly common fees on the Unsold Units in the amount of \$16,263 to ECC 122.
- 4.6 Liability insurance coverage for the Unsold Units is currently provided under an insurance policy in the name of a company related to Portofino. The Receiver confirmed that the policy is in effect and has advised the insurance broker of its appointment. The Receiver is making arrangements for the liability coverage to be transferred to a separate policy in the name of the Receiver.
- 4.7 The Receiver met with representatives of Tarion Warranty Corporation ("**Tarion**") which administers the Ontario New Home Warranties Plan Act (the "**ONHWP**"). Tarion confirmed that the 43 finished Unsold Condominium Units are not eligible for the ONHWP because they have been previously occupied as rental units. If sold as is, the nine unfinished Unsold Condominium Units would be eligible for ONHWP

coverage, to the point they have been completed.

- 4.8 Tarion also advised that the performance audit required by the *Condominium Act* was conducted in 2008 and identified several deficiencies, which are not considered to be excessive for a condominium of the size of Portofino. However, an independent follow-up report confirming that the deficiencies have either been addressed or their current status has not yet been completed. ECC 122 intends to engage an engineer to carry out this report.
- 4.9 The remaining deficiencies will be remedied by the Receiver.

5. Receiver's Sale of 1108-1225 Riverside Drive West

- 5.1 On or about March 5, 2014, the Receiver and Shi entered into the Unit 1108 APS in respect of the sale of Unit 1108 to Shi. A copy of the Unit 1108 APS together with the Receiver's analysis of the Unit 1108 Transaction is contained in the Confidential Supplement.
- 5.2 The Receiver commissioned an appraisal of the Unsold Condominium Units, including Unit 1108. Excerpts from the appraisal report of Metrix Realty Group are attached as **Appendix B** to the Confidential Supplement.
- 5.3 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have should the Unit 1108 Transaction fail to close for any reason. Publication of the purchase price and appraisal information would undermine the fairness of the resumption of the sale process that may be required if the Unit 1108 Transaction does not close and could also negatively impact the future sale of other Unsold Units within Portofino.
- 5.4 On or about March 5, 2014, the Receiver accepted the offer from Shi for the purchase of Unit 1108, subject to Court approval. The Unit 1108 Transaction was originally scheduled to close on May 1, 2014. By amendment to the Unit 1108 APS, the Unit 1108 Transaction is now scheduled to close on May 5, 2014, subject to Court approval and the granting of the appropriate Vesting Order to facilitate a transfer of Unit 1108 to Shi free of any and all encumbrances.
- 5.5 The Receiver is not seeking to distribute the proceeds of the Unit 1108 Transaction at this time and intends to hold the proceeds from the Unit 1108 Transaction pending further order of the Court.
- 5.6 It is the Receiver's view that the Unit 1108 Transaction is appropriate in the circumstances.
- 5.7 The Receiver is satisfied that the Unit 1108 Transaction represents fair market value for Unit 1108.

- 5.8 The Receiver is of the view that it has maximized the realization available and the Unit 1108 Transaction is commercially reasonable in all respects. Given the forgoing, the Receiver is of the view that the Unit 1108 Transaction is in the best interests of the creditors and other stakeholders of the Company.
- 5.9 BMO supports the Receiver entering into and completing the Unit 1108 Transaction.
- 5.10 The Receiver recommends that this Court approve the completion of the Unit 1108 Transaction.
- 5.11 The Receiver requests a Vesting Order be made in favour of Shi as the purchaser of Unit 1108.

6. Receiver's Sale Process for the Unsold Units

- 6.1 The First Report outlined the Receiver's proposed sales process for the Unsold Units which was approved by the December Order.
- 6.2 As noted in the First Report, the Receiver obtained a copy of the appraisal of the Unsold Condominium Units prepared for Portofino by Finlay Appraisal and Consultation Service as of August 10, 2013 (the "**Finlay Appraisal**"). The approach of the Finlay Appraisal was to estimate the value of the total inventory of Unsold Condominium Units. It employed an average rate per square foot of building area to determine an overall value estimate. Estimated values for individual Unsold Condominium Units were not determined, and as such the appraisal is of limited use to the Receiver in its sale process.
- 6.3 The Receiver commissioned a second appraisal of the Unsold Condominium Units, on an individual condominium unit basis, by Metrix Realty Group (the "**Metrix Appraisal**"). There were several factors that contributed to the complexity of the Metrix Appraisal, including: the number of condominium units to be appraised; the number of different models/floor plans; the nine unfinished condominium units; issues such as the valuation premium associated with a river view or a higher floor; and the relatively unique nature of the Portofino Condominium within the Windsor condominium market. As a result, the Receiver reviewed several draft versions of the appraisal and provided extensive input and clarification to the appraiser throughout the process. The Metrix Appraisal was completed on March 11, 2014.
- 6.4 The Receiver believes the Metrix Appraisal is thorough and well researched and does not believe it is necessary to seek an additional appraisal at this time.

However, depending on the results of the sale process described below, the Receiver may reconsider the need for an additional appraisal.

- 6.5 Based on professional referrals and a review of Windsor, Ontario condominium sales data over the period 2011 through 2013, the Receiver identified five (5) Windsor real estate agents from whom it would seek listing proposals for the Unsold Units. The Receiver contacted each of the five agents by electronic mail to provide background on the Receiver's role and invited them to submit a listing proposal. In its invitation for listing proposals, the Receiver established a fixed commission rate of four (4) per cent where a co-operating broker is involved in the transaction and three (3) per cent where there is no co-operating broker.
- 6.6 One real estate agent did not respond to the Receiver's invitation for listing proposals or subsequent telephone call. The other four agents each submitted listing proposals prior to the Receiver's requested deadline of February 10, 2014.
- 6.7 On February 21, 2014, the Receiver interviewed each of the four agents that submitted listing proposals and reviewed their professional experience and marketing plan for the Unsold Units. The Receiver also considered the agent's knowledge of Portofino and capacity to list and service several Unsold Unit listings, in addition to their other listings.
- 6.8 The Receiver selected Ms. Julia McLelland ("**McLelland**") of Bob Pedler Real Estate Limited ("**Pedler**") in Windsor to act as its agent in listing the Unsold Units.
- 6.9 The Receiver noted that eight (8) Portofino units are listed for re-sale on the MLS market. So as not to saturate the market, the Receiver elected to list only four (4) of the Unsold Condominium Units for sale, rather than ten to fifteen as estimated in

the First Report.

- 6.10 In selecting the four condominium units to list for sale, the Receiver identified those where the tenant lease will expire in the near future or the tenant is on a month to month basis. The Receiver also considered the style/model, floor, direction of view and price point in order to identify four condominium units that should be readily saleable. Based on the Metrix Appraisal as well as prior sales and listings, the Receiver established a list price for each Unsold Condominium Unit and entered into listing agreements with Pedler for the four condominium units. As Unsold Condominium Units sell, it is the Receiver's intention to list a new condominium unit to replace the condominium unit sold.
- 6.11 Prior to listing the four condominium units on the MLS market, the Receiver authorized McLelland to approach the existing tenants residing in each of the four condominium units to determine if they were interested in purchasing the condominium unit. Where the tenant was not interested in purchasing the condominium unit, the listing was opened up to the MLS market. The four condominium units were listed on MLS on March 25, 2014.
- 6.12 Prior to the Receiver's appointment, Portofino utilized the Ontario Real Estate Association ("**OREA**") standard form Agreement of Purchase and Sale for condominium units ("**OREA Form 111**") along with a Schedule of Essex Standard Condominium Plan No. 122 Condominium Rules (the "**Condominium Rules**").
- 6.13 The Unit 1108 APS consists of OREA Form 111, the Condominium Rules and a schedule of terms and conditions consistent with a sale by a Court appointed Receiver (the "**Terms and Conditions**"). For finished condominium units, the Terms and Conditions include disclosure that the finished condominium unit is not

eligible for ONHWP coverage.

- 6.14 OREA Form 111 is familiar to residential real estate agents who will conduct sales of the Unsold Units. The Receiver has prepared a form of agreement of purchase and sale that utilizes OREA Form 111, the Condominium Rules and the Terms and Conditions. These documents comprise the Form of Unsold Unit Sale Agreement, a copy of which is attached as **Appendix F**.
- 6.15 The Form of Unsold Unit Sale Agreement is intended to be utilized by the Receiver for the sale of the Unsold Units.
- 6.16 The Receiver is of the view that the Unsold Units will be more marketable and the marketing and sale process more efficient and cost effective if the Court grants the Omnibus Approval and Vesting Order which (a) authorizes the Receiver to enter into an agreement of purchase and sale in the Form of Unsold Unit Sale Agreement; (b) approves the sale of the Unsold Units; and (c) vests clear title to a purchaser on a prospective basis. Such an order, if granted, will avoid the cost and expense associated with the Receiver returning to Court for approval of each individual Unsold Unit sale.
- 6.17 The Unsold Parking Units have separate property identifier numbers in the land registry. As previously noted, the Unsold Parking Units are not assigned to specific condominium units under the Condominium Declaration. Prior sales of parking units, prior to the appointment of the Receiver, have been at prices below the \$50,000 threshold set out in paragraph 3 (l) of the Appointment Order and are discussed in the Confidential Supplement. The Receiver is of the view that it would not be practical to obtain an appraisal of the Unsold Parking Units.

- 6.18 The Receiver is not actively marketing the Unsold Parking Units for sale at the present time, but current and future owners of condominium units may be interested in purchasing the Unsold Parking Units. In order to deal with any interest that is received, the Receiver is of the view that it would be efficient and cost effective if the Unsold Parking Units are included in the Omnibus Approval and Vesting Order. The Receiver contemplates utilizing the Form of Unsold Unit Sale Agreement for the sale of Unsold Parking Units.
- 6.19 As noted above, Portofino also owns the Unsold Storage Units which are located in the lower level of the Portofino Condominium and which have separate property identifier numbers in the land registry.
- 6.20 The draft Omnibus Approval and Vesting Order includes the Unsold Storage Units. However, the Receiver does not contemplate the sale of the storage rooms at the present time as they are being used by the property manager. The Receiver contemplates utilizing the Form of Unsold Unit Sale Agreement for the sale of the Unsold Storage Units in the event that a potential sale of the Unsold Storage Units arises in the future.
- 6.21 MT has forwarded to the Land Registrar for the Land Registry Office of the County of Essex (the "**Land Registrar**") a copy of the draft Omnibus Approval and Vesting Order. MT expects to have the Land Registrar's preapproval and acceptance of the form of Omnibus Approval and Vesting Order prior to the return of the Receiver's motion herein.
- 6.22 The Receiver will file with the Court, once all Transactions are completed and title to all of the Unsold Units has been transferred to the applicable Purchasers, a report advising of the purchase price for each Unsold Unit.

7. Valente Court Action

- 7.1.1 Section 6 of the First Report provides a summary of the ongoing litigation in the Valente Court Action.
- 7.1.2 As noted above, leave of the Court was granted to continue the Valente Court Action. The Receiver submitted its First Report in support of a motion for, among other things, the advice and direction of the court on issues relating to the letter of credit posted by Portofino with the Court as security in the Valente Court Action, the Receiver's future involvement in the trial and the defence of the Valente Court Action, whether or not the Valente Court Action should continue to be exempted from the Stay and whether the trial of the Valente Court Action should be adjourned until such time as the Court determines that funds remain in the receivership proceeding after satisfaction of the secured claims to satisfy, in whole or part, the claims of unsecured creditors.
- 7.1.3 Pursuant to the December Order, among other things, Mr. Justice Thomas adjourned the hearing of the Remaining Issues. The Timetable Order established a timetable for the remaining steps on the December Motion and set May 2, 2014 as the date for the hearing of the Remaining Issues.
- 7.1.4 Thereafter, Valente Real Estate delivered the affidavit of Peter Valente sworn February 14, 2014. The Receiver submitted its Second Report to provide the Court with additional information with respect to matters raised in Mr. Valente's affidavit. Thereafter, Valente Real Estate delivered a further affidavit of Mr. Valente sworn March 17, 2014. Cross-examinations of Mr. Valente and the Receiver have been conducted. Counsel for Valente Real Estate advised of his intention to examine a representative of BMO as a witness on a pending motion, but as of the date of this report, has not conducted that examination.

7.1.5 Under the powers conferred on it in the Appointment Order, the Receiver has served a Notice of Motion in the Valente Court Action for a motion to be heard at the same time as the hearing of the Remaining Issues. The motion in the Valente Court Action seeks relief similar to the relief being sought in the receivership proceeding.

8. Statement of Receipts and Disbursements of the Receiver

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

8.2 Receipts

a) *Condominium rent collected (\$465,873.13)* — The Receiver collected \$465,873.13 from the rental of the Unsold Units.

b) *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.

c) *Parking rent collected (\$7,382.00)* — The Receiver collected \$7,382.00 from the rental of Unsold Parking Units.

d) *Deposit (\$5,000.00)* — The Receiver received \$5,000.00 as a deposit on the purchase of Unit 1108 by Shi.

8.3 Disbursements

a) *Property taxes (\$180,000.00)* — The Receiver paid property taxes on the Unsold Units to the City of Windsor at \$30,000.00 per month.

b) *Condominium common fees (\$97,578.42)* — The Receiver has paid \$97,578.42 to ECC 122 for common fees on the Unsold Units.

- c) *Receiver's fees (\$94,544.04)* – BDO's account for the period July 19, 2013 to November 28, 2013 in the amount of \$25,014.45, excluding HST, was previously approved by the Court and paid. The Receiver paid BDO's interim accounts for the period November 28, 2013 to March 10, 2014 in the amount of \$69,529.59 and is seeking approval of the Court for these invoices.
- d) *Legal fees (\$55,544.65)* – MT's account for the period September 9, 2013 to November 15, 2013 in the amount of \$9,221.95, excluding HST, was previously approved by the Court and paid. The Receiver paid MT's interim accounts for the period November 18, 2013 to February 28, 2014 in the amount of \$46,322.70, excluding HST, and is seeking approval of the Court for these invoices.
- e) *HST paid (\$22,211.19)* – The Receiver has paid \$22,211.19 in HST on its disbursements.
- f) *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.
- g) *Insurance (\$9,501.00)* — The Receiver paid \$9,501.00 in premiums to maintain the bonding coverage required by Tarion.
- h) *Legal fees – Sutts Strosberg (\$5,000.00)* – The Receiver paid \$5,000.00 to Sutts Strosberg LLP to provide a review and chronology of the Valente Court Action for the Receiver's counsel.

9. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 9.1 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.
- 9.2 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.
- 9.3 Attached as **Appendix H** is the fee affidavit of Stephen N. Cherniak sworn April 17, 2014 containing BDO's interim accounts as Receiver for the following periods:
- November 28, 2013 to January 17, 2014
 - January 17, 2014 to March 10, 2014
 - March 10, 2014 to April 9, 2014
- 9.4 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.
- 9.5 Attached as **Appendix I** is the fee affidavit of Sherry A. Kettle, sworn April 14, 2014 containing the interim accounts of MT for the period November 16, 2013 to March 31,

2014.

- 9.6 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.

10. Recommendations

10.1. The Receiver recommends and respectfully requests that the Court grant the following:

- (a) the Unit 1108 Approval and Vesting Order:
 - (i) sealing the Confidential Supplement filed with the Court from the public record until further order of the Court;
 - (ii) approving the Unit 1108 APS and authorizing and directing the Receiver to enter into and complete the Unit 1108 Transaction and thereafter to file the Receiver's certificate;
 - (iii) vesting in Shi all of Portofino's right, title and interest in and to Unit 1108 free and clear of any and all claims and encumbrances;
- (b) the Sale Agreement Order:
 - (i) approving the Third Report, the Confidential Supplement and the activities and conduct of the Receiver described therein;
 - (ii) approving the Form of Unsold Unit Sales Agreement together with any amendments thereto deemed necessary and appropriate by the Receiver to be used by the Receiver on all future sales of the Unsold Units;
 - (iii) approving the Receiver's interim Statement of Receipts and Disbursements; and
 - (iv) approving the Professional Fees;
- (c) the Omnibus Approval and Vesting Order:
 - (i) prospectively authorizing the Receiver 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) is subject 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;

- (ii) 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 substantially in the form of the Form of Unsold Unit Sale Agreement, together with any amendments or modifications thereto deemed necessary by the Receiver;
- (iii) prospectively approving the Transactions in respect of the Unsold Units, more particularly described on Schedule "A" to the Omnibus Approval and Vesting Order; and
- (iv) providing that, upon the delivery by the Receiver to a Purchaser of a Receiver's Certificate, all of Portofino's right, title and interest in and to the Purchased Assets will vest in and to the applicable Purchaser, free and clear of all encumbrances including those listed on Schedule "C" and in paragraph 3 of the Omnibus Approval and Vesting Order, save and except for those encumbrances listed on Schedule "D" of the Omnibus Approval and Vesting Order, in relation to the Purchased Assets.

All of which is Respectfully Submitted this 21st day of April, 2014.

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
Senior Vice President

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

April 15, 2016

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Appendices

- Appendix A** - Appointment Order dated October 29, 2013
- Appendix B** - First Report to Court of Receiver dated December 6, 2013 (without appendices)
- Appendix C** - Order dated December 13, 2013
- Appendix D** - Timetable Order dated February 3, 2014
- Appendix E** - Second Report to Court of Receiver dated February 28, 2014 (without appendices)
- Appendix F** - Third Report to Court of Receiver dated April 21, 2014 (without appendices)
- Appendix G** - Unit 1108 Approval and Vesting Order dated May 2, 2014
- Appendix H** - Sale Agreement Order dated May 2, 2014
- Appendix I** - Omnibus Approval and Vesting Order dated May 2, 2014
- Appendix J** - Justice Carey's endorsement and order dated February 26, 2015
- Appendix K** - Justice LaForme's endorsement dated July 27, 2015
- Appendix L** - Endorsement of the Court of Appeal panel dated December 21, 2015
- Appendix M** - Rule 49 Offer to Settle
- Appendix N** - Statement of Claim in Court File Number CV-13-20061
- Appendix O** - Statement of claim in Court File Number CV-13-20062
- Appendix P** - Letter to James Cooke dated April 13, 2016
- Appendix Q** - Statement of Receipts and Disbursements
- Appendix R** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn April 14, 2016
- Appendix S** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn March 23, 2016

1. Introduction and Background

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**”, “**Portofino 2**” 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 The Unsold Parking Units and Unsold Storage Units are not assigned to specific condominium units under the Condominium Declaration.
- 1.2.5 Since 2005, there has been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Capaldi, Portofino, Portofino Riverside Tower Inc. ("**Portofino 1**") and Westview Park Gardens (2004) Inc. ("**Westview Park**"), as defendants in Court Action No. 05-CV-5864CM (the "**Valente Court Action**"). Portofino 1 is a company which held title to the Project before it was transferred to Portofino. Westview Park is a previous name of Portofino.
- 1.2.6 An application was brought by BMO for the appointment of BDO as Receiver and Manager of Portofino to ensure that the Unsold Units are sold in an orderly fashion and that their sale is not prevented or delayed by litigation proceedings.
- 1.2.7 As noted above, on October 29, 2013, Mr. Justice Thomas granted the relief sought by BMO and issued the Appointment Order.
- 1.2.8 Although the Appointment Order imposes a stay of proceedings in respect of Portofino (the "**Stay**"), the Valente Court Action was excluded from the scope of the Stay.
- 1.2.9 The Receiver submitted its First Report to the Court dated December 6, 2013 ("**First Report**") in support of a motion for, among other things, approval of a sale process for the Unsold Units and the advice and direction of the court on issues relating to the letter of credit posted by Portofino with the Court as security in the Valente Court Action, the Receiver's future involvement in the trial and the defence of the Valente Court Action, whether or not the Valente Court Action should continue to be exempted from the Stay and whether the trial of the Valente Court Action should be adjourned until such time as the Court determines that funds remain in the receivership proceeding after satisfaction of the secured claims to satisfy, in whole or part, the claims of unsecured creditors (the "**Remaining Issues**"). A copy of the First Report (without appendices) is attached as **Appendix B**.
- 1.2.10 By Order dated December 13, 2013 (the "**December Order**"), among other things, Mr. Justice Thomas approved the sales process for the Unsold Units. The Remaining Issues in respect of the December Motion were adjourned at the request of Valente Real Estate and on consent of the Receiver, in part, to a date to be agreed by

counsel and scheduled by the Trial Coordinator. A copy of the December Order is attached as **Appendix C**.

- 1.2.11 By Order of Mr. Justice Thomas dated February 3, 2014 (the “**Timetable Order**”), a timetable was established and the hearing of the Remaining Issues scheduled for May 2, 2014. A copy of the Timetable Order is attached as **Appendix D**.
- 1.2.12 The Receiver submitted its Second Report to the Court dated February 28, 2014 (the “**Second Report**”) to provide the Court with additional information with respect to matters raised in connection with the Valente Court Action. A copy of the Second Report (without appendices) is attached as **Appendix E**.
- 1.2.13 The Receiver submitted its Third Report to the Court dated April, 21, 2014 in support of a motion for, among other things, an Order approving the sale of the Unsold Unit municipally known as 1108-1225 Riverside Drive West, Windsor (“**Unit 1108**”) to Quan Shi (“**Shi**”) and directing the Receiver to complete the transaction (the “**Unit 1108 transaction**”) and vesting in Shi all of Portofino’s right, title and interest in and to Unit 1108 free and clear of any and all claims and encumbrances.
- 1.2.14 The Third Report was also submitted in support of a motion for, among other things, an Order approving the form of Agreement of Purchase and Sale with respect to the sale of the Unsold Units substantially in the form submitted to the Court (the “**Form of Unsold Unit Sales Agreement**”), and an Order prospectively authorizing the Receiver to accept offers to purchase any or all of the Unsold Units provided that the sale price to which such offer(s) relates is acceptable to the Receiver; 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 Unsold Unit Sale Agreement; prospectively approving future sale transactions in respect of the Unsold Units; and prospectively vesting all of Portofino’s right, title and interest in and to the applicable Unsold Unit, subject to certain conditions, in the applicable Purchaser. A copy of the Third Report (without appendices) is attached as **Appendix F**.
- 1.2.15 By Orders dated May 2, 2014 (the “**Unit 1108 Approval and Vesting Order**” and “**Sale Agreement Order**”) Mr. Justice Campbell, among other things, approved the

Unit 1108 transaction, vested all of Portofino right, title and interest in Unit 1108 in Shi and approved the Form of Unsold Unit Sales Agreement. A copy of the Unit 1108 Approval and Vesting Order and the Sale Agreement Order are attached as **Appendix G** and **Appendix H** respectively.

- 1.2.16 By further 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 prospectively vested all 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 I**.
- 1.2.17 In May 2015, BMO sold its Portofino Corporation loans to RREF II BHB IV PORTOFINO LLC (“**RREF II BHB IV**”) and assigned its security to RREF II BHB IV. The RREF II BHB IV loans are managed by Rialto Capital Management (“**Rialto**”), who are based in Miami, Florida.

2. Terms of Reference

- 2.1 In preparing this Fourth 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 Fourth Report

- 3.1 This constitutes the Receiver's Fourth Report to the Court (the "**Fourth Report**") in this matter and is filed:
- (a) To provide this Court with information on:
 - (i) the Receiver's activities since the date of the Third Report and the Receiver's activities as outlined therein;
 - (ii) the results to date of the process undertaken by the Receiver with respect to the marketing and sale of the Unsold Units; and
 - (iii) the status of the Valente Court Action and other litigation affecting Portofino.
 - (b) In support of an order of the Court:
 - (i) approving the Fourth Report and the activities and conduct of the Receiver described therein;
 - (ii) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to April 15, 2016 (the "**Statement of Receipts and Disbursements**");
 - (iii) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**"); and
 - (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**").

4. Receiver's Activities

- 4.1 It its Third Report the Receiver reported to the Court on its activities through April 21, 2014.
- 4.2 In this the Fourth Report, the Receiver reports on its activities since the date of the Third Report.

Sale Process for the Unsold Units

- 4.3 The Third Report detailed the Receiver's Sale Process for the Unsold Units. The Receiver's exclusive agent is Ms. Julia McClelland ("**McClelland**") of Bob Pedler Real Estate Limited in Windsor ("**Pedler**"). As noted in the Third Report, on March 25, 2014 the Receiver listed four condominium units for sale on MLS.
- 4.4 During the first six months of the sale process, only a few sales were achieved. The Receiver received several offers that were markedly below its list prices and rejected these without a counter offer. The Receiver made some gradual adjustment to its initial list prices and undertook various marketing and advertising in support of its sales efforts.
- 4.5 The Receiver installed new, quality signage at Portofino Condominium, with the Receiver's agent's contact information, and arranged for updates and revisions to the existing portofinocondo.ca web site, including new virtual tours.
- 4.6 Since the Third Report the Receiver has advertised in the following print and online publications: *The Windsor Star* and *Windsor Star Homes*; *Our Homes* – Windsor and Essex County edition; *The National Post* - August 30, 2014 Essex County feature; *Globe and Mail* Real Estate section – four consecutive Fridays in September/October 2014; *London Free Press* Homes section – June 2015; and *Crain's Detroit Business*.
- 4.7 As units have been sold, the Receiver has continued to maintain between three (3) and five (5) active MLS listings representing a mix of style/model, floor and list price. The Receiver also made units, other than MLS listed units, available for viewing to qualified parties. Generally, the units listed for sale are vacant, but the

Receiver has also listed units that are tenanted on a month to month to basis, or under a lease that is nearing expiry.

- 4.8 Since April 2015, the Receiver has maintained one active MLS listing that is professionally staged. Units 701, 901 and 1008 were staged and subsequently sold. Currently, unit 103 is staged and listed for sale.
- 4.9 Through its agent, the Receiver approached selected long term tenants at Portofino to determine if the tenant would be interested in purchasing either their own, or another unit at Portofino. Interested tenants were provided with a list price, consistent with the list price for comparable MLS listed units, and invited to submit an offer to purchase. Several units have been sold to existing tenants.
- 4.10 During the late winter and spring of 2015, the Receiver experienced higher levels of prospective buyer showings and activity, which resulted in increased unit sales. This sales momentum was maintained through the balance of 2015 and into 2016.
- 4.11 Following upon the Unit 1108 Approval and Vesting Order made by Justice Campbell, the sale of Unit 1108 was completed on May 5, 2014.
- 4.12 To date, the Receiver has sold 26 units, including one unfinished unit (the unfinished unit was Unit 1503, which was completed on January 25, 2016). Of these, 25 unit sales have been completed, with the sale of Unit 1101 scheduled to close on June 1, 2016. In addition, the Receiver has sold Units 708 and 1501, but the completion of the sales is subject to buyers' conditions.
- 4.13 The Receiver has sold four (4) of the Unsold Parking Units, consisting of three surface level garages and one surface level parking space. Of the 52 Unsold Condominium Units owned by Portofino Corporation at the time of the appointment of the Receiver, 26 units remain unsold, 18 of which are fully finished and 8 are unfinished. In addition, 34 parking units and two storage units remain unsold (collectively, the "**Remaining Unsold Units**"). A summary of the Unsold Units is provided below:

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
1101	Finished	1,593	01-Jun-16
		<u>39,558</u>	

Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
103	Finished	1,282
104	Finished	1,217
105	Finished	1,062
106	Finished	1,150
204	Finished	1,150
304	Finished	1,282
309	Finished	1,151
408	Finished	1,150
601	Finished	1,150
708	Finished	1,150
806	Finished	1,217
1201	Unfinished	2,233
1202	Unfinished	2,450
1301	Finished	2,233
1302	Unfinished	2,450
1401	Finished	2,233
1402	Unfinished	2,450
1501	Finished	2,233
1502	Finished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1603	Finished	2,450
1605	Finished	1,718
		<u>46,379</u>

- 4.14 The Receiver determined that it is obliged to collect HST on the sale of Unsold Parking Units and unfinished Unsold Condominium Units. Once the unit is completed, the buyer is eligible to claim a new housing rebate for a portion of the HST paid as long as the buyer is residing in the unit as their principal residence.

Property Management and Leasing

- 4.15 The Receiver finalized a Property Management Agreement between the Receiver and Capaldi Investment Holdings Inc. ("**Capaldi Holdings**"), (the "**Property Management Agreement**"). Capaldi Holdings also functions as an onsite building superintendent and leasing agent of the Unsold Units. Under the Property Agreement Management Capaldi Holdings is paid \$2,000 per month and receives rent free occupancy of Unit 1603.
- 4.16 With the assistance of the Property Manager, the Receiver continued to collect rents from the Unsold Units on a monthly basis. As some Unsold Units have become vacant, the Receiver entered into leases with new tenants for terms not exceeding one year. In other cases, the Receiver elected to keep the unit vacant and available for sale. As at the date of this report, all of the 18 finished, remaining unsold Condominium Units are occupied, except for two units that are vacant and listed for sale. The current monthly rent on the leased units is \$26,786.00.
- 4.17 The Receiver continues to pay maintenance and repair costs on the Remaining Unsold Units and costs associated with tenant turnover such as cleaning and re-painting. The Receiver pays utility costs on vacant condominium units and two leased units where the terms of the lease provide for utilities to be paid by the Landlord.
- 4.18 The Receiver directs the Property Manager to carry out certain repairs prior to closing, where the repairs have been agreed to by the Receiver under the Agreement of Purchase and Sale for an Unsold Condominium Unit.

Property Taxes

- 4.19 Prior to the appointment of the Receiver there were several years of outstanding property taxes on the Unsold Units. The property tax arrears at July 13, 2013 were \$2,126,661.25, including interest and penalties. At the time of the appointment of the Receiver, the outstanding property taxes were approximately \$2,225,000.
- 4.20 Commencing in November 2013, the Receiver paid \$30,000 per month to the City of Windsor for property taxes, which exceeded the amount of the current taxes. Also, on the sale of units by the Receiver, the full amount of the property tax arrears

in respect of the sold unit was paid on closing. However, due to penalties and interest charges of 1.25 per cent per month, no net reduction in the arrears was achieved during the first year of the receivership. The outstanding property tax arrears at October 7, 2014 were \$2,367,019.48.

- 4.21 However, by June 2015 the Receiver had accumulated sufficient funds from the sale of condominium units to begin making lump sum payments toward the property tax arrears. In view of the high interest rate and ongoing penalty charges, the Receiver considered it prudent to apply surplus funds toward the property tax arrears. Rialto agreed with this strategy and supported the Receiver making the lump sum payments. Between June 5, 2015 and August 15, 2015 the Receiver made three payments to the City of Windsor totalling \$2,098,833.85 to bring the property taxes current. The Receiver continues to make regular installment payments on the Remaining Unsold Units. The Receiver has paid the first three of six installment payments for 2016, prior to the due date of April 13, 2016.
- 4.22 The Receiver reviewed the current Municipal Property Assessment Corporation (“**MPAC**”) valuations for the Unsold Units. Based on the initial appraisal commissioned by the Receiver, activity and offers received, feedback from the Receiver’s agent and the Receiver’s sales through February 28, 2015, it was the Receiver’s opinion that the MPAC assessed value for most Unsold Units was reasonable.
- 4.23 However, based on the same factors, it was the Receiver’s view that the assessed values for eight (8) finished ‘Marseilles’ model units (the “**Marseilles units**”) were overstated by as much as 15 to 20 per cent. The Receiver filed a Request for Reconsideration for these units with MPAC prior to the March 31, 2015 deadline. MPAC conducted its review and recommended a decrease in the assessed value of each of the Marseilles units of approximately 15 per cent. The Receiver signed Minutes of Settlement to accept the revised values. As a result, 2015 annual property taxes decreased by approximately \$720 per unit versus 2014. Two of the Marseilles units were subsequently sold. 2016 property taxes have not yet been finalized, but should also be proportionately lower based on the revised assessed value.

ECC 122 Common Fees

- 4.24 At the time of the appointment of the Receiver there were several months of unpaid common fees on the Unsold Units, The Receiver commenced paying monthly common fees on the Unsold Units, on a current basis to ECC 122. On the sale of units, the full amount of common fee arrears in respect of the sold unit was paid to ECC 122 on closing.
- 4.25 The unpaid condominium fees were subject to an interest charge of two per cent per month. Based on information provided by ECC 122, at June 22, 2015 there were unpaid common fees on the unsold units at that time of \$122,836, including interest and penalty charges. The Receiver and ECC 122 agreed to a payment of \$100,000 in full settlement of the unpaid common fees. This payment was made on August 10, 2015. The Receiver continues to pay monthly common fees to ECC 122 on the Remaining Unsold Units. The current monthly common fees on the Remaining Unsold Units are \$11,187.
- 4.26 At the Annual General Meeting of ECC 122 on November 5, 2015, Mr. Stephen Cherniak, a representative of the Receiver was nominated and appointed as a Director of ECC 122.

Tarion Warranty Corporation

- 4.27 As noted in the Third Report, in an initial meeting, Tarion Warranty Corporation (“**Tarion**”) which administers the Ontario New Home Warranties Plan Act (the “**ONHWP**”) advised the Receiver that the original performance audit required by the *Condominium Act* was conducted in 2008 and identified several deficiencies. The deficiencies were not considered to be excessive for a seventeen (17) story high rise condominium tower. However, a subsequent, independent performance audit was required to report on the status of the original deficiencies.
- 4.28 Since that time the Receiver and ECC 122 have undertaken certain repairs and capital projects. Details of major items are as follows:
- a) Subsequent to the construction of Portofino, defects appeared in the main roof. Prior to the appointment of the Receiver, the roof on the east side of the building was successfully replaced using a redesigned system and the rooftop

terrace constructed over it. The roof on the west side developed similar defects and was noted as a deficiency in the original Performance Audit Report by Tarion. Through the Property Manager, the Receiver obtained tenders from three commercial roofing contractors and selected Gillett Roofing Inc. for the replacement of the west side roof. The work was completed in November 2014 at a cost of \$74,980.00, exclusive of HST.

- b) Following the completion of the new roof on the west side, ECC 122 commenced planning the landscaping and owner amenities over the new roof. The landscaping was significantly enhanced from the original design and includes a commercial size barbecue, pergola and additional seating. The project was completed in July 2015 at a total cost of \$60,715, exclusive of HST. Under an agreement with ECC 122 the Receiver paid \$35,000 (inclusive of HST) toward the project, with the balance paid by ECC 122. The amount paid by the Receiver was based on Portofino's obligation for landscaping under the original design, at an estimated cost of \$25,000 to \$30,000, plus a small contribution toward the enhancements. The Receiver believes the completion of the project significantly improves the appearance of the 17th floor rooftop amenity area, and will assist in the marketing of the Remaining Unsold Units.

- 4.29 The Receiver has continued to pay premiums to Northridge General Insurance Corporation ("**Northridge**") on a bond, posted as security for Tarion. As noted in the Third Report, the finished Unsold Condominium units are not eligible for the ONHWP because they have been previously occupied as rental units. The unfinished Unsold Condominium Units are eligible for limited ONHWP coverage, to the point of completion.
- 4.30 ECC 122 has engaged an engineer to conduct the outstanding performance audit. Mr. Tom Park attended at Portofino Condominium in February 2016 and his report is expected shortly. The Receiver expects that with several of the original deficiencies having been corrected, and with only eight (8) ONHWP eligible units remaining unsold, the amount of the bond required by Tarion should be significantly reduced.

Insurance

4.31 At the time of the appointment of the Receiver, liability insurance coverage for the Unsold Units was provided under an insurance policy in the name of a company related to Portofino. The Receiver made arrangements for the liability coverage to be transferred to a separate policy in the name of the Receiver.

Reporting

4.32 Pursuant to the Appointment Order, the Receiver prepared reports to stakeholders, dated October 28, 2014, April 10, 2015, October 6, 2015 and February 23, 2016. Commencing May 2015, the Receiver provided monthly reporting of receipts, disbursements and condominium unit sale closing particulars to Rialto.

5. Valente Court Action

- 5.1 Section 6 of the First Report (Appendix B) provided a summary of the ongoing litigation in the Valente Court Action. The Receiver provided an update on the status of the Valente Court Action in the Third Report (Appendix F).
- 5.2 As outlined in the First Report, the Valente Court Action has a long and complicated history. With the setting aside by the Court of Appeal of the trial judgment of Justice Brockenshire, the Valente Court Action is now a breach of contract claim. Because Portofino had posted with the Court a \$2,000,000 letter of credit as security in the Valente Court Action, the Valente Court Action was excluded from the operation of the stay of proceedings provided for in the Appointment Order.
- 5.3 It appeared to the Receiver that upon the Receiver's appointment the concerns that had previously existed and caused the Court to require the letter of credit to be posted with the Court as security in the Valente Court Action no longer existed. As such, the Receiver sought the advice and directions of the Court on issues relating to the letter of credit, the Receiver's future involvement in the trial and defence of the Valente Court Action, whether or not the Valente Court Action should continue to be exempted from the stay of proceedings in the receivership and whether the trial of the Valente Court Action should be adjourned until such time as it is determined that funds remain in the receivership proceeding after satisfaction of the secured claims to satisfy, in whole or part, the claims of unsecured creditors. The Receiver also brought a motion in the Valente Court Action seeking similar relief.
- 5.4 The motions in both the receivership proceeding and the Valente Court Action were heard by Justice Carey on February 23, 2015. In an endorsement dated February 26, 2015, Justice Carey provided directions to the Receiver in the receivership proceeding that the letter of credit was not to be cancelled and dismissed the motion in the Valente Court Action. Copies of Justice Carey's endorsement and Order are attached as **Appendix J**.
- 5.5 Justice Carey's Order was made in both the receivership proceeding and the Valente Court Action. The Receiver filed an appeal to the Court of Appeal from Justice

Carey's Order in the receivership proceeding. The Receiver also filed a motion with the Court of Appeal for leave to appeal Justice Carey's Order pursuant to section 193(e) of the *Bankruptcy and Insolvency Act* (the "Leave Motion").

- 5.6 The Leave Motion was heard by Justice LaForme, in chambers, on July 24, 2015. In an endorsement dated July 27, 2015, Justice LaForme dismissed the Leave Motion. A copy of Justice LaForme's endorsement is attached as **Appendix K**.
- 5.7 In addition to dismissing the Leave Motion, in his endorsement Justice LaForme held that there was no as of right appeal to the Court of Appeal from Justice Carey's Order in the receivership proceeding. After Justice LaForme's endorsement was released, the hearing of the appeal from Justice Carey's Order, which was scheduled for September 15, 2015, was cancelled by the Court of Appeal office.
- 5.8 After the release of Justice LaForme's endorsement, the Receiver and its counsel consulted with counsel for Rialto, as the primary secured creditor in the receivership estate, regarding the further prosecution of the appeal from Justice Carey's Order having regard to the costs of same. Given Justice LaForme's endorsement, the Receiver was concerned whether expending further costs in pursuing the appeal were warranted.
- 5.9 Through its counsel, Rialto indicated its support for the appeal to be pursued. Because the Receiver remained concerned regarding the costs of doing so, it was agreed between Rialto and the Receiver that Rialto would reimburse the Receiver for all costs incurred by the Receiver (and indemnify the Receiver for any adverse costs that might be made against it) in pursuing the appeal further.
- 5.10 Thereafter, the Receiver filed a motion with the Court of Appeal to review the Order of Justice LaForme and to restore to the hearing list the appeal from the Order of Justice Carey. The Receiver's motion was heard by a panel of the Court of Appeal on December 21, 2015 and was dismissed. A copy of the endorsement of the Court of Appeal is attached as **Appendix L**.
- 5.11 The trial of the Valente Court Action was adjourned in February, 2014 while the issues involving the letter of credit were addressed. With the dismissal by the Court of Appeal of the Receiver's motion to review the Order of Justice LaForme, those issues have been finally determined. As such, the Valente Court Action is now able

to move forward again.

- 5.12 The Receiver has retained William Sasso of Sutts Strosberg as trial counsel for the Valente Court Action. Mr. Sasso acted as counsel for Portofino and the other defendants on the appeals to the Divisional Court and Court of Appeal from the trial judgment of Justice Brockenshire.
- 5.13 The Valente Court Action is on the trial list for the week of June 20, 2016.
- 5.14 On April 8, 2016, the defendants, including Portofino, served a rule 49 offer to settle, a copy of which is attached as **Appendix M**.
- 5.15 Pursuant to the orders of the Court of Appeal and Justice Quinn by which the letter of credit remains in place as security for the breach of contract claim, Valente Real Estate is required to pay the costs of maintaining the letter of credit in place. Despite those orders, Valente Real Estate has failed to do so. Justice Carey dealt with that issue in his order (Appendix J). Justice Carey ordered Valente Real Estate to reimburse Portofino and pay to the Receiver the costs associated with maintaining the letter of credit from May 9, 2012 at a daily rate of \$54.80 except during such time that the Valente Court Action was struck from the trial list and his order was not final. Despite requests, Valente Real Estate has also failed to comply with the order of Justice Carey and make any payment to the Receiver for the costs of maintaining the letter of credit in place. The Receiver will be bringing a motion in the Valente Court Action to facilitate the registration of a writ of seizure and sale against Valente Real Estate for the amount of the unpaid costs and to strike the statement of claim for failure to comply with the order of Justice Carey and the previous orders of the Court.

6. Capaldi Construction Lien Actions

- 6.1 On October 25, 2013 two construction liens were registered against the Unsold Units as follows:
- (i) a construction lien in the principal amount of \$3,000,000 in favour of Dr. Dante Capaldi and 1287678 Ontario Inc. as instrument number CE587801; and
 - (ii) a construction lien in the principal amount of \$875,000 in favour of Wilma Capadi and Andreolli Investments Inc. as instrument number CE587802.
- 6.2 Actions to perfect the liens were commenced under court file numbers CV-13-20061 and CV-13-20062. Copies of the Statement of Claim are attached as **Appendices N and O**. Certificates of action were registered on title to the Unsold Units as instrument numbers CE588864 and CE588865.
- 6.3 The actions to perfect the liens were commenced on October 29, 2013. The actions have not been set down for trial and no order has been made for the trial of an action in which the liens may be enforced. More than two years having passed since the actions were commenced. As such, pursuant to section 37 of the *Construction Lien Act*, R.S.O. 1990 c. C.30, the liens have now expired.
- 6.4 Receiver's counsel has written to counsel for the lien claimants and requested that the liens be vacated from title. A copy of that correspondence is attached as **Appendix P**. Failing a satisfactory response, the Receiver will be bringing a motion to vacate the liens on the remaining Unsold Units.

7. Dalfidan Litigation

- 7.1 There is ongoing litigation between Dede Dalfidan carrying on business as Fidan Enterprise Contracting (“**Dalfidan**”), as plaintiff, and Portofino and Civa Stucco Supply Ltd. also known as Civa Stucco Supply Ltd. & Moulding (“**Civa**”), as defendants, in Court File No. 07-CV-8478 (the “**Dalfidan Action**”). Counsel for Dalfidan has advised that Civa is no longer defending the Dalfidan Action.
- 7.2 Civa was the stucco contractor for the Project. Dalfidan was a subcontractor to Civa. Dalfidan seeks payment of approximately \$230,000 alleged to be owing under its subcontract with Civa. Dalfidan also seeks payment from Portofino for additional services and materials in the amount of \$16,945.40. Dalfidan registered a construction lien against the Portofino condominium. Portofino defended the Dalfidan Action and, among other things, denies that any amount is owing by it to Dalfidan and any amount owing by Civa to Dalfidan is offset against costs incurred by Portofino in responding to Dalfidan’s lien claim.
- 7.3 Portofino vacated the registration of Dalfidan’s construction lien by posting security in the amount of \$290,465.07 by way of a lien bond issued by Lombard General Insurance Company. Thereafter, an order was issued limiting the extent of the security posted by Portofino to \$150,000.
- 7.4 The Dalfidan Action was scheduled to proceed to trial in September, 2014 but has not proceeded because of the receivership. Counsel for the Receiver and Dalfidan have engaged in settlement discussions, but no settlement has been reached. Because Portofino has posted security for Dalfidan’s lien, if a settlement cannot be reached, the action will have to proceed to trial.

8. Statement of Receipts and Disbursements of the Receiver

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

8.2 Receipts

- a) *Sale of units and surface parking (\$6,998,010.85)* — The Receiver received net proceeds of \$6,998,010.85 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 (\$1,729,747.60)* — The Receiver collected \$1,729,547.60 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) *Parking rent collected (\$23,159.69)* — The Receiver collected \$23,159.69 from the rental of Unsold Parking Units.
- e) *Interest (\$2,215.06)* — The Receiver received \$2,215.06 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates ("GIC") that matured or were redeemed. Interest has not been accrued on funds currently invested in GIC's and is recognized as it is received.

8.3 Disbursements

- a) *Property taxes (\$2,881,887.80)* — The Receiver has paid property taxes to the City of Windsor of \$2,881,887.60. This amount represents property tax arrears,

interest and penalties to August 2015 and current installment payments for the balance of 2015 and 2016 year to date.

- b) *Condominium common fees (\$594,990.33)* — The Receiver has paid \$594,990.33 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- c) *Receiver's fees (\$535,580.64)* – BDO's accounts for the period July 19, 2013 to April 9, 2014 in the amount of \$124,049.04, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim accounts for the period April 10, 2014 to January 15, 2016 in the amount of \$411,531.60 and is seeking approval of the Court for these invoices and its invoice for the period January 16, 2016 to March 10, 2016.
- d) *Legal fees (\$242,903.33)* – MT's accounts for the period September 9, 2013 to March 29, 2014 in the amount of \$66,207.75, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim accounts for the period April 1, 2014 to December 31, 2015 in the amount of \$176,695.58, excluding HST, and is seeking approval of the Court for these invoices.
- e) *Repairs and Maintenance (\$178,245.28)* – The Receiver has paid \$178,245.28 in repairs and maintenance to the Unsold Units, and repairs and enhanced landscaping to the west roof.
- f) *HST paid (\$129,774.74)* – The Receiver has paid \$129,774.74 in HST on its disbursements.
- g) *HST remitted (\$63,303.38)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has remitted \$63,303.38. This amount represents the HST collected, less any eligible input tax credits.
- h) *Property management fees (\$56,000.00)* — The Receiver has paid \$56,000.00 to Capaldi Holdings for property management of the Unsold Units.
- i) *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.

- j) *Utilities (\$31,542.79)* — The Receiver paid \$31,542.79 for utilities on vacant Unsold Units and two leased condominium units where utilities are paid by the Landlord.
- k) *Costs awarded – Valente Real Estate (\$30,393.34)* — The Receiver paid \$30,393.34 in legal costs awarded to Valente Real Estate in the Valente Court Action.
- l) *Bond premiums (\$30,003.00)* — The Receiver paid \$30,003.00 to Northridge for the premiums on bonds posted as security for: i) Tarion; and ii) Portofino litigation with Dede Dalfidan cob as Fidan Enterprise Contracting
- m) *Advertising (\$28,254.69)* — The Receiver paid \$28,254.69 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- n) *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.
- o) *Legal fees – Sutts Strosberg (\$5,000.00)* – The Receiver paid \$5,000.00 to Sutts Strosberg LLP to provide a review and chronology of the Valente Court Action for the Receiver’s counsel.
- p) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.
- q) *Insurance (\$2,741.04)* — The Receiver paid \$2,741.04 to Hub International for premiums on the Receiver’s liability insurance policy.

9. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 9.1 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.
- 9.2 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.
- 9.3 Attached as **Appendix R** is the fee affidavit of Stephen N. Cherniak sworn April 14, 2016 containing BDO's interim accounts as Receiver for the following periods:
- April 10, 2014 to May 22, 2014
 - May 23, 2014 to July 14, 2014
 - July 15, 2014 to August 22, 2014
 - August 23, 2014 to October 20, 2014
 - October 21, 2014 to December 15, 2014
 - December 16, 2015 to March 16, 2015
 - March 17, 2015 to May 19, 2015
 - May 20, 2015 to July 14, 2015
 - July 15, 2015 to August 13, 2015
 - August 14, 2015 to October 14, 2015
 - October 15, 2015 to November 21, 2015
 - November 22, 2015 to January 15, 2016
 - January 16, 2016 to March 10, 2016

9.4 The Receiver's fees to date, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$124,049.04
Fees paid, but not yet Court approved	-	\$411,531.60
Fees neither paid, nor Court approved	-	\$ 39,053.39
		<u>\$574,634.03</u>

9.5 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.

9.6 Attached as **Appendix S** is the fee affidavit of Sherry A. Kettle, sworn March 23, 2016 containing the interim accounts of MT for the period April 1, 2014 to February 24, 2016.

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

Fees paid and Court approved	-	\$
		066,207.75
Fees paid, but not yet Court approved	-	\$176,695.58
Fees neither paid, nor Court approved	-	\$ 10,159.02
		<u>\$253,062.35</u>

9.8 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.

10. Recommendations

- 10.1. The Receiver recommends and respectfully requests that the Court grant an order:
- (a) approving the Receiver's Fourth Report, and the activities and actions of the Receiver described therein;
 - (b) approving the Statements of Receipts and Disbursements;
 - (c) approving the Professional Fees;

All of which is Respectfully Submitted this 15th day of April, 2016.

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

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Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RREF II BHB IV PORTOFINO, LLC

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

July 13, 2016

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Appendices

- Appendix A** - Appointment Order dated October 29, 2013
- Appendix B** - Omnibus Approval and Vesting Order dated May 2, 2014
- Appendix C** - Statement of Receipts and Disbursements
- Appendix D** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn July 11, 2016
- Appendix E** - Fee affidavit of Tony Van Klink for the interim accounts of Miller Thomson LLP sworn July 13, 2016
- Appendix F** - Fee affidavit of William Sasso for the interim accounts of Sutts Strosberg sworn July 13, 2016
- Appendix G** - Independent Legal Opinion re: BMO security

1. Introduction and Background

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 has 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**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 31 Unsold Condominium Units and the defence of the Valente Court Action. To date, four reports 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 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 Because the Omnibus Approval and Vesting Order was obtained before the assignments of the BMO Mortgage, the schedule attached to the Omnibus Approval and Vesting Order of the claims to be deleted from title as the Unsold Units are sold does not make reference to those assignments. As such, an amendment to the Omnibus Approval and Vesting Order is required to delete the particulars of those assignments from the title to the Unsold Units which were sold by the Receiver after

the date of those assignments and from the title to the remaining Unsold Units as they are sold in the future.

- 1.2.11 The Receiver is presently holding net receipts of approximately \$4.15 million from the sale of units and the collection of rents. The Receiver wishes to make an interim distribution of \$4 million from those funds.

2. Terms of Reference

- 2.1 In preparing this Fifth 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 Fifth Report

- 3.1 This constitutes the Receiver's Fifth Report to the Court (the "**Fifth 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 Fourth Report; and
 - (ii) the status of the Valente Court Action.
 - (b) In support of an order of the Court:
 - (i) Amending the Omnibus Approval and Vesting Order to include in the list of instruments to be deleted from title on all future sales of the Unsold Units the following:
 - (I) instrument no. CE664524, being a Transfer of Charge from BMO to RREF;
 - (II) instrument no. CE715152, being a Transfer of Charge from RREF to 250 Ontario;
 - (III) instrument no. CE715282, being a Transfer of Charge from 250 Ontario to WFCU; and
 - (IV) instrument nos. CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562, being postponements of construction liens and certificates of action to the BMO Mortgage;
 - (ii) Deleting instrument nos. CE664524, CE715152, CE715282, CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 from title to the Unsold Units that have been sold by the Receiver against which the said instruments remain registered;
 - (iii) Approving the Fifth Report and the activities and conduct of the Receiver described herein;

- (iv) 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**");
- (v) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
- (vi) Approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**");
- (vii) Approving the professional fees and disbursements of Sutts Strosberg ("**SS**"), counsel retained by the Receiver on behalf of Portofino for the Valente Court Action ("**SS Fees**" and collectively with the BDO Fees and MT Fees, the "**Professional Fees**"); and
- (viii) Approving and authorizing the distribution of \$4,000,000 to WFCU from the funds on hand.

4. Receiver's Activities

- 4.1 It its Fourth Report the Receiver reported to the Court on its activities through April 15, 2016.
- 4.2 In this, the Fifth Report, the Receiver reports on its activities since the date of the Fourth 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 Since the Fourth Report, the Receiver has completed the sale of units 708 and 1101. Firm Agreements of Purchase and Sale have been entered into for the sale of units 103, 105, 304 and 1202. Agreements of Purchase and Sale which remain subject to buyer's conditions have been entered into for units 601 and 1501.
- 4.5 To date, the Receiver has sold 31 of the Unsold Condominium Units, including two unfinished units. Of these sales, 27 have been completed, with the sales of units 103, 105, 304 and 1202 scheduled to close on various dates in July and August 2016.
- 4.6 The Receiver has sold four (4) of the Unsold Parking Units, consisting of three surface level garages and one surface level parking space.
- 4.7 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 21 units remain unsold, 14 of which are fully finished and 7 are unfinished. In addition, 34 parking units and two 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:

Other Property Matters

- 4.8 Subsequent to the construction of the Portofino Condominium, the waterproof membrane over the underground parking garage failed. Portofino successfully sued the original contractor, but was unable to collect on the damages awarded. Through its property manager, the Receiver arranged for the replacement of the membrane at a cost of \$22,000, exclusive of HST. ECC 122 plans to create thirteen (13) additional surface visitor parking spaces in this area, at its own cost.
- 4.9 As condition of the sale of unit 1202, the Receiver arranged for the installation of the rooftop air conditioning condenser unit. At the time of the original construction, condenser units were not installed in eight (8) of the unfinished units. In addition, units 1402 and 1602 do not have a furnace in the unit.
- 4.10 Based on its experience in having unsuccessfully listed Unit 102 for sale, and other factors, the Receiver considered the assessed value of Units 101 and 102 to be higher than market value. The Receiver filed 2016 Requests for Reconsideration with the Municipal Property Assessment Corporation in respect of these two units, and is awaiting the outcome of that review.

Registration of Appointment Order on Unsold Units

- 4.11 Upon the appointment of the Receiver, the Receiver's legal counsel registered the Appointment Order on title to the Unsold Condominium Units. In May 2016 the Receiver determined that the Appointment Order had not been registered on title to the Unsold Parking Units and the Unsold Storage Units.
- 4.12 The Receiver authorized MT to register the Appointment Order on title to the remaining 34 Unsold Parking Units and two Unsold Storage Units. The Appointment Order was registered on May 30, 2016 as Instrument CE715104.

5. Valente Court Action

- 5.1 The First Report and Third Report provided a summary and subsequent update of the Valente Court Action. More recently, the Fourth Report and appendices J through M provided a detailed report on the current status of the Valente Court Action.
- 5.2 The Valente Court Action was on a running list for trial for the week of June 20, 2016 but was not reached. Counsel for the parties attended on a case conference before Justice Pomerance on June 22, 2016 at which time counsel for the Receiver requested a fixed trial date. Justice Pomerance directed that a further pre-trial be conducted to provide advice and directions to streamline the conduct of the trial if a settlement cannot be reached. The further pre-trial was held on June 29, 2016 before Justice King. The trial of the Valente Court Action is now scheduled for the fall of 2016.

6. Amendments to Omnibus Approval and Vesting Order

- 6.1 The Omnibus Approval and Vesting Order was made on May 2, 2014. Schedule "C" to the Omnibus Approval and Vesting Order lists the instruments to be deleted from title as the Unsold Units as they are sold.
- 6.2 In June 2015, BMO sold its loans with Portofino and the security for those loans, including the BMO Mortgage, to RREF. The Transfer of Charge from BMO to RREF for the BMO Mortgage was registered on June 29, 2015 as Instrument No. CE664524 against the Unsold Units owned by Portofino at that date.
- 6.3 In May 2016, RREF sold the Portofino loans and security which it had acquired from BMO to 250 Ontario. The Transfer of Charge from RREF to 250 Ontario for the BMO Mortgage was registered on May 30, 2016 as Instrument No. CE715152 against the Unsold Units owned by Portofino at that date.
- 6.4 On May 30, 2016, 250 Ontario further assigned to WFCU, by way of security, the Portofino loans and security which it purchased from RREF. The Transfer of Charge from 250 Ontario to WFCU for the BMO Mortgage was registered on May 31, 2016 as Instrument No. CE715282 against the Unsold Units owned by Portofino at that date.
- 6.5 On September 30, 2013 and October 25, 2013 a total of four construction liens were registered against the Unsold Units by Capaldi and parties related to Capaldi. Certificates of Action were later registered with respect to two of those construction liens on November 1, 2013. By Instruments CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 registered on May 30, 2016 the construction liens and certificates of action were postponed to the BMO Mortgage.
- 6.6 Because the Omnibus Approval and Vesting Order was made prior to the various assignments of the BMO Mortgage and the postponement of the construction liens and certificates of action, Schedule "C" to the Omnibus Approval and Vesting Order does not include Instrument number CE664524 (the Transfer of Charge from BMO to RREF), Instrument CE715152 (the Transfer of Charge from RREF to 250 Ontario), CE715282 (the Transfer of Charge from 250 Ontario to WFCU) and

Instruments CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 (the postponements of the construction liens and certificates of action).

- 6.7 Although instrument CE664524 (the Transfer of Charge from BMO to RREF) is not listed on Schedule "C" to the Omnibus Approval and Vesting Order, the Land Registrar has been deleting it from title to the Units as they are sold by the Receiver with the exception of parking unit 116, the sale of which was completed by the Receiver on October 16, 2015. MT is consulting with the Land Registrar regarding the deletion of instrument CE664524 from title to parking unit 116.
- 6.8 The Transfer of Charge from BMO to RREF (instrument CE664524), the Transfer of Charge from RREF to 250 Ontario (instrument CE715152), the Transfer of Charge from 250 Ontario to WFCU (instrument CE715282) and the postponements of the Capaldi liens and certificates of action (instruments CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562) remain registered on title to unit 1101, the sale of which was completed by the Receiver on July 5, 2016. That may, however, be a result of the Land Registrar not yet having certified title and deleting those instruments following the completion of that sale. MT is consulting with the Land Registrar regarding the deletion of those instruments from title to unit 1101.
- 6.9 The postponements of the Capaldi liens and certificates of action which were registered on May 30, 2016 also appear on title to unit 708, the sale of which was completed by the Receiver on May 16, 2016. MT is consulting with the Land Registrar regarding the deletion of the postponements from title to unit 708.
- 6.10 Depending on the outcome of the inquiries being made by MT with the Land Registrar, if needed, the Receiver seeks an order to delete instrument CE664524 (the Transfer of Charge from BMO to RREF), instrument CE715152 (the Transfer of Charge from RREF to 250 Ontario), instrument CE715282 (the Transfer of Charge from 250 Ontario to WFUC) and instruments CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 (the postponements of the construction liens and certificates of action) from title to all units sold by the Receiver against which those instruments remain registered.
- 6.11 The Receiver also seeks an order to amend the Omnibus Approval and Vesting Order to add to Schedule "C" Instrument No's CE664524, CE715152, CE715282,

CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 such that those instruments will be deleted from title to the remaining Unsold Units on the completion of the sales of those units.

7. Statement of Receipts and Disbursements of the Receiver

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

7.2 Receipts

- a) *Sale of units and surface parking (\$7,220,822.07)* — The Receiver received net proceeds of \$7,220,822.07 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 (\$1,791,119.60)* — The Receiver collected \$1,791,119.60 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 (\$23,929.69)* — The Receiver collected \$23,929.69 from the rental of Unsold Parking Units.
- f) *Interest (\$2,215.06)* — The Receiver received \$2,215.06 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates ("GIC") that matured or were redeemed. Interest has not been accrued on funds currently invested in GIC's and is recognized as it is received.

7.3 Disbursements

- a) *Property taxes (\$2,881,887.80)* — The Receiver has paid property taxes to the City of Windsor of \$2,881,887.60. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015 and 2016 year to date.
- b) *Condominium common fees (\$629,412.75)* — The Receiver has paid \$629,412.75 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- c) *Receiver's fees (\$610,676.86)* – BDO's accounts for the period July 19, 2013 to March 10, 2016 in the amount of \$574,634.03, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim account for the period March 11, 2016 to May 10, 2016 in the amount of \$36,042.83 and is seeking approval of the Court for this invoice and its invoice for the period May 11, 2016 to June 14, 2016.
- d) *Legal fees (\$260,630.54)* – MT's accounts for the period September 9, 2013 to February 24, 2016 in the amount of \$253,062.35, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim account for the period February 25, 2016 to April 30, 2016 in the amount of \$7,568.19 and is seeking approval of the Court of this invoice.
- e) *Repairs and Maintenance (\$206,721.81)* – The Receiver has paid \$206,721.81 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$148,409.32)* – The Receiver has paid \$149,409.32 in HST on its disbursements.
- g) *HST remitted (\$63,303.38)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has remitted \$63,303.38. This amount represents the HST collected, less any eligible input tax credits.

- h) *Property management fees (\$62,000.00)* — The Receiver has paid \$62,000.00 to Capaldi Holdings for property management of the Unsold Units.
- i) *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.
- j) *Utilities (\$33,801.17)* — The Receiver paid \$33,801.17 for utilities on vacant Unsold Units and two leased condominium units where utilities are paid by the Landlord.
- k) *Advertising (\$30,852.14)* — The Receiver paid \$30,852.14 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- l) *Bond premiums (\$30,753.00)* — The Receiver paid \$30,753.00 to Northridge for the premiums on bonds posted as security for: i) Tarion Warranty Corporation; and ii) Portofino litigation with Dede Dalfidan cob as Fidan Enterprise Contracting.
- m) *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.
- n) *Legal fees – Sutts Strosberg (\$18,763.25)* – The Receiver paid \$18,763.25 to Sutts Strosberg LLP to provide an initial review and chronology of the Valente Court Action for the Receiver’s counsel, and to continue the litigation on behalf of Portofino Corporation.
- o) *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
- p) *Insurance (\$5,212.08)* — The Receiver paid \$5,212.08 to Hub International for premiums on the Receiver’s liability insurance policy.
- q) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.

8. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 8.1 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.
- 8.2 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.
- 8.3 Attached as **Appendix D** is the fee affidavit of Stephen N. Cherniak sworn July 11, 2016 containing BDO's interim accounts as Receiver for the following periods:
- o March 11, 2016 to May 10, 2016
 - o May 11, 2016 to June 14, 2016
- 8.4 The Receiver's fees to date, exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|---------------------|
| Fees paid and Court approved | - | \$ 574,634.03 |
| Fees paid, but not yet Court approved | - | 36,042.83 |
| Fees neither paid, nor Court approved | - | 28,016.30 |
| | | <u>\$638,693.16</u> |
- 8.5 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.
- 8.6 Attached as **Appendix E** is the fee affidavit of Tony Van Klink, sworn July 13 2016, containing the interim accounts of MT for the period February 25, 2016 to June 30, 2016.

8.7 MT's fees to June 30, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 253,062.35
Fees paid, but not yet Court approved	-	\$ 7,568.19
Fees neither paid, nor Court approved	-	<u>\$ 12,644.10</u>
		<u>\$ 273,274.64</u>

8.8 Attached as **Appendix F** is the fee affidavit of William Sasso, sworn July 13, 2016, containing the interim accounts of SS for the period April 13, 2015 to June 30, 2016.

8.9 SS fees to June 30, 2016, exclusive of HST, are as follows:

Fees paid, but not yet Court approved	-	\$13,763.25
Fees neither paid, nor Court approved	-	<u>\$19,243.82</u>
		<u>\$33,007.07</u>

8.10 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.

9. Distribution

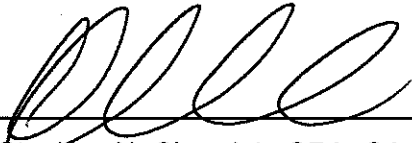
- 9.1 The Receiver obtained an independent legal opinion of MT indicating that, subject to the customary assumptions and qualifications, the BMO Mortgage is valid and enforceable in accordance with its terms and has priority over all other registered charges. A copy of the independent legal opinion of MT is attached as **Appendix G**.
- 9.2 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 million letter of credit posted by BMO on behalf of Portofino in the Valente Court Action. No payments have been made against that indebtedness since the Receiver's appointment.
- 9.3 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.
- 9.4 The Receiver has sufficient funds on hand to distribute \$4,000,000.
- 9.5 The Receiver seeks an Order authorizing it to distribute \$4,000,000 to WFCU from the funds on hand.

10. Recommendations

- 10.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Amending the Omnibus Approval and Vesting Order to include in the list of instruments to be deleted from title on all future sales of the Unsold Units the following:
 - (i) instrument no. CE664524, being a Transfer of Charge from BMO to RREF;
 - (ii) instrument no. CE715152, being a Transfer of Charge from RREF to 250 Ontario;
 - (iii) instrument no. CE715282, being a Transfer of Charge from 250 Ontario to WFCU; and
 - (iv) instrument nos. CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562, being postponements of construction liens and certificates of action to the BMO Mortgage;
 - (b) Deleting instrument nos. CE664524, CE715152, CE715282, CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 from title to the Unsold Units that have been sold by the Receiver against which the said instruments remain registered;
 - (c) Approving the Fifth Report and the activities and conduct of the Receiver described herein;
 - (d) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to June 30, 2016;
 - (e) Approving the Professional Fees; and
 - (f) Approving and authorizing the distribution of \$4,000,000 to WFCU from the funds on hand.

All of which is Respectfully Submitted this ^{13th} day of July, 2016.

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

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Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

November 9, 2016

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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** - Statement of Receipts and Disbursements
- Appendix E** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn October 18, 2016
- Appendix F** - Fee affidavit of Tony Van Klink for the interim accounts of Miller Thomson LLP sworn November 7, 2016
- Appendix G** - Fee affidavit of William Sasso for the interim accounts of Sutts Strosberg sworn November 8, 2016
- Appendix H** - Independent Legal Opinion re: BMO security

1. Introduction and Background

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 has 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**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 36 Unsold Condominium Units and the defence of the Valente Court Action. To date, six 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 Because the Omnibus Approval and Vesting Order was obtained before the assignments of the BMO Mortgage, the schedule attached to the Omnibus Approval and Vesting Order of the claims to be deleted from title as the Unsold Units are sold did not make reference to those assignments. Accordingly, as part of its Fifth Report the Receiver sought an amendment to the Omnibus Approval and Vesting Order to delete the particulars of those assignments from the title to the Unsold Units which

were sold by the Receiver after the date of those assignments and from the title to the remaining Unsold Units as they are sold in the future.

- 1.2.11 By order dated July 26, 2016 (the "**July 26, 2016 Order**") Mr. Justice Campbell, among other things, approved the amendments to the Omnibus Approval and Vesting Order. Subsequently, counsel to the Receiver deleted the assignments from title to the Unsold Units that were sold by the Receiver after the date of the assignments. A copy of the July 26, 2016 Order is attached as **Appendix C**.
- 1.2.12 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.
- 1.2.13 The Receiver is presently holding net receipts of approximately \$2,550,000 from the sale of units and the collection of rents. The Receiver wishes to make an interim distribution of \$2,400,000 from those funds.

2. Terms of Reference

- 2.1 In preparing this Sixth 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 Sixth Report

- 3.1 This constitutes the Receiver's Sixth Report to the Court (the "**Sixth 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 Fifth Report; and
 - (ii) the status of the Valente Court Action.
 - (b) In support of an order of the Court:
 - (i) Approving the Sixth 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 4, 2016 (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**");
 - (v) Approving the professional fees and disbursements of Sutts Strosberg ("**SS**"), counsel retained by the Receiver on behalf of Portofino for the Valente Court Action ("**SS Fees**" and collectively with the BDO Fees and MT Fees, the "**Professional Fees**"); and
 - (vi) Approving and authorizing the distribution of \$2,400,000 to WFCU from the funds on hand.

4. Receiver's Activities

- 4.1 In its Fifth Report, the Receiver reported to the Court on its activities through July 13, 2016.
- 4.2 In this, the Sixth Report, the Receiver reports on its activities since the date of the Fifth 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 The Fifth Report provided an update on sales that were pending at the time of the Fourth Report and new sales to July 13, 2016.
- 4.5 Since the Fifth Report, the Receiver has now completed the sale of units 103, 104, 105, 304, 309, 408, 601, 1202 and 1501. Agreements of Purchase and Sale which remain subject to buyer's conditions have been entered into for units 806, 1601 and 1602.
- 4.6 To date, the Receiver has sold 36 of the Unsold Condominium Units, including two unfinished units.
- 4.7 The Receiver has sold five (5) of the Unsold Parking Units, consisting of four surface level garages and one surface level parking space.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 16 units remain unsold, 9 of which are fully finished and 7 are unfinished. In addition, 33 parking units and two 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
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
		<u>53,685</u>	

Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
106	Finished	1,150
204	Finished	1,150
806	Finished	1,217
1201	Unfinished	2,233
1301	Finished	2,233
1302	Unfinished	2,450
1401	Finished	2,233
1402	Unfinished	2,450
1502	Finished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1603	Finished	2,450
1605	Finished	1,718

32,252

Other Matters

- 4.9 The Receiver engaged Portofino's external accountant to prepare financial statements and income tax returns for the fiscal years ended July 1, 2014 and July 1, 2015.

5. Valente Court Action

- 5.1 The First Report and Third Report provided a summary and subsequent update of the Valente Court Action. A detailed report on the status of the Valente Court Action was provided in the Fourth Report.
- 5.2 As noted in the Fifth Report, the Valente Court Action was on a running list for trial for the week of June 20, 2016 but a settlement was not reached. A case conference was held on June 22, 2016 and a pre-trial was held on June 29, 2016.
- 5.3 Since the date of the Fifth Report, further settlement offers have been exchanged but no settlement has been reached. The trial of the action is scheduled to start November 14, 2016.

6. Statement of Receipts and Disbursements of the Receiver

6.1 The Receiver maintains an account at BMO in London, Ontario. Attached as **Appendix D** 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 (\$9,834,595.17)* — The Receiver received net proceeds of \$9,834,595.17 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 (\$1,857,587.60)* — The Receiver collected \$1,857,587.60 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 (\$25,294.69)* — The Receiver collected \$25,294.69 from the rental of Unsold Parking Units.
- f) *Interest (\$18,383.59)* — The Receiver received \$18,383.59 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.

6.3 Disbursements

- a) *Property taxes (\$2,925,916.05)* — The Receiver has paid property taxes to the City of Windsor of \$2,925,916.05. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015 and 2016 year to date.
- b) *Receiver's fees (\$685,234.55)* – BDO's accounts for the period July 19, 2013 to June 14, 2016 in the amount of \$638,693.16, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim account for the period June 15, 2016 to August 7, 2016 in the amount of \$46,541.39 and is seeking approval of the Court for this invoice and its invoice for the period August 8, 2016 to September 26, 2016.
- c) *Condominium common fees (\$658,984.18)* — The Receiver has paid \$658,984.18 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$294,891.15)* – MT's accounts for the period September 9, 2013 to June 30, 2016 in the amount of \$273,274.64, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim account for the period July 1, 2016 to August 31, 2016 in the amount of \$21,616.51 and is seeking approval of the Court of this invoice.
- e) *Repairs and Maintenance (\$211,382.37)* – The Receiver has paid \$211,382.37 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$166,630.60)* – The Receiver has paid \$166,630.60 in HST on its disbursements.
- g) *HST remitted (\$112,610.71)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has remitted \$112,610.71. This amount represents the HST collected, less any eligible input tax credits.

- h) *Property management fees (\$68,000.00)* — The Receiver has paid \$68,000.00 to Capaldi Holdings for property management of the Unsold Units.
- i) *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.
- j) *Legal fees – Sutts Strosberg (\$38,007.07)* – The Receiver paid \$38,007.07 to SS to provide an initial review and chronology of the Valente Court Action for the Receiver's counsel, and to continue the litigation on behalf of Portofino Corporation.
- k) *Utilities (\$35,514.36)* — The Receiver paid \$35,514.36 for utilities on vacant Unsold Units and two leased condominium units where utilities are paid by the Landlord.
- l) *Advertising (\$34,433.76)* — The Receiver paid \$34,433.76 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- m) *Bond premiums (\$34,170.00)* — The Receiver paid \$34,170.00 to Northridge for the premiums on bonds posted as security for: i) Tarion Warranty Corporation; and ii) Portofino litigation with Dede Dalfidan cob as Fidan Enterprise Contracting.
- n) *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.
- o) *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.
- p) *Insurance (\$5,212.08)* — The Receiver paid \$5,212.08 to Hub International for premiums on the Receiver's liability insurance policy.
- q) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.

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

- 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 E** is the fee affidavit of Stephen N. Cherniak sworn October 18, 2016 containing BDO's interim accounts as Receiver for the following periods:
- o June 15, 2016 to August 7, 2016
 - o August 8, 2016 to September 26, 2016.
- 7.4 The Receiver's fees to date, exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|---------------------|
| Fees paid and Court approved | - | \$ 638,693.16 |
| Fees paid, but not yet Court approved | - | 46,541.39 |
| Fees neither paid, nor Court approved | - | <u>23,540.48</u> |
| | | <u>\$708,775.03</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 F** is the fee affidavit of Tony Van Klink, sworn November 7, 2016, containing the interim accounts of MT for the period June 21, 2016 to October 31, 2016.

7.7 MT's fees to October 31, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 273,274.64
Fees paid, but not yet Court approved	-	21,616.51
Fees neither paid, nor Court approved	-	<u>7,924.15</u>
		<u>\$ 302,815.30</u>

7.8 Attached as **Appendix G** is the fee affidavit of William Sasso, sworn November 8, 2016, containing the interim accounts of SS for the period July 6, 2016 to November 6, 2016.

7.9 SS fees to November 6, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$33,007.07
Fees neither paid, nor Court approved	-	<u>19,640.39</u>
		<u>\$52,647.46</u>

7.10 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, MT and SS in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

8. Distribution

- 8.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the "**July 11th 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 Fifth Report. Attached hereto as **Appendix H** is a copy of a letter from MT confirming that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from July 11, 2016 to November 2, 2016.
- 8.2 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 million letter of credit posted by BMO on behalf of Portofino in the Valente Court Action.
- 8.3 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.
- 8.4 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.
- 8.5 The Receiver has sufficient funds on hand to distribute a further \$2,400,000.
- 8.6 The Receiver seeks an Order authorizing it to distribute \$2,400,000 to WFCU from the funds on hand.

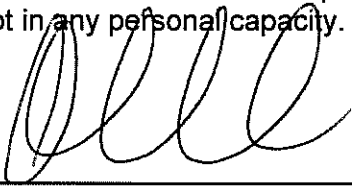
9. Recommendations

9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:

- (a) Approving the Sixth 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 4, 2016;
- (c) Approving the Professional Fees; and
- (d) Approving and authorizing the distribution of \$2,400,000 to WFCU from the funds on hand.

All of which is Respectfully Submitted this 9th day of November, 2016.

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

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Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

February 7, 2017

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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** - Minutes of Settlement
- Appendix E** - Judgment of Justice Thomas dated January 3, 2017
- Appendix F** - Miller Thomson letter dated February 3, 2017
- Appendix G** - Statement of Receipts and Disbursements
- Appendix H** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn February 7, 2017
- Appendix I** - Fee affidavit of Sherry A. Kettle for the interim accounts of Miller Thomson LLP sworn February 8, 2017
- Appendix J** - Fee affidavit of William Sasso for the interim accounts of Sutts Strosberg sworn February 8, 2017

1. Introduction and Background

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 has 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**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 38 Unsold Condominium Units and the defence of the Valente Court Action. To date, seven 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.

2. Terms of Reference

- 2.1 In preparing this Seventh 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 Seventh Report

- 3.1 This constitutes the Receiver's Seventh Report to the Court (the "**Seventh 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 Sixth Report;
 - (ii) the resolution of the Valente Court Action; and
 - (iii) the status of other litigation that Portofino is a party to
 - (b) In support of an order of the Court:
 - (i) Approving the Seventh Report and the activities and conduct of the Receiver described herein;
 - (ii) Approving and authorizing 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;
 - (iii) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017 (the "**Statement of Receipts and Disbursements**");
 - (iv) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (v) Approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**"); and
 - (vi) Approving the professional fees and disbursements of Sutts Strosberg LLP ("**SS**"), counsel retained by the Receiver on behalf of Portofino for

the Valente Court Action (“**SS Fees**” and collectively with the BDO Fees and MT Fees, the “**Professional Fees**”)

4. Receiver's Activities

- 4.1 In its Sixth Report, the Receiver reported to the Court on its activities through November 9, 2016.
- 4.2 In this, the Seventh Report, the Receiver reports on its activities since the date of the Sixth 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 Sixth Report, the Receiver has completed the sale of unit 806 and entered into a firm Agreement of Purchase and Sale for unit 1401 that is scheduled to close on February 17, 2017. The conditional sales of units 1601 and 1602 reported in the Sixth Report are not proceeding. Unit 1602 continues to be listed on the Multiple Listing Service ("MLS").
- 4.6 To date, the Receiver has sold 38 of the Unsold Condominium Units, including two unfinished units.
- 4.7 The Receiver has sold five (5) of the Unsold Parking Units, consisting of four surface level garages and one surface level parking space.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 14 units remain unsold, 7 of which are fully finished and 7 are unfinished. In addition, 33 parking units and two 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
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
		<u>57,135</u>	

Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
106	Finished	1,150
204	Finished	1,150
1201	Unfinished	2,233
1301	Finished	2,233
1302	Unfinished	2,450
1402	Unfinished	2,450
1502	Finished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1603	Finished	2,450
1605	Finished	1,718

28,802

Other Matters

- 4.9 The Receiver engaged Portofino's external accountant to prepare financial statements and income tax returns for the fiscal year ended July 1, 2016. The Receiver is now current in filing the income tax returns of Portofino, and the returns have been assessed by Canada Revenue Agency.

5. Valente Court Action

- 5.1 The First Report and Third Report provided a summary and subsequent update of the Valente Court Action. A detailed report on the status of the Valente Court Action was provided in the Fourth Report.
- 5.2 The trial of the Valente Court Action commenced on November 14, 2016. Prior to the commencement of the trial there were settlement discussions, but no settlement was reached. On November 15, 2016 further settlement discussions were held which resulted in a settlement being reached. Minutes of Settlement were drafted and signed. A copy of the signed Minutes of Settlement is attached as **Appendix D**.
- 5.3 Under the terms of the Minutes of Settlement, Portofino was to pay to the plaintiff \$630,000 within five business days.
- 5.4 Prior to the receivership, Portofino posted with the court a \$2 million letter of credit as security for the claims made in the Valente Court Action. As part of the arrangements made in connection with the assignment of the BMO security and debt to RREF, 250 Ontario and ultimately WFCU, 250 Ontario posted with the lawyers for RREF security for the contingent liability represented by the letter of credit. When the Minutes of Settlement were signed, it was intended that the \$630,000 to be paid by Portofino to the plaintiff under the Minutes of Settlement would be funded from the security posted by 250 Ontario with the lawyers for RREF. That funding did not occur.
- 5.5 Not having received payment of the amounts required by the Minutes of Settlement, the plaintiff brought a motion for judgment in accordance with the settlement. On that motion a judgment was signed by Mr. Justice Thomas, on consent, a copy of which is attached as **Appendix E**.
- 5.6 Steps have been taken by the plaintiff in accordance with that judgment to draw upon the letter of credit for the amounts provided for in the judgment (\$630,000 plus interest and costs of the motion). After the judgment is satisfied, the letter of credit is to be released and the Valente litigation will thereupon be complete.

6. Other Litigation

- 6.1 In November 2016, the Receiver learned that Portofino was a party to numerous legal actions including a number of actions that were approaching administrative dismissal due to the length of time that had elapsed since the commencement of the litigation. Several of the actions originated from pre-construction sales of condominium units in 2003 – 2005 that could not be completed by the buyer.
- 6.2 In order to prevent the administrative dismissal of the actions on January 1, 2017, and afford the opportunity for the Receiver to evaluate the actions, the Receiver's legal counsel filed motions returnable on February 28, 2017 for orders that status hearings be held.
- 6.3 The Receiver's counsel has reviewed the various actions, to the extent that documents were available. MT's letter to the Receiver, summarizing the outstanding actions, is attached as **Appendix F**.
- 6.4 The Receiver's counsel determined that in one of the actions - Betschel's Kitchen Centre Inc. vs Portofino Corporation, Court File No. 07-CV-9730 ("**Betschel's Kitchen Action**") – Portofino had posted security with the Court which, with accrued interest, totalled \$148,897 as of November 30, 2016. The Receiver in consultation with its legal counsel is assessing the ability of the Receiver to obtain payment out of Court of those funds.
- 6.5 As recommended by MT, the Receiver seeks the approval of the Court to take no further steps with respect to the following actions (being the actions summarized in MT's Report in which a judgment has not been obtained, save and except the Betschel's Kitchen Action), and to make the actions available to any creditors of Portofino to pursue for their own benefit, but at their own risk and expense. If no creditor takes an assignment of the actions, the actions will be abandoned by the Receiver.

Opposing Party	Court File Number
Adam, Richard	N/A
B & R Crevatin Electric Inc.	CV-08-12314 SR
Betschel, David	CV-09-13288SR
Eagle Mechanical Group Inc. / Osvaldo Rizzo	CV-11-16298
Jeji, Karamit	CV-09-13287 SR
Loucks, Richard	CV-09-13289 SR
Mind Quest Engineering Inc. / Dennis Pupulin	CV-10-15068
Spec Coatings Inc.	CV-09-13226 CM
Villata, Dino & Tina	CV-09-13290 SR

7. Statement of Receipts and Disbursements of the Receiver

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

7.2 Receipts

- a) *Sale of units and surface parking (\$10,306,427.16)* — The Receiver received net proceeds of \$10,306,427.16 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 (\$1,901,137.60)* — The Receiver collected \$1,901,137.60 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 (\$27,079.69)* — The Receiver collected \$27,079.69 from the rental of Unsold Parking Units.
- f) *Interest (\$20,155.82)* — The Receiver received \$20,155.82 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.

7.3 Disbursements

- a) *Property taxes (\$2,946,945.52)* — The Receiver has paid property taxes to the City of Windsor of \$2,946,945.52. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015 and 2016.
- b) *Receiver's fees (\$743,168.56)* – BDO's accounts for the period July 19, 2013 to September 26, 2016 in the amount of \$708,775.53, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim account for the period September 27, 2016 to November 22, 2016 in the amount of \$34,393.03 and is seeking approval of the Court for this invoice and its invoice for the period November 23, 2016 to January 13, 2017.
- c) *Condominium common fees (\$691,921.05)* — The Receiver has paid \$691,921.05 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$328,201.31)* – MT's accounts for the period September 9, 2013 to October 31, 2016 in the amount of \$302,815.30, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim account for the period November 1, 2016 to December 29, 2016 in the amount of \$25,386.01 and is seeking approval of the Court of this invoice.
- e) *Repairs and Maintenance (\$214,204.05)* – The Receiver has paid \$214,204.05 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$185,059.21)* – The Receiver has paid \$185,059.21 in HST on its disbursements.
- g) *HST remitted (\$115,452.23)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has

remitted \$115,452.23. This amount represents the HST collected, less any eligible input tax credits.

- h) *Legal fees – Sutts Strosberg (\$78,662.72)* – The Receiver engaged 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. SS’s accounts for the period July 6, 2016 to November 6, 2016 in the amount of \$52,647.46, excluding HST, were previously approved by the Court and paid. The Receiver paid SS’s interim account for the period November 7, 2016 to December 30, 2016 in the amount of \$21,015.26 and is seeking approval of the Court of this invoice.
- i) *Property management fees (\$70,000.00)* — The Receiver has paid \$70,000.00 to Capaldi Holdings for property management of the Unsold Units.
- j) *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.
- k) *Advertising (\$38,178.71)* — The Receiver paid \$38,178.71 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- l) *Bond premiums (\$37,587.00)* — The Receiver paid \$37,587.00 to Northbridge General Insurance Corporation for the premiums on bonds posted as security for:
 - i) Tarion Warranty Corporation; and
 - ii) Portofino litigation with Dede Dalfidan cob as Fidan Enterprise Contracting.
- m) *Utilities (\$36,489.15)* — The Receiver paid \$36,489.15 for utilities on vacant Unsold Units and two leased condominium units where utilities were paid by the Landlord.
- n) *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.
- o) *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.

- p) *Insurance (\$5,212.08)* — The Receiver paid \$5,212.08 to Hub International for premiums on the Receiver's liability insurance policy.
- q) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.

8. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 8.1 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.
- 8.2 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.
- 8.3 Attached as **Appendix H** is the fee affidavit of Stephen N. Cherniak sworn February 7, 2017 containing BDO's interim accounts as Receiver for the following periods:
- o September 27, 2016 to November 22, 2016
 - o November 23, 2016 to January 13, 2017
- 8.4 The Receiver's fees to date, exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|---------------------|
| Fees paid and Court approved | - | \$ 708,775.53 |
| Fees paid, but not yet Court approved | - | 34,393.93 |
| Fees neither paid, nor Court approved | - | 30,080.68 |
| | | <u>\$773,249.64</u> |
- 8.5 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.
- 8.6 Attached as **Appendix I** is the fee affidavit of Sherry A. Kettle, sworn February 8, 2017, containing the interim accounts of MT for the period November 1, 2016 to December 31, 2017.
- 8.7 MT's fees to December 31, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 302,815.30
Fees paid, but not yet Court approved	-	<u>25,386.01</u>
		<u>\$328,201.31</u>

8.8 Attached as **Appendix J** is the fee affidavit of William V. Sasso, sworn February 8, containing the interim accounts of SS for the period November 7, 2016 to December 30, 2016.

8.9 SS fees to December 30, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$52,647.46
Fees paid, but not yet Court approved	-	<u>21,015.26</u>
		<u>\$73,662.72</u>

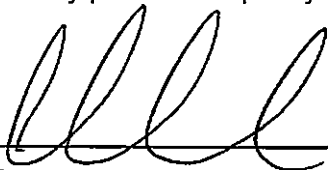
8.10 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver, MT and SS in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional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

9. Recommendations

- 9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Approving the Seventh Report and the activities and conduct of the Receiver described herein;
 - (b) Approving and authorizing the Receiver to take no further steps with respect to certain litigation, as set out in Section 6 of the Seventh Report, but make the actions available to any creditor of Portofino to pursue at their own risk and expense;
 - (c) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017; and
 - (d) Approving the Professional Fees;

All of which is Respectfully Submitted this 1th day of February, 2017.

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

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Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

August 22, 2017

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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** - Seventh Report of the Receiver dated February 7, 2017
- Appendix E** - Order dated February 28, 2017
- Appendix F** - Letter from Receiver to creditors dated March 8, 2017 re: assignment of Portofino legal actions
- Appendix G** - Miller Thomson LLP letter to creditors dated April 12, 2017
- Appendix H** - Minutes of Settlement dated June 29, 2017
- Appendix I** - Statement of Receipts and Disbursements
- Appendix J** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn August 18, 2017
- Appendix K** - Fee affidavit of Tony Van Klink for the interim accounts of Miller Thomson LLP sworn August 18, 2017
- Appendix L** - Legal Opinion of Miller Thomson LLP dated July 11, 2016
- Appendix M** - Legal Opinion of Miller Thomson LLP dated November 7, 2016
- Appendix N** - Legal Opinion of Miller Thomson LLP dated August 17, 2017

1. Introduction and Background

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 has 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**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 41 Unsold Condominium Units and the defence of the Valente Court Action. To date, eight 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 Receiver's Seventh Report to Court dated February 7, 2017 (the "**Seventh Report**"), but make the actions available to any creditor of Portofino to pursue at their own risk and expense. The Seventh Report (without appendices) is attached as **Appendix D**. A copy of the February 28, 2017 Order is attached as **Appendix E**.
- 1.2.14 The Receiver is presently holding net receipts of approximately \$1,930,000 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

- 2.1 In preparing this Eighth 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 Eighth Report

- 3.1 This constitutes the Receiver's Eighth Report to the Court (the "**Eighth 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 Seventh Report;
 - (ii) the completion of the Valente Court Action;
 - (iii) the status of the various litigation that was the subject of the February 28, 2017 Order; and
 - (iv) the status of 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**").
 - (b) In support of an order of the Court:
 - (i) Approving the Eighth 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 July 21, 2017 (the "**Statement of Receipts and Disbursements**");
 - (iii) Authorizing the Receiver to enter into a settlement agreement with Dalfidan whereby the Receiver would pay \$80,000 in full and final settlement of the Dalfidan Action;
 - (iv) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");

- (v) 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
- (vi) Approving and authorizing the distribution of \$1,700,000 to WFCU from the funds on hand.

4. Receiver's Activities

- 4.1 In its Seventh Report, the Receiver reported to the Court on its activities through February 7, 2017.
- 4.2 In this, the Eighth Report, the Receiver reports on its activities since the date of the Seventh 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 Seventh Report, the Receiver has completed the sales of units 1301, 204 and 1603, and entered into a firm Agreement of Purchase and Sale for unit 1502 that is scheduled to close on October 3, 2017. Unit 1602 (unfinished) continues to be listed on the Multiple Listing Service ("MLS").
- 4.6 To date, the Receiver has sold 42 of the Unsold Condominium Units, including two 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, 10 units remain unsold, 3 of which are fully finished and 7 are unfinished. In addition, 32 parking units and two 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
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
1502	Finished	2,450	03-Oct-17
		<u>65,418</u>	

Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
106	Finished	1,150
1201	Unfinished	2,233
1302	Unfinished	2,450
1402	Unfinished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1605	Finished	1,718

20,519

Tarion Warranty Corporation

- 4.9 The Receiver's Third Report to the Court, and the Receivers' Fourth Report to the Court (the "**Fourth 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 Northridge General Insurance Corporation ("**Northridge**") on a bond, in the amount of \$640,000, posted as security for Tarion.
- 4.10 As noted in the Fourth Report, Essex Standard Condominium Corporation No. 122 ("**ECC 122**") engaged an engineer to conduct the outstanding Performance Audit required by Tarion. Mr. Tom Park of OHE Consultants ("**OHE**") attended at Portofino Condominium in February 2016, and provided his written Performance Audit Tracking Summary Report (the "**PATS Report**") on August 5, 2016.
- 4.11 On November 1, 2016, the President of ECC 122 provided Tarion with written comments, and an action plan, regarding the relatively small number of items that OHE had noted as still incomplete (the "**November 1, 2016 Tarion Letter**").
- 4.12 In April 2017, a representative of Tarion attended at a meeting of the Board of Directors of ECC 122, and subsequently viewed Portofino Condominium, including the items noted in the November 1, 2016 Tarion Letter.
- 4.13 On May 17, 2017, the Board of Directors of ECC 122 passed a resolution confirming that all items noted in the original, June 16, 2008 Performance Audit and the PATS Report are now resolved, with the exception of those noted in the November 1, 2016 Tarion Letter.
- 4.14 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. The Receiver has not yet been advised of the revised bond amount.

5. Litigation

Valente Court Action

- 5.1 The Seventh Report outlined the settlement of the Valente Court Action and the funding of the settlement amount of \$630,000.
- 5.2 As set out in the Seventh Report, the plaintiff drew upon the letter of credit posted as security in the action to satisfy the settlement amount of \$630,000.00. The letter of credit was thereafter delivered up to the Receiver by the Accountant of the Superior Court of Justice. The letter of credit has since been cancelled. This settlement has been completed and the Valente Court Action is now concluded.

Actions subject to the February 28, 2017 Order

- 5.3 Section 6 of the Seventh Report outlined the recommendation of the Receiver's counsel with respect to numerous other legal actions, including several that were approaching administrative dismissal due to the length of time that had elapsed since the commencement of the litigation.
- 5.4 The February 28, 2017 Order, 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.
- 5.5 On March 8, 2017 the Receiver notified all known creditors, including parties to litigation with Portofino, either by electronic mail or registered mail, of the February 28, 2017 Order and the mechanism for creditors to take an assignment of the actions (the "**Actions**"). A copy of the March 8, 2017 letter from the Receiver, including the creditor list, is attached as **Appendix F**.
- 5.6 The Receiver and its legal counsel received various enquiries from creditors regarding the process to take an assignment of the Actions. However, no creditors indicated their intention to take an assignment of the Actions.
- 5.7 By letter to all creditors dated April 12, 2017, a copy of which is attached as

Appendix G, the Receiver's legal counsel advised all known creditors that the Actions were being abandoned by the Trustee.

- 5.8 On April 12, 2017 the Receiver's legal counsel advised the Court that the Actions were being abandoned and withdrew motions for the scheduling of status hearings in certain of the Actions.

The Dalfidan Action

- 5.9 As set out in the Fourth Report, Civa Stucco Supply Ltd, also known as Civa Stucco Supply Ltd. & Moulding ("Civa") was the stucco contractor for the Project. Dalfidan was a subcontractor to Civa. Dalfidan seeks payment of approximately \$230,000 alleged to be owing under its subcontract with Civa. Dalfidan also seeks payment from Portofino for additional services and materials in the amount of \$16,945.40.
- 5.10 Dalfidan registered a construction lien against the Portofino condominium. Portofino vacated the registration of Dalfidan's construction lien by posting security in the amount of \$290,465.07 by way of a lien bond issued by Lombard General Insurance Company. Thereafter, an order was issued limiting the extent of the security posted by Portofino to \$150,000. A bond in this amount was issued by Northridge, on which the Receiver has continued to pay the premiums.
- 5.11 The Dalfidan Action was scheduled to proceed to trial in September, 2014 but has not proceeded because of the receivership.
- 5.12 Settlement discussions have resulted in a settlement being reached, subject to Court approval. Minutes of Settlement have been executed. A copy of the executed Minutes of Settlement is attached as **Appendix H**.
- 5.13 Under the terms of the Minutes of Settlement, Portofino is to pay the plaintiff Dalfidan \$80,000 on or before 30 days following the approval of the settlement by the Court.
- 5.14 In the Receiver's view, the settlement of the Dalfidan Action is reasonable and in the best interests of the creditors given the time, expense and uncertainty involved in the litigation process.

