

Court File No.: CV-23-00694646-00CL

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.**

Respondents

**MOTION RECORD OF THE RECEIVER,
BDO CANADA LIMITED**

May 13, 2024

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Court File No.: CV-23-00694646-00CL

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.**

Respondents

NOTICE OF MOTION

BDO Canada Limited (the “**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) over Dundas Shorncliffe Limited Partnership and its General Partner, Dundas Shorncliffe Ltd. (collectively the “**Debtor**”) will make a motion to a Judge presiding over the Ontario Superior Court of Justice (Commercial List) on May 15, 2024 at 12:00 p.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

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

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

The motion is to be heard by videoconference, details of which are to be provided by the Court.

THE MOTION IS FOR:

1. An Order substantially in the form of the draft Order attached at Tab 3 of the Motion Record (the “**Sale Process Order**”), among other things:
 - (a) if necessary, abridging the time for service of the Notice of Motion and Motion Record herein and dispensing of service thereof;
 - (b) approving the First Report of the Receiver dated May 10, 2024 (the “**First Report**”) and the Receiver’s activities described therein;
 - (c) approving the sale and investment solicitation process (“**SISP**”);
 - (d) approving the asset purchase agreement made as of May 10, 2024 (the “**Stalking Horse Sale Agreement**” of “**Stalking Horse Bid**”), among the Receiver as Vendor and Centurion Acquisition Corporation, in trust for a corporation to be incorporated (the “**Stalking Horse Bidder**”) as purchaser, solely for the purpose of acting as the stalking horse bid in the SISP;
 - (e) sealing the confidential appendices to the First Report contained in the Supplementary Motion Record dated May 13, 2024 (the “**Confidential Appendices Report**”); and
 - (f) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:**Background**

1. Pursuant to the Order of Justice Kimmel dated August 4, 2023 (the “**Appointment Order**”) BDO was appointed as Receiver of the Debtor pursuant to section 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”) and section 101 of the *Courts of Justice Act* (“**CJA**”). The Appointment Order did not become effective until March 26, 2024 as described below.

2. Dundas Shorncliffe Limited Partnership is an Ontario limited partnership and the owner of the property with municipal address 5507 and 5509 Dundas Street West, Etobicoke, Ontario (the “**Property**”). Dundas Shorncliffe Ltd. (“**Dundas**”) is the General Partner of Dundas Shorncliffe Limited Partnership, with its head office located in Toronto, Ontario. Dundas Shorncliffe Ltd. was previously known as 2727400 Ontario Corp. but changed its name effective June 8, 2021.

3. The Debtor’s primary asset is the Property which is an assembly of two separate parcels of land on Dundas Street West in Etobicoke, Ontario. The Borrower acquired the parcels that make up the Property in December 2019, and planned to construct a 22-storey, condominium-style rental project on the Property (the “**Project**”). The Property is a pre-construction proposed mixed purpose residential and retail development but is currently zoned for residential rental units. The Project is still at the site plan application stage, the application fee has been partially paid and an application for shoring, excavation and site clearing can now be made.

4. To date, the Borrower has not commenced construction of the Project, however, the Debtor has expended monies toward the “soft costs” associated with the Project.

Centurion Security, Other Secured Parties, and Debtor’s Breach

5. The Applicant, Centurion Mortgage Capital Corporation (“**Centurion**”) has loaned the principal sum of \$16,111,912.00 to the Debtor for land acquisition and pre-development purposes (the “**Loan**”). The loan was guaranteed by Dundas Shorncliffe Ltd. (formerly 2727400 Ontario Corp.), Contessa Developments Inc. and Karsten von Wersebe (collectively the “**Guarantors**”). Centurion’s charge against the Real Property was registered on December 23, 2019 for the principal amount of \$11 million.

6. For ease of reference, set out below is a summary of the charges that are registered against the Real Property by parcel identification number:

PIN#	Secured Creditor	Instrument	Charge
07550-0051	Centurion Mortgage Capital Corporation	AT5328801	\$11,000,000
07550-0051	Pesciolino Holdings Inc.	AT5328806	\$3,050,000
07550-0051	Mapleview Pear Tree Inc.	AT5978724	\$1,337,500
07550-0052	Pesciolino Holdings Inc.	AT5328799	\$5,000,000
07550-0052	Centurion Mortgage Capital Corporation	AT5328801	\$11,000,000
07550-0052	Pesciolino Holdings Inc.	AT5328806	\$3,050,000
07550-0052	Mapleview Pear Tree Inc.	AT5978724	\$1,337,500

7. Pesciolino Holdings Inc. (“**Pesciolino**”) is a secured creditor of the Debtor, Pesciolino has:

- (a) two mortgages registered against the property with municipal address 5507 Dundas Street West, Etobicoke, ON (“**5507**”): a first-ranking mortgage in the amount of \$5,000,000 with instrument number AT5328799 and a third-ranking mortgage in the amount of \$3,050,000 with instrument number AT5328806; and
- (b) a second-ranking mortgage in the amount of \$3,050,000 with instrument AT5328806 against the property with municipal address 5509 Dundas Street, West, Etobicoke, ON (“**5509**”).

8. Pesciolino’s first ranking mortgage on 5507 was in the form of a vendor take-back mortgage. The second ranking mortgage on both 5507 and 5509 is a result of a Density and Zoning Bonus owed to Pesciolino by the Debtor.

9. Pesciolino entered into a Subordination and Standstill Agreement with Centurion and the Debtor in respect of charge bearing instrument number AT5328806 which prevents Pesciolino from enforcing this mortgage without first having obtained the written consent of Centurion.

10. There is also a third-ranking charge on 5509 and a fourth-ranking charge on 5507 in the amount of \$1,337,500 in favour of Mapleview Pear Tree Inc. and registered as instrument number AT5978724 on both properties. This falls behind Centurion’s priority.

11. The Debtor is in breach of the terms of the Loan by: (i) failing to fully repay the indebtedness owing to Centurion on its maturity date; (ii) failing to make property tax payments when due and (iii) failure to pay or perform any covenants or agreements under the Loan. Centurion is owed \$20,046,375.00 as of April 30, 2024, plus accruing interest at a per diem rate of \$10,473.03, costs and disbursements.

Centurion Appointed Private Receiver and Prior Court Orders in Receivership Proceedings

12. Centurion initially applied for the appointment of a Receiver over the Debtor's assets in March 2023. In the Endorsement dated March 30, 2023, Justice Kimmel confirmed, among other things, the following:

- (a) the Debtor had until Tuesday April 11, 2023 to pay in a lump sum to Centurion the per diem interest on the Loan of \$9,252.68/day commencing March 30 through to and including April 30, 2023;
- (b) if the Debtor provided the interest payment contemplated in paragraph (a) above, the application was to be adjourned to April 28, 2023, at which time the application would proceed unless the Debtor had secured an alternative transaction that causes Centurion to agree to further adjourn or withdraw its application.

13. On April 28, 2023, Centurion and the Debtor agreed to adjourn the receivership application to June 1, 2023 on specific terms, as set out in the Endorsement of Justice Conway dated April 28, 2023 (the "**Conway Endorsement**"), which included, among other things:

- (a) Centurion may appoint BDO as a private receiver (in such capacity, the "**Private Receiver**") of the Debtor. In the event BDO is appointed as Private Receiver, BDO may take all the necessary steps to prepare the Property for sale, including retaining Avison Young Commercial Real Estate Services, LP ("**AY**") as broker to conduct the sale of the Property. However, notwithstanding its appointment, neither BDO nor its agents or realtors will actively market (or pre-market) the sale of the Property, including listing the Property for sale until after June 1, 2023;
- (b) in the event of a private appointment of BDO, the Applicant, BDO, and their agents and employees shall keep all information relating to the private appointment

confidential and such information shall not be disseminated to any third party, with the exception of a duly retained real estate agent. This confidentiality obligation extended to any realtor retained by BDO or the Applicant.

14. BDO was appointed as Private Receiver over the Debtor's assets on May 3, 2023. In accordance with the Conway Endorsement, BDO did not file the statutory receivership notices pursuant Section 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* to keep its appointment as Private Receiver confidential.

15. Pursuant to the Endorsement of Justice Osborne, dated June 2, 2023 (the "**Osborne Endorsement**"), the receivership application was adjourned on specific terms as set out in the Osborne Endorsement, which included, among other things:

- (a) continuation of BDO's appointment as Private Receiver of the Debtor with the power to market and list the Property for sale with a commercial realtor; and
- (b) neither BDO or its agents or realtors will accept and enter into an agreement of purchase and sale for the Property until the conclusion of the marketing period set forth in the Pre-Filing Report, and in any event not before June 20, 2023.

16. Pursuant to the Endorsement of Madam Justice Steele dated June 21, 2023 (the "**Steele Endorsement**") the receivership application was again adjourned on specific terms as set out in the Steele Endorsement, which included among other things:

- (a) continuation of BDO's appointment as Private Receiver of the Debtor with the power to market and list the Property for sale with a commercial realtor; and
- (b) neither BDO or its agents or realtors will accept and enter into an agreement of purchase and sale for the Property until after July 14, 2023.

17. Pursuant to the Endorsement of Justice Kimmel dated August 4, 2023 (the "**Kimmel Endorsement**") the Appointment Order was granted on the following terms:

- (a) The Appointment Order sought by Centurion shall be granted in the form uploaded to Caselines;

- (b) Notwithstanding the granting of the Appointment Order on August 4, 2023, the Appointment Order shall not be in force or effect until
 - (i) After 9:00 a.m. on Monday, August 14, 2023; and
 - (ii) Centurion has delivered an affidavit to both the Receiver and counsel for the Respondents attesting to the fact that the indebtedness owed to the Applicant remains unpaid as of 9:00 a.m. on Monday August 14, 2023;
- (c) In the event that Centurion receives full payment, the Appointment Order shall be null and void and shall never become effective;
- (d) The Receiver is not permitted to enter into an agreement of purchase and sale in respect of the Property until the Appointment Order is in force and effect in accordance with paragraph (b) above.

18. Following the Kimmel Endorsement, Centurion continued to work with the Debtor to afford it time to secure alternative financing which efforts ultimately failed. Contemporaneously, the Private Receiver listed the Property for sale with AY which resulted in the Private Receiver receiving two offers for the Property for consideration as discussed below.

19. In the circumstance, an affidavit was sworn by Bob Vavaroutsos dated March 26, 2024 (the “**Vavaroutsos Affidavit**”) on behalf of Centurion confirming that the Debtor did not repay the indebtedness owing to Centurion and advised the Receiver and the Debtor of the status of the indebtedness. Consequently, the Appointment Order became effective on the date the Vavaroutsos Affidavit was sworn and served pursuant to the Kimmel Endorsement.

Marketing Efforts

20. In accordance with the judges’ endorsements as set out above, the Private Receiver solicited listing proposals from four commercial real estate brokers. The Private Receiver entered into a listing agreement with AY on May 2, 2023 to list the Property and Project for sale. This was done in accordance with the sale process that was ultimately approved by the Appointment Order.

21. AY thoroughly exposed the Property and Project to the market and secured two offers both dated August 17, 2023 for consideration. The Private Receiver reviewed the offers with Centurion. The offers were negotiated, however, they were ultimately allowed to expire given that they were both for considerably less than the amount outstanding under Centurion's mortgage.

22. The Receiver also understands that the Debtor listed the Property for sale with another commercial broker prior to the private receivership proceeding.

23. Given the Property and Project's prior exposure to the market, the Receiver is proposing to conduct an abbreviated sale and investment solicitation process for the Property, Project and SISP for approximately 10 weeks concurrent with a "Stalking Horse" bid from Centurion which effectively sets a "floor price" for the Property and Project.

Sale Process: SISP

24. The Appointment Order, *inter alia*, granted the Receiver the power to market any and all of the Debtor's property including advertising and soliciting offers and negotiating terms of sale as the Receiver, in its discretion, may deem appropriate.

25. The Receiver has developed a detailed SISP to market the Property and Project and investment opportunity in an open and transparent manner designed to maximize realizations.

26. As part of the SISP negotiations, the Receiver intends, upon approval of this Honourable Court, to enter into a fully binding conditional Stalking Horse Sale Agreement between the Receiver and the Stalking Horse Bidder pursuant to which the Stalking Horse Bidder has made an offer to purchase the Property and Project through a combination of a credit bid plus cash consideration.s

27. The Receiver's proposed SISP is expected to take approximately 75 days and is described below with the milestone dates summarized in the following table. The SISP is expected to be relatively short given that the Property and Project has already been thoroughly exposed to the market by the Private Receiver and the Debtor. The First Report fully details the proposed SISP.

Stalking Horse Bid and Process

28. The pertinent terms of the Stalking Horse Sale Agreement are summarized below:

- (a) the Stalking Horse Bidder will pay an amount set out in the Stalking Horse Sale Agreement for the Property and Project, plus customary adjustments associated with the sale of lands (the "**Stalking Horse Bid**"). The details of how the purchase price will be satisfied are set out in the First Report;
- (b) the Property and Project is purchased on an "as is, where is" basis; and
- (c) closing of the transaction is to occur 10 days after the approval and vesting order or such other date as may be agreed in writing between the parties to the APS ("**Closing**").

29. The First Report fully details the bidding process.

30. The Receiver is of the view that the SISP, including the Stalking Horse Bid, is appropriate for the following reasons:

- (a) the Property and Project and investment opportunity will be widely exposed to the market through the SISP;
- (b) the timeline is sufficient to allow interested parties to perform due diligence and submit offers;
- (c) the identification of potential bidders and initial contact with prospective candidate will be accompanied by an advertising campaign in the national media to increase exposure of the Property and Project offered for sale, and an introduction to the SISP;
- (d) the senior secured creditor is supportive of the SISP;

- (e) the Stalking Horse Bid is fair and reasonable having considered prior offers received for the Property and Project having already been exposed to the market for a considerable length of time; and
- (f) the Stalking Horse Bid sets a fair “base level” that is acceptable to Centurion.

31. In the circumstances, the Receiver is satisfied that the proposed SISP represents the most efficient and fair process to be administered that will sufficiently expose the Property and Project for sale to the marketplace to generate the maximum value for the Property and Project. Furthermore, the Receiver’s recommendation is supported by the Debtor’s secured lender, Centurion.

Approval of the First Report and Activities

32. In the First Report, the Receiver has included a detailed description of its activities.

33. The Receiver has acted reasonably, prudently and not arbitrarily, in carrying out its activities as described in the First Report and it is appropriate to approve the activities set out therein.

34. The Receiver's activities as set out in the First Report are fair and reasonable and should be approved.

Sealing the Confidential Appendices

35. The Receiver is requesting that the Court seal the Confidential Appendices pending the completion of the intended transaction or further order of this Honourable Court.

36. The Confidential Appendices should be sealed as its contents contain commercially sensitive financial information which could have a negative impact on the market for the Property should the sale of the Property to the Purchaser not close.

37. The salutary effects of sealing the Confidential Appendices outweighs any deleterious effects.

Other Grounds

38. The provisions of the BIA and the inherent jurisdiction of this Court.

39. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*.

40. Such further and other grounds as the lawyers may advise.

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

- (a) The First Report;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 13, 2024

ROBINS APPLEBY LLP
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Lawyers for the Receiver

TO: ATTACHED SERVICE LIST

**CENTURION MORTGAGE - and -
CAPITAL CORPORATION**

**DUNDAS SHORNCLIFFE
LIMITED PARTNERSHIP**

Applicant

Respondent

Court File No.: CV-23-00694646-00CL

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

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

ROBINS APPLEBY LLP

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Lawyers for the Court-Appointed Receiver, BDO Canada
Limited

TAB 2

Court File No. CV-23-00694646-00CL

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

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

- and -

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP and
DUNDAS SHORNCLIFFE LTD.**

Respondents

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

**BDO CANADA LIMITED
IN ITS CAPACITY AS RECEIVER OF
DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP**

May 10, 2024

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INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction

1. This report dated May 10, 2024 (the “**First Report**”) is filed by BDO Canada Limited (“**BDO**”) in its capacity as the receiver (the “**Receiver**”) over the property, assets and undertakings, including the real property known municipally as 5507-5509 Dundas Street West, Etobicoke, Ontario and the associated Project (defined below) (collectively the “**Assets**”) of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively “**Dundas**” or the “**Debtor**”). An order appointing BDO as Receiver was made on August 4, 2023 (the “**Receivership Order**”) by the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on application by Centurion Mortgage Capital Corporation (“**Centurion**” or the “**Lender**”). The Receivership Order did not become effective until March 26, 2024 as described below. A copy of the Receivership Order is attached as **Appendix “A”**.
2. The Debtor’s primary asset consists of lands located at 5507 and 5509 Dundas Street West, Etobicoke, Ontario (collectively the “**Real Property**”). The Real Property is a pre-construction proposed mixed purpose residential and retail development. Legal description of the Real Property, is included hereto as **Appendix “B”**.
3. Centurion initially applied for the appointment of a Receiver over the Debtor’s Assets in March 2023. In her endorsement dated March 30, 2023, attached as **Appendix “C”**, Madam Justice Kimmel confirmed, among other things, the following:
 - a) The Borrower shall have until Tuesday April 11, 2023 (because of the Easter weekend intervening) to pay in a lump sum to Centurion the per diem interest on the Loan of \$9,252.68/day commencing March 30 through to and including April 30, 2023.
 - b) If the Borrower provides the interest payment contemplated in paragraph (a) above, the parties shall notify the court (through my judicial assistant at: linda.bunoza@ontario.ca) and

this application shall be adjourned to April 28, 2023 at 10:00 a.m., at which time it will proceed unless the Borrower has secured an alternative transaction that causes Centurion to agree to further adjourn or withdraw its application. The court time on April 28, 2023 has been reserved with the Commercial List Office.

4. On April 28, 2023, Centurion and the Debtor agreed to adjourn the receivership application to June 1, 2023 on specific terms, as set out in the endorsement of Justice Conway (the “**Conway Endorsement**”) attached as **Appendix “D”**, which included, among other things,:
 - a) That Centurion may appoint BDO as a private receiver (in such capacity, the “**Private Receiver**”) of the Debtor. In the event BDO is appointed as Private Receiver, BDO may take all the necessary steps to prepare the property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario (the “**Lands**”) for sale, including retaining Avison Young Commercial Real Estate Services, LP (“**AY**”) as broker to conduct the sale of the Lands. However, notwithstanding its appointment, neither BDO nor its agents or realtors will actively market (or pre-market) the sale of the Lands, including listing the Lands for sale until after June 1, 2023.
 - b) In the event of a private appointment of BDO, the Applicant, BDO, and their agents and employees shall keep all information relating to the private appointment confidential and such information shall not be disseminated to any third party, with the exception of a duly retained real estate agent. For greater clarity, this confidentiality obligation shall extend to any realtor retained by BDO or the Applicant.
5. BDO was appointed as Private Receiver over the Debtor’s Assets on May 3, 2023. In accordance with the Conway Endorsement, BDO did not file the statutory receivership notices pursuant Section 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* to keep its appointment as Private Receiver confidential.

6. Pursuant to the endorsement of Justice Osborne, dated June 2, 2023, attached as **Appendix “E”**, the receivership application was adjourned on specific terms, which included, among other things, :
 - a) continuation of BDO’s appointment as Private Receiver of the Debtor with the power to market and list the Real Property for sale with a commercial realtor; and
 - b) neither BDO or its agents or realtors will accept and enter into an agreement of purchase and sale for the Real Property until the conclusion of the marketing period set forth in the Pre-Filing Report, and in any event not before June 20, 2023.

7. Pursuant to the endorsement of Madam Justice Steele dated June 21, 2023, attached as **Appendix “F”**, the receivership application was again adjourned on specific terms, which included among other things, :
 - a) continuation of BDO’s appointment as Private Receiver of the Debtor with the power to market and list the Real Property for sale with a commercial realtor; and
 - b) neither BDO or its agents or realtors will accept and enter into an agreement of purchase and sale for the Real Property until after July 14, 2023.

