

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

**MOTION RECORD
(MOTION RETURNABLE MAY 2, 2014)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

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TAB “1”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

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

**NOTICE OF MOTION
(returnable May 2, 2014)**

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 Justice Thomas dated October 29, 2013 (the “**Appointment Order**”) will make a motion to The Honourable Justice Thomas to be heard on Friday, May 2, 2014 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:

1. an Order substantially in the form appended hereto as **Schedule “A”** (the “**Unit 1108 Approval and Vesting Order**”):
 - (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 Third Report of the Receiver dated April

21, 2014 and all appendices thereto (the "**Third Report**"), and directing that any further service of same be dispensed with such that this motion is properly returnable on May 2, 2014;

- (b) sealing the Confidential Supplement to the Third Report and all appendices thereto (the "**Confidential Supplement**") filed with the Court from the public record until further order of the Court;
- (c) approving the sale transaction (the "**Unit 1108 Transaction**") contemplated by an Agreement of Purchase and Sale dated February 15, 2014 between the Receiver, as vendor, and Quan Shi ("**Shi**"), as purchaser (the "**Unit 1108 APS**"), and authorizing and approving the execution of the Unit 1108 APS by the Receiver, *nunc pro tunc*, in respect to the real property legally described as Unit 8, Level 11, Essex Standard Condominium Plan No. 122, Windsor (PIN 01872-0138 (LT)) and municipally known as 1108-1225 Riverside Drive West, Windsor ("**Unit 1108**"), appended as Appendix "A" to the Confidential Supplement;
- (d) authorizing and directing the Receiver to complete the Unit 1108 Transaction by taking such additional steps and executing such additional documents as may be necessary or desirable for the completion of the Unit 1108 Transaction and for the conveyance of Unit 1108 to Shi and, thereafter, to deliver the Receiver's Certificate to Shi and to file a copy of such Receiver's Certificate with the Court;
- (e) upon the closing of the Unit 1108 Transaction and delivery of the applicable Receiver's Certificate to Shi, vesting in Shi all of Portofino's right, title and interest in and to Unit 1108 free and clear of any and all claims and encumbrances;
- (f) such further and other relief as counsel may advise and this Honourable Court may deem just; and

2. an Order substantially in the form appended hereto as **Schedule "B"** (the "**Sale Agreement Order**"):
 - (a) approving the Third Report, 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 the Sale Agreement 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 attached as Schedule "C" hereto;
 - (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**" and collectively with the BDO Fees, the "**Professional Fees**");
 - (f) such further and other relief as counsel may advise and this Honourable Court may deem just;

3. an Order substantially in the form appended hereto as **Schedule "C"** (the "**Omnibus Approval and Vesting Order**"):
 - (a) prospectively authorizing the Receiver to accept an offer or offers to purchase any or all of the Unsold Units provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;

- (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 the Omnibus Approval and Vesting 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 the Omnibus Approval and Vesting Order, all of Portofino's right, title and interest in and to the Unsold Unit(s) described in each applicable Unsold Unit Sale Agreement (the "**Purchased Assets**") will vest in and to the applicable Purchaser, free and clear of any and all claims and encumbrances including those listed on Schedule "C" and in paragraph 3 of the Omnibus Approval and Vesting Order, save and except for those encumbrances listed on Schedule "D" of the Omnibus Approval and Vesting Order, in relation to the Purchased Assets.

THE GROUNDS FOR THE MOTION ARE:

Unit 1108 Transaction

1. Pursuant to paragraph 3(l) of the Appointment Order, the Receiver has the power to, among other things, sell, convey, transfer, lease or assign any of the assets, undertakings and properties of the Debtor (the "**Property**") or any part or parts thereof out of the ordinary course of business without the approval of the 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 otherwise the Receiver must obtain Court approval;

2. Pursuant to paragraph 3(m) of the Appointment Order, the Receiver may apply for a vesting order or other orders to convey title to the Property to a purchaser free and clear of any liens or encumbrances affecting the Property;
3. Subject to approval of the Court, the Receiver has entered into the Unit 1108 APS;
4. The Unit 1108 Transaction was originally scheduled to close on May 1, 2014 but, by agreement of the Receiver and Shi, is now scheduled to close on May 5, 2014;
5. An appraisal of the Unsold Condominium Units, as defined below, including Unit 1108, was commissioned by the Receiver and supports the purchase price payable by Shi pursuant to the Unit 1108 APS;
6. The Receiver is of the view that the Unit 1108 Transaction represents fair market value for Unit 1108 and is commercially reasonable;
7. The Unit 1108 Transaction is in the best interests of the creditors and other stakeholders of Portofino;
8. The Receiver has acted and continues to act honestly and in good faith;
9. The Receiver has not acted improvidently;
10. The Receiver recommends approval of the Unit 1108 APS and the Unit 1108 Transaction;
11. *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), s. 247; and
12. *Courts of Justice Act*, R.S.O. 1990, c. C. 43 ("**CJA**"), s. 100;

Sealing Order

13. The Confidential Supplement filed with the Court contains commercially sensitive information which if disclosed could undermine the integrity of the marketing and sale process of the Unsold Units;
14. No party will be prejudiced if the Confidential Supplement filed with the Court remains sealed until further order of the Court;

15. S. 137(2) of the CJA;

Form of Unsold Unit Sale Agreement

16. The Unsold Units include:
 - (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**");
 - (c) two (2) storage units (the "**Unsold Storage Units**");
17. The Unsold Parking Units and Unsold Storage Units are not assigned to specific condominium units under the Condominium Declaration;
18. The Receiver seeks an order approving the Form of Unsold Unit Sale Agreement, together with any amendments thereto deemed necessary and appropriate by the Receiver and authorizing the Receiver to accept an offer or offers to purchase any or all of the Unsold Units provided that the sale price for each Unsold Unit to which such offer(s) is subject is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;

Approval of the Third Report, the Receiver's Activities and the Statements of Receipts and Disbursements

19. The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
20. The Receiver seeks approval of the Third Report, the Confidential Supplement and the Receiver's activities detailed therein;
21. The Statement of Receipts and Disbursements are detailed in the Third Report;

Approval of Professional Fees

22. Pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property as security for the Professional Fees, both before and after the making of the Appointment Order;
23. 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;
24. The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
25. 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 MT in connection with these receivership proceedings;

Omnibus Approval and Vesting Order

26. The Receiver is of the view that the Unsold Units will be more marketable and the marketing and sale process more efficient and cost effective if the Court grants an order which (a) authorizes the Receiver to enter into an agreement of purchase and sale in the Form of Unsold Unit Sale Agreement, (b) approves the sale of the Unsold Units and (c) vests clear title to a Purchaser on a prospective basis;
27. The Receiver will avoid the cost and expense associated with returning to Court for approval of each individual Unsold Unit sale if the Omnibus Approval and Vesting Order is granted;
28. The Receiver expects to have the Land Registrar's preapproval and acceptance of the form of Omnibus Approval and Vesting Order prior to the return of the Receiver's motion herein;
29. The Receiver will file with the Court, once all Transactions are completed and title to all of the Unsold Units has been transferred to the Purchasers, a report advising of the purchase price for each Unsold Unit;

30. The Receiver recommends that the Court prospectively approve the Transactions and prospectively authorize the execution of the Form of Unsold Unit Sale Agreement for each Transaction, together with any amendments or modifications thereto deemed necessary by the Receiver;
31. The Receiver requests that the Court direct the Receiver to complete the Transactions and to grant an Order vesting the applicable Unsold Unit(s) in favour of the applicable Purchaser upon the delivery by the Receiver to such Purchaser of a Receiver's Certificate, free and clear of all encumbrances including those listed on Schedule "C" and in paragraph 2 of the Omnibus Approval and Vesting Order, save and except for those encumbrances listed on Schedule "D" of the Omnibus Approval and Vesting Order, in relation to the Purchased Assets;
32. *Courts of Justice Act*, R.S.O. 1990, c. C. 43 ("**CJA**"), s. 100;

Other

33. Appointment Order;
34. Section 101 of the CJA;
35. Section 243 of the BIA;
36. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;
37. Rules 1.04, 1.05, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
38. 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 Third Report;
2. the Confidential Supplement;
3. the fees Affidavit of Stephen N. Cherniak sworn April 17, 2014 and the exhibits attached thereto;

4. the fees Affidavit of Sherry A. Kettle sworn April 14, 2014 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.

April 21, 2014

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

TO: THE SERVICE LIST

BANK OF MONTREAL
Plaintiff

and **PORTOFINO CORPORATION**
Defendant

Court File No: CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WINDSOR

NOTICE OF MOTION
(RETURNABLE MAY 2, 2014)

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

TAB "A"

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.) FRIDAY, THE 2ND
JUSTICE THOMAS) DAY OF MAY, 2014

BANK OF MONTREAL
Applicant

- and -

PORTOFINO CORPORATION
Respondent

APPROVAL AND VESTING ORDER
(Unit 1108)

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

- (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 Third Report of the Receiver dated April 21, 2014 and all appendices thereto (the "Third Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on May 2, 2014;
- (b) sealing the Confidential Supplement to the Third Report and all appendices thereto (the "Confidential Supplement") filed with the Court from the public record until further order of the Court;

- (c) approving the sale transaction (the "**Unit 1108 Transaction**") contemplated by an Agreement of Purchase and Sale dated February 15, 2014 between the Receiver, as vendor, and Quan Shi (the "**Purchaser**"), as purchaser (the "**Unit 1108 APS**"), and authorizing and approving the execution of the Unit 1108 APS by the Receiver, *nunc pro tunc*, in respect to the real property legally described as Unit 8, Level 11, Essex Standard Condominium Plan No. 122, Windsor (PIN 01872-0138 (LT)) and municipally known as 1108-1225 Riverside Drive West, Windsor ("**Unit 1108**"), appended as Appendix "A" to the Confidential Supplement;
- (d) authorizing and directing the Receiver to complete the Unit 1108 Transaction by taking such additional steps and executing such additional documents as may be necessary or desirable for the completion of the Unit 1108 Transaction and for the conveyance of Unit 1108 to the Purchaser and, thereafter, to deliver the Receiver's Certificate to the Purchaser and to file a copy of such Receiver's Certificate with the Court;
- (e) upon the closing of the Unit 1108 Transaction and delivery of the applicable Receiver's Certificate to the Purchaser, vesting in the Purchaser all of Portofino's right, title and interest in and to Unit 1108 free and clear of any and all claims and encumbrances;
- (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 21, 2014, filed:

1. THIS COURT ORDERS that the time for service and filing and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Third Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the Confidential Supplement, and all appendices thereto, be and is hereby sealed until further Order of this Court.

3. THIS COURT ORDERS AND DECLARES that the Unit 1108 Transaction is hereby approved, and the execution of the Unit 1108 APS by the Receiver is hereby authorized and approved, *nunc pro tunc*, with such minor amendments as the Receiver may deem necessary.

4. THIS COURT ORDERS that the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Unit 1108 Transaction and for the conveyance of Unit 1108 to the Purchaser.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to Unit 1108 described in the Unit 1108 APS and listed on **Schedule "B"** hereto shall vest absolutely in 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; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to Unit 1108 are hereby expunged and discharged as against Unit 1108 .

6. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of Unit 1108 identified in Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to Unit 1108 all of the Claims listed in Schedule "C" hereto and in paragraph 5 of this Order.

7. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of Unit 1108 shall stand in the place and stead of Unit 1108, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of Unit 1108 with the same priority as they had with respect to Unit 1108 immediately prior to the sale, as if Unit 1108 had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

9. 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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of Unit 1108 in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT ORDERS AND DECLARES that the Unit 1108 Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. 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.

Schedule "A" – 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 Mr. 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 the assets, undertakings and properties of Portofino Corporation (the "**Debtor**").

B. Pursuant to an Order of the Court dated May 2, 2014, the Court approved an Agreement of Purchase and Sale dated February 15, 2014, as amended (the "**Unit 1108 APS**") between the Receiver, as vendor, and Quan Shi, as purchaser (the "**Purchaser**"), to the real property legally described as Unit 8, Level 11, Essex Standard Condominium Plan No. 122, Windsor (PIN 01872-0138 (LT)) and municipally known as 1108-1225 Riverside Drive West, Windsor ("**Unit 1108**"), appended as Appendix "A" to the Confidential Supplement to the Third Report of the Receiver dated April 21, 2014 (the "**Confidential Supplement**"), and vesting in the Purchaser the Debtor's right, title and interest in and to Unit 1108, which vesting is to be effective with respect to Unit 1108 upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for Unit 1108; (ii) that the conditions to closing as set out in the Unit 1108 APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Unit 1108 APS.

THE RECEIVER CERTIFIES the following:

- 1. The Purchaser has paid and the Receiver has received the purchase price for Unit 1108 payable on closing pursuant to the Unit 1108 APS;
- 2. The conditions to closing as set out in the Unit 1108 APS have been satisfied or waived by the Receiver and the Purchaser; and
- 3. The Transaction has been completed to the satisfaction of the Receiver.
- 4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

BDO CANADA LIMITED, solely in its capacity as Court-appointed receiver of the assets, undertakings and properties of Portofino Corporation, and not in its personal capacity

Per: _____

Name:

Title:

BANK OF MONTREAL
Plaintiff

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
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

Schedule "B" – Unit 1108

The lands and premises legally described as Unit 8, Level 11, 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 (PIN 01872-0138 (LT)) and municipally known as 1108-1225 Riverside Drive West, Windsor.

Schedule "C" – Claims to be deleted and expunged from title to Unit 1108

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. 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.
4. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
6. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
7. Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.
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.
9. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
10. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
11. Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.
12. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, 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.

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants
related to Unit 1108**

(unaffected by the 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)

BANK OF MONTREAL
Plaintiff

and
PORTOFINO CORPORATION
Defendant

Court File No: CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

APPROVAL AND VESTING ORDER
(UNIT 1108)

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

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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

TAB “B”

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.)	FRIDAY, THE 2ND
)	
JUSTICE THOMAS)	DAY OF MAY, 2014

B E T W E E N:

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 21, 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

SCHEDULE "A"



Agreement of Purchase and Sale - POTL Common Elements Condominium

Form 111
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)

REAL PROPERTY (Parcel of Tied Land – POTL):

Address.....
fronting on the side of.....
in the
and having a frontage of more or less by a depth of..... more or less
and legally described as
..... (the "property").
(Legal description of land including easements not described elsewhere)

COMMON ELEMENTS CONDOMINIUM:

The property shall be deemed to include a common interest in the Condominium Corporation
being..... Condominium Plan No.....
(Legal Name of Condominium Corporation)
as more particularly set out on the Declaration and Description.

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

1. **IRREVOCABILITY:** This offer shall be irrevocable by until 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.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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.

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. **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): 

- 8. **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 and that the principal building may be insured against risk of fire. 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.
- 9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
- 10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 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, or that the principal building may not be insured against risk of fire 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.
- 11. **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.
- 12. **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. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. 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.
- 13. **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.**

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. 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.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
16. **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. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
17. **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.
18. **ADJUSTMENTS:** Common Expenses; realty taxes, including local improvement rates; mortgage interest; rentals; unmetered public or private utilities and fuel where billed to the Parcel of Tied Land 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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
25. **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.
26. **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.
27. **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): 

28. COMMON ELEMENTS CONDOMINIUM:

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

b). STATUS CERTIFICATE AND MANAGEMENT OF CONDOMINIUM: The Seller represents and warrants to the 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. 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.

c). MEETINGS: The Seller represents and warrants to the 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:
(i) the termination of the government of the condominium property;
(ii) any substantial alteration in or substantial addition to the common elements or the renovation thereof; OR
(iii) any substantial change in the assets or liabilities of the Condominium Corporation;
and Seller covenants that if the Seller receives any such notice prior to the date of completion Seller shall forthwith notify the Buyer in writing and Buyer may thereupon at the Buyer's option declare the Agreement null and void and all monies paid by the Buyer shall be refunded without interest or deduction.

d). TITLE: The Buyer agrees to accept title to the Property subject to the provisions of the Condominium Act and its Regulations and the terms, conditions and provisions of the Declaration, Description and Bylaws, Occupancy Standards Bylaws, including the Common Element Rules and other Rules and Regulations.

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

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 



29. **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... 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.

