

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**RREF II BHB IV PORTOFINO, LLC**

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 JULY 26, 2016)**

July 14, 2016

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Portofino Corporation

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**TAB 1**

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SUPERIOR COURT OF JUSTICE**

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**PORTOFINO CORPORATION**

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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 July 26, 2016)**

BDO CANADA LIMITED ("BDO"), in its capacity as court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation ("Portofino" or the "Debtor") pursuant to the Order of The Honourable Mr. Justice Thomas dated October 29, 2013 (the "Appointment Order") will make a motion to the Court on Tuesday, July 26, 2016 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

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

THE MOTION IS FOR an Order as follows:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Fifth Report of the Receiver dated July 13, 2016 and all appendices thereto (the "Fifth Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on July 26, 2016;

- (b) amending Schedule "C" to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014 by adding to Schedule "C" the following instruments:
- (i) instrument number CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015;
  - (ii) instrument number CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016;
  - (iii) instrument number CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (iv) instrument number CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (v) instrument number CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (vi) instrument number CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (vii) instrument number CE715158 - Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
  - (viii) instrument number CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016; and
  - (ix) instrument number CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Ltd. registered on May 31, 2016.

- (c) deleting instrument numbers CE664524, CE715152, CE715154, CE715155, CE715156, CE715157, CE715158, CE715159 and CE715282 from title to all condominium units that have been sold by the Receiver against which the said instruments remain registered;
- (d) approving the Fifth Report and the activities and conduct of the Receiver described therein;
- (e) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to June 30, 2016 (the "Statement of Receipts and Disbursements");
- (f) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees");
- (g) approving and authorizing the distribution of \$4,000,000 to Windsor Family Credit Union from the funds on hand; and
- (h) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Amendment of Omnibus Approval and Vesting Order and deletion of instruments from sold units

1. Additional instruments have been registered on title to the condominium units since the making of the Omnibus Approval and Vesting Order which need to be deleted from title to units already sold and to be sold by the Receiver;

Approval of the Fifth 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 Fifth 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 Fifth Report;

Approval of Professional Fees

1. Pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property, as defined in the Appointment Order, as security for the Professional Fees, both before and after the making of the Appointment Order;
2. 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;
3. The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
4. It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and its legal counsel in connection with these receivership proceedings;

Interim Distribution to Windsor Family Credit Union

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

Other

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



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

1. the Fifth Report;
2. the fees Affidavit of Stephen N. Cherniak sworn July 11, 2016 and the exhibits attached thereto;
3. the fees Affidavit of Tony Van Klink sworn July 13, 2016 and the exhibits attached thereto;
4. the fees Affidavit of William Sasso sworn July 13, 2016 and the exhibits attached thereto;
5. all other pleadings and materials previously filed in these proceedings; and
6. such further and other evidence as counsel may advise and this Honourable Court may permit.

July 14, 2016

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AND TO:	<p><b>Remo Valente Real Estate (1990) Limited</b> 2985 Dougall Avenue Windsor, ON N9E 1S1</p>
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RREF II BHB IV PORTOFINO, LLC  
Applicant

and  
PORTOFINO CORPORATION  
Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**NOTICE OF MOTION  
(RETURNABLE JULY 26, 2016)**

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Receiver of Portofino Corporation

//

**TAB 2**



**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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- 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

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## 1.1 Introduction

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

## 1.2 Background

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

- 1.2.4 Since 2005, there 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

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- 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**

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- 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

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- 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**

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- 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

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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

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- 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

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- 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 | - | <u>28,016.30</u>    |
|                                       |   | <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

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- 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

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- 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 13<sup>th</sup> 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



# **APPENDIX “A”**

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Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**BANK OF MONTREAL**

Applicant

- and -

**PORTOFINO CORPORATION**

Respondent

**ORDER**

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

ON READING the affidavit of Greg Fedoryn sworn September 6, 2013 and the Exhibits thereto and on hearing the submissions of counsel for BMO, Essex Condominium Corporation 122 ("ECC 122"), the Estate of Patrick D'Amore, Portofino Corporation and Dante Capaldi, Remo Valente Real Estate (1990) Limited and Suits 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

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;

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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.



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**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

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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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J. S. V. Pinner

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

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**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.

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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:



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*Bank of Montreal*  
*Applicant*

*Portofino Corporation*  
*Respondent*

Court File No. CV-13-19866

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
WINDSOR

ORDER

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

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

Lawyers for the Applicant, Bank of Montreal

# **APPENDIX “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. )  
JUSTICE CAMPBELL )  
BETWEEN: )

FRIDAY, THE 2ND  
DAY OF MAY, 2014

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

OMNIBUS APPROVAL AND VESTING ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

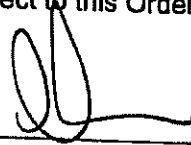
8. THIS COURT ORDERS that, notwithstanding:

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

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

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

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



Justice, Superior Court of Justice

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## Schedule "A" – Unsold Units

## Legal Description

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

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



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

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

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

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

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

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

Schedule "B" – Form of Receiver's Certificate

Court File No. CV-13-19866

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

RECEIVER'S CERTIFICATE

RECITALS

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

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

(a) the Court's approval of this Transaction in respect of the Purchased Assets (as defined below) as described in the Sale Agreement (as defined below);

(b) the Court's authorization of the Receiver entering into the Agreement of Purchase and Sale made as of \_\_\_\_\_ [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver and \_\_\_\_\_ [NAME OF PURCHASER] (the "Purchaser"); and

(c) the vesting in and to the Purchaser all of Portofino's right, title and interest in and to the lands and premises legally described on Exhibit "A" to this Receiver's Certificate (the "Purchased Assets"), with such vesting to be effective in respect of the Purchased

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

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

THE RECEIVER CERTIFIES the following:

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

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

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

Name:

Title:

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

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

**BANK OF MONTREAL**  
Plaintiff

and

**PORTOFINO CORPORATION**  
Defendant

Court File No: CV-13-19866

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

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

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

**Tony Van Klink** LSUC#: 29008M  
Tel: 519.931.3509  
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**Sherry A. Kettle**, LSUC #53561B  
Tel: 519.931.3534  
Fax: 519.858.8511  
Email: skettle@millerthomson.com

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

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

<b>Description:</b>	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, Pl 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 Pl 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
<b>Unsold Condominium Units (See Schedule "A" for individual unit descriptions)</b>	
<ol style="list-style-type: none"> <li>1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</li> <li>2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.</li> <li>3. Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.</li> <li>4. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</li> <li>5. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</li> <li>6. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</li> <li>7. Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Suits Strosberg LLP, registered on August 9, 2011.</li> <li>8. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</li> <li>9. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</li> <li>10. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.</li> <li>11. Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Suits Strosberg LLP, registered on January 10, 2013.</li> <li>12. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal,</li> </ol>	

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

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

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

- registered on March 1, 2012.
9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
  10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
  11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
  12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
  13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
  14. Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
  15. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
  16. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

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

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

Royal Bank of Canada, registered on December 20, 2011.

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

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

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

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

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**BANK OF MONTREAL** Applicant and **PORTOFINO CORPORATION** Respondent

Court File No: CV-13-19866

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

Proceeding commenced at Windsor

**OMNIBUS APPROVAL AND VESTING ORDER**

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

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

# **APPENDIX “C”**

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**BDO Canada Limited Court Appointed Receiver of  
Portofino Corporation  
Statement of Receipts and Disbursements  
October 29, 2013 through June 30, 2016**

**Receipts:**

Sale of units & surface parking	\$ 7,937,699.00	
Less: property tax arrears	(424,295.35)	
Less: real estate commissions (incl HST)	(304,081.25)	
Less: ECC No. 122 common fees	(36,959.02)	
Less: closing adjustments	(17,867.19)	
Add: HST collected on parking and unfinished units	<u>66,325.88</u>	
		\$ 7,220,822.07
Unit rental income		1,791,119.60
Holdback funds re: Portofino sub-trades		119,789.96
Reimbursement of Letter of Credit costs		64,408.22
Parking space rental		23,929.69
Interest		2,215.06
Miscellaneous litigation		<u>497.88</u>
		<u>9,222,782.48</u>

**Disbursements:**

City of Windsor - property taxes	2,881,887.80	
ECC No. 122 - common fees	629,412.75	
Receiver's fees	610,676.86	
Miller Thomson LLP - Receiver's legal fees	260,630.54	
Repairs & maintenance	206,721.81	
HST paid on disbursements	148,409.32	
HST remitted	63,303.38	
Property management fees	62,000.00	
BMO - Letter of Credit fees re Valente litigation	39,074.26	
Utilities	33,801.17	
Advertising	30,852.14	
Bond premiums	30,753.00	
Valente litigation - costs award	30,393.34	
Sutts, Strosberg - legal fees	18,763.25	
Appraisal fees	15,014.50	
Insurance	5,212.08	
Commission paid re rentals	3,650.00	
Miscellaneous expenses	2,168.00	
Bank charges	595.50	
Receiver General - receivership filing fee	<u>70.00</u>	
		5,073,389.70

**Excess receipts over disbursements**

4,149,392.78

**Represented by:**

Funds invested in a one year cashable GIC at 0.85%	2,000,000.00	
Funds invested in a one year cashable GIC at 0.75%	1,000,000.00	
Funds invested in a one year cashable GIC at 0.85%	750,000.00	
Funds held in trust account	<u>399,392.78</u>	
Balance of funds held by Receiver as at June 30, 2016		<u>\$ 4,149,392.78</u>



# **APPENDIX “D”**

**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. Since the date of the Receiver’s last account the Receiver has been engaged in the following:
  - Complete the Fourth Report of the Receiver and attend Court hearing on May 17, 2016;

- Complete the sale of condominium units 708 and 1001;
- Negotiate the sale of units 103, 304, 1202 through the Receiver's agent and various amendments to the Agreements of Purchase and sale to amend the conditions and extend the completion date of the sale of unit 1202:
- Negotiate the conditional sale of unit 1501 through the Receiver's agent;
- Review several successive requests by purchaser of Unit 1101 for extension of the completion date with Receiver's counsel, and review and execute various additional agreements in connection with the extension;
- Direct Property Manager to complete various repairs to condominium units prior to sale completion, as agreed to by the Receiver under Agreements of Purchase and Sale;
- Arrange, through the Property Manager, for the installation of rooftop air conditioning unit for unit 1202;
- Correspondence and telephone calls with the Receiver's legal counsel concerning the Valente Court Action;
- Telephone calls, preparation of various schedules of unsold unit detail and email correspondence with Receiver's legal counsel, 2502461 Ontario Ltd. ("250 Ontario"), 250 Ontario's legal counsel and Windsor Family Credit Union ("WFCU") concerning the sale of the original Bank of Montreal loans to Portofino from RREF II BHB IV PORTOFINO LLC to 250 Ontario;
- Attend meetings of the Board of Directors of ECC 122 by telephone;
- Collect monthly rents for the leased, unsold units;
- Review and execute offer to lease for vacant unit 204;
- Respond to tenant queries and concerns; and
- Various telephone calls and correspondence with the stakeholders and their respective counsel.

8. In the course of performing the duties pursuant to the Order and as set out above at paragraph 7, and since the date of the Third Report the Receiver's staff expended 172.8 hours for the period of March 11, 2016 through June 14, 2016. Attached hereto and marked as Exhibit "A" to this my Affidavit is the account of the Receiver together with a summary sheet.
9. 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.
10. 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.
11. 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.
12. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
13. 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 17<sup>th</sup> day of July, 2016




STEPHEN N. CHERNIAK, CPA, CA, CIRP



Commissioner for Taking Affidavits

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

Attached is Exhibit A  
To the Affidavit of Stephen N. Cherniak  
Sworn the 11<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_  
A Commissioner, Etc

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

**Summary of Receiver's Accounts for the period  
March 11, 2016 through June 14, 2016**

<b>Invoice Date</b>	<b>Hours Expended</b>	<b>Fees &amp; Disbursements</b>	<b>HST</b>	<b>Invoice Total</b>
May 11, 2016	98.6	\$36,042.83	\$4,685.56	\$40,728.39
June 15, 2016	74.2	28,016.30	3,642.12	31,658.42
	<b>172.8</b>	<b>\$64,059.13</b>	<b>\$8,327.68</b>	<b>\$72,386.81</b>



EXHIBIT "A"  
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Invoice # 88537762  
Portofino Corporation  
HST Reg # 101518124RT0001

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

May 11, 2016

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**Re: Portofino Corporation**

For professional services rendered for the period March 11, 2016 through May 10, 2016 as per the attached detail:

Our Fee	\$36,000.00
Disbursements (courier)	<u>42.83</u>
Sub total	\$36,042.83
HST	4,685.56
Total	<u>\$40,728.39</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
103-252 Pall Mall Street  
London, ON N6A 5P6

Invoice #	88537762
Amount	\$40,728.39

May 11, 2016

For professional services rendered

Staff	Date	Time	Narrative
Cherniak, S	11-Mar-16	0.3	Execution of documents and updates on unit 1001.
Finnegan, M	11-Mar-16	0.5	Prepare and pay 2nd installment of 2016 property taxes.
Flett, D	11-Mar-16	2.8	Review D. Capaldi emails on unit 401, unit 105; call with J. McClelland on unit 1001 fulfillment of 2 conditions, unit 708 interested party, planned April listing; review unit 1001 fulfillment and return signed to J. McClelland; review bill summary for fee affidavit; review and sign 2nd fulfillment for unit 1001 and emails with J. McClelland; email to Miller Thomson with documents, to advise of unit 1001 sale.
Cherniak, S	14-Mar-16	0.6	Review of email from D. Capaldi re unit 304. Review of court report materials. Update on available units. Review of Miller Thomson legal account.
Finnegan, M	14-Mar-16	0.5	File administration.
Flett, D	14-Mar-16	1.1	Email with D. Capaldi re: unit 304 tenant status and listing considerations; review unit inventory mix and upcoming lease expiries; call with J. McClelland on unit 1001 sale, unit 304 listing; other matters; review property expense reports and email to D. Capaldi re Reliance water heaters.
Cherniak, S	15-Mar-16	0.3	Emails re unit 304 tenancy. Email from Miller Thomson re unit 1001. Discussion re court report.
Finnegan, M	15-Mar-16	0.5	Update rent roll, deposit rent cheque and account for cash deposited in Windsor re rents.
Flett, D	15-Mar-16	2.8	Review D. Capaldi email re: unit 304, Reliance; memo to D. Capaldi re: unit 304 MLS listing plans and tenant options; review MPAC reconsideration request package; review unit 1001 draft statements of adjustment and trust; revisions and update to affidavit of fees for 4th report; lengthy call with J. McClelland on unit 708 interested party, previous offer and issues.
Cherniak, S	16-Mar-16	0.9	Update on water heater issue in unit 1001. Review of email. Update on potential sale of unit 708. Review of emails to/from Capaldi re unit 204 lease. Discussion re listing/leasing unit 204. Review of email to Rialto. Call with Miller Thomson re report and Morga.
Finnegan, M	16-Mar-16	0.8	Prepare monthly R & D for stakeholders report. For unit 1008 prepare for signature closing documents and send same to Miller Thomson.
Flett, D	16-Mar-16	2.6	Review D. Capaldi emails on unit 204, unit 304 and unit 1001 Reliance; review several matters, unit 204 lease, unit 1001 closing, unit 304 listing, unit 708 interested party; call with J. McClelland on unit 1001, unit 204, unit 708 interested party and list price; reply to D. Capaldi on unit 204 lease, unit 304; review draft R&D for Feb 2016 and note revisions; further call with J. McClelland on unit 708; revisions to monthly report; email to Rialto on unit 1001 sale; review fee affidavit for 4th report.



