

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.  
JUSTICE CAMPBELL

)  
)  
)

FRIDAY, THE 2ND  
DAY OF MAY, 2014

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

**ORDER**  
**(Sale Agreement 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) approving the Third Report to the Court dated April 21, 2014 and all appendices thereto (the "**Third Report**"), the Confidential Supplement to the Third Report and all appendices thereto (the "**Confidential Supplement**") and the activities and conduct of the Receiver described therein;
- (b) approving the form of Agreement of Purchase and Sale, substantially in the form attached to this Order as Schedule "A" (the "**Form of Unsold Unit Sale Agreement**"), together with any amendments thereto deemed necessary and appropriate by the Receiver to be used by the Receiver on all future sales of the

unsold units (the “**Unsold Units**”) more particularly described on Schedule “A” to the Omnibus Approval and Vesting Order;

- (c) approving the Receiver’s interim Statement of Receipts and Disbursements for the period October 29, 2013 to April 16, 2014 (the “**Statement of Receipts and Disbursements**”);
- (d) approving the professional fees and disbursements of BDO as Receiver (“**BDO Fees**”);
- (e) approving the professional fees and disbursements of Miller Thomson LLP, counsel to the Receiver (“**MT Fees**”);
- (f) such further and other relief as counsel may advise and this Honourable Court may deem just;

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

ON READING the Third Report and 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 activities and conduct of the Receiver as set out in the Third Report and the Confidential Supplement are hereby approved.
2. THIS COURT ORDERS that the Form of Unsold Unit Sale Agreement with respect to the sale of the Unsold Units, substantially in the form attached to this Order as Schedule “A” together with any amendments thereto deemed necessary and appropriate by the Receiver, is hereby approved.
3. THIS COURT ORDERS that the Statement of Receipts and Disbursements is hereby approved.
4. THIS COURT ORDERS that the BDO Fees for the period commencing October 29, 2013 through April 9, 2014 as described in the Third Report and the Affidavit of Stephen N. Cherniak sworn April 17, 2014 and the MT Fees for the period November 16, 2013 through

March 31, 2014 as described in the Third Report and the Affidavit of Sherry A. Kettle sworn April 14, 2014, as appended to the Third Report, are hereby approved.



Justice, Superior Court of Justice

ENTERED AT WINDSOR	
In Book No.	25
rs Document No.	571
on	May 2 20 14
by	DF

**SCHEDULE "A"**



Agreement of Purchase and Sale  
Condominium Resale

Form 101  
for use in the Province of Ontario

This Agreement of Purchase and Sale dated this..... day of ..... 20.....

BUYER,....., agrees to purchase from  
(Full legal names of all Buyers)

SELLER,....., the following  
(Full legal names of all Sellers)

PROPERTY:

a unit in the condominium property known as ..... No.....  
(Apartment/Townhouse/Suite/Unit)

located at .....

in the .....

being ..... Condominium Plan No .....  
(Legal Name of Condominium Corporation)

Unit Number ..... Level No. .... Building No. .... together with ownership  
or exclusive use of Parking Space(s) ..... together with ownership or exclusive use of  
(Number(s), Level(s))

Locker(s) ..... together with Seller's proportionate undivided tenancy-in-common interest  
(Number(s), Level(s))  
in the common elements appurtenant to the Unit as described in the Declaration and Description including the exclusive right  
to use such other parts of the common elements appurtenant to the Unit as may be specified in the Declaration and  
Description: the Unit, the proportionate interest in the common elements appurtenant thereto, and the exclusive use portions  
of the common elements, being herein called the "Property".