6. Statement of Receipts and Disbursements of the Receiver

6.1 The Receiver maintains an account at BMO in London, Ontario. Attached as **Appendix I** 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 (\$11,979,284.61)* — The Receiver received net proceeds of \$11,979,284.61 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 (\$1,950,387.60)* — The Receiver collected \$1,950,387.60 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 (\$30,814.69)* — The Receiver collected \$30,814.69 from the rental of Unsold Parking Units.
- f) *Interest (\$20,155.82)* — The Receiver received \$20,155.82 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 (\$3,004,706.56)* — The Receiver has paid property taxes to the City of Windsor of \$3,004,706.56. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015, 2016, and 2017 year to date.
- b) *Receiver's fees (\$836,448.52)* – BDO's accounts for the period July 19, 2013 to January 13, 2017 in the amount of \$773,249.64, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim accounts for the period January 14, 2017 to May 17, 2017 in the amount of \$63,199.28 and is seeking approval of the Court for these invoices.
- c) *Condominium common fees (\$726,121.44)* — The Receiver has paid \$726,121.44 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$364,642.44)* – MT's accounts for the period September 9, 2013 to December 31, 2016 in the amount of \$328,201.31, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim accounts for the period January 1, 2017 to May 31, 2017 in the amount of \$36,441.13, and is seeking approval of the Court of these invoices.
- e) *Repairs and Maintenance (\$218,068.95)* – The Receiver has paid \$218,068.95 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$202,727.91)* – The Receiver has paid \$202,727.91 in HST on its disbursements.
- g) *HST remitted (\$116,483.44)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has remitted \$116,483.44. This amount represents the HST collected, less any eligible input tax credits.
- h) *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.

- i) *Property management fees (\$70,000.00)* — The Receiver has paid \$70,000.00 to Capaldi Holdings for property management of the Unsold Units.
- j) *Bond premiums (\$41,004.00)* — The Receiver paid \$41,004.00 to Northbridge General Insurance Corporation for the premiums on bonds posted as security for:
 - i) Tarion Warranty Corporation; and
 - ii) Portofino litigation with Dalfidan.
- k) *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.
- l) *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.
- m) *Utilities (\$37,641.05)* — The Receiver paid \$37,641.05 for utilities on vacant Unsold Units and leased condominium units where utilities were paid by the Landlord.
- n) *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.
- o) *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.
- p) *Insurance (\$7,372.00)* — The Receiver paid \$7,372.00 to Hub International for premiums on the Receiver's liability insurance policy.
- q) *Miscellaneous (\$4,640.00)* — The Receiver has paid \$4,640.00 in miscellaneous expenses.
- r) *Accounting fees (\$4,250.00)* — The Receiver has paid \$4,250.00 to Michael Greenaway Professional Corporation for the preparation of 2013 through 2016 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 property manager to assist in the leasing of vacant Unsold Units.

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

- 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 J** is the fee affidavit of Stephen N. Cherniak sworn August 18, 2017 containing BDO's interim accounts as Receiver for the following periods:
- o January 14, 2017 to March 13, 2017
 - o March 14, 2017 to May 17, 2017
- 7.4 The Receiver's fees to date, exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|---------------|
| Fees paid and Court approved | - | \$ 773,249.64 |
| Fees paid, but not yet Court approved | - | 63,199.28 |
| Fees neither paid, nor Court approved | - | - |
| | | \$836,448.52 |
- 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 K** is the fee affidavit of Tony Van Klink, sworn August 18, 2017, containing the interim accounts of MT for the period January 3, 2017 to July 26, 2017.
- 7.7 MT's fees to date, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 328,201.31
Fees paid, but not yet Court approved	-	36,441.13
Fees neither paid, nor Court approved	-	<u>2,781.80</u>
		<u>\$367,424.24</u>

7.8 The fees of SS, to date, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$73,662.72
Fees paid, but not yet Court approved	-	-
Fees neither paid, nor Court approved	-	<u>-</u>
		<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, MT and SS in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

8. Distribution

- 8.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the "**July 11th 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 L**. MT confirmed that the opinions expressed in the July 11th 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 M**. MT has confirmed that the opinions expressed in the July 11th 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 is attached hereto as **Appendix N**.
- 8.2 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 million letter of credit posted by BMO on behalf of Portofino in the Valente Court Action.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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. Although the Receiver will require additional information from 250 Ontario to complete its review, the Receiver is satisfied that 250 Ontario's indebtedness exceeds the

distributions to date, plus the proposed distribution of \$1,700,000.

- 8.7 The Receiver has sufficient funds on hand to distribute a further \$1,700,000.
- 8.8 The Receiver seeks an Order authorizing it to distribute \$1,700,000 to WFCU from the funds on hand.

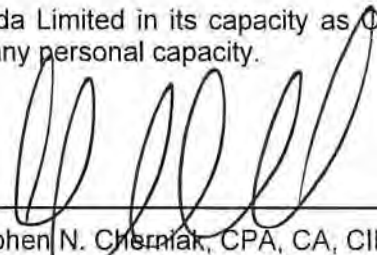
9. Recommendations

9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:

- (a) Approving the Eighth 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 July 21, 2017;
- (c) Authorizing the Receiver to enter into a settlement agreement with Dalfidan whereby the Receiver would pay \$80,000 in full and final settlement of the Dalfidan Action;
- (d) Approving the Professional Fees; and
- (e) Approving and authorizing the distribution of \$1,700,000 to WFCU from the funds on hand.

All of which is Respectfully Submitted this 22nd day of August, 2017.

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

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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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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

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

- 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

- 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

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

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.

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- 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. ²⁷⁰

- 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 International²⁷¹ 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

- 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>
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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

- 8.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the “**July 11th 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 11th 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 11th 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 11th 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 \$2,400,000²⁷⁵ 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

- 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 23rd 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

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**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

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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

- 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

- 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

- 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

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

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

- 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>\$1,039,628.71</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

- 7.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the “**July 11th 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 11th 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 11th 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 11th 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 11th 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.

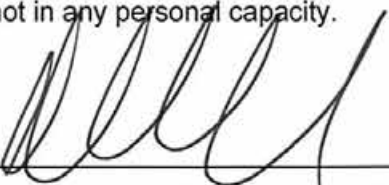
- 7.7 As set out in paragraphs 1.17 – 1.22 of this Report, to date the Receiver has distributed \$9.8 million to WFCU on account of the secured claim under the BMO Mortgage.
- 7.8 At the Receiver's request, 250 Ontario provided the Receiver with a loan statement at August 8, 2017. The Receiver conducted 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

- 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 “C”

#	Suite No.	Model	Size (sq. ft)	Sale Price	\$ per sq. ft	Closing Date	Buyer
1	1108	Palermo	1,151	\$ 215,000	187	05-May-14	Quan Shi
2	704	San Remo	1,282	296,000	231	30-Jun-14	Cornel Rizea
3	904	Costa Brava	1,602	324,000	202	31-Oct-14	Al-Karim Samnani
4	804	San Remo	1,282	257,500	201	04-Dec-14	Hanan Mousa
5	1102	Venice	1,547	310,000	200	09-Jan-15	Muna Al-Haddad
6	1104	Costa Brava	1,602	325,000	203	12-Feb-15	Henry & Joanne Oorebeek
7	803	Capri	1,217	255,000	210	29-May-15	Mohammadreza Khademiparvin
8	1404	Biarritz	2,233	447,500	200	30-Jun-15	Yun Loo & Ho Lee
9	701	Marseilles	1,150	225,000	196	24-Jul-15	Marc Elias, Issa & Nawal Khouri
10	402	Miramar	1,062	230,000	217	30-Jul-15	Mohammad Howidi
11	1105	Venice	1,547	335,000	217	31-Jul-15	Ahmed Azab
12	1002	Venice	1,547	315,000	204	14-Aug-15	Fraser & Olivia Previl
13	508	Marseilles	1,150	218,500	190	03-Sep-15	Manjit Dhaliwal
14	805	San Remo	1,282	262,500	205	23-Sep-15	Marah & Sarwat Shehata
15	203	Miramar	1,062	215,000	202	23-Oct-15	James & Ann Davis
16	1303	Trieste	2,450	475,000	194	16-Nov-15	Morton Wholesale Ltd.
17	901	Genova	1,593	320,000	201	20-Nov-15	1156722 Ontario Limited
18	903	Costa Brava	1,602	330,000	206	20-Nov-15	Syed Ahmed
19	1403	Trieste	2,450	472,500	193	01-Dec-15	Leslie Meredith Lattimore
20	603	Capri	1,217	258,000	212	03-Dec-15	Joy Lenore Bloomfield
21	906	Genova	1,593	320,000	201	11-Dec-15	Jean-Guy & Suzanne Cayen
22	1503	Trieste (unfinished)	2,450	465,000	190	25-Jan-16	Frank Bisson
23	1008	Palermo	1,151	201,000	175	19-Feb-16	David Matthew Del Greco
24	401	Marseilles	1,150	230,000	200	08-Mar-16	Marah & Sarwat Shehata
25	1001	Genova	1,593	340,000	213	24-Mar-16	Kathy Diane Lafreniere
26	708	Marseilles	1,150	230,000	200	16-May-16	Vincenzo Caccavo
27	1101	Genova	1,593	340,000	213	05-Jul-16	Anlawar Azizah
28	1202	Trieste (unfinished)	2,450	395,000	161	13-Jul-16	Norman & Mary Fretz
29	103	San Remo	1,282	251,000	196	15-Jul-16	Davinderpal Singh Sethi
30	304	San Remo	1,282	260,000	203	02-Aug-16	Pooja Kapoor
31	601	Marseilles	1,150	245,355	213	05-Aug-16	Liam Diego Mastronardi
32	105	Miramar	1,062	220,000	207	30-Aug-16	Ronald & Ruth Cottingham
33	1501	Biarritz	2,233	445,000	199	20-Sep-16	Ronald & Patricia Columbus
34	104	Capri	1,217	244,000	200	03-Oct-16	Adnan Ehsan Bhalli
35	408	Marseilles	1,150	243,000	211	03-Oct-16	1034436 Ontario Limited
36	309	Palermo	1,151	208,100	181	02-Nov-16	James & Lily Young
37	806	Capri	1,217	280,355	230	06-Jan-17	Liam Diego Mastronardi
38	1401	Biarritz	2,233	470,000	210	17-Feb-17	Medhat Moustafa Ibrahim Radwin
39	1301	Biarritz	2,233	485,000	217	31-Mar-17	Jeffrey Sinclair Dason
40	204	Marseilles	1,150	237,000	206	16-Jun-17	Jessica Jakubowski / Sandra Jakubowska
41	1603	Trieste	2,450	540,000	220	22-Jun-17	Wilma & Dante Capaldi
42	1302	Trieste (unfinished)	2,450	402,000	164	25-Sep-17	Qiong Ren
43	1502	Trieste	2,450	500,000	204	03-Oct-17	1034436 Ontario Limited
44	102	Monaco	2,081	390,000	187	08-Jan-18	James & Lily Young
45	1602	Trieste (unfinished)	2,450	416,500	170	31-Jan-18	Daniel Watters & Christine Cartier-Lozon
46	1605	Toulon	1,718	320,000	186	29-Mar-18	Sam Daraiche
47	1402	Trieste (unfinished)	2,450	400,000	163	23-Apr-18	Lauren Dimenna
48	1201	Biarritz (unfinished)	2,233	370,000	166	23-May-18	JY International Inc.
49	1601	Biarritz (unfinished)	2,233	385,000	172	22-Jun-18	2121945 Ontario Inc.
50	101	Monte Carlo (unfinished)	2,036	280,000	138	13-Jul-18	Lily Young
51	1505	Toulon (unfinished)	1,718	255,000	148	22-Aug-18	Sang Thi Nguyen
52	106	Marseilles	1,150	222,000	193	08-Apr-20	Li Hua Liao & Saihui Ning
				\$ 16,676,810			

APPENDIX “D”

TARION WARRANTY CORPORATION BOND
(Condominiums Type C or D under Builder Bulletin 19)

BOND NO.: 3500177

AMOUNT: \$2,460,000.00

KNOW ALL PERSONS BY THESE PRESENTS, that we Portofino Corporation, as Principal (hereinafter called the "Principal") and Lombard General Insurance Company of Canada, as Surety, (hereinafter called the "Surety"), are held and firmly bound unto Tarion Warranty Corporation, (hereinafter called "Tarion"), as Oblige, in the aggregate sum of **Two Million Four Hundred and Sixty Thousand Dollars (\$2,460,000.00)** lawful money of Canada, (the "Face Amount of the Bond") for the payment whereof the said Principal and Surety bind themselves jointly and severally firmly by these presents.

WHEREAS:

- (A) By virtue of the provisions of the Ontario New Home Warranties Plan Act R.S.O. 1990, Chapter 0.31 (the "Act") the Principal is or has applied to be registered with Tarion as a "Vendor" or "Builder" or both (as each term is defined in the Act);
- (B) By an agreement entered into or to be entered into between the Principal and Tarion (the "Vendor/Builder Agreement"), the Principal has agreed with Tarion to perform diligently or cause to be performed certain obligations imposed on the Principal under the Ontario New Home Warranties Plan (the "Plan") and under any agreement made by the Principal with Tarion in respect of the Plan;
- (C) The Principal has undertaken to act as a vendor and/or builder of a type C or D residential condominium development (the "Development") as defined by Tarion Builder Bulletin 28 (as revised from time to time) subject in whole or in part to the provisions of Part 3 of the *Ontario Building Code* and the provisions of Tarion Builder Bulletin 19 (as revised from time to time) and known as "Portofino Riverside Condominiums" and containing 123 dwelling units (hereinafter collectively referred to as the "Units" and individually as a "Unit");
- (D) A purchaser or owner of a Unit as defined in the Act or regulations thereunder (a "Purchaser") is entitled to certain warranties and compensation under Sections 13 and 14 of the Act;
- (E) The Principal has requested that the Surety enter into the within Bond (the "Bond") in favour of Tarion as additional security to Tarion for the due performance by the Principal of its obligations under the Act.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall perform its obligations to Tarion under the Vendor/Builder Agreement, the Act, the regulations thereunder and the applicable Builder Bulletins then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Principal shall be in default of its aforesaid obligations to Tarion, Tarion having to perform the Principal's obligations to the Purchasers under the Act, then the Surety shall be obligated as set out below:

1. INTERPRETATION:

- (a) All expressions defined in the Act or in the regulations thereunder shall have the same meanings when used in this Bond.
- (b) For the purposes of this Bond, "Damages" means the lesser of:
 - (i) The payment, including interest which has accrued thereon calculated pursuant to the *Condominium Act* as amended from time to time (the "Condominium Act"), claimed pursuant to Section 14(1) of the Act by a Purchaser of a Unit; or
 - (ii) Twenty Thousand Dollars (\$20,000), plus interest which has accrued thereon pursuant to the *Condominium Act*,
- (c) In addition to the amount calculated pursuant to subsection (b), "Damages" shall also include Tarion's administration fee on all claims paid or payable, in the amount of 15% of the amount paid or to be paid (the "Administration Fee") and interest on the amount of such claims plus the Administration Fee, at the rate of 1.5% per month calculated daily.

2. BOND OBLIGATIONS:

The Surety shall be obligated to Tarion under this Bond only as follows:

- (a) Under Section 14 (1) of the Act, for an amount equal to the Damages multiplied by the number of Units in the Development.
- (b) Under Section 14 (3) of the Act, for any claim(s) for breaches of warranty in the Common Elements of the Development, which shall be limited to an amount which is the lesser of:
 - (i) Two Million, Five Hundred Thousand Dollars (\$2,500,000.00); or
 - (ii) an amount equal to Fifty Thousand Dollars (\$50,000.00) multiplied by the number of Units in the Development; or
 - (iii) the Face Amount of the Bond.
- (c) Under Section 14 (3) of the Act, any claim(s) for breaches of warranty made in respect of a Unit shall be limited to an amount which will not exceed \$100,000.00.
- (d) For any and all costs incurred by Tarion in the enforcement of the Principal's obligations under Builder Bulletin 19 (as revised from time to time) *Condominium Projects: Design and Field Review Reporting*.
- (e) All obligations of the Surety, pursuant to subsections (a), (b) and (c) above shall be increased by the amount of interest paid by Tarion, as well as the amounts contemplated by Section 1(c) hereof, but not to exceed the Face Amount of the Bond.
- (f) In the event of a default by the Principal, as hereinafter contemplated by Section 5 hereof, this Bond shall remain in force under Section 14 (1) and 14(3) of the Act.

3. TERMINATION OF BOND OBLIGATIONS

The Surety shall cease to be obligated to Tarion under this Bond as follows:

- (a) with respect to the obligations of the Surety under Section 2 (a) and (e) of this Bond, upon delivery to each Purchaser of a registerable transfer of their respective unit.
- (b) with respect to the obligations of the Surety under Section 2 (b), (c), (d) and (e) of this Bond, **upon the later of:**
 - (i) the expiry of one (1) year from the date the warranty under Section 13 (1)(a) of the Act takes effect; and two (2) years from the date of warranty under Regulation 892, Sections 14 through 19;
 - (ii) the 100% release by Tarion of the Surety pursuant to a Builder Bulletin 19 (as revised from time to time) Final Report (the "**Bulletin 19 Final Report**") acceptable to Tarion; or
 - (iii) the resolution, to the satisfaction of Tarion, of claims made to Tarion by the condominium corporation, as defined by the Condominium Act (the "**Condominium Corporation**") and/or Unit Purchasers, where such claims are deemed to be valid by Tarion, pursuant to the Act.
- (c) upon the expiry of the current Tarion registration of the Principal, provided that not less than two (2) months prior written notice of the effective date of Bond cancellation (the "**Notice**") is given by the Surety to each of the Registrar of Tarion and the Principal, **and provided that** the liability of the Surety under the Bond shall continue in respect of all Units and Common Elements in the Development, enrolled or which should have been enrolled in the Plan by the Principal prior to the effective date of Bond cancellation, until the Principal shall have fulfilled all of his, her or its obligations under the Plan in respect of such Units and Common Elements in the Development.

4. REDUCTION OF BOND AMOUNT

In the event that the face amount of the Bond is greater than the maximum amount of the liabilities of Tarion under Sections 14 (1) and 14(3) of the Act, the face amount of this Bond shall be reduced to the amount of the said maximum liabilities. Notwithstanding the foregoing it is specifically agreed that the face amount of the Bond may be reduced to a lesser sum only as agreed to in writing from time to time by Tarion.

5. DEFAULT

Where the Principal named herein has failed to:

- (a) comply with its obligations to a Purchaser pursuant to a purchase agreement as defined by the regulations under the Act, such that Tarion is obligated to the Purchaser under Section 14 (1) or 14 (3) of the Act; or
- (b) ensure that the Development is constructed in accordance with the Vendor's warranty obligations under the Act, and Regulations;

Tarion may declare this Bond or a portion thereof forfeited, and thereupon any amounts paid or payable by Tarion to correct the Principal's default, plus interest and administration fees, shall become due and payable by the Surety on demand as a debt to Tarion without further proof or need for inquiry by the Surety. Provided however that Tarion will deliver to the Surety, at such time as Tarion declares the Bond or a portion thereof to be forfeited, a certificate signed by Tarion agreeing and/or confirming that monies drawn pursuant to this Bond are drawn in respect of obligations incurred or to be incurred by the Principal to Tarion pursuant to the provisions of the Act, the regulations thereunder, its policies and/or practices.

6. MISCELLANEOUS

- (a) The Principal hereby covenants, promises and agrees that if, as a result of this Bond, the Surety pays any sum of money to Tarion, its successors or assigns, then the Principal shall reimburse the said sum of money immediately to the Surety, together with interest thereon.
- (b) The liability of the Surety hereunder, shall be limited to the amount of the Bond as presently written, subject to any reduction calculated in accordance with Section 4 of this Bond.
- (c) No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Surety and Tarion, and their respective successors or assigns.
- (d) If at the expiry of the liability as provided in the Bond, there shall be any proceeds remaining, Tarion shall pay such proceeds to the Surety.

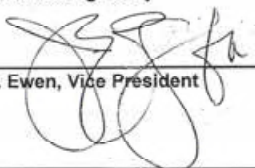
DATED at Toronto this 6th day of December, 2005.

LOMBARD GENERAL INSURANCE COMPANY OF CANADA

PORTOFINO CORPORATION


 Per: _____
 Title Authorized Signatory

Per: _____
 Title


 Per: _____
 Title R.A. Ewen, Vice President c/s

Per: _____
 Title

I/we have the authority to bind the Corporation

APPENDIX “E”

Court File No.: 07-CV-9730

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

)

TUESDAY, THE 1st

)

JUSTICE CAREY

)

DAY OF MARCH, 2022

)

BETWEEN:

BETSCHEL'S KITCHEN CENTRE INC.

Plaintiff

- and -

PORTOFINO CORPORATION

Defendant

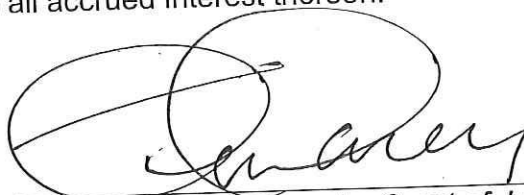
ORDER

THIS MOTION made by BDO Canada Limited (the "Receiver"), the court-appointed receiver of the assets, undertakings and properties of the defendant, Portofino Corporation, for (i) an Order dismissing the within action for delay, and (ii) directing the Accountant of the Superior Court of Justice to pay to the Receiver the sum of \$116,514.11 paid into Court to the credit of this action on or about June 20, 2007, plus all accrued interest thereon, was heard this day via judicial videoconference at 245 Windsor Avenue, Windsor, Ontario.

ON READING the Motion Record and on hearing the submissions of counsel for the Receiver, and such other counsel that were present as listed on the participant information sheet, no one appearing for any other person, although properly served as appears from the affidavit of service, filed:

1. THIS COURT ORDERS that the within action be and the same is hereby dismissed for delay; and

2. THIS COURT ORDERS that the Accountant of the Superior Court of Justice shall pay out of Court to the Receiver the sum of \$116,514.11 paid into Court to the credit of this action on or about June 20, 2007, plus all accrued interest thereon.



Justice, Ontario Superior Court of Justice

BETSCHHEL'S KITCHEN CENTRE INC. and PORTOFINO CORPORATION
Plaintiff Defendant

Court File No.: 07-CV-9730

**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
Tel: 519.931.3509
Fax: 519.858.8511
Email: tvanklink@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

Friday...DAY, THE 21st
DAY OF JUNE, 2007

BETWEEN:

(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

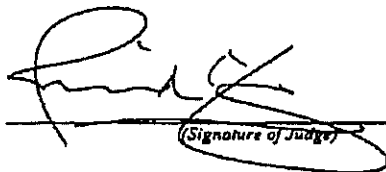
charged to the purchaser(s) together with an allowance for GST thereon pending the final determination of plaintiff's commission right thereto, if any.

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)

ENTRANCE 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”



SHIBLEY RIGHTON LLP
Barristers and Solicitors

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.



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.

PORTOFINO CORPORATION INVESTMENT CERTIFICATESMC CLIENT/MATTER #INVEST. AMOUNT

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/Toussignant - 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
		Matter Total		4,830.58
		00073 - s/t Steven Hearn, Unit 1105 - 1225 River		
		996116	02/12/2009 CAD Client A/R	1,426.69
		Matter Total		1,426.69
		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
		Matter Total		8,135.75
		00076 - s/t Marc Kobrosli, Unit 1008 - 1225 Rive		
		1010998	05/20/2009 CAD Client A/R	290.85
		Matter Total		290.85
		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
		Matter Total		6,010.97
		00091 - s/t Kaveh Mobin, Unit 805 - 1225 Riversi		
		1010991	05/20/2009 CAD Client A/R	305.29
		Matter Total		305.29
		00092 - s/t Tony Darvishian, Unit 804 - 1225 Riv		
		1010997	05/20/2009 CAD Client A/R	295.58
		Matter Total		295.58
		00101 - s/t Cornel Rizea, Unit 704 - 1225 Rivers		
		988923	12/12/2008 CAD Client A/R	1,424.66
		Matter Total		1,424.66
		00105 - s/t Michal Chlumecky, 908 - 1225 Riversi		
		997919	02/27/2009 CAD Client A/R	182.98
		Matter Total		182.98
		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	Matter Total			7,671.97
		00112 - s/t Melnik, Rozalia, 1505-1225 Riverside	1075997	08/16/2010	CAD Client AVR	567.26
			Matter Total			567.26
		00114 - Potential Breach of Contract with Betsch	949526	04/21/2008	CAD Client AVR	7,765.12
			1090221	11/29/2010	CAD Client AVR	14,809.37
			Matter Total			22,574.49
		00118 - Registration of Condominium Declaration	914462	09/14/2007	CAD Client AVR	9,731.25
			Matter Total			9,731.25
		00120 - Corporate Records Maintenance	1072233	07/27/2010	CAD Client AVR	452.00
			Matter Total			452.00
		00121 - ats. Michael Hablb - breach of contract	1055365	03/31/2010	CAD Client AVR	4,740.76
			1067938	06/24/2010	CAD Client AVR	1,937.64
			Matter Total			6,678.40
		00123 - Appeal Matters with Remo Valente Real Es	948170	04/10/2008	CAD Client AVR	10,313.10
			Matter Total			10,313.10
		00124 - Application v. Designers Kitchen for pos	1098245	01/14/2011	CAD Client AVR	447.10
			Matter Total			447.10
		00131 - Review of Forbearance Agreement with the	1101244	02/09/2011	CAD Client AVR	1,019.38
			Matter Total			1,019.38
		00133 - Transfer to Westview Park Luxury Gardens	1118808	06/17/2011	CAD Client AVR	616.60
			Matter Total			616.60

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
		Matter Total					1,007.94
		00143 - Revision of Security to Sutt's Strosberg	1192357	01/15/2013	CAD	Client A/R	956.41
		Matter Total					956.41
		00145 - Mortgage Amending Agreement - Bank of Mo	1214636	07/31/2013	CAD	Client A/R	903.42
		Matter Total					903.42
		Total for Portofino Corporation					94,212.85

APPENDIX “H”

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

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 26th day of April, 2013.

PORTOFINO CORPORATION

per: 

ASO - I have authority to bind the corporation.

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
1023685	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
1072293	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 Sutt	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 Sutt's Strosberg	956.41	956.41
					93,919.57	

SCHEDULE "A"



APPENDIX “I”

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.

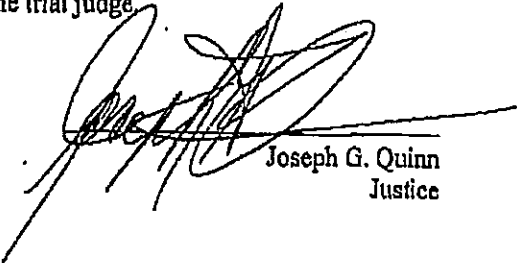
Page: 2

- [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.

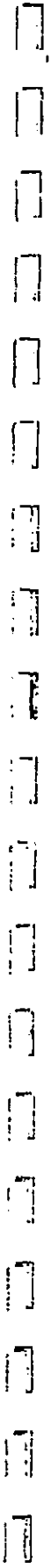
- [7] The appellate courts set aside the trial judgment but not on the basis of this finding. Justice Brockenshire's finding is at the very least persuasive evidence that there is a risk that the defendant Dante J. Capaldi may dispose of his assets to avoid the possible consequences of this litigation.
- [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.

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



Joseph G. Quinn
Justice

Released: May 4, 2012



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 “J”

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 “K”

Gino Morga Q.C.

Barristers and Solicitors

334

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 “L”



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: 337
 2510 Ouellette Avenue, Suite 301, Windsor, Ontario, N6X 1L4
 Main 519 969-9844 Toll Free 1-866-422-7988
 Facsimile 519 969-8045

TORONTO OFFICE:
 250 University Avenue, Suite 703, 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

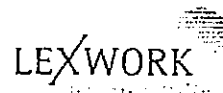
By:

J.L. Goldberg
 Jerry L. Goldberg

/s

Encl.

(dictated, signed in the writer's absence)



APPENDIX “M”



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

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 Marga (w/o encl.)
11678466.1

APPENDIX “N”



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

WINDSOR OFFICE:
2510 Ouellette Avenue, Suite 301, Windsor, Ontario, N8X 1L4
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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

Via email to tvanklink@millertthomson.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 24th last, further to Mr. Goldberg's February 14th letter and your conference call with him on February 24th.

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 “O”

Court File No. _____
(To be issued)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

WESTVIEW PARK LUXURY GARDENS (2006) INC.

Applicant

and

PORTOFINO CORPORATION

Respondent

**AFFIDAVIT OF DANTE CAPALDI
Sworn on February 12, 2018**

I, Dante Capaldi, of the City of Windsor, in the County of Essex, MAKE OATH AND
SAY AS FOLLOWS:

1. I am a Director and Officer of Portofino Corporation, Westview Park Luxury Gardens (2006) Inc., Capaldi Corporation and of 2043571 Ontario Inc., and as such have knowledge of the matters hereinafter deposed.
2. Portofino Corporation was previously known as Westview Park Gardens (2004) Inc. ("Westview 2004"). ***Attached hereto and marked as Exhibit "A" to this my affidavit is a true copy of Articles of Incorporation for Westview Park***

Gardens (2004) Inc. They demonstrate that Westview 2004 was incorporated on May 27, 2004.

3. On or about June 4, 2004 Westview 2004 acquired vacant lands in the Town of LaSalle, in the County of Essex more particularly described as:

Lots 12 to 15 inclusive, and Part of Block "W" and 'AB" on Registered Plan 1007

Lots 322 to 335, Plan 827 in the Town of LaSalle in the County of Essex
(hereinafter referred to as the "LaSalle property".)

Attached hereto and marked as Exhibit "B" to this my affidavit is a true copy of a Transfer from the vendor, 1425336 Ontario Inc. to Westview 2004, registered on June 4, 2004.

4. The Agreement of Purchase and Sale to purchase the LaSalle property from the vendor, 1425336 Ontario Inc. ("1425336") had been entered into by another corporation that I control, Capaldi Corporation. The purchase price agreed was \$600,000. A deposit was required to be paid on acceptance of the agreement in the amount of \$30,000. Capaldi Corporation paid the deposit. ***Attached hereto and marked as Exhibit "C" to this my affidavit is a true copy of a cheque stub dated December 21, 2003 payable to Fazio & Associates representing the payment of the deposit under the Agreement of Purchase and Sale, together with a copy of the bank statement of Capaldi Corporation for the month of December 2003.***

5. The advance of \$30,000 by Capaldi Corporation for the deposit on the purchase of the LaSalle property was recorded in the General Journal of Capaldi Corporation as a loan. ***Attached hereto and marked as Exhibit "D" to this my affidavit is a true copy of an excerpt from the General Journal of Portofino Corporation with an entry dated June 3, 2004 showing "due to Capaldi Corp." the amount of \$30,000.***

6. Westview 2004 was incorporated for the purpose of taking title to the LaSalle property and pursuing the land development and building. It was not until immediately before the closing date of June 3, 2004, that Capaldi Corporation assigned the Agreement to Westview 2004.

7. The Agreement provided for the purchase to be financed by mortgage back to the vendor, 1425336, in the amount of \$480,000. ***Attached hereto and marked as Exhibit "E" to this my affidavit is a true copy of a Charge/Mortgage from Westview 2004, Chargor to 1425336, Chargee, registered on June 4, 2004.***

8. The balance of the purchase price plus GST in the amount of \$42,000 was payable on closing. ***Attached hereto and marked as Exhibit "F" to this my affidavit is a true copy of the Statement of Adjustments prepared by my lawyers, Miller Canfield, in respect of the transaction, adjusted as of June 3, 2004.*** The balance due on closing was \$90,096.87.

9. The trust statement produced by Miller Canfield describes the source of the funds received to pay the balance due on closing. Another corporation that I controlled, 2043571 Ontario Inc., provided \$99,000 to the trust account of Miller Canfield to close the purchase transaction. ***Attached hereto and marked as Exhibit "G" to this my affidavit is a true copy of the Miller Canfield trust statement dated July 12, 2004. Attached hereto and marked as Exhibit "H" to this my affidavit is a true copy of an excerpt from the General Journal of Portofino Corporation with an entry dated June 3, 2004 showing "due to 2043571 Ontario" the amount of \$99,000 and "due to Capaldi Corporation" in the amount of \$30,000.*** These entries were made by my wife, Wilma Andreolli Capaldi ("Wilma Capaldi"), who kept the books for the corporations that I controlled.
10. No security for the monies advanced by Capaldi Corporation and by 2043571 Ontario Inc., was registered at or after the time of the advances.
11. In or about 2005 I arranged to re-finance the charge/mortgage to 1425336 by raising money from several sources. My lawyer, Jerry Goldberg, ("Goldberg") arranged for his wife, Francis Goldberg, and a person named Arnold Manias ("Manias") to collectively advance a total of \$379,371. On November 18, 2005 a Charge/Mortgage to TD Canada Trust, as trustee for Goldberg, and Francis Goldberg and Manias, as Chargees, was registered on title of the LaSalle property to secure the new financing (the "Goldberg Charge"). ***Attached hereto and***

marked as Exhibit "I" is a true copy of a Charge registered on November 18, 2005 in the amount of \$380,000.

12. Goldberg also registered a charge/mortgage for the land transfer that he volunteered to advance in the amount of \$8,000. ***Attached hereto and marked as Exhibit "J" is a true copy of a Charge registered on June 15, 2011 in the amount of \$8,000.***

13. I arranged for Capaldi Corporation to advance \$140,000 to Westview 2004 to make up the required balance to pay off the mortgage to 1425336 and the associated expenses. No security was taken from Westview 2004 for the advance. ***Attached hereto and marked as Exhibit "K" to this my affidavit is a true copy of a trust statement from Miller Canfield dated November 24, 2005 re "Discharge of Mortgage with 1425336 Ontario Inc. vacant lands LaSalle, Ontario".*** The statement lists the persons and entities who advanced the funds for the refinancing. It also records how the funds received from the new funders were disbursed to pay off the mortgage held by 1425336.

14. The name of the corporation, Westview 2004, was changed to Portofino Corporation on or about July 20, 2005. I decided to use Westview 2004 as a vehicle to develop another project on a different parcel called Portofino Riverside Tower because a corporation already registered with Tarion was needed to pursue the Portofino development and meet time-sensitive commitments to purchasers.

Attached hereto and marked as Exhibit "L" to this my affidavit is a true copy of the Articles of Amendment dated July 20, 2005.

15. The unrecorded debt obligations of Westview 2004 were assumed by a new corporation that I incorporated for the purpose of going ahead with the Westview project on the LaSalle property, called Westview Park Luxury Gardens (2006) Inc. ("Westview 2006"), including the debts to Capaldi Corporation and 2043571 Ontario Inc. for part of the purchase price, in the amount of \$126,000 and the advance to fund the refinancing of the vendor take back mortgage in the amount of \$140,000. Wilma Capaldi reversed the entries to the General Journal of Westview 2004 on or about February 2, 2006 and made the same entries in Westview 2006 on or about August 31, 2006. She then made a journal entry in the books of Westview 2006 on the same day to record the funds advanced by Goldberg et al. and by Capaldi Corporation for the refinancing. ***Attached hereto and marked as Exhibit "M" to this my affidavit are true copies of the General Journal entries as well as the reversal of the previous General Journal entry to Westview 2004 made on February 24, 2006.***

16. The LaSalle property was not conveyed to Westview 2006 as planned until on or about June 15, 2011. This was the result of an oversight, which was prolonged due to being distracted with the challenges of managing the development, finances and sale of numerous projects during a difficult period in the economy. Starting in 2006, Westview 2006 paid all financial obligations relating to the LaSalle property, including property tax and interest on the Goldberg Charge.

17. In or about 2011, I instructed the lawyer for my corporations, Goldberg to transfer the LaSalle property from Portofino Corporation to Westview 2006. I instructed him that the consideration was to be based on the existing obligations of Westview 2004 in respect of the land cost, which was \$600,000. Goldberg drew up the closing documents and I attended at his office to sign them on behalf of both the transferor and transferee. I relied on Goldberg's expertise to draw up the necessary documents to effect the transfer, and did not question or consider why a new mortgage was being given for \$280,000 when a debt obligation of \$269,000 from Westview 2006 to Portofino Corporation already existed and documented as an unsecured obligation of Westview 2006. In fact, there was an additional obligation of \$8,000 for the Goldberg mortgage that had not been recorded in the financial records of Westview 2006, by reason of an oversight, which brought the total existing obligation to \$277,000.

18. On or about June 15, 2011, a Transfer was registered by Goldberg, who acted for the corporations on both sides of the transaction, from Portofino Corporation to Westview 2006. The consideration for the transaction, as described in the transfer, was the assumption of the first mortgage of \$380,000 and a vendor-take-back mortgage in the amount of \$280,000. ***Attached hereto and marked as Exhibit "N" to this my affidavit is a true copy of the Transfer registered on June 15, 2011. Attached hereto and marked as Exhibit "O" to this my affidavit is a true copy of a Charge/Mortgage from Westview 2006 to Portofino Corporation registered on June 15, 2011.***

19. Up to that point, there had been no security taken by Capaldi Corporation or by 2043571 Ontario Inc. for the advances they had made to Westview 2004 to partially fund the purchase price of the LaSalle land and to partially fund the refinancing, but the debts existed and had been recorded in the books of Westview 2006. Effectively, at the time that Portofino Corporation received the vendor take back mortgage from the transferee, Westview 2006, Portofino Corporation was holding its mortgage on the LaSalle property to the extent of \$239,000 in trust for Capaldi Corporation and to the extent of \$30,000 in trust for 2043571 Ontario Inc.
20. The loans from Capaldi Corporation and 2043571 Ontario Inc. were recorded in the Financial Statements of Westview 2006 in its initial Financial Statement for the year end August 31, 2006. ***Attached hereto and marked as Exhibit "P" to this my affidavit is a true copy of the Financial Statement of Westview 2006 for the year end August 31, 2007, which has comparative figures for the previous yearend.***
21. The loans from Capaldi Corporation and 2043571 Ontario Inc. were never recorded in the Financial Statements of Westview 2004. ***Attached hereto and marked as Exhibit "Q" to this my affidavit is a true copy of the Financial Statements of Portofino Corporation for the year ending July 1, 2006.*** Those statements also include the comparative figures for the year ending July 1, 2005, as there were no separate statements done for that year end. These demonstrate that there was never a loan receivable in respect of the advances made on account

of the LaSalle property recorded as an asset of Westview 2004/Portofino Corporation.

22. The loans by Capaldi Corporation to Westview 2004/Portofino Corporation were recorded in its Financial Statements. ***Attached hereto and marked as Exhibit "R" to this my affidavit is a true copy of the Financial Statements of Capaldi Corporation for the year ends August 31, 2004, 2005, 2006 and 2007.***

23. Financial Statements were never prepared for 2043571 Ontario Inc. as it was not an active corporation.

24. I therefore believe that there was no consideration given by Westview 2006 for the Charge it granted to Portofino Corporation on June 15, 2011.

25. A Receiver was appointed for Portofino Corporation by order of Justice Thomas on October 29, 2013. ***Attached hereto to this my affidavit and marked as Exhibit "S" is a true copy of the Order of Justice Thomas dated October 29, 2013.***

26. The Receiver, BDO, registered a Notice of its receivership interest under section 71 of the Land Titles Act, RSO 1990 c. L.5. ***Attached hereto to this my affidavit and marked as Exhibit "T" is a true copy of the Notice registered on August 8, 2017.***

27. This affidavit is made in support of an application to rectify the title of the lands described in Schedule A to the Notice of Application by discharging a Charge

registered by Portofino Corporation against the said lands on June 15, 2011, or in the alternative, for a declaration that the Charge registered by Portofino Corporation against the said lands on June 15, 2011 is held in trust for Westview 2006, and is not made for any other or improper purpose.

SWORN BEFORE ME at
the City of Windsor, in
the Province of Ontario,
this 12 day of February,
2018

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)
)
)
)


DANTE CAPALDI


A COMMISSIONER FOR TAKING AFFIDAVITS

Shery Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

*THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*

A handwritten signature in blue ink, appearing to be 'S. Trombley', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

Request ID: 006133736
Demande n°:
Transaction ID: 023761843
Transaction n°:
Category ID: CT
Catégorie:

Province of Ontario
Province de l'Ontario
Ministry of Consumer and Business Services
Ministère des Services aux consommateurs et aux entreprises
Companies and Personal Property Security Branch
Direction des compagnies et des sûretés mobilières

Date Report Produced: 2004-05-27
Document produit le:
Time Report Produced: 16:29:35
Imprimé à:

Certificate of Incorporation Certificat de constitution

This is to certify that

Ceci certifie que

WESTVIEW PARK GARDENS (2004) INC.

Ontario Corporation No.

Numéro matricule de la personne morale en
Ontario

002047562

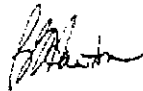
is a corporation incorporated,
under the laws of the Province of Ontario.

est une société constituée aux termes
des lois de la province de l'Ontario.

These articles of incorporation
are effective on

Les présents statuts constitutifs
entrent en vigueur le

MAY 27 MAI, 2004



Director/Directrice
Business Corporations Act/Loi sur les sociétés par actions

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FORM 1

FORMULE NUMÉRO 1

BUSINESS CORPORATIONS ACT

/

LOI SUR LES COMPAGNIES

ARTICLES OF INCORPORATION
STATUTS CONSTITUTIFS

1. The name of the corporation is: *Dénomination sociale de la compagnie:*
WESTVIEW PARK GARDENS (2004) INC.
2. The address of the registered office is: *Adresse du siège social:*
C/O DANTE J. CAPALDI
697 FRONT ROAD NORTH

(Street & Number, or R.R. Number & if Multi-Office Building give Room No.)
(Rue et numéro, ou numéro de la R.R. et, s'il s'agit édifice à bureau, numéro du bureau)
AMHERSTBURG ONTARIO
CANADA N9V 2V6
(Name of Municipality or Post Office) (Postal Code/Code postal)
(Nom de la municipalité ou du bureau de poste)
3. Number (or minimum and maximum number) of directors is: *Nombre (ou nombres minimal et maximal) d'administrateurs:*
Minimum 1 Maximum 9
4. The first director(s) is/are: *Premier(s) administrateur(s):*
First name, initials and surname *Resident Canadian State Yes or No*
Prénom, initiales et nom de famille Résident Canadien Oui/Non
Address for service, giving Street & No. or R.R. No., Municipality and Postal Code *Domicile élu, y compris la rue et le numéro, le numéro de la R.R., ou le nom de la municipalité et le code postal*
- * DANTE J CAPALDI YES
697 FRONT ROAD NORTH
AMHERSTBURG ONTARIO
CANADA N9V 2V6

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-
5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.
Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la compagnie.

There are no such restrictions on the business the Corporation may carry on or on the powers the Corporation may exercise.

6. The classes and any maximum number of shares that the corporation is authorized to issue:
Catégories et nombre maximal, s'il y a lieu, d'actions que la compagnie est autorisée à émettre:

1. An unlimited number of common shares;
2. An unlimited number of voting non-participating, redeemable, retractable Class A Special Shares, bearing a variable dividend rate of between zero (0%) percent and fifteen (15%) percent per annum on the redemption amount thereof; and
3. An unlimited number of non-voting non-participating, redeemable, retractable Class B Special Shares, bearing a variable dividend rate of between zero (0%) percent and fifteen (15%) percent per annum on the redemption amount thereof.

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

COMMON SHARES

7.1 Dividends. Subject to the prior rights of the holders of the Class A and Class B special shares and to any other shares ranking senior to the common shares with respect to priority in the payment of dividends, the holders of common shares shall be entitled to receive dividends and the Corporation shall pay dividends thereon, as and when declared by the board of directors of the Corporation out of moneys properly applicable to the payment of dividends, in such amount and in such form as the board of directors may from time to time determine and all dividends which the directors may declare on the common shares shall be declared and paid in equal amounts per share on all common shares at the time outstanding.

7.2 Dissolution. In the event of the dissolution, liquidation or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, subject to the prior rights of the holders of the preference shares and to any other shares ranking senior to the common shares with respect to priority in the distribution of assets upon dissolution, liquidation or winding-up, the holders of the common shares shall be entitled to receive the remaining property and assets of the Corporation.

7.3 Voting Rights. The holders of the common shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Corporation and shall have one vote for each common share held at all meetings of the shareholders of the Corporation, except for meetings at which only holders of another specified class or series of shares of the Corporation are entitled to vote separately as a class or series.

CLASS A SPECIAL SHARES

7a.1. Stated Capital. The Class A special shares in the capital stock of the Corporation shall be issuable at a stated capital value as hereinafter defined and shall be designated as Class A voting, redeemable, retractable and non-participating (whether as to dividend or winding-up) shares without par value yielding, in priority to any payment of dividends on the Class B special shares, non-cumulative dividends at a variable rate of between zero (0%) percent and fifteen (15%) percent per annum on the Redemption Amount as hereinafter defined.

7a.2. Dividend Rate and Amount. The holders of the Class A special

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shares shall be entitled to receive and the Corporation shall pay thereon as and when declared by the Board of Directors of the Corporation out of profits or surplus of the Corporation properly available for the payment of dividends preferential, non-cumulative dividends at the rate per annum which shall be determined from time to time by the Board of Directors of the Corporation in good faith and having regard to all of the circumstances of the Corporation at a variable rate of between zero (0%) percent and fifteen (15%) percent per annum of the Redemption Amount thereof. The Board of Directors shall be entitled from time to time to declare part of the said preferential non-cumulative dividend for any fiscal year notwithstanding that such dividend for such fiscal year shall not be declared in full. If within four (4) months after the expiration of any fiscal year of the Corporation, the Board of Directors in its discretion shall not declare the said dividend or any part thereof on the Class A special shares to such dividend or to any undeclared part thereof for such fiscal year shall be forever extinguished. The holder of the Class A special shares shall not be entitled to any dividends other than or in excess of the preferential non-cumulative dividends as hereinbefore provided for.

7a.3. Priority on Dividends. Except with the consent in writing of the holders of all of the Class A special shares issued and outstanding, no dividend shall at any time be declared and paid on or set apart for payment upon the common shares or any other shares of the Corporation ranking junior to the Class A special shares in any fiscal year unless and until the preferential non-cumulative dividend on all the prior standing Class A special shares and any other class of shares of the Corporation ranking in priority to or in parity with the Class A special shares outstanding in respect of such fiscal year has been declared and paid or set apart for payment.

7a.4. Preference on Redemption. In the event of liquidation, dissolution or winding-up of the Corporation or other distribution of assets or property of the Corporation among shareholders for the purposes of winding-up its affairs, the holder of Class A special shares shall be entitled to receive from the assets and property of the Corporation a value not exceeding the Redemption Amount of the Class A special shares as hereinafter defined per each Class A special share together with all declared and unpaid preferential non-cumulative dividends thereon, before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any common share or shares of any other class ranking junior to the Class A special shares. After payment of the holders of the Class A special shares of the amounts so payable to them as above provided; they shall not be entitled to share in any further distribution

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

of the assets or any property of the Corporation.

7a.5. Purchase for Cancellation. The Corporation may, at any time, or from time to time, purchase for cancellation all or any part of the outstanding Class A special shares at the lowest price at which, in the opinion of the Board of Directors, such shares are obtainable but not exceeding an amount equal to one hundred percent (100%) of the aggregate Redemption Amounts thereof. Except where the purchase for cancellation is made on the open market or all of the holders of the Class A special shares consent to the purchase, the Corporation may purchase such shares only pursuant to tenders received by the Corporation upon request for tenders addressed to all the holders of the Class A special shares and the Corporation shall accept only the lowest tenders. Where, in response to the invitation for tenders, two (2) or more shareholders submit tenders at the same price and the tenders are accepted by the Corporation as to part only of the Class A special shares offered in each tender in proportion as nearly as may be to the total number of Class A special shares offered in each tender (disregarding fractions).