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)



Schedule A
Agreement of Purchase and Sale - POTL
Common Elements Condominium

Form 111
for use in the Province of Ontario

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): 

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 of 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, dusters, 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 proscribe 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. Roller blading 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 111 (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 111 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

Applicant

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

ORDER
(Sale Agreement Order)

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

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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

TAB “C”

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.) FRIDAY, THE 2ND
JUSTICE THOMAS) DAY OF MAY, 2014

BETWEEN:

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 21, 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

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

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 Honourable Justice Thomas 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

PORTOFINO CORPORATION
Defendant

Court File No: CV-13-19886

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

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

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 (LRO#12)
Unsold Condominium 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. 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.
4.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
6.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
7.	Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.
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.
9.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
10.	Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
11.	Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.
12.	Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal,

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.
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. 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)

BANK OF MONTREAL

and

Applicant

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

OMNIBUS APPROVAL AND VESTING ORDER

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

TAB “2”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

April 21, 2014

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Appendices

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

1. Introduction and Background

1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("**BDO**" or the "**Receiver**") of the assets, undertakings and properties of Portofino Corporation ("**Portofino**", "**Portofino 2**" or the "**Company**") acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof (the "**Property**").
- 1.1.2 On application of Bank of Montreal ("**BMO**"), BDO was appointed as receiver by the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 (the "**Appointment Order**"). A copy of the Appointment Order is attached as **Appendix A** to this report.

1.2 Background

- 1.2.1 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as "Portofino" (the "**Portofino Condominium**" or the "**Project**"), located at 1225 Riverside Drive West in the City of Windsor, Ontario. Dr. Dante Capaldi ("**Capaldi**") is the principal of Portofino.
- 1.2.2 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 ("**ECC 122**") was registered and the closing of sales of units commenced in July, 2007.
- 1.2.3 At the present time, Portofino owns:
- (a) fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the "**Unsold Condominium Units**");

- (b) thirty-eight (38) parking units, including four (4) surface-level covered parking units and thirty-four (34) surface-level uncovered parking units (the "**Unsold Parking Units**"); and
 - (c) two (2) storage units (the "**Unsold Storage Units**")
(collectively, the "**Unsold Units**").
- 1.2.4 The Unsold Parking Units and Unsold Storage Units are not assigned to specific condominium units under the Condominium Declaration.
- 1.2.5 Since 2005, there has been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Capaldi, Portofino, Portofino Riverside Tower Inc. ("**Portofino 1**") and Westview Park Gardens (2004) Inc. ("**Westview Park**"), as defendants in Court Action No. 05-CV-5864CM (the "**Valente Court Action**"). Portofino 1 is a company which held title to the Project before it was transferred to Portofino. Westview Park is a previous name of Portofino.
- 1.2.6 An application was brought by BMO for the appointment of BDO as Receiver and Manager of Portofino to ensure that the Unsold Units are sold in an orderly fashion and that their sale is not prevented or delayed by litigation proceedings.
- 1.2.7 As noted above, on October 29, 2013, the Honourable Mr. Justice Thomas granted the relief sought by BMO and issued the Appointment Order.
- 1.2.8 Although the Appointment Order imposes a stay of proceedings in respect of Portofino (the "**Stay**"), leave of the Court was granted to continue the Valente Court Action.
- 1.2.9 The Receiver submitted its First Report to the Court dated December 6, 2013 ("**First Report**") in support of a motion for, among other things, the advice and direction of the court on issues relating to the letter of credit posted by Portofino with the Court as security in the Valente Court Action, the Receiver's future involvement in the trial and the defence of the Valente Court Action, whether or not the Valente Court Action

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

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

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

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

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

2. Terms of Reference

2.1 In preparing this Third Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from the Portofino's books and records and discussions with former management and staff (the "Information"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

3. Purpose of the Receiver's Third Report

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

- (a) To provide this Court with information on:
 - (i) the Receiver's activities since the date of the First Report and the Receiver's activities as outlined therein;
 - (ii) the process undertaken by the Receiver in respect to the marketing and sale of the Unsold Units;
 - (iii) the Receiver's recommendation with respect to the sale of Unit 8, Level 11, Essex Standard Condominium Plan No. 122, Windsor (PIN 01872-0138 (LT)), municipally known as 1108-1225 Riverside Drive West, Windsor ("**Unit 1108**");

- (b) In support of an order of the Court (the "**Unit 1108 Approval and Vesting Order**"):
 - (i) sealing the Confidential Supplement to the Third Report dated April 21, 2014 and all appendices thereto (the "**Confidential Supplement**") filed with the Court from the public record until further order of the Court;
 - (ii) approving the agreement of purchase and sale dated February 15, 2014 with a closing date of May 5, 2014 (the "**Unit 1108 APS**") between the Receiver, as vendor, and Quan Shi ("**Shi**"), as purchaser, in respect of Unit 1108 and an Order authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Unit 1108 APS (the "**Unit 1108 Transaction**") and thereafter to file the Receiver's certificate;

- (iii) vesting in Shi all of Portofino's right, title and interest in and to Unit 1108 free and clear of any and all claims and encumbrances;
- (c) In support of an order of the Court (the "**Sale Agreement Order**"):
- (i) approving the Third Report, the Confidential Supplement and the activities and conduct of the Receiver described therein;
 - (ii) approving the form of Agreement of Purchase and Sale with respect to the sale of the Unsold Units, substantially in the form attached as **Appendix F** hereto (the "**Form of Unsold Unit Sales Agreement**") together with any amendments thereto deemed necessary and appropriate by the Receiver to be used by the Receiver on all future sales of the Unsold Units;
 - (iii) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to April 16, 2014 (the "**Statement of Receipts and Disbursements**");
 - (iv) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (v) approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**");
- (d) in support of an order of the Court (the "**Omnibus Approval and Vesting Order**"):
- (i) prospectively authorizing the Receiver to accept an offer or offers to purchase any or all of the Unsold Units provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;

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

4. Receiver's Activities

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

coverage, to the point they have been completed.

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

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

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

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

6. Receiver's Sale Process for the Unsold Units

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

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

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

the First Report.

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

eligible for ONHWP coverage.

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

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

7. Valente Court Action

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

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

8. Statement of Receipts and Disbursements of the Receiver

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

8.2 Receipts

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

b) *Lawsuit (\$119,789.96)* — Portofino was involved in litigation arising from the original construction of the Project. The Receiver collected \$119,789.96, being the balance of holdback funds held in the lawyer's trust account, after distribution to sub-contractors in settlement of the litigation.

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

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

8.3 Disbursements

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

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

- c) *Receiver's fees (\$94,544.04)* – BDO's account for the period July 19, 2013 to November 28, 2013 in the amount of \$25,014.45, excluding HST, was previously approved by the Court and paid. The Receiver paid BDO's interim accounts for the period November 28, 2013 to March 10, 2014 in the amount of \$69,529.59 and is seeking approval of the Court for these invoices.
- d) *Legal fees (\$55,544.65)* – MT's account for the period September 9, 2013 to November 15, 2013 in the amount of \$9,221.95, excluding HST, was previously approved by the Court and paid. The Receiver paid MT's interim accounts for the period November 18, 2013 to February 28, 2014 in the amount of \$46,322.70, excluding HST, and is seeking approval of the Court for these invoices.
- e) *HST paid (\$22,211.19)* – The Receiver has paid \$22,211.19 in HST on its disbursements.
- f) *Appraisal fees (\$15,014.50)* — The Receiver paid \$15,014.50 to Metrix Realty Group for an appraisal of the Unsold Condominium Units on an individual unit basis.
- g) *Insurance (\$9,501.00)* — The Receiver paid \$9,501.00 in premiums to maintain the bonding coverage required by Tarion.
- h) *Legal fees – Sutts Strosberg (\$5,000.00)* – The Receiver paid \$5,000.00 to Sutts Strosberg LLP to provide a review and chronology of the Valente Court Action for the Receiver's counsel.

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

- 9.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees.
- 9.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 9.3 Attached as **Appendix H** is the fee affidavit of Stephen N. Cherniak sworn April 17, 2014 containing BDO's interim accounts as Receiver for the following periods:
- November 28, 2013 to January 17, 2014
 - January 17, 2014 to March 10, 2014
 - March 10, 2014 to April 9, 2014
- 9.4 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 9.5 Attached as **Appendix I** is the fee affidavit of Sherry A. Kettle, sworn April 14, 2014 containing the interim accounts of MT for the period November 16, 2013 to March 31,

2014.

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

10. Recommendations

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

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

each Unsold Unit to which such offer(s) is subject is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;

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

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

BDO Canada Limited in its capacity as Court Appointed Receiver of Portofino Corporation and not in any personal capacity.



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

TAB “A”

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE B. THOMAS

) TUESDAY, THE 29th
)
) DAY OF OCTOBER, 2013

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

ORDER

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

ON READING the affidavit of Greg Fedoryn sworn September 6, 2013 and the Exhibits thereto and on hearing the submissions of counsel for BMO, Essex Condominium Corporation 122 ("ECC 122"), the Estate of Patrick D'Amore, Portofino Corporation and Dante Capaldi, Remo Valente Real Estate (1990) Limited and Sutts Strosberg LLP, no one appearing for Lombard General Insurance Company of Canada (now Northbridge General Insurance

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Corporation) or Royal Bank of Canada, although duly served and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

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course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor, and to complete any minor repairs or construction as may be required to release and/or reduce security held for the Debtor's obligations under the Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31, as amended:

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

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conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; In marketing the Property, the Receiver will consult with ECC 122; however the advice and opinions of ECC 122 will not be binding upon the Receiver;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

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- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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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

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 2009
by	J.S.V.P.

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

-and-
Portfolio Corporation
Respondent

Court File No. CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDSOR

ORDER

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Lawyers for the Applicant, Bank of Montreal

TAB “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

December 6, 2013

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1. Introduction and Background

1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("**BDO**" or the "**Receiver**") of the assets, undertakings and properties of Portofino Corporation ("**Portofino**", "**Portofino 2**" or the "**Company**") acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof (the "**Property**").
- 1.1.2 On application of Bank of Montreal ("**BMO**"), BDO was appointed as receiver by the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 (the "**Appointment Order**"). A copy of the Appointment Order is attached as **Appendix A** to this report.

1.2 Background

- 1.2.1 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as "Portofino" (the "**Portofino Condominium**" or the "**Project**"), located at 1225 Riverside Drive West in the City of Windsor, Ontario (the "**Lands**").
- 1.2.2 Portofino Condominium was originally a partnership comprised of Dr. Dante Capaldi ("**Capaldi**") and three (3) other parties as partners. On or about January 1, 2005, Capaldi bought out his former partners and acquired two (2) new partners, namely Mr. Patrick D'Amore ("**D'Amore**") and Mr. Ozvaldo Rizzo ("**Rizzo**") who invested in the project.
- 1.2.3 Since 2005, there has been ongoing litigation commenced by one (1) of the original partners, Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**") as plaintiff against Capaldi, Portofino, Portofino Riverside Tower Inc. ("**Portofino 1**")

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

- 1.2.4 BMO provided construction financing to the Project under a commitment letter dated August 3, 2005 (the "**Commitment Letter**"). The financing consisted of demand loan facilities totalling \$27,325,000 (the "**BMO Credit Facility**").
- 1.2.5 As security for the BMO Credit Facility, Portofino granted to BMO, among other security a first mortgage over the Lands and a General Security Agreement. In addition, Capaldi, D'Amore and Rizzo provided their personal guarantees.
- 1.2.6 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 ("**ECC 122**") was registered and the closing of sales of units commenced in July, 2007. At the time of the Receiver's appointment on October 29, 2013, nine (9) units remained unfinished.
- 1.2.7 Portofino appears to have over-estimated the demand for luxury condominium units in the Windsor, Ontario market. In addition, the economic downturn in 2008 and appreciation of the Canadian dollar relative to the U.S. dollar negatively impacted sales. As at the date of this First Report, fifty-two (52) condominium units remain unsold and owned by Portofino (the "**Unsold Units**").
- 1.2.8 In view of the difficulty in selling the Unsold Units and Portofino's ability to repay the BMO Credit Facility, BMO amended the BMO Credit Facility on January 8, 2008, March 5, 2009, December 30, 2010, October 17, 2011, February 28, 2012, March 19, 2013 and April 15, 2013.
- 1.2.9 Portofino failed to pay property taxes to the City of Windsor over a period of several years and has accumulated tax arrears exceeding \$2.1 million (the "**Tax Arrears**").

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

- (c) manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company, and to complete minor repairs or construction as may be required to release and/or reduce security held for the Company's obligations under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. 0.31, as amended;
- (d) receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (e) in consultation with ECC 122, market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, with the opinions of ECC 122 not being binding upon the Receiver; and
- (f) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000, and with the approval of the Court in which the purchase price exceeds these monetary thresholds.

2. Terms of Reference

- 2.1 In preparing this First Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from the Portofino's books and records and discussions with former management and staff (the "Information"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

3. Purpose of the Receiver's First Report

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

- (a) To provide this Court with information on, among other things:
 - (i) the Receiver's activities since its appointment;
 - (ii) the arrangements in place for the ongoing property management of the Portofino Condominium;
 - (iii) the status of the property tax arrears of Portofino;
 - (iv) the status of condominium fees payable by Portofino to ECC 122; and
 - (v) The Receiver's proposed plan for the marketing and sale of the Unsold Units;

- (b) In support of:
 - (i) the advice and direction of the Court with respect to issues relating to the Letter of Credit in favour of Valente Real Estate as security for any judgment obtained by Valente Real Estate in the Valente Court Action, including:
 - (A) whether Valente Real Estate is contractually entitled to security for any judgment obtained in the Valente Court Action arising from the Defendant, Portofino's breach of the Exclusive Listing Agreement?
 - (B) whether in the context of these receivership proceedings there remains any risk to Valente Real Estate that the property, assets and undertaking of Portofino will be dissipated or disposed of pending a trial of the remaining issues in the Valente Court Action?
 - (C) whether maintaining the Letter of Credit in favour of Valente Real Estate as security for any judgment is contrary to public

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

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

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

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

4. Receiver's Activities

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

separately and invoiced to the Receiver.

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

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

5. Receiver's Proposed Sale Process

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

Unsold Units.

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

6. Valente Court Action

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

- 6.7 By Agreement dated January 17, 2006, the Limited Partnership agreed to keep Portofino 1 fully protected, defended and indemnified against all amounts that Portofino 1 may be legally obligated to pay to Valente Real Estate, if any, in respect of real estate commissions payable pursuant to the Listing Agreement (the "Indemnity"). In addition, the Limited Partnership agreed to irrevocably direct its trustee, Portofino 2, to pay such amounts from the proceeds of the sale of the condominium units at issue in priority to any payment to the Limited Partnership (the "Direction"). Portofino 2 acknowledged the Direction. Attached hereto as **Appendix G** is a copy of the Indemnity and Direction.

- 6.8 Valente Real Estate sued the Defendants for, among other things, breach of contract in respect of the Listing Agreement and oppression. The trial judge addressed only the oppression claim, not the breach of contract claim. The trial judge concluded that Valente Real Estate was a creditor of Portofino 1 and thus was a "complainant" as that term is understood under the oppression remedy sections of the Ontario *Business Corporations Act*. Having found that the real reason that Portofino 1 was reorganized was to ensure that Portofino 1 was an empty shell so that Valente Real Estate would be unable to collect commissions owed to it, the trial judge concluded that the corporate restructuring constituted oppression and ordered immediate judgment against the Defendants in the amount of \$1 million (the "Interim Judgment"). Attached hereto as **Appendix H** is a copy of the Reasons for Judgment of Justice Brockenshire dated August 31, 2007 in respect of the Interim Judgment.

- 6.9 In the Interim Judgment dated August 31, 2007, the trial judge also ordered that the Defendants, jointly and severally, give security to the plaintiff against all of their assets in the amount of \$2 million for payment of further damages or loss to date for past, future and contingent commissions, accrued interest on unpaid accounts, prejudgment interest, costs and GST.

- 6.10 By order dated October 9, 2007 (the "Security Order"), the form of security was settled by the trial judge:
 - (a) a Bank of Montreal Irrevocable Standby Letter of Credit No. BMT0191410OS in the total amount of \$2,000,000 (the "Letter of Credit"); and

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

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

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

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

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

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

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

6.14 By endorsement dated March 15, 2012, the Court of Appeal directed “that security should remain in place pending the outcome of the trial of the contract issue”. The court stated that “security” is an issue properly to be decided by the trial court in which the breach of contract issue will be heard. Accordingly, the Court of Appeal directed that the security remain in place temporarily to permit Valente Real Estate to move for security in the court below if so advised. Attached hereto as **Appendix M** is a copy of the Appeal Court Endorsement dated March 15, 2012.