PURCHASE PRICE: ..... Dollars (CDN\$).....  
..... Dollars

DEPOSIT: Buyer submits .....  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)  
..... Dollars (CDN\$).....

by negotiable cheque payable to..... "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.  
For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the  
Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that,  
unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's  
non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A..... attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by ..... until ..... a.m./p.m. on  
(Seller/Buyer)  
the ..... day of ..... 20....., after which time, if not accepted, this  
offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the ..... day  
of ..... 20..... . Upon completion, vacant possession of the Property shall be given to the  
Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: ..... (For delivery of Documents to Seller)      FAX No.: ..... (For delivery of Documents to Buyer)  
 Email Address: ..... (For delivery of Documents to Seller)      Email Address: ..... (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **COMMON EXPENSES:** Seller warrants to Buyer that the common expenses presently payable to the Condominium Corporation in respect of the Property are approximately \$.....per month, which amount includes the following:.....

8. **PARKING AND LOCKERS:** Parking and Lockers are as described above or assigned as follows:..... at an additional cost of:.....

9. **HST:** If the sale of the Property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be ..... the Purchase Price. If the sale of the Property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the Property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

**INITIALS OF BUYER(S):**  

**INITIALS OF SELLER(S):**

10. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of....., 20....., (Requisition Date) to examine the title to the Property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding work orders or deficiency notices

affecting the Property, and that its present use (.....) may be lawfully continued. If within that time any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the Property. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the Property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

11. **TITLE:** Buyer agrees to accept title to the Property subject to all rights and easements registered against title for the supply and installation of telephone services, electricity, gas, sewers, water, television cable facilities and other related services; provided that title to the Property is otherwise good and free from all encumbrances except: (a) as herein expressly provided; (b) any registered restrictions, conditions or covenants that run with the land provided such have been complied with; (c) the provisions of the Condominium Act and its Regulations and the terms, conditions and provisions of the Declaration, Description and By-laws, Occupancy Standards By-laws, including the Common Element Rules and other Rules and Regulations; and (d) any existing municipal agreements, zoning by-laws and/or regulations and utilities or service contracts.

12. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

13. **STATUS CERTIFICATE AND MANAGEMENT OF CONDOMINIUM:** Seller represents and warrants to Buyer that there are no special assessments contemplated by the Condominium Corporation, and there are no legal actions pending by or against or contemplated by the Condominium Corporation. The Seller consents to a request by the Buyer or the Buyer's authorized representative for a Status Certificate from the Condominium Corporation. Buyer acknowledges that the Condominium Corporation may have entered into a Management Agreement for the management of the condominium property.

14. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the Property except such as are in the possession or control of Seller. Seller agrees to deliver to Buyer, if it is possible without incurring any costs in so doing, copies of all current condominium documentation of the Condominium Corporation, including the Declaration, Description, By-laws, Common Element Rules and Regulations and the most recent financial statements of the Condominium Corporation. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

15. **MEETINGS:** Seller represents and warrants to Buyer that at the time of the acceptance of this Offer the Seller has not received a notice convening a special or general meeting of the Condominium Corporation respecting; (a) the termination of the government of the condominium property; (b) any substantial alteration in or substantial addition to the common elements or the renovation thereof; OR (c) any substantial change in the assets or liabilities of the Condominium Corporation; and Seller covenants that if Seller receives any such notice prior to the date of completion Seller shall forthwith notify Buyer in writing and Buyer may thereupon at Buyer's option declare this Agreement to be null and void and all monies paid by Buyer shall be refunded without interest or deduction.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



16. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the Property.**
17. **APPROVAL OF THE AGREEMENT:** In the event that consent to this sale is required to be given by the Condominium Corporation or the Board of Directors, the Seller will apply forthwith for the requisite consent, and if such consent is refused, then this Agreement shall be null and void and the deposit monies paid hereunder shall be refunded without interest or other penalty to the Buyer.
18. **INSURANCE:** The Unit and all other things being purchased shall be and remain at the risk of the Seller until completion. In the event of substantial damage to the Property Buyer may at Buyer's option either permit the proceeds of insurance to be used for repair of such damage in accordance with the provisions of the Insurance Trust Agreement, or terminate this Agreement and all deposit monies paid by Buyer hereunder shall be refunded without interest or deduction. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
19. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer.
20. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
21. **ADJUSTMENTS:** Common Expenses; realty taxes, including local improvement rates; mortgage interest; rentals; unmetered public or private utilities and fuel where billed to the Unit and not the Condominium Corporation; are to be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Buyer. There shall be no adjustment for the Seller's share of any assets or liabilities of the Condominium Corporation including any reserve or contingency fund to which Seller may have contributed prior to the date of completion.
22. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the Property, save and except any property taxes that accrued prior to the completion of this transaction.
23. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
24. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
25. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
26. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the Property, Seller has not caused any building on the Property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the Property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
27. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
28. **CONSUMER REPORTS:** **The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**
29. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
30. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the Property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):