8. Pursuant to the endorsement of Madam Justice Kimmel dated August 4, 2023, attached as **Appendix “G”**, (the **“Kimmel Endorsement”**) the receivership application was granted on the following terms:
 - a) The Receivership Order sought by the Applicant shall be granted in the form uploaded to Caselines;
 - b) Notwithstanding the granting of the Receivership Order on today’s date, the Receivership Order shall not be in force or effect until
 - (i) After 9:00 a.m. on Monday, August 14, 2023; and

- (ii) The Applicant has delivered an affidavit to both the Receiver and counsel for the Respondents attesting to the fact that the indebtedness owed to the Applicant remains unpaid as of 9:00 a.m. on Monday August 14, 2023.
 - c) In the event that the Applicant receives full payment, the Receivership Order shall be null and void and shall never become effective.
 - d) The Receiver is not permitted to enter into an agreement of purchase and sale in respect of the Real Property until the Receivership Order is in force and effect in accordance with paragraph (b) above.
9. Following the Kimmel Endorsement, Centurion continued to work with the Debtor to afford it time to secure alternative financing which efforts ultimately failed. Contemporaneously, the Private Receiver listed the Real Property for sale with AY which resulted in the Private Receiver receiving two offers for the Real Property for consideration as discussed below.
10. In the circumstances, an affidavit was sworn by Bob Vavaroutsos dated March 26, 2024 (the “**Vavaroutsos Affidavit**”) confirming that the Debtor did not repay the indebtedness owing to Centurion and advised the Receiver and the Debtor of the status of the indebtedness. Consequently, the Receivership Order became effective on the date the Vavaroutsos Affidavit was sworn and served pursuant to the Kimmel Endorsement. A copy of the Vavaroutsos Affidavit is attached hereto as **Appendix “H”**.
11. This First Report (defined below), and other all court materials and orders issued and filed in these receivership proceedings are or will be made available on the Receiver’s case website (“**Case Website**”) at: <https://www.bdo.ca/en-ca/extranets/dundas-shorncliffe/> and will remain available on the Case Website for a period of six (6) months following the Receiver’s discharge.

12. This receivership proceeding is referred to hereinafter as the “**Receivership Proceeding**”.

Purpose of this Report

13. The purpose of the Receiver’s First Report is to provide information to the Court with respect to:

- (a) certain background information leading to the Receivership Proceeding and information with regard to the Real Property and the Project; and
- (b) the Receiver’s request for an Order of this Court approving the Receiver’s recommended sale and investment solicitation process for the Real Property, Project and investment opportunity (the “SISP”), as set out in this First Report.

SCOPE AND TERMS OF REFERENCE

14. This First Report has been prepared for this Court and the Debtor’s stakeholders to provide general information relating to the Debtor and to assist the Court in making a determination on whether to grant the relief sought herein. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose.

15. In preparing this First Report and conducting its analysis and recommendations, the Receiver has obtained and relied upon information provided to it by the Lender. Except as otherwise described in this First Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook. The Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein.

16. Capitalized terms used herein and not defined in this First Report shall have the meaning ascribed to them in the Receivership Order.

17. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

BACKGROUND

Property Description

18. The Real Property consists of two adjacent parcels of land located at the intersection of Dundas Street West and Shorncliffe just west of Kipling Avenue in Etobicoke, Ontario. The Real Property is currently zoned for residential rental units. To date no construction has commenced, however, the Debtor has expended monies toward the “soft costs” associated with the lands’ development. The project is still at the site plan application stage, the application fee has been partially paid and an application for shoring, excavation and site clearing can now be made.
19. The Real Property was approved for construction of a 22-storey, 242,187 square foot mixed use building with up to 265 residential rental suites and 176 parking stalls (the “**Project**”). Publicly available information regarding 5507-5509 Dundas West indicates that there would be 228,195 square feet of residential space and 13,982 square feet of commercial space under the approved zoning by-law. According to marketing information, the Project was to have “amazing amenities, breathtaking modern design, an outdoor patio and high-quality finishes”. The Real Property is accessible by motor vehicle and both the TTC and Go transit being close to Kipling Station in Toronto. Toronto Pearson Airport, Sherway Gardens Mall and Highway 427 are all close by.
20. Dundas Shorncliffe Limited Partnership is the limited partnership and according to the corporate profile report was incorporated on November 22, 2019. Dundas Shorncliffe Ltd. is the general partner of Dundas Shorncliffe Limited Partnership and was incorporated on November 18, 2019. The Debtor’s corporate address is listed as 555 Richmond Street West, Suite 504, Toronto, Ontario.

Centurion and other Secured Parties

21. As noted in the Affidavit of Bob Vavaroutsos sworn March 2, 2023 and filed in support of the request for the Receivership Proceeding, Centurion has loaned the principal sum of \$16,111,912.00 to the Debtor for land acquisition and pre-development purposes (the “**Loan**”). The loan was guaranteed by Dundas Shorncliffe Ltd. (formerly 2727400 Ontario Corp.), Contessa Developments Inc. and Karsten von Wersebe (collectively the “**Guarantors**”). Centurion’s charge against the Real Property was registered on December 23, 2019.
22. As security for the Loan to Centurion, the Debtor provided, without limitation, (collectively, the “**Security**”): (i) a registered first mortgage in the amount of \$11 million; (ii) a general assignment of rents; (iii) a Site Specific General Security Agreement; and (iv) a guarantee and postponement of claim from the Guarantors.
23. For ease of reference, set out below is a summary of the charges that are registered against the Real Property by parcel identification number:

PIN#	Secured Creditor	Instrument	Charge
07550-0051	Centurion Mortgage Capital Corporation	AT5328801	\$11,000,000
07550-0051	Pesciolino Holdings Inc.	AT5328806	\$3,050,000
07550-0051	Mapleview Pear Tree Inc.	AT5978724	\$1,337,500
07550-0052	Pesciolino Holdings Inc.	AT5328799	\$5,000,000
07550-0052	Centurion Mortgage Capital Corporation	AT5328801	\$11,000,000
07550-0052	Pesciolino Holdings Inc.	AT5328806	\$3,050,000
07550-0052	Mapleview Pear Tree Inc.	AT5978724	\$1,337,500

24. Pesciolino Holdings Inc. (“**Pesciolino**”) is a secured creditor of the Debtor, Pesciolino has:
- (a) two mortgages registered against the property with municipal address 5507 Dundas Street West, Etobicoke, ON (“**5507**”): a first-ranking mortgage in the amount of \$5,000,000 with instrument number AT5328799 and a third-ranking mortgage in the amount of \$3,050,000 with instrument number AT5328806; and

- (b) a second-ranking mortgage in the amount of \$3,050,000 with instrument AT5328806 against the property with municipal address 5509 Dundas Street, West, Etobicoke, ON (“5509”).
25. Pesciolino’s first ranking mortgage on 5507 was in the form of a vendor take-back mortgage. The second ranking mortgage on both 5507 and 5509 is a result of a Density and Zoning Bonus owed to Pesciolino by the Debtor.
26. Pesciolino entered into a Subordination and Standstill Agreement with Centurion and the Debtor in respect of charge bearing instrument number AT5328806 which prevents Pesciolino from enforcing this mortgage without first having obtained the written consent of Centurion.
27. There is also a third-ranking charge on 5509 and a fourth-ranking charge on 5507 in the amount of \$1,337,500 in favour of Mapleview Pear Tree Inc. and registered as instrument number AT5978724 on both properties. This falls behind Centurion’s priority.
28. The Debtor is in breach of the terms of the Loan by: (i) failing to fully repay the indebtedness owing to Centurion on its maturity date; (ii) failing to make property tax payments when due and (iii) failure to pay or perform any covenants or agreements under the Loan. Centurion is owed \$20,046,375 as of April 30, 2024, plus accruing interest, at a per diem rate of \$10,473.03., plus future costs and disbursements.

Marketing Efforts

29. In accordance with the judges’ endorsements as set out above, the Private Receiver solicited listing proposals from four commercial real estate brokers. The Private Receiver entered into a listing agreement with AY on May 2, 2023 to list the Real Property and Project for sale.
30. AY thoroughly exposed the Real Property and Project to the market and secured two offers both dated August 17, 2023 for consideration. The Private Receiver reviewed the offers with Centurion. The offers were negotiated, however, they were ultimately allowed to expire given that they were both

for considerably less than the amount outstanding under Centurion's mortgage. Copies of the offers received by the Private Receiver are included as **Confidential Appendix "A"**.

31. The Receiver also understands that the Debtor listed the Real Property for sale with another commercial broker prior to the private receivership proceeding.
32. Given the Real Property and Project's prior exposure to the market, the Receiver is proposing to conduct an abbreviated SISP for approximately 10 weeks concurrent with a "Stalking Horse" bid from Centurion which effectively sets a "floor price" for the Real Property and Project.

SALE PROCESS

33. Pursuant to the Receivership Order, the Receiver is authorized to sell, convey, transfer, lease or assign 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.

Receiver's SISP

34. The Receiver has developed a detailed SISP to market the Real Property, Project and investment opportunity in an open and transparent manner designed to maximize realizations. A copy of the SISP document is attached as **Appendix "I"** hereto.
35. As part of the SISP negotiations, the Receiver intends, upon approval of this Honourable Court, to enter into a fully binding conditional purchase and sale agreement dated May 10, 2024 (the "**Stalking Horse Sale Agreement**") between the Receiver and Centurion Acquisition Corporation, in trust for a corporation to be incorporated (the "**Stalking Horse Bidder**") pursuant to which the Stalking Horse Bidder has made an offer to purchase the Real Property and Project through a combination of a credit bid plus cash consideration.

36. The Receiver’s proposed SISP is expected to take approximately 75 days and is described below with the milestone dates summarized in the following table. The SISP is expected to be relatively short given that the Real Property and Project has already been thoroughly exposed to the market by the Private Receiver and the Debtor.

Milestone	Deadline
Commencement of SISP	May 16, 2024
Distribution of the Teaser Letter and Bid Letter	May 20, 2024
Globe & Mail Advertisement	May 23, 30, 2024
Bid Deadline	June 28, 2024
Auction	July 5, 2024
Sale Approval Hearing	July 15 to 19, 2024
Closing Date Deadline	on or before July 29, 2024

Phase 1

- (a) preparing a list of potential purchasers which included both industry and financial buyers (the “**Potential Bidder’s List**”);
- (b) promoting the SISP on the Receiver’s Case Website;
- (c) advertising the opportunity in national edition of the Globe and Mail, Daily Commercial News construction gazette and the NRU GTA Weekly Newsletter;
- (d) advertising the development/investment opportunity on the MLS and/or ICX website through a third party provider;
- (e) preparing a summary describing the opportunity, outlining the process under the SISP and inviting recipients to express their interest pursuant to the SISP (the “**Teaser**”);
- (f) preparing a standard non-disclosure agreement (“**NDA**”) to be executed by potential bidders prior to be provided access to confidential information related to the Real Property;
- (g) preparing a detailed confidential information package (“**Confidential Information Package**”) which provides information regarding the Real Property and the Project;
- (h) creating and populating a virtual dataroom with relevant information and documents associated with the Real Property and the Project;

- (i) preparing a bid letter which provides instructions on the bid process including the bid deadline (the “**Bid Letter**”);
- (j) preparing a standard asset purchase agreement to allow all potential purchasers to bid on the same basis (the “**Template APA**”);
- (k) contacting each of the parties included on the Potential Bidders List, obtaining executed NDA’s and providing the Confidential Information Package and the Bid Letter;
- (l) soliciting preliminary offers and receiving expressions of interest (“**EOI**”);

Phase 2

- (m) reviewing submitted EOI’s;
- (n) select which potential purchasers will be invited to perform additional due diligence, if required (“**Qualified Bidders**”);
- (o) distribute the Template APA to potential purchasers;
- (p) arranging and participating in site tours, if required, and meetings with prospective purchasers;
- (q) soliciting final offers in the form of the marked-up Template APA;
- (r) engaging in negotiations with potential buyers;
- (s) consultation with primary stakeholders;
- (t) selection of Bids;

Phase 3

- (u) Auction process as necessary;
- (v) Selection of Winning Bidder;
- (w) Court approval; and
- (x) further negotiating and completion of closing definitive documents.

Stalking Horse Bid and Process

37. The Redacted Stalking Horse Sale Agreement is attached hereto as **Appendix “J”** and the unredacted Stalking Horse Sale Agreement is at **Confidential Appendix “B”** to the Supplementary Motion Record.

The pertinent terms of the Stalking Horse Sale Agreement are summarized below:

- (i) the Stalking Horse Bidder will pay an amount set out in the unredacted Stalking Horse Sale Agreement for the Real Property and Project, plus customary adjustments associated with the sale of lands (the **“Stalking Horse Bid”**). The purchase price will be satisfied as follows:
 - (a) by paying by wire transfer at the Time of Closing of Canadian dollar funds to an account specified by the Receiver (collectively, the **“Closing Amount”**):
 - (1) The amount required for the Receiver to repay the loan owing to Pesciolino pursuant to its Charge/Mortgage registered as Instrument No. AT5328799 on December 23, 2019;
 - (2) An amount equal to the unfunded fees and expenses (plus applicable HST) of the Receiver and its agents and legal counsel, payable by wire transfer on Closing to the Receiver or to whom the Receiver will otherwise direct;
 - (b) by assuming a portion of the obligations and liabilities secured by the Charge/Mortgage registered as Instrument No. AT5328801 in favour of Centurion (collectively the **“Assumed Liabilities”**) which assumed portion shall be in the amount of the balance of the purchase price.
- (ii) the Real Property and Project is purchased on an “as is, where is” basis; and
- (iii) closing of the transaction is to occur 10 days after the approval and vesting order or such other date as may be agreed in writing between the parties (**“Closing”**).

38. Potential Bidders other than the Stalking Horse Bidder will be required to submit their offers no later than, June 28, 2024, the **“Bid Deadline Date”**.

39. For a Competing Bidder to have a qualified bid (**“Qualified Bid”**) they will have signed an NDA and complied with all of the requirements as set out in the SISP document.

40. For a Competing Bidder to have a superior bid to the Stalking Horse Bid (a “**Superior Offer**”), the Superior Offer must exceed the Stalking Horse Bid by a minimum of the sum of:
- a. an incremental increase of \$100,000.00.
41. In the event that there is no Superior Bid the Receiver and the Stalking Horse Bidder shall close the Stalking Horse Bid as soon as is practicable thereafter and the Real Property and Project will vest in the Stalking Horse Bidder in accordance with the terms of the vesting order approved by this Court with no further court application necessary.
42. In the event that one or more Qualified Bidders submits a Qualified Bid, the Receiver shall conduct an auction for the determination and selection of a winning bid (the Bidder submitting such bid being the “**Winning Bidder**”). Upon the selection of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Receiver. The Receiver shall forthwith bring a motion following the selection of the Winning Bidder for an order approving the agreement reached with the Winning Bidder and to vest the Purchased Assets in the Winning Bidder and, if granted, shall proceed with closing the transaction.

Receiver’s Observations on the Sales Process

43. The Receiver is of the view that the SISP, including the Stalking Horse Bid, is appropriate for the following reasons:
- (i) the Real Property and Project and investment opportunity will be widely exposed to the market through the SISP;
 - (ii) The timeline is sufficient to allow interested parties to perform due diligence and submit offers;
 - (iii) the identification of potential bidders and initial contact with prospective candidate will be accompanied by an advertising campaign in the national media to increase exposure of the Real Property and Project offered for sale, and an introduction to the SISP;

- (iv) The senior secured creditor is supportive of the SISP;
- (v) The Stalking Horse Bid is fair and reasonable having considered prior offers received for the Real Property and Project having already been exposed to the market for a considerable length of time; and
- (vi) The Stalking Horse Bid sets a fair “base level” that is acceptable to Centurion.

Sealing the Confidential Appendices

44. The Receiver is of the view, and requests, that the Confidential Appendices be sealed until the transaction is approved or further order of the Court. The Confidential Appendices contain commercially sensitive information. The disclosure of the information contained in the Confidential Appendices would seriously impair the Receiver's ability to negotiate an agreement to sell the Property with a future third party. The Receiver is of the view that this would be harmful to stakeholders as it would undermine a future sales process.

45. In the circumstances, the salutary effects of sealing the Confidential Appendices outweigh the deleterious effects and accordingly the sealing order should be granted.

SUMMARY AND RECOMMENDATIONS

46. In the circumstances, the Receiver is satisfied that the proposed SISP represents the most efficient and fair process to be administered that will sufficiently expose the Real Property and Project for sale to the marketplace to generate the maximum value for the Real Property and Project. Furthermore, the Receiver's recommendation is supported by the Debtor's Lender.

47. Accordingly, the Proposed Receiver respectfully requests an order:

- (a) approving this First Report of the Receiver and the activities as set out herein;
- (b) approving the SISP and the Stalking Horse Bid; and

(c) sealing the Confidential Appendices.

All of which is respectfully submitted this 10th day of May 2024.

**BDO CANADA LIMITED,
in its capacity as the Proposed Court-appointed Receiver of
Dundas Shorncliffe Limited Partnership and not in its personal or
corporate capacity**

Per:



Name: Gary Cerrato, CIRP, LIT
Title: Senior Vice-President

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APPENDIX A



Court File No.: CV-23-00694646-00CL

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

THE HONOURABLE) **FRIDAY, THE 4TH**
)
JUSTICE KIMMEL) **DAY OF AUGUST, 2023**

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.**

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by Centurion Mortgage Capital Corporation (“**Centurion**” or the “**Lender**”), on consent, 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. C.43, as amended (the “**CJA**”) appointing BDO Canada Limited as receiver and manager (in such capacities, the “**Receiver**”) over the Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively “**Dundas**” or the “**Debtor**”), and all of the assets, undertakings and properties of the Debtor, including the real property known municipally as 5507-5509 Dundas Street West, Toronto, Ontario (the “**Lands**”) with the legal description set out in Schedule "A", and all other property, assets and undertakings relating thereto, acquired for, or used in relation to a business carried on by the Debtor, and for other relief, was heard this day by way of video-conference.

ON READING the affidavit of H. Bob Vavaroutsos dated March 2, 2023 and the Exhibits thereto, the affidavit of H. Bob Vavaroutsos dated March 28, 2023 and the Exhibits thereto, the Pre-Filing Report of the Receiver dated March 23, 2023 (the “**Pre-Filing Report**”) and the Appendices thereto, the Affidavit of Antonio Dutra sworn March 27, 2023 and the Exhibits thereto, and on being advised of the consent of counsel acting for the Applicant and the Respondent and such other parties as were present, 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 is hereby appointed Receiver, without security, over the Debtor and 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, and including the property set out in Schedule "A" and all proceeds thereof (collectively 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 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 course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (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 assessments of the Property;
- (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 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;
- (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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; 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;
- (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;
- (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.
- (t) 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, limited partners 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.

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.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **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

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **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

11. **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

12. **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

13. **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

14. **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 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) 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

16. **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

17. **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

18. **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 unless otherwise ordered by the Court on the passing of accounts, 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 81.6(2) of the BIA.

19. **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 Commercial List of the Ontario Superior Court of Justice.

20. **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 standard 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

21. **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 \$500,000.00 (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 subordinate 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 B IA.

22. **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.

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

24. **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.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.bdo.ca/en-ca/extranets/dundas-shorncliffe/>

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

SALE PROCESS

27. **THIS COURT ORDERS** that the Sale Process as set out in the Pre-Filing Report of the Receiver dated March 23, 2023 is hereby approved and that the Receiver is authorized and directed to continue and complete the Sale Process for the purpose of soliciting interest in and opportunities for the sale of the Property of the Debtor.

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

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

RETENTION OF LAWYERS

30. **THIS COURT ORDERS** that the Receiver may retain lawyers, including the Applicant's lawyers, to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such lawyers may be the lawyers for the Applicant herein, in respect of any aspect, where the Receiver is satisfied that there is no actual or potential conflict of interest.

GENERAL

31. **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.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

33. **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.

34. **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.

35. **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 Applicant's security or, if not so provided by the Applicant'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.

36. **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.