6.15 On motion by Valente Real Estate in the Superior Court of Justice, the Honourable Mr. Justice Quinn heard arguments about the security issue. In his reasons, Justice Quinn notes that security as a general rule is not ordered in contract actions. The exception to this rule is where the court is persuaded that there is a real risk that the defendant will dispose of his assets in a manner not consistent with normal business practice. Justice Quinn determined that there were good reasons to leave security in place in light of the defendants’ past conduct designed to avoid payment under the Listing Agreement. Justice Quinn also determined that the only security required is a letter of credit which remained at \$2,000,000 with Valente Real Estate directed to continue to bear the costs of the security. Attached hereto as **Appendix N** is a copy of reasons for judgment of Justice Quinn dated May 4, 2012 (the “**Quinn Decision**”).

6.16 Paragraph 8 of the Quinn Decision states:

“... The courts, to date, in this matter to achieve security, have ordered a third mortgage, indemnity agreements, funds to be held in trust and a letter of credit. In my judgment the only security that is required is a letter of credit. The only issue with the letter of credit is the quantum.”

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

Estate thereunder.

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

7. Statement of Receipts and Disbursements of the Receiver

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

7.2 Receipts

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

7.3 Disbursements

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

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

- 8.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees (the "**Receiver's Charge**").
- 8.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 8.3 Attached as **Appendix R** is the fee affidavit of Stephen N. Cherniak sworn December 5, 2013 containing BDO's interim account as Receiver for the period, July 19, 2013 to November 28, 2013.
- 8.4 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 8.5 Attached as **Appendix S** is the fee affidavit of Sherry A. Kettle, sworn December 6, 2013 containing the interim account of MT for the period September 9, 2013 to November 15, 2013.

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

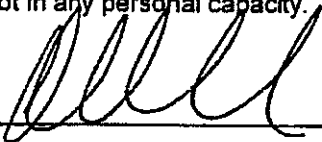
9. Recommendations

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

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

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

BDO Canada Limited in its capacity as Court Appointed Receiver of Portofino Corporation and not in any personal capacity.



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

TAB “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) FRIDAY, THE 13TH
JUSTICE THOMAS) DAY OF DECEMBER, 2013

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

ORDER

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

- (a) if necessary, abridging the time for and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the First Report of the Receiver dated December 6, 2013 and all appendices thereto (the "**First Report**"), and directing that any further service of same be dispensed with such that this motion is properly returnable on December 13, 2013;
- (b) approving the First Report and activities and conduct of the Receiver described therein;
- (c) authorizing and directing the Receiver to enter into a property management agreement with Capaldi Investment Holdings Inc. ("**Capaldi Holdings**") with respect to the unsold units on terms to be negotiated between the Receiver and Capaldi Holdings;

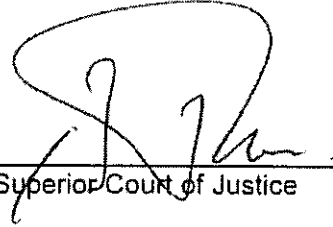
- (d) authorizing and directing the Receiver to negotiate and enter into a payment arrangement with the City of Windsor with respect to the payment of property tax arrears;
- (e) approving the Receiver's proposed sale process for the unsold units as set out in Section 5 of the First Report (the "**Sale Process**"), and authorizing the Receiver to carry out the Sale Process;
- (f) discharging the mortgage registered in favour of Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**") as instrument number CE297353 in the Land Registry Office (Essex) No. 12 on October 12, 2007 in the amount of \$1,000,000 (the "**Mortgage**") and directing the Land Registrar for the County of Essex to expunge the Mortgage from title to the real property described on **Schedule "A"** hereto;
- (g) directing Valente Real Estate to reimburse and pay to the Receiver the costs paid by Portofino to maintain a letter of credit posted by Bank of Montreal in the amount of \$2,000,000 (the "**Letter of Credit**") in favour of Valente Real Estate as security for any judgment obtained by Valente Real Estate in Court Action No. 05-CV-5864CM, in the amount of \$31,562.80 or such other amount as the Court determines is due to Portofino (the "**Letter of Credit Costs**");
- (h) approving the Receiver's interim Statement of Receipts and Disbursements for Portofino for the period October 29, 2013 to November 28, 2013 (the "**Statement of Receipts and Disbursements**");
- (i) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
- (j) approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**"); and
- (k) 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 First Report 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 December 9, 2013, filed:

1. THIS COURT ORDERS that the time for and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the First Report, is hereby abridged and validated and any further service of same is hereby dispensed with such that this motion is properly returnable on December 13, 2013.
2. THIS COURT ORDERS that the First Report and the activities and conduct of the Receiver as set out therein are hereby approved.
3. THIS COURT ORDERS that the Receiver is hereby authorized to enter into a property management agreement with Capaldi Holdings with respect to the unsold units on terms to be negotiated between the Receiver and Capaldi Holdings.
4. THIS COURT ORDERS that the Receiver is hereby authorized and directed to negotiate a payment arrangement with the City of Windsor with respect to the property tax arrears.
5. THIS COURT ORDERS that the Sale Process is hereby approved and the Receiver is authorized to carry out the Sale Process.
6. THIS COURT ORDERS that the Statement of Receipts and Disbursements is hereby approved.
7. THIS COURT ORDERS that the BDO Fees for the period commencing July 19, 2013 through November 28, 2013, as described in the First Report and in the Affidavit of Stephen N. Cherniak sworn December 5, 2013, and the MT Fees for the period September 9, 2013 to November 15, 2013, as described in the First Report and the Affidavit of Sherry A. Kettle sworn December 6, 2013, are hereby approved.

8. THIS COURT ORDERS that the hearing of the motion for the relief sought in paragraphs (f) and (g) above shall be adjourned to a date to be agreed by counsel and scheduled by the Trial Coordinator.



Justice, Superior Court of Justice

ENTERED AT WINDSOR	
In Book No. 21	
re Document No. 1603	
on Dec 13 2013	
by [Signature]	

SCHEDULE 'A'

<i>PIN</i>	01872 - 0001 LT
<i>Description</i>	UNIT 1, LEVEL 1, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0002 LT
<i>Description</i>	UNIT 2, LEVEL 1, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0003 LT
<i>Description</i>	UNIT 3, LEVEL 1, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0004 LT
<i>Description</i>	UNIT 4, LEVEL 1, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0005 LT
<i>Description</i>	UNIT 5, LEVEL 1, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0006 LT
<i>Description</i>	UNIT 6, LEVEL 1, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0052 LT
<i>Description</i>	UNIT 3, LEVEL 2, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0053 LT
<i>Description</i>	UNIT 4, LEVEL 2, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0058 LT
<i>Description</i>	UNIT 4, LEVEL 3, 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
<i>Address</i>	WINDSOR

PIN 01872 - 0063 LT
Description UNIT 9, LEVEL 3, 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
Address WINDSOR

PIN 01872 - 0065 LT
Description UNIT 1, LEVEL 4, 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
Address WINDSOR

PIN 01872 - 0066 LT
Description UNIT 2, LEVEL 4, 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
Address WINDSOR

PIN 01872 - 0072 LT
Description UNIT 8, LEVEL 4, 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
Address WINDSOR

PIN 01872 - 0082 LT
Description UNIT 8, LEVEL 5, 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
Address WINDSOR

PIN 01872 - 0085 LT
Description UNIT 1, LEVEL 6, 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
Address WINDSOR

PIN 01872 - 0087 LT
Description UNIT 3, LEVEL 6, 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
Address WINDSOR

PIN 01872 - 0095 LT
Description UNIT 1, LEVEL 7, 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
Address WINDSOR

PIN 01872 - 0098 LT
Description UNIT 4, LEVEL 7, 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
Address WINDSOR

<i>PIN</i>	01872 - 0102 LT
<i>Description</i>	UNIT 8, LEVEL 7, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0107 LT
<i>Description</i>	UNIT 3, LEVEL 8, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0108 LT
<i>Description</i>	UNIT 4, LEVEL 8, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0109 LT
<i>Description</i>	UNIT 5, LEVEL 8, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0110 LT
<i>Description</i>	UNIT 6, LEVEL 8, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0115 LT
<i>Description</i>	UNIT 1, LEVEL 9, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0117 LT
<i>Description</i>	UNIT 3, LEVEL 9, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0118 LT
<i>Description</i>	UNIT 4, LEVEL 9, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0120 LT
<i>Description</i>	UNIT 6, LEVEL 9, 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
<i>Address</i>	WINDSOR

PIN 01872 - 0123 LT
Description UNIT 1, LEVEL 10, 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
Address WINDSOR

PIN 01872 - 0124 LT
Description UNIT 2, LEVEL 10, 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
Address WINDSOR

PIN 01872 - 0130 LT
Description UNIT 8, LEVEL 10, 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
Address WINDSOR

PIN 01872 - 0131 LT
Description UNIT 1, LEVEL 11, 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
Address WINDSOR

PIN 01872 - 0132 LT
Description UNIT 2, LEVEL 11, 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
Address WINDSOR

PIN 01872 - 0134 LT
Description UNIT 4, LEVEL 11, 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
Address WINDSOR

PIN 01872 - 0135 LT
Description UNIT 5, LEVEL 11, 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
Address WINDSOR

PIN 01872 - 0138 LT
Description UNIT 8, LEVEL 11, 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
Address WINDSOR

PIN 01872 - 0138 LT
Description UNIT 1, LEVEL 12, 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
Address WINDSOR

<i>PIN</i>	01872 - 0140 LT
<i>Description</i>	UNIT 2, LEVEL 12, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0145 LT
<i>Description</i>	UNIT 1, LEVEL 13, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0146 LT
<i>Description</i>	UNIT 2, LEVEL 13, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0147 LT
<i>Description</i>	UNIT 3, LEVEL 13, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0151 LT
<i>Description</i>	UNIT 1, LEVEL 14, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0152 LT
<i>Description</i>	UNIT 2, LEVEL 14, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0153 LT
<i>Description</i>	UNIT 3, LEVEL 14, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0154 LT
<i>Description</i>	UNIT 4, LEVEL 14, 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
<i>Address</i>	WINDSOR
<i>PIN</i>	01872 - 0157 LT
<i>Description</i>	UNIT 1, LEVEL 15, 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
<i>Address</i>	WINDSOR

PIN 01872 - 0158 LT
Description UNIT 2, LEVEL 15, 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
Address WINDSOR

PIN 01872 - 0159 LT
Description UNIT 3, LEVEL 15, 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
Address WINDSOR

PIN 01872 - 0161 LT
Description UNIT 5, LEVEL 15, 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
Address WINDSOR

PIN 01872 - 0162 LT
Description UNIT 1, LEVEL 16, 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
Address WINDSOR

PIN 01872 - 0163 LT
Description UNIT 2, LEVEL 16, 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
Address WINDSOR

PIN 01872 - 0164 LT
Description UNIT 3, LEVEL 16, 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
Address WINDSOR

PIN 01872 - 0165 LT
Description UNIT 5, LEVEL 16, 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
Address WINDSOR

Document to be Discharged

<i>Registration No</i>	<i>Date</i>	<i>Type of Instrument</i>
CE297353	2007 10 12	Charge/Mortgage

BANK OF MONTREAL
Applicant

PORTOFINO CORPORATION
and
Respondent

Court File No: CV-13-29866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WINDSOR

ORDER

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

Alissa K. Mitchell LSUC#: 35104E
Tel: 519.931.3510
Fax: 519.858.8511

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

TAB “D”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) MONDAY, THE 3RD
JUSTICE THOMAS) DAY OF FEBRUARY, 2014

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

ORDER

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

- (a) if necessary, abridging the time for service and filing and validating the method of service of the Notice of Motion and the confirmation form(s) and directing that any further service of same be dispensed with such that this motion is properly returnable on February 3, 2014;
- (b) scheduling the hearing of the remaining issues on the motion originally returnable before the Honourable Mr. Justice Thomas on December 13, 2013 (the "December Motion");
- (c) approving a timetable for the delivery of materials and cross-examinations, if any, in connection with the return of the December Motion; and
- (d) such further and other relief as counsel may advise and this Honourable Court may deem just,

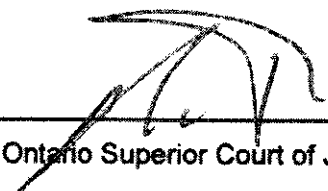
was heard this day at the Courthouse, 245 Windsor Avenue, Windsor Ontario.

ON READING the Notice of Motion, on hearing the submissions of the lawyers for the Receiver and such other persons as may be present,

1. THIS COURT ORDERS that the time for service and filing and the method of service of the Notice of Motion and the motion confirmation form is hereby validated and directs that any further service of same be dispensed with such that this motion is properly returnable today.

2. THIS COURT ORDERS that the remaining issues on the December Motion shall be adjourned to a special appointment hereby scheduled for MAY 2, 2014. subject to the following:

- (a) responding motion materials of Remo Valente Real Estate (1990) Limited shall be served by February 14, 2014;
- (b) reply materials of the Receiver shall be served by February 28, 2014;
- (c) reply or other motion materials of other stakeholders having an interest in the remaining issues in connection with the December Motion (the "Stakeholder Motions") shall be served by February 28, 2014;
- (d) responding materials to the Stakeholder Motions shall be served by March 14, 2014;
- (e) cross-examinations, if any, shall be conducted by March 28, 2014; and
- (f) facta shall be served by April 23, 2014.



 Justice, Ontario Superior Court of Justice

ENTERED AT WINDSOR	
IN BOOK NO. 25	
IN DOCUMENT NO. 149	
DATE Feb 3 2014	
BY [Signature]	

BANK OF MONTREAL
Applicant

PORTOFINO CORPORATION
and
Respondent

Court File No: CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WINDSOR

O R D E R

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

Alissa K. Mitchell LSUC#: 35104E
Tel: 519.931.3510
Fax: 519.858.8511

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

147

TAB "E"

Court File No. CV-13-29866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

February 28, 2014

Appendices

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

1. Introduction

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

2. Purpose of the Receiver's Second Report

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

3. The Valente Affidavit

Registration of the Lombard Mortgage

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

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

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

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

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

The Letter of Credit

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

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

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

BDO Canada Limited in its capacity as Court Appointed Receiver
of Portofino Corporation and not in any personal capacity.



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

TAB “F”



Agreement of Purchase and Sale - POTL Common Elements Condominium

Form 111
for use in the Province of Ontario

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

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

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

REAL PROPERTY (Parcel of Tied Land – POTL):

Address.....
fronting on the side of.....
in the
and having a frontage of more or less by a depth of..... more or less
and legally described as
..... (the "property").
(Legal description of land including easements not described elsewhere)

COMMON ELEMENTS CONDOMINIUM:

The property shall be deemed to include a common interest in the Condominium Corporation
being..... Condominium Plan No.....
(Legal Name of Condominium Corporation)
as more particularly set out on the Declaration and Description.

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

1. **IRREVOCABILITY:** This offer shall be irrevocable by until 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.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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.

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. **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): 



- 8. **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 and that the principal building may be insured against risk of fire. 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.
- 9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
- 10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 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, or that the principal building may not be insured against risk of fire 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.
- 11. **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.
- 12. **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. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. 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.
- 13. **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.**

INITIALS OF BUYER(S):

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INITIALS OF SELLER(S):

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- 14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. 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.
- 15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
- 16. **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. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. **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.
- 18. **ADJUSTMENTS:** Common Expenses; realty taxes, including local improvement rates; mortgage interest; rentals; unmetered public or private utilities and fuel where billed to the Parcel of Tied Land 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.
- 19. **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.
- 20. **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.
- 21. **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.
- 22. **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.
- 23. **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.
- 24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
- 25. **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.
- 26. **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.
- 27. **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):

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INITIALS OF SELLER(S):

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28. COMMON ELEMENTS CONDOMINIUM:

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

b). STATUS CERTIFICATE AND MANAGEMENT OF CONDOMINIUM: The Seller represents and warrants to the 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. 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.

c). MEETINGS: The Seller represents and warrants to the 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: (i) the termination of the government of the condominium property; (ii) any substantial alteration in or substantial addition to the common elements or the renovation thereof; OR (iii) any substantial change in the assets or liabilities of the Condominium Corporation; and Seller covenants that if the Seller receives any such notice prior to the date of completion Seller shall forthwith notify the Buyer in writing and Buyer may thereupon at the Buyer's option declare the Agreement null and void and all monies paid by the Buyer shall be refunded without interest or deduction.

d). TITLE: The Buyer agrees to accept title to the Property subject to the provisions of the Condominium Act and its Regulations and the terms, conditions and provisions of the Declaration, Description and Bylaws, Occupancy Standards Bylaws, including the Common Element Rules and other Rules and Regulations.

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

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



29. **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..... 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.

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.....

(Buyer) DATE.....

(Seller) DATE.....

(Buyer) DATE.....

Address for Service..... Tel.No.

Address for Service..... Tel.No.

Seller's Lawyer.....

