

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the
Courts of Justice Act and Section 243 of the *Bankruptcy and Insolvency Act*

THE HONOURABLE) FRIDAY, THE 14th
)
MADAM JUSTICE DIETRICH) DAY OF MAY, 2021

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

1001 BROADVIEW AVENUE INC.

Respondent

ORDER
(Approval and Vesting Order)

THIS MOTION made by the BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the property municipally known as 995-1001, 1003 & 1005 Broadview Avenue, Toronto, Ontario and 2 & 4 Mortimer Avenue, Toronto, Ontario (collectively the "**Property**"), for the relief set out in the Notice of Motion dated May 4, 2021, including the approval of the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement between the Receiver in its capacity as Receiver of the Property and Mirshams Mousavi, in trust for a corporation to be incorporated (the

"Purchaser") made as of April 9, 2021 (the "Sale Agreement"), and vesting in the Purchaser 1001 Broadview Avenue Inc.'s (the "Debtor") right, title, benefit and interest in the assets described in the Sale Agreement (the "Purchased Assets") was heard this day by videoconference as a result of the Covid-19 pandemic.

ON READING the Motion Record of the Receiver and the Fourth Report of the Receiver dated May 4, 2021 (the "Receiver's Fourth Report"), the Confidential Supplemental Report of the Receiver dated May 4, 2021 (the "Confidential Supplemental Report"), the Affidavit of Irving Marks sworn May 4, 2021 (the "Robins Fee Affidavit") and the Affidavit of Josie Parisi sworn May 4, 2021 (the "BDO Fee Affidavit") and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Wendy Lee sworn May 10, 2021, filed.

1. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, and/or to whomever the Purchaser may nominate or direct.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of Debtor's right, title, benefit and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, or to whomever the Purchaser may nominate or direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order dated the 21st day of July, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule B** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule C**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a Transfer/Deed of Land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser, or to whomever the Purchaser may nominate or direct, as the owner of the subject real property in fee simple, and is hereby directed to delete and expunge from title to the real property all of the Claims listed in **Schedule B** hereto.

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

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

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

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

- (c) any assignment in bankruptcy made in respect of Debtor;

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

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and Sections 6(3) of the *Retail Sales Act* (Ontario).

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

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SCHEDULE A
FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-20-00643617-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the
Courts of Justice Act and Section 243 of the *Bankruptcy and Insolvency Act*

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

and

1001 BROADVIEW AVENUE INC.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Gilmore of the Ontario Superior Court of Justice (the "**Court**") dated July 21st, 2020, BDO Canada Limited was appointed as receiver (the "**Receiver**") of the property municipally known as 995-1001, 1003 & 1005 Broadview Avenue, Toronto, Ontario and 2 & 4 Mortimer Avenue, Toronto, Ontario (collectively the "**Property**") owned by 1001 Broadview Avenue Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated May 14, 2021, the Court approved the Asset Purchase Agreement between the Receiver in its capacity as Receiver of the Property and Mirshams Mousavi, in trust for a corporation to be incorporated (the "**Purchaser**") made as of April 9, 2021 (the "**Sale Agreement**") and provided for the vesting in the Purchaser of Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with

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

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

THE RECEIVER CERTIFIES the following:

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

BDO Canada Limited, in its capacity as Receiver of the Property municipally known as 995-1001, 1003 & 1005 Broadview Avenue, Toronto, Ontario and 2 & 4 Mortimer Avenue, Toronto, Ontario, and not in its personal capacity

Per: _____

Name: Josie Parisi

Title: Senior Vice-President

SCHEDULE B
CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

PIN 10399-0074

1. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028
2. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029
3. Court Order registered on July 21, 2020 as Instrument AT5478284

PIN 10399-0076

4. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028
5. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029
6. Charge from 1001 Broadview Avenue Inc. to 1001 Broadview Investment Inc. registered on September 1, 2017 as Instrument No. AT4671585
7. Postponement from 1001 Broadview Avenue Inc. in favour of Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041052 with respect to the above-noted mortgages
8. Court Order registered on March 13, 2020 as Instrument No. AT5387704 by Amr Abdulwahab A Attar
9. Court Order registered on July 21, 2020 as Instrument AT5478284

PIN 10399-0077

10. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028
11. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029
12. Charge from 1001 Broadview Avenue Inc. to 1001 Broadview Investment Inc. registered on September 1, 2017 as Instrument No. AT4671585
13. Postponement from 1001 Broadview Avenue Inc. in favour of Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041052 with respect to the above-noted mortgages

14. Court Order registered on March 13, 2020 as Instrument No. AT5387704 by Amr Abdulwahab A Attar

15. Court Order registered on July 21, 2020 as Instrument AT5478284

PIN 10399-0078

16. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028

17. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029

18. Charge from 1001 Broadview Avenue Inc. to 1001 Broadview Investment Inc. registered on September 1, 2017 as Instrument No. AT4671585

19. Postponement from 1001 Broadview Avenue Inc. in favour of Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041052 with respect to the above-noted mortgages

20. Court Order registered on March 13, 2020 as Instrument No. AT5387704 by Amr Abdulwahab A Attar

21. Court Order registered on July 21, 2020 as Instrument AT5478284

PIN 10399-0079

22. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028

23. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029

24. Charge from 1001 Broadview Avenue Inc. to 1001 Broadview Investment Inc. registered on September 1, 2017 as Instrument No. AT4671585