Digitally signed by Jessica
Kimmel
Date: 2023.08.04 12:45:41 -0400

SCHEDULE "A" THE PROPERTY

PIN: 07550-0052 (LT)

DESCRIPTION: Lot 13, Plan 2104, Except Part 1, 64R1955, Part 7, RS1028 & Part 26, 64R8387; S/T EB 542779, TB 34882 Etobicoke; City of Toronto

Address: 5507 Dundas Street West, Etobicoke, Ontario

and

PIN: 07550-0051 (LT)

DESCRIPTION: Part of Lot 14, Plan 2104, as in EB429988; Etobicoke; City of Toronto

Address: 5509 Dundas Street West, Etobicoke, Ontario

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "**Receiver**") over Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (the "**Debtor**") and all of the assets, undertakings and Property of the Debtor municipally known as 5507-5509 Dundas Street West, Toronto, Ontario (collectively the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____, 2023 (the "**Order**") made in an application having Court file number CV- CV-23-00694646-00CL, 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.

2. 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 _____ from time to time.

3. 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.

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

5. 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.

6. 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.

7. 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 the ____ day of _____, 20__.

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

Per: _____

Name: Josie Parisi

Title: Senior Vice-President

**CENTURION MORTGAGE - and - DUNDAS SHORNCLIFFE
CAPITAL CORPORATION LIMITED PARTNERSHIP et al.**

Applicant

Respondents

Court File No.: CV-23-00694646-00CL

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Appointing Receiver)**

ROBINS APPLEBY LLP

Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No. 56871V

Email: dmichaud@robapp.com
Tel: (416) 360-3795

Anisha Samat LSO No. 82342Q

Email: asamat@robapp.com
Tel: (416) 360-3728

Lawyers for the Applicant

**CENTURION MORTGAGE - and -
CAPITAL CORPORATION**

**DUNDAS SHORNCLIFFE LIMITED
PARTNERSHIP AND DUNDAS
SHORNCLIFFE LTD.**

Applicant

Respondents

Court File No.: CV-23-00694646-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF H. BOB VAVAROUTSOS

ROBINS APPLEBY LLP
Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No. 56871V
Email: dmichaud@robapp.com
Tel: (416) 360-3795

Lawyers for the Applicant

APPENDIX B

Appendix B

PIN: 07550-0052 (LT)

DESCRIPTION: Lot 13, Plan 2104, Except Part 1, 64R1955, Part 7, RS1028 & Part 26, 64R8387; S/T EB542779, TB34882 Etobicoke; City of Toronto

ADDRESS: 5507 Dundas Street West, Etobicoke, Ontario

and

PIN: 07550-0051 (LT)

DESCRIPTION: Part of Lot 14, Plan 2104, as in EB429988; Etobicoke; City of Toronto

ADDRESS: 5509 Dundas Street West Etobicoke, Ontario

APPENDIX C



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENTCOURT FILE NO.: CV-23-00694646-00CLDATE: 30 March 2023NO. ON LIST: 2TITLE OF PROCEEDING: **CENTURION MORTGAGE CAPITAL CORPORATION v. DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP et al**BEFORE MADAM JUSTICE: **KIMMEL****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Dom Michaud	Centurion Mortgage Capital Corporation	dmichaud@robapp.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Doug Bourassa	Dundas Shorncliffe	dbourassa@torkinmanes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Josie Parisi	BDO Canada Limited	jparisi@bdo.ca

ENDORSEMENT OF MADAM JUSTICE KIMMEL

[1] On this Application, Centurion Mortgage Capital Corporation ("Centurion" or the "Lender") seeks an Order:

- a. appointing BDO Canada Limited as the Receiver and Manager ("BDO" or the "Receiver") over Dundas Shorncliffe Limited Partnership and its General Partner, Dundas Shorncliffe Ltd. ("Dundas" or the "Borrower") pursuant to section 101 of the Courts of Justice Act (the "CJA") and section 243(1) of the Bankruptcy and Insolvency Act (the "BIA"); and
- b. approving the sales and marketing process (the "Sale Process") as described in the Pre-Filing Report of the Receiver dated July 10, 2020 (the "Pre-Filing Report").

[2] The Lender is seeking a Court-appointed Receiver pursuant to the terms of the Loan (defined below) and related security, in order to maximize the realization of the sale of the property owned by the Borrower, with municipal address 5507-5509 Dundas Street West, Toronto, Ontario (the "Property"), and ensure the interests of all creditors and other stakeholders are considered as part of a transparent, Court-supervised sale process. The Lender also seeks approval of the Sale Process in order to maximize the efficiency of the contemplated receivership.

[3] Pursuant to the terms of a mortgage commitment agreement dated November 29, 2019 (the "Commitment"), Centurion made a secured loan to the Borrower in the principal amount of \$10,498,450.00 (the "Loan"). The purpose of the Loan was for the Borrower to acquire the Property. Centurion's security includes a first ranking registered charge on the Property (the "Charge" or "Mortgage"), a first ranking General Assignment of Rents and Leases, a site specific general security agreement and personal guarantees (the "Security"). Centurion's Charge is for \$11 million. Centurion has loaned in total the principal sum of \$16,111,912.00 to the Borrower for land acquisition and pre-development purposes. There are other secured creditors with second, third and fourth ranking charges against the Property.

[4] Section 35 of the Centurion Charge provides that on default, Centurion is entitled to demand payment of the full amount owing on the Loan due immediately. Section 38 of the Additional Provisions of the Mortgage and section 6.02 of the GSA permit the Lender to appoint a receiver in respect of the Property, in the event that the Borrower is in default of the Loan.

[5] The borrower is in default by:

- a. failing to repay the outstanding amount owing on the Loan on its maturity date of September 1, 2022; and
- b. failing to pay the monthly interest payments after January 1, 2023. Upon maturity, the Borrower continued to make interest payments in October 2022 and November 2022. However, since then, the Borrower has not made any other payments to Centurion. Centurion also claims to be contractually entitled to an increased interest rate pursuant to the Loan as of November 2022.

[6] Further defaults have occurred because of outstanding property taxes owing on both 5507 and 5509 Dundas Street West from 2022, in the amounts of \$89,485.12 and \$43,560.42 respectively. No one other than the Borrower and Guarantors indicated any opposition to the relief sought on this application.

[7] Despite ongoing discussions about arrangements to repay the Loan, by January 9, 2023, the Borrower had not provided Centurion with a firm strategy to do so. Accordingly, Centurion's counsel made formal written demand on the Borrower and Guarantors for repayment of the Loan. Centurion also gave notice of its intention to enforce its security pursuant to section 244 of the BIA (the "BIA Notice") (collectively, the "Demand").

[8] To date, no construction has taken place. The demolition permit has been obtained but the Project is still at the site plan application stage. The application fee has been partially paid, and an application for shoring, excavation and site clearing can also be made now. As part of the Receiver's proposed Sale Process, the Receiver will enter into a 4 month listing agreement for the sale of the Property with Avison Young Commercial Real Estate (Ontario) Inc. (the "Broker").

[9] The Borrower also indicated that it was considering selling the Property and suggested to Centurion in December 2022 that it expected to have a buyer in place before the end of March, 2023. The Borrower still claims to be in discussions with prospective investors but has not provided any evidence of firm offers or agreements for the purchase or refinancing of the Property in its response to this application.

[10] Nonetheless, the Borrower requested that the court adjourn the application for 30 days to allow it time to obtain one or more signed term sheets with respect to a complete restructuring of the subject construction project (the "Project"), including financing to pay out and discharge the Loan entirely.

[11] Dundas Shorncliffe Limited Partnership ("DSLPP") does not dispute that the Mortgage matured in September, 2022, and that it has made no payments in respect of the mortgage since December, 2022. Further, it is acknowledged that the relevant Loan and Security documents provide the Applicant with the right to request the Receiver upon the occurrence of an event of default thereunder. If it is not successful in obtaining a signed term sheet (or term sheets from multiple potential lenders) or commitment letter in respect of a transaction that will include payment in full of the Applicant within the requested adjournment, DSLPP does not intend to oppose the Application at the next return date.

[12] The applicant was prepared to agree to adjourn if the interest arrears and interest that would accrue and come due during the adjournment period is paid. According to Centurion's payout statement dated March 28, 2023, interest accrued to and including April 30, 2023 would be \$1,388,627.88. The per diem interest rate is \$9,252.68. The Loan balance as at April 30, 2023 will be \$17,672,945.40. The applicant also proposed a form of provisional receivership appointment order with a come-back period in which the receivership could be terminated if the Borrower is able to repay the Loan plus all interest, fees, costs and expenses, including the receivership costs incurred to the date of termination (the "Provisional Receivership Order").

[13] The test to appoint a receiver under section 101 of the CJA and section 243(1) of the BIA is whether it would be just or convenient to do so. In assessing whether it is just and convenient to appoint a receiver, the question is whether it is more in the interests of all concerned to have the receiver appointed or not.⁴⁰ When there is a contractual power of appointment, the Court assesses "the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the work and duties of the [Receiver]. See: *Royal Bank of Canada v. CENDRS Inc.*, 2017 ONSC 7661, at para. 9, citing *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (Ont. Gen Div.), at para, 12.

[14] When deciding to appoint a receiver, the Court must have regard to all of the circumstances but in particular, the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right to appoint a receiver is an important factor to be considered as is the

question of whether or not an appointment by the Court is necessary to enable the receiver to carry out its work and duties more efficiently. *RBC*, at para. 8, citing *Freure Village*, at para. 11; see also *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007, at para. 24.

[15] There are many factors that may be considered. The relevant ones in this case, as highlighted by Centurion, are:

- a. the Lender has a contractual right to appoint a receiver upon default of the Loan under the Charge, which expressly permits the appointment of a receiver;
- b. the current economic environment has created a significant uncertainty in respect of the value of the Property, which causes great concern that the sale of the Property may result in a shortfall on the amounts owing by the Borrower under the Charges registered against the Property;
- c. in these circumstances, a Court supervised process will ensure that the interests of all creditors and other stakeholders of the Borrower are considered with a view to minimizing the shortfall and achieving the maximum realization on the Property;
- d. the appointment of the Receiver will help to avoid any potential dispute regarding expenses incurred in and the value ultimately obtained for the sale of the Borrower's assets;
- e. BDO has consented to its Court appointment; and
- f. a court appointed receivership process will provide the best forum to deal with any priority issues as between the mortgagees and other stakeholders.

[16] The proposed Sale Process will be implemented by the Receiver with the benefit of the expertise and assistance of Avison Young Commercial Real Estate (Ontario) Inc. (the "Broker") pursuant to a four month listing agreement that is expected to include specific stages for data room development, the solicitation of prospective purchasers, marketing and bidding. It appears to be a fair, reasonable and commercially efficient process, which should allow for a sufficient opportunity to optimize the chances of securing the best possible price for the Property for the benefit of all creditors and other stakeholders of the Borrower. Avison Young was selected as the Broker after receiving and considering proposals from four different prospective brokers and has been directly involved in the development of the Sale Process.

[17] Any transaction arising out of the Sale Process will still be subject to court approval, on notice to the Borrower, other secured creditors and any other participating stakeholders. While the reasonableness and adequacy of a Sale Process such as this that the court is being asked by a court-appointed receiver to approve in advance must be assessed in light of the factors which a court will eventually take into account when considering the approval of a proposed sale (see also *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750, at para. 6), the court will still need to be satisfied at the time that its approval sought in respect of any proposed transaction coming out of the Sale Process that the test for the approval of the transaction has been met, having regard to the factors identified by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727.

[18] Having considered the submissions of the parties and the relevant factors, no serious challenge has been put forward in opposition to the relief sought by Centurion or to its ability to satisfy the requirements for the appointment of a Receiver and the approval of the proposed Sale Process. The only issue of contention is the Borrower's adjournment request.

[19] While I do not doubt that the Borrower is highly incentivized to find an alternative transaction, it has been trying to do so for some time, without success. The Borrower has not been able to find a purchaser or investor or new lender over the past seven months since the Loan matured. Some explanations have been provided and the Borrower blames Centurion for some of the delay, but the reality of the situation is that it has been in default for seven months, it has not paid anything for three months and Centurion is entitled to take action and has been entitled to do so for some time.

[20] There has been one very recent legislative change that could resurrect the prospect of one of the alternatives that the Borrower had been exploring. That said, the Borrower has not come to the court with anything concrete (no binding, or even non-binding, letter of intent, no commitment letter and no firm proposal) and was not, at least at the hearing, in a position to even offer to cover the interest accruing during the proposed adjournment period.

[21] The Borrower's primary justification for opposing any terms of the requested adjournment was that there is no evidence of a risk that Centurion is under-secured or is at risk of being prejudiced by a further month adjournment. Centurion counters that the market is unstable and unpredictable and it has waited long enough, and these concerns are expressed in its evidence. Although not critical to my decision, I note as well that Centurion does not appear to have security for its entire Loan and there are other secured creditors as well, who did not appear to oppose the relief sought by Centurion or to support the Borrower's request for an adjournment.

[22] Centurion has waited long enough and, absent some terms, should not be forced to delay without some protection. Accordingly, the following orders and directions were provided orally at the hearing and are confirmed herein:

- a. The Borrower shall have until Tuesday April 11, 2023 (because of the Easter weekend intervening) to pay in a lump sum to Centurion the per diem interest on the Loan of \$9,252.68/day commencing on March 30 through to and including April 30, 2023.
- b. If the Borrower provides the interest payment contemplated by paragraph (a) above, the parties shall notify the court (through my judicial assistant at: linda.bunoza@ontario.ca) and this application shall be adjourned to April 28, 2023 at 10:00 a.m., at which time it will proceed unless the Borrower has secured an alternative transaction that causes Centurion to agree to further adjourn or withdraw its application. The court time on April 28, 2023 has been reserved with the Commercial List office.
- c. In the meantime, on or before April 11, 2023, Centurion will provide to the Borrower and to the court (by emailing it to my assistant and uploading it into CaseLines) its proposed form of Provisional Order (in this matter) together with a blackline against the draft order presented with its application to the court (removing paragraph 25 from that draft at the court's request) and the precedent order upon which the proposed Provisional Order is based [it appears that this may have already been done].
- d. If the Borrower does not provide the interest payment contemplated by paragraph (a) above, the court will sign the Provisional Order (in a form that the court determines to be acceptable after receiving and considering the proposed form of Provisional Order provided by Centurion and receiving any further written or oral submissions that the court may request).
- e. If the court signs a Provisional Order then the April 28, 2023 court time may be used for the come-back that is provided for in that order, if the Borrower is able to satisfy the

requirements for a come-back by that day; otherwise, the parties shall notify the Commercial List Office as soon as possible in advance of April 28, 2023 that the court time is no longer needed on that day.

- f. The parties are responsible for ensuring that all material to be relied upon at any hearing that is proceeding on April 28, 2023 (including a copy of this endorsement and any orders that may be signed after today) is uploaded into the appropriate bundle in CaseLines (in addition to any new material being served and filed with the court in the normal course).

[23] This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of formal issuance and entry.

A handwritten signature in black ink that reads "Kimmel J." with a stylized flourish at the end.

KIMMEL J.

30 March 2023

APPENDIX D



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00694656-00CL

DATE: 28-APR-2023

NO. ON LIST: 3

TITLE OF PROCEEDING: CENTURION MORTGAGE CAPITAL CORPORATION v. DUNDAS SHORENCLIFFE LIMITED PARTNERSHIP et al.
BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Dom Michaud	Centurion Mortgage Capital Corporation	dmichaud@robapp.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Doug Bourassa	Dundas Shorncliffe Limited Partnership	dbourassa@torkinmanes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CONWAY:

- [1] The Applicant and the Respondents have agreed to adjourn the receivership application hearing scheduled for today, April 28, 2023 to **June 1, 2023 at 12:30 p.m. for 30 minutes (confirmed with the CL office, any judge)** on the following terms, which I endorse today.
- [2] The Applicant may appoint BDO Canada Limited (“BDO” or the “Receiver”) as a private receiver of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively the “Respondent”). In the event BDO is appointed as private receiver, BDO may take all the necessary steps to prepare the property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario (the “Lands”) for sale, including retaining Avison Young as broker to conduct the sale of the Lands. However, notwithstanding its appointment, neither BDO nor its agents or realtors will actively market (or pre-market) the sale of Lands, including listing the Lands for sale until after June 1, 2023.
- [3] In the event of a private appointment of BDO, the Respondent will have the obligation to fully cooperate with BDO and the Applicant to ensure BDO can effectively carry out its mandate as private receiver, including providing full financial disclosure and access to all books and records. The Respondent’s duty to cooperate shall be the same as those duties and responsibilities of a debtor in the Model Receivership Appointment Order.
- [4] In the event of a private appointment of BDO, the Applicant, BDO, and their agents and employees shall keep all information relating to the private appointment confidential and such information shall not be disseminated to any third party, with the exception of a duly retained real estate agent. For greater clarity, this confidentiality obligation shall extend to any realtor retained by BDO or the Applicant.
- [5] The Respondent will pay interest for the period of May 1, 2023 to May 31, 2023 on May 1, 2023. This interest payment shall be calculated on the per diem interest rate set of \$9,252.68, as described in Justice Kimmel’s endorsement dated March 28, 2023.
- [6] The Respondent will pay a forbearance fee and default administration fee of a combined \$200,000 to the Lender. Payment of this forbearance fee shall be added to the indebtedness owing to by the Debtor to the Applicant effective May 1, 2023.
- [7] The Respondent shall have until May 31, 2023 to pay the amounts necessary to pay the items set out below (collectively the “Payment”):
- i. the full amount owing under the Applicant’s Mortgage including all principal and interest, and forbearance fee due and owing;
 - ii. the Receiver’s Accounts incurred to the date of the Payment;
 - iii. the legal fees incurred by both the Applicant and the Receiver in respect of this receivership;
 - iv. any reasonable break fee negotiated by the Receiver for the termination of a listing agreement with a real estate broker engaged to sell the Property. For greater clarification, such a break fee shall be for payment in consideration for work completed by a real estate broker in respect of the sale of the Property for the time period commencing from any

appointment of BDO as a private Receiver to May 31, 2023 (“Initial Break Fee Period”) and the break fee for the Initial Break Fee Period that shall not exceed \$85,000 plus HST;

- [8] The Respondent consents to the court appointment of BDO as Receiver effective the earlier of June 1, 2023 or upon default of the terms of this adjournment. If there is any default of the above terms, the Applicant shall have the unfettered right to return to Court to take out a consent Order appointing BDO as Receiver in substantially the form of Order as the Draft Order uploaded to case lines by Applicant in respect of the April 28, 2023 hearing.



APPENDIX E



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00694646-00CL

DATE: June 2, 2023

REGISTRAR: L. Lewis

NO. ON LIST: 1

TITLE OF PROCEEDING: **Centurion Mortgage Capital Corporation v Dundas
Shorncliffe Limited Partnership et al**

BEFORE JUSTICE: **Justice Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Dom Michaud	Counsel for Centurion Mortgage Capital Corporation	dmichaud@robapp.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Doug Bourassa	Counsel for Dundas Shorncliffe	dbourassa@torkinmanes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE OSBORNE:

1. This case conference proceeded today. Counsel are agreed on terms of adjournment of this receivership application which are set out below.

2. Accordingly, and on consent, this matter is adjourned to June 21, 2023 at 9:30 AM for 15 minutes via Zoom. At that time, counsel will advise that the matter is settled or, alternatively, if not, the receivership order can issue as has been consented to by the parties. The terms of adjournment are as follows:

TERMS OF ADJOURNMENT

The Applicant and the Respondents agree to adjourn the receivership application hearing scheduled for today, June 1, 2023 to June 21, 2023 at 9 on the following terms:

1. BDO Canada Limited (“**BDO**” or the “**Receiver**”) may continue on in its mandate as a private receiver of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively the “**Respondent**”). As part of this private receivership appointment, BDO is entitled to take all the necessary steps to prepare the property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario (the “**Lands**”) for sale and may commence the marketing and sale process, including listing the Lands for sale, as described in the Report of the Receiver

dated March 23, 2023 (the “**Pre-Filing Report**”) that was filed in the Applicant’s Supplementary Application Record dated March 24, 2023. However, notwithstanding the foregoing, neither BDO nor its agents or realtors will accept and enter into an agreement of purchase and sale in respect of the Lands until after the conclusion of the recommended marketing period set forth in the Pre- Filing Report, and in any event not before June 20, 2023.

