

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**MOTION RECORD
(RETURNABLE NOVEMBER 29, 2016)**

November 14, 2016

MILLER THOMSON LLP

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

Tony Van Klink LSUC#: 29008M

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B

Tel: 519.931.3534

Fax: 519.858.8511

Email: skettle@millerthomson.com

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

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TAB “1”

Court File No. CV-13-19866

**ONTARIO
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Applicant

-and-

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Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**NOTICE OF MOTION
(returnable November 29, 2016)**

BDO CANADA LIMITED ("BDO"), in its capacity as court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation ("Portofino" or the "Debtor") pursuant to the Order of The Honourable Mr. Justice Thomas dated October 29, 2013 (the "Appointment Order") will make a motion to the Court on Tuesday, November 29, 2016 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order as follows:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Sixth Report of the Receiver dated November 9, 2016 and all appendices thereto (the "Sixth Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on November 29, 2016;

- (b) approving the Sixth Report and the activities and conduct of the Receiver described therein;
- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to October 4, 2016 (the "Statement of Receipts and Disbursements");
- (d) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees");
- (e) approving and authorizing the distribution of \$2,400,000 to Windsor Family Credit Union from the funds on hand; and
- (f) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

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

1. The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
2. The Receiver seeks approval of the Sixth Report and the Receiver's activities detailed therein;
3. The particulars of the receipts and disbursements reflected in the Statement of Receipts and Disbursements are detailed in the Sixth Report;

Approval of Professional Fees

1. Pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property, as defined in the Appointment Order, as security for the Professional Fees, both before and after the making of the Appointment Order;
2. Pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice;

3. The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
4. It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and its legal counsel in connection with these receivership proceedings;

Interim Distribution to Windsor Family Credit Union

1. The Receiver has received an Opinion from its independent legal counsel, Miller Thomson LLP, that, subject to the customary assumptions and qualifications, the security granted by the Debtor to Bank of Montreal, which security has been assigned to Windsor Family Credit Union, over the assets realized upon by the Receiver to date is valid and enforceable and in priority to all other registered interests.

Other

1. Appointment Order;
2. Section 101 of the CJA;
3. Section 243 of the BIA;
4. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;
5. Rules 1.04, 1.05, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
6. such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Sixth Report;
2. the fees Affidavit of Stephen N. Cherniak sworn October 18, 2016 and the exhibits attached thereto;
3. the fees Affidavit of Tony Van Klink sworn November 7, 2016 and the exhibits attached thereto;

4. the fees Affidavit of William Sasso sworn November 8, 2016 and the exhibits attached thereto;
5. all other pleadings and materials previously filed in these proceedings; and
6. such further and other evidence as counsel may advise and this Honourable Court may permit.

November 14, 2016

MILLER THOMSON LLP

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

Tony Van Klink LSUC#: 29008M

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B

Tel: 519.931.3534

Fax: 519.858.8511

Email: skettle@millerthomson.com

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

TO: THE SERVICE LIST

SERVICE LIST

TO:	<p>Robins, Appleby & Taub LLP Barristers and Solicitors Suite 2600 120 Adelaide Street West Toronto, ON M5H 1T1</p> <p>David Taub Tel: 416.360.3354 Fax: 416.868.0306 Email: dtaub@robapp.com</p> <p>Lawyers for Bank of Montreal</p>
AND TO:	<p>BDO Canada Limited 633 Colborne Street Suite 100 London, ON N6B 2V3</p> <p>Stephen N. Cherniak Tel: 519.660.2666 Fax: 519.439.4351 Email: scherniak@bdo.ca</p>
AND TO:	<p>Shibley Righton LLP 2510 Ouellette Avenue Suite 301 Windsor, ON N8X 1L4</p> <p>Jerry Goldberg Email: goldberg@shibleyrighton.com</p> <p>Lawyers for the Respondent, Portofino Corporation</p>

<p>AND TO:</p>	<p>Bartlet & Richardes LLP Barristers and Solicitors 1000-374 Ouellette Ave Windsor, ON N9A 1A9</p> <p>Philip S. Chandler Tel: 519.253.7461 Fax: 519.253.2321 Email: pchandler@bartlet.com</p> <p>Elizabeth Musyj Tel: 519.253.7461 Fax: 519.253.2321 Email: emusyj@bartlet.com</p> <p>Lawyer for the Estate of Patrick D'Amore and 2502461 Ontario Inc.</p>
<p>AND TO:</p>	<p>Delzotto Zorzi LLP Suite D 4810 Dufferin Street Toronto, ON M3H 5S8</p> <p>Robert Calderwood Tel: 416.665.5555 Fax: 416.665.9653 Email: rcalderwood@dzlaw.com</p> <p>Lawyers for Northbridge General Insurance Corporation (formerly Lombard General Insurance Company of Canada)</p>
<p>AND TO:</p>	<p>Gino Morga Q.C. 2485 Ouellette Avenue, Suite 104 Windsor, ON N8X 1Y4</p> <p>Tel: 519.561.7413 Fax: 519.971.0577 Email: gmorga@morgalaw.com</p> <p>Counsel for Remo Valente Real Estate (1990) Limited</p>

AND TO:	<p>Sutts Strosberg LLP 600-251 Goyeau Street P.O. Box 670 Windsor, ON N9A 6V4</p> <p>William V. Sasso Tel: 519.561.6220 Fax: 519.258.9527 Email: wsasso@strosbergco.com</p> <p>Jacqueline A. Horvat Tel: 519.561.6245 Fax: 519.258.9527 Email: jhorvat@strosbergco.com</p> <p>Solicitors for Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante Capaldi</p>
AND TO:	<p>Harrison Pensa LLP 450 Talbot Street London, ON N6A 4K3</p> <p>Timothy C. Hogan Tel: 519.661.6743 Fax: 519.667.3362 Email: thogan@harrisonpensa.com</p> <p>Solicitors for Royal Bank of Canada</p>
AND TO:	<p>Marusic Law LLP 2491 Ouellette Avenue Windsor, ON N8X 1L5</p> <p>Maria Marusic Tel: 519.969.1817 Fax: 519.969.9655 Email: mmarusic@marusiclaw.com</p>

AND TO:	Essex County Condominium Corporation No. 122 1225 Riverside Dr. W. Windsor, ON Dr. Paul Cassano President ECC #122 Email: pvc@uwindsor.ca
AND TO:	DRUDI ALEXIOU KUCHAR LLP 7050 Weston Road Suite 610 Vaughan, ON L4L 8G7 Constantine Alexiou Email: calexiou@dakilp.com
AND TO:	Oswaldo Rizzo 4000 North Talbot Road Oldcastle, ON N0R 1L0
AND TO:	Remo Valente Real Estate (1990) Limited 2985 Dougall Avenue Windsor, ON N9E 1S1
AND TO:	Royal Bank of Canada 383 Richmond Street, Suite 804 London, ON N6A 3C4 Mark Swanson E-mail: mark.swanson@rbc.com

AND TO:	RREF II BHB IV Portofino LLC Rialto Capital Management 790 NW 107 th Avenue Suite 400 Miami, FL 33172 Jonathan Horowitz E-mail: jonathan.horowitz@rialtocapital.com
AND TO:	Bank of Montreal 100 King Street West P.O. Box 1 Toronto, ON M5X 1A1 Greg Fedoryn E-mail: greg.fedoryn@bmo.com
AND TO:	Windsor Family Credit Union 3000 Marentette Avenue Windsor, ON N8C 4G2 Dan Mladenovic Tel: 519.946.3196 Fax: 519.974.9098 E-mail: dmladenovic@windsorfamily.com
AND TO:	Dr. Dante J. Capaldi 285 Ouellette Avenue Windsor ON N9A 4H9 E-mail: drcapaldi@sympatico.ca
AND TO:	Wilma Capaldi 285 Ouellette Avenue Windsor ON N9A 4H9 E-mail: drcapaldi@sympatico.ca
AND TO:	1287678 Ontario Inc. 285 Ouellette Avenue Windsor ON N9A 4H9 E-mail: drcapaldi@sympatico.ca
AND TO:	Andreolli Investments Inc. 285 Ouellette Avenue Windsor ON N9A 4H9 E-mail: drcapaldi@sympatico.ca

2502461 ONTARIO LTD.
Applicant

and PORTOFINO CORPORATION
Respondent

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**NOTICE OF MOTION
(RETURNABLE NOVEMBER 29, 2016)**

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

Tony Van Klink LSUC#: 29008M
Tel: 519.931.3509
Fax: 519.858.8511
Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B
Tel: 519.931.3534
Fax: 519.858.8511
Email: skettle@millerthomson.com

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

TAB “2”

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

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

November 9, 2016

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- Appendix A** - Appointment Order dated October 29, 2013
- Appendix B** - Omnibus Approval and Vesting Order dated May 2, 2014
- Appendix C** - Order dated July 26, 2016
- Appendix D** - Statement of Receipts and Disbursements
- Appendix E** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn October 18, 2016
- Appendix F** - Fee affidavit of Tony Van Klink for the interim accounts of Miller Thomson LLP sworn November 7, 2016
- Appendix G** - Fee affidavit of William Sasso for the interim accounts of Sutts Strosberg sworn November 8, 2016
- Appendix H** - Independent Legal Opinion re: BMO security

1. Introduction and Background

1.1 Introduction

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

1.2 Background

- 1.2.1 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as “Portofino” (the “**Portofino Condominium**” or the “**Project**”), located at 1225 Riverside Drive West in the City of Windsor, Ontario. Dr. Dante Capaldi (“**Capaldi**”) is the principal of Portofino.
- 1.2.2 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 (“**ECC 122**”) was registered and the closing of sales of units commenced in July, 2007.
- 1.2.3 At the time of the appointment of the Receiver, Portofino owned:
- (a) fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the “**Unsold Condominium Units**”);
 - (b) thirty-eight (38) parking units, including four (4) surface-level covered parking units and thirty-four (34) surface-level uncovered parking units (the “**Unsold Parking Units**”); and
 - (c) two (2) storage units (the “**Unsold Storage Units**”)
- (collectively, the “**Unsold Units**”).

- 1.2.4 Since 2005, there has been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Portofino, among others, in Court Action No. 05-CV-5864CM (the "**Valente Court Action**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 36 Unsold Condominium Units and the defence of the Valente Court Action. To date, six reports, including the within report, have been filed by the Receiver in these proceedings wherein these activities, transactions and litigation are described in greater detail.
- 1.2.6 As part of its Third Report to the Court, the Receiver sought prospective approval for future sales of the Unsold Units and the vesting of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain conditions, in the applicable Purchaser.
- 1.2.7 By Order dated May 2, 2014 (the "**Omnibus Approval and Vesting Order**"), Mr. Justice Campbell prospectively approved the sales transactions in respect of the Unsold Units and vested all of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain terms and conditions, in the Purchaser. A copy of the Omnibus Approval and Vesting Order is attached as **Appendix B**.
- 1.2.8 In June 2015, BMO sold to RREF II BHB IV PORTOFINO LLC ("**RREF**") its loans with Portofino and the security held for those loans, including the mortgage held by BMO over the Project (the "**BMO Mortgage**").
- 1.2.9 In May 2016, RREF, in turn, sold those loans and security, including the BMO Mortgage, to 2502461 Ontario Ltd. ("**250 Ontario**"). 250 Ontario subsequently assigned those loans and security to Windsor Family Credit Union ("**WFCU**") by way of security for amounts owing by 250 Ontario to WFCU.
- 1.2.10 Because the Omnibus Approval and Vesting Order was obtained before the assignments of the BMO Mortgage, the schedule attached to the Omnibus Approval and Vesting Order of the claims to be deleted from title as the Unsold Units are sold did not make reference to those assignments. Accordingly, as part of its Fifth Report the Receiver sought an amendment to the Omnibus Approval and Vesting Order to delete the particulars of those assignments from the title to the Unsold Units which

were sold by the Receiver after the date of those assignments and from the title to the remaining Unsold Units as they are sold in the future.

- 1.2.11 By order dated July 26, 2016 (the "**July 26, 2016 Order**") Mr. Justice Campbell, among other things, approved the amendments to the Omnibus Approval and Vesting Order. Subsequently, counsel to the Receiver deleted the assignments from title to the Unsold Units that were sold by the Receiver after the date of the assignments. A copy of the July 26, 2016 Order is attached as **Appendix C**.
- 1.2.12 The July 26, 2016 Order also approved the interim distribution of \$4.0 million to WFCU from the net receipts from the sale of units and collection of rents. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.
- 1.2.13 The Receiver is presently holding net receipts of approximately \$2,550,000 from the sale of units and the collection of rents. The Receiver wishes to make an interim distribution of \$2,400,000 from those funds.

2. Terms of Reference

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

3. Purpose of the Receiver's Sixth Report

- 3.1 This constitutes the Receiver's Sixth Report to the Court (the "**Sixth Report**") in this matter and is filed:
- (a) To provide the Court with information on:
 - (i) the Receiver's activities since the date of the Fifth Report; and
 - (ii) the status of the Valente Court Action.
 - (b) In support of an order of the Court:
 - (i) Approving the Sixth Report and the activities and conduct of the Receiver described herein;
 - (ii) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to October 4, 2016 (the "**Statement of Receipts and Disbursements**");
 - (iii) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (iv) Approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**");
 - (v) Approving the professional fees and disbursements of Sutts Strosberg ("**SS**"), counsel retained by the Receiver on behalf of Portofino for the Valente Court Action ("**SS Fees**" and collectively with the BDO Fees and MT Fees, the "**Professional Fees**"); and
 - (vi) Approving and authorizing the distribution of \$2,400,000 to WFCU from the funds on hand.

4. Receiver's Activities

- 4.1 In its Fifth Report, the Receiver reported to the Court on its activities through July 13, 2016.
- 4.2 In this, the Sixth Report, the Receiver reports on its activities since the date of the Fifth Report.

Sale of the Unsold Units

- 4.3 The Fourth Report provided a detailed report of the Receiver's sale process for the Unsold Units and the results achieved to April 15, 2016.
- 4.4 The Fifth Report provided an update on sales that were pending at the time of the Fourth Report and new sales to July 13, 2016.
- 4.5 Since the Fifth Report, the Receiver has now completed the sale of units 103, 104, 105, 304, 309, 408, 601, 1202 and 1501. Agreements of Purchase and Sale which remain subject to buyer's conditions have been entered into for units 806, 1601 and 1602.
- 4.6 To date, the Receiver has sold 36 of the Unsold Condominium Units, including two unfinished units.
- 4.7 The Receiver has sold five (5) of the Unsold Parking Units, consisting of four surface level garages and one surface level parking space.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 16 units remain unsold, 9 of which are fully finished and 7 are unfinished. In addition, 33 parking units and two storage units remain unsold. A summary of the sales completed to date of the Unsold Condominium Units and the remaining Unsold Condominium Units is provided on the following page:

Condominium units sold by Receiver

Unit No.		Size (Sq. ft.)	Sale date
1108	Finished	1,151	05-May-14
704	Finished	1,282	30-Jun-14
904	Finished	1,602	31-Oct-14
804	Finished	1,282	04-Dec-14
1102	Finished	1,547	09-Jan-15
1104	Finished	1,602	12-Feb-15
803	Finished	1,217	29-May-15
1404	Finished	2,233	30-Jun-15
701	Finished	1,150	24-Jul-15
402	Finished	1,062	30-Jul-15
1105	Finished	1,547	31-Jul-15
1002	Finished	1,547	14-Aug-15
508	Finished	1,150	03-Sep-15
805	Finished	1,282	23-Sep-15
203	Finished	1,062	23-Oct-15
1303	Finished	2,450	16-Nov-15
901	Finished	1,593	20-Nov-15
903	Finished	1,602	20-Nov-15
1403	Finished	2,450	01-Dec-15
603	Finished	1,217	03-Dec-15
906	Finished	1,593	11-Dec-15
1503	Unfinished	2,450	25-Jan-16
1008	Finished	1,151	19-Feb-16
401	Finished	1,150	08-Mar-16
1001	Finished	1,593	24-Mar-16
708	Finished	1,150	16-May-16
1101	Finished	1,593	05-Jul-16
1202	Unfinished	2,450	13-Jul-16
103	Finished	1,282	15-Jul-16
304	Finished	1,282	02-Aug-16
601	Finished	1,150	05-Aug-16
105	Finished	1,062	30-Aug-16
1501	Finished	2,233	20-Sep-16
104	Finished	1,217	03-Oct-16
408	Finished	1,150	03-Oct-16
309	Finished	1,151	02-Nov-16
		<u>53,685</u>	

Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
106	Finished	1,150
204	Finished	1,150
806	Finished	1,217
1201	Unfinished	2,233
1301	Finished	2,233
1302	Unfinished	2,450
1401	Finished	2,233
1402	Unfinished	2,450
1502	Finished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1603	Finished	2,450
1605	Finished	1,718

32,252

Other Matters

- 4.9 The Receiver engaged Portofino's external accountant to prepare financial statements and income tax returns for the fiscal years ended July 1, 2014 and July 1, 2015.

5. Valente Court Action

- 5.1 The First Report and Third Report provided a summary and subsequent update of the Valente Court Action. A detailed report on the status of the Valente Court Action was provided in the Fourth Report.
- 5.2 As noted in the Fifth Report, the Valente Court Action was on a running list for trial for the week of June 20, 2016 but a settlement was not reached. A case conference was held on June 22, 2016 and a pre-trial was held on June 29, 2016.
- 5.3 Since the date of the Fifth Report, further settlement offers have been exchanged but no settlement has been reached. The trial of the action is scheduled to start November 14, 2016.

6. Statement of Receipts and Disbursements of the Receiver

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

6.2 Receipts

- a) *Sale of units and surface parking (\$9,834,595.17)* — The Receiver received net proceeds of \$9,834,595.17 from the sale of the Unsold Units. Proceeds received are net of amounts paid on closing for condominium fee arrears, real estate commissions inclusive of HST, and HST collected on the sale of Unsold Parking Units and unfinished Unsold Condominium Units.
- b) *Condominium rent collected (\$1,857,587.60)* — The Receiver collected \$1,857,587.60 from the rental of the Unsold Condominium Units.
- c) *Lawsuit (\$119,789.96)* — Portofino was involved in litigation arising from the original construction of the Project. The Receiver collected \$119,789.96, being the balance of holdback funds held in the lawyer's trust account, after distribution to sub-contractors in settlement of the litigation.
- d) *Reimbursement of Letter of Credit Costs (\$64,408.22)* — As required by the Orders of the Court of Appeal and Justice Quinn, Valente Real Estate reimbursed the costs of maintaining the letter of credit in the Valente Court Action.
- e) *Parking rent collected (\$25,294.69)* — The Receiver collected \$25,294.69 from the rental of Unsold Parking Units.
- f) *Interest (\$18,383.59)* — The Receiver received \$18,383.59 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates ("GIC") that matured or were redeemed. Interest is recognized as it is received.

6.3 Disbursements

- a) *Property taxes (\$2,925,916.05)* — The Receiver has paid property taxes to the City of Windsor of \$2,925,916.05. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015 and 2016 year to date.
- b) *Receiver's fees (\$685,234.55)* – BDO's accounts for the period July 19, 2013 to June 14, 2016 in the amount of \$638,693.16, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim account for the period June 15, 2016 to August 7, 2016 in the amount of \$46,541.39 and is seeking approval of the Court for this invoice and its invoice for the period August 8, 2016 to September 26, 2016.
- c) *Condominium common fees (\$658,984.18)* — The Receiver has paid \$658,984.18 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$294,891.15)* – MT's accounts for the period September 9, 2013 to June 30, 2016 in the amount of \$273,274.64, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim account for the period July 1, 2016 to August 31, 2016 in the amount of \$21,616.51 and is seeking approval of the Court of this invoice.
- e) *Repairs and Maintenance (\$211,382.37)* – The Receiver has paid \$211,382.37 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$166,630.60)* – The Receiver has paid \$166,630.60 in HST on its disbursements.
- g) *HST remitted (\$112,610.71)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has remitted \$112,610.71. This amount represents the HST collected, less any eligible input tax credits.

- h) *Property management fees (\$68,000.00)* — The Receiver has paid \$68,000.00 to Capaldi Holdings for property management of the Unsold Units.
- i) *Letter of credit fees (\$39,074.26)* — The Receiver paid \$39,074.26 to BMO for fees to maintain the \$2.0 million Letter of Credit in connection with the Valente Court Action.
- j) *Legal fees – Sutts Strosberg (\$38,007.07)* – The Receiver paid \$38,007.07 to SS to provide an initial review and chronology of the Valente Court Action for the Receiver's counsel, and to continue the litigation on behalf of Portofino Corporation.
- k) *Utilities (\$35,514.36)* — The Receiver paid \$35,514.36 for utilities on vacant Unsold Units and two leased condominium units where utilities are paid by the Landlord.
- l) *Advertising (\$34,433.76)* — The Receiver paid \$34,433.76 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- m) *Bond premiums (\$34,170.00)* — The Receiver paid \$34,170.00 to Northridge for the premiums on bonds posted as security for: i) Tarion Warranty Corporation; and ii) Portofino litigation with Dede Dalfidan cob as Fidan Enterprise Contracting.
- n) *Valente litigation – Costs Award (\$30,393.34)* — The Receiver paid \$30,393.34 in legal costs awarded to Valente Real Estate in the Valente Court Action.
- o) *Appraisal fees (\$15,014.50)* — The Receiver paid \$15,014.50 to Metrix Realty Group for an appraisal of the Unsold Condominium Units on an individual unit basis.
- p) *Insurance (\$5,212.08)* — The Receiver paid \$5,212.08 to Hub International for premiums on the Receiver's liability insurance policy.
- q) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.

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

- 7.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees.
- 7.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 7.3 Attached as **Appendix E** is the fee affidavit of Stephen N. Cherniak sworn October 18, 2016 containing BDO's interim accounts as Receiver for the following periods:
- o June 15, 2016 to August 7, 2016
 - o August 8, 2016 to September 26, 2016.
- 7.4 The Receiver's fees to date, exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|---------------------|
| Fees paid and Court approved | - | \$ 638,693.16 |
| Fees paid, but not yet Court approved | - | 46,541.39 |
| Fees neither paid, nor Court approved | - | <u>23,540.48</u> |
| | | <u>\$708,775.03</u> |
- 7.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 7.6 Attached as **Appendix F** is the fee affidavit of Tony Van Klink, sworn November 7, 2016, containing the interim accounts of MT for the period June 21, 2016 to October 31, 2016.

7.7 MT's fees to October 31, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 273,274.64
Fees paid, but not yet Court approved	-	21,616.51
Fees neither paid, nor Court approved	-	<u>7,924.15</u>
		<u>\$ 302,815.30</u>

7.8 Attached as **Appendix G** is the fee affidavit of William Sasso, sworn November 8, 2016, containing the interim accounts of SS for the period July 6, 2016 to November 6, 2016.

7.9 SS fees to November 6, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$33,007.07
Fees neither paid, nor Court approved	-	<u>19,640.39</u>
		<u>\$52,647.46</u>

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

8. Distribution

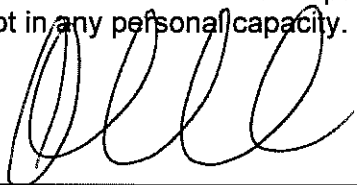
- 8.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the "**July 11th Opinion**") indicating that, subject to the customary assumptions and qualifications, the BMO Mortgage is valid and enforceable in accordance with its terms and has priority over all other registered charges. A copy of the independent legal opinion of MT was attached as **Appendix G** to the Fifth Report. Attached hereto as **Appendix H** is a copy of a letter from MT confirming that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from July 11, 2016 to November 2, 2016.
- 8.2 Based on the materials filed by BMO on the receivership application, as of September, 2013 BMO was owed approximately \$11.8 million by Portofino for principal and interest, including a \$2 million letter of credit posted by BMO on behalf of Portofino in the Valente Court Action.
- 8.3 As set out above, the BMO Mortgage was assigned to RREF, 250 Ontario and, most recently, WFCU. 250 Ontario has provided the Receiver with an irrevocable Direction directing the Receiver to make payment to WFCU of all amounts otherwise payable to 250 Ontario under the BMO Mortgage.
- 8.4 The July 26, 2016 Order authorized the Receiver to distribute \$4,000,000 to WFCU. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.
- 8.5 The Receiver has sufficient funds on hand to distribute a further \$2,400,000.
- 8.6 The Receiver seeks an Order authorizing it to distribute \$2,400,000 to WFCU from the funds on hand.

9. Recommendations

- 9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Approving the Sixth Report and the activities and conduct of the Receiver described herein;
 - (b) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to October 4, 2016;
 - (c) Approving the Professional Fees; and
 - (d) Approving and authorizing the distribution of \$2,400,000 to WFCU from the funds on hand.

All of which is Respectfully Submitted this 9th day of November, 2016.

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



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

TAB "A"

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE
JUSTICE B. THOMAS**

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

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

ORDER

THIS APPLICATION made by the Applicant, Bank of Montreal, ("BMO") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended (the "CJA") appointing BDO Canada Limited as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 245 Windsor Avenue, Windsor, Ontario.

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; In marketing the Property, the Receiver will consult with ECC 122; however the advice and opinions of ECC 122 will not be binding upon the Receiver;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

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5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

REPORT TO COURT AND STAKEHOLDERS

7. THIS COURT ORDERS that the Receiver will deliver its first report to the Court on notice to BMO, Dante Capaldi, the Estate of Patrick D'Amore, Osvaldo Rizzo, Northbridge General Insurance Corporation, Remo Valente Real Estate (1990) Limited, Sutra Strosberg LLP,

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Royal Bank of Canada, Essex Condominium Corporation no.122 and the City of Windsor (collectively, the "Stakeholders") within 45 days following its appointment.

8. THIS COURT ORDERS that the Receiver will report to the Stakeholders on a quarterly basis, prorated for 2013, such that the first such report is not required until the end of the first quarter of 2014.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Leave of the Court is hereby granted to continue the Proceeding known as *Remo Volante Real Estate (1990) Limited v. Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante Capaldi*, Court file 05-CV-5864CM.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, Internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.5(3) of the BIA, or under the *Wage Earners Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.5(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinates in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
30. THIS COURT ORDERS that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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J. S. Pomeroy

ENTERED AT WINDSOR	
In Book No.	24
re Document No.	1485
on	NOV 29 1882
by	J

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

32. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the _____ of _____, 2013 (the "Order") made in an action having Court file number _____ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

33. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of Montreal from time to time.

34. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

35. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

36. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

37. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

38. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED this _____ day of _____, 2013.

BDO Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

Bank of Montreal
Applicant

vs. **Partysys Corporation**
Respondent

Court File No. CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDSOR

ORDER

ROBINS APPLEBY & TAUBILLP
Barristers & Solicitors
2600 - 120 Adelaide Street West
Toronto ON M5H 1T1

David A. Tumb
LSUC No. 33518M
Tel: (416) 360-3354
Fax: (416) 868-0306

Lawyers for the Applicant, Bank of Montreal

TAB “B”

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

OMNIBUS APPROVAL AND VESTING ORDER

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

- (a) prospectively authorizing the Receiver to accept an offer or offers to purchase any or all of the unsold units (the "Unsold Units") provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;
- (b) prospectively authorizing the execution of an agreement of purchase and sale in respect of each Unsold Unit by the Receiver, as vendor, and the purchaser of each Unsold Unit (each purchaser hereinafter referred to as the "Purchaser") substantially in the form of the Form of Unsold Unit Sale Agreement attached as Schedule "A" to the Sale Agreement Order, together with any amendments or

modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as an "Unsold Unit Sale Agreement");

- (c) prospectively approving the sale transactions (each such transaction, a "Transaction" and together, the "Transactions") in respect of the Unsold Units, more particularly described on Schedule "A" to this Order; and
- (d) providing that, upon the delivery by the Receiver to a Purchaser of a Receiver's Certificate substantially in the form attached as Schedule "B" to this Order (the "Receiver's Certificate"), all of Portofino's right, title and interest in and to the Unsold Unit(s) described in each applicable Unsold Unit Sale Agreement (the "Purchased Assets") will vest in and to the applicable Purchaser, free and clear of any and all claims and encumbrances including those listed on Schedule "C" and in paragraph 3 of this Order, save and except for those encumbrances listed on Schedule "D" of this Order,

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

ON READING the Third Report of the Receiver dated April 21, 2014 and all appendices thereto (the "Third Report"), and the Confidential Supplement to the Third Report and all appendices thereto (the "Confidential Supplement") and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn April 22, 2014, filed:

1. THIS COURT ORDERS that the Receiver is hereby prospectively authorized to accept an offer or offers to purchase any or all of the Unsold Units provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino.
2. THIS COURT ORDERS AND DECLARES that each Transaction is hereby prospectively approved, and the execution of each applicable Unsold Unit Sale Agreement by the Receiver is hereby authorized and approved, with any amendments or modifications thereto deemed necessary by the Receiver. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for

the completion of any Transaction and for the conveyance of the Purchased Assets to each applicable Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto, all of Portofino's right, title and interest in and to the Purchased Assets described in the applicable Unsold Unit Sale Agreement and listed on Exhibit "A" of the applicable Receiver's Certificate in respect of such Unsold Unit Sale Agreement shall vest absolutely in and to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Thomas dated October 29, 2013; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any Claims filed in respect of or affecting the Purchased Assets, which Claims are filed on or after the date of the granting of this Order, including without limitation, Claims in respect of the *Construction Lien Act* (Ontario); (iv) those Claims listed on **Schedule "C"** hereto in relation to the Purchased Assets (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** in relation to the Purchased Assets) and, for greater certainty, this Court orders that upon delivery of the applicable Receiver's Certificate all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets.

4. THIS COURT DIRECTS that the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) (the "**Land Registry**") shall register a copy of this Order along with the applicable fully completed and executed Receiver's Certificate in respect of the Purchased Assets once the Land Registrar is in receipt of same.

5. THIS COURT ORDERS that upon the registration in the Land Registry of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* (which will include a copy of this Order and the fully completed and executed Receiver's Certificate in respect of the Purchased Assets), the Land Registrar is hereby directed to enter the Purchaser named in the applicable Receiver's Certificate as the owner of the

Purchased Assets listed in Exhibit "A" to the Receiver's Certificate in fee simple, and is hereby directed to delete and expunge from title to the Purchased Assets all of the Claims listed in Schedule "C" hereto and in paragraph 3 of this Order.

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

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of each Receiver's Certificate, forthwith after delivery thereof, and in any event no later than thirty (30) days after the date of the closing of the Transaction detailed in each applicable Unsold Unit Sale Agreement.

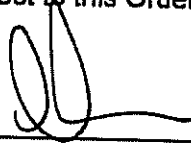
8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Portofino and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Portofino;

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

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

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Justice, Superior Court of Justice

ENTERED AT WINDSOR	
In Book No. <u>25</u>	
File Document No. <u>572</u>	
on <u>May 2</u>	at <u>14</u>
by <u>DT</u>	

Schedule "A" – Unsold Units

Legal Description

Description: Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, PI 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 PI 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LT) (LRO#12)

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

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

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

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

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

Unsold Parking Units					
Unit	Level		PIN		
48	1		01872	-	0048
49	1		01872	-	0049

Unsold Storage Units					
Unit	Level		PIN		
2	A		01872	-	0168
1	A		01872	-	0167

Schedule "B" – Form of Receiver's Certificate

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated October 29, 2013, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties Portofino ("**Portofino**").

B. Pursuant to an Order of the Court dated May 2, 2014, the Court granted an omnibus approval and vesting order (the "**Omnibus Approval and Vesting Order**"), providing for among other things:

- (a) the Court's approval of this Transaction in respect of the Purchased Assets (as defined below) as described in the Sale Agreement (as defined below);
- (b) the Court's authorization of the Receiver entering into the Agreement of Purchase and Sale made as of _____ [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver and _____ [NAME OF PURCHASER] (the "**Purchaser**"); and
- (c) the vesting in and to the Purchaser all of Portofino's right, title and interest in and to the lands and premises legally described on Exhibit "**A**" to this Receiver's Certificate (the "**Purchased Assets**"), with such vesting to be effective in respect of the Purchased

Assets upon the delivery by the Receiver to the Purchaser of this certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent that such conditions could be waived, have been waived by the Receiver and the Purchaser; and (iii) the transaction described in the Sale Agreement (the "Transaction") has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Omnibus Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on closing pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent such conditions could be waived, have been waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver;
4. In accordance with the provisions of the Omnibus Approval and Vesting Order, upon delivery by the Receiver of this Receiver's Certificate to the Purchaser, the Transaction is approved and the Purchaser is vested with all of Portofino's right, title and interest in and to the Purchased Assets; and
5. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

BDO CANADA LIMITED solely in its capacity
as Court-appointed receiver of Portofino
Corporation and not in its personal capacity

Per: _____

Name:

Title:

Exhibit "A" to Form of Receiver's Certificate – Purchased Assets

**(INSERT LEGAL DESCRIPTION AND MUNICIPAL ADDRESS FOR EACH UNSOLD UNIT
COMPRISING THE PURCHASED ASSETS SUBJECT TO THE APPLICABLE UNSOLD UNIT
SALE AGREEMENT)**

BANK OF MONTREAL
Plaintiff

PORTOFINO CORPORATION
and
Defendant

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

Tony Van Klink LSUC#: 29008M
Tel: 519.931.3509
Fax: 519.858.8511
Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B
Tel: 519.931.3534
Fax: 519.858.8511
Email: skettle@millerthomson.com

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

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

Description:	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, Pl 392 & Pl Lot 73 Concession 1 Windsor; Pt 1 Pl 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
Unsold Condominium Units (See Schedule "A" for individual unit descriptions)	
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	<p>Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</p> <p>Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.</p> <p>Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.</p> <p>Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</p> <p>Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.</p> <p>Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</p> <p>Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</p> <p>Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.</p> <p>Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.</p> <p>Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal,</p>

registered on July 22, 2013.

13. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
14. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
15. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
16. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
17. Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
18. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
19. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
20. Instrument No. CE592122 – Application Court Order registered on November 28, 2013.

Unsold Parking Units (See Schedule "A" for individual unit descriptions)

1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation,

registered on March 1, 2012.

9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
15. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
16. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

Unsold Storage Units (See Schedule "A" for individual unit descriptions)

1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to

Royal Bank of Canada, registered on December 20, 2011.

8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
15. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Unsold Units (Unsold Condominium Units, Unsold Parking Units and
Unsold Storage Units)**

(unaffected by the Omnibus Approval and Vesting Order)

- (i) Instrument No. CE98338 – Notice from the Corporation of the City of Windsor to Portofino Riverside Tower Inc.
- (ii) Instrument No. CE191717 – Notice from the Corporation of the City of Windsor to Portofino Corporation
- (iii) Instrument No. CE278123 – Declaration Condo
- (iv) Instrument No. ECP122 – Plan Condominium
- (v) Instrument No. CE279560 – Condo By-Law/98 (By-Law No. 1)
- (vi) Instrument No. CE279561 – Condo By-Law/98 (By-Law No. 2)
- (vii) Instrument No. CE279607 – Condo By-Law/98 (By-Law No. 3)
- (viii) Instrument No. CE279624 – Condo By-Law/98 (By-Law No. 4)
- (ix) Instrument No. CE279635 – Condo By-Law/98 (By-Law No. 5)
- (x) Instrument No. CE279643 – Condo By-Law/98 (By-Law No. 6)

BANK OF MONTREAL

and

Applicant

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

OMNIBUS APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

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

Tony Van Klink LSUC#: 29008M

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B

Tel: 519.931.3534

Fax: 519.858.8511

Email: skettle@millerthomson.com

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

TAB "C"

Court File No.: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE

Scott G. Campbell

)
)
)

TUESDAY, THE 26TH

DAY OF JULY, 2016

BETWEEN:

2502461 ONTARIO LTD.

Applicant

-and-

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

ORDER

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

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Fifth Report of the Receiver dated July 13, 2016 and all appendices thereto (the "Fifth Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on July 26, 2016;
- (b) amending Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014;

- 2 -

- (c) deleting instrument numbers CE664524, CE715152, CE715154, CE715155, CE7157156, CE715157, CE715158, CE715159 and CE715282 from title to the condominium units comprised by property identifier numbers 01872-0131, 01872-0140 and 01872-0003;
- (d) approving the Fifth Report and the activities and conduct of the Receiver described therein;
- (e) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to June 30, 2016 (the "Statement of Receipts and Disbursements");
- (f) approving the professional fees and disbursements of BDO as Receiver;
- (g) approving the professional fees and disbursements of Miller Thomson LLP and Sutts Strosberg LLP, counsel to the Receiver;
- (h) approving and authorizing the distribution of \$4,000,000 to Windsor Family Credit Union from the funds on hand; and
- (i) such further and other relief as counsel may advise and this Honourable Court may deem just.

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

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver, no one else appearing from the service list, although duly served as appears from the affidavit of Julie Los sworn July 14, 2016, filed:

1. **THIS COURT ORDERS** that the time for and method of service of all motion confirmation forms, the motion record, including the notice of motion and the Fifth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof;
2. **THIS COURT ORDERS** that Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014 be and is hereby amended and replaced by the Schedule

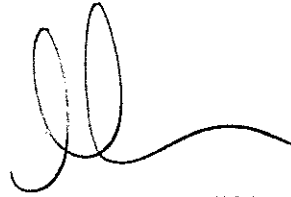
- 3 -

"C" – Claims to be deleted and expunged from title to the Unsold Units attached to this Order;

3. **THIS COURT ORDERS** that the following instruments are to be deleted and expunged from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003 and the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) is hereby directed to delete and expunge the following instruments from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003:
- (a) instrument number CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015;
 - (b) instrument number CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016;
 - (c) instrument number CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
 - (d) instrument number CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
 - (e) instrument number CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
 - (f) instrument number CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
 - (g) instrument number CE715158 - Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
 - (h) instrument number CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016; and

(i) instrument number CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Ltd. registered on May 31, 2016.

- 4. **THIS COURT ORDERS** that the Fifth Report and the activities and conduct of the Receiver described in the Fifth Report are hereby approved;
- 5. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved;
- 6. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP and Sutts Strosberg LLP, as described in the fee affidavits of Steven Cherniak sworn July 11, 2016, Tony Van Klink sworn July 13, 2016 and William Sasso sworn July 13, 2016 be and the same are hereby approved; and
- 7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to distribute to Windsor Family Credit Union the sum of \$4,000,000 from the funds being held by the Receiver.



ENTERED AT WINDSOR	
In Book No.	27
re Document No.	964
on	JUL 26 2016
by	HK

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

Description:	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, PI 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 PI 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
Unsold Condominium Units (See Schedule "A" for individual unit descriptions)	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.
4.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
6.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
7.	Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.
8.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
9.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
10.	Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
11.	Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.
12.	Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
13.	Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.

14. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
15. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
16. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
17. Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
18. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
19. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
20. Instrument No. CE592122 – Application Court Order registered on November 28, 2013.
21. Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
22. Instrument No. CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
24. Instrument No. CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
25. Instrument No. CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
26. Instrument No. CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016 (save and except PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).
27. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
28. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Limited registered on May 30, 2016.
29. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
30. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016 (PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).

Unsold Parking Units (See Schedule "A" for individual unit descriptions)

1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
15. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
16. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

17.	Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
18.	Instrument No. CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016.
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25.	Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
Unsold Storage Units (See Schedule "A" for individual unit descriptions)	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.

8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
15. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
16. Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
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21. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
22. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
24. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

ORDER

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

Tony Van Klink LSUC#: 29008M
Tel: 519.931.3509
Fax: 519.858.8511
Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B
Tel: 519.931.3534
Fax: 519.858.8511
Email: skettle@millerthomson.com

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

TAB “D”

**BDO Canada Limited Court Appointed Receiver of
Portofino Corporation
Statement of Receipts and Disbursements
October 29, 2013 through October 4, 2016**

Receipts:

Sale of units & surface parking	\$ 10,601,054.00	
Less: property tax arrears	(424,295.35)	
Less: real estate commissions (incl HST)	(414,746.90)	
Less: ECC No. 122 common fees	(36,959.02)	
Less: closing adjustments	(10,733.44)	
Add: HST collected on parking and unfinished units	<u>120,275.88</u>	
		\$ 9,834,595.17
Unit rental income		1,857,587.60
Holdback funds re: Portofino sub-trades		119,789.96
Reimbursement of Letter of Credit costs		64,408.22
Parking space rental		25,294.69
Interest		18,383.59
Miscellaneous litigation		<u>497.88</u>
		<u>11,920,557.11</u>

Disbursements:

City of Windsor - property taxes	2,925,916.05	
Receiver's fees	685,234.55	
ECC No. 122 - common fees	658,984.18	
Miller Thomson LLP - Receiver's legal fees	294,891.15	
Repairs & maintenance	211,382.37	
HST paid on disbursements	166,630.60	
HST remitted	112,610.71	
Property management fees	68,000.00	
BMO - Letter of Credit fees re Valente litigation	39,074.26	
Sutts, Strosberg - legal fees	38,007.07	
Utilities	35,514.36	
Advertising	34,433.76	
Bond premiums	34,170.00	
Valente litigation - costs award	30,393.34	
Appraisal fees	15,014.50	
Insurance	5,212.08	
Commission paid re rentals	3,650.00	
Miscellaneous expenses	2,168.00	
Bank charges	595.50	
Receiver General - receivership filing fee	<u>70.00</u>	
		5,361,952.48

Excess receipts over disbursements

6,558,604.63

Represented by:

Payment to secured creditor (WFCU)	4,000,000.00	
Funds held in trust account	<u>2,558,604.63</u>	
Balance of funds held by Receiver as at October 4, 2016		<u><u>\$ 2,558,604.63</u></u>

TAB "E"

**ONTARIO SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF PORTOFINO CORPORATION

AFFIDAVIT OF STEPHEN N. CHERNIAK

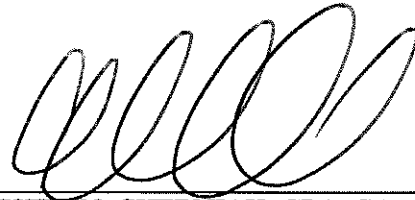
I, Stephen N. Cherniak, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Senior Vice-President of BDO Canada Limited, the Receiver of Portofino Corporation, (“Portofino”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated October 29, 2013 BDO Canada Limited was appointed as Receiver of Portofino (the “Receiver”).
3. The Receiver’s First Report to the Court was approved by Mr. Justice Thomas on December 13, 2013. The first account of the Receiver for the period July 19, 2013 to November 28, 2013 was also approved by the Order of Justice Thomas on December 13, 2013.
4. The Receiver’s Second Report to the Court was submitted to the Court on February 28, 2014.
5. The Receiver’s Third Report to the Court was approved by Mr. Justice Campbell on May 2, 2014. The second account of the Receiver for the period November 28, 2013 to April 9, 2014 was also approved by the Order of Justice Campbell on May 2, 2014.
6. The Receiver’s Fourth Report to the Court was approved by Mr. Justice Desotti on May 17, 2016. The third account of the Receiver for the period April 10, 2014 to March 10, 2016 was also approved by the Order of Justice Desotti on May 17, 2016.
7. The Receiver’s Fifth Report to the Court was approved by Mr. Justice Campbell on July 26, 2016. The fourth account of the Receiver for the period March 11, 2016 to June 14, 2016 was also approved by the Order of Justice Campbell on July 26, 2016

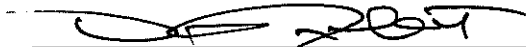
8. Since the date of the Receiver's last account the Receiver has been engaged in the following:
- Complete the Fifth Report of the Receiver and attend Court hearing on July 26, 2016;
 - Negotiate the sale of units 104, 105, 309, 408 and 601 through the Receiver's agent;
 - Negotiate the conditional sale of units 1601 and 1602 through the Receiver's agent, and various amendments to the Agreements of Purchase and Sale to amend the conditions;
 - Complete the sale of condominium units 103, 105, 304, 601, 1101, 1202 and 1501;
 - Direct Property Manager to complete various repairs to condominium units prior to sale completion, as agreed to by the Receiver under Agreements of Purchase and Sale;
 - Correspondence and telephone calls with the Receiver's legal counsel concerning the Valente Court Action;
 - Prepare working schedules and correspond with external accountant regarding July 1, 2014 and July 1, 2015 financial statements and income tax returns;
 - Commence the Sixth Report of the Receiver;
 - Attend meetings of the Board of Directors of ECC 122 by telephone;
 - Collect monthly rents for the leased, unsold units;
 - Respond to tenant queries and concerns; and
 - Various telephone calls and correspondence with the stakeholders and their respective counsel
9. In the course of performing the duties pursuant to the Order and as set out above at paragraph 8, and since the date of the Fifth Report the Receiver's staff expended 197.1 hours for the period of June 15, 2016 through September 26, 2016. Attached hereto and marked as Exhibit "A" to this my Affidavit are the accounts of the Receiver together with a summary sheet.

10. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
11. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
12. Although the assets of Portofino are located in Windsor and the Receiver's primary office is located in London the Receiver has not charged for travel time or travel expenses.
13. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
14. This Affidavit is sworn in support of the motion for approval of the Receiver's fees and disbursements and for no other or improper purposes.

SWORN BEFORE ME at the City of
London in the Province of Ontario
on the 18th day of October, 2016



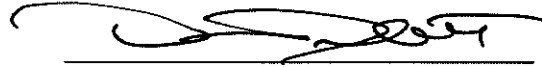
STEPHEN N. CHERNIAK, CPA, CA, CIRP



Commissioner for Taking Affidavits

**David Randall Flett, a
Commissioner, etc., Province of Ontario,
For BDO Canada Limited and BDO Canada LLP.
Expires April 20, 2019.**

Attached is Exhibit A
To the Affidavit of Stephen N. Cherniak
Sworn the 18th day of October, 2016.



A Commissioner, Etc

David Randall Flett, a
Commissioner, etc., Province of Ontario,
For BDO Canada Limited and BDO Canada LLP.
Expires April 20, 2019.

**Summary of Receiver's Accounts for the period
June 15, 2016 through September 26, 2016**

Invoice Date	Hours Expended	Fees & Disbursements	HST	Invoice Total
August 8, 2016	129.2	\$46,541.39	\$6,050.38	\$52,591.77
September 27, 2016	67.9	23,540.48	3,060.33	26,601.31
	197.1	\$70,081.87	\$9,110.71	\$79,193.08

Invoice # 88628732
 Portofino Corporation
 HST Reg # 101518124RT0001

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

August 8, 2016

Re: Portofino Corporation

For professional services rendered for the period June 15, 2016 through August 7, 2016 as per the attached detail:

Our Fee	\$46,500.00
Disbursements (courier)	<u>41.39</u>
Sub total	46,541.39
HST	6,050.38
	<hr/>
Total	<u>\$52,591.77</u>

REMITTANCE ADVICE

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

Invoice #	88628732
Amount	\$52,591.77

August 8, 2016

For professional services rendered

Staff	Date	Time	Narrative
Flett, D	15-Jun-16	1.2	Review email from D. Capaldi on tenant and maintenance matters; sign and return unit 304 amendment to J. McClelland; email to D. Capaldi re: unit 304 sale; update sales and inventory schedules; email to D. Capaldi re: unit 1301 lease request; call with J. McClelland on unit 304 acknowledgement pages, unit 304 cleaning; unit 1501 condition status, unit 1301 and unit 1401 availability and tenant status; forward unit 304 acknowledgement to J. McClelland; call with J. McClelland on unit 304 repairs and email to D. Capaldi.
Finnegan, M	15-Jun-16	0.3	Letter to owner of unit 603 re condo fee payment.
Cherniak, S	15-Jun-16	0.4	Review of Gillett Roofing invoice from D. Capaldi. Review of email re Eansor lease in unit 1301. Discuss. Decide not to renew. Review of Order on non-payment of Letter of Credit fees.
Cherniak, S	16-Jun-16	0.1	Email from D. Capaldi re unit 1301 lease.
Flett, D	16-Jun-16	1.4	Review D. Capaldi emails; call with J. McClelland on unit 1501 conditions and offer status. Call with J. McClelland on condo rules re: unit 304 buyer, unit 1501 condition extensions, Reliance, unit 105 interested party query; review condo declaration re: use of common elements; review Gillett Roofing invoice for parking roof membrane and prior correspondence on issue, memo to D. Capaldi on roof membrane and additional visitor parking; email to D. Capaldi re unit 105 repairs.
Flett, D	17-Jun-16	4.8	Email with D. Capaldi on repairs and garage roof; call with J. McClelland on unit 1202 conditions and extension, unit 304 condition status, unit 105 showings; upcoming unit 601 listing; review and revise unit 1202 amendment; review unit 1202 amendment and unit 1501 extension of conditions; Call with J. McClelland re: unit 1501 Prepare 7th report of Receiver – background portion, receiver activities; amendments to approval and vesting order for transfers of charge from BMO to RREF II, and RREF II to WFCU; table for report of units sold after BMO transfer to RREF II; email to Miller Thomson on closing date changes and sale status.
Cherniak, S	17-Jun-16	0.3	Update on unit 1202. Execute extension. Review of unit 1501 deal and possible extension.
Cherniak, S	20-Jun-16	0.5	Discussion re report and how to deal with unit 1101 re discharges. Discussion re roof membrane. Review and execute extensions on unit 1501.

Staff	Date	Time	Narrative
Flett, D	20-Jun-16	3.5	Continue with Receiver 5th report - receiver activities, professional fees, distribution; review of parcel register and detail of transfers of charges, postponements; voice mail from J. McClelland on showings, amendments; review unit 1501 amendment; review vesting order amendment issues re unit 1101, unit 103, and 5th report content; review unit 1501 amendment, sign forward to J. McClelland.
Flett, D	21-Jun-16	2.8	Call with J. McClelland on unit 1202, unit 304 conditions, unit 1202 HST; Continue with 5th Court Report - amendments to Omnibus re; Capaldi lien postponement, distribution, recommendations; calls with J. McClelland on unit 304 fulfillment of conditions, review and sign notice, return to J. McClelland; update sales and inventory schedules.
Cherniak, S	21-Jun-16	0.5	Review of condo rules prepared by D. Capaldi. Discussion re report and removal of D. Capaldi lien by vesting order.
Cherniak, S	22-Jun-16	0.5	Review of emails re Letter of Credit replacement motion and trial. Review of email from D. Capaldi re expenses. Review of unit 304 notice of fulfillment.
Flett, D	22-Jun-16	2.2	Call with J. McClelland on unit 601 listing; email to J. McClelland on unit 601 taxes and condo fees; email to Miller Thomson on unit 304 sale, sale documents, property taxes on pending closings; review updated rent roll; review and edit statement of receipts and disbursements; continue with 5th report - R&D; review unit 601 listing agreement.
Finnegan, M	22-Jun-16	1	Update R&D re court report. Deposit rent cheques and update rent roll.
Flett, D	23-Jun-16	2	Edit unit 601 listing agreement, and forward to J. McClelland; review May 2016 property maintenance expenses; call with J. McClelland on unit 105 offer, unit 1101 utility accounts; call with J. McClelland on unit 1101, unit 601 interest and showings, staging; forward unit 701 photos to J. McClelland for unit 601 interested party; update to 5th report for receipts and disbursements; revisions to 5th report.
Cherniak, S	23-Jun-16	0.6	Review of D. Capaldi expenses. Review of emails from Sasso re Morga and Letter of Credit replacement and trial. Review and execute unit 601 listing agreement.
Hooper, L	23-Jun-16	0.1	Banking.
Hooper, L	24-Jun-16	0.1	Banking.
Cherniak, S	24-Jun-16	1.7	Review of fifth report. Call to Miller Thomson re report. Review and execute counter on unit 105. Discussion re units available.

Staff	Date	Time	Narrative
Flett, D	24-Jun-16	4.5	Revisions to 5th report; review unit 105 offer; review and sign receiver cheques; prepare unit 105 counter offer and forward to J. McClelland; emails with Miller Thomson on absence of status certificate in unit 105 offer; review 2016 final tax bills and update schedules; call with J. McClelland on unit 1202 waiver of conditions, unit 105, staging re-location; sign and return unit 1202 fulfillment of conditions to J. McClelland; email to D. Capaldi re: unit 1202 closing; prepare dated schedule of 2016 property taxes and condo fees and forward to J. McClelland; detailed email to Miller Thomson on unit 1202 sale documents, amendments, 2016 tax bills for pending closings; revisions to 5th report for unit 105 and unit 1202 sales.
Finnegan, M	24-Jun-16	0.5	Bill payments.
Finnegan, M	27-Jun-16	0.5	Prepare and send monthly condo fee payment.
Flett, D	27-Jun-16	3.2	Email to Miller Thomson, with documents re: unit 105 sale; email to D. Capaldi re: unit 105 sale; review inventory listing and HVAC status re: unfinished unit listing; call with J. McClelland on unit 601 showings and offer status, unit 1602 listing; revisions and updates to 5th report; review 3 offers for unit 601; calls with J. McClelland on offer terms and dates and return accepted offer; updates to sales and inventory schedules.
Cherniak, S	27-Jun-16	0.5	Discussion and review of multiple offer scenario on unit 601. Review and execute offer.
Cherniak, S	28-Jun-16	0.7	Review of email from D. Capaldi re unit 601. Review of final edits to fifth report. Email to Miller Thomson.
Flett, D	28-Jun-16	2.6	Review email from D. Capaldi on tenant matters, upcoming closings; revisions and updates to 5th report and review revised R&D; updates to inventory schedules; lengthy call with J. McClelland on units 104/106 listings, possible new offer on unit 601, unit 309 status, unit 1301 and unit 1401 availability and timing; email with Miller Thomson on unit 1101 property taxes; emails to D. Capaldi on units 104, 106, 309, 408 tenant status; review additional unit 601 offer and email, phone call with J. McClelland.
Finnegan, M	28-Jun-16	0.2	Update to court report R&D.
Flett, D	29-Jun-16	1.8	Review D. Capaldi emails; call with J. McClelland on unit 601 status certificate conditions; redact status certificate requisition and forward to J. McClelland with requisition particulars; call with J. McClelland on unit 1602 listing, scheduled units 1301 and 1401 showings and list prices; call with J. McClelland on unit 1602 listing and email to D. Capaldi; review new listings.
Cherniak, S	29-Jun-16	0.3	Review of email from D. Capaldi. Discussion and review of upcoming listings.
Cherniak, S	30-Jun-16	0.4	Review pictures of unit 1602. Execute listing agreement. Emails re unit 1101 closing.

Staff	Date	Time	Narrative
Flett, D	30-Jun-16	1.4	Review D. Capaldi emails on tenants; email with Miller Thomson and review revised unit 1202 statements of adjustment and trust; call with J. McClelland on unit 104 listing and tenant, unit 1602 listing agreement; unit 1202 closing matters; review and revise unit 1602 listing agreement and forward to J. McClelland; emails with Miller Thomson on unit 1101 closing issues and status.
Finnegan, M	30-Jun-16	0.3	File HST return.
Flett, D	4-Jul-16	2.2	Review emails from D. Capaldi on units 408, 309; and review tenant status and list prices; lengthy call with J. McClelland on unfinished unit showings, units 309 and 408 list prices, unit 1206 re-sale; units 1301 and 1401 list prices, unit 1101 closing; email to L. Arthurton re: Biarritz staging; email to D. Capaldi re: units 309 and 408 list prices; review and revise unit 106 listing agreement and return to J. McClelland.
Cherniak, S	4-Jul-16	1.2	Review of results of survey. Review of emails to D. Capaldi re listing units 309 and 408. Review of emails re roof enhancements. Review of email to D. Capaldi re listing unit 104. Execute listing agreement. Review of correspondence from Sasso re Valente trial. Call with S. D'Amore re update on various matters.
Cherniak, S	5-Jul-16	1.1	Review of emails re roof top terrace issues. Update on unit 1101 closing in escrow. Review of D. Capaldi email requesting call on unit 309 and 408 pricing. Review of emails between Miller Thomson and Trottier re security documents.
Flett, D	5-Jul-16	1.7	Review D. Capaldi emails on units 309 and 408; email with Miller Thomson on unit 1101 closing; email to J. McClelland on units 1301 and 1502 MPAC assessments; voice mail to/from D. Capaldi re: listings; call with Miller Thomson re: unit 1101 funds and closing; email to D. Capaldi and J. McClelland re: unit 1101 closing in escrow; update sales and inventory schedules; email with J. McClelland on listings; calls with J. McClelland on unit 1101 key arrangements.
Flett, D	6-Jul-16	2.4	Update unsold unit summary schedule; call with D. Capaldi on units 309 and 408, list prices and market activity; call with J. McClelland on unit 1602 showing, MLS reports, other matters; email to D. Capaldi with units 309 and 408 property tax information; emails with Miller Thomson and text msg to D. Capaldi re: unit 1101 buyer key arrangements; review sales and re-sales for first 6 months of year.
Cherniak, S	6-Jul-16	0.7	Update on call with D. Capaldi re list prices. Review of email re keys for unit 1101. Update on comparable sales in building. Review of various emails between Miller Thomson and Trottier re security opinion.
Cherniak, S	7-Jul-16	1.6	Review of emails to/from Miller Thomson and Trottier re WFCU security. Review of Miller Thomson edits to report. Discuss with D. Flett. Call with Miller Thomson re edits. Review further edits. Discussion and review of offer on unit 104. Execute counter.

Staff	Date	Time	Narrative
Flett, D	7-Jul-16	3.5	Call with J. McClelland on unit 104 offer; review unit 104 offer; review draft statements of adjustment and Trust for unit 1202, revisions and email with Miller Thomson; review HST inputs on unit 1202 sale; review 5th report as revised by Miller Thomson; call with Miller Thomson on 5th report, orders and registrations to be discharged; review unit 104 offer, prepare counter offer and forward to J. McClelland; further revisions to 5th report and forward to Miller Thomson; emails with S. Merry on unfinished unit HST rebate application filing.
Finnegan, M	7-Jul-16	1	Deposit sale funds. Prepare sale documents and send to legal.
Finnegan, M	8-Jul-16	1	Review and prepare property tax payment. Prepare sale documents and send to legal.
Flett, D	8-Jul-16	3.6	Call with unit 1503 buyer re: HST rebate application and rules; review unit 1602 offer and call with J. McClelland on offer; review unit 104 counter offer; prepare unit 1602 counter offer and condition revisions, unit 104 counter offer; prepare affidavit of fees for 5th report; emails with At-Home re: unit 1501 staging plan and re-location from unit 103; review unit 103 statements of adjustment and trust; review unit 104 and unit 1602 offers.
Cherniak, S	8-Jul-16	1.1	Review of Morga pre-trial materials for breach of contract trial. Review and execute counter on 104. Review and discuss of offer on 1602. Execute counter. Execute docs for 103 closing. Deal with court report.
Cherniak, S	11-Jul-16	1.3	Email from Miller Thomson re issues with registrations. Review of response from Miller Thomson re LRO. Review of emails to D. Capaldi re sale of unit 104. Review of response of tenants re unit 309 and unit 408. Review of waiver on unit 601. Review of Sasso factum on pre-trial re breach of contract.
Flett, D	11-Jul-16	2.8	Emails to D. Capaldi re: unit 601, unit 104 sales and units 309 and 408 listings; email to Miller Thomson re: sale of unit 601 with sale documents; updates to unsold unit and sales schedules; call with J. McClelland on unit 1602 offer, surface parking availability, units 309 and 408 listings and list prices; review and sign property tax cheque; review Miller Thomson emails on transfer of charge, postponement registrations and revisions to 5th report; minor revision to fee affidavit; email to D. Capaldi re: unit 104 repairs and maintenance; email to D. Capaldi re: unit 304 tenant and last month deposit; brief review of Miller Thomson security opinion; review units 309 and 408 listing agreements; call with J. McClelland on units 309 and 408 showings.
Finnegan, M	11-Jul-16	0.5	Email to/from BDO Windsor re rents received in office. Update rent roll re cash payment received. Send affidavit and bills to legal re Receiver's 5th report to court.
Hooper, L	11-Jul-16	0.1	Banking.
Finnegan, M	12-Jul-16	1	Deposit rent cheques and update rent roll.

Staff	Date	Time	Narrative
Flett, D	12-Jul-16	3	Review several emails from D. Capaldi on tenant matters, pending sales; forward signed units 309 and 408 listing agreements to J. McClelland; lengthy call with J. McClelland on status of various unit 103 pre-closing repairs; email and text messages with D. Capaldi on unit 103 repairs status, issues and timing; review new listings, financial statement and tax return status; several further text msgs with D. Capaldi re: unit 103 repairs and closing date; calls with J. McClelland re: unit 103 repairs and re-schedule of buyer inspection; penthouse enquiry; review July rent roll and email to D. Capaldi re: unit 408.
Cherniak, S	12-Jul-16	0.5	Review of emails from D. Capaldi. Review of Miller Thomson security review. Update on D. Capaldi non repairs to unit 104.
Cherniak, S	13-Jul-16	1.3	Review of changes to report because of lesser number or registrations. Calls to Miller Thomson re same. Review of emails to Sasso re fee affidavit. Execute report and send to Miller Thomson. Discussion re financial statements and no response from D. Capaldi/accountant. Review email to D. Capaldi. Review staging pictures for unit 1501.
Flett, D	13-Jul-16	3.2	Review email from D. Capaldi re: unit 408 rent and other tenant matters; review rent roll and sold unit status; review revised 5th report from Miller Thomson; review prior financial statements and tax return correspondence and review compliance; detailed email to D. Capaldi and M. Greenaway re; income tax return filing and compliance; update sales and unsold unit schedules for unit 1202 closing; text msg to D. Capaldi and call with J. McClelland re unit 1202 closing and arrangements; email with Miller Thomson re: unit 1202, unit 103 closings; call with J. McClelland on unit 1202 closing, unit 408 showings, surface parking condo fee and tax enquiry; email to J. McClelland with parking condo fee and tax details; review unit 1501 photos and memo re: staging, unit 1501 set-up.
Finnegan, M	13-Jul-16	0.5	Updated rent roll with tenants vacating etc. Bill payments.
Hooper, L	13-Jul-16	0.1	Banking.
Finnegan, M	14-Jul-16	0.5	Deposit sale proceeds and account for HST collected on sale.
Flett, D	14-Jul-16	3	Call with J. McClelland on unit 408 showings, unit 103 inspection, unit 309 offer; text msg with D. Capaldi re: unit 103 inspection; review unit 309 offer, prepare counter and forward to J. McClelland; review unit 408 offer; call with J. McClelland on unit 408 offer and unit 309 buyer counter offer; review performance audit status and Tarion issues; emails to D. Capaldi on performance audit status and unit 1202 Tarion certificate; review unit 408 offer, revise and prepare counter offer; call with J. McClelland on unit 408 counter offer and unit 103 inspection issues.

Staff	Date	Time	Narrative
Cherniak, S	14-Jul-16	1.5	Review of D. Capaldi response on accountants. Respond. Review of ECC #122 financial statements. Review of motion record. Review and counter offer on unit 309. Review and counter offer on unit 408. Review of Northbridge email. Discuss with Miller Thomson. Review of email to D. Capaldi re Tom Park audit. Discussion re Tarion certificates for unfinished units. Review of email to D. Capaldi re certificate for unit 1202. Review of email from Trottier re problems with charges not being deleted as per receivers report.
Cherniak, S	15-Jul-16	1	Emails from D. Capaldi re Tom Park audit and Tarion document. Review of counter on unit 309 vis a vis second offer. Call with Miller Thomson re law on multiple offers. Discuss strategy. Email to Miller Thomson re Trottier email on the postponements. Review response. Accept new offer on unit 309. Discuss strategy on unit 408 offer.
Flett, D	15-Jul-16	4.5	Review second unit 309 offer; review unit 309 offer and multiple offer issues; brief call with Miller Thomson; call with and voice mail from J. McClelland on units 309 and 408 counter offer status; detailed email to Miller Thomson re: unit 103 buyer request for holdback of funds; call with J. McClelland on unit 103 repair status and further emails with Miller Thomson on issue; text messages with D. Capaldi on unit 103 Jacuzzi repair status and motor on order; forward unit 309 accepted offer to J. McClelland; further emails with Miller Thomson on unit 103 closing issues; call with J. McClelland on unit 408 tenant, unit 408 acceptance and conditional period clause, unit 309 conditional sale, unit 103 closing; update sales, unsold unit schedules estimated future proceeds for units 309 and 408 sales; email to D. Capaldi re: sales of units 309 and 408 and status certificates; call with J. McClelland on unit 104 buyer appraiser, amendment to add financing conditions and timing/ tenant considerations; text msg to D. Capaldi re: unit 103 closing and keys; call with W Marsh of Stats Canada - enquiry re: unoccupied units, and email to D. Capaldi.
Finnegan, M	15-Jul-16	0.5	Process GIC collapse and accounting re same.
Szypula, C	15-Jul-16	0.5	Review of 5th report.
Finnegan, M	18-Jul-16	0.5	Pay bills.
Flett, D	18-Jul-16	2.8	Review correspondence and prepare requisition for partial last month refund to unit 304 former tenant; review D. Capaldi emails on Tarion, tenant matters; review At-Home staging invoice; call with J. McClelland on unit 105 inspection, unit 106 listing, unit 104 appraiser issue; email to Miller Thomson on unit 105 closing common fees; email to D. Capaldi re: performance audit; call with J. McClelland on unit 104 issues, amendment for financing condition and review; call with J. McClelland re: unit 104 conditions, unit 408 showings; further call with J. McClelland re: unit 104 issues, inspection, re-submitting of new offer.

Staff	Date	Time	Narrative
Cherniak, S	18-Jul-16	0.8	Review of emails re closing of unit 103. Respond to Miller Thomson re request for holdback re Jacuzzi. Update on sale of unit 408. Review of email to D. Capaldi re sale of units 309 and 408. Discussion of issues re unit 103 closing. Review of email from D. Capaldi re Tarion certificate. Review of email to D. Capaldi re update on Jacuzzi part and performance audit. Discussion and resolution re unit 104 conditional sale request for amendment re financing condition.
Cherniak, S	19-Jul-16	1.2	Review of emails from D. Capaldi re Park audit and update on Jacuzzi part for unit 103. Review of counter on unit 1602. Review of emails from Trottier re Letter of Credit and D'Amore cash with Miller Thomson. Review of Miller Thomson response. Call with Miller Thomson re same. Review of response from Miller Thomson re adjustment to vesting order re D. Capaldi postponements.
Flett, D	19-Jul-16	2.4	Call with J. McClelland on unit 104 conditional issues; call with unit 1602 offeror on sale process; further call with J. McClelland on unit 104 issues, mutual release, units 309 and 408 inspections; review unit 1602 offer, review emails from D. Capaldi on repairs, inspections, performance audit; call with J. McClelland on unit 1202 Tarion and forward certificate; review unit 1602 offer; call with J. McClelland on unit 1602 counter, units 309 and 408 appraisals.
Flett, D	20-Jul-16	1.6	Review D. Capaldi email on repair matters; call with J. McClelland on units 304 and 408 conditions, unit 104 mutual release, unit 1602 status; email to D. Capaldi re: unit 104 repairs; review unit 104 mutual release and note date issue; call with J. McClelland re: unit 104; revise unit 104 mutual release and return signed to J. McClelland.
Finnegan, M	20-Jul-16	0.5	Account for and deposit sale funds.
Cherniak, S	20-Jul-16	1	Email from D. Capaldi re Tarion. Review of email re unit 104 issues. Email from Greenaway. Deal with sale of unit 408 re financing condition. Execute mutual release. Discuss new offer.
Cherniak, S	21-Jul-16	1.3	Review of email from company accountant and BDO response. Discussion re unit 309 notice to terminate and timing thereto. Discussion re possibility of tenant remaining. Execute new offer on unit 408. Call from BMO re old Letter of Credit. Email to City of Windsor. Call from City of Windsor re same. Call from Miller Thomson re Dalfidian litigation.
Flett, D	21-Jul-16	1.4	Review D. Capaldi emails on tenant matters and unit 104 repairs; email with M. Greenaway with various attachments re: preparation of 2014 financial statements and tax returns; review unit 104 offer and forward accepted offer to J. McClelland; call with J. McClelland on unit 309 buyer rental plans; email to D. Capaldi re: unit 309 tenant notice to vacate and lease with new owner; review email re: BMO L/C with City and discuss; email with D. Capaldi on unit 309 tenant plans and possible one month lease.
Cherniak, S	22-Jul-16	0.5	Emails re unit 309 and notice period. Email from D. Capaldi re monthly expenses. Review of amended Notice of Motion from Miller Thomson re court date July 26, 2016.

Staff	Date	Time	Narrative
Cherniak, S	25-Jul-16	1.1	Email from realtor re other offer on unit 408. Review of emails to D. Capaldi re Jacuzzi part for unit 103, update on park audit and monthly reporting. Review monthly reporting. Review of emails to Miller Thomson re unit 304 status certificate and closings prior to vacation. Review of emails to accountant.
Flett, D	25-Jul-16	2.4	Review unit 408 offer and email to J. McClelland; several emails to D. Capaldi on unit 103 repairs, performance audit status; emails with Miller Thomson on unit 304 closing, status certificate request process; review June, 2016 property expenses; email to D. Capaldi re: unit 1401 tenant, utilities; email to D. Capaldi re: unit 304 repairs and cleaning; emails with Miller Thomson re units 304 and 601 closings; emails with M. Greenaway on fiscal 2014 ledger and supporting documents; calls with J. McClelland on unit 408 condition status, second unit 408 offer, unit 1501 staging, garage availability; call with Meta Hall of MPAC on units 102 and 103 requests for reconsideration, surface parking spaces and other issues; review and return signed unit 408 Fulfillment, email to J. McClelland; email to D. Capaldi re: firm sale of unit 408 and tenant notice.
Hooper, L	25-Jul-16	0.2	Banking
Hooper, L	26-Jul-16	0.1	Banking
Flett, D	26-Jul-16	3.3	Review several emails from D. Capaldi on tenant and building matters; review and sign unit 309 notice of fulfillment and return to J. McClelland; lengthy call with J. McClelland on unit 408 tenant home inspection issue, unit 309 tenant, unit 1505 list price; further call with J. McClelland on unit 408 inspection issue and detailed email to D. Capaldi; review unit 304 draft closing documents; review and sign unit 104 notice of fulfillment and return to J. McClelland; review unit 601 draft closing documents and email with J Lehman; further call with J. McClelland on unit 408 issue, unit 104 buyer and tenant, unit 309 buyer timing, rental enquiry; review unit 408 issue and units 104, 309 and 408 status; call with J. McClelland on unit 408 tenant issue; updates to unsold unit and sales schedules.
Finnegan, M	26-Jul-16	0.5	Pay bills
Cherniak, S	26-Jul-16	2.3	Attend court re approval of fifth report. Meet with S. D'Amore and counsel. Review of emails from D. Capaldi re sale of unit 408 and update on park report. Execute documents for sale of units 601 and 304. Email from BMO re Letter of Credit. Review of emails re problem with unit 408 inspection. Discuss resolution with D. Flett.
Cherniak, S	27-Jul-16	0.6	Emails re Letter of Credit to City of Windsor and BMO. Update on unit 309 sale. Discuss listing unit 104. Review order and send cheque to WFCU.
Finnegan, M	27-Jul-16	1.5	Prepare and send executed sale documents to Miller Thomson re units 601 and 304. Prepare and send August, 2016 condo common fee payment. Prepare and send secured creditor payment to WFCU and post approval Order to BDO external website. Deposit rent cheque.

Staff	Date	Time	Narrative
Flett, D	27-Jul-16	1.6	Review D. Capaldi emails re: tenants; review updated rent roll and unit 408 status; email to D. Capaldi re: unit 309 waiver of conditions and tenant matters; call with J. McClelland re: units 104 and 309; email to D. Capaldi re: unit 104 waiver of conditions and tenant matters; review email MPAC re: loft sales and request for reconsideration; review unit 106 listing agreement, sign and return to J. McClelland.
Flett, D	28-Jul-16	1.1	Review emails from D. Capaldi (D. Capaldi) on notices to end tenancy, tenant arrangements; review current funds on hand and pending sales value; email to J Lehman of MT with sale documents and particulars of 104, 309, 408 sales; email with J Lehman on 304 closing; email with J. McClelland re: 106 listing
Hooper, L	28-Jul-16	0.2	Banking
Flett, D	29-Jul-16	2.2	Review D. Capaldi email with notices to end tenancy and reply; review unit 309 closing date amendment and return to J. McClelland; email to Miller Thomson and D. Capaldi re: unit 309 closing date; calls with J. McClelland on unit 106 showing and review photos; email with MPAC; review unit 106 offer; lengthy call with J. McClelland on unit 106 repair issues and offer, large unit showings; unfinished taxes and condo fees; prepare unit 106 counter offer and forward to J. McClelland; review and sign receiver cheques.
Flett, D	2-Aug-16	2.8	Review emails from D. Capaldi on units 408 and 104 tenants; review unit 106 revised offer; call with Miller Thomson on unit 304 closing and condo fee difference, statement of adjustments; calls with J. McClelland on unit 106 offer; accept revised unit 106 offer and return to J. McClelland; review letter from unit 103 buyer and email with Miller Thomson on repair status; text message with D. Capaldi and call with J. McClelland on unit 304 closing; detailed email to D. Capaldi re: unit 104 repairs and common element issue; update sales and unsold unit inventory schedules for unit 106 sale, unit 304 closing; email to D. Capaldi re: buyer contact information for unit 104 and 408 tenants.
Flett, D	3-Aug-16	2.2	Review D. Capaldi email re: unit 106 repairs; call with J. McClelland re: units 106 and 1501 condition status, showings, unit 101 listing; review unit 106 photos; call with J. McClelland re: unit 104 tenant, unit 106 repair issues, unfinished taxes and condo fees; emails with Miller Thomson and forward new Receiver's certificate re: land registry issue; prepare and forward unfinished tax and condo fee summary to J. McClelland; confirm monthly condo fees for pending sales; email to D. Capaldi re: tenant lease with buyer and waiver of notice to end tenancy; email follow-up with J. McClelland on unit 304 closing.
Finnegan, M	3-Aug-16	0.4	File HST return.
Finnegan, M	4-Aug-16	0.5	Deposit.
Flett, D	4-Aug-16	0.7	Review D. Capaldi emails on tenant matters; review unit 106 photos and call with J. McClelland; email with D. Capaldi on additional moisture issues and repairs to unit 106.

Staff	Date	Time	Narrative
Flett, D	5-Aug-16	2.1	Email with D. Capaldi re: unit 106; lengthy call with J. McClelland on unit 106 sale status, repair issues and review home inspection report; preliminary review of F2014 financial statements and email with M. Greenaway on query; email with Miller Thomson and text msg to D. Capaldi re: unit 601 closing; call with J. McClelland on unit 601 buyer; email with J. McClelland re: unit 106 inspection; update sales and unsold unit schedules for unit 601 closing.
Finnegan, M	5-Aug-16	0.1	Email re holding rent cheque to deposit later in month.
Cherniak, S	7-Aug-16	1.5	Review of numerous emails re condo board issues. Review of issues re unit 106 and sale of unit 106 while on vacation.
		129.2	Total Time

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$475	28.2
Finnegan, M	Administrative	London	\$175	11.8
Flett, D	Vice President	London	\$350	87.9
Hooper, L	Estate Administrator	London	\$125	0.8
Szypula, C	Sr. Vice President	London	\$425	0.5
				129.2

Invoice # 88660918
Portofino Corporation
HST Reg # 101518124RT0001

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

September 27, 2016

Re: Portofino Corporation

For professional services rendered for the period August 8, 2016 through September 26, 2016
as per the attached detail:

Our Fee	\$23,500.00
Disbursements (courier)	<u>40.98</u>
Sub total	23,540.48
HST	3,060.33
Total	<u>\$26,601.31</u>

REMITTANCE ADVICE

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

Invoice #	88660918
Amount	\$26,601.31

September 27, 2016

For professional services rendered

Staff	Date	Time	Narrative
Cherniak, S	8-Aug-16	1	Review of email to D. Capaldi re Jacuzzi part for unit 103. Review of draft performance audit. Discussion re issues. Review of offer on unit 106 and various deficiencies. Discussion over approach re dealing with condo corporation re repairs. Review of draft f/s and inclusion of D. Capaldi lien amount. Review of updated chart. Update on sale of unit 1501.
Finnegan, M	8-Aug-16	1	Deposit and update rent roll. File HST return and prepare HST remittance.
Flett, D	8-Aug-16	4.5	Review D. Capaldi emails on tenant matters; review unit 106 sale and ECC #122 issues; call with J. McClelland unit 1501 conditions, garage #8, unit 106 issues and status; review updated rent roll; review GIC, last month deposits on sold units; text msg with D. Capaldi re: garage 8 and emails to Miller Thomson re: unit 1501 sale and closing date; call with Miller Thomson on unit 1501 conditional, unit 106 offer and repairs; preliminary review of performance audit summary; review draft financial statements, performance audit; lengthy call with D. Capaldi on unit 106 water issues and ECC #122 responsibilities, unit 806 tenant plans, performance audit roof related items and Tarion process; call with Miller Thomson re: unit 106; review July HST return and sign cheque.
Flett, D	9-Aug-16	0.7	Email with D. Capaldi re unit106; review unit 106 sale status and repair issues, performance audit report, F2014 financial statements; review GIC with M. Finnegan; review final 5th report for file.
Finnegan, M	9-Aug-16	0.6	Deposit sale funds. Set up GIC for excess funds.
Cherniak, S	9-Aug-16	0.5	Update on call with D. Capaldi re performance audit. Update on condo corporation position on repairs to unit 106. Discussion re f/s issues re Capaldi lien.
Cherniak, S	10-Aug-16	0.5	Email from S. D' Amore re update on condo sales and next projected distribution. Update on unit 106 deal and how to structure conditions.
Hooper, L	10-Aug-16	0.1	Banking.
Finnegan, M	10-Aug-16	0.4	Deposit EFT rent payment, Check online banking to ensure GIC purchased.
Flett, D	10-Aug-16	1.6	Draft memo to S. D' Amore on unsold unit and pending sale status, future distributions; call with J. McClelland on unit 106 sale, amendment for water repairs, closing date, other conditions; review unit 106 status and amendment.
Flett, D	11-Aug-16	0.2	Review email from D. Capaldi; emails with J. McClelland re: unit 106.
Finnegan, M	11-Aug-16	1	File Administration. Pay bills
Finnegan, M	12-Aug-16	0.5	Deposit rent cheques and update rent roll.

Staff	Date	Time	Narrative
Flett, D	12-Aug-16	2.2	Call with J. McClelland unit 106 conditional offer, unit 1501 sale status, unit 1501 showing; sign and return unit 106 listing cancellation to J. McClelland; review, sign and return unit 106 mutual release to J. McClelland; update unsold unit and sales schedules; email to D. Capaldi re: unit 106 sale status, repairs and inspector report; review staging invoice; email to M. Greenaway re: F2014 financial statements and amounts charged by Capaldi.
Flett, D	15-Aug-16	0.9	Emails with D. Capaldi re: unit 106 repairs and tenant vacating; review updated rent roll; email D. Capaldi re: unit 103 repairs; call with J. McClelland re: unit 1501 showings, unit 106 enquiries; review unit 106, listings, financial statements.
Finnegan, M	15-Aug-16	0.1	Update rent roll with tenant vacating unit information.
Hooper, L	15-Aug-16	0.2	Banking
Cherniak, S	15-Aug-16	0.8	Emails re condo board items. Update on unit 106 sale being aborted, email to accountant, review of correspondence from Sutts re trial.
Cherniak, S	16-Aug-16	0.3	Update on repairs to unit 103. Reply from D. Capaldi re unit 106 tenant. Discussion re 2007 selling prices re Sasso schedule. Discussion re topics for Capaldi call.
Finnegan, M	16-Aug-16	0.5	Pay bills
Flett, D	16-Aug-16	0.8	Emails with D. Capaldi re: unit 106 tenant, unit 103 repairs; brief review of unit schedule for Valente litigation; review file notes and prepare memo re: issues to review with D. Capaldi.
Flett, D	17-Aug-16	2.4	Review property management arrangements; email to Miller Thomson re: unit 103 repair status and holdback funds; email to D. Capaldi re: unit 806 tenant lease expiry; call with J. McClelland re: unit 1501 conditions, status, possible closing date; start to prepare Receiver's 6th report- background, receiver activities.
Cherniak, S	17-Aug-16	0.9	Call with D. Capaldi re compensation and moving out of unit. Call with S. D' Amore re same. Review of email to Miller Thomson re update on unit 103.
Flett, D	18-Aug-16	0.4	Continue with Receiver 6th report.
Finnegan, M	18-Aug-16	0.3	Deposit rent cheque.
Flett, D	19-Aug-16	0.8	Review rent roll and August rent status; text msg with D. Capaldi re: unit 103 screen door; email with Miller Thomson re: unit 103 repair and release of holdback funds; call with J. McClelland on unit 1602 pending offer; review pending sales/offers.
Cherniak, S	19-Aug-16	0.2	Update on unit 103 holdback. Discussion of possible offer and waiver of conditions next week.
Cherniak, S	22-Aug-16	0.2	Email from D. Capaldi re monthly reporting. Email from Miller Thomson re unit 103.
Finnegan, M	22-Aug-16	0.3	Deposit.
Cherniak, S	23-Aug-16	0.1	Email from Miller Thomson re unit 105 closing.
Cherniak, S	24-Aug-16	0.2	Execute docs for unit 105. Review of email to Miller Thomson re SOA.
Cherniak, S	25-Aug-16	0.1	Request to move up unit 105 closing.

Staff	Date	Time	Narrative
Cherniak, S	26-Aug-16	0.2	Update from J. McClelland on activity. Review of schedule.
Cherniak, S	29-Aug-16	1	Review and discussion of offer on units 1601/1602. Review and execute counter. Review of email re HST on garage on unit 108 sale. Review of welcome package.
Flett, D	29-Aug-16	4	Review unit 105 statement of adjustments and trust and email with Miller Thomson; review emails re: unit 105 closing and text msg to D. Capaldi; review September condo fee payment; review units 1601/1602 offers; prepare units 1601/1602 counter offers and additional conditions; lengthy call with J. McClelland on units 1601/1602 offers and conditions, unit 105 closing, unit 1301 showing, listing status; email with Miller Thomson re: HST on garage #108; review and forward unit 1601 listing agreement; email with M. Greenaway on F2014 financial statements and unit sales composition; forward units 1601/1602 counter offer to J. McClelland; call with J. McClelland on units 1601/1602, unit 105 closing, service elevator and ECC #122 issues; unit 601 repairs.
Flett, D	30-Aug-16	1.8	Email with Miller Thomson on unit 103 holdback funds; review unit 601 repairs; call with J. McClelland on unit 601 repairs, unit 1601 offer, unit 1501 inspection; emails with Royal Lepage, D. Capaldi on repairs to unit 601; email with Miller Thomson on unit 105 closing and text message with D. Capaldi; update inventory and sales schedules for unit 105 closing.
Finnegan, M	30-Aug-16	0.5	Prepare and send condo fee payment.
Cherniak, S	30-Aug-16	0.3	Discussion re repairs to unit 601. Review of emails. Update on unit 105.
Cherniak, S	31-Aug-16	1	Call to Miller Thomson re D' Amore Letter of Credit issue re whether Receiver can pay out fund without holding back for potential settlement. Review of email to Capaldi re ECC #122 sign off on wall issue between units 1601/1602. Discuss, review and execute removal of conditions on unit 1501. Discuss review and execute counters on units 1601/1602.
Finnegan, M	31-Aug-16	0.5	Deposit sale funds.
Flett, D	31-Aug-16	3.8	Emails with D. Capaldi on unit 601 repairs and July reporting and maintenance expenses; review unit 105, unit 103 receipts and update; call with J. McClelland on units 1601/1602 offer status, unit 1501 inspection; detailed email to D. Capaldi on units 1601/1602 offer and structural, ECC #122 considerations; call with J. McClelland on unit 1501 removal of conditions and units 1601/1602 counter offer; review unit 1501 and Garage #8 removal of conditions, forward signed amendments to J. McClelland and update schedules; review revised buyer offers for units 1601/1602, review, and prepare counter offers; forward unit 1601 counter offers to J. McClelland with comments.
Flett, D	1-Sep-16	1.3	Review D. Capaldi emails on unit 1601 offer, July maintenance expenses; email to Miller Thomson with sale documents and tax details for unit 1501 and garage #8; email to D. Capaldi re: fulfillment of unit 1501 conditions and pre-closing repairs; voice mail from and call with J. McClelland re: units 1601/1602 counter offer status.

Staff	Date	Time	Narrative
Cherniak, S	1-Sep-16	0.4	Review of D. Capaldi response re units1601/1602 deal and requirement for advising ECC #122 re construction. Review of email re unit 1501 sale.
Cherniak, S	2-Sep-16	0.3	Review of D. Capaldi response on unit 1501. Deal with counter on units1601/1602.
Flett, D	2-Sep-16	2.4	Review units1601/1602 buyer counter offer; call with J McClelland re: units1601/1602 offer, unfinished unit showing, unit 1401 listing; call with D. Capaldi on monthly property maintenance expenses, review of performance audit and Tarion, ECC #122 improvements to building access, key arrangements on closings; forward accepted units1601/1602 offer to J. McClelland; update sales and unsold unit schedules for units 1601/1602 conditional sales; review rent roll and query.
Flett, D	6-Sep-16	1.3	Email with D. Capaldi on unit 106 rent, units 1601/1602 conditional sale; call with M. Greenaway on F2014 statements, amounts due to Capaldi Corporation; call with J. McClelland on units 1601/1602 conditional sale, unit 1401 listing; review sale accounting; email to J. McClelland re: unit 1401 listing.
Cherniak, S	6-Sep-16	0.2	Review of email to D. Capaldi re sale of units1601/1602. Email re accountant.
Cherniak, S	7-Sep-16	0.4	Review of D. Capaldi email on units 1601/1602. Discussion of approach with Greenaway re Capaldi liens and accounting thereto. Review of email to Greenaway.
Flett, D	7-Sep-16	1.6	Review emails from D. Capaldi on unit 1601 sale, unit 106 rent; review September rents received; email to D. Capaldi re unit 309 last month deposit; email to M Greenaway on amounts invoiced by Capaldi, F2014 financial statements and F2015 information requirements; review September property tax payment and sign cheque; email to Miller Thomson on unit 1501 sale; review property management fees and maintenance expenses.
Finnegan, M	7-Sep-16	0.5	Deposit rent cheques and update rent roll.
Hooper, L	8-Sep-16	0.1	Banking.
Flett, D	8-Sep-16	0.4	Email with D. Capaldi re: unit 309 tenant and call with J. McClelland re: unit 309 tenant October occupancy and amendment to agreement of purchase and sale. Email with J. McClelland re unit 309 amendment and buyer plans.
Flett, D	13-Sep-16	1.2	Email re: unit 104 rent cheque received; call with J. McClelland on unit 309 October tenant issue and closing extension, unit 1401 listing, unit 104 tenant continuation status; email to D. Capaldi re: unit 104 September rent; sign receiver cheques; review draft unit 1501 and garage #8 closing statements and email with Miller Thomson; review unit 1401 listing.
Finnegan, M	13-Sep-16	0.4	Deposit rent cheques.
Cherniak, S	13-Sep-16	0.3	Execute documents for unit 1501. Update on Pinto tenant issue re sale and move out.

Staff	Date	Time	Narrative
Cherniak, S	14-Sep-16	1.1	Update on Pinto situation. Execute sale extension. Review and execute unit 1401 listing. Review of Calderwood email re Tarion. Call with Miller Thomson. Review of Miller Thomson response to Calderwood. Execute T183 re tax return. Review of correspondence from accountant.
Finnegan, M	14-Sep-16	0.8	Email confirming rent payment arrangements re certain units. Update rent roll and deposit payments. Bill payments.
Flett, D	14-Sep-16	2.4	Email with D. Capaldi re: unit 104 September rent; review revised closing statements for unit 1501 and garage #8 and email with Miller Thomson; email with J McClelland re: unit 1501 staging; review revised F2014 financial statements and tax return and email with M. Greenaway re revisions, signed T183; forward unit 1401 listing agreement to J. McClelland and email with D. Capaldi on listing; review unit 309 closing date amendment and Northridge/Tarion bond status; forward unit 309 amendment to J. McClelland; email to D. Capaldi and Miller Thomson re: change to unit 309 closing date; update to sales and unsold unit schedules.
Flett, D	15-Sep-16	1.1	Review D. Capaldi emails; email with Miller Thomson on unit 309 closing; email and call with J. McClelland on photos for unit 1401 listing, unit 1601 conditional status, recent unit 1401 showing, unit 408 amendment; email with M. Greenaway on F2015 statements; email to D. Capaldi re: status of PATS report.
Finnegan, M	15-Sep-16	0.5	Deposit rent cheque and bill payment.
Cherniak, S	15-Sep-16	0.1	Review of email from D. Capaldi.
Cherniak, S	16-Sep-16	0.1	Update from D. Capaldi on Tarion report.
Flett, D	16-Sep-16	1.4	Email with D. Capaldi re: Tarion bond; review unit 408 sale amendment, sign and return to J. McClelland; email to D. Capaldi and Miller Thomson re: unit 408 amendment; voice mail from J. McClelland re: unit 1401 showing; review correspondence re: financial statements and information to be provided to M. Greenaway; run F2015 GL and prepare F2015 only unit sale summary.
Flett, D	19-Sep-16	2.8	Review emails from D. Capaldi; review complete accepted offers for units 1601/1602; review and edit F2015 unit sales summary; review F2015 GL and detailed memo with attachments to M. Greenaway re: F2105 financial statements; lengthy call with J. McClelland on unit 1401 showing, unit 1601 condition status; unit 1401 repair item; unit 1501 closing arrangements; building security upgrades; email to D. Capaldi re: unit 1401 minor water damage repair.
Cherniak, S	19-Sep-16	0.2	Email from D. Capaldi. Review email re f/s.
Flett, D	20-Sep-16	2.2	Email with M. Greenaway on F2015 statements and allocation of condominium costs; review further unit 408 amendment, sign and return to J McClelland; forward further unit 408 amendment, with explanation to Miller Thomson; email with Miller Thomson and text msg to D. Capaldi re: unit 1501 closing; voice mail for J. McClelland re: unit 1501 closing and phone call; update sales and unsold unit schedules for unit 1501 sale; review draft F2015 statements; email to M. Greenaway re: F2015 cash basis and property tax liability.

Staff	Date	Time	Narrative
Flett, D	21-Sep-16	2.4	Review CS wind electronic receipt, and email with D. Capaldi on issue; email with M. Greenaway on property taxes, finalizing F2015 statements and return; review email and call with Miller Thomson re: J. Udell issue; call with J McClelland on unit 806 listing and email to D. Capaldi re: unit 806 tenant and lease expiry; prepare unsold unit schedule for 6th report and updates to draft 6th report; email with Miller Thomson on units 1501/108 commission statements.
Finnegan, M	21-Sep-16	1	Emails to BMO to confirm status of rent funds paid in error by ex-tenant to the Portofino company bank account and arrange return of same. Deposit sale funds.
Cherniak, S	21-Sep-16	0.5	Email from Cassano re Udell. Email to Miller Thomson. Review of response. Update on f/s. Email from D. Capaldi re unit 806.
Cherniak, S	22-Sep-16	0.2	Email from Cassano. Respond.
Flett, D	22-Sep-16	0.8	Review emails from D. Capaldi on several items and reply re: unit 806 tenant; updates to unsold unit schedule; call with J. McClelland on unit 601 repairs; review, sign and return units1601/1602 amendment.
Flett, D	23-Sep-16	0.2	Call with D. Capaldi re: unit 806 listing, tenant
Cherniak, S	23-Sep-16	0.1	Email from Capaldi re Udell.
Cherniak, S	26-Sep-16	1.3	Review of numerous emails re condo board meeting. Review of agenda. Email to D. Capaldi re attendance. Call with D. Capaldi and Cassano re Udell comments. Call with Miller Thomson re same. Execute sale documents for unit 408. Review of updated sales schedules.
Finnegan, M	26-Sep-16	0.5	Prepare and send closing documents. File administration.

67.9 Total Time

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$475	12.5
Finnegan, M	Administrative	London	\$175	9.4
Flett, D	Vice President	London	\$350	45.6
Hooper, L	Estate Administrator	London	\$125	0.4

67.9

TAB "F"

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

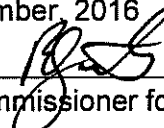
APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

AFFIDAVIT OF TONY VAN KLINK

I, TONY VAN KLINK, of the Municipality of Thames Centre, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner with the law firm of Miller Thomson LLP ("MT"), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the "Receiver") of the property, assets and undertakings of Portofino Corporation and, as such, have knowledge of the matters to which I hereinafter depose.
2. I make this Affidavit in support of the Receiver's motion for, among other things, having the fees and disbursements of MT, as legal counsel to the Receiver, approved.
3. Attached hereto to this my Affidavit and marked as Exhibit "A" are copies of the invoices rendered by MT to the Receiver for fees and disbursements of MT for the period June 21, 2016 through to October 31, 2016 (the "Period"). I affirm that the invoices accurately reflect the services provided by MT during the Period and the fees and disbursements claimed by it. During the Period, the total fees billed were \$27,587.50, the disbursements billed were \$1,953.16, plus H.S.T. in the amount of \$3,822.48. Attached hereto to this my Affidavit and marked as Exhibit "B" is a statement summarizing MT's fees for the Period. Lawyers and staff at MT have collectively expended a total of 83.50 billable hours in connection with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".

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

SWORN before me at the City of London,)
Province of Ontario this 7th day of)
November, 2016)
)
_____)
A Commissioner for taking affidavits.)


_____)
Tony Van Klink

Attached are Exhibits "A" and "B" to the
Affidavit of Tony Van Klink sworn the
7th day of November, 2016



A Commissioner, Etc.

2502461 ONTARIO LTD.

Applicant

PORTOFINO CORPORATION

and

Respondent

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**AFFIDAVIT OF TONY VAN KLINK
SWORN NOVEMBER 7, 2016**

MILLER THOMSON LLP

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

Tony Van Klink LSUC#: 29008M

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B

Tel: 519.931.3534

Fax: 519.858.8511

Email: skettle@millerthomson.com

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

ACCOUNT

September 8, 2016

Invoice Number 2936920

BDO Canada Limited
252 Pall Mall Street
Suite 103
London, ON N6A 5P6
Canada

Attention: Stephen N. Cherniak

TO PROFESSIONAL SERVICES RENDERED in
connection with the following matter including:

Re: Portofino Corporation
Our File No. 082873.0012

Date	Initials	Description	Hours
06/21/2016	AVK	Review correspondence from Mr. Michaud re replacement of BMO LC	0.10
06/22/2016	AVK	Telephone call with Mr. Sasso	0.10
06/22/2016	AVK	Telephone call with and e-mail to Mr. Chandler	0.20
06/22/2016	AVK	Review correspondence from Mr. Morga and Mr. Michaud regarding replacement of LC	0.10
06/22/2016	JL	E-mail correspondence with client regarding new transaction;	0.10
06/23/2016	AVK	E-mail from and to Mr. Sasso re status of Valente action	0.10
06/29/2016	AVK	Telephone call with Mr. Sasso re Valente action	0.40
06/29/2016	AVK	Telephone call with Mr. Sasso re Valente pre trial	0.20
06/30/2016	JL	Revise Statement of Adjustments and Statement of Trust; various e-mail correspondence;	0.50
07/04/2016	JL	E-mail correspondence with purchaser's lawyer regarding closing procedures;	0.30

Date	Initials	Description	Hours
07/04/2016	LK	Obtain Corporate Profile report for Portofino Corporation and provide same to T. Van Klink;	0.10
07/05/2016	ASR	Update regarding closing; Attend to closing of unit;	0.40
07/05/2016	AVK	Reviewing BMO security documents and assignments; e-mail from and to to Mr. Trottier; drafting security opinion	2.60
07/05/2016	JL	E-mail correspondence; revise outgoing couriers; attend to various matters to facilitate closing; review of executed documents received from Purchaser's solicitor; telephone conference with client and purchaser's solicitor;	1.00
07/06/2016	AVK	Working on revisions to Receiver's Fifth report to Court and opinion on BMO mortgage	6.00
07/06/2016	RA	Obtaining parcel register for PIN 01872-0063 and 01872-0167 , together with copies of instruments CE715154, CE715155, CE715156 CE715158, CE715159 and CE715562	0.20
07/06/2016	LK	Obtain Verbal Personal Property Securities Act Printout for Portofino Corporation and provide same to T. Van Klink;	0.20
07/07/2016	ASR	Attend to response to requisitions;	0.20
07/07/2016	AVK	Working on Receiver's Fifth Report and opinion on BMO security	3.20
07/07/2016	AVK	Telephone call with Messrs. Cherniak and Flett re Receiver's Fifth Report	0.40
07/07/2016	AVK	Review pre trial memos for Valente action	0.40
07/07/2016	JL	Review of requisition letter and draft response; prepare all closing documents and correspondence; e-mail correspondence with purchaser's lawyer;	1.50
07/08/2016	AVK	Review Agreement for postponement of construction liens and e-mail to Mr. Trottier thereon	0.20
07/08/2016	AVK	Review parcel registers for sold parcels, e-mails to Mr. Cherniak and clerk thereon	1.20
07/08/2016	RA	Obtaining parcel registers;	0.60
07/08/2016	JL	Review of requisition letter and draft response; prepare all closing documents and correspondence; e-mail correspondence;	1.50
07/11/2016	AVK	Revisions to Receiver's Fifth Report; e-mail to Mr. Sasso re fees affidavit; revisions to and finalizing security opinion	1.80
07/11/2016	SK	Prepare letter to agent re filing receiver's certificate for unit 1101;	0.10

Date	Initials	Description	Hours
07/11/2016	JL	Prepare and fax PIN Correction reports to the Essex Land Registry Office; various e-mail correspondence; revise Applications to include newly registered postponements;	1.00
07/12/2016	AVK	Revisions to Fifth Report and fees affidavit; prepare draft Notice of Motion	0.70
07/13/2016	ASR	Attend to payout;	0.20
07/13/2016	AVK	E-mails to Mr. Cherniak; revise Notice of Motion; review documents re PIN corrections and e-mail to Mr. Cherniak thereon; e-mail to counsel for 250 Ontario; telephone call with Mr. Cherniak; e-mails with Mr. Sasso's office re fees affidavit; finalize motion record and letter to service list	1.50
07/13/2016	JL	E-mail correspondence; prepare outgoing couriers and accounting forms; review of faxed correspondence from LRO regarding PIN corrections; attend to various matters to facilitate closing; review of executed documents from purchasers lawyer;	0.70
07/14/2016	SK	Prepare letter to agent re filing receiver's certificate re Unit 1202;	0.10
07/15/2016	ASR	Telephone attendance regarding new offer; Attend to closing;	0.30
07/15/2016	JL	E-mail correspondence; prepare accounting forms and closing correspondence; attend to various matters to facilitate closing; draft and revise documents; discussions with A. Roth; telephone conference with purchaser's lawyer;	1.20
07/18/2016	JL	Attend to post closing matters; revise Statement of Trust and accounting forms;	0.40
07/19/2016	AVK	Review e-mail from Mr. Trottier regarding postponements, review various instruments, request updated parcel register, telephone call with Mr. Trottier regarding postponements and replacement security under BMO charge, prepare draft order	2.60
07/19/2016	AVK	E-mails to and from clerk regarding deletion of instruments	0.20
07/19/2016	AVK	Telephone call with Mr. Cherniak	0.30
07/19/2016	RA	Obtaining parcel register for PIN 01872-0131	0.10
07/20/2016	AVK	Working on draft order and amended schedule to AVO, prepare Amended Notice of Motion, letter to service list	0.80
07/20/2016	SK	Review motion record; E-mail correspondence from and to Ms. Peterson re Dalfidan; Telephone call to Mr. Cherniak (left voice message);	1.30
07/21/2016	SK	Telephone conference with Mr. Cherniak re Dalfidan;	0.20
07/21/2016	JL	Telephone conference with purchaser's lawyer;	0.20

Date	Initials	Description	Hours
07/22/2016	AVK	Finalize amended schedule to Omnibus AVO, draft Order and Amended Notice of Motion	0.30
07/25/2016	SK	Prepare for motion and review draft order; Meeting with Mr. Van Klink re same; Prepare letter to agent re filing receiver's certificate re Unit 103;	1.00
07/25/2016	JL	Telephone conference with purchaser's lawyer;	0.30
07/26/2016	ASR	Attend to response to requisitions;	0.20
07/26/2016	AVK	Receive and review Order re amended title of proceedings and e-mails thereon	0.10
07/26/2016	SK	Travel to and from Windsor; Review letter re order to continue; Revise draft order; Attend court re Receiver's Fifth Report; Attend at Court office to have order issued and entered;	3.60
07/26/2016	JL	Review of requisition letters and prepare response; draft closing letters and all correspondening documents; discussons with A. Roth; various e-mail correspondence;	2.80
07/27/2016	SK	E-mail correspondence with Mr. Cherniak re order from Fifth Report; Telephone conference with Mr. Cherniak re same; Draft service letter re same; Telephone conference from Bhardwaj law firm re condo closing; Voice message re same; Telephone conference with Ms. Lehman re same; E-mail correspondence from and to Mr. Chandler;	0.70
07/27/2016	JL	Telephone conference with purchaser's lawyer; discussions with S. Kettle & A. Roth; e-mail correspondence;	0.40
07/28/2016	JL	Telephone conference with purchaser's lawyer; revise documents; various e-mail correspondence;	0.60
08/02/2016	AVK	Review motion record to substitute WFCU letter of credit	0.30
08/02/2016	AVK	E-mail from and to Mr. Sasso re motion to replace L/C in Valente litigation	0.20
08/02/2016	JL	E-mail correspondence with purchaser's lawyer; prepare outgoing couriers; finalize documents for registration; attend to various matters to fa ciliate closing; telephone conference with client;	0.90
08/04/2016	SK	Prepare letter to agent re filing receiver's certificate for unit 304;	0.10
08/05/2016	ASR	Attend to closing;	0.30
08/05/2016	JL	Finalize documents for registration; e-mail correspondence;	0.50
08/08/2016	SK	Review materials re Dalfidan;	1.70

Date	Initials	Description	Hours
08/09/2016	SK	Prepare letter to agent re filing receiver's certificate for Unit 601;	0.10
08/09/2016	SK	Review documents re Dalfidan;	2.00
08/22/2016	JL	E-mail correspondence regarding release of holdback;	0.20
08/23/2016	JL	Review of requisition letter and drafter response; prepare Statement of ADjustments and Statement of Trust; e-mail correspondence; draft closing correspondence and documents;	1.40
08/25/2016	JL	E-mail correspondence with client and purchaser's counsel regarding change in closing date;	0.10
08/26/2016	JL	E-mail correspondence with purchaser's lawyer regarding change in closing date;	0.20
08/30/2016	ASR	Attend to closing;	0.30
08/30/2016	JL	E-mail correspondence with client; prepare letter to client releasing holdback funds and corresponding accounting forms;	0.70
08/31/2016	AVK	Telephone call with Mr. Cherniak	0.10

TOTAL HOURS 54.60

OUR FEE: \$19,775.00

Initials	Name	Title	Rate	Hours	Amount
5212 ASR	A. Roth	Partner	365.00	1.90	693.50
5403 AVK	A. Van Klink	Partner	545.00	24.10	13,134.50
5715 SK	S. Kettle	Partner	305.00	10.90	3,324.50
5767 JL	J. Lehman	Clerk	150.00	16.50	2,475.00
5790 LK	L. Klassen	Clerk	140.00	0.10	14.00
5790 LK	L. Klassen	Clerk	105.00	0.20	21.00
5721 RA	R. Armstrong	Clerk	125.00	0.90	112.50

TAXABLE DISBURSEMENTS

Parking	3.32	
Couriers	153.28	
Mileage/Parking	84.96	
Certificate of Status	26.00	
Corporate or Securities file searches	8.00	
Agent's Fees	159.60	
Online Searches - Teranet	1,236.35	
PPSA Registration	8.00	
Process Server Fees	25.00	
TOTAL TAXABLE	1704.51	\$1,704.51

NON-TAXABLE DISBURSEMENTS

Miscellaneous - Non Taxable	10.00	
Issue Notice of Motion	127.00	
TOTAL NON-TAXABLE	<u>137.00</u>	\$137.00

TOTAL FEES AND DISBURSEMENTS: \$21,616.51

Harmonized Sales Tax (R119440766)

On Fees	\$2,570.75
On Disbursements	\$221.59

TOTAL AMOUNT DUE: \$24,408.85

E.&O.E.



MILLER THOMSON LLP
MILLERTHOMSON.COM

ONE LONDON PLACE + 255 QUEENS AVENUE, SUITE 2010
LONDON, ON + N6A 5R8 + CANADA

T 519.931.3500
F 519.858.8511

September 8, 2016

Invoice Number 2936920

BDO Canada Limited
252 Pall Mall Street
Suite 103
London, ON N6A 5P6
Canada

Attention: Stephen N. Cherniak

Re: **Portofino Corporation**

ACCOUNT SUMMARY AND REMITTANCE FORM

FEES:	\$19,775.00
DISBURSEMENTS:	\$1,841.51
TAX ON FEES:	\$2,570.75
TAX ON DISBURSEMENTS:	\$221.59
TOTAL AMOUNT DUE:	<u>\$24,408.85</u>

Reference No. 082873.0012

Please return the Account Summary and Remittance Form with Payment
Terms: Accounts due when rendered. Interest at the rate of 1.30% per annum will be charged on
accounts overdue 30 days or more in accordance with the Solicitors Act. Any disbursements not
posted to your account on the date of this account will be billed later.



MILLER THOMSON LLP
ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
LONDON, ON N6A 5R8
CANADA

T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

ACCOUNT

November 2, 2016

Invoice Number 2959849

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3

Canada

Attention: Stephen N. Cherniak

TO PROFESSIONAL SERVICES RENDERED in
connection with the following matter including:

Re: Portofino Corporation
Our File No. 082873.0012

Date	Initials	Description	Hours
09/02/2016	SK	Review letter from Mr. Alexiou; Telephone call to Mr. Alexiou (left voice message);	0.20
09/08/2016	SK	Prepare letter to agent re filing receiver's certificate for unit 103;	0.10
09/08/2016	JL	E-mail correspondence with client regarding upcoming transactions;	0.20
09/12/2016	SK	Received voice message from Mr. Alexiou; Telephone call to Mr. Alexiou (left voice message);	0.10
09/12/2016	JL	E-mail correspondence with purchaser's lawyer regarding upcoming transaction;	0.30
09/13/2016	JL	Review of requisition letter and draft response; prepare Statement of Adjustments, Statement of Trust, closing documents and correspondence; various e-mail correspondence;	2.20
09/14/2016	AVK	E-mail from Mr. Calderwood, telephone call with Mr. Cherniak thereon and respond to same	0.30



Date	Initials	Description	Hours
09/14/2016	JL	Revise Statement of Adjustments and Statement of Trust; e-mail correspondence with client and purchaser's lawyer;	0.30
09/15/2016	ASR	Attend to closing documents and response to requisitions;	0.20
09/20/2016	ASR	Attend to discharges;	0.20
09/20/2016	JL	E-mail correspondence with purchaser's solicitor; prepare Applications for registration and outgoing couriers; attend to various matters to facilitate closing; draft accounting forms; review of executed documents received from purchaser's solicitor;	0.90
09/21/2016	AVK	E-mails from and to Mr. Cherniak and telephone call with Mr. Flett regarding Mr. Udell, telephone call to Mr. Udell	0.20
09/21/2016	AVK	Telephone call with Mr. Udell and e-mail to receiver thereon	0.30
09/21/2016	SK	Prepare letter to agent to file receiver's certificate for unit 105;	0.10
09/22/2016	JL	Draft final reports;	1.70
09/23/2016	SK	Prepare letter to agent re filing receiver's certificates for unit 1501 and parking unit 108;	0.10
09/26/2016	ASR	Response to requisitions;	0.20
09/26/2016	AVK	Telephone call with Mr. Cherniak	0.40
09/26/2016	JL	Review of documents received from client; telephone conference with purchaser's solicitor; review of requisition letter and draft response along with closing documents and correspondence;	1.50
09/27/2016	ASR	Attend to closing letter;	0.20
09/27/2016	JL	Draft and revise correspondence to purchaser's solicitor and prepare all closing documents and correspondence; e-mail correspondence with client and purchaser's solicitor;	1.70
09/28/2016	JL	E-mail correspondence regarding payment of common expenses;	0.20
10/03/2016	ASR	Attend to multiple closings;	0.30
10/03/2016	JL	Prepare outgoing couriers; e-mail correspondence; finalize Applications for registrations; attend to various matters to facilitate closing; telephone conference with purchasers solicitor; review of faxed correspondence and executed documents;	1.40
10/04/2016	SK	Prepare letter to agent re filing receiver's certificates for units 104 and 408;	0.10



Date	Initials	Description	Hours
10/11/2016	ASR	Attend to payout;	0.20
10/12/2016	SK	Review brief received from Mr. Alexiou;	1.80
10/13/2016	SK	Review plaintiff's brief; Review client documents; Review litigation materials; Research;	6.90
10/14/2016	ASR	Telephone attendance on B. Flett regarding late waiver notice;	0.20
10/14/2016	SK	Voice message from Goldman Sloan re viewing unit; Telephone call to Goldman Sloan re same;	0.10
10/14/2016	SK	Review documents and plaintiff's brief; Consider law; Telephone call to Mr. Alexiou (left voice message);	1.20
10/19/2016	AVK	Review Offer to Settle from Valente litigation and e-mail to Mr. Cherniak thereon	0.10
10/19/2016	AVK	Telephone call with Mr. Cherniak and e-mail to Mr. Sasso re Valente settlement offer	0.10
10/19/2016	SK	Voice message from Mr. Alexiou;	0.10
10/20/2016	SK	Telephone call to Mr. Alexiou (left voice message);	0.40
10/20/2016	JL	Review of requisition letter and draft response; prepare closing documents and correspondence; draft Application; prepare Statement of Adjustments and Statement of Trust and corresponding accounting forms; e-mail correspondence; review of Agreement of Purchase and Sale;	1.60
10/25/2016	AVK	Review BMO charge and consider LC security issue, e-mail to Mr. Cherniak thereon	1.50
10/26/2016	AVK	E-mail to Mr. Sasso	0.10
10/26/2016	AVK	Telephone call with Mr. Cherniak	0.20
10/26/2016	SK	E-mail correspondence from Mr. Van Klink re Sixth Report;	0.10
10/31/2016	SK	E-mail correspondence to and from Mr. Flett re Sixth report; Work on motion for Sixth report;	0.90

TOTAL HOURS 28.90

OUR FEE: \$7,812.50

	Initials	Name	Title	Rate	Hours	Amount
5212	ASR	A. Roth	Partner	365.00	1.50	547.50
5403	AVK	A. Van Klink	Partner	545.00	3.20	1,744.00
5715	SK	S. Kettle	Partner	305.00	12.20	3,721.00



MILLER THOMSON
AVOCATS | LAWYERS

Page 4
Invoice 2959849

	Initials	Name	Title	Rate	Hours	Amount
5767	JL	J. Lehman	Clerk	150.00	12.00	1,800.00

TAXABLE DISBURSEMENTS

Couriers	51.65	
Agent's Fees	60.00	
TOTAL TAXABLE	<u>111.65</u>	\$111.65

TOTAL FEES AND DISBURSEMENTS: \$7,924.15

Harmonized Sales Tax (R119440766)

On Fees	\$1,015.63
On Disbursements	\$14.51

TOTAL AMOUNT DUE: \$8,954.29

E.&O.E.

EXHIBIT "B"
Miller Thomson's Fees

Hours	Year of Call	Inv.#2936920		Inv.#2959849		Total
		September 8, 2016	November 2, 2016	September 8, 2016	November 2, 2016	
S. Kettle	2007		10.90		12.20	23.10
T. Van Klink	1988	\$305.00	24.10		3.20	27.30
A. Roth	2004	\$365.00	1.90		1.50	3.40
J. Lehman - clerk	N/A	\$150.00	16.50		12.00	28.50
L. Klassen -clerk	N/A	\$140.00	0.10		0.00	0.10
L. Klassen - clerk	N/A	\$105.00	0.20		0.00	0.20
R. Armstrong - clerk	N/A	\$125.00	0.90		0.00	0.90
			54.60		28.90	83.50

Total \$	Year of Call	Inv.#2936920		Inv.#2959849		Total
		September 8, 2016	November 2, 2016	September 8, 2016	November 2, 2016	
S. Kettle	2007	\$3,324.50		\$3,721.00		\$7,045.50
T. Van Klink	1988	\$13,134.50		\$1,744.00		\$14,878.50
A. Roth	2004	\$693.50		\$547.50		\$1,241.00
J. Lehman - clerk	N/A	\$2,475.00		\$1,800.00		\$4,275.00
L. Klassen - clerk	N/A	\$14.00		\$0.00		\$14.00
L. Klassen - clerk	N/A	\$21.00		\$0.00		\$21.00
R. Armstrong - clerk	N/A	\$112.50		\$0.00		\$112.50
		\$19,775.00		\$7,812.50		\$27,587.50

Summary			
Fees		\$19,775.00	\$7,812.50
Disbursements		\$1,841.51	\$111.65
HST		\$2,792.34	\$1,030.14
Total		\$24,408.85	\$8,954.29
			\$33,363.14

TAB “G”

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

AFFIDAVIT OF WILLIAM V. SASSO

I, WILLIAM V. SASSO, of the City of Windsor, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner with the law firm of Sutts, Strosberg LLP ("SS"), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the "Receiver") of the property, assets and undertakings of Portofino Corporation in respect of Ontario Superior Court of Justice action no. CV-05-5864CM being the claim by Remo Valente Real Estate (1990) Limited v. Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante J. Capaldi ("Valente contract claim") and, as such, have knowledge of the matters to which I hereinafter depose.
2. I make this Affidavit in support of the Receiver's motion for, among other things, having the fees and disbursements of SS, as legal counsel to the Receiver in the Valente contract claim, approved.
3. Attached hereto to this my Affidavit and marked as Exhibit "A" is a copy of the invoice rendered by SS to the Receiver for fees and disbursements for the period from July 6, 2016 through to November 6, 2016 (the "Period"). I affirm that the invoice accurately reflects the services provided by SS during the Period and the fees and disbursements claimed by it.

THE ATTACHED IS EXHIBIT A TO THE
AFFIDAVIT OF WILLIAM V. SASSO
SWORN BEFORE ME THIS 8th DAY OF
NOVEMBER, 2016



Commissioner for Taking Affidavits



SUTTS, STROSBERG

LAWYERS

www.strosbergco.com

600-251 Goyeau Street
Windsor, ON N9A 6V4
519.258.9333Stephen N. Cherniak
BDO Canada Limited, Court Appointed Receiver
of Portofino Corporation
BDO Canada Limited
252 Pall Mall Street, Suite 103
London, ON
N9A 5P6

November 8, 2016

Our File No.: 76160002
Bill No.: 42025
H.S.T. Reg. #: 12276 8955 R10001

PLEASE RETURN ONE COPY OF OUR ACCOUNT WITH YOUR PAYMENT

Portofino Riverside Tower Inc. et al as Remo Valente Real Estate (1990) Limited

TO FEES FOR ALL PROFESSIONAL SERVICES RENDERED and costs incurred in connection with the above file and matter, including those items, the particulars of which are set forth in the schedule annexed hereto.

OUR FEE: \$ 19,000.00

DISBURSEMENTS

Colour Photocopies	\$	24.00
Courier Service		15.88
Facsimile		2.00
Imaging		65.25
Local Registrar		30.00
Long Distance Telephone		0.20
Photocopies		176.25
Postage		2.38
Search Fees & Disbursements		217.60
Sundry Disbursements		41.95
Witness Fees		64.88
Total Disbursements Billed		640.39
Total Fees and Disbursements		19,640.39
H.S.T.		2,553.26
BALANCE DUE AND OWING	\$	22,193.65

SUTTS, STROSBERG

Stephen N. Cherniak

BDO Canada Limited

252 Pall Mall Street, Suite 103

London, ON

N9A 5P6

THIS ACCOUNT IS DUE WITHIN 30 DAYS OF THE DATE OF ISSUANCE. INTEREST WILL BE CHARGED AT THE RATE OF 20% PER ANNUM ON UNPAID FEES, CHARGES AND DISBURSEMENTS, CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS STATEMENT IS DELIVERED.

SUTTS, STROSBERG

LAWYERS

www.strosbergco.com

Particulars of time for matter 76160002 to November 6, 2016 for Bill 42025

DATE	IND	ACTIVITY PERFORMED	HOURS
06/JUL/16	WVS	REVIEW AND REPORT ON FOLLOW UP INFORMATION REQUEST FROM GOLDBERG AND CAPALDI	0.20
15/JUL/16	WVS	REVIEW LETTER FROM PHILIP S. CHANDLER ATTACHING MOVING PARTY'S MOTION RECORD RETURNABLE AUGUST 2, 2016 (MOTION OF PROPOSED INTERVENOR, 2502461 ONTARIO LTD./SCOTT D'AMORIS)	0.10
19/JUL/16	CJA	REVIEW NOTICE OF MOTION FROM CHANDLER RE INTERVENTION, REVIEW KP, SEEK INSTRUCTIONS FROM VAN KLINK AS TO INVOLVEMENT	1.50
20/JUL/16	CJA	REVIEW FILE, MORGA COMMUNICATIONS, INSTRUCTIONS RE ATTENDANCE	0.30
20/JUL/16	WVS	REVIEW LETTER FROM GINO MORGA	0.10
27/JUL/16	WVS	RECEIPT OF MOTION CONFIRMATION FORM FROM PHILIP S. CHANDLER	0.10
29/JUL/16	WVS	FILE REVIEW; REVIEW OF REASONS OF THOMAS J.; REVIEW OF MOVING PARTY'S MOTION RECORD RE FURTHER REPLACEMENT OF LETTER OF CREDIT; TELEPHONE CONFERENCE WITH PHIL. CHANDLER; NOTES TO TONY VAN KLINK; FOLLOW UP ON UPDATED INFORMATION FROM CAPALDI AND JERRY GOLDBERG	1.20
15/SEP/16	WVS	REVIEW E-MAIL FROM THE SUPERIOR COURT OF JUSTICE (1:30 P.M.)	0.10
13/OCT/16	WVS	CONFERRING WITH RYAN SOLCZ, REVIEW AND PREPARATION FOR TRIAL.	1.50
15/OCT/16	RS	REVIEW TRIAL COURT, DIVISIONAL COURT, AND COURT OF APPEAL DECISIONS	3.10
17/OCT/16	RS	FILE REVIEW IN PREPARATION FOR MEETING ON FRIDAY	1.50
18/OCT/16	RS	REVIEW ACCOUNTING EVIDENCE (PRICES OF SALES, EXTRAS, COMMISSIONS, PROPERTIES UNSOLD)	3.00
19/OCT/16	WVS	REVIEW LETTER FROM GINO MORGA	0.10
19/OCT/16	RS	REVIEW OFFER TO SETTLE; EMAIL CORRESPONDENCE	0.20
20/OCT/16	WVS	FILE REVIEW; PREPARATION FOR TRIAL.	1.50
21/OCT/16	WVS	REVIEW E-MAIL FROM STEPHEN CHERNIAK (4:47 P.M.)	0.10
21/OCT/16	WVS	REVIEW E-MAIL FROM STEPHEN CHERNIAK (3:59 P.M.)	0.10
21/OCT/16	WVS	TELEPHONE CALL TO TONY VAN KLINK, MESSAGE LEFT.	0.10
21/OCT/16	WVS	CONFERRING WITH RYAN SOLCZ REGARDING RECORDS OF SALE.	1.00
21/OCT/16	WVS	MEETING WITH DR. DANTE CAPALDI AND RYAN SOLCZ PREPARATION FOR TRIAL.	2.50
21/OCT/16	WVS	TELEPHONE CALL TO STEPHEN CHERNIAK MESSAGE LEFT; TELEPHONE CONFERENCE WITH STEPHEN CHERNIAK UPDATE ON DEVELOPMENTS, RECEIVING INSTRUCTIONS REGARDING SETTLEMENT; RECEIPT AND REVIEW OF ADDITIONAL SALES RECORDS.	0.40
21/OCT/16	RS	MEETING WITH DR. CAPALDI; CORRESPONDENCE TO ARRANGE TIME FOR MEETING NEXT DAY TO OBTAIN BUSINESS MEETING MINUTES	2.60
22/OCT/16	RS	OBTAIN CORPORATE MINUTES FROM DR. CAPALDI; REVIEW CORPORATE MINUTES	1.00
22/OCT/16	RS	REVIEW EMAIL CORRESPONDENCE	0.10
23/OCT/16	WVS	REVIEW OF RECORDS OF ADDITIONAL UNIT SALES, REVIEW OF PRIOR REPORTS ON ASPECT OF CONTRACT DAMAGE CLAIM.	1.50
24/OCT/16	WVS	REVIEW E-MAIL FROM DR. DANTE J. CAPALDI (4:48 A.M.)	0.10
24/OCT/16	WVS	CONTINUING PREPARATION FOR TRIAL; CONFERENCE WITH RYAN SOLCZ REGARDING UPDATE ON SALES SCHEDULE; TELEPHONE CALL TO JULIA MCCLELLAND FROM BOB PEDLER REAL ESTATE LIMITED DISCUSSING MARKET CONDITIONS, EXPERIENCE IN THE SALE OF CONDO UNITS; TELEPHONE CALL TO GINO MORGA, MESSAGE LEFT.	2.00
24/OCT/16	RS	MEET WITH BILL SASSO; EMAIL CORRESPONDENCE	0.50
25/OCT/16	WVS	TELEPHONE DISCUSSIONS WITH GINO MORGA (3); INTERNAL DISCUSSIONS REGARDING PROPERTY SALES AND PREPARATION FOR TRIAL. UPDATE OF SCHEDULE OF SALES.	1.50
25/OCT/16	RS	REVIEW CORRESPONDENCE FROM/TO RECEIVER, TRIAL TRANSCRIPTS, UPDATE EXCEL CHART PER INSTRUCTIONS	4.10
26/OCT/16	WVS	REVIEW E-MAIL FROM DR. DANTE CAPALDI (4:29 A.M.)	0.10
26/OCT/16	WVS	REVIEW E-MAIL FROM STEPHEN CHERNIAK (8:52 A.M.)	0.10
26/OCT/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (9:59 A.M.)	0.10

SUTTS, STROSBERG

LAWYERS

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Particulars of time for matter 76160002 to November 6, 2016 for Bill 42025

DATE	IND	ACTIVITIES PERFORMED	HOURS
26/OCT/16	WVS	REVIEW AND UPDATE OF SALES CHART; REVIEW OF PLEADINGS AND RECORDS; PREPARATION FOR TRIAL; TELEPHONE CALL TO RYAN SOLCZ AND CONFERENCE WITH RYAN SOLCZ REGARDING UPDATED SALES RECORDS.	1.50
26/OCT/16	WVS	NOTES TO STEPHEN CHERNIAK, TONY VANKLINK REGARDING SALE OF REMAINING UNITS. PROVIDING INFORMATION FOR RECEIVER REPORT TO COURT.	0.40
26/OCT/16	RS	REVIEW AND UPDATE CHARTS; REVIEW EMAIL CORRESPONDENCE; RETRIEVE AND PRINT CASE LAW FOR REVIEW PER WILLIAM SASSO'S INSTRUCTIONS	6.90
27/OCT/16	RS	SEARCH MLS LISTING; EMAIL STEPHEN CHERNIAK RE: MLS LISTING AGREEMENT; REVIEW CASE LAW; UPDATE AND REVIEW CHARTS	2.00
28/OCT/16	WVS	REVIEW CORRESPONDENCE FROM GINO MORGA (2:47 P.M.)	0.10
28/OCT/16	WVS	REVIEW E-MAIL FROM GINO MORGA (3:22 P.M.)	0.10
28/OCT/16	RS	READ AND SUMMARIZE RECEIVER REPORTS ON REALIZATION PROCESS; REVIEW EMAIL CORRESPONDENCE; UPDATE EXCEL CHARTS; SEND CHARTS TO CLIENT AND OTHERS VIA EMAIL FOR THEIR REVIEW	6.60
03/NOV/16	WVS	RECEIPT AND REVIEW OF PROPOSED PRODUCTIONS OF VALENTE; REVIEW OF TRANSCRIPTS AND PREPARATION FOR TRIAL; INTERNAL DISCUSSIONS.	2.00
04/NOV/16	WVS	REVIEW OF PRIOR RULINGS; CONTINUING REVIEW OF PROPOSED PRODUCTIONS; INTERNAL DISCUSSIONS REGARDING TRIAL PREPARATION; ONGOING PREPARATION FOR TRIAL.	2.50
06/NOV/16	WVS	PREPARATION FOR TRIAL.	3.00


SUTTS, STROSBERG LAWYERS

www.strosbergco.com

Summary of work for matter 76160002 to November 6, 2016 for Bill 42025 by Individual within Category

INIT	INDIVIDUAL	HOURS	AVG RATE	AMOUNT
Category 1				
CJA	Craig J. Allen	1.80	350.00	630.00
WVS	William V. Sasso	24.10	500.00	12,050.00
RS	Ryan Solcz	31.60	200.00	6,320.00
Subtotal for category 1		57.50		19,000.00
Total for all individuals		57.50	330.43	19,000.00

THE ATTACHED IS EXHIBIT B TO THE
AFFIDAVIT OF WILLIAM V. SASSO
SWORN BEFORE ME THIS 8th DAY OF
NOVEMBER, 2016


Commissioner for Taking Affidavits

Sufits Strossberg's Fees

	<u>Rate 2016</u>	<u>Inv.#42025</u> <u>November 8, 2016</u>	<u>Total</u> <u>Invoices</u>
Hours			
Craig J.Allen	\$350.00	1.80	1.80
William V. Sasso	\$500.00	24.10	24.10
Ryan Solcz	\$200.00	31.60	31.60
		<u>57.50</u>	<u>57.50</u>
Total \$			
Craig J.Allen	\$350.00	\$630.00	\$630.00
William V. Sasso	\$500.00	\$12,050.00	\$12,050.00
Ryan Solcz	\$200.00	\$6,320.00	\$6,320.00
		<u>\$19,000.00</u>	<u>\$19,000.00</u>
Summary			
Fees		\$19,000.00	\$19,000.00
Disbursements		\$640.39	\$640.39
HST		\$2,553.26	\$2,553.26
Total		<u>\$22,193.65</u>	<u>\$22,193.65</u>

2502461 ONTARIO LTD.

PORTOFINO CORPORATION

Court File No. CV-13-19866

and

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**AFFIDAVIT OF WILLIAM V. SASSO
SWORN NOVEMBER 2, 2016**

MILLER THOMSON LLP

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

Tony Van Klink LSUC#: 29008M

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B

Tel: 519.931.3534

Fax: 519.858.8511

Email: skettle@millerthomson.com

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

TAB “H”



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
LONDON, ON N6A 5R8
CANADA

T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

November 7, 2016

Delivered via E-mail (original by mail)

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3

Attention: Stephen N. Cherniak, CPA, CA,
CIRP

Tony Van Klink
Direct Line: 519.931.3509
tvanklink@millerthomson.com

File: 082873.0012

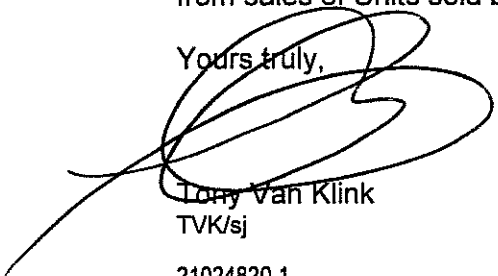
Dear Sir:

Re: Portofino Corporation

We refer to our opinion dated July 11, 2016 (the "July 11th Opinion"). Unless otherwise indicated, defined terms herein have the same meaning as in the July 11th Opinion.

We confirm that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Units sold by the Receiver from July 11, 2016 to November 2, 2016.

Yours truly,


Tony Van Klink
TVK/sj

21024820.1

2502461 ONTARIO LTD.

and

PORTOFINO CORPORATION

Respondent

Court File No.: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD
(RETURNABLE NOVEMBER 29, 2016)**

MILLER THOMSON LLP

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

Tony Van Klink LSUC#: 29008M

Tel: 519.931.3509

Sherry A. Kettle, LSUC #53561B

Tel: 519.931.3534

Fax: 519.858.8511

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