

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

B E T W E E N:

**CENTURION MORTGAGE CAPITAL CORPORATION**

Applicant

- and -

**TERRASAN 327 ROYAL YORK RD. LIMITED**

Respondent

**NINTH REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY**

**AS COURT APPOINTED RECEIVER**

**August 23, 2018**

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## INTRODUCTION AND PURPOSE OF THIS REPORT

### Introduction

1. By Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (the "**Court**") dated February 24, 2017 (the "**Receivership Order**"), BDO Canada Limited ("**BDO**") was appointed as the Court-appointed receiver (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties (collectively, the "**Assets**") of Terrasan 327 Royal York Rd. Limited ("**Terrasan**" or the "**Company**"), pursuant to the application made by Centurion Mortgage Capital Corporation ("**Centurion**").
2. The Company's principal asset was a partially constructed residential condominium development known as the "*On the Go Mimico*" (the "**Project**"). The municipal address for the Project is 327 Royal York Rd., Toronto, Ontario (the "**Property**").
3. On April 3, 2017, this Court granted an Order (the "**Sale Process Order**") which, among other things, approved a marketing and sale process set out in respect of the Assets (the "**Sale Process**").
4. On August 25, 2017, this Court granted an Approval and Vesting Order which approved, among other things, the asset purchase agreement dated July 28, 2017 between the Receiver and 2402871 Ontario Inc., and the transaction as set out therein (the "**Transaction**").
5. The Transaction closed on September 15, 2017. The net sale proceeds totaling \$30,044,444 ("**Sale Proceeds**") stand in the place and stead of the Property in respect of the various mortgages and lien claims previously registered against title to the Property.
6. On October 10, 2017, the Court granted an Order (the "**Centurion Distribution Order**") which, among other things, directed the Receiver to make a distribution from the Sale Proceeds sufficient to repay the first mortgagee, Centurion, in full and final satisfaction of all amounts owing by Terrasan to Centurion.
7. On November 16, 2017 the Court granted an Order (the "**Deposit Claims Procedure Order**") which approved the deposit claims procedure to address the claims of the purchasers of the Project's condominium units (each a "**Purchaser**") and the deposits paid (the "**Deposit Claims Procedure**").
8. On April 18, 2018, the Court granted an Order (the "**Deposit Claims Distribution Order**") which, among other things, authorized and directed the Receiver to make a distribution

from the Sale Proceeds to purchasers with a proven deposit claim in an amount equal to the corresponding accepted deposit claim, in accordance with the Deposit Claims Procedure Order (a “**Deposit Claim Distribution**”).

9. On April 27, 2018, the Court granted an Order (the “**Deposit Claims Protocol Order**”) which, among other things, set out a protocol (the “**Deposit Claims Protocol**”) to address: (i) the delivery of Deposit Claims Procedure documentation, and (ii) the manner in which the Tarion Bond (as defined herein) would be reduced by the corresponding value of the delivered Deposit Claim Distributions, the value of the disallowed claims, and the value of the barred claims.
10. On July 6, 2018, the Court granted an Order (the “**Diversified Distribution Order**”) which, among other things, directed the Receiver to make a distribution from the Sale Proceeds sufficient to repay the third place mortgagee, (or second place mortgagee at the time of such distribution as the first mortgage had already been re-paid) Diversified Capital Inc. (“**Diversified**”), in full and final satisfaction of all amounts owing by Terrasan to Diversified.
11. The Receiver has set up a website at <http://extranets.bdo.ca/terrasan> (the “**Website**”). All prescribed materials filed by the Receiver and other parties relating to these receivership proceedings are available to creditors and other interested parties in electronic format on the Website. The Receiver makes periodic updates to the Website to ensure creditors and other interested parties are kept informed of recent developments.

#### **Purpose of the Report**

12. The purpose of this report dated August 23, 2018 (the “**Ninth Report**”) is to provide information to the Court with respect to:
  - (a) the Receiver’s activities since its eighth report dated July 4, 2018 (the “**Eighth Report**”);
  - (b) the Receiver’s progress with respect to the Deposit Claims Procedure;
  - (c) the Receiver’s progress with respect to the Deposit Claim Distributions; and
  - (d) the Receiver’s motion for an Order of this Court (the “**Holdback and Distribution Order**”):
    - (i) approving and authorizing a procedure to establish a holdback and holdback release mechanism (the “**Holdback Procedure**”) in connection

with deposit claims related to the Project that may be made against Tarion Warranty Corporation (“**Tarion**”) pursuant to bond number TM5120055 dated July 18, 2013 (the “**Tarion Bond**”);

