

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

**MOTION RECORD
(MOTION RETURNABLE DECEMBER 2, 2013)**

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AND TO:	<p>Karry & Laba Barristers and Solicitors 25 Main Street East Kingsville, ON N9Y 1A1</p> <p>Michael Laba Tel: 519-733-2372 Ext: 25 Fax: 519.733.3110 Email: karrylaba@sympatico.ca</p> <p>Lawyers for Hadi Custom Homes Inc.</p>

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

NOTICE OF MOTION
(returnable December 2, 2013)

BDO CANADA LIMITED ("BDO"), in its capacity as Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc. ("**Royal Timbers**" and collectively with Banwell, the "**Companies**") pursuant to the Order of The Honourable Justice Thomas dated June 5, 2013 (the "**Appointment Order**"), will make a motion to The Honourable Justice Thomas to be heard on Monday, December 2, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

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

THE MOTION IS FOR AN ORDER, in the form attached here to as Schedule "A" hereto (the "**Order**");

- (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Third Report of the Receiver dated November 25, 2013 and all appendices thereto (the "**Third Report**"), and any supplementary motion materials, if any, and directing that any further service of same be dispensed with such that this motion is properly returnable on December 2, 2013;

- (b) approving the Third Report, the Confidential Supplement to the Third Report of the Receiver dated November 25, 2013 (the "**Confidential Supplement**") and the activities and conduct of the Receiver described therein;
- (c) sealing the Confidential Supplement until further order of this Court;
- (d) amending the Omnibus Approval and Vesting Order of the Honourable Mr. Justice Thomas in these proceedings dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**") to add Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) ("**Block 120**") to Schedule "A" to the Omnibus Approval and Vesting Order and to delete certain instruments from title as set out on Schedule "C" to the Omnibus Approval and Vesting Order in the form attached as **Schedule "A"** to the Order (the "**Amended Omnibus Approval and Vesting Order**");
- (e) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending November 13, 2013 (the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**", respectively);
- (f) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
- (g) approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**"); and
- (h) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Amending the Omnibus Approval and Vesting Order

- (a) Pursuant to paragraph 3(l) of the Appointment Order, the Receiver has the power to, among other things, sell, convey, transfer, lease or assign any of the assets, undertakings and properties of the Companies (the "**Property**") or any part or

parts thereof in the ordinary course of business without the approval of the Court in respect of any transaction not exceeding \$50,000 provided that the aggregate consideration for all such transactions does not exceed \$200,000, and otherwise the Receiver must obtain Court approval;

(b) Pursuant to subparagraph 3(m) of the Appointment Order, the Receiver may apply for a vesting order or other orders to convey title to the Property to a purchaser free and clear of any liens or encumbrances affecting the Property;

(c) The Receiver brought a motion seeking an Omnibus Approval and Vesting Order, among other things, (a) authorizing the Receiver to enter into an agreement of purchase and sale in the Form of Lot Sales Agreement (as that term is defined in the Omnibus Approval and Vesting Order), (b) approving the sale of the Banwell Lots (as that term is defined in the Third Report), and (c) vesting clear title to a Lot(s) to a Purchaser on a prospective basis;

(d) The Receiver sought the Omnibus Approval and Vesting Order on the basis that the Banwell Lots would be more marketable and the marketing and sale process more efficient and cost effective since the Receiver could avoid the cost and expense associated with returning to Court for approval of each individual Lot sale;

(e) The Omnibus Approval and Vesting Order was granted by Mr. Justice Thomas on July 23, 2012;

(f) The Banwell Lots include Block 120. A previously prepared draft plan of subdivision provides for the creation of nine (9) residential building lots within Block 120 (the "**Block 120 Lots**"); however the Reference Plan effecting the subdivision of Block 120 Plan 12M-533 into nine (9) individual blocks/lots (the "**Block 120 Reference Plan**") had not been prepared and registered against title to the Banwell Lands prior to July 23, 2013 and, as such, the Block 120 Lots were not included in the Royal Timbers Subdivision lot inventory set out in Schedule "A" to the Omnibus Approval and Vesting Order at the time of its issuance;

(g) Despite the Reference Plan not having been registered against title to Block 120, the Receiver received an offer to purchase all of the Block 120 Lots. On November 2, 2013 the Receiver entered into an Agreement of Purchase and Sale for

the nine (9) blocks/lots ultimately to be created by the Block 120 Reference Plan (the "**Block 120 Transaction**");

(h) The Block 120 Transaction requires that the Receiver have the Block 120 Reference Plan approved and registered thus effecting a subdivision of Block 120 into the Block 120 Lots prior to closing of the Block 120 Transaction. The Receiver engaged a survey firm who is in the process of preparing the Block 120 Reference Plan. Once completed the Block 120 Reference Plan will be approved by the Land Registrar for the Land Registry Office of the City of Windsor (the "**Land Registrar**") and filed with the City of Windsor for final approval;

(i) Legal descriptions and property identifier numbers for the Block 120 Lots to be transferred on the closing of the Transaction will be available once the Block 120 Reference Plan is approved, filed and registered;

(j) MT has forwarded to the Land Registrar a copy of the draft Amended Omnibus Approval and Vesting Order and expects to have the Land Registrar's preapproval and acceptance of the form of Amended Omnibus Approval and Vesting Order prior to the return of the Receiver's motion herein;

(k) The Receiver has acted and continues to act honestly and in good faith;

(l) The Receiver recommends that the Court amend the Omnibus Approval and Vesting Order to include Block 120;

(m) *Courts of Justice Act*, R.S.O. 1990, c. C. 43 ("**CJA**"), s. 100;

Approval of the Third Report, the Confidential Supplement, the Receiver's Activities and the Statement of Receipts and Disbursements

(n) The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order and other orders made in these receivership proceedings;

(o) The Receiver seeks approval of the Third Report and the Confidential Supplement and the Receiver's activities detailed therein, including the Statements of Receipts and Disbursements;

Approval of Professional Fees

- (p) Pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property as security for the Professional Fees, both before and after the making of the Appointment Order;
- (q) Pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice;
- (r) The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
- (s) It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and MT in connection with these receivership proceedings;

Sealing Order

- (t) The Confidential Supplement contains commercially sensitive information which if disclosed could undermine the integrity of the marketing, sale and leasing of the Property;
- (u) No party will be prejudiced if the Confidential Supplement remains sealed until further order of the Court;
- (v) S. 137(2) of the CJA;

Other

- (w) The Appointment Order;
- (x) The Sales Process Order;
- (y) The Omnibus Approval and Vesting Order;
- (z) Section 101 of the CJA;
- (aa) *Business Corporations Act*, R.S.O. 1990, c. B.16, ss. 248(3)(b) and 209;

(bb) Rules 1.04, 1.05, 3.02(1), 16 and 37 of the Ontario *Rules of Civil Procedure*; and

(cc) Such other grounds as counsel may advise and this Honourable Court may permit.

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

(a) the Third Report of the Receiver and the appendices attached thereto, dated November 25, 2013;

(b) the Confidential Supplement to the Third Report of the Receiver, and the appendices attached thereto, dated November 25, 2013, to be filed on the return of the within Motion;

(c) the fees affidavit of Stephen N. Cherniak sworn November 18, 2013 and the exhibits attached thereto;

(d) the fees affidavit of Sherry Kettle sworn November 15, 2013 and the exhibits attached thereto

(e) all other pleadings and materials previously filed in these proceedings; and

(f) such further and other evidence as counsel may advise and this Honourable Court may permit.

November 25, 2013

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AND TO:	<p>Lerners LLP Toronto Office 130 Adelaide Street West Suite 2400 Toronto, ON M5H 3P5</p> <p>Cynthia B. Kuehl Tel: 416.601.2363 Fax: 416.867.2433 Email: ckuehl@lerners.ca</p> <p>Lawyers for the Applicant, Kevin D'Amore</p>
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AND TO:	<p>Affleck Greene McMurtry Barristers and Solicitors 365 Bay Street Suite 200 Toronto, ON M5H 2V1</p> <p>Peter R. Green Tel: 416-360-8767 Fax: 519.360.5960 Email: pgreene@agmlawyers.com</p> <p>Lawyers for Banwell Development Corporation and Royal Timbers Inc.</p>
AND TO:	<p>Solar Power Network Inc. 1780 North Talbot Road Windsor, ON N9A 6J3</p> <p>Jonathan Persaud Fax: 1.855.328.8261 Email: john@solarpowernetwork.ca</p>

KEVIN D'AMORE

Applicant

BANWELL DEVELOPMENT
CORPORATION, 928579 ONTARIO
LIMITED, SCOTT D'AMORE and ROYAL
TIMBERS INC.

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**NOTICE OF MOTION
(RETURNABLE DECEMBER 2, 2013)**

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Receiver of Banwell Development Corporation
and Royal Timbers Inc.

TAB A

SCHEDULE "A"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE

)

MONDAY, THE 2nd DAY

JUSTICE THOMAS

)

OF DECEMBER, 2013

)

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

ORDER

THIS MOTION, made by BDO Canada Limited (the "**Receiver**"), in its capacity as Court-appointed receiver of all of the assets, undertakings and properties of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc. pursuant to the Order of the Honourable Justice Thomas dated June 5, 2013 (the "**Appointment Order**"), for an order:

- (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Third Report of the Receiver dated November 25, 2013, and all appendices thereto (the "**Third Report**") and any supplementary motion materials, if any, and

directing that any further service of same be dispensed with such that this motion is properly returnable on December 2, 2013;

- (b) approving the Third Report, the Confidential Supplement to the Third Report of the Receiver dated November 25, 2013 (the "**Confidential Supplement**") and the activities and conduct of the Receiver described therein;
- (c) sealing the Confidential Supplement until further Order of the Court;
- (d) amending the Omnibus Approval and Vesting Order of the Honourable Mr. Justice Thomas in these proceedings dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**") to add Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) to Schedule "A" to the Omnibus Approval and Vesting Order and to delete certain instruments from title as set out on Schedule "C" to the Omnibus Approval and Vesting Order, in the form attached as Schedule "A" hereto;
- (e) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending November 13, 2013 (the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**", respectively);
- (f) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
- (g) approving the professional fees and disbursements of Miller Thomson LLP, counsel to the Receiver ("**MT Fees**"); and
- (h) such further and other relief as counsel may advise and this Honourable Court may deem just,

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

ON READING the Third Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Lynsey Noseworthy sworn November 25, 2013, filed:

1. THIS COURT ORDERS that the time for and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Third Report, is hereby abridged and validated and any further service of same is hereby dispensed with such that this motion is properly returnable on December 2, 2013.
2. THIS COURT ORDERS that the Third Report and the Confidential Supplement and the activities and conduct of the Receiver as set out therein are hereby approved.
3. THIS COURT ORDERS that the Confidential Supplement is hereby sealed until further order of the Court.
4. THIS COURT ORDERS that the Omnibus Approval and Vesting Order is hereby amended in the form attached hereto as Schedule "A" and titled the "Amended Omnibus Approval and Vesting Order".
5. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements are hereby approved.
6. THIS COURT ORDERS that the BDO Fees for the period commencing July 6, 2013 through November 5, 2013, as described in the Third Report and in the Affidavit of Stephen N. Cherniak sworn November 18, 2013, and the MT Fees for the period July 2, 2013 to November 8, 2013, as described in the Third Report and the Affidavit of Sherry Kettle sworn November 15, 2013, are hereby approved.

Justice, Superior Court of Justice

KEVIN D'AMORE

Applicant

BANWELL DEVELOPMENT
CORPORATION, 928579 ONTARIO
LIMITED, SCOTT D'AMORE and ROYAL
TIMBERS INC.

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

ORDER

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and Royal Timbers Inc.

SCHEDULE "A"

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) TUESDAY, THE 23rd DAY
JUSTICE THOMAS) OF JULY, 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

AMENDED OMNIBUS APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of all of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. pursuant to the Order of The Honourable Justice Thomas dated June 5, 2013 (the "Receiver"), for an order:

- (a) prospectively approving the sale transactions (each such transaction, a "Transaction") in respect of the residential building lots more particularly described on **Schedule "A"** hereto (the "**Banwell Lots**");
- (b) prospectively authorizing the execution of an agreement of purchase and sale in respect of one or more of the Banwell Lots (individual Banwell Lots hereinafter referred to as a "Lot") by the Receiver, as vendor, and the purchaser of each Lot (each purchaser hereinafter referred to as the "**Purchaser**") substantially in the form of agreement of purchase and sale attached as Schedule "A" to the Sales Process Order of this Honourable Court dated July 23, 2013, together with any

amendments or modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as a "**Sale Agreement**"); and

- (c) providing that, upon the delivery by the Receiver to a Purchaser of a Receiver's certificate substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), all of Banwell's right, title and interest in and to the Lot(s) described in each applicable Sale Agreement (the "**Purchased Assets**") will vest in and to the applicable Purchaser, free and clear of all encumbrances including those listed on **Schedule "C"** hereto and in paragraph 2 of this Order, save and except for those encumbrances listed on **Schedule "D"** hereto in relation to the Purchased Assets,

was heard this day at the Courthouse, 80 Dundas Street, London Ontario.

ON READING the Second Report of the Receiver dated July 12, 2013 (the "**Second Report**"), and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn July 12, 2013, filed:

1. THIS COURT ORDERS AND DECLARES that each Transaction is hereby prospectively approved, and the execution of each applicable Sale Agreement by the Receiver is hereby authorized and approved, with any amendments or modifications thereto deemed necessary by the Receiver. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of any Transaction and for the conveyance of the Purchased Assets to each applicable Purchaser.
2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto, all of Banwell's right, title and interest in and to the Purchased Assets described in the applicable Sale Agreement and listed on Exhibit "A" of the applicable Receiver's Certificate in respect of such Sale Agreement shall vest absolutely in and to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Thomas dated June

5, 2013; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any Claims filed in respect of or affecting the Purchased Assets, which Claims are filed on or after the date of the granting of this Order, including without limitation, Claims in respect of the *Construction Lien Act* (Ontario); (iv) those Claims listed on Schedule "C" hereto in relation to the Purchased Assets (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D" in relation to the Purchased Assets) and, for greater certainty, this Court orders that upon delivery of the applicable Receiver's Certificate all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets.

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

4. THIS COURT ORDERS that upon the registration in the Land Registry of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* (which will include a copy of this Order and the fully completed and executed Receiver's Certificate in respect of the Purchased Assets), the Land Registrar is hereby directed to enter the Purchaser named in the applicable Receiver's Certificate as the owner of the Purchased Assets listed in Exhibit "A" to the Receiver's Certificate in fee simple, and is hereby directed to delete and expunge from title to the Purchased Assets all of the Claims listed in **Schedule "C"** hereto and in paragraph 2 of this Order.

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 in respect of an applicable Sale Agreement, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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

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

8. THIS COURT ORDERS AND DECLARES that each Transaction is exempt from the application of the *Bulk 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.