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Staff	Date	Time	Narrative
Cherniak, S	17-Mar-16	0.5	Discussion re listing unit 309. Review of email to Capaldi. Review of reporting to Rialto.
Finnegan, M	17-Mar-16	0.6	Paid bills. Review HST assessment received.
Flett, D	17-Mar-16	2.4	Review fee affidavit for 4th report, HST presentation; review; email memo to D. Capaldi re: unit 309 tenant, listing; issue Feb 2016 report and supplemental information to Rialto and email with W. Lee; call with J. McClelland on unit 708; further call with J. McClelland on unit 708 interested party to offer in April.
Cherniak, S	18-Mar-16	0.4	Review of emails re unit 204 and unit 309. Execute lease for unit 204.
Finnegan, M	18-Mar-16	0.2	Deposit rent cheque.
Flett, D	18-Mar-16	0.7	Review D. Capaldi email on unit 309; email with D. Capaldi on unit 204 lease; review unit 204 lease and schedules and return to D. Capaldi; updates to unsold unit schedule; email to J. McClelland and review unit 1501 listing.
Cherniak, S	21-Mar-16	0.2	Email from Capaldi re monthly expenses. Email re unit 304.
Flett, D	21-Mar-16	0.4	Review email from D. Capaldi on tenant matters, property management; call with J. McClelland on showings, unit 103, unit 105 listings; email to D. Capaldi on unit 304 tenant lease options.
Cherniak, S	22-Mar-16	0.6	Review of email from Capaldi re unit 304 and expenses. Discussion re Reliance expenses. Review of emails from Rialto re units listed. Discuss response. Review response. Discussion re listing of unfinished unit.
Flett, D	22-Mar-16	1.8	Review D. Capaldi emails re: unit 304 tenant, property expenses; detailed review of Feb 2016 property expenses including several Reliance accounts and review; email with Rialto re: upcoming closings; call with J. McClelland on expected unit 1501 and garage #8 offer and forward garage particulars; email to Rialto on listings and mix; call with J. McClelland on unit 1501, G108 offer received, conditions, timing and counter offer.
Cherniak, S	23-Mar-16	0.6	Review of Portofino condo corporation budget. Discuss and execute counters on unit 1501 and garage offer. Review of email to D. Capaldi re 105 rent arrears.
Flett, D	23-Mar-16	1.6	Review unit 1501 and garage #8 offer, prepare counter offer and forward with garage listing agreement to J. McClelland; email memo to D. Capaldi re unit 105 rent arrears, vacancy date and options; call with J. McClelland on unit 1501 offer, unfinished unit listing, unit 103 showing.
Cherniak, S	24-Mar-16	1	Email from D. Capaldi re rent arrears. Update and discussions re offer on unit 1501. Execute counter. Review sign back. Execute and finalize. Update on unit 1001 closing.
Finnegan, M	24-Mar-16	0.2	Emails re rents and tenants vacating, update rent schedule to reflect same.

Staff	Date	Time	Narrative
Flett, D	24-Mar-16	3.2	Review emails from D. Capaldi on tenant matters; call with J. McClelland on unit 1501 on counter offer and expected offer from other party; review unit 1501 offer status; email with Miller Thomson on unit 1001 closing; email to J. McClelland on unit 1202 listing and remarks re: HST; further calls with J. McClelland on unit 1501 offer, status of competing offer; prepare and return counter offer; call with J. McClelland on unit 1501 and prepare, forward acceptance; text msg with D. Capaldi on unit 1001 closing; update sales and inventory schedules for unit 1001 close; review Feb 2016 property expenses.
Hooper, L	25-Mar-16	0.1	Banking.
Cherniak, S	28-Mar-16	0.6	Discuss and review offer on unit 103. Counter offer. Discuss status of unfinished listing. Review funds on hand and decide on GIC purchase amount.
Finnegan, M	28-Mar-16	0.5	Deposit various rent cheques, updated rent roll, and deposited sale funds.
Flett, D	28-Mar-16	2.8	Call with J. McClelland on weekend showings, unit 103 offer; review full accepted offers for unit 1501 and garage #8; review unit 103 offer, review and revise/prepare counter offer; memo to D. Capaldi re: Reliance arrears; email and call with J. McClelland on unit 1202 listing particulars; review April, 2016 condo fee and property tax payments, rent receipts; sign Receiver cheques.
Hooper, L	28-Mar-16	0.1	Banking.
Cherniak, S	29-Mar-16	0.8	Review of email from D. Capaldi re reliance bills. Update on unit 304. Update on unit 1501 sale. Discussion and execution of listing for unfinished unit. Email to Miller Thomson re edits/additions to report. Discussion and review and approve D. Capaldi expenses.
Finnegan, M	29-Mar-16	1	Prepare and pay 3rd installment of property taxes. Prepare and pay April, 2016 condo fee payment.
Flett, D	29-Mar-16	2.6	Review D. Capaldi emails re unit 304, Reliance billing; review GIC and updated R&D to be prepared; email to D. Capaldi re: Reliance and February 2016 property expenses and management fees; lengthy call with J. McClelland on unit 1202 listing, unit 1501 sale condition, unit 1401 showings, list price and availability date; review and edit unit 1202 listing; review and sign unit 1501 amendment and return to J. McClelland; review unit 103 counter offer from buyer; review updated R&D to March 31, 2016.
Cherniak, S	30-Mar-16	0.6	Review of emails from D. Capaldi re reliance bills re prospective purchasers of unfinished suite. Discussion re response. Review of email to Rialto re listing of unfinished unit. Discussion re listing of unit 708. Review of email to D. Capaldi.
Flett, D	30-Mar-16	1.6	Review D. Capaldi emails re: unit 1401, penthouse buyer interest; memo to D. Capaldi on unit 1201, unit 1202, unit 1402 enquiry and rooftop condensers; call with J. McClelland on unit 103 counter offer, unit 1202 listing, unit 1401 availability; call with J. McClelland on unit 103 offer, unit 708 listing; review unit 708 listing; email to D. Capaldi re: unit 708 listing, showing schedule.
Hooper, L	30-Mar-16	0.1	Banking.
Cherniak, S	31-Mar-16	0.3	Email from D. Capaldi re condensers for upper floor units. Email to D. Capaldi re timing of unit 708 showings. Review of email to D. Capaldi re unit 1501.

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Staff	Date	Time	Narrative
Finnegan, M	31-Mar-16	0.5	Bill payments.
Flett, D	31-Mar-16	1.5	Review D. Capaldi emails; call with J. McClelland on unit 708 listing and showings, unit 1401 showing, unfinished unit waters heaters; emails to D. Capaldi re: unit 708 tenant showing arrangements and schedule; call with J. McClelland on unit 1601, unit 1602 offer; review unit 1202 MLS listing and email to J. McClelland on edit; review email from M Cleary of HUB.
Cherniak, S	1-Apr-16	0.6	Review of emails from D. Capaldi re unit 1501, and unit 708 showings. Review of emails and discussion re liability insurance. Call with Miller Thomson re status of report. Update on potential interest in unfinished units.
Flett, D	1-Apr-16	1.4	Review D. Capaldi emails on tenant and maintenance matters; email with Lori of At home staging; text mgs with D. Capaldi on Reliance reconciliation and review; call with J. McClelland on unit 708 listing and units 1601 / 1602 interested party; email with D. Capaldi re: unit 105 April rent; email with M Cleary of HUB on liability policy and review coverage.
Cherniak, S	4-Apr-16	0.2	Review of emails to D. Capaldi re reliance. Update on call.
Flett, D	4-Apr-16	2.4	Review D. Capaldi emails on Reliance, unit 105 last month rent; email to Rialto with unit 1001 closing documents; review Reliance account summary and detail prepared by property manager; email and call with D. Capaldi re: Reliance accounts, unit 708 listing and showings; call with J. McClelland on weekend showings, unit 1601 interested party, unit 708 listing.
Cherniak, S	5-Apr-16	1.3	Discussion re listing of unit 708 with no response from tenant. Update on discussion with D. Capaldi re Reliance bills. Execute unit 708 listing agreement. Review of correspondence from Miller Thomson from Sasso re offer to settle, Letter of Credit motion and costs arrangement with Cooke/Capaldi. Call with Miller Thomson. Respond to emails.
Flett, D	5-Apr-16	1.8	Review D. Capaldi emails re: water heaters, unit 708 showings; update unsold unit summary schedule re unfinished hvac and water heaters; review unit 708 marketing schedule; call with J. McClelland on unit 708 listing and schedule; review unit 708 listing, sign and return to J. McClelland; text msgs with D. Capaldi on unit 708 tenant.
Hooper, L	5-Apr-16	0.1	Banking.
Cherniak, S	6-Apr-16	0.3	Update on rent cheques. Review of emails from Sasso, Miller Thomson and Cooke re Valente litigation.
Flett, D	6-Apr-16	2.2	Review D. Capaldi emails; call with J. McClelland on unit 708 showings and schedule, unfinished Toulon enquiry; review condo declaration re: parking and email to J. McClelland on unit 1505 list price, HST rebate; email to D. Capaldi on garage #8 tenant; review April rent cheques and update rent roll; call with J. McClelland on garage #8, unit 1101 tenant status.
Cherniak, S	7-Apr-16	0.1	Update on unit 708 activity.
Flett, D	7-Apr-16	0.5	Review bank deposit; call with J. McClelland on unit 708 listing, other showings; review court report timing.
Hooper, L	7-Apr-16	0.5	Deposit rent cheques.

Staff	Date	Time	Narrative
Flett, D	8-Apr-16	0.5	Call with J. McClelland on unit 708 and unfinished unit showings; emails with J. McClelland on unit 1201, unit 1601 taxes, A/C condensers.
Cherniak, S	11-Apr-16	1	Email from Capaldi re condo board meeting. Review and execute offer on unit 708. Review of correspondence from Sasso re Valente litigation. Respond. Review of listing re unit 1501 back up property.
Flett, D	11-Apr-16	1.8	Call with J. McClelland on unit 708 showings and Caccavo offer and financing; call with J. McClelland on unit 708 interested parties; review unit 708 offer and forward accepted offer to J. McClelland; call with J. McClelland on unit 708 financing, unit 103 showings; unit 1501 conditional offer status; updates to sales and inventory schedules; email to D. Capaldi re: unit 708.
Cherniak, S	12-Apr-16	0.4	Review of Sasso response. Emails and updates on unit 708 and unit 304. Email re unit 1201 and potential interest.
Flett, D	12-Apr-16	0.9	Email with Miller Thomson re: unit 708 sale; call with J. McClelland re: unit 708 appraisal and photos; unit 1201 enquiry re: wall removal and plumbing location; Emails to D. Capaldi re: unit 1201 inspection with J. McClelland, unit 708 showings and appraisal arrangements.
Cherniak, S	13-Apr-16	1	Email from D. Capaldi re unit 708 and unit 304 update. Review BDO response. Call to Miller Thomson re status of report. Email and call re Capaldi lien claim status. Review of letter to Cooke re same. Emails with Sasso office re account reporting.
Flett, D	13-Apr-16	1.3	Review several emails from D. Capaldi on unit 708, unit 304 tenants; call with J. McClelland on unit 708 showing; email to D. Capaldi on unit 304 listing and tenant relocation parameters; update R & D to Apr 15; call with J. McClelland on unit 304 listing and tenant timing, unit 103, unit 1501 showings.
Cherniak, S	14-Apr-16	1.2	Emails from Miller Thomson re Morga emails on Letter of Credit costs. Respond. Call from WFCU re take out financing. Review of emails to Cooke re vacate Capaldi liens. Respond. Review of Miller Thomson additions/edits to report. Discussions re logistics of report. Review of Capaldi response unit 304 move out.
Flett, D	14-Apr-16	2.6	Emails with D. Capaldi on unit 304 tenant and listing; review Miller Thomson comments on Receiver 4th report and litigation sections; revisions to 4th report and finalized affidavit of fees; call with J. McClelland on unit 1201, unit 708 appraisal, unit 1601 interested party; review R&D to Apr 15, 2016.
Cherniak, S	15-Apr-16	1.2	Review of Capaldi email re unit 304. Review of agenda and minutes for upcoming board meeting. Final review of 4th report. Review of emails to/from Miller Thomson and Morga re costs on Letter of Credit.
Flett, D	15-Apr-16	2.4	Review and revise 4th report to court and revise R&D to April 15, 2016; memo to Miller Thomson re: 4th report, updates and professional fee cut-off; call with J. McClelland re: unit 708 sale and financing condition; review new unit 708 offer and call with J. McClelland re: offer, financing status; call with Miller Thomson on 4th report.
Cherniak, S	18-Apr-16	1.5	Review of financial information in preparation for board meeting. Update on condo sales for meeting. Attend condo board meeting by phone.