2. During the period of this adjournment, the Respondent will continue to have the obligation to fully cooperate with BDO and the Applicant to ensure BDO can effectively carry out its mandate as private receiver, including providing full financial disclosure and access to all books and records. The Respondent’s duty to cooperate shall be the same as those duties and responsibilities of a debtor in the Model Receivership Appointment Order.
3. The Respondent will pay interest for the period of June 1, 2023 to June 30, 2023 on or before June 2, 2023. This interest payment shall be calculated on the per diem interest rate set of \$9,252.68, as described in Justice Kimmel’s endorsement dated ~~March 23, 2023~~ ~~March 24, 2023~~.
4. The Respondent will pay a further forbearance fee and default administration fee of a combined \$200,000 to the Lender (the “**Further Forbearance Fee**”). Payment of this forbearance fee shall be added to the indebtedness owing to by the Debtor to the Applicant effective June 1, 2023. However, in the event that Applicant’s Mortgage is fully repaid on or by June 20, 2023, the Further Forbearance Fee shall be reduced to \$100,000.
5. The Respondent shall have until June 20, 2023 to pay the amounts necessary to pay the items set out below (collectively the “**Payment**”):the full amount owing under the Applicant’s Mortgage including all principal and interest, and forbearance fees due and owing;
 - i. the Receiver’s Accounts incurred to the date of the Payment;
 - ii. the legal fees incurred by both the Applicant and the Receiver in respect of this receivership;
 - iii. any reasonable break fee negotiated by the Receiver for the termination of a listing agreement with a real estate broker engaged to sell the Lands. For greater clarification, such a break fee shall be for payment in consideration for work completed by a real estate broker in respect of the sale of the Lands for the time period commencing from

any appointment of BDO as a private Receiver to June 20, 2023 (“**Initial Break Fee Period**”) and the break fee and the break fee shall be in the sum of \$85,000 if paid on or before June 13, 2023, and if paid after June 13, 2023 and on or before June 20, 2023, the break fee shall be in the sum of \$125,000. This provision is without prejudice to the real estate broker claiming HST, and without prejudice to parties disputing any such entitlement;

6. The Respondent consents to the court appointment of BDO as Receiver effective the earlier of June 21, 2023 or upon default of the terms of this adjournment. If there is any default of the above terms, the Applicant shall have the unfettered right to return to Court to take out a consent Order appointing BDO as Receiver in substantially the form of Order as the Draft Order uploaded to case lines by Applicant in respect of the April 28, 2023 hearing.

Oleau, J.

APPENDIX F



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00694646-00CL DATE: June 21, 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: CENTURION MORT CAPITAL CORP V DUNDAS SHORNCLIFFE

BEFORE: **Madam Justice Steele**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Dom Michaud	CENTURION MORTGAGE CAPITAL CORPORATION	dmichaud@robapp.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Doug Bourassa	DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP & DUNDAS SHORNCLIFFE LTD	dbourassa@torkinmanes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

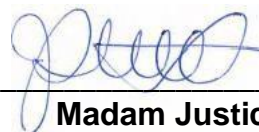
ENDORSEMENT

[1] Conference held on June 21 via Zoom. The Applicant and the Respondents agreed to adjourn the receivership application hearing scheduled for today, June 21, 2023 to July 17, 2023 at 10:00 am on the following terms:

- a. BDO Canada Limited (“**BDO**” or the “**Receiver**”) shall continue on in its mandate as a private receiver of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively the “**Respondent**”). As part of this private receivership appointment, BDO shall take all the necessary steps to prepare the property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario (the “**Lands**”) and shall commence the marketing and sale process (the “**Sale Process**”), including listing the Lands for sale, as described in the Report of the Receiver dated March 23, 2023 (the “**Pre-Filing Report**”) that was filed in the Applicant’s Supplementary Application Record dated March 24, 2023. However, notwithstanding its appointment and commencement of the sales process, neither BDO nor its agents or realtors will accept and enter into an agreement of purchase and sale in respect of the Lands until after July 14, 2023.
- b. During the period of this adjournment, the Receiver and its respective affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Receiver in performing its obligations under the Sale Process.
- c. During the period of this adjournment, the Respondent will continue to have the obligation to fully cooperate with BDO and the Applicant to ensure BDO can effectively carry out its mandate as private receiver, including providing full financial disclosure and access to all books and records. The Respondent’s duty to cooperate shall be the same as those duties and responsibilities of a debtor in the Model Receivership Appointment Order.
- d. The Respondent will pay interest for the period of July 1, 2023 to July 31, 2023 on July 4, 2023. This interest payment shall be calculated on the per diem interest rate set of \$9,252.68, as described in Justice Kimmel’s endorsement dated March 28, 2023.
- e. The Respondent will pay a further forbearance fee and default administration fee of a combined \$200,000 to the Lender (the “**Further Forbearance Fee**”). Payment of this forbearance fee shall be added to the indebtedness owing to by the Respondent to the Applicant effective June 21, 2023. However, in the event that Applicant’s Mortgage is fully repaid on or before July 14, 2023, the Further Forbearance Fee shall be reduced to \$100,000.
- f. The Respondent shall pay \$500,000 on June 21, 2023, towards the repayment of accrued interest owing to by the Respondent to the Applicant.
- g. The Respondent shall have until July 14, 2023 to pay the amounts necessary to pay the items set out below (collectively the “**Payment**”):

1. the full amount owing under the Applicant's Mortgage including all principal and interest, and forbearance fees due and owing;
 2. the Receiver's Accounts incurred to the date of the Payment;
 3. the legal fees incurred by both the Applicant and the Receiver in respect of this receivership;
 4. the break fee negotiated by the Receiver for the termination of the listing agreement with a real estate broker engaged to sell the Lands pursuant to the Listing Agreement between the Receiver and Avison Young Commercial Real Estate Services, LP dated [May 8, 2023](#) (the "**Listing Agreement**"). For greater clarification, such a break fee shall be for payment in consideration for work completed by the real estate broker in respect of the sale of the Lands for the time period commencing from any appointment of BDO as a private Receiver to the date of the termination of the Listing Agreement;
- h. The Applicant and the Respondent agree that in the event that the Payment is not made by July 14, 2023, that the Applicant will consider granting a further adjournment to August 1, 2023 on the condition that the Respondent provide the Applicant:
1. the following fully executed transaction agreements in respect of the refinancing transaction being undertaken by the Respondent to complete, *inter alia*, the Payment (the "**Refinancing**"): (i) agreement of purchase and sale; (ii) credit agreement; and (iii) shareholders agreement. These documents are to be held in strict confidence and not disseminated beyond the Applicant and its legal counsel;
 2. documentation demonstrating that the funding of the Refinancing will be completed on or before July 31, 2023.
- i. The Applicant and the Respondent agree if documentation set out in paragraph h. is provided to the Applicant is satisfactory in the Applicant's full and unfettered discretion, the Applicant will agree to further adjournment to August 1, 2023 to allow for the refinancing to be completed by July 31, 2023. No further forbearance fee will be sought or required for this additional extension.
- j. In the event the further adjournment is agreed upon, BDO as private receiver shall not be permitted to enter into an agreement of purchase and sale in respect of the Lands until after July 31, 2023.
- k. The Respondent consents to the court appointment of BDO as Receiver effective either:

1. in the event that no further adjournment is agreed to by the Applicant as contemplated in paragraphs h and i, the earlier of July 17, 2023 or upon default of the terms of this adjournment; or
 2. in the event that a further adjournment is agreed to by the Applicant as contemplated in paragraphs h and i, the earlier of August 1, 2023 or upon default of the terms of this adjournment.
- I. If there is any default of the above terms, the Applicant shall have the unfettered right to return to Court to take out a consent Order appointing BDO as Receiver in substantially the form of Order as the Draft Order uploaded to case lines by Applicant in respect of the April 28, 2023 hearing.



Madam Justice Steele

Date: June 21, 2023

APPENDIX G



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00694646-00CL **DATE:** 4 August 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: **CENTURION MORTGAGE CAPITAL CORPORATION v.
DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP et al.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Joey Jamil	Lawyer for the Applicant	jjamil@robapp.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Doug Bourassa	Lawyer for the Respondents	dbourassa@torkimanes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL:

1. Counsel attended and advised that the parties had resolved this receivership application on the basis of a consent order that will not come into force or effect until August 14, 2023, and then only if the applicant has confirmed by affidavit that it has not been repaid in full as of 9:00 a.m. that day. Their agreed upon endorsement is attached and is approved by the court.
2. The consent order, if it becomes effective, also authorizes and approves the continuation of the Sale Process as set out in the Pre-Filing Report of the Receiver dated March 23, 2023. In the meantime, one of the terms of the agreed terms of resolution is that, until the order becomes effective, the Receiver shall not enter into an agreement of purchase and sale in respect of the Lands.
3. Order to go on consent in the form signed by me today.

A handwritten signature in black ink that reads "Kimmel J." with a stylized flourish at the end.

KIMMEL J.

Court File No.: CV-23-00694646-00CL

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP AND DUNDAS SHORNCLIFFE LTD.

Respondents

ENDORSEMENT AUGUST 4, 2023

The Applicant and the Respondents consent to the following resolution of the attendance on today's date:

- a. The receivership order sought by the Applicant shall be granted in the form uploaded to Caselines;
- b. Notwithstanding the granting of the order on today's date, the Order shall not be in force or effect until
 - (i) after 9:00 a.m. on Monday, August 14, 2023; and
 - (ii) the Applicant has delivered an affidavit to both the Receiver and to counsel for the Respondents attesting to the fact that the indebtedness owed to the Applicant remains unpaid as of 9:00 a.m. on Monday August 14, 2023.
- c. In the event that the Applicant receives full payment, the Order shall be null and void and shall never become effective.
- d. The Receiver is not permitted to enter into an agreement of purchase and sale in respect of the Lands until the Order is in force and effect in accordance with paragraph (b) above.

APPENDIX H

Court File No.: CV-23-00694646-00CL

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.**

Respondents

THIRD AFFIDAVIT OF H. BOB VAVAROUTSOS

I, **H. BOB VAVAROUTSOS** of the City of Toronto in the Province of Ontario **MAKE OATH AND SAY:**

1. I am an Assistant Vice President of Mortgage Investments and Joint Ventures of the Applicant, Centurion Mortgage Capital Corporation (the "**Lender**" or "**Centurion**") and, as such, have knowledge of the matters contained in this Affidavit.

2. I am making this affidavit in support of an application by the Lender for the appointment of BDO Canada Limited (the "**Receiver**"), as receiver and manager for Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively the "**Borrower**"), including the properties municipally known as 5507 Dundas Street West, Toronto, Ontario ("**5507 Dundas**") and 5509 Dundas Street West, Toronto, Ontario ("**5509 Dundas**") (collectively the "**Property**").

3. I am making this affidavit to provide an update as to the status of the herein receivership matter in accordance with the Endorsement of Justice Kimmel dated August 4, 2023 (the “**Kimmel Endorsement**”). A copy of the Kimmel Endorsement together with a copy of the Order of Justice dated August 4, 2023 wherein BDO Canada Limited was appointed as Receiver (the “**Appointment Order**”) are attached as **Exhibit “1”**.

4. In accordance with paragraph 1 of the Kimmel Endorsement, I confirm that as of today the Borrower has not repaid the indebtedness owing to the Lender. I am swearing this affidavit to advise the Receiver and the Borrower of the status of the indebtedness and for the Appointment Order to become effective in accordance with the Kimmel Endorsement.

5. I make this Affidavit in support of the within Application and for no improper purpose.

SWORN remotely by H. Bob Vavaroutsos
at the City of Toronto, in the Province of
Ontario, before me on the 26th day of March,
2024, in accordance with *O. Reg. 431/20*,
Administering Oath or Declaration
Remotely.



DocuSigned by:
Dominique Michaud
5206B6ADCEAA461...

Commissioner for Taking Affidavits
(or as may be)

DOMINIQUE MICHAUD

DocuSigned by:
H. Bob Vavaroutsos
B5485109C657440...

H. BOB VAVAROUTSOS

THIS IS **EXHIBIT "1"** REFERRED TO IN
THE AFFIDAVIT OF **H. BOB VAVAROUTSOS**

SWORN BEFORE ME

THIS 26TH DAY OF MARCH, 2024

DocuSigned by:

Dominique Michaud

5295B6ADCEAA451...

A Commissioner, Notary, Etc.

Dominique Michaud



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00694646-00CL **DATE:** 4 August 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: **CENTURION MORTGAGE CAPITAL CORPORATION v.
DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP et al.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Joey Jamil	Lawyer for the Applicant	jjamil@robapp.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Doug Bourassa	Lawyer for the Respondents	dbourassa@torkimanes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL:

1. Counsel attended and advised that the parties had resolved this receivership application on the basis of a consent order that will not come into force or effect until August 14, 2023, and then only if the applicant has confirmed by affidavit that it has not been repaid in full as of 9:00 a.m. that day. Their agreed upon endorsement is attached and is approved by the court.
2. The consent order, if it becomes effective, also authorizes and approves the continuation of the Sale Process as set out in the Pre-Filing Report of the Receiver dated March 23, 2023. In the meantime, one of the terms of the agreed terms of resolution is that, until the order becomes effective, the Receiver shall not enter into an agreement of purchase and sale in respect of the Lands.
3. Order to go on consent in the form signed by me today.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.

Court File No.: CV-23-00694646-00CL

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP AND DUNDAS SHORNCLIFFE LTD.

Respondents

ENDORSEMENT AUGUST 4, 2023

The Applicant and the Respondents consent to the following resolution of the attendance on today's date:

- a. The receivership order sought by the Applicant shall be granted in the form uploaded to Caselines;
- b. Notwithstanding the granting of the order on today's date, the Order shall not be in force or effect until
 - (i) after 9:00 a.m. on Monday, August 14, 2023; and
 - (ii) the Applicant has delivered an affidavit to both the Receiver and to counsel for the Respondents attesting to the fact that the indebtedness owed to the Applicant remains unpaid as of 9:00 a.m. on Monday August 14, 2023.
- c. In the event that the Applicant receives full payment, the Order shall be null and void and shall never become effective.
- d. The Receiver is not permitted to enter into an agreement of purchase and sale in respect of the Lands until the Order is in force and effect in accordance with paragraph (b) above.



Court File No.: CV-23-00694646-00CL

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

THE HONOURABLE) **FRIDAY, THE 4TH**
)
JUSTICE KIMMEL) **DAY OF AUGUST, 2023**

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.**

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by Centurion Mortgage Capital Corporation (“**Centurion**” or the “**Lender**”), on consent, 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. C.43, as amended (the “**CJA**”) appointing BDO Canada Limited as receiver and manager (in such capacities, the “**Receiver**”) over the Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively “**Dundas**” or the “**Debtor**”), and all of the assets, undertakings and properties of the Debtor, including the real property known municipally as 5507-5509 Dundas Street West, Toronto, Ontario (the “**Lands**”) with the legal description set out in Schedule "A", and all other property, assets and undertakings relating thereto, acquired for, or used in relation to a business carried on by the Debtor, and for other relief, was heard this day by way of video-conference.

ON READING the affidavit of H. Bob Vavaroutsos dated March 2, 2023 and the Exhibits thereto, the affidavit of H. Bob Vavaroutsos dated March 28, 2023 and the Exhibits thereto, the Pre-Filing Report of the Receiver dated March 23, 2023 (the “**Pre-Filing Report**”) and the Appendices thereto, the Affidavit of Antonio Dutra sworn March 27, 2023 and the Exhibits thereto, and on being advised of the consent of counsel acting for the Applicant and the Respondent and such other parties as were present, 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 is hereby appointed Receiver, without security, over the Debtor and 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, and including the property set out in Schedule "A" and all proceeds thereof (collectively 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 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 course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (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 assessments of the Property;
- (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 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;
- (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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; 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;
- (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;
- (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.
- (t) 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, limited partners 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.

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.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **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

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **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

11. **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

12. **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

13. **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

14. **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 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) 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

16. **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

17. **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

18. **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 unless otherwise ordered by the Court on the passing of accounts, 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 81.6(2) of the BIA.

19. **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 Commercial List of the Ontario Superior Court of Justice.

20. **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 standard 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

21. **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 \$500,000.00 (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 subordinate 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 B IA.

22. **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.

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

24. **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.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.bdo.ca/en-ca/extranets/dundas-shorncliffe/>

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

SALE PROCESS

27. **THIS COURT ORDERS** that the Sale Process as set out in the Pre-Filing Report of the Receiver dated March 23, 2023 is hereby approved and that the Receiver is authorized and directed to continue and complete the Sale Process for the purpose of soliciting interest in and opportunities for the sale of the Property of the Debtor.

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

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

RETENTION OF LAWYERS

30. **THIS COURT ORDERS** that the Receiver may retain lawyers, including the Applicant's lawyers, to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such lawyers may be the lawyers for the Applicant herein, in respect of any aspect, where the Receiver is satisfied that there is no actual or potential conflict of interest.

GENERAL

31. **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.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

33. **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.

34. **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.

35. **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 Applicant's security or, if not so provided by the Applicant'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.

36. **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.



Digitally signed by Jessica
Kimmel
Date: 2023.08.04 12:45:41 -0400

SCHEDULE "A" THE PROPERTY

PIN: 07550-0052 (LT)

DESCRIPTION: Lot 13, Plan 2104, Except Part 1, 64R1955, Part 7, RS1028 & Part 26, 64R8387; S/T EB 542779, TB 34882 Etobicoke; City of Toronto

Address: 5507 Dundas Street West, Etobicoke, Ontario

and

PIN: 07550-0051 (LT)

DESCRIPTION: Part of Lot 14, Plan 2104, as in EB429988; Etobicoke; City of Toronto

Address: 5509 Dundas Street West, Etobicoke, Ontario

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "**Receiver**") over Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (the "**Debtor**") and all of the assets, undertakings and Property of the Debtor municipally known as 5507-5509 Dundas Street West, Toronto, Ontario (collectively the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____, 2023 (the "**Order**") made in an application having Court file number CV- CV-23-00694646-00CL, 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.

2. 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 _____ from time to time.

3. 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.

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

5. 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.

6. 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.

7. 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 the ____ day of _____, 20__.

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

Per: _____

Name: Josie Parisi

Title: Senior Vice-President

**CENTURION MORTGAGE - and- DUNDAS SHORNCLIFFE
CAPITAL CORPORATION LIMITED PARTNERSHIP et al.**

Applicant

Respondents

Court File No.: CV-23-00694646-00CL

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Appointing Receiver)**

ROBINS APPLEBY LLP
Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No. 56871V
Email: dmichaud@robapp.com
Tel: (416) 360-3795

Anisha Samat LSO No. 82342Q
Email: asamat@robapp.com
Tel: (416) 360-3728

Lawyers for the Applicant

**CENTURION MORTGAGE - and -
CAPITAL CORPORATION**

**DUNDAS SHORNCLIFFE LIMITED
PARTNERSHIP AND DUNDAS
SHORNCLIFFE LTD.**

Applicant

Respondents

Court File No.: CV-23-00694646-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF H. BOB VAVAROUTSOS

ROBINS APPLEBY LLP

Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No. 56871V

Email: dmichaud@robapp.com

Tel: (416) 360-3795

Lawyers for the Applicant

APPENDIX I

Sale and Investment Solicitation Process

INTRODUCTION

By order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 4, 2023 which did not become effective until March 26, 2024 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings, and properties, including the real property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario and the associated Project (as defined below) and all other property, assets and undertakings related thereto (collectively the “**Property**”) of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively, “**Dundas**” or the “**Debtor**”). The real property was approved for construction of a 22-storey, 242,187 square foot mixed use building with up to 265 residential rental suites and 176 parking stalls (the “**Project**”).

THE OPPORTUNITY

It is anticipated that, on or about May 16, 2024, the Receiver will, *inter alia*, apply to the Court to approve the sale and investment solicitation process (“**SISP**”) described herein (the “**Process Approval Order**”). It is further anticipated that the Process Approval Order will also (i) authorize the Receiver to enter into a fully binding and conditional purchase and sale agreement (the “**Stalking Horse Agreement**”) between the Receiver and Centurion Acquisition Corporation, in trust for a corporation to be incorporated (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Purchaser will make an offer to purchase the Property; and (ii) approve the transaction contemplated by the Stalking Horse Agreement.

The opportunity may involve the recapitalization, investment in, arrangement or reorganization of the Debtor or the business of the Debtor (the “**Business**”) as a going concern or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).