7a.6. Redemption by Corporation. The Class A special shares or any part thereof shall be redeemable at any time at the option of the Corporation without the consent of the holders thereof, upon giving notice as hereinafter provided, and on payment to the holders thereof, for each share to be redeemed, an amount or value not exceeding the Redemption Amount of each such Class A special share as herein defined for each such Class A special share (together with all declared and unpaid preferential non-cumulative dividends thereon).

7a.7. Procedure on Redemption by Corporation. In the case of the redemption of the Class A special shares under the provisions of paragraph 7a.6 hereof, the Corporation shall, at least twenty (20) days before the date specified for redemption, mail to each person who at the date of mailing is a registered holder of the Class A special shares to be redeemed a notice in writing of the intention of the Corporation to redeem such Class A special shares. Such notice shall be mailed by letter postage prepaid, addressed to each such shareholder at the shareholder's address as it appears on the records of the Corporation or in the event of the address of any such shareholder not so appearing then to the last known address of such shareholder; provided, however, that accidental failure to give such notice to one or more persons being such shareholders shall not affect the validity of such redemption. Such notice shall set out the redemption price and the date on which the redemption is to take place and if part only of the shares held by the person to whom it is addressed is to be redeemed the number thereof so to be redeemed. On or after the date so

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specified for redemption, the Corporation shall pay or cause to be paid to or to the order of the registered holders of the Class A special shares to be redeemed the redemption price thereof on presentation and surrender at the registered office of the Corporation or any other place designated in such notice of the certificate representing the Class A special shares called for redemption. If a part only of the shares represented by any certificate is to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation. From and after the date specified for redemption in any such notice, the Class A special shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the redemption price shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case the rights of the shareholders shall remain unaffected. The Corporation shall have the right at any time after the mailing of notice of its intention to redeem any Class A special shares as aforesaid to deposit the redemption price of the shares so called for redemption or if such of the said shares represented by certificates as have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption to a special account in any chartered bank or any trust company in Canada, named in such notice, to be paid without interest to or to the order of the respective holders of such Class A special shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same and upon such deposit being made or upon the date specified for redemption in such notice, whichever is the later, the Class A special shares in respect whereof such deposit shall have been made shall be redeemed and the rights of the holders thereof after such deposit or such redemption date, as the case may be, shall be limited to receiving without interest their proportionate part of the total redemption price so deposited against presentation and surrender of the said certificates held by them respectively.

7a.8. Voting Rights. The holders of the Class A special shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Corporation and shall have one vote for each Class A special share held at all meetings of the shareholders of the Corporation, except for meetings at which only holders of another specified class or series of shares of the Corporation are entitled to vote separately as a class or series.

7a.9. Further Amendments. The confirmation required by the Business Corporations Act, R.S.O. 1990, chap. B.16 as now enacted or as the same may from time to time be amended, re-enacted, or replaced (and in the case of

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:

such amendment, re-enactment or replacement, any references herein shall be read as referring to the amended re-enactment or replaced provision) (the "Act"), of a resolution authorizing an amendment to the articles deleting or varying a preference, right, condition, restriction, limitation or prohibition attaching to the Class A special shares ranking in any respect in priority to or on a parity with the Class A special shares may be given by at least two-thirds (2/3) of the votes cast at a meeting of the holders of the Class A special shares duly called for that purpose and held upon at least ten (10) days' notice at which the holders of at least ten percent (10%) of the then outstanding Class A special shares are present or represented by proxy. If at any such meeting the holders of ten percent (10%) of the outstanding Class A special shares are not present or represented by proxy within half an hour after the time appointed for the meeting, then the meeting shall be adjourned to such date not being less than fourteen (14) days later and to such time and place as may be appointed by the Chairman and at least ten (10) days' notice shall be given of such adjourned meeting but it shall not be necessary in such notice to specify the purpose for which the meeting was originally called. At such adjourned meeting the holders of Class A special shares present or represented by proxy may transact the business for which the meeting was originally called and the confirmation of the holders of the Class A special shares referred to above may be given by at least two-thirds (2/3) of the votes cast at such adjourned meeting. The formalities to be observed with respect to the giving of notice of any such meeting and the conduct thereof shall be those from time to time prescribed in the by-laws of the Corporation with respect to meetings of shareholders. On every poll taken at every such meeting every holder of the Class A special shares shall be entitled to one (1) vote in respect of each Class A special share held.

7a.10. Retraction. A holder of Class A special shares shall be entitled to require the Corporation to redeem at any time or times after the issuance thereof all or any of the Class A special shares registered in the name of such holder on the books of the Corporation by tendering the Corporation at its registered office a share certificate or certificates representing the Class A special shares which the registered holder desires to have the Corporation redeem together with a request in writing specifying (i) that the registered holder desires to have the Class A special shares represented by such certificate or certificates redeemed by the Corporation; and (ii) the business day (in this paragraph referred to as the "Redemption Date") on which the holder desires to have the Corporation redeem such Class A special shares. Requests in writing given by the registered holder, shall specify a Redemption Date which shall be not less than one hundred and eighty (180) days after the date on which the

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

request in writing is given to the Corporation. Upon receipt of a share certificate or certificates representing the Class A special shares which the registered holder desires to have the Corporation redeem together with such a request, the Corporation shall on the Redemption Date redeem such Class A special shares by paying to such registered holder an amount equal to the aggregate of the Redemption Amount of the Class A special shares being redeemed plus all declared and unpaid dividends thereon. Such payment shall be made by cheque payable at par at any branch of the Corporation's banker for the time being in Canada. The said Class A special shares shall be redeemed on the Redemption Date and such shares shall cease to be entitled to any dividends and the holders thereof shall not be entitled to exercise any of the rights of holders of Class A special shares in respect thereof unless payment of the redemption price is not made on the Redemption Date, in which event, the rights of the holders of the said shares shall remain unaffected.

7a.11. Redemption Amount. The Redemption Amount of each Class A special share shall be that amount or value which is equivalent to the fair market value of the consideration received by or paid to the Corporation for and in respect of the issuance by the Corporation to the particular shareholder to whom such Class A special shares was issued as at the time of issuance of and for that issuance of Class A special shares divided by the number of Class A special shares issued at the time of the issuance.

7a.12. Limitation on Redemption Amount. Save and except where the authorized capital of the Corporation allocated to the aggregate of the Class A special shares shall be increased in accordance with the applicable and appropriate procedure referable to or otherwise governing the increase of the Corporation's authorized capital, the aggregate of the Redemption Amounts of all of the Class A special shares issued or to be issued by the Corporation shall not under any circumstances exceed the sum or value which is equivalent to the fair market value of the consideration received by or paid to the Corporation for or in respect of the issue of the aggregate of all Class A special shares issued and outstanding at the particular point of time.

7a.13. Addition to Stated Capital Account. Each Class A special share shall be issued by the Corporation at an amount or value equivalent to the Stated Capital Amount of or for such Class A special share. The Stated Capital Amount of and for each Class A special share shall be such sum or amount as may be determined by the Board of Directors by resolution of the Board of Directors in respect of the issuance of the particular Class A special share; provided that the Stated Capital Amount of each Class A special share shall not in any event exceed the Redemption Amount of each

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

Class A special share.

7a.14. Price Adjustment. The Redemption Amount and the Stated Capital Amount of each Class A special share issued by the Corporation shall be determined as hereinbefore provided. Such Redemption Amount and Stated Capital Amount shall be determined in good faith by the Board of Directors of the Corporation in conjunction, co-operation and agreement with the particular shareholder to whom the Class A special share was issued as at the time of issuance of such Class A special share and the Redemption Amount and Stated Capital Amount so determined shall be deemed to be binding upon both the Corporation and the shareholder to whom the particular Class A special share was issued or any heir, successor, assignee thereof, or transferee therefrom. Provided that in the event that the Redemption Amount and the Stated Capital Amount or either of them shall be determined by the Minister of National Revenue (or any other person succeeding or inheriting the authority, responsibilities or powers of the Minister of National Revenue) to be some value or amount other than as have been determined in accordance herewith by the Corporation and the particular shareholder as hereinafter provided; then, and in such event, the Redemption Amount or the Stated Capital Amount, as the case may be, shall be such amount or value other than as determined in accordance herewith being an amount or value that is agreed upon by each and all of the Corporation, the shareholder then holding and being the registered holder of the particular Class A special share and the Minister of National Revenue. Provided that if the Corporation, the shareholder and the Minister of National Revenue shall be unable to agree upon the value or the amount of the Redemption Amount or the Stated Capital Amount, as the case may be, as hereinbefore provided; then the determination of the Redemption Amount or the Stated Capital Amount shall be referred to a court of competent jurisdiction for determination and the value or amount of the Redemption Amount or the Stated Capital Amount, as the case may be, shall be such amount or value as shall have been determined by the said Court of competent jurisdiction being a determination that each and all of the Corporation, the shareholders and the Minister of National Revenue shall each accept or being a determination by a Court of competent jurisdiction from which no further appeal lies.

7a.15. Priority. The Class A special shares shall rank in priority to the Class B special shares and the common shares.

CLASS B SPECIAL SHARES

7b.1. Stated Capital. The Class B special shares in the capital stock of the Corporation shall be issuable at a stated capital value as

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:

hereinafter defined and shall be designated as Class B non-voting, non-participating, redeemable and retractable shares without par value yielding, subject to the prior preference of the Class A special shares, non-cumulative dividends at a variable rate of between zero (0%) percent and fifteen (15%) percent per annum per annum on the Redemption Amount as hereinafter defined.

7b.2. Dividend Rate and Amount. The holders of the Class B special shares shall be entitled, subject to the prior preference of the Class A special shares, to receive and the Corporation shall pay thereon as and when declared by the Board of Directors of the Corporation out of profits and surplus of the Corporation properly available for the payment of dividends preferential, non-cumulative dividends at the rate per annum which shall be determined from time to time by the Board of Directors of the Corporation in good faith and having regard to all of the circumstances of the Corporation at a variable rate of between zero (0%) percent and fifteen (15%) percent per annum on the Redemption Amount thereof. The Board of Directors shall be entitled from time to time to declare part of the said preferential non-cumulative dividend for any fiscal year notwithstanding that such dividend for such fiscal year shall not be declared in full. If within four (4) months after the expiration of any fiscal year of the Corporation, the Board of Directors in its discretion shall not declare the said dividend or any part thereof on the Class B special shares for such fiscal year then the rights of the holders of the Class B special shares to such dividend or to any undeclared part thereof for such fiscal year shall be forever extinguished. The holders of the Class B special shares shall not be entitled to any dividends other than or in excess of the preferential non-cumulative dividends as hereinbefore provided for.

7b.3. Priority on Dividends. Except with the consent in writing of the holders of all Class B special shares outstanding, no dividends shall at any time be declared or paid upon, or set aside for payment on any common shares without nominal or par value (hereinafter called the "common shares") or on any shares of any other class ranking junior to the Class B special shares for any fiscal year unless and until the preferential non-cumulative dividend for such fiscal year on all Class B special shares outstanding has been declared and paid or a sum set aside for payment thereof.

7b.4. Preference on Redemption. In the event of liquidation, dissolution or winding-up of the Corporation or other distribution of assets or property of the Corporation among shareholders for the purposes of winding-up its affairs, the holder of Class B special shares shall be

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entitled to receive from the assets and property of the Corporation a value not exceeding the Redemption Amount of the Class B special shares as hereinafter defined per each Class B special share together with all declared and unpaid preferential non-cumulative dividends thereon, before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any common share or shares of any other class ranking junior to the Class B special shares. After payment of the holders of the Class B special shares of the amounts so payable to them as above provided; they shall not be entitled to share in any further distribution of the assets or any property of the Corporation.

7b.5. Purchase for Cancellation. The Corporation may, at any time, or from time to time, purchase for cancellation all or any part of the outstanding Class B special shares at the lowest price at which, in the opinion of the Board of Directors, such shares are obtainable but not exceeding an amount equal to one hundred percent (100%) of the aggregate Redemption Amounts thereof. Except where the purchase for cancellation is made on the open market or all of the holders of the Class B special shares consent to the purchase, the Corporation may purchase such shares only pursuant to tenders received by the Corporation upon request for tenders addressed to all the holders of the Class B special shares and the Corporation shall accept only the lowest tenders. Where, in response to the invitation for tenders, two (2) or more shareholders submit tenders at the same price and the tenders are accepted by the Corporation as to part only of the Class B special shares offered in each tender in proportion as nearly as may be to the total number of Class B special shares offered in each tender (disregarding fractions).

7b.6. Redemption by Corporation. The Class B special shares or any part thereof shall be redeemable at any time at the option of the Corporation without the consent of the holders thereof, upon giving notice as hereinafter provided, and on payment to the holders thereof, for each share to be redeemed, an amount or value not exceeding the Redemption Amount of each such Class B special share as herein defined for each such Class B special share (together with all declared and unpaid preferential non-cumulative dividends thereon).

7b.7. Procedure on Redemption by Corporation. In the case of the redemption of the Class B special shares under the provisions of paragraph 7b.6 hereof, the Corporation shall, at least twenty (20) days before the date specified for redemption, mail to each person who at the date of mailing is a registered holder of the Class B special shares to be redeemed a notice in writing of the intention of the Corporation to redeem such Class B special shares. Such notice shall be mailed by letter postage

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

prepaid, addressed to each such shareholder at the shareholder's address as it appears on the records of the Corporation or in the event of the address of any such shareholder not so appearing then to the last known address of such shareholder; provided, however, that accidental failure to give such notice to one or more persons being such shareholders shall not affect the validity of such redemption. Such notice shall set out the redemption price and the date on which the redemption is to take place and if part only of the shares held by the person to whom it is addressed is to be redeemed the number thereof so to be redeemed. On or after the date so specified for redemption, the Corporation shall pay or cause to be paid to or to the order of the registered holders of the Class B special shares to be redeemed the redemption price thereof on presentation and surrender at the registered office of the Corporation or any other place designated in such notice of the certificate representing the Class B special shares called for redemption. If a part only of the shares represented by any certificate is to be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation. From and after the date specified for redemption in any such notice, the Class B special shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the redemption price shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case the rights of the shareholders shall remain unaffected. The Corporation shall have the right at any time after the mailing of notice of its intention to redeem any Class B special shares as aforesaid to deposit the redemption price of the shares so called for redemption or if such of the said shares represented by certificates as have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption to a special account in any chartered bank or any trust company in Canada, named in such notice, to be paid without interest to or to the order of the respective holders of such Class B special shares called for redemption upon presentation and surrender to such bank or trust company of the certificates representing the same, and upon such deposit being made or upon the date specified for redemption in such notice, whichever is the later, the Class B special shares in respect whereof such deposit shall have been made shall be redeemed and the rights of the holders thereof after such deposit or such redemption date, as the case may be, shall be limited to receiving without interest their proportionate part of the total redemption price so deposited against presentation and surrender of the said certificates held by them respectively.

7b.8. Voting. The holders of the Class B special shares shall not be entitled as such (except as hereinafter specifically provided) to receive

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notice of or to attend any meeting of the shareholders of the Corporation and shall not be entitled to vote at any such meeting. The holders of the Class B special shares shall, however, be entitled to notice of meetings of the shareholders called for the purpose of authorizing dissolution of the Corporation or the sale of its undertaking or a substantial part thereof.

7b.9. Further Amendments. The confirmation required by the Act of a resolution authorizing an amendment to the articles deleting or varying a preference, right, condition, restriction, limitation or prohibition attaching to the Class B special shares ranking in any respect in priority to or on a parity with the Class B special shares may be given by at least two-thirds (2/3) of the votes cast at a meeting of the holders of the Class B special shares duly called for that purpose and held upon at least ten (10) days' notice at which the holders of at least ten percent (10%) of the then outstanding Class B special shares are present or represented by proxy. If at any such meeting the holders of ten percent (10%) of the outstanding Class B special shares are not present or represented by proxy within half an hour after the time appointed for the meeting, then the meeting shall be adjourned to such date not being less than fourteen (14) days later and to such time and place as may be appointed by the Chairman and at least ten (10) days' notice shall be given of such adjourned meeting but it shall not be necessary in such notice to specify the purpose for which the meeting was originally called. At such adjourned meeting the holders of Class B special shares present or represented by proxy may transact the business for which the meeting was originally called and the confirmation of the holders of the Class B special shares referred to above may be given by at least two-thirds (2/3) of the votes cast at such adjourned meeting. The formalities to be observed with respect to the giving of notice of any such meeting and the conduct thereof shall be those from time to time prescribed in the by-laws of the Corporation with respect to meetings of shareholders. On every poll taken at every such meeting every holder of the Class B special shares shall be entitled to one (1) vote in respect of each Class B special share held.

7b.10. Retraction. A holder of Class B special shares shall be entitled to require the Corporation to redeem at any time or times after the issuance thereof all or any of the Class B special shares registered in the name of such holder on the books of the Corporation by tendering the Corporation at its registered office a share certificate or certificates representing the Class B special shares which the registered holder desires to have the Corporation redeem together with a request in writing specifying (i) that the registered holder desires to have the Class B special shares represented by such certificate or certificates redeemed by the Corporation; and (ii) the business day (in this paragraph referred to

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as the "Redemption Date") on which the holder desires to have the Corporation redeem such Class B special shares. Requests in writing given by the registered holder, shall specify a Redemption Date which shall be not less than one hundred and eighty (180) days after the date on which the request in writing is given to the Corporation. Upon receipt of a share certificate or certificates representing the Class B special shares which the registered holder desires to have the Corporation redeem together with such a request, the Corporation shall on the Redemption Date redeem such Class B special shares by paying to such registered holder an amount equal to the aggregate of the Redemption Amount of the Class B special shares being redeemed plus all declared and unpaid dividends thereon. Such payment shall be made by cheque payable at par at any branch of the Corporation's banker for the time being in Canada. The said Class B special shares shall be redeemed on the Redemption Date and such shares shall cease to be entitled to any dividends and the holders thereof shall not be entitled to exercise any of the rights of holders of Class B special shares in respect thereof unless payment of the redemption price is not made on the Redemption Date, in which event, the rights of the holders of the said shares shall remain unaffected.

7b.11. Redemption Amount. The Redemption Amount of each Class B special share shall be that amount or value which is equivalent to the fair market value of the consideration received by or paid to the Corporation for and in respect of the issuance by the Corporation to the particular shareholder to whom such Class B special shares was issued as at the time of issuance of and for that issuance of Class B special shares divided by the number of Class B special shares issued at the time of the issuance.

7b.12. Limitation on Redemption Amount. Save and except where the authorized capital of the Corporation allocated to the aggregate of the Class B special shares shall be increased in accordance with the applicable and appropriate procedure referable to or otherwise governing the increase of the Corporation's authorized capital, the aggregate of the Redemption Amounts of all of the Class B special shares issued or to be issued by the Corporation shall not under any circumstances exceed the sum or value which is equivalent to the fair market value of the consideration received by or paid to the Corporation for or in respect of the issue of the aggregate of all Class B special shares issued and outstanding at the particular point of time.

7b.13. Addition to Stated Capital Account. Each Class B special share shall be issued by the Corporation at an amount or value equivalent to the Stated Capital Amount of or for such Class B special share. The Stated Capital Amount of and for each Class B special share shall be such sum or

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amount as may be determined by the Board of Directors by resolution of the Board of Directors in respect of the issuance of the particular Class B special share; provided that the Stated Capital amount of each Class B special share shall not in any event exceed the Redemption Amount of each Class B special share.

7b.14. Price Adjustment. The Redemption Amount and the Stated Capital Amount of each Class B special share issued by the Corporation shall be determined as hereinbefore provided. Such Redemption Amount and Stated Capital Amount shall be determined in good faith by the Board of Directors of the Corporation in conjunction, co-operation and agreement with the particular shareholder to whom the Class B special share was issued as at the time of issuance of such Class B special share and the Redemption Amount and Stated Capital Amount so determined shall be deemed to be binding upon both the Corporation and the shareholder to whom the particular Class B special share was issued or any heir, successor, assignee thereof, or transferee therefrom. Provided that in the event that the Redemption Amount and the Stated Capital Amount or either of them shall be determined by the Minister of National Revenue (or any other person succeeding or inheriting the authority, responsibilities or powers of the Minister of National Revenue) to be some value or amount other than as have been determined in accordance herewith by the Corporation and the particular shareholder as hereinafter provided; then, and in such event, the Redemption Amount or the Stated Capital Amount, as the case may be, shall be such amount or value other than as determined in accordance herewith being an amount or value that is agreed upon by each and all of the Corporation, the shareholder then holding and being the registered holder of the particular Class B special share and the Minister of National Revenue. Provided that if the Corporation, the shareholder and the Minister of National Revenue shall be unable to agree upon the value or the amount of the Redemption Amount or the Stated Capital Amount, as the case may be, as hereinbefore provided; then the determination of the Redemption Amount or the Stated Capital Amount shall be referred to a court of competent jurisdiction for determination and the value or amount of the Redemption Amount or the Stated Capital Amount, as the case may be, shall be such amount or value as shall have been determined by the said Court of competent jurisdiction being a determination that each and all of the Corporation, the shareholders and the Minister of National Revenue shall each accept or being a determination by a Court of competent jurisdiction from which no further appeal lies.

7b.15. Priority. The Class B special shares shall rank in priority to the common shares.

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8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:
L'émission, le transfert ou la propriété d'actions est/n'est pas restreinte. Les restrictions, s'il y a lieu, sont les suivantes:

No shares shall be transferred without the consent of the Board of Directors evidenced by a resolution or by their consent in writing.

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9. Other provisions, (if any, are):
Autres dispositions, s'il y a lieu:

(a) That the Board of Directors may from time to time, in such amounts and on such terms as it deems expedient:

(i) borrow money on the credit of the Corporation;

(ii) issue, reissue, sell or pledge debt obligations (including bonds, debentures, notes or other evidences of indebtedness or guarantee, secured or unsecured) of the Corporation;

(iii) to the extent permitted by the Business Corporations Act (as from time to time amended) give directly or indirectly financial assistance to any person by means of a loan, a guarantee or otherwise on behalf of the Corporation to secure performance of any present or future indebtedness, liability or obligation of any person; and

(iv) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all or any of the currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the Corporation.

(b) To the extent permitted by the Business Corporations Act (as from time to time amended), that the Board of Directors may from time to time delegate to such one or more of the directors and officers of the Corporation as may be designated by the Board of Directors all or any of the powers conferred on the Board of Directors above to such extent and in such manner as the Board of Directors shall determine at the time of each such delegation.

(c) That the outstanding securities of the Corporation are beneficially owned, directly or indirectly, by not more than thirty-five persons or companies, exclusive of:

(i) persons or companies that are, or at the time they last acquired securities of the Corporation were, accredited investors (as defined under applicable Ontario securities laws, as may be amended from time to time); and

(ii) current or former directors, officers or employees of the Corporation or a corporation, company, syndicate, partnership, trust or unincorporated organization (each, an "Entity") affiliated (as defined under applicable Ontario securities laws, as may be amended from time to time) with the Corporation, or current or former consultants (as defined under applicable Ontario securities laws, as may be amended from time to

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9. Other provisions, (if any, are):
Autres dispositions, s'il y a lieu:

time), who in each case beneficially own only securities of the Corporation that were issued as compensation by, or under an incentive plan of, the Corporation or an Entity affiliated with the Corporation;

provided that:

(A) two or more persons who are the joint registered holders of one or more securities of the Corporation shall be counted as one beneficial owner of those securities; and

(B) an Entity shall be counted as one beneficial owner of the securities of the Corporation unless such Entity has been created or is being used primarily for the purpose of acquiring or holding securities of the Corporation, in which event each beneficial owner of an equity interest in the Entity or each beneficiary of the Entity, as the case may be, shall be counted as a separate beneficial owner of those securities of the Corporation.

(d) That subject to the provisions of the Business Corporations Act, the Corporation shall have a lien on the shares registered in the name of a shareholder who is indebted to the Corporation to the extent of such debt.

(e) That subject to the provisions of the Business Corporations Act, the Corporation may purchase any of its issued shares.

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10. The names and addresses of the incorporators are
Nom et adresse des fondateurs

First name, initials and last name
or corporate name

*Prénom, initiale et nom de
famille ou dénomination sociale*

Full address for service or address of registered office or of principal place of business
giving street & No. or R.R. No., municipality and postal code
*Domicile élu, adresse du siège social au adresse de l'établissement principal, y compris
la rue et le numéro, le numéro de la R.R., le nom de la municipalité et le code postal*

- DANTE J CAPALDI

697 FRONT ROAD NORTH

AMHERSTBURG ONTARIO
CANADA N9V 2V6

***THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 17, 2018***

A handwritten signature in blue ink, appearing to be 'S. Trombley', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

A small, dark handwritten mark or signature.



Transfer/Deed of Land

Do Propress Software Ltd. • (416) 322-6111
2004-13

(1) Registry Land Title (2) Page 1 of 2 pages

(3) Property Description(s) Block Property
70549-0187 (R) PART OF PIN

(4) Consideration
SIX HUNDRED THOUSAND ----- Dollars \$ 600,000.00

(5) Description This is: Property Division Property Consolidation
Lots 12 to 25 inclusive, Plan 1007, Lots 322 to 326 inclusive Plan 827, Lot 328, Plan 827 save and except Part 3 on 12R-20303, Lot 329 to 335 inclusive, Plan 827, Pt Bk AD, Plan 1007 as in R1428533 (Secondly), Pt Bk W, Plan 1007 as in R1341752, in the Town of LaSalle, in the County of Essex.

FOR OFFICE USE ONLY

1542019

CERTIFICATE OF REGISTRATION
CERTIFICAT D'INSCRIPTION

JUN 04 2004
MAY 20 PM 2:07

New Property Information

Executions

Additional See Schedule

(6) This Document Contains (a) Resubscription New Easement Plan/Sketch (b) Schedule for Description Additional Parties Other (7) Intergovernmental Fee Simple

(8) Transferor(s) The transferor hereby transfers the land to the transferee **WESTVIEW PARK GARDENS (2004) INC.**

Name(s) **1425336 ONTARIO INC.** Date of Signature Y M D 2004 06 02
Signature of **Giulio Malandrucolo**
I have authority to bind the Corporation. Title: **President**

(9) Spouse(s) of Transferor(s) I hereby consent to this transaction Name(s) Signature(s) Date of Signature Y M D

(10) Transferor(s) Address for Service **1544 Conte Crescent, LaSalle, Ontario N9J 3N4**

(11) Transferee(s) **WESTVIEW PARK GARDENS (2004) INC.** Date of Sign Y M D

(12) Transferee(s) Address for Service **697 Front Road North, Amherstburg, Ontario N9V 2V6**

(13) Transferor(s) The transferor warrants that to the best of the transferor's knowledge and belief, this transfer does not contravene section 50 of the Planning Act. I have authority to bind the Corporation.
Signature of **ANNE D. MANNINA** Date of Signature Y M D 2004 06 02
Name and Address of Solicitor **333 Wyandotte Street E. Windsor, Ontario N9A 3H7**

(14) Solicitor for Transferor(s) I have investigated the title to this land and to adjoining land where relevant and I am satisfied that the title records reveal no contravention as set out in subsection 50 (2)(c) of the Planning Act and that to the best of my knowledge and belief this transfer does not contravene section 50 of the Planning Act. I act independently of the solicitor for the transferor(s) and I am an Ontario solicitor in good standing.
Name and Address of Solicitor **JERRY L. GOLDBERG 443 Ouellette Avenue, Suite 300 P.O. Box 1390, Windsor, ON N9A 6K4** Date of Signature Y M D 2004 06 02

(15) Assessment Roll Number of Property
City: 37, Municipality: 34, Map: 210, Sub: 000, Parcels: 19400, Parcel: 0000

(16) Municipal Address of Property
Vacant lot
(17) Document Prepared by:
**ANNE D. MANNINA
FAZIO & ASSOCIATES
333 WYANDOTTE STREET EAST
WINDSOR, ONTARIO
N9A 3H7**

Fees and Tax	
Registration Fee	60
Land Transfer Tax	7475.00
Total	7535.00

De Process Software Ltd. • (416) 222-6111

Property Identifier(s) No. 70549-0187

Page 2

Refer to all instructions on reverse side.

Land Transfer Tax Affidavit
Land Transfer Tax Act

IN THE MATTER OF THE CONVEYANCE OF (insert brief description of land) Lots 12 to 25 inclusive, Plan 1007, Lots 322 to 326 Inclusive, Plan R27, L.R. 32A, Plan R27, L.R. 32A and except Part 3 on Plan 12R-20303, Lots 329 to 335 inclusive, Plan R27, P.I. Djk, AB, Plan 1007 as in R1428533 (Secondly), Part Block W, Plan 1007, Town of LaSalle.

BY (and names of all transferees in Act) 1425336 Ontario Inc.
TO (and names of all transferees in Act) Westview Park Gardens (2004) Inc.

We have personal knowledge of the facts herein deposed to and MAKE OATH AND SAY THAT:

- 1. I am/We are (place a check mark within the square opposite the following paragraph(s) that describe(s) the capacity of the deponent(s):
(a) the transferee(s) named in the above-described conveyance;
(b) the authorized agent or solicitor acting in this transaction for the transferee(s);
(c) The President, Vice-President, Secretary, Treasurer, Director or Manager authorized to act for Westview Park Gardens (2004) Inc. (the transferee(s));
(d) a transferee and am making this affidavit on my own behalf and on behalf of (insert name of spouse or same-sex partner) who is my spouse or same-sex partner.
(e) the transferor and I am tendering this document for registration and no tax is payable on registration of this document.

2. THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

Table with 2 columns: Description and Amount. Rows include: (a) Money paid or to be paid in cash (\$120,000.00), (b) Mortgage (i) As named (Capital and interest) (\$Nil), (ii) Given back to vendor (\$480,000.00), (c) Property transferred in exchange (Value below is paid) (\$Nil), (d) Other consideration subject to tax (Recall section 1) (\$Nil), (e) Fair market value of the lands (see instruction 1) (\$Nil), (f) Value of land, building, fixtures and goodwill subject to Land Transfer Tax (Total of (b) to (d)) (\$600,000.00), (g) Value of all chattels - items of tangible personal property which are taxable under the provisions of the Retail Sales Tax Act (\$Nil), (h) Other consideration for transaction not included in (f) or (g) above (\$Nil), (i) Total Consideration (\$600,000.00). Note: All blanks must be filled in, insert 'Nil' where applicable.

3. To be completed where the value of the consideration for the conveyance exceeds \$400,000.00

- I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land conveyed in the above-described conveyance:
(a) does not contain a single family residence or contains more than two single family residences.
(b) contains at least one and not more than two single family residences.
(c) contains at least one and not more than two single family residences and the lands are used for other than just residential purposes. The transferee has accordingly apportioned the value of consideration on the basis that the consideration for the single family residence is \$ and the remainder of the lands are used for purposes.

Note: Subsection 2(1)(d) imposes an additional tax at the rate of one-half of one percent upon the value of the consideration in excess of \$400,000.00 where the conveyance contains at least one and not more than two single family residences and 2(2) allows an apportionment of the consideration where the lands are used for other than just residential purposes.

- 4. If consideration is nominal, is the land subject to any encumbrance? Yes No
5. Other remarks and explanations, if necessary. n/a

Sworn before me at the City of Windsor in the County of Essex this 2 day of August, 2004

Signature of Notary Public: Bruce Capaldi

Property Information Record

- A. Describe nature of instrument: Transfer/Deed of Land
B. (a) Address of property being conveyed (if available) 2600 Yacart Land, LaSalle, Ontario
(b) Assessment Roll No. (if available) 3234 210 000 19400
C. Mailing address(es) for future Notices of Assessment under the Assessment Act for property being conveyed 697 Front Road North, Amherstburg, Ontario N9V 2V6

- D. (a) Registration number for last conveyance of property being conveyed (if available)
(b) Legal description of property conveyed: Same as in D.4) above. Yes No Not known

E. Name(s) and address(es) of each transferor's solicitor: Jerry L. Goldberg, Yvonne Walker LLP, 443 Duquette Avenue, Windsor, Ontario, N9A 6R4 IP# 118786-13/JLG/jml

School Support (Voluntary Election) (see reverse for explanation)

- (a) Are all individual transferees Roman Catholic? Yes No
(b) If Yes, do all individual transferees wish to be Roman Catholic Separate School Supporters? Yes No
(c) Do all individual transferees have French Language Education Rights? Yes No
(d) If Yes, do all individual transferees wish to support the French Language School Board (where established)? Yes No

NOTE: As to (a) and (d) the land being transferred will receive French Public School Board Election unless otherwise directed in (a) and (b).

Consideration \$ 1.00

Transferor(s)

The transferor(s) hereby transfers the land to the transferee(s).

Name 1425338 ONTARIO INC.
 Address for Service 1544 Conte Crescent
 LaSalle, Ontario
 N9J 3N4

I, GIULIO MALANDRUCCOLO (President), have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Transferee(s)

Capacity

Share

Name WESTVIEW PARK GARDENS (2004) INC. Beneficial Owner
 Address for Service 697 Front Road North
 Amherstburg, Ontario
 N9V 2V6

STATEMENT OF THE TRANSFEROR (S): The transferor(s) verifies that to the best of the transferor's knowledge and belief, this transfer does not contravene the Planning Act.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEROR (S): I have explained the effect of the Planning Act to the transferor(s) and I have made inquiries of the transferor(s) to determine that this transfer does not contravene that Act and based on the information supplied by the transferor(s), to the best of my knowledge and belief, this transfer does not contravene that Act. I am an Ontario solicitor in good standing.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEE (S): I have investigated the title to this land and to abutting land where relevant and I am satisfied that the title records reveal no contravention as set out in the Planning Act, and to the best of my knowledge and belief this transfer does not contravene the Planning Act. I act independently of the solicitor for the transferor(s) and I am an Ontario solicitor in good standing.

Signed By

Ililane Domenica Cedrone-Mannina 333 Wyandotte St. E. acting for Transferor(s) Signed 2004 06 04
 Windsor N9A 3H7

Tel 5192585030
 Fax 5198710051

Jerry Lee Goldberg 300-443 Ouellette Avenue, PO Box acting for Transferee(s) Signed 2004 08 03
 1390, Stn. A
 Windsor N9A 6R4

Tel 5199771555
 Fax 5199771568

Submitted By

WILSON WALKER LLP 300-443 Ouellette Avenue, PO Box 1390, Stn A 2004 06 04
 Windsor N9A 6R4

Tel 5199771555
 Fax 5199771568

Fees/Taxes/Payment

Statutory Registration Fee \$80.00

TRANSFEROR CREDIT REFERENCE :

2004 10

Transferee Client File Number :

118788-13/JLG/JM

- (d) The authorized agent or solicitor acting in this transaction for _____ described in paragraph(s) () above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for WESTVIEW PARK GARDENS (2004) INC. described in paragraph(s) (c) above.
- (f) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of _____ who is my spouse described in paragraph () and as such, I have personal knowledge of the facts herein deposed to.
- (g) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of _____ who is my same-sex partner described above in paragraph(s) ().

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	1.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	1.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	1.00

4. s) other: Land Transfer Tax is being paid under a Deed registered in the Registry Office for the County of Essex (No.12).

6. Other remarks and explanations, if necessary.
 1 Ministry of Finance has endorsed documents as follows: "No Land Transfer Tax Payable" (evidence needs to be submitted)

PROPERTY Information Record

A. Nature of Instrument: Transfer
 LRO 12 Registration No. CE80639 Date: 2004/06/04

B. Property(s): PIN 70549 - 0333 Address STOCKS STREET Assessment 3734210 - 000194000000
 LASALLE Roll No

C. Address for Service: 697 Front Road North
 Amherstburg, Ontario
 N9V 2V6

D. (i) Last Conveyance(s): PIN 70549 - 0333 Registration No. R1497405
 (ii) Legal Description for Property Conveyed : Same as in last conveyance? Yes No Not known

E. Tax Statements Prepared By: Jerry Leo Goldberg
 300-443 Ouellette Avenue,
 PO Box 1390, Stn. A
 Windsor N9A 6R4

**THIS IS EXHIBIT "C" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

DATE December 6th 2003
TO Fazio & Associates
RE Western Park Blvd Stn 2

GST AMOUNT <u>0</u>		GST *	
BALANCE FORWARD		<u>30000.00</u>	
THIS CHEQUE			
DEPOSIT			
OTHER			
BALANCE			

11/20/03

QUELLETTE AVE AT WYANDOTTE
596 QUELLETTE AVE
WINDSOR, ON N9A 6J8

Tel: 1-800-975-3387

0007/ 2-7/ 31-12/ / 21/ 39/

CAPALDI CORPORATION
697 FRONT RD N
AMHERSTBURG ON
N9V 2V6

— —
— —
— —
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Statement of Account	
Branch No.	Account No.
0007	6846 - 5000923

Account Type
FULL SERVE 4

Statement From - To
NOV 28/03 - DEC 31/03
Page 2 of 2

DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			DEC22	3,294.09
GC 0125-TRANSFER		5,000.00	DEC24	8,294.09
TD MORTGAGE	100.50		DEC29	
CHQ#06671-0036107380	109.78		DEC29	
CHQ#06672-0038219502	1,000.00		DEC29	7,083.81
GC 0125-NSF CHARGE R		5.00	DEC30	7,088.81
GC 0125-TRANSFER		25,000.00	DEC31	
CERTIFIED CHQ #06673	30,000.00		DEC31	
FULL SERVE 4 FEE	35.00		DEC31	
OVERDRAFT INTEREST	10.37		DEC31	2,043.44
21 CHEQUES ENCLOSED NEXT STATEMENT DATE IS JAN 30/04 MONTHLY AVER. CR. BAL. \$3,363.93 MONTHLY MIN. BAL. \$16,495.230D				
TD BUSINESS LINE OF CREDIT LIMIT: \$15,000.00			No.	Amount
			Credits	3 30,005.00
			Debits	6 31,255.65

-
-
-

*THIS IS EXHIBIT "D" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

Portofino Corporation
 General Journal J20798 to J20798 (Set Up)

			Debits	Credits	Project Amt.	Project
03/06/2004	J20798	Lawyer, purchase of Phase II Westview				
		17... Land Westview Phase II-St...	609,000.00	-		
		26... Mortgage - Phase II Westvi...	-	480,000.00		
		26... Due to Capaldi Corp	-	30,000.00		
		26... Due to 2043571 Ontario	-	99,000.00		
			609,000.00	609,000.00		

*THIS IS EXHIBIT "E" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name WESTVIEW PARK GARDENS (2004) INC.
Address for Service 697 Front Road North, Amherstburg, Ontario N9V 2V6

I, Dante Capaldi, President, have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
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Name 1425338 ONTARIO INC.
Address for Service 1544 Conle Crescent, LaSalle, Ontario N9J 3N4

Statements

Schedule: See Schedules

Provisions

Principal	\$ 480,000.00	Currency	CDN
Calculation Period	half-yearly, not in advance		
Balance Due Date	2005/06/03		
Interest Rate	8.0%		
Payments			
Interest Adjustment Date	2004 12 03		
Payment Date			
First Payment Date			
Last Payment Date	2005 06 03		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor	Capaldi Corporation		

Additional Provisions

Interest shall not accrue until December 3, 2004.

The chargor has the privilege of prepaying the whole or any part of the principal sum secured at any time without notice or bonus.

Signed By

Julie Louise Mijatovic	300-443 Ouellette Avenue, PO Box acting for Chargor(s)	Signed	2004 06 04
	1390, Stn A		
	Windsor N9A 6R4		
Tel	5199771555		
Fax	5199771566		

Statutory Registration Fee \$60.00

Total Paid \$60.00

<i>File Number</i>

Chargor Client File Number : 118786-13/JLG/JM

Chargee Client File Number : 2004-13

*THIS IS EXHIBIT "F" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

STATEMENT OF ADJUSTMENTS

VENDOR: 1425336 Ontario Inc.

PURCHASER: Westview Park Gardens (2004) Inc.

PROPERTY: Lots 12 to 25 inclusive, and Part of Blocks "W" and "AB"
on Registered Plan 1007
Lots 322 to 335, Plan 827
in the Town of LaSalle
in the County of Essex

ADJUSTED AS OF: June 3, 2004

<u>SALE PRICE</u>		\$600,000.00 ✓
<u>GST</u>		
Credit Vendor		\$42,000.00
Credit Purchaser as GST registrant	\$42,000.00	
<u>DEPOSIT</u>	\$30,000.00	cc Feb 13
<u>VENDOR TAKE BACK MORTGAGE</u>		
Credit purchaser	\$480,000.00	
<u>TAXES</u>		
Based on 2004 interim taxes of \$611.31 x 2		
Vendor share 154 days	\$514.44	
Vendor paid	\$611.31	
Credit Vendor		\$96.87 ✓
<u>BALANCE DUE ON CLOSING</u>		
payable to		
FAZIO & ASSOCIATES (IN TRUST)		
by Certified Cheque		
or as further directed	\$90,096.87	
	<hr/>	<hr/>
	\$642,096.87	\$642,096.87
	<hr/>	<hr/>

E. & O. E.

MILLER, CANFIELD, PADDOCK AND STONE

WILSON WALKER LLP

July 12, 2004

Invoice # 746144

Re: Capaldi Homes - Acquisition of Phase II for 1425336 Ontario Inc.
 Client/Matter #118786/00013
 Billing Attorney: Jerry L. Goldberg Esq.

TRUST STATEMENT

		RECEIPTS & PAYMENTS	INVESTMENTS
06/03/04	Paid To Minister of Finance - land transfer tax and registration of deed	-7,535.00 ✓	
06/03/04	Paid To Fazio & Associates, in Trust - balance due on closing	-90,096.87	
06/04/04	Received from 2043571 Ontario <i>LT #1059</i>	99,000.00 /	
06/04/04	Paid To Minister of Finance - register VTB mortgage	-60.00 ✓	
06/04/04	Paid To Wilson Walker LLP - EReg - electronic registration	-141.40 ✓	
07/12/04	Transferred to Pay Account	-1,166.73	
	Balance in Trust:	0.00	

PURSUANT TO SECTION 33 OF THE SOLICITORS ACT INTEREST SHALL BE CHARGED ON
 OUTSTANDING ACCOUNTS AS SET OUT IN SECTION 128 OF THE COURTS OF JUSTICE ACT

E.&O.E.

*THIS IS EXHIBIT "G" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners **LLP**,
Barristers and Solicitors.
Expires January 27, 2020.

MILLER, CANFIELD, PADDOCK AND STONE

WILSON WALKER LLP

July 12, 2004

Invoice # 746144

Re: Capaldi Homes - Acquisition of Phase II for 1425336 Ontario Inc.
 Client/Matter #118786/00013
 Billing Attorney: Jerry L. Goldberg Esq.

TRUST STATEMENT

		RECEIPTS & PAYMENTS	INVESTMENTS
06/03/04	Paid To Minister of Finance - land transfer tax and registration of deed	-7,535.00 ✓	
06/03/04	Paid To Fazio & Associates, in Trust - balance due on closing	-90,096.87	
06/04/04	Received from 2043571 Ontario <i>LC 110009</i>	99,000.00 /	
06/04/04	Paid To Minister of Finance - register VTB mortgage	-60.00 ✓	
06/04/04	Paid To Wilson Walker LLP - EReg - electronic registration	-141.40 ✓	
07/12/04	Transferred to Pay Account	-1,166.73	
	Balance in Trust:	0.00	

PURSUANT TO SECTION 33 OF THE SOLICITORS ACT INTEREST SHALL BE CHARGED ON
 OUTSTANDING ACCOUNTS AS SET OUT IN SECTION 128 OF THE COURTS OF JUSTICE ACT

E.&O.E.

*THIS IS EXHIBIT "H" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a thin horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

Portofino Corporation
 General Journal J20798 to J20798 (Set Up)

			Debits	Credits	Project Amt	Project
03/06/2004	J20708	Lawyer, purchase of Phase II Westview				
		17... Land Westview Phase II-St.	609,000.00	-		
		26... Mortgage - Phase II Westvi...	-	480,000.00		
		26... Due to Capaldi Corp	-	30,000.00		
		26... Due to 2043571 Ontario	-	99,000.00		
			609,000.00	609,000.00		

*THIS IS EXHIBIT "I" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 14, 2018*

A handwritten signature in blue ink, appearing to be 'Sherry Ann Trombley', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

LRO # 12 Charge/Mortgage

Registered as CE163410 on 2005 11 18 at 09:03

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

<i>PIN</i>	70540 - 0357 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOT 327 PLAN 827 & PART OF BLOCK AB PLAN 1007 AS PART 2 ON 12R22010; LASALLE		
<i>Address</i>	LASALLE		
<i>PIN</i>	70540 - 0356 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOTS 12 TO 25 INCL, PART OF BLK AB & ,PART OF BLK W, PLAN 1007, LOTS 322 TO 328 & LOTS 329 TO 335 INCL & PT LOT 328 ALL ON PLAN 827 AS PARTS 1 & 3 ON 12R22010; LASALLE S/T EASE OVER PART 3 ON 12R22010 AS IN R1427776		
<i>Address</i>	LASALLE		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name FORTOFINO CORPORATION
Address for Service 607 Front Road North, Amherstburg,
 Ontario N9V 2V6

I, Dante J. Capaldi, President, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
<i>Name</i> THE CANADA TRUST COMPANY	Trustee	as to a 10.00% share
<i>Address for Service</i> 77 Bloor Street West, 5th Floor, Toronto, Ontario M4Y 2T1		
<i>Name</i> THE CANADA TRUST COMPANY	Trustee	as to a 20.00% share
<i>Address for Service</i> 77 Bloor Street West, 5th Floor, Toronto, Ontario M4Y 2T1		
<i>Name</i> GOLDBERG, FRANCES	Tenants In Common	as to a 39.474% share
<i>Address for Service</i> c/o 443 Ouellette Avenue, Windsor, Ontario N9A 6R4		
<i>Name</i> MANIAS, ARNOLD	Tenants In Common	as to a 30.526% share
<i>Address for Service</i> c/o 443 Ouellette Avenue, Windsor, Ontario N9A 6R4		

Statements

Schedule: See Schedules

Provisions

<i>Principal</i>	\$380,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	semi-annually, not in advance		
<i>Balance Due Date</i>	2006/12/01		
<i>Interest Rate</i>	Nine (9%)		
<i>Payments</i>			
<i>Interest Adjustment Date</i>	2005 12 01		
<i>Payment Date</i>	first day of each month		
<i>First Payment Date</i>	2006 01 01		
<i>Last Payment Date</i>	2006 12 01		
<i>Standard Charge Terms</i>	200033		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>	Dante J. Capaldi, Wilma Capaldi		

LRO # 12 Charge/Mortgage

Registered as CE163410 on 2005 11 18 at 09:03

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

Additional Provisions

Additional Mortgagee Information: The Canada Trust Company, Trustee for SDRSP #563581G (Jerry L. Goldberg) as to a 10.00% share.