Staff	Date	Time	Narrative
Flett, D	18-Apr-16	0.8	Call with J. McClelland on unit 103 showing, unit 708 financing status; review letter from MPAC re: requests for reconsideration (units 101, 102); memo re: sales and listings update for board; review correspondence from Hub re: liability policy increase; confirm cash rent deposits.
Cherniak, S	19-Apr-16	0.3	Review of Rialto reporting. Review of email to Rialto.
Finnegan, M	19-Apr-16	0.7	Bill payments. Prepare monthly R & D.
Flett, D	19-Apr-16	1.2	Review email from D. Capaldi re: unit 1201; review April 2016 R&D report and review revisions; call with J. McClelland on unit 708 conditional status and unit 304 to be listed; issue monthly report to Rialto with comments; review tax return status.
Hooper, L	19-Apr-16	0.1	Banking.
Szypula, C	19-Apr-16	0.5	2nd partner review of court report.
Cherniak, S	20-Apr-16	0.5	Review of email from Rialto. Respond. Email from Miller Thomson re court date for Valente. Respond re knowledge of receiver of issues. Call to Miller Thomson re court date for Portofino.
Flett, D	20-Apr-16	1.1	Review rent roll for additional cheques; review unit 104 rent cheque and email to D. Capaldi re April/May rent and unit 1401 status; sign Receiver cheques and review legal fees, insurance posting; call with J. McClelland re: unit 708 conditional status.
Hooper, L	20-Apr-16	0.1	Banking.
Cherniak, S	21-Apr-16	0.6	Email from Capaldi re monthly reporting. Review of motion record filed for fourth report. Review of email from Miller Thomson to counsel for Rialto re reimbursement of costs. Review of email to Sasso re Capaldi share of costs for trial and motion against Valente for non-payment of Letter of Credit fees.
Finnegan, M	21-Apr-16	0.6	Review and pay bills.
Flett, D	21-Apr-16	0.7	Review email from D. Capaldi on tenant matters and rents; voice mail message from and email to J. McClelland re: unit 708 removal of conditions; brief review of motion record for Receiver 4th report; email with J. McClelland re: unit 708.
Cherniak, S	22-Apr-16	0.5	Update on unit 708. Execute fulfillment of conditions. Call from Scott D'Amore re update. Review of email to Rialto.
Flett, D	22-Apr-16	1.8	Review unit 708 fulfillment of conditions and return acceptance to J. McClelland; review March 2016 property maintenance expenses; email to Miller Thomson, with documents on unit 708 sale; email to D. Capaldi, Rialto on unit 708 closing; update sales and inventory schedules; email with J. McClelland on unit 708 repairs.
Cherniak, S	25-Apr-16	0.4	Review and discuss offer on unit 1202. Execute counter.
Flett, D	25-Apr-16	1.3	Lengthy call with J. McClelland on unit 1202 offer and showing, unit 1102 listing, unit 1006 rental, unit 103 showings; review unit 1202 offer; email with D. Capaldi re: unit 708; review unit 1202 offer and return counter offer to J. McClelland; call with J. McClelland on unit 1202 counter and unit 1102 listing.
Cherniak, S	26-Apr-16	0.7	Review, discussion and execution of counter on unit 1202. Discussion and resolution re listing a resale unit.
Finnegan, M	26-Apr-16	0.5	Deposit.

Staff	Date	Time	Narrative
Flett, D	26-Apr-16	1.7	Review 1102 listing issues; update inventory summary; call with J. McClelland on unit 1202 status, unit 1102 listing; review unit 1202 counter offer received; email and call with J. McClelland on unit 1202 accepted offer and forward; review May, 2016 condo fee and adjustment; email memo to D. Capaldi re: unit 1202 conditional sale, condenser installation and utility accounts; update to sales and inventory schedules.
Cherniak, S	27-Apr-16	0.4	Emails from Capaldi on condensers for unit 1202 and update on tenant in unit 304. Review of newsletter. Email to Capaldi.
Finnegan, M	27-Apr-16	0.3	Condo fee payment.
Flett, D	27-Apr-16	0.4	Review D. Capaldi emails re: unit 1202, unit 304 tenant and reply; email with J. McClelland on unit 708 and unit 1202 status; email with Miller Thomson re unit 708.
Cherniak, S	28-Apr-16	0.8	Email from Capaldi re unit 1202 and unit 304. Email from Chandler re summary of units remaining and square footage. Prepare and respond. Call from S D'Amore re same and payout.
Flett, D	28-Apr-16	1.4	Review email from D. Capaldi; review pending sales and unsold square footage; review unit 1101 photos; call with J. McClelland on unit 1101 repair issue, unit 1202 conditions and status, unit 103 showings, unit 304 listing timing; email to D. Capaldi re: unit 1101 repairs, unit 1202 status certificate.
Flett, D	29-Apr-16	0.9	Review unit 1202 photos; call with J. McClelland on unit 1202 inspection and issues, unit 103 showings; email to and voice mail from J. McClelland re: unit 1202 access and water issue.
Hooper, L	29-Apr-16	0.1	Deposit.
Cherniak, S	2-May-16	0.3	Review of emails re units 304 /105. Review and respond to Miller Thomson email re Cooke and Capaldi lien claims. Respond.
Flett, D	2-May-16	0.8	Email to D. Capaldi re: unit 304, 105 tenant status; call with J. McClelland on unit 304 listing, showings; at-home invoice; review notes re: unit VTB mortgage, PIN; call with J. McClelland.
Cherniak, S	3-May-16	0.5	Email from Capaldi re update on units 304/105. Review and pay property manager invoices. Update on sales and potential listings. Update on possible lien on condo.
Flett, D	3-May-16	1.2	Email to D. Capaldi re: units 304, 105, and 1101 pre-closing repairs; email to J. McClelland re: unit 105, unit 708, and unit 1101 pre-closing; email Miller Thomson re: unit 503 VTB mortgage and review parcel register; review unit 105 photos and J. McClelland voice mail message re: unit 105, unit 708; call with J. McClelland re: unit 105, unit 708 repairs, City of Windsor enquiry; email to D. Capaldi on particulars of unit 105, unit 708 repairs; review BDO engagements website re: orders and motion records posted.
Hooper, L	3-May-16	0.1	Banking.
Cherniak, S	4-May-16	0.8	Review of updates from Capaldi on unit 105, unit 1101 and unit 708 repairs. Review of email from Calderwood re: funds for liens. Call with Miller Thomson. Review of file. Send letter to Miller Thomson. Update on Morga motion re nonpayment of fees. Review of correspondence to Rialto and counsel.

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Staff	Date	Time	Narrative
Flett, D	4-May-16	0.9	Review D. Capaldi emails on unit 105, unit 708 and unit 1101 repair/maintenance items; review building issues - roof membrane and parking, 17th floor hot tub status; call with J. McClelland on unit 304 status, repair status; unit 1201 and unit 1501 conditions.
Cherniak, S	5-May-16	0.1	Update on court date.
Hooper, L	5-May-16	0.1	Banking.
Finnegan, M	6-May-16	0.6	Update rent roll and deposit rent cheques.
Cherniak, S	9-May-16	1.3	Review of Miller Thomson materials for motion to strike Letter of Credit for nonpayment. Update on unit 304 situation. Execute listing agreement for unit 304. Execute documents for unit 708 sale.
Finnegan, M	9-May-16	0.5	Pay bills.
Flett, D	9-May-16	3.1	Text message with D. Capaldi re: unit 304 status; review unit 1202 amendment and call with J. McClelland re: unit 1202 amendment, unit 103 showing, unit 304, 1401 tenant status; forward signed unit 1202 amendment to J. McClelland; review posted May rent roll; sign Receiver cheques; call with D. Capaldi re: unit 304 tenant status and listing, unit 1401 tenant status; possible leasing of unit 103; call with J. McClelland on unit 304 listing and price; review unit 708 draft closing statements and email with Miller Thomson; review unit 304 listing agreement, review and return to J. McClelland; call with J. McClelland on unit 304 listing; further emails with D. Capaldi and J. McClelland on unit 304 tenant vacating, unit 103 offer and availability for leasing.
Cherniak, S	10-May-16	1	Review of Sasso email and Miller Thomson response re materials filed re nonpayment of Letter of Credit fees. Call from Cooke re Capaldi. Review of Cooke email to Miller Thomson and response. Email from Capaldi re windows missing. Update on units 103 and 105 and tenant moving out of unit 304. Discuss offer on unit 103. Decide not to counter.
Finnegan, M	10-May-16	0.5	Prepare and send sale documents re unit 708.
		<b>98.6</b>	<b>Total Time</b>

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$475	24.7
Finnegan, M	Administrative	London	\$175	9
Flett, D	Vice President	London	\$350	63
Hooper, L	Estate Administrator	London	\$125	1.40
Szypula, C	Sr. Vice President	London	\$475	0.5
				<b>98.6</b>



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Invoice # 88573006  
Portofino Corporation  
HST Reg # 101518124RT0001

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

June 15, 2016

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**Re: Portofino Corporation**

For professional services rendered for the period May 11, 2016 through June 14, 2016 as per the attached detail:

Our Fee	\$28,000.00
Disbursements (courier)	<u>16.30</u>
Sub total	28,016.30
HST	3,642.12
Total	<u>\$31,658.42</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
103-252 Pall Mall Street  
London, ON N6A 5P6

Invoice #	88573006
Amount	\$31,658.42





June 15, 2016

For professional services rendered

Staff	Date	Time	Narrative
Flett, D	10-May-16	0.8	Emails with D. Capaldi on unit 304 last month's rent and review rent roll; call with J. McClelland on unit 103 offer, unit 304 and unit 105 listings and prices; review unit 103 offer and review; call with J. McClelland on unit 103 offer.
Hooper, L	10-May-16	0.1	Banking.
Flett, D	11-May-16	2.2	Memo re: current listings and units available for lease; call with J. McClelland and review revised unit 103 offer; prepare counter offer and forward to J. McClelland; updates to inventory summary; call with D. Capaldi on unit 304 tenant deposit, unit 105 listing and unit 103 status, unit 708 repair; emails with J. McClelland on unit 708 closing; review unit 304 status; call with J. McClelland re: unit 103 offeror query and unit 304 showings.
Cherniak, S	11-May-16	0.8	Email from S. D'Amore re listings and tenants. Respond. Update on unit 103 and unit 105. Counter offer on unit 103. Discussion re dealing with unit 304 deposit. Email from Miller Thomson re notice of motion.
Cherniak, S	12-May-16	0.5	Emails from S. D'Amore re units sold and proceeds. Respond. Review of emails re unit 103 patio and issues thereto. Discussions re review of condo declaration. Review of email re materials being served on Morga.
Flett, D	12-May-16	1.8	Review S. D'Amore emails re: unsold units; email with D. Capaldi on unit 103 patio; call with J. McClelland on unit 103 and unit 304 showings; call with J. McClelland on first floor patios, unit 105 repair status, unit 103 interested party; email to D. Capaldi re: unit 105 repairs; review condo declaration re: exclusive use common areas; call with J. McClelland re: unit 103 and unit 708 walk through and email to D. Capaldi re: patio rules.
Hooper, L	12-May-16	0.1	Banking.
Flett, D	13-May-16	2.1	Review email from D. Capaldi on condo declaration, unit 105 repairs; review revised unit 103 offer and return accepted offer to J. McClelland; call with J. McClelland re unit 103 offer, unit 1202 conditions and unfinished unit completion costs; email to D. Capaldi on unit 103 sale and status certificate; review condo by-law no. 6 re: standard unit finishes and memo to D. Capaldi with queries on by-law; email to J. McClelland; updates to unsold unit inventory schedule.
Finnegan, M	13-May-16	0.3	Receipt of rent cheque and update rent roll.

Staff	Date	Time	Narrative
Cherniak, S	13-May-16	0.3	Review counter on unit 103. Execute and send back. Review of emails to D. Capaldi re sale and finishes to unfinished units.
Cherniak, S	16-May-16	0.6	Review of email from D. Capaldi re standard finishes and insurance and response to unit 103. Review of email re upcoming board meeting. Email D. Capaldi re agenda item. Review and execute amendments on unit 103 and unit 1202. Updates on situation. Review of email to Rialto re unit 708 and closing.
Flett, D	16-May-16	2.6	Emails with D. Capaldi on by-law No. 6, standard unit finishes, insurance and unfinished unit construction logistics; lengthy call with J. McClelland on unit 103 sale amendment, unit 1202 status, conditions and contractor queries, unit 708 walk through and closing; review unit 103 amendments; review unit 103, unit 1202 amendments, review and return signed to J. McClelland; email to D. Capaldi re: unfinished unit terrace door repairs; text msg with D. Capaldi on unit 708 closing; call with J. McClelland on unit 708 closing arrangements, unit 1202 amendment; email to Rialto; update to unsold unit inventory schedule.
Flett, D	17-May-16	2.4	Review several emails from D. Capaldi on maintenance, repair and other matters; two calls with J. McClelland on unit 103 conditions, unit 1202 conditions, unit 1101 closing extension request, unfinished unit completion restrictions; review ECC#122 matters; further call and email with J. McClelland on unit 1101 extension request, unit 1202 closing date and unit 606 re-sale listing; email to D. Capaldi re: unit 1202 condenser install, etc.; forward unit 1501 listing extension to J. McClelland; review April monthly financial report and edit.
Finnegan, M	17-May-16	0.8	Deposit sale funds. Prepare monthly R&D. Add court order to external website.
Cherniak, S	17-May-16	1	Review of D. Capaldi response re harassment claim. Respond. Execute listing extension re unit 1501. Review of email re listing at Portofino. Attend court re fourth report. Review of order.
Cherniak, S	18-May-16	1.1	Review of email from D. Capaldi on harassment of Cassano. Review status of unit 1501, unit 304, unit 103 and unit 105. Execute amendment to extend closing of unit 1202. Discussion re extending closing of unit 1101. Discussion re contractor purchasing unfinished unit and holding until finished and sold. Discussion re interest in sale of all remaining units. Review of R&D to Rialto and email thereto.