Justice, Superior Court of Justice

Schedule "A" – Banwell Lots

Legal Description

Banwell Development Corporation						
Royal Timbers Subdivision - Lot Inventory						
Description				PIN		
Phase 1						
Plan 12M-503	Lot	60		1566	-	0424
Plan 12M-503	Lot	99		1566	-	0463
Plan 12M-503	Lot	101		1566	-	0465
Phase 2						
Plan 12M-533	Lot	12		1566	-	0578
Plan 12M-533	Lot	15		1566	-	0581
Plan 12M-533	Lot	16		1566	-	0582
Plan 12M-533	Lot	17		1566	-	0583
Plan 12M-533	Lot	18		1566	-	0584
Plan 12M-533	Lot	20		1566	-	0586
Plan 12M-533	Lot	21		1566	-	0587
Plan 12M-533	Lot	23		1566	-	0589
Plan 12M-533	Lot	26		1566	-	0592
Plan 12M-533	Lot	27		1566	-	0593
Plan 12M-533	Lot	28		1566	-	0594
Plan 12M-533	Lot	29		1566	-	0595
Plan 12M-533	Lot	30		1566	-	0596
Plan 12M-533	Lot	38		1566	-	0604

Plan 12M-533	Lot	39		1566	-	0605
Plan 12M-533	Lot	43		1566	-	0609
Plan 12M-533	Lot	48		1566	-	0614
Plan 12M-533	Lot	49		1566	-	0615
Plan 12M-533	Lot	50		1566	-	0616
Plan 12M-533	Lot	51		1566	-	0617
Plan 12M-533	Lot	103		1566	-	0669
Plan 12M-533	Lot	104		1566	-	0670
Plan 12M-533	Lot	105		1566	-	0671
Plan 12M-533	Lot	106		1566	-	0672
Plan 12M-533	Lot	116		1566	-	0682
Plan 12M-533	Lot	117		1566	-	0683
<u>Plan 12M-533</u>	<u>Block</u>	<u>120</u>		<u>1566</u>	<u>-</u>	<u>0686</u>
Phase 4						
Plan 12M-546	Lot	2		1566	-	0824
Plan 12M-546	Lot	3		1566	-	0825
Plan 12M-546	Lot	4		1566	-	0826
Plan 12M-546	Lot	6		1566	-	0828
Plan 12M-546	Lot	7		1566	-	0829
Plan 12M-546	Lot	8		1566	-	0830
Plan 12M-546	Lot	9		1566	-	0831
Plan 12M-546	Lot	10		1566	-	0832
Plan 12M-546	Lot	11		1566	-	0833
Plan 12M-546	Lot	12		1566	-	0834
Plan 12M-546	Lot	13		1566	-	0835

Plan 12M-546	Lot	29		1566	-	0851
Plan 12M-546	Lot	30		1566	-	0852
Plan 12M-546	Lot	31		1566	-	0853
Plan 12M-546	Lot	32		1566	-	0854
Plan 12M-546	Lot	33		1566	-	0855
Plan 12M-546	Lot	34		1566	-	0856
Plan 12M-546	Lot	35		1566	-	0857
Plan 12M-546	Lot	36		1566	-	0858
Plan 12M-546	Lot	37		1566	-	0859
Plan 12M-546	Lot	38		1566	-	0860
Plan 12M-546	Lot	39		1566	-	0861
Plan 12M-546	Lot	40		1566	-	0862

Schedule "B" – Form of Receiver's Certificate

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated June 5, 2013, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc.

B. Pursuant to an Order of the Honourable Justice Thomas of the Court dated July 23, 2013, the Court granted an omnibus approval and vesting order (the "**Omnibus Approval and Vesting Order**"), providing for among other things:

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

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

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____
Name:
Title:

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

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

KEVIN D'AMORE

Applicant

and

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED, SCOTT D'AMORE and ROYAL TIMBERS INC.

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

Alissa K. Mitchell LSUC#: 35104E
Tel: 519.931.3510
Fax: 519.858.8511

Lawyers for BDO Canada Limited,
Receiver of Banwell Development Corporation
and Royal Timbers Inc.

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Schedule "C" – Claims to be deleted and expunged from title to the Banwell Lots

Description				PIN		
Phase 1						
Plan 12M-503	Lot	60		1566	-	0424
1. Instrument No. CE573510 - Notice of Court Order. 2. Instrument No. CE93353 – Charge in the principal amount of \$58,800 given by Affinity Custom Homes and Contracting Inc. to Banwell Development Corporation registered on August 3, 2004. 3. Instrument No. CE95821 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on August 13, 2004.						
Plan 12M-503	Lot	99		1566	-	0463
1. Instrument No. CE573510 - Notice of Court Order. 2. Instrument No. CE103476 – Charge in the principal amount of \$491,300 given by Thibert Homes Inc. to Banwell Development Corporation registered on September 17, 2004. 3. Instrument No. CE103750 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on September 17, 2004.						
Plan 12M-503	Lot	101		1566	-	0465
1. Instrument No. CE573510 - Notice of Court Order. 2. Instrument No. CE103476 – Charge in the principal amount of \$491,300 given by Thibert Homes Inc. to Banwell Development Corporation registered on September 17, 2004. 3. Instrument No. CE103750 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on September 17, 2004.						
Phase 2						
Plan 12M-533	Lot	12		1566	-	0578
1. Instrument No. CE569187 - Notice of Court Order. 2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. 3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.						

Plan 12M-533	Lot	15		1566	-	0581
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	16		1566	-	0582
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	17		1566	-	0583
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	18		1566	-	0584
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	20		1566	-	0586
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						

2

April 24, 2007.

Plan 12M-533	Lot	21		1566	-	0587
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	23		1566	-	0589
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	26		1566	-	0592
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	27		1566	-	0593
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	28		1566	-	0594
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.

3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	29		1566	-	0595
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	30		1566	-	0596
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	38		1566	-	0604
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	39		1566	-	0605
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	43		1566	-	0609
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1. Instrument No. CE569187 - Notice of Court Order.

2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	48		1566	-	0614
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	49		1566	-	0615
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	50		1566	-	0616
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	51		1566	-	0617
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533	Lot	103		1566	-	0669
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	104		1566	-	0670
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	105		1566	-	0671
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	106		1566	-	0672
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						
Plan 12M-533	Lot	116		1566	-	0682
<ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. 						

April 24, 2007.

Plan 12M-533**Lot****117****1566****-****0683**

1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.

Plan 12M-533**Block****120****1566****-****0686**

1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE269359 – Charge in the principal amount of \$240,496 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 25, 2007.

Phase 4**Plan 12M-546****Lot****2****1566****-****0824**

1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4. Instrument No. CE171657 – Postponement registered September 20, 2005.
5. Instrument No. CE171658 – Postponement registered September 20, 2005.
6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546**Lot****3****1566****-****0825**

1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on

August 10, 2005.

4. Instrument No. CE171657 – Postponement registered September 20, 2005.
5. Instrument No. CE171658 – Postponement registered September 20, 2005.
6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	4		1566	-	0826
Plan 12M-546	Lot	6		1566	-	0828

1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4. Instrument No. CE171657 – Postponement registered September 20, 2005.
5. Instrument No. CE171658 – Postponement registered September 20, 2005.
6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	7		1566	-	0829
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4. Instrument No. CE171657 – Postponement registered September 20, 2005.
5. Instrument No. CE171658 – Postponement registered September 20, 2005.
6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	8		1566	-	0830
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.

4. Instrument No. CE171657 – Postponement registered September 20, 2005.
5. Instrument No. CE171658 – Postponement registered September 20, 2005.
6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	9		1566	-	0831
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4. Instrument No. CE171657 – Postponement registered September 20, 2005.
5. Instrument No. CE171658 – Postponement registered September 20, 2005.
6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	10		1566	-	0832
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4. Instrument No. CE171657 – Postponement registered September 20, 2005.
5. Instrument No. CE171658 – Postponement registered September 20, 2005.
6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	11		1566	-	0833
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1. Instrument No. CE569187 - Notice of Court Order.
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4. Instrument No. CE171657 – Postponement registered September 20, 2005.

- 5. Instrument No. CE171658 – Postponement registered September 20, 2005.
- 6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	12		1566	-	0834
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- 1. Instrument No. CE569187 - Notice of Court Order.
- 2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
- 3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
- 4. Instrument No. CE171657 – Postponement registered September 20, 2005.
- 5. Instrument No. CE171658 – Postponement registered September 20, 2005.
- 6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	13		1566	-	0835
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- 1. Instrument No. CE569187 - Notice of Court Order.
- 2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
- 3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
- 4. Instrument No. CE171657 – Postponement registered September 20, 2005.
- 5. Instrument No. CE171658 – Postponement registered September 20, 2005.
- 6. Instrument No. CE261562 – Notice registered February 28, 2007.

Plan 12M-546	Lot	29		1566	-	0851
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- 1. Instrument No. CE569187 - Notice of Court Order.
- 2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
- 3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
- 4. Instrument No. CE171657 – Postponement registered September 20, 2005.
- 5. Instrument No. CE171658 – Postponement registered September 20, 2005.

6. Instrument No. CE261562 – Notice registered February 28, 2007.						
Plan 12M-546	Lot	30		1566	-	0852
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.						
4. Instrument No. CE171657 – Postponement registered September 20, 2005.						
5. Instrument No. CE171658 – Postponement registered September 20, 2005.						
6. Instrument No. CE261562 – Notice registered February 28, 2007.						
Plan 12M-546	Lot	31		1566	-	0853
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.						
4. Instrument No. CE171657 – Postponement registered September 20, 2005.						
5. Instrument No. CE171658 – Postponement registered September 20, 2005.						
6. Instrument No. CE261562 – Notice registered February 28, 2007.						
Plan 12M-546	Lot	32		1566	-	0854
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.						
4. Instrument No. CE171657 – Postponement registered September 20, 2005.						
5. Instrument No. CE171658 – Postponement registered September 20, 2005.						
6. Instrument No. CE261562 – Notice registered February 28, 2007.						

Plan 12M-546	Lot	33		1566	-	0855
1.	Instrument No. CE569187 - Notice of Court Order.					
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.					
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.					
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.					
6.	Instrument No. CE261562 – Notice registered February 28, 2007.					
Plan 12M-546	Lot	34		1566	-	0856
1.	Instrument No. CE569187 - Notice of Court Order.					
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.					
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.					
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.					
6.	Instrument No. CE261562 – Notice registered February 28, 2007.					
Plan 12M-546	Lot	35		1566	-	0857
1.	Instrument No. CE569187 - Notice of Court Order.					
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.					
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.					
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.					
6.	Instrument No. CE261562 – Notice registered February 28, 2007.					

Plan 12M-546	Lot	36		1566	-	0858
1.	Instrument No. CE569187 - Notice of Court Order.					
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.					
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.					
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.					
6.	Instrument No. CE261562 – Notice registered February 28, 2007.					
Plan 12M-546	Lot	37		1566	-	0859
1.	Instrument No. CE569187 - Notice of Court Order.					
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.					
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.					
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.					
6.	Instrument No. CE261562 – Notice registered February 28, 2007.					
Plan 12M-546	Lot	38		1566	-	0860
1.	Instrument No. CE569187 - Notice of Court Order.					
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.					
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.					
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.					
6.	Instrument No. CE261562 – Notice registered February 28, 2007.					

Plan 12M-546	Lot	39		1566	-	0861
<ol style="list-style-type: none"> 1. Instrument No. CE569187 - Notice of Court Order. 2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. 3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D’Amore registered on August 10, 2005. 4. Instrument No. CE171657 – Postponement registered September 20, 2005. 5. Instrument No. CE171658 – Postponement registered September 20, 2005. 6. Instrument No. CE261562 – Notice registered February 28, 2007. 						
Plan 12M-546	Lot	40		1566	-	0862
<ol style="list-style-type: none"> 1. Instrument No. CE569187 - Notice of Court Order. 2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. 3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D’Amore registered on August 10, 2005. 4. Instrument No. CE171657 – Postponement registered September 20, 2005. 5. Instrument No. CE171658 – Postponement registered September 20, 2005. 6. Instrument No. CE261562 – Notice registered February 28, 2007. 						

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Purchased Assets**

(unaffected by the Vesting Order)

Generally

- (i) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- (ii) Any registered restrictions or covenants that run with the Purchased Assets provided the same have been complied with in all material respects;
- (iii) Any easements, rights of way, or right of re-entry in favour of a Developer, not materially or adversely impairing the present use of the Purchased Assets;
- (iv) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- (v) Any minor encroachments which might be revealed by an up to date survey of the Purchased Assets;
- (vi) Any gas or oil lease in respect of the Purchased Assets;

Lots in Plan 12M533

- (vii) Instrument No. CE166202 – Notice of Subdivision Agreement;
- (viii) Instrument No. CE191966 – Notice of Subdivision;
- (ix) Instrument No. CE193237 – Plan Document Agreement;
- (x) Instrument No. 12M533 – Plan of Subdivision;
- (xi) Instrument No. CE193800 – Application to Annex Restrictive Covenant;
- (xii) Instrument No. 12R22439 – Reference Plan;
- (xiii) Instrument No. CE194979 – Transfer Easement;

Lots in Plan 12M546

- (xiv) Instrument No. R1201053 – Agreement;
- (xv) Instrument No. CE195978 – No Sub Agreement;
- (xvi) Instrument No. CE251614 – Plan Document;
- (xvii) Instrument No. 12M546 – Plan Subdivision;
- (xviii) Instrument No. 12R22894 – Plan Reference;
- (xix) Instrument No. CE468429 – Apl Annex Rest Cov;

Lots in Plan 12M-503

- (xx) Instrument No. 12R15293 – Plan Reference;
- (xxi) Instrument No. 12R20732 – Plan Reference;
- (xxii) Instrument No. CE51657 – No Sub Agreement;
- (xxiii) Instrument No. CE56048 – No Sub Agreement;
- (xxiv) Instrument No. CE58400 – Plan Document;
- (xxv) Instrument No. 12M503 – Plan Subdivision;
- (xxvi) Instrument No. 12R21094 – Plan Reference;
- (xxvii) Instrument No. CE66960 – Apl Annex Rest Cov

KEVIN D'AMORE

Applicant

and

BANWELL DEVELOPMENT
CORPORATION, 928579 ONTARIO
LIMITED, SCOTT D'AMORE and ROYAL
TIMBERS INC.

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

AMENDED OMNIBUS APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

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

Alissa K. Mitchell LSUC#: 35104E

Tel: 519.931.3510

Fax: 519.858.8511

Lawyers for BDO Canada Limited, Receiver
of Banwell Development Corporation
and Royal Timbers Inc.

TAB 2

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

**BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE AND ROYAL TIMBERS INC.**

Respondents

**THIRD REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED,
AS RECEIVER OF BANWELL DEVELOPMENT CORPORATION
AND ROYAL TIMBERS INC.**

November 25, 2013

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Appendices

- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - First Report to the Court of Proposed Receiver dated May 29, 2013 (without appendices)
- Appendix C** - First Report to the Court of Receiver dated June 20, 2013 (without appendices)
- Appendix D** - Second Report to the Court of Receiver dated July 12, 2013 (without appendices)
- Appendix E** - Sales Process Order dated July 23, 2013
- Appendix F** - Omnibus Approval and Vesting Order dated July 23, 2013
- Appendix G** - Statement of Receipts and Disbursements – Banwell
- Appendix H** - Statement of Receipts and Disbursements – Royal Timber
- Appendix I** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn November 18, 2013
- Appendix J** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn November 15, 2013

1. Introduction and Background

1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver (“BDO” or the “Receiver”) of all assets, undertakings and properties (the “Property”) of Banwell Development Corporation (“Banwell”) and Royal Timbers Inc. (“Royal Timbers” and collectively with Banwell, the “Companies”)
- 1.1.2 BDO was appointed as Receiver by the Order of Mr. Justice Thomas dated June 5, 2013 (the “Appointment Order”). A copy of the Appointment Order is attached as Appendix A to this report.

1.2 Background

- 1.2.1 At all material times, Banwell was engaged in the development and sale of residential building lots (the “Royal Timbers Subdivision”) on lands located just west of Banwell Road in the City of Windsor, Ontario (the “Lands”). At all material times, Royal Timbers was engaged in the development, construction and subsequent leasing of a commercial plaza located at the southwest corner of the Lands at the junction of Banwell Road and Wildwood Drive, Windsor, Ontario (the “Commercial Plaza”).
- 1.2.2 Banwell was effectively a joint venture between Mr. Murray Troup (“Troup”) and Mr. Patrick D’Amore (“D’Amore”), with ownership held equally by Troup, through his holding company, 928579 Ontario Limited (“928579”) and D’Amore, as trustee for his sons Kevin D’Amore (“Kevin”) and Scott D’Amore (“Scott”), as beneficiaries. Royal Timbers is the wholly-owned subsidiary of Banwell.

- 1.2.3 Banwell is the owner of that portion of the Lands comprising the Royal Timbers Subdivision. Royal Timbers is the owner of that portion of the Lands comprising the Commercial Plaza.
- 1.2.4 In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell vesting equally in each of Kevin and Scott.
- 1.2.5 Within these court proceedings and pursuant to the Endorsement of Mr. Justice Thomas dated May 15, 2013, Bank of Montreal ("**BMO**") brought a motion seeking the appointment of BDO as receiver and manager of the Property.
- 1.2.6 On June 5, 2013, the Honourable Justice Thomas granted the relief sought by BMO on its motion and issued the Appointment Order.
- 1.2.7 Immediately following the issuance of the Appointment Order, the Receiver sought an order approving the sale of Lot 44, Plan 12M-533, Windsor, ("**Lot 44**") located in the Royal Timbers Subdivision, to Kirson Quality Homes Ltd. ("**Kirson**") (the "**Lot 44 Transaction**") and vesting title to Lot 44 in Kirson on closing. In support of the relief sought by the Receiver, BDO, in its capacity as the Proposed Receiver, submitted a Report to the Court dated May 29, 2013. A copy of the First Report of the Proposed Receiver (without appendices) is attached as **Appendix B**. Immediately following its appointment and pursuant to Court Order dated June 5, 2013, the Receiver obtained the approval of the Court to complete the Lot 44 Transaction and to vest title to Lot 44 in and to Kirson on closing. The Lot 44 Transaction was completed on June 7, 2013.