The Process Approval Order, the procedures in respect of the SISP as contained herein (the “**SISP Procedures**”) and any subsequent orders issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the Transaction.

The purpose of these SISP Procedures is to determine whether a better Transaction than the Stalking Horse Agreement may be obtained by the Receiver in a formal marketing process approved by the Court. For the purposes of these SISP Procedures, a “**Superior Offer**” shall mean:

- a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
- b) an offer that provides for cash consideration in an amount equal to the purchase price in the Stalking Horse Agreement, plus (i) an incremental increase of \$100,000.00.

Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as defined below), any sale of the Property or investment in the Debtor will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, or any of their respective agents, advisors or representatives, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to a Court order, except as otherwise provided in such Court order.

TIMELINE

The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement of SISP	May 16, 2024
Distribution of the Notice and Teaser Letter	May 20, 2024
Bid Deadline	June 28, 2024
Auction	July 5, 2024
Sale Approval Hearing	July 15 to July 19, 2024
Closing Date Deadline	On or before July 29, 2024

The dates set out in the SISP may be extended by the Receiver in its sole discretion.

SOLICITATION OF INTEREST

As soon as reasonably practicable:

1. the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Receiver indicating an interest in the opportunity, and (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing the Property or investing in the Debtor pursuant to the SISP (collectively, “**Known Potential Bidders**”);
2. the Receiver will arrange for a notice of the SISP (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and any other newspaper or journal as the Receiver considers appropriate, if any; and

3. the Receiver will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (an “**NDA**”).

The Receiver will publish the Notice and send the Teaser Letter and NDA to all Known Potential Bidders by no later than May 23, 2024 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

INTERESTED PARTIES

Delivery of Confidential Information Package

Any party who wishes to participate in the SISP must provide to the Receiver, unless the Receiver confirms to such potential bidder that the below documents are already available to the Receiver, the following:

1. an NDA executed by it and a letter setting forth the identity of the potential bidder, the contact information for such potential bidder and full disclosure of the direct and indirect principals of the potential bidder; and
2. such form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the potential bidder’s financial and other capabilities to consummate a transaction that would constitute a Superior Offer.

If the Receiver determines, exercising its reasonable business judgement that a bidder: (i) has delivered the documents contemplated in the immediately preceding paragraph; and (ii) has the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP, then such bidder shall be deemed to be a “**Qualified Bidder**”. For greater certainty, no bidder shall be deemed not to be a Qualified Bidder without the approval of the Receiver.

At any time during Phase 1 of the SISP, the Receiver may, in its reasonable business judgment eliminate a Qualified Bidder from the SISP, in which case such Qualified Bidder will be eliminated from the SISP and will no longer be a Qualified Bidder for the purposes of the SISP.

The Receiver will prepare and send to each Qualified Bidder a confidential information package providing additional information considered relevant to the potential Transaction (the “**Confidential Information Package**”).

The Receiver and its respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver.

Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any Transaction they enter into with the Receiver.

Due Diligence

The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property as it deems appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver in its reasonable business judgment may agree.

The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from a Qualified Bidder and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property or Business to any person other than to a Qualified Bidder. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information.

FORMAL BINDING OFFERS

Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Debtor (a “**Bidder**”) shall submit a binding offer (the “**Bid**”) that complies with all of the following requirements to the Receiver at the addresses specified in Schedule “A” hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Eastern Time) on June 28, 2024 (the “**Bid Deadline**”):

1. the Bid may be an offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”), or to make an investment in, restructure, reorganize or refinance the Business (an “**Investment Proposal**”), or such other structure as the Bidder may propose;
2. in the case of a Sale Proposal, it identifies or contains the following:
 - a. the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - b. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - c. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - d. a description of the conditions and approvals required for a final and binding offer;

- e. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - f. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction;
3. in the case of an Investment Proposal, it identifies the following:
 - a. a description of how the Bidder proposes to structure the proposed investment;
 - b. the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars;
 - c. the underlying assumptions regarding the pro forma capital structure;
 - d. a specific indication of the sources of capital for the Bidder and the structure and financing of the Transaction;
 - e. a description of the conditions and approvals required for a final and binding offer;
 - f. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - g. all conditions to closing that the Bidder may wish to impose; and
 - h. any other terms or conditions of the Investment Proposal that the Bidder believes are material to the transaction;
4. in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Receiver and it has a reasonable prospect of resulting in a Superior Offer.
5. the Bid includes a letter stating that the Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder (as defined below), its offer shall remain irrevocable until the closing of the Transaction with the Successful Bidder;
6. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
7. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed Transaction, that will allow the Receiver to make a determination as to the Bidder's financial and other capabilities to consummate the proposed Transaction;

8. the Bid is not conditional on:
 - a. the outcome of any further due diligence by the Bidder, apart from, if applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld during the due diligence process prior to the Bid Deadline, or
 - b. obtaining financing;
9. the Bid fully discloses the identity of each entity or person that will be entering into the Transaction, that is participating in, or benefiting from, such bid, including any equity holders;
10. for a Sale Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the Purchase Price offered upon the Bidder being selected as the Successful Bidder (as defined below);
11. for an Investment Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder (as defined below);
12. the Bid includes acknowledgments and representations from the Bidder that the Bidder:
 - a. has had an opportunity to conduct any and all due diligence regarding the Property, and Business prior to making its offer (apart from, to the extent applicable, the disclosure of any due diligence materials representing proprietary or sensitive competitive information withheld during the due diligence process prior to the Bid Deadline);
 - b. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - c. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business or the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
13. the Bid is received by the Bid Deadline;
14. the Bid constitutes, in the reasonable business judgment of the Receiver, a Superior Offer; and
15. the Bid contemplates closing the Transaction set out therein on or before July 29, 2024 (the “Closing Date”).

A Bid that qualifies with the requirements set out above shall be considered a “**Qualified Bid**”. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Qualified Bid.

The Receiver may waive strict compliance with any one or more of the non-material foregoing requirements and deem such non-compliant bids to be a Qualified Bid.

SELECTION OF SUCCESSFUL BIDDERS

Following the Bid Deadline, the Receiver will assess the Bids received in consultation with its counsel. The Receiver shall approve the disqualification of any Bids that are deemed not to be Qualified Bids. Only Bidders whose Bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days following the Bid Deadline, or at such later time as the Receiver deems appropriate.

If no Qualified Bids (either individually or in the aggregate), other than the Stalking Horse Agreement have been received by the Bid Deadline, then the Receiver may consider an extension of the Bid Deadline for up to 7 business days to allow any party that submitted a Bid to consult with the Receiver and to revise such Bid such that it would provide for, or that might reasonably be expected to provide for, a Superior Offer.

Evaluation of Competing Bids

A Qualified Bid will be evaluated upon many factors, including, without limitation, items such as:

1. the Purchase Price and the net value provided by such Qualified Bid,
2. the identity, circumstances and ability of the Bidder to successfully complete such Transaction,
3. the proposed Transaction documents,
4. factors affecting the speed, certainty and value of the Transaction,
5. the assets included or excluded from the Bid,
6. the likelihood and timing of consummating such Transaction, and
7. whether the Transaction results in a Superior Offer.

each as determined by the Receiver, in consultation with its counsel.

Selection of Successful Bid

The Receiver shall:

1. first, review and evaluate each Qualified Bid, provided that the Receiver may contact any Bidder to clarify the terms of any Bid, and the applicable Bidder may amend, modify or vary such Bid for the purpose of clarification;
2. second, identify if any Qualified Bid is a Superior Offer; and
3. third, if one or more Qualified Bids are considered to be Superior Offers, those Qualified Bidders presenting a Superior Offer shall proceed to an auction with the Stalking Horse Bidder to be held on or before July 5, 2024 (the “**Auction**”), which shall proceed according to the Auction Procedures set out in **Schedule “B”** to this SISP to identify the “**Successful Bid**”, and the Bidder making such Successful Bid, the “**Successful Bidder**”.

If no Superior Offer is received by the Bid Deadline, the Auction will not be held and the Stalking Horse Bidder will be declared to be the Successful Bidder. The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.

Sale Approval Motion Hearing

At the hearing of the motion to approve any Transaction with a Successful Bidder (the “**Sale Approval Hearing**”), the Receiver shall seek, among other things, approval from the Court to consummate the Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

DEPOSIT

All deposits shall be held by the Receiver in a single noninterest-bearing account designated solely for such purpose. A deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Bidders not selected as the Successful Bidder shall be returned to such Bidder within three business days of Court approval of the Successful Bid.

CONFIDENTIALITY AND ACCESS TO INFORMATION

All discussions regarding a Transaction, Sale Proposal, Investment Proposal, Bid or Successful Bid should be directed through the Receiver. Under no circumstances should the management of the Debtor be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP at the discretion of the Receiver.

Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bidders, Qualified Bids, the details of any Bids or Qualified Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other Bidders or Qualified Bidders in connection with the SISP, except to the extent that the Receiver, with the consent of the applicable participants, is seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Receiver share any material information concerning any of the Bids with any person other than its advisors.

SUPERVISION OF THE SISP

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver and any Qualified Bidder, Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver.

Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, Bidder, the Successful Bidder, or any other creditor or other stakeholder of the Debtor, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Receiver. By submitting a Bid, each Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver in respect of the SISP for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct by the Receiver.

Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Schedule "A"**Addresses of Receiver****To the Receiver**

BDO Canada Limited
20 Wellington Street East, Suite 500
Toronto, ON M5E 1C5

Attention: Josie Parisi
Email: jparisi@bdo.ca

Schedule "B"

AUCTION PROCEDURES

1. On or before July 5, 2024, the Receiver will confirm those Qualified Bidders who present a Superior Offer ("**Superior Bidders**") that their Bid will be advanced to the Auction.
2. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Stalking Horse Bidder and each Superior Bidder shall be eligible to attend at the Auction and make any Subsequent Bid (as defined below) at the Auction.
3. The Auction, if any, shall be conducted by the Receiver, on or before July 5, 2024 at 10:00 a.m. (Eastern Time) via video conference.
4. At the Auction, all Superior Bidders and the Stalking Horse Bidder shall be permitted to increase their Superior Bids and the Stalking Horse Agreement in accordance with the procedures set forth herein (each, a "**Subsequent Bid**"). All Subsequent Bids presented during the Auction shall be made and received via video conference on an open basis. All participating Superior Bidders and the Stalking Horse Bidder shall be entitled to be present for all bidding with the understanding that the true identity of each participating Superior Bidder shall be fully disclosed to all other Superior Bidders and the Stalking Horse Bidder and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Stalking Horse Bidder and all other participating Superior Bidders throughout the entire Auction.
5. All Superior Bidders and the Stalking Horse Bidder at the Auction must have at least one individual representative with authority to bind such Superior Bidder and the Stalking Horse Bidder present at the Auction.
6. The Auction shall be recorded by the Receiver for their exclusive use and shall not be recorded by any other party.
7. At least three (3) days prior to the Auction, the Receiver will advise the Stalking Horse Bidder and all other Superior Bidders which of the Superior Bid or of the Stalking Horse Bidder the Receiver has determined in its reasonable business judgment, after consultation with its advisors, constitutes the then highest or otherwise best offer Sale Proposal or Investor Proposal (the "**Starting Bid**").
8. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Superior Bidder or the Stalking Horse Bidder that (i) improves upon such Superior Bidder's immediately prior Superior Bid or upon the Stalking Horse Agreement, as the case may be, and meets the overbid requirement set forth in paragraph 9 below, and (ii) the Receiver determines, in its reasonable business judgment, after consultation with its advisors, such Subsequent Bid is a higher or otherwise better offer than the then current leading Superior Bid.
9. Bidding at the Auction shall be in increments of \$100,000 and shall continue until such

- time as the highest and best bid is determined by the Receiver's reasonable business judgment after consultation with its advisors. For the purpose of evaluating the value of the consideration provided by each bid (including any Subsequent Bid by the Stalking Horse Bidder) presented at the Auction, the value will: (i) be deemed to be the net consideration payable to the Receiver after considering, *inter alia*, any Break Fee due to the Stalking Horse Bidder under the Stalking Horse Agreement; and (ii) take into account any additional liabilities to be assumed by a Superior Bidder.
10. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the Subsequent Bid that the Receiver has determined in its reasonable business judgment, after consultation with its advisors, to be the then highest or best bid (the "**Leading Bid**"). A round of bidding will conclude after each participating Superior Bidder and the Stalking Horse Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
 11. If no Superior Bidder or the Stalking Horse Bidder submits a Subsequent Bid (as determined by the Receiver) after a period of 30 minutes following the Receiver's acceptance of a Subsequent Bid as the Leading Bid, and the Receiver chooses not to adjourn the Auction further, the Receiver shall enter into a binding agreement of purchase and sale or investment substantially on the same terms as the Superior Bid or the Stalking Horse Agreement (as the case may be), as amended by the Leading Bid, with the Superior Bidder or the Stalking Horse Bidder (the Successful Bidder) that submitted the highest and best bid as determined by the Receiver (the "**Accepted Bid**"), whereupon the Auction will be concluded.
 12. At the Auction, the Receiver, after consultation with its advisors, may employ and announce additional procedural rules that are fair and reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; provided, however, that such rules are (a) not inconsistent with the Auction Procedures, the *Bankruptcy and Insolvency Act*, any order of the Courts entered in connection with the Auction Procedures and (b) disclosed to each Superior Bidder and the Stalking Horse Bidder at the Auction.

APPENDIX J

ASSET PURCHASE AGREEMENT

BETWEEN

BDO CANADA LIMITED,

solely in its capacity as court appointed receiver of Dundas Shorncliffe Limited Partnership and
Dundas Shorncliffe Ltd., and not in its personal capacity

AND

CENTURION ACQUISITION CORPORATION,

in trust for a corporation to be incorporated

MADE AS OF

May 10, 2024

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of May 10, 2024

BETWEEN

BDO CANADA LIMITED, solely in its capacity as court-appointed receiver of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd., and not in its personal capacity

(collectively, the "**Vendor**" or "**Receiver**")

- and -

CENTURION ACQUISITION CORPORATION, in trust for a corporation to be incorporated

(the "**Purchaser**"),

WHEREAS the Receiver was appointed as receiver over the Debtors pursuant to the order of Justice Kimmel dated the 4th day of August, 2023 (the "**Receivership Order**");

AND WHEREAS pursuant to the terms of the Receivership Order, the Receiver is authorized to market and sell the Properties;

AND WHEREAS the Purchaser desires to purchase the Purchased Assets (as defined herein) upon and subject to the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

"**Accepted Bid**" has the meaning set out in the Sale Process;

"**Acceptance Date**" means the date upon which this Agreement is fully executed by both parties.

"**Affiliates**" means, with respect to any Person, any other Person that controls or is controlled by or is under common control with the referent Person.

"**Agreement**" means this agreement, including its recitals and schedules, as amended from time to time.

“Applicable Law” means:

- (i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, as well as the common law; and
- (ii) any applicable and enforceable rule, requirement, order, judgment, injunction, award or decree of a Governmental Authority.

“Approval and Vesting Order” means an order of the Court substantially in the form attached hereto as **Exhibit A**: (i) approving the sale of the Purchased Assets by the Receiver to the Purchaser pursuant to the terms of this Agreement, and (ii) providing for the vesting of the right, title, benefit and interest of the Debtors in and to the Properties in and to the Purchaser, free and clear of all Liens, other than the Permitted Encumbrances.

“Assumed Liabilities” has the meaning set out in Section 1.01(1)(c).

“Business Day” means a day other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario.

“Claim” means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any Loss, claim or demand relating thereto or resulting therefrom, or any other claim or demand of whatever nature or kind.

“Closing Amount” has the meaning set out in Section 1.01(1)(b).

“Closing Date” means ten (10) days following the date of the Approval and Vesting Order, or such other date as may be agreed in writing between the parties hereto.

“Contract” means any contract, agreement, license, instrument or commitment recognized at law or equity, whether express or implied, or arising by a course of conduct or usage of trade.

“Court” means the Ontario Superior Court of Justice (Commercial List).

“Debtors” means Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd., and **“Debtor”** means any one of them.

“Documents” means any and all documents pertaining to the Lands and pertaining to the development thereof which are in the possession of the Receiver and have been made available to the Purchaser electronically through the “data room”. Without limiting the generality of the foregoing this includes all plans, surveys, studies, analysis, architectural plans, drawings and renderings, engineering reports including environmental reports, soil reports, structural reports and studies and analysis, planning opinions, recommendations, reports and studies, all marketing materials, reports, studies, opinions and recommendations which are in the possession of the Receiver.

“Environmental Law” means any Applicable Law relating to the natural or indoor environment including those pertaining to (i) reporting, licensing, permitting, investigating, remediating or controlling the presence or Release or threatened Release of Hazardous Substances, or (ii) the use,

treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including, for greater certainty, any such Applicable Law pertaining to occupational health and safety.

“**Governmental Authority**” means any domestic or foreign legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.

“**Hazardous Substance**” means any substance, material or emission whose storage, handling, use, transportation or Release is prohibited, controlled or regulated by any Governmental Authority having jurisdiction pursuant to Environmental Laws, including any contaminant or pollutant as defined in the *Environmental Protection Act* (Ontario).

“**Lands**” means the properties municipally known as 5507 and 5509 Dundas Street West, Toronto, Ontario and legally described as set out on **Exhibit D**.

“**Liabilities**” means all costs, expenses, charges, debts, liabilities, commitments and obligations of any nature or kind, whether accrued or fixed, actual, absolute, contingent, latent or otherwise, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law or Claim and those arising under any Contract or undertaking or otherwise, including any tax liability or tort liability of Debtor.

“**Liens**” means any lien (statutory or otherwise), mortgage, pledge, security interest (whether contractual, statutory or otherwise), hypothecation, trust or deemed trust (whether contractual, statutory, or otherwise), execution, levy, charge, encumbrance, interest in property, or other financial or monetary claim which, in each case, in substance, secures payment or performance of an obligation, or similar charge of any kind.

“**Permitted Encumbrances**” means only those Liens related to the Purchased Assets set forth on **Exhibit C**.

“**Person**” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“**Personal Information**” means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

“**Purchase Price**” has the meaning set out in Section 2.02.

“**Purchased Assets**” has the meaning set out in Section 2.01.

“**Purchaser’s Solicitor**” means Robins Appleby LLP.

“**Release**” means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

“**Receiver**” has the meaning set out in the recitals hereto.

“**Receiver’s Certificate**” means a certificate signed by the Receiver substantially in the form attached as **Schedule A** to the Approval and Vesting Order confirming that: (i) the Purchaser has paid, and the Receiver has received payment of, the Purchase Price in relation to the purchase by the Purchaser of the Purchased Assets, and (ii) the conditions to be complied with at or prior to the Time of Closing as set out in Sections 6.01 and 6.02, respectively, have been satisfied or waived by the Receiver or the Purchaser, as applicable, pursuant to Section 6.03.

“**Receivership Order**” has the meaning set out in the recitals hereto.

“**Receiver’s Solicitor**” means Lerner LLP, Attention: Domenico Magisano.

“**Revised Bid**” has the meaning set out in the Sale Process.

“**Sale Process**” has the meaning set out in Section 3.02.

“**Stalking Horse Bid**” has the meaning set out in Section 3.02.

“**Tax Act**” means the *Income Tax Act* (Canada).

“**Time of Closing**” means 9:00 a.m. (Toronto Time) on the Closing Date.

“**Transfer Taxes**” has the meaning set out in Section 2.06.

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Exhibits are to Articles and Sections of and Exhibits to this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than the Receiver and the Purchaser.

1.04 **Capacity of Receiver**

The Receiver, in executing this Agreement, is entering into this Agreement solely in its capacity as the court appointed receiver of the Properties, and not in its personal or any other capacity. The Receiver shall have no personal or corporate liability of any kind whether in contract, tort or otherwise.

1.05 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.06 **Currency**

All references to currency herein are to lawful money of Canada.