Buyer's Lawyer.....

Address.....

Address.....

Email.....

Email.....

Tel.No. FAX No.

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)





Schedule A

Agreement of Purchase and Sale - POTL

Common Elements Condominium

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):



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 of 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, dusters, 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 proscribe 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. Roller blading 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 111 (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 111 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

TAB "G"

**BDO Canada Limited Court Appointed Receiver of
Portofino Corporation
Statement of Receipts and Disbursements
October 29, 2013 - April 16, 2014**

Receipts:

Unit rental Income	\$ 465,873.13	
Excess proceeds re: Portofino sub-trades	119,789.96	
Parking space rental	7,382.00	
Deposit - on sale of unit	5,000.00	
		\$ 598,045.09

Disbursements:

City of Windsor - installments on 2012 property taxes	180,000.00	
ECC #122 - monthly common fees	97,578.42	
Receiver's fees	94,544.04	
Miller Thomson - Receiver's legal fees	55,544.65	
HST on disbursements	22,211.19	
Appraisal fees	15,014.50	
Insurance	9,501.00	
Sutts, Strosberg - legal fees	5,000.00	
Advertising - Signage	950.00	
Capaldi Corp - Tarion warranty	500.00	
Receiver General - receivership filing fee	70.00	
Bank charges	14.00	
		480,927.80

Excess receipts over disbursements

\$ 117,117.29

Represented by:

Balance in Receiver's account as at April 16, 2014		\$ 117,117.29
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TAB “H”

**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:**

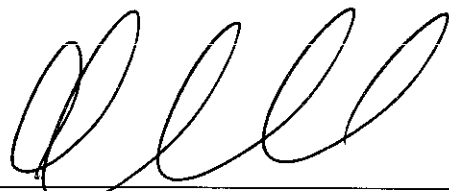
1. I am a Senior Vice-President of BDO Canada Limited, the Receiver of Portofino Corporation, (“Portofino”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated October 29, 2013 BDO Canada Limited was appointed as Receiver of Portofino (the “Receiver”).
3. The Receiver’s First Report to the Court was approved by 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. Since the date of the Receiver’s last account the Receiver has been engaged in the following:
 - Complete the First Report of the Receiver and attend Court hearing on December 13, 2013;
 - Prepare draft Property Management Agreement and provide to Capaldi Holdings;
 - Meet with representatives of Tarion Corporation to review status of the Ontario New Home Warranty Program for the Unsold units and status of other outstanding issues;
 - Identify five (5) Windsor, Ontario real estate agents from whom to seek listing proposals for the Unsold Units, issue invitation to submit proposals and review the proposals submitted by four agents;

- Conduct interviews with four (4) real estate agents in Windsor and advise realtors of Receiver's selection;
 - Review Valente litigation issues with the Receiver's legal counsel;
 - Review Second Report of Receiver prepared by Receiver's legal counsel in connection with Valente litigation;
 - Review several drafts of appraisal of unsold units and provide information and clarification to appraiser throughout appraisal process;
 - Prepare Receiver's Schedule to accompany Ontario Real Estate Association ("OREA") standard forms and finalize with legal counsel;
 - Complete Agreement of Purchase and Sale for Unit 1108;
 - Review sales process issues and considerations with Ms. Julia McClelland of Bob Pedler Real Estate Limited and complete listing agreements with J. McLelland for 5 unsold units;
 - Prepare the Third Report of the Receiver and Confidential Supplement to obtain the Omnibus Approval and Vesting Order and approval of the Agreement of Purchase and Sale for Unit 1108;
 - Prepare for and examination of Receiver by Valente legal counsel;
 - Review and reject inadequate unsolicited offers received for blocks of Unsold units;
 - Collect monthly rents for the forty-two (42) leased, unsold units;
 - Review and execute offers to lease for vacant units;
 - Respond to tenant queries and concerns;
 - Various telephone calls and correspondence with the stakeholders and their respective counsel.
6. In the course of performing the duties pursuant to the Order and as set out above at paragraph 5, and since the date of the First Report the Receiver's staff expended 280.1 hours for the period of November

28, 2013 through April 9, 2014. Attached hereto and marked as Exhibit "A" to this my Affidavit is the account of the Receiver together with a summary sheet

- 7. 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.
- 8. 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.
- 9. 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.
- 10. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
- 11. 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 17th day of April, 2014



STEPHEN N. CHERNIAK, CPA•CA•CIRP



Commissioner for Taking Affidavits

Roberta Ann Robinson, a Commissioner, etc.,
Province of Ontario, for BDO Canada Limited,
Trustee in Bankruptcy.
Expire of Office: October 8, 2014.

Attached is Exhibit A
To the Affidavit of Stephen N. Cherniak
Sworn the 17th day of April, 2014.



A Commissioner, Etc

Roberta Ann Robinson, a Commissioner, etc.,
Province of Ontario, for BDO Canada Limited,
Trustee in Bankruptcy.
Expires December 8, 2014.

**Summary of Receiver's Accounts for the period
November 28, 2013 through April 9, 2014**

Invoice Date	Hours Expended	Invoice Total
January 20, 2014	72.9	\$26,029.59
March 12, 2014	122.2	43,500.00
April 10, 2014	85.0	29,505.00
	280.1	\$99,034.59



177

Invoice # 87661486
Portofino Corporation
HST Reg # 101518124RT0001

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

January 20, 2014

Re: Portofino Corporation

For professional services rendered for the period November 28, 2013 to January 17, 2014 as per the attached detail:

Our Fee	\$26,000.00
Disbursements (courier)	<u>\$29.59</u>
Sub Total	\$26,029.59
HST	\$3,383.84
Total	<u>\$29,413.43</u>

REMITTANCE ADVICE

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

Invoice #	87661486
Amount	\$29,413.43

January 20, 2014

For professional services rendered

Staff	Date	Time	Narrative
Prieur, C	26-Nov-13	0.5	Email D. Capaldi, verify cash on hand for deposit, prepare deposit
Flett, D	27-Nov-13	1.1	Email with D. Capaldi re unsold units; review emails; continue with Receiver's First Report
Finnegan, M	28-Nov-13	1	Banking, pay bills. R&D and file admin
Hooper, L	28-Nov-13	0.1	Issued chqs
Cherniak, S	28-Nov-13	1.1	Call with D. Capaldi. Review of file. Call with Cassano. Register order on title. Update on appraisal.
Flett, D	28-Nov-13	0.7	Email with Metrix on appraisal; finalize draft of court report and appendices; review draft court report
Flett, D	29-Nov-13	0.8	Revisions to First Court Report
Cherniak, S	29-Nov-13	1.5	Review of report. Finalize BMO Line of Credit calculation. Call with P. Cassano re sales process.
Hinton, B	29-Nov-13	0.3	BMO interest calculation
Finnegan, M	2-Dec-13	0.5	Pay bills
Cherniak, S	2-Dec-13	1.5	Meet with D. Capaldi re update on file and concerns re Tarion. Miller Thomson tour of exterior of building.
Flett, D	2-Dec-13	0.3	Review revised court report and email with Miller Thomson on status
Flett, D	3-Dec-13	1.7	Review issues and revisions to Receiver's report; Finalize and forward to Miller Thomson
Cherniak, S	3-Dec-13	0.5	Final review of draft first report.
Hooper, L	3-Dec-13	0.1	Issued cheque
Finnegan, M	4-Dec-13	1.5	Receipt of December rent cheques. Update rent roll and prepare for deposit.
Cherniak, S	4-Dec-13	1.1	Review of emails between G. Morga and Miller Thomson. Call to Miller Thomson. Update BMO on the file.
Flett, D	4-Dec-13	1.1	Review A Mitchell emails and correspondence re: Valente litigation; prepare detail of fee affidavit for first report
Finnegan, M	5-Dec-13	0.2	Deal with NSF rent cheque
Szypula, C	5-Dec-13	0.5	2nd partner review of 1st Report to court
Flett, D	6-Dec-13	0.4	Email with Miller Thomson and review revision to report re: ESC 122; email with S Kettle on report re: clarification on units to be listed; review Miller Thomson emails on revisions, serving of motion record
Cherniak, S	6-Dec-13	1.5	Correspondence re Miller Thomson. Review of Miller Thomson changes to report. Calls to Miller Thomson.
Cherniak, S	9-Dec-13	2.8	Review of finalized report. Respond to Branoff emails. Call from Scott D'Amore. Emails to D. Capaldi re employees. Call from Vince Grillo re property taxes. Call from Robert Calderwood re units. Emails to/from BMO re BMO audit of Portofino file.
Flett, D	9-Dec-13	1.6	Review final version of report and motion record; draft response to Branoff queries and review of emails; review unsold unit occupancy status; review Capaldi Holdings employee arrangements
Finnegan, M	9-Dec-13	0.5	Updating rent roll. Following up on nsf rent chq.

Staff	Date	Time	Narrative
Prieur, C	9-Dec-13	1	Meet with D. Capaldi re: collection of December rent and review December rent summary schedule.
Cherniak, S	10-Dec-13	0.1	Email from KPMG re BMO audit of Portofino file.
Cherniak, S	11-Dec-13	1.5	Review of emails to/from counsel re court. Review of email from Northbridge and call to Miller Thomson re same. Review of correspondence from Miller Canfield re funds. Email to Miller Thomson and response from BMO. Emails from Morga re attendance and adjournment. Call from Miller Thomson re same.
Prieur, C	11-Dec-13	0.5	Update Dec rent rec'd schedule
Finnegan, M	12-Dec-13	1	Deposit. Update rent summary. Deal with December NSF rent cheque
Cherniak, S	12-Dec-13	0.1	Email re court attendance.
Cherniak, S	13-Dec-13	1.1	Attend at court re Portofino sale process approval motion.
Hooper, L	15-Dec-13	0.1	Issued chqs
Finnegan, M	16-Dec-13	0.5	Deposit rent cheques and update rent roll
Cherniak, S	16-Dec-13	1	Call from resident re parking and sales process. Call with D. Capaldi re parking and other issues.
Cherniak, S	17-Dec-13	0.5	Review of parking maps.
Cherniak, S	18-Dec-13	0.5	Update from Miller Thomson on trust monies with Miller Canfield and potential proposal.
Flett, D	18-Dec-13	0.5	Review email re: parking spaces and diagrams; review of realtor profiles
Cherniak, S	19-Dec-13	1.2	Review of invoices from Northbridge. Review of updated condo schedule. Call with D. Capaldi re lawsuit for fees.
Finnegan, M	19-Dec-13	0.5	Deposit and rent roll update
Hooper, L	19-Dec-13	0.1	Issued chq
Hooper, L	19-Dec-13	0.1	Bank rec
Hooper, L	20-Dec-13	0.1	Issued chqs
Finnegan, M	20-Dec-13	1.5	Paid bills. File admin
Cherniak, S	20-Dec-13	1	Email from D. Capaldi. Discussions re realtors. Pay bills.
Flett, D	20-Dec-13	0.4	Review property management arrangements; research re; market property management fees; review realtors
Cherniak, S	23-Dec-13	0.5	Emails to/from D. Capaldi. Update on appraisal. Call to Miller Thomson re D. Capaldi actions.
Flett, D	27-Dec-13	0.2	Emails with Metrix Realty re: appraisal and timing
Flett, D	30-Dec-13	0.2	Review City Windsor property tax schedule
Cherniak, S	30-Dec-13	0.5	Emails re property taxes.
Flett, D	31-Dec-13	0.6	Review 803 lease, rent roll, Finlay appraisal and email D. Capaldi on lease; review City Windsor property tax schedule and email with D. Capaldi on sale of #1406.
Flett, D	2-Jan-14	1.7	Review emails and documents re; leasing of unit 1406 and commission; review ESCC 122 insurance and email to D. Capaldi re: insurance; discuss property management considerations and prepare prop mnagement agreement
Cherniak, S	2-Jan-14	1.5	Deal with the leasing of Unit 803. Review of property tax info from the City of Windsor.
Cherniak, S	3-Jan-14	1.5	Deal with insurance issue. Call with D. Capaldi re insurance, realtors, property management agreement and potential leasing of unit 102. Emails from Miller Thomson on court updates.

Staff	Date	Time	Narrative
Flett, D	3-Jan-14	1.2	Review insurance renewals/coverages and email with D. Capaldi on unsold unit liability and interior coverage; review unsold unit liability coverage; review property management agreement terms and compensation; revisions to property management agreement
Flett, D	6-Jan-14	1.4	Review unit 103 offer to lease; memo and discuss re: first refusal/agent commission; continue with property management agreement - insurance section; review D. Capaldi corporation liability insurance policy and email with D. Capaldi re; 52 unsold units, liability
Cherniak, S	6-Jan-14	1.7	Review of offer to lease 102. Edits. Call to D. Capaldi. Review of insurance policy. Call from BMO.
Cherniak, S	7-Jan-14	1.8	Call with T. Goebel re listing Portofino properties. Review of CV. Review and respond to email re leasing a unit with offer to purchase. Email and call to Royal LePage re realtors. Email to D. Capaldi.
Flett, D	7-Jan-14	1.1	Phone call with D Capaldi on Capaldi Corp Aviva policy and Portofino liability coverage and review; prepare/edit unsold unit schedule; review emails on realtor enquiry; review Goebel prepared schedule of estimated values; review realtor criteria
Flett, D	8-Jan-14	1.2	Revisions to property management agreement - insurance; review of Finlay appraisal and methodology; review list of sales and re-sales
Cherniak, S	8-Jan-14	1.5	Review of email from Goebels. Call with D. Capaldi. Email to Goebels. Call and email re condo sales.
Prieur, C	8-Jan-14	0.4	Meet w. D Capaldi re: rent receipts for January, 2014
Finnegan, M	9-Jan-14	1.5	Deposit rent cheques and update rent schedule
Cherniak, S	9-Jan-14	1.7	Emails from Goebels re lease of 1105. Call from Greg Barlow re realtors. Review of condo sales provided by Greg Barlow.
Flett, D	9-Jan-14	2.2	Finalize draft property management agreement; review of Finlay appraisal - reported sales; analysis and summary by agent of Windsor condo sales data from 2010 to 2013
Flett, D	10-Jan-14	1.8	Revisions to property management agreement and forward to Miller Thomson with comments; review revised unit 102 offer to lease; analysis of condo sales information 2010 - 2013 and prepare summary schedule of agent activity and review; review report of re-sales
Cherniak, S	10-Jan-14	2	Review agents re condo sales. Emails from Goebels. Review of draft property management agreement. Review revised offer on 1105.
Finnegan, M	10-Jan-14	0.5	Pay bills
Finnegan, M	13-Jan-14	0.5	Deposit.
Flett, D	13-Jan-14	2.2	Review Miller Thomson revisions to property management agreement and memo; revision to s. 6.2 of agreement and email to Miller Thomson with revision; review of condo sales data and realtor candidate listings, background and condo sales data; update condo realtor summary schedule; review and sign receiver cheques
Cherniak, S	13-Jan-14	1.3	Review of property management agreement. Call with M. Troup re realtors. Emails re leasing of units.
Cherniak, S	14-Jan-14	1.2	Calls and email with D. Capaldi. Review of email re realtors. Call with owner. Email from Miller Thomson re scheduling. Call with Miller Thomson re potential settlement with Valente. Call to Scott D'Amore. Call with Adam Paglione re lawsuits.

