

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

THE HONOURABLE JUSTICE

CONWAY

)
)
)

MONDAY, THE 3rd DAY OF
APRIL, 2017

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

and



TERRASAN 327 ROYAL YORK RD. LIMITED

Respondent

SALE PROCESS ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Terrasan 327 Royal York Rd. Limited (“**Terrasan**”) for an order approving the sale process, set out in Schedule “A” hereto (the “**Sale Process**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated March 27, 2017 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Amanda Campbell sworn March 29, 2017, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

RECEIVER'S ACTIVITIES

2. **THIS COURT ORDERS** that the First Report is approved and the activities of the Receiver as described therein.

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, as set out in the First Report, be and are hereby approved.

SALE PROCESS

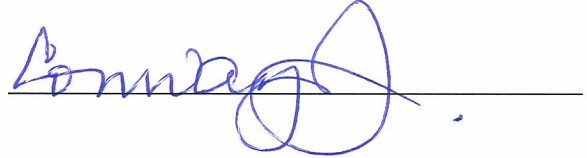
4. **THIS COURT ORDERS** that the Sale Process be and is hereby approved and that the Receiver is authorized and directed to commence the Sale Process for the purpose of soliciting interest in and opportunities for a sale of the property and assets of Terrasan.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to perform its obligations under the Sale Process, and to do all things reasonably necessary to do so.

6. **THIS COURT ORDERS** the Receiver and its respective affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Receiver in performing its obligations under the Sale Process (as determined by this Court).

GENERAL

7. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions on the discharge of its duties and powers hereunder.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
APR 03 2017

PER / PAR: 

Schedule “A” – Sale Process

Sale Process

Set forth below is the sale process (the “**Sale Process**”) to be employed with respect to the proposed sale of all or substantially all of the business and assets (the “**Assets**”) of Terrasan 327 Royal York Rd. Limited (“**Terrasan**”).

On February 24, 2017, the Ontario Superior Court of Justice (the “**Court**”) issued an order (the “**Receivership Order**”), appointing BDO Canada Limited as the receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of Terrasan.

Pursuant to the Receivership Order, the Receiver is authorized to market, advertise and solicit offers in respect of the sale, in whole or in part, of the Assets.

The Sale Process is intended to solicit interest in an acquisition of the Assets, under a fair and competitive sale process pursuant to which all qualified interested parties will be provided with a fair and equal opportunity to participate in the Sale Process.

Notwithstanding anything contained herein, the Receiver shall have the right to enter into an exclusive transaction for the sale of the Assets, or any portion thereof, outside of the Sale Process prior to the selection of a Successful Bidder (as defined herein).

Timeline

The following table sets out the key milestones under the Sale Process:

Milestone	Deadline
Non-Binding APA Deadline	May 12, 2017
Binding APA Deadline	July 28, 2017
Sale Approval Motion	August 18, 2017
Closing Date	August 25, 2017

Subject to the terms contained herein and any order of the Court, the dates set out in the Sale Process may be extended by the Receiver, in its sole discretion acting reasonably, all with a view of maximizing the value of the Assets.

Sale Process

The Sale Process set forth herein describes, among other things: (i) the Assets available for sale, (ii) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Assets, (iii) the manner in which bidders can be

determined to be a Phase 1 Qualified Bidder (as defined herein), (iv) the timing of delivering a Non-Binding APA (as defined herein), (v) the manner in which bids are to be received and negotiated, (vi) the ultimate selection of any Successful Bidder (as defined herein) and the process leading up to that selection, and (vii) the approval thereof by the Court.

Assets To Be Sold

The Receiver, in accordance with this Sale Process, is offering for sale, in one or more transactions, the Assets. The Receiver reserves the right to eliminate certain assets available for sale pursuant to the Sale Process prior to the Non-Binding APA Deadline (as defined below).

“As Is, Where Is”

The sale of the Assets will be on an “as is, where is” basis without representations or warranties of any kind, nature or description by the Receiver, or any of their respective directors, officers, partners, employees, agents, advisors or estates, except to the extent as may be set forth in a Binding APA (as defined herein), and approved by the Court. By submitting a bid, each Potential Bidder (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA and approved by the Court.