1.07 **Exhibits**

The following are the Exhibits to this Agreement:

Exhibit A - Form of Approval and Vesting Order

Exhibit B – HST Undertaking and Indemnity

Exhibit C - Permitted Encumbrances

Exhibit D – Legal Description

Exhibit E – Sales Process

ARTICLE 2 - SALE AND PURCHASE

2.01 **Assets to be Sold and Purchased**

Upon and subject to the terms and conditions hereof, the Receiver will sell to the Purchaser and the Purchaser will purchase from the Receiver, as of and with effect from the Time of Closing, all of the right, title, benefit and interest of Debtor in and to the following assets (collectively, the “**Purchased Assets**”):

- (a) the Lands;
- (b) all structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Lands; and
- (c) the Documents.

2.02 **Purchase Price**

The aggregate purchase price payable by the Purchaser on Closing to the Receiver for the Purchased Assets will be [REDACTED] (the “**Purchase Price**”), plus or minus customary adjustments on account of the sale of the Lands.

2.03 **Payment of Purchase Price**

- (1) The Purchase Price will be satisfied by the Purchaser as follows:

- (a) by paying, by wire transfer at the Time of Closing of Canadian dollars funds to an account specified by the Receiver (collectively, the “**Closing Amount**”):
- (i) the amount required for the Receiver to repay the loan owing to Pesciolino Holdings Inc. pursuant to its Charge/Mortgage registered as Instrument No. AT5328799 on December 23, 2019;
 - (ii) an amount equal to the unfunded fees and expenses (plus applicable HST) of the Receiver and its agents and legal counsel, payable by wire transfer on Closing to the Receiver or to whom the Receiver will otherwise direct.
- (b) by assuming a portion of the obligations and liabilities secured by the Charge/Mortgage registered as Instrument No. AT5328801 in favour of Centurion Mortgage Capital Corporation (collectively, the “**Assumed Liabilities**”) which assumed portion shall be in the amount of the balance of the Purchase Price.

2.04 Assumed Liabilities

Other than the Assumed Liabilities, the Purchaser will not assume any liabilities or obligations of the Debtor of any kind, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereinafter created. The Purchaser acknowledges that the assumption of the Assumed Liabilities will require the Purchaser to enter into certain agreements with and provide certain information to Centurion Mortgage Capital Corporation, as necessary for the underwriting of the Purchaser by Centurion Mortgage Capital Corporation, and the Purchaser agrees to enter into such agreements and provide all such information forthwith.

2.05 Property Taxes

(1) The Purchaser and the Receiver shall adjust all municipal realty taxes to the Closing Date. This includes all municipal realty taxes, assessments, levies and penalties of any nature or kind, and interest and costs thereon, including all levies and special charges set forth in the respective tax bills of any government taxation authority.

(2) The Purchaser shall, at its option, be entitled to continue any realty tax appeals, complaints, applications, or proceedings pending for any calendar year prior to the calendar year in which the Closing Date occurs and shall be entitled to receive from the municipality any payment resulting therefrom. To the extent the Purchaser receives any of the aforementioned payments, it shall hold said payments in trust for the Receiver and forthwith remit the payments to the Receiver.

2.06 Transfer Taxes

(1) The Purchaser will be liable for and will pay, or will cause to be paid, all transfer, land transfer, value added, *ad-valorem*, excise, sales, use, consumption, goods or services,

harmonized sales, retail sales, social services, or other similar taxes or duties (collectively, “**Transfer Taxes**”) payable under any Applicable Law on or with respect to the sale and purchase of the Purchased Assets under this Agreement. The Purchaser will prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense.

(2) The Purchaser shall indemnify and save harmless the Receiver and its employees, advisors and agents from all Claims incurred, suffered or sustained as a result of a failure by the Purchaser:

- (a) to pay any Transfer Taxes payable by the Purchaser; and/or
- (b) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Purchased Assets.

2.07 Delivery of Purchased Assets

At the Time of Closing, the Purchaser will take possession of the Purchased Assets where situated.

ARTICLE 3– COMPETING BIDS AND SALES PROCESS

3.01 Bid and Auction Procedures

The Purchaser and Receiver acknowledge that this Agreement and the transactions contemplated hereby are subject to the marketing and auction process contemplated by the Sale Process and to the approval of the Court.

The Purchaser further acknowledges that the Receiver intends to bring a motion to the Court to seek approval for the Sale Process to market and sell the Purchased Assets. By making an offer pursuant to this Agreement, the Purchaser acknowledges that it has reviewed and accepts the Sale Process.

3.02 The Sale Process

The parties acknowledge and agree that, as soon as reasonably practicable, the Receiver will apply to the Court for a timetable for and a bidding and sales process (the “**Sale Process**”) with respect to the Purchased Assets, as more particularly set forth in Exhibit E. The Sale Process will recognize this Agreement and in particular the Closing Amount, as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”), and shall also provide for a marketing process of the Purchased Assets by the Receiver and competitive bidding to be administered by the Receiver. The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a higher price than that contemplated in the Stalking Horse Bid can be obtained for the Purchased Assets.

ARTICLE 4- REPRESENTATIONS AND WARRANTIES

4.01 Receiver's Representations and Warranties

The Receiver represents and warrants to the Purchaser that, as at the date hereof and as of the Closing Date:

- (a) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, the Receiver has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
- (b) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, this Agreement constitutes a valid and legally binding obligation of the Receiver, enforceable against the Receiver in accordance with its terms; and
- (c) Debtor is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

4.02 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Receiver that:

- (a) the Purchaser is a corporation duly incorporated, organized and existing under the laws of the Province of Ontario;
- (b) the Purchaser has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
- (c) this Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms;
- (d) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein will not breach its constating documents, any agreement binding on the Purchaser, or Applicable Laws relating to the Purchaser;
- (e) that it has the financial ability through its own resources or through financing that has been arranged with a recognized financial lending institution, to close the transaction contemplated herein and pay the balance of the Purchase Price on the Closing Date;
- (f) the Purchaser has available, and at the Time of Closing will have, sufficient funding to enable the Purchaser to consummate the purchase of the Purchased Assets on the terms set forth herein and otherwise to perform all of the Purchaser's obligations under this Agreement;

- (g) the Purchaser will be registered under Part IX of the *Excise Tax Act* (Canada) on or before the Closing Date; and
- (h) the Purchaser is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

4.03 **“As Is, Where Is”**

(1) The Purchaser acknowledges and agrees that it is purchasing the Purchased Assets on an “as is, where is” basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Assets (including a review of title), and all other relevant matters and has determined to proceed with the transaction contemplated herein and will accept the same at the Time of Closing in their then current state, condition, location, and amounts, subject to all Permitted Encumbrances.

(2) Any documents, materials and information provided by or on behalf of the Receiver to the Purchaser with respect to the Purchased Assets (including the Documents and any confidential information memorandums, management presentations, or material made available to the Purchaser) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Receiver has not made and is not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Receiver and their respective affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information. The Purchaser further acknowledges that the use of the Documents may not be possible without the Purchaser obtaining reliance or other assurances from the author of such Documents directly and further that the interest of the Debtor in the Documents may be subject to copyright or other property rights which may preclude their use by the Purchaser in whole or in part.

ARTICLE 5 - COVENANTS

5.01 **Covenants of the Receiver**

(1) The Receiver will ensure that the representations and warranties of the Receiver set out in Section 4.01 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Purchaser set out in Section 6.01 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Receiver shall file with the Court, as soon as practicable after its execution and delivery of this Agreement, a motion seeking the Court’s issuance of the Approval and Vesting Order.

5.02 **Covenants of the Purchaser**

(1) The Purchaser will ensure that the representations and warranties of the Purchaser set out in Section 4.02 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Receiver set out in Section 6.02 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Purchaser will provide the Receiver with all information within its possession or control that the Receiver may reasonably request to assist the Receiver in obtaining the Approval and Vesting Order.

(3) The Purchaser will comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar Applicable Laws relating to privacy and the protection of Personal Information in respect of the Books and Records, Contracts and any other business and financial records related to the Purchased Assets.

(4) The Purchaser will provide to a third party in a timely manner and without delay such information as may be required or requested by such third party in connection with obtaining any consent, approval or waiver of such third party under the Assumed Liabilities, including confidential, financial and sensitive information.

(5) On Closing, the Purchaser will assume the obligations of the Debtor under the Assumed Liabilities in writing in favour of both the Receiver and any other required parties in such forms as may be required by the Receiver, acting reasonably, and by the other parties, acting in their respective discretion permitted under the Assumed Liabilities.

ARTICLE 6 - CONDITIONS AND TERMINATION

6.01 **Conditions for the Benefit of the Purchaser**

The sale by the Receiver and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with:

- (a) the representations and warranties of the Receiver set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Receiver will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Receiver at or prior to the Time of Closing;
- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the Purchased Assets at the Time of Closing; and
- (d) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or

any such appeal shall have been dismissed with no further appeal therefrom) prior to the Time of Closing.

6.02 **Conditions for the Benefit of the Receiver**

The sale by the Receiver and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Receiver and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Purchaser set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Purchaser will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing;
- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the Purchased Assets; and
- (d) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom).

6.03 **Waiver of Condition**

The Purchaser, in the case of a condition set out in Section 6.01, and the Receiver, in the case of a condition set out in Section 6.02, will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the purchase and sale of the Purchased Assets herein contemplated.

6.04 **Termination**

This Agreement may be terminated, by delivery of written notice within 2 Business Days of such party learning of such breach with respect to Section 5.04(a) and prior to the Closing Date for any other provision below:

- (a) by the Receiver or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party and such breach has not been waived or cured within five days following the date on which the non-breaching party notifies the other party of such breach;

- (b) by the Purchaser if a condition in Section 6.01 becomes impossible to satisfy by the Time of Closing (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition;
- (c) by the Receiver if a condition in Section 6.02 becomes impossible to satisfy prior to the Time of Closing (other than through the failure of the Receiver to comply with its obligations under this Agreement) and the Receiver has not waived such condition; and
- (d) by written agreement of the Purchaser and the Receiver.

6.05 **Effect of Termination**

Each party's right of termination under Section 6.04 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 6.04, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 7.04, 9.03, 9.04 and 9.16 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE 7 - CLOSING ARRANGEMENTS

7.01 **Closing**

The sale and purchase of the Purchased Assets will be completed at the Time of Closing at the offices of Robins Appleby LLP, 120 Adelaide Street West, Suite 2600, Toronto, Ontario M5H 1T1.

7.02 **Receiver's Closing Deliveries**

On or before the Time of Closing, the Receiver will deliver or cause to be delivered to the Purchaser the following:

- (a) a certificate executed by the Receiver confirming that the representations and warranties of the Receiver in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Receiver to be performed prior to the Time of Closing have been performed in all material respects;
- (b) an undertaking to readjust the any customary adjustments to the Purchase Price, if necessary;

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- (c) an assignment and assumption agreement (the “**Assignment and Assumption Agreement**”), duly executed by the Receiver, effecting the assignment and assumption by the Purchaser of the Assumed Liabilities;
- (d) a copy of the issued and entered Approval and Vesting Order; and
- (e) such other documents or instruments as contemplated or required to be delivered by the Receiver pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

7.03 **Purchaser’s Closing Deliveries**

On or before the Time of Closing, the Purchaser will deliver or cause to be delivered to the Receiver the following:

- (a) payment of the Purchase Price to the Receiver as contemplated by Section 2.03(1);
- (b) a certificate executed by a senior officer of the Purchaser confirming that the representations and warranties of the Purchaser in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Purchaser to be performed prior to the Time of Closing have been performed in all material respects;
- (c) an undertaking to readjust the customary adjustments to the Purchase Price, if necessary;
- (d) if required, a land transfer tax affidavit;
- (e) the HST Undertaking and Indemnity;
- (f) the Assignment and Assumption Agreement, duly executed by the Purchaser; and
- (g) such other documents or instruments as contemplated or required to be delivered by the Purchaser pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

7.04 **Confidentiality**

Both prior to the Closing Date and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason thereafter, the Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning Debtor or the operations obtained by the Purchaser pursuant hereto, and will hold all such information in the strictest confidence and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason, will return all documents, records and all other information or data relating to Debtor or to the operations which the Purchaser obtained pursuant to this Agreement.

7.05 **Delivery of Receiver's Certificate**

When the Receiver is satisfied that all conditions hereunder have been satisfied or waived, and all documents to be delivered under the terms hereof have been delivered at or before the Time of Closing, the Receiver will deliver an executed copy of the Receiver's Certificate to the Purchaser's counsel in escrow upon the sole condition of receipt by the Receiver of the amounts referred to in Section 2.03(1). All of the foregoing amounts will then be paid by the Purchaser, by wire transfer of immediately available funds to an account designated in writing by the Receiver for this purpose pursuant to Section 2.03(1) hereof. Following written confirmation of receipt by the Receiver of such funds (or such person directed by the Receiver to receive such funds), the Receiver's Certificate will be released from escrow to the Purchaser. Upon such delivery, the closing will be deemed to have occurred at the Time of Closing. The Receiver will file a copy of the Receiver's Certificate with the Court on the next Business Day following the Closing Date and provide evidence of such filing to the Purchaser.

7.06 **Planning Act**

This Agreement is subject to compliance with the *Planning Act* (Ontario). The parties agree that compliance with the *Planning Act* (Ontario) shall be the responsibility of the Purchaser at its costs. The Receiver agrees to execute all documents reasonably requested by the Purchaser in respect thereof.

ARTICLE 8 - SURVIVAL AND ACCESS

8.01 **Survival**

No covenants, representations and warranties of each party contained in this Agreement will survive the completion of the sale and purchase of the Purchased Assets, except for the covenants that by their terms are to be satisfied or survive after the Time of Closing (including without limitation Sections 2.06, 9.03, 9.04, and 9.16), which covenants will continue in full force and effect in accordance with their terms.

8.02 **Access by Purchaser**

The Receiver shall allow the Purchaser, its representatives and advisors to have access to the Lands and subject to providing twenty four (24) hours' Notice, to allow the Purchaser to carry out such non-invasive tests (including soil tests), environmental audits or assessments, surveys and inspections of the Lands as the Purchaser, its representatives or advisors may deem necessary. All such tests and inspections shall be at the sole risk and expense of the Purchaser. The Purchaser acknowledges that the Receiver shall be entitled to have a representative present during each such period of access. The Purchaser shall promptly repair at its sole cost and expense any damage to the Property caused by such tests and inspections and indemnify the Receiver for any damages or costs sustained by the Receiver as a result of the Purchaser's inspections. The Purchaser agrees that this covenant shall survive termination of this Agreement.

ARTICLE 9 - GENERAL

9.01 Further Assurances

Each of the Receiver and the Purchaser will from time to time at the request and expense of the other execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

9.02 Time of the Essence

Time is of the essence of this Agreement.

9.03 Fees, Commissions and other Costs and Expenses

Each of the Receiver and the Purchaser will pay its respective legal and accounting costs and expenses and any real estate or other commissions incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim resulting from any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

9.04 Public Announcements

Except as required by Applicable Law, no public announcement or press release concerning the sale and purchase of the Purchased Assets may be made by the Receiver or the Purchaser without the prior consent and joint approval of the Receiver and the Purchaser.

9.05 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties.

9.06 Entire Agreement

This Agreement (including the agreements contemplated hereby) constitute the entire agreement between the parties with respect to the subject matter hereof and such agreements cancel and supersede any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement (including the agreements contemplated hereby).

9.07 Amendments and Waivers

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties. No waiver of any breach of any provision of this Agreement

will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

9.08 **Assignment and Adoption**

Prior to obtaining the Approval and Vesting Order, this Agreement may be assigned by the Purchaser or adopted as a pre-incorporation contract by a newly incorporated corporation without the prior consent of but on notice to the Receiver. Following the Approval and Vesting Order having been obtained, this Agreement may not be assigned by the Purchaser or adopted as a pre-incorporation contract by a newly incorporated corporation without the written consent of the Receiver, which consent may be arbitrarily withheld. It is acknowledged that the Approval and Vesting Order is being obtained to vest title into the name of the Purchaser. Accordingly, as a condition of any consent to an assignment or adoption, the Purchaser will be responsible to pay the Receiver's costs for obtaining any revisions to or preparing materials to obtain an amended Approval and Vesting Order to vest title into the name of the assignee or adoptee. Upon any assignment (but for clarity, not any adoption), the original Purchaser shall nonetheless remain liable until successful completion of this transaction.

9.09 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

To the Receiver:

BDO Canada Limited
20 Wellington Street East
Suite 500
Toronto, Ontario M5E 1C5

Fax No.: 416-369-6031
Email: JParisi@bdo.ca
Attention: Josie Parisi

With copies to:

Lerners LLP
225 King Street West
Suite 1600
Toronto, Ontario M5V 3M2

Attention: Domenico Magisano

To the Purchaser:

Centurion Acquisition Corporation
25 Sheppard Avenue West

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Toronto, Ontario
M2N 6S6

E-mail: bvavaroutsos@centurion.ca
Attention: Bob Vavaroutsos

With copies to:

Robins Appleby LLP
120 Adelaide Street West
Suite 2600
Toronto, Ontario M5H 1T1

Fax No: 416-863-4592
Email: dmichaud@robapp.com
Attention: Dominique Michaud

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

9.10 **Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.11 **No Third Party Beneficiaries**

This Agreement is solely for the benefit of:

- (a) the Receiver, and its successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and
- (b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Receiver under this Agreement,

and this Agreement will not be deemed to confer upon or give to any other person any Claim or other right or remedy.

9.12 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

9.13 **Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Receiver and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

9.14 **Appointment of Agent for Service**

The Purchaser nominates, constitutes and appoints the Purchaser's Solicitor its true and lawful agent to accept service of process and to receive all lawful notices in respect of any action arising under this Agreement (other than any notice that is to be given by one party to another pursuant to Section 9.09). Until due and lawful notice of the appointment of another and subsequent agent in the Province of Ontario has been given to and accepted by the Receiver, service of process or of papers and such notices upon the Purchaser's Solicitor will be accepted by the Purchaser as sufficient service.

9.15 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect.

9.16 **No Registration of Agreement**

The Purchaser agrees that it will not register or cause or permit to be registered this Agreement and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Lands and/or any part thereof. The Purchaser shall indemnify and save the Receiver harmless from and against any and all Claims whatsoever arising from or with respect to any such registration. This Section shall survive the expiration and/or termination of this Agreement for any reason.

9.17 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

9.18 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

This Agreement shall expire if it has not been accepted by the Receiver on or before May 31, 2024.

[The balance of this page has been intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**CENTURION ACQUISITION
CORPORATION, in trust for a
corporation to be incorporated**

Per:



Name: Greg Romundt
Title: Authorized Signing Officer

**BDO CANADA LIMITED,
solely in its capacity as receiver of solely
in its capacity as court-appointed
receiver of Dundas Shorncliffe Limited
Partnership and Dundas Shorncliffe
Ltd., and not in its personal capacity**

Per:

Name:

Title:

EXHIBIT A

Form of Approval and Vesting Order

Court File No. CV-23-00694646-00CL

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

THE HONOURABLE JUSTICE) DAY, THE [__] DAY OF
) [__], 2024
)

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

and

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP & DUNDAS SHORNCLIFFE
LTD.**

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court appointed receiver (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and • (the “**Purchaser**”) dated •, 2024, and vesting in the Purchaser, DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP and DUNDAS SHORNCLIFFE LTD. (collectively, the “**Debtors**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of ● sworn ●, 2024 and the ● Report of the Receiver dated ●, 2024 (the “● Report”), and on hearing the submissions of counsel for the Receiver, the Applicant, and the Purchaser, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ●, 2024 filed:

1. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
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 A** hereto (the “**Receiver’s Certificate**”), all of Debtors’ right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order dated the 4th day of August, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule B** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule C**) and, for greater certainty, this Court orders that all of

the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to Debtors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Debtors.

7. **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 Debtors and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of Debtors;

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

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and Sections 6(3) of the *Retail Sales Act* (Ontario).

9. **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.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-23-00694646-00CL

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

THE HONOURABLE JUSTICE) DAY, THE [__] DAY OF
) [__], 2024
)

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

and

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP & DUNDAS SHORNCLIFFE
LTD.**

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice _____ of the Ontario Superior Court of Justice (the “**Court**”) dated August 4th, 2023, BDO Canada Limited was appointed as receiver (the “**Receiver**”) of DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP and DUNDAS SHORNCLIFFE LTD. (collectively, the “**Debtor**”).