The Canada Trust Company, Trustee for SDRSP #388969S (Frances Goldberg) as to a 20.00% share.

Payments shall be interest only.

Provided further that, when not in default hereunder, the Chargee/Mortgagor shall have the privilege of prepaying the whole or any part of the principal sum hereby secured at any time or times without notice or bonus.

Provided further that in the event the Chargee/Mortgagor should sell, convey or transfer the herein described lands and premises to a Purchaser,

Grantee or Transferee without the prior written consent of the Chargee, then this Charge/Mortgage of Land, at the option of the Chargee/Mortgagor, shall become fully due and payable forthwith in its entirety.

Signed By

Julie Louise Mijatovic 300-443 Ouellette Avenue, PO acting for Chargee(s) Signed 2005 10 25
Box 1390, Stn. A
Windsor N9A 6R4

Tel 5199771555

Fax 5199771566

Submitted By

MILLER CANFIELD PADDOCK AND 300-443 Ouellette Avenue, PO Box 1390, Stn. A 2005 11 18
STONE LLP Windsor N9A 6R4

Tel 5199771555

Fax 5199771566

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Chargee Client File Number: 129020-12/JLG/JM

Chargee Client File Number: 129020-12/JLG/JM

IN consideration of the premises and of the Mortgagee advancing the said money to the Mortgagor, the Guarantor, doth hereby absolutely and unconditionally guarantee to the Mortgagee and its successors and assigns, the due and punctual payment by the Mortgagor of all principal moneys, interest and other moneys owing on the security of this mortgage, and the Guarantor for himself, his heirs, executors and administrators, covenants with the Mortgagee that if the Mortgagor shall at any time make default in the punctual payment of any moneys payable hereunder, he or they will pay all such moneys to the Mortgagee without any demand being required to be made.

AND it is hereby expressly declared that although as between the Guarantor and the Mortgagor, the Guarantor is only surety for the payment by the Mortgagor of the moneys hereby guaranteed, yet as between the Guarantor and the Mortgagee the Guarantor shall be considered as primarily liable therefore and that no release or releases of any portion or portions of the mortgaged premises, and no indulgence shown by the Mortgagee in respect of any default by the Mortgagor or any successor which may arise under this mortgage, and that no extension or extensions granted by the Mortgagee to the Mortgagor or any successor for payment of the mortgage moneys hereby secured or for the doing, observing or performing of any covenant, agreement, matter or thing herein contained, to be done observed or performed by the Mortgagor or any successor nor any variation in or departure from the provisions of this mortgage nor any other dealings between the Mortgagor or any successor and Mortgagee nor any release of the Mortgagor or any other thing whatsoever whereby the Guarantor as surety only would or might have been released shall in any way modify, alter, vary or in any way prejudice the Mortgagee or affect the liability of the Guarantor in any way under this covenant, which shall continue and be binding on the Guarantor, and as well after as before default and after as before maturity of this mortgage, until the said mortgage moneys are fully paid and satisfied. And it is hereby further expressly declared that the Mortgagee shall not be bound to exhaust its recourse against the Mortgagor or the mortgaged premises before being entitled to payment from the Guarantor of the amount hereby guaranteed by the Guarantor.

ANY payment by the Guarantor of any moneys under his said guarantee shall not in any event be taken to affect the liability of the Mortgagor for payment thereof but such liability shall remain unimpaired and enforceable by the Guarantor against the Mortgagor and the Guarantor shall, to the extent of any such payments made by him, in addition to all other remedies be subrogated as against the Mortgagor to all the rights, privileges and powers to which the Mortgagee was entitled prior to payment by such Guarantor; provided, nevertheless, that the Guarantor shall not be entitled in any event to rank for payment against the mortgaged premises in competition with the Mortgagee and shall not unless and until the whole of the principal, interest and other moneys owing on the security of this mortgage shall have been paid, be entitled to any rights or remedies whatsoever in subrogation to the Mortgagee.

AND it is further hereby expressly declared that the release of any of the Guarantors from his or their liability hereunder shall not affect the liability of the remaining Guarantor or Guarantors which shall remain unimpaired and still in full force and affect as if the Guarantor or Guarantors so released had not been a party or parties to this Agreement.

ALL covenants, liabilities and obligations entered into or imposed hereunder upon the Guarantor or Guarantors shall be equally binding upon his, or their heirs, executors, administrators and assigns, or successors and assigns as the case may be, and all such covenants and liabilities and obligations shall be joint and several.

THE Mortgagee may vary any agreement or arrangement with the Guarantor and grant extensions of time to or otherwise deal with him, his executors or administrators, without any consent on the part of the Mortgagor.

*THIS IS EXHIBIT "J" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

LRO # 12 Charge/Mortgage

Registered as CE474294 on 2011 06 15 at 16:16

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN	70549 - 0350 LT	<i>Interest/Estate</i>	Fee Simple
Description	LOTS 12 TO 25 INCL, PART OF BLK AB & ;PART OF BLK W, PLAN 1007, LOTS 322 TO 328 & LOTS 329 TO 335 INCL & PT LOT 328 ALL ON PLAN 827 AS PARTS 1 & 3 ON 12R22010; LASALLE S/T EASE OVER PART 3 ON 12R22010 AS IN R1427776		
Address	LASALLE		
PIN	70549 - 0357 LT	<i>Interest/Estate</i>	Fee Simple
Description	PART OF LOT 327 PLAN 827 & PART OF BLOCK AB PLAN 1007 AS PART 2 ON 12R22010; LASALLE		
Address	LASALLE		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name WESTVIEW PARK LUXURY GARDENS (2006) INC.
Address for Service 1403-1225 Riverside Drive East,
 Windsor, Ontario N9A 0A2

I, Denta Capaldi, President, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Chargee(s)**Capacity****Share**

Name GOLDBERG, JERRY L.
Address for Service c/o 443 Quailton Avenue, Windsor, Ontario N9A 6R4

Provisions

Principal	\$8,000.00	Currency	CDN
Calculation Period	Monthly, not in advance		
Balance Due Date	2012/01/01		
Interest Rate	5.0%		
Payments	\$1,400.00		
Interest Adjustment Date	2011 07 01		
Payment Date	On the first day of each and every month		
First Payment Date	2011 08 01		
Last Payment Date	2012 01 01		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Additional Provisions

It is agreed and understood between the Chargor and the Chargee that in the event of the Chargor selling, conveying or transferring title to, disposing of, leasing or otherwise dealing with any of the property hereby mortgaged, all monies hereby secured, including interest, shall forthwith become due and payable, at the option of the Chargee.

If Chargor's cheque, given as a payment on the amount secured by the Charge, is dishonored by the Chargor's bank, such payment is late, not made, the Chargor shall pay a fee of \$100.00. The fee shall be added to the principal amount owing hereunder to compensate for additional collection, bookkeeping, and handling. This fee shall be in addition to the other remedies provided herein.

Provided that the Chargor shall deliver to the Chargee, upon execution of this Charge and thereafter on each anniversary of the Interest Adjustment Date, for the duration of the term of this Charge, post dated cheques for principal and interest covering the payments due during the next ensuing twelve month period.

Chargor acknowledges and agrees to pay to the Chargee or its administrator upon satisfaction of principal and interest accruals hereunder, the then current fee charged by or to the Chargee or its administrator for the calculating of discharge figures and execution and delivery of a discharge.

The Chargor agrees to provide the Chargee with proof of insurance with the Chargee's interest noted thereon prior to mortgage advance date.

LRO # 12 Charge/Mortgage

Registered as CE474294 on 2011 06 15 at 16:16

The applicant(s) hereby applies to the Lund Registrar.

yyyy mm dd Page 2 of 2

Additional Provisions

If notice of cancellation of insurance is received, Chargee has the right to replace the insurance and add the amount of the premium to the principal amount and the Chargor shall pay a fee to the Chargee for such placement.

The Chargor shall provide as they come due and not later than ten days thereafter, proof of payment of the property/realty taxes to the Chargee and if notice of non payment of realty or property taxes or local improvements is received the Chargee has the right to pay same and the amount thereof shall be added to the principal amount and the Chargor shall pay a fee to the Chargee for doing so.

Provided the Chargor is not in default of his obligations hereunder, he shall have the right to pre-pay any or all of the principal secured hereunder at any time or times without notice or bonus.

Signed By

Julie Louise Mijatovic 300-443 Duquette Avenue, PO acting for Chargor Signed 2011 06 13
Box 1390, Str. A (s)
Windsor
N9A 6R4

Tel 519-977-1555

Fax 5199771568

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

MILLER CANFIELD PADDOCK AND STONE LLP 300-443 Duquette Avenue, PO 2011 06 15
Box 1390, Str. A
Windsor
N9A 6R4

Tel 519-977-1655

Fax 5199771568

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargor Client File Number : 129020-133/JLG/JM

Chargee Client File Number : 129020-133/JLG/JM

*THIS IS EXHIBIT "K" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 7, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

MILLER, CANFIELD, PADDOCK AND STONE, LLP

November 24, 2005

Invoice # 814297

Re: Discharge of Mortgage with 1425336 Ontario Inc., Vacant Land, LaSalle, Ontario
 Client/Matter #129020/00012
 Billing Attorney: Jerry L Goldberg

TRUST STATEMENT

		RECEIPTS & PAYMENTS	INVESTMENTS
11/15/05	Received from Frances Goldberg	150,000.00	
11/17/05	Received from Jerry Goldberg	37,592.00	
11/17/05	Received from Frances Goldberg	75,679.00	
11/17/05	Received from Manias, Arnold	4,500.00	
11/17/05	Received from Manias, Arnold	5,000.00	
11/17/05	Received from Manias, Arnold	106,500.00	
11/18/05	Received from Capaldi Corporation	140,000.00	
11/18/05	Paid To 1425336 Ontario Inc. - Portofino - mortgage payout	-516,821.38	
11/18/05	Paid To Fazio & Associates, in Trust - Portofino - Mortgage payout	-2,183.95	
11/21/05	Paid To Miller, Canfield, Paddock and Stone LLP - E-Reg-Minister of Finance - electronic registration	-141.40	
11/23/05	Received from Goldberg, Jerry L.	87.00	
11/24/05	Transferred to Pay Account	-211.27	
	Balance in Trust:	0.00	

PURSUANT TO SECTION 33 OF THE SOLICITORS ACT INTEREST SHALL BE CHARGED ON
 OUTSTANDING ACCOUNTS AS SET OUT IN SECTION 124 OF THE COURTS OF JUSTICE ACT

*THIS IS EXHIBIT "L" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*

A handwritten signature in blue ink, appearing to be 'Sherry Ann Trombley', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

- 6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la Loi sur les sociétés par actions.
- 7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2005 - July - 15


(Year, Month, Day)
(année, mois, jour)

These articles are signed in duplicate
Les présents statuts sont signés en double exemplaire

Westview Park Gardens (2004) Inc.

(Name of Corporation) (If the name is to be changed by these articles set out current name)
(Dénomination sociale de la société) (Si l'on demande un changement de nom, indiquer ci-dessus la dénomination sociale actuelle)

By/
Par



(Signature)
(Signature)

Dante J. Capaldi

President

(Description of Office)
(Fonction)

*THIS IS EXHIBIT "M" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

Portofino Corporation
General Journal J20798 to J20798 (Set Up)

			Debits	Credits	Project Amt	Project
03/06/2004	J20798	Lawyer purchase of Phase II Westview				
		17 Land Westview Phase II-St	609,000.00	-		
		25 Mortgage - Phase II Westvi	-	480,000.00		
		26 Due to Capaldi Corp	-	30,000.00		
		28 Due to 2043571 Ontario	-	99,000.00		
			609,000.00	609,000.00		

Portofino Corporation
General Journal J20988 to J20988 (Reverse)

			Debits	Credits	Project Amt	Project
24/02/2006	J20988	WVPhaseII, transfer to Westview 2006				
		17 Land Westview Phase II-St	-	609,000.00		
		25 Mortgage - Phase II Westvi	480,000.00	-		
		28 Due to Capaldi Corp	30,000.00	-		
		26 Due to 2043571 Ontario	99,000.00	-		
			609,000.00	609,000.00		

*THIS IS EXHIBIT "N" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12 2018*

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above the text 'A COMMISSIONER FOR TAKING AFFIDAVITS'.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

LRO # 12 Transfer

Received as CE474293 on 2011 06 15 at 16.16

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 70549 - 0356 LT *Interest/Estate* Fee Simple
Description LOTS 12 TO 25 INCL, PART OF BLK AB & ;PART OF BLK W, PLAN 1007, LOTS 322 TO 326 & LOTS 329 TO 335 INCL & PT LOT 328 ALL ON PLAN 827 AS PARTS 1 & 3 ON 12R22010; LASALLE S/T EASE OVER PART 3 ON 12R22010 AS IN R142776
Address LASALLE

PIN 70549 - 0357 LT *Interest/Estate* Fee Simple
Description PART OF LOT 327 PLAN 827 & PART OF BLOCK AB PLAN 1007 AS PART 2 ON 12R22010; LASALLE
Address LASALLE

Consideration

Consideration \$ 600,000.00

Transferor(s)

The transferor(s) hereby transfers the land to the transferee(s).

Name PORTOFINO CORPORATION
Address for Service 1403-1225 Rivers de Drive West, Windsor, Ontario N9A 0A2

I, Dante Capaldi, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Transferee(s)*Capacity**Share*

Name WESTVIEW PARK LUXURY GARDENS (2006) INC.
Address for Service 1403-1225 Riverside Drive West, Windsor, Ontario N9A 0A2

Signed By

Jerry Lee Goldberg 300-443 Ouellette Avenue, PO Box acting for Signed 2011 06 15
 1390, Stn. A Transfereor(s)
 Windsor
 N9A 6R4

Tel 519-977-1555
 Fax 5199771566

I am the solicitor for the transferor(s) and the transferee(s) and this transfer is being completed in accordance with my professional standards.

I have the authority to sign and register the document on behalf of all parties to the document.

Jerry Lee Goldberg 300-443 Ouellette Avenue, PO Box acting for Signed 2011 06 15
 1390, Stn. A Transferee(s)
 Windsor

LRO # 12 Transfer

Received as CE474293 on 2011 06 15 at 16:16

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

Submitted By

MILLER CANFIELD PADDOCK AND STONE LLP 300-443 Ouellette Avenue, PO Box 2011 06 15
1390, Stn. A
Windsor
N9A 6R4

Tel 519-977-1555
Fax 5199771566

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
Provincial Land Transfer Tax \$7,475.00
Total Paid \$7,535.00

File Number

Transferor Client File Number : 129020-133/JLG/JM
Transferee Client File Number : 129020-133/JLG/JM

LAND TRANSFER TAX STATEMENT

In the matter of the conveyance of: 70549 - 0356 LOTS 12 TO 25 INCL, PART OF BLK AB & ;PART OF BLK W, PLAN 1007, LOTS 322 TO 326 & LOTS 329 TO 335 INCL & PT LOT 328 ALL ON PLAN 827 AS PARTS 1 & 3 ON 12R22010; LASALLE S/T EASE OVER PART 3 ON 12R22010 AS IN R1427776

70549 - 0357 PART OF LOT 327 PLAN 827 & PART OF BLOCK AB PLAN 1007 AS PART 2 ON 12R22010; LASALLE

BY: PORTOFINO CORPORATION

TO: WESTVIEW PARK LUXURY GARDENS (2006) INC.

%(all PINs)

1. DANTE CAPALDI

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for ____ described in paragraph(s) () above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for WESTVIEW PARK LUXURY GARDENS (2006) INC. described in paragraph(s) (c) above.
- (f) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of ____ who is my spouse described in paragraph () and as such, I have personal knowledge of the facts herein deposed to.

2 I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:

does not contain a single family residence or contains more than two single family residences.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	0.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	380,000.00
(ii) Given Back to Vendor	220,000.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	600,000.00
(h) VALUE OF ALL CHATTELS - Items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	600,000.00

PROPERTY Information Record

A. Nature of Instrument: Transfer
LRO 12 Registration No. CE474293 Date: 2011/06/15

B. Property(s):
PIN 70549 - 0356 Address LASALLE Assessment Roll No -
PIN 70549 - 0357 Address LASALLE Assessment Roll No -

C. Address for Service: 1403-1225 Riverside Drive West,
Windsor, Ontario N9A 0A2

D. (i) Last Conveyance(s): PIN 70549 - 0356 Registration No. R1542019
PIN 70549 - 0357 Registration No. CE80839

(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes No Not known

E. Tax Statements Prepared By: Jerry Lee Goldberg
300-443 Ouellette Avenue,
PO Box 1390, Stn. A
Windsor N9A 6R4

*THIS IS EXHIBIT "O" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*

A handwritten signature in blue ink, appearing to be 'S. Trombley', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

LRO # 12 Charge/Mortgage

Registered as CE474295 on 2011 06 15 at 16:15
yyyy mm dd Page 1 of 2

The applicant(s) hereby applies to the Lund Registrar.

Properties

<i>PIN</i>	70549 - 0356 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOTS 12 TO 28 INCL., PART OF BLK AB & ; PART OF BLK W, PLAN 1007, LOTS 322 TO 326 & LOTS 329 TO 335 INCL & PT LOT 328 ALL ON PLAN 827 AS PARTS 1 & 3 ON 12R22010; LASALLE S/T EASE OVER PART 3 ON 12R22010 AS IN R1427770		
<i>Address</i>	LASALLE		
<i>PIN</i>	70540 - 0357 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOT 327 PLAN 827 & PART OF BLOCK AB PLAN 1007 AS PART 2 ON 12R22010; LASALLE		
<i>Address</i>	LASALLE		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

<i>Name</i>	WESTVIEW PARK LUXURY GARDENS (2006) INC
<i>Address for Service</i>	1403-1225 Rivoralko Drive West, Windsor, Ontario N9A 0A2

I, Dante Cepaldi, President, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)**Capacity****Share**

<i>Name</i>	PORTOFINO CORPORATION
<i>Address for Service</i>	1403-1225 Rivoralko Drive West, Windsor, Ontario N9A 0A2

Provisions

<i>Principal</i>	\$220,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>			
<i>Balance Due Date</i>	Due on demand		
<i>Interest Rate</i>			
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>			
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>	200033		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>			

Additional Provisions

PROVIDED that, when not in default hereunder, the Chargor/Mortgagor shall have the privilege of prepaying the whole or any part of the principal sum hereby secured at any time or times without notice or bonus.

PROVIDED further that in the event the Chargor/Mortgagor should sell, convey or transfer the herein described lands and premises to a Purchaser, Grantor or Transferee without the prior written consent of the Chargee, then this Charge/Mortgage of Land, at the option of the Chargee/Mortgagee, shall become fully due and payable forthwith in its entirety.

Signed By

Julia Louisa Mijatovic	300-443 Ouellette Avenue, PO Box 1390, Str. A Windsor N9A 6R4	acting for Chargor	Signed 2010 03 08 (s)
------------------------	--	--------------------	--------------------------

Tel 519-877-1555

Fax 5199771566

I have the authority to sign and register the document on behalf of the Chargor(s).

LRO # 12 Charge/Mortgage

Registered as CE474295 on 2011 08 15 at 16:16
yyyy mm dd Page 2 of 2

The applicant(s) hereby applies to the Land Registrar.

Submitted By

MILLER CANFIELD PADDOCK AND STONE LLP 300-443 Ouellette Avenue, PO 2011 08 15
Box 1390, Str. A
Windsor
N9A 6R4

Tel 510-877-1555
Fax 5198771566

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
Total Paid \$80.00

File Number

Charger Client File Number : 129020-133/JLG/JM
Chargee Client File Number : 129020/133/JLG/JM

*THIS IS EXHIBIT "P" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

**SOVRAN &
GREENAWAY LLP**

Chartered Accountants

1000-176 University Ave. W. Windsor, ON N9A 5P1 (519) 258-7500 Fax 258-1800

141 Sandwich South Amherstburg, ON N9V 1Z9 (519) 736-3932 Fax 736-8033

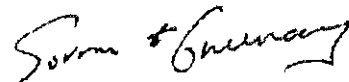
NOTICE TO READER

On the basis of information provided by management, we have compiled the balance sheet of Westview Luxury Gardens (2006) Inc. as at August 31, 2007 and the statement of income and retained earnings for the year then ended.

We have not prepared an audit or a review engagement in respect of these financial statements and accordingly, we express no assurance thereon.

Readers are cautioned that these may not be appropriate for their purposes.

February 11, 2010
Amherstburg, Ontario



Chartered Accountants
Licensed Public Accountants

WESTVIEW PARK LUXURY GARDENS (2006) INC.
BALANCE SHEET

(Unaudited - See Notice to Reader)

As at August 31	2007	2006
	\$	\$
ASSETS		
CURRENT ASSETS		
Bank	-	373
Due from Townhomes	3,303	3,303
GST Receivable	-	525
	3,303	4,201
CAPITAL ASSETS		
Land	600,000	600,000
OTHER ASSETS		
Incorporation costs	1,198	1,198
Deferred development costs	183,424	141,051
	184,622	142,249
	787,925	746,450
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Bank indebtedness	151	-
Accounts payable and accrued liabilities	51	227
Loan - Capaldi Corporation	262,900	221,400
Loan - 2043571 Ontario	99,000	99,000
Loan - Heritage Park	17,500	17,500
Loan - Westview Park	10,000	10,000
Loan - Westview Park (2004)	18,223	18,223
	407,825	366,350
LONG TERM LIABILITIES	380,000	380,000
SHAREHOLDERS' EQUITY		
Common shares	100	100
Retained earnings	-	-
	100	100
	787,925	746,450

WESTVIEW PARK LUXURY GARDENS (2006) INC.
STATEMENT OF INCOME AND RETAINED EARNINGS
(Unaudited - See Notice to Reader)

Year ended August 31	2007	2006
	\$	\$
Revenue	-	-
Expenses		
Amortization	-	-
Bank charges and interest	-	-
Common fees	-	-
Office assistant	-	-
Office supplies	-	-
Parking spaces	-	-
Property taxes	-	-
Repairs and maintenance	-	-
Utilities	-	-
NET INCOME (LOSS)	-	-
Retained earnings at beginning of year	-	-
RETAINED EARNINGS AT END OF YEAR	-	-

*THIS IS EXHIBIT "Q" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12, 2018*

A handwritten signature in blue ink, appearing to be 'Sherry Ann Trombley', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

**SOVRAN &
GREENAWAY LLP**

Chartered Accountants

1000-176 University Ave. W. Windsor, ON N9A 5P1 (519) 258-7500 Fax 258-1800

141 Sandwich South Amherstburg, ON N9V 1Z9 (519) 736-3932 Fax 736-8033

NOTICE TO READER

We have compiled the balance sheet of Portofino Corporation as at July 1, 2006 and the statement of income and retained earnings for the year then ended from information provided by management. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Readers are cautioned that these statements may not be appropriate for their purposes.

December 13, 2008
Amherstburg, Ontario

Chartered Accountants

PORTOFINO CORPORATION

BALANCE SHEET
(Unaudited - See Notice to Reader)

As at July 1	2006	2005
	\$	\$

ASSETS		
CURRENT ASSETS		
Cash and marketable securities	-	4,797
Receivable from related companies	526,223	7,542
Funds in trust	649,911	-
GST receivable	409,825	2,296
Prepays and deposits	12,640	-
	1,598,599	14,635

DEFERRED DEVELOPMENT COSTS	15,330,808	840,183
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INCORPORATION COSTS	1,225	1,225
----------------------------	-------	-------

	16,930,632	856,043
--	------------	---------

LIABILITIES AND SHAREHOLDERS' EQUITY

CURRENT LIABILITIES		
Bank indebtedness	2,284,254	-
Accounts payable and accrued liabilities	5,018,733	28,543
	7,302,986	28,543

LONG-TERM DEBT		
Loan - Bank of Montreal	7,485,616	640,000
Payable to Damore	786,000	16,000
Payable to Rizzo	222,500	-
Payable to Capaldi	1,132,429	171,400
	9,627,545	827,400

SHAREHOLDERS' EQUITY		
Capital stock issued	100	100
Retained earnings	100	100
	16,930,632	856,043

PORTOFINO CORPORATION

STATEMENT OF INCOME AND RETAINED EARNINGS
(Unaudited - See Notice to Reader)

As at July 1	2006	2005
	\$	\$

Revenue	-	-
Expenses	-	-

NET INCOME	-	-
-------------------	---	---

Retained earnings at beginning of year	-	-
--	---	---

RETAINED EARNINGS AT END OF YEAR	-	-
---	---	---

*THIS IS EXHIBIT "R" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 12 2018*

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

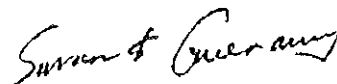
**SOVRAN &
GREENAWAY LLP**
Chartered Accountants

1000-176 University Ave. W. Windsor, ON N9A 5P1 (519) 258-7500 Fax 258-1800
141 Sandwich South Amherstburg, ON N9V 1Z9 (519) 736-3932 Fax 736-8033

NOTICE TO READER

We have compiled the balance sheet of Capaldi Corporation as at August 31, 2004 and the statement of income and retained earnings for the year then ended from information provided by management. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Readers are cautioned that these statements may not be appropriate for their purposes.

April 15, 2005
Amherstburg, Ontario



Chartered Accountants

CAPALDI CORPORATION

BALANCE SHEET

(Unaudited - See Notice to Reader)

	August 31	
	2004	2003
	\$	\$
ASSETS		
CURRENT ASSETS		
Bank and investments	151,309	352,864
Loans receivable	130,200	126,700
Inventories - Land	76,000	76,000
Inventories - WIP	1,678,148	940,871
Prepaid expenses and deposits	2,000	2,000
	<u>2,037,657</u>	<u>1,498,436</u>
CAPITAL ASSETS		
Equipment	19,776	4,938
Accumulated amortization	6,755	4,736
	<u>13,021</u>	<u>202</u>
DUE FROM SHAREHOLDER	-	193,965
	2,050,678	1,692,602
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Customer deposits	1,775	1,775
Income taxes payable	22,000	-
	<u>23,775</u>	<u>1,775</u>
LOANS PAYABLE	692,467	1,000,612
PAYABLE TO RELATED PARTIES	700,133	685,780
PAYABLE TO SHAREHOLDER	538,233	-
	1,930,833	1,686,392
SHAREHOLDERS' EQUITY		
Capital stock issued	100	100
Retained earnings	95,970	4,335
	<u>96,070</u>	<u>4,435</u>
	2,050,678	1,692,602

CAPALDI CORPORATION

STATEMENT OF INCOME AND RETAINED EARNINGS

(Unaudited - See Notice to Reader)

	Year ended August 31	
	2004	2003
	\$	\$
Sales	923,207	1,027,194
Less: Commissions and legals	(48,732)	(40,409)
Sales - net	874,475	986,785
Direct costs	756,022	809,679
Gross margin - construction	118,453	177,106
Other income	99,018	33,638
	217,471	210,744
Expenses		
Advertising and promotion	7,418	10,626
Automotive	7,851	13,908
Bank charges and interest	45,533	22,407
Amortization	2,019	50
Miscellaneous	2,283	200
Management fees	-	124,000
Insurance	23,268	22,443
Office	5,779	7,810
Professional fees	1,275	2,440
Telephone and courier	8,410	7,262
	103,836	211,146
Income (Loss) before income taxes	113,635	(402)
Income taxes	22,000	-
NET INCOME (Loss)	91,635	(402)
Retained earnings at beginning of year	4,335	4,737
RETAINED EARNINGS AT END OF YEAR	95,970	4,335

CAPALDI CORPORATION

SCHEDULE OF DIRECT COSTS

(Unaudited - See Notice to Reader)

	Year ended August 31	
	2004	2003
	\$	\$
Cost of land sold	90,393	93,879
Equipment rental and maintenance	4,765	17,521
Materials and subcontractors	620,111	633,860
Permits	29,771	24,611
Utilities	10,982	39,808
	756,022	809,679

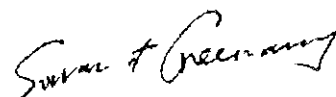
**SOVRAN &
GREENAWAY LLP**
Chartered Accountants

1000-176 University Ave. W. Windsor, ON N9A 5P1 (519) 258-7500 Fax 258-1800
141 Sandwich South Amherstburg, ON N9V 1Z9 (519) 736-3932 Fax 736-8033

NOTICE TO READER

We have compiled the balance sheet of Capaldi Corporation as at August 31, 2005 and the statement of income and retained earnings for the year then ended from information provided by management. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Readers are cautioned that these may not be appropriate for their purposes.

June 12, 2006
Amherstburg, Ontario



Chartered Accountants

CAPALDI CORPORATION

BALANCE SHEET

(Unaudited - See Notice to Reader)

As at August 31	2005 \$	2004 \$
ASSETS		
CURRENT ASSETS		
Bank and investments	45,603	151,309
Accounts receivable	760	-
Loans receivable	156,700	130,200
Inventories - Land	75,000	76,000
Inventories - WIP	1,490,568	1,678,148
Prepaid expenses and deposits	3,408	2,000
	<u>1,772,039</u>	<u>2,037,657</u>
CAPITAL ASSETS		
Equipment	22,292	19,776
Vehicle	3,996	-
	<u>26,288</u>	<u>19,776</u>
Accumulated amortization	12,388	6,755
	<u>13,900</u>	<u>13,021</u>
	<u>1,785,939</u>	<u>2,050,678</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable and accrued liabilities	41,111	-
Customer deposits	1,775	1,775
Income taxes payable	11,500	24,000
	<u>54,386</u>	<u>25,775</u>
LOANS PAYABLE	1,003,790	692,467
PAYABLE TO RELATED PARTIES	152,146	700,133
PAYABLE TO SHAREHOLDER	444,993	538,233
	<u>1,600,929</u>	<u>1,930,833</u>
SHAREHOLDERS' EQUITY		
Capital stock issued	100	100
Retained earnings	130,524	93,970
	<u>130,624</u>	<u>94,070</u>
	<u>1,785,939</u>	<u>2,050,678</u>

CAPALDI CORPORATION

STATEMENT OF INCOME AND RETAINED EARNINGS

(Unaudited - See Notice to Reader)

As at August 31	2005 \$	2004 \$
Sales	670,126	923,207
Less: Commissions and legals	(40,575)	48,732
Sales - net	629,551	874,475
Direct costs	484,525	756,022
Gross margin - construction	145,026	118,453
Other income	55,209	99,018
	200,235	217,471
Expenses		
Advertising and promotion	9,552	7,418
Automotive	2,004	7,851
Bank charges and interest	32,784	45,533
Amortization	5,633	2,019
Miscellaneous	4,692	2,283
Insurance	26,195	23,268
Loan interest	34,250	-
Office	4,403	5,779
Executive wages	16,000	-
Professional fees	1,300	1,275
Telephone and courier	8,810	8,410
	145,623	103,836
Income before income taxes	54,612	113,635
Income taxes	18,058	24,000
NET INCOME	36,554	89,635
Retained earnings at beginning of year	93,970	4,335
RETAINED EARNINGS AT END OF YEAR	130,524	93,970

CAPALDI CORPORATION**SCHEDULE OF DIRECT COSTS**
(Unaudited - See Notice to Reader)

As at August 31	2005	2004
	\$	\$
Cost of land sold	138,522	90,393
Equipment rental and maintenance	7,120	4,765
Materials and subcontractors	317,128	620,111
Permits	16,197	29,771
Utilities	5,558	10,982
	<u>484,525</u>	<u>756,022</u>

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NOTICE TO READER

On the basis of information provided by management, we have compiled the balance sheet of Capaldi Corporation at August 31, 2006 and the statement of income and retained earnings for the year then ended.

We have not prepared an audit or a review engagement in respect of these financial statements and accordingly, we express no assurance thereon.

Readers are cautioned that these may not be appropriate for their purposes.

January 8, 2009
Amherstburg, Ontario


Chartered Accountants
Licensed Public Accountants

CAPALDI CORPORATION

BALANCE SHEET

(Unaudited - See Notice to Reader)

As at August 31	2006 \$	2005 \$
ASSETS		
CURRENT ASSETS		
Bank and investments	36,181	45,603
Accounts receivable	275	760
Loans receivable	430,819	156,700
Inventories - Land	37,500	75,000
Inventories - WIP	3,083,811	1,490,568
Prepaid expenses and deposits	3,408	3,408
	3,591,994	1,772,039
CAPITAL ASSETS		
Equipment	22,292	22,292
Vehicle	3,996	3,996
	26,288	26,288
Accumulated amortization	15,738	12,388
	10,550	13,900
	3,602,544	1,785,939
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable and accrued liabilities	3,600	41,111
Customer deposits	1,775	1,775
Income taxes payable	2,738	11,500
	8,114	54,386
LOANS PAYABLE	2,464,758	1,003,790
PAYABLE TO RELATED PARTIES	305,630	152,146
PAYABLE TO SHAREHOLDER	696,767	444,993
	3,467,155	1,600,929
SHAREHOLDERS' EQUITY		
Capital stock issued	100	100
Retained earnings	127,175	130,524
	127,275	130,624
	3,602,544	1,785,939

CAPALDI CORPORATION

STATEMENT OF INCOME AND RETAINED EARNINGS

(Unaudited - See Notice to Reader)

As at August 31	2006 \$	2005 \$
Sales	534,522	670,126
Less: Commissions and legals	(31,819)	(40,575)
Sales - net	502,703	629,551
Direct costs	299,709	484,525
Gross margin - construction	202,994	145,026
Other income	28,888	55,209
	231,882	200,235
Expenses		
Advertising and promotion	9,340	9,552
Automotive	9,285	2,004
Bank charges and interest	34,366	32,784
Loan interest	66,379	34,250
Amortization	3,350	5,633
Miscellaneous	10,157	4,692
Insurance	14,636	26,195
Office	3,531	4,403
Executive wages	70,000	16,000
Professional fees	1,411	1,300
Telephone and courier	12,725	8,810
	235,181	145,623
Income before income taxes	(3,299)	54,612
Income taxes	50	18,058
NET INCOME	(3,349)	36,554
Retained earnings at beginning of year	130,524	93,970
RETAINED EARNINGS AT END OF YEAR	127,175	130,524

CAPALDI CORPORATION**SCHEDULE OF DIRECT COSTS**
(Unaudited - See Notice to Reader)

As at August 31	2006	2005
	\$	\$
Cost of land sold	133,475	138,522
Equipment rental and maintenance	6,116	7,120
Materials and subcontractors	133,742	317,128
Permits	19,698	16,197
Utilities	6,679	5,558
	299,709	484,525

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141 Sandwich South, Amherstburg, ON N9V 1Z9 (519) 736-3932 Fax 736-8033

NOTICE TO READER

On the basis of information provided by management, we have compiled the balance sheet of Capaldi Corporation at August 31, 2007 and the statement of income and retained earnings for the year then ended.

We have not prepared an audit or a review engagement in respect of these financial statements and accordingly, we express no assurance thereon.

Readers are cautioned that these may not be appropriate for their purposes

July 30, 2009
Amherstburg, Ontario

Chartered Accountants
Licensed Public Accountants

CAPALDI CORPORATION

BALANCE SHEET

(Unaudited - See Notice to Reader)

As at August 31	2007 \$	2006 \$
ASSETS		
CURRENT ASSETS		
Bank and investments	-	36,181
Accounts receivable	-	275
Loans receivable	315,440	430,819
Inventories - Land	77,000	37,500
Inventories - WIP	3,282,654	3,083,811
Prepaid expenses and deposits	3,408	3,408
	3,678,502	3,591,994
CAPITAL ASSETS		
Equipment	22,292	22,292
Vehicle	3,996	3,996
	26,288	26,288
Accumulated amortization	18,238	15,738
	8,050	10,550
	3,686,552	3,602,544
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Bank overdraft	133,798	-
Accounts payable and accrued liabilities	60,344	3,600
Customer deposits	1,775	1,775
Income taxes payable	0	2,738
	195,916	8,114
LOANS PAYABLE	2,074,310	2,464,758
PAYABLE TO RELATED PARTIES	796,760	305,630
PAYABLE TO SHAREHOLDER	494,791	696,767
	3,365,860	3,467,155
SHAREHOLDERS' EQUITY		
Capital stock issued	100	100
Retained earnings	124,675	127,175
	124,775	127,275
	3,686,552	3,602,544

CAPALDI CORPORATION

STATEMENT OF INCOME AND RETAINED EARNINGS

(Unaudited - See Notice to Reader)

As at August 31	2007 \$	2006 \$
Sales	505,381	534,522
Less: Commissions and legals	(31,719)	(31,819)
Sales - net	473,662	502,703
Direct costs	360,988	299,709
Gross margin - construction	112,674	202,994
Other income (expenses)	(7,451)	28,888
	105,223	231,882
Expenses		
Advertising and promotion	26,836	9,340
Automotive	30	9,285
Bank charges and interest	3,891	34,366
Loan interest	56,200	66,379
Amortization	2,500	3,350
Miscellaneous	1,887	10,157
Insurance	6,456	14,636
Office	1,319	3,531
Executive wages	0	70,000
Professional fees	0	1,411
Telephone and courier	7,539	12,725
	106,658	235,181
Income before income taxes	(1,435)	(3,299)
Income taxes	1,065	50
NET INCOME	(2,500)	(3,349)
Retained earnings at beginning of year	127,175	130,524
RETAINED EARNINGS AT END OF YEAR	124,675	127,175

CAPALDI CORPORATION**SCHEDULE OF DIRECT COSTS**
(Unaudited - See Notice to Reader)

As at August 31	2007	2006
	\$	\$
Cost of land sold	136,906	133,475
Equipment rental and maintenance	3,002	6,116
Materials and subcontractors	192,172	133,742
Permits	20,644	19,698
Utilities	8,264	6,679
	<u>360,988</u>	<u>299,709</u>

**THIS IS EXHIBIT "S" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 17, 2018**



A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

Court File No. CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
 JUSTICE B. THOMAS

) TUESDAY, THE 29th
)
) 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. C43, 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

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

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

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;

- (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.

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;

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.

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.

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

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.

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.

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.

000559

J. V. Amos

ENTERED AT WINESBORO	
In Book No.	24
In Document No.	1485
on	NOV 21 21883
by	JV

000560

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.

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- Portofino 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

*THIS IS EXHIBIT "T" TO
THE AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY 17, 2018*

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Sherry Ann Trombley, a Commissioner, etc.,
Province of Ontario, for Kirwin Partners LLP,
Barristers and Solicitors.
Expires January 27, 2020.

LRO # 12 Notice

Registered as CE785768 on 2017 08 08 at 12:28

The applicant(s) hereby applies to the Land Registrar

yyyy mm dd Page 1 of 2

Properties

PIN 70549 - 0356 LT
 Description LOTS 12 TO 25 INCL., PART OF BLK AB & PART OF BLK W, PLAN 1007, LOTS 322 TO 326 & LOTS 329 TO 335 INCL. & PT LOT 328 ALL ON PLAN 827 AS PARTS 1 & 3 ON 12R22010; LASALLE S/T EASE OVER PART 3 ON 12R22010 AS IN R1427776
 Address LASALLE

PIN 70549 - 0357 LT
 Description PART OF LOT 327 PLAN 827 & PART OF BLOCK AB PLAN 1007 AS PART 2 ON 12R22010; LASALLE
 Address LASALLE

Consideration

Consideration \$0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name BDO CANADA LIMITED
 Address for Service 633 Colborne Street
 Suite 100
 London, Ontario
 N6B 2V3

I, Stephen Chemak, Senior Vice President, have the authority to bind the corporation
 This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.
 This notice is for an indeterminate period
 Schedule: See Schedules

Signed By

Andrew Samuel Roth	295 Hagey Blvd., Suite 300 Waterloo N2L 6R5	acting for Applicant(s)	Signed	2017 08 08
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Tel 519-579-3660

Fax 519-743-2540

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

MILLER THOMSON LLP	295 Hagey Blvd., Suite 300 Waterloo N2L 6R5	2017 08 08
--------------------	---	------------

Tel 519-579-3660

Fax 519-743-2540

Fees/Taxes/Payment

Statutory Registration Fee	\$63.35
Total Paid	\$63.35

File Number

Applicant Client File Number : 82873.12

**LAND TITLES ACT
APPLICATION TO REGISTER A NOTICE OF AN UNREGISTERED ESTATE,
RIGHT, INTEREST OR EQUITY**

(UNDER SECTION 71 OF THE LAND TITLES ACT)

To: The Land Registrar for the Land Titles Division of Essex

I, **Andrew Roth, Solicitor for the Applicant**, hereby state the applicant has an unregistered estate, right, interest of equity in the lands described as:

PART OF LOT 327 PLAN 827 & PART OF BLOCK AB PLAN 1007 AS PART 2 ON 12R22010; LASALLE; Being all of PIN: 70549-0357 (LT)

AND

LOTS 12 TO 25 INCL. PART OF BLK AB & ;PART OF BLK W, PLAN 1007, LOTS 322 TO 326 & LOTS 329 TO 335 INCL. & PT LOT 328 ALL ON PLAN 827 AS PARTS 1 & 3 ON 12R22010; LASALLE S/T EASE OVER PART 3 ON 12R22010 AS IN R1427776; Being all of PIN: 70549-0356 (LT)

WESTVIEW PARK LUXURY GARDENS (2006) INC. is the current registered owner of the above lands I hereby apply under Section 71 of the Land Titles Act for the entry of a Notice in the register for the said parcels.

The Applicant is the Court Appointed receiver of the Chargee named in Instrument No. CE474295.

The Applicant, who is authorized by court file no. CV-13-19868 dated May 2, 2014, which is still in full force and effect, hereby authorizes the Land Registrar to delete the entry of this Notice from the said parcel register upon the discharge of the Charge registered as Instrument No. CE474295 and upon receipt of the consent of BDO Canada Limited, as the court appointed receiver of the Chargee.

Dated August 8th, 2017.



**Andrew Roth
Solicitor for the Applicant**

The address of the applicant for service is:

**BDO Canada Limited
833 Colborne Street
Suite 100
London, Ontario
N6B 2V3**

WESTVIEW PARK LUXURY GARDENS (2006) INC.

-and- PORTOFINO CORPORATION

Plaintiff

Defendants

Court File No (To Be issued)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**AFFIDAVIT OF DANTE CAPALDI
SWORN FEBRUARY , 2018**

KLAIMAN EDMONDS

Barristers
60 Yonge Street
Suite 1000
Toronto, Ontario
M5E 1H5

Diana Edmonds LSUC# (21628N)

Tel: (416) 867-9600

Fax: (416) 867-9783

Lawyers for Portofino Corporation

APPENDIX “P”

**BDO Canada Limited Court Appointed Receiver of
Portofino Corporation
Statement of Receipts and Disbursements
October 29, 2013 through November 15, 2022**

464

Receipts:

Sale of condominium units and surface parking	\$ 16,964,509.00	
Less: real estate commissions (incl. HST)	(656,938.27)	
Less: property tax arrears	(424,295.35)	
Less: ECC No. 122 common fees	(36,959.02)	
Less: closing adjustments	(18,567.49)	
Add: HST collected on parking and unfinished units	260,545.88	
		\$ 16,088,294.75
Unit rental Income		1,978,587.60
Funds in Court re: Betschel's Kitchen Centre Inc.		159,530.86
Holdback funds re: Portofino sub-trades		119,789.96
Letter of Credit cost reimbursement		64,408.22
VTB mortgage payout		47,500.00
Parking space rental		41,914.69
Security re: Dalfidan Action		31,368.69
Interest earned		27,322.75
HST refund		7,971.76
Miscellaneous litigation		497.88
		18,567,187.16

Disbursements:

City of Windsor - property taxes	3,060,155.01	
Receiver's fees	1,140,048.71	
ECC No. 122 - common fees	786,233.64	
Miller Thomson LLP - Receiver's legal fees	433,933.51	
HST paid on disbursements	254,954.58	
HST remitted	250,138.22	
Repairs & maintenance	237,927.74	
Settlement of Dalfidan litigation	80,000.00	
Sutts, Strosberg LLP- legal fees	78,662.72	
Property management fees	70,000.00	
Bond premiums	55,689.00	
Utilities	41,559.74	
Advertising	40,346.72	
BMO - Letter of Credit fees re Valente litigation	39,074.26	
Valente litigation - costs award	30,393.34	
Appraisal fees	15,014.50	
Insurance	12,021.48	
Accounting fees	11,050.00	
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	668.00	
Valente litigation - interest on settlement	628.36	
Bank charges	607.50	
Receiver General - receivership filing fee	70.00	
		6,647,994.17

Excess receipts over disbursements

\$ 11,919,192.99

Represented by:

Payments to Secured Creditors

2502461 Ontario Ltd. / Windsor Family Credit Union	\$ 11,200,000.00
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Funds Held by Receiver

Guaranteed Investment Certificate	600,000.00	
Balance in Receiver's account at November 15, 2022	119,192.99	
		719,192.99
		\$ 11,919,192.99

APPENDIX “Q”

**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. The Receiver's Tenth Report to the Court was approved by Mr. Justice Carey on November 27, 2018.
The ninth account of the Receiver for the period April 2, 2018 to July 24, 2018 was also approved by the Order of Justice Carey on November 27, 2018.
13. Since the date of the Receiver's last account the Receiver has been engaged in the following:
 - Prepare the Tenth Report of the Receiver and attend Court hearing on November 27, 2018;
 - Prepare unit 106 to be listed for sale 'as is' and negotiate the sale of unit 106 through the Receiver's agent;
 - Negotiate the sale of block of 29 surface parking spaces through the Receiver's agent;
 - Negotiate the sale of basement storage units A1, A2 and three surface parking spaces directly with the purchaser;

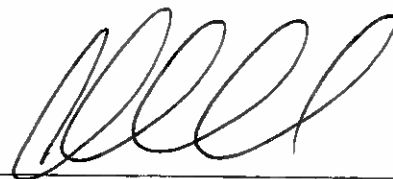
- Complete the sale of condominium units 1505 and 106, two basement storage units and numerous surface parking spaces;
- Assist buyers of units 1202 and 1402 with HST New Housing Rebate application;
- Correspond with S. Nevicato of Tarion regarding the sale of unfinished units, certificates of completion and possession, bond status, Tarion process with respect to outstanding deficiencies from performance audit and other matters;
- Telephone calls and correspondence with Property Manager for Essex Condominium Corporation No. 122 regarding maintenance and repairs, parking space rental, Tarion forms and other issues;
- Prepare annual working schedules and correspond with external accountant, Michael Greenaway Professional Corporation, regarding the preparation of July 1, 2019 through July 1, 2022 financial statements and income tax returns;
- Negotiate payout amount of unit 503 vendor take back mortgage by J. Bravo, arrange for mortgage discharges and execute related documents;
- Maintain loan schedule for 2502461 Ontario Ltd. and periodic revisions for changes in the bank prime rate;
- Direct legal counsel on recovery of Betschel Kitchen litigation funds held in court, including review and execution of affidavit and other documents;
- Prepare the Eleventh Report of the Receiver and final Statement of Receipts and Disbursements;
- Review issues and approach to outstanding matters to conclude receivership with legal counsel, including Tarion bond, Miller Canfield trust funds and Westview trust funds / vendor take back mortgage; and
- Various telephone calls and correspondence with the stakeholders and their respective counsel and other parties.

