

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

THE HONOURABLE. ) FRIDAY, THE 25<sup>th</sup> DAY  
JUSTICE *MYERS* )  
 ) OF AUGUST, 2017  
 )



BETWEEN:

**CENTURION MORTGAGE CAPITAL CORPORATION**

Applicant

and

**TERRASAN 327 ROYAL YORK RD. LIMITED**

Respondent

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by BDO Canada Limited, in its capacity as Court appointed receiver and manager (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and 240871 Ontario Inc. (the “**Purchaser**”) dated July 28, 2017, and vesting in the Purchaser Terrasan 327 Royal York Rd. Limited’s (“**Terrasan**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Receiver dated August 18, 2017 and the Second Report of the Receiver dated August 16, 2017 (the “**Second Report**”), the Affidavit of Josie Parisi sworn August 14, 2017 and Kenneth Kraft sworn August 18, 2017 (collectively, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver, the Applicant, and the Purchaser, 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 Vanja Ginic sworn August 18, 2017 filed:

1. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

2. **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.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as 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 Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **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 Terrasan's right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement, including the lands legally described in **Schedule B** hereto (the "**Lands**"), 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 Receivership Order dated February 24, 2017; (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** and **Schedule C-1** 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 are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a Transfer/Deed of Land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the Lands in fee simple, and is hereby directed to delete and expunge from title to the Lands all of the Claims listed in **Schedule C** hereto.

6. **THIS COURT** authorizes and directs the Receiver and / or its solicitors or its agents to file one or more financing change statements to discharge the PPSA registrations set forth in **Schedule C-1**.

7. **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 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.

8. **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 Terrasan's records pertaining to Terrasan's past and current employees. 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 prior use of such information by Terrasan.

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 Terrasan and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Terrasan;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Terrasan and shall not be void or voidable by creditors of Terrasan, 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 Transaction is exempt from the application of Sections 6(3) of the *Retail Sales Tax Act* (Ontario).

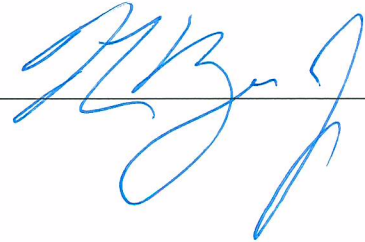
11. **THIS COURT ORDERS** that the Confidential Appendix “A” and the Confidential Appendix “B” to the Second Report shall be sealed, kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court.

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

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

14. **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.



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

AUG 25 2017

PER / PAR: 

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-16-11337-00CL

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

THE HONOURABLE ) [DAY], THE [ ] DAY  
JUSTICE )  
) OF [ ], 2017

BETWEEN:

**CENTURION MORTGAGE CAPITAL CORPORATION**

Applicant

and

**TERRASAN 327 ROYAL YORK RD. LIMITED**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (the “**Court**”) dated February 24, 2017, BDO Canada Limited was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Terrasan 327 Royal York Rd. Limited (“**Terrasan**”).

B. Pursuant to an Order of the Court dated August 25, 2017, the Court approved the agreement of purchase and sale made as of July 28, 2017 (the “**Asset Purchase Agreement**”) between the Receiver and 2402871 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of Terrasan’s right, title and interest in and to the Purchased Assets, which

vesting is to be effective with respect to the Purchased Assets 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, (ii) that the conditions to closing as set out in the Asset Purchase Agreement 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 Asset Purchase Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; 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, in its capacity as  
Receiver, and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule B – Description of Lands**

327 Royal York Road, Toronto

PIN 07619-0889 (LT)

Lots 159, 160 and 161, Plan 164 (Etobicoke) except part of Lots 160 and 161, Plan 164 designated as Part 2, Plan 66R28185, City of Toronto;

Together with an easement over part of Lots 160 & 160 Plan 164, Part 2, Plan 66R28185 as in Instrument AT4215400.

Subject to an easement in gross as in AT4264438;

Subject to an easement in gross as in AT4274323.