**31. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

..... (Witness) ..... (Buyer) ..... (Seal) DATE.....  
 ..... (Witness) ..... (Buyer) ..... (Seal) DATE.....

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

..... (Witness) ..... (Seller) ..... (Seal) DATE.....  
 ..... (Witness) ..... (Seller) ..... (Seal) DATE.....

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

..... (Witness) ..... (Spouse) ..... (Seal) DATE.....

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at..... a.m./p.m. this.....day of....., 20.....  
 ..... (Signature of Seller or Buyer)

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage..... Tel.No. ....  
 Co-op/Buyer Brokerage..... Tel.No. ....

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... (Seller) ..... DATE.....  
 ..... (Seller) ..... DATE.....  
 Address for Service..... Tel.No. ....  
 Seller's Lawyer.....  
 Address.....  
 Email.....  
 ..... Tel.No. .... FAX No. ....

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... (Buyer) ..... DATE.....  
 ..... (Buyer) ..... DATE.....  
 Address for Service..... Tel.No. ....  
 Buyer's Lawyer.....  
 Address.....  
 Email.....  
 ..... Tel.No. .... FAX No. ....

Property Manager:..... (Name) ..... (Address) ..... (Tel.No., FAX No.)

**FOR OFFICE USE ONLY**

**COMMISSION TRUST AGREEMENT**

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:  
 In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by:  
 ..... (Authorized to bind the Listing Brokerage) ..... (Authorized to bind the Co-operating Brokerage)

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER**,....., and

**SELLER**,.....

for the purchase and sale of .....

..... dated the ..... day of ....., 20.....

Buyer agrees to pay the balance as follows:

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):**

**INITIALS OF SELLER(S):**



SCHEDULE "B"  
ESSEX STANDARD CONDOMINIUM PLAN NO. 122

CONDOMINIUM RULES

BYLAW #3 as amended are the following rules respecting the use of the common elements and units to promote the safety, security or welfare of the owners and residents, and to prevent unreasonable interference with the use and enjoyment of the common elements and of other units.

The following rules and regulations shall be observed by the owners and any other person occupying a unit with the owner's approval, and all guests and invitees of any one of them, whose acts and omissions in relation to the observance of these rules the owner shall be responsible for:

1. No one shall do or permit anything to be done in a unit or bring or keep anything therein which will in any way increase the risk of fire or the rate of fire insurance on any building or property kept therein, or obstruct or interfere with the rights of the other owners, or in any way injure or annoy them, or conflict with the laws relating to fire or with the regulations of the Fire Department or with any insurance policy carried by the Corporation or any owner or conflict with any of the rules and ordinances of the Board of Health or with any statute or municipal by-law.
2. Nothing shall be placed on the outside sills or projections. No awning or shade shall be erected over or outside the windows or balconies without the prior written consent of the board of directors (hereinafter referred to as the "Board").
3. Water shall not be left running unless in actual use in any unit. Bathroom fixture and other plumbing apparatus, including drains, shall not be used for any purpose other than those for which they are constructed and no sweepings, garbage, rubbish, rags, ashes or other substances shall be thrown therein.
4. No one shall place, leave or permit to be placed, or left in, or upon the common elements including those of which there is exclusive use, any debris, refuse or garbage, except in the designated garbage chute or in any area designated by the Corporation as a central garbage depository. Such debris, refuse or garbage shall be contained in properly tied plastic bags not exceeding twenty-five (25 lbs) pounds per bag in weight, and not exceeding the dimensions of the garbage chute. Where such debris, refuse or garbage consists of packing cartons or crates, arrangements shall be made with the manager for the means of disposal thereof, and in no event shall such packing cartons or crates be left outside the unit.
5. No one shall create or permit the creation of or continuation of any noise or nuisance which, in the opinion of Board or the manager, may or does disturb the comfort or quiet enjoyment of the property by other owners, their tenants, licensees, families, guests, visitors, invitees, servants and persons having business with them.
6. Nothing shall be thrown out of the windows or doors of the building.
7. No one shall overload existing electrical circuits.
8. No auction sale shall be held on the property.
9. No stores of coal, or any combustible, inflammable or offensive goods, provisions or materials shall be kept in any unit except for use in any fireplace forming part of the unit.
10. The sidewalks, entryways, passageways, walkways and driveways used in common by shall not be obstructed by any one or used for any purpose other than for ingress and egress to and from units.
11. No mops, brooms, dusts, rugs or bedding shall be shaken or beaten from any window, door or those parts of the common elements over which there is exclusive use. No hanging or drying of clothes is allowed on any part of the common elements including those parts of the common elements over which there is exclusive use. Only seasonal furniture is allowed on balconies and the balconies shall not be used for storage.
12. No motor vehicle of any kind shall be driven on any part of the common elements other than on a driveway, parking space or loading space.
13. No television antenna, aerial, satellite dish, tower or similar structure and appurtenances thereto shall be erected on or fastened to any unit or to any portion of the common elements, except by the Corporation in connection with a common television cable system.
14. No one shall harm, mutilate, destroy, alter or litter any of the landscaping work on the property, including grass, trees, shrubs, hedges, flowers or flower beds.
15. No building or structure or tent shall be erected and no trailer either with or without living, sleeping or eating accommodations shall be placed, located, kept or maintained on the common elements by anyone other than the Declarant, as provided in the Declaration.
16. Without limiting or changing the other provisions in the Corporation's declaration and bylaws which prescribe unreasonable interference with the use and enjoyment of the common elements and of other units, neighbours shall suffer the normal annoyances that are not beyond the limit of tolerance they owe each other, considering the nature of a multi-unit condominium.
17. Rollerblading through the lobby and corridors of the building may damage the limestone and the carpeting. Roller blades are to be put on and removed outside of the building.
18. Bicycles are to be stored in individual storage lockers or in the parking garage below. They are not allowed in residential units for the reasons set out in #17 above.
19. Walking barefoot through the building is not allowed.
20. Smoking is not permitted in any of the common areas of the building.
21. Alcohol is not to be consumed in public areas of the building, save and except the lounge when private parties are being held.
22. Elevators are not to be kept on hold without securing the approval of the property manager.
23. Individuals not personally known to you should not be admitted to the building by you.
24. No decorations, adornments, furniture, floor mats or any other such items shall be placed or permitted in any of the hallways which are common areas.
25. Owners and residents shall require guests to sign in at the front desk in the log-in sheet provided.
26. Owners and residents shall park in assigned parking places only and each vehicle which has been assigned a parking permit must display the permit affixed to the rear view mirror.

## SCHEDULE C

THIS SCHEDULE forms part of an Agreement of Purchase and Sale between \_\_\_\_\_, as purchaser (the "Purchaser") and BDO Canada Limited., solely in its capacity as receiver of the property, assets and undertakings of Portofino Corporation., ("Portofino"), and without personal liability, as vendor (the "Vendor").