Free Of Any And All Claims And Interests

Except as may otherwise be provided in the Successful Bidder’s Binding APA, all of the rights, title and interests of Terrasan in and to the Assets, or any portion thereof, will be sold free and clear of all liens and claims (which may be defined in an Approval and Vesting Order (as defined herein)), subject to any permitted encumbrances (which may be defined in an Approval and Vesting Order), pursuant to an order by the Court approving the sale of the Assets, or a portion thereof, and vesting in the Successful Bidder all of Terrasan’s rights, title and interests in and to such Assets, or a portion thereof, by way of an approval and vesting order (the “**Approval and Vesting Order**”). For greater certainty, such liens and claims are to attach to the net proceeds of the sale of such Assets following the granting of the Approval and Vesting Order.

Publication Notice

Within seven (7) business days of the granting of the Sale Process order by the Court (the “**Sale Process Order**”), or as soon as practicable thereafter the Receiver shall publish notice of

this Sale Process: (i) in The Globe and Mail (National Edition), the Daily Commercial News, the NRU GTA Weekly Newsletter, the MLS and / or ICX (through a third party provider), (ii) in any other relevant publication that may advertise and potentially solicit interest in the Assets, and (iii) by posting a copy of the Teaser Letter (as defined herein) on the Axial website.

Solicitation of Interest

As soon as reasonably practicable after the granting of the Sale Process Order, the Receiver will prepare an initial offering summary (the “**Teaser Letter**”) notifying prospective purchasers of the existence of the Sale Process and inviting prospective purchasers to express their interest in making an offer for the Assets pursuant to the terms of the Sale Process.

Participation Requirements

Unless otherwise ordered by the Court or as otherwise determined by the Receiver, each person who wishes to participate in the Sale Process, (a “**Potential Bidder**”) must deliver to the Receiver, an executed non-disclosure agreement (“**NDA**”), in the form attached herein as **Schedule “A”**, prior to the distribution of any confidential information by the Receiver.

If it is determined by the Receiver, in its reasonable business judgment, that a Potential Bidder: (i) has a *bona fide* interest in an acquisition of the Assets; and (ii) has delivered the NDA, then such Potential Bidder will be deemed by the Receiver to be a “**Phase 1 Qualified Bidder**”.

The Receiver will prepare and send to each Phase 1 Qualified Bidder, as soon as reasonably practicable, a confidential information memorandum which will provide, among other things, information considered relevant to the Sale Process.

Due Diligence

The Receiver, in its reasonable business judgment, and subject to competitive and other business considerations, may give each Phase 1 Qualified Bidder, such access to due diligence materials and information relating to the Assets as the Receiver deems appropriate. Due diligence access may include access to an electronic data room (a “**Data Room**”), on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and as to which the Receiver, in its reasonable business judgment, may agree. The Receiver may designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. Neither the Receiver nor any of its affiliates (or any of its respective representatives) will be obligated to furnish any information relating to the Assets to any person, in its discretion. The Receiver makes no representation or warranty as to the information to be

provided through this due diligence process or otherwise, except as may be set forth in a Binding APA with the Successful Bidder.

Non-Binding APA Deadline

A Phase 1 Qualified Bidder that desires to make a bid shall deliver written copies of its bid, in the form of the template asset purchase agreement located in the Data Room (the “**APA**”), together with a blackline outlining all changes made to the APA (a “**Non-Binding APA**”), to the Receiver as follows: Attn: Gary Cerrato, e-mail gcerrato@bdo.ca, fax (416) 865-0904, so as to be received by the Receiver no later than May 12, 2017 at 5:00 p.m. (ET) (as may be extended as set out below, the “**Non-Binding APA Deadline**”). The Receiver, may extend the Non-Binding APA Deadline, once or successively, but is not obligated to do so. If the Non-Binding APA Deadline is extended, the Receiver will promptly notify all Phase 1 Qualified Bidders.