- (ii) approving and authorizing a full and final distribution by the Receiver to the Guarantee Company of North America (the “**Guarantee**”) from the Sale Proceeds in the amount of \$283,765.72 (the “**Guarantee Distribution**”), as set out in the Ninth Report;
- (iii) approving and authorizing the settlement of lien claim and motion agreement dated July 31, 2018 between Resform Construction Limited (“**Resform**”) and the Receiver (the “**Settlement Agreement**”), and the distribution to Resform in the amount of \$186,843.98, as outlined and in accordance with the terms of the Settlement Agreement;
- (iv) approving the Ninth Report and the activities and conduct of the Receiver outlined herein;
- (v) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP (“**Dentons**”), as set out in this Ninth Report, and authorizing the Receiver to pay all approved and unpaid fees and disbursements; and
- (vi) approving the Receiver’s interim statement of receipts and disbursements to date (the “**Interim R&D**”).

#### **Disclaimer**

13. This Ninth Report is prepared solely for the use of the Court for the purpose of assisting the Court in making a determination whether to: (i) approve and authorize the Holdback Procedure, (ii) approve and authorize the Guarantee Distribution, (iii) approve and authorize the Settlement Agreement and Resform Distribution (as defined herein), (iv) approve the actions and conduct of the Receiver as set out in this Ninth Report, including the Interim R&D, and (v) grant any other ancillary relief being sought.
14. Except as otherwise described in this Ninth Report:
  - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or

partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

- (b) the Receiver has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
15. Unless otherwise stated, all monetary amounts contained in this Ninth Report are expressed in Canadian dollars.

## **BACKGROUND**

16. Terrasan is a single purpose entity incorporated in Ontario for the purpose of developing the Project. The Project was to be developed into a condominium complex with 242 suites ranging between 537 sq. ft. to 2,700 sq. ft. including two levels of penthouses. Additionally, the Project was to include 193 residential parking stalls, 116 lockers and 8,245 sq. ft. of retail/commercial space.
17. The Receiver understands that approximately 208 condominium units had been pre-sold (the “**Pre-Construction Sales**”) and agreements of purchase and sale (a “**Purchase Agreement**”) had been executed between Terrasan and the Purchasers. In addition, Terrasan had received deposits on account of the Pre-Construction Sales. According to the Terrasan books and records, as at the receivership date: (i) 73 of the Purchase Agreements appeared to be valid and enforceable, and (ii) 135 Purchase Agreements appeared to have been terminated, due to the non-payment of milestone deposits as prescribed in each Purchase Agreement.
18. On October 10, 2017, the Receiver delivered correspondence to the Purchasers that executed a Purchase Agreement and advised those Purchasers that the Receiver closed the Transaction and as a result, Terrasan no longer had any ownership interest in the Property and would not be in a position to satisfy its obligations to those Purchasers with a valid and enforceable Purchase Agreement (the “**Purchaser Correspondence**”).
19. Following the delivery of the Purchaser Correspondence and upon receiving the Court’s approval of the Deposit Claims Procedure, the Receiver notified the Purchasers of the Deposit Claims Procedure and the requirement to complete and file with the Receiver the required documentation to prove any claim they may have pursuant to the Deposit Claims Procedure.

20. As noted in the Receiver's prior reports, the Receiver implemented the Deposit Claims Procedure and obtained the Deposit Claims Distribution Order authorizing Deposit Claim Distributions to Purchasers with proven deposit claims.

#### **ACTIVITIES OF THE RECEIVER**

21. In addition to the activities undertaken by the Receiver as detailed in its prior reports, the Receiver has, among other things:
- (a) continued to attend to the administration of the Deposit Claims Procedure, in particular, resolving three (3) notices of dispute delivered to the Receiver in respect of disallowed claims;
  - (b) engaged in further discussions with Tarion and the Guarantee regarding the reduction of the Tarion Bond equal to: (i) the value of the Receiver's Certificates (as defined herein) delivered by the Receiver in respect of Proven Deposit Claims, (ii) the total value of disallowed claims, and (iii) the total value of barred claims, in accordance with the Deposit Payment Protocol Order;
  - (c) completed the distribution to Diversified pursuant to the Diversified Distribution Order;
  - (d) engaged in further discussions with its legal counsel, Dentons, and trade creditors that filed lien claims against the Property regarding the potential priority of those claims in relation to the various mortgages that were registered against title to the Property;
  - (e) engaged in discussions and meetings with the mortgagees and lien claimants regarding the anticipated timing of distributions and the completion of the receivership administration; and
  - (f) completed other miscellaneous administrative obligations of the Receiver as required.