### Authority for Sale

- 1 Subject to what follows, it is understood and agreed that the Vendor is selling the real property and chattels described in the attached pre-printed form 101 (collectively, the "Assets") pursuant to an Order of the Superior Court of Justice (Ontario) dated October 29, 2013 (the "Appointment Order") by which the Vendor was appointed as receiver of the property, assets and undertakings of Portofino and entering into this Agreement pursuant to an Order of the Superior Court of Justice (Ontario) dated May 2, 2014 (the "Omnibus Approval and Vesting Order") by which the Vendor was prospectively authorized to execute agreements of purchase and sale for the condominium units and related chattels owned by Portofino, including the Assets. The Appointment Order entitles the Vendor to sell all or any part of the property and assets of Portofino subject to the approval of the Court in certain circumstances. The Omnibus Approval and Vesting Order prospectively granted court approval of the transaction contemplated by this agreement.

### Acceptance of Interest and "As is, Where is"

- 2 The Purchaser acknowledges that the Assets are being purchased on an "as is, where is" basis and that he/she has inspected the Assets and will accept the same in their present state and condition. The Purchaser acknowledges and agrees that the Vendor has not made and will not be asked to make any representation or warranty and further acknowledges that there are no conditions or warranties, whether express or implied, statutory or non-statutory, affecting or in any way relating to the Assets or any portion thereof relating to any manner whatsoever, including the title, encumbrances, state of repair, degree of maintenance, description, quality, fitness for any present or intended purpose or use, physical condition, compliance or non-compliance with environmental rules, regulations or legislative provisions, zoning, or any other matter whatsoever. The Vendor has no knowledge and makes no representations or warranties, whatsoever, as to the existence or non-existence of urea formaldehyde insulation, asbestos, PCB's, radium, radon or radon daughters, or any other substances, liquids or materials, whether hazardous or toxic or not, which are or which may constitute on their own or together in combination with any other substance contaminants or pollutants of any environment, including the natural environment. The Vendor specifically makes no representation regarding the compliance of the Assets with any environmental regulation, whether federal, provincial or municipal or with respect to any rule, regulation, covenant or agreement whether statutory or non-statutory. The Purchaser acknowledges that the Purchaser has relied entirely upon the Purchaser's own inspections and investigations with respect to all such issues and with respect to proceeding with the transaction contemplated in this Agreement. The implied covenants set forth in the *Land Registration Reform Act* otherwise operating in favour of the Purchaser are hereby expressly excluded. All conditions and warranties expressed or implied pursuant to the provisions of the *Sale of Goods Act* of Ontario do not apply hereto and have been waived by the Purchaser.

The description of the Assets is believed to be materially correct but if any statement, error or omission shall be found therein or in the particulars thereof, same shall not entitle the Purchaser to be relieved of any obligation hereunder nor shall any compensation be allowed to either the Vendor or the Purchaser in respect thereof. Similarly loss of or damage to any portion of the Assets, with the exception of the substantial destruction of the condominium unit comprising the real property shall not entitle the Purchaser to be relieved of any obligation hereunder nor shall any compensation or abatement be allowed to the Purchaser by reason thereof.

### **Closing Documents**

- 3 The Vendor agrees to provide on closing to the Purchaser and the Purchaser acknowledges that it shall only have the right to require:
  - a) The Receiver's Certificate as contemplated by the Omnibus Approval and Vesting Order; and
  - b) A Statement of Adjustments.

The Purchaser agrees to provide on closing such other undertakings, certificates, releases, agreements and documents as the Vendor's solicitors and the Purchaser's solicitors, both acting reasonably, determine are necessary or required to complete the transactions contemplated herein.

### **Extension of Closing**

- 4 In the event any issue is raised with respect to this Agreement which the Vendor determines impairs the ability of the Vendor to complete this Agreement or in the event that an injunction or other Court Order is obtained or sought preventing the Vendor from completing this Agreement which the Vendor is unable or unwilling to remove, unless the parties otherwise agree in writing, this Agreement shall be terminated and any deposit paid shall be returned to the Purchaser without interest or deduction and the Vendor shall not be liable, in any manner whatsoever, for any costs, expenses, loss or damages incurred or suffered by the Purchaser by reason of same or in any way relating to this Agreement.