Qualified APA

A Non-Binding APA will be considered a qualified APA only if the Non-Binding APA is submitted by a Phase 1 Qualified Bidder and complies with all of the following (a “**Qualified APA**”):

- (a) the bid (either individually or in combination with other bids that make up one Qualified APA) is an offer to purchase some or all of the Assets on terms and conditions reasonably acceptable to the Receiver;
- (b) it is duly authorized and executed, and includes a purchase price for the Assets expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits, schedules and all applicable ancillary agreements thereto;
- (c) it includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a reasonable determination as to the Phase 1 Qualified Bidder’s financial and other capabilities to consummate the proposed sale and pay the Purchase Price;
- (d) it provides all of the conditions associated with unperformed due diligence that is required to be conducted in order to proceed with a Binding APA. For greater certainty, such conditions cannot relate to any financing condition;
- (e) it fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring, financing, participating or benefiting from such bid;
- (f) it includes an acknowledgement and representation of the Phase 1 Qualified Bidder that: (i) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and (ii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise,

regarding the Assets or the completeness of any information provided in connection therewith;

- (g) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Phase 1 Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Qualified APA submitted by the Phase 1 Qualified Bidder;
- (h) provides a deposit in the amount of not less than 5% of the Purchase Price offered by the Phase 1 Qualified Bidder (the "**Deposit**"); and
- (i) it is received by the Receiver by the Non-Binding APA Deadline.

The Receiver may determine whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be a Qualified APA.

The Receiver shall notify each Phase 1 Qualified Bidder in writing as to whether such Phase 1 Qualified Bidder's APA constituted a Qualified APA within five (5) business days following the expiration of the Non-Binding APA Deadline, or at such later time as the Receiver deems appropriate. If such notification is provided, then such Phase 1 Qualified Bidder will be deemed to be a "**Phase 2 Qualified Bidder**".

If the Receiver is not satisfied with the number or terms of bids submitted by the Non-Binding APA Deadline, the Receiver may extend the Non-Binding APA Deadline or cancel the Sale Process.

Binding APA Deadline

The Receiver will take all reasonable steps to negotiate and assist Phase 2 Qualified Bidder(s) in completing its unperformed due diligence, or any other bid matters including any discussions or negotiations required to be completed with any stakeholders in the receivership proceedings of Terrasan, with a view of submitting: (i) a further binding APA (a "**Binding APA**") on or before July 28, 2017 (the "**Binding APA Deadline**"), and (ii) a blackline outlining all changes made to the APA, for consideration by the Receiver. For greater certainty, a Binding APA shall:

- (a) be delivered to the Receiver prior to the Binding APA Deadline;
- (b) replace and supersede the Non-Binding APA submitted by a Phase 2 Qualified Bidder;
- (c) comply with all of the requirements set forth in respect of a Qualified APA;

- (d) include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable and open for acceptance until the Successful APA (as defined herein) is selected by the Receiver;
- (e) include written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (f) not to be conditioned on: (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, and/or (ii) obtaining financing;
- (g) fully disclose the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
- (h) provide the Deposit (as may be adjusted);
- (i) include acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Assets and Terrasan prior to making its bid, (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Assets or the completeness of any information provided in connection therewith; and
- (j) the bid contemplates closing the transaction set out therein on or before August 25, 2017 (the "**Closing Date**").

The Receiver may determine whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be a Binding APA.

Evaluation of Binding APA

A Binding APA will be valued based upon several factors including, without limitation, items such as the Purchase Price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, the assets included or excluded from the bid, the transition services required from the Receiver (if any), any related transaction costs, and the likelihood and timing of consummating such transactions, each as determined by the Receiver.

Each Phase 2 Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Phase 2 Qualified Bidder or the Binding APA. Failure of a Phase 2 Qualified Bidder to comply with requests for additional information will be a basis for the Receiver to reject a Binding APA.

