

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

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

MOTION RECORD
(MOTION RETURNABLE JANUARY 27, 2014)

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, Court-
appointed Receiver of Banwell Development
Corporation and Royal Timbers Inc.

TO: THE SERVICE LIST

SERVICE LIST

TO: **Robins, Appleby & Taub LLP**
Barristers and Solicitors
Suite 2600
120 Adelaide Street West
Toronto, ON M5H 1T1

David Taub
Tel: 416.360.3354
Fax: 416.868.0306
Email: dtaub@robapp.com

Lawyers for Bank of Montreal

AND TO: **Lerners LLP**
Toronto Office
130 Adelaide Street West
Suite 2400
Toronto, ON M5H 3P5

Cynthia B. Kuehl
Tel: 416.601.2363
Fax: 416.867.2433
Email: ckuehl@lerners.ca

Lawyers for the Applicant, Kevin D'Amore

AND TO: **R.G. Colautti Law Professional Corporation**
Suite 300
2510 Ouellette Avenue
Windsor, ON N8X 1L4

Raymond G. Colautti
Tel: 519.966.1300
Fax: 519.966.1079
Email: rcolautti@colauttilaw.com

Lawyers for the Respondent, Scott D'Amore

AND TO: **Chodola Reynolds Binder**
720 Walker Road
Windsor, ON N8Y 2N3

Robert J. Reynolds
Tel: 519.254.6433
Fax: 519.254.7990
Email: reynolds@crblaw.ca

Lawyers for the Respondent, J. Murray Troup and 928579 Ontario Limited

AND TO: **Shulgan Martini Marusic LLP**
2491 Ouellette Avenue
Windsor, ON N8X 1L5

Myron Shulgan
Tel: 519.969.1817
Fax: 519.969.9655
Email: mshulgan@smbarristers.com

Lawyers for the Execution Creditor, J. Lepera Contracting Inc.

AND TO: **Sutts Strosberg LLP**
600-251 Goyeau Street
P.O. Box 670
Windsor, ON N9A 6V4

James K. Ball
Tel: 519.561.6220
Fax: 519.258.9527
Email: jkb@strosbergco.com

Lawyers for the Execution Creditor, M.R. Dunn Contractors Ltd.

AND TO: **James Branoff**
Suite 400
1500 Ouellette Avenue
Windsor, ON N8X 1K7

Tel: 519.254.4958
Fax: 519.254.4838
Email: jamesbranoff@bellnet.ca

Lawyer for the Estate of Patrick D'Amore and Simba Group Developments Limited

AND TO: **Affleck Greene McMurtry**
Barristers and Solicitors
365 Bay Street
Suite 200
Toronto, ON M5H 2V1

Peter R. Greene
Tel: 416-360-8767
Fax: 519.360.5960
Email: pgreene@agmlawyers.com

Lawyers for Banwell Development Corporation and Royal Timbers Inc.

AND TO: **THE CORPORATION OF THE CITY OF WINDSOR**
Room 100
350 City Hall Square West
Windsor, ON N9A 6S1

Vince Grillo
Email: vgrillo@city.windsor.on.ca

AND TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
The Exchange Tower
130 King Street West
Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Tel: 416.973.3172
Email: diane.winters@justice.gc.ca

Peter Zevenhuizen
Tel: 416.952.8563
Email: peter.zevenhuizen@justice.gc.ca

AND TO: **MINISTRY OF FINANCE**
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Kevin J. O'Hara
E-mail: Kevin.ohara@ontario.ca

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ONTARIO
SUPERIOR COURT OF JUSTICE

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BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
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APPLICATION UNDER SECTION 207 OF THE *BUSINESS CORPORATIONS*
ACT, R.S.O. 1990, C. B. 16, AS AMENDED

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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

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

NOTICE OF MOTION
(returnable January 27, 2014)

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, January 27, 2014 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 :

1. an Order substantially in the form attached hereto as **Schedule "A"**:
 - (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 Fifth Report of the Receiver dated January 21, 2014 and all appendices thereto (the "**Fifth**

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 January 27, 2014;

- (b) approving the Fifth Report and the activities and conduct of the Receiver described therein;
- (c) authorizing the Receiver to distribute from the net receipts of the Receiver with respect to Royal Timbers the sum of \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment, to Bank of Montreal (“**BMO**”) in full and final satisfaction of all claims of BMO against Royal Timbers pursuant to a Charge/Mortgage of Land registered against title to Block 105 and Block 106, Plan 12M503, Windsor (PINs 01566-0469 (LT) and 01566-0470 (LT)) (the “**Commercial Plaza**”) as Instrument No. CE163177 on August 10, 2005 (the “**BMO Mortgage**”);
- (d) approving the Receiver’s Interim Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending January 15, 2014;
- (e) approving the professional fees and disbursements of BDO, as Receiver (“**BDO Fees**”);
- (f) 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
- (g) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Distribution

- (a) as reported on in the Fifth Report, the sale transaction contemplated by an agreement of purchase and sale dated effective November 22, 2013 between the Receiver, as vendor, and Avila Investments Ltd. (“**Avila**”) with respect to the Commercial Plaza (the “**Commercial Plaza Transaction**”) was completed on December 16, 2013;

- (b) pursuant to the Approval and Vesting Order issued by the Honourable Justice Thomas on December 13, 2013 (the “**Commercial Plaza Approval and Vesting Order**”), the Commercial Plaza Transaction was approved and the Receiver was directed to complete the Commercial Plaza Transaction and title to the Commercial Plaza vested in Avila free and clear of all Claims and Encumbrances (as those terms are defined in the Commercial Plaza Approval and Vesting Order) and such Claims and Encumbrances attach to the net proceeds from the sale of the Commercial Plaza with the same priority as they had with respect to the Commercial Plaza immediately prior to the sale as if the Commercial Plaza had not been sold;
- (c) the Receiver is presently holding \$2,173,049.19 on account of receipts with respect to the realization of assets of Royal Timbers including the sale proceeds from the completion of the Commercial Plaza Transaction;
- (d) the Receiver has received an opinion from its independent legal counsel, MT, that, subject to the customary assumptions and qualifications, the mortgage security granted by Royal Timbers to BMO and Simba with respect to the Commercial Plaza Lands is valid and enforceable;
- (e) the BMO security has priority over the Simba security;
- (f) Royal Timbers is indebted to BMO in the amount of \$1,917,494.69 as at January 20, 2014 on account of principal, interest and legal costs;
- (g) following the distribution to BMO recommended by the Receiver herein, the Receiver expects to retain the balance of the receipts sufficient to satisfy any amounts owing in priority to the claims of BMO and Simba including any outstanding and future Professional Fees, further property taxes with respect to the Property, and further costs associated with the receivership;

Approval of the Fifth Report and the Receiver’s Activities and the Statements of Receipts and Disbursements

- (h) 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 including, without limitation, the Commercial Plaza Approval and Vesting Order;

- (i) the Receiver seeks approval of the Fifth Report and the Receiver's activities detailed therein including the Statements of Receipts and Disbursements;

Approval of Professional Fees

- (j) 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;
- (k) 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;
- (l) the Receiver and its legal counsel maintained detailed records of the Professional Fees;
- (m) 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;

Other

- (n) The Appointment Order;
- (o) The Commercial Plaza Approval and Vesting Order;
- (p) Section 101 of the CJA;
- (q) *Business Corporations Act*, R.S.O. 1990, c. B.16, ss. 248(3)(b) and 209;
- (r) Rules 1.04, 1.05, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
- (s) 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:

- (t) the Fifth Report of the Receiver and the appendices attached thereto dated January 21, 2014;
- (u) the Fees Affidavit of Stephen N. Cherniak sworn January 20, 2014 and the exhibits attached thereto;
- (v) the Fees Affidavit of Sherry Kettle sworn January 17, 2014 and the exhibits attached thereto;
- (w) all other pleadings and materials previously filed in these proceedings; and
- (x) Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 21, 2014

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, Court-
Appointed Receiver of Banwell Development
Corporation and Royal Timbers Inc.

KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

NOTICE OF MOTION
(RETURNABLE JANUARY 27, 2014)

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

TAB "A"

Schedule "A"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 27 TH DAY
)	
JUSTICE THOMAS)	OF JANUARY, 2014

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

APPLICATION UNDER SECTION 107 OF THE BUSINESS CORPORATIONS
ACT, R.S.O. 1990, C. B. 16, AS AMENDED

DISTRIBUTION ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed 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 "Receiver"), for an order distributing, subject to certain reserves, the net receipts held by the Receiver with respect to Royal Timbers and other incidental and ancillary relief, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Fifth Report to the Court of the Receiver dated January 21, 2014 (the "Fifth Report") and on hearing the submissions of counsel for the Receiver, counsel for Bank of Montreal ("BMO"), 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 January 21, 2014, filed:

1. THIS COURT ORDERS that the time for and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Fifth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the activities and conduct of the Receiver described in the Fifth Report are hereby approved.
3. THIS COURT ORDERS that the Receiver is hereby authorized and directed to pay from the net receipts of Royal Timbers currently held by the Receiver, the sum of \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment, to BMO in full and final satisfaction of all claims of BMO against Royal Timbers.
4. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements for the period ending January 15, 2014 appended as Appendices H and I, respectively, to the Fifth Report, be and are hereby approved.
5. THIS COURT ORDERS that the BDO Fees for the period November 6, 2013 to January 15, 2014 as described in the Fifth Report and in the Affidavit of Stephen N. Cherniak sworn January 20, 2014, and the MT Fees for the period November 9, 2013 to December 31, 2013 as described in the Fifth Report and the Affidavit of Sherry Kettle sworn January 17, 2014 are hereby approved.

Justice, Superior Court of Justice

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

DISTRIBUTION 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

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

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

January 21, 2014

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Appendices

- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - Second Report to the Court of Receiver dated July 12, 2013 (without appendices)
- Appendix C** - Sales Process Order dated July 23, 2013
- Appendix D** - Third Report to the Court of Receiver dated November 25, 2013 (without appendices)
- Appendix E** - Amended Omnibus Approval and Vesting Order dated July 23, 2013
- Appendix F** - Fourth Report to the Court of Receiver dated December 9, 2013 (without appendices)
- Appendix G** - Commercial Plaza Approval and Vesting Order dated December 13, 2013
- Appendix H** - Statement of Receipts and Disbursements – Banwell
- Appendix I** - Statement of Receipts and Disbursements – Royal Timbers
- Appendix J** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn January 20, 2014
- Appendix K** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn January 17, 2014
- Appendix L** - Independent Legal Opinion re: Royal Timbers security

1. Introduction and Background

1.1 Introduction

1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver (“**BDO**” or the “**Receiver**”) of 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 Upon application of Bank of Montreal (“**BMO**”), 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 originally 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. In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell vesting equally in each of Kevin and Scott.

- 1.2.3 Royal Timbers is the wholly-owned subsidiary of Banwell.
- 1.2.4 Royal Timbers is the owner of that portion of the Lands comprising the Commercial Plaza.
- 1.2.5 Since its appointment on June 5, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of numerous residential building lots contained in the Royal Timbers Subdivision. A number of reports have been filed by the Receiver in these proceedings wherein these activities and transactions are described in greater detail. In particular, 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 proposed sales process in respect of the Commercial Plaza (the "**Second Report**"). A copy of the Second Report (without appendices) is attached as **Appendix B**.
- 1.2.6 By Order dated July 23, 2013 (the "**Sales Process Order**"), among other things, Mr. Justice Thomas approved the sales process for the Commercial Plaza. A copy of the Sales Process Order is attached as **Appendix C**.
- 1.2.7 By further Order dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**"), as amended by Order dated December 2, 2013 (the "**Amended Omnibus Approval and Vesting Order**") Mr. Justice Thomas prospectively approved the sales transactions in respect of each of the remaining lots in the Royal Timbers Subdivision and prospectively vested all of Banwell's right, title and

interest in and to the applicable Lot(s) subject to certain conditions and restrictions.

- 1.2.8 The Receiver submitted a Third Report to the Court dated November 25, 2013 in support of a motion for, among other things, an amendment to the Omnibus Approval and Vesting Order adding nine (9) residential building lots to be created within Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) (“**Block 120**”) to Schedule A to the Omnibus Approval and Vesting Order and deleting certain instruments from title to Block 120 (the “**Third Report**”). A copy of the Third Report (without appendices) is attached as **Appendix D**.
- 1.2.9 By Order dated December 2, 2013, Mr. Justice Thomas, among other things, approved an amendment to the Omnibus Approval and Vesting Order adding Block 120 to Schedule A to the Omnibus Approval and Vesting Order. A copy of the Amended Omnibus Approval and Vesting Order is attached as **Appendix E**.
- 1.2.10 The Receiver submitted a Fourth Report to the Court dated December 9, 2013 (the “**Fourth Report**”) in support of a motion for, among other things, an Order approving the sale of the Commercial Plaza to Avila Investments Limited (“**Avila**”) and directing the Receiver to complete the transaction (the “**Commercial Plaza Transaction**”) and vesting in Avila all of Royal Timbers’ right, title and interest in and to the Commercial Plaza free and clear of any and all claims and encumbrances (the “**Encumbrances**”). A copy of the Fourth Report (without appendices) is attached as **Appendix F**.
- 1.2.11 By Order dated December 13 2013 (the “**Commercial Plaza Approval and Vesting Order**”), Mr. Justice Thomas, among other things, approved the

transaction and vested all of Royal Timbers' right, title and interest in the Commercial Plaza in Avila and directed the Receiver to hold the net proceeds and declaring that the Encumbrances attached to such net proceeds in the same manner and to the same extent as they attached to the Commercial Plaza prior to completing the Commercial Plaza Transaction. A copy of the Commercial Plaza Approval and Vesting Order is attached as **Appendix G**.

- 1.2.12 The Commercial Plaza Transaction was completed in accordance with the terms of the Commercial Plaza Approval and Vesting Order on December 16, 2013.