Staff	Date	Time	Narrative
Flett, D	14-Jan-14	0.4	Email with D Capaldi re: financial statements; review and summarize condo re-sale data for 2010 to 2013
Flett, D	15-Jan-14	0.8	Sales data and realtor analysis; update Windsor realtor and candidate short list schedule; email with Metrix; review unit summary schedule
Cherniak, S	15-Jan-14	1	Review of realtors. Email from Goebels. Call to Greg Barlow re realtors. Review of schedule for prospective realtors.
Cherniak, S	16-Jan-14	0.6	Call from an owner of a unit. Review of emails from Miller Thomson re court scheduling.
Finnegan, M	16-Jan-14	1	Review and update rent rec'd summary. Process cash deposited in Windsor to update banking.
Finnegan, M	17-Jan-14	0.5	Further updates to rent roll summary.
Cherniak, S	17-Jan-14	0.5	Update on status of appraisal. Update on status of rents.
		72.9	Total Time

Staff	Position	Rate	Time
Cherniak, S	Sr. Vice President	\$450	34.3
Finnegan, M	Administrative	\$175	11.2
Flett, D	Vice President	\$325	23.6
Hinton, B	Estate Administrator	\$200	0.3
Hooper, L	Estate Administrator	\$125	0.6
Prieur, C	Estate Administrator	\$200	2.4
Szypula, C	Sr. Vice President	\$450	0.5
			72.9



Invoice # 87701030
Portofino Corporation
HST Reg # 101518124RT0001

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

March 12, 2014

Re: Portofino Corporation

For professional services rendered for the period January 17, 2014 to March 10, 2014 as per the attached detail:

Our Fee	\$43,500.00
HST	<u>\$5,655.00</u>
Total	<u>\$49,155.00</u>

REMITTANCE ADVICE

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

Invoice #	87701030
Amount	\$49,155.00

March 12, 2014

For professional services rendered

Staff	Date	Time	Narrative
Flett, D	17-Jan-14	0.7	Review sale unit schedule vs rent roll re: unfinished units; review January rent roll and advise of recent units leased; Assemble various requested information and prepare email memo to Metrix Realty.
Flett, D	20-Jan-14	0.4	Prelim review of 2010 - 2012 financial statements and email with D. Capaldi on financials and other matters
Cherniak, S	20-Jan-14	0.6	Review of financial statements. Email from Miller Thomson re settlement offer and Capaldi litigation. Call with Scott d'Amore re realtors.
Hooper, L	20-Jan-14	0.1	Bank rec
Hooper, L	21-Jan-14	0.1	Issued chq
Finnegan, M	21-Jan-14	0.5	File admin
Cherniak, S	21-Jan-14	0.5	Email from Capaldi re financial statements. Review of Miller Thomson letter to Goldberg. Emails from Miller Thomson re strategy on Valente litigation.
Finnegan, M	22-Jan-14	0.5	Pay bills
Cherniak, S	23-Jan-14	0.6	Emails from Capaldi re offer on 1105 and lease on 102. Call with Miller Thomson re offer to settle Valente litigation and scheduling.
Flett, D	23 Jan-14	0.4	Review offer received; review recent re-sale data; email with D. Capaldi on unit 102 lease and waiver
Flett, D	24-Jan-14	5.2	Meeting with W. Northcott, A. Darr, C. Foreshew of Tarion on status; coverage on unfinished units, security/bond; 2008 audit status and other issues; meet with D. Capaldi re: unit 1105 offer, marketing process; ECC122 and other issues; phone calls with M. Mclintock of Metrix on appraisal approach and value vs. List price; review preliminary Metrix findings; prepare schedule of key unsold unit key information
Cherniak, S	24-Jan-14	3.6	Meet with Tarion reps and D. Capaldi. Meet with Capaldi after to review offer and take aways from Tarion meeting. Review of offer on unit 1105. Discuss preliminary appraisal results. Counter offer. Discuss recent re-sales on a per sq ft. Basis.
Finnegan, M	24-Jan-14	0.5	Deposit and update rent summary

Staff	Date	Time	Narrative
Cherniak, S	27-Jan-14	0.6	Update on scheduling motion for February 3, 2014. Review and discussion with Miller Thomson re Morga emails on settling Valente litigation. Meet with S. d'Amore re realtors. Email from realtor re listing.
Flett, D	27-Jan-14	0.6	Email with D. Capaldi; prepare summary schedule of unsold units for realtors
Flett, D	28-Jan-14	0.6	Review City of Windsor property tax schedules and compare to unsold unit summary; prepare draft memo to realtors re: listing proposals
Cherniak, S	28-Jan-14	1.7	Review of realtors. Draft email to realtors. Email from Goebel.
Finnegan, M	28-Jan-14	1	Prepare property tax payment schedule. Cheque requisition for January payment on property taxes owing.
Hooper, L	28-Jan-14	0.1	Issued chq
Finnegan, M	29-Jan-14	0.5	Pay property tax bills
Cherniak, S	29-Jan-14	1.1	Review of motion materials on adjournment re Valente litigation. Finalize email to realtors. Email to City of Windsor re property taxes. Brief review of ECC# 122 statements. Email from Goebels.
Flett, D	29-Jan-14	1.4	Draft memo to realtors re: listing proposals; email to Metrix on appraisal; update unsold unit schedule; review ECC #122 2011-2013 financial statements and memo
Flett, D	30-Jan-14	0.3	Review of email with T. Goebel on listings and T. Goebel schedule; email with D. Capaldi re: unit 1105 and review
Cherniak, S	30-Jan-14	0.5	Email to/from D. Capaldi re offer. Emails to Goebels. Review response.
Cherniak, S	31-Jan-14	1	Emails re property taxes and update condo schedule. Send email to realtors. Response. Begin review of appraisal.
Flett, D	31-Jan-14	1.1	Review 2013 property tax schedule from City Windsor; update unsold units summary sheet; prelim review of Metrix appraisal and memo re: general values, unit 1105; review memo to invited realtors and review email responses from realtors
Flett, D	3-Feb-14	3.8	Detailed review of Metrix appraisal and analysis versus current list prices and versus 2012-2013 sales data; email with D. Capaldi on property taxes/unit 107
Cherniak, S	3-Feb-14	0.3	Updates on file. Call with Miller Thomson. Emails from D. Capaldi.
Cherniak, S	4-Feb-14	1.2	Review appraisal and revised requirements from Metrix. Email from Goebells. Respond.

Staff	Date	Time	Narrative
Flett, D	4-Feb-14	3.3	Review draft Metrix appraisal - methodology, issues, re-sale data etc; further review of appraisal and summarize questions, issues; email with and lengthy phone call with Metrix on draft appraisal - Portofino re-sale data; small unit values - Palermo, Marseilles, Miramar; unit 102 value;
Finnegan, M	4-Feb-14	0.5	Deposit
Finnegan, M	5-Feb-14	0.5	Pay condo fees for February. Email re o/s January rent cheques.
Hooper, L	5-Feb-14	0.1	Issued chq
Flett, D	5-Feb-14	0.9	Email with D. Capaldi on insurance; telephone calls to realtors invited to submit proposal; call with N. Jones; email to D. Routliffe on proposals and timelines; call with M. Berthiaume
Cherniak, S	5-Feb-14	0.5	Update on realtors. Review timing of meeting. Email from Goebel.
Cherniak, S	6-Feb-14	0.5	Review of Neil Jones proposal. Update on insurance, rent. Update BMO. Call from realtor.
Flett, D	6-Feb-14	1.3	Review of property taxes/Goebel schedule; email with D. Capaldi on insurance; emails with Metrix on assessed values and unfinished units; review realtor proposal; review realtor status
Flett, D	7-Feb-14	0.4	Review realtor proposal
Cherniak, S	7-Feb-14	0.5	Review of McCelland proposal. Discuss. Email from D. Capaldi.
Cherniak, S	10-Feb-14	1	Review of Eugeni sales package. Discuss set up of app'ts. Review Routlege email. Respond re meeting times.
Flett, D	10-Feb-14	0.8	Review of realtor proposals; email to realtor re: interview; email with D. Capaldi
Flett, D	11-Feb-14	0.9	Email with realtors submitting proposals and review of proposals; email with Metrix on revised draft appraisal; review email from D. Capaldi on sale of units, insurance
Cherniak, S	11-Feb-14	0.5	Update on appraisal. Emails from D. Capaldi re potential offers and insurance update.
Hooper, L	11-Feb-14	0.1	Issued chq
Finnegan, M	11-Feb-14	1.2	Deposit February rent cheques. Update rent roll summary.
Cherniak, S	12-Feb-14	1.1	Call from D. Capaldi re potential offers. Discussions re revisions to Portofino appraisal.
Finnegan, M	12-Feb-14	0.8	Reconcile and post direct deposit rent cheques. Pay monthly property tax payment

Staff	Date	Time	Narrative
Flett, D	12-Feb-14	5.2	Offers and pending offers - review sales data, draft appraisal, call/email with D. Capaldi; detailed review of revised Metrix appraisal and note issues; review unfinished unit methodology; email with realtors on meeting; prepare schedule of Metrix appraisal vs. Current list prices for analysis; revisions to unsold units schedule; call with D. Capaldi on liability insurance
Flett, D	13-Feb-14	3.8	Further review of draft Metrix appraisal and floor plan comparables / ranges; revisions to schedule to compare appraisal to list on square foot basis; email with Metrix on unfinished units; prepare schedule C to accompany offers to purchase condos
Cherniak, S	13-Feb-14	0.6	Call with D. Capaldi re potential offers. Discuss appraisal revision.
Cherniak, S	14-Feb-14	0.6	Review of schedules to accompany offers. Update on status of appraisal.
Flett, D	14-Feb-14	4	Phone call with D. Capaldi on offers, list price setting and specific suite features; revise/update schedule comparing Metrix draft value to list; review of draft Metrix report and analyze expired listings and Portofino comparables; check particulars of Portofino comparables; email with D. Capaldi on expired listings; email with Metrix on appraisal timing and issues.
Cherniak, S	17-Feb-14	0.2	Review of email from Goebells.
Cherniak, S	18-Feb-14	0.5	Call from BMO re update. Emails and discussion re appraisal and marketing.
Flett, D	18-Feb-14	1.8	Email with M. Cunningham re: property taxes; further review of draft Metrix appraisal and notes, email with D. Capaldi to query particulars on expired listings; email with Metrix on expired listings and unfinished unit valuation approach
Flett, D	19-Feb-14	2.8	Phone call with Metrix to review draft appraisal - unfinished unit approach, Palmero and Marseilles valuations, Portofino comparables, N vs NE/NW premium; draft emails to Metrix and D Capaldi on expired listing details; details of upgrades units; Monaco comparables and other matters; review appraisal issues and Mextrix; review email from D Capaldi on offer
Cherniak, S	19-Feb-14	0.8	Update from D. Flett on call with Metrix re appraisal. Email from Goebells. Review of offer. Emails from D. Capaldi re offer.
Finnegan, M	19-Feb-14	0.8	Deposit rent cheques and update rent roll summary. Update direct deposit rents deposited
Cherniak, S	20-Feb-14	1	Emails from Goebells. Review of unsolicited realtor's proposal. Review of questions for tomorrow meeting. Receipt of offer on unit 1108.

Staff	Date	Time	Narrative
Flett, D	20-Feb-14	2.2	Draft email to Metrix on Palmero valuation; emails with 4 realtors to confirm interview arrangements and respond to questions; review realtor proposals and draft questions; email with D. Capaldi on upgraded suites
Hooper, L	20-Feb-14	0.1	Bank rec
Flett, D	21-Feb-14	4.5	Interview/meeting with 4 prospective realtors at Portofino; review expired listing details, 1108 offer and other issues with D. Capaldi
Cherniak, S	21-Feb-14	5.5	Meet with realtors and D. Capaldi re Portofino listings. Emails to/from Miller Thomson re Valente litigation.
Cherniak, S	22-Feb-14	0.7	Emails to/from D. Capaldi. Emails to/from Goebels. Consider offer and input from Miller Thomson
Cherniak, S	24-Feb-14	2.7	Email to Miller Thomson re offer and schedule. Lengthy call with Miller Thomson re update on Valente litigation, update on realtor selection and responding to Martini email. Review process for next report and omnibus order. Get consensus on Agreement of Purchase and Sale. Review realtor selection. Call from City of Windsor re property taxes. Email re same. Update on appraisal. Call from tenant.
Flett, D	24-Feb-14	4.2	Review short listed realtor listings and condo sales data; prepare analysis; two calls and email with Metrix on appraisal and expired listing details, 1102 expired listing vs. Draft range and other issues; review realtor considerations and selection; revisions to revised appraisal summary schedule - vs. List prices, value per sq ft; call with D Capaldi on 1108 offer and Receiver schedule to OREA forms
Flett, D	25-Feb-14	1.8	Further analysis and review of revised appraisal and update unsold unit schedule to includes comparable by view and floor, review realtor selection and listing considerations; emails with two realtors not selected to list; email with D. Capaldi on lease expiry dates
Cherniak, S	25-Feb-14	1.1	Update on appraisal. Calls to realtors re selection. Email from Miller Thomson re Valente litigation. Review of draft second report.
Cherniak, S	26-Feb-14	0.5	Review unit values and comparables. Email to Miller Thomson.
Flett, D	26-Feb-14	2.4	Email with Metrix re: comparables, unit 1406 and additional detail required; email with D. Capaldi on details of unit 606 sale; review of current MLS listings and expand unsold unit summary schedule; review current MLS listings vs, appraisal and recent sales; review Receiver's 2nd report to Court; call to M. Mccleary of HUB
Szypula, C	26-Feb-14	0.3	Review of Second Report to Court

Staff	Date	Time	Narrative
Flett, D	27-Feb-14	1.8	Email with J. McLelland; email with D. Capaldi on 606 and 1406; preliminary review of revised appraisal and various emails with Metrix on expired listings, 706 comparable, upgrades and other matters.
Cherniak, S	27-Feb-14	0.3	Emails from Julia re Idzinski potential offer. Updates on appraisal.
Finnegan, M	27-Feb-14	0.5	Deposit and rent roll reconciliation for Feb
Cherniak, S	28-Feb-14	1.2	Review offer from Farhi. Call to Julio McLelland. Review appraisal with D. Flett. Email from Miller Thomson. Review edits of Second Report and send to Miller Thomson.
Flett, D	28-Feb-14	5	Email with D. Capaldi on costs to complete unfinished units; review unfinished unit offer; detailed review of revised draft Metrix appraisal; review of listing and Portofino sales info and update excel schedule to compare to Portofino list price and recent sales; detailed memo to Metrix on comments, corrections, suggested revisions.
Flett, D	3-Mar-14	2.6	Review current MLS listings; emails with D Capaldi and Metrix on apparent errors in MLS re-sale specs; costs to complete unfinished units, lease expiry dates; revise/update unsold units master schedule for lease expiry dates and other data
Cherniak, S	3-Mar-14	0.6	Update on appraisal. Review of appraisal.
Cherniak, S	4-Mar-14	1.2	Review final numbers on appraisal. Call with Miller Thomson re OREA form and receivers schedule. Email to D. Capaldi re status of ECC #122.
Flett, D	4-Mar-14	4.5	Email to M. Cleary of HUB re: unsold unit liability policy for Receiver; update master schedule of unsold units for comparable sale and current listing references; review draft appraisal valuations and discuss comparable sales by model and preliminary list prices; call with Metrix on appraisal and valuation by model; review revised appraisal and memo to Metrix on Monte Carlo valuation and other edits required; call with Metrix on revisions; email with D. Capaldi on utilities and common fees
Flett, D	5-Mar-14	2.5	Review revised appraisal and email with Metrix on revisions/corrections; update master schedule of unsold unit inventory; review Schedule C to OREA 111 revised by Miller Thomson, for offers to purchase
Cherniak, S	5-Mar-14	1.5	Review of edits to receivers schedules from Miller Thomson. Finalize changes to sale of 1108 agreement. Review final Metrix appraisal in prep for call to D. Capaldi. Email to Miller Thomson re HST
Cherniak, S	6-Mar-14	2.3	Lengthy call with D. Capaldi to go through appraisal. Discussions re: revisions to appraisal.

Staff	Date	Time	Narrative
Flett, D	6-Mar-14	3.2	Lengthy call with D. Capaldi to review draft appraisal findings and preliminary list prices on selected units; re-review appraisal comparables and Windsor market sales per sq ft.; phone call and subsequent emails with Metrix on: base rates for Marseilles, san Remo and Capri; nature and methodology for upgraded units; Monaco unit and Walkerville lofts as main comparable; review considerations for units to be listed and schedule C to OREA
Flett, D	7-Mar-14	1.8	Review condo marketing/listing timing and approach; start preparation of Receiver's third report
Cherniak, S	7-Mar-14	0.2	Update on appraisal and sale strategy.
Cherniak, S	10-Mar-14	0.5	Finalize appraisal. Strategize re condos to be listed. Review of offer to lease unit 1105.