Staff	Date	Time	Narrative
Flett, D	18-May-16	2.9	Email with D. Capaldi on unit 1202 condenser installation; update on status of conditional sales, future listings and review builder enquiry on unfinished units; review and finalize April, 2016 monthly report and issue to Rialto with comments and various attachments; lengthy call with J. McClelland on unit 1202 conditions and unfinished unit completion considerations; other builder en bloc enquiry; unit 304 showing; unit 1101 closing extension; sign unit 1202 closing amendment and return to J. McClelland; review unit 1101 extension, unit 1202 status, builder enquiry; call with J. McClelland re: enbloc enquiry.
Finnegan, M	19-May-16	0.2	Update 2016 property tax schedule re sold units.
Cherniak, S	19-May-16	0.9	Review of email from Trottier re property taxes. Compile info including call to City of Windsor and review of response. Send to Trottier. Review of email from D. Capaldi re harassment complaint. Review of Flett information re Bravo.
Finnegan, M	20-May-16	0.5	Update rent roll and deposit rent cheques.
Flett, D	20-May-16	2.6	Review emails with G. Trottier and V. Grillo on property taxes; review schedules and email on non-unit tax accounts. Lengthy call with J. McClelland on unit 103 inspection and repairs, unit 1202 status; en bloc enquiry; unit 1501 showing and other matters; review unit 103 home inspector report and detailed memo to D. Capaldi and queries and pre-closing repairs; review unit 709 status certificate and email to D. Capaldi on inclusion by-laws in status certificate; email with J. McClelland and Miller Thomson on unit 1101 closing extension.
Flett, D	24-May-16	4.7	Review D. Capaldi emails on several matters including unit 103 repairs; review G. Trottier email re: title and encumbrance issues with unsold units and review; prepare schedule of units, surface parking spaces, and storage with tax detail and sale status; prepare detailed email to Miller Thomson with comments on G. Trottier email, reconciliation of unsold units, detail of unit 107 tax roll number for surface parking and payout of condo fee arrears; review unit 103 amendment to waive conditions; lengthy call with J. McClelland on unit 103 amendment and repairs, by-laws and status certificate inclusions, unit 1202 conditions, unit 1501 enquiry; email to D. Capaldi re: unit 103 blinds, appliance repair; call with D. Capaldi re: unit 1401 tenant lease extension; review and revise unit 103 amendment and return counter to J. McClelland; call with J. McClelland on unit 103 amendment, unit 1202 buyer counsel enquiry; email with D. Capaldi and Miller Thomson on unit 1101 closing extension.
Finnegan, M	24-May-16	0.5	Bill payments

Staff	Date	Time	Narrative
Cherniak, S	24-May-16	1.2	Review of letter from Morga re LC payment. Discuss same with Miller Thomson. Review of lengthy email from Trottier re issues with registrations and number of units at Portofino re WFCU replacing Rialto as lender. Discuss response from BDO. Review response to Miller Thomson. Email from Trottier re cash on hand. Respond. Review of email from D. Capaldi re 604 vacate and repairs to unit 103. Discuss and execute waiver for unit 103.
Hooper, L	24-May-16	0.1	Banking.
Cherniak, S	25-May-16	0.2	Review of Morga opposition to settled order re Letter of Credit replacement.
Flett, D	25-May-16	2.4	Review D. Capaldi emails on various tenant matters and unit 103 pre-closing repairs; emails with D. Capaldi, J. McClelland and Miller Thomson on unit 103 waiver of conditions; forward unit 103 sale and tax documents to J Lehman; call with J. McClelland on unit 103 and unit 1501 conditional sale status; review April, 2016 property maintenance expenses report; email to D. Capaldi re: unit 1501 Reliance arrears; call with J. McClelland on unit 103 condition status, unit 304 showings; unit 105 listing and pre-listing repairs and review unit 105 interior photos.
Flett, D	26-May-16	3.7	Review D. Capaldi emails on various maintenance matters; review G Trottier emails on Rialto payout and registration issues; calls with G. Trottier and Miller Thomson re: discharge of ECC #122 registration, registration of Receivership Order on parking and storage units, issues regarding charge for BMO to Rialto transfer on post June 29-15 sales, other issues; revise unit and parking summary schedule to include sale date and forward two versions to G. Trottier and Miller Thomson; review several emails re: discharge of ECC #122 lien on units; review April, 2016 property expenses; email memo to Miller Thomson re: registration of receivership order on parking and storage; call with J. McClelland on unit 103 condition status, unit 304 showings and offer timing; email with D. Capaldi re: unit 105 repairs; review unit 103 amendment, sign and return to J. McClelland.
Cherniak, S	26-May-16	3.4	Email to ECC #122 re mortgage discharges. Various emails re same. Call from G. Trottier re various issues with units ie order not on title for parking garage, parking spaces and storage units. Vesting needing amendment. Discussion with Miller Thomson re same. Call with Scott S. D'Amore. Further call with G. Trottier re need for comfort letter re distribution of funds. Review of email to Miller Thomson re registration of order. Review of updated units list. Discuss and extend unit 103 conditional period to deal with status certificate. Review of emails re unit 105 refurbishing. Attend condo board meeting.
Cherniak, S	27-May-16	0.3	Review correspondence from G. Trottier re letter. Revise letter. Send to G. Trottier.

Staff	Date	Time	Narrative
Finnegan, M	27-May-16	0.4	File HST return
Finnegan, M	30-May-16	0.4	Deposit and update rent roll.
Flett, D	30-May-16	2.8	Review and check draft application to register court order on parking and storage; call with J. McClelland on showings, unit 304 offer; confirm no unit 304 counter offer; review unit 1502 rent status and email to D. Capaldi; review liability insurance policy and email to G. Trottier re: unsold unit betterments and commercial liability coverage; email to D. Capaldi re: unit 1401 tenant extension request; draft memo to G. Trottier re; betterment insurance coverage issues and limitations; review revised unit 304 offer and call with J. McClelland on offer; further call with J. McClelland on unit 304 offer.
Cherniak, S	30-May-16	0.8	Review of email to D. Capaldi re rent arrears on 1502. Review Miller Thomson documents re registering order on title to parking garages and spaces. Discuss lowball offer on unit 304. No counter. Discuss and review response to emails from G. Trottier re insurance on units.
Cherniak, S	31-May-16	0.3	Discussions re tenant in unit 1401, offer on unit 304, condo board meeting and MPAC and J. McClelland listing.
Flett, D	31-May-16	2.2	Emails with At-home on staging re-location and timing, June, 2016 invoices; review D. Capaldi emails on tenant matters; review unit 1401 tenant status, board meeting; email to D. Capaldi on terms of unit 1401 tenant extension; review current MLS listings; review email from and call with J. McClelland re: unit 1202 conditions, unfinished unit completion issues, unit 304 offer, 'waterfront' versus 'waterview' and listing revisions;
Flett, D	1-Jun-16	2.8	Review ECC #122 budget and new condo fee schedule; call with J. McClelland on unit 103 status, unit 304 showing; review revised schedule C from Miller Thomson, email with S Kettle and forward to J. McClelland; updates to unsold unit inventory schedule; update inventory schedule for condo fee increase; call with J. McClelland on unit 1202 buyers, lease or purchase of surface parking, updated schedule C; review and return signed unit 1202 amendment to J. McClelland; email to D. Capaldi re: current parking space leases, availability; email memo to S. D'Amore on lease availability and MLS listing particulars.
Cherniak, S	1-Jun-16	1.4	Review of emails from D. Capaldi re newsletter, budget and future funding of the reserve fund. Email from G. Trottier re S. D'Amore estate taking out Rialto. Call from S. D'Amore re same and listings and possible lease of units. Review of Miller Thomson correspondence re Morga calculation of Letter of Credit fees, motion dismissal and costs. Respond by email. Execute extension on unit 1202 purchase. Review of email to S. D'Amore re listings and leased units. Review of email to D. Capaldi re parking spaces for unit 1202. Review of email to Morga re BDO instructions.

Staff	Date	Time	Narrative
Cherniak, S	2-Jun-16	1.1	Review of correspondence from Morga re Letter of Credit. Review of Miller Thomson email to Morga. Review and execute condition fulfillment on unit 103. Review of D. Capaldi response on parking spaces. Review of email to D. Capaldi re unit 304. Call with S. D'Amore re Letter of Credit trial and sales. Review of update email to S. D'Amore re units available.
Flett, D	2-Jun-16	1.4	Review email from D. Capaldi on sale of parking spaces and email to D. Capaldi re: updated parking summary; email to D. Capaldi re: unit 304 tenant status; review unit 103 waiver of conditions and return signed to J. McClelland; emails to D. Capaldi, Miller Thomson and S. D'Amore re: firm sale of unit 103 and update unsold unit inventory schedule; voice mail from J. McClelland re: unit 1202 buyers; call with J. McClelland re: unit 1202, unit 103 staging relocation, unit 105 and unit 304 status, unit 105 listing.
Finnegan, M	2-Jun-16	0.4	Bill payment.
Flett, D	3-Jun-16	1.2	Several emails with D. Capaldi on parking rent, unit 304 tenant status and last month deposit, unit 103 repairs status and cost; summary notes re: unit 103 repairs; call with J. McClelland on unfinished unit showings and list prices, unit 105 listing, unit 304 showings; update unsold inventory schedule.
Cherniak, S	3-Jun-16	0.2	Emails to D. Capaldi re repairs at unit 103 and tenant in unit 304.
Cherniak, S	6-Jun-16	0.4	Review of emails from D. Capaldi re unit 304 and survey to be sent to owners. Review of survey. Execute listing agreement for unit 105.
Flett, D	6-Jun-16	1.6	Review emails from D. Capaldi on tenant and repair matters; review and edit unit 105 listing agreement; call with J. McClelland on unit 105 listing and photos, staging re-locating, unit 1202 conditions status; hvac completion on unfinished units; email to D. Capaldi on unit 1202 condenser and utility accounts; review draft unit 1101 closing documents from Miller Thomson and return email; review unit 105 listing and other listing status and forward unit 105 to J. McClelland.
Flett, D	7-Jun-16	0.9	Review email from D. Capaldi re: parking, unit 1202 hvac; email with J. McClelland and review unit 105 photos; review updated leased parking schedule and email to D. Capaldi on questions; review unit 603 condo fee prepayment terms and calculate balance of 2016 condo fees owing; voice msg from J. McClelland and email to J. McClelland re: unit 105 listing, unit 1202 hvac.
Finnegan, M	7-Jun-16	0.4	Prepare and send closing documents to Miller Thomson re unit 1101.

Staff	Date	Time	Narrative
Cherniak, S	7-Jun-16	0.5	Review of email from D. Capaldi re unit 1202 repairs. Call with Joy Bloomfield re condo fees and various. Review of email re lobby.
Cherniak, S	8-Jun-16	0.1	Email from D. Capaldi re renos to lobby.
Finnegan, M	8-Jun-16	0.3	Pay bills.
Flett, D	8-Jun-16	0.2	Review email from D. Capaldi and revised parking rent schedule.
Flett, D	9-Jun-16	0.9	Call with J. McClelland on unit 1101 closing, unit 1202 conditions, unit 105 listing, unit 304 interested party; email memo to Miller Thomson re: unit 1101 closing extension request; review unit 1202, unit 1101 status.
Cherniak, S	9-Jun-16	0.9	Emails to/from Miller Thomson re extending closing date on unit 1101. Emails to condo board re survey. Review of email re motion to deal with costs re nonpayment of Letter of Credit at trial. Call with Miller Thomson re same. Discussion re unit 1101, potential offer on unit 304 and unit 1202 extension.
Cherniak, S	10-Jun-16	2.3	Review correspondence re requested extension unit 1101. Respond to Miller Thomson. Review offer on unit 304. Review comparables. Discuss with D. Flett. Execute counter. Send to realtor. Review extension request on unit 1202. Execute and send to realtor. Review Miller Thomson amendment to draft order on Letter of Credit nonpayment costs. Review of email from D. Capaldi.
Flett, D	10-Jun-16	0.3	Brief review of several emails from Miller Thomson re: unit 1101, unit 304; call with S. Cherniak on unit 304 counter offer and other sales.
Finnegan, M	10-Jun-16	1	Deposit rent cheques and update rent roll.
Finnegan, M	13-Jun-16	0.2	Update rent roll and deposit rent payment.
Flett, D	13-Jun-16	2.9	Review emails and documents from J. McClelland and Miller Thomson re: unit 1101 closing extension, unit 1202 amendment, unit 304 counter offer; email to J. McClelland re: San Remo re-sale data; call with J. McClelland re: weekend showings, unit 304 counter offer, unit 1501 buyer and status of conditions; review June, 2016 rent roll; text messages with D. Capaldi re: unit 304 tenant status, last month deposit and partial June occupancy; call with J. McClelland on unit 304 counter; review unit 603 condo fee adjustment and correspondence to ECC #122; call with J. McClelland on unit 404, unit 1501 showing; review revised unit 304 offer; prepare unit 304 counter offer and forward to J. McClelland.

Staff	Date	Time	Narrative
Cherniak, S	13-Jun-16	2.5	Review of emails re Morga Letter of Credit issues. Call and email to Miller Thomson re instructions not to attend court re same. Review of Sasso email re D. Capaldi nonattendance. Call with Miller Thomson re same. Call with D. Capaldi re same. Call with Miller Thomson to update. Discussion and review of counter on unit 304. Review and execute further counter. Email re board meeting. Review of email from D. Capaldi re board meeting and Sasso.
Cherniak, S	14-Jun-16	1.1	Review various materials for upcoming board meeting. Review of D. Capaldi email re Sasso. Send to Miller Thomson. Review J. Bloomfield letter. Call with S. D'Amore re report and Letter of Credit motion heard today. Review of executed documents re unit 1101 extension. Call with S. D'Amore re Jim Bravo mortgage.
Flett, D	14-Jun-16	1.2	Email/text with D. Capaldi re: unit 304 tenant and repair items; review letter to unit 603 owner; calls with J. McClelland on unit 304 offer, acceptance and financing amendment, unit 1301, unit 1401 availability; review executed unit 1101 extension agreement and email with D. Capaldi. Review unit 304 accepted offer, amendment; update sales and inventory schedules; review next court report timing and content.