2. Terms of Reference

- 2.1 In preparing this, the Receiver's Fifth 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 Fifth Report

3.1 This constitutes the Receiver's Fifth Report to the Court (the "**Fifth 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 Third Report and to seek approval of the Fifth Report, and the Receiver's activities as outlined herein and in particular activities relating to the completion of the Commercial Plaza Transaction;
- (b) In support of an order of the Court:
 - (i) approving the Fifth Report and the activities of the Receiver described therein;
 - (ii) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending January 15, 2014 (the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**", respectively);
 - (iii) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (iv) approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**"); and
 - (v) authorizing a distribution of the sum of \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment,

to BMO in full and final satisfaction of all claims of BMO against Royal Timbers pursuant to a Charge/Mortgage of Land registered on August 10, 2005 against title to the Commercial Plaza as Instrument No. CE163177.

4. Receiver's Activities

- 4.1 In its Third Report the Receiver reported to the Court on its activities for the period July 12, 2013 through November 25, 2013.
- 4.2 The Receiver's Fourth Report was prepared solely to provide the Court with information on the Receiver's recommendation with respect to the sale of the Commercial Plaza and to seek the Court's approval of the Commercial Sale Transaction.
- 4.3 In this Fifth Report, the Receiver reports on its activities since the date of the Third Report.

Commercial Plaza Transaction

- 4.4 Prior to the closing of the sale of the Commercial Plaza Transaction, the Receiver provided various information requested by Avila and its legal counsel and assisted in the transferring and setting up of utility accounts.
- 4.5 The Receiver discovered that the tenant of unit 200 of 3335 Banwell Road had carried out certain modifications to the interior of the unit that did not comply with municipal building codes. The Receiver arranged for repairs to be made to the unit prior to the closing of the Commercial Plaza Transaction. The Receiver intends to seek reimbursement for these repair costs from the tenant.
- 4.6 The Receiver completed the Commercial Sale Transaction on December 16, 2013. Effective on closing, the Property Management Agreement between Wintru and the Receiver was terminated.

Property Taxes

- 4.7 With sufficient funds on hand from the closing of the Commercial Plaza Transaction, the Receiver paid to the City of Windsor the outstanding property

taxes through December 31, 2013 on all properties owned by Royal Timbers and Banwell. The Receiver paid the aggregate sum of \$366,040.37 to the City of Windsor, comprised of \$117,992.51 on account of Royal Timbers' and \$248,047.86 on account of Banwell.

Block 120, Plan 12M-533

- 4.8 The Receiver's Third Report and Confidential Supplement to the Third Report reported on the status of an Agreement of Purchase and Sale between the Receiver and Hadi Custom Homes Inc. ("Hadi") with respect to Block 120 (the "**Block 120 APS**")
- 4.9 In its Third Report the Receiver reported that the Block 120 APS contemplated a closing date of December 12, 2013 and provided for the Receiver to hold a VTB mortgage maturing on March 31, 2014 for a portion of the purchase price.
- 4.10 As a condition to closing, the Receiver was required to complete a reference plan for Block 120, Plan 12M-533 ("**Block 120**") whereby a description and Parcel Identification Number for each of the nine (9) Block 120 lots was to be approved and registered. The reference plan was completed by the survey firm engaged by the Receiver, deposited with the Land Registrar and approved on December 3, 2013.
- 4.11 As a further condition of closing, the Receiver was required to make by-law applications to the City of Windsor for 'Part Lot Control Exemption' and 'Removal of the Zoning Hold Symbol' in respect of Block 120. The required by-laws were passed by the City of Windsor on December 16, 2013.
- 4.12 As a further condition of closing, the Receiver was required to complete the application of base asphalt to approximately 473 feet of McRobbie Road, onto which the Block 120 lots front. Due to unseasonably cold weather conditions in December 2013, the seasonal closure of area asphalt plants was accelerated and the Receiver was not able to complete the paving prior to the original closing date of December 12, 2013. The Receiver consulted with the company retained by the Receiver to complete the asphalt work and has been advised that the work can be completed in the Spring 2014.

- 4.13 The Receiver and Hadi have agreed to extend the closing date to complete the transaction contemplated by the Block 120 APS to April 30, 2014, with the balance of the purchase price, net of deposits paid, to be paid in full in certified funds on closing. A portion of the purchase price will no longer be satisfied by a VTB mortgage. The purchase price contained in the Block 120 APS remains unchanged.

5. Statement of Receipts and Disbursements of the Receiver

5.1 The Receiver maintains a bank account with BMO in London, Ontario for each of Banwell and Royal Timbers. Attached as **Appendix H and Appendix I**, 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:

5.2 Receipts - Banwell

- a) *Sale of Lots (\$582,259.47)* — The Receiver received net proceeds totalling \$582,259.47 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) *Block 120 deposit (\$22,500.00)* — The Receiver received \$22,500.00 as a deposit paid under the Block 120 APS. The transaction contemplated by the Block 120 APS is scheduled to close on April 30, 2014.
- d) *Security Deposits on Sale of Lots (\$12,000.00)* — The Receiver received security deposits totalling \$12,000.00 from completing the sales of Lots.

These deposits are refundable to the applicable purchaser on the completion of construction of a house on the Lot and fulfillment of certain conditions.

5.3 Disbursements - Banwell

- a) *Property taxes (\$271,542.18)* — The Receiver paid \$271,542.18 to the City of Windsor for property tax arrears from 2010 through December 31, 2013.
- b) *Receiver's Certificate (\$125,000.00)* – The Receiver repaid BMO under the Receiver's certificate.
- c) *Legal fees (\$89,764.57)* – MT's legal fees for the period from May 16, 2013 to November 8, 2013 in the amount of \$140,011.87, excluding HST, were previously approved by the Court and one half of these accounts were paid by the Receiver from the Banwell account. The Receiver paid MT's interim account for period November 4, 2013 to November 29, 2013 in the amount of \$19,739.37 from the Banwell account. The Receiver is seeking approval of the Court for this invoice.
- d) *Receiver's fees (\$89,112.12)* – BDO's accounts for the period May 2, 2013 through November 5, 2013 in the amount of \$178,224.18, excluding HST, were previously approved by the Court and one half of the accounts were paid from the Banwell account.
- e) *HST Paid (\$28,598.89)* — The Receiver paid \$28,598.89 in HST on its disbursements.

- f) *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.
- 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) *Professional fees (\$6,000.00)* — The Receiver paid \$6,000.00 to RC Spencer Associates Inc., the engineering firm engaged to co-ordinate and inspect the paving of McRobbie Road as a condition of closing under the Block 120 APS
- j) *Appraisal fees (\$3,954.20)* — The Receiver paid \$3,954.20 to Metrix Realty Group for an appraisal of the Banwell Lots.
- k) *City of Windsor application fees (\$3,568.00)* — The Receiver paid \$3,568.00 to the City of Windsor to process the By-Law Applications.
- l) *Survey fees (\$3,473.25)* — The Receiver paid \$3,473.25 to Verhaegen Stubberfield Brewer Bezaire Inc. for the preparation of the Block 120 Reference Plan.

- m) *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.
- n) *Insurance (\$2,082.24)* — The Receiver paid \$2,082.24 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- o) *Interest on Receiver's Certificate (\$1,114.72)* — The repayment of the Receiver's certificate of \$126,114.72 included accrued interest of \$1,114.72, of which one half was allocated to and paid by Royal Timbers.

5.4. Receipts – Royal Timbers

- a) *Sale of Commercial Plaza (\$2,435,730.42)* – The Receiver received \$2,435,730.42 from the sale of the Commercial Plaza. The proceeds received were net of property tax arrears paid to the City of Windsor and closing adjustments in favour of the purchaser for tenant security deposits and the purchaser's portion of December 2013 rents collected by the Receiver.
- b) *Rental income (\$214,992.30)* – The Receiver received \$190,992.51 in rental income for the months of June through December 2013 from the tenants of the Commercial Plaza. 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.
- c) *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 Unit 100.

- d) *Security deposit (\$5,000.00)* – The Receiver received a security deposit of \$5,000.00 on the leasing of Unit 100. On the closing of the sale of the Commercial Plaza, credit was given to the purchaser for this amount and other tenant security deposits. The Receiver has no further obligation to the tenant with respect to the deposit.

5.5. Disbursements – Royal Timbers

- a) *Property taxes (\$214,498.19)* — The Receiver paid \$214,498.19 to the City of Windsor for property tax arrears from 2010 through December 31, 2013.
- b) *Receiver's fees (\$89,112.12)* – BDO's accounts for the period May 2, 2013 through November 5, 2013 in the amount of \$178,2243.18, excluding HST, were previously approved by the Court and one half of the accounts were paid from the Royal Timbers account.
- c) *Legal fees (\$70,959.11)* – MT's legal fees for the period from May 16, 2013 to November 8, 2013 in the amount of \$140,011.87, excluding HST, were previously approved by the Court and one half of these accounts were paid by the Receiver from the Royal Timbers account. The Receiver paid MT's interim account for period November 12, 2013 to November 15, 2013 in the amount of \$963.90 from the Royal Timbers account. The Receiver is seeking approval of the Court for this invoice.
- d) *HST Paid (27,692.19)* — The Receiver paid \$27,692.19 in HST on its disbursements.

- e) *Repairs and Maintenance (\$18,034.19)* – The Receiver paid \$18,034.19 for repairs and maintenance to the Commercial Plaza.
- f) *Payroll (\$16,814.08)* – The Receiver paid net wages of \$16,814.08 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.
- 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 (\$8,642.98)* — The Receiver paid \$8,642.98 to Wintru for its property management of the Commercial Plaza during the period June 5, 2013 through December 16, 2013.
- i) *HST remitted (\$6,830.45)* — The Receiver remitted \$6,830.45 in HST collected on rents, net of HST paid on its disbursements.
- j) *Payroll source deductions (\$6,077.58)* – The Receiver remitted \$6,077.58 to the Receiver General for source deductions on employee wages.
- k) *Insurance (\$5,024.16)* — The Receiver paid \$5,024.16 for the insurance premiums on the combined Banwell and Royal Timbers policy
- l) *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.

- m) *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.
- n) *Appraisal fees (\$4,145.15)* — The Receiver paid \$4,145.15 to Metrix Realty Group for an appraisal of the Commercial Plaza.
- o) *Utilities (\$2,972.37)* – The Receiver paid \$2,972.37 for utilities for the vacant 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.

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

- 6.1 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**”).
- 6.2 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.
- 6.3 Attached as **Appendix J** is the fee affidavit of Stephen N. Cherniak sworn January 20, 2014 containing BDO’s interim accounts as Receiver for the following periods:
- November 5, 2013 to December 10, 2013
 - December 11, 2013 to January 15, 2014
- 6.4 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.

- 6.5 Attached as **Appendix K** is the fee affidavit of Sherry Kettle, sworn January 17, 2014 containing the interim accounts of MT for the period November 9, 2013 to December 31, 2013.
- 6.6 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.

7. Distribution

- 7.1 As noted above, the Commercial Plaza was, at all material times, owned by Royal Timbers and consists of two parcels of land, namely Block 105, Plan 12M-503, Windsor (PIN 01566-469 (LT)) ("**Block 105**") and Block 106, Plan 12M-503, Windsor (PIN 01566-0749 (LT)) ("**Block 106**"). While Royal Timbers is the owner of other lands and premises (the "**Other Royal Timbers Lands**"), the BMO Mortgages (defined below) do not extend to the Other Royal Timbers Lands and attach, only, to title to the Commercial Plaza and now the proceeds from the Commercial Plaza Transaction. Given the mandate of the Receiver contained in the Appointment Order, the Receiver has not taken steps to take possession of and realize upon the Other Royal Timbers Lands.
- 7.2 The Receiver obtained the Independent Legal Opinion of MT indicating that, subject to the customary assumptions and qualifications, the Assignment of Rents dated March 29, 2006 and the Assignment of Rents dated March 29, 2008 and registered as CE205661 and CE325207, respectively, and the Charges/Mortgages of Land registered against title to Block 105 and Block 106 in favour of BMO as Instruments CE205660 on March 29, 2006 and CE325206 on April 25, 2008, respectively (collectively, the "**BMO Mortgages**"), among other security held by BMO, are valid, binding and enforceable against the Receiver and Royal Timbers in accordance with their respective terms. A copy of the Independent Legal Opinion of MT (the "**Legal Opinion**") is attached as **Appendix L**.
- 7.3 BMO has advised the Receiver that Royal Timbers is indebted to BMO on account of principal, interest and professional fees as at January 20, 2014 in the amount of \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment (the "**BMO Indebtedness**"). The BMO Indebtedness is secured by the BMO Mortgages.
- 7.4 Having completed the Commercial Plaza Transaction, the Receiver has sufficient funds to fully repay the BMO Indebtedness as secured by the BMO Mortgages. The

Receiver is seeking an Order authorizing the Receiver to distribute the sum of \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment, from the funds on hand in its Royal Timbers account to BMO, in full satisfaction of the BMO Indebtedness.

- 7.5 The Legal Opinion also contains an opinion that, subject to the customary assumptions and qualifications, the Charge/Mortgage of Land registered against title to Block 105 and Block 106 in favour of Simba Group Developments Limited ("**Simba**") as Instrument CE163211 on August 10, 2005 (the "**Simba Mortgage**") is valid, binding and enforceable against the Receiver and Royal Timbers in accordance with its terms. Pursuant to various postponement agreements executed by Simba in favour of BMO and described in the Legal Opinion, the Simba Mortgage is subordinate to the BMO Mortgages. In addition the Simba Mortgage is subordinate to the prior-ranking charges created by the Receivership Order to secure payment of the Professional Fees and other costs of the receivership.
- 7.6 The Receiver's mandate under the Appointment Order requires the Receiver "to realize upon the Property as may be required in order to repay the debts owing by the [Companies] to BMO and to pay realty taxes owing upon the Property". After payment of the BMO Indebtedness and the outstanding property taxes in respect of the Property, including the Commercial Plaza, and maintaining a reserve for unpaid Professional Fees, ongoing property taxes for the Other Royal Timbers Lands and the Banwell lands and the ongoing costs of the receivership, including the payment of future Professional Fees, the Receiver is not able to make a distribution to Simba in payment of amounts due to Simba by Royal Timbers under the Simba Mortgage. Although no distribution will be made to Simba under the Simba Mortgage, Simba retains mortgage security over the Other Royal Timbers Lands which appears to stand as additional collateral for the obligations of Royal Timbers under the Simba Mortgage.