- 1.2.8 Following its appointment, the Receiver sought orders approving the sale transactions of Lot 40, Plan 12M-533, Windsor, ("**Lot 40**") and Lot 47, Plan 12M-533, Windsor, ("**Lot 47**"), both located in the Royal Timbers Subdivision, to Hadi Custom Homes Inc. ("**Hadi**") (the "**Lot 40 and 47 Transactions**") and vesting title to Lots 40 and 47 in Hadi on closing. In support of the relief sought, the Receiver submitted a Report to the Court dated June 20, 2013. A copy of the First Report of the Receiver (without appendices) is attached as **Appendix C** (the "**First Report**"). Pursuant to Court Order issued June 26, 2013, the Receiver obtained the approval of the Court to complete the Lot 40 and 47 Transactions and to vest title to Lots 40 and 47 in and to Hadi on closing (the "**Lots 40 and 47 Approval and Vesting Order**").
- 1.2.9 The Receiver submitted a Second Report to the Court dated July 12, 2013 in support of a motion for, among other things, a Sales Process Order with respect to the Banwell Lots and an Omnibus Approval and Vesting Order with respect to the Banwell Lots (the "**Second Report**"). A copy of the Second Report (without appendices) is attached as **Appendix D**.
- 1.2.10 By Order dated July 23, 2013 (the "**Sales Process Order**"), among other things, Mr. Justice Thomas approved the sales process for the serviced residential building lots comprising the Royal Timbers Subdivision (the "**Banwell Lots**" or the "**Lots**"), authorized the Receiver to accept an offer or offers to purchase any or all of the Banwell Lots, approved the form of Agreement of Purchase and Sale with respect to the sale of the Banwell Lots and approved the sales process for the Commercial Plaza. A copy of the Sales Process Order is attached as **Appendix E**.

1.2.11 By further Order dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**"), Mr. Justice Thomas prospectively approved the sales transactions in respect of each of the remaining Lots, authorized the execution of an agreement of purchase and sale in respect of each Lot sale transaction by the Receiver and vested all of Banwell's right, title and interest in and to the applicable Lot(s) subject to certain conditions and restrictions. A copy of the Omnibus Approval and Vesting Order is attached as **Appendix F**.

2. Terms of Reference

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

3. Purpose of the Receiver's Third Report

3.1 This constitutes the Receiver's Third Report to the Court (the "**Third Report**") in this matter and is filed:

- (a) To provide this Court with information on:
 - (i) the Receiver's activities since the date of the Second Report and to seek approval of the Third Report, and the Receiver's activities as outlined therein;
 - (ii) the results and current status of the Receiver's sale process for the Commercial Plaza;
 - (iii) the potential recovery to the Receiver for the reimbursement of costs incurred by Banwell in the servicing of the rear portion of lots located on Robinet Road;

- (b) In support of an order of the Court:
 - (i) approving the Third Report, the Receiver's Confidential Supplement to the Third Report (the "**Confidential Supplement**") and the activities of the Receiver described therein;
 - (ii) sealing the Confidential Supplement until further Order of the Court;
 - (iii) amending the Omnibus Approval and Vesting Order to add Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) ("**Block 120**") to Schedule "A" to the Omnibus Approval and Vesting Order and to delete certain instruments from title to Block 120 as set out on Schedule "C" to the Omnibus Approval and Vesting Order in the form attached as Schedule "A" to the draft Order appended as Schedule "A"

to the Notice of Motion (the "**Amended Omnibus Approval and Vesting Order**");

- (iv) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending November 13, 2013 (the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**", respectively);
- (v) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**"); and
- (vi) approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**").

4. Receiver's Activities

Banwell Lots

- 4.1 As approved by the Lots 40 and 47 Approval and Vesting Order, the Receiver completed the sales of Lot 40 on July 12, 2013 and Lot 47 on September 30, 2013.
- 4.2 The Sales Process Order authorizes the Receiver to accept offers to purchase any or all of the Banwell Lots provided that the sale price for each Lot is acceptable to the Receiver having regard to the appraised value for such Lot and prior sales of similar lots and the terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Banwell.
- 4.3 On August 9, 2013, the Receiver entered into an Agreement of Purchase and Sale in the Form of the Lot Sales Agreement (as defined in the Sales Process Order) for the sale of six (6) Lots to Hadi, consisting of Lots 43, 48, 49, 50, 51 and 117, Plan 12M-533. The Receiver completed the sales of these Lots on August 23, 2013 in accordance with the Lot Sales Process (as defined in the Sale Process Order).
- 4.4 On October 17, 2013 the Receiver entered into an Agreement of Purchase and Sale in the Form of the Lot Sales Agreement for the sale of Lot 39, Plan 12M-533 ("**Lot 39**") to Gabrail Khoshaba ("**Lot 39 APS**"). The purchaser offered the Receiver a portion of the purchase price on closing, with the Receiver to hold a vendor-take-back ("**VTB**") mortgage for the balance of the purchase price.
- 4.5 The Receiver confirmed with both Troup and Scott that it is common practice in the

Windsor real estate industry for land developers to hold a VTB mortgage on the sale of residential building lots. Accordingly, in order to facilitate the sale of Lot 39 prior to the winter months and to accommodate the delay between the purchaser (developer's) acquisition of the Lot and construction of a house and the ultimate sale of the Lot to the homeowner in Spring 2014, the Receiver accepted a VTB mortgage for the balance of the purchase price. The VTB mortgage matures and is repayable on April 30, 2014. The Receiver completed the sale of Lot 39 on October 29, 2013.

Block 120, Plan 12M-533

- 4.6 The Banwell Lots include Block 120. A previously prepared draft plan of subdivision for Block 120 provides for the creation of nine (9) residential building lots within Block 120 (the "**Block 120 Lots**"), however, the Reference Plan whereby a description and a Parcel Identification Number for each of the Block 120 Lots (the "**Block 120 Reference Plan**") had not been approved and registered at the time of the Receiver's motion seeking the Omnibus Approval and Vesting Order. Accordingly, the Block 120 Lots were not included in the Royal Timbers Subdivision lot inventory set out in Schedule "A" to the Omnibus Approval and Vesting Order.
- 4.7 The Block 120 Lots front onto McRobbie Road and are fully serviced except for approximately 473 feet of base asphalt on McRobbie Road. In order to fully complete and sell the Block 120 Lots, the Receiver estimates the cost of paving, surveying and engineering fees to be approximately \$40,000 to \$50,000.
- 4.8 On November 2, 2013 the Receiver entered into an Agreement of Purchase and Sale in the Form of Lot Sales Agreement to Hadi for the Block 120 Lots (the "**Block**

120 APS”), with a closing date of December 12, 2013.

- 4.9 An appraisal of the real property comprising, in part, the Banwell Lots was commissioned by the Companies from Valco prior to the Receiver’s appointment (February 14, 2013) (the “**Valco Appraisal**”). The Valco Appraisal has been previously filed by the Receiver in these proceedings to support the approval of prior Lot sales and the granting of the Omnibus Approval and Vesting Order.
- 4.10 Having regard to the appraised value of the Block 120 Lots contained in the Valco Appraisal (appended as Appendix “E” to the Confidential Supplement to the First Report of the Proposed Receiver) and the appraised value of the Block 120 Lots contained in the Metrix Appraisal (as defined in the Confidential Supplement to the Third Report and appended as Appendix “A” thereto) prior Receiver sales of similar sized and serviced Lots, the Receiver believes the sale of the Block 120 Lots to Hadi pursuant to the Block 120 APS to be in the best interests of the stakeholders of Banwell and was obtained in accordance with the Lot Sales Process previously approved by the Court.
- 4.11 The Block 120 APS requires the Receiver to complete the paving and Block 120 Reference Plan and registration of the individual Block 120 Lots. In addition, as a result of the Receiver discovering that a zoning hold symbol ‘H’ was inadvertently still in place over the Block 120 zoning designation, it was determined that it was necessary for the Receiver to make applications to the City of Windsor for a ‘Part Lot Control Exemption’ and for ‘Removal of the Zoning Hold Symbol’ (the “**By-Law Applications**”). On November 7, 2013, the Receiver filed the By-Law Applications with the City of Windsor.

- 4.12 The Receiver has engaged the firm of Verhagen Stubberfield Brewer Bezaire Inc. (the "**Surveyor**") to complete the Block 120 Reference Plan. Legal descriptions for the Block 120 Lots will be available once the Reference Plan is approved by the Land Registrar and the City of Windsor and registered on title to Block 120.
- 4.13 As at the date of this report, the Surveyor had not yet completed the Block 120 Reference Plan. The Receiver expects this to be completed shortly.
- 4.14 Paragraph 12 of the Block 120 APS permits the Receiver to extend the closing date for such periods of time as may be necessary to resolve any issue which impairs the ability of the Receiver to complete the Block 120 APS. If necessary, the Receiver will elect to extend the closing date to allow for registration of the Block 120 Reference Plan and for the By-Law Applications to be dealt with by the City of Windsor.
- 4.15 The Block 120 APS provides for the Receiver to hold a VTB mortgage maturing on March 31, 2014, for a portion of the sale price. After considering all estimated costs, completing the Block 120 APS will generate net receipts to the Receiver in excess of \$500,000.
- 4.16 To facilitate completing the Block 120 APS, the Receiver is seeking the approval of the Court to amend the Omnibus Approval and Vesting Order to add Block 120 to the Schedule "A" inventory of Lots and to add to Schedule "C" certain encumbrances relating to Block 120 to be deleted from title on closing of the Block 120 APS.

Commercial Plaza

- 4.17 The Receiver also learned that the Commercial Plaza was subject to a zoning hold symbol 'H' that is intended to restrict development of the property until certain conditions are met. Construction of the Commercial Plaza was completed in 2006 and it appears to have been an administrative oversight of the City of Windsor that the holding symbol was not lifted. The Receiver submitted an application to the City of Windsor for the removal of the zoning hold symbol and a by-law has been passed removing the zoning hold symbol with respect to the Commercial Plaza.
- 4.18 At the time of the appointment of the Receiver, Unit 100 of 3335 Banwell Road of the Commercial Plaza was vacant ("**Unit 100**"). The Receiver and the Receiver's property manager, Wintru Developments Inc. ("**Wintru**") entered into negotiations with a prospective tenant. On August 22, 2013, the Receiver entered into a lease of Unit 100 with Bella Vita Hair Design and Spa Inc. ("**Bella Vita**") for a term commencing on August 15, 2013 and expiring on September 30, 2018. Full details of the terms of the lease are provided in the Confidential Supplement to the Third Report. A commission was paid to Wintru in accordance with the Property Management Agreement between the Receiver and Wintru and previously approved by this Court.
- 4.19 In addition, Bella Vita purchased certain chattels located on the premises comprising Unit 100 that had been abandoned by the previous tenant when it vacated the unit. The purchase price of \$8,000, plus HST, was considered to be fair market value for the chattels purchased. The purchase price, plus HST, has been paid to the Receiver.

4.20 Through its property manager, the Receiver continues to collect rents from the tenants of the Commercial Plaza and has carried out required maintenance and repairs.

Receiver's Certificate

4.21 As reported in the Receiver's Second Report, the Receiver received \$125,000 from BMO under a Receiver's Certificate. From the borrowings, the Receiver paid \$120,000 on account of 2010 and prior years' property tax arrears to the City of Windsor. With funds available from the sale of Banwell Lots funds borrowed under the Receiver's certificate have been repaid to BMO in the amount of \$126,114.72, including accrued interest.

5. Robinet Road Lots Servicing Reimbursement

- 5.1. The Royal Timbers Subdivision was developed on previously vacant land located south of Tecumseh Road between Robinet Road to the west and Banwell Road to the east.
- 5.2. The houses on Robinet Road were constructed in the 1940's. The lots on the east side of Robinet Road (the "**Robinet Lots**") are approximately 280 feet in depth, the approximate equivalent of two (2) current standard sized building lots. The Robinet Lots back onto McRobbie Road, which was created as part of the Royal Timbers Subdivision.
- 5.3. In the course of constructing and servicing McRobbie Road, Banwell installed servicing to the rear of the Robinet Lots. This would allow the rear portion of the Robinet Lots to be severed at some future date and new building lots, fronting onto McRobbie Road, created.
- 5.4. In 2005, Banwell entered into a preliminary cost sharing arrangement with the City of Windsor whereby Banwell is to be reimbursed for its servicing costs when the rear portion of the Robinet Lots are severed. In order to secure Banwell's costs, a one (1) foot reserve in favour of each of the City of Windsor and Banwell was registered on title to the Robinet Lots. When a Robinet Lot homeowner makes application to the City of Windsor to sever the rear portion of a Robinet Lot, the approval is conditional upon payment of the related servicing costs. The one-foot

reserve will be released when the City of Windsor is reimbursed of the servicing costs. The City of Windsor will in turn reimburse Banwell these costs.

- 5.5. The Receiver is finalizing the costs to be reimbursed to Banwell for the City of Windsor's approval. The amount to be reimbursed to Banwell is estimated to be \$20,000 to \$30,000 per lot severed, depending on the foot frontage on McRobbie Road.
- 5.6. Based on twenty-eight (28) Robinet Lots with the rear portion of same fronting onto McRobbie Road, the estimated recovery to Banwell is approximately \$650,000 to \$750,000. These funds are likely to be received over several years as the owners of the Robinet Lots decide to sever and sell the rear portion of their lots.
- 5.7. The Receiver expects to incur some engineering and consulting fees to finalize the cost sharing and reimbursement arrangement with the City of Windsor.

6. Receiver's Sale Process for the Commercial Plaza

- 6.1 The Commercial Plaza consists of two (2) separate parcels of land, municipally known as 3335 Banwell Road ("**3335 Banwell**"), Windsor and 3993 Wildwood Drive, Windsor ("**3993 Wildwood**").
- 6.2 3335 Banwell is an 11,500 square foot, multi-tenant plaza, located on approximately 0.93 acres of land, with frontage along Banwell Road. 3993 Wildwood is a 3,000 square foot, single tenant retail plaza located on 0.77 acres of land, with frontage along Wildwood Drive.

- 6.3 In accordance with the Commercial Plaza Sales Process (as defined in the Sales Process Order), the Receiver conducted an Invitation for Offers sale process with respect to the sale of the Commercial Plaza.
- 6.4 In accordance with the Commercial Plaza Sales Process approved by the Court, the Receiver prepared a Confidential Information Memorandum (“**CIM**”) containing information relating to the Commercial Plaza, including photographs, site plan, a summary of tenant leases, property tax information and the terms and conditions of the Receiver’s sale process.
- 6.5 The Receiver placed advertisements for the Invitation for Offers in the online and two (2) print editions of each of The Windsor Star, the London Free Press and The Globe and Mail. Print advertisements were placed as follows: Windsor Star – September 7 and 10, 2013; London Free Press – September 7 and 10, 2013; Globe and Mail – September 6 and 10, 2013.
- 6.6 In addition, the Receiver circulated highlights of the Commercial Plaza and the Commercial Plaza Sale Process on its own internal network of BDO partners in ninety-five (95) BDO Canada offices across Canada.
- 6.7 The Receiver established a deadline for the submission of offers of Friday, October 11, 2013 (the “**First Offer Deadline**”).
- 6.8 Fifty-five (55) parties expressed interest in obtaining detailed information about the Commercial Plaza and the sale process and were provided with a Confidentiality and Non-Disclosure Agreement (“**NDA**”) for execution.
- 6.9 Thirty-eight (38) parties executed the NDA and were provided with access to an

electronic data room ("**data room**") established by the Receiver and maintained by a third party company, Firmex Inc. ("**Firmex**"). Firmex provides electronic data room services to major financial institutions and the Receiver has successfully utilized Firmex services on other receivership engagements. Access to the data room was controlled and monitored by the Receiver.

