

**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

SEVENTH REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY

AS COURT APPOINTED RECEIVER

April 13, 2018

TABLE OF CONTENTS

INTRODUCTION AND PURPOSE OF THIS REPORT.....	3
Introduction	3
Purpose of the Report.....	4
Disclaimer	5
BACKGROUND	5
ACTIVITIES OF THE RECEIVER.....	6
DEPOSIT CLAIMS PROCEDURE UPDATE	7
CANADA REVENUE AGENCY PRIORITY CLAIMS.....	10
RECEIPTS AND DISBURSEMENTS	11
SECURED CREDITORS	11
SECURITY OPINIONS – SECURED CREDITORS	12
DIVERSIFIED – REQUEST FOR DISTRIBUTION.....	14
CASH SUMMARY.....	14
FEES AND DISBURSEMENTS.....	14
SUMMARY AND RECOMMENDATIONS	15

APPENDICES

Deposit Claims Procedure Order	A
R&D Statement	B
Diversified Mortgage Payout Statement	C
Olympia Mortgage Payout Statement	D
Affidavit of Josie Parisi sworn April 13, 2018	E
Affidavit of Robert Kennedy sworn April 13, 2018	F

CONFIDENTIAL APPENDICIES

Confidential Appendix A: Claim Determination Summary	A
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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 (the "**Approval and Vesting Order**") which approved, among other things, the asset purchase agreement dated July 28, 2017 (the "**2402871 APA**") between the Receiver and 2402871 Ontario Inc. (the "**2402871**"), and the transaction as set out therein (the "**Transaction**").
5. The Transaction closed on September 15, 2017. The Receiver also filed the Receiver's Certificate on September 15, 2017 in accordance with the 2402871 APA and the Approval and Vesting Order, confirming that the Transaction had closed. 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 "**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. 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

9. The purpose of this report dated April 13, 2018 (the "**Seventh Report**") is to provide information to the Court with respect to:
 - (a) the Receiver's activities since the Sixth Report dated November 13, 2017 (the "**Sixth Report**");
 - (b) the Receiver's progress with respect to the implementation of the Deposit Claims Procedure in accordance with the provisions of the Deposit Claims Procedure Order; and,
 - (c) the Receiver's motion for an Order of this Court:
 - (i) approving and authorizing distributions by the Receiver, from the Sale Proceeds, to those Purchasers with a Proven Deposit Claim (as defined in the Deposit Claims Procedure Order) in an amount equal to the corresponding accepted Deposit Claim, subject to any adjustment on account of the return of any Remaining Trust Funds payable to such Purchaser (the "**Deposit Claim Distribution**");
 - (ii) approving the Seventh Report and the activities and conduct of the Receiver outlined herein;
 - (iii) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP ("**Dentons**"), as set out in this Seventh Report, and authorizing the Receiver to pay all approved and unpaid fees and disbursements;
 - (iv) approving the Receiver's interim statement of receipts and disbursements to date (the "**R&D Statement**").

Disclaimer

10. This Seventh 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 the Deposit Claim Distribution, (ii) approve the actions and conduct of the Receiver as set out in this Seventh Report, including the R&D Statement, (iii) approve the fees of the Receiver and Dentons, and (iv) grant any other ancillary relief being sought.
11. Except as otherwise described in this Seventh 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.
12. Unless otherwise stated, all monetary amounts contained in this Seventh Report are expressed in Canadian dollars.

BACKGROUND

13. 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.
14. According to the Corporate Profile Report of Terrasan, Luigi Santaguida is listed as the sole officer and director of Terrasan. Mr. Santaguida is the acting President and Secretary of Terrasan and the sole employee.
15. 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 (a "**Deposit**") on account of the Pre-Construction Sales. According to the Terrasan books and records (the "**Records**"), as at the receivership date: (i) 73 of the Purchase Agreements appear to be valid and enforceable, and (ii) 135

Purchase Agreements appear to have been terminated, due to the non-payment of milestone deposits as prescribed in each Purchase Agreement.

16. 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**").
17. 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 requested that they complete the required documentation to prove any claim they may have pursuant to the Deposit Claims Procedure.