### **Covenants of the Purchaser**

- 5 The Purchaser agrees that, on or before closing, it will cause the following to be done:
  - a) ensure that the representations and warranties of the Purchaser set forth herein are true and correct at the time of closing; and
  - b) pay the balance of the purchase price, subject to adjustment, to the Vendor by way of certified cheque or bank draft.

### **Representations and Warranties of the Vendor**

- 6 The Vendor represents and warrants to the Purchaser as follows and acknowledges that the Purchaser is relying thereon in entering into and completing this Agreement:
  - a) The Vendor has been duly appointed by the Appointment Order as the receiver of the property, assets and undertakings of Portofino and has the requisite right, power and authority to enter into this Agreement and to complete the transactions contemplated herein;
  - b) The Vendor is not aware of any proceedings pending or threatened to enjoin all or any portion of the transactions by this Agreement;
  - c) The Vendor has not done any act to encumber the Assets and will not encumber the Assets from the date of acceptance hereof to the date of closing;
  - d) The Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act (Canada)*;
  - e) The Vendor has not previously sold and will not dispose of or sell the Assets or any portion thereof between the date hereof and the date of closing; and
  - f) The Vendor shall furnish or produce only any abstract, deed, declaration or other document or evidence of its interest in the Assets or any portion thereof that is in its possession.

### **Representations and Warranties of the Purchaser**

- 7 The Purchaser represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying thereon in entering into and completing this Agreement:
  - a) This Agreement and each of the other agreements, documents and instruments to be executed and delivered by the Purchaser on or before closing have been or will be duly executed and delivered by, and when executed and delivered, will constitute the valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms; and
  - b) The Purchaser is not a non-resident of Canada for purposes of the *Income Tax Act (Canada)*.

### **Mutual Conditions for the Benefit of the Vendor and the Purchaser**

- 8 The following conditions are for the benefit of both the Vendor and the Purchaser and neither party will be obligated to complete the transactions contemplated by this Agreement unless such conditions have been satisfied or waived by both the Vendor and the Purchaser:
  - a) At the time of closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before any court of competent jurisdiction to prevent or otherwise adversely affect the purchase and sale of the Assets or any portion thereof pursuant to this Agreement; and

- b) The Appointment Order and Omnibus Approval and Vesting Order shall remain in effect and the Vendor shall not have lost its ability to complete the transaction contemplated by this Agreement.

### **Exclusion from Ontario New Home Warranty Program**

- 9 The Vendor has advised the Purchaser, and the Purchaser acknowledged that the condominium unit comprising the real property has been previously occupied as a rental unit and as such is not included in the Ontario New Home Warranty Program underwritten by Tarion Corporation.

### **Unwanted Chattels**

- 10 The Vendor may but shall not be obligated to remove from the real property any unwanted chattel existing as of the closing date.

### **Fixtures/Chattels**

- 11 Other than the chattels described in Form 101 of the Agreement, the purchase price herein shall not include any chattels presently located on, upon, around or forming part of the real property, and the Purchaser acknowledges that the following fixtures may have been installed by the registered owner of the real property on a rental basis:

Hot water heater

### **Conditional Period**

- 12 In the event that the obligations of the Purchaser herein are subject to any conditions in any fashion whatsoever other than the conditions in this Schedule C, then, in that event and until written waiver of all such conditions by the Purchaser, the Vendor shall have the right, but not the obligation to continue to offer the Assets for sale. In the event that the Vendor receives an offer or offers to purchase the Assets which the Vendor wishes to accept, then, in that event, the Vendor shall notify the Purchaser of that fact in writing and the Purchaser shall have the right to irrevocably waive, in writing, all such conditions by no later than 4:00 p.m. on the second business day following the date upon which notice is given by the Vendor in the manner specified below. In the event that the Purchaser does not waive any and all such conditions in accordance with the provisions hereof and within the time period specified, this Agreement shall terminate, the deposit shall be refunded, without interest, to the Purchaser and neither party shall have any further liability or other obligations to the other under or by virtue of this Agreement.