**Schedule C – Claims to be deleted and expunged from title to Real Property**

**PIN 07617-0889 (LT)**

1. Charge registered as Instrument No. AT3235332 on February 12, 2013
2. Notice of Assignment of Rents-General registered as Instrument No. AT3235333 on February 12, 2013
3. Charge registered as Instrument No. AT3539503 on March 17, 2014
4. Notice registered as Instrument No. AT3549928 on April 1, 2014
5. Transfer of Charge registered as Instrument No. AT3549936 on April 1, 2014
6. Transfer of Charge registered as Instrument No. AT3555412 on April 9, 2014
7. Transfer of Charge registered as Instrument No. AT3561505 on April 17, 2014
8. Transfer of Charge registered as Instrument No. AT3566547 on April 25, 2014
9. Transfer of Charge registered as Instrument No. AT3575227 on April 6, 2014
10. Transfer of Charge registered as Instrument No. AT3585296 on May 20, 2014
11. Transfer of Charge registered as Instrument No. AT3596048 on May 30, 2014
12. Transfer of Charge registered as Instrument No. AT3601926 on June 6, 2014
13. Transfer of Charge registered as Instrument No. AT3607117 on June 13, 2014
14. Transfer of Charge registered as Instrument No. AT3613001 on June 20, 2014
15. Transfer of Charge registered as Instrument No. AT3619994 on June 27, 2014
16. Notice registered as Instrument No. AT3658194 on August 11, 2014
17. Transfer of Charge registered as Instrument No. AT3658196 on August 11, 2014
18. Transfer of Charge registered as Instrument No. AT3666880 on August 20, 2014
19. Notice registered as Instrument No. AT3685946 on September 11, 2014
20. Transfer of Charge registered as Instrument No. AT3703135 on September 30, 2014
21. Notice registered as Instrument No. AT3708526 on October 7, 2014
22. Transfer of Charge registered as Instrument No. AT3710726 on October 9, 2014

23. Transfer of Charge registered as Instrument No. AT3717540 on October 20, 2014
24. Transfer of Charge registered as Instrument No. AT3723532 on October 28, 2014
25. Transfer of Charge registered as Instrument No. AT3728118 on October 30, 2014
26. Transfer of Charge registered as Instrument No. AT3741238 on November 14, 2014
27. Transfer of Charge registered as Instrument No. AT3745031 on November 20, 2014
28. Transfer of Charge registered as Instrument No. AT3749969 on November 26, 2014
29. Transfer of Charge registered as Instrument No. AT3765342 on December 12, 2014
30. Notice registered as Instrument No. AT3769051 on December 17, 2014
31. Transfer of Charge registered as Instrument No. AT3790042 on January 19, 2015
32. Notice registered as Instrument No. AT3793278 on January 22, 2015
33. Transfer of Charge registered as Instrument No. AT3818095 on February 25, 2015
34. Charge registered as Instrument No. AT3841250 on March 26, 2015
35. Transfer of Charge registered as Instrument No. AT3844741 on March 31, 2015
36. Notice registered as Instrument No. AT3850533 on April 7, 2015
37. Notice registered as Instrument No. AT3881044 on May 12, 2015
38. Postponement registered as Instrument No. AT3894276 on May 28, 2015
39. Notice registered as Instrument No. AT3941583 on July 9, 2015
40. Postponement registered as Instrument No. AT3989335 on August 26, 2015
41. Postponement registered as Instrument No. AT3989337 on August 26, 2015
42. Postponement registered as Instrument No. AT3989338 on August 26, 2015
43. Transfer of Charge registered as Instrument No. AT4035434 on October 14, 2015
44. Notice of Assignment of Rents-General registered as Instrument No. AT4035435 on October 14, 2015
45. Transfer of Charge registered as Instrument No. AT4066213 on November 13, 2015
46. Notice registered as Instrument No. AT4066214 on November 13, 2015
47. Notice registered as Instrument No. AT4132320 on January 29, 2016