14. In the course of performing the duties pursuant to the Order and as set out above at paragraph 13, and since the date of the Tenth Report the Receiver's staff expended 307.0 hours for the period of July 25, 2018 through November 21, 2022. The Receiver's final invoice dated November 22, 2022 includes a provision for the Receiver to deal with issues arising from the Court's advice and direction on the Westview matter, Tarion bond and Miller Canfield trust funds, and to finalize the administration of the estate, based on time incurred at normal hourly rates, but not to exceed \$25,000. Attached hereto and marked as Exhibit "A" to this my Affidavit are the accounts of the Receiver together with a summary sheet.
15. 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.
16. 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.
17. 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.
18. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
19. 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 24th day of November, 2022

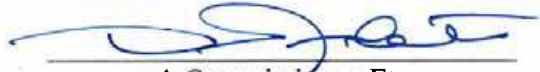


Commissioner for Taking Affidavits



STEPHEN N. CHERNIAK, CPA, CA, CIRP

Attached is Exhibit A
To the Affidavit of Stephen N. Cherniak
Sworn the 24th day of November 2022.



A Commissioner, Etc

David Randall Flett, a Commissioner, etc.,
Province of Ontario, for BDO Canada Limited and BDO
Canada LLP. Expires April 24, 2025

**Summary of Receiver's Accounts for the period
July 25, 2018 to November 21, 2022**

Invoice Date	Hours Expended	Fees & Disbursements	HST	Invoice Total
July 23, 2019	107.00	\$39,000.00	\$5,070.00	\$44,070.00
December 10, 2019	65.70	26,000.00	3,380.00	29,380.00
June 1, 2022	85.20	35,420.00	4,604.60	40,024.60
November 22, 2022	49.10	48,045.00	6,245.85	54,290.85
	307.00	\$148,465.00	\$19,300.45	\$167,765.45



Invoice # 07232019
Portofino Corporation
HST Reg # 101518124RT0001

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

July 23, 2019

Re: Portofino Corporation

For professional services rendered for the period July 25, 2018 through July 15, 2019 as per the attached detail:

Our Fee	\$39,000.00
Disbursements	<u>0.00</u>
Sub total	\$39,000.00
HST	5,070.00
Total	<u>\$44,070.00</u>

REMITTANCE ADVICE

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

Invoice #	07232019
Amount	\$44,070.00

July 23, 2019

For professional services rendered

Staff	Date	Time	Narrative
Hooper, L	2018-07-25	0.1	Banking
Flett, D	2018-07-25	1.7	Start 10th report to court; email with N. Bear re 1505, parking.
Finnegan, M	2018-07-25	0.5	File admin
Flett, D	2018-07-26	0.5	Continue with 10th report
Cherniak, S	2018-07-26	0.2	Email from D'Amore. Respond.
Flett, D	2018-07-27	0.9	Call with J. McClelland re 1505 conditional sale status, 1202 HST rebate; detailed email to D. Fretz re: preparation of HST new housing rebate for unit 1202, information required by Scott Merry.
Cherniak, S	2018-07-27	0.1	Review of email on HST rebate.
Flett, D	2018-07-30	0.4	Email with N. White re 1202 HST rebate application; review reliance collection notices with M. Finnegan; sign receiver cheques; call with J. McClelland re; 1505 conditional sale status, other 1505 showings.
Finnegan, M	2018-07-31	0.3	Pay bills.
Flett, D	2018-08-01	0.2	Call with J. McClelland re: 1505 waiver of conditions, 1202 HST rebate
Flett, D	2018-08-02	1.5	Sign 1505 notice of fulfillment and fwd to J. McClelland; email with J. McClelland re: 1505 closing; email to N. Bear re 1505; email with Miller Thomson re sale of 1505 and forward sale and property tax documents; update unsold unit summary; update 10th report and unit summary chart for 10th report.
Flett, D	2018-08-03	0.9	Continue 10th report of Receiver - Tarion, property management; review receiver accounting / general ledger re 10th report receipts and disbursements; update unsold unit summary.
Flett, D	2018-08-07	0.8	Email with N. Bear re: City Windsor fire inspection invoice, Tarion CCP form status for unfinished units; call with City Windsor re: property tax payments; review August common fees; call with J. McClelland and email to N. Bear re: 1505 pre-closing repair issue.
Finnegan, M	2018-08-07	0.2	Pay condo fees.
Cherniak, S	2018-08-07	0.5	Review of emails re fire inspection bill, problems with 1505, update on 1505 while on vacation.
Flett, D	2018-08-08	0.7	Emails re property tax admin issues. Review Reliance collection correspondence and property manager accounting for relevant periods and approve 1301 payment; emails with L. Lattimore re 1403 reliance account.
Hooper, L	2018-08-08	0.1	Banking

Staff	Date	Time	Narrative
Cherniak, S	2018-08-08	0.4	Review of emails re reliance. Update on 101 and water issues. Discuss remaining issues on file.
Flett, D	2018-08-09	0.1	Instructions to M. Finnegan re: reliance collection agency correspondence.
Finnegan, M	2018-08-09	0.3	Bill payment.
Flett, D	2018-08-10	0.1	Email with N. Bear, J. McClelland re 1505 repair and leave voice mail message.
Flett, D	2018-08-14	2.1	Lengthy call with N. Bear re: parking space accounting / deposit, spaces 18-20, unit 106, 1505 repair, amended schedule F to condo declaration and parking space assignment; review Portofino web site, review 2017 property expenses and emails with D. Capaldi re web site hosting invoice and hosting cancellation; review amended schedule F to condo declaration and note changes in parking assignment; email to N. Bear with schedules F and queries re parking; review status of ECC 122 / Capaldi Corporation litigation with SC; review of various ESCC 122 related documents.
Cherniak, S	2018-08-14	0.4	Review of invoice re website. Review of email to Capaldi. Discussion re parking. Review of email to bear.
Flett, D	2018-08-16	0.1	Review banking and parking deposit with M. Finnegan.
Finnegan, M	2018-08-16	0.3	Pay bill
Finnegan, M	2018-08-17	0.5	Prepare and send sale documents re 1505.
Flett, D	2018-08-17	1.4	Email to N. Bear re parking deposit / accounting; review draft 1505 closing statements and email with Miller Thomson re minor revision, closing key arrangements; emails with J. McClelland and N. Bear re 1505 cleaning and closing arrangements; call with J. McClelland re: 1505 closing; review parking catch-up deposit.
Cherniak, S	2018-08-17	0.2	Execute 1505 closing documents.
Hooper, L	2018-08-20	0.1	Banking
Cherniak, S	2018-08-20	0.2	Review of revised SOA for 1505.
Finnegan, M	2018-08-21	0.2	Bill payment.
Finnegan, M	2018-08-23	0.4	Deposit sale funds.
Cherniak, S	2018-08-23	0.2	Update on 1505 closing.
Flett, D	2018-08-26	0.4	Review revised 1505 closing statements; email with Miller Thomson re 1505 closing; email to N. Bear re 1505 closing; txt msg with J. McClelland re: 1505 closing, release keys.
Flett, D	2018-08-27	0.4	Email to D. Capaldi re 1505 Tarion CCP form; update sales and unsold unit inventory summary schedules for 1505 closing.
Cherniak, S	2018-08-27	0.1	Email re Tarion or 1505.
Flett, D	2018-08-28	0.1	Review 1505 HST, inputs.

Staff	Date	Time	Narrative
Flett, D	2018-08-29	1	Call with N. Bear re invoice; call with J. McClelland re: 1403 re-sale listing; review 106 status, J. McClelland re-sale listings with SC; text messages with JM; update draft 10th report; email to N. Bear re: Tarion CCP.
Cherniak, S	2018-08-29	0.1	Update on 106.
Flett, D	2018-08-30	1.7	Continue with draft 10th report re: Dalfidan, other matters; review august 14, 2018 parking deposit and back-up and reconcile; detailed email to N. Bear re: pre july 2018 parking rent outstanding and other queries; emails with N. White re 1202 HST rebate application (Fretz); email with J. McClelland re 1505 repairs status; Fretz HST rebate application - emails with DF.
White, Nicole	2018-08-30	0.2	1202-1225 rRverside new housing rebate.
Jokanovic, Ilijana	2018-08-30	1	Banking
Hooper, L	2018-08-31	0.1	Banking
Flett, D	2018-08-31	0.3	Emails with N. Bear re: parking, ESC 122 declaration.
Flett, D	2018-09-04	1.3	Prepare master summary of receiver surface parking spaces - sold, rental details, available for sale; emails with N. Bear and J. McClelland re parking spaces, 1605 purchase enquiry; email with D. Capaldi re: Tarion CCP for unit 1505; call with J. McClelland re: 1605 parking space enquiry.
Hooper, L	2018-09-05	0.1	Banking
Cherniak, S	2018-09-05	0.2	Deal with 1505 Tarion certificate.
Hooper, L	2018-09-06	0.1	Banking
Flett, D	2018-09-06	1.3	Email to N. Bear with Tarion CCP for 1505; email to D. Cooper / N White re: 1202 HST rebate application; call with N. Bear re: sale of parking spaces; call with J. McClelland re parking space enquiry, space 17 availability; email to Miller Thomson re: ECC 122 proposal to create replacement parking spaces 18,19 and 20; prepare parking inventory summary for J. McClelland.
Finnegan, M	2018-09-06	0.3	Pay bills
Flett, D	2018-09-07	1.8	Review parking 18,19,20 issues and basement storage options; review parking space commission; call with J. McClelland re storage unit pricing, parking space commission; review Miller Thomson email re: ECC 122 proposal to create new spaces 18,19, 20; review S. Kettle 2014 email, registered 12R reference plan and parking legal descriptions re: 18-20 issue; reply to Miller Thomson re spaces 18,19,20 and Receiver preference to sell/convey; sign parking #17 listing agreement and return to J. McClelland

Staff	Date	Time	Narrative
Cherniak, S	2018-09-07	0.3	Update on parking spaces and realtor commission thereto.
Cherniak, S	2018-09-10	0.2	Review of emails re parking spaces.
Flett, D	2018-09-11	0.8	Update parking space master for August rent catch-up deposit by Arnsby; email to N. Bear re parking spaces 18, 19, 20 and conveyance to ECC 122; email with J. McClelland re parking #17.
Cherniak, S	2018-09-11	0.2	Review of email re parking issue. Discuss internally
Flett, D	2018-09-12	0.6	Call with Union Gas re scheduled work, property management contact; review September property taxes with M. Finnegan; prepare brief lease vs buy analysis re parking spaces, current rental rate.
Finnegan, M	2018-09-12	0.2	Deposit.
Cherniak, S	2018-09-12	0.1	Review of Miller Thomson account.
Finnegan, M	2018-09-13	0.2	Bill payment
Flett, D	2018-09-13	0.4	Review September proper tax payment; call with J. McClelland re parking space #17, 1202 HST rebate application; email with N. White re: 1202 HST rebate application.
Jokanovic, Ilijana	2018-09-13	0.45	Fretz, Mary rebate update.
Flett, D	2018-09-14	0.7	Review schedule C to APS ; email to Miller Thomson re Schedule C for parking spaces; review updated Schedule C prepared by S. Kettle and email reply; email to J. McClelland with Schedule C for parking spaces and comments.
Flett, D	2018-09-17	0.1	Email with N. White re: 1202 HST rebate.
Cherniak, S	2018-09-17	0.2	Review of revisions to parking APS.
Flett, D	2018-09-27	0.1	Review October common fees and sign cheque.
Flett, D	2018-09-28	0.6	Call with N. Bear re; parking receipt catch-up, space allotment and current rental rate, Tarion CCP's; prepare summary of parking unit sales to date from main sale summary and forward to N. Bear as requested.
Cherniak, S	2018-09-28	0.5	Review of letter from Capaldi lawyer and T. Van Klink response. Review of email to N. Bear re parking sales.
Flett, D	2018-10-02	0.2	Review parking deposit, HST remittance and 1505 realtor commission with M. Finnegan.
Finnegan, M	2018-10-02	0.6	Bill payments. File HST returns
Cherniak, S	2018-10-02	0.5	Call with TVK re Capaldi lien claims. Review of email to Edmonds and her response.
Hooper, L	2018-10-03	0.1	Banking
Flett, D	2018-10-04	0.6	Review draft 2018 financial statements and 2013/2014 comparison; email to M Greenaway.
Cherniak, S	2018-10-04	0.2	Review of F/S.

Staff	Date	Time	Narrative
Flett, D	2018-10-10	4	Review S. D'Amore and SC emails re; status, future distribution; Continue 10th report - update, 503 vtb, Westview, Betschel Kitchen; review R&D to be prepared with M. Finnegan; review and revise draft R&D; review future realizations and distribution, Westview mortgage with SC; review detailed SC reply to S. D'Amore enquiries; revisions to R&D; continue with 10th report.
Finnegan, M	2018-10-10	0.6	R&D for Court Report
Cherniak, S	2018-10-10	1.1	Emails from D'Amore re update on file. Respond. Detailed response to distribution and potential shortfall. Discuss report.
Flett, D	2018-10-11	0.7	Revisions to 10th report and appendices, finalize draft.
Cherniak, S	2018-10-11	0.2	Questions re report.
Flett, D	2018-10-12	0.2	Review 2018 financial statements and tax return, and forward to SC for signing.
Flett, D	2018-10-15	0.2	Review and forward signed T183 to M. Greenaway re 2018 tax returns.
Cherniak, S	2018-10-15	0.9	Review of tenth report. Review of email from TVK. Review of Edmonds and Godard affidavit. Review of Miller Thomson letter re same.
Flett, D	2018-10-16	0.9	Review 10th report with SC, revisions and forward to Miller Thomson with comments and appendices.
Finnegan, M	2018-10-16	0.4	Bill payments.
Hooper, L	2018-10-16	0.1	Banking
Flett, D	2018-10-17	0.2	Email with M Greenaway re: 2018 tax return and review invoice.
Flett, D	2018-10-22	0.6	Call with J. McClelland re unsold parking spaces and selling arrangements, 106 status, 1203 listing, parking space; prepare unsold parking summary and forward to J. McClelland.
Finnegan, M	2018-10-22	0.1	Deposit parking cheque.
Flett, D	2018-10-23	0.7	Emails and call with J. McClelland re parking space enquiry and pricing; email reply to parking space buyer; update parking space rental summary and email to N. Bear re parking space rental status, deposit, unit 106.
Cherniak, S	2018-10-23	0.2	Review of emails re parking space offer.
Flett, D	2018-10-24	0.2	Update 2502461 Ontario loan schedule and notes re prime rate increase
Flett, D	2018-10-25	0.5	Review catch-up parking rent deposit and forward to M. Finnegan; review parking space summary provided by Arnsby; review parking rent details.
Finnegan, M	2018-10-26	0.5	Confirm and post parking fees deposit. Pay bills
Hooper, L	2018-10-26	0.1	Banking.

Staff	Date	Time	Narrative
Flett, D	2018-10-29	1.5	Review T. Van Klink emails re Miller Canfield funds in trust and applied to invoices; review and reconcile Arnsby parking deposit, ECC 122 schedules and update master parking space rent roll/summary; email to N. Bear with various queries on space allocation, parking rents due.
Cherniak, S	2018-10-29	0.4	Review of email from Miller Thomson re court report.
Flett, D	2018-10-30	0.4	Review application of Miller Canfield trust funds to solicitor invoices with SC; review SC, T. Van Klink emails re Miller Canfield Valente trust funds, 10th report; review parking deposits, email to M. Finnegan re: posting.
Finnegan, M	2018-10-30	0.3	Pay condo fees.
Hooper, L	2018-10-30	0.1	Banking
Cherniak, S	2018-10-30	0.5	Review of file re issue of Goldberg applying funds. Send emails to Miller Thomson. Review reply.
Flett, D	2018-10-31	1.4	Review parking summary; call/email to N. Bear re: issues to discuss; review draft 10th report revised by Miller Thomson, including Miller Canfield trust funds section; review required edits corrections to revised 10th report with SC; review prior reports re funding of Valente settlement and detailed email to T. Van Klink with queries, suggested revisions to 10th report.
Cherniak, S	2018-10-31	0.5	Review Miller Thomson edits re report. Review email response.
Hooper, L	2018-11-01	0.1	Banking
Flett, D	2018-11-05	1.2	Prepare fee affidavit for 10th report.
Flett, D	2018-11-06	0.2	Review 10th report and fee affidavit status with SC; voice mail message with N. Bear
Cherniak, S	2018-11-07	0.1	Call to Miller Thomson re update.
Flett, D	2018-11-08	1.1	Email with T. Van Klink re 10th report and revisions, updated Miller Thomson fees; review revised 10th report and email to T. Van Klink with comments; swear Receiver fee affidavit; review GIC redemption timing with M. Finnegan.
Cherniak, S	2018-11-08	0.5	Review of Miller Thomson changes. Review of emails re same. Execute fee affidavit.
Flett, D	2018-11-09	0.8	Review GIC, fee affidavit with M. Finnegan; call with N. Bear on several issues including parking, grading and 106 repair status, Tarion CCP forms, basement storage rooms; email to J. McClelland re 1505 buyer contact info; email to N. Bear confirming parking space rental increase and arrangements.
Jokanovic, Ilijana	2018-11-09	1	Unit 1202 rebate.

Staff	Date	Time	Narrative
Flett, D	2018-11-12	0.9	Emails with J. McClelland and N. Bear re 1505 buyer particulars; review property tax installment payment; emails and call with J. McClelland re 1402 buyer HST rebate enquiry; call with 1402 buyer re HST new housing rebate claim; emails with S. Merry re 1402 HST rebate claim.
Finnegan, M	2018-11-12	0.3	Property tax payment.
Flett, D	2018-11-13	1	Update unsold unit inventory and other asset schedule; email to N. Bear re AGM; review T. Van Klink email and Justice Bondy orders obtained by Capaldi; review Miller Thomson opinion letter re sale of units since March 29, 2018; review finalized 10th report.
White, Nicole	2018-11-13	0.3	Review HST rebate for Mary and Norman Fretz, email Dave Cooper for Peaco Contracting HST number.
Cherniak, S	2018-11-13	0.3	Review of orders re Capaldi. Review of email to N. Bear.
White, Nicole	2018-11-14	0.1	HST rebate Mary Fretz - email Dave about HST reg number for contractor.
Flett, D	2018-11-14	0.1	Brief review of motion record for 10th report, Miller Canfield trust funds.
Cherniak, S	2018-11-14	0.3	Review of letter to Leschied.
Flett, D	2018-11-15	0.6	Review various Reliance bills, collection notices prepared by M. Finnegan and review, authorize for payment; email with L. Lattimore re 1403 Reliance; review Reliance 106 and instructions to M. Finnegan re utility accounts.
Flett, D	2018-11-16	1.4	Review 106 reliance account arrears and account status with M. Finnegan; review status of several issues with SC including ECC 122 litigation, 106 water issues, building repairs, parking, basement storage units; detailed email to J. Dimenna and Scott Merry with documents re preparation of 1402 new housing HST rebate application; email with N. Bear re 106 utilities.
Finnegan, M	2018-11-16	0.5	Deal with reliance o/s and account for unit 106.
Hooper, L	2018-11-16	0.1	Banking.
Cherniak, S	2018-11-16	0.3	Update on property manager issues. Storage unit, reliance etc.
Szypula, Chester	2018-11-18	0.7	Review 10th report
Flett, D	2018-11-20	0.7	Email with J. McClelland re 1402 HST; review ESCC 122 AGM owner package and financial statements.
Cherniak, S	2018-11-20	0.2	Review of Miller Thomson invoice. Begin review of condo AGM package.
Cherniak, S	2018-11-21	0.5	Finish review of AGM package. Review of emails to/from Goldberg re court application.
Flett, D	2018-11-22	0.2	Revise and update 2502461 Ontario loan statement for proposed distribution;
Finnegan, M	2018-11-22	0.3	Pay bills

Staff	Date	Time	Narrative
Cherniak, S	2018-11-22	0.6	Review of confirmation of motion and amended confirmation of motion. Review of letter from Goldberg and Miller Thomson email. Call with D'Amore. Review of email from Pickard.
White, Nicole	2018-11-23	0.1	Fretz HST rebate - email to Dave Cooper to have Mary sign and return
Jokanovic, Ilijana	2018-11-23	0.75	1202-1225 riverside- Mary Fretz rebate.
Flett, D	2018-11-26	0.9	Review 2502461 Ontario, BMO loan statements and Receiver's schedule; email to T. Van Klink of Miller Thomson re: Capaldi counsel enquiry on BMO loan balance and statements; review email from D Edmonds re: 10th report motion.
Cherniak, S	2018-11-26	0.4	Review of TVK email re Edmonds request for info. Discuss with D. Flett. Review BDO email to Miller Thomson and Miller Thomson email to Edmonds.
Flett, D	2018-11-27	0.3	Review common fee payment, GIC redemption; review Order of Justice Carey; update 2502461 Ontario loan schedule.
Finnegan, M	2018-11-27	0.3	Pay December, 2018 condo fees.
Cherniak, S	2018-11-27	1.5	Attend Court re tenth Receiver's report.
Flett, D	2018-11-28	0.2	Email with SC and instruction to M. Finnegan re distribution to WFCU; update 2502461 loan schedule
Hooper, L	2018-11-28	0.1	Banking
Cherniak, S	2018-11-28	0.1	Distribution.
Flett, D	2018-11-29	0.1	Sign cheque to WFCU and update 2502461 loan schedule
Finnegan, M	2018-11-29	0.4	Cheque to WFCU re Court Order dated Nov 27 2018
Flett, D	2018-11-30	0.1	Call to/voice mail for N. Bear re status of several items.
Flett, D	2018-12-06	0.4	Emails with S. Merry re 1402 HST rebate application; review outstanding items, parking rent status and email to N. Bear with discussion list; forward updated 2502461 Ontario loan schedule to SC.
Finnegan, M	2018-12-06	0.3	Bill payments.
Cherniak, S	2018-12-06	0.2	Miller Thomson email to Shulgan re litigation. Review of BDO email to Bear.
Flett, D	2018-12-11	0.2	Update unsold unit and estimated realization summary and forward to SC.
Cherniak, S	2018-12-12	0.1	Review of email to Matt Todd re lawsuit.
Finnegan, M	2019-01-04	0.3	Pay invoices
Hooper, L	2019-01-05	0.1	Banking
Flett, D	2019-01-09	0.2	Email to N. Bear re Tarion; email with J. McClelland re parking space HST.
Finnegan, M	2019-01-09	0.2	Bill payments.
Flett, D	2019-01-22	0.1	Review 2019 interim property tax bills
Hooper, L	2019-01-28	0.1	Banking
Finnegan, M	2019-01-30	0.4	Pay condo fees and other various bills.

Staff	Date	Time	Narrative
Hooper, L	2019-01-30	0.1	Banking
Flett, D	2019-01-31	0.1	Review BMO letter of credit charge with M. Finnegan
Flett, D	2019-02-01	0.5	Email to N. Bear; call with N. Bear re 106, grading status, parking rents and deposit, Tarion CCP forms and other issues; review banking activity and instructions to M. Finnegan; email to N. Bear re December 20 deposit; notes to file.
Finnegan, M	2019-02-01	0.2	Email to BMO re L/C fee on bank statement. Deposit of direct deposit rent cheques.
Flett, D	2019-02-04	0.2	Review City of Windsor letter of credit / GIC status with M. Finnegan and email with SC; review parking revenue to be posted
Flett, D	2019-02-05	0.3	Email with E. Orbach of BMO re city of Windsor LC and GIC; review SC, E Orbach emails re cancellation of LC.
Cherniak, S	2019-02-05	0.3	Deal with LC issue.
Finnegan, M	2019-02-07	0.4	Pay first installment of 2019 property tax
Hooper, L	2019-02-07	0.2	Banking
Flett, D	2019-02-08	0.5	Email with N. Bear re summary of outstanding issues, documents requested, parking rents, unit 106; review Dec 2018 parking deposit and fwd to M. Finnegan.
Flett, D	2019-02-11	0.2	Review tenth report and email to T. Van Klink of Miller Thomson re miller canfield trust funds, betschel kitchen funds in court.
Cherniak, S	2019-02-11	0.3	Discussion re outstanding issues. Review of email to Miller Thomson.
Flett, D	2019-02-14	0.1	Review t5 from Sutts Strosberg and forward to M. Green
Cherniak, S	2019-02-14	0.1	Receipt of T5.
Flett, D	2019-02-15	0.2	Email to N. Bear re parking, unit 106 status; review parking rent summary and arrears
Hooper, L	2019-02-15	0.1	Issued chq
Finnegan, M	2019-02-19	0.2	Bill payment
Flett, D	2019-02-25	0.4	Call with N. Bear re parking spaces, storage A1, A2 and potential purchase by condo corporation; review metrix appraisal and voice mail for S. Dejong.
Cherniak, S	2019-02-25	0.2	Review of condo corp interest in last unit and storage units.
Hooper, L	2019-02-25	0.2	Banking
Flett, D	2019-02-26	0.1	Review issues re sale of parking spaces, storage to ECC 122 with SC;
Cherniak, S	2019-02-26	0.3	Discuss with D. Flett strategy re parking spaces and storage units re selling to condo corp.
Finnegan, M	2019-02-26	0.2	Pay monthly condo fees

Staff	Date	Time	Narrative
Flett, D	2019-02-28	0.7	Detailed email reply to S. Nevicato of Tarion re status of sale of unfinished units 101, 1505, 1601 and provided CCP forms not signed by buyers; further emails with S. Nevicato and M. Critchley of Tarion re CCP forms, unit 1402; email to N. Bear re completion of Tarion CCP's, parking rent deposit.
Hooper, L	2019-02-28	0.1	Banking
Cherniak, S	2019-02-28	0.2	Review of emails re Tarion
Finnegan, M	2019-03-01	0.2	Bill payment.
Flett, D	2019-03-06	0.1	Call to N. Bear, voice mail message
Finnegan, M	2019-03-07	0.3	File HST returns.
Hooper, L	2019-03-14	0.1	Banking
Finnegan, M	2019-03-15	0.2	Bill payment
Flett, D	2019-03-15	0.4	Calls with J. McClelland re 106 status, future listing, condo corporation , market activity, other Portofino listings.
Cherniak, S	2019-03-18	0.2	Update on file.
Flett, D	2019-03-21	0.2	Review banking, parking deposit with M. Finnegan; email to N. Bear re parking deposit, Tarion forms
Hooper, L	2019-03-27	0.1	Banking
Flett, D	2019-03-27	0.1	Email with Hub re liability policy renewal.
Finnegan, M	2019-03-27	0.3	Monthly condo fee payment.
Cherniak, S	2019-03-28	0.1	Call to Amy Allen. Leave message.
Hooper, L	2019-04-01	0.1	Banking
Finnegan, M	2019-04-02	0.2	Bill payment
Flett, D	2019-04-03	0.2	Email with J. McClelland re parking spaces, unit 106 and forward list of unsold spaces.
Flett, D	2019-04-05	0.1	Call with J. McClelland re 106, parking space enquiry received.
Flett, D	2019-04-10	0.2	Review liability insurance policy renewal and memo to SC.
Hooper, L	2019-04-15	0.1	Banking
Finnegan, M	2019-04-15	0.4	Pay bills
Finnegan, M	2019-04-16	0.2	File HST return
Hooper, L	2019-04-29	0.1	Banking
Finnegan, M	2019-04-29	0.3	Pay property taxes
Flett, D	2019-05-03	0.1	Call to N. Bear re outstanding items and leave message.
Hooper, L	2019-05-03	0.2	Banking
Flett, D	2019-05-09	0.1	Email with N. Bear re grading, parking spaces, unit 106.
Finnegan, M	2019-05-13	0.3	Pay bills
Hooper, L	2019-05-27	0.1	Banking
Finnegan, M	2019-05-27	0.3	Pay bills
Cherniak, S	2019-05-29	0.1	Call from D'Amore re update.
Flett, D	2019-05-30	0.2	Email with J. McClelland re interest in parking spaces; review recent parking inventory summary.

Staff	Date	Time	Narrative
Cherniak, S	2019-05-30	0.4	Email re parking spots. Email and call with BMO re potential BMO outstandings.
Flett, D	2019-06-06	1.2	Review unsold parking unit summary and prepare schedule with PIN numbers for Schedule B to APS; emails with J. McClelland re parking space interested party; call with J. McClelland re parking space offer, update on other matters; review offer for parking spaces and email with J. McClelland re buyer; brief review of offer considerations condo corporation status with SC.
Cherniak, S	2019-06-06	0.1	Update on offer re parking spaces.
Flett, D	2019-06-07	1.7	Call with J. McClelland re parking space offer and related issues, review parking space offer, listing agreement and review issues and counter with SC; prepare counter offer with seller's condition; forward counter offer to J. McClelland; further call with J. McClelland and sign confirm of co-operation and representation.
Cherniak, S	2019-06-07	0.4	Discussion re offer and counter on parking spaces. Execute counter.
Hooper, L	2019-06-10	0.1	Banking
Finnegan, M	2019-06-10	0.1	Pay bill
Flett, D	2019-06-11	0.4	Call with J. McClelland re parking space offer, 1601 buyer issues; review revised offer for parking spaces; prepare draft email to Miller Thomson re sale of remaining spaces.
Hooper, L	2019-06-11	0.1	Banking
Flett, D	2019-06-12	0.3	Review parking space counter offer received with SC and prepare receiver counter offer; forward counter offer to J. McClelland.
Cherniak, S	2019-06-12	0.3	Review, discuss and execute counter re parking spaces.
Flett, D	2019-06-13	0.3	Review parking space counter offer and amended counter offer; emails with J. McClelland
Flett, D	2019-06-14	1.2	Review buyer parking space counter offer with SC and forward accepted offer to JM; review Sched F to Condominium declaration; emails with Miller Thomson re review of parking space APS, restrictions on buyer, other considerations; three calls with J. McClelland re property taxes on parking spaces, fulfillment of seller's condition, unit 106 enquiry.
Cherniak, S	2019-06-14	0.6	Review and execute counter. Review of emails to/from counsel re review of condo declaration.
Flett, D	2019-06-17	0.9	Email with J. McClelland re parking space sale, fulfillment of conditions; sign seller fulfillment and forward to J. McClelland; update sale summary schedule; email to Miller Thomson with comments, documents re sale of remaining

Staff	Date	Time	Narrative
			parking units; email to N. Bear re common fee increase, parking receipts.
Cherniak, S	2019-06-17	0.3	Review of emails re finalized parking deal.
Flett, D	2019-06-18	0.2	Execute document.
			Email with J. McClelland and receive acknowledged notice of fulfillment; email with Miller Thomson re parking space sale, buyer's lawyer.
Hooper, L	2019-06-19	0.1	Banking
Flett, D	2019-06-20	0.4	Phone call with N. Bear re owner's meeting, building repair issues, unit owner information package, parking deposits; brief memo to, and review with SC.
Cherniak, S	2019-06-20	0.6	Review of docs provided by Arnsby re assessment and repairs.
Flett, D	2019-06-21	0.3	Review email from N. Bear and Arnsby summary report on building issues.
Flett, D	2019-06-24	1.2	Review 2019 final tax bills and update unit summary; calculate property tax details, taxes paid by Receiver for 29 parking spaces sold and email to Miller Thomson with explanation and copy of tax bill; call with J. McClelland re recent ESCC 122 report, planned building repairs.
Flett, D	2019-06-25	0.1	Call with N. Bear re sale of parking spaces; call with JJ. McClelland
Hooper, L	2019-06-26	0.1	Banking
Flett, D	2019-06-26	0.8	Review email from J. McClelland and reply re 106 enquiry; review sign common fees cheques and review common fee increase with M. Finnegan; preliminary view of engineer and consultant reports on Kitec plumbing, parking garage, exterior finish system and timing, financing.
Flett, D	2019-06-27	0.5	Emails with N. Bear re grading, planned exterior wall repairs and 106 status, interior repairs; review and complete ministry form to receive ESC 122 notices electronically; forward signed agreement to S. Hardat of Arnsby; email with J. McClelland re 106; review ESCC 122 financing options table re unit 106.
Cherniak, S	2019-06-27	0.3	Emails re 106 with realtor and condo corp.
Hooper, L	2019-07-02	0.1	Banking.
Flett, D	2019-07-03	0.4	Review ESCC 122 letter re common fee increase; memo to M. Finnegan; update unsold inventory summary schedule; memo to M. Finnegan re August 2019 common fee amounts for 106 and parking spaces (sale pending).
Cherniak, S	2019-07-03	0.1	Review of email re revised condo fees.
Finnegan, M	2019-07-03	0.2	Pay bill

Staff	Date	Time	Narrative
Flett, D	2019-07-04	1.3	Review repairs, condo fee increase and report from Arnsby with SC; review Miller Thomson email re 1505 buyer HST rebate enquiry; review sale documents, Receiver ascend accounting and email to Miller Thomson with HST number and additional information; email to N. Bear of M.F. Arnsby re queries on reserve fund investments, ESCC 122 financial statements; review reply from N. Bear, ESCC 122 statements for 2018 and further email re financial statement notes.
Cherniak, S	2019-07-04	0.4	Emails and discussion re reserve fund notes and maturity and borrowings. Email from Miller Thomson re HST issue.
Flett, D	2019-07-08	0.1	Email to N. Bear re parking deposit
Hooper, L	2019-07-10	0.05	Banking
Flett, D	2019-07-10	0.8	Review 2018 financial statements and working papers; update and prepare 2502461 Ontario loan schedule for statements; prepare unit sales summary for F2019.
Finnegan, M	2019-07-10	0.3	Pay property tax installment.
Hooper, L	2019-07-11	0.05	Banking
Flett, D	2019-07-11	2.6	Review fiscal 2019 general ledger; review parking deposit to be posted with M. Finnegan; review ESCC 122 letter re common fee increase and prepare august 2019 payment schedule for new amount and retroactive increases for July 2019; email to Miller Thomson re sale of parking spaces - common fee increase and arrangements, HST on sale of spaces; email to M. Greenaway CPA with schedules and additional comments re 2019 financial statements; review august common fee payment and new fee amounts with M. Finnegan.
Cherniak, S	2019-07-11	0.3	Review of email to accountant re external F/S. Review of email to Miller Thomson re upcoming sale of parking spots.
Finnegan, M	2019-07-12	0.3	Pay bills
Flett, D	2019-07-15	0.3	Review 1602 Reliance bill and email with J. McClelland; email from Miller Thomson re parking spaces.
		107	Total Time

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$525	19.7
Finnegan, M	Administrative	London	\$175	13.5
Flett, D	Vice President	London	\$375	66
Hooper, L	Estate Administrator	London	\$150	3.2
Jokanovic, L	Tax	Cambridge	\$150	3.2
Szypula, C	Sr. Vice President	London	\$525	0.7
White, N	Tax	London	\$150	0.7
				107



Invoice # 12102019
Portofino Corporation
HST Reg # 101518124RT0001

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

December 10, 2019

Re: Portofino Corporation

For professional services rendered for the period July 23, 2019 through December 10, 2019 as per the attached detail:

Our Fee	\$26,000.00
Disbursements	<u>0.00</u>
Sub total	26,000.00
HST	3,380.00
Total	<u>\$29,380.00</u>

REMITTANCE ADVICE

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

Invoice #	12102019
Amount	\$29,380.00

December 10, 2019

For professional services rendered

Staff	Date	Time	Narrative
Flett, D	2019-07-23	0.2	Review status of parking space sale with Miller Thomson; review unrealized assets, estimated recoveries with SC
Finnegan, M	2019-07-23	0.2	Pay bill
Flett, D	2019-07-24	0.6	Review 2019 final tax bill, statement of adjustment and statement of trust for 29 parking spaces; emails with Miller Thomson re documents, revised statement of trust; email to N. Bear re parking space sale, receipts and deposit.
Finnegan, M	2019-07-24	0.5	File administration.
Hooper, L	2019-07-25	0.2	Banking
Cherniak, S	2019-07-25	0.3	Execute docs re parking space sale.
Finnegan, M	2019-07-25	0.8	File administration. Pay bill
Flett, D	2019-07-29	0.3	Review Oct 2018 parking schedule prepared by property manager; emails with Miller Thomson re sale of parking spaces and purchaser request for rental details; email to N. Bear re updated parking space rent roll.
Flett, D	2019-07-30	1.1	Email with M. Greenaway re 2019 financial statements; email with Miller Thomson re closing of sale of 29 parking spaces; update inventory and sale summary schedules re parking spaces; email with N. Bear, J. McClelland re parking space closing; instruct to MF re September condo fees.
Finnegan, M	2019-07-31	0.5	Deposit sale funds.
Flett, D	2019-07-31	0.1	Review parking space sale proceeds received.
Flett, D	2019-08-02	0.1	Review deposit activity, parking receipts with MF.
Cherniak, S	2019-08-06	0.3	Review of emails re closing of parking spaces sale. Update on status of file.
Flett, D	2019-08-06	0.2	Review parking space sale, funds on hand, 106 status and future distribution, reporting with SC.
Flett, D	2019-08-07	0.1	Email from Miller Thomson with parking space reporting book.
Cherniak, S	2019-08-07	0.1	Review of sale of parking space reporting from MT.
Flett, D	2019-08-08	0.2	Review outstanding issues with SC, including call with T. Van Klink, Betschel Kitchen, approach to parking spaces 18-20 and storage A1, A2.
Cherniak, S	2019-08-08	0.1	Discuss outstanding issues with T. Van Klink.
Finnegan, M	2019-08-08	0.3	HST returns.
Flett, D	2019-08-09	0.6	Prepare detailed memo to N Bear, ESCC 122 re proposal for parking spaces 18-20, storage A1, A2.
Hooper, L	2019-08-12	0.2	Banking
Flett, D	2019-08-12	1.2	Emails with J McClelland re information on Sept and Nov, 2019 property tax installments for parking space buyer; revise internal schedule for receiver share of Sept/Nov taxes; call and email with N. Bear re parking rent deposit and rental list, upcoming meeting proxies; review ESCC 122 materials for Aug. 13 and Aug. 20 meetings re borrowing by-law, board removal; review and complete proxy forms for Aug 13, 20 meetings; email to N. Bear with signed proxy forms.
Cherniak, S	2019-08-12	0.5	Review of materials re meeting. Execute proxies.

Staff	Date	Time	Narrative
Cherniak, S	2019-08-13	0.1	Review of email to N. Bear re proxy.
Flett, D	2019-08-14	0.1	Review SC emails with S. D'Amore re status;
Cherniak, S	2019-08-14	0.2	Review and respond to email from S. D'Amore.
Finnegan, M	2019-08-19	0.2	Banking
Cherniak, S	2019-08-21	0.1	Call from Martini re vacant unit.
Hooper, L	2019-08-22	0.1	Banking
Finnegan, M	2019-08-26	0.3	Bill payment
Flett, D	2019-08-26	0.1	Review parking deposit by N. Bear
Finnegan, M	2019-08-30	0.2	Bill payment
Finnegan, M	2019-09-06	0.2	Bill payment
Flett, D	2019-09-10	0.3	Brief review of notices re ongoing reliance billing issues; call with N. Bear re new condo board, building repair issues, 106 status, future property management.
Finnegan, M	2019-09-11	0.2	File HST return
Cherniak, S	2019-09-11	0.3	Update on board situation. Discussion of status of unsold condo.
Flett, D	2019-09-11	0.2	Review condo board change, repair issues, 106 repair status, 106 unsolicited offer, Betschel funds in court with SC.
Flett, D	2019-09-12	0.2	Review property tax installment; email to N. Bear re parking 18, 19 & 20.
Flett, D	2019-09-16	1.4	Review SC, E. Orbach of BMO emails re L/C; review with SC: estimated 106 list price, impact of needed building repairs on unit value, A1, A2 storage, future receiver realizations and distributions; call with J. McClelland re building repairs, new condo board, unit 106, current market value and activity; email to J. McClelland re 6 - 12 month change in values per sq ft.
Finnegan, M	2019-09-16	0.4	Bill payments
Cherniak, S	2019-09-16	0.6	Call with Martini/Koop re purchase of condo/storage units. Discussion with D. Flett re same. Email from BMO re LC.
Flett, D	2019-09-17	0.8	Review ongoing reliance billing issue with MF re unit 1602 and others; call with J. McClelland re recent sale values, market conditions, suggested 106 list price; review draft 2019 financial statements and email to approve to M. Greenaway.
Finnegan, M	2019-09-17	0.5	Deal with Reliance bills on sold units.
Cherniak, S	2019-09-17	0.1	Review of email to Greenaway.
Flett, D	2019-09-18	0.4	Review original Metrix appraisal, schedule F to condo declaration; email to Metrix re valuation of storage A1 and A2
Flett, D	2019-09-19	0.9	Review condominium declaration; emails with Metrix re storage A1, A2; review prior email correspondence with MT re parking spaces 18, 19 & 20; detailed email to Miller Thomson with 2019 final tax bill re parking 18, 19 & 20.
Cherniak, S	2019-09-19	0.2	Call with Martini re condo
Flett, D	2019-09-20	0.3	Email from M. Greenaway and review 2019 final financial statements; edits to T183.
Flett, D	2019-09-23	0.4	Email with Metrix re value of storage rooms A1, A2; review 106 interested party, comparable sales, future distributions with SC.
Cherniak, S	2019-09-23	0.2	Review of emails from Metrix re storage units. Discuss Martini offer.

Staff	Date	Time	Narrative
Flett, D	2019-09-24	2.4	Update 2502461 mortgage balance and prepare analysis of estimated future realizations, costs and funds available for secured creditor distribution; phone call with and email from Metrix re valuation approach to below grade storage and market cap rates; forward signed T183 to M. Greenaway re 2019 statements; email to N. Bear re outstanding Tarion CCP forms; review unit 503 vtb mortgage terms, unit value; review and mark-up surface parking site plan and forward to Miller Thomson re spaces 18, 19 & 20.
Cherniak, S	2019-09-24	0.2	Review of emails re parking spaces/property tax roll issue removal.
Flett, D	2019-09-25	0.6	Email with Miller Thomson re parking spaces 18, 19 & 20; review correspondence from ESCC 122 board and new property manager; complete owner information form and forward to Danbury; review common fees and payment arrangements with MF.
Cherniak, S	2019-09-25	0.4	Email from MT re parking spaces. Review BDO response. Email from new property manager. Review BDO response.
Flett, D	2019-09-26	2.1	Commence email to Tarion; review status of CCP forms on unfinished units sold in 2018; review Northbridge bond status and accounting; email to J. McClelland re unfinished units, Tarion forms outstanding; call with J McClelland re Tarion CCP forms, unit status, building management change; forward 101, 1505 CCP forms to JM; emails Miller Thomson re parking spaces, approach to transfer to condo corporation; call with N. Bear re management status, ESCC 122 lawyer's name, Tarion forms.
Cherniak, S	2019-09-26	0.4	Emails re parking spaces. Update on conversation with N. Bear and Metrix.
Hooper, L	2019-09-26	0.1	Banking
Flett, D	2019-09-27	1.2	Email from N. Bear re parking spaces 18, 19 & 20; email to Miller Thomson re parking spaces, condo corporation lawyer particulars; brief review of Edison Engineers report for June 18, 2019 information meeting; update unit 503 vtb mortgage schedule; review 106 offer status, A1, A2 valuation and estimated future realizations with SC; update unit 503 vtb mortgage schedule.
Cherniak, S	2019-09-27	0.5	Call with Martini. Update D. Flett. Review of email from Arnsby re parking spaces.
Finnegan, M	2019-10-02	0.2	Bill payment
Flett, D	2019-10-03	0.2	Review Northbridge bond renewal, fee calculation and forward to SC for approval.
Flett, D	2019-10-04	0.3	Review A1, A2 options and listing unit 106 with SC; email with C. Zoric of Danbury re unit 106 water penetration.
Cherniak, S	2019-10-04	0.2	Discussion re listing 106. Brief review of condo corp email.
Flett, D	2019-10-07	0.6	Email from Danbury; review parking spaces 18, 19, 20, parking plan, recent photo and memo to SC; review storage unit asking price with SC; review SC email to C. Martini; call with J. McClelland re 106 listing considerations and list price.
Cherniak, S	2019-10-07	1.1	Call and email from Martini re storage locker, 106 and parking spaces. Review issue with D. Flett. Draft and send response email to martini. Review of condo corp email and material.

Staff	Date	Time	Narrative
Flett, D	2019-10-08	1.2	Review sale of A1, A2 , parking 18, 19, 20 with SC and Ridge Capital email; emails with Miller Thomson re parking 18, 19, 20 and correspondence with ESCC 122; organize and review 15 attachments from Oct 4, 2019 email from Danbury on behalf of ESCC 122 re Oct. 16 meeting and memo to SC.
Cherniak, S	2019-10-08	0.8	Email from Martini re offer on spaces and storage units. Discuss with D. Flett. Emails to/from Miller Thomson re same.
Flett, D	2019-10-09	1.7	Review ESCC 122 correspondence regarding July 1 common fee increase and calculate for A1, A2 and parking; prepare Ridge Capital APS / Offer for A1, A2 and parking 18,19 and 20 including conditions and Schedule B property summary; call with J McClelland re unit 106; review unit 106 listing considerations with SC; revisions to Ridge Capital offer and finalize.
Finnegan, M	2019-10-09	0.3	Bill payment
Cherniak, S	2019-10-09	1.1	Discussion re listing of 106. Review of certain docs re condo corp meeting. Review and execute offer o 106. Send deal to Martini.
Flett, D	2019-10-10	1.4	Call with SC re Ridge Capital offer; emails to/from C. Martini, R Koop re parking spaces; revise agreement of purchase and sale for A1, A1 and forward to C Martini; call with J. McClelland re 106 listing issues, alternate broker referral; email with City of Windsor re parking space property tax account and sale of 29 spaces.
Finnegan, M	2019-10-10	0.2	File HST return
Cherniak, S	2019-10-10	0.7	Call with Martini re offer. Deal with revisions. Review of email from Koop.
Flett, D	2019-10-11	1.8	Review storage A1, A2 status with SC and forward accepted APS with comments to C. Martini; emails and phone call with City Windsor re parking space tax roll, balance of 2019 installments and new tax roll created by MPAC for 2020; review 106 listing, G. Barlow arrangements with SC; email to Miller Thomson with A1, A2 transactions details and copy of APS; email to C. Martini re details of parking space property taxes, Sept 18, 2019 arrears and final installment arrangements for pooled tax account; review 106 listing agreement from 2016; call with J. McClelland re building access and key arrangements and email to N. Bear re same.
Finnegan, M	2019-10-11	0.2	Bill payment
Cherniak, S	2019-10-11	0.8	Call with G. Barlow re listing 106. Discuss next steps with D. Flett. Finalize sale to ridge.
Flett, D	2019-10-15	0.7	Email with Miller Thomson re sale of A1, A2 and deposit cheque received; call with N. Bear re unit 106 and building access, key; email to G. Barlow with unit 106 details, listing particulars and building access status; further email with G. Barlow and forward Receiver's schedule to accompany form 101.
Finnegan, M	2019-10-15	0.3	Bill payment
Cherniak, S	2019-10-15	0.6	Emails re deal on parking spaces and storage units with Koop. Emails with G. Barlow re listing 106.
Flett, D	2019-10-16	1.1	Review draft 106 listing and surface parking plan; email to G. Barlow with listing revisions, additional information re garage P2; calls with J. McClelland re sale of parking spaces, 106 listing; review pending sale of A1, A2 with SC.