**74.2 Total Time**

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$475	21.9
Finnegan, M	Administrative	London	\$175	5.4
Flett, D	Vice President	London	\$350	46.6
Hooper, L	Estate Administrator	London	\$125	0.3
				<b>74.2</b>



# **APPENDIX “E”**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**RREF II BHB IV PORTOFINO, LLC**

**Applicant**

- and -

**PORTOFINO CORPORATION**

**Respondent**

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

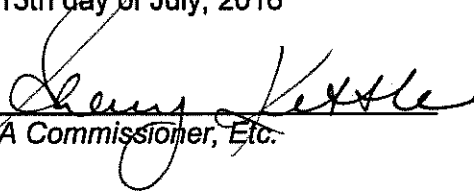
**AFFIDAVIT OF TONY VAN KLINK**

I, TONY VAN KLINK, of the Municipality of Thames Centre, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner with the law firm of Miller Thomson LLP ("MT"), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the "Receiver") of the property, assets and undertakings of Portofino Corporation and, as such, have knowledge of the matters to which I hereinafter depose.
2. I make this Affidavit in support of the Receiver's motion for, among other things, having the fees and disbursements of MT, as legal counsel to the Receiver, approved.
3. Attached hereto to this my Affidavit and marked as Exhibit "A" are copies of the invoices rendered by MT to the Receiver for fees and disbursements of MT for the period February 25, 2016 through to June 30, 2016 (the "Period"). I affirm that the invoices accurately reflect the services provided by MT during the Period and the fees and disbursements claimed by it. During the Period, the total fees billed were \$19,480.50, the disbursements billed were \$731.79, plus H.S.T. in the amount of \$2,602.92. 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 47.60 billable hours in connection with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".



Attached are Exhibits "A" and "B" to the  
Affidavit of Tony Van Klink sworn the  
13th day of July, 2016

  
A Commissioner, Etc.

ACCOUNT

May 10, 2016

Invoice Number 2889258

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

Attention: Stephen N. Cherniak

**TO PROFESSIONAL SERVICES RENDERED in**  
connection with the following matter including:

**Re: Portofino Corporation**  
**Our File No. 082873.0012**

Date	Initials	Description	Hours
03/02/2016	AVK	Telephone call with Mr. Cherniak; e-mails to Mr. Taub and Mr. Sasso	0.60
03/03/2016	AVK	Telephone calls and e-mails with Mr. Taub and Mr. Cherniak regarding Valente litigation	1.20
03/04/2016	JL	E-mail correspondence; telephone conference with other lawyer; prepare outgoing couriers;	0.60
03/08/2016	VW	Prepare financial documents;	0.30
03/08/2016	ASR	Attend to unit closing;	0.20
03/08/2016	JL	E-mail correspondence; prepare closing package;	0.50
03/09/2016	AVK	Telephone calls with and e-mails from and to Mr. Cherniak and Mr. Sasso re Valente litigation	0.60
03/10/2016	AVK	E-mail from and to Mr. Sasso	0.10
03/10/2016	AVK	E-mails from and to Mr. Morga and Mr. Sasso regarding Valente litigation	0.30

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Date	Initials	Description	Hours
03/15/2016	JL	Review of requisition letter and prepare response; draft closing documents and Statement of Adjustments; e-mail correspondence; telephone conference with purchaser's lawyer;	1.70
03/23/2016	SK	Prepare and swear fee affidavit;	1.40
03/24/2016	ASR	Attend to payouts;	0.30
03/24/2016	TV	Consult with J. Lehman regarding file status and outstanding matters; review file instructions; multiple telephone attendance with purchaser's solicitor regarding closing procedure; review purchaser's solicitor's closing package; finalize Teraview form; attend to closing registration; notify respective parties transaction closed; attend to post closing matters;	1.10
03/24/2016	JL	E-mail correspondence; draft accounting forms; compile closing package;	0.50
03/29/2016	SK	E-mail correspondence from Mr. Cherniak re Fourth Report; Meeting with Mr. Van Klink re same;	0.10
03/29/2016	JL	Draft final report letters;	0.60
03/30/2016	SK	Prepare letter to agent to file receiver's certificate re Unit 1001;	0.10
04/04/2016	SK	Review and revise reporting letter re Unit 1001; Review and revise reporting letter re Unit 401; Review and revise reporting letter re Unit 1008; Review and revise reporting letter re Unit 1503; Review and revise reporting letter re Unit 906;	0.60
04/05/2016	AVK	Review correspondence from Mr. Sasso regarding Valente litigation and e-mail to Mr. Cherniak thereon; review draft Rule 49 offer to settle and e-mail to Mr. Cherniak thereon	0.20
04/05/2016	AVK	Review correspondence from Mr. Sasso regarding Railto LC replacement motion and e-mail to Mr. Cherniak thereon	0.20
04/05/2016	AVK	E-mails to Mr. Morga and Mr. Taub re draft order and LC fees issue	0.10
04/05/2016	AVK	Telephone call with Mr. Cherniak	0.10
04/05/2016	AVK	E-mails to Mr. Sasso regarding offer to settle and consent to draft order for replacement LC	0.10
04/05/2016	SK	Finalize various reporting letters;	0.20
04/10/2016	AVK	Review draft receiver's fourth report	0.30
04/13/2016	AVK	E-mail to and from Mr. Sasso re Valente litigation	0.10

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Date	Initials	Description	Hours
04/13/2016	AVK	Review pleadings and documents for Capaldi lien actions; letter to Mr. Cooke re expiration of liens	0.40
04/13/2016	AVK	Working on revisions to receiver's fourth report and status update on outstanding litigation	1.70
04/13/2016	AVK	Review e-mail from Mr. Morga and supporting calculations regarding LC fee and respond to Mr. Morga thereon	0.60
04/13/2016	SK	Prepare summary of Dalfidan litigation status;	0.90
04/14/2016	AVK	Revise Receiver's fourth report; e-mails from and to Mr. Sasso re Valente litigation; telephone call to Mr. Morga re LC; e-mail from and to Mr Cooke re Capaldi construction liens	0.70
04/14/2016	AVK	E-mails from and to Mr. Cherniak	0.20
04/15/2016	AVK	Telephone call with and e-mail to Mr. Morga re LC fees	0.60
04/15/2016	SK	Telephone conference with Mr. Flett re fee affidavit; Discussion with Mr. Van Klink re same and fourth report; Update fourth report;	0.40
04/20/2016	AVK	Prepare Notice of Motion, draft Order and letter to service list	0.40
04/20/2016	AVK	Review e-mail from Mr. Sasso re Valente action and e-mail to Mr. Cherniak thereon	0.10
04/21/2016	AVK	Finalize motion record, draft order and correspondence to service list	0.20
04/21/2016	AVK	E-mails to Mr. Taub and Mr. Sasso	0.20
04/22/2016	JL	E-mail correspondence with client;	0.10
04/29/2016	AVK	Letter to David Taub; Telephone call with Mr. Cooke re Capaldi construction liens; e-mail to Mr. Cherniak	0.40

TOTAL HOURS 19.00

OUR FEE: \$7,262.50

**TAXABLE DISBURSEMENTS**

Couriers	58.69	
Agent's Fees	120.00	
<b>TOTAL TAXABLE</b>	<u>178.69</u>	\$178.69

**NON-TAXABLE DISBURSEMENTS**

Issue Notice of Motion	127.00	
<b>TOTAL NON-TAXABLE</b>	<u>127.00</u>	\$127.00

**TOTAL FEES AND DISBURSEMENTS: \$7,568.19**

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**Harmonized Sales Tax (R119440766)**  
On Fees  
On Disbursements

\$944.13  
\$23.23

**TOTAL AMOUNT DUE:**

**\$8,535.55**

E.&O.E.



ACCOUNT

June 30, 2016

Invoice Number 2911740

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

Attention: Stephen N. Cherniak

**TO PROFESSIONAL SERVICES RENDERED in**  
connection with the following matter including:

**Re: Portofino Corporation**  
**Our File No. 082873.0012**

Date	Initials	Description	Hours
05/03/2016	JL	Obtain and review parcel register; e-mail correspondence with client regarding registered security;	0.30
05/04/2016	AVK	Preparing motion materials - Valente action	4.00
05/09/2016	ASR	Attend to response to requisitions;	0.20
05/09/2016	AVK	Working on motion materials for Valente action	2.50
05/09/2016	JL	E-mail correspondence; draft closing documents; review of requisition letter and prepare response; draft Application for Vesting Order;	1.40
05/10/2016	AVK	Working on motion materials for Valente Real Estate motion	0.90
05/10/2016	AVK	E-mail from and to Mr. Cooke re Capaldi construction liens	0.10
05/13/2016	AVK	Prepare draft order	0.20
05/13/2016	JL	Review of documents from Borrower's solicitor; e-mail correspondence; prepare outgoing couriers;	0.30
05/16/2016	ASR	Attend to sale of unit 708;	0.20

Date	Initials	Description	Hours
05/16/2016	AVK	Review materials, prepare for motion	0.50
05/16/2016	JL	E-mail correspondence; attend to various matters to facilitate closing; review of document package from Purchaser's solicitor;	0.80
05/17/2016	AVK	Attend on motion for court approval of activities, attend to entry of order in court office, travel to and from Windsor	5.70
05/17/2016	AVK	Letter to service list re issued and entered order	0.10
05/17/2016	SK	Prepare letter to agent re filing receiver's certificate Unit 708;	0.10
05/18/2016	JL	Telephone conference with Purchaser's solicitor;	0.10
05/20/2016	AVK	Review correspondence from Mr. Morga	0.10
05/25/2016	AVK	Review correspondence from Mr. Michaud	0.10
05/26/2016	AVK	Review various e-mails and documents from Mr. Trottier and BDO regarding title related matters; telephone call with Messrs Cherniak and Flett; telephone call with Mr. Trottier	1.50
05/26/2016	AVK	Review and consider correspondence from Mr. Morga and Mr. Sasso regarding letter of credit issue; correspondence to Mr. Cherniak	0.40
05/26/2016	AVK	Revisions to draft comfort letter and e-mail thereon	0.10
05/26/2016	JL	E-mail correspondence; review of title documents; draft Application to register court order;	0.60
05/27/2016	ASR	Review draft court order registration;	0.20
05/27/2016	AVK	Letter to Mr. Cherniak	0.10
05/30/2016	ASR	Sign receivership order for registration;	0.20
05/30/2016	JL	E-mail correspondence; attend to registration of Court Order; draft final report to client;	0.70
05/31/2016	JL	Review of correspondence from Borrower's solicitor; e-mail correspondence; prepare outgoing couriers;	0.70
06/01/2016	AVK	Telephone call with Mr. Cherniak; e-mail to Mr. Morga	0.30
06/01/2016	SK	Review and revise reporting letter on Unit 708;	0.20
06/02/2016	AVK	Review correspondence from Mr. Morga and Mr. Michaud re LC replacement issue	0.20
06/02/2016	AVK	E-mail to Mr. Morga re LC costs	0.10
06/02/2016	AVK	E-mail from Mr. Trottier regarding assignment of Rialto mortgage security and respond to same	0.10
06/06/2016	ASR	Attend to response to requisitions;	0.20

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Date	Initials	Description	Hours
06/06/2016	JL	Review of requisition letter and draft response; e-mail correspondence; draft closing documents; prepare Statement of Adjustments and SStatement of Trust;	1.70
06/08/2016	AVK	Telephone calls with Mr. Allen re LC motion; e-mail from Mr. Allen; e-mail to Mr. Cherniak	0.20
06/09/2016	AVK	Telephone call with Mr. Cherniak and e-mail to Mr. Allan re outstanding issues on LC motion	0.10
06/09/2016	AVK	Review motion materials from Mr. Morga for LC replacement motions (stay and leave to appeal); revise draft order	0.50
06/09/2016	JL	E-mail correspondence with client;	0.10
06/10/2016	ASR	Attend to lot transfer correspondence;	0.20
06/10/2016	AVK	Finalize revisions to draft order and e-mail to Mr. Allen thereon	0.20
06/10/2016	AVK	Review correspondence from Mr. Morga; e-mails to Mr. Cherniak and Mr. Sasso regarding stay and leave motions	0.60
06/10/2016	JL	Review of extension request; e-mail correspondence; discussions with A. Roth; draft extension correspondence;	0.60
06/13/2016	AVK	E-mails from and to Mr. Sasso and Mr. Cherniak re Valente action and leave to appeal/stay motion; telephone call with Mr. Cherniak re Dante Capaldi and Valente action; e-mail from Mr. Michaud re stay motion and e-mail to Mr. Cherniak thereon	0.50
06/14/2016	AVK	E-mail from Mr. Cherniak	0.10
06/14/2016	JL	E-mail correspondence; draft accounting forms; telephone conference with purchaser's lawyer;	0.30
06/15/2016	AVK	Receive and review issued order for Valente action and e-mail to Mr. Cherniak thereon	0.10
06/20/2016	JL	E-mail correspondence; obtain parcel register;	0.20
<b>TOTAL HOURS</b>			<b>28.60</b>
<b>OUR FEE:</b>			<b>\$12,218.00</b>

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**TAXABLE DISBURSEMENTS**

Teraview service Fee	10.50	
Couriers	47.64	
Mileage/Parking	171.46	
Agent's Fees	30.00	
Online Searches - Teranet	103.65	
<b>TOTAL TAXABLE</b>	<u>363.25</u>	\$363.25

**NON-TAXABLE DISBURSEMENTS**

Registration fees	62.85	
<b>TOTAL NON-TAXABLE</b>	<u>62.85</u>	\$62.85

**TOTAL FEES AND DISBURSEMENTS: \$12,644.10**

**Harmonized Sales Tax (R119440766)**

On Fees		\$1,588.34
On Disbursements		\$47.22

**TOTAL AMOUNT DUE: \$14,279.66**

E.&O.E.