### **Independent Advice**

- 13 The Purchaser acknowledges that the Purchaser has had an opportunity to obtain independent advice including, without limitation, independent real estate, accounting and legal advice, prior to the execution of this Schedule, the pre-printed form to which it is attached and all other schedules referred to therein or herein.

### **Receipt of Information**

14 The Purchaser acknowledges that no property owner's statement of disclosure will be delivered or requested and that any document supplied to the Purchaser has been provided for the convenience of the Purchaser and has been delivered without any representation or warranty by or on behalf of the Vendor as to its accuracy or with respect to any other aspect thereof and does not form part of this Agreement.

**Notices**

15 Any notice relating to this Agreement of Purchase and Sale shall be forwarded as follows:

a) To the Purchaser at:

With a copy to (Counsel)

b) To the Vendor at:

BDO Canada Limited  
252 Pall Mall Street  
Suite 103  
London, ON N6A 5P6  
Attention: Stephen N. Cherniak, CPA, CA, CIRP  
Fax (519) 439 4351



With a copy to:

Miller Thomson LLP  
One London Place  
255 Queen's Avenue  
Suite 2010  
London, ON N6A 5R8

Attention: Tony Van Klink  
Fax: (519) 858-8511

Any notice shall be deemed given and received when hand delivered or delivered by courier to the address for service provided herein or, where a facsimile number is utilized, when successfully transmitted electronically to that facsimile number provided that if the service is effected on a weekend, statutory holiday or after 5:00 p.m. on any business day, service shall be deemed to have been effected at 9:00 a.m. on the next business day.

### **General Provisions**

- 16 Acceptance of this offer by either party and communication of same by facsimile transmission shall be binding upon each party as if documents transmitted were originally executed documents.
- 17 Upon termination of this Agreement by reason of default of the Purchaser, in addition to any other remedy which the Vendor may have, the deposit, together with all interest accrued thereon, shall be paid to the Vendor, forthwith, without any further direction from the Purchaser required as liquidated damages and not as a penalty
- 18 Except as herein expressly stated no representation, statement understanding or agreement has been made or exists, either oral or in writing, which in any way affects the terms or the subject matter hereof.
- 19 Time will, in all respects be of the essence of this Agreement and no extension or variation of this Agreement or any obligation hereunder will operate as a waiver or implied waiver of this provision.
- 20 Where the provisions of this Schedule conflict with anything contained in the pre-printed form to which this Schedule is attached, the parties agree that the provisions of this Schedule shall govern. Otherwise the provisions of this Schedule shall supplement the provisions of the pre-printed form.
- 21 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.
- 22 The Vendor and the Purchaser will each execute and deliver all such further documents and instruments and do all acts and things as the Purchaser or the Vendor may, either before or after closing reasonably require to carry out effectively the intent and meaning of this Agreement and to consummate the transaction hereby contemplated.
- 23 This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

24 The Vendor is acting solely in its capacity as receiver and manager of Portofino and shall have no personal or corporate liability under or by virtue of this Agreement.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Schedule "C" on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
*Witness* \_\_\_\_\_ *Purchaser*

\_\_\_\_\_  
*Name of Witness*

\_\_\_\_\_  
*Address of Witness*

BDO Canada Limited, in its capacity  
as Court appointed receiver of all of the  
property, assets and undertakings of Portofino  
Corporation, without personal liability

Per: \_\_\_\_\_  
Stephen N. Cherniak, CPA, CA, CIRP  
Senior Vice President

I have the authority to bind  
BDO Canada Limited

BANK OF MONTREAL

and

PORTOFINO CORPORATION

Applicant

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**ORDER**  
(Sale Agreement Order)

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