- 6.10 The data room contained the CIM, tenant leases, a summary of common area expenses, a summary of tenant security deposits and a form of Agreement of Purchase and Sale ("**Commercial Plaza APS**") to be used by interested parties for the submission of offers.
- 6.11 The Receiver received numerous enquiries by telephone and electronic mail for additional information about the Commercial Plaza and the Commercial Plaza Sale Process.
- 6.12 The Receiver received a number of offers for the purchase of the Commercial Plaza on or prior to the First Offer Deadline. The Receiver invited certain parties to submit or re-submit offers by Friday, October 25, 2013 (the "**Second Offer Deadline**"). The Receiver received several offers on or before the Second Offer Deadline.
- 6.13 As a result of the Commercial Plaza Sales Process to date, the Receiver identified and entered into negotiations with a party to finalize an Agreement of Purchase and Sale for the Commercial Plaza. The Receiver entered into agreement of purchase and sale with this party effective November 22, 2013 (the "**Commercial Plaza APA**"). The Commercial Plaza APA is subject to a due diligence period expiring November 29, 2013. If, upon the expiration of the due diligence period, the

purchaser elects to complete the transaction, the Receiver has tentatively scheduled to have the motion for an approval and vesting order heard December 13, 2013.

- 6.14 In the event the purchaser, upon the expiration of the due diligence period elects to terminate the Commercial Plaza APA, the Receiver intends to seek listing proposals from three (3) commercial real estate brokers who are experienced with similar properties, and list the Commercial Plaza for sale on the Multiple Listing Service.
- 6.15 Further details of the Commercial Plaza Sales Process undertaken to date and the offers received are set in the Confidential Supplement.

7. Statement of Receipts and Disbursements of the Receiver

7.1 The Receiver maintains a bank account with BMO in London, Ontario for each of Banwell and Royal Timbers. Attached as **Appendix G** and **Appendix H**, respectively, are the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements are as follows:

7.2 Receipts - Banwell

- a) *Sale of Lots (\$566,622.90)* — The Receiver received net proceeds totalling \$566,622.90 from completing the sales of Lots 39, 40, 43, 44, 47, 48, 49, 50, 51 and 117 Plan 12M-533, City of Windsor. Proceeds received are net of property tax arrears paid to the City of Windsor.

- b) *Receiver's Certificate #1 (\$125,000.00)* — The Receiver received \$125,000 from BMO under a Receiver's Certificate, of which \$96,505.68 was transferred to Royal Timbers in order for Royal Timbers to pay its share of property tax arrears.

- c) *Security Deposits on Sale of Lots (\$10,500.00)* — The Receiver received security deposits totalling \$10,500.00 from completing the sales of Lots. These deposits are refundable to the purchaser on the completion of construction of a house on the Lot and fulfillment of certain conditions.

7.3 Disbursements - Banwell

- a) *Receiver's Certificate (\$126,114.72)* – The Receiver repaid BMO under the Receiver's certificate in the amount of \$126,114.72, including accrued interest.
- b) *Legal fees (\$88,144.33)* – MT's legal fees for the period from May 16, 2013 to June 26, 2013 in the amount of \$41,867.97, excluding HST, were previously approved by the Court and one half of these accounts was paid by the Receiver from the Banwell account. The Receiver paid all of MT's interim accounts for the period July 2, 2013 through July 31, 2013 from the Banwell account. The Receiver paid one half of MT's interim accounts for the periods August 1, 2013 through August 30, 2013 and September 3, 2013 through September 30, 2013 from the Banwell account. The Receiver is seeking approval of the Court for these invoices.
- c) *Receiver's fees (\$43,041.44)* – BDO's account for the period May 2, 2013 through July 5, 2013 in the amount of \$51,018.94, excluding HST, was previously approved by the Court and one half of the account was paid from the Banwell account. The Receiver paid one half of BDO's account for the period July 5, 2013 through August 5, 2013 in the amount of \$35,063.93 from the Banwell account and is seeking approval of the Court of this invoice.
- d) *Sales commissions (\$24,237.50)* – The Receiver paid commissions on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.

- e) *Property taxes (\$23,494.32)* — The Receiver paid \$23,494.32 to the City of Windsor for 2010 and prior property tax arrears.
- f) *HST Paid (\$21,257.60)* — The Receiver paid \$21,257.60 in HST on its disbursements.
- g) *Repairs and Maintenance (\$8,264.70)* – The Receiver paid \$8,264.70 for landscaping and repairs and maintenance to the Banwell Lots and subdivision infrastructure.
- h) *Letter of Credit Administrative Charge (\$6,750.00)* — The Receiver paid BMO's annual fee to maintain Banwell's letter of credit posted with the City of Windsor.
- i) *Appraisal fees (\$3,954.20)* — The Receiver paid \$3,954.20 to Metrix Realty Group for an appraisal of the Banwell Lots.
- j) *City of Windsor application fees (\$3,568.00)* — The Receiver paid \$3,568.00 to the City of Windsor for the By-Law Applications.
- k) *Refund of Security deposits (\$2,298.31)* — The Receiver paid \$2,298.31 to refund the unused portion of security deposits posted by home builders on prior sales of Lots.
- l) *Insurance (\$2,082.24)* — The Receiver paid \$2,082.24 for the insurance premiums on the combined Banwell and Royal Timbers policy.

7.4. Receipts – Royal Timbers

- a) *Rental income (\$167,044.71)* – The Receiver received \$167,044.71 in rental income for the months of June through November 2013 from the tenants of the Commercial Plaza;
- b) *Receiver's Certificate #1 (\$96,505.68)* – The Receiver transferred \$96,505.68 borrowed from BMO under the Receiver's Certificate to the Royal Timbers account.
- c) *Property taxes (\$23,999.79)* – The Receiver received \$23,999.79 from the sole tenant of 3993 Wildwood who pays the actual amount of property taxes directly to Royal Timbers.
- d) *Sale of chattels (\$9,040.00)* – On the leasing of Unit 100, Bella Vita paid \$8,000.00, plus HST of \$1,040.00 for chattels that were owned by the previous tenant and abandoned when that tenant vacated the premises.
- e) *Security deposit (\$5,000.00)* – The Receiver received a security deposit of \$5,000.00 on the leasing of Unit 100.

7.5. Disbursements – Royal Timbers

- a) *Property taxes (\$96,505.68)* — The Receiver paid \$96,505.68 to the City of Windsor for 2010 and prior property tax arrears.

- b) *Receiver's fees (\$43,041.44)* – BDO's account for the period May 2, 2013 through July 5, 2013 in the amount of \$51,018.94, excluding HST, was previously approved by the Court and one half of the account was paid from the Royal Timbers account. The Receiver paid one half of BDO's account for the period July 5, 2013 through August 5, 2013 in the amount of \$35,063.93 from the Royal Timbers account and is seeking approval of the Court of this invoice
- c) *Legal fees - MT (\$37,695.84)* – MT's legal fees for the period from May 16, 2013 to June 26, 2013 in the amount of \$41,867.97, excluding HST, were previously approved by the Court and one half of these accounts was paid by the Receiver from the Royal Timbers account. The Receiver paid one half of MT's interim accounts for the period August 1, 2013 through August 30, 2013 and September 3, 2013 through September 30, 2013 from the Royal Timbers account. The Receiver is seeking approval of the Court of these invoices.
- d) *HST Paid (15,971.32)* — The Receiver has paid \$15,971.32 on its disbursements.
- e) *Payroll (\$12,085.12)* – The Receiver paid net wages of \$12,085.12 to Marina Ognjanovski, who provides administrative support to the management of the Commercial Plaza as well as to the management and maintenance of the vacant Banwell lands.
- f) *Repairs and Maintenance (\$10,764.93)* – The Receiver paid \$10,764.93 for repairs and maintenance to the Commercial Plaza.

- g) *Advertising (\$9,042.34)* – The Receiver paid \$9,042.34 in advertising the Invitation for Offers process for the Commercial Plaza.
- h) *Property Management Fees (\$6,350.70)* — The Receiver paid \$6,350.70 to Wintru for property management of the Commercial Plaza through October 31, 2013.
- i) *Insurance (\$5,024.16)* — The Receiver paid \$5,024.16 for the insurance premiums on the combined Banwell and Royal Timbers policy
- j) *Legal fees – Wolf Hooker (\$4,858.40)* – The Receiver paid \$4,858.40 for the legal account of Royal Timbers legal counsel in order to have a reconciliation of the lawyer's trust accounts prepared. This reconciliation was necessary to complete the financial statements of Royal Timbers and Banwell which will assist in the settlement of the shareholder litigation.
- k) *Commissions paid (\$4,659.20)* — In accordance with the terms of the Property Management Agreement approved by the Court, the Receiver paid \$4,659.20 to Wintru on the leasing of Unit 100.
- l) *Payroll source deductions (\$4,518.41)* – The Receiver remitted \$4,518.41 to the Receiver General for source deductions on employee wages.
- m) *Appraisal fees (\$4,145.15)* — The Receiver paid \$4,145.15 to Metrix Realty Group for an appraisal of the Commercial Plaza.
- n) *HST remitted (\$2,612.40)* — The Receiver remitted \$2,612.40 in HST collected on rents, net of HST paid on its disbursements.

- o) *Utilities (\$2,121.77)* – The Receiver paid \$2,121.77 for utilities for the unleased units and common area at the Commercial Plaza.

- p) *City of Windsor application fee (\$1,172.00)* – The Receiver paid an application fee to the City of Windsor of \$1,172.00 for the “Removal of the Zoning Hold Symbol” on the Commercial Plaza.

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

- 8.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees (the "Receiver's Charge").
- 8.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 8.3 Attached as **Appendix I** is the fee affidavit of Stephen N. Cherniak sworn November 18, 2013 containing BDO's interim accounts as Receiver for the following periods:
- o July 6, 2013 to August 5, 2013
 - o August 6, 2013 to September 5, 2013
 - o September 6, 2013 to October 4, 2013
 - o October 5, 2013 to November 5, 2013
- 8.4 The Receiver submits that the hourly rates charged by the Receiver and its staff are

commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.

- 8.5 Attached as **Appendix J** is the fee affidavit of Sherry Kettle, sworn November 15, 2013 containing the interim accounts of MT for the period July 2, 2013 to November 8, 2013.
- 8.6 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

9. Recommendations

9.1. The Receiver recommends and respectfully requests that this Court grant an Order:

- a) approving the Third Report, the Confidential Supplement and the activities and actions of the Receiver described therein;
- b) sealing the Confidential Supplement until further order of the Court;
- c) amending the Omnibus Approval and Vesting Order to add Block 120 to Schedule "A" to the Omnibus Approval and Vesting Order and to delete certain instruments from title as set out on Schedule "C" to the Omnibus Approval and Vesting Order;
- d) approving the Banwell Statement of Receipts and Disbursements and Royal Timbers Statement of Receipts and Disbursements; and
- e) approving the Professional Fees.

All of which is Respectfully Submitted this 25th day of November, 2013.

BDO Canada Limited in its capacity as Court Appointed Receiver of Banwell Development Corporation and Royal Timbers Inc. and not in any personal capacity.



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

A

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

) WEDNESDAY, THE 5TH.

JUSTICE

Bruce G. Thomas

DAY OF JUNE 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

APPLICATION UNDER SECTION 207 OF THE *BUSINESS
CORPORATIONS ACT*, R.S.O. 1990, C. B.16, AS AMENDED

ORDER

THIS MOTION made by Bank of Montreal ("BMO") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing BDO Canada Limited as interim receiver-manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. (collectively, the "Corporations") acquired for, or used in relation to a business carried on by the Corporations, was heard this day at 245 Windsor Ave, Windsor Ontario, pending completion of the valuation and sales process ordered pursuant to the Order of The Honourable Bruce Thomas rendered July 26, 2012 (the "July 26, 2012 Order")

ON READING the Affidavits of Grey Fedoryn sworn May 13, 2013 and May 22, 2013 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the

Respondents and Bank of Montreal (“BMO”) and the Consent of the Respondents Banwell Development Corporation, Royal Timbers Inc. (hereinafter referred to as the “Corporations”) and the respondents Scott D’Amore Executor for the Estate of Patrick D’Amore, Scott D’Amore (“Scott”), Kevin D’Amore (“Kevin”), 928579 Ontario Limited (“928579”), and of Simba Group Developments Limited and BMO 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 248(3)(b) and 209 of the *Business Corporations Act* R.S.O. 1990 c. B16 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 , BDO Canada Limited is hereby appointed Receiver-Manager, without security, of all of the assets, undertakings and properties of the Corporations acquired for, or used in relation to a business carried on by the Corporations, including all proceeds thereof (the "Property"). The Receivership shall not terminate prior to repayment of the amounts owing by the Corporations to BMO. The Receiver’s mandate is to forthwith refinance or realize upon the Property as may be required in order to repay the debts owing by the Corporations to BMO and to pay realty taxes owing upon the Property. For greater certainty, the implementation of the July 26, 2012 Order will not delay or hinder the Receiver from carrying out its mandate.

RECEIVER’S POWERS

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

- a. to take possession of and exercise control over the Property and any and all

proceeds, receipts and disbursements arising out of or from the Property;

- b. to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c. to manage, operate, and carry on the business of the Corporations, 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 Corporations;
- 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 Corporations or any part or parts thereof;
- f. to receive and collect all monies and accounts now owed or hereafter owing to the Corporations and to exercise all remedies of the Corporations in collecting such monies, including, without limitation, to enforce any security held by the Corporations;
- g. to settle, extend or compromise any indebtedness owing to the Corporations;
- 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 Corporations, for any purpose pursuant to this Order;

- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Corporations;
- 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 Corporations, the Property or the Receiver, and to settle or compromise any such proceedings save and except for the proceedings that relate to the July 26, 2012 Order. 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 in the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply. The Receiver is permitted to sell, convey or transfer the assets of Banwell Development Corporation and to use the proceeds to pay the debts of Royal Timbers Inc.

- 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 BMO and 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 Corporations;
- q. to exercise any shareholder, partnership, joint venture or other rights which the Corporations may have; and
- r. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Corporations, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their 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 Corporations, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

REPORT TO COURT

7. **THIS COURT ORDERS** that the Receiver will deliver its first report to the Court on notice to BMO, Scott, Kevin and 928579 and all other interested parties within 45 days following its appointment, which report will include its plan to carry out its mandate and the steps taken to date.

FINANCIAL REPORTING TO STAKEHOLDERS

8. **THIS COURT ORDERS** that the Receiver shall provide monthly financial reporting on the 10th day of each month (and if the 10th is not a business day, the first business day following the 10th day of each month) to BMO, Scott, Kevin and 928579, including, but not limited to, a statement of receipts and disbursements related to the Corporations and their operations.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE CORPORATIONS OR THE PROPERTY

10. **THIS COURT ORDERS** that, save and except for the July 26, 2012 Order, no Proceeding against or in respect of the Corporations or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Corporations or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Corporations, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Corporations to carry on any business which the Corporations is not lawfully entitled to carry on, (ii) exempt the Receiver or the Corporations from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest,

or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Corporations 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 Corporations 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 Corporation'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 Corporations or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Corporations shall remain the employees of the Corporations until such time as the Receiver, on the Corporation'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 other than such amounts as the Receiver may specifically agree in writing to pay, or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **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 Corporations, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part, or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by any other applicable legislation.

RECEIVER'S ACCOUNTS

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

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

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall

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

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the total outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

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

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

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

GENERAL

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

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

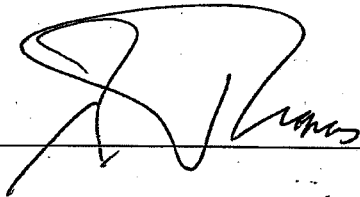
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that BMO shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Corporations' estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

ENTERED AT WINDSOR
In Book No. 24
re Document No. 729
JUN - 5 2013
VB



 JUSTICE

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. acquired for, or used in relation to a business carried on by the Corporations, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the _____ day of June, 2013 (the "Order") made in an action having Court file number _____ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
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 5th day of June,
2013.

BDO Canada Limited

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

Per:

Name:

Title:

KEVIN D'AMORE

-and- BANWELL DEVELOPMENT
CORPORATION et al
Defendants

Plaintiff

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDORD

ORDER
AFFIDAVIT OF SERVICE

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Lawyers for the Bank of Montreal

B

114 90

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

**BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE AND ROYAL TIMBERS INC.**

Respondents

**FIRST REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED, IN ITS
CAPACITY AS PROPOSED RECEIVER OF BANWELL DEVELOPMENT CORPORATION
AND ROYAL TIMBERS INC.**

May 29, 2013

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- Appendix B** - Search results under the PPSA for Banwell and Royal Timbers with a file currency date of May 27, 2013
- Appendix C** - Execution Certificates dated May 28, 2013 for Banwell and Royal Timbers along with the Writ Details Reports dated May 28, 2013 for Royal Timbers
- Appendix D** - Endorsement of The Honourable Justice Thomas dated May 15, 2013

1. Introduction and Background

1.1 Introduction

1.1.1 By motion within these court proceedings returnable on June 5, 2013 in Windsor (the "**Appointment Motion**"), Bank of Montreal ("**BMO**") is seeking, *inter alia*, an Order of this Honourable Court (the "**Appointment Order**") appointing BDO Canada Limited ("**BDO**" or the "**Proposed Receiver**") as receiver of all of the assets, undertakings and properties (the "**Property**") of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc. ("**Royal Timbers**" and collectively with Banwell, the "**Companies**").