122.2 Total Time

Staff	Position	Rate	Time
Cherniak, S	Sr. Vice President	\$450	37.8
Finnegan, M	Administrative	\$175	7.3
Flett, D	Vice President	\$325	76.2
Hooper, L	Estate Administrator	\$125	0.6
Szypula, C	Sr. Vice President	\$450	0.3
			122.2



Invoice # 87743243
 Portofino Corporation
 HST Reg # 101518124RT0001

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

April 10, 2014

Re: Portofino Corporation

For professional services rendered for the period March 10, 2014 to April 9, 2014 as per the attached detail:

Our Fee	\$29,500.00
Disbursements (courier)	<u>5.00</u>
Sub total	29,505.00
HST	\$3,835.65
Total	<u>\$33,340.65</u>

REMITTANCE ADVICE

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

Invoice #	87743243
Amount	\$33,340.65

April 10, 2014

For professional services rendered

Staff	Date	Time	Narrative
Flett, D	10-Mar-14	3.5	Call with Metrix to discuss revisions to appraisal; review revised appraisal and update master schedule of unsold units; review #1105 offer to lease and discuss terms, email to D. Capaldi on terms; review unsold unit inventory and select units to list and list price; review court report considerations re: 1108 sale;
Finnegan, M	10-Mar-14	0.5	Pay bills
Hooper, L	10-Mar-14	0.1	Issued cheques
Finnegan, M	11-Mar-14	2	Deposit rent cheques and update rent schedule summary
Flett, D	11-Mar-14	3.3	Call with Metrix on Monaco/Monte Carlo valuations and comparables; review valuations; further call with Metrix; review revised appraisal and email Metrix on additional revisions, corrections; instruct Metrix to issue appraisal in final; review D. Capaldi memo on 1105 lease terms and return acceptance of offer to lease; update master schedule of unsold units; memo to D. Capaldi on 4 units to be listed and process/timing
Cherniak, S	11-Mar-14	1.1	Review and edits to lease of 1105. Finalize selection of units to be listed. Finalize appraisal.
Cherniak, S	12-Mar-14	2.5	Lengthy call with realtor re listings and strategy. Finalize lease agreement for 1105. Deal with D. Capaldi concerns re appraisal. Email to realtor with schedules to be attached to offers. Email from realtor re questions. Response. Email to Miller Thomson re court date.
Flett, D	12-Mar-14	3.6	Lengthy call with J. McLelland to review units to be listed, process, competing listings, Receiver's schedule C and other issues; call with D. Capaldi on units being listed, Monaco/Monte Carlo valuations and 1105 offer to lease; email memo to J. McLelland to provide various requested information; review listing process, appraisal status and 1105 offer to lease
Finnegan, M	12-Mar-14	0.5	File administration
Finnegan, M	13-Mar-14	0.2	Deposit and update rent roll summary
Flett, D	13-Mar-14	1.8	Review amended 1105 lease and return to D. Capaldi; review Schedule C to sale agreement and email with J. McLelland on revision; review Metrix appraisal (final); memo to J. McLelland responding to questions on listing process, irrevocable period and other issues
Cherniak, S	13-Mar-14	1	Review of D. Capaldi changes to lease agreement. Review of sample status certificate. Call from BMO. Review of email to J. McLelland. Review change to agreement.

Staff	Date	Time	Narrative
Cherniak, S	14-Mar-14	0.8	Call from current owner. Call from Miller Thomson re Morga and Valente litigation.
Cherniak, S	17-Mar-14	1	Emails from J. McLelland re Goebels. Respond and call re unit 1603. Discuss strategy re potential sale of unit. Review email re financial statements
Flett, D	17-Mar-14	2.2	Review email re: offer to purchase 1603, email to M. Cleary re: liability policy; review financial statements and email with D. Capaldi on 2013 f/s and tax returns; work on confidential supplement to Third Report re: sale of 1108
Flett, D	18-Mar-14	4.2	Review email re: 1603 interested party; email with D. Capaldi re: 2013 f/s and tax return; prepare Third Report of Receiver and Confidential Supplement
Cherniak, S	18-Mar-14	1.2	Emails from J. McLelland re Goebels and 1603 and 1602. Call to J. McLelland to respond. Email to J. McLelland re Goebels. Call to J. McLelland re strategy in reviewing units. Emails from BMO re professional fees. Email update on status of f/s. Call from J. McLelland re Hanna and expired listings.
Flett, D	19-Mar-14	2.8	Prepare Receiver's Third Report and Confidential Supplement; phone call with tenant - 1001 re: issues, listing for sale of unit; memo re; listings
Hooper, L	19-Mar-14	0.1	Bank rec
Flett, D	20-Mar-14	3.6	Email with D Capaldi, J. McLelland re; 1001 listing; Voice mail message with 1001 tenant; review notes on Tarion meeting and Tarion web site; prepare Receiver's Third Report
Cherniak, S	20-Mar-14	0.3	Update on unit 1001 not being listed. Email from current owner.
Cherniak, S	21-Mar-14	1.3	Email re billing. Update on units to be listed. Questions re listing agreement. Call with D. Capaldi re the listing of unit 1001. Review of units to determine replacement unit. Review of status of court report. Emails re Lepera.
Flett, D	21-Mar-14	3.5	Update/continue with Receiver 3rd report and confidential supplement; review court report content, timing; phone call with J McLelland on listings, deposits, photos and other issues; email memos to J. McLelland with legal description and confirmation on other items discussed; email and call with D. Capaldi on Genova listing, issues and status of 1108 agreement of purchase and sale
Flett, D	24-Mar-14	4.8	Review 1108 offer acceptance and email with D Capaldi; email with D. Capaldi on 1203 re-sale offer; email with D. Capaldi and J. McLelland on listing 1101; review of listing agreement for 4 units and email with J. McLelland on listings, receiver approval and 1203; revisions, updates and finalize draft Receiver Third Report and confidential supplement - review of draft R & D narrative, unit 1108 sale discussion

Staff	Date	Time	Narrative
Cherniak, S	24-Mar-14	1.8	Review and execute 4 listings. Update on sale of owned unit. Review of Valente affidavit. Email from Miller Thomson re Valente litigation.
Hooper, L	24-Mar-14	0.1	Issued cheques
Finnegan, M	24-Mar-14	0.5	Prepare R & D for court report
Cherniak, S	25-Mar-14	1	Emails re interest from realtors re enbloc sale. Review of J. McLelland's consent form re taking pictures of units. Emails re meeting between D. Capaldi and counsel. Update Miller Thomson on D. Capaldi litigation. Emails re attendance at examination by Morga. Call with Miller Thomson re update.
Flett, D	25-Mar-14	1.1	Review final/draft Receiver 3rd report and supplement; review Portofino MLS listings and email with J. McLelland
Flett, D	26-Mar-14	1.8	Review real estate listings; call with J. McLelland on scheduled showings and interest in initial listings; email from J. McLelland on 1203 and showings; edits and revisions to Receiver 3rd report
Cherniak, S	26-Mar-14	0.7	Email updates on listing of units and feedback. Email re attendance at examination and meeting with D. Capaldi. Organize meeting with Miller Thomson.
Cherniak, S	27-Mar-14	1.5	Review of court reports in preparation for Examination for Discovery re Valente litigation. Calls and emails with J. McLelland re 1108.
Finnegan, M	27-Mar-14	0.5	Deposit
Cherniak, S	28-Mar-14	3.6	Meet with Miller Thomson in preparation for examination by Morga. Examination by Morga. Meet with Miller Thomson and counsel for bank after to discuss strategy. Emails from realtor. Update on potential sales.
Flett, D	28-Mar-14	2.4	Phone calls with J. McLelland re; 1105 offer update, listings, signage, advertising, Biarritz/Trieste and other matters; update master schedule of unsold units; memo re sales since May 2012 and list prices for Biarritz/Trieste units;
Flett, D	31-Mar-14	3.6	Call with J. McLelland on advertising, weekend showings and buyer status and questions re: other units available, list prices; review 1105 offer and memo, review offer price, appraisal and closing date issues; call with J. McLelland on 1105 offer and investor interest; calls with with J. McLelland on 1105 offeror agent comments, counter offer and re-write offer on form 1101; update unsold unit master schedule for rents, receiver listings and sales; prepare unsold unit summary grouped by model for J. McLelland and forward
Cherniak, S	31-Mar-14	2	Update on realtor activities from J. McLelland. Call to J. McLelland re offer on 1105. Review of offer. Email from Miller Thomson re meeting.

Staff	Date	Time	Narrative
Cherniak, S	1-Apr-14	1	Updates on 1105 sale. Update on D. Capaldi meeting. Update on investor sale. Email from Tarion.
Flett, D	1-Apr-14	2.8	Review details of rented units and prepare memo on units suitable for investor enquiry with list prices; prepare schedule with details of 4 leased units and provide to J. McLelland with memo on units and offer conditions; phone call and email with J. McLelland on status of 1105 offer, status of other interested parties, new signage and other matters
Flett, D	2-Apr-14	0.6	Review signage and offer status; memo to J. McLelland on new signage.
Cherniak, S	2-Apr-14	0.6	Discussion re signage. Email to counsel for BMO re undertakings ie Portofino sales. Email re interested party. Call from interested party
Finnegan, M	2-Apr-14	0.5	Pay bills
Hooper, L	2-Apr-14	0.1	Issued cheques
Cherniak, S	3-Apr-14	0.9	Review of emails from realtor re interest in 1501. Call to Miller Thomson re update on examination and court report. Email to D. Capaldi re extending closing to May 5 to allow for May 2 court date. Email to Miller Thomson.
Flett, D	3-Apr-14	2.2	Review J. McLelland email on Biarritz enquiry; review Biarritz inventory - lease term status, list prices; email with J. McLelland on Biarritz; email with D. Capaldi on extending closing date on 1108 and email/call with J. McLelland on OREA amendment form for 1108, signage and 1105 offer status; review OREA amendment form
Flett, D	4-Apr-14	1.4	Review 1108 closing amendment and forward with comments to D. Capaldi; review MLS listings; email to D. Capaldi re: Tarion; call with J. McLelland re: showings, new signage
Cherniak, S	4-Apr-14	0.6	Updates on sales process. Execute closing extension. Email re Tarion.
Cherniak, S	7-Apr-14	0.9	Review of email from D. Capaldi to Tarion. Review of realtor ad and proposed signage. Discussion re Portofino website.
Flett, D	7-Apr-14	2.4	Email from J. McLelland with sign drawings and Saturday ad; review sign drawings and call with J. McLelland on signage, web site, advertising; review existing Portofino web site and prepare draft memo to D. Capaldi on required revisions to remove old pricing, contact information etc; memo to J. McLelland on sign specifications and design
Finnegan, M	7-Apr-14	0.8	Pay property tax installment. Review rent o/s and account for direct deposit rent payments.
Finnegan, M	8-Apr-14	1.7	Pay bills. Review of rent roll and update of unit vacancies. Deposit rent cheques

Staff	Date	Time	Narrative
Flett, D	8-Apr-14	0.8	Review 1108 amendment; email with D. Capaldi on 1108 and 704 interested party; email with J. McLelland on signage and other matters; requisition sign deposit cheque
Cherniak, S	8-Apr-14	0.7	Review of revised drawings re billboards. Emails from D. Capaldi re 1108 and potential sale of 704. Review of email to D. Capaldi re website. Review of website.
Cherniak, S	9-Apr-14	0.3	Updates on advertising. Call from BMO.
Finnegan, M	9-Apr-14	0.2	Pay bill
		85	Total Time

Staff	Position	Rate	Time
Cherniak, S	Sr. Vice President	\$450	24.8
Finnegan, M	Administrative	\$175	7.4
Flett, D	Vice President	\$325	52.4
Hooper, L	Estate Administrator	\$125	0.4
			85

TAB “I”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

AFFIDAVIT OF SHERRY A. KETTLE

I, SHERRY A. KETTLE, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

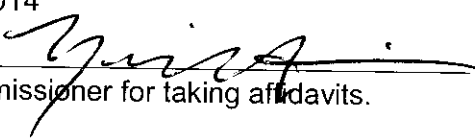
1. I am an associate lawyer with the law firm of Miller Thomson LLP ("**MT**"), lawyers for BDO Canada Limited ("**BDO**"), in its capacity as Court-appointed Receiver (the "**Receiver**") of the property, assets and undertakings of Portofino Corporation ("**Portofino**") and, as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. I make this Affidavit further to my previous fee affidavit sworn December 6, 2013 in these proceedings and in support of the Receiver's motion (the "**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 BDO which reflect, *inter alia*, fees and disbursements of MT relating to the period November 16, 2013 through to March 31, 2014 (the "**Period**"). I affirm that the invoices rendered by MT and appended hereto as Exhibit "A" (the "**MT Invoices**") accurately reflect the services provided by MT in connection with the Period and the fees and disbursements claimed by it. During the Period, the total fees billed were \$55,864.50, the disbursements billed were \$1,121.30, plus applicable taxes in the amount of \$7,382.42.

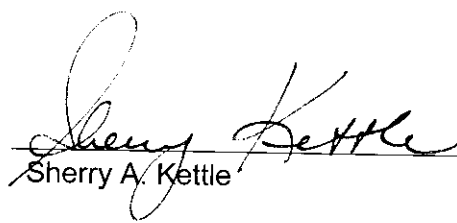
Attached hereto to this my Affidavit and marked as **Exhibit "B"** is a statement summarizing MT's fees for the Period. Lawyers and staff at MT have collectively expended a total of 145.80 billable hours in connection with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".

4. To the best of my knowledge, the rates charged by MT throughout these proceedings are comparable to the rates charged by other firms in the Southwestern Ontario market for the provision of similar services. No premiums have been charged on the invoices.

5. This Affidavit is sworn in connection with the Motion, namely, among other things, the approval of the fees and disbursements of MT, as legal counsel to the Receiver, and for no improper purpose.


SWORN before me at the City of London,)
in the County of Middlesex, this 14th day of)
April, 2014)


A Commissioner for taking affidavits.)


Sherry A. Kettle)

**Neil Kenneth Stuart Harris, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires May 13, 2018**

Attached are Exhibits "A" and "B" to the
Affidavit of Sherry A. Kettle sworn the
14th day of April, 2014


A Commissioner, Etc.

**Neil Kenneth Stuart Harris, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires May 13, 2016**

BANK OF MONTREAL

and

Applicant

PORTOFINO CORPORATION

Respondent

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

AFFIDAVIT OF SHERRY A. KETTLE

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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LONDON, ON + N6A 5R8 + CANADA

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F 519.858.8511

ACCOUNT

December 17, 2013

Invoice Number 2544940

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
11/18/2013	AM	Exchange of electronic mail messages with Tim Hogan; Exchange of electronic mail messages with Janet Ford; Circulate e-mail to counsel list confirming date of motion;	0.60
11/19/2013	AM	Telephone conversation with Steve Cherniak re Valente litigation and various issues;	0.30
11/20/2013	AM	Review correspondence from Robert Calderwood; Electronic mail message to Robert Calderwood; Review correspondence from Morga; Exchange of electronic mail messages with David Taub; Electronic mail message to Bill Sasso re Valente Offer; Review reporting letter of Sasso re Valente litigation; Telephone conversation with Bill Sasso; Telephone conversation with Steve Cherniak; Telephone conversation with Gino Morga;	2.60
11/21/2013	AM	Review decision of Justice Quinn; Review law regarding Marjeva injunctions; Review report of Sasso re Valente litigation; Telephone conversation with Steve Cherniak; Meeting with Sherry Kettle re motion for advise and direction;	1.40

Date	Initials	Description	Hours
11/21/2013	SK	Meeting with Ms. Mitchell re motion materials re Letter of Credit;	0.70
11/22/2013	VW	Perform property search as per SWO Search request;	0.30
11/22/2013	AM	Review report of William Sasso; Participate on conference call with David Taub and Steve Cherniak;	1.70
11/25/2013	AM	Review and respond to electronic mail message from Joyce Harris; Exchange of electronic mail messages with Steve Cherniak; Review issued Order; Discussion with Kelly Barker re registration of Appointment Order;	0.10
11/25/2013	SK	E-mail correspondence with Ms. Mitchell; Review materials for motion;	0.30
11/26/2013	AM	Telephone conversation with David Taub; Electronic mail message to Steve Cherniak; Telephone call to Bill Sasso; Discussion with Sherry Kettle; Exchange of electronic mail messages with Gino Morga;	1.00
11/26/2013	SK	Review documents for motion re security; Meeting with Ms. Mitchell re same;	2.90
11/27/2013	AM	Telephone conversation with Bill Sasso; Review and respond to electronic mail messages from Joyce Harris; Exchange of electronic mail messages with Steve Cherniak;	0.60
11/28/2013	KB	Register Court Order.	0.30
11/29/2013	AM	Electronic mail message to Gino Morga regarding discharge of mortgage and payment of LC fees;	0.40

TOTAL HOURS 13.20

OUR FEE: \$5,194.50

initials	Name	Title	Rate	Hours	Amount
5404 AM	A. Mitchell	Partner	475.00	8.70	4,132.50
5715 SK	S. Kettle	Associate	255.00	3.90	994.50
5720 KB	K. Barker	Clerk	120.00	0.30	36.00
5050 VW	V. Wood	Clerk	105.00	0.30	31.50

TAXABLE DISBURSEMENTS

Copywork	55.30	
Online Searches - Teranet	36.00	
TOTAL TAXABLE	91.30	\$91.30

TOTAL FEES AND DISBURSEMENTS: \$5,285.80

Harmonized Sales Tax (R119440766)

On Fees \$675.29

On Disbursements

\$11.87

TOTAL AMOUNT DUE:

\$5,972.96

E.&O.E.