Staff	Date	Time	Narrative
Cherniak, S	2019-10-16	0.6	Emails re listing agreement from Barlow. Update on call with J. McClelland re parking spaces.
Finnegan, M	2019-10-17	0.2	Deposit cheque
Flett, D	2019-10-17	0.9	Call with G. Barlow re 106 listing, water issue history and access; email to G. Barlow with floor plan, photos and additional information; finalize listing agreement; review parking 18, 19, 20 ESCC 122 issues with SC; email with N. Bear re 106 access.
Cherniak, S	2019-10-17	0.5	Call with J. Pineda re sale of parking spaces. Update D. Flett on call.
Flett, D	2019-10-22	1.2	Review documents from Oct. 16/19 ESCC 122 meeting; calls with N. Bear re 106 keys and fob; emails with G. Barlow, K. Sturba re 106 listing, access; review building proposed repairs with SC.
Cherniak, S	2019-10-22	0.5	Call with Barlow. Send order. Discuss access with D. Flett. Review of emails re same.
Flett, D	2019-10-23	0.3	Review 106 offer; email with G. Barlow re 106 access
Finnegan, M	2019-10-23	0.2	Pay bill
Cherniak, S	2019-10-23	0.3	Review of offer on 106. Respond to G. Barlow.
Cherniak, S	2019-10-24	0.3	Email from Barlow. Review file re parking spaces.
Flett, D	2019-10-24	0.7	Review past emails, correspondence regarding ESCC 122 and parking spaces 18, 19 & 20; call with N Bear and email with G. Barlow re 106 keys and access.
Flett, D	2019-10-25	0.8	Review files re documents on visitor parking area added by ESCC122; several emails with N. Bear, K. Sturba re 106 keys, access over weekend for showings; call with N. Bear re building access, building repair issues and other matters.
Cherniak, S	2019-10-25	0.2	Update on keys.
Flett, D	2019-10-28	0.6	Review closing statements for A1, A2, review PIN numbers, common fees and emails with Miller Thomson re documents, common fee adjustment; call with N. Bear re 106 access and email with K. Sturba.
Cherniak, S	2019-10-28	0.5	Execute docs re sale of spaces and units. Emails re same.
Finnegan, M	2019-10-29	0.2	Pay bill
Flett, D	2019-10-29	0.9	Phone calls and email with N. Bear re 106 access for realtor, 106 maintenance issue, access for locksmith to re-key and distribution of keys; call with C. Prieur re locksmith arrangements; emails with K. Sturba re 106 access and review of photos; further calls, text messages with N. Bear re 106 locksmith access and key for realtor.
Cherniak, S	2019-10-29	0.3	Emails re 106.
Flett, D	2019-10-30	0.2	Call with N. Bear and emails with K. Sturba re 106 keys, access to unit.
Cherniak, S	2019-10-30	0.1	Update on keys for 106.
Cherniak, S	2019-10-31	0.6	Update and emails re closing delayed. Email from condo corp. Emails re purchaser undertakings. Review response.

Staff	Date	Time	Narrative
Flett, D	2019-10-31	0.9	Review email from F. Giorgi to Miller Thomson re parking space taxes and rent adjustment; email to Miller Thomson to explain parking space rents and confirm credit in favour of buyer for prepaid rents; call with N. Bear and email with K. Sturba re 106 access; emails with Miller Thomson re A1 A2 closing arrangements, buyer HST number issue; review information certificates received from Danbury Property.
Hooper, L	2019-11-01	0.1	Banking
Flett, D	2019-11-01	0.1	Email from Miller Thomson re revise A1, A2 buyer entity, and revise documents.
Cherniak, S	2019-11-01	0.4	Email re change of purchaser name and additional cost. Respond. Update on closing.
Flett, D	2019-11-04	0.6	Email with K. Sturba re 106 keys, showings. 11/04/19: email with Miller Thomson re A1, A2 closing; email to Danbury re sale of A1, A2; email with K. Sturba re unit 106, plumbing repair.
Cherniak, S	2019-11-04	0.3	Emails re closing and 106.
Finnegan, M	2019-11-05	0.5	Deposit sale funds.
Flett, D	2019-11-05	0.5	Update unsold unit summary schedule, review A1, A2 closing with MF; email with Danbury, Miller Thomson re A1, A2 closing, waiver of common fees; review recurring Reliance billing error issue with MF.
Cherniak, S	2019-11-05	0.4	Email from Danbury re sale. Discuss response with D. Flett. Review response.
Cherniak, S	2019-11-06	0.3	Emails re responding to property manager re closing of storage units.
Flett, D	2019-11-06	0.7	Email with K. Sturba re 106 plumber; call with N. Bear re prepaid parking, Tarion CCP forms; email to J. McClelland re Tarion forms to be signed for 101, 1505; email from Miller Thomson; review email and documents from Danbury re board meeting and AGM.
Flett, D	2019-11-07	0.3	Email and invoice from K. Sturba re 106; emails and call with J. McClelland re Tarion CCP forms; review signed Tarion forms for 101 and 1505.
Cherniak, S	2019-11-07	0.2	Review of corr from condo corp.
Flett, D	2019-11-08	0.7	Emails with Tarion to provide signed CCP forms for unit 101 and 1505, status of 1601 CCP and enquire re release of security/bond; review invoice re 106 locksmith; memo to SC re Tarion bond and review.
Cherniak, S	2019-11-08	0.2	Discussion re review of bonds. Review of email re same.
Hooper, L	2019-11-11	0.1	Banking
Finnegan, M	2019-11-11	0.4	Pay bills
Cherniak, S	2019-11-11	0.1	Corr from condo corp.
Flett, D	2019-11-11	0.2	Review email from Tarion re security, release of bond; review Tarion issues and options with SC.
Finnegan, M	2019-11-12	0.4	Property tax installment payment.
Flett, D	2019-11-12	0.2	Review November property tax payment; review Tarion security issues and status with SC; email to Tarion.
Finnegan, M	2019-11-14	0.2	Pay bill

Staff	Date	Time	Narrative
Flett, D	2019-11-15	0.8	Lengthy call with S. Nevicato re condo corporation director change, bond status, conciliation process and remedy, unit 106; review unit and parking space parcel register re Lombard/Northridge registration.
Cherniak, S	2019-11-18	0.2	Update on call with Tarion.
Flett, D	2019-11-18	0.2	Review Tarion security status, draw down process and Northridge security position with SC; notes to file re Tarion security.
Hooper, L	2019-11-19	0.1	Banking
Flett, D	2019-11-27	0.2	Review SC email to T. Van Klink, draft letters to D. Leschied, D. Edmonds re Westview mortgage.
Cherniak, S	2019-11-27	0.6	Review of draft letters re Miller Canfield matter and Capaldi matter. Respond.
Cherniak, S	2019-11-28	0.2	Review of corr to Shibley and Capaldi lawyer.
Cherniak, S	2019-11-29	0.4	Review of Leschied letter. Discussion with T. Van Klink re letter and finalization of file.
Flett, D	2019-12-02	1.3	Review 106 offer and discuss with SC; review Miller Canfield funds, other remaining issue status with SC; call with K. Sturba re 106 offer, building water issues; prepare 106 counter offer with Sched C and forward to K. Sturba; call with K. Sturba re offer, Receiver's schedule.
Finnegan, M	2019-12-02	0.2	Bill payment.
Cherniak, S	2019-12-02	0.7	Discussion and review of offer on 106. Execute counter. Emails to/from agent.
Flett, D	2019-12-04	0.7	Review w106 counter offer and review with SC; call with K. Sturba re 106; prepare receiver counter offer and forward to K. Sturba; email with K. Sturba re counter offer and edit.
Cherniak, S	2019-12-04	0.3	Review, discuss and execute counter on 106.
Flett, D	2019-12-05	0.5	Review accepted offer for 106 and email with K. Sturba; update unsold inventory, unit sales and estimated realization schedules.
Cherniak, S	2019-12-05	0.2	Review of completed APS for 106
		65.7	Total Time

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$525	18.3
Finnegan, M	Administrative	London	\$175	7.8
Flett, D	Vice President	London	\$375	38.7
Hooper, L	Estate Administrator	London	\$150	0.9
				65.7



495

Invoice # 05312022
Portofino Corporation
HST Reg # 101518124RT0001

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

June 1, 2022

Re: Portofino Corporation

For professional services rendered for the period December 11, 2019 to May 31, 2022 as per the attached detail:

Our Fee	\$35,420.00
Disbursements	<u>0.00</u>
Sub total	35,420.00
HST	4,604.60
Total	<u>\$40,024.60</u>

REMITTANCE ADVICE

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

Invoice # 05312022

Amount \$40,024.60

For professional services rendered

June 1, 2022

Staff	Date	Time	Comments
Flett, D	12/11/2019	0.2	Review correspondence from ESCC 122 re annual meeting, EIFS project insurance certificate.
Cherniak, S	12/13/2019	0.1	Review of excerpt from ECC 122 minutes re building.
Flett, D	12/16/2019	0.2	Email with K. Sturba re 106 buyer request for mutual release and review with S. Cherniak.
Cherniak, S	12/16/2019	0.5	Email re aborted offer on 106. Respond. Review realtor response. Emails to/from BMO re Letter of Credit.
Hooper, L	12/17/2019	0.1	Issued chqs
Finnegan, M	12/17/2019	0.2	Bill payment
Cherniak, S	12/17/2019	0.1	Update on offer from G. Barlow.
Flett, D	12/18/2019	0.2	Review 106 offer status with S. Cherniak; email with K. Sturba re status certificate.
Finnegan, M	12/18/2019	0.2	File HST return.
Cherniak, S	12/18/2019	0.1	Review of email re status certificate.
Finnegan, M	12/20/2019	0.2	Pay condo fees for Jan/20
Finnegan, M	12/23/2019	0.2	Pay bills.
Flett, D	12/27/2019	0.2	Email with K. Sturba re holiday hours; review 106 offer and email with K. Sturba re no counter offer.
Cherniak, S	01/03/2020	0.2	Review and execute banking document.
Flett, D	01/06/2020	1.4	Review 106 offer and review water repair conditions with S. Cherniak; sign Patalas mutual release and 106 accepted offer and forward to K. Sturba with comments; further review of water damage repair condition with S. Cherniak, locate and review letter from ESCC 122 re unit 101 and emails with G. Barlow re condition; review 106 showing and offer summary prepared by K. Sturba; receive 106 signed mutual release.
Cherniak, S	01/06/2020	0.8	Review of new offer on 106. Discuss with D. Flett. Review of emails to/from realtor. Discussion of water issues. Execute offer and mutual release on other deal.
Flett, D	01/07/2020	0.3	Email with J. Cook re sale of 106 and provide sale documents; review remaining realizations, unit 503 VTB mortgage with S. Cherniak.
Cherniak, S	01/07/2020	0.1	Review of correspondence to Miller Thomson.
Flett, D	01/08/2020	0.4	Brief review of Nov/Dec board minutes; emails with K. Sturba re 106 repair invoice and confirm payment details with M. Finnegan.

Staff	Date	Time	Comments
Cherniak, S	01/08/2020	0.2	Review of minutes of board meetings.
Cherniak, S	01/10/2020	0.2	Review of legal bill.
Finnegan, M	01/14/2020	0.2	Bill payment.
Finnegan, M	01/15/2020	0.2	File HST return and request closure of RT0002 account.
Flett, D	01/15/2020	0.1	Email with K. Sturba re 106 sale.
Flett, D	01/16/2020	0.1	Email with Miller Thomson re 106 sale.
Hooper, L	01/22/2020	0.1	Bank recs.
Finnegan, M	01/23/2020	0.4	Pay condo fees.
Flett, D	01/27/2020	0.2	Review unit 2020 interim tax bill for unit 106 and forward to M. Finnegan, J Cook of Miller Thomson re closing.
Hooper, L	01/30/2020	0.1	Bank recs.
Flett, D	02/04/2020	0.3	Review bond premium invoice and forward to S. Cherniak for approval; brief review of January 2020 director minutes; email reply to J. McClelland re 106, unsold unit status.
Cherniak, S	02/04/2020	0.3	Pay bill. Review of minutes.
Finnegan, M	02/05/2020	0.5	Pay bills and file admin
Flett, D	02/10/2020	0.2	Review letter from City Windsor re Durmus and forward to C. Zoric of Danbury with comments.
Cherniak, S	02/10/2020	0.2	Review of emails from property manager.
Finnegan, M	02/14/2020	0.2	Pay bill.
Cherniak, S	02/14/2020	0.3	Review of emails from property manager.
Flett, D	02/14/2020	0.2	Review emails from C. Zoric of Danbury, newsletter and brief review of reserve fund study.
Cherniak, S	02/18/2020	0.2	Brief review of condo study.
Finnegan, M	02/20/2020	0.2	Bill payment
Flett, D	02/21/2020	0.2	Email with S. McAnuff of Hub re insurance renewal.
Cherniak, S	02/21/2020	0.2	Review and discussion re Portofino insurance. Review of email to insurer.
Finnegan, M	02/27/2020	0.2	Pay condo fees.
Finnegan, M	03/02/2020	0.2	Pay bill.
Flett, D	03/03/2020	0.2	Review ESCC meeting minutes and other documents provided by C. Zoric of Danbury.
Cherniak, S	03/03/2020	0.3	Review of emails from condo corp.
Flett, D	03/09/2020	0.2	Update 2502461 mortgage schedule for BMO prime rate change

Staff	Date	Time	Comments
Hooper, L	03/10/2020	0.1	Bank recs.
Cherniak, S	03/11/2020	0.2	Review of emails from property manager.
Flett, D	03/12/2020	0.1	Email with Miller Thomson re current common fee amount for 106 closing.
Cherniak, S	03/12/2020	0.2	Emails re closing.
Flett, D	03/13/2020	0.4	Email and call with B. MacNuff of Hub re liability policy renewal; return real estate agent enquiry re units for sale; further email and call with M. MacNuff re VTB on unit 503, wording re equity; review property tax payment.
Finnegan, M	03/13/2020	0.3	Pay property tax bill.
Cherniak, S	03/13/2020	0.1	Review of email re insurance.
Flett, D	03/16/2020	0.4	Review liability policy renewal, 503 VTB, other completion issues with S. Cherniak; review documents on file re 503 VTB; email with Miller Thomson re confirm 503 VTB mortgage validity;
Cherniak, S	03/16/2020	0.2	Discuss Bravo VTB. Review of email to Miller Thomson.
Flett, D	03/17/2020	0.3	Review S. D' Amore, S. Cherniak emails re status; update 2502461 Ontario Ltd loan schedule for decrease in BMO prime rate.
Finnegan, M	03/17/2020	0.2	Bill payment.
Cherniak, S	03/17/2020	0.2	Email from S. D'Amore. Respond.
Cherniak, S	03/19/2020	0.4	Emails and calls with D. Flett re stolen keys for 106.
Flett, D	03/19/2020	0.7	Several emails with K. Sturba of Royal LePage, C. Zoric of Danbury and call with Essex County locksmith re stolen keys for unit 106, buyer inspection.
Flett, D	03/20/2020	0.1	Email with K. Sturba re 106 keys and buyer inspection.
Cherniak, S	03/20/2020	0.1	Update on key fob issue.
Flett, D	03/25/2020	0.2	Email with K. Sturba re 106 walk through; review emails from Danbury for ESCC 122.
Cherniak, S	03/25/2020	0.3	Emails from property manager. Email update from K. Sturba
Flett, D	03/26/2020	0.5	Review K. Sturba email and buyer amendment to extend 106 closing and review with S. Cherniak; call and email with K. Sturba re receiver's position; review draft statement of adjustments, trust statement and interim tax bill for 106 and email to Miller Thomson to confirm.
Finnegan, M	03/26/2020	0.2	Pay April, 20 condo fees.
Cherniak, S	03/26/2020	0.6	Email re closing of 106. Discuss with D. Flett. Review response. Review of closing docs from Miller Thomson. Review of bravo abstract.

Staff	Date	Time	Comments
Flett, D	03/27/2020	0.2	Emails with Miller Thomson re unit 503 VTB and review parcel registers and charge document.
Cherniak, S	03/27/2020	0.3	Emails on Bravo mortgage.
Finnegan, M	03/30/2020	0.5	Bill payment and prepare and send executed sale documents for unit 106.
Cherniak, S	04/01/2020	0.1	Email from property manager.
Cherniak, S	04/03/2020	0.1	Review of email from property manager.
Flett, D	04/06/2020	0.4	Emails with Miller Thomson, M. Finnegan re 106 closing status, receiver wire information; email with K. Sturba re key arrangements for closing.
Finnegan, M	04/06/2020	0.3	Provide banking information for receipt of sale funds.
Cherniak, S	04/06/2020	0.2	Emails re closing.
Flett, D	04/08/2020	1.3	Emails with J. Cook re 106 closing, wire receipt; email with K. Sturba re 106 key arrangements, interim property tax bill; review closing statements and update unit summary, sales summary schedule and agree to general ledger, forward summary to S. Cherniak; email to B. MacNuff of Hub re closing of last unit, liability policy not renewed.
Finnegan, M	04/08/2020	0.3	Check bank for receipt of sale proceeds and post to Ascend.
Cherniak, S	04/08/2020	0.4	Emails re closing. Review of closing docs.
Flett, D	04/09/2020	0.7	Email with C. Zoric of Danbury re sale of unit 106; email with B. MacNuff of Hub re policy cancellation, review form, forward to S. Cherniak and return executed copy; review and update 2502461 Ontario mortgage schedule and unit summary; email with M. Finnegan re 106 utilities.
Finnegan, M	04/09/2020	0.1	Prepare insurance cancellation request form for signature.
Cherniak, S	04/09/2020	0.4	Emails to/from property manager. Review and execute insurance cancellation.
Flett, D	04/15/2020	0.3	Update 2502461 Ontario mortgage schedule and notes for decrease in BMO prime rate; review status of outstanding issues, funds in court with S. Cherniak.
Finnegan, M	04/15/2020	0.4	Bill payments.
Cherniak, S	04/15/2020	0.1	Pay bill
Finnegan, M	04/16/2020	0.2	Bill payment.
Finnegan, M	04/22/2020	0.2	Bill payment.
Cherniak, S	04/22/2020	0.1	Question re BMO LC.
Finnegan, M	04/23/2020	0.4	Search for LC info for BMO and email to BMO re same.

Staff	Date	Time	Comments
Flett, D	04/23/2020	0.2	Re view S. Cherniak email and BMO correspondence re L/C for City Windsor; review banking with M. Finnegan.
Cherniak, S	04/23/2020	0.3	Emails re cancellation of LC.
Flett, D	04/24/2020	0.2	Email with T. Van Klink of Miller Thomson re sale of 106, remaining issues and funds held in court.
Cherniak, S	04/24/2020	0.1	Review of email and response from Miller Thomson re update.
Flett, D	04/28/2020	0.4	Update 503 VTB mortgage schedule; review and download bank of Canada historical weekly mortgage rates for 503 mortgage calculation and discussion purposes.
Hooper, L	04/29/2020	0.2	Bank recs
Cherniak, S	05/07/2020	0.1	Review of Miller Thomson account.
Finnegan, M	05/20/2020	0.2	Update banking re GIC interest.
Hooper, L	05/22/2020	0.4	March & April bank recs
Finnegan, M	05/26/2020	0.4	Pay bills
Finnegan, M	05/27/2020	0.3	Receipt of bill from union gas, call to confirm final read was done.
Flett, D	05/27/2020	0.2	Email and call with M. Finnegan re 106 closing date, status of utility accounts.
Flett, D	05/28/2020	0.2	Email with K. Sturba re 106 union gas account; call with J McClelland.
Cherniak, S	05/28/2020	0.1	Email re utilities.
Finnegan, M	06/02/2020	0.2	Pay bill
Flett, D	06/08/2020	0.1	Review D. Capaldi email, northbridge invoice for bond premium and email to S. Cherniak confirm amount.
Finnegan, M	06/15/2020	0.2	Bill payment
Hooper, L	06/24/2020	0.2	Bank rec
Finnegan, M	07/03/2020	0.2	Receipt of final gas bill for unit 106. Pay.
Finnegan, M	07/13/2020	0.2	Bill payment
Finnegan, M	07/21/2020	0.2	Call to Enbridge re return of credit balance on acct for unit 106.
Flett, D	07/23/2020	0.1	Review locksmith invoice for 106 and forward for payment.
Finnegan, M	07/23/2020	0.1	Cheque requisition.
Finnegan, M	07/28/2020	0.3	Bill payment.
Hooper, L	07/29/2020	0.3	Bank recs.
Cherniak, S	08/19/2020	1.7	Numerous emails from BMO re Bravo mortgage. Review and reply to all. Review mortgage doc. Review file. Email to Miller Thomson. Call with J. Bravo. Update Miller Thomson and BMO.

Staff	Date	Time	Comments
Cherniak, S	08/20/2020	0.5	Call and email to RBC re Bravo mortgage. Review email from Bravo. Respond.
Flett, D	08/24/2020	0.3	08/19/20: emails with S. Cherniak re Bravo VTB mortgage and forward updated mortgage balance schedule. 08/24/20: review Bravo payout status with S. Cherniak.
Cherniak, S	08/24/2020	0.2	Email from Bravo. Respond.
Hooper, L	08/26/2020	0.2	Bank rec
Cherniak, S	08/27/2020	0.3	Call with Bravo. Email to RBC.
Flett, D	09/03/2020	0.4	Emails with S. Cherniak, Miller Thomson re payout of Bravo mortgage and provide registered documents on file; review emails from A. Roth, BMO re Bravo mortgage discharge.
Cherniak, S	09/03/2020	1.3	Numerous emails and calls re Bravo mortgage with BMO, Miller Thomson and RBC.
Cherniak, S	09/04/2020	0.4	Email to BMO re Bravo mortgage. Email to RBC re same. Email to Bravo.
Cherniak, S	09/08/2020	0.1	Call from RBC re Bravo mortgage.
Flett, D	09/09/2020	0.2	Review emails from Miller Thomson and documents re payout of Bravo mortgage and BMO release
Cherniak, S	09/09/2020	0.6	Email to Miller Thomson re docs. Review and execute BDO doc. Send doc to BMO. Emails to Miller Thomson re same.
Cherniak, S	09/10/2020	0.3	Emails from BMO and Bravo. Respond.
Cherniak, S	09/11/2020	0.2	Call from RBC re Bravo mortgage. Return call.
Cherniak, S	09/14/2020	0.7	Emails and calls re Bravo mortgage.
Cherniak, S	09/15/2020	0.4	Emails re Bravo mortgage.
Cherniak, S	09/16/2020	0.5	Emails re Bravo mortgage. Call with J. Bravo.
Flett, D	09/25/2020	1.3	Review email from S. D' Amore on status and S. Cherniak reply; emails re payout of Bravo mortgage; further emails from S. D' Amore and review email, 503 VTB discharge document from Miller Thomson; review receiver ascend accounting, review Tarion bond documents, update interest on 2502461 loan and prepare updated estimated realization; emails with S. Cherniak re estimated realization, Westview funds, Tarion bond.
Cherniak, S	09/25/2020	1.3	Email from S. D' Amore. Respond. Deal with Bravo discharge. Email to T. Van Klink final items. Review of updated security schedule.
Finnegan, M	09/28/2020	0.5	Deposit funds from mortgage discharge unit 503.

Staff	Date	Time	Comments
Flett, D	09/29/2020	0.9	Review email from J. Branoff re request for 2502461 loan schedule; prepare 2502461 schedule for July 31, 2020 year end and at Sept 30, 2020 re Branoff request; forward loan schedule to J. Branoff with comments; review and revised 2502461 loan schedule and forward to J. Branoff with comment.
Finnegan, M	09/29/2020	0.4	Pay payroll
Cherniak, S	09/29/2020	1.2	Review of file re Capaldi/Westview matter. Email from J. Branoff re update on outstandings. Review response.
Hooper, L	09/30/2020	0.3	Bank recs, discuss with M. Finnegan
Finnegan, M	09/30/2020	0.3	Bank statement reconciliations for July and Aug - issue re mortgage funds included in bank statement balance
Flett, D	10/07/2020	0.2	Email with M Greenaway re 2020 statements and tax returns.
Cherniak, S	10/13/2020	0.1	Deal with GIC.
Finnegan, M	10/19/2020	0.3	Run GL report for F2020.
Flett, D	10/19/2020	2.5	Prepare F2020 sales summary, 2502461 Ontario Loan schedule at July 1, 2020; email call with M. Finnegan re general ledger for F2020, BMO account bank balances at year end; email with S. Cherniak re former GIC funds re City of Windsor; email to M. Greenaway with year documents, comments on receivership status, query re funds in trust.
Cherniak, S	10/19/2020	0.1	Question re GIC.
Cherniak, S	10/20/2020	0.2	Review of email to accountant.
Flett, D	10/28/2020	0.5	Review schedule from M. Greenaway re funds in trust; review draft 2020 financial statements and email with M. Greenaway, S. Cherniak.
Cherniak, S	10/28/2020	0.2	Review of 2020 F/S..
Hooper, L	10/29/2020	0.3	Bank Recs
Flett, D	11/02/2020	0.1	Email to M. Greenway to finalize statements and T2
Cherniak, S	11/02/2020	0.1	Review of email to M. Greenaway.
Cherniak, S	11/03/2020	0.3	Review correspondence from M. Greenaway. Execute t183. Update T. Van Klink on file.
Flett, D	11/03/2020	0.2	Review final statements and forward T183 to S. Cherniak
Cherniak, S	11/05/2020	0.1	Send T183
Flett, D	11/06/2020	0.1	Email with M. Greenaway to forward T183
Finnegan, M	11/17/2020	0.2	Bill payment
Hooper, L	11/25/2020	0.3	Bank Rec
Cherniak, S	11/30/2020	0.1	Review and approve bond premium.

Staff	Date	Time	Comments
Finnegan, M	12/14/2020	0.3	Bill payment
Hooper, L	01/05/2021	0.3	Bank rec
Cherniak, S	01/11/2021	0.2	Discussions re GIC.
Cherniak, S	01/12/2021	0.3	Review and execute docs for GIC.
Cherniak, S	01/13/2021	0.1	Review of Miller Thomson account.
Finnegan, M	01/14/2021	0.4	Bill payment.
Cherniak, S	01/14/2021	0.1	Update on GIC.
Cherniak, S	01/22/2021	0.3	V/M from Dalfidian. Review file.
Hooper, L	01/25/2021	0.1	Bank rec
Hooper, L	01/25/2021	0.1	Bank rec
Flett, D	02/17/2021	2.2	Review 10th report of Receiver and status of issues; start 11th report of Receiver
Hooper, L	02/18/2021	0.2	Bank Rec
Flett, D	02/18/2021	0.6	Continue with 11th report - Unit 503 VTB mortgage; call with S. Cherniak re Miller Canfield trust funds, Westview Park, other issues to completion of file.
Cherniak, S	02/18/2021	0.2	Discuss next report with D. Flett.
Flett, D	02/23/2021	2.2	Review receiver accounting and continue with 11th report of Receiver - receiver activities, Unit 503 VTB, professional fees, R&D narrative.
Flett, D	02/24/2021	0.9	Continue with 11th report; update final schedule of sales for 106 and prepare full summary schedule of receiver's sales for inclusion in 11th report.
Flett, D	02/25/2021	0.2	Call with S. Cherniak re funds in court, other issues to close file; brief memo to S. Cherniak re Tarion bond.
Cherniak, S	02/25/2021	0.1	Update D. Flett on conversation with T. Van Klink.
Cherniak, S	03/04/2021	0.1	Update S. D'Amore on Portofino.
Hooper, L	03/16/2021	0.2	Bank rec
Flett, D	03/17/2021	0.2	Call with S. Cherniak; review prior emails; email to T. Van Klink re items to completion, funds in court
Cherniak, S	03/26/2021	0.7	Deal with Capaldi conflict.
Flett, D	03/29/2021	0.2	Email with M. Finnegan re Northridge invoice, status; email with S. Cherniak re bond, status of issues.
Cherniak, S	03/29/2021	0.4	Emails re Capaldi. Approve Northridge payment.
Finnegan, M	03/30/2021	0.5	Bill payment

Staff	Date	Time	Comments
Hooper, L	04/30/2021	0.2	Bank rec
Cherniak, S	05/05/2021	0.3	Email from S. D' Amore. Respond. Email to T. Van Klink.
Hooper, L	06/02/2021	0.2	Bank recs
Hooper, L	06/29/2021	0.2	Bank Rec
Finnegan, M	07/06/2021	0.5	Prepare payment for insurance bond.
Finnegan, M	07/07/2021	0.5	Bill payment.
Flett, D	07/07/2021	0.1	Email with M. Finnegan re Northridge bond premium and sign cheque.
Cherniak, S	07/08/2021	0.2	Review and approve bond bill.
Cherniak, S	07/12/2021	0.2	Discussion with T. Van Klink. Re next steps.
Flett, D	07/15/2021	0.6	Review prior year financial statement schedules, emails with M. Finnegan and review F2021 GL and bank statements; review 2502461 mortgage schedule and update interest to July 1, 2021.
Finnegan, M	07/15/2021	0.3	Provide GL and bank statements as required.
Flett, D	07/22/2021	0.6	Review historical GL re funds in trust, mortgage receivable; prepare email to M. Greenway with comments and documents, schedules for 2021 financial statements.
Cherniak, S	07/27/2021	0.2	Update S. D'Amore on file.
Hooper, L	07/28/2021	0.2	Bank rec
Flett, D	08/17/2021	0.1	Review CRA notice to file 2020 T2 and forward to M. Greenaway.
Flett, D	08/25/2021	0.7	Revisions and updates to 11th report; review projected distribution summary, prior emails with Tarion ; email to S. Cherniak re status and outstanding issues.
Hooper, L	08/25/2021	0.2	Bank rec
Cherniak, S	08/25/2021	0.1	Update on file.
Flett, D	08/26/2021	0.1	Review status of issues to close, projected realizations with S. Cherniak.
Cherniak, S	08/26/2021	0.1	Discuss final steps with D. Flett.
Flett, D	08/31/2021	0.2	Review 2020 corporate tax notice of assessment and email with M. Finnegan, M. Greenaway
Flett, D	09/07/2021	0.2	Emails with M. Greenaway re 2021 financial statements and forward schedules.
Flett, D	09/08/2021	0.3	Review draft 2021 financial statements, 2013 A/P listing
Flett, D	09/09/2021	0.2	Email with S. Cherniak, M. Greenaway to approve 2021 financial statements.
Cherniak, S	09/10/2021	0.2	Review of Financial statements.

Staff	Date	Time	Comments
Hooper, L	09/20/2021	0.1	Bank rec
Cherniak, S	09/21/2021	0.1	Question re F/S.
Flett, D	09/27/2021	0.1	Email with M. Greenaway re finalize 2021 statements and T2
Flett, D	09/28/2021	0.3	Review T2, T183 and email from M. Greenaway; email with S. Cherniak re finalize T2; email to M. Greenaway to forward signed T183.
Cherniak, S	09/28/2021	0.2	Execute docs re F/S.
Cherniak, S	09/28/2021	0.4	Review and approve F/s and tax returns.
Finnegan, M	09/30/2021	0.3	Bill payment
Finnegan, M	10/12/2021	0.6	Pay bill. Contact BMO re purchasing a GIC.
Flett, D	10/12/2021	0.1	Review 2021 notice of assessment.
Cherniak, S	10/12/2021	0.3	Emails re GIC and payment of Northbridge fee.
Cherniak, S	10/14/2021	0.2	Review and sign GIC Docs.
Flett, D	10/18/2021	0.1	Review outstanding issues and Miller Thomson engagement with S. Cherniak
Cherniak, S	10/18/2021	0.1	Discuss file with D. Flett.
Finnegan, M	10/19/2021	0.5	Bill payments.
Hooper, L	10/25/2021	0.2	Bank Rec
Cherniak, S	10/28/2021	0.1	Discuss with T. Van Klink.
Flett, D	11/24/2021	0.3	Update 2502461 loan schedule; email with L. Bezaire to forward current and July 1, 2021 loan schedules.
Hooper, L	11/24/2021	0.2	Bank Rec
Cherniak, S	11/24/2021	0.2	Review of query from accountant
Hooper, L	12/22/2021	0.1	Bank rec
Cherniak, S	01/11/2022	0.1	Email from T. Van Klink re Bechtel.
Flett, D	01/12/2022	0.2	Review T. Van Klink email and letter to court re Betschel Kitchen funds.
Cherniak, S	01/12/2022	0.5	Review of draft affidavit on Bechtel and respond to T. Van Klink.
Flett, D	01/13/2022	0.4	Review T. Van Klink email and S. Cherniak affidavit re Betschel Kitchen fund; review prior litigation summary table and emails with S. Cherniak re D. Betschel bankruptcy.
Cherniak, S	01/13/2022	0.2	Emails re Beschtel. Review of insolvency search.
Flett, D	01/17/2022	0.7	Call with S. Cherniak re Betschel Kitchen funds in court and application; review receiver accounting, prepare updated projected distribution schedule at Jan 17 22 and email to S. Cherniak.

Staff	Date	Time	Comments
Cherniak, S	01/17/2022	0.2	Review of updated distribution. Discuss next steps with D. Flett.
Cherniak, S	01/21/2022	0.2	Discuss file with T. Van Klink.
Hooper, L	01/26/2022	0.1	Bank rec.
Cherniak, S	01/28/2022	0.6	Review of accounting from the Court and revised affidavit. Zoom call with T. Van Klink. re commissioning affidavit.
Flett, D	01/31/2022	0.3	Review T. Van Klink email, updated Court funds statement of account and S. Cherniak affidavit re Betschel Kitchen; call with S. Cherniak re funds in court status and other issues to complete.
Flett, D	02/01/2022	0.4	Update projected realizations and distributions re funds in court and prepare memo to S. Cherniak re distribution, file closure considerations.
Cherniak, S	02/01/2022	0.1	Review of updated realization schedule.
Flett, D	02/02/2022	0.4	Brief review of Betschel Kitchen funds motion record, letter to service list and related emails with S. Cherniak;
Cherniak, S	02/02/2022	0.5	Review of Beschtel Motion Record. Query to T. Van Klink re service list. Review response.
Cherniak, S	02/03/2022	0.2	Review of correspondence from Miller Thomson re service on counsel.
Flett, D	02/09/2022	0.1	Review Miller Thomson letter to service list and revised motion record re Betschel.
Cherniak, S	02/09/2022	0.3	Review revised MR on Betschel.
Cherniak, S	02/17/2022	0.2	Review and approve Miller Thomson account.
Hooper, L	02/25/2022	0.1	Bank rec
Hooper, L	02/25/2022	0.1	Bank rec
Finnegan, M	02/28/2022	0.5	Bill payment
Finnegan, M	03/01/2022	0.2	Email from D. Capaldi requesting payment of bond premium insurance.
Flett, D	03/01/2022	0.1	Email and call with S. Cherniak re Betschel Kitchen order, next steps, Tarion L/C.
Cherniak, S	03/01/2022	0.6	Emails from T. Van Klink re update on funds in court matter. Approve Northbridge bill. Discuss file with D. Flett
Flett, D	03/02/2022	0.2	Review and update 2502461 Ontario loan schedule.
Flett, D	03/03/2022	0.1	Review and update 202461 Ontario loan schedule.
Finnegan, M	03/07/2022	0.3	Pay bill
Flett, D	03/15/2022	0.1	Review Justice Carey order re Betschel Kitchen funds.
Cherniak, S	03/15/2022	0.2	Review of order re Betschel Kitchens

Staff	Date	Time	Comments
Cherniak, S	03/21/2022	0.2	Call from party interested in leasing. Send to J. McClelland.
Cherniak, S	03/24/2022	0.1	Update on Portofino.
Hooper, L	03/29/2022	0.2	Bank rec x2
Cherniak, S	03/31/2022	0.2	Deal with renewal of GIC.
Flett, D	04/13/2022	0.2	Review and update 2502461 mortgage schedule and notes re BMO prime rate increase.
Cherniak, S	04/13/2022	0.3	Email to Miller Thomson re update on funds in Court. Review response.
Cherniak, S	04/19/2022	0.2	Renew GIC.
Finnegan, M	04/21/2022	0.5	File administration: accounting for GIC redemption and renew and post interest earned.
Hooper, L	04/22/2022	0.2	Bank Rec x2
Cherniak, S	04/22/2022	0.5	Email from S. D' Amore re update. Respond.
Cherniak, S	05/12/2022	0.2	Review of Miller Thomson bill.
Finnegan, M	05/17/2022	0.3	Bill payment
Flett, D	05/31/2022	0.2	Email from S. Cherniak, T. Van Klink re funds in court; revise update 2502461 Ontario mortgage loan schedule for pending prime rate increase.
Finnegan, M	05/31/2022	0.5	File Administration.
Cherniak, S	05/31/2022	0.7	Call with T. Van Klink re finalization of file. Review of email re wrong court file number and retrieving funds from court. respond re bank account details.
85.2 Total Time			

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$525	31.0
Finnegan, M	Administrative	London	\$175	16.20
Flett, D	Vice President	London	\$475	32.2
Hooper, L	Estate Administrator	London	\$175	5.8
				85.2



Tel: 519 660 6540
 Fax: 519 439 4351
 www.bdo.ca

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

508

INVOICE

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

Date

November 22, 2022

Invoice No.

CINV11222022

Re Portofino Corporation

FOR PROFESSIONAL SERVICES RENDERED in connection with our engagement for the above noted matter for the June 1, 2022 to November 21, 2022 as per the details below.

Our Fee:	\$23,045.00
Estimated time to complete	25,000.00
Subtotal	<u>48,045.00</u>
HST - 13% (#R101518124)	6,245.85
Total Due	<u><u>\$54,290.85</u></u>

Summary of Time Charges	Hours	Rate	Amount
S. Cherniak, Sr. Vice President	17.5	550.00	\$9,625.00
D. Flett, Vice President	26.3	475.00	12,492.50
M. Finnegan, Administrative	4.5	175.00	787.50
L. Hooper, Administrative	0.8	175.00	140.00
Total	<u>49.1</u>		<u><u>\$23,045.00</u></u>

Staff	Date	Comments	Hours
Cherniak, S	2-Jun-22	File admin.	0.2
Cherniak, S	3-Jun-22	Review of email from T. Van Klink re Capaldi and final report. Respond.	0.2
Flett, D	6-Jun-22	Review bank account balance and activity with M. Finnegan; prepared updated estimated realization and distribution schedule; review T. Van Klink email re Westview; email with S. Cherniak re Westview, approach to finalize and close file; call with S. Cherniak re approach to final distribution, Tarion, Westview.	0.9
Cherniak, S	6-Jun-22	Discuss T. Van Klink email with D. Flett. Discuss reporting.	0.3
Hooper, L	6-Jun-22	Banking	0.2
Flett, D	13-Jun-22	Brief review of several emails from Dalfidan and email/brief call with S. Cherniak; emails with M. Finnegan re stale dated cheque cashed, banking.	0.2
Finnegan, M	13-Jun-22	Research stale dated cheque from 2016 recently cashed.	0.2
Cherniak, S	13-Jun-22	Review of numerous emails from Dalfidan over the weekend. Review file. Email to C. Alexiou. Review response from T. Van Klink. Discuss with D. Flett.	1.4
Flett, D	14-Jun-22	Brief review of S. Cherniak email and attachments from T Van Klink re Betschel.	0.1
Cherniak, S	14-Jun-22	Deal with old cheque being cashed. Email from D. Dalfidan. Review of correspondence to court from Miller Thomson.	0.7
Finnegan, M	15-Jun-22	Complete stale cheque issue with bank and review receipt of funds returned.	0.5
Flett, D	21-Jun-22	Resume preparation of and updates to 11th report to court; emails with M. Finnegan re Northridge bond; call with S. Cherniak re Westview park funds in trust, proposed distribution and other issues.	1.5
Cherniak, S	21-Jun-22	Discuss report with D. Flett.	0.2
Flett, D	22-Jun-22	Email with M. Finnegan re Northridge bond premium payments.	0.1
Cherniak, S	22-Jun-22	Emails from Dalfidan.	0.2
Flett, D	23-Jun-22	Review 2013 application record exhibits, review PPSA and parcel register re Lombard, Sutts Strosberg LLP; email to M. Finnegan re bond.	0.3
Flett, D	27-Jun-22	Email with M. Finnegan and review documents re Lombard registration, Northridge bond in favour of Tarion.	0.2
Cherniak, S	28-Jun-22	Update on Court funds. Review of query re report from D. Flett. Respond.	0.3
Flett, D	28-Jun-22	Continue with 11th report - Betschel, Miller Canfield Trust funds, Lombard/Northridge, Sutts Strosberg, proposed distribution.	2.2

Staff	Date	Comments	Hours
Flett, D	29-Jun-22	Continue with 11th report - 2502461 Ontario loan; review sales summary to date and 10th report R&D re accounting for final report.	0.4
Hooper, L	30-Jun-22	Banking	0.2
Flett, D	7-Jul-22	Continue with and revisions to draft 11th report; email with M. Finnegan re Westview funds and review ledger; finalize sales summary schedule for 11th report.	0.9
Flett, D	11-Jul-22	Emails with S. Cherniak re Betschel funds in court; email from C. Spezza of Superior Court; review emails with M. Finnegan and email with S. Cherniak re Northridge bond.	0.3
Cherniak, S	11-Jul-22	Email to Court re funds. Review response. Email re bond premium.	0.3
Flett, D	13-Jul-22	Update 2502461 mortgage schedule for increase in prime rate and add per diem calculation.	0.2
Flett, D	20-Jul-22	Review statement of account for Betschel Kitchen funds paid out from court and emails with S. Cherniak, M. Finnegan.	0.2
Cherniak, S	20-Jul-22	Review of accounting and transfer from Court re Bechtel. Instruct staff.	0.4
Flett, D	21-Jul-22	Revisions and updates to 11th report to court.	0.3
Flett, D	25-Jul-22	Review sales summary and instructions to M. Finnegan statement of receipts and disbursements for court report; review and revisions to draft R & D.	1.4
Finnegan, M	25-Jul-22	Prepare R&D.	1.0
Flett, D	26-Jul-22	Review of R&D and revisions; call with M. Finnegan to review R&D revisions, GIC interest posting, bond premiums and other receiver accounting; further reconcile of draft R&D to 10th report R&D and subsequent receiver activity.	1.1
Flett, D	27-Jul-22	Review revised R & D, and emails with M. Finnegan; emails with M. Finnegan re Northridge invoice, D. Capaldi reply and approval to pay; revisions to R & D to finalize; continue with 11th report - R&D narrative, distribution, update 2502461 Ontario loan schedule to July 31, 2022, plus per diem and per diem interest adjustment calculation.	2.5
Finnegan, M	27-Jul-22	Complete R&D and balancing of discrepancies to GL. Email to D. Capaldi re bond insurance invoice. Receipt of same and prepare payment.	1.5
Flett, D	28-Jul-22	Emails with M. Finnegan and minor revisions to draft 11th report; forward report to S. Cherniak for review with comments and appendices.	0.4
Finnegan, M	28-Jul-22	Formatting edits to report and R&D.	0.3
Hooper, L	29-Jul-22	Banking	0.1
Finnegan, M	3-Aug-22	Pay bill.	0.3

Staff	Date	Comments	Hours
Flett, D	10-Aug-22	Prepare 202461 loan schedule at July, 2022 for year-end; review F2021 year end documents and email with M. Finnegan re bank statement, F2022 general ledger.	0.4
Flett, D	11-Aug-22	Review F2022 general ledger, bank account transaction report prepared by M. Finnegan, related emails and call re GIC statement, transaction history; email to M Greenaway with comments for 2022-year end, schedules and attachments.	0.6
Finnegan, M	11-Aug-22	Pull GL and banking info for financial statement purposes.	0.5
Cherniak, S	11-Aug-22	Review of email to accountant re y/e stmts. Update T. Van Klink on file.	0.3
Hooper, L	6-Sep-22	Bank statement.	0.1
Flett, D	7-Sep-22	Update 2502461 Ontario loan schedule and notes for increase in BMO prime rate.	0.2
Flett, D	19-Sep-22	Update 2502461 Ontario loan schedule to Sept 30, 2022 and R & D to Sept 15 2022; revisions and updates to 11th report; emails with S. Cherniak re finalize draft of 11th report; forward 11th report and appendices to T Van Klink with comments re notes to draft, other matters.	1.2
Cherniak, S	19-Sep-22	Send report to D. Flett. Review email to T. Van Klink. Call with D. Flett re same.	0.5
Finnegan, M	19-Sep-22	Review R&D for report and update as necessary.	0.2
Flett, D	21-Sep-22	Review draft 2022 financial statements and emails with M Greenaway.	0.3
Cherniak, S	21-Sep-22	Review of email from M. Greenaway.	0.2
Cherniak, S	22-Sep-22	Review of Portofino f/s tax return email.	0.1
Cherniak, S	23-Sep-22	Review and execute f/s docs.	0.5
Flett, D	28-Sep-22	Email with M. Greenaway and forward signed authorization to file.	0.2
Cherniak, S	29-Sep-22	Review of D. Flett email to accountant.	0.1
Hooper, L	30-Sep-22	Banking.	0.2
Cherniak, S	14-Oct-22	Reply to S. D'Amore request for update.	0.2
Flett, D	14-Oct-22	S. D'Amore enquiry, S. Cherniak reply re file status; email with S. Cherniak re counsel review of report.	0.1
Cherniak, S	25-Oct-22	Review T. Van Klink edits to report. Review email re issue with Miller Canfield lien. Call with T. Van Klink re same. Update D. Flett.	2.0
Flett, D	26-Oct-22	Call with S. Cherniak re T. Van Klink revisions to report, Miller Canfield trust funds, Sasso and Lombard security, estimated distribution and other issues; email with T. Van Klink re Lombard, SSS security; review T. Van Klink revisions to 11th report including Miller Canfield and Westview details; update 2502461 loan schedule and for prime rate increase and 11th	2.5

Staff	Date	Comments	Hours
		report and forward to T. Van Klink; prepare updated projected distribution schedule re other secured creditors.	
Cherniak, S	26-Oct-22	Review of T. Van Klink edits. Discuss T. Van Klink changes with D. Flett. Review of emails to B. Sasso and R. Calderwood and B. Sasso response.	1.5
Flett, D	27-Oct-22	Brief review of email from K. Petersen of SSS and attached security documents.	0.2
Cherniak, S	27-Oct-22	Review of Calderwood email. Send to D. Flett re Tarion query.	0.5
Flett, D	31-Oct-22	Review T. Van Klink, R. Calderwood emails re Northbridge bond, Lombard security and Tarion; review prior emails with S. Nevicato of Tarion and email to arrange call.	0.2
Cherniak, S	31-Oct-22	Email from D. Capaldi.	0.1
Cherniak, S	1-Nov-22	Emails re call with Tarion. Discuss report.	0.5
Flett, D	1-Nov-22	Emails with S. Nevicato of Tarion; emails and call with S. Cherniak re Tarion bond, unfinished unit certificates of completion and projected distribution.	0.4
Flett, D	2-Nov-22	Review 2017 ESCC 122 and Tarion correspondence re performance audit; conference call with S. Nevicato, R. Salisbury of Tarion, S. Cherniak re receivership status, Northbridge bond, time limit on common elements claims and other matters; review Northbridge bond premium invoice and instructions to MF to pay; call with S. Cherniak re conclusion of call with Tarion, options to close file and final report	1.2
Cherniak, S	2-Nov-22	Call and review of emails from D. Flett re call with Tarion. Call with Tarion re how to deal with bond. Follow up call with D. Flett. Review of bond premium.	1.1
Flett, D	3-Nov-22	Emails with S. Cherniak re Tarion bond; review Lombard/Northbridge bond in favour of Tarion and T Van Klink email with analysis; further emails with S. Cherniak re Receiver options for bond, status of work identified in performance audit.	0.4
Cherniak, S	3-Nov-22	Call with T. Van Klink re call with Tarion. Review of email to R. Calderwood re bond. Review of bond and T. Van Klink analysis. Respond. Respond to query re Receiver dealing with deficiencies.	1.2
Flett, D	7-Nov-22	Email with M Greenaway re 2022 invoice, review prior emails and forward to S. Cherniak for approval.	0.2
Cherniak, S	7-Nov-22	Approve and pay accounting bill.	0.2
Cherniak, S	14-Nov-22	Review of email to Tarion.	0.1
Flett, D	14-Nov-22	Email to S Nevicato of Tarion; review Westview trust fund accounting and interest with M. Finnegan.	0.2

Staff	Date	Comments	Hours
Flett, D	15-Nov-22	Email from S. Nevicato of Tarion re bond status; lengthy call with S. Nevicato re outstanding deficiencies from 2016 Performance audit, potential ESCC 122 Tarion claim, process and avenues to conclude; review ESCC 122 correspondence and resolution regarding performance audit from 2016-2017; review prior MT correspondence with L. Glithero, T Baker of Cohen Highley on behalf of ESCC 122; call with S. Cherniak to review call with S. Nevicato, Tarion position re bond, Receiver final report, proposed distribution to Northbridge and related matters; S. Cherniak email to T. Van Klink re Tarion and final report.	2.2
Cherniak, S	15-Nov-22	Update on call with Tarion from D. Flett. Review of docs. Email to T. Van Klink.	0.9
Flett, D	16-Nov-22	T. Van Klink email re court report; memo to S. Cherniak summarizing Tarion process going forward and most likely scenario, time line; review 10th report motion record and email with S. Cherniak re Tarion, service list; email to S. Nevicato re proposed Northbridge payout, addresses for service list.	1.1
Cherniak, S	16-Nov-22	Emails re Tarion. Email update from T. Van Klink re report.	0.8
Flett, D	17-Nov-22	Emails with S. Nevicato, T. Salisbury of Tarion re service list updates.	0.1
Cherniak, S	17-Nov-22	Review of email from R. Calderwood to T. Van Klink.	0.2
Cherniak, S	18-Nov-22	Review of T. Van Klink response to Calderwood. Review of T. Van Klink analysis of Northbridge security. Respond. Review of D. Flett queries re same.	0.9
Flett, D	21-Nov-22	Review T. Van Klink email summarizing Lombard security and priorities for final receiver distribution; further S. Cherniak, T. Van Klink emails re Lombard, distribution; email with S. Cherniak re Tarion; download Lombard security documents from T. Van Klink; emails with S. Cherniak, S. Nevicato of Tarion re receiver's motion for discharge, contact for service; T. Van Klink email re revised report; review revised 11th report from T. Van Klink.	1.4
Cherniak, S	21-Nov-22	Review of T. Van Klink edits to report. Emails re fee affidavit. Review of various emails re Tarion. Review of MT security position.	1.4
Various	21-Nov-22	The Receiver to deal with issues arising from the Court's advice and direction on the Westview matter, Tarion Bond and Miller Canfield legal fees along with finalizing the administration of the estate	

APPENDIX “R”

**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

FEE AFFIDAVIT OF MICHAEL PROSIA

I, MICHAEL PROSIA, of the City of London, County of Middlesex, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate 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 September 1, 2018 through to November 30, 2022 (the "**Period**"). During the Period, the total fees and disbursements billed were \$50,379 and \$1,349.14 respectively. The HST billed was \$6,651.73. 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 99.5 billable hours in connection

with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".