#### **DEPOSIT CLAIMS PROCEDURE AND DISTRIBUTION UPDATE**

22. Capitalized terms not otherwise defined in this section are as defined in the Deposit Claims Procedure Order, attached hereto as **Appendix A**.
23. As discussed in the Receiver's seventh report dated April 13, 2018 (the "**Seventh Report**"), establishing the Deposit Claims Procedure was necessary to enable the

Receiver, in consultation with the Guarantee, to: (i) determine proven Deposit Claims and facilitate the return of amounts payable in respect of Deposit Claims to Purchasers, and (ii) assist the Receiver and the Guarantee in quantifying the Guarantee's secured claim pursuant to its loan and security documentation as the Guarantee's claim is contingent in nature and based on the Guarantee's liability under the deposit insurance policies and the payment of Proven Deposit Claims. A copy of the Seventh Report (without appendices) is attached hereto as **Appendix B**.

24. Subsequent to the issuance of the Deposit Claims Procedure Order, the Receiver received and reviewed all Deposit Claims and, collaboratively with the Guarantee, determined the Deposit Claims as either accepted, disallowed or revised. The Receiver communicated with all Purchasers who filed a Deposit Claim.
25. The Receiver's final determination (as supported by the Guarantee) of the Deposit Claims received pursuant to the Deposit Claims Procedure Order, is summarized in the following table:

Terrasan Claims Summary		
	# of Claims	Total \$ Claimed
Accepted	76	\$ 3,767,046.61
Disallowed	30	515,018.46
Total	106	\$ 4,282,065.07

26. As noted in the Receiver's Eighth Report, the Receiver had received three (3) notices of dispute in respect of disallowed claims (the "**Disputed Claims**"). Each of the Disputed Claims include a claim of \$1,000 as an actual deposit amount paid to Terrasan. The remaining claim balance (ranging between \$4,650 and \$5,000) represents a claim for payment of a finder's fee or commission. The Receiver has now resolved the Disputed Claims by accepting a claim of \$1,000 for each Disputed Claim in accordance with the Deposit Claims Procedure, with the residual claim amounts remaining as a disallowed claim.
27. Pursuant to the Deposit Claims Procedure Protocol, the Receiver was to deliver a receiver's certificate to Tarion on a bi-weekly basis outlining the Deposit Claim Distributions made on account of the Proven Deposit Claims (a "**Receiver's Certificate**"). The following table summarizes the total value of the Receiver's Certificates delivered by the Receiver to Tarion and the Guarantee:



Deposit Claim Payments	
Total accepted Deposit Claims	\$ 3,767,046.61
Payments on account of Tarion Bond	1,428,335.00
Payments on account of Excess Condominium Deposit Insurance	2,335,711.61
Total payments	3,764,046.61
Net payments pending delivery to Purchasers	\$ 3,000.00

28. To date, the Receiver has delivered payments totaling \$3,764,046.61 in respect of Proven Deposit Claims. The Receiver is in the process of arranging the delivery of the \$1,000 payment to the three (3) Purchasers with resolved Disputed Claims at \$1,000 (the “**Remaining Distributions**”).

### RECEIPTS AND DISBURSEMENTS

29. The Interim R&D, attached as **Appendix C**, reports net receipts over disbursements from the date of the Receiver’s appointment to August 23, 2018 of \$10,312,454.10.
30. The Receiver is seeking the Court’s approval of its Interim R&D.

### SECURED CREDITORS and LIEN CLAIMANTS

#### Secured Creditors | Mortgages

31. Detailed below is a summary of the mortgages that were registered against title to the Property prior to the closing of the Transaction, and the corresponding amount of the registered mortgage (collectively, the “**Mortgages**”):

Creditor	Instrument Number	Charge
Centurion	AT4192730	\$21,800,000
GCNA	AT3841250	\$15,053,500
Diversified	AT3235332 and AT4035434	\$3,000,000
Olympia Trust Company / John Fletcher / Community Trust Company (“ <b>Olympia</b> ”)	AT3539503 and AT4464383 (Transfer of Charge)	\$15,000,000

32. As noted above:
- (a) pursuant to the Centurion Distribution Order, the Receiver distributed the amount of \$12,692,899.41 to the first mortgagee, Centurion, in full and final satisfaction of all amounts owing by Terrasan to Centurion;
  - (b) pursuant to the Deposit Claims Distribution Order granted on April 18, 2018, the Receiver has (to date) made distributions totaling \$3,764,046.61 on account of

Deposit Claims Distributions, which are secured by the second position Guarantee mortgage, and anticipates delivery of the Remaining Distributions in the near future; and

- (c) pursuant to the Diversified Distribution Order granted on July 6, 2018, the Receiver distributed the amount of \$3,404,228.47 to the third position mortgagee, Diversified, in full and final satisfaction of all amounts owing by Terrasan to Diversified.