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F 519.858.8511

ACCOUNT

December 31, 2013

Invoice Number 2558329

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
12/01/2013	SK	Instructions to assistant re motion materials;	0.10
12/02/2013	AM	Visit the Portofino condo building in Windsor; Discussion with David Taub re issues;	0.50
12/02/2013	SK	Meeting with Mr. Cherniak and Ms. Mitchell re real estate properties; Meeting with Mr. Taub and Ms. Mitchell re motion;	0.50
12/03/2013	AM	Review and respond to electronic mail message from Gino Morga;	0.50
12/03/2013	SK	E-mail correspondence with Ms. Mitchell and Mr. Flett;	0.10
12/04/2013	AM	Telephone conversation with Steve Cherniak; Electronic mail message to David Taub; Discussion with Sherry Kettle regarding nature of relief; Review and respond to electronic mail message from Gino Morga;	0.50
12/04/2013	SK	Review and revise draft first receiver's report; Draft notice of motion; Draft order; Meeting with Ms. Mitchell re motion materials; Review documents;	3.10
12/05/2013	SK	Draft motion materials;	2.40

Date	Initials	Description	Hours
12/06/2013	AM	Review, revise and draft motion materials re advice and direction; Discussion with Sherry Kettle; Telephone conversation with Steve Cherniak; Telephone conversation with Bill Sasso; Review reconciliation of Letter of Credit Costs;	5.80
12/06/2013	SK	Draft motion materials re receiver's first report; Review and revise Receiver's draft report; E-mail correspondence with Mr. Cherniak and Mr. Flett; Telephone conference with Mr. Cherniak and Ms. Mitchell; Finalize draft order; Finalize notice of motion; Finalize Receiver's report; Finalize motion record;	12.00
12/09/2013	AM	Review electronic mail message from Joyce Harris; Review electronic mail message from Jeffery Goldberg; Review message from James Branoff regarding property management; Review and respond to electronic mail messages from Steve Cherniak; Telephone conversation with Robert Caldwell re Tarion Home warranty issues; Telephone conversation with Steve Cherniak;	0.20
12/10/2013	AM	Review and respond to electronic mail message from Bill Sasso; Electronic mail message to Gino Morga;	0.10
12/10/2013	SK	Research re security issue; Draft factum; Prepare motion confirmation;	4.50
12/11/2013	AM	Review and respond to various electronic mail messages from Mr. Morga; Electronic mail message to Janet Ford re scheduling; Electronic mail message to Gino Morga; Electronic mail message to Bill Sasso; Electronic mail message to stakeholders regarding adjournment of a portion of relief; Review and respond to electronic mail message from Tim Hogan; Exchange of electronic mail messages with Steve Cherniak; Exchange of electronic mail messages with David Taub; Review correspondence from Jerry Goldberg and respond thereto;	1.50
12/11/2013	SK	Conduct research; Draft factum; E-mail correspondence with Ms. Mitchell re motion on December 13, 2013;	6.50
12/12/2013	AM	Telephone conversation with Bill Sasso; Review electronic mail message from Claudio Martini; Prepare for return of motion on December 13th;	1.80
12/12/2013	SK	E-mail correspondence with Ms. Mitchell re factum;	0.10
12/13/2013	AM	Prepare for and attend on motion to report to Court;	4.20
12/13/2013	SK	E-mail correspondence with Ms. Mitchell; Research; Draft factum;	2.90
12/16/2013	AM	Review and revise factum regarding letter of credit issue;	1.40

Date	Initials	Description	Hours
12/16/2013	SK	Draft factum; Prepare brief of authorities;	4.40
12/17/2013	AM	Telephone conversation with Bill Sasso;	0.50
12/18/2013	AM	Discussion with Steve Cherniak regarding Valente Litigation;	0.30
12/19/2013	AM	Electronic mail message to Gino Morga re scheduling issues;	0.20
12/23/2013	AM	Telephone conversation with Steve Cherniak; Review Notice to Mediate;	0.30
12/30/2013	AM	Review Notices to Mediate; Letter to Windsor Mediation Office; Meeting with SHerry Kettle regarding scheduling of motion;	0.60
12/30/2013	SK	Meeting with Ms. Mitchell re motions;	0.30
12/31/2013	SK	E-mail correspondence with Mr. Sasso; E-mail correspondence with Mr. Morga;	0.90

TOTAL HOURS 56.20

OUR FEE: \$18,379.00

Initials	Name	Title	Rate	Hours	Amount
5404	AM	A. Mitchell	475.00	18.40	8,740.00
5715	SK	S. Kettle	255.00	37.80	9,639.00

TAXABLE DISBURSEMENTS

Teraview service Fee	10.00	
Couriers	72.34	
Agent's Fees	37.00	
Copywork	289.30	
Long Distance Telephone	0.54	
Postage	5.99	
Fax	1.50	
TOTAL TAXABLE	416.67	\$416.67

NON-TAXABLE DISBURSEMENTS

Miscellaneous - Non Taxable	11.00	
Registration fees	60.00	
Issue Notice of Motion	127.00	
TOTAL NON-TAXABLE	198.00	\$198.00

TOTAL FEES AND DISBURSEMENTS: \$18,993.67

Harmonized Sales Tax (R119440766)

On Fees	\$2,389.27
On Disbursements	\$54.17

TOTAL AMOUNT DUE: \$21,437.11

E.&O.E.



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F 519.858.8511

ACCOUNT

February 28, 2014

Invoice Number 2572553

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
01/03/2014	SK	E-mail correspondence with Mr. Morga; E-mail correspondence with Ms. Ford; E-mail correspondence with Mr. Cherniak;	1.00
01/08/2014	AM	Discussion with Sherry Kettle regarding scheduling issues; Review various electronic mail messages from Sherry Kettle; Review electronic mail message from Gino Morga;	0.60
01/08/2014	SK	Meeting with Ms. Mitchell re status; Telephone call to Ms. Ford (left voice message);	0.30
01/10/2014	AM	Review and respond to electronic mail message from David Taub; Discussion with Sherry Kettle;	0.20
01/12/2014	AM	Review and revise letter to Mediation Office re Capaldi Lien Claims; Review and revise Property Management Agreement re Capaldi and circulate to Receiver;	1.00
01/13/2014	AM	Review message from David Taub; Meeting with Sherry Kettle; Telephone conversation with Steve Cherniak;	0.40

Date	Initials	Description	Hours
01/14/2014	AM	Telephone conversation with David Taub re various issues; Telephone conversation with Steve Cherniak; Telephone conversation with Janet Ford;	1.20
01/15/2014	AM	Telephone conversation with Gino Morga; Telephone conversation with Bill Sasso;	0.50
01/16/2014	AM	Electronic mail message to Janet Ford; Electronic mail message to service list confirming date of motion; Exchange of electronic mail messages with Gino Morga; Electronic mail message to David Taub;	0.90
01/16/2014	SK	Meeting with Ms. Mitchell re motion to adjourn trial;	0.20
01/20/2014	AM	Review the financial statements for 2010, 2011 and 2012; Review correspondence from David Taub and respond thereto; Draft offer to settle; Electronic mail message to Bill Sasso; Review letter from Jerry Goldberg;	0.40
01/21/2014	AM	Review and respond to electronic mail message from Bill Sasso; Review and revise letter to Jerry Goldberg;	0.40
01/23/2014	AM	Review and respond to electronic mail message from Janet Ford; Telephone conversation with Steve Cherniak; Exchange of electronic mail messages with Gino Morga; Telephone conversation with Gino Morga;	1.40
01/23/2014	SK	Prepare motion materials re adjournment of trial;	5.50
01/24/2014	AM	Exchange of electronic mail messages with Gino Morga;	0.10
01/27/2014	AM	Attend in Court to speak to adjournment of trial; Electronic mail message to Janet Ford re scheduling issues re Valente litigation; Electronic mail message to counsel re scheduling motion;	0.60
01/27/2014	SK	Review e-mail correspondence re motion to adjourn the trial; E-mail correspondence with Ms. Mitchell re same;	0.10
01/28/2014	AM	Review and respond to electronic mail message from Gino Morga; Telephone conversation with Janet Ford; Telephone call to Gino Morga;	0.80
01/28/2014	SK	E-mail correspondence with Ms. Mitchell re motion to adjourn trial and LC motion;	0.30
01/29/2014	AM	Discussion with Sherry Kettle re motion to adjourn and scheduling of motion re LC; Revise motion materials regarding adjournment of Valente trial and scheduling of motion;	0.70

Date	Initials	Description	Hours
01/29/2014	SK	Meeting with Ms. Mitchell re motion to adjourn Valente trial and motion to set scheduling of remaining issues from December motion (re Valente); Draft motion materials for both motions; Draft orders for both motions; E-mail correspondence with Ms. Ford re filing motion materials; Serve motion materials re motion to set date and timetable;	5.30
01/30/2014	SK	E-mail correspondence with Mr. Branoff; E-mail correspondence with Mr. Goldberg; Prepare motion confirmations (2); Swear and commission affidavits of service; Meeting with Ms. Mitchell;	0.80
01/31/2014	SK	E-mail correspondence with Mr. Morga;	0.30
TOTAL HOURS			23.00

OUR FEE: \$8,165.00

Initials	Name	Title	Rate	Hours	Amount
5404 AM	A. Mitchell	Partner	490.00	9.20	4,508.00
5715 SK	S. Kettle	Associate	265.00	13.80	3,657.00

TAXABLE DISBURSEMENTS

Couriers	36.31	
Copywork	20.65	
Long Distance Telephone	17.82	
Postage	3.15	
Fax	8.50	
Long Distance Telephone -Bell Confere	6.38	
TOTAL TAXABLE	92.81	\$92.81

TOTAL FEES AND DISBURSEMENTS: \$8,257.81

Harmonized Sales Tax (R119440766)

On Fees	\$1,061.45
On Disbursements	\$12.07

TOTAL AMOUNT DUE: \$9,331.33

E.&O.E.



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F 519.858.8511

ACCOUNT

March 13, 2014

Invoice Number 2575950

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
02/02/2014	SK	E-mail correspondence with Mr. Morga re motion; E-mail correspondence with Mr. Taub re same;	0.20
02/03/2014	SK	Travel to/from Windsor; Attend court re motion to adjourn trial and re LC motion; E-mail correspondence with Mr. Cherniak re same;	6.50
02/04/2014	SK	Prepare service letters re orders and endorsements of Mr. Justice Thomas re December Motion and adjournment of Valente trial;	0.20
02/20/2014	AVK	Review Valente litigation materials and reply affidavit of Peter Valente and consideration of issues in relation to same; receive and review e-mails from Mr. Taub and Mr. Martini; lengthy e-mail to Mr. Cherniak regarding issues in Valente letter of credit motion	5.20
02/20/2014	SK	Review e-mail correspondence re Valente Action; Discussion with Mr. Van Klink re same;	0.40
02/21/2014	AVK	Consideration of Valente LC issue and lengthy telephone call with Mr. Taub thereon	2.50

Date	Initials	Description	Hours
02/21/2014	SK	Review e-mail correspondence from Mr. Van Klink; Meeting with Mr. Van Klink; Review responding affidavit re LC; Teleconference with Mr. Taub and Mr. Van Klink;	3.00
02/24/2014	AVK	Telephone call with Mr. Cherniak, including review of materials and preparation for same; telephone call with Bill Sasso re Valente litigation and letter of credit issue; telephone call with Robert Calderwood re Northbridge mortgage and Valente affidavit; further review of responding affidavit of Peter Valente and and consideration of issues raised therein; prepare outline of further receiver's report	6.80
02/24/2014	SK	Telephone conference with Mr. Van Klink and Mr. Cherniak; Discussion with Mr. Van Klink re reply report; Voice message from Mr. Calderwood; E-mail to Mr. Van Klink re same; E-mail correspondence with Mr. Calderwood;	2.70
02/25/2014	AVK	Lengthy e-mail regarding letter of credit issue; draft Receiver's Second Report to Court	4.00
02/27/2014	AVK	E-mail to Mr. Taub	0.10
02/28/2014	AVK	Telephone call with David Taub; revising receiver's report and communications with Mr. Cherniak thereon	1.00

TOTAL HOURS 32.60

OUR FEE: \$13,539.00

	Initials	Name	Title	Rate	Hours	Amount
5403	AVK	A. Van Klink	Partner	515.00	19.60	10,094.00
5715	SK	S. Kettle	Associate	265.00	13.00	3,445.00

TAXABLE DISBURSEMENTS

Mileage/Parking	178.76	
Copywork	10.00	
Long Distance Telephone	50.22	
Postage	5.19	
Fax	2.25	
TOTAL TAXABLE	<u>246.42</u>	\$246.42

TOTAL FEES AND DISBURSEMENTS: \$13,785.42

Harmonized Sales Tax (R119440766)

On Fees	\$1,760.07
On Disbursements	\$32.03

TOTAL AMOUNT DUE: \$15,577.52

E.&O.E.

Please return the Account Summary and Remittance Form with Payment
Terms: Accounts due when rendered. Interest at the rate of 3.00% per annum will be charged on
accounts overdue 30 days or more in accordance with the Solicitors Act. Any disbursements not
posted to your account on the date of this account will be billed later.

ACCOUNT

April 10, 2014

Invoice Number 2587116

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
03/04/2014	AVK	Review Agreement of Purchase and Sale for unit 1108; review and revise Schedule and development of pro forma schedule for future sales; telephone call with Mr. Cherniak regarding certain provisions in Agreement	2.50
03/05/2014	AVK	Further revisions to schedules for Agreements of Purchase and Sale and e-mails to Mr. Cherniak thereon	1.20
03/07/2014	SK	Discussion with Mr. Van Klink re next steps; E-mail correspondence with Mr. Van Klink re same;	0.20
03/14/2014	AVK	Telephone call with Mr. Morga; Telephone call with Mr. Cherniak; receive correspondence from Mr. Morga	0.70
03/20/2014	AVK	Review reply affidavit of Peter Valente and consider issues raised by same; e-mail to Mr. Cherniak	0.30
03/24/2014	AVK	Review file materials re Valente action; e-mail from and to Mr. Morga; review materials re Capaldi construction lien action and e-mail to Mr. Cherniak thereon	0.80
03/25/2014	AVK	Telephone call with Mr. Cherniak; e-mails to and from Mr. Morga	0.30

Date	Initials	Description	Hours
03/26/2014	SK	Meeting with Mr. Van Klink re motions (omnibus order, approval order); E-mail correspondence re scheduling motion;	0.30
03/27/2014	AVK	Review materials; prepare for cross examinations of Steve Cherniak and Peter Valente	3.50
03/28/2014	AVK	Meeting with Steve Cherniak to prepare for cross examination; attend on cross examinations of Mr. Cherniak and Mr. Valente in Windsor; discussions with Mr. Cherniak and Mr. Taub; travel to and from Windsor	10.00
03/29/2014	AVK	Consideration of issues for LC motion	1.00
TOTAL HOURS			20.80

OUR FEE: \$10,587.00

Initials	Name	Title	Rate	Hours	Amount
5403 AVK	A. Van Klink	Partner	515.00	20.30	10,454.50
5715 SK	S. Kettle	Associate	265.00	0.50	132.50

TAXABLE DISBURSEMENTS

Couriers	27.89	
Agent's Fees	40.00	
Copywork	3.30	
Long Distance Telephone	4.91	
TOTAL TAXABLE	76.10	\$76.10

TOTAL FEES AND DISBURSEMENTS: \$10,663.10

Harmonized Sales Tax (R119440766)

On Fees	\$1,376.31
On Disbursements	\$9.89

TOTAL AMOUNT DUE: \$12,049.30

E.&O.E.