8. Recommendations

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

- a) approving the Receiver's Fifth Report, and the activities and actions of the Receiver described therein;
- b) approving the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements;
- c) approving the Professional Fees; and
- d) authorizing a distribution of \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment, to BMO in full and final satisfaction of the BMO Indebtedness as secured by the BMO Mortgages.

All of which is Respectfully Submitted this 21st day of January, 2014.

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



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

TAB "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

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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.

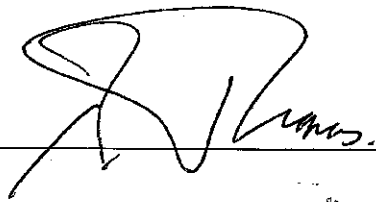
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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
Document No. 729
JUN - 5 2013
16



 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

BANWELL DEVELOPMENT

CORPORATION et al

Plaintiff

-and-

Defendants

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDORD

ORDER
~~AFUDAVIT OF SERVICE~~

ROBINS APPLEBY & TAUB LLP
Barristers & Solicitors
120 Adelaide Street West, Suite 2600
Toronto ON M5H 1T1

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

Lawyers for the Bank of Montreal

TAB “B”

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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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** - 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 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") 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 Barwell;
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 Barwell 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.

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 loops and a horizontal line at the bottom, positioned above the typed name.

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

TAB “C”

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

SALES PROCESS 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 the time for and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Second Report of the Receiver dated July 12, 2013 and all appendices thereto (the "Second Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on July 23, 2013;

- (b) approving the Second Report and the activities and conduct of the Receiver described therein;
- (c) extending the date by which consolidated Court Action Nos. 55047 and 06-CV-6763 shall be set down for trial as required by the Order of Justice Gates dated May 29, 2013 by the length of the stay of proceedings imposed by the Appointment Order;
- (d) approving and authorizing the Receiver to enter into a property management agreement with Wintru Developments Inc. ("**Wintru**") substantially in the form attached as Appendix E to the Second Report;
- (e) approving the sales process (the "**Lot Sales Process**") with respect to the residential building lots comprising the Royal Timbers Subdivision, more particularly described on Schedule "A" to the draft Omnibus Approval and Vesting Order attached as Schedule "B" hereto (the "**Banwell Lots**" or the "**Lots**"), and authorizing the Receiver to carry out the Lot Sales Process;
- (f) approving the form of Agreement of Purchase and Sale with respect to the sale of the Banwell Lots, substantially in the form attached to the Sales Process Order (the "**Form of Lot Sales Agreement**"), together with any amendments thereto deemed necessary and appropriate by the Receiver;
- (g) 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 to which such offer(s) is subject is acceptable to the Receiver having regard to the appraised value for such Lot(s) and prior sales of similar lots and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Banwell;
- (h) approving the Receiver's proposed marketing plan and sale process for the Commercial Plaza (as defined in the Second Report) as set out in Section 7 of the Second Report (the "**Commercial Plaza Sales Process**");
- (i) approving the Receiver's interim 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**");

- (j) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
- (k) 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**";
- (l) authorizing and directing the Receiver, *nunc pro tunc*, to redact paragraph 6.12 from the Second Report served on any party other than the Court;
- (m) sealing the unredacted version of the Second Report filed with the Court from the public record until further order of the Court; and
- (n) such further and other relief as counsel may advise and this Honourable Court may deem just;

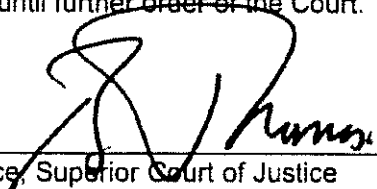
was heard this day at the Courthouse, 80 Dundas Street, London Ontario.

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 that the time for and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Second Report, is hereby abridged and validated and any further service of same is hereby dispensed with such that this motion is properly returnable on July 23, 2013.
2. THIS COURT ORDERS that the activities and conduct of the Receiver as set out in the Second Report are hereby approved.
3. THIS COURT ORDERS that the date by which consolidated Court Action Nos. 55047 and 06-CV-6763 shall be set down for trial as required by the of the Honourable Justice Gates dated May 29, 2013 is hereby extended by the length of the stay of proceedings imposed by the Appointment Order.

4. THIS COURT ORDERS that the Receiver is hereby approved and authorized to enter into a property management agreement with Wintru substantially in the form appended as Appendix E to the Second Report.
5. THIS COURT ORDERS that the Lot Sales Process with respect to the Banwell Lots is hereby approved and the Receiver is hereby authorized to carry out the Lot Sales Process.
6. THIS COURT ORDERS that the Form of Lot Sale Agreement with respect to the sale of the Banwell Lots, substantially in the form attached hereto as Schedule "A", together with any amendments thereto deemed necessary and appropriate by the Receiver, is hereby approved.
7. THIS COURT ORDERS that the Receiver is hereby authorized 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.
8. THIS COURT ORDERS that the Commercial Plaza Sales Process is hereby approved.
9. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements are hereby approved.
10. THIS COURT ORDERS that the BDO Fees for the period commencing May 2, 2013 through July 5, 2013 as described in the Second Report and in the Affidavit of Stephen N. Cherniak sworn July 9, 2013 and the MT Fees for the period May 16, 2013 to June 26, 2013 as described in the Second Report and the Affidavit of Sherry A. Kettle sworn July 12, 2013, as appended to the Second Report, are hereby approved.
11. THIS COURT ORDERS AND DIRECTS and authorizes the Receiver, *nunc pro tunc*, to redact paragraph 6.12 from the Second Report served on any party other than the Court.

12. THIS COURT ORDERS that the unredacted version of the Second Report filed with the Court is hereby sealed from the public record until further order of the Court.



Justice, Superior Court of Justice

ENTERED AT WINNIPEG	
In Book No.	24
re Document No.	991
on	JUL 26 2013
by	R.

SCHEDULE "A"

BANWELL DEVELOPMENT CORPORATION

Lot No. _____

Plan _____, Windsor, Ontario

Property Identifier No. _____

ROYAL TIMBERS SUBDIVISION – PHASES I / II / III / IV

AGREEMENT OF PURCHASE AND SALE

The undersigned _____ (collectively, the "Purchaser"), hereby agrees with **BDO CANADA LIMITED**, in its capacity as the court appointed receiver of all of the assets, undertaking and properties of Banwell Development Corporation ("**Banwell**"), without personal liability (the "**Vendor**"), to purchase the above-noted property, and legally described for identification purposes, only, on **Schedule "A"** attached hereto, being a lot in the Royal Timbers Subdivision, located in the City of Windsor, County of Essex, Ontario, Canada (the "**Property**"), on the following terms and conditions:

1. The purchase price of the Property is _____ Dollars (\$) in lawful money of Canada (the "**Purchase Price**"), payable as follows:
 - (a) To the Vendor's solicitors, in trust, (the "**Vendor's Solicitors**") by certified cheque or bank draft, as a deposit pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Closing Date the sum of TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$2,500.00) (the "**Deposit**") submitted within forty eight (48) hours of acceptance of this Agreement;
 - (b) The balance of the Purchase Price and the Security Deposit by certified cheque or bank draft on the Closing Date, subject to the adjustments hereinafter set forth; and
 - (c) The Vendor's Solicitors shall hold such funds in trust in accordance with this Agreement of Purchase and Sale.

2. (a) The transfer of title to the Property shall be completed on _____, 201__ (the "**Closing Date**").
- (b) The Purchaser's address for delivery of any notices pursuant to this Agreement is as follows:

Address: _____

City: _____

Province: Ontario

Postal Code: _____

Telephone (B): _____

(H): _____

Facsimile: _____

E-Mail address: _____

Sections 3 through 35 and Schedules "A" and "B" attached to this Agreement are an integral part hereto and are contained on subsequent pages. The Purchaser acknowledges that he or she has read all sections of and the schedules to this Agreement.

DATED at _____ this _____ day of _____, 201__.

SIGNED, SEALED AND DELIVERED) Signature _____
in the presence of)

WITNESS)
(as to all Purchaser's) Purchaser Name _____
signatures, if more than)
one purchaser))

)
)
) Signature _____
)

)
)
) Purchaser Name _____
)

Purchaser's Solicitors:

Address: _____

Telephone: _____ Facsimile: _____ Email: _____

The undersigned accepts the above offer and agrees to complete this transaction in accordance with the terms thereof.

DATED at _____ this _____ day of _____, 201__.

Vendor's Solicitors:
Miller Thomson LLP
Suite 2010
One London Place
255 Queens Avenue
London, ON N6A 5R8
Tel 519.931.3510
Fax 519.858.8511
Attn: Alissa K. Mitchell

BDO CANADA LIMITED in its capacity as the court appointed receiver of all of the assets, undertaking and properties of Barwell Development Corporation, without personal liability

Per: _____

Authorized Signing Officer

I have the authority to bind the Corporation

Definitions

3. The meaning of words and phrases used in this Agreement and its Schedules shall have the following definitions:
- (a) **"Agreement"** means this Agreement of Purchase and Sale including all Schedules attached hereto and made a part hereof;
 - (b) **"Banwell"** has the meaning ascribed in the preamble;
 - (c) **"Closing Date"** has the meaning ascribed in Section 2;
 - (d) **"Damage"** shall mean to include any damage done to any of the services or any dirt or debris entering in any of the services and shall include the cost of rectification thereof, including but not limited to the total cost incurred in connection with the replacing, relocating or repairing any of the services or incurred in connection with the refilling, removing and regarding any Lot, roads or other services where direct, debris earth or foreign material has been deposited therein;
 - (e) **"Deposit"** has the meaning ascribed in Section 1(a);
 - (f) **"Developer"** shall mean Banwell;
 - (g) **"Front of the House"** has the meaning ascribed in Section 8(d);
 - (h) **"Improvements"** has the meaning ascribed in Section 25;
 - (i) **"Omnibus Approval and Vesting Order"** means the Order of Justice Thomas dated July 23, 2013 vesting all the right, title and interest of Banwell in and to the Property in the Purchaser free and clear of all mortgages, charges, liens, security interests and encumbrances save and except for those encumbrances listed on Schedule D to such Order, upon the delivery of a Receiver's Certificate to the Purchaser in the form appended as Schedule "B" to the Omnibus Approval and Vesting Order (the **"Receiver's Certificate"**);
 - (j) **"Owner"** shall mean the purchaser of the Property from the Purchaser;
 - (k) **"Lot"** shall mean any subdivision lot and all improvements located thereon, located within Royal Timbers Subdivision;
 - (l) **"Property"** has the meaning ascribed in the preamble;
 - (m) **"Purchase Price"** has the meaning ascribed in Section 1;
 - (n) **"Purchaser"** has the meaning ascribed in the preamble;
 - (o) **"Receiver's Certificate"** has the meaning ascribed in Section 3(i);
 - (p) **"Related Party to the Purchaser"** shall mean to include any employee, servant, agent, independent agent, contractor or subcontractor, or any successor in title to the lands of the Purchaser;

- (q) **"Restrictions"** means the restrictions contained in Section 8(a) – (h);
- (r) **"Royal Timbers Subdivision"** means the lands described on **Schedule "B"** to this Agreement legal title to which is held by Banwell and which comprise the residential development lots located west of Banwell Road in the City of Windsor;
- (s) **"Security Deposit"** has the meaning ascribed in Section 5(a);
- (t) **"Services"** shall mean to include any services installed within the Royal Timbers Subdivision by Banwell or any other person or persons, including the Municipality or any other Authority including but not limited to the survey stakes, landscaping, curbs, streets, walkways, street signage and lighting, fences abutting the property, sanitary and storm sewers (including lateral connections), water mains (including lateral connections), and all appurtenances relating to any of the services, any underground hydro service, gas service, telephone and cable services or any other services effected for the purpose of public utilities;
- (u) **"Substantially Complete"** has the meaning ascribed in Section 5(j);
- (v) **"Vendor"** has the meaning ascribed in the preamble;
- (w) **"Vendor's Solicitors"** has the meaning ascribed in Section 1(a).

Irrevocability

4. This offer by the Purchaser, shall be irrevocable by the _____ until the _____ day of _____, 201_, after which time, this offer may be withdrawn, and if so, same shall be null and void and the Deposit shall be returned to the Purchaser without interest or deduction. Acceptance by the Vendor of this offer shall be deemed to have been sufficiently made if this Agreement is executed by the Vendor on or before the irrevocable date specified in the preceding sentence, without requiring any notice of such acceptance to be delivered to the Purchaser prior to such time. Without limiting the generality of the foregoing, acceptance of this offer (or any counter-offer with respect thereto) may be made by way of telefax transmission (or similar system reproducing the original) provided all of the necessary signatures and initials of both parties hereto are duly reflected on (or represented by) the telefaxed copy of the agreement of purchase and sale so transmitted, and such acceptance shall be deemed to have been effected or made when the accepted offer (or counter-offer, as the case may be) is telefaxed to the intended party, provided that a confirmation of such telefaxed transmission is received by the transmitting party at the time of such transmission, and the original executed document is thereafter forthwith couriered (or personally delivered) to the recipient of the telefaxed copy.