- 33. As noted in the Receiver's Seventh Report, the Receiver received a mortgage discharge statement from the fourth position mortgagee, Olympia Trust Company / Fletcher / Community Trust Company, which indicates that, as of December 17, 2017, the amount of \$11,160,862.42 was due and owing by Terrasan.

#### **Lien Claims**

- 34. The Receiver is advised by its counsel that liens (the "**Lien Claims**") totaling \$4,359,219.12 were registered against title to the Property pursuant to the *Construction Lien Act* (Ontario) (the "**CLA**"). A detailed listing of the lien claims is set out in paragraph 43 of Seventh Report.
- 35. The Receiver has received a legal opinion from Dentons that concludes that the priority of each Lien Claim to the Sale Proceeds is limited (in the circumstances) to the deficiency in the holdback (the "**Holdback Deficiency**") that was required to be retained by Terrasan pursuant to the CLA. An assessment of the Holdback Deficiency (based on the records of Terrasan and information received by the lien claimant) for each lien claimant has been completed by the Receiver, and in this regard, the Receiver is currently negotiating limited priority lien payments with each of the lien claimants.

#### **Resform Settlement**

- 36. Following numerous discussions, the Receiver entered into the Settlement Agreement with Resform. A copy of the Settlement Agreement is attached hereto as **Appendix D**.
- 37. Resform filed a lien in the amount of \$2,015,268 against title to the Property. Resform also filed notices of motion on August 30, 2017 and September 15, 2017 seeking, among other things, a priority payment in respect of demobilization costs of a crane located at the Project.

38. The Settlement Agreement contemplates a distribution to Resform in the amount of \$186,843.98 from the Sale Proceeds (the "**Resform Distribution**"). As noted above, the Receiver has reviewed the Lien Claim asserted by Resform and is of the view that the Settlement Agreement is reasonable. Additionally, the Receiver is of the view that the Resform Distribution is reasonable and appropriate in the circumstances.
39. Following the distributions contemplated by the Holdback and Distribution Order, sufficient cash remains in the estate to address the balance of the Lien Claims.

#### **THE GUARANTEE DISTRIBUTION**

40. As reported in the Seventh Report, the Receiver obtained a security opinion from its counsel (the "**Guarantee Security Opinion**") and, subject to the customary qualifications and assumptions contained therein, the Guarantee Security Opinion opines that: (i) the security held by the Guarantee is valid and legally enforceable against Terrasan, and (ii) the Guarantee currently has a first priority security interest in the Assets (now Sale Proceeds).
41. Total deposits paid by Purchasers for the purchase of a condominium unit at the Project, according to the Terrasan records, totaled \$5,930,681.61. On or before the claims bar date (January 24, 2018), deposit claims totaling \$4,282,065.07 were filed with the Receiver.
42. The amount of \$3,764,046.61 has been paid by way of Deposit Claims Distributions, which payments were made from the Sale Proceeds on account of the Guarantee's secured claim. The Receiver's administration of the Deposit Claims Procedure is complete as all deposit claims have been determined in accordance with the Deposit Claims Procedure Order.
43. The Guarantee has provided a final payout statement to the Receiver in the amount of \$283,756.72, as due and owing to the Guarantee by Terrasan on account of outstanding premiums, fees and expenses (the "**Guarantee Payout**"). A copy of the Guarantee Payout is attached hereto as **Appendix E**.
44. There are sufficient funds in the estate as outlined in the Interim R&D to support the Guarantee Distribution. The Receiver is of the view that the Guarantee Distribution is appropriate and reasonable in the circumstances.

