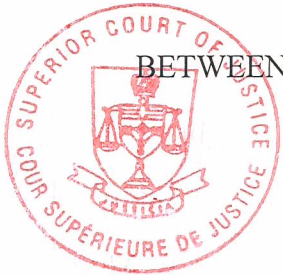


**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE )  
JUSTICE *HAINES* )  
)

WEDNESDAY, THE 29<sup>th</sup> DAY  
OF AUGUST, 2018



BETWEEN:

**CENTURION MORTGAGE CAPITAL CORPORATION**

Applicant

and

**TERRASAN 327 ROYAL YORK RD. LIMITED**

Respondent

**ORDER  
(Holdback and Distribution Order)**

**THIS MOTION**, made by BDO Canada Limited, in its capacity as Court appointed receiver and manager (the “**Receiver**”), for an order,

- (a) approving the Holdback Procedure (as defined herein);
- (b) approving and authorizing a full and final distribution by the Receiver to the Guarantee (as defined herein) from the Sale Proceeds in the amount of \$294,720.37 (the “**Guarantee Distribution**”), as set out in the ninth report of the Receiver dated August 23, 2018 (the “**Ninth Report**”);
- (c) approving the activities of the Receiver, together with the fees and disbursements of the Receiver, and its legal counsel, Dentons Canada LLP, as set out in the Ninth Report; and

- (d) such further and other relief as counsel may advise and this Honourable Court may deem just;

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Receiver dated August 23, 2018 and the Ninth Report, and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn August 23, 2018 filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **INTERPRETATION**

2. **THIS COURT ORDERS** that, for the purposes of this Order, the following terms shall have the following meanings:

- (a) **“Acknowledgment”** has the meaning ascribed to such term in paragraph 3 of this Order;
- (b) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) **“Claimant”** means a Person asserting a Tarion Claim;
- (d) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (e) **“Deposit”** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades, paid by a Person pursuant to a Purchase Agreement for a Unit at the Project;
- (f) **“Deposit Trustee”** means Schneider Ruggerio LLP;
- (g) **“Guarantee”** means The Guarantee Company of North America;
- (h) **“Holdback”** has the meaning ascribed to such term in paragraph 4 of this Order;

- (i) “**Holdback Balance**” has the meaning ascribed to such term in paragraph 6(c) of this Order;
- (j) “**Holdback Claim Amount**” means amounts in respect of accepted Tarion Claims and any administration fees and other amounts to which Tarion may be entitled in connection therewith pursuant to the Tarion Bond;
- (k) “**Holdback Procedure**” means the procedures outlined in this Order in connection with the establishment of the Holdback and the procedure for the return of the Holdback Balance to the Receiver;
- (l) “**MECDIP**” means the Master Excess Condominium Deposit Insurance Policy issued by the Guarantee;
- (m) “**ONHWPA**” means the *Ontario New Home Warranties Plan Act* (Ontario), R.S.O. 1990, c. O.31, as amended, and the regulations promulgated thereunder;
- (n) “**Order**” means this Order;
- (o) “**Outside Date**” has the meaning ascribed to such term in paragraph 4 of this Order;
- (p) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity, and for greater certainty, such term includes the Deposit Trustee;
- (q) “**Project**” means the residential condominium development located at 327 Royal York Rd., Toronto, Ontario known as “*On the Go Mimico*”;
- (r) “**Purchase Agreement**” means an agreement of purchase and sale between Terrasan and a Person for the sale and purchase of a residential condominium unit at the development located at 327 Royal York Rd., Toronto Ontario and known as “*On the Go Mimico*”;
- (s) “**Sale Proceeds**” means the proceeds generated from the closing of the Court approved transaction between the Receiver and 2402871 Ontario Inc. pursuant to an asset purchase agreement dated July 28, 2017;
- (t) “**Tarion**” means the Tarion Warranty Corporation;

- (u) “**Tarion Bond**” means the Tarion bond, being bond number TM5120055 dated July 18, 2013 issued by the Guarantee in favour of Tarion;
- (v) “**Tarion Claim**” means any right or claim of any Person against Tarion under the ONHWPA in respect of the Project;
- (w) “**Terrasas**” means Terrasas 327 Royal York Rd. Limited;
- (x) “**Unit**” means a residential condominium unit at the Project;

### TARION HOLDBACK

3. **THIS COURT ORDERS** that the Receiver shall pay, within ten (10) Business Days of the granting of this Order, the amount of \$220,000 from the Sale Proceeds to Tarion (the “**Holdback**”), which amount shall be a holdback required to secure payment by Tarion in respect of a Tarion Claim that is made upon Tarion by a Claimant prior to January 24, 2019 (the “**Outside Date**”), and against which Tarion may claim a Holdback Claim Amount;

4. **THIS COURT ORDERS** that upon Tarion's receipt of the Holdback pursuant to paragraph 3, Tarion shall deliver to the Guarantee the Tarion Bond for immediate cancellation and neither Tarion nor the Guarantee shall have any further obligations or liability whatsoever in respect of the Tarion Bond or the Project (in the case of Tarion, subject only to any Tarion Claims that are to be dealt with pursuant to paragraph 5), and any and all claims, including without limitation any suits, debts, causes of action that any Person has, may have or could have pursuant to, or arising from the Tarion Bond or the Project as against the Guarantee and Tarion, be and are hereby forever barred, released and extinguished (in the case of Tarion, subject only to the Tarion Claims that are to be dealt with pursuant to paragraph 5).