B. Pursuant to an Order of the Court dated ●, 2024, the Court approved the agreement of purchase and sale made as of ●, 2024 (the “**Asset Purchase Agreement**”) between the Receiver and ● (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title

and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets, (ii) that the conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**BDO Canada Limited, in its capacity as
Receiver, and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Claims to be deleted and expunged from title to Real PropertyPIN 07550-0051 (LT)

1. Notice as Instrument No. AT5328805
2. Charge in favour of Pesciolino Holdings Inc. registered as Instrument No. AT5328806
3. Notice registered as Instrument No. AT5328807
4. Postponement registered as Instrument No. AT5674648
5. Postponement registered as Instrument No. AT5674649
6. Postponement registered as Instrument No. AT5674650
7. Postponement registered as Instrument No. AT5709906
8. Postponement registered as Instrument No. AT5709907
9. Postponement registered as Instrument No. AT5709908
10. Application to Change Name registered as Instrument No. AT5766785
11. Postponement registered as Instrument No. AT5821000
12. Postponement registered as Instrument No. AT5821001
13. Postponement registered as Instrument No. AT5821002
14. Charge in favour of Mapleview Pear Tree Inc. registered as Instrument No. AT5978724
15. Postponement registered as Instrument No. AT5978784
16. Postponement registered as Instrument No. AT5978785
17. Court Order registered as Instrument _____

PIN 07550-0052 (LT)

1. Notice registered as Instrument No. AT5328805
2. Charge in favour of Pesciolino Holdings Inc. registered as Instrument No. AT5328799
3. Charge in favour of Pesciolino Holdings Inc. registered as Instrument No. AT5328806
4. Notice registered as Instrument No. AT5328807
5. Postponement registered as Instrument No. AT5674648

6. Postponement registered as Instrument No. AT5674649
7. Postponement registered as Instrument No. AT5674650
8. Postponement registered as Instrument No. AT5674651
9. Postponement registered as Instrument No. AT5709906
10. Postponement registered as Instrument No. AT5709907
11. Postponement registered as Instrument No. AT5709908
12. Application to Change Name registered as Instrument No. AT5766785
13. Postponement registered as Instrument No. AT5821000
14. Postponement registered as Instrument No. AT5821001
15. Postponement registered as Instrument No. AT5821002
16. Charge in favour of Mapleview Pear Tree Inc. registered as Instrument No. AT5978724
17. Postponement registered as Instrument No. AT5978784
18. Postponement registered as Instrument No. AT5978785
19. Court Order registered as Instrument _____

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property (unaffected by the Vesting Order)**

(SEE EXHIBIT C)

EXHIBIT B**HST UNDERTAKING AND INDEMNITY**

TO: BDO CANADA LIMITED., solely in its capacity as receiver of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd., and not in its personal capacity

AND TO: Robins Appleby LLP, its solicitors

RE: **Agreement of Purchase and Sale dated May 10, 2024 (the "Agreement") between BDO CANADA LIMITED., solely in its capacity as court appointed receiver of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd., and not in its personal capacity (the "Receiver") and _____ (the "Purchaser") in respect of the property municipally known as 5507 and 5509 Dundas Street West, Toronto, Ontario (collectively, the "Purchased Assets")**

IN CONSIDERATION of and notwithstanding closing of the above-noted purchase, the undersigned hereby covenants and agrees that with respect to Harmonized Sales Tax ("HST") payable pursuant to the *Excise Tax Act* (the "Act") by reason of the sale of the Property and all buildings, structures and improvements thereon, the Purchaser represents, warrants and agrees that:

- (i) It is purchasing the Purchased Assets as principal for its own account and same is not being purchased by the Purchaser as an agent, trustee or otherwise on behalf of or for another person;
- (ii) It is registered under Subdivision (d) of Division V of Part IX of the *Act* for the collection and remittance of HST; its registration number is _____; and such registration is in good standing and has not been withdrawn or revoked and shall file returns and remit any HST owing on the sale to the Receiver General to the extent required by the *Act*;
- (iii) It shall be liable to and shall self-assess and remit to the appropriate governmental authority all HST which is payable under the *Act* in connection with the transfer of the Purchased Assets made pursuant to this Agreement of Purchase and Sale, all in accordance with the *Act*;
- (iv) It acknowledges that the Receiver is relying upon the accuracy of the above representations and warranties in not collecting HST and allowing the Purchaser to self-assess and remit HST to the Receiver General in accordance with the *Act*, and that such representation and warranties shall not merge on the closing of the transaction;
- (v) It shall indemnify and save harmless the Receiver from and against any and all HST, penalties, costs and/or interest which may become payable by or assessed against the Receiver as a result of any inaccuracy, misstatement or misrepresentation made in connection with any matter raised in this paragraph or contained in any declaration referred to herein; and

- (vi) If HST is payable in respect of this transaction in accordance with the Act, the undersigned, having paid or agreed to pay the consideration for the sale, is liable for payment of HST thereon.

The above warranties, certificates and agreements will survive the closing of this transaction and continue in full force and effect thereafter.

DATED this _____ day of _____, 2024.

Per: _____

Name:

Title:

I have the authority to bind the corporation

EXHIBIT C
PERMITTED ENCUMBRANCES

1. The reservations, limitations, provisions and conditions expressed in the original grant from the Crown and all unregistered rights, interests and privileges in favour of the Crown under or pursuant to any applicable statute or regulation.
2. Any subdivision agreement, development agreement, servicing agreement, site plan agreement or any other agreement, document, regulation, subdivision control by-law or other instrument containing provisions relating to the Lands or the use, development, installation of services and utilities or the erection of buildings or other improvements in or on the Lands.
3. All easements, licenses, rights-of-way, watercourses and rights (and all reference plans with respect thereto), whether registered or unregistered, including without limitation those for access or for the installation and maintenance of public and private utilities and other services including without limitation, telephone lines, hydro-electric lines, gas mains, water mains, sewers and drainage and other services or for the maintenance, repair or replacement of any adjoining building or lands, including any cost sharing agreement relating thereto, or any right of re-entry reserved by a predecessor in title.
4. Any restrictive covenants and building restrictions affecting the Lands.
5. Any defects of title or encroachments by or onto the Lands, whether by gardens, fences, trees, buildings, foundations, or other structures or things, which may be revealed by any survey or reference plan of the Lands, whether now in existence or not.
6. Utility agreements, and other similar agreements with Authorities or private or public utilities affecting the Lands.
7. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
8. Undetermined, inchoate or statutory liens and charges (including, without limitation, the liens of public utilities, workers, suppliers of materials, contractors, subcontractors, architects and unpaid Receivers of moveable property) incidental to any current operations of the Lands which have not been filed pursuant to any legal requirement or which relate to obligations not yet due or delinquent.
9. Zoning restrictions, restrictions on the use of the Lands or minor irregularities in title thereto.
10. The reservations, limitations, conditions and exceptions to title set out in the *Land Titles Act (Ontario)*.
11. Instrument No. EB254155
12. Instrument No. 64R8387

13. Instrument No. EB542779
14. Instrument No. TB34882
15. Instrument No. E317117
16. Instrument No. AT1090313
17. Charge in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5328801
18. Notice of Assignment of Rents – General in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5328802
19. Notice of Right of First Refusal in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5328804
20. Instrument No. AT5674643
21. Postponement registered as Instrument No. AT5674645
22. Postponement registered as Instrument No. AT5674647
23. Notice in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5709874
24. Notice in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5820957

EXHIBIT D
LEGAL DESCRIPTION

PIN 07550-0052 (LT)

LT 13, PL 2104 , EXCEPT PART 1, 64R1955, PART 7, RS1028, & PART 26, 64R8387 ; S/T
EB542779,TB34882 ETOBICOKE , CITY OF TORONTO

PIN 07550-0051 (LT)

PT LT 14, PL 2104 , AS IN EB429988 ; ETOBICOKE , CITY OF TORONTO

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EXHIBIT E **SALES PROCESS**

INTRODUCTION

By order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 4, 2023 which did not become effective until March 26, 2024 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings, and properties, including the real property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario and the associated Project (as defined below) and all other property, assets and undertakings related thereto (collectively the “**Property**”) of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively, “**Dundas**” or the “**Debtor**”). The real property was approved for construction of a 22-storey, 242,187 square foot mixed use building with up to 265 residential rental suites and 176 parking stalls (the “**Project**”).

THE OPPORTUNITY

It is anticipated that, on or about May 16, 2024, the Receiver will, *inter alia*, apply to the Court to approve the sale and investment solicitation process (“**SISP**”) described herein (the “**Process Approval Order**”). It is further anticipated that the Process Approval Order will also (i) authorize the Receiver to enter into a fully binding and conditional purchase and sale agreement (the “**Stalking Horse Agreement**”) between the Receiver and Centurion Acquisition Corporation, in trust for a corporation to be incorporated (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Purchaser will make an offer to purchase the Property; and (ii) approve the transaction contemplated by the Stalking Horse Agreement.

The Opportunity may involve the recapitalization, investment in, arrangement or reorganization of the Debtor or the business of the Debtor (the “**Business**”) as a going concern or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).

The Process Approval Order, the procedures in respect of the SISP as contained herein (the “**SISP Procedures**”) and any subsequent orders issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the Transaction.

The purpose of these SISP Procedures is to determine whether a better Transaction than the Stalking Horse Agreement may be obtained by the Receiver in a formal marketing process approved by the Court. For the purposes of these SISP Procedures, a “**Superior Offer**” shall mean:

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- a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
- b) an offer that provides for cash consideration in an amount equal to the purchase price in the Transaction, plus an incremental increase of \$_____.

Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as defined below), any sale of the Property or investment in the Debtor will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, or any of their respective agents, advisors or representatives, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to a Court order, except as otherwise provided in such Court order.

TIMELINE

The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement of SISP	May 16, 2024
Distribution of the Notice and Teaser Letter	May 20, 2024
Bid Deadline	June 28, 2024
Auction	July 5, 2024
Sale Approval Hearing	July 15 to July 19, 2024
Closing Date Deadline	On or before July 29, 2024

The dates set out in the SISP may be extended by the Receiver in its sole discretion.

SOLICITATION OF INTEREST

As soon as reasonably practicable:

1. the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Receiver indicating an interest in the opportunity, and (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing the Property or investing in the Debtor pursuant to the SISP (collectively, “**Known Potential Bidders**”);

2. the Receiver will arrange for a notice of the SISP (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and any other newspaper or journal as the Receiver considers appropriate, if any; and
3. the Receiver will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (an “**NDA**”).

The Receiver will publish the Notice and send the Teaser Letter and NDA to all Known Potential Bidders by no later than May 23, 2024 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

INTERESTED PARTIES

Delivery of Confidential Information Package

Any party who wishes to participate in the SISP must provide to the Receiver, unless the Receiver confirms to such potential bidder that the below documents are already available to the Receiver, the following:

1. an NDA executed by it and a letter setting forth the identity of the potential bidder, the contact information for such potential bidder and full disclosure of the direct and indirect principals of the potential bidder; and
2. such form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the potential bidder’s financial and other capabilities to consummate a transaction that would constitute a Superior Offer.

If the Receiver determines, exercising its reasonable business judgement that a bidder: (i) has delivered the documents contemplated in the immediately preceding paragraph; and (ii) has the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP, then such bidder shall be deemed to be a “**Qualified Bidder**”. For greater certainty, no bidder shall be deemed not to be a Qualified Bidder without the approval of the Receiver.

At any time during Phase 1 of the SISP, the Receiver may, in its reasonable business judgement eliminate a Qualified Bidder from the SISP, in which case such Qualified Bidder will be eliminated from the SISP and will no longer be a Qualified Bidder for the purposes of the SISP.

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The Receiver will prepare and send to each Qualified Bidder a confidential information package providing additional information considered relevant to the potential Transaction (the “**Confidential Information Package**”).

The Receiver and its respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver.

Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any Transaction they enter into with the Receiver.

Due Diligence

The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property as it deems appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver in its reasonable business judgment may agree.

The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from a Qualified Bidder and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property or Business to any person other than to a Qualified Bidder. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information.

FORMAL BINDING OFFERS

Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Debtor (a “**Bidder**”) shall submit a binding offer (the “**Bid**”) that complies with all of the following requirements to the Receiver at the addresses specified in Schedule “A” hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Eastern Time) on June 28, 2024 (the “**Bid Deadline**”):

1. the Bid may be an offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”), or to make an investment in, restructure, reorganize or refinance the

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- Business (an “**Investment Proposal**”), or such other structure as the Bidder may propose;
2. in the case of a Sale Proposal, it identifies or contains the following:
 - a. the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - b. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - c. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - d. a description of the conditions and approvals required for a final and binding offer;
 - e. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - f. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction;
 3. in the case of an Investment Proposal, it identifies the following:
 - a. a description of how the Bidder proposes to structure the proposed investment;
 - b. the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars;
 - c. the underlying assumptions regarding the pro forma capital structure;
 - d. a specific indication of the sources of capital for the Bidder and the structure and financing of the Transaction;
 - e. a description of the conditions and approvals required for a final and binding offer;
 - f. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - g. all conditions to closing that the Bidder may wish to impose; and
 - h. any other terms or conditions of the Investment Proposal that the Bidder believes are material to the transaction;

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4. in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Receiver and it has a reasonable prospect of resulting in a Superior Offer.
5. the Bid includes a letter stating that the Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder (as defined below), its offer shall remain irrevocable until the closing of the Transaction with the Successful Bidder;
6. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
7. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed Transaction, that will allow the Receiver to make a determination as to the Bidder's financial and other capabilities to consummate the proposed Transaction;
8. the Bid is not conditional on:
 - a. the outcome of any further due diligence by the Bidder, apart from, if applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld during the due diligence process prior to the Bid Deadline, or
 - b. obtaining financing;
9. the Bid fully discloses the identity of each entity or person that will be entering into the Transaction, that is participating in, or benefiting from, such bid, including any equity holders;
10. for a Sale Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the Purchase Price offered upon the Bidder being selected as the Successful Bidder (as defined below);
11. for an Investment Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder (as defined below);
12. the Bid includes acknowledgments and representations from the Bidder that the Bidder:
 - a. has had an opportunity to conduct any and all due diligence regarding the Property, and Business prior to making its offer (apart from, to the extent applicable, the disclosure of any due diligence materials representing proprietary or sensitive

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competitive information withheld during the due diligence process prior to the Bid Deadline);

- b. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - c. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business or the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
13. the Bid is received by the Bid Deadline;
14. the Bid constitutes, in the reasonable business judgment of the Receiver, a Superior Offer; and
15. the Bid contemplates closing the Transaction set out therein on or before July 29, 2024 (the “Closing Date”).

A Bid that qualifies with the requirements set out above shall be considered a “**Qualified Bid**”. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Qualified Bid.

The Receiver may waive strict compliance with any one or more of the non-material foregoing requirements and deem such non-compliant bids to be a Qualified Bid.

SELECTION OF SUCCESSFUL BIDDERS

Following the Bid Deadline, the Receiver will assess the Bids received in consultation with its counsel. The Receiver shall approve the disqualification of any Bids that are deemed not to be Qualified Bids. Only Bidders whose Bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days following the Bid Deadline, or at such later time as the Receiver deems appropriate.

If no Qualified Bids (either individually or in the aggregate), other than the Stalking Horse Agreement have been received by the Bid Deadline, then the Receiver may consider an extension of the Bid Deadline for up to 7 business days to allow any party that submitted a Bid to consult with the Receiver and to revise such Bid such that it would provide for, or that might reasonably be expected to provide for, a Superior Offer.

Evaluation of Competing Bids

A Qualified Bid will be evaluated upon many factors, including, without limitation, items such as:

1. the Purchase Price and the net value provided by such Qualified Bid,
2. the identity, circumstances and ability of the Bidder to successfully complete such Transaction,
3. the proposed Transaction documents,
4. factors affecting the speed, certainty and value of the Transaction,
5. the assets included or excluded from the Bid,
6. the likelihood and timing of consummating such Transaction, and
7. whether the Transaction results in a Superior Offer.

each as determined by the Receiver, in consultation with its counsel.

Selection of Successful Bid

The Receiver shall:

1. first, review and evaluate each Qualified Bid, provided that the Receiver may contact any Bidder to clarify the terms of any Bid, and the applicable Bidder may amend, modify or vary such Bid for the purpose of clarification;
2. second, identify if any Qualified Bid is a Superior Offer; and
3. third, if one or more Qualified Bids are considered to be Superior Offers, those Qualified Bidders presenting a Superior Offer shall proceed to an auction with the Stalking Horse Bidder to be held on or before July 5, 2024 (the “**Auction**”), which shall proceed according to the Auction Procedures set out in **Schedule “B”** to this SISP to identify the “**Successful Bid**”, and the Bidder making such Successful Bid, the “**Successful Bidder**”.

If no Superior Offer is received by the Bid Deadline, the Auction will not be held and the Stalking Horse Bidder will be declared to be the Successful Bidder. The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.

Sale Approval Motion Hearing

At the hearing of the motion to approve any Transaction with a Successful Bidder (the “**Sale Approval Hearing**”), the Receiver shall seek, among other things, approval from the Court to consummate the Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

DEPOSIT

All deposits shall be held by the Receiver in a single noninterest-bearing account designated solely for such purpose. A deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Bidders not selected as the Successful Bidder shall be returned to such Bidder within three business days of Court approval of the Successful Bid.

CONFIDENTIALITY AND ACCESS TO INFORMATION

All discussions regarding a Transaction, Sale Proposal, Investment Proposal, Bid or Successful Bid should be directed through the Receiver. Under no circumstances should the management of the Debtor be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP at the discretion of the Receiver.

Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bidders, Qualified Bids, the details of any Bids or Qualified Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other Bidders or Qualified Bidders in connection with the SISP, except to the extent that the Receiver, with the consent of the applicable participants, is seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Receiver share any material information concerning any of the Bids with any person other than its advisors.

SUPERVISION OF THE SISP

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver and any Qualified Bidder, Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver.

Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, Bidder, the Successful Bidder, or any other creditor or other stakeholder of the Debtor, for any act or omission related to

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the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Receiver. By submitting a Bid, each Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver in respect of the SISP for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct by the Receiver.

Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Schedule "A"

Addresses of Receiver

To the Receiver

BDO Canada Limited

20 Wellington Street East, Suite 500
Toronto, ON M5E 1C5

Attention: Josie Parisi
Email: jparisi@bdo.ca

Schedule "B"

AUCTION PROCEDURES

1. On or before July 5, 2024, the Receiver will confirm those Qualified Bidders who present a Superior Offer ("**Superior Bidders**") that their Bid will be advanced to the Auction.
2. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Stalking Horse Bidder and each Superior Bidder shall be eligible to attend at the Auction and make any Subsequent Bid (as defined below) at the Auction.
3. The Auction, if any, shall be conducted by the Receiver, on or before July 5, 2024 at 10:00 a.m. (Eastern Time) via video conference.
4. At the Auction, all Superior Bidders and the Stalking Horse Bidder shall be permitted to increase their Superior Bids and the Stalking Horse Agreement in accordance with the procedures set forth herein (each, a "**Subsequent Bid**"). All Subsequent Bids presented during the Auction shall be made and received via video conference on an open basis. All participating Superior Bidders and the Stalking Horse Bidder shall be entitled to be present for all bidding with the understanding that the true identity of each participating Superior Bidder shall be fully disclosed to all other Superior Bidders and the Stalking Horse Bidder and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Stalking Horse Bidder and all other participating Superior Bidders throughout the entire Auction.
5. All Superior Bidders and the Stalking Horse Bidder at the Auction must have at least one individual representative with authority to bind such Superior Bidder and the Stalking Horse Bidder present at the Auction.
6. The Auction shall be recorded by the Receiver for their exclusive use and shall not be recorded by any other party.
7. At least three (3) days prior to the Auction, the Receiver will advise the Stalking Horse Bidder and all other Superior Bidders which of the Superior Bid or of the Stalking Horse Bidder the Receiver has determined in its reasonable business judgment, after consultation with its advisors, constitutes the then highest or otherwise best offer Sale Proposal or Investor Proposal (the "**Starting Bid**").
8. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Superior Bidder or the Stalking Horse Bidder that (i) improves upon such Superior

Bidder's immediately prior Superior Bid or upon the Stalking Horse Agreement, as the case may be, and meets the overbid requirement set forth in paragraph 9 below, and (ii) the Receiver determines, in its reasonable business judgment, after consultation with its advisors, such Subsequent Bid is a higher or otherwise better offer than the then current leading Superior Bid.