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

Hours	Year of Call	Rate 2015	Rate 2016	Inv.#2889258 May 10/16	Inv.#2911740 June 30/16	Total Invoices
S. Kettle	2007	\$280.00	\$305.00	3.70	0.30	4.00
T. Van Klink	1988	\$525.00		0.00	0.00	0.00
T. Van Klink			\$545.00	9.40	19.30	28.70
A. Roth	2004	\$330.00	\$365.00	0.50	1.20	1.70
J. Lehman - clerk	N/A	\$140.00	\$150.00	4.00	7.80	11.80
T. Vogel - clerk	N/A	\$165.00	\$175.00	1.10	0.00	1.10
V. Wood - clerk	N/A	N/A	\$120.00	0.30	0.00	0.30
				19.00	28.60	47.60

<b>Total \$</b>						
S. Kettle	2007	\$280.00	\$305.00	\$1,128.50	\$91.50	\$1,220.00
T. Van Klink	1988	\$525.00		\$0.00	\$0.00	\$0.00
T. Van Klink			\$545.00	\$5,123.00	\$10,518.50	\$15,641.50
A. Roth	2004	\$330.00	\$365.00	\$182.50	\$438.00	\$620.50
J. Lehman - clerk	N/A	\$140.00	\$150.00	\$600.00	\$1,170.00	\$1,770.00
T. Vogel - clerk	N/A	\$165.00	\$175.00	\$192.50	\$0.00	\$192.50
V. Wood - clerk	N/A	N/A	\$120.00	\$36.00	\$0.00	\$36.00
				\$7,262.50	\$12,218.00	\$19,480.50

Summary	Fees	Disbursements	HST	Total
	\$7,262.50	\$12,218.00		\$19,480.50
	\$305.69	\$426.10		\$731.79
	\$967.36	\$1,635.56		\$2,602.92
	\$8,535.55	\$14,279.66		\$22,815.21

RREF II BHB IV PORTOFINO, LLC  
Applicant

and  
PORTOFINO CORPORATION  
Respondent

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**AFFIDAVIT OF TONY VAN KLINK  
SWORN JULY 13, 2016**

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

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

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

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

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# **APPENDIX “F”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RREF II BHB IV PORTOFINO, LLC

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

**AFFIDAVIT OF WILLIAM V. SASSO**

I, WILLIAM V. SASSO, of the City of Windsor, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner with the law firm of Sutts, Strosberg LLP ("**SS**"), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the "**Receiver**") of the property, assets and undertakings of Portofino Corporation in respect of Ontario Superior Court of Justice action no. CV-05-5864CM being the claim by Remo Valente Real Estate (1990) Limited v. Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante J. Capaldi ("**Valente contract claim**") 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 SS, as legal counsel to the Receiver in the Valente contract claim, approved.

3. Attached hereto to this my Affidavit and marked as **Exhibits "A"** and **"B"** are copies of the invoices rendered by SS to the Receiver for fees and disbursements for the period from April 13, 2015 through to June 30, 2016 (the "**Period**"). I affirm that the invoices accurately reflect the services provided by SS during the Period and the fees and disbursements claimed by it.





THE ATTACHED IS EXHIBIT A TO THE  
AFFIDAVIT OF WILLIAM V. SASSO  
SWORN BEFORE ME THIS 13<sup>TH</sup> DAY  
OF JULY, 2016

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

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**SUTTS, STROSBERG**  
LAWYERS  
www.strosbergco.com

600-251 Goyeau Street  
Windsor, ON N9A 6V4  
519.258.9333

Stephen N. Cherniak  
BDO Canada Limited, Court Appointed Receiver  
of Portofino Corporation  
BDO Canada Limited  
252 Pall Mall Street, Suite 103  
London, ON  
N9A 5P6

April 8, 2016

Our File No.: 76160002  
Bill No.: 40986  
H.S.T. Reg. #: 12276 8955 RT0001

PLEASE RETURN ONE COPY OF OUR ACCOUNT WITH YOUR PAYMENT

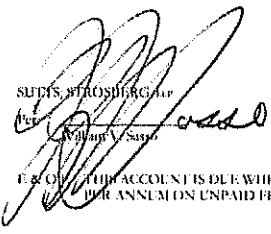
Portofino Riverside Tower Inc. et al ats Remo Valente Real Estate (1990) Limited

TO FEES FOR ALL PROFESSIONAL SERVICES RENDERED and costs incurred in connection with the above file and matter, including those items, the particulars of which are set forth in the schedule annexed hereto.

OUR FEE: \$ 13,700.00

DISBURSEMENTS

Facsimile	\$	0.25	
Imaging		20.25	
Long Distance Telephone		2.00	
Photocopies		40.75	
		<hr/>	
Total Disbursements Billed			63.25
			<hr/>
Total Fees and Disbursements			13,763.25
			<hr/>
H.S.T.			1,789.22
			<hr/>
BALANCE DUE AND OWING	\$		15,552.47
			<hr/>

  
SUTTS, STROSBERG LLP  
Per: William A. Sutt

THIS ACCOUNT IS DUE WHEN RENDERED. IN ACCORDANCE WITH SECTION 33 OF THE SOLICITORS ACT, INTEREST WILL BE CHARGED AT THE RATE OF 2.000 PERCENT PER ANNUM ON UNPAID FEES, CHARGES AND DISBURSEMENTS, CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS STATEMENT IS DELIVERED

# SUTTS, STROSBERG LLP

LAWYERS

www.strosbergco.com

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Particulars of time for matter 76160002 to April 6, 2016 for Bill 40986

DATE	IND	ACTIVITY PERFORMED	HOURS	RATE
13/APR/15	WVS	REVIEW E-MAIL (ATTACHMENT) FROM STEPHEN CHERNIAK TO SERVICE LIST RE: RECEIVER'S REPORTING LETTER - 10:00 AM	0.20	500.00
13/APR/15	WVS	PREPARE E-MAIL TO STEPHEN CHERNIAK AT BDO CANADA, CC COUNSEL RE: RECEIVER'S REPORTING LETTER - 12:31 PM	0.10	500.00
13/APR/15	WVS	REVIEW E-MAIL FROM TONY VAN KLINK, CC COUNSEL RE: CLARIFICATION OF MOTIONS HELD ON FEBRUARY 23, 2015 - 12:49 PM	0.10	500.00
13/APR/15	WVS	FILE REVIEW; REVIEW OF REPORT OF RECEIVER RE VALENTE LITIGATION; LETTER TO RECEIVER AND OTHER COUNSEL CONCERNING APPEAL PROCESS AND OUR FIRM'S FUTURE ROLL	0.80	500.00
22/APR/15	WVS	REVIEW LETTER (ATTACHMENTS) FROM TONY VAN KLINK AT MILLER THOMSON LLP RE: RECEIVER'S LEAVE MOTION ON MAY 11, 2015 AND APPEAL DOCUMENTS	0.20	500.00
05/JUN/15	WVS	TELEPHONE CALL FROM GINO MORGA RECEIVING UPDATE ON STATUS OF RECEIVER'S MOTION TO STAY ACTION; NOTE TO TONY VAN KLINK REQUESTING ADVICE FROM RECEIVER ON WHETHER THE STAKE HOLDERS IN PORTOFINO ESTATE ARE AFFECTED BY TRANSFER OF INTEREST FROM BMO	0.50	500.00
11/JUN/15	WVS	PREPARE E-MAIL TO GINO MORGA RE BDO CANADA LIMITED COURT-APPOINTED RECEIVER OF PORTOFINO CORPORATION	0.10	500.00
11/JUN/15	WVS	PREPARE E-MAIL TO GINO MORGA RE ORDER TO CONTINUE	0.10	500.00
11/JUN/15	WVS	REVIEW E-MAIL FROM GINO MORGA RE ORDER TO CONTINUE	0.10	500.00
11/JUN/15	WVS	REVIEW E-MAIL FROM TONY VAN KLINK RE ORDER TO CONTINUE	0.10	500.00
12/JUN/15	WVS	REVIEW OF RECEIVER'S REPORT; NOTE TO TONY VAN KLINK; RECEIVER'S REPORT; NOTE TO TONY VAN KLINK RE SETTLEMENT AND STATUS OF VALENTE ACTION	0.40	500.00
31/JUL/15	WVS	REVIEW LETTER TO GINO MORGA FROM TONY VAN KLINK RE NOTICE OF MOTION	0.10	500.00
02/AUG/15	WVS	REVIEW OF RECORD OF MOTION ON APPEAL	0.30	500.00
04/AUG/15	WVS	TELEPHONE CALL FROM GINO MORGA, MESSAGE LEFT; TELEPHONE CALL TO GINO MORGA, MESSAGE LEFT; TELEPHONE CONVERSATION WITH GINO MORGA RE CONDUCT OF ESTATE, ALLEGED DISSIPATION OF ASSETS	0.40	500.00
13/AUG/15	WVS	REVIEW E-MAIL FROM JEFFREY NANSON RE NO LONGER COUNSEL FOR DR. CAPALDI - 1:37 PM	0.10	500.00
19/AUG/15	WVS	REVIEW E-MAIL FROM MARY SCHIRRIPIA RE APPEAL REMOVED FROM THE COURT'S LIST FOR ARGUMENT ON SEPTEMBER 15, 2015 - 12:04 PM	0.10	500.00
15/SEP/15	WVS	REVIEW E-MAIL FROM JESSICA BUGDEN RE SUPPLEMENTARY MOTION RECORD OF THE APPLICANT - 10:16 AM	0.10	500.00
21/SEP/15	WVS	REVIEW E-MAIL FROM JESSICA BUGDEN RE RREF II BHB IV PORTOFINO, LLC V. PORTOFINO CORPORATION CV-13-19866 - 3:52 PM	0.10	500.00
22/SEP/15	WVS	REVIEW E-MAIL FROM DAVID TAUB RE POSITION ON MOTION - 6:07 PM	0.10	500.00
22/SEP/15	WVS	PREPARE E-MAIL TO DAVID TAUB RE POSITION ON MOTION - 9:56 PM	0.10	500.00
22/SEP/15	WVS	PREPARE E-MAIL TO COUNSEL ET AL RE POSITION ON MOTION - 6:00 PM	0.10	500.00
25/SEP/15	WVS	REVIEW LETTER FROM SHERRY KETTLE RE MOTION RECORD RETURNABLE OCTOBER 6, 2015	0.10	500.00
05/OCT/15	WVS	REVIEW LETTER FROM PHILIP CHANDLER RE NOTICE OF CHANGE OF LAWYER	0.10	500.00
07/OCT/15	WVS	REVIEW E-MAIL FROM MAXINE FINNEGAN RE RECEIVER'S REPORT - 3:18 PM	0.10	500.00
07/JAN/16	WVS	TELEPHONE CALL TO GINO MORGA RECEIVING BRIEFING ON LETTER OF CREDIT ISSUE AND STATUS OF PROCEEDINGS; DISCUSSING PROPOSED SETTLEMENT ARRANGEMENT	0.50	500.00
07/JAN/16	WVS	TELEPHONE CALL FROM DOMINIQUE MICHAUD; TELEPHONE CALL TO DOMINIQUE MICHAUD DISCUSSION OF PENDING MOTION; NOTE TO GINO MORGA	0.50	500.00

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Particulars of time for matter 76160002 to April 6, 2016 for Bill 40986

DATE	IND	ACTIVITY PERFORMED	HOURS	RATE
07/JAN/16	WVS	REVIEW LETTER FROM GINO MORGA TO DOMINIQUE MICHAUD RE MOTION MATERIALS	0.10	500.00
07/JAN/16	WVS	REVIEW E-MAIL FROM DOMINIQUE MICHAUD RE MOTION MATERIALS - 5:11 PM	0.10	500.00
07/JAN/16	WVS	PREPARE E-MAIL TO GINO MORGA AND SUSAN FISHER RE MOTION FOR THE REPLACEMENT LETTER OF CREDIT - 5:50 PM	0.10	500.00
13/JAN/16	WVS	REVIEW E-MAIL FROM DOMINIQUE MICHAUD RE MOTION TO REPLACE THE BMO LC WITH BANK OF NOVA SCOTIA LC - 10:00 AM	0.10	500.00
13/JAN/16	WVS	REVIEW E-MAIL FROM GINO MORGA RE MOTION - 3:18 PM	0.10	500.00
13/JAN/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK RE MOTION - 5:22 PM	0.10	500.00
13/JAN/16	WVS	PREPARE E-MAIL TO DOMINIQUE MICHAUD RE MOTION MATERIALS - 2:45 PM	0.10	500.00
14/JAN/16	WVS	REVIEW OF MOTION RECORD RE LETTER OF CREDIT ISSUE; TELEPHONE CALL TO TONY VAN KLINK DISCUSSING POSITION ON LETTER OF CREDIT MOTION AND FUTURE CONDUCT OF PORTOFINO V. VALENTE ACTION; TELEPHONE CALL TO JAMES COOKE, MESSAGE LEFT RE POSITION OF DANTE CAPALDI; E-MAIL TO DOMINIQUE MICHAUD, TONY VAN KLINK AND GINO MORGA	0.90	500.00
20/JAN/16	WVS	LENGTHY TELEPHONE CONFERENCE WITH JIM COOKE RE RECENT DISCOVERIES ON BANK CLAIM UNDER GUARANTEE AGAINST CAPALDI; DISCUSSIONS ON FUTURE CONDUCT OF PROCEEDINGS; NOTE TO FILE	1.00	500.00
21/JAN/16	WVS	REVIEW E-MAIL FROM DOMINIQUE MICHAUD RE MOTION ADJOURNED TO APRIL 4TH - 6:08 PM	0.10	500.00
21/JAN/16	WVS	PREPARE E-MAIL TO DOMINIQUE MICHAUD RE LETTER TO CREDIT ISSUE - 5:42 PM	0.10	500.00
22/JAN/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK RE MOTION TO REPLACE THE BMO LC WITH AN LC FROM THE BANK OF NOVA SCOTIA - 8:17 AM	0.10	500.00
25/JAN/16	WVS	REVIEW LETTER FROM GINO MORGA	0.20	500.00
26/JAN/16	WVS	TELEPHONE CALLS FROM AND TO GINO MORGA	0.30	500.00
26/JAN/16	WVS	REVIEW E-MAILS FROM JANET FORD RE REPLY TO JANUARY 25, 2016 CORRESPONDENCE RE TRIAL LIST - 9:18 AM & 9:55 AM	0.20	500.00
26/JAN/16	WVS	REVIEW E-MAIL FROM GINO MORGA RE REQUEST FOR POTENTIAL DATES FOR TWO WEEK TRIAL - 9:37 AM	0.10	500.00
02/FEB/16	WVS	REVIEW E-MAIL FROM JIM COOKE RE REQUEST FOR MATERIALS AND OPINION LETTERS - 3:29 PM	0.10	500.00
03/FEB/16	WVS	TELEPHONE CALL TO WERNER KELLER, REQUEST OF FOLLOW UP ON PERSONAL DISCUSSIONS WITH CAPALDI; TELEPHONE CALL TO TONY VAN KLINK RE PROTOCOL FOR BILLING, REPORTING AND CONDUCT OF VALENTE CLAIM; REVIEW OF NOVEMBER 2013 REPORT TO RECEIVER AND ATTACHMENTS; NOTE TO TONY VAN KLINK AND JIM COOKE; MEMO TO FILE	1.50	500.00
03/FEB/16	WVS	PREPARE E-MAIL TO JIM COOKE RE "PRIVILEGED AND CONFIDENTIAL" REPORTS TO CLIENT - 12:30 PM	0.10	500.00
04/FEB/16	WVS	REVIEW E-MAIL FROM JIM COOKE RE REQUEST FOR MATERIALS AND OPINION LETTERS - 9:34 AM	0.10	500.00
05/FEB/16	WVS	TELEPHONE CALL FROM TONY VAN KLINK; TELEPHONE CONFERENCE WITH TONY VAN KLINK RE POSITION OF RECEIVER ON LETTER OF CREDIT PRIORITIES; PROTOCOL OF FURTHER CONDUCT OF VALENTE V. PORTOFINO CLAIM	0.70	500.00
23/FEB/16	WVS	RECEIPT AND REVIEW OF RECEIVER'S REPORT, E-MAIL TONY VAN KLINK RE PARTICULARS OF FUTURE CONDUCT OF VALENTE ACTION	0.40	500.00
24/FEB/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK ENCLOSING STAKEHOLDERS' REPORT, 8:07 AM	0.10	500.00