25. Postponement from 1001 Broadview Avenue Inc. in favour of Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041052 with respect to the above-noted mortgages

26. Court Order registered on March 13, 2020 as Instrument No. AT5387704 by Amr Abdulwahab A Attar

27. Court Order registered on July 21, 2020 as Instrument AT5478284

PIN 10399-0080

28. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028
29. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029
30. Charge from 1001 Broadview Avenue Inc. to 1001 Broadview Investment Inc. registered on September 1, 2017 as Instrument No. AT4671585
31. Postponement from 1001 Broadview Avenue Inc. in favour of Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041052 with respect to the above-noted mortgages
32. Court Order registered on March 13, 2020 as Instrument No. AT5387704 by Amr Abdulwahab A Attar
33. Court Order registered on July 21, 2020 as Instrument AT5478284

PIN 10399-0081

34. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028
35. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029
36. Charge from 1001 Broadview Avenue Inc. to 1001 Broadview Investment Inc. registered on September 1, 2017 as Instrument No. AT4671585
37. Postponement from 1001 Broadview Avenue Inc. in favour of Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041052 with respect to the above-noted mortgages
38. Court Order registered on March 13, 2020 as Instrument No. AT5387704 by Amr Abdulwahab A Attar
39. Court Order registered on July 21, 2020 as Instrument AT5478284

PIN 10399-0082

40. Charge from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041028
41. Notice of Assignment of Rents – General from 1001 Broadview Avenue Inc. to Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041029

42. Charge from 1001 Broadview Avenue Inc. to 1001 Broadview Investment Inc. registered on September 1, 2017 as Instrument No. AT4671585
43. Postponement from 1001 Broadview Avenue Inc. in favour of Centurion Mortgage Capital Corporation registered on December 21, 2018 as Instrument No. AT5041052 with respect to the above-noted mortgages
44. Court Order registered on March 13, 2020 as Instrument No. AT5387704 by Amr Abdulwahab A Attar
45. Court Order registered on July 21, 2020 as Instrument AT5478284

SCHEDULE C
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS
RELATED TO THE REAL PROPERTY (UNAFFECTED BY THE VESTING ORDER)

1. The reservations, limitations, provisions and conditions expressed in the original grant from the Crown and all unregistered rights, interests and privileges in favour of the Crown under or pursuant to any applicable statute or regulation.
2. Any subdivision agreement, development agreement, servicing agreement, site plan agreement or any other agreement, document, regulation, subdivision control by-law or other instrument containing provisions relating to the Lands or the use, development, installation of services and utilities or the erection of buildings or other improvements in or on the Lands.
3. All easements, licenses, rights-of-way, watercourses and rights (and all reference plans with respect thereto), whether registered or unregistered, including without limitation those for access or for the installation and maintenance of public and private utilities and other services including without limitation, telephone lines, hydro-electric lines, gas mains, water mains, sewers and drainage and other services or for the maintenance, repair or replacement of any adjoining building or lands, including any cost sharing agreement relating thereto, or any right of re-entry reserved by a predecessor in title.
4. Any restrictive covenants and building restrictions affecting the Lands.
5. Any defects of title or encroachments by or onto the Lands, whether by gardens, fences, trees, buildings, foundations, or other structures or things, which may be revealed by any survey or reference plan of the Lands, whether now in existence or not.
6. Utility agreements, and other similar agreements with Authorities or private or public utilities affecting the Lands.
7. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
8. Undetermined, inchoate or statutory liens and charges (including, without limitation, the liens of public utilities, workers, suppliers of materials, contractors, subcontractors, architects and unpaid Receivers of moveable property) incidental to any current operations of the Lands which have not been filed pursuant to any legal requirement or which relate to obligations not yet due or delinquent.
9. Zoning restrictions, restrictions on the use of the Lands or minor irregularities in title thereto.
10. The reservations, limitations, conditions and exceptions to title set out in the *Land Titles Act (Ontario)*.
11. Instrument No. 66BA379

12. Instrument No. 66R17037
13. Instrument No. A996558
14. Instrument No. AT4649388
15. Instrument No. C387561
16. Instrument No. C544802
17. Instrument No. C548972
18. Instrument No. C628541
19. Instrument No. C742328
20. Instrument No. C742337
21. Instrument No. C991121
22. Instrument No. C991122
23. Instrument No. C991123
24. Instrument No. E285156
25. S/T A ROW OVER THE NLY 1 FT IN PERPENDICULAR WIDTH OF THE LAND HEREIN DESCRIBED BY A LIKE DEPTH. SAID TWO RIGHTS OF WAY TO FORM A COMMON SIDE ENTRANCE FOR USE IN COMMON BY THE OWNERS AND OCCUPANTS FROM TIME TO TIME ON EITHER SIDE THEREOF [as set out in the legal description of PIN 10399-0080]
26. S/T A ROW OVER THE SLY 1 FT IN PERPENDICULAR WIDTH OF THIS LAND BY A LIKE DEPTH, SAID TWO RIGHTS OF WAY TO FORM A COMMON SIDE ENTRANCE FOR USE IN COMMON BY THE OWNERS AND OCCUPANTS FROM TIME TO TIME ON EITHER SIDE THEREOF [as set out in the legal description of PIN 10399-0079]

**CENTURION MORTGAGE
CAPITAL CORPORATION**

- and -

1001 BROADVIEW AVENUE INC.

Applicant

Respondent

Court File No.: CV-20-00643617-00CL

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Approval and Vesting Order)**

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