Selection of Successful APA

The Receiver will review and evaluate each Binding APA. Each Binding APA may be negotiated by the Receiver and the applicable Phase 2 Qualified Bidder submitting the Binding APA (the “**Unconditional Bidder**”), and may be amended, modified or varied to improve such Binding APA, and as a result of such negotiations, the Receiver may: (i) identify the highest or otherwise best offer for the Assets (the “**Successful APA**”, and the Unconditional Bidder making such Successful APA, the “**Successful Bidder**”), or (ii) in the event no Successful Bidder is declared, reject each Binding APA and may ask any Unconditional Bidder to resubmit a revised Binding APA. The determination of a Successful APA by the Receiver, shall be subject to approval by the Court.

Notwithstanding the foregoing, a Binding APA may not be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful APA being determined. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the Successful APA being determined shall result in the forfeiture of such Unconditional Bidder’s deposit as liquidated damages and not as a penalty.

In the event an Unconditional Bidder is not selected as a Successful Bidder, the Deposit shall be returned to the Unconditional Bidder as soon as reasonably practicable.

The Receiver shall have no obligation to select a Successful APA, and it reserves the right to reject any or all Binding APAs.

Sale Approval Motion Hearing

The motion for an order of the Court approving any Successful APA (the “**Sale Approval Motion**”) shall be sought and include, among other things, the approval from the Court to consummate the Successful APA. The Sale Approval Motion shall be heard on or before August 18, 2017.

All of the Binding APAs other than the Successful APA, if any, shall be deemed rejected by the Receiver on and as of the date of closing of the transaction contemplated by the Successful APA.

Reservation of Rights

The Receiver may: (a) determine which Binding APA, if any, is the highest or otherwise best offer; (b) reject at any time before the issuance and entry of an order approving a Binding APA, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Process or any order of the Court, or (iii) contrary to the best interests of the receivership estate, and (c) may modify the Sale Process or impose additional terms and conditions on the sale of the Assets.

Miscellaneous

This Sale Process is solely for the benefit of the Receiver and nothing contained in the Sale Process Order or this Sale Process shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise).

Except as provided in the Sale Process Order and Sale Process, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order and the Sale Process.

Limitation of Liability

The Receiver shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Terrasan, or any creditor or other stakeholder, for any act or omission related to the Sale Process. By submitting a bid, each Potential Bidder shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever.

Schedule "A"
Non-Disclosure Agreement

PRIVATE & CONFIDENTIAL

► [Potential Bidder Organization Name and Address]

Dear Sirs:

Re: Confidential Information with respect to Terrasan 327 Royal York Rd. Ltd. (the "Debtor")

In accordance with the terms of the Sale Process approved by the Ontario Superior Court of Justice (Commercial List) on _____ (the "**Sale Process**") you have requested access to due diligence and other materials relating to the business and assets (the "**Assets**") of the Debtor, such access to be coordinated by BDO Canada Limited, in its capacity as the Court-appointed Receiver in the receivership proceedings (the "**Receivership Proceedings**") of the Debtor (the "**Receiver**"). You will treat confidentially any information the Receiver or its representatives furnish to you in connection with the Assets (the "**Evaluation Material**"), provided, however, that the term "Evaluation Material" does not include information that: (a) was or becomes generally available to the public or to you on a non-confidential basis through no fault or breach of this agreement on your part or on the part of any of your directors, officers, employees or agents (including investment bankers, financing sources, accountants, and attorneys) (all such directors, officers, employees or agents referred to collectively as, "**Representatives**"); (b) was independently developed by you or your affiliates without reference to the Evaluation Material; or (c) was provided to you by a third party not known to you, after due inquiry, to be subject to confidentiality obligations.

You shall use the same degree of care as you use to protect your own confidential information of a similar nature, but not less than reasonable care, to prevent the unauthorized use, dissemination or publication of the Evaluation Material.