Purchaser's Building Covenants

5. The Purchaser covenants as follows with respect to any construction on or access to the Property:
 - (a) The Purchaser shall be liable to the Vendor for all damages to services, structures and equipment installed by the Vendor or the Developer, which damage is caused subsequent to the Vendor transferring title to the Property to

the Purchaser without proof that said damage was caused by the Purchaser or a Related Party to the Purchaser. The Purchaser shall pay to the Vendor a security deposit in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for each single family residential Lot and Seven Hundred Fifty Dollars (\$750.00) for each semi-detached Lot being purchased, to be held as security for the performance of all of the Purchaser's obligations pursuant to this Agreement (the "Security Deposit"). The Security Deposit shall be paid on the Closing Date and may be applied against any costs for restoration or damages caused by the Purchaser or any Related Party to the Purchaser, or if the Vendor performs grading, drainage or any other obligation of the Purchaser pursuant to this Agreement, the Security Deposit may be applied to the costs of performing such work. When the Purchaser has completed construction, including but not limited to a paved driveway and sod on the Property in accordance with the terms of the Agreement and in accordance with the terms of any agreement with the Municipality, and upon satisfactory inspection by the Vendor, the Vendor shall release the Security Deposit to the Purchaser, or as it may direct.

The Purchaser shall not interfere with the services or with the installation to services, without limiting the generality of the foregoing, the Purchaser shall keep the total road allowance including boulevards and any easements over or under the Property so as not to obstruct the installation of curbs, streets, utility or municipal services, landscaping and use thereof. The Purchaser will not interfere with the survey staking of lands within the Royal Timbers Subdivision.

After the Closing Date, the Vendor shall not be required to replace or relocate staking unless the Vendor or its agents damage or remove such stakes. The amount of Damages caused by the Purchaser or any Related Party to the Purchaser to the services shall be determined by the Vendor's engineer acting reasonably which decision shall be final and binding upon the parties hereto and the determination of the engineer shall be made by him alone and he shall not be obligated to act as an arbitrator in connection therewith nor shall any of the rules normally applicable to arbitrators apply to the determination by such engineer.

The Purchaser shall keep the Property in a neat and tidy condition before commencement of construction and during construction. The Purchaser shall comply with any reasonable request made by the Vendor in respect of the appearance of the Property.

- (b) The Purchaser shall pay to the Municipality, for each building permit issued, all fees, including any development charges or such other amount as may be required by the Municipality at the time such building permit is obtained, in accordance with the Municipal By-Laws then enforced from time to time.
- (c) The Purchaser covenants and agrees to comply with the stipulations and restrictive covenants set forth in this Section 5 and Section 8 and shall insert the restrictive covenants set forth in this Section 5 and Section 8 in every Agreement of Purchase and Sale entered into by the Purchaser for the resale of the Property.
- (d) The Purchaser shall provide and maintain during the construction period disposal bins and portable toilets on the Lot to accommodate the proper disposal of refuse

and debris and shall also keep the road allowances adjacent to the Property clean of debris and dirt.

- (e) The Purchaser shall grade, spread top soil and sod the front and side yards, including the untraveled portion of the road allowance in front and flanking the Property upon the Substantial Completion of the dwelling thereon. Such grading and sodding shall extend from the walls of each building to the curb or edge of the road or the edge of the Property.
- (f) The Purchaser will be responsible for locating the survey markers and will pay to the Vendor on demand the cost of replacing each survey marker for any lot that is damaged, destroyed or removed as a result of any act by the Purchaser, its employees, agents or contractors.
- (g) The Purchaser (not later than the earlier of twenty-four months from the date of occupancy permit or prior to installation of Municipal sidewalks) will cover all driveways from the curb to the dwelling, front and side sidewalks in concrete or interlocking brick paving stones or such other material as the Vendor or the Vendor's designated agent may accept. The Purchaser acknowledges that asphalt and gravel are not permitted covering for the driveway and sidewalks. (A driveway or sidewalk can be temporarily covered with gravel until the permanent covering is installed within the time limits indicated above.)
- (h) The Owner must plant a minimum of one tree as approved by the City of Windsor Forester for species. One approved tree must be planted in the front yard. The location of the trees and type of tree must be submitted on a sketch also showing the location of the house, driveway and services. Located at:
 - The Corporation of the City of Windsor
350 City Hall Square West
Windsor, ON N9A 6S1
To: Public Works Department
 - And:
 - The Corporation of the City of Windsor Parks & Recreation Department
2450 McDougall
Windsor, ON N8X 3N6
To: Bill Roesol
- (i) The Purchaser shall not assign this Agreement or any part hereof without the prior written consent of the Vendor, which consent may be arbitrarily withheld. If the Purchaser is a corporation, a change in control of the corporation shall be deemed to be an assignment requiring the Vendor's approval. In addition, the Purchaser shall not transfer, assign, convey or otherwise dispose of any interest which the Purchaser may have in this Agreement or the Property nor shall the Purchaser grant an option to purchase, acquire, or otherwise obtain the interest which the Purchaser had in this Agreement or the Property at any time prior to the Closing Date, without the written consent of the Vendor, which consent may be arbitrarily withheld.
- (j) Not later than twenty-four months after the Closing Date, the Purchaser shall obtain the necessary building permits and fully complete all footings for a building

on the Property and not later than twelve months after completion of such building footings, the Purchaser shall substantially complete the building(s). To "Substantially Complete" the building means either the satisfactory performance of a final building inspection by the Municipality or that the building and improvements to the Property are capable of completion at a cost of not more than ten (10) percent of the total cost of construction.

Option to Purchase

6. Subject to the provisions of Section 7 hereof, if the Purchaser fails to complete all building footings or substantially complete the building(s) on the Property in the manner and within the time limits by Section 5(j) hereof and fails within thirty (30) days of notice of such default to Substantially Complete the building, then for one hundred and twenty (120) days thereafter, the Vendor shall have an irrevocable option to repurchase each Lot comprising the Property in respect of which the Purchaser is in default hereunder for the original price for the Property/Lot, less: (i) ten (10) percent; (ii) any agent's commissions paid or incurred by the Vendor; (iii) any unpaid taxes and charges against such Lot and any monies including interest owing hereunder by the Purchaser to the Vendor; and (iv) all legal fees and any expenses incurred by the Vendor in connection with such repurchase.

Contemporaneously upon payment to the Purchaser of such price for repurchase within thirty (30) days of the Vendor's election to repurchase, the Purchaser shall transfer and release all of its rights, title and interest in the Property, or each such Lot as the case may be, and this Agreement to the Vendor free and clear of all encumbrances and deliver up quiet possession of the Property or Lot(s) to the Vendor.

Extension of Closing Date

7. If the completion of construction of either all building footings or Substantial Completion of the building(s) as required under Section 5(j) is delayed by causes which, in the opinion of the Vendor or its designate agent, were not within the reasonable control of the Purchaser (excluding the Purchaser's financial status) or the delay was caused by any default or act of omission by the Vendor, then the time for completion will be extended by the time of such delay.

Deed Restrictions

8. In addition to any other restrictions contained in this Agreement, the following restrictions are applicable to each of Lots 1 – 118 Plan 12M-533 inclusive or Block 120, 121, 122 on Reference Plan of Survey 12M-533, all in the City of Windsor, in the County of Essex, if such Lots(s) comprise a portion of the Property being purchased herein, and these restrictions shall be binding upon and enure to the benefit of the Purchaser, its respective heirs, executors, administrators, successors and assigns:
 - (a) The Purchaser acknowledges and agrees that no building, structure or erection of any kind shall be erected on the Property unless the plans therefor have been previously submitted to the Vendor for the purpose of verifying the size of the living area and the architectural design and the Purchaser has obtained the prior written approval of the Vendor;

- (b) The Purchaser further acknowledges that no approval shall be issued unless a Site Plan, a Floor plan for each house to be built and full elevation plans, or such other plans as the Vendor deems necessary to verify compliance with this section, have been submitted to the Vendor, which set of plans the Vendor shall retain for its records;
- (c) For the purposes of this section, the following definitions shall be applicable thereto:

"Floor Area" shall mean the area occupied by the dwelling house exclusive of any open or closed porch, patio, garage, carport or breezeway.

"Main Floor" shall mean the floor area occupied by the first floor, or the intermediate floors lower than the ceiling of the first floor and completely above the finished grade at the front of the dwelling house;

"First Floor" shall mean the floor area occupied by the first floor completely above the finished grade; and

"Second Floor" shall mean the floor area occupied by the floor immediately above the main floor.

No more than one (1) single-family residential dwelling shall be constructed on each Lot comprising the Property and with respect to such dwelling:

- (i) no building shall be erected on Lots 1 to 118 12M-533 inclusive or Block 120, 121, 122 on Reference Plan of Survey 12M-533 other than one (1) single detached dwelling unit which must include a minimum two (2) car garage.
- (ii) no dwelling, residence, or structure shall be erected other than a one (1) storey ranch or a two (2) storey or multi-level home and, as desired by the Purchaser and/or their successors and assigns, any other accessory structures as permitted by, and which are in compliance with the Building Code of the Province of Ontario and the by-laws of the Corporation of the City of Windsor.
- (iii) the single detached dwelling unit built or erected on any of Lots 1 to 118 inclusive or Block 120, 121, 122 on Reference Plan of Survey 12M-533 shall have the following minimum floor area:
- (A) any one (1) storey ranch shall have a minimum main floor area of at least 1,400 square feet, except Lots 1 – 31 Plan 12M-533 inclusive and Lots 37 – 44 Plan 12M-533 inclusive shall have a minimum main floor area of at least 1,200 square feet;
- (B) any two (2) storey house shall have combined main floor and second floor area of at east 2,000 square feet; and
- (C) any multi-level house (being a raised ranch, bi-level, tri-level, or four level) shall have a combined main floor and first floor area of

at least 1,400 square feet, except Lots 1 – 31 Plan 12M-533 inclusive and Lots 37-44 Plan 12M-533 inclusive shall have a combined main floor and first floor area of at least 1,200 square feet.

- (d) The exterior of the front of the house, meaning the side of the house facing the street, (the "Front of the House"), is to be 100% brick, stucco, stone or any combination thereof. In the event that the exterior of the Front of the House is 100% stucco, the remaining exterior of the house including the exterior of the attached garage must also be 100% brick, stucco, stone or any combination thereof. In the event of the Front of the House is 100% brick, the exterior of the attached garage must also be 100% brick, stucco, stone or any combination thereof (except where there is a gable end which can be sided above the garage ceiling height) with the remaining exterior of the house to be (a) a minimum of 50% brick, stucco, stone, if a stucco, wood, vinyl or other approved siding material is to be used on the remaining 50% for a two (2) storey home, (b) a minimum of 33.3% brick, stucco, stone, if a stucco, wood vinyl or other approved siding material is to be used on the remaining 66.7% for a multi-level and (c) a minimum of 66.7% brick, stucco, stone, if a stucco, wood, vinyl or other approved siding material is to be used on the remaining 33.3% for a one (1) storey ranch.
- (e) The Property shall not have:
 - (i) more than two (2) driveway approaches;
 - (ii) a swimming pool constructed above-grade;
 - (iii) a satellite dish (save and except a satellite dish no greater than 18" in diameter) aerial, tower or similar structure and appurtenances thereto shall be erected on or fastened to any house or located on the Property;
 - (iv) any doghouse, kennel or dog run placed thereon; and
 - (v) above-ground utility lines placed thereon.
- (f) The Owner of the Property shall not permit any fence located on the Property which has been constructed by the Vendor or the Developer to fall into disrepair, including the repair of any holes in the fence, replacement of rotted or broken pieces. The said fence shall not be maintained or altered in any manner other than to restore the fence from the original specifications as constructed by the Vendor or the Developer.
- (g) Except in a fully enclosed garage, no boats, campers, recreational vehicles, commercial vehicles, buses, jet-skis, personal watercraft, go-carts, motor bikes, dirt bikes, motor scooters, cube vans, any type of utility trailer or any other vehicle that is powered by an internal combustion engine shall be stored or parked on any of the Property or on any public rights-of-way except for automobiles, motorcycles, pick-up trucks, sport utility vehicles and non-combustion powered vehicles.

- (h) The Purchaser shall not disrupt or interfere with the rear yard drainage of the Property from the lot grading and rear yard drainage approved and certified by the City of Windsor.
- (i) The Purchaser acknowledges that children of the Owner may not be able to attend the closest neighbourhood school.
- (j) The Restrictions, as amended and supplemented from time to time as herein provided, shall be deemed to run with the title to the Property, and shall remain in full force and effect for the benefit of the Property.
- (k) The Restrictions shall be binding upon the Purchaser and their heirs, trustees, administrators, successors, and assigns and shall continue in full force and effect in perpetuity from the date hereof. The Restrictions are for the benefit of each and every Owner of the Property.
- (l) The construction, validity, and enforcement of the Restrictions shall be determined according to the laws of the Province of Ontario. The venue of any action or suit brought in connection with the Restrictions shall be in Essex County, in the Province of Ontario.
- (m) Wherever the covenants, Restrictions and conditions herein contained are in conflict with the provisions of any applicable federal, provincial, or municipal by-law, regulation or ordinance, those provisions contained herein or in such by-law, regulation or ordinance which is not onerous or which places the greatest restrictive burden on the use of the Property shall be applicable.
- (n) Failure of the Vendor to insist upon strict performance of the Restrictions shall not be deemed to be a waiver of such Restriction unless the Vendor has executed in writing a waiver thereof. Any such written waiver of any of the Restrictions by the Vendor shall not constitute a waiver of such Restriction as to any other Lot.
- (o) The amendment or invalidation of any provision or provisions of this section by lawful Court order shall not affect or modify any of the other provisions of this section, which other provisions shall remain in full force and effect. The Parties agree that the Ontario Superior Court of Justice shall have the right to amend these provisions.
- (p) The Vendor reserves the right to amend the Restrictions as reasonably required, in its sole discretion.
- (q) In the event the Purchaser sells or transfers the Property prior to the fulfilment of the requirements herein, the Purchaser shall obtain written undertaking from such Owner requiring him/her to complete all of the matters specified and to obtain executed written confirmation that said Owner will be bound by the terms hereof.
- (r) The Purchaser hereby agrees to comply with the provisions and requirements noted herein and further agrees to rectify and correct any default forthwith upon receiving notice thereof. Failure of the Purchaser to rectify any such default on a

timely basis may result in the Vendor making such corrections and in such event the Purchaser shall forthwith pay the Vendor all reasonable costs associated therewith. For the purpose of carrying out such works, the Vendor shall have the right to enter the Property.