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Particulars of time for matter 76160002 to April 6, 2016 for Bill 40986

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DATE	IND	ACTIVITY PERFORMED	HOURS	RATE
09/MAR/16	WVS	TELEPHONE CALL FROM GINO MORGA, MESSAGE LEFT, TELEPHONE CALL TO GINO MORGA, MESSAGE LEFT, TELEPHONE CALL FROM GINO MORGA, RECEIVING ADVICE THAT SCOTT D'AMORE ATTEMPTING TO BUY MORTGAGE, GENERAL DISCUSSION ON FUTURE CONDUCT OF VALENTE ACTION, ADVISE THAT I AWAIT RECEIPT OF FIRM INSTRUCTIONS FROM RECEIVER, E-MAILS TO AND FROM TONY VAN KLINK, TELEPHONE CALL FROM TONY VAN KLINK, DISCUSSION RE DECISION OF RECEIVER TO RETAIN ME TO CONDUCT TRIAL IN THE VALENTE ACTION, ADVISE WILL PERFORM SERVICES AT \$500 PER HOUR, TELEPHONE CALL TO JIM COOKE, MESSAGE LEFT RE CAPALDI REPRESENTATION	1.20	500.00
09/MAR/16	WVS	E-MAIL TO TONY VAN KLINK RE CALL WITH GINO MORGA, 4:50 PM	0.10	500.00
10/MAR/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK, 8:43 AM	0.10	500.00
10/MAR/16	WVS	REVIEW E-MAILS FROM GINO MORGA, 3:32 PM, 4:07 PM (2X), RE DEFENCE OF PROCEEDING ON BEHALF OF PORTOFINO	0.30	500.00
10/MAR/16	WVS	REVIEW E-MAILS FROM TONY VAN KLINK RE DEFENCE OF PROCEEDINGS ON BEHALF OF PORTOFINO, 3:37 PM, 3:42 PM	0.20	500.00
10/MAR/16	WVS	E-MAIL TO TONY VAN KLINK RE RECEIVER DEALING DIRECTLY WITH DANTE CAPALDI, 8:37 AM	0.10	500.00
10/MAR/16	WVS	E-MAIL TO GINO MORGA RE VALENTE ACTION AND I AM CONTINUING TO ACT FOR ALL DEFENDANTS, 3:21 PM	0.10	500.00
10/MAR/16	WVS	REVIEW E-MAIL FROM GINO MORGA ATTACHING COURT OF APPEAL'S ENDORSEMENT, 2:46 PM	0.10	500.00
10/MAR/16	WVS	TELEPHONE CALL FROM GINO MORGA, MESSAGE LEFT, TELEPHONE CALL TO GINO MORGA, LENGTHY DISCUSSION RE STATUS OF PROCEEDINGS, TELEPHONE CONFERENCE WITH TONY VAN KLINK, FOLLOW UP TELEPHONE CALL TO GINO MORGA, TELEPHONE CALL (2X) TO JIM COOKE, MESSAGES LEFT	1.20	500.00
11/MAR/16	WVS	TELEPHONE CALL FROM MORGA, DISCUSSION RE TRIAL SCHEDULING, MATTERS TO BE DONE	0.40	500.00
11/MAR/16	WVS	FURTHER CALL FROM MORGA, ADVICE RE PLACEMENT OF PORTOFINO VALENTE FILE ON TRIAL LIST	0.10	500.00
11/MAR/16	WVS	REPORT TO RECEIVER AND CLIENT GROUP	0.20	500.00
17/MAR/16	WVS	FILE REVIEW, PREPARATION FOR TRIAL, OUTLINE OF DRAFT REPORT TO JIM COOKE, TELEPHONE CALLS TO AND FROM JIM COOKE	2.00	500.00
22/MAR/16	WVS	OUTLINE OF REPORT TO RECEIVER, TELEPHONE CALL TO JAMES COOKE, MESSAGE LEFT, TELEPHONE CALL TO JAMES COOKE RE REPRESENTATION OF DANTE CAPALDI, PRELIMINARY REVIEW OF RECORD FOR BREACH OF CONTRACT PROCEEDINGS, OUTLINE OF OPENING ARGUMENT	1.50	500.00
23/MAR/16	WVS	FILE REVIEW, PREPARATION OF REPORT ON STATUS OF MATTER	1.50	500.00
29/MAR/16	WVS	REVIEW E-MAIL FROM JESSICA BUGDEN, 5:32 PM, ENCLOSING CONFIRMATION FAXED TO THE COURT OFFICE	0.10	500.00
04/APR/16	WVS	REVIEW OF FACTS AND MATERIALS FILED ON MOTION RE SECURITY IN VALENTE ACTION, TO ATTENDANCE ON MOTION BEFORE JUSTICE PATTERSON, TO RESPONDING TO JUSTICE PATTERSON'S REQUEST FOR CLARIFICATION OF PORTOFINO RECEIVER AND OTHER DEFENDANTS, TO OUTLINE OF POSITION, TO RE-ATTENDANCE BEFORE JUSTICE PATTERSON, TO PREPARATION OF CONSENT AND REPORT TO VAN KLINK AND COOKE	5.00	500.00
05/APR/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK, 4:49 PM, RECEIVER APPROVES OFFER	0.10	500.00
05/APR/16	WVS	REPORT TO TONY VAN KLINK, REPORT TO JIM COOKE, RECEIPT OF INSTRUCTIONS FROM VAN KLINK, TELEPHONE CALL TO JIM COOKE, MESSAGE LEFT	0.50	500.00
06/APR/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK, 12:37 PM, RE REPORTING AND ACCOUNT	0.10	500.00

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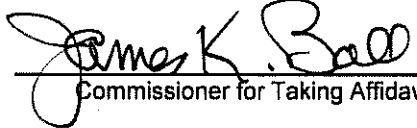
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Particulars of time for matter 76160002 to April 6, 2016 for Bill 40986

DATE	IND	ACTIVITY PERFORMED	HOURS	RATE
06/APR/16	WVS	REVIEW E-MAIL FROM JIM COOKE, 3:02 PM, RE CLIENT CONSENTS TO TERMS OF THE PROPOSED LOC ORDER	0.20	500.00
06/APR/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK, 12:33 PM, RE ACCOUNT AND REPORTING	0.10	500.00

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THE ATTACHED IS EXHIBIT B TO THE  
AFFIDAVIT OF WILLIAM V. SASSO  
SWORN BEFORE ME THIS 13<sup>TH</sup> DAY  
OF JULY, 2016



Commissioner for Taking Affidavits



**SUTTS, STROSBURG** LLP  
LAWYERS  
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118  
600-251 Goyeau Street  
Windsor, ON N9A 6V4  
519.258.9333

Stephen N. Cherniak  
BDO Canada Limited, Court Appointed Receiver  
of Portofino Corporation  
BDO Canada Limited  
252 Pall Mall Street, Suite 103  
London, ON  
N9A 5P6

July 4, 2016

Our File No.: 76160002  
Bill No.: 41510  
H.S.T. Reg. #: 12276 8955 RT0001

PLEASE RETURN ONE COPY OF OUR ACCOUNT WITH YOUR PAYMENT

Portofino Riverside Tower Inc. et al ats Remo Valente Real Estate (1990) Limited

TO FEES FOR ALL PROFESSIONAL SERVICES RENDERED and costs incurred in connection with the above file and matter, including those items, the particulars of which are set forth in the schedule annexed hereto.

OUR FEE: \$ 18,678.00

DISBURSEMENTS

Agency Fees	\$ 45.00
Courier Service	15.51
Facsimile	10.75
Imaging	127.75
Local Registrar	127.00
Long Distance Telephone	1.85
Photocopies	236.25
Postage	1.71

Total Disbursements Billed 565.82

Total Fees and Disbursements 19,243.82

H.S.T. 2,501.70

BALANCE DUE AND OWING \$ 21,745.52

SUTTS, STROSBURG LLP

Per \_\_\_\_\_  
William V. Sasso

E & O E THIS ACCOUNT IS DUE WHEN RENDERED. IN ACCORDANCE WITH SECTION 33 OF THE SOLICITORS ACT. INTEREST WILL BE CHARGED AT THE RATE OF 2.0000 PER CENT PER ANNUM ON UNPAID FEES, CHARGES AND DISBURSEMENTS, CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS STATEMENT IS DELIVERED.

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Particulars of time for matter 76160002 to June 30, 2016 for Bill 41510

DATE	IND	ACTIVITY PERFORMED	HOURS	RATE
07/APR/16	WVS	E-MAILS TO AND FROM JIM COOKE, SETTING OUT PROPOSALS AND AGREEMENT WITH SAME	0.50	500.00
07/APR/16	WVS	TELEPHONE CALL TO COOKE RE RESPONSE TO REQUEST FOR INSTRUCTIONS RE OFFER TO SETTLE AND APPROVAL OF REPLACEMENT LETTER OF CREDIT	0.20	500.00
07/APR/16	WVS	TELEPHONE CALLS TO CAPALDI - MESSAGE LEFT; EMAIL TO VAN KLINK AND COOKE; PREPARATION OF REPORT TO RECEIVER; LETTER TO MORGA RE OFFER TO SETTLE; LETTER TO MORGA AND MICHAUD RE CONSENT TO REPLACEMENT LETTER OF CREDIT	0.40	500.00
09/APR/16	WVS	FINALIZING OFFER TO SETTLE; LETTER TO MORGA DELIVERING OFFER TO SETTLE; LETTER TO MICHAUD/MORGA DELIVERING CONSENT TO REPLACEMENT INSURANCE; TELEPHONE CALL FROM MORGA (519) 819-1001 RE PROPOSAL OF FURTHER MEDIATION OR PRE-TRIAL TO DISCUSS SETTLEMENT OFFER; REPORT TO RECEIVER	0.30	500.00
11/APR/16	WVS	REVIEW LETTER FROM DOMINIQUE MICHAUD, 9:50 AM, ENCLOSING DRAFT LETTER OF CREDIT FROM SCOTIA BANK	0.10	500.00
11/APR/16	WVS	NOTES TO AND FROM STEPHEN CHERNIAK RE REPORTING AND ACCOUNT PROTOCOL	0.20	500.00
11/APR/16	WVS	REVIEW E-MAIL FROM DOMINIQUE MICHAUD, 9:50 AM, RE LETTER OF CREDIT	0.10	500.00
12/APR/16	WVS	NOTES TO AND FROM GINO MORGA, DOMINIQUE MICHAUD RE FORM OF ORDER RE REPLACEMENT LETTER OF CREDIT AND CONSENT	0.30	500.00
12/APR/16	WVS	REVIEW E-MAIL FROM DOMINIQUE MICHAUD, 3:20 PM, RE LETTER OF CREDIT	0.10	500.00
12/APR/16	WVS	REVIEW E-MAIL FROM GINO MORGA, 3:46 PM, RE CONSENT/DIRECTION TO BE SIGNED BY CLIENTS	0.10	500.00
13/APR/16	WVS	LETTER TO MICHAUD AND MORGA COMMENTING ON FORM OF LETTER OF CREDIT, FORM OF ORDER OF PATTERSON J., FORM OF CONSENT, REPORT TO RECEIVER	0.60	500.00
13/APR/16	WVS	NOTES TO AND FROM TONY VAN KLINK RE TRIAL SCHEDULING	0.20	500.00
13/APR/16	WVS	REVIEW E-MAIL FROM DOMINIQUE MICHAUD, 10:51 AM, ENCLOSING DRAFT ORDER	0.10	500.00
13/APR/16	WVS	REVIEW E-MAIL FROM DOMINIQUE MICHAUD, 11:57 AM, LETTER OF CREDIT LANGUAGE	0.10	500.00
14/APR/16	WVS	PREPARE E-MAIL TO DOMINIQUE MICHAUD, 10:02 AM, CONTENT WITH FORM ORDER AND LETTER OF CREDIT	0.10	500.00
19/APR/16	WVS	LETTER FROM AND TO COURT RE POSITION OF DEFENDANTS ON MOTION BEFORE JUSTICE PATTERSON, LETTER TO DAWN CARON, COPY TO OTHER COUNSEL	0.20	500.00
19/APR/16	WVS	REVIEW E-MAIL FROM GINO MORGA, 3:24 PM, RE JUSTICE PATTERSON'S ENDORSEMENT BEFORE APPROVE ORDER	0.10	500.00
19/APR/16	WVS	E-MAIL FROM DOMINIQUE MICHAUD, 7:18 PM, RE CONFERENCE CALL WITH JUDGE AS NO ENDORSEMENT	0.10	500.00
20/APR/16	WVS	NOTES FROM AND TO TONY VAN KLINK RE SCHEDULING OF TRIAL	0.20	500.00
20/APR/16	WVS	E-MAIL TO TONY VAN KLINK, 10:30 AM, RE TRIAL DATE	0.10	500.00
21/APR/16	WVS	E-MAIL FROM TONY VAN KLINK, 12:42 PM, RE MOTION	0.10	500.00
22/APR/16	WVS	E-MAIL FROM DOMINIQUE MICHAUD, 4:10 PM, ENCLOSING ENDORSEMENT	0.10	500.00
26/APR/16	WVS	E-MAIL FROM DOMINIQUE MICHAUD, 3:22 PM, RE DRAFT ORDER	0.10	500.00
11/MAY/16	KP	PREPARE MEMO TO BEDARD COURT SERVICES ARRANGE FOR SERVICE OF MOTION RECORD ON GINO MORGA, LAWYER FOR PLAINTIFF; PREPARE AFFIDAVIT OF SERVICE AND ARRANGE FOR FILING AT COURT WITH COURT FEE \$127 [[RULE 60.12 MOTION]	0.20	215.00
11/MAY/16	WVS	E-MAIL FROM DOMINIQUE MICHAUD, 4:15 P.M., RE CALL WITH JUSTICE PATTERSON ON MAY 24TH TO SETTLE FORM OF ORDER	0.10	500.00