ACTIVITIES OF THE RECEIVER

18. In addition to the activities undertaken by the Receiver as detailed in its prior reports (in particular since the Sixth Report), the Receiver has, among other things:
 - (a) attended to the implementation and administration of the Deposit Claims Procedure;
 - (b) directed Schneider Ruggerio LLP ("**SRLaw**"), the Deposit Trustee, to forward any deposit funds being held in its trust accounts to the Receiver pursuant to the Deposit Claims Procedure Order;
 - (c) responded to enquiries from Purchasers regarding the Deposit Claims Procedure and provided assistance to Purchasers to properly complete their respective claim forms;
 - (d) reviewed claims received from Purchasers;
 - (e) forwarded additional correspondence to Purchasers reminding them to file claims with the Receiver prior to the Claims Bar Date (defined below);
 - (f) engaged in discussion and meetings with The Guarantee Company of North America (the "**Guarantee**") regarding the Deposit Claims Procedure being administered by the Receiver and the details of Purchasers' claims received to date;

- (g) attended to several post-closing issues with respect to the Transaction;
- (h) cancelled the insurance policy over the condominium development and corresponded with the insurer regarding the refund to be provided to the Receiver;
- (i) numerous communications with the Canada Revenue Agency (“**CRA**”) and the Department of Justice (the “**DOJ**”) to request a trust exam of Terrasan’s HST account;
- (j) continued its review of the Records in order to assess the status of the Purchase Agreements and the Deposits and reviewed a “loyalty program” that was implemented by Terrasan to sell units in the Project;
- (k) engaged in discussions with 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;
- (l) engaged in discussions and meetings with the mortgagees and other secured creditors regarding the anticipated timing of distributions and the completion of the receivership administration;
- (m) responding to the motion filed by Resform Construction Ltd.;
- (n) meeting with representatives from Resform and their counsel to discuss and negotiate Resform’s claims;
- (o) completed the Receiver’s outstanding HST returns as required and closed existing Terrasan accounts; and,
- (p) completed other miscellaneous administrative obligations of the Receiver as required.

DEPOSIT CLAIMS PROCEDURE UPDATE

19. Capitalized terms not otherwise defined in this section are as defined in the Deposit Claims Procedure Order, attached herein as **Appendix A**.
20. On November 17, 2017, the Court granted the Deposit Claims Procedure Order that approved the Deposit Claims Procedure establishing a procedure for the Receiver to deal with the claims of the Purchasers and the Guarantee.

21. As discussed in the Sixth Report, establishing the Deposit Claims Procedure was necessary to enable the Receiver, in consultation with the Guarantee, to: (i) determine proven Deposit Claims and to 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.
22. The Deposit Claims Procedure Order also directed SRLaw to deliver to the Receiver all Remaining Deposit Funds held in trust by SRLaw. The Remaining Deposit Funds on account of Deposits amount to \$230,821.60, and were deposited by the Receiver as required by the Deposit Claims Procedure Order (consisting of \$157,089.61 in deposits and \$73,731.99 of interest).
23. Pursuant to the Deposit Claims Procedure Order, the Receiver completed the following on or before November 24, 2017:
 - (i) mailed Claims Packages to each of the 208 Purchasers on November 21, 2017;
 - (ii) published Newspaper Notices in the Globe and Mail and the Toronto Star; and,
 - (iii) posted the Claims Package on the Receiver's Website on November 21, 2017.
24. Additionally, the Receiver:
 - (a) on December 11, 2017, sent notices to Purchasers reminding them of the Claims Bar Date; and
 - (b) on January 23, 2018, contacted by email all Purchasers whose Claims Package had been returned to the Receiver in the mail.
25. As at the Claims Bar Date, the Receiver had received 106 Deposit Claims from Purchasers. Two Deposit Claims were received after the Claims Bar Date (the "**Late Deposit Claims**"), but were allowed by the Receiver. Shortly following the Claims Bar Date, the Receiver completed a preliminary review of the Deposit Claims and summarized them for the Guarantee as set out in the chart below:

Terrasan Claims Summary	
	Total
Accepted	27
Disallowed	32
Revised	4
Deposit Claims requiring additional information	43

26. On February 16, 2018, the Receiver delivered correspondence to all Purchasers whose claims were missing information and requested them to provide the required missing information to the Receiver on or before March 9, 2018.
27. With respect to the evaluation process, the Receiver established a secure and confidential electronic data room as a repository for all Deposit Claims and supporting information submitted by Purchasers to allow the Guarantee to review and evaluate Deposit Claims in accordance with the Claims Procedure Order.
28. The Receiver has consulted with the Guarantee in relation to the determination of Deposit Claims and in this regard, the Receiver's assessment (as approved by the Guarantee) of the Deposit Claims received in accordance with the Deposit Claims Procedure Order is as follows:

Terrasan Determined Claims Summary		
	Total	Amount
Accepted	66	3,404,992.91
Disallowed	33	405,005.00
Revised	6	427,832.16
Deposit Claim requiring additional information	1	44,235.00
Total	106	\$4,282,065.07

29. Attached herein as **Confidential Appendix A** is a claim determination summary outlining the proven, revised and disallowed claims.
30. On April 13, 2018, the Receiver delivered:
- (a) correspondence to the Purchasers with a Proven Deposit Claim, advising that their Deposit Claim has been accepted; and

(b) a notice of disallowance to the Purchasers that submitted a Deposit Claim that has been disallowed by the Receiver.