4. To the best of my knowledge, the rates charged by MT throughout these proceedings are comparable to the rates charged by other firms in the Southwestern Ontario market for the provision of similar services. No premiums have been charged on the invoices.

SWORN BEFORE ME:

in person by video conference

With the deponent in the City of London, County of Middlesex, Province of Ontario and the Commissioner in the Municipality of Thames Centre, Province of Ontario in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely this 12th day of December, 2022.



Michael Prosia


A Commissioner for taking Affidavits (or as may be)
(Tony Van Klink)

Attached are Exhibits "A" and "B" to
the Affidavit of Michael Prosia sworn
the 12th day of December, 2022 .



A Commissioner, Etc.

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EXHIBIT "A"

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MILLER THOMSON
AVOCATS | LAWYERS

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ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
LONDON, ON N6A 5R8
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MILLERTHOMSON.COM

November 15, 2018

Invoice Number 3256308

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

Date	Initials	Description	Hours
09/07/2018	JC	Discussions with A. Roth regarding transfer of parking spaces; email correspondence with client regarding same;	0.70
09/07/2018	ASR	Attend to issue regarding swap of parking spaces;	0.40
09/14/2018	SK	E-mail correspondence from and to Mr. Flett; Prepare Agreement of Purchase and Sale for parking units;	0.50
09/26/2018	AVK	Receive and review correspondence from lawyer for Capaldi; reviewing status of Capaldi lien actions; telephone calls with and lengthy e-mail to lawyer for Capaldi	2.00
10/02/2018	SK	Prepare letter to process server to file receiver's certificate re Unit 1505;	0.10
10/02/2018	AVK	Telephone call with Mr. Cherniak; e-mail to Ms. Edmonds regarding Capaldi lien actions	0.40
10/05/2018	SK	Review and finalize reporting letter re Unit 1505;	0.10
10/15/2018	AVK	Reviewing motion records; letter to Ms. Edmonds and Mr. Godard; e-mails with Ms. Edmonds	0.50



Date	Initials	Description	Hours
10/17/2018	AVK	Telephone call with Mr. Godard's office regarding motion	0.10
10/19/2018	AVK	Review drafts order and executing consents, e-mails to lawyers for Capaldi	0.20
10/22/2018	AVK	E-mails regarding Capaldi action motions	0.20
10/26/2018	AVK	Reviewing and revising Tenth Report; consideration of issues relating to Betschel's Kitchen lien action; consideration of issues relating to Miller Canfield solicitor's lien claim	1.80
10/29/2018	AVK	Reviewing documents, research and considering solicitors' lien issue; e-mail to Messrs. Cherniak and Flett	4.00
10/30/2018	AVK	Working on revisions to 10th Report (Miller Canfield trust funds)	1.40
10/31/2018	AVK	Working on revisions to 10th Report	2.80
Total Hours			15.20

Our Fee: 8,363.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
05212	ASR	A. Roth	Partner	\$435.00	0.40	\$174.00
05403	AVK	A. Van Klink	Partner	\$585.00	13.40	\$7,839.00
05767	JC	J. Cook	Paraprofession al	\$165.00	0.70	\$115.50
05715	SK	S. Kettle	Partner	\$335.00	0.70	\$234.50

Taxable Disbursements

Delivery	18.21	
Agent's Fees	25.00	
Total Taxable Disbursements	<u>43.21</u>	\$43.21

Non-Taxable Disbursements

Issue Notice of Motion	160.00
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Total Non-Taxable Disbursements	<u>160.00</u>	\$160.00
Total Fees and Disbursements		\$8,566.21
Ontario HST 13% (R119440766)		
On Fees		\$1,087.19
On Disbursements		\$5.62
Total Amount Due		<u>\$9,659.02</u>
E.&O.E.		

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MILLER THOMSON
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523

December 31, 2018

Invoice Number 3278742

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

Date	Initials	Description	Hours
11/07/2018	AVK	Reviewing draft orders for Capaldi actions, approval of same and e-mails to counsel	0.20
11/08/2018	AVK	Working on revisions to 10th Report and fees affidavit	0.60
11/09/2018	SK	Review and swear fee affidavit;	0.30
11/09/2018	AVK	Working on motion materials	0.30
11/12/2018	AVK	Working on motion materials	1.20
11/13/2018	JC	Obtain parcel registers	0.30
11/13/2018	SK	Request and review parcel registers; Prepare opinion re sale of units;	0.60
11/13/2018	AVK	Revising motion materials; letter to Messrs. Goldberg and Leischeid; prepare draft order	0.50
11/14/2018	AVK	Finalize Motion Record; correspondence to service list	0.20
11/21/2018	AVK	E-mail to Messrs. Goldberg and Leschied regarding motion	0.10
11/22/2018	AVK	Preparing motion confirmation form; e-mail to Mr.	0.10



Date	Initials	Description	Hours
		Goldberg	
11/22/2018	AVK	Reviewing correspondence from Mr. Goldberg, telephone calls with Mr. Goldberg and Mr. Leschied; e-mail to Mr. Cherniak	0.30
11/26/2018	AVK	E-mails regarding state of account of BMO loan	0.30
11/27/2018	AVK	Attend on motion for approval of Tenth Report; letters to service list and Messrs. Goldberg and Leschied	7.00
12/12/2018	AVK	Telephone call with and e-mail to Mr. Todd	0.20
Total Hours			12.20

Our Fee: 6,786.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
05403	AVK	A. Van Klink	Partner	\$585.00	11.00	\$6,435.00
05767	JC	J. Cook	Paraprofessional	\$165.00	0.30	\$49.50
05715	SK	S. Kettle	Partner	\$335.00	0.90	\$301.50

Taxable Disbursements

Delivery	25.05	
Agent's Fees	25.00	
Mileage/Parking Expenses	169.91	
Online Searches - Teranet	192.25	
Total Taxable Disbursements	412.21	\$412.21

Total Fees and Disbursements \$7,198.21

Ontario HST 13% (R119440766)

On Fees	\$882.18
On Disbursements	\$53.58



Total Amount Due

\$8,133.97

E.&O.E.

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MILLER THOMSON
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MILLERTHOMSON.COM

527

July 31, 2019

Invoice Number 3366024

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
06/14/2019	ASR	Review declaration and provide comments with respect to sale of parking spaces;	0.70
06/24/2019	ASR	E-mail correspondence regarding outstanding amounts;	0.20
07/15/2019	JC	Email correspondence with client	0.10
07/23/2019	JC	Email correspondence with client;	0.10
07/23/2019	ASR	Attend to transfer of parking spaces;	0.20
07/24/2019	JC	Review of requisition letter; draft response to requisitions and ancillary documents including Receiver's Certificate and accounting documents; draft Teraview documents and message to other solicitor; various e-mail correspondence;	1.90
07/24/2019	ASR	Attend to response to requisitions regarding parking spaces;	0.20
07/29/2019	JC	Email correspondence with client and purchaser's lawyer regarding leased parking spaces;	0.20
07/30/2019	JC	Prepare closing package to purchaser's solicitor; various e-mail correspondence; attend to various matters to facilitate closing; finalize report to client;	0.80



Date	Initials	Description	Hours
		prepare payout letters; attend to HST registry search;	
07/30/2019	ASR	Attend to closing;	0.30
07/31/2019	SK	Memo to agent re filing receiver's certificate for 29 parking spaces;	0.10
Total Hours			4.80

Our Fee: 1,306.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
05212	ASR	A. Roth	Partner	\$465.00	1.60	\$744.00
05767	JC	J. Cook	Paraprofession al	\$170.00	3.10	\$527.00
05715	SK	S. Kettle	Partner	\$350.00	0.10	\$35.00

Taxable Disbursements

Delivery	11.65	
Total Taxable Disbursements	<u>11.65</u>	\$11.65

Total Fees and Disbursements \$1,317.65

Ontario HST 13% (R119440766)

On Fees		\$169.78
On Disbursements		\$1.51

Total Amount Due \$1,488.94

E.&O.E.

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MILLER THOMSON
AVOCATS | LAWYERS

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ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
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530

December 31, 2019

Invoice Number 3426241

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
08/07/2019	JC	Prepare final report to client;	0.50
09/20/2019	ASR	E-mail correspondence regarding issues with respect to parking spaces;	0.20
09/23/2019	KD	Conduct legal research regarding transferring parking spaces to condo corporation;	0.50
09/23/2019	JC	Discussions with A. Roth and K. Descouteaux regarding parking space issue; email correspondence with client;	0.30
09/23/2019	ASR	Instructions to associate regarding transfer of parking spaces;	0.20
09/24/2019	JC	Email correspondence with client; discussions with K. Descouteaux & A. Roth;	0.30
09/24/2019	KD	Conduct legal research regarding vesting parking spaces to condo corporation; examine condo declaration; examine the Condominium Act, 1998;	0.70
09/25/2019	KD	Draft email correspondence to D. Flett regarding transfer of ownership of parking spaces; conduct legal research regarding vesting land in the name of the condominium corporation;	0.90

Please return the Account Summary and Remittance Form with your payment.

Terms: Accounts due when rendered. Interest at the rate of 12.0% per annum will be charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.
<http://eastfinweb.millerthomson.com/adeant/Tools/PrintPreview/FileStream.aspx?documentType=BILL&documentKey=7834310&CacheID=59936dda-f919-4b2a-a431-ca4769c6970b>



Date	Initials	Description	Hours
09/25/2019	ASR	Review transfer matters with associate;	0.20
09/26/2019	ASR	E-mail correspondence regarding parking units;	0.20
09/27/2019	ASR	E-mail correspondence regarding lawyer for condo and related matters;	0.20
09/30/2019	ASR	Instructions to associate regarding correspondence;	0.20
09/30/2019	KD	Discuss next steps with A. Roth; draft email correspondence to the Condominium Corporation's lawyer regarding vesting parking spaces to the Condominium Corporation;	0.20
10/08/2019	JC	Discussions with K. Descoteaux; draft Application for Vesting Order; review of email correspondence;	0.30
10/08/2019	ASR	E-mail correspondence to obtain instructions;	0.20
10/15/2019	JC	Review of Agreement of Purchase and Sale; compose email to Purchaser's solicitor regarding closing date;	0.30
10/15/2019	ASR	E-mail correspondence regarding transfers;	0.20
10/16/2019	ASR	Instructions to associate;	0.20
10/18/2019	JC	Follow up with Purchaser's lawyer and client regarding change in closing date;	0.20
10/28/2019	JC	Draft and revise documents; draft Teraview documents and message to other solicitor; various e-mail correspondence;	1.00
10/28/2019	ASR	Attend to matters with respect to sale of parking spaces;	0.30
10/31/2019	ASR	E-mail correspondence regarding changes to deal and documents;	0.30
10/31/2019	JC	Prepare closing package to purchaser's solicitor; revise closing documents to reflect new purchaser corporation; various e-mail correspondence; draft final report to client; prepare payout letters; attend to HST registry search; discussions with A. Roth;	1.00
11/01/2019	JC	Revise Closing Documents and correspondence to reflect new title instructions received from Purchaser's solicitor; attend to various matters to facilitate closing; attend to HST registry search; various email correspondence; discussions with A. Roth;	0.80

Please return the Account Summary and Remittance Form with your payment.



Date	Initials	Description	Hours
11/04/2019	JC	Email correspondence with client and Purchaser's solicitor; finalize final report to client;	0.40
11/05/2019	ASR	E-mail correspondence regarding sale of lockers;	0.20
11/06/2019	ASR	Correspondence regarding transfer of units;	0.20
11/06/2019	JC	Email correspondence with client and property manager regarding change of ownership;	0.20
11/25/2019	AVK	Reviewing materials relating to Betschel's Kitchen lien action and instructing student thereon; reviewing materials relating to Miller Canfield trust funds and correspondence to Mr. Leischied thereon; reviewing Goldberg file and materials respecting Westview Park lands and letter to Ms. Edmonds thereon	2.00
11/26/2019	AVK	Revising draft correspondence to Mr. Leischied and Ms. Edmonds	0.30
11/27/2019	AVK	Revising draft correspondence; e-mail to Mr. Cherniak	0.30
11/29/2019	AVK	Reviewing correspondence from Mr. Leschied; telephone call with Mr. Cherniak	0.30
Total Hours			13.30

Our Fee: 4,359.50

TK ID	Initials	Name	Title	Rate	Hours	Amount
05212	ASR	A. Roth	Partner	\$465.00	2.80	\$1,302.00
05403	AVK	A. Van Klink	Partner	\$585.00	2.90	\$1,696.50
05767	JC	J. Cook	Paraprofession al	\$170.00	5.30	\$901.00
05975	KD	K. Descoteaux	Associate	\$200.00	2.30	\$460.00

Taxable Disbursements

Delivery	23.80	
Agent's Fees	50.00	
Total Taxable Disbursements	73.80	\$73.80

Please return the Account Summary and Remittance Form with your payment.



Total Fees and Disbursements	\$4,433.30
Ontario HST 13% (R119440766)	
On Fees	\$566.74
On Disbursements	\$9.59
Total Amount Due	\$5,009.63

E.&O.E.

Please return the Account Summary and Remittance Form with your payment.

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MILLER THOMSON
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MILLERTHOMSON.COM

535

March 31, 2020

Invoice Number 3466783

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
01/02/2020	AS	Reviewing Email from Essex process servers;	0.10
01/07/2020	JC	Email correspondence with client; review of Agreement of Purchase and Sale;	0.30
01/08/2020	AS	Reviewing documents received from Essex processing re: Portofino;	0.10
01/09/2020	AS	Reviewing trial record and notice of motion re: Betschel's Kitchen v. Portofino: Reviewing next steps to bring motion to release court funds; Consulting with T. Van Klink ; Drafting and sending letter to Accountant of Superior Court re: updated statement of account;	1.90
01/16/2020	JC	Email correspondence with client;	0.10
01/23/2020	AS	Drafting letter to Essex process server re: enclosure of payment for copying Betschel's v. Portofino file;	0.40
01/27/2020	JC	Email correspondence;	0.10
03/12/2020	JC	Email correspondence with client regarding common expenses;	0.10
03/16/2020	ASR	E-mail correspondence regarding VTB payment;	0.20



Date	Initials	Description	Hours
03/25/2020	JC	Review of email correspondence from client; obtain and review updated parcel register and security documents;	0.50
03/26/2020	JC	Draft Closing Documents for sale of Unit 106; various email correspondence with client and purchaser's solicitor regarding same; compose email to client regarding Unit 503;	1.30
03/26/2020	ASR	E-mail correspondence regarding closing matters;	0.30
03/27/2020	JC	Email correspondence with client;	0.30
03/27/2020	ASR	E-mail correspondence;	0.20
03/30/2020	JC	Email correspondence with client; review of excused documents;	0.10
Total Hours			6.00

Our Fee: 1,176.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
01137	AS	A. Salomon	Articling Student	\$140.00	2.50	\$350.00
05212	ASR	A. Roth	Partner	\$480.00	0.70	\$336.00
05767	JC	J. Cook	Paraprofessional	\$175.00	2.80	\$490.00

Taxable Disbursements

Court Messenger	68.36	
Online Searches - Teranet	67.40	
Total Taxable Disbursements	<u>135.76</u>	\$135.76

Total Fees and Disbursements \$1,311.76

Ontario HST 13% (R119440766)
On Fees \$152.88



On Disbursements

\$17.65

Total Amount Due

\$1,482.29

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539

April 30, 2020

Invoice Number 3477581

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
04/01/2020	JC	Review of requisition letter; draft response to requisitions compose e-mail to purchaser's lawyer enclosing same;	0.50
04/01/2020	ASR	Attend to response to requisitions;	0.20
04/03/2020	JC	Email correspondence with Purchaser's solicitor;	0.10
04/06/2020	ASR	Attend to closing matters;	0.20
04/06/2020	JC	Email correspondence with client regarding extension and outstanding items for closing;	0.20
04/07/2020	JC	Email correspondence with Purchaser's solicitor regarding additional documents to be deleted;	0.30
04/08/2020	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; prepare accounting forms;	1.10
04/08/2020	ASR	Attend to closing matters; E-mail correspondence; Attend to funds flow documents; Attend to closing and final report;	0.50
04/14/2020	ASR	Attend to original documents;	0.20



Date	Initials	Description	Hours
04/14/2020	SK	E-mail to courthouse re filing receiver's certificate re unit 106;	0.10
04/15/2020	SK	E-mail correspondence from courthouse; E-mail correspondence with Mr. Roth;	0.10
04/16/2020	SK	Prepare letter to court house to file Receiver's Certificate re Unit 106; Provide instructions re same;	0.10
Total Hours			3.60

Our Fee: **1,025.50**

TK ID	Initials	Name	Title	Rate	Hours	Amount
05212	ASR	A. Roth	Partner	\$480.00	1.10	\$528.00
05767	JC	J. Cook	Paraprofessional	\$175.00	2.20	\$385.00
05715	SK	S. Kettle	Partner	\$375.00	0.30	\$112.50

Taxable Disbursements

Delivery	11.99	
Total Taxable Disbursements	11.99	\$11.99

Total Fees and Disbursements **\$1,037.49**

Ontario HST 13% (R119440766)

On Fees	\$133.32
On Disbursements	\$1.56

Total Amount Due **\$1,172.37**

E.&O.E.

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December 31, 2020

Invoice Number 3574268

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
09/03/2020	JC	Review of documents and email correspondence; discussions with A. Roth; email correspondence with client;	0.30
09/03/2020	ASR	E-mail correspondence relating to discharge request;	0.50
09/04/2020	ASR	E-mail correspondence regarding BMO charge;	0.20
09/09/2020	JC	Review of email correspondence; draft and revise discharge documents for signature by BMO & client; email correspondence;	0.80
09/09/2020	ASR	Attend to discharge documents and matters;	0.40
09/10/2020	JC	Review of email correspondence;	0.10
09/10/2020	ASR	E-mail correspondence regarding demand loan;	0.20
09/14/2020	ASR	E-mail correspondence;	0.20
09/14/2020	JC	Review of email correspondence;	0.10
09/15/2020	JC	Email correspondence with client; compose fax to RBC with discharge statement;	0.30
09/25/2020	JC	Review of email correspondence; attend to registration of discharge; email correspondence with client;	0.20



Total Hours **3.30**

Our Fee: **1,035.00**

TK ID	Initials	Name	Title	Rate	Hours	Amount
05212	ASR	A. Roth	Partner	\$480.00	1.50	\$720.00
05767	JC	J. Cook	Paraprofession al	\$175.00	1.80	\$315.00

Taxable Disbursements

Teraview Service Fee	10.85	
Total Taxable Disbursements	10.85	\$10.85

Non-Taxable Disbursements

Registration Fee	65.05	
Total Non-Taxable Disbursements	65.05	\$65.05

Total Fees and Disbursements **\$1,110.90**

Ontario HST 13% (R119440766)

On Fees		\$134.55
On Disbursements		\$1.41

Total Amount Due **\$1,246.86**

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545

January 31, 2022

Invoice Number 3719780

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
01/11/2022	RA	Obtaining parcel register and copies of registrations	0.20
01/11/2022	HC	Obtain Ontario Corporate Profile Report and Federal Bankruptcy and Insolvency Report against for Betschel's Kitchen Centre Inc.;	0.30
01/11/2022	AVK	Letter to Accountant of Superior Court; email to Ms. Caron; working on motion materials	4.00
01/12/2022	AVK	Working on motion materials for dismissal of Betschel's lien action and payment of funds out of court	4.60
01/28/2022	RA	Obtaining a copy of Instrument CE276012	0.10
01/28/2022	AVK	Receive Statement of Account from Accountant of the Superior Court and provide copy to Mr. Cherniak; working on motion materials for dismissal of Bestchel's lien action and payment of funds out of Court	1.20
01/28/2022	AVK	Commissioning affidavit of Mr. Cherniak	0.10
01/31/2022	AVK	Reviewing provisions of the OBCA for effecting service upon a dissolved corporation; instructing clerk re title search for David Betschel; working on motin materials	0.70



Total Hours **11.20**

Our Fee: **7,010.00**

TK ID	Initials	Name	Title	Rate	Hours	Amount
05403	AVK	A. Van Klink	Partner	\$650.00	10.60	\$6,890.00
10032	HC	H. Coulter	Law Clerk	\$235.00	0.30	\$70.50
05721	RA	R. Armstrong	Paraprofession al	\$165.00	0.30	\$49.50

Taxable Disbursements

Delivery	14.83	
Corporate Profile Search/Report	7.60	
Online Searches - Teranet	10.10	
Bankruptcy Search (Industry Canada)	7.12	
Total Taxable Disbursements	39.65	\$39.65

Non-Taxable Disbursements

Other Non Taxable Charges	16.00	
Total Non-Taxable Disbursements	16.00	\$16.00

Total Fees and Disbursements **\$7,065.65**

Ontario HST 13% (R119440766)

On Fees		\$911.30
On Disbursements		\$5.16

Total Amount Due **\$7,982.11**

E.&O.E.

9



April 30, 2022

Invoice Number 3752940

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
02/01/2022	RA	Obtaining parcel register for 1054 Glidden Avenue, Windsor	0.10
02/01/2022	RA	Completing name search; obtaining parcel register	0.10
02/02/2022	AVK	Prepare draft Order	0.20
02/02/2022	AVK	Finalize Motion Record, correspondence to Service List	0.40
02/02/2022	AVK	Correspondence to Mr. Tighe regarding motion for dismissal order of Betschel's Kitchen lien action	0.20
02/02/2022	AVK	Emails with Mr. Cherniak regarding Betschel's Kitchen motion	0.10
02/03/2022	AVK	Commissioning affidavit of service	0.10
02/04/2022	AVK	Receive and review email from Mr. Tighe	0.10
02/09/2022	AVK	Correspondence to service list regarding new motion date	0.20
02/10/2022	AVK	Commissioning affidavit	0.10
02/11/2022	AVK	Dealing with filing of motion record and revisions to notice of motion to facilitate same	0.10



Date	Initials	Description	Hours
02/23/2022	AVK	Preparing motion confirmation form	0.10
02/28/2022	AVK	Preparing for motion to dismiss action and payment of funds out of court	0.50
03/01/2022	AVK	Attend on motion to obtain Order for dismissal of Betschel's Kitchen lien action and payment of funds out of court	1.50
03/01/2022	AVK	Revising draft Order	0.10
03/15/2022	AVK	Letter to Service List re dismissal of Betschel's lien action	0.10
04/13/2022	AVK	Preparing affidavit and correspondence for payment of funds out of Court for Betschel Kitchens lien action; swear affidavit	0.70
04/13/2022	SK	Commission affidavit;	0.10
Total Hours			4.80

Our Fee: 3,003.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
05403	AVK	A. Van Klink	Partner	\$650.00	4.50	\$2,925.00
05721	RA	R. Armstrong	Paraprofession al	\$165.00	0.20	\$33.00
05715	SK	S. Kettle	Partner	\$450.00	0.10	\$45.00

Taxable Disbursements

Delivery	15.82	
Online Searches - Teranet	33.15	
Total Taxable Disbursements	48.97	\$48.97

Non-Taxable Disbursements

Court Fees/ Costs	320.00	
Total Non-Taxable Disbursements	320.00	\$320.00



Total Fees and Disbursements **\$3,371.97**

Ontario HST 13% (R119440766)

On Fees \$390.39

On Disbursements \$6.37

Total Amount Due **\$3,768.73**

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552

July 29, 2022

Invoice Number 3778464

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
05/31/2022	AVK	Reviewing response from Accountant of the Superior Court regarding payment of funds out of court for Betschel's lien action; reviewing documents related to payment of funds into court; preparing supplementary affidavit	0.50
06/03/2022	AVK	Reviewing materials relating to Westview Park mortgage issue, consideration of same and develop strategy; email to Mr. Cherniak	1.00
06/13/2022	AVK	Review emails re Dalfidan	0.10
06/14/2022	AVK	Revising and swearing affidavit for payment of funds out of court	0.20
06/14/2022	AVK	Correspondence to Accountant of the Superior Court	0.10
Total Hours			1.90

Our Fee: 1,235.00



TK ID	Initials	Name	Title	Rate	Hours	Amount
05403	AVK	A. Van Klink	Partner	\$650.00	1.90	\$1,235.00

Ontario HST 13% (R119440766)
On Fees

\$160.55

Total Amount Due

\$1,395.55

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11



MILLER THOMSON
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Account Summary and Remittance Form

November 30, 2022

Invoice Number 3824459

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

Attention: Stephen N. Cherniak

Re: Portofino Corporation
Our File No. 0082873.0012

Fees:	\$15,080.00
Ontario HST 13%(R119440766)	\$1,960.40
Total Amount Due	<u><u>\$17,040.40</u></u>



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556

November 30, 2022

Invoice Number 3824459

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

Attention: Stephen N. Cherniak

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

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
10/21/2022	AVK	Reviewing and revising Eleventh Report to the Court	0.80
10/24/2022	AVK	Working on eleventh report to the court	6.70
10/25/2022	AVK	Considering issues relating to the Miller Canfield trust funds; email to Mr. Cherniak thereon; telephone call with Mr. Cherniak re Miller Canfield trust funds and motion for directions; preparing supplementary opinion re units between August 23, 2018 and April 8, 2020; revising Eleventh Report, including section to seek advice and directions with respect to the Miller Canfield funds	4.50
10/26/2022	AVK	Further consideration of miller Canfield solicitors' lien issue; working on revisions to Eleventh Report to the Court; email to Mr. Sasso and Robert Calderwood regarding PPSA security	0.80
11/03/2022	AVK	Communicating with Mr. Cherniak and counsel for Northbridge regarding Tarion bond; reviewing Tarion bond, considering whether obligations thereunder have terminated and options for receiver to deal with same	1.30
11/16/2022	AVK	Communicating with Mr. Cherniak and counsel for	1.50



Date	Initials	Description	Hours
		Northbridge regarding Tarion Warranty bond; working on revisions to 11th Report to Court	
11/18/2022	AVK	Reviewing Lombard/Northbridge security; considering priority/distribution of remaining funds and detailed email to Receiver thereon; revising Eleventh Court Report (Realizations, priorities and proposed distribution of funds)	3.30
11/21/2022	AVK	Reviewing personal property security and preparing opinion; working on revisions to Eleventh Report to Court	3.00
11/22/2022	AVK	Telephone call with counsel for Northbridge	0.30
11/28/2022	AVK	Communicating with Receiver and counsel for Northbridge regarding Tarion bond and completion of deficiency work	1.00
Total Hours			23.20

Our Fee: 15,080.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
05403	AVK	A. Van Klink	Partner	\$650.00	23.20	\$15,080.00

Ontario HST 13% (R119440766)
On Fees \$1,960.40

Total Amount Due \$17,040.40

E.&O.E.

EXHIBIT "B"
Miller Thomson's Fees

Year of Call	Inv. #3256308		Inv. #3278742		Inv. #3366024		Inv. #3426241		Inv. #3466783		Inv. #3477581		Inv. #3574268		Inv. #3719780		Inv. #3752940		Inv. #3778464		Inv. #3824459		Total Invoices
	Rate 2018	Rate 2019	Rate 2020	Rate 2022	November 15, 2018	December 31, 2018	July 31, 2019	December 31, 2019	March 31, 2020	April 30, 2020	December 31, 2020	January 31, 2022	April 30, 2022	July 29, 2022	November 30, 2022								
Hours																							
S. Kettle	2007	\$335.00	\$350.00	\$375.00	\$450.00	0.70	0.90	0.10	0.00	0.00	0.30	0.00	0.00	0.10	0.00	0.00	0.10	0.00	0.00	0.00	0.00	0.00	2.10
T. Van Klink	1988	\$585.00	\$585.00	N/A	\$650.00	13.40	11.00	0.00	2.90	0.00	0.00	0.00	10.60	4.50	1.90	23.20	67.50						
A. Roth	2004	\$435.00	\$465.00	\$480.00	N/A	0.40	0.00	1.60	2.80	0.70	1.10	1.50	0.00	0.00	0.00	0.00	8.10						
K. Descoteaux	2019	N/A	\$200.00	N/A	N/A	0.00	0.00	0.00	2.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.30						
J. Cook - clerk	N/A	\$165.00	\$170.00	\$175.00	N/A	0.70	0.30	3.10	5.30	2.80	2.20	1.80	0.00	0.00	0.00	0.00	16.20						
A. Salomon - Articling Student	N/A	N/A	N/A	\$140.00	N/A	0.00	0.00	0.00	0.00	2.50	0.00	0.00	0.00	0.00	0.00	0.00	2.50						
H. Coulter - clerk	N/A	N/A	N/A	N/A	\$235.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.30						
R. Armstrong - clerk	N/A	N/A	N/A	N/A	\$165.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	0.20	0.00	0.00	0.50						
						15.20	12.20	4.80	13.30	6.00	3.60	3.30	11.20	4.80	1.90	23.20	99.50						
Total \$																							
S. Kettle	2007	\$335.00	\$350.00	\$375.00	\$450.00	\$234.50	\$301.50	\$35.00	\$0.00	\$0.00	\$112.50	\$0.00	\$0.00	\$45.00	\$0.00	\$0.00	\$728.50						
T. Van Klink	1988	\$585.00	\$585.00	N/A	\$650.00	\$7,839.00	\$6,435.00	\$0.00	\$1,696.50	\$0.00	\$0.00	\$0.00	\$6,890.00	\$2,925.00	\$1,235.00	\$15,080.00	\$42,100.50						
A. Roth	2004	\$435.00	\$465.00	\$480.00	N/A	\$174.00	\$0.00	\$744.00	\$1,302.00	\$336.00	\$528.00	\$720.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,804.00						
K. Descoteaux	2019	N/A	\$200.00	N/A	N/A	\$0.00	\$0.00	\$0.00	\$460.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$460.00							
J. Cook - clerk	N/A	\$165.00	\$170.00	\$175.00	N/A	\$115.50	\$49.50	\$527.00	\$901.00	\$490.00	\$385.00	\$315.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,783.00						
A. Salomon - Articling Student	N/A	N/A	N/A	\$140.00	N/A	\$0.00	\$0.00	\$0.00	\$0.00	\$350.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$350.00						
H. Coulter - clerk	N/A	N/A	N/A	N/A	\$235.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$70.50	\$0.00	\$0.00	\$0.00	\$70.50						
R. Armstrong - clerk	N/A	N/A	N/A	N/A	\$165.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$49.50	\$33.00	\$0.00	\$0.00	\$82.50						
						\$8,363.00	\$6,786.00	\$1,306.00	\$4,359.50	\$1,176.00	\$1,025.50	\$1,035.00	\$7,010.00	\$3,003.00	\$1,235.00	\$15,080.00	\$50,379.00						
Summary																							
Fees						\$8,363.00	\$6,786.00	\$1,306.00	\$4,359.50	\$1,176.00	\$1,025.50	\$1,035.00	\$7,010.00	\$3,003.00	\$1,235.00	\$15,080.00	\$50,379.00						
Disbursements						\$203.21	\$412.21	\$11.65	\$73.80	\$135.76	\$11.99	\$75.90	\$55.65	\$368.97	\$0.00	\$0.00	\$1,349.14						
HST						\$1,092.81	\$935.76	\$171.29	\$576.33	\$170.53	\$134.88	\$135.96	\$916.46	\$396.76	\$160.55	\$1,960.40	\$6,651.73						
Total						\$9,659.02	\$8,133.97	\$1,488.94	\$5,009.63	\$1,482.29	\$1,172.37	\$1,246.86	\$7,982.11	\$3,768.73	\$1,395.55	\$17,040.40	\$58,379.87						

APPENDIX “S”



MILLER THOMSON LLP
MILLERTHOMSON.COM

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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.

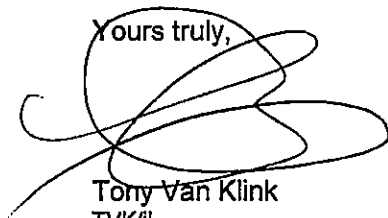
OPINIONS

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

M_I
T

APPENDIX “T”



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
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CANADA

569
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

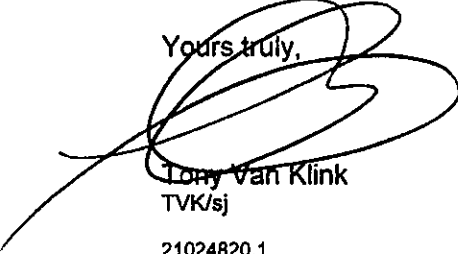
Dear Sir:

Re: Portofino Corporation

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

We confirm that the opinions expressed in the July 11th 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



MILLER THOMSON
AVOCATS | LAWYERS

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ONE LONDON PLACE
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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 11th Opinion") and November 7, 2016. Unless otherwise indicated, defined terms herein have the same meaning as in the July 11th Opinion.

We confirm that the opinions expressed in the July 11th 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



MILLER THOMSON
AVOCATS | LAWYERS

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ONE LONDON PLACE
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CANADA

T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

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 11th Opinion"), November 7, 2016 and August 17, 2017. Unless otherwise indicated, defined terms herein have the same meaning as in the July 11th Opinion.

We confirm that the opinions expressed in the July 11th 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



MILLER THOMSON
AVOCATS | LAWYERS

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ONE LONDON PLACE
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MILLERTHOMSON.COM

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 11th 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 11th Opinion.

We confirm that the opinions expressed in the July 11th 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

APPENDIX “U”



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
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574
T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

October 25, 2022

Delivered via E-mail (scherniak@bdo.ca)

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

Tony Van Klink
Direct Line: 519.931.3509
Tvanklink@millerthomson.com

File: 082873.0012

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

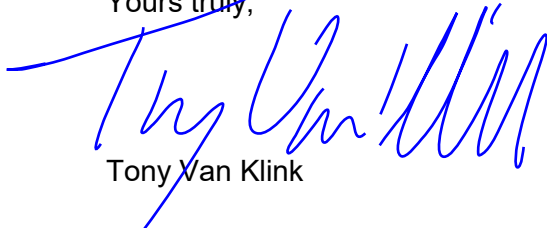
Dear Sir:

Re: Portofino Corporation

We refer to our opinions dated July 11, 2016 (the "**July 11th Opinion**"), November 7, 2016, August 17, 2017, April 4, 2018 and November 13, 2018. Unless otherwise indicated, defined terms herein have the same meaning as in the July 11th Opinion.

We confirm that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Units sold by the Receiver from August 23, 2018 to April 8, 2020, being the date on which the last of the unsold Units was sold by the Receiver.

Yours truly,



Tony Van Klink

APPENDIX “V”



November 21, 2022

E-mail: scherniak@bdo.ca

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

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

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.

We have previously provided to you our report and our opinion on the validity and enforceability of the security granted by the Debtor to Bank of Montreal (“**BMO**”)¹ against the real property assets² of the Debtor realized upon by the Receiver.

The Receiver has also realized upon certain personal property assets of the Debtor including, the payment out of court of approximately \$159,000 paid into court by the Debtor to vacate a construction lien, approximately \$150,000 of construction holdback funds, approximately \$64,000 by way of reimbursement for fees paid to maintain a letter of credit, \$47,500 on account of a vendor take back mortgage and approximately \$8,000 for a HST refund. Further amounts may also be realized by the Receiver from a mortgage receivable and funds held in trust by Miller Canfield for the Debtor at the date of the Receiver’s appointment.

The following is our report to you and opinion on the validity and enforceability of the security granted by the Debtor over its personal property assets (the “**Personal Property**”) in favour of those parties having registrations under the *Personal Property Security Act*, namely, Lombard General Insurance Company (“**Lombard**”), BMO and Sutts Strosberg LLP, now known as Strosberg Sasso Sutts LLP (“**SSS**”).

ASSUMPTIONS AND QUALIFICATIONS

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

¹ Through a series of assignments, this security is now held by Windsor Family Credit Union.

² The real property assets realized upon by the Receiver consisted on unsold units and parking spaces in the Portofino project and the collection of rents.

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. *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.

SECURITY REVIEWED

We have reviewed copies of the following security documents:

1. Ontario Personal Property Security Act Security Agreement dated October 27, 2005 granted by the Debtor in favour of BMO (the “**BMO GSA**”);
2. General Security Agreement dated October 21, 2011 granted by the Debtor, Wilma Kathleen Capaldi and Portofino Riverside Tower Inc., jointly, in favour of SSS and General Security Agreement dated October 21, 2011 granted by the Debtor, Dr. Dante Capaldi and Portofino Riverside Tower Inc., jointly, in favour of SSS (the “**SSS GSAs**”); and
3. Deposit Trust Agreement dated October 24, 2005 made between the Debtor and Lombard (the “**Lombard DTA**”).

The BMO GSA

The BMO GSA is executed by Dante J. Capaldi, as president, on behalf of the Debtor.

Under the terms of the BMO GSA, the Debtor granted to BMO a security interest in all of its present and after acquired personal property as security for all of its present and future indebtedness to BMO.

There is no apparent defect in the execution of the BMO GSA.

The SSS GSAs

The SSS GSAs are executed by Dante J. Capaldi, as president, on behalf of the Debtor.



Under the terms of the SSS GSAs, the Debtor granted to SSS a security interest in all of its present and after acquired personal property as security for the payment and performance of all of its present and future indebtedness to SSS.

There is no apparent defect in the execution of the SSS GSAs.

The Lombard DTA

The copy of the Lombard DTA provided to us for review was not executed by the Debtor.

Under the terms of the Lombard DTA, the Debtor granted to Lombard a security interest in the deposits paid to the Debtor by purchasers of condominium units as security for the payment and performance of all of its present and future indebtedness, liabilities and obligations to Lombard under an Indemnity Agreement and Tarion warranty bond issued by Lombard, among other things.

We understand that the Personal Property realized upon by the Receiver does not include any customer deposits in which Lombard held a security interest.

The PPSA Registrations

The PPSA registrations outstanding against the Debtor as of July 4, 2016 are summarized on Schedule B. Registrations have been made with respect to the Lombard DTA, BMO GSA and SSS GSAs.

The Lombard registration is prior in time to the BMO and SSS registrations. However, as mentioned above, Lombard's security interest in the Personal Property is limited to certain purchaser's deposits held by the Debtor prior to the Receiver's appointment. Lombard does not have a general security interest in all of the Personal Property, including the personal property realized upon by the Receiver.

The BMO and SSS registrations are in proper form. The BMO registration includes the collateral classifications of inventory, equipment, accounts, other and motor vehicles. The SSS registration includes the collateral classifications of consumer goods, inventory, equipment, accounts and other.

Through a series of assignments, the BMO registration has been assigned to Windsor Family Credit Union ("WFCU").

OPINIONS

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

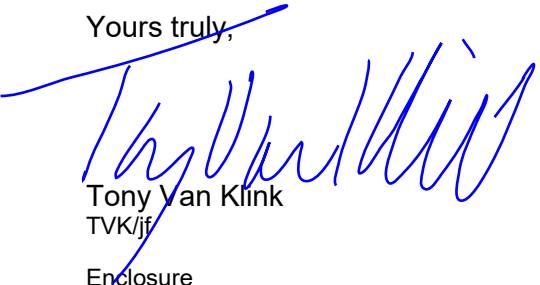
1. The BMO GSA constitutes a valid and effective security interest in the Personal Property, securing all indebtedness and liabilities of the Debtor to BMO³;

³ Now assigned to WFCU.



2. The SSS GSAs constitute valid and effective security interests in the Personal Property, securing all indebtedness and liabilities of the Debtor to SSS; and
3. The security interest created by BMO GSA is perfected prior in time to, and has priority over, the security interests created by the SSS GSAs.

Yours truly,



Tony Van Klink
TVK/jf

Enclosure



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: 15-Nov-22

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	(6)
12-Jul-18	5.70%	3,077.02		1,876,494.76	Interest to 12-Jul-18	(7)
25-Oct-18	5.95%	30,769.37		1,907,264.13	Interest to 25-Oct-18	(8)
30-Nov-18	5.95%	11,192.77	(1,400,000.00)	518,456.90	Interest to 30-Nov-18	(9)
01-Jul-19	5.95%	18,001.82		536,458.71	Interest to 01-Jul-19	(10)
05-Mar-20	5.45%	21,687.63		558,146.34	Interest to 05-Mar-20	(11)
17-Mar-20	4.95%	1,000.08		559,146.42	Interest to 17-Mar-20	(12)
30-Mar-20	4.45%	985.78		560,132.20	Interest to 30-Mar-20	(13)
01-Jul-20	4.45%	6,350.98		566,483.18	Interest to 01-Jul-20	(14)
01-Jul-21	4.45%	25,208.50		591,691.68	Interest to 01-Jul-21	(15)
03-Mar-22	4.70%	17,673.75		609,365.43	Interest to 03-Mar-22	(16)
14-Apr-22	5.20%	3,295.58		612,661.01	Interest to 14-Apr-22	(17)
02-Jun-22	5.70%	4,276.88		616,937.89	Interest to 02-Jun-22	(18)
01-Jul-22	5.70%	2,793.97		619,731.86	Interest to 01-Jul-22	(19)
14-Jul-22	6.70%	1,258.14		620,990.00	Interest to 14-Jul-22	(20)
08-Sep-22	7.45%	6,383.44		627,373.44	Interest to 08-Sep-22	(21)
27-Oct-22	7.95%	6,274.59		633,648.03	Interest to 27-Oct-22	(22)
15-Nov-22	7.95%	2,622.26		636,270.29	Interest to 15-Nov-22	

Per diem

\$ 138.01

2502461 Ontario Ltd.

BMO Loan to Portofino Corporation assigned to 2502461 Ontario Ltd.

Statement at: 15-Nov-22

Prepared by Receiver

Notes

- (1) 2502461 Ontario Ltd. ("2502461 Ontario") loan balance at Aug. 8, 2017, per Mortgage Statement provided to Receiver by 2502461 Ontario. Mortgage statement commences from "4/1/15 Opening Balance" of \$9,982,007.22, for which 2502461 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) Portofino Corporation fiscal year end, July 1, 2018.
- (7) Increase in BMO prime rate to 3.70%, effective July 12, 2018.
- (8) Increase in BMO prime rate to 3.95%, effective October 25, 2018.
- (9) Distribution of \$1,400,000 as approved by Order of Justice Carey dated November 27, 2018.
- (10) Portofino Corporation fiscal year end, July 1, 2019.
- (11) Decrease in BMO prime rate to 3.45%, effective March 5, 2020.
- (12) Decrease in BMO prime rate to 2.95%, effective March 17, 2020.
- (13) Decrease in BMO prime rate to 2.45%, effective March 30, 2020
- (14) Portofino Corporation fiscal year end, July 1, 2020.
- (15) Portofino Corporation fiscal year end, July 1, 2021.
- (16) Increase in BMO prime rate to 2.70%, effective March 3, 2022.
- (17) Increase in BMO prime rate to 3.20%, effective April 14, 2022.
- (18) Increase in BMO prime rate to 3.70%, effective June 2, 2022.
- (19) Portofino Corporation fiscal year end, July 1, 2022.
- (20) Increase in BMO prime rate to 4.70%, effective July 14, 2022.
- (21) Increase in BMO prime rate to 5.45%, effective September 8, 2022.
- (22) Increase in BMO prime rate to 5.95%, effective October 27, 2022.

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No.: CV-13-00019866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD
(RETURNABLE JANUARY 10, 2023)**

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Portofino Corporation**