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Particulars of time for matter 76160002 to June 30, 2016 for Bill 41510

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DATE	IND	ACTIVITY PERFORMED	HOURS	RATE
11/MAY/16	WVS	REVIEW LETTER FROM TONY VAN KLINK ENCLOSING MOTION RECORD OF RECEIVER RETURNABLE MAY 24, 2016 [RULE 60.12 MOTION]	0.10	500.00
13/MAY/16	WVS	TELEPHONE CALL FROM/TELEPHONE CALL TO GINO MORGA RE PAYMENT OF COSTS FOR LETTER OF CREDIT, REVIEW OF RECORD, TELEPHONE CALL TO TONY VAN KLINK, MESSAGE LEFT	0.80	500.00
14/MAY/16	WVS	PRELIMINARY FILE REVIEW, OUTLINE OF MATTERS TO BE ADDRESSED ON MOTION BY RECEIVER IN THE CONDUCT OF TRIAL	1.50	500.00
17/MAY/16	WVS	E-MAIL FROM JULIE LOS, 4:13 P.M., ENCLOSING ORDER OF JUSTICE DESOTTI DATED MAY 17, 2016	0.10	500.00
18/MAY/16	CJA	REVIEW FILE, RECEIVER'S MOTION	0.50	350.00
18/MAY/16	CJA	TELEPHONE CONFERENCE WITH TONY VAN KLINK	0.30	350.00
18/MAY/16	CJA	TELEPHONE CONFERENCE WITH GINO MORGA	0.30	350.00
18/MAY/16	CJA	DRAFT REPORTING MEMO TO WVS	0.20	350.00
19/MAY/16	WVS	REVIEW OF MOTION RECORD, CONFERENCE WITH CRAIG ALLEN, ATTENDANCE AT OFFICES OF GINO MORGA, TELEPHONE CALL TO DANTE CAPALDI, ARRANGING FOR PARTIAL PAYMENT OF LETTER OF CREDIT COST	1.00	500.00
20/MAY/16	WVS	TELEPHONE CALL TO GINO MORGA, TELEPHONE CALL TO DANTE CAPALDI, LETTER FROM MORGA RE PAYMENT OF CARRYING COSTS OF LETTER OF CREDIT	0.30	500.00
24/MAY/16	WVS	PREPARE LETTER TO (COURIER) TONY VAN KLINK ENCLOSING CHEQUES RE LETTER OF CREDIT FEES FROM VALENTE (CC STEPHEN CHERNIAK)	0.20	500.00
24/MAY/16	WVS	TELEPHONE CONFERENCE WITH JUSTICE PATTERSON, GINO MORGA, DOM MICHAUD RE FORM OF CONSENT WITH LETTER OF CREDIT AND ORDER IN APPROVED FORM TO BE ATTACHED	0.30	500.00
25/MAY/16	CJA	REVIEW FILE, E-MAILS AND CORRESPONDENCE FROM TONY VAN KLINK CONFIRMING RECEIPT OF INITIAL FUNDS	0.50	350.00
01/JUN/16	CJA	REVIEW FILE, NEEDED RESPONSE FROM MORGA, INSTRUCTIONS TO RE POSSIBLE FACTUM	0.50	350.00
01/JUN/16	WVS	REVIEW LETTER FROM GINO MORGA	0.10	500.00
02/JUN/16	WVS	REVIEW LETTER FROM DOMINIQUE MICHAUD - ROBINS APPLEBY LLP	0.10	500.00
02/JUN/16	WVS	E-MAIL TO DOMINIQUE MICHAUD, 4:04 P.M., ENCLOSING DRAFT CONSENT FOR REVIEW	0.10	500.00
06/JUN/16	CJA	REVIEW FILE, TELEPHONE CALL/E-MAIL WITH VAN KLINK, MESSAGE FOR MORGA RE COSTS OF MOTION	0.50	350.00
08/JUN/16	CJA	REVIEW FILE, TELEPHONE CONVERSATION WITH GINO, AGREEMENT TO ISSUE OF COSTS AND ALL OTHER ISSUES ON MOTION, RESERVE TO TRIAL JUDGE, DRAFT CONSENT ORDER FOR CIRCULATION	0.50	350.00
09/JUN/16	CJA	REVIEW E-MAIL FROM (10:21 A.M.) TONY VAN KLINK - RECEIVER AGREES TO LEAVE BALANCE OF ISSUES (COST OF LETTER OF CREDIT AND COSTS) TO TRIAL JUDGE	0.10	350.00
09/JUN/16	CJA	REVIEW MOTION RECORD FROM MORGA RE LEAVE TO APPEAL PATTERSON DECISION OF MAY 27, 2016 ALONG WITH FACTUM	0.70	350.00
09/JUN/16	CJA	REDRAFT ORDER, CIRCULATE FOR APPROVAL	0.50	350.00
09/JUN/16	WVS	RECEIPT OF CONFIRMATION OF MOTION FROM GINO MORGA	0.10	500.00
09/JUN/16	WVS	REVIEW LETTER FROM DOMINIQUE MICHAUD - ROBINS APPLEBY	0.10	500.00
09/JUN/16	WVS	REVIEW LETTER FROM GINO MORGA	0.10	500.00
10/JUN/16	CJA	REVIEW (12:17 P.M.) E-MAIL FROM TONY VAN KLINK ATTACHING REVISED ORDER FOR MOTION RETURNABLE JUNE 13, 2016 (COSTS OF LETTER OF CREDIT)	0.10	350.00
10/JUN/16	CJA	REVIEW PROPOSED CHANGES TO ORDER BY VAN KLINK, INSTRUCTIONS TO MAKE CHANGES, CONFIRM MORGA CONSENT	0.50	350.00
10/JUN/16	WVS	REVIEW FAX FROM GINO MORGA	0.10	500.00
12/JUN/16	WVS	PREPARE E-MAIL TO JIM COOKE, 2:19 P.M.	0.10	500.00

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LAWYERS

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Particulars of time for matter 76160002 to June 30, 2016 for Bill 41510

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DATE	IND	ACTIVITY PERFORMED	HOURS	RATE
13/JUN/16	CJA	CORRESPONDENCE WITH VAN KLINK RE RECEIVER NOT PARTICIPATING IN THE STAY OR LEAVE MOTIONS, TO ADVISE MORGA AND OTHER COUNSEL OF SAME	0.50	350.00
13/JUN/16	CJA	PREPARE FOR AND ATTEND COURT, JUSTICE HEBNER, OBTAIN CONSENT ORDER, INSTRUCTIONS TO ISSUE AND CIRCULATE	1.00	350.00
13/JUN/16	WVS	REVIEW E-MAIL FROM JIM COOKE, 8:10 A.M.	0.10	500.00
15/JUN/16	CJA	REVIEW FILE, E-MAILS, ATTACHED MORGA LETTER AND WVS REQUEST FOR TRIAL ADJOURNMENT AND OBTAINING A "FIXED DATE"	0.50	350.00
15/JUN/16	CJA	REVIEW FILE, TELEPHONE CONFERENCES WITH MORGA AND JANET AT COURTHOUSE, NO CONSENT RE ADJOURNMENT AND FIXED TRIAL DATE, REQUIRED MOTION TO BE BROUGHT	0.50	350.00
15/JUN/16	CJA	REVIEW ALL ISSUES RELATING TO WVS REQUEST TO ADJOURN, DICTATE MEMO TO KP RE CURRENT STATUS OF LIST AND PROPOSAL RE ADJOURNMENT	0.70	350.00
17/JUN/16	CJA	REVIEW DRAFT NOTICE OF MOTION FOR ADJOURNING TRIAL	0.50	350.00
17/JUN/16	CJA	REVIEW JUSTICE THOMAS DECISION ON STAY MOTION	0.70	350.00
17/JUN/16	CJA	RE TRIAL ADJOURNMENT - ATTENDANCE BEFORE TRIAL CO-ORDINATION, REPORT RE COURT DIRECTED APPROACH TO ADJOURNMENT	0.50	350.00
20/JUN/16	WVS	REVIEW E-MAIL FROM GINO MORGA, 5:27 P.M.	0.10	500.00
20/JUN/16	WVS	REVIEW E-MAIL FROM LANA CARILLO, MINISTRY OF THE ATTORNEY GENERAL, 4:01 P.M.	0.10	500.00
21/JUN/16	WVS	CONFERENCE WITH DANTE CAPALDI, TRIAL PREPARATION, REVIEW OF TRANSCRIPTS AND EVIDENCE AT TRIAL, PREPARATION OF WRITTEN OPENING SUBMISSIONS	4.50	500.00
21/JUN/16	WVS	REVIEW E-MAIL FROM JANET FORD, MINISTRY OF THE ATTORNEY GENERAL, 10:33 A.M.	0.10	500.00
21/JUN/16	WVS	REVIEW E-MAIL FROM SUSAN FISHER, MORGA'S OFFICE, 9:09 A.M.	0.10	500.00
22/JUN/16	WVS	PREPARATION FOR AND ATTENDANCE BEFORE LOCAL ADMINISTRATIVE JUDGE POMERANCE RE FIXING OF TRIAL DATE AND PRE-TRIAL IN PORTOFINO/VALENTE MATTER, FOLLOW UP DISCUSSIONS WITH GINO MORGA, TELEPHONE CALL TO JERRY GOLDBERG, NOTE TO GOLDBERG RE FOLLOW UP ON FINAL SALE PARTICULARS DURING TERM OF LISTING AGREEMENT, TELEPHONE CALL TO TONY VAN KLINK REPORTING ON DEVELOPMENTS, NOTE TO VAN KLINK AND CAPALDI, OUTLINE OF PRE-TRIAL MEMORANDUM	2.50	500.00
22/JUN/16	WVS	TELEPHONE CONFERENCE RON DENEAU, GENERAL DISCUSSION RE SERVICES RENDERED AS PEDLER AGENT IN SALE OF PROPERTIES	0.30	500.00
27/JUN/16	WVS	RECEIPT AND REVIEW OF PLAINTIFF'S PRE-TRIAL MEMORANDUM, PREPARATION OF SUPPLEMENTARY PRE-TRIAL MEMORANDUM	2.00	500.00
28/JUN/16	WVS	REVIEW OF AUTHORITIES, PREPARATION OF OPENING SUBMISSIONS, PRE-TRIAL BRIEF, PREPARATION FOR PRE-TRIAL CONFERENCE	4.50	500.00
29/JUN/16	WVS	OUTLINE OF COMMENTS FOR PRE-TRIAL, TELEPHONE CALL TO TONY VAN KLINK, TELEPHONE CALL TO JERRY GOLDBERG RE MEETING WITH CAPALDI, UPDATING RECORDS ON ADDITIONAL CLOSURES, HOLDBACKS AND RECONSTRUCTING FILE, TELEPHONE CALL TO DANTE CAPALDI RE ISSUES ON UPGRADES AND EXTRAS	0.70	500.00
29/JUN/16	WVS	TELEPHONE CALL FROM TONY VAN KLINK RE PRE-TRIAL AND MATTERS TO BE DONE, TELEPHONE CALL RE RECORDS OF MILLER CANFIELD (SLOPEN)	0.60	500.00
29/JUN/16	WVS	MEETING WITH DANTE CAPALDI, ATTENDANCE AT PRE-TRIAL CONFERENCE BEFORE JUSTICE KING, PREPARATION OF REPORT	3.00	500.00
30/JUN/16	WVS	FILE REVIEW, PREPARATION OF REPORT TO RECEIVER, FOLLOW UP ON PRE-TRIAL CONFERENCE	2.00	500.00

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THE ATTACHED IS EXHIBIT C TO THE  
AFFIDAVIT OF WILLIAM V. SASSO  
SWORN BEFORE ME THIS 13<sup>TH</sup> DAY  
OF JULY, 2016

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

# SUTTS, STROSBERG

LAWYERS

www.strosbergco.com

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Summary of work for matter 76160002 to April 6, 2016 for Bill 40986 by Individual within Category

TIME	INDIVIDUAL	HOURS	AVG. RATE	AMOUNT
<b>Category 1</b>				
WVS	William V. Sasso	27.40	500.00	13,700.00
Subtotal for category 1		27.40		13,700.00
Total for all individuals		27.40	500.00	13,700.00

# SUTTS, STROSBERG LLP

L A W Y E R S

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Summary of work for matter 76160002 to June 30, 2016 for Bill 41510 by Individual within Category

INIT	INDIVIDUAL	HOURS	AVG RATE	AMOUNT
<b>Category 1</b>				
CJA	Craig J. Allen	10.10	350.00	3,535.00
WVS	William V. Sasso	30.20	500.00	15,100.00
Subtotal for category 1		40.30		18,635.00
<b>Category 20</b>				
KP	Karen Peterson	0.20	215.00	43.00
Subtotal for category 20		0.20		43.00
Total for all individuals		40.50	461.19	18,678.00

RREF II BHB IV  
PORTOFINO, LLC

and

PORTOFINO CORPORATION

Applicant

Respondent

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**AFFIDAVIT OF WILLIAM V. SASSO**

**SUTTS STROSBERG LLP**

Lawyers  
600-251 Goyeau Street  
Windsor, ON Canada N9A 6V4

**William V. Sasso**

LSUC#: 121341  
Tel: 519.561.6222  
Fax: 519.561.6203  
Email: [wvs@strosbergco.com](mailto:wvs@strosbergco.com)

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

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# **APPENDIX “G”**

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.

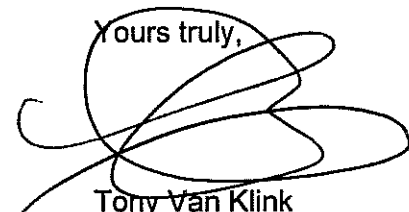
OPINIONS

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  
T



RREF II BHB IV PORTOFINO, LLC.

Applicant

PORTOFINO CORPORATION

and

Respondent

Court File No.: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD  
(RETURNABLE JULY 26, 2016)**

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

**Tony Van Klink LSUC#: 29008M**  
Tel: 519.931.3509  
Fax: 519.858.8511

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