You agree that you will not use the Evaluation Material for any purpose other than evaluating your interest in purchasing some or all of the Assets; provided, however, that you may disclose

any Evaluation Material to your Representatives who need to know such information for the purpose of evaluating the possible purchase of the Assets (it being understood that you shall inform such Representatives of the confidential nature of such information and that, by receiving such information, they agree to abide by the terms this Agreement), provided that you will be responsible for any breach of the provisions of this Agreement by any such Representatives. Upon gaining access to the Evaluation Material, you will not contact any director, officer, employee or stakeholder of the Debtor or its affiliates with respect to the Evaluation Material or any other matter contemplated in this Agreement, without the express consent of the Receiver. In the event you are deemed a "Phase 2 Qualified Bidder" in accordance with the terms of the Sale Process, the Receiver may assist and coordinate meetings, discussions, and other communications between you and the aforementioned parties, all with a view of assisting you in submitting a "Binding APA" pursuant to the Sale Process.

In the event that you are required by applicable law or legal process or regulatory body or agency to disclose any part of the Evaluation Material, you will, to the extent permitted by law, give the Receiver prompt notice of such request so that the Receiver may seek an appropriate protective order. If in the absence of a protective order you are nonetheless compelled to disclose any part of the Evaluation Material, you may disclose such information (but only to the extent necessary to comply with your legal obligations) without liability hereunder, provided, however, that you give the Receiver written notice of the information to be disclosed as far in advance of its disclosure as is practicable and legally permitted. Upon the Receiver's request, you will use your commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

Upon the Receiver's written request, you shall return promptly to the Receiver or destroy all copies of the Evaluation Material and you shall provide promptly a written certificate to the Receiver confirming your compliance with this Agreement. Notwithstanding the foregoing, on written notice to the Receiver concurrently with the provision of the aforementioned written certificate, you may retain a copy of the Evaluation Material to the extent required in order to comply with regulatory and internal record retention requirements.

You agree that (a) the Receiver reserves the right, in its reasonable business judgment, and subject to competitive and other business considerations, to decline access to all or part of the Evaluation Material, and (b) the Receiver reserves the right to reject any and all offers for the Assets or to terminate discussions and negotiations with you at any time all in accordance with the terms of the Sale Process. The exercise by the Receiver of these rights shall not affect the enforceability of any provision of this Agreement.

You acknowledge and agree that neither the Debtor nor the Receiver nor their representatives have made or make any representation or warranty as to the accuracy or completeness of the

Evaluation Material. You agree that neither the Debtor nor the Receiver nor their representatives shall have any liability to you or any of your Representatives resulting from the use of, or reliance on, the Evaluation Material. You agree that if you determine to engage in a transaction with the Receiver, such determination will be based solely on the terms of any definitive written agreement covering that transaction and on your own investigation, analysis and evaluation of the transaction.

You agree that damages may not be a sufficient remedy for any breach of this Agreement by you or your Representatives, and that in addition to all other remedies, the Receiver shall be entitled to seek specific performance, injunctive relief or other equitable relief as a remedy for any such breach.

You agree that this Agreement, and any rights of the Debtor or Receiver hereunder, shall inure to the benefit of any party that enters into a transaction contemplated by the Sale Process.

The Receiver may disclose the existence of this agreement, the identities of the parties hereto and any other information in respect of this agreement, or a transaction proposed by any party hereto, to the extent required in connection with the Receivership Proceedings or applicable laws, to any other person.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. This Agreement and the rights and obligations of the parties will terminate two years from the date hereof.

Please indicate your agreement with the foregoing by signing and returning one copy of this agreement to:

[NTD]

Yours very truly,

**TERRASAN 327 ROYAL YORK RD.
LIMITED , by its court appointed receiver
BDO Canada Limited., and not in any other
capacity**

Per: _____

Name:

Title:

Confirmed and agreed to this _____ day of _____, 2017

► **[Potential Bidder Organization Name]**

Per: _____

Name:

Title:

(I have the authority to bind the corporation)

CENTURION MORTGAGE CAPITAL CORPORATION

and

TERRASAN 327 ROYAL YORK RD. LIMITED

Applicant

Respondent

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p>
<p>ORDER (Sale Process)</p>
<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Fax: 416-863-4592</p> <p>Robert Kennedy (LSUC No. 474070) Tel: 416-637-6756 Email: robert.kennedy@dentons.com</p> <p><i>Counsel to the Receiver</i></p>