1.1.2 This report is submitted by BDO, in its capacity as Proposed Receiver of the Companies.

1.2 Background

1.2.1 At all material times, Banwell was engaged in the development and sale of residential building lots (the "**Royal Timbers Subdivision**") on lands located just west of Banwell Road in the City of Windsor, Ontario (the "**Lands**"). At all material times, Royal Timbers, the wholly owned subsidiary of Banwell, was engaged in the development, construction and subsequent leasing of a commercial plaza located at the southwest corner of the Lands at the junction of Banwell Road and Wildwood Drive, Windsor, Ontario (the "**Commercial Plaza**").

1.2.2 Banwell was effectively a joint venture between Mr. Murray Troup ("**Troup**") and Mr. Patrick D'Amore ("**D'Amore**"), with ownership held equally by Mr. Troup, through his holding company, 928579 Ontario Limited ("**928579**") and Mr. D'Amore, as trustee for his sons Kevin D'Amore ("**Kevin**") and Scott D'Amore ("**Scott**"), as beneficiaries. As noted above, Royal Timbers is a wholly owned subsidiary of Banwell.

- 1.2.3 On or about July 8, 2005, BMO entered into a credit facilities agreement with Banwell that provided for a non-revolving demand facility in the amount of \$4,204,350 (the "**Banwell Credit Facility**"). This amount was comprised of \$404,350 remaining on a previous credit facility and a new credit facility of \$3,800,000.
- 1.2.4 On or about February 20, 2006, BMO entered into a credit facilities agreement with Royal Timbers that provided for a non-revolving demand facility in the amount of \$2,150,000 (the "**Royal Timbers Credit Facility**").
- 1.2.5 As security for the Banwell Credit Facility, BMO was granted, among other security, a first mortgage over that portion of the Lands comprising the Royal Timbers Subdivision (the "**Banwell Lands**").
- 1.2.6 As security for the Royal Timbers Credit Facility, BMO was granted, among other security, a first mortgage over that portion of the Lands comprising the Commercial Plaza (the "**Royal Timbers Lands**").
- 1.2.7 In or around 2009, a dispute developed between the then shareholders of Banwell resulting in an eventual impasse that remains unresolved and is the subject of this litigation. The Companies have not held a shareholder meeting since 2008.
- 1.2.8 In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell being vested equally in each of Kevin and Scott.
- 1.2.9 On March 5, 2012, BMO provided to the Companies formal notice of default under their respective loan agreements. The default arose from the Companies' breach of their covenant to provide BMO with accountant-prepared financial statements and municipal tax certificates confirming that taxes were paid current contained in their respective loan agreements.

- 1.2.10 BMO was prepared to delay enforcement proceedings against the Companies to allow the shareholders time to resolve their dispute provided interest payments on the credit facilities were kept current
- 1.2.11 On March 1, 2013, Royal Timbers defaulted in payment of the interest due to BMO.
- 1.2.12 As a result, on March 22, 2013, BMO made demand for repayment of both the Banwell Credit Facility and the Royal Timbers Credit Facility.
- 1.2.13 As of March 19, 2013, Banwell and Royal Timbers were indebted to BMO in the approximate amounts of \$990,000 and \$1,801,000 respectively.
- 1.2.14 It appears that BMO holds a first-ranking mortgage on Lot 44 (defined below) comprising a portion of the Banwell Lands. Simba Group Developments Limited and Patrick D'Amore appear to hold a second-ranking mortgage on Lot 44. A copy of a Parcel Register for Lot 44 prepared on May 28, 2013 is attached hereto as **Appendix "A"**.
- 1.2.15 Searches conducted of the *Personal Property Security Act* (Ontario) (the "**PPSA**") registry system reveal only the all-encompassing registration in favour of BMO. Copies of the search results under the PPSA for the Companies with a file currency date of May 27, 2013 are attached hereto as **Appendix "B"**.
- 1.2.16 An executions search conducted May 28, 2013 revealed no executions filed against Banwell. An executions search conducted on May 28, 2013 with respect to Royal Timbers discloses two (2) executions, namely, J. Lepera Contracting Inc. and M.R. Dunn Contractors Ltd. Copies of the Execution Certificates dated May 28, 2013 for Banwell and Royal Timbers along with the Writ Details Reports dated May 28, 2013 for Royal Timbers are collectively attached hereto as **Appendix "C"**.
- 1.2.17 Within these court proceedings, a motion was brought for the appointment of an interim receiver/manager to operate the business of Banwell and Royal Timbers. The

motion was heard by The Honourable Justice Thomas in Windsor on May 14, 2013. Justice Thomas determined that the appointment of a receiver was appropriate for the orderly conduct of the business and to repay the debts of the Companies to BMO. Pursuant to the endorsement of Justice Thomas dated May 15, 2013 (the "Endorsement"), leave was granted to BMO to bring a motion for the appointment of BDO as receiver with proper notice on all secured parties and execution creditors. A copy of the Endorsement is attached hereto as **Appendix "D"**.

1.2.18 As directed by the terms of Endorsement and in order to facilitate the sale of the Property and repayment of the obligations of the Companies to BMO, BMO served notice of the Appointment Motion returnable at 10:00 a.m on June 5, 2013 in Windsor, Ontario. The form of Appointment Order sought by BMO on the return of the Appointment Motion, if granted, will empower but not obligate the Proposed Receiver to, among other things:

- (a) Take possession of and exercise control over all of the Property.
- (b) Take possession of and exercise control of any and all proceeds, receipts and disbursements arising out of or from the Property.
- (c) Receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, changing the 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.
- (d) Manage, operate and carry on the business of the Companies, 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 Companies.
- (e) Receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting

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such monies, including, without limitation, to enforce any security held by the Companies.

- (f) 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 Proposed Receiver in its discretion may deem appropriate.
- (g) Sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000 and with the approval of the Court in which the purchase price exceeds these monetary thresholds.

2. Purpose of the Proposed Receiver's First Report

- 2.1 This constitutes the Proposed Receiver's First Report to the Court (the "**First Report**") in this matter and is filed to:
- (a) Seek approval of the First Report, the Proposed Receiver's Confidential Supplement to the First Report (the "**Confidential Supplement**") and the Proposed Receiver's activities as outlined therein;
 - (b) Provide the Proposed Receiver's recommendation with respect to the sale of Lot 44, Plan 12M-533, Windsor (PIN 01566-0610 (LT)) and municipally known as 11234 Urban Lane, Windsor ("**Lot 44**");
 - (c) Request approval of the agreement of purchase and sale dated December 28, 2012 (the "**APS**") between the Proposed Receiver, as vendor and assignee, and Kirson Quality Homes Ltd. ("**Kirson**"), as purchaser, as amended, in respect of Lot 44 and an Order authorizing and directing the Proposed Receiver to enter into and complete the transaction contemplated by the Amended APS (defined below) (the "**Transaction**") and, thereafter, to file the Proposed Receiver's Certificate;
 - (d) Obtain a Vesting Order in respect of the sale of Lot 44; and
 - (e) Request that the Court seal the Confidential Supplement until the Proposed Receiver has filed a copy of the Proposed Receiver's Certificate with the Court following the closing of the Transaction.

3. Proposed Receiver's Activities

- 3.1 In anticipation of the Appointment Order being granted on June 5, 2013, the Proposed Receiver seeks approval to enter into and complete the Transaction as part of its anticipated mandate to facilitate the sale of the Property and repayment of the obligations of the Companies to BMO.

- 3.2 An arm's length party, Kirson, as purchaser, entered into the APS with Banwell, as vendor, for the purchase of Lot 44. Prior to completing a sale of Lot 44 to Kirson pursuant to the APS, Kirson constructed a home on lands comprising Lot 44 for purposes of ultimate re-sale of the home and lands comprising Lot 44. A copy of the APS is attached as **Appendix "A" to the Confidential Supplement**.

- 3.3 After construction of the home on Lot 44 by Kirson, Banwell has been unable to complete the Transaction as proceeds from a sale of Lot 44 are insufficient to satisfy the obligations due to the holders of the mortgages registered against title the Lands, including Lot 44.

- 3.4 On May 28, 2013, Banwell, as vendor under the APS, assigned its interests under the APS to BDO, as Proposed Receiver, in order to facilitate the completion of the Transaction to Kirson without further delay. Kirson and the Proposed Receiver amended the APS (the "**Amended APS**") to provide for terms and conditions of sale consistent with a sale by a court-appointed Receiver. A copy of the Assignment and Amendment Agreement is attached as **Appendix "B" to the Confidential Supplement**. A copy of the Amended APS is attached as **Appendix "C" to the Confidential Supplement**.

4. Proposed Receiver's Sale of Lot 44

- 4.1 As noted above, on or about December 28, 2012, Banwell and Kirson entered into the APS in respect to the sale of Lot 44 from Banwell to Kirson. The Proposed Receiver's analysis of the Transaction is contained in the Confidential Supplement.
- 4.2 Two appraisals of the real property comprising the Banwell Lands, including Lot 44, were commissioned by the Companies and/or its shareholders. The appraisal report of Finlay Appraisal and Consultation Services ("Finlay") is attached as **Appendix "D"** to the Confidential Supplement. The appraisal report of Valco Real Estate Appraiser & Consultants ("Valco") is attached as **Appendix "E"** to the Confidential Supplement.
- 4.3 The Proposed Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have should the Transaction failed to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the Transaction does not close and could negatively impact the future sale of other lots owned by Banwell in the Royal Timbers subdivision.
- 4.4 On or about January 2, 2013, Banwell accepted the offer from Kirson for the purchase of Lot 44. The offer provided for Kirson to construct a single family residence on the property, with the completion of the sale of Lot 44 to Kirson to correspond to the completion date of Kirson's sale to a subsequent and the ultimate homeowner.
- 4.5 Kirson has completed construction and sold the home located on Lot 44, the sale of which was originally scheduled to close on May 17, 2013. Once the Appointment Order is granted, the Proposed Receiver seeks to complete the Transaction between Banwell and Kirson, subject to the approval of this Court.
- 4.6 The Proposed Receiver intends to complete the Transaction as soon as possible

following Court approval and the granting of the appropriate Vesting Order to facilitate a transfer of Lot 44 to Kirson free of any and all encumbrances.

- 4.7 The Proposed Receiver is not seeking to distribute the proceeds of the Transaction at this time and intends to hold the proceeds from the Transaction pending further order of this Honourable Court.
- 4.8 It is the Proposed Receiver's view that the Transaction is appropriate in the circumstances.
- 4.9 The Proposed Receiver is satisfied that the Transaction represents fair market value for Lot 44.
- 4.10 The Proposed Receiver is of the view that it has maximized the realization available and the Transaction is commercially reasonable in all respects. Given the forgoing, the Proposed Receiver is of the view that the Transaction is in the best interests of the creditors and other stakeholders of the Companies.
- 4.11 BMO supports the Proposed Receiver entering into and completing the Transaction.
- 4.12 The Proposed Receiver recommends that this Court approve the completion of the Transaction.
- 4.13 The Proposed Receiver requests a Vesting Order be made in favour of Kirson as the purchaser of Lot 44.

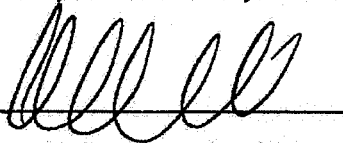
5. Recommendations

5.1. The Proposed Receiver recommends and respectfully requests that this Court grant an Order:

- (a) Approving the First Report, the Confidential Supplement and the activities of the Proposed Receiver described therein;
- (b) Approving the Amended APS and authorizing and directing the Proposed Receiver to enter into and complete the Transaction and, thereafter to file the Proposed Receiver's Certificate;
- (c) Making a Vesting Order in respect of Lot 44; and
- (d) Sealing the Confidential Supplement until the Proposed Receiver has filed a copy of the Proposed Receiver's Certificate with the Court following the closing of the Transaction.

All of which is Respectfully Submitted this 29th day of May, 2013.

BDO Canada Limited in its capacity as Proposed Court Appointed Receiver of Banwell Development Corporation and Royal Timbers Inc. and not in any personal capacity.



Per: Stephen N. Cherniak, CA, CIRP
Senior Vice President

C

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

**BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE AND ROYAL TIMBERS INC.**

Respondents

**FIRST REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED,
AS RECEIVER OF BANWELL DEVELOPMENT CORPORATION
AND ROYAL TIMBERS INC.**

June 20, 2013

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Appendix A - Appointment Order dated June 5, 2013

1. Introduction and Background

1.1 Introduction

1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("BDO" or the "Receiver") of the assets, undertakings and properties (the "Property") of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers" and collectively with Banwell, the "Companies")

1.1.2 BDO was appointed as Receiver by the Order of Mr. Justice Thomas dated June 5, 2013 (the "Appointment Order"). A copy of the Appointment Order is attached as Appendix A to this report.

1.2 Background

1.2.1 At all material times, Banwell was engaged in the development and sale of residential building lots (the "Royal Timbers Subdivision") on lands located just west of Banwell Road in the City of Windsor, Ontario (the "Lands"). At all material times, Royal Timbers, the wholly owned subsidiary of Banwell, was engaged in the development, construction and subsequent leasing of a commercial plaza located at the southwest corner of the Lands at the junction of Banwell Road and Wildwood Drive, Windsor, Ontario (the "Commercial Plaza").

1.2.2 Banwell was effectively a joint venture between Mr. Murray Troup ("Troup") and Mr. Patrick D'Amore ("D'Amore"), with ownership held equally by Mr. Troup, through his holding company, 928579 Ontario Limited ("928579") and Mr. D'Amore, as trustee for his sons Kevin D'Amore ("Kevin") and Scott D'Amore ("Scott"), as beneficiaries. As noted above, Royal Timbers is a wholly owned subsidiary of Banwell.

- 1.2.3 In or around 2009, a dispute developed between the then shareholders of Banwell resulting in an eventual impasse that remains unresolved and is the subject of this litigation. The Companies have not held a shareholder meeting since 2008.
- 1.2.4 In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell being vested equally in each of Kevin and Scott.
- 1.2.5 Within these court proceedings, a motion was brought for the appointment of an interim receiver/manager to operate the business of Banwell and Royal Timbers. The motion was heard by The Honourable Justice Thomas in Windsor on May 14, 2013. Justice Thomas determined that the appointment of a receiver was appropriate for the orderly conduct of the business and to repay the debts of the Companies to BMO. Pursuant to the endorsement of Justice Thomas dated May 15, 2013 (the "Endorsement") leave was granted to BMO to bring a motion for the appointment of BDO as receiver with proper notice to all secured parties and execution creditors.
- 1.2.6 As directed by the Endorsement, on June 5, 2013 BMO brought a motion seeking the appointment of BDO as receiver and manager of the Property.
- 1.2.7 On June 5, 2013, the Honourable Justice Thomas granted the relief sought by BMO on its motion and issued the Appointment Order.
- 1.2.8 Immediately following the issuance of the Appointment Order, the Receiver sought an order approving the sale of Lot 44, Plan 12M-533, Windsor, ("Lot 44") located in the Royal Timbers Subdivision, to Kirson Quality Homes Ltd. ("Kirson") and vesting title to Lot 44 in Kirson on closing. In support of the relief sought by the Receiver, BDO, in its capacity as the Proposed Receiver, submitted a Report to the Court dated May 29, 2013. On June 5, 2013, following its appointment, the Receiver obtained the approval of the Court for the completion of the sale to Kirson and vesting title to Lot 44 in and to Kirson on closing (the "Lot 44 Approval and Vesting Order").

2. Terms of Reference

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

3. Purpose of the Receiver's Second Report

3.1 This constitutes the Receiver's First Report to the Court (the "First Report") in this matter and is filed in support of:

- (a) an order approving of the First Report, the Receiver's Confidential supplement to the First Report (the "Confidential Report") and the Receiver's activities as outlined therein;
- (b) the Receiver's recommendation with respect to the sale of Lot 40, Plan 12M-533, Windsor (PIN 01566-606 (LT)), municipally known as 3003 Troup Crescent ("Lot 40");
- (c) the Receiver's recommendation with respect to the sale of Lot 47, Plan 12M-533, Windsor (PIN 01566-613 (LT)), municipally known as 11265 Urban Lane ("Lot 47");
- (a) an order approving the agreement of purchase and sale dated March 5, 2013 with a closing date of July 4, 2013 (the "Lot 40 APS") between the Receiver, as vendor, and Hadi Customs Homes Inc. ("Hadi"), as purchaser, as amended, in respect of Lot 40 and an Order authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Amended Lot 40 APS (defined below) (the "Lot 40 Transaction") and, thereafter, to file the Receiver's Certificate;
- (b) a vesting order in favour of Hadi in respect of the Lot 40 Transaction;
- (c) an order approving the agreement of purchase and sale dated May 23, 2013 with a closing date of September 30, 2013 (the "Lot 47 APS") between the Receiver, as vendor, and Hadi as purchaser, as amended, in respect of Lot 47 and an Order authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Amended Lot 47 APS (defined

below) (the "Lot 47 Transaction") and, thereafter, to file the Receiver's Certificate;

- (d) a vesting order in favour of Hadi in respect of the sale of Lot 47; and
- (e) and order sealing the Confidential Report until further order of the Court.

4. Receiver's Activities

- 4.1 Pursuant to the Lot 44 Approval and Vesting Order, on June 7, 2013, the Receiver completed the sale of Lot 44 to Kirson and filed a copy of the Receiver's Certificate with the Court following the closing of the transaction.
- 4.2 Prior to BDO's appointment as Receiver, Hadi, as purchaser, entered into the Lot 40 APS and the Lot 47 APS with Banwell, as vendor, for the purchase of Lots 40 and 47, respectively.
- 4.3 As permitted under the Lot 40 APS, Hadi constructed a home on lands comprising Lot 40 for purposes of the ultimate re-sale of these home and lands. A copy of the Lot 40 APS is attached as Appendix "A" to the Confidential Supplement. Hadi has resold Lot 40 and both the Lot 40 Transaction and the re-sale of Lot 40 to the ultimate homeowner are scheduled to be completed on July 4, 2013.
- 4.4 Hadi has commenced construction of a model home on the lands comprising Lot 47, but has not yet re-sold the home and lands comprising Lot 47. A copy of the Lot 47 APS is attached as Appendix "D" to the Confidential Supplement.
- 4.5 The Receiver is empowered under the Appointment Order to assume the obligations of Banwell, as vendor under the Lot 40 APS and the Lot 47 APS in order to facilitate the completion of the transactions contemplated thereby to Hadi. The Receiver assumed the obligations of Banwell under the Lot 40 APS and Hadi and the Receiver amended the Lot 40 APS to provide for terms and conditions of sale consistent with a sale by a court-appointed Receiver pursuant to an assumption and amending agreement dated June 19, 2013 (the "Amended Lot 40 APS"). A copy of the Assumption and Amending Agreement is attached as Appendix "B" to the Confidential Supplement. A copy of the Amended Lot 40 APS is attached as Appendix "C" to the Confidential Supplement.
- 4.6 On June 19, 2013, the Receiver assumed the obligations of Banwell under the Lot 47 APS and Hadi and the Receiver amended the Lot 47 APS to provide for terms

and conditions of sale consistent with a sale by a court-appointed Receiver pursuant to an assumption and amending agreement dated June 19, 2013 (the "Amended Lot 47 APS"). A copy of the Assumption and Amending Agreement is attached as Appendix "E" to the Confidential Supplement. A copy of the Amended Lot 47 APS is attached as Appendix "F" to the Confidential Supplement.

- 4.7 As required by paragraph 7 of the Appointment Order, the Receiver intends to serve its Second Report to this Court containing details of its marketing plan with respect to the Commercial Plaza and the balance of the lots comprising the Royal Timbers Subdivision by no later than July 19, 2013. At the same time, the Receiver will report therein on all of its activities to date. The Receiver intends to return to Court to seek approval of the Second Report and in particular the marketing plan contained therein on further motion (the "Approval Motion").
- 4.8 In order to complete the Lot 40 Transaction by July 4, 2013 as required under the Amended Lot 40 APS and to facilitate the re-sale of Lot 40 to the homeowner on that same date, the Receiver could not delay in bringing this motion until the return of the Approval Motion.
- 4.9 On the return of the Approval Motion, the Receiver intends, also, to seek the Court's approval of an Omnibus Approval and Vesting Order with respect to the balance of the lots comprising the Royal Timbers Subdivision. It is intended that such an order will allow the Receiver to complete individual lot sales without the necessity of having to return to court to seek the Court's separate approval of each transaction.

5. Receiver's Sale of Lot 40 and Lot 47

- 5.1 On or about March 5, 2013, Banwell and Hadi entered into the Lot 40 APS in respect to the sale of Lot 40 from Banwell to Hadi. The Receiver's analysis of the Lot 40 Transaction is contained in the Confidential Supplement.
- 5.2 On or about May 23, 2013, Banwell and Hadi entered into the Lot 47 APS in respect to the sale of Lot 47 from Banwell to Hadi. The Receiver's analysis of the Lot 47 Transaction is contained in the Confidential Supplement.
- 5.3 The Lot 40 Transaction and the Lot 47 Transaction are collectively referred to as the "Hadi Transactions"
- 5.4 An appraisal of the real property comprising the Banwell Lands, including Lot 40 and Lot 47, was commissioned by the Companies prior to the appointment of the Receiver. The appraisal report of Valco Real Estate Appraiser & Consultants ("Valco") is attached as Appendix "G" to the Confidential Supplement.
- 5.5 The Receiver commissioned an appraisal of the Banwell Lands by Metrix Realty Group ("Metrix"). However, the Metrix appraisal will not be completed in time for the Receiver to obtain Court approval of the Hadi Transactions and complete the Lot 40 Transaction on July 4, 2013.
- 5.6 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have should either of the Hadi Transactions fail to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if either of the Hadi Transactions does not close and could negatively impact the future sale of other lots comprising the Royal Timbers Subdivision.
- 5.7 The Receiver intends to complete the Hadi Transactions as soon as possible following Court approval and the granting of the appropriate Vesting Orders to facilitate a transfer of Lots 40 and 47 to Hadi free of any and all claims and encumbrances.

- 5.8 The Receiver is not seeking to distribute the proceeds of the Hadi Transactions at this time and intends to hold the proceeds from the Hadi Transactions pending further order of the Court.
- 5.9 It is the Receiver's view that the Hadi Transactions are appropriate in the circumstances.
- 5.10 The Receiver is satisfied that the Hadi Transactions represent fair market value for each of Lots 40 and 47.
- 5.11 The Receiver is of the view that it has maximized the realization available and the Hadi Transactions are commercially reasonable in all respects. Given the forgoing, the Receiver is of the view that the Hadi Transactions are in the best interests of the creditors and other stakeholders of the Companies.
- 5.12 BMO supports the Receiver entering into and completing the Hadi Transactions.
- 5.13 The Receiver recommends that this Court approve the completion of the Hadi Transactions.
- 5.14 The Receiver requests that Vesting Orders be made in favour of Hadi as the purchaser of Lot 40 and Lot 47.

6. Recommendations

- 6.1. The Receiver recommends and respectfully requests that this Court grant an Order:
- a) Approving the First Report of the Receiver, the Confidential Supplement and the activities of the Receiver described therein;
 - b) Approving the Lot 40 APS and authorizing and directing the Receiver to enter into and complete the Lot 40 Transaction and, thereafter to file the Receiver's Certificate with the Court;
 - c) Vesting title to Lot 40 in and to Hadi;
 - d) Approving the Lot 47 APS and authorizing and directing the Receiver to enter into and complete the Lot 47 Transaction and, thereafter to file the Receiver's Certificate with the Court;
 - e) Vesting title to Lot 47 in and to Hadi;
 - f) Sealing the Confidential Supplement until further order of the Court;

All of which is respectfully submitted this 20th day of June, 2013.

BDO Canada Limited, solely in its capacity as Court Appointed Receiver of Banwell Development Corporation and Royal Timbers Inc. and not in any personal capacity.


Per: Stephen N. Cherniak, CPA, CA-CIRP
Senior Vice President

D

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

**BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE AND ROYAL TIMBERS INC.**

Respondents

**SECOND REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED,
AS RECEIVER OF BANWELL DEVELOPMENT CORPORATION
AND ROYAL TIMBERS INC.**

July 12, 2013

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- Appendix B** - First Report to the Court of Proposed Receiver dated May 29, 2013 (without appendices)
- Appendix C** - First Report to the Court of Receiver dated June 20, 2013 (without appendices)
- Appendix D** - Commercial Plaza Rent Roll
- Appendix E** - Proposed Property Management Agreement with Wintru Developments Inc.
- Appendix F** - Litigation Chart
- Appendix G** - Reasons for Judgment of the Honourable Justice Thomas dated July 26, 2012
- Appendix H** - Schedule of Banwell Lots
- Appendix I** - Form of Lot Sales Agreement
- Appendix J** - Banwell Statement of Receipts and Disbursements
- Appendix K** - Royal Timbers Statement of Receipts and Disbursements
- Appendix L** - Fee affidavit of Stephen N. Cherniak for Interim accounts of BDO Canada Limited sworn July 9, 2013
- Appendix M** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn July 12, 2013

1. Introduction and Background

1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("BDO" or the "Receiver") of all assets, undertakings and properties (the "Property") of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers" and collectively with Banwell, the "Companies")
- 1.1.2 BDO was appointed as Receiver by the Order of Mr. Justice Thomas dated June 5, 2013 (the "Appointment Order"). A copy of the Appointment Order is attached as **Appendix A** to this report.

1.2 Background

- 1.2.1 At all material times, Banwell was engaged in the development and sale of residential building lots (the "Royal Timbers Subdivision") on lands located just west of Banwell Road in the City of Windsor, Ontario (the "Lands"). At all material times, Royal Timbers was engaged in the development, construction and subsequent leasing of a commercial plaza located at the southwest corner of the Lands at the junction of Banwell Road and Wildwood Drive, Windsor, Ontario (the "Commercial Plaza").
- 1.2.2 Banwell was effectively a joint venture between Mr. Murray Troup ("Troup") and Mr. Patrick D'Amore ("D'Amore"), with ownership held equally by Troup, through his holding company, 928579 Ontario Limited ("928579") and D'Amore, as trustee for his sons Kevin D'Amore ("Kevin") and Scott D'Amore ("Scott"), as beneficiaries. Royal Timbers is the wholly-owned subsidiary of Banwell.

- 1.2.3 Barwell is the owner of that portion of the Lands comprising the Royal Timbers Subdivision. Royal Timbers is the owner of that portion of the Lands comprising the Commercial Plaza.
- 1.2.4 In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Barwell vesting equally in each of Kevin and Scott.
- 1.2.5 Within these court proceedings and pursuant to the Endorsement of Mr. Justice Thomas dated May 15, 2013, Bank of Montreal ("**BMO**") brought a motion seeking the appointment of BDO as receiver and manager of the Property.
- 1.2.6 On June 5, 2013, the Honourable Justice Thomas granted the relief sought by BMO on its motion and issued the Appointment Order.
- 1.2.7 Immediately following the issuance of the Appointment Order, the Receiver sought an order approving the sale of Lot 44, Plan 12M-533, Windsor, ("**Lot 44**") located in the Royal Timbers Subdivision, to Kirson Quality Homes Ltd. ("**Kirson**") and vesting title to Lot 44 in Kirson on closing. In support of the relief sought by the Receiver, BDO, in its capacity as the Proposed Receiver, submitted a Report to the Court dated May 29, 2013. A copy of the First Report of the Proposed Receiver (without appendices) is attached as **Appendix B**. On June 5, 2013, immediately following its appointment, the Receiver obtained the approval of the Court to complete the sale to Kirson and vest title to Lot 44 in and to Kirson on closing (the "**Lot 44 Approval and Vesting Order**").
- 1.2.8 Following its appointment, the Receiver sought an order approving the sale of Lot 40, Plan 12M-533, Windsor, ("**Lot 40**") and Lot 47, Plan 12M-533, Windsor, ("**Lot**

47"), both located in the Royal Timbers Subdivision, to Hadi Custom Homes Inc. ("Hadi") and vesting title to Lots 40 and 47 in Hadi on closing. In support of the relief sought, the Receiver submitted a Report to the Court dated June 20, 2013. A copy of the First Report of the Receiver (without appendices) is attached as **Appendix C** (the "First Report"). On June 25, 2013, the Receiver obtained the approval of the Court to complete the sale to Hadi and vest title to Lots 40 and 47 in and to Hadi on closing (the "Lots 40 and 47 Approval and Vesting Order").

2. Terms of Reference

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

3. Purpose of the Receiver's Second Report

3.1 This constitutes the Receiver's Second Report to the Court (the "Second Report") in this matter and is filed:

- (a) To provide this Court with information on:
 - (i) the Receiver's activities since the date of the First Report and to seek approval of the Second Report, and the Receiver's activities as outlined therein;
 - (ii) the arrangements in place for the ongoing property management of the Commercial Plaza;
 - (iii) the Receiver's payment of 2010 and prior property tax arrears with respect to the Commercial Plaza; and
 - (iv) the Receiver's proposed plan for the marketing and sale of the balance of the unsold serviced residential building lots comprising the Royal Timbers Subdivision (the "Banwell Lots" or the "Lots") and the Receiver's proposed plan for the marketing and sale of the Commercial Plaza,

- (b) In support of an order of the Court (the "Sales Process Order"):
 - (i) approving the Second Report and the activities of the Receiver described herein;

- (ii) extending the date by which the Consolidated Action (defined below) shall be set down for trial as required by the Order of Mr. Justice Gates dated May 29, 2013 (the "**Gates Order**") by the length of the stay of proceedings imposed by the Appointment Order;
- (iii) approving and authorizing the Receiver to enter into a property management agreement with Wintru Developments Inc. ("**Wintru**") substantially in the form appended as Appendix E hereto;
- (iv) approving the sales process with respect to the Banwell Lots (the "**Lot Sales Process**") and authorizing the Receiver to carry out the Lots Sales Process;
- (v) approving the form of Agreement of Purchase and Sale with respect to the sale of the Banwell Lots, substantially in the form attached as Appendix I hereto (the "**Form of Lot Sales Agreement**") together with any amendments thereto deemed necessary and appropriate by the Receiver;
- (vi) authorizing the Receiver to accept an offer or offers to purchase any or all of the Banwell Lots provided that the sale price for each Lot is acceptable to the Receiver having regard to the appraised value for such Lot(s) and prior sales of similar lots and the terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Banwell;

- (vii) approving the Receiver's proposed sale process for the Commercial Plaza as set out in Section 7 of the Second Report (the "**Commercial Plaza Sales Process**");
 - (viii) approving the Receiver's Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period June 5 to July 4, 2013 (the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**");
 - (ix) approving BDO's accounts for professional fees and disbursements as Receiver ("**BDO Fees**");
 - (x) approving the fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**") and collectively with the BDO Fees, the "**Professional Fees**";
 - (xi) authorizing and directing the Receiver to redact paragraph 6.12 from this Second Report served on any party other than the Court; and
 - (xii) sealing the unredacted version of this Second Report filed with the Court until further order of the Court;
- (a) In support of an order of the Court (the "**Omnibus Approval and Vesting Order**"):
- (i) prospectively approving the Lot sales transactions (each such transaction, a "**Transaction**" and all such transactions, the "**Transactions**") in respect of the Banwell Lots and authorizing the execution of an agreement of purchase and sale in respect of each Lot

by the Receiver, as vendor and the purchaser of each Lot (each purchaser hereinafter referred to as the "Purchaser") substantially in the form of the Form of Lot Sales Agreement, together with any amendments or modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as a "Lot Sale Agreement"); and

- (ii) upon the delivery of a Receiver's Certificate (as such term is defined in the draft Omnibus Approval and Vesting Order) by the Receiver to a Purchaser confirming the satisfaction or waiver of the conditions precedent under the applicable Lot Sale Agreement, vesting all of Banwell's right, title and interest in and to the Lot(s) described in such applicable Lot Sale Agreement (the "Purchased Assets") in and to the applicable Purchaser, free and clear of all encumbrances, save and except for those encumbrances listed in Schedule D to the draft Omnibus Approval and Vesting Order.

4. Receiver's Activities

- 4.1 As approved by the Lots 40 and 47 Approval and Vesting Order, on July 12, 2013, the Receiver is scheduled to complete the sale of Lot 40. The sale of Lot 47 is scheduled to be completed on September 30, 2013.

- 4.2 At the time of the Receiver's appointment, Wintru, a company of which Troup is the sole officer and director, was acting as the property manager of the Commercial Plaza. As property manager, Wintru was responsible for the leasing of vacant units, collection of rents and supervision of maintenance and repairs.

- 4.3 Following its appointment, representatives of the Receiver met with Troup and obtained information relating to the business operations and current status of Banwell and Royal Timbers. At that time, it was expressly stated by the Receiver to Troup that Wintru had been retained by the Receiver and, therefore, would report, only, to the Receiver and, moreover, that Wintru and, more importantly, Troup, has no authority to make decisions or execute documents on behalf of or as agent for Royal Timbers and/or Banwell and/or BDO in its capacity as Receiver, without the prior approval of the Receiver.

- 4.4 Prior to the receivership, Banwell had one (1) office employee. The Receiver entered into a limited term employment agreement with Marina Ognjanovski on June 21, 2013 at the same rate of pay as she enjoyed immediately prior to the appointment of the Receiver.

- 4.5 The Receiver did not establish new accounts with Canada Revenue Agency for source deductions and HST; rather, the Receiver has elected to continue to file returns using the Companies' existing accounts. The rationale for maintaining the Companies' existing accounts is that it is expected Banwell will carry on in business once the Receiver's mandate is complete.

- 4.6 As required by the terms of the Appointment Order, the Receiver opened two (2) bank accounts at BMO to account for the separate receipts of Banwell and Royal Timbers.

- 4.7 Tenants of the Commercial Plaza pay rent on the first business day of each month. The Receiver obtained and reviewed copies of the Commercial Plaza tenant leases and a summary of the monthly rent roll prepared by Wintru. A rent roll for the tenants of the Commercial Plaza is attached as **Appendix D**.

- 4.8 The Commercial Plaza has six (6) units of which four (4) are occupied and two (2) are vacant. Troup advised the Receiver that he has met with a party interested in leasing one (1) of the vacant units. As of the writing of this report, the two (2) units remain vacant. In discussions with Troup, the Receiver was advised that preliminary discussions with one (1) proposed tenant involved lease payments of \$16/square foot for the first two (2) years and \$18/square foot for the last three (3) years. If acceptable to the proposed tenant, such terms would be acceptable to the Receiver as they are above market rates.

- 4.9 At the time of the Receiver's appointment, one (1) tenant had not paid the full rent due on June 1, 2013. Since that time, the Receiver has collected the balance of the June rent owing and made arrangements through Wintru for future rents and

common area maintenance payments to be forwarded to the Receiver.

4.10 All rents are paid directly to the Receiver and deposited to the Receiver's Royal Timbers Bank account established with BMO. Troup does not receive or handle the rents.

4.11 The Receiver has assumed payment of utilities and other ongoing expenses of the Commercial Plaza.

Property Management of the Commercial Plaza

4.12 Prior to the Receiver's appointment, Wintru was paid a property management fee equal to six (6) per cent of gross rents, billed and paid on a yearly basis. The Receiver understands this fee was increased by Royal Timbers approximately two (2) years ago from five (5) per cent. As at the date of the Receiver's appointment, no formal written property management agreement existed between Royal Timbers and Wintru.

4.13 Commercial property management fees vary depending on the nature and size of the property being managed, the number of tenants and other factors. Based on the Receiver's knowledge and prior experience and after consulting with other real estate professionals, the Receiver concluded that the six (6) per cent fee paid to Wintru was marginally in excess of market rates for property management fees.

4.14 In view of Wintru's knowledge and experience with the Commercial Plaza, the Receiver recommends to the Court that Wintru continue as property manager of the Commercial Plaza. As well, given that the Receiver anticipates a sale of the Commercial Plaza within the next few months, the Receiver does not believe it

would be prudent to change the property manager at this time.

- 4.15 However, in view of Scott's concerns with respect to Troup's continued involvement as expressed to the Receiver, the Receiver requested proposals to manage the Commercial Plaza from two (2) other property management companies.
- 4.16 Of these proposals, one (1) proposal called for a property management fee equal to six (6) per cent of gross rents. The other proposal was prepared on a flat, monthly fee basis and resulted in a proposed fee of approximately \$350 less per month than the amount proposed to be paid to Wintru. While one (1) proposal is less than the rate proposed to be charged by Wintru, the Receiver does not believe the nominal cost savings associated with this proposal warrants a change of property manager during the anticipated short period of time prior to a sale of the Commercial Plaza.
- 4.17 The Receiver has prepared a draft property management agreement which provides for, among other things, a fee of five (5) per cent of gross rents payable monthly. The form of property management agreement is attached as **Appendix E**. The Receiver recommends that it be authorized to enter into a property management agreement with Wintru in the form attached as Appendix E.
- 4.18 In addition, Wintru will be paid a commission if successful in leasing any of the vacant units in the Commercial Plaza. This fee will be calculated as 3.5 per cent of the gross rent payable over the term of the applicable lease. Based on the Receiver's knowledge of commercial real estate leasing commissions, the Receiver believes this fee is reasonable and reflects market conditions and rates.

Real Ranchs Inc.

4.19 Real Ranchs Inc. ("**Real Ranchs**") is a company of which Troup is sole officer, director and shareholder. The Receiver understands that 28 of 52 lots in Phase IV of the Royal Timbers Subdivision were sold by Banwell to Real Ranchs pursuant to an Agreement of Purchase and Sale dated September 27, 2006 (the "**RRI Sale Agreement**"). The RRI Sale Agreement was executed by Troup on behalf of Real Ranchs, as purchaser, and by D'Amore on behalf of Banwell, as vendor. The Receiver understands that BMO agreed to the sale and the Lots remain subject to BMO's mortgage security albeit the Lots are now the property of Real Ranchs. As such, the Receiver has no authority to deal with these Lots under the Appointment Order.

Property Tax Arrears

4.20 Property taxes with respect to the Lands have not been regularly paid and there are significant arrears dating back to 2010. It appears the Companies have had insufficient cash flow to keep property taxes current; however, the Receiver has not assessed and confirmed the cause of the extensive arrears.

4.21 In addition to the Banwell Lots and the Commercial Plaza, Royal Timbers owns nine (9) adjacent parcels of commercial land on Banwell Road and Banwell owns two (2) adjacent parcels of commercial land located on Tecumseh Road (the "**Vacant Commercial Lands**").

4.22 The Receiver was contacted by a representative of the City of Windsor Finance Department with respect to the property tax arrears and the Receiver obtained confirmation of the amounts owing in respect of all the Lands including the Vacant

Commercial Lands.

- 4.23 Total property taxes due in respect of the Lands, including all arrears, penalties and interest and the 2013 interim taxes (calculated at 50 per cent of 2012 final taxes), was \$589,349.41 as at June 24, 2013.
- 4.24 The City of Windsor confirmed to the Receiver that a payment of \$116,700.71 was required to pay 2010 and prior property tax arrears, penalties and interest. The Receiver determined that it was prudent to pay this portion of the property tax arrears in order to reduce the amount of penalties and high rate of interest accruing.
- 4.25 As permitted by the terms of the Appointment Order, the Receiver has requested \$125,000 from BMO under a Receiver's Certificate and will use the majority of these funds to satisfy 2010 and prior years' property tax arrears totalling \$116,700.71 owing to the City of Windsor.
- 4.26 The interest accruing on the Receiver's borrowings under the Receiver's Borrowing Certificate is far less than the interest accruing on the property tax arrears.

Builder Security Deposits

- 4.27 On the sale of a Lot, Banwell's standard form Agreement of Purchase and Sale required the purchaser/builder to pay a security deposit of \$1,500 (\$750 on a semi-detached Lot) to Banwell on closing. This security deposit was intended to be held by Banwell as security for any damage caused by the Purchaser to curbs, installation of sidewalks and as security for other obligations of the purchaser. The security deposit is to be refunded (less any back charges owed by Banwell),

following an inspection post closing and post construction.

- 4.28 The refundable portion of the security deposits held by Banwell for Lots located in Phase 1 of the Royal Timbers Subdivision was returned by Banwell prior to the appointment of the Receiver.
- 4.29 The Receiver is in the process of compiling a detailed list of the security deposits currently held by Banwell. Based on sales of approximately ninety (90) Lots in Phase 2 and two (2) Lots in Phase 4, the Receiver estimates, on a preliminary basis, that Banwell held security deposits totalling approximately \$138,000 as at the date of the receivership.
- 4.30 The Form of Lot Sale Agreement provides for a security deposit to be paid by the applicable Purchaser on closing.

Vendor Take Back Mortgages

- 4.31 On the sale of certain Lots, Banwell received a vendor take back mortgage in part payment of the purchase price (the "VTB"). The VTB was to be repaid with proceeds from the subsequent resale of homes constructed by the purchaser on the Lot.
- 4.32 Two (2) such VTBs remain outstanding, the particulars of which are as follows:
- a) Fontes Construction: \$39,800 (Balance at May 31, 2012. Updated balance to be obtained); and
 - b) Petvin Homes: \$181,435 (Balance at May 31, 2012. Updated balance to be obtained).

4.33 In addition, Banwell holds a VTB from the sale of twenty-eight (28) Lots to Real Ranchs referred to in paragraph 4.19 above. The principal amount of the VTB is approximately \$1,350,000. The Receiver understands this amount does not include an interest component which remains to be determined.

Secured Creditors

4.34 The First Report of the Proposed Receiver noted that an executions search conducted on May 28, 2013 revealed no executions against Banwell. An executions search conducted on May 28, 2013 with respect to Royal Timbers revealed executions filed by J. Lepera Contracting Inc. ("**Lepera**") and M.R. Dunn Contractors Ltd. ("**Dunn**"). The Execution Certificates and Writ Details Reports were attached as Appendix C to the First Report of the Proposed Receiver.

5. Litigation

5.1. The Companies are parties to the following Court actions (the "Court Actions")¹:

A. Banwell

5.2. Banwell, together with Royal Timbers, are plaintiffs:

- (a) **Court Action No. 55047:** The companies seek damages of \$500,000 from D'Amore Construction (2000) Ltd. ("**D'Amore Construction**") arising from apparent deficiencies in the grading of the Vacant Commercial Lands during the approximate period 2005 to 2007. The Companies allege that D'Amore Construction filled the lands to a level higher than that specified in the Grading Plan. In addition, fill was used that was not suitable for the application. The Companies' claim damages for the costs incurred to remove the excess and unsuitable fill. No settlement conference has taken place and no offers to settle have been served. This action was consolidated with Court Action No. 06-CV-6763 (the "**Consolidated Action**") and must be set down for trial by April 30, 2014.

5.3. With respect to the Consolidated Action, the Receiver notified the Registrar for the Ontario Superior Court of Justice in Windsor of the Stay of Proceedings imposed by the terms of the Appointment Order. The Receiver advised the Court that it would

¹ See Litigation Chart at **Appendix F**

be seeking to obtain an Order extending the time period by which to set the Consolidated Action down for trial as required by the Gates Order be extended by the length of the stay of proceedings.

5.4. Banwell is defendant in the following Court actions:

- (a) **Court Action Nos. CV-13-18974 and CV-13-18975:** These are foreclosure actions commenced by Simba Group Developments Ltd. ("Simba") and The estate of D'Amore. Banwell has issued a Counterclaim claiming damages of \$5,000,000.
- (b) **Court Action No. 06-CV-006763:** D'Amore Construction issued a lien claim in the amount of \$488,000. This action forms part of the Consolidated Action and is subject to the Gates Order and must be set down for trial by April 30, 2014.

B. Royal Timbers

5.5. Royal Timbers is a plaintiff in the following Court actions:

- (a) See Section 5.2.
- (b) **Court Action No. LC080015:** Royal Timbers is seeking damages of \$86,330 from the City of Windsor resulting from the extended closure of Banwell Road in 2007 for water main and sewer replacement. Royal Timbers claims damages for rent rebates paid to a tenant. Offers to settle have been exchanged. No settlement has been reached.

5.6. Royal Timbers is a defendant in the following Court actions:

- (a) **Court Action No. CV-07-10224:** J. Lepera Contracting Inc. ("Lepera") provided servicing to the Companies under two contracts. Under an 'outside servicing' contract, Lepera claimed approximately \$55,000 from Royal Timbers, who ultimately consented to judgment and this amount was paid into court.
- (b) **Court Action No. CV-07-009805:** Lepera claims a lien in the amount of \$385,449. By Judgment dated March 23, 2012 (the "**Judgment**"), the action was dismissed as against Royal Timbers and cost orders totalling approximately \$100,000 have been made in favour of Royal Timbers against Lepera. Lepera has filed an appeal of the Judgment to the Divisional Court and such appeal has been perfected and is pending (the "**Appeal**").
- (c) **Court Action No. CV-13-18976:** Simba and The estate of D'Amore seek foreclosure. Royal Timbers has issued a Statement of Defence and Counterclaim claiming damages of 5,000,000.

5.7. With respect to the Appeal, the Receiver notified the Registrar for the Divisional Court at London of the stay of proceedings imposed by paragraph 10 of the Appointment Order and provided a copy of the Appointment Order.

C. Former Tenants - Claims

5.8. Since the opening of the Commercial Plaza, several tenants have vacated their respective units prior to the expiration of their respective lease terms. A brief summary of each potential claim of Royal Timbers for breach of contract and/or the status of claims commenced follows:

- (a) 'Once Upon a Tea Cup' was the first of several tenants occupying Unit 200. This tenant vacated without notice to Royal Timbers. Royal Timbers commenced an action for unpaid rent. The principal of Once Upon a Tea Cup subsequently moved to the United States. Royal Timbers determined the action was not worth continuing and the action was dismissed by the Court.
- (b) Royal Timbers enhanced Unit 200 with equipment purchased from the bailiff of a demised 'Soup Man' franchise located in Devonshire Mall, Windsor. Unit 200 was leased to a new venture known as 'World Famous Soup operating as Soup Man'. The Soup Man restaurant located in Unit 200 failed after a brief period. The Receiver understands that the principal of this business filed personal bankruptcy and Royal Timbers determined it was not worth pursuing legal action. No action was commenced.
- (c) Unit 200 was subsequently leased to a 'Burrito Loco' restaurant. Royal Timbers made certain modifications to the existing restaurant equipment to accommodate this tenant. The principal of 'Burrito Loco' elected to close the restaurant after a brief period, but arranged for the unit to be leased to the current tenant, 'The Loco Thai Lounge Inc.', who significantly enhanced the unit. In exchange, Royal Timbers released 'Burrito Loco' from its obligations under the lease and refunded its security deposit. 'The Loco Thai Lounge Inc' continues to occupy unit 200 and its rent obligations are current. It would appear that the damage claim of Royal Timbers against 'Burrito Loco' has been fully mitigated. No action was commenced.

- (d) For a period of time, Unit 400 was leased to a 'Gino's Pizza' franchise. The tenant vacated the unit without notice to Royal Timbers. Royal Timbers issued to the principal a statement of amounts owing; however, the principal could not be located. Royal Timbers retained the tenant's security deposit, and determined that it was not worth pursuing legal action for the balance of the rental amounts. No action was commenced.

- (e) In 2007 Unit 100 was leased to Sensation Hair-Esthetics & Spa Inc. ("Sensations"), a party related to Troup, for a period of 10 years. The original lease provided for Royal Timbers to provide a tenant allowance of \$25,000 for equipment and fixtures. In July 2012 Sensations closed, with significant rental arrears as well as amounts owing to suppliers. The Receiver understands that Sensations' only assets consist of certain chattels and spa supplies. The original lease provided for a personal guarantee of the principal of Sensations, but was limited to two months rent during the first and second year of the lease. Such guarantee has expired. Royal Timbers did not commence legal proceedings as it was determined that Sensations had little, if any, assets to satisfy any Judgment obtained.

5.9. The Receiver has determined that, at this stage of these receivership proceedings, its time and efforts are best directed towards realizing on the Banwell Lots and the Commercial Plaza in an effort to repay the obligations due to BMO and the property taxes in the most cost effective and timely manner. Accordingly, the Receiver has determined that it is neither cost effective nor prudent to prosecute or defend the Court Action, commence further actions or respond to the Appeal. Moreover, BMO

does not support the Receiver borrowing monies under the Receiver's Borrowing Certificates for purposes of retaining legal counsel to prosecute and/or defend the Court Actions or respond to the Appeal.

- 5.10. The Receiver wishes to ensure that the interests of all parties to the Court Actions and the Appeal, including and in particular those of the Companies, are preserved and not prejudiced as a result of the stay of proceedings imposed under the Appointment Order. Accordingly, the Receiver seeks an Order varying the Gates Order to extend the time for setting down the Consolidated Action for trial by the length of the stay of proceedings. Other than the effect of the Gates Order the Receiver is unaware of any prejudice which may be caused to any party by the stay of the Court Actions or the Appeal.

July 26, 2012 Reasons for Judgment

- 5.11. On June 25, 2012 the Honourable Justice Thomas heard arguments on issues in the within proceedings with respect to the wind-up of the Companies and issues in connection with Court Action CV-11-16379 (an action to which the Companies are not parties) relating to Troup's request to be appointed sole manager of the Companies. Pursuant to Reasons for Judgment issued July 26, 2012 (the "2012 Reasons"), a copy of which are attached hereto as **Appendix G**, the Court ordered, among things:

- (a) a process for the valuation and a sale mechanism for the shares of Banwell;
and

(b) that it was not appropriate to allow Troup to fully manage the Companies.

Since the issuance of the 2012 Reasons, the foreclosure actions described above were issued and BMO issued demand and notice of its intention to enforce its security. BMO ultimately sought and obtained the appointment of BDO Canada Limited as Court-appointed Receiver and manager of the property, assets and undertakings of the Companies.

5.12. Paragraph 2 of the Appointment Order provides, *inter alia*, as follows: "For greater certainty the implementation of the July 26, 2012 Order will not delay or hinder the Receiver from carrying out its mandate".

5.13. The Receiver is of the view that the foregoing provision permits the Receiver to exercise its powers under the Appointment Order, including engaging Wintru and Troup to assist the Receiver in carrying out its mandate under the Appointment Order, if it determines, in all of the circumstances, that to do so is commercially reasonable and prudent and is not prejudicial to the stakeholders.

6. Receiver's sale process for residential building lots

- 6.1 Banwell commenced development of the Royal Timbers Subdivision in approximately 2005. The development plan consisted of four (4) phases and is now well advanced, with lots sold and houses constructed on the majority of Phase I and II of the development.
- 6.2 The current status of the lots comprising the Royal Timbers Subdivision is as follows:
- a) **Phase I:** three (3) lots remain unsold of one hundred and forty eight (148) total lots developed;
 - b) **Phase II:** The Receiver has completed the sale of Lot 44. The sales of Lot 40 and Lot 47 are scheduled to close on July 12, 2013 and September 30, 2013, respectively. Twenty six (26) Lots remain unsold of one-hundred and eighteen (118) total lots developed;
 - c) **Phase III:** Servicing has not been completed for Phase III. There are twenty-five (25) lots which are not readily saleable without the completion of servicing. The Receiver does not intend to complete the servicing of these Lots at this time or include these Lots in the Lot Sales Process;
 - d) **Phase IV:** Twenty-two (22) Lots of a total of fifty-two (52) Lots remain available for sale by the Receiver.

- 6.3 In total, fifty-one (51) serviced Lots owned by Banwell remain unsold. A list of the Banwell Lots is attached as **Appendix H**.
- 6.4 An appraisal of the real property comprising, in part, the Banwell Lots was commissioned by the Companies from Valco prior to the appointment of the Receiver (the "**Valco Appraisal**"). The Valco Appraisal has been previously filed by the Receiver in these proceedings to support the approval of the sale of Lots 40, 44 and 47.
- 6.5 The Receiver has commissioned an appraisal of the Banwell Lots by Metrix Realty Group ("**Metrix**"). The appraisal is in the process of being completed and will form part of the Receiver's next report to the Court.
- 6.6 At the time of the Receiver's appointment, the sale of the Lots was being conducted by Wintru. Prior to the Receiver's appointment, Banwell was paying Wintru a commission of \$2,500 on the sale of each Lot.
- 6.7 Due to the shareholder litigation between Kevin, Scott and Troup, the sale of the Lots had slowed in the months prior to the Receiver's appointment. Troup has indicated to the Receiver that there is demand for the Banwell Lots from both builders and individual homebuyers and that he is interested in continuing to solicit interest in the Banwell Lots.
- 6.8 Scott has also indicated to the Receiver an interest in soliciting interest in the Banwell Lots and introducing interested parties to the Receiver.
- 6.9 The Receiver recommends that both Troup and Scott be authorized and approved to solicit interest in the Banwell Lots as agent for the Receiver and that the

Receiver compensate Scott and Troup, as the case may be, on a per sales lot basis at the rate of \$2,500/Lot.

6.10 The Receiver believes that continuing to sell the Lots through Wintru/Troup and Scott is the best course of action for the following reasons:

- a) Wintru/Troup and Scott have a demonstrated record of success in selling the Lots in the Royal Timbers Subdivision;
- b) Wintru/Troup and Scott have detailed knowledge of the Royal Timbers Subdivision and surrounding area;
- c) Wintru/Troup and Scott appear to have established contacts with home builders who comprise the pool of prospective purchasers for the Lots;
- d) A sales commission of \$2,500 per lot is reasonable relative to market rates and the expected purchase price for each Lot;

6.11 As noted above, the Court approved the completion of the sale of Lot 44 by Order issued June 5, 2013 and the completion of the sales of Lot 40 and 47 by Order issued June 25, 2013.

6.12 [REDACTED] Based on the purchase price paid in connection with the sale of Lots 44, 40 and 47 which exceeded the Valco Appraisal appraised value for such Lots by greater than 10% the Receiver recommends that it should accept any offer for the purchase of a Lot(s) where such offer is recommended to the Receiver by Wintru/Troup or Scott, as the case may be, and the offered purchase price exceeds the average of the Valco Appraisal and the Metrix Appraisal by a minimum of 10%. The Receiver will endeavour to exceed the 10% threshold; however, proposes to

apply the 10% as a floor where in the Receiver's opinion the sale is commercially reasonable in all respects taking into account market conditions.

- 6.13 Prior to the Receiver's appointment, Banwell utilized the Ontario Real Estate Association standard form Agreement of Purchase and Sale, along with schedules of Purchaser's Building Covenants and Deed Restrictions ("**Covenants and Restrictions**") to sell the Lots. The Receiver has prepared a form of agreement of purchase and sale which incorporates the Covenants and Restrictions and provides for terms and conditions consistent with a sale by a Court appointed Receiver, a copy of which Form of Lot Sales Agreement is attached as **Appendix I**.
- 6.14 The Form of Lot Sales Agreement is intended to be utilized by the Receiver for the sale of the Banwell Lots.
- 6.15 The Receiver is of the view that the Banwell Lots will be more marketable and the marketing and sale process more efficient and cost effective if the Court grants an order which (a) authorizes the Receiver to enter into an agreement of purchase and sale in the Form of Lot Sales Agreement; (b) approves the sale of the Lots; and (c) vests clear title to a purchaser on a prospective basis (the "**Omnibus Approval and Vesting Order**"). Such an order, if granted, will avoid the cost and expense associated with the Receiver returning to Court for approval of each individual Lot sale.
- 6.16 MT has forwarded to the Land Registrar for the Land Registry Office of the City of Windsor (the "**Land Registrar**") a copy of the draft Omnibus Approval and Vesting Order. MT expects to have Land Registrar's preapproval and acceptance of the form of Omnibus Approval and Vesting Order and the form of Receiver's Certificate

attached as Schedule "B" to the Omnibus Approval and Vesting Order prior to the return of the Receiver's motion herein.

6.17 The Receiver will file with the Court, once all Transactions are completed and title to all of the Banwell Lots has been transferred to the applicable Purchasers, a report advising of the purchase price for each Lot.

7. Receiver's proposed sale process for the Commercial Plaza

- 7.1 The Commercial Plaza consists of two (2) separate parcels of land, municipally known as 3335 Banwell Road ("3335 Banwell"), Windsor and 3993 Wildwood Drive, Windsor ("3993 Wildwood").
- 7.2 3335 Banwell is an 11,500 square foot, multi-tenant plaza, located on approximately 0.93 acres of land, with frontage along Banwell Road. Currently, it is leased to three (3) tenants, comprising approximately 77 per cent of the space. As noted above, two (2) units, comprising approximately 23 per cent of the space are vacant.
- 7.3 3993 Banwell is a 3,000 square foot, single tenant retail plaza located on 0.77 acres of land, with frontage along Wildwood Drive. It is fully leased to a national tenant under a long term lease.
- 7.4 The Receiver intends to sell the Commercial Plaza by an Invitation for Offers process conducted by the Receiver.
- 7.5 The Receiver is of the view that this approach is the most effective method of maximizing exposure of the Commercial Plaza to the market and of ensuring the Commercial Plaza is sold in a commercially reasonable manner thus maximizing the recoveries for the various stakeholders of Royal Timbers.
- 7.6 The Receiver was provided with an appraisal of the Commercial Plaza that was

prepared for the Companies on February 4, 2013, prior to the appointment of the Receiver. In addition, the Receiver commissioned the Metrix Appraisal which appraises the value of both the Banwell Lands and the Commercial Plaza. Both appraisals were conducted by Accredited Appraisers of the Canadian Institute ("AACI's").

- 7.7 The Receiver intends to advertise the Invitation for Offers in both the print and online editions of The Windsor Star, the London Free Press and The Globe and Mail. In addition, the Receiver will circulate highlights of the Commercial Plaza and the sale process on its own internal network of BDO partners in ninety-five (95) BDO Canada offices across Canada. As well, the Receiver will utilize the resources of both Wintru and Scott who have indicated to the Receiver that they are aware of parties interested in purchasing the Commercial Plaza.
- 7.8 Parties expressing an interest in obtaining detailed information about the Commercial Plaza will be required to execute a Confidentiality and Non-Disclosure Agreement ("NDA").
- 7.9 The Receiver will prepare a Confidential Information Memorandum ("CIM") containing information relating to the Commercial Plaza, including photographs, a summary of tenant leases, historical financial information and terms and conditions of the Receiver's sale process.
- 7.10 The Receiver will establish an electronic data room ("data room") to make relevant information available to interested parties. Access to the data room will be restricted to parties who have executed the NDA. The data room will be maintained by a third party company Firmex Inc. ("Firmex"), with access to the data

room controlled and monitored by the Receiver. Firmex provides electronic data room services to major financial institutions and the Receiver has successfully utilized Firmex services on other receivership engagements.

7.11 Among other documents, the data room will contain the CIM, historical financial information, tenant leases, property tax statements, information on utilities and a form of Agreement of Purchase and Sale to be used for the submission of offers.

7.12 The terms and conditions of the sale will include, *inter alia*, the following:

- (a) That the process should not be construed as a 'Sale by Tender';
- (b) The highest or any offer will not necessarily be accepted and the Receiver reserves the right to reject any or all offers without explanation;
- (c) A deadline for the receipt of offers, but the Receiver shall have the discretion to accept an offer either before or after the deadline;
- (d) Acceptance of all offers is subject to approval of the Court;
- (e) A deposit in certified funds equal to ten (10) per cent of the offer price must accompany all offers;
- (f) The balance of the purchase price is to be paid by certified funds, direct deposit or wire transfer at the time of closing. The Receiver will not accept offers that include Vendor Take Back financing as payment of the purchase price or a portion thereof;
- (g) Sale is on an "as is, where is" basis without representations and warranties of

any kind;

- (h) Offer to be submitted using the draft form Agreement of Purchase and Sale contained in the data room; and
- (i) Transfer of title will be by way of vesting order.

8. Statements of Receipts and Disbursements of the Receiver

8.1 The Receiver maintains an account at BMO in London, Ontario for each of Banwell and Royal Timbers. Attached as **Appendix J** and **Appendix K**, respectively, are the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements is as follows:

8.2 Receipts - Banwell

a) *Sale of Lot 44 (\$65,657.05)* — The Receiver received net proceeds totalling \$65,657.05 from completing the sale of Lot 44, Plan 12M-533, City of Windsor. Proceeds received were net of property tax arrears paid to the City of Windsor. (Note: The sale of Lot 40 is scheduled to be completed on July 12, 2013. The Receiver has not yet received the net proceeds of sale from the sale of Lot 40).

8.3 Disbursements - Banwell

- a) *Letter of Credit Admin Charge (\$6,750.00)* — The Receiver paid BMO's annual fee on the Banwell letter of credit account.
- b) *Legal fees (\$5,706.22)* — The Receiver paid one half of MT's interim account for the period May 16 to May 31, 2013 from the Banwell account.
- c) *HST Paid (\$788.15)* — The Receiver has paid \$788.15 on its disbursements.

8.4. Receipts – Royal Timber

- a) *Rental income (\$51,131.13)* – The Receiver has received \$51,131.13 in rental income for the months of June and July from the tenants of the Commercial Plaza;

8.5. Disbursements – Royal Timber

- a) *Legal fees (\$5,706.22)* – The Receiver paid one half of MT's interim account for the period May 16 to May 31, 2013 from the Royal Timbers account.
- b) *Payroll (\$2,101.76)* – The Receiver paid net wages of \$2,101.76 to Marina Ognjanovski,
- c) *Repairs and Maintenance (\$1,022.41)* – The Receiver paid \$1,022.41 for repairs and maintenance to the Commercial Plaza,
- d) *HST Paid (949.79)* — The Receiver has paid \$949.79 on its disbursements.
- e) *Payroll source deductions (\$858.99)* – The Receiver remitted \$858.99 to the Receiver General for source deductions on employee wages.
- f) *Utilities (\$413.88)* – The Receiver paid utilities of \$413.88 for utilities for the two (2) unleased units at the Commercial Plaza.
- g) *Office Copier Lease (\$269.75)* – The Receiver has paid \$269.75 in respect of the lease for an office copier in the name of Banwell.

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

- 9.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees (the "Receiver's Charge").
- 9.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 9.3 Attached as **Appendix L** is the fee affidavit of Stephen N. Cherniak containing BDO's interim accounts as Receiver for the period May 2, 2013 to July 5, 2013.
- 9.4 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 9.5 Attached as **Appendix M** is the fee affidavit of Sherry Kettle containing the interim accounts of MT for the period May 16, 2013 to June 26, 2013.

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

10. Recommendations

10.1. The Receiver recommends and respectfully requests that this Court:

- a) grant an Order
 - i) approving the Second Report and the activities and actions of the Receiver described therein;
 - ii) extending the date by which the Consolidated Action must be set down for trial by the length of the stay of proceedings imposed by the Appointment Order;
 - iii) approving and authorizing the Receiver to enter into the form of property management agreement with Wintru;
 - iv) approving the Lot Sales Process and authorizing the Receiver to carry out the Lot Sales Process;
 - v) approving the Form of Lot Sale Agreement, together with any amendments or modifications thereto deemed necessary and appropriate by the Receiver;
 - vi) approving the Commercial Plaza Sales Process;
 - vii) approving the Banwell Statement of Receipts and Disbursements and Royal Timbers Statement of Receipts and Disbursements;
 - viii) approving the Professional Fees;

- ix) authorizing and directing the Receiver to redact paragraph 6.12 from this Second Report served on any other party than the Court and sealing the unredacted version of this Second Report filed with the Court until further order of the Court, and

- b) grant the Omnibus Approval and Vesting Order:
 - i) prospectively approving the Transactions in respect of the Banwell Lots and authorizing the execution of an agreement of purchase and sale in respect of each Lot by the Receiver, as vendor and the Purchaser of each lot substantially in the form of the Form of Lot Sale Agreement, together with any amendments or modifications thereto deemed necessary by the Receiver; and

 - ii) providing that upon the delivery by the Receiver to a Purchaser of a Receiver's Certificate confirming the satisfaction or waiver of the conditions precedent under the applicable Lot Sale Agreement, for all of Banwell's right, title and interest in and to the Lot(s) vesting in and to the applicable Purchaser, free and clear of all encumbrances, save and except for those encumbrances listed in Schedule D to the Omnibus Approval and Vesting Order relating to the applicable Lots.

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All of which is Respectfully Submitted this 12th day of July, 2013.

BDO Canada Limited in its capacity as Court Appointed Receiver
of Banwell Development Corporation and Royal Timbers Inc.
and not in any personal capacity.

A handwritten signature in black ink, consisting of several large, overlapping loops, positioned above a horizontal line.

Per: Stephen N. Cherniak, CPA, CA-CIRP
Senior Vice President