## HOLDBACK PROCEDURE

45. The Guarantee issued the Tarion Bond pursuant to the *Ontario New Home Warranties Plan Act* (Ontario) in the amount of \$4,840,000. Under the Tarion Bond, the Guarantee insured deposits made by Purchasers to a maximum of \$20,000 per Purchaser. The Guarantee also provided a Master Excess Condominium Deposit Insurance Policy to Terrasan, which insured individual Purchaser's deposits in excess of \$20,000.
46. Pursuant to the Deposit Claims Protocol Order, Tarion has delivered release letters to Terrasan and the Guarantee reducing the Tarion Bond from \$4,840,000 to \$200,000 (the "**Release Letters**"). The Release Letters account for all determined claims pursuant to the Deposit Claims Procedure (accepted, disallowed and barred).
47. Notwithstanding that the Receiver's determination of all deposit claims is complete and the distributions pursuant to the Deposit Claims Distribution Order are accounted for, Tarion has expressed a concern about potential liability in the event there are outstanding deposits claims not currently known to Tarion, the Guarantee or the Receiver. Accordingly, Tarion is requesting that a holdback from the Sale Proceeds be established in accordance with the proposed Holdback Procedure described below.
48. The Holdback Procedure set out in the proposed Holdback and Distribution Order contemplates the following (capitalized terms used in this paragraph are as defined in the Holdback and Distribution Order):
  - (a) the Receiver paying, within ten (10) Business Days of the granting the Holdback and Distribution Order, the amount of \$200,000 from the Sale Proceeds to Tarion (the "**Holdback**"), which amount shall be a holdback required to secure payment by Tarion in respect of a Tarion Claim that is made upon Tarion by a Purchaser prior to January 24, 2019 (the "**Outside Date**"), and against which Tarion may claim a Holdback Claim Amount;
  - (b) upon Tarion's receipt of the Holdback, Tarion shall deliver to the Guarantee the Tarion Bond for immediate cancellation and neither Tarion nor the Guarantee shall have any further obligations or liability whatsoever in respect of the Tarion Bond or the Project (in the case of Tarion, subject only to any Tarion claims that are to be dealt with pursuant to paragraph 6 of the Holdback and Distribution Order); and
  - (c) establishing a review mechanism for Tarion Claims received prior to the Outside Date, the frequency of reporting to the Receiver regarding Tarion Claims received

and Holdback Claim Amounts paid, and a procedure for delivering any Holdback Balance to the Receiver.

49. The Receiver is of the view that the proposed Holdback Procedure is appropriate and reasonable in the circumstances, facilitates the release of the Tarion Bond to the Guarantee in order to support the Guarantee Payout (as defined herein), and concludes all matters concerning deposit claims in the receivership proceedings.

#### **FEES AND DISBURSEMENTS**

50. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements, which are described in the Affidavit of Gary Cerrato sworn July 25, 2018, attached herein as **Appendix F**.
51. The detailed narratives contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with the invoices is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.
52. Additionally, the Receiver has incurred legal fees of its legal counsel, Dentons, in respect of these proceedings, as more particularly set out in the Affidavit of Robert Kennedy sworn August 23, 2018, attached herein as **Appendix G**.
53. The Receiver requests that the Court approve its interim accounts from February 1, 2018 to June 30, 2018 in the amount of \$150,349.61, inclusive of HST of \$17,296.86.
54. The Receiver also requests that the Court approve the interim accounts of its legal counsel for the period from January 1, 2018 to May 31, 2018 in the amount of \$209,365.59, inclusive of HST of \$24,067.90.
55. The Receiver respectfully submits that the Receiver's fees and disbursements, and Dentons' fees and disbursements, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

#### **SUMMARY AND RECOMMENDATIONS**

56. Based on the foregoing, the Receiver respectfully recommends that the Court:
  - (a) approve and authorize the Holdback Procedure;
  - (b) approve and authorize the Guarantee Distribution;

- (c) approve and authorize the Settlement Agreement and the Resform Distribution;
- (d) approve the Ninth Report and the activities and conduct of the Receiver outlined herein;
- (e) approve the fees and disbursements of the Receiver and its Dentons, as set out in this Ninth Report, and authorize the Receiver to pay all approved and unpaid fees and disbursements; and
- (f) approve the Receiver's Interim R&D;

All of which is respectfully submitted this 23<sup>rd</sup> day of August, 2018.

**BDO CANADA LIMITED,  
in its capacity as the Court-appointed Receiver of  
Terrasan 327 Royal York Rd. Limited, and not in its personal  
or corporate capacity**

Per:



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Name: Josie Parisi  
Title: Senior Vice President

CENTURION MORTGAGE CAPITAL CORPORATION

- and -

TERRASAN 327 ROYAL YORK RD. LIMITED

Applicant

Respondent

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

PROCEEDING COMMENCED AT TORONTO

**NINTH REPORT OF BDO CANADA LIMITED, IN ITS  
CAPACITY AS COURT APPOINTED RECEIVER**

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