31. The Receiver anticipates the delivery of the notices of revision, on or before April 17, 2018.
32. For the balance of the Purchasers that did not file a Deposit Claim (104), as noted above and according to the Terrasan records, the corresponding Purchase Agreements for those Purchasers were terminated by correspondence from SRLaw on January 18, 2017 as a result of the non-payment of milestone deposits as required by the Purchase Agreement, with any previously paid deposits by a Purchaser being forfeited to Terrasan.
33. The Receiver is now in a position to commence the process associated with paying Proven Deposit Claims in accordance with the Deposit Claims Procedure Order.

CANADA REVENUE AGENCY PRIORITY CLAIMS

34. The Company's records indicate that at the date of receivership Terrasan had no employees (other than Mr. Santaguida), no outstanding wages, vacation pay or source deductions. In addition, the records show Terrasan had no outstanding HST obligations and was in an HST receivable position.
35. On November 13, 2017 the Receiver contacted CRA and requested a trust examination of the HST account. On December 11, 2017 the Receiver contacted CRA to obtain an update on the timing of the requested trust examination. In response to the Receiver's requests, CRA issued a Letter of Good Standing (the "**Letter**"). The Letter indicated that there were no outstanding balances or arrears in respect of the HST and corporate income tax accounts. The Letter further stated: "*CRA does not guarantee that the appropriate obligations have been met by Terrasan 327 Royal York Rd. Limited, or that other arrears exist*". Accordingly, this did not allow the Receiver to ascertain whether there were any HST liabilities and whether CRA would subsequently issue an assessment, after funds had already been distributed to creditors.
36. On January 2, 2018, the Receiver contacted CRA and again requested a trust examination. At that time, CRA advised that it would not conduct a trust examination and suggested the Receiver request a tax clearance certificate if it needed confirmation that no trust obligations existed.

37. On January 11, 2018, the Receiver wrote to CRA requesting that tax clearance certificates be issued January 31, 2018. To date, the Receiver has not received an HST clearance certificate.
38. On January 31, 2018, the Receiver contacted the DOJ and requested assistance with either scheduling a trust examination or obtaining the tax clearance certificate. The DOJ suggested that the Receiver contact CRA and schedule the examination directly. The Receiver did so and was advised by CRA that there was no reason to complete an audit and they did not intend to do so.

RECEIPTS AND DISBURSEMENTS

39. The R&D Statement, attached herein as **Appendix B**, reports net receipts over disbursements from the date of the Receiver's appointment to April 13, 2018 of \$17,361,712.28
40. The Receiver is seeking the Court's approval of its R&D Statement.

SECURED CREDITORS

41. As discussed in the Sixth Report, 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 (" Olympia ")	AT3539503 and AT4464383 (Transfer of Charge)	\$15,000,000

42. Pursuant to the Distribution Order granted on October 10, 2017, 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.
43. Additionally, the Receiver is advised by its counsel that the following liens ("**Lien Claims**") were registered against title to the Property:

Liens per PIN Search	
CRH Canada Group Inc.	\$ 435,519.00
Summit Concrete & Drain Ltd.	111,313.00
Roni Excavating Limited	504,413.00
Bluescape Construction Management Inc.	469,827.00
Mansteel Rebar Ltd.	228,336.00
Desrosiers Geothermal Corporation	285,237.00
R. Mancini and Associates Ltd.	34,881.00
R. Mancini and Associates Ltd.	29,826.00
Resform Construction Ltd.	2,015,268.00
Shalom Electric Inc.	73,198.12
McCallum Sather Architects Inc	115,432.00
Quinn Dressel Associates	55,969.00
Total	\$ 4,359,219.12

44. With respect to the Lien Claims, the Receiver and its legal counsel are in the process of resolving the Lien Claims.

SECURITY OPINIONS – SECURED CREDITORS

The Guarantee

45. 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 has a first priority security interest in the assets sold pursuant to the 2402871 APA (the “**Assets**”).
46. Subject to the customary assumptions and qualifications contained in the Guarantee Security Opinion, Receiver’s counsel has opined that the subject Guarantee security documents:
- (a) constitute legal, valid and binding security interests in favour of the Guarantee in the Assets;
 - (b) is sufficient to secure the payment and performance of the obligations secured thereby; and
 - (c) is properly registered and in first position over all other secured creditors.

Diversified

47. The Receiver obtained a security opinion from its counsel (the “**Diversified Security Opinion**”) and, subject to the customary qualifications and assumptions contained therein,

the Diversified Security Opinion opines that: (i) the security held by Diversified is valid and legally enforceable against Terrasan, and (ii) Diversified has a second priority security interest in the Assets.

48. Subject to the customary assumptions and qualifications contained in the Diversified Security Opinion, Receiver's counsel has opined that the subject Diversified security documents:
- (a) constitute legal, valid and binding security interests in favour of Diversified in the Assets;
 - (b) is sufficient to secure the payment and performance of the obligations secured thereby; and
 - (c) is properly registered and in second position over all other secured creditors.
49. According to a payout statement received on April 6, 2018, the amount of \$3,126,190.27 is claimed as owing to Diversified of April 6, 2018, together with interest accruing at 30 percent per annum. Attached herein as **Appendix C**, is a copy of the Diversified payout statement.

Olympia

50. The Receiver obtained a security opinion from its counsel (the "**Olympia Security Opinion**") and, subject to the customary qualifications and assumptions contained therein, the Olympia Security Opinion opines that: (i) the security held by Olympia is valid and legally enforceable against Terrasan, and (ii) Olympia has a third priority security interest in the Assets
51. Subject to the customary assumptions and qualifications contained in the Olympia Security Opinion, Receiver's counsel has opined that the subject Olympia security documents:
- (a) constitute legal, valid and binding security interests in favour of Olympia in the Assets;
 - (b) is sufficient to secure the payment and performance of the obligations secured thereby; and
 - (c) is properly registered and in third position over all other secured creditors.

52. According to a payout statement received on April 10, 2018, the amount of \$11,160,862.42 is claimed as owing to Olympia as of April 10, 2018. Attached herein as **Appendix D**, is a copy of the Olympia payout statement.

DIVERSIFIED – REQUEST FOR DISTRIBUTION

53. The Receiver has received a request from Diversified for a distribution in full and final satisfaction of all amounts owing by Terrasan to Diversified.
54. Notwithstanding that Diversified is subordinated and postponed to the Guarantee contractually pursuant to a Subordination, Postponement and Standstill Agreement dated April 12, 2016, Diversified is of the view that there is sufficient proceeds in the estate to allow for a distribution in priority the Guarantee.
55. At this time, the Receiver understands that the Guarantee and Diversified have conflicting views on this distribution request.

CASH SUMMARY

56. For ease of reference, the Receiver has prepared the table below which provides a summary of the potential known priority claims to the Sale Proceeds:

Estimated Cash Balances	
Balance in Receiver's Trust Account Apr 13, 2018 (per R&D)	\$17,361,712.28
Value of Deposit Claims received pursuant to the Claims Procedure	(4,282,065.07)
Reserve for Lien Claims	(4,359,219.12)
Balance Remaining for Costs and Further Distributions	\$ 8,720,428.09

FEES AND DISBURSEMENTS

57. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements, which are described in the Affidavit of Josie Parisi sworn April 13, 2018, attached herein as **Appendix E**.
58. 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.

59. 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 April 13, 2018, attached herein as **Appendix F**.
60. The Receiver requests that the Court approve its interim accounts from October 2, 2017 to January 31, 2018 in the amount of \$125,144.98, inclusive of HST of \$14,397.21.
61. The Receiver also requests that the Court approve the interim accounts of its legal counsel for the period from September 1, 2017 to December 31, 2017 in the amount of \$351,856.73, inclusive of HST of \$40,423.87.
62. 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

63. Based on the foregoing, the Receiver respectfully recommends that the Court:
 - (a) approve the Deposit Claim Distribution;
 - (b) approve the Seventh Report and the activities and conduct of the Receiver outlined herein;
 - (c) approving the fees and disbursements of the Receiver and Dentons, as set out in this Seventh Report, and authorizing the Receiver to pay all approved and unpaid fees and disbursements;
 - (d) approve the Receiver's R&D Statement.

All of which is respectfully submitted this 13th day of April, 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:



Name: Josie Parisi
Title: Senior Vice President