### TARION CLAIMS

5. **THIS COURT ORDERS** that:

- (a) Tarion shall:
  - (i) review any Tarion Claim filed prior to the Outside Date and not already satisfied as of the date hereof, and accept, revise or reject them in accordance with Tarion's ordinary claims review procedures provided,

however, that Tarion shall have the right, but not the obligation, to consult with the Receiver during its review of a Tarion Claim;

- (ii) advise the Receiver of the particulars of the payment of any Tarion Claim within ten (10) days after the payment of any such Tarion Claim, and
  - (iii) provide a report to the Receiver as to the Tarion Claims received, Tarion Claims paid and the amount remaining in the Holdback as at the date of such report, with such reports due on October 10, 2018, December 10, 2018 and January 25, 2019;
- (b) Tarion shall be entitled to utilize the Holdback and process payments therefrom on account of accepted Tarion Claims and the Holdback Claim Amounts, 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, rights of distraint, 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;
- (c) the balance of the Holdback (the “**Holdback Balance**”), if any, shall be paid by Tarion to the Receiver, within ten (10) Business Days following the later of:
- (i) the Outside Date;
  - (ii) the completion of the review by Tarion of all Tarion Claims filed prior to the Outside Date;
  - (iii) in the event that Tarion revises or rejects any Tarion Claim, the resolution of such Tarion Claim in accordance with the procedures provided for in the ONHWPA;
  - (iv) the processing and payment by Tarion of any Tarion Claims and Holdback Claim Amounts from the Holdback; and

- (d) Tarion shall have no further obligations or liability whatsoever in respect of the Holdback Balance following Tarion's payment of the Holdback Balance to the Receiver.

### **THE GUARANTEE DISTRIBUTION**

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to make the Guarantee Distribution from the Sale Proceeds in full and final satisfaction of all amounts owing by Terrasan to the Guarantee, as set out in the Ninth Report.

7. **THIS COURT ORDERS** that upon the Receiver's payment of each of the Holdback and the Guarantee Distribution pursuant to paragraphs 3 and 6, respectively, the Guarantee and its respective successors, assigns or agents shall not:

- (a) have any further right whatsoever to claim any further amount derived from or related to the Project; and
- (b) have any remaining interest whatsoever in the Sale Proceeds or any of the assets, properties or undertakings of Terrasan.

8. **THIS COURT ORDERS** that, effective immediately, the MECDIP shall be cancelled and the Guarantee shall not have any further obligations or liability whatsoever, to any Person in respect of the MECDIP or the Project and any and all claims, including without limitation any suits, debts, causes of action that any Person has, may have, or could have pursuant to, or arising from the MECDIP or the Project as against the Guarantee, be and are hereby forever barred, released and extinguished.

### **THE GUARANTEE, TARION AND THE RECEIVER**

9. **THIS COURT ORDERS** that none of the Guarantee, Tarion or the Receiver shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of any gross negligence or wilful misconduct on their respective parts, and that no proceeding or process in any court or tribunal shall be commenced or continued against any of the Guarantee, Tarion or the Receiver in connection with the carrying out of the provisions of

this Order except with the written consent of the Guarantee, Tarion or the Receiver, as applicable, or with leave of this Court on seven (7) days' notice to the Guarantee, Tarion or the Receiver, as applicable.

10. **THIS COURT ORDERS** that, in connection with the payment or receipt of any funds described herein, the Person receiving such funds shall do so 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, rights of distraint, 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.

#### **RESFORM SETTLEMENT**

11. **THIS COURT ORDERS** that the settlement of lien claim and motion agreement dated July 31, 2018 between Resform Construction Limited (“**Resform**”) and the Receiver (the “**Settlement Agreement**”) is hereby authorized and approved, and the Receiver is hereby authorized and directed to make a distribution to Resform in the amount of \$186,843.98, as outlined and in accordance with the terms of the Settlement Agreement.

#### **RECEIVER'S ACTIVITIES**

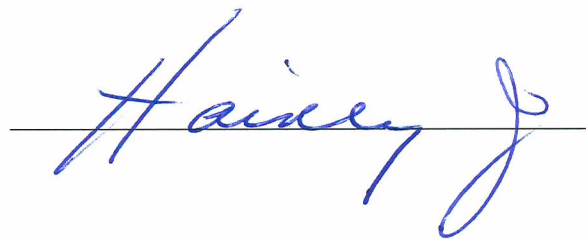
12. **THIS COURT ORDERS** that the Ninth Report and the activities of the Receiver as set out in the Ninth Report, are hereby approved

13. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Dentons, as set out in the Ninth Report and in the Fee Affidavits, are hereby approved and the Receiver is hereby authorized to pay any unpaid fees and disbursements herein approved

#### **MISCELLANEOUS**

14. **THIS COURT ORDERS** that each of Tarion, the Guarantee and the Receiver may from time to time apply to this Court for advice and directions in respect of the terms of this Order and in carrying out the terms of this Order.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to give effect to this Order and to assist Tarion, the Guarantee and the Receiver and their respective 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 Tarion, the Guarantee and the Receiver and their respective agents, as may be necessary or desirable to give effect to this Order or to assist Tarion, the Guarantee and the Receiver and their respective agents, in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

AUG 29 2018

PER / PAR:





**CENTURION MORTGAGE CAPITAL CORPORATION**

- and -

**TERRASAN 327 ROYAL YORK RD. LIMITED**

Applicant

Respondent

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

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(Holdback and Distribution Order)**

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*Lawyers for the Receiver*