48. Postponement registered as Instrument No. AT4132321 on January 29, 2016
49. Postponement registered as Instrument No. AT4132323 on January 29, 2016
50. Postponement registered as Instrument No. AT4192703 on April 14, 2016
51. Postponement registered as Instrument No. AT4192704 on April 14, 2016
52. Charge registered as Instrument No. AT4192730 on April 14, 2016
53. Notice of Assignment of Rents-General registered as Instrument No. AT4192731 on April 14, 2016
54. Postponement registered as Instrument No. AT4192760 on April 14, 2016
55. Postponement registered as Instrument No. AT4192761 on April 14, 2016
56. Postponement registered as Instrument No. AT4192762 on April 14, 2016
57. Notice registered as Instrument No. AT4193455 on April 14, 2016
58. Postponement registered as Instrument No. AT4264603 on June 30, 2016
59. Postponement registered as Instrument No. AT4264604 on June 30, 2016
60. Postponement registered as Instrument No. AT4264605 on June 30, 2016
61. Postponement registered as Instrument No. AT4264606 on June 30, 2016
62. Postponement registered as Instrument No. AT4264607 on June 30, 2016
63. Postponement registered as Instrument No. AT4274414 on July 11, 2016
64. Postponement registered as Instrument No. AT4274415 on July 11, 2016
65. Postponement registered as Instrument No. AT4274416 on July 11, 2016
66. Postponement registered as Instrument No. AT4274417 on July 11, 2016
67. Postponement registered as Instrument No. AT4274418 on July 11, 2016
68. Transfer of Charge registered as Instrument No. AT4327730 on August 31, 2016
69. Construction Lien registered as Instrument AT4455871 on January 11, 2017
70. Construction Lien registered as Instrument No. AT4458595 on January 13, 2017
71. Construction Lien registered as Instrument No. AT4459539 on January 13, 2017
72. Construction Lien registered as Instrument No. AT4462727 on January 18, 2017

73. Transfer of Charge registered as Instrument No. AT4464383 on January 19, 2017
74. Construction Lien registered as Instrument No. AT4464740 on January 19, 2017
75. Construction Lien registered as Instrument No. AT4467005 on January 23, 2017
76. Construction Lien registered as Instrument No. AT4468556 on January 24, 2017
77. Construction Lien registered as Instrument No. AT4468557 on January 24, 2017
78. Postponement registered as Instrument No. AT4471568 on January 27, 2017
79. Construction Lien registered as Instrument No. AT4475863 on January 31, 2017
80. Certificate registered as Instrument No. AT4480120 on February 6, 2017
81. Certificate registered as Instrument No. AT4483429 on February 9, 2017
82. Construction Lien registered as Instrument No. AT4484326 on February 10, 2017
83. Certificate registered as Instrument No. AT4484646 on February 10, 2017
84. Certificate registered as Instrument No. AT4488807 on February 16, 2017
85. Construction Lien registered as Instrument No. AT4494360 on February 24, 2017
86. Certificate registered as Instrument No. AT4494829 on February 24, 2017
87. Certificate registered as Instrument No. AT4513705 on March 16, 2017
88. Certificate registered as Instrument No. AT4513712 on March 16, 2017
89. Application Court Order registered as Instrument No. AT4518660 on March 23, 2017
90. Application General registered as Instrument No. AT4528870 on April 3, 2017
91. Certificate registered as Instrument No. AT4538384 on April 18, 2017
92. Construction Lien registered as Instrument No. AT4541935 on April 20, 2017
93. Certificate registered as Instrument No. AT4600997 on June 16, 2017

**Schedule C-1 – PPSA Registrations to be Deleted**

1. File Number 715589415 – Secured Party: Centurion Mortgage Capital Corporation
2. File Number 704262735 – Secured Party: The Guarantee Company of North America
3. File Number 688915296 – Secured Party: The Guarantee Company of North America
4. File Number 681585921 – Secured Party: Diversified Capital Inc.

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

**(unaffected by the Vesting Order)**

1. Transfer of Easement registered as Instrument No. AT3989173 on August 26, 2015.
2. Instrument No. AT2717994 registered on June 10, 2011 is a Notice between the City of Toronto and Terrasan 327 Royal York Road Limited.
3. Instrument No. AT4264438 registered on June 30, 2016 is a Transfer of Easement between Terrasan 327 Royal York Road Limited and Canadian National Railway Company
4. Instrument No. AT4274323 registered on July 11, 2016 is a Transfer of Easement between Terrasan 327 Royal York Road Limited and Metrolinx.
5. Instrument No. AT4215393 on May 11, 2016 is a Notice between the City of Toronto and Terrasan 327 Royal York Road Limited.

**CENTURION MORTGAGE CAPITAL CORPORATION**

- and -

**TERRASAN 327 ROYAL YORK RD. LIMITED**

Applicant

Respondent

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

PROCEEDING COMMENCED AT TORONTO

**APPROVAL AND VESTING ORDER**

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