Fence Acknowledgement

9. If any of Lots 5 – 31 inclusive, 32-37 inclusive, 44, 90, 101-106 inclusive, comprise a portion of the Property, the Purchaser acknowledges that the Vendor is entitled, but not obligated, to construct a metal or wood fence along the rear or side property line of such Lots approximately 5-6 feet in height.

In the event that such fence has not been constructed prior to the Closing Date, the Purchaser agrees to give the Vendor, and any agents retained by the Vendor, access to the Property to construct such fence.

Acceptance of Interest

10. Notwithstanding any other term of this Agreement, the Purchaser shall purchase all of Banwell's beneficial and legal, right, title and interest, if any, in and to the Property as it exists at the present time without representation, warranty or condition with respect to the fitness, condition, zoning or lawful use of the Property or any portion thereof. The Purchaser acknowledges that the Property is being purchased on an "as is, where is" basis and that it has inspected the Property and will accept same in its present state and condition. The Purchaser acknowledges and agrees that the Vendor has not made and will not be asked to make any representation or warranty and further acknowledges that there are no conditions or warranties, whether express or implied, statutory or non-statutory, affecting or in any way relating to the Property or any portion thereof relating to any matter whatsoever, including the state of repair, degree of maintenance, description, quality, fitness for any present or intended purpose or use, physical condition, compliance or non-compliance with environmental rules, regulations or legislative provisions, zoning, location or any other matter whatsoever. The Purchaser acknowledges that the Purchaser has relied entirely upon the Purchaser's own inspections and investigations with respect to all such issues and with respect to proceeding with the transactions contemplated in this Agreement. The implied covenants set forth in the *Land Registration Reform Act* otherwise operating in favour of the Purchaser are hereby expressly excluded.

The description of the Property is believed to be materially correct but if any statement, error or omission shall be found in the particulars thereof, including the acreage or square footage of the Property, same shall not entitle the Purchaser to be relieved of any obligation hereunder nor shall any compensation be allowed to either the Vendor or the Purchaser in respect thereof. Similarly loss of or damage to any portion of the Property, with the exception of the substantial destruction of the principal buildings, if any, on the Property, shall not entitle the Purchaser to be relieved of any obligation hereunder nor shall any compensation or abatement be allowed to the Purchaser in respect thereof.

Closing Documents

11. The Vendor agrees to provide to the Purchaser on closing, and the Purchaser acknowledges that it shall only have the right to require:
- (a) the Omnibus Approval and Vesting Order;
 - (b) the Receiver's Certificate;
 - (c) a Statement of Adjustments; and
 - (d) an undertaking to readjust the statement of adjustments.

The Purchaser agrees to provide on closing, in addition to payment of the balance of the Purchase Price and the Security Deposit, an indemnity consistent with Section 20 hereof, an undertaking to readjust the statement of adjustments and such other undertakings, certificates, releases, agreements and documents as the Vendor's Solicitors and the Purchaser's Solicitors, both acting reasonably, determine are necessary or required to complete the transactions contemplated herein.

Extension of Closing

12. In the event that by the Closing Date (i) appeal proceedings of the Omnibus Approval and Vesting Order have been commenced, (ii) any issue is raised with respect to this Agreement which the Vendor determines impairs the ability of the Vendor to complete this Agreement or (iii) an injunction or other court order is obtained or sought preventing the Vendor from completing this Agreement which the Vendor is unable or unwilling to remove, the Vendor may extend the Closing Date for a period or periods of time to allow additional time in order for all matters enumerated above to be obtained or otherwise resolved, in either case, by notice in writing to the Purchaser or to the Purchaser's solicitors. In no event shall the Vendor be otherwise responsible for any costs, expenses, loss or damages incurred or suffered by the Purchaser in any way relating to this Agreement.

Covenants of the Vendor

13. Without limiting any other provisions of this Agreement, the Purchaser acknowledges that the Property may be subject to the following, all of which the Purchaser agrees to accept and take title subject to and to complete the transaction contemplated by this Agreement without adjustments notwithstanding the existence of any of the following, and further confirms that the Vendor shall not be obligated to take any actions in respect thereof:
- (a) the reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
 - (b) the Restrictions;
 - (c) any registered restrictions or covenants that run with the Property provided the same have been complied with in all material respects;

- (d) 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 Property;
- (e) any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- (f) any minor encroachments which might be revealed by an up to date survey of the Property; and
- (g) any gas or oil lease in respect of the Property.

Covenants of the Purchaser

14. The Purchaser agrees that, on or before closing, it will cause the following to be done:
- (a) the Purchaser shall furnish the Vendor with evidence of the Purchaser's sales tax registration numbers and sales tax exemption certificates, including, without limitation, evidence of the Purchaser's Harmonized Sales Tax registration number under the *Excise Tax Act* (Canada); and
 - (b) ensure that the representations and warranties of the Purchaser set forth herein are true and correct at the time of closing by delivery of a bring-down certificate on closing.

Representations and Warranties of the Vendor

15. The Vendor represents and warrants to the Purchaser as follows and acknowledges that the Purchaser is relying thereon in entering into and completing this Agreement:
- (a) the Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
 - (b) the Vendor has not previously sold the Property or any portion thereof, and subject to Section 24 hereof, will not dispose of or sell the Property or any portion thereof between the date hereof and the date of closing;

Representations and Warranties of the Purchaser

16. In addition to any other representations and warranties contained in this Agreement, the Purchaser represents and warrants to the Vendor as follows and acknowledges that the Vendor is relying thereon in entering into and completing this Agreement:
- (a) this Agreement and each of the other agreements, documents and instruments to be executed and delivered by the Purchaser on or before closing have been or will be duly executed and delivered by, and when executed and delivered, will constitute the valid and binding obligations of, the Purchaser, enforceable against the Purchaser in accordance with their respective terms;
 - (b) the Purchaser is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and

- (c) the Purchaser is registered under the *Excise Tax Act* (Canada) and the *Retail Sales Tax Act* (Ontario).

Conditions for the Benefit of Vendor and the Purchaser

17. The following conditions are for the benefit of both the Vendor and Purchaser and neither party will be obligated to complete the transactions contemplated by this Agreement unless such conditions have been satisfied:
- (a) at the time of closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before any court of competent jurisdiction, to prevent or otherwise adversely affect the purchase and sale of the Property or any portion thereof pursuant to this Agreement; and
 - (b) the Omnibus Approval and Vesting Order shall not have been stayed, vacated or varied.

Environmental Condition

18. The Vendor has no knowledge and makes no representations or warranties, whatsoever, as to the existence or non-existence of urea formaldehyde insulation, asbestos, PCB's, radium, radon or radon daughters, or any other substances, liquids or materials, whether hazardous or toxic or not, which are or which may constitute on their own or together in combination with any other substance contaminants or pollutants of any environment, including the natural environment. The Vendor specifically makes no representation regarding the compliance of the Property with any environmental law or regulation, whether federal, provincial or municipal or with respect to any rule, regulation, covenant or agreement whether statutory or non-statutory.

Governmental Approvals

19. It shall be the responsibility of the Purchaser, at the Purchaser's own expense, to obtain any and all governmental, regulatory or other approvals necessary to utilize the Property and every portion thereof. In particular and without limiting the foregoing, the Purchaser shall have full obligation to obtain all necessary approvals, building permits, licences, permits, authority, permission or other items whether required locally, provincially, federally or otherwise as may be required to use and enjoy the Property and/or to construct a building thereon and the obtaining of such approvals shall not, in any manner whatsoever, be a precondition to completion of or affect or limit the Purchaser's obligations to complete the within transaction.

Taxes

20. The Purchaser shall pay on closing, in addition to the purchase price after the contemplated adjustments, all applicable federal and provincial taxes including any applicable Land Transfer Tax and Harmonized Sales Tax except to the extent that the Purchaser provides on or before closing, where applicable, appropriate exemption certificates and the Purchaser agrees to indemnify and save the Vendor harmless from and against all claims and demands for payment made as a result of the failure by the

Purchaser to fulfil the requirements hereof and the Purchaser acknowledges and agrees that such indemnity shall extend to and include any amounts assessed against the Vendor on account of interest and/or penalties. The Purchaser shall be permitted to self-assess for the applicable Harmonized Sales Tax provided the Purchaser complies with Section 221(2) of the *Excise Tax Act* as amended.

Unwanted Chattels

21. The Vendor may but shall not be obligated to remove from the Property and/or any buildings or other structures thereon, any unwanted chattel existing as of the Closing Date.

Fixtures/Chattels

22. Notwithstanding any other clauses set out in this Agreement, the Purchase Price shall not include any chattels presently located on, upon, around or forming part of the Property.

Property Taxes

23. The Purchaser acknowledges that the Vendor may apply for a reduction in the taxes payable to the municipality with respect to the Property for the period prior to the Closing Date. The Purchaser agrees that the Vendor shall be entitled to the benefit of any such reduction for the period prior to the Closing Date. The Purchaser agrees that on the closing of this transaction it shall execute such directions, acknowledgements and other documents as may be necessary or desirable to ensure that the benefit of any such reduction for the period prior to the Closing Date is received by the Vendor.

Conditions

24. If the obligations of the Purchaser herein are subject to any conditions of any kind whatsoever (other than conditions in Section 17 hereof), until written waiver of all such conditions by the Purchaser is received by the Vendor, the Vendor shall have the right, but not the obligation, to continue to offer the Property for sale. In the event that the Vendor receives an offer or offers to purchase the Property which the Vendor wishes to accept then, in that event, the Vendor shall notify the Purchaser of that fact in writing and the Purchaser shall have the right to irrevocably waive, in writing, all conditions contained herein by no later than 4:00 p.m. on the second business day following the date upon which notice is given by the Vendor in the manner specified below. In the event that the Purchaser does not waive any and all conditions in accordance with the provisions hereof and within the time period specified, this Agreement shall terminate, the Deposit shall be refunded, without interest, to the Purchaser and neither party shall have any further or other obligation to the other.
25. Following waiver of any conditions for the benefit of the Purchaser (other than conditions in Section 17 hereof) and prior to the Closing Date, the Purchaser shall be permitted access to the Property for purposes of constructing a dwelling on and making improvements to the Property all in conformance with the requirements of Sections 5 and 8 of this Agreement (the "Improvements"). Should the transactions contemplated by this Agreement not be completed for any reason, other than as a result of any default

or act of omission by the Vendor, the Purchaser shall be deemed to forfeit the Improvements for the benefit of the Vendor and waives any right to claim against the Vendor or claim an interest in the Property or the Improvements, whether in law or in equity, and hereby releases the Receiver, the Property and the Improvements from any and all such claims and interests.

Independent Advice

26. The Purchaser acknowledges that the Purchaser has had an opportunity to obtain independent advice including, without limitation, independent real estate, accounting and legal advice, prior to the execution of this agreement of purchase and sale, together with all schedules thereto.

Receipt of Information

27. The Purchaser acknowledges that no property owner's statement of disclosure will be delivered or requested and that any document supplied to the Purchaser has been or will be delivered without any representation or warranty by or on behalf of the Vendor of any nature or kind with respect to the accuracy, and in any other respect, thereof and without liability.

Notices

28. Any notice shall be deemed given and received when hand delivered or delivered by courier to the address for service provided in Section 2 or, where a facsimile number is utilized, when successfully transmitted electronically to that facsimile number provided that if the service is effected on a weekend, statutory holiday or after 5:00 p.m. on any business day, service shall be deemed to have been effected at 9:00 a.m. on the next business day.
29. If this Agreement is executed by the Purchaser in trust for another person, this Agreement may be assigned by the Purchaser without the prior written consent of the Vendor but the assignment of the Agreement shall not release the party which has executed this Agreement as trustee (or the beneficiary on whose behalf the Purchaser was acting as trustee) personally from any liability for non-completion of this Agreement, including without limitation, the payment of the purchase price. The Purchaser personally (together with the beneficiary on whose behalf the Purchaser was acting as trustee) shall be liable for all obligations and liabilities of the Purchaser under this Agreement, including any obligations and liabilities arising from the failure to complete the transaction contemplated by this Agreement, notwithstanding any future assignment of this Agreement, as permitted herein. Any assignment of this Agreement by the Purchaser, as permitted herein, shall also be deemed to assign all of the Purchaser's interest in any deposit or interest earned thereon.

General Provisions

30. Upon termination of this Agreement by reason of default of the Purchaser, the Deposit, together with all interest accrued thereon, shall be paid to the Vendor, forthwith, without any further direction from the Purchaser required, without prejudice to any other right or remedy which the Vendor may have against the Purchaser at law or in equity.

31. Except as herein expressly stated no representation, statement, understanding or agreement has been made or exists, either oral or in writing, which in any way affects the terms or the subject matter hereof.
32. Time will, in all respects, be of the essence of this Agreement and no extension or variation of this Agreement or any obligation hereunder will operate as a waiver or implied waiver of this provision.
33. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.
34. The Vendor and the Purchaser will each execute and deliver all such further documents and instruments and do all acts and things as the Purchaser or the Vendor may, either before or after closing, reasonably require to carry out effectively the intent and meaning of this Agreement and to consummate the transactions hereby contemplated.
35. The covenants and agreements of each of the parties hereto shall not merge on the Closing Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled in accordance with the provisions of this Agreement. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

SCHEDULE "A"

Legal Description of the Property

[to be completed]

SCHEDULE "B"Legal Description of Royal Timbers Subdivision

Phase 1 – Lots 60, 99, 101, Plan 12M503, Windsor;

Phase 2 – Lots 12, 15, 16, 17, 18, 20, 21, 23, 26, 27, 28, 29, 30, 38, 39, 40, 43, 44, 47, 48, 49, 50, 51, 103, 104, 105, 106, 116, 117, Plan 12M533, Windsor;

Phase 3 – Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, Plan 12M533, Windsor;

Phase 4 – Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40; 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 42, 43, 45, 46, 47, 48, 49, 50, Plan 12M546, Windsor.