9. Bidding at the Auction shall be in increments of \$100,000 and shall continue until such time as the highest and best bid is determined by the Receiver's reasonable business judgment after consultation with its advisors. For the purpose of evaluating the value of the consideration provided by each bid (including any Subsequent Bid by the Stalking Horse Bidder) presented at the Auction, the value will: (i) be deemed to be the net consideration payable to the Receiver after considering, *inter alia*, any Break Fee due to the Stalking Horse Bidder under the Stalking Horse Agreement; and (ii) take into account any additional liabilities to be assumed by a Superior Bidder.
10. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the Subsequent Bid that the Receiver has determined in its reasonable business judgment, after consultation with its advisors, to be the then highest or best bid (the "**Leading Bid**"). A round of bidding will conclude after each participating Superior Bidder and the Stalking Horse Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
11. If no Superior Bidder or the Stalking Horse Bidder submits a Subsequent Bid (as determined by the Receiver) after a period of 30 minutes following the Receiver's acceptance of a Subsequent Bid as the Leading Bid, and the Receiver chooses not to adjourn the Auction further, the Receiver shall enter into a binding agreement of purchase and sale or investment substantially on the same terms as the Superior Bid or the Stalking Horse Agreement (as the case may be), as amended by the Leading Bid, with the Superior Bidder or the Stalking Horse Bidder (the Successful Bidder) that submitted the highest and best bid as determined by the Receiver (the "**Accepted Bid**"), whereupon the Auction will be concluded.
12. At the Auction, the Receiver, after consultation with its advisors, may employ and announce additional procedural rules that are fair and reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; provided, however, that such rules are (a) not inconsistent with the Auction Procedures, the *Bankruptcy and Insolvency Act*, any order of the Courts entered in connection with the Auction Procedures and (b) disclosed to each Superior Bidder and the Stalking Horse Bidder at the Auction.

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TAB 3

Court File No.: CV-23-00694646-00CL

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

THE HONOURABLE)	WEDNESDAY, THE 15th
)	
JUSTICE CONWAY)	DAY OF MAY, 2024

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

-and-

**DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. 8-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43. AS AMENDED

ORDER

(Approval of Sale Process and Stalking Horse Sale Agreement)

THIS MOTION made by the BDO Canada Limited (the “**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) over Dundas Shorncliffe Limited Partnership and its General Partner, Dundas Shorncliffe Ltd. (collectively the “**Debtor**”) for the relief set out in the Notice of Motion dated May 13, 2024, including, *inter alia*, the approval of the sale and investment

solicitation process substantially in the form attached as Schedule “A” (the “**SISP**”) and approving the Stalking Horse Sale Agreement (defined below) was heard this day by videoconference.

ON READING the Motion Record of the Receiver and the First Report of the Receiver dated May 10, 2024 (the “**First Report**”), the Supplementary Motion Record dated May 13, 2024 containing the confidential appendices and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Rachel Cheung sworn May 13, 2024, filed.

SERVICE

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

SISP

2. **THIS COURT ORDERS** that the SISP is hereby approved.

3. **THIS COURT ORDERS** that the Receiver and its advisors are hereby authorized and directed to carry out the SISP and take such steps and execute such documentation as may be necessary or incidental to the SISP.

4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages, or liability of any nature or kind to any person in connection with or as a result of the SISP, except to the extent that such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Receiver in performing its obligations under the SISP.

5. **THIS COURT ORDERS** that, in carrying out the SISP, the Receiver shall have all benefits and protections granted to it under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the Order (Appointing Receiver) dated August 4, 2023 and any Order of this Court in the within proceeding.

STALKING HORSE SALE AGREEMENT

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to enter into the asset purchase agreement made as of May 10, 2024 (the “**Stalking Horse Sale Agreement**”, among the Receiver as Vendor and Centurion Acquisition Corporation, in trust for a corporation to be incorporated (the “**Stalking Horse Bidder**”), in the form attached as Appendix “J” to the First Report with such minor amendments as may be acceptable to each of the parties thereto; provided that nothing herein approves the sale and vesting of the assets contemplated in the Stalking Horse Sale Agreement (the “**Assets**”) and the approval and sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following the completion of the sale process pursuant to the terms of the SISP if the Stalking Horse Bidder is the successful bidder.

APPROVAL OF THE FIRST REPORT AND ACTIVITIES

7. **THIS COURT ORDERS** that the activities of the Receiver as described the First Report are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

8. **THIS COURT ORDERS** that the First Report is hereby approved.

SEALING

9. **THIS COURT ORDERS** that the Supplementary Motion Record dated May 13, 2024 to and the appendices thereto are hereby sealed until the earlier of:

- (a) the closing of the transaction; or
- (b) upon further order of the Court.

GENERAL

12. **THIS COURT ORDERS** that this Order shall have full force and-effect in all provinces and territories in Canada.

13. **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 or under the Bidding Procedures.

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

15. **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.

SCHEDULE “A” – SISP

Sale and Investment Solicitation Process

INTRODUCTION

By order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 4, 2023 which did not become effective until March 26, 2024 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings, and properties, including the real property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario and the associated Project (as defined below) and all other property, assets and undertakings related thereto (collectively the “**Property**”) of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively, “**Dundas**” or the “**Debtor**”). The real property was approved for construction of a 22-storey, 242,187 square foot mixed use building with up to 265 residential rental suites and 176 parking stalls (the “**Project**”).

THE OPPORTUNITY

It is anticipated that, on or about May 16, 2024, the Receiver will, *inter alia*, apply to the Court to approve the sale and investment solicitation process (“**SISP**”) described herein (the “**Process Approval Order**”). It is further anticipated that the Process Approval Order will also (i) authorize the Receiver to enter into a fully binding and conditional purchase and sale agreement (the “**Stalking Horse Agreement**”) between the Receiver and Centurion Acquisition Corporation, in trust for a corporation to be incorporated (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Purchaser will make an offer to purchase the Property; and (ii) approve the transaction contemplated by the Stalking Horse Agreement.

The opportunity may involve the recapitalization, investment in, arrangement or reorganization of the Debtor or the business of the Debtor (the “**Business**”) as a going concern or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).

The Process Approval Order, the procedures in respect of the SISP as contained herein (the “**SISP Procedures**”) and any subsequent orders issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the Transaction.

The purpose of these SISP Procedures is to determine whether a better Transaction than the Stalking Horse Agreement may be obtained by the Receiver in a formal marketing process approved by the Court. For the purposes of these SISP Procedures, a “**Superior Offer**” shall mean:

- a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and

- b) an offer that provides for cash consideration in an amount equal to the purchase price in the Stalking Horse Agreement, plus (i) an incremental increase of \$100,000.00.

Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as defined below), any sale of the Property or investment in the Debtor will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, or any of their respective agents, advisors or representatives, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to a Court order, except as otherwise provided in such Court order.

TIMELINE

The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement of SISP	May 16, 2024
Distribution of the Notice and Teaser Letter	May 20, 2024
Bid Deadline	June 28, 2024
Auction	July 5, 2024
Sale Approval Hearing	July 15 to July 19, 2024
Closing Date Deadline	On or before July 29, 2024

The dates set out in the SISP may be extended by the Receiver in its sole discretion.

SOLICITATION OF INTEREST

As soon as reasonably practicable:

- the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Receiver indicating an interest in the opportunity, and (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing the Property or investing in the Debtor pursuant to the SISP (collectively, “**Known Potential Bidders**”);
- the Receiver will arrange for a notice of the SISP (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and any other newspaper or journal as the Receiver considers appropriate, if any; and

3. the Receiver will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (an “**NDA**”).

The Receiver will publish the Notice and send the Teaser Letter and NDA to all Known Potential Bidders by no later than May 23, 2024 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

INTERESTED PARTIES

Delivery of Confidential Information Package

Any party who wishes to participate in the SISP must provide to the Receiver, unless the Receiver confirms to such potential bidder that the below documents are already available to the Receiver, the following:

1. an NDA executed by it and a letter setting forth the identity of the potential bidder, the contact information for such potential bidder and full disclosure of the direct and indirect principals of the potential bidder; and
2. such form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the potential bidder’s financial and other capabilities to consummate a transaction that would constitute a Superior Offer.

If the Receiver determines, exercising its reasonable business judgement that a bidder: (i) has delivered the documents contemplated in the immediately preceding paragraph; and (ii) has the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP, then such bidder shall be deemed to be a “**Qualified Bidder**”. For greater certainty, no bidder shall be deemed not to be a Qualified Bidder without the approval of the Receiver.

At any time during Phase 1 of the SISP, the Receiver may, in its reasonable business judgment eliminate a Qualified Bidder from the SISP, in which case such Qualified Bidder will be eliminated from the SISP and will no longer be a Qualified Bidder for the purposes of the SISP.

The Receiver will prepare and send to each Qualified Bidder a confidential information package providing additional information considered relevant to the potential Transaction (the “**Confidential Information Package**”).

The Receiver and its respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver.

Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any Transaction they enter into with the Receiver.

Due Diligence

The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property as it deems appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver in its reasonable business judgment may agree.

The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from a Qualified Bidder and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property or Business to any person other than to a Qualified Bidder. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information.

FORMAL BINDING OFFERS

Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Debtor (a “**Bidder**”) shall submit a binding offer (the “**Bid**”) that complies with all of the following requirements to the Receiver at the addresses specified in Schedule “A” hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Eastern Time) on June 28, 2024 (the “**Bid Deadline**”):

1. the Bid may be an offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”), or to make an investment in, restructure, reorganize or refinance the Business (an “**Investment Proposal**”), or such other structure as the Bidder may propose;
2. in the case of a Sale Proposal, it identifies or contains the following:
 - a. the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - b. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - c. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - d. a description of the conditions and approvals required for a final and binding offer;

- e. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - f. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction;
3. in the case of an Investment Proposal, it identifies the following:
 - a. a description of how the Bidder proposes to structure the proposed investment;
 - b. the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars;
 - c. the underlying assumptions regarding the pro forma capital structure;
 - d. a specific indication of the sources of capital for the Bidder and the structure and financing of the Transaction;
 - e. a description of the conditions and approvals required for a final and binding offer;
 - f. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - g. all conditions to closing that the Bidder may wish to impose; and
 - h. any other terms or conditions of the Investment Proposal that the Bidder believes are material to the transaction;
4. in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Receiver and it has a reasonable prospect of resulting in a Superior Offer.
5. the Bid includes a letter stating that the Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder (as defined below), its offer shall remain irrevocable until the closing of the Transaction with the Successful Bidder;
6. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
7. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed Transaction, that will allow the Receiver to make a determination as to the Bidder's financial and other capabilities to consummate the proposed Transaction;

8. the Bid is not conditional on:
 - a. the outcome of any further due diligence by the Bidder, apart from, if applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld during the due diligence process prior to the Bid Deadline, or
 - b. obtaining financing;
9. the Bid fully discloses the identity of each entity or person that will be entering into the Transaction, that is participating in, or benefiting from, such bid, including any equity holders;
10. for a Sale Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the Purchase Price offered upon the Bidder being selected as the Successful Bidder (as defined below);
11. for an Investment Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder (as defined below);
12. the Bid includes acknowledgments and representations from the Bidder that the Bidder:
 - a. has had an opportunity to conduct any and all due diligence regarding the Property, and Business prior to making its offer (apart from, to the extent applicable, the disclosure of any due diligence materials representing proprietary or sensitive competitive information withheld during the due diligence process prior to the Bid Deadline);
 - b. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - c. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business or the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
13. the Bid is received by the Bid Deadline;
14. the Bid constitutes, in the reasonable business judgment of the Receiver, a Superior Offer; and
15. the Bid contemplates closing the Transaction set out therein on or before July 29, 2024 (the “Closing Date”).

A Bid that qualifies with the requirements set out above shall be considered a “**Qualified Bid**”. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Qualified Bid.

The Receiver may waive strict compliance with any one or more of the non-material foregoing requirements and deem such non-compliant bids to be a Qualified Bid.

SELECTION OF SUCCESSFUL BIDDERS

Following the Bid Deadline, the Receiver will assess the Bids received in consultation with its counsel. The Receiver shall approve the disqualification of any Bids that are deemed not to be Qualified Bids. Only Bidders whose Bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days following the Bid Deadline, or at such later time as the Receiver deems appropriate.

If no Qualified Bids (either individually or in the aggregate), other than the Stalking Horse Agreement have been received by the Bid Deadline, then the Receiver may consider an extension of the Bid Deadline for up to 7 business days to allow any party that submitted a Bid to consult with the Receiver and to revise such Bid such that it would provide for, or that might reasonably be expected to provide for, a Superior Offer.

Evaluation of Competing Bids

A Qualified Bid will be evaluated upon many factors, including, without limitation, items such as:

1. the Purchase Price and the net value provided by such Qualified Bid,
2. the identity, circumstances and ability of the Bidder to successfully complete such Transaction,
3. the proposed Transaction documents,
4. factors affecting the speed, certainty and value of the Transaction,
5. the assets included or excluded from the Bid,
6. the likelihood and timing of consummating such Transaction, and
7. whether the Transaction results in a Superior Offer.

each as determined by the Receiver, in consultation with its counsel.

Selection of Successful Bid

The Receiver shall:

1. first, review and evaluate each Qualified Bid, provided that the Receiver may contact any Bidder to clarify the terms of any Bid, and the applicable Bidder may amend, modify or vary such Bid for the purpose of clarification;
2. second, identify if any Qualified Bid is a Superior Offer; and
3. third, if one or more Qualified Bids are considered to be Superior Offers, those Qualified Bidders presenting a Superior Offer shall proceed to an auction with the Stalking Horse Bidder to be held on or before July 5, 2024 (the “**Auction**”), which shall proceed according to the Auction Procedures set out in **Schedule “B”** to this SISP to identify the “**Successful Bid**”, and the Bidder making such Successful Bid, the “**Successful Bidder**”.

If no Superior Offer is received by the Bid Deadline, the Auction will not be held and the Stalking Horse Bidder will be declared to be the Successful Bidder. The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.

Sale Approval Motion Hearing

At the hearing of the motion to approve any Transaction with a Successful Bidder (the “**Sale Approval Hearing**”), the Receiver shall seek, among other things, approval from the Court to consummate the Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

DEPOSIT

All deposits shall be held by the Receiver in a single noninterest-bearing account designated solely for such purpose. A deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Bidders not selected as the Successful Bidder shall be returned to such Bidder within three business days of Court approval of the Successful Bid.

CONFIDENTIALITY AND ACCESS TO INFORMATION

All discussions regarding a Transaction, Sale Proposal, Investment Proposal, Bid or Successful Bid should be directed through the Receiver. Under no circumstances should the management of the Debtor be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP at the discretion of the Receiver.

Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bidders, Qualified Bids, the details of any Bids or Qualified Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other Bidders or Qualified Bidders in connection with the SISP, except to the extent that the Receiver, with the consent of the applicable participants, is seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Receiver share any material information concerning any of the Bids with any person other than its advisors.

SUPERVISION OF THE SISP

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver and any Qualified Bidder, Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver.

Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, Bidder, the Successful Bidder, or any other creditor or other stakeholder of the Debtor, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Receiver. By submitting a Bid, each Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver in respect of the SISP for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct by the Receiver.

Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Schedule “A” to the SISP**Addresses of Receiver****To the Receiver**

BDO Canada Limited
20 Wellington Street East, Suite 500
Toronto, ON M5E 1C5

Attention: Josie Parisi
Email: jparisi@bdo.ca

Schedule “B” to the SISP

AUCTION PROCEDURES

1. On or before July 5, 2024, the Receiver will confirm those Qualified Bidders who present a Superior Offer (“**Superior Bidders**”) that their Bid will be advanced to the Auction.
2. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Stalking Horse Bidder and each Superior Bidder shall be eligible to attend at the Auction and make any Subsequent Bid (as defined below) at the Auction.
3. The Auction, if any, shall be conducted by the Receiver, on or before July 5, 2024 at 10:00 a.m. (Eastern Time) via video conference.
4. At the Auction, all Superior Bidders and the Stalking Horse Bidder shall be permitted to increase their Superior Bids and the Stalking Horse Agreement in accordance with the procedures set forth herein (each, a “**Subsequent Bid**”). All Subsequent Bids presented during the Auction shall be made and received via video conference on an open basis. All participating Superior Bidders and the Stalking Horse Bidder shall be entitled to be present for all bidding with the understanding that the true identity of each participating Superior Bidder shall be fully disclosed to all other Superior Bidders and the Stalking Horse Bidder and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Stalking Horse Bidder and all other participating Superior Bidders throughout the entire Auction.
5. All Superior Bidders and the Stalking Horse Bidder at the Auction must have at least one individual representative with authority to bind such Superior Bidder and the Stalking Horse Bidder present at the Auction.
6. The Auction shall be recorded by the Receiver for their exclusive use and shall not be recorded by any other party.
7. At least three (3) days prior to the Auction, the Receiver will advise the Stalking Horse Bidder and all other Superior Bidders which of the Superior Bid or of the Stalking Horse Bidder the Receiver has determined in its reasonable business judgment, after consultation with its advisors, constitutes the then highest or otherwise best offer Sale Proposal or Investor Proposal (the “**Starting Bid**”).
8. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Superior Bidder or the Stalking Horse Bidder that (i) improves upon such Superior Bidder’s immediately prior Superior Bid or upon the Stalking Horse Agreement, as the case may be, and meets the overbid requirement set forth in paragraph 9 below, and (ii) the Receiver determines, in its reasonable business judgment, after consultation with its advisors, such Subsequent Bid is a higher or otherwise better offer than the then current leading Superior Bid.
9. Bidding at the Auction shall be in increments of \$100,000 and shall continue until such time as the highest and best bid is determined by the Receiver’s reasonable business judgment after consultation with its advisors. For the purpose of evaluating the value of

- the consideration provided by each bid (including any Subsequent Bid by the Stalking Horse Bidder) presented at the Auction, the value will: (i) be deemed to be the net consideration payable to the Receiver after considering, *inter alia*, any Break Fee due to the Stalking Horse Bidder under the Stalking Horse Agreement; and (ii) take into account any additional liabilities to be assumed by a Superior Bidder.
10. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the Subsequent Bid that the Receiver has determined in its reasonable business judgment, after consultation with its advisors, to be the then highest or best bid (the “**Leading Bid**”). A round of bidding will conclude after each participating Superior Bidder and the Stalking Horse Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
 11. If no Superior Bidder or the Stalking Horse Bidder submits a Subsequent Bid (as determined by the Receiver) after a period of 30 minutes following the Receiver’s acceptance of a Subsequent Bid as the Leading Bid, and the Receiver chooses not to adjourn the Auction further, the Receiver shall enter into a binding agreement of purchase and sale or investment substantially on the same terms as the Superior Bid or the Stalking Horse Agreement (as the case may be), as amended by the Leading Bid, with the Superior Bidder or the Stalking Horse Bidder (the Successful Bidder) that submitted the highest and best bid as determined by the Receiver (the “**Accepted Bid**”), whereupon the Auction will be concluded.
 12. At the Auction, the Receiver, after consultation with its advisors, may employ and announce additional procedural rules that are fair and reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; provided, however, that such rules are (a) not inconsistent with the Auction Procedures, the *Bankruptcy and Insolvency Act*, any order of the Courts entered in connection with the Auction Procedures and (b) disclosed to each Superior Bidder and the Stalking Horse Bidder at the Auction.

**CENTURION MORTGAGE - and-
CAPITAL CORPORATION**

**DUNDAS SHORNCLIFFE
LIMITED PARTNERSHIP**

Applicant

Respondent

Court File No.: CV-23-00694646-00CL

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

PROCEEDING COMMENCED AT TORONTO

ORDER

ROBINS APPLEBY LLP

Barristers + Solicitors
2600 - 120 Adelaide Street West
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Lawyers for the Receiver, BDO Canada Limited

Applicant

Respondents

Court File No.: CV-23-00694646-00CL

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

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

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Lawyers for the Court-Appointed Receiver,
BDO Canada Limited