EXHIBIT "B"
Miller Thomson's Fees

Hours	Year of Call	Rate 2013	Rate 2014	Inv.#2544940 Dec 17/13	Inv.#2558329 Dec 31/13	Inv.#2572553 Feb 28/14	Inv.#2575950 Mar 13/14	Inv.#2587116 Apr 10/14	Total Invoices
A. Mitchell				8.70	18.40	9.20	0.00	0.00	36.30
S. Kettle				3.90	37.80	13.80	13.00	0.50	69.00
T. Van Klink				0.00	0.00	0.00	19.60	20.30	39.90
K. Barker - clerk				0.30	0.00	0.00	0.00	0.00	0.30
V. Wood - clerk				0.30	0.00	0.00	0.00	0.00	0.30
				13.20	56.20	23.00	32.60	20.80	145.80
Total \$				\$4,132.50	\$8,740.00	\$4,508.00	\$0.00	\$0.00	\$17,380.50
A. Mitchell	1994	\$475.00	\$490.00	\$994.50	\$9,639.00	\$3,657.00	\$3,445.00	\$132.50	\$17,868.00
S. Kettle	2007	\$255.00	\$265.00	\$0.00	\$0.00	\$0.00	\$10,094.00	\$10,454.50	\$20,548.50
T. Van Klink	1988	N/A	\$515.00	\$36.00	\$0.00	\$0.00	\$0.00	\$0.00	\$36.00
K. Barker - clerk	N/A	\$120.00	N/A	\$31.50	\$0.00	\$0.00	\$0.00	\$0.00	\$31.50
V. Wood	N/A	\$105.00	N/A	\$5,194.50	\$18,379.00	\$8,165.00	\$13,539.00	\$10,587.00	\$55,864.50
Summary				\$5,194.50	\$18,379.00	\$8,165.00	\$13,539.00	\$10,587.00	\$55,864.50
Fees				\$91.30	\$614.67	\$92.81	\$246.42	\$76.10	\$1,121.30
Disbursements				\$687.16	\$2,443.44	\$1,073.52	\$1,792.10	\$1,386.20	\$7,382.42
HST				\$5,972.96	\$21,437.11	\$9,331.33	\$15,577.52	\$12,049.30	\$64,368.22
Total									

EXHIBIT "B"

BANK OF MONTREAL

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No. CV-13-29866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

AFFIDAVIT OF SHERRY A. KETTLE

MILLER THOMSON LLP

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

TAB “3”

ONTARIO
SUPERIOR COURT OF JUSTICE
~~COMMERCIAL LIST~~

THE HONOURABLE MR.

)

FRIDAY, THE 2ND

JUSTICE THOMAS

)

DAY OF MAY, 202014

)

~~BETWEEN:~~

PLAINTIFF

Plaintiff

BANK OF MONTREAL

Applicant

- and -

DEFENDANT

Defendant

PORTOFINO CORPORATION

Respondent

**APPROVAL AND VESTING ORDER
(Unit 1108)**

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

- (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 Third Report of the Receiver dated April 21, 2014 and all appendices thereto (the "Third Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on May 2, 2014;
- (b) sealing the Confidential Supplement to the Third Report and all appendices thereto (the "Confidential Supplement") filed with the Court from the public record until further order of the Court;
- (c) ~~THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor") for an order approving the sale transaction (the "Unit 1108 Transaction") contemplated by an ~~agreement~~Agreement of purchasePurchase and sale (the "Sale Agreement")dated February 15, 2014 between the Receiver, as vendor, and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.~~ Quan Shi (the "Purchaser"), as purchaser (the "Unit 1108 APS"), and authorizing and approving the execution of the Unit 1108 APS by the Receiver, nunc pro tunc, in respect to the real property legally described as Unit 8, Level 11, Essex Standard Condominium Plan No. 122, Windsor (PIN 01872-0138 (LT)) and municipally known as 1108-1225 Riverside Drive West, Windsor ("Unit 1108"), appended as Appendix "A" to the Confidential Supplement;
- (d) authorizing and directing the Receiver to complete the Unit 1108 Transaction by taking such additional steps and executing such additional documents as may be necessary or desirable for the completion of the Unit 1108 Transaction and for the conveyance of Unit 1108 to the Purchaser and, thereafter, to deliver the Receiver's Certificate to the Purchaser and to file a copy of such Receiver's Certificate with the Court;

- (e) upon the closing of the Unit 1108 Transaction and delivery of the applicable Receiver's Certificate to the Purchaser, vesting in the Purchaser all of Portofino's right, title and interest in and to Unit 1108 free and clear of any and all claims and encumbrances;
- (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, ~~[NAMES OF OTHER PARTIES APPEARING]~~, ~~no one appearing for any other person on the service list 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 ~~[NAME]~~ Susan Jarrell sworn ~~[DATE]~~ April 21, 2014, filed¹:

1. THIS COURT ORDERS that the time for service and filing and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Third Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Confidential Supplement, and all appendices thereto, be and is hereby sealed until further Order of this Court.
3. THIS COURT ORDERS AND DECLARES that the Unit 1108 Transaction is hereby approved, and the execution of the Unit 1108 APS by the Receiver is hereby authorized and approved, nunc pro tunc, with such minor amendments as the Receiver may deem necessary.
4. ~~1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved;~~

¹ This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

~~with such minor amendments as the Receiver may deem necessary. The~~ THIS COURT ORDERS ~~that the~~ Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Unit 1108 Transaction and for the conveyance of the ~~Purchased Assets~~ Unit 1108 to the Purchaser.

5. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the ~~Purchased Assets~~ Unit 1108 described in the ~~Sale Agreement~~ [Unit 1108 APS] and listed on **Schedule "B"** hereto⁴ shall vest absolutely in 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**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~ Thomas dated ~~[DATE]~~ 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; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the ~~Purchased Assets~~ Unit 1108 are hereby expunged and discharged as against the ~~Purchased Assets~~ Unit 1108.

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

⁵ ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

6. ~~3.~~ THIS COURT ORDERS that upon the registration in the Land Registry Office for the ~~{Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver}~~ [Land Titles Division of {LOCATION} Essex (No. 12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the ~~subject real property~~ Unit 1108 identified in Schedule "B" hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the ~~Real Property~~ Unit 1108 all of the Claims listed in Schedule "C" hereto and in paragraph 5 of this Order.

7. ~~4.~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the ~~Purchased Assets~~ Unit 1108 shall stand in the place and stead of the ~~Purchased Assets~~ Unit 1108, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the ~~Purchased Assets~~ Unit 1108 with the same priority as they had with respect to the ~~Purchased Assets~~ Unit 1108 immediately prior to the sale⁸, as if the ~~Purchased Assets~~ Unit 1108 had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser~~

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

~~shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

9. ~~7.~~ 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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of ~~the Purchased Assets~~ Unit 1108 in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. ~~8.~~ THIS COURT ORDERS AND DECLARES that the Unit 1108 Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. ~~9.~~ 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.



Schedule "A" – Form of Receiver's Certificate

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

~~BETWEEN:~~

PLAINTIFF

Plaintiff

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

DEFENDANT

Defendant

PORTOFINO CORPORATION

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Mr. Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ October 29, 2013, BDO Canada Limited ("BDO") was appointed as the receiver (the "**Receiver**") of the ~~undertaking, property and assets of [DEBTOR]~~ assets, undertakings and properties of Portofino Corporation (the "**Debtor**").

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 2, 2014, the Court approved the ~~agreement of purchase and sale made as of [DATE OF AGREEMENT]~~ (the "**Sale Agreement**") Agreement of Purchase and Sale dated February 15, 2014, as amended (the "**Unit 1108 APS**")

between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the "Purchaser") and provided for the vesting in the Purchaser of, as vendor, and Quan Shi, as purchaser (the "Purchaser"), to the real property legally described as Unit 8, Level 11, Essex Standard Condominium Plan No. 122, Windsor (PIN 01872-0138 (LT)) and municipally known as 1108-1225 Riverside Drive West, Windsor ("Unit 1108"), appended as Appendix "A" to the Confidential Supplement to the Third Report of the Receiver dated April 21, 2014 (the "Confidential Supplement"), and vesting in the Purchaser the Debtor's right, title and interest in and to the ~~Purchased Assets~~Unit 1108, which vesting is to be effective with respect to the ~~Purchased Assets~~Unit 1108 upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the ~~Purchase Price for the Purchased Assets~~purchase price for Unit 1108; (ii) that the conditions to ~~Closing~~closing as set out in section ~~●~~ of the ~~Sale Agreement~~the Unit 1108 APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the ~~Transaction~~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 ~~Sale Agreement~~Unit 1108 APS.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the ~~Purchase Price~~purchase price for the ~~Purchased Assets~~Unit 1108 payable on the ~~Closing Date~~closing pursuant to the ~~Sale Agreement~~Unit 1108 APS;
2. The conditions to ~~Closing~~closing as set out in section ~~●~~ of the ~~Sale Agreement~~the Unit 1108 APS have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~{NAME OF RECEIVER}, BDO CANADA LIMITED, solely in its capacity as Receiver~~Court-appointed receiver of the undertaking, property and assets of {DEBTOR} assets, undertakings and properties of Portofino Corporation, and not in its personal capacity

Per: _____
Name:
Title:

BANK OF MONTREAL
Plaintiff

and

PORTOFINO CORPORATION
Defendant

Court File No: CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

RECEIVERS CERTIFICATE

MILLER THOMSON LLP
One London Place
255 Queens Avenue, Suite 2010
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Sherry A. Kettle LSUC #53561B
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Fax: 519.858.8511
Email: skettle@millerthomson.com

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

Schedule B—Purchased Assets**Schedule “B” – Unit 1108**

The lands and premises legally described as Unit 8, Level 11, 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 (PIN 01872-0138 (LT)) and municipally known as 1108-1225 Riverside Drive West, Windsor.

Schedule "C" – Claims to be deleted and expunged from title to Real Property Unit 1108

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. 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.
4. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
6. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
7. Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.
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.
9. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
10. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
11. Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.
12. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, 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.

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property Unit 1108**

(unaffected by the 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)

BANK OF MONTREAL
Plaintiff

and

PORTOFINO CORPORATION
Defendant

Court File No. CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

APPROVAL AND VESTING ORDER
(UNIT 1108)

MILLER THOMSON LLP

One London Place

255 Queens Avenue, Suite 2010

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Sherry A. Kettle LSUC #53561B

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

Document comparison by Workshare Professional on Monday, April 21, 2014
3:22:15 PM

Input:	
Document 1 ID	interwovenSite://MTDMS.MILLERTHOMSON.CORP/Legal/11447786/1
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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
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Moved to	8
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Format changed	0
Total changes	347

TAB “4”

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 2ND
)
JUSTICE THOMAS) DAY OF MAY, 202014
)

BETWEEN:

PLAINTIFF

Plaintiff

BANK OF MONTREAL

Applicant

- and -

DEFENDANT

Defendant

PORTOFINO CORPORATION

Respondent

OMNIBUS APPROVAL AND VESTING ORDER

~~THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the BDO Canada Limited, in its capacity as Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto,~~

Ontario 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 Report 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, ~~[NAMES OF OTHER PARTIES APPEARING]~~, ~~no one appearing for any other person on the service list 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 ~~[NAME]~~ Susan Jarrell sworn ~~[DATE]~~ April 21, 2014, filed¹:

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. ~~1.~~ THIS COURT ORDERS AND DECLARES that ~~the~~each Transaction is hereby prospectively approved,² and the execution of ~~the~~each applicable Unsold Unit Sale Agreement by the Receiver³ is hereby authorized and approved, with ~~such~~ ~~minor~~any amendments ~~as or modifications thereto deemed necessary by the Receiver~~ may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of ~~the~~any Transaction and for the conveyance of the Purchased Assets to ~~the~~each applicable Purchaser.

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate Certificate to the Purchaser substantially in the form attached as **Schedule A "B"** hereto ~~(the "Receiver's Certificate")~~, all of the ~~Debtor~~ Portofino's right, title and interest in and to the Purchased Assets described in the applicable Unsold Unit Sale Agreement ~~{and listed on Schedule B hereto}~~⁴ Exhibit "A" of the applicable Receiver's Certificate in respect of such Unsold

¹ ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

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**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME]Thomas dated [DATE]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; and (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~~"**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 are hereby ~~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. ~~3.~~ THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a ~~Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver~~[Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act*

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

and/or the *Land Registration Reform Act*⁶ (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 subject-real property identified in Schedule B hereto (the "Real Property") 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 Real Property Purchased Assets all of the Claims listed in Schedule "C" hereto and in paragraph 3 of this Order.

6. ~~4.~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ 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 sale⁸, 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. ~~5.~~ THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the each Receiver's Certificate, forthwith after delivery thereof.

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the~~

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

~~prior use of such information by the Debtor, 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. ~~7.~~ 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 ~~the Debtor~~ Portofino and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ~~the Debtor~~ Portofino;

the vesting of the Purchased Assets in ~~the~~ each applicable Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of ~~the Debtor~~ Portofino and shall not be void or voidable by creditors of ~~the Debtor~~ 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. ~~8.~~ THIS COURT ORDERS AND DECLARES that ~~the~~ each Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. ~~9.~~ 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

Schedule A "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, 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 (LT) (LRO#12)

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

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

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

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

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

<u>Unsold Parking Units</u>				
<u>Unit</u>	<u>Level</u>		<u>PIN</u>	
<u>48</u>	<u>1</u>		<u>01872</u>	<u>0048</u>
<u>49</u>	<u>1</u>		<u>01872</u>	<u>0049</u>

<u>Unsold Storage Units</u>				
<u>Unit</u>	<u>Level</u>		<u>PIN</u>	
<u>2</u>	<u>A</u>		<u>01872</u>	<u>0168</u>
<u>1</u>	<u>A</u>		<u>01872</u>	<u>0167</u>

Schedule "B" – Form of Receiver's Certificate

Court File No. _____ CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

~~BETWEEN:~~

PLAINTIFF

Plaintiff

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

DEFENDANT

Defendant

PORTOFINO CORPORATION

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ October 29, 2013, BDO Canada Limited ("BDO") was appointed as the receiver (the "**Receiver**") of all of the undertaking, property and assets of [DEBTOR] (the "Debtor assets, undertakings and properties Portofino ("Portofino").

B. Pursuant to an Order of the Honourable Justice Thomas 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) B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in and to the Purchaser all of the Debtor'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"), which with such vesting is to be effective within respect to of the Purchased Assets upon the delivery by the Receiver to the Purchaser of a this certificate confirming (i) the payment by the Purchaser of the Purchase Price purchase price for the Purchased Assets; (ii) that the conditions to Closing closing as set out in section 1 of 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 Sale Agreement Omnibus Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price purchase price for the Purchased Assets payable on the Closing Date closing pursuant to the Sale Agreement;

2. The conditions to Closing closing as set out in section 1 of the Sale Agreement have been satisfied or, to the extent such conditions could be waived, have been waived by the Receiver and the Purchaser; ~~and~~

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] _____ [TIME] on _____ [DATE] [DATE].

~~[NAME OF RECEIVER], BDO CANADA LIMITED solely in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], Court-appointed receiver of Portofino Corporation and not in its personal capacity~~

Per: _____
Name: _____
Title: _____

Schedule B

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

PORTOFINO CORPORATION
Defendant

and

Court File No: CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

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

Description:	<u>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 (LRO#12)</u>
Unsold Condominium Units (See Schedule "A" for individual unit descriptions)	
1.	<u>Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</u>
2.	<u>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.</u>
3.	<u>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.</u>
4.	<u>Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</u>
5.	<u>Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</u>
6.	<u>Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</u>
7.	<u>Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.</u>
8.	<u>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.</u>
9.	<u>Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</u>
10.	<u>Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.</u>
11.	<u>Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.</u>

<u>12.</u>	<u>Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.</u>
<u>13.</u>	<u>Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.</u>
<u>14.</u>	<u>Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.</u>
<u>15.</u>	<u>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.</u>
<u>16.</u>	<u>Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.</u>
<u>17.</u>	<u>Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.</u>
<u>18.</u>	<u>Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.</u>
<u>19.</u>	<u>Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.</u>
<u>20.</u>	<u>Instrument No. CE592122 – Application Court Order registered on November 28, 2013.</u>
<u>Unsold Parking Units (See Schedule “A” for individual unit descriptions)</u>	
<u>1.</u>	<u>Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</u>
<u>2.</u>	<u>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.</u>
<u>3.</u>	<u>Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</u>
<u>4.</u>	<u>Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</u>
<u>5.</u>	<u>Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</u>
<u>6.</u>	<u>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.</u>
<u>7.</u>	<u>Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</u>
<u>8.</u>	<u>Instrument No. CE508840 – Application Change Name from Lombard General</u>

	<u>Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.</u>
9.	<u>Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.</u>
10.	<u>Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.</u>
11.	<u>Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.</u>
12.	<u>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.</u>
13.	<u>Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.</u>
14.	<u>Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.</u>
15.	<u>Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.</u>
16.	<u>Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.</u>
<u>Unsold Storage Units (See Schedule “A” for individual unit descriptions)</u>	
1.	<u>Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</u>
2.	<u>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.</u>
3.	<u>Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</u>
4.	<u>Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</u>
5.	<u>Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</u>
6.	<u>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.</u>
7.	<u>Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to</u>

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 ~~Real Property~~ 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)

BANK OF MONTREAL

and

Applicant

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

OMNIBUS APPROVAL AND VESTING ORDER

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BANK OF MONTREAL

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and

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**ONTARIO
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Proceeding commenced at Windsor

MOTION RECORD
(RETURNABLE MAY 2, 2014)

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