KEVIN D'AMORE

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

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

SALES PROCESS 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, Court-appointed Receiver of Banwell Development Corporation and Royal Timbers Inc.

TAB “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

**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.

- 15
- 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 Barwell 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 Barwell Development Corporation and Royal Timbers Inc.
and not in any personal capacity.



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

TAB "E"

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE THOMAS)
TUESDAY, THE 23rd DAY
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:

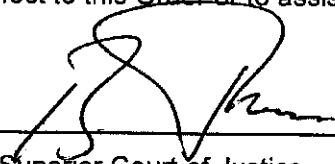
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Banwell and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made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

ENTERED AT WINDSOR	
In Book No.	24
re Document No.	1529
on	02 DEC 2013
by	

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.

Respondents

Court File No: CV-11-17088

**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.

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
<ol style="list-style-type: none"> 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
<ol style="list-style-type: none"> 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
<ol style="list-style-type: none"> 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
<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. 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"> 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	16	1566	-	0582
<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. 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"> 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	18	1566	-	0584
<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. 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"> 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. 					

April 24, 2007.						
Plan 12M-533	Lot	21		1566	-	0587
<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	23		1566	-	0589
<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	26		1566	-	0592
<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	27		1566	-	0593
<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	28		1566	-	0594
<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. 						

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
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
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
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
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"> 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	104	1566	-	0670
<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. 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"> 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	106	1566	-	0672
<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. 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"> 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	117		1566	-	0683
<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	Block	120		1566	-	0686
<ol style="list-style-type: none"> <u>Instrument No. CE569187 - Notice of Court Order.</u> <u>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.</u> <u>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.</u> 						
Phase 4						
Plan 12M-546	Lot	2		1566	-	0824
<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. 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. Instrument No. CE171657 – Postponement registered September 20, 2005. Instrument No. CE171658 – Postponement registered September 20, 2005. Instrument No. CE261562 – Notice registered February 28, 2007. 						
Plan 12M-546	Lot	3		1566	-	0825
<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. 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
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
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
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
<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	34	1566	-	0856
<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	35	1566	-	0857
<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	36	1566	-	0858
<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	37	1566	-	0859
<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	38	1566	-	0860
<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	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 "F"

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

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

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

December 9, 2013

Table of Contents

1. Introduction and Background	1
2. Terms of Reference.....	4
3. Purpose of the Receiver's Fourth Report.....	5
4. Receiver's Activities	6
5. Sale of the Commercial Plaza.....	7
6. Recommendations	10

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** - Amended Omnibus Approval and Vesting Order dated December 2, 2013
- Appendix G** - Third Report to the Court of Receiver dated November 25, 2013 (without appendices)

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 Upon application of Bank of Montreal (“**BMO**”), 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 originally 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. In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell vesting equally in each of Kevin and Scott.

- 1.2.3 Royal Timbers is the wholly-owned subsidiary of Banwell.
- 1.2.4 Royal Timbers is the owner of that portion of the Lands comprising the Commercial Plaza.
- 1.2.5 Since its appointment on June 5, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of numerous residential building lots contained in the Royal Timbers Subdivision. A number of reports have been filed by the Receiver in these proceedings wherein these activities and transactions are described in greater detail. In particular, 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 proposed sales process in respect of the Commercial Plaza (the "**Second Report**"). A copy of the Second Report (without appendices) is attached as **Appendix D**.
- 1.2.6 By Order dated July 23, 2013 (the "**Sales Process Order**"), among other things, Mr. Justice Thomas approved the sales process for the Commercial Plaza. A copy of the Sales Process Order is attached as **Appendix E**.
- 1.2.7 By further Order dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**"), as amended by Order dated December 2, 2013 (the "**Amended Omnibus Approval and Vesting Order**") Mr. Justice Thomas prospectively approved the sales transactions in respect of each of the remaining lots in the Royal Timbers Subdivision and prospectively 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 Amended Omnibus Approval and Vesting Order is attached as **Appendix F**.

1.2.8 The Receiver submitted a Third Report to the Court dated November 25, 2013 in support of a motion for, among other things, an amendment to the Omnibus Approval and Vesting Order adding Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) ("**Block 120**") to Schedule A to the Omnibus Approval and Vesting Order and deleting certain instruments from title to Block 120. A copy of the Third Report (without appendices) is attached as **Appendix G**.

1.2.9 By Order dated December 2, 2013, Mr. Justice Thomas, among other things, approved an amendment to the Omnibus Approval and Vesting Order adding Block 120 to Schedule A to the Omnibus Approval and Vesting Order .

2. Terms of Reference

2.1 In preparing this, the Receiver's Fourth 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 Fourth Report

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

- (a) To provide this Court with information on:
 - (i) The Receiver's advice and recommendation with respect to the sale of the Commercial Plaza; and
- (b) In support of an order of the Court:
 - (i) approving the Receiver's Fourth Report, the Receiver's Confidential Supplement to the Receiver's Fourth Report dated December 9, 2013 (the "**Confidential Supplement**") and the activities of the Receiver described therein;
 - (ii) approving the Agreement of Purchase and Sale dated effective November 22, 2013 (the "**APS**") between the Receiver, as vendor, and Avila Investments Ltd. ("**Avila**") as purchaser, in respect of the Commercial Plaza and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**") and directing the Receiver to enter into and complete the transaction contemplated therein (the "**Transaction**") and, thereafter, to file the Receiver's Certificate with the Court;
 - (iii) granting a vesting order in respect of the sale of the Purchased Assets; and
 - (iv) sealing the Confidential Supplement until the Receiver has filed a copy of the Receiver's Certificate with the Court following the closing of the Transaction.

4. Receiver's Activities

- 4.1 In its Third Report to the Court dated November 25, 2013 (the "Receiver's Third Report"), the Receiver reported to the Court on its activities for the period July 12, 2013 through November 25, 2013.
- 4.2 This, the Receiver's Fourth Report, has been prepared solely to provide the Court with information on the Receiver's recommendation with respect to the sale of the Purchased Assets and to seek the Court's approval of the APS.

5. Sale of the Commercial Plaza

- 5.1 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**").
- 5.2 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.
- 5.3 As a result of the Commercial Plaza Sales Process (as defined in the Sales Process Order), which was outlined in the Receiver's Third Report, the Receiver entered into negotiations with Avila (the "**Purchaser**") to finalize an Agreement of Purchase and Sale with respect to the Purchased Assets including the Commercial Plaza. The Receiver and Avila entered into the APS effective November 22, 2013. The APS was subject to a due diligence period expiring November 29, 2013 and subsequently extended by agreement of the parties to December 4, 2013.
- 5.4 Avila completed its due diligence and on December 4, 2013 provided the Receiver with notice of waiver of the conditions contained in the APS.
- 5.5 A copy of the APS is attached as **Appendix B** to the Confidential Supplement.
- 5.6 The Receiver was provided with a copy of an appraisal of the lands comprising the Commercial Plaza commissioned by the Companies prior to the appointment of the Receiver. The Receiver commissioned a second appraisal of the lands comprising the Commercial Plaza. Both appraisals are included in the Confidential Supplement

as **Appendix C** and **Appendix D**.

- 5.7 Details of the offers received for the Purchased Assets were provided in the Confidential Supplement to the Receiver's Third Report.
- 5.8 The Receiver's analysis of the Transaction is contained in the Confidential Supplement to the Receiver's Fourth Report.
- 5.9 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact the dissemination of the confidential information would have if the Transaction fails 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.
- 5.10 During the negotiation process with Avila, the Receiver consulted with the stakeholders and obtained their input and concurrence. BMO and Scott support the Receiver in recommending the Transaction. Troup and Kevin do not object to the Receiver completing the Transaction.
- 5.11 The Transaction is scheduled to be completed by no later than December 20, 2013 in the event that the Court grants an Approval and Vesting Order.
- 5.12 It is the Receiver's view that the Transaction is appropriate in the circumstances.
- 5.13 The Receiver conducted the Commercial Plaza Sales Process as approved by the Court pursuant to the Sales Process Order.
- 5.14 The Receiver is satisfied that the property subject to the Transaction was properly exposed to the relevant market place, that the offer process was conducted in a fair and commercially reasonable manner and the Transaction represents fair market value for the Purchased Assets.
- 5.15 The Receiver is of the view that it has maximized the realization available and the Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Transaction is in the best interests of the

stakeholders.

- 5.16 The Receiver recommends that this Court approve the completion of the Transaction.
- 5.17 The Receiver requests that this Honourable Court grant an Approval and Vesting Order in favour of Avila substantially in the form agreed by the parties and appended as Schedule "C" to the APS.

6. Recommendations

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

- a) approving the Receiver's Fourth Report, the Confidential Supplement and the activities and actions of the Receiver described therein;
- b) approving the APS and authorizing and directing the Receiver to enter into and complete the Transaction and, thereafter to file the Receiver's Certificate with the Court;
- c) granting an Approval and Vesting Order in respect of the Purchased Assets in favour of the Purchaser;
- d) sealing the Confidential Supplement until the Transaction has been completed and the Receiver's Certificate filed.

All of which is Respectfully Submitted this 9th day of December, 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

TAB “G”

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 13TH 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

APPLICATION UNDER SECTION 107 OF THE BUSINESS CORPORATIONS
ACT, R.S.O. 1990, C. B. 16, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed 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 "Receiver"), for an order approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale dated effective November 22, 2013 (the "APS"), between the Receiver, as vendor, and, and Avila Investments Ltd., as purchaser (the "Purchaser"), in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the

"Commercial Plaza") and other assets described in the APS (together with the Commercial Plaza, the "Purchased Assets"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013 (the "Confidential Supplement"), and vesting in the Purchaser all of Royal Timber's right, title and interest in and to the Commercial Plaza, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Fourth Report to the Court of the Receiver dated December 9, 2013 (the "Receiver's Fourth 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 Susan Jarrell sworn December 9, 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 Receiver's Fourth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the activities and conduct of the Receiver described in the Receiver's Fourth Report and the Confidential Supplement are hereby approved.

3. THIS COURT ORDERS that the Confidential Supplement be and is hereby sealed until further Order of the Court.

4. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all of Royal Timber's right, title and interest in and to the Purchased Assets and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all leases, subleases and occupancy agreements (other than those forming part of the permitted encumbrances set out on Schedule "D" hereto), 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; and (iii) all claims by the tenants under the Leases (as defined on Schedule "D" hereto) in the Commercial Plaza with respect to year end rent adjustments; (iv) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** (the "**Permitted Encumbrances**")) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the lands comprising the Commercial Plaza identified in Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the lands comprising the Commercial Plaza all of the Claims listed in Schedule "C" hereto.

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

8. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

9. THIS COURT ORDERS that, notwithstanding:

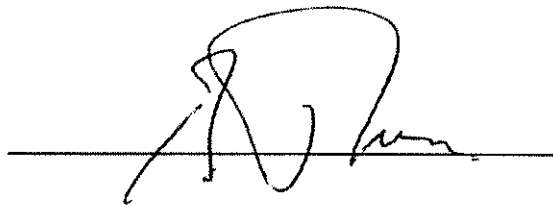
- (a) the pendency of these proceedings;

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Royal Timbers and shall not be void or voidable by creditors of Royal Timbers, 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)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

11. 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.



ENTERED AT WINDSOR	
In Book No.	24
to Document No.	1602
on	Dec. 13 2013
by	LR

Schedule A

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

APPLICATION UNDER SECTION 207 OF THE *BUSINESS CORPORATIONS*
ACT, R.S.O. 1990, C. B. 16, AS AMENDED**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 the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("**Royal Timbers**").

B. Pursuant to an Order of the Court dated December 13, 2013, the Court approved an Agreement of Purchase and Sale dated effective November 22, 2013 (the "**APS**") between the Receiver, as vendor, and Avila Investments Limited (the "**Purchaser**") in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the "**Commercial Plaza**") and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013, and

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

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

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 APS;
2. The conditions to closing as set out in the APS have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____
Name:
Title:

Schedule B – Purchased Assets

Commercial Plaza

The lands and premises legally described as:

Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)); and

Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT))

(collectively, the “**Commercial Plaza**”),

Other Assets

All leases, easements, rights-of-way or privileges appurtenant or belonging to the Commercial Plaza and together with all buildings, fixtures, chattels, licenses, equipment and machinery owned by the Royal Timbers, if any, located on or at the Commercial Plaza or directly or indirectly used in or arising from or in any manner related to the Commercial Plaza, the buildings or fixtures.

Schedule C – Claims to be deleted and expunged from title to the Commercial Plaza

Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.
5. Instrument No. CE207420 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.

Block 1 06 Plan 12M503, Windsor, Ontario, s ave & except P art 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.

5. Instrument No. CE207474 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.
10. Instrument No. CE513669 - Notice of Lease given by Royal Timbers Inc. to Solar Power Network Inc. registered on April 11, 2012.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Commercial Plaza**

(unaffected by the Vesting Order)

- (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 Commercial Plaza 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 Commercial Plaza;
- (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 Commercial Plaza;
- (vi) The following leases (collectively the "Leases"):
 - (a) Lease with Mac's Convenience Stores Inc. dated the 11th day of May, 2005;
 - (b) Lease with Edward Jones, an Ontario Limited Partnership, dated April 14, 2008, amended by agreement made May 23, 2013;
 - (c) Lease with Alexander Daycare Limited (Alexander's Daycare Center) dated December 23, 2006;
 - (d) The Loco Thai Lounge Inc. dated September 25, 2012; and
 - (e) Lease with Bella Vista Hair Design and Day Spa Inc. dated August 2, 2013.
- (vii) Instrument No. 12R15293 – Reference Plan;
- (viii) Instrument No. 12R20732 – Reference Plan;
- (ix) Instrument No. CE51657 – Notice of Subdivision Agreement;
- (x) Instrument No. CE56048 – Notice of Subdivision Agreement;
- (xi) Instrument No. CE58400 – Plan Document;
- (xii) Instrument No. 12M503 – Plan of Subdivision;
- (xiii) Instrument No. 12R21325 – Reference Plan;
- (xiv) Instrument No. CE171086 – Notice;
- (xv) Instrument No. CE194026 – Notice;

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.

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

KEVIN D'AMORE

and

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

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 “H”

**BDO Canada Limited Court Appointed Receiver of
Banwell Development Corporation
Statement of Receipts and Disbursements
June 5, 2013 through January 15, 2014**

Receipts:

Receiver's Certificate # 1		\$ 125,000.00
Sale of Lots	\$660,050.00	
Less: property taxes	(32,790.53)	
Less: Vendor take back	<u>(45,000.00)</u>	
		582,259.47
Royal Timbers - repayment of advances including Receiver's Certificate # 1		114,158.71
Block 120 - McRobbie Road - deposit		22,500.00
Security deposits collected on sale of lots		12,000.00
City of Windsor - indemnity refund re sewer connection permit		800.00
Royal Timbers - share of interest on Receiver's Certificate #1		<u>557.36</u>
		<u>\$ 857,275.54</u>

Disbursements:

Property taxes	\$ 271,542.18	
Repayment of Receiver's Certificate # 1	125,000.00	
Funds advanced to Royal Timbers Receiver's account	114,158.71	
Legal Fees	89,764.57	
Receiver's fees	89,112.12	
HST on disbursements	28,598.89	
Consulting fees/commission fees on lot sales	24,237.50	
Repair & maintenance (grass/weed cutting on lots)	8,264.70	
BMO - Letter of Credit admin charge	6,750.00	
Professional fees re McRobbie Road paving	6,000.00	
Appraisal fees	3,954.20	
City of Windsor - application fees re sale of block 120	3,568.00	
Fees to Verhaegen Stubberfield re Block 120 Reference Plan	3,473.25	
Refund of security deposits on lots 47, 49	2,298.31	
Insurance	2,082.24	
Interest paid on Receiver's Certificate # 1	1,114.72	
Utilities	805.33	
Copier lease	323.53	
Fees to renew corporation name	<u>185.80</u>	
		<u>\$ 781,234.05</u>

Excess receipts over disbursements\$76,041.49

Represented by:

Balance in Receiver's account\$76,041.49**NOTE:**

Funds advanced by Banwell to Royal Timbers to fund day to day expenses have now been repaid including share of interest on Receiver's Certificate.

TAB “I”

**BDO Canada Limited Court Appointed Receiver of
Royal Timbers Inc.
Statement of Receipts and Disbursements
June 5, 2013 through January 15, 2014**

Receipts:

Sale of Plaza	\$ 2,750,000.00	
Less: property tax arrears	(278,730.30)	
Less: December rent and security deposits (credited to purchaser)	<u>(35,539.28)</u>	
		\$ 2,435,730.42
Rent collected from commercial tenants		214,992.30
Advance of funds from Banwell		114,158.71
Sale of chattels to new tenant (includes HST)		9,040.00
Security deposit on Lease of unit 100		5,000.00
Insurance premium refund		<u>324.00</u>
		<u>\$ 2,779,245.43</u>

Disbursements:

City of Windsor - property taxes	\$ 214,498.19	
Repayment of funds to Banwell	114,158.71	
Receiver's fees	89,112.11	
Legal fees	70,959.11	
HST on disbursements	27,692.19	
Repair & maintenance	18,034.19	
Payroll (net)	16,814.08	
Advertising - re sale of plaza	9,042.34	
Wintru - property management fees	8,642.98	
HST remitted	6,830.45	
Payroll source deductions remitted	6,077.58	
Insurance	5,024.16	
Legal fees paid to Wolf Hooker Professional Corp	4,858.40	
Commission on unit 100 lease	4,659.20	
Appraisal fees	4,145.15	
Utilities	2,972.37	
City of Windsor - zoning issue hold removal	1,172.00	
Miscellaneous	566.00	
Interest paid on Receiver's Certificate # 1	557.36	
Office copier lease	269.75	
WSIB premium	<u>109.92</u>	
		\$ 606,196.24

Excess receipts over disbursements\$ 2,173,049.19

Represented by:

Balance in Receiver's account

\$ 2,173,049.19

NOTE:

Royal Timbers has now repaid funds advanced by Banwell

TAB “J”

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

**IN THE MATTER OF THE RECEIVERSHIP OF BANWELL DEVELOPMENT CORPORATION AND
ROYAL TIMBERS INC.**

AFFIDAVIT OF STEPHEN N. CHERNIAK

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

1. I am a Senior Vice-President of BDO Canada Limited, the Receiver of Banwell Development Corporation and Royal Timbers Inc., (“Banwell” and “Royal Timbers”) and as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated June 5, 2013 BDO Canada Limited was appointed as Receiver of Banwell and Royal Timbers (the “Receiver”).
3. The Receiver’s First Report to the Court was approved by Justice Thomas on June 25, 2013.
4. The Receiver’s Second Report to the Court was approved by Justice Thomas on July 23, 2013. The first account of the Receiver for the period May 2, 2013 to July 5, 2013 was also approved by the Order of Justice Thomas on July 23, 2013.
5. The Receiver’s Third Report to the Court was approved by Justice Thomas on December 2, 2013. The second account of the Receiver for the period July 5, 2013 to November 5, 2013 was also approved by the Order of Justice Thomas on December 2, 2013.
6. The Receiver’s Fourth Report to the Court was approved by Justice Thomas on December 13, 2013
7. Since the date of the Receiver’s last account the Receiver has been engaged in the following:
 - Complete the Third Report of the Receiver and Confidential Supplement to provide the Court with information on the results of the Receiver’s sales process for the Royal Timbers Commercial Plaza

- ("Commercial Plaza") to obtain an Order amending the Omnibus Approval and Vesting Order to add the Block 120 lots and attend Court hearing on December 2, 2013;
- Negotiate with Avila Investments Ltd. ("Avila") on several issues, including the purchase price, to finalize an Agreement of Purchase and Sale in Respect of the Commercial Plaza (the "APS");
 - Arrange for the fulfillment of conditions contained in the APS, including: Obtaining estoppel certificates completed by the tenants of the Commercial Plaza; providing the purchaser with various information; arranging for and attending at inspections by the Purchaser;
 - Complete the Fourth Report of the Receiver to obtain an Order approving the APS between the Receiver, as vendor, and Avila Investment Ltd., as purchaser, in respect of the Commercial Plaza and attend Court hearing on December 13, 2013;
 - Supervise issues on the pending sale of the nine lots comprising Block 120 including: completion of Reference Plan and deposit with Land Registry Office; City of Windsor by-laws passed on December 16, 2013; paving of McRobbie Road and decision to postpone paving to Spring 2014; postponement of closing of the sale to April 30, 2014;
 - Arrange for the completion of repairs to unit 200 of the Commercial Plaza prior to the closing of the sale;
 - Complete the sale of the Commercial Plaza;
 - Review and analyze property tax information provided by the City of Windsor and make payment of property tax arrears through December 31, 2013 on all properties owned by Banwell and Royal Timbers;
 - Commence drafting the Receiver's Fifth Report to obtain an Order to distribute funds to the Bank of Montreal ("BMO") from the Receiver's Royal Timbers bank account to fully repay its indebtedness to BMO;
 - Oversee and approve maintenance and repairs to the commercial plaza and the Banwell lots and infrastructure;

- Provide monthly reporting of Receipts and Disbursements to the stakeholders;
 - Respond to tenant queries and concerns; and
 - Various phone calls and correspondence with the stakeholders and their respective counsel.
8. In the course of performing the duties pursuant to the Order and as set out above at paragraph 7, and since the date of the Third Report the Receiver's staff expended 218.35 hours for the period of November 5, 2013 through January 15, 2014. Attached hereto and marked as Exhibit "A" to this my Affidavit are the accounts of the Receiver together with a summary sheet.
9. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
10. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
11. Although the assets of Banwell and Royal Timber are located in Windsor and the Receiver's primary office is located in London the Receiver has not charged for travel time or travel expenses.
12. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
13. This Affidavit is sworn in support of the motion for approval of the Receiver's fees and disbursements and for no other or improper purposes.

SWORN BEFORE ME at the City of
London in the Province of Ontario
on the 20th day of January, 2014




Commissioner for Taking Affidavits

Roberta Ann Robinson, a Commissioner, etc.,
Province of Ontario, for BDO Canada Limited,
Trustee in Bankruptcy.
Expires December 8, 2014.


STEPHEN N. CHERNIAK, CPA, CA, CIRP

Attached is Exhibit A
To the Affidavit of Stephen N. Cherniak
Sworn the 20th day of January, 2014.



A Commissioner, Etc

Roberta Ann Robinson, a Commissioner, etc.,
Province of Ontario, for BDO Canada Limited,
Trustee in Bankruptcy.
Expires December 8, 2014.

**Summary of Receiver's Accounts for the period
November 5, 2013 through January 15, 2014**

Invoice Date	Hours Expended	Invoice Total
December 11, 2013	156.45	\$55,466.08
January 15, 2014	61.90	\$20,974.07
	218.35	\$76,440.15



Invoice # 87635520
 Banwell Developments Corp
 HST Reg # 101518124RT0001

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

December 11, 2013

Re: Banwell Development Corporation and Royal Timbers Inc.

For professional services rendered for the period November 5, 2013 through December 10, 2013 as per the attached detail:

Our Fee	\$49,000.00
Disbursements (courier)	<u>85.03</u>
Sub Total	\$49,085.03
HST	6,381.05
Total	<u>\$55,466.08</u>

REMITTANCE ADVICE

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

Invoice #	87635520
Amount	\$55,466.08

December 11, 2013

For professional services rendered

Staff	Date	Time	Narrative
Cherniak, S	5-Nov-13	1.1	Emails from Miller Thomson re Mac's lease. Update on Block 120 deal and requirements from City of Windsor. Review of Metrix update on appraisal.
Flett, D	5-Nov-13	5.5	Review block 120 lot issues; prepare file with details of land sales to date and provide to Metrix; phone call with Miller Thomson on block 120 sale issues and timing - reference plan, part lot control exemption; call with M. Troup on Mac's and other tenant initial occupancies, Robinet servicing and block 120 applications; review draft Metrix addendum on block 120 lots; memo on block 120 /Hadi sale; complete City of Windsor applications for 1) part lot exemption 2) zoning hold removal;
Finnegan, M	5-Nov-13	0.5	Begin monthly R&D report.
Finnegan, M	6-Nov-13	0.5	Prepare cheques for lot control exemption applications from the City of Windsor
Flett, D	6-Nov-13	4.2	Review City of Windsor applications and finalize; email with J Abbs of City Windsor; call with M Troup on Robinet servicing; review and sign wage, maintenance cheques; Receivers Third Report and Confidential Supplement
Cherniak, S	6-Nov-13	1	Review and execute documents related to part lot exemption and removed of zoning hold. Pay bills. Call from Miller Thomson re discussion with M. Troup.
Cherniak, S	7-Nov-13	1.2	Emails to/from Miller Thomson re estoppel certificates. Email re timing for report and information. Emails from M. Troup re Block 120.
Flett, D	7-Nov-13	5.2	Review A. Mitchell email and draft estoppel certificate; call and email with M Troup on estoppel certificate. Rick Spencer - engineer services, update summary of lot sales; review court report and supplement issues and format; continue with Third report on supplement - lease of unit 100, block 120, receipts and disbursements.
Finnegan, M	7-Nov-13	1.5	Prepare and send weekly payroll. Update payroll summary. Review Banwell HST assessment. Pay bills
Finnegan, M	8-Nov-13	0.7	Update monthly R&D report. Deal with returned mail. Deal with NSF rent cheque.
Flett, D	8-Nov-13	5.5	Review monthly reporting to stakeholders; prepare third report of receiver and confidential supplement to third report - Robinet servicing reimbursement, receipts and disbursements commentary, supplement details of unit 100 lease, block 120 sale to Hadi
Cherniak, S	8-Nov-13	1.2	Review of monthly reporting. Emails and call to Miller Thomson re reduction in offer from Avila.
Cherniak, S	11-Nov-13	2.4	Several calls from M. Troup re revised offer on plaza. Call to Miller Thomson. Review of email from City of Windsor. Finish monthly reporting and send to stakeholders. Pay bills. Discussions re format of court report.
Flett, D	11-Nov-13	3.2	Calls with M. Troup on Mac's issues and Avila offer; prepare Receiver Third report and supplement

Staff	Date	Time	Narrative
Flett, D	12-Nov-13	2.2	Review third report and confidential supplement and revisions/additions; review correspondence and previous file notes on Real Ranchs Inc lots and Windsor Family Credit Union
Cherniak, S	12-Nov-13	1.2	Review of emails re engineering. Call to Alissa Mitchell re update on plaza sale. Call from BMO and review of correspondence on position by WFCU on Real Ranches.
Hooper, L	12-Nov-13	0.1	Issued chqs
Hooper, L	13-Nov-13	0.1	Issued chqs
Cherniak, S	13-Nov-13	2.1	Update from M. Troup on sale of plaza. Clarification on position from WFCU re Real Ranches. Call to Miller Thomson. Email to BMO re Real Ranch position. Emails and calls from M. Troup re increased offer from Avila.
Flett, D	13-Nov-13	2.4	Calls with M. Troup on Real Ranchs lots secured WFCU, block 120 paving and 117 servicing; review BMO and legal counsel emails and correspondence on 5 Real Ranchs lots postponed to WFCU; revisions to Third Report and Confidential supplement
Finnegan, M	13-Nov-13	0.7	Prepare bill payment, return deposit cheque for unsuccessful purchaser of plaza.
Finnegan, M	14-Nov-13	2	Prepare and reconcile R&D's for Banwell and Royal Timbers to Nov 14/13 for court report. Prepare and send payroll cheque. Pay bills
Flett, D	14-Nov-13	3.5	Call with M. Troup on pending offer; call with Rick Spencer on engineering work for McRobbie Road paving re: block 120 sale; review of Receiver statement of receipts and disbursements; review appraisals and update lot sale schedule; revisions, edits and updates to Receiver Third Report and Confidential Supplement
Cherniak, S	14-Nov-13	2.4	Review of court report and confidential supplement. Update on plaza sale. Emails re work on block 120.
Cherniak, S	15-Nov-13	2.6	Finalize draft third report. Send to Miller Thomson. Calls with M. Troup re plaza offer. Call to BMO. Call to Scott D'Amore. Call to Miller Thomson.
Flett, D	15-Nov-13	4.5	Phone calls with SC and M. Troup, S. D'Amore and A. Mitchell of Miller Thomson on revised Avila offer, conditions, timing; Review R and D's and compare to Third Report; Revisions and updates to Third Report of Receiver and confidential supplement; Prepare Receiver's activities section of S Cherniak Affidavit
Finnegan, M	15-Nov-13	0.8	File admin. Deposit
Hooper, L	15-Nov-13	0.1	Bank rec
Finnegan, M	18-Nov-13	0.2	Edits to fee affidavit etc
Flett, D	18-Nov-13	1.2	Review MPAC 2014 assessments and email with Marina; Email with R. Spencer on McRobbie Road paving; revisions to Affidavit for Third Court report
Cherniak, S	18-Nov-13	0.8	Work on court report. Updates on plaza deal. Review of MPAC notices.
Cherniak, S	19-Nov-13	1.1	Emails from Miller Thomson re content of third report. Sign cheques. Review of invoices. Email to Lerner re sale of plaza. Updates on plaza sale.

Banwell Corporation and Royal Timbers Inc.

Staff	Date	Time	Narrative
Flett, D	19-Nov-13	1.2	Review mail from Miller Thomson on Receivers Report and supplement; Review report and draft email response on lot transaction details, issues/questions; email with R. Spence re: McRobbie road paving and payment arrangements; review email from Miller Thomson on offer status
Finnegan, M	19-Nov-13	0.2	Send fee affidavit to HP for court report inclusion
Hooper, L	19-Nov-13	0.1	Issued chqs
Finnegan, M	20-Nov-13	0.6	Pay bills. Prepare payroll cheque.
Flett, D	20-Nov-13	0.8	Review revised Avila offer; call with Scott D'Amore on offer status; review M. Troup emails on Block 120 and Robinet
Cherniak, S	20-Nov-13	1.3	Review of revised offer from Avila. Call from Miller Thomson re Avila offer. Emails from M. Troup
Cherniak, S	21-Nov-13	1.2	Call with Avila to resurrect deal. Call with Miller Thomson. Review email re Kevin D'Amore wishing to sell a lot. Emails from M. Troup.
Flett, D	21-Nov-13	2.6	Review maintenance invoices and email with Marina; call with K D'Amore on lot inventory, lot sale process and availability of 60 foot lot; review of Teranet plans and email memo K D'Amore on inventory by phase; call with K. D'Amore re: lot 116; review offer status and K. D'Amore enquiry; call with Miller Thomson on block 120 and reference plan; call re status and estoppel certificates
Hooper, L	21-Nov-13	0.1	Issued chq
Flett, D	22-Nov-13	0.8	Phone call and email with M. Troup on offer status, lot 118; phone call with Miller Thomson on Block 120 and reference plan, City of Windsor applications; call re offer status and estoppel certs
Cherniak, S	22-Nov-13	1.5	Call with Miller Thomson re amended Purchase and Sale and changes thereto. Review and execute letters to city re Avila. Review of changes to estoppel certificate. Email to C. Prieur re attendance at plaza.
Cherniak, S	25-Nov-13	3.3	Miller Thomson edits to reports. Conference call with Miller Thomson re changes. Deal with issuance of estoppel certificates. Email to Mac's Milk. Email re Edward Jones.
Flett, D	25-Nov-13	5.5	Review revised plaza offer; email and phone calls with C. Prieur re: estoppel certificates and format, issues; review email from Mac;s re: estoppel cert and cam charges; call with M. Troup on block 120, reference plan status and process; review Metrix appraisals and addendum and provide to Miller Thomson with explanatory memo re: block 120; review revised receiver's report and confidential supplement and note revisions needed - receiver's activities; conference call with S. Cherniak and Miller Thomson on revisions to report and supplement; review final report and supplement
Finnegan, M	25-Nov-13	0.5	Bill payment. Email to Marina re R. Timbers HST o/s.
Prieur, C	25-Nov-13	3	Prepare Estoppel Certificate packages, attend location to deliver to tenants, return to pick up from Local Thai
Finnegan, M	26-Nov-13	0.5	Deposit
Flett, D	26-Nov-13	1.4	Review of December 2 motion record served to all parties; review of emails on Mac's common area and estoppel certificate provided; call with M Troup and S. Cherniak re; Mac's common area arrangements and 2007-2012 reconciliation; call with C. Prieur to review approach to Mac's common area summary and other tenants to closing date

Staff	Date	Time	Narrative
Cherniak, S	26-Nov-13	1.6	Deal with estoppel certificates. Call from Macs. Review of Macs changes. Call to Miller Thomson. Set up visit to plaza by Avila. Call from BMO. Call with M. Troup re cam charges.
Prieur, C	26-Nov-13	1.3	Calls to plaza tenants re: access to premises, attend location re: estoppel certificate for Alexander daycare & Bella Vita, call re: cam reconciliation for Mac's
Cherniak, S	27-Nov-13	2.8	Calls to staff re site visit by prospective purchaser. Update counsel on estoppel certificates. Deal with Bella Vita's refusal to sign estoppel certificate. Email and phone call. Various emails by counsel on Receiver's fees. Deal with chattel issue re sale. Updates on paving and reference plan.
Flett, D	27-Nov-13	2.8	Email and phone calls re: purchaser access to plaza; calls/email with M. Troup on plaza access - mechanical room etc; emails with M. Troup, R. Spencer on Block 120 paving quotations and issues; call with M. Troup on plaza chattels, vacant unit; review spa and restaurant leases re: chattels on premises and review agreement of purchase sale re: chattels; review Branoff and subsequent emails re: fees; memo re: chattels in restaurant
Finnegan, M	27-Nov-13	0.5	Prepare payroll and send
Szypula, C	27-Nov-13	0.8	Review 3rd Report to Court
Hooper, L	27-Nov-13	0.1	Issued chq
Prieur, C	27-Nov-13	0.5	Call with Bella Vita re: access for showing & his concerns over estoppel agreement
Prieur, C	27-Nov-13	1	Dry run re access, Local Thai
Hooper, L	28-Nov-13	0.1	Issued chqs
Flett, D	28-Nov-13	1.6	Review email on site visit; review Miller Thomson email and letter from Hadi counsel; draft email response to Miller Thomson re: block 120 status - details - reference plan, paving, servicing; review restaurant rent and estoppel status; review A. Mitchell and other email on professional fees, re December court hearing
Cherniak, S	28-Nov-13	1.6	Email to Miller Thomson re Hadi deal. Update on plaza showing. Emails from counsel re court attendances. Updates from Chomycz re lawyer. Call to/from Ed Hooker re same.
Prieur, C	28-Nov-13	2	Attend location re: Estoppel Certificate & rent due Local Thai, attend to show plaza to potential purchaser, email memo re same
Cherniak, S	29-Nov-13	1.3	Correspondence re Hadi deal. Call from Avila re sales process. Call to C. Prieur re estoppel certificates and tree. Call to Miller Thomson. Review of law re fees for court appointed receiver.
Flett, D	29-Nov-13	2.3	Review restaurant estoppel and rent issue; review photos of maintenance issue; review draft Miller Thomson letter to Laba re: block 120 status and closing date and approve; brief review of A. Mitchell Statement of law; call/email to M Troup re: plaza and block 120; set up Receiver Fourth Report
Prieur, C	29-Nov-13	0.75	Email re Estoppel Certificate, call with S. Cherniak re attend location and pictures of damaged tree on property
Prieur, C	2-Dec-13	1.5	Attend Local Thai re: rent & Estoppel cert., emails to owner, various phone calls and email re: common fee consolidation schedule 2007-present

Banwell Corporation and Royal Timbers Inc.

Staff	Date	Time	Narrative
Flett, D	2-Dec-13	1.3	Email/call re; restaurant estoppel and rent issues; review M Troup emails on plaza maintenance issues and status; review block 120 paving quotations; phone call and email with M. Troup on block 120 paving, plaza heating and maintenance issue, property management fees
Finnegan, M	2-Dec-13	0.5	Pay bills
Cherniak, S	2-Dec-13	2.2	Attendance at court re approval of block 120, fees and receiver's activities. Miller Thomson tour of plaza. Meet with M. Troup and Rob Reynolds. Call to WFCU re Troup. Emails re updates on estoppel certificates and paving quotes.
Cherniak, S	3-Dec-13	1	Review of estoppel cert from Bella Vita. Update on Edward Jones. Emails to Miller Thomson. Call to M. Troup. Response from counsel to purchaser.
Flett, D	3-Dec-13	1.6	Call with M Troup on maintenance issues; call with tenant - Alexander Daycare on lighting issue; review spa estoppel certificate and memo; review offer status and work on Receiver's 4th report
Prieur, C	3-Dec-13	0.1	Follow email to Edward Jones
Prieur, C	4-Dec-13	1	Meet with Local Thai re: rent outstanding/estoppel certificate
Hooper, L	4-Dec-13	0.1	Issued chqs
Flett, D	4-Dec-13	4.8	Review estoppel status and maintenance issues; call with M Troup on maintenance, vacant unit heating and unit estoppel issues; review of emails re: financial statements; Continue with receiver's 4th report and confidential supplement - background and analysis of offer
Finnegan, M	4-Dec-13	0.5	Paid bill. Prepared and sent payroll cheque
Cherniak, S	4-Dec-13	3.3	Obtain final estoppel certificates. Call from Bagnara. Call to Miller Thomson re deal. Calls to M. Troup. Call to BMO. Emails re Hyatt Lassaline meeting with Branoff/D'Amore. Emails re Hadi Homes deposits and servicing of lots. Call to Scott D'Amore. Deal with final undertaking re purchaser.
Cherniak, S	5-Dec-13	3	Update and strategize on sale approval report. Emails and calls to/from Miller Thomson re Bella Vita leasehold/chattel issue as it relates to sale. Email to stakeholders re sale. Call from Cheifetz re D'Amore construction. Calls with Bagnara and Chomczyk re Bella Vita estoppel certificate. Update Miller Thomson.
Finnegan, M	5-Dec-13	1	Emails from Marina re bills. Deposits for R. Timbers and Banwell
Flett, D	5-Dec-13	5.5	Review unit 100 chattels status, Sensations sale to Bella Vita documents and Bella Vita lease re: purchaser query; call with M Troup re: lot 117 servicing; security deposit status and procedure and vacant unit heating; response to Miller Thomson enquiry re: 117; review of plaza appraisal methodology and industry cap rate data; continue with receiver 4th report and confidential supplement.
Hooper, L	5-Dec-13	0.1	Issued chqs
Prieur, C	6-Dec-13	1	Attend Local Thai to collect rent for Nov & Dec as well as meet with manager to discuss repairs made to the RT equipment leased by them

Banwell Corporation and Royal Timbers Inc.

Staff	Date	Time	Narrative
Flett, D	6-Dec-13	4.5	Revisions to 4th report confidential supplement; email memo to Miller Thomson re: lot 117 serving; email memo to Miller Thomson re: Hadi security deposits and subdivision Phase 2 status; review unit 100 maintenance issues and vacant unit heating; revisions to 4th report and revisions to confidential supplement re: Avila negotiations; review Valco appraisal on plaza and revision to supplement for impact of higher cap rate; forward report, supplement and appraisals to Miller Thomson for review.
Finnegan, M	6-Dec-13	1.5	Email and calls to/from Marina/ESA re ESA inspection for unit 400. Arranged for inspection date. Pay bills.
Cherniak, S	6-Dec-13	2.5	Emails and calls to Chomyycz re Bella Vita issue. Calls and email to Bagnara. Updates on Hadi deposits. Review of fourth report and supplement. Call to Marina re status of repair. Update on Local Thai rent and repairs.
Cherniak, S	9-Dec-13	2.3	Call to Vince Grillo at City of Windsor. Review of property tax schedules. Emails re Bella Vita. Review of changes to receivers report. Calls to Miller Thomson. Review of Local Thai rent receipts. Email from M. Troup re paving.
Finnegan, M	9-Dec-13	0.4	Emails to/from tenant re rent cheque. Pay bill
Flett, D	9-Dec-13	2.2	Review plaza property tax status; review block 120 reference plan received; call with tenant - Alexander Daycare re; issues; call to City Windsor re: block 120; review email re block 120 paving; review 4th report revised by legal counsel; review 4th report confidential supplement revised by legal counsel
Cherniak, S	10-Dec-13	2.0	Review of changes to the confidential supplement. Email to Miller Thomson. Emails to/from Chomyycz /Marina re pedicure chairs. Emails from Miller Thomson.
Flett, D	10-Dec-13	5.2	Review revised 4th report confidential supplement; review revisions to supplement re; sealing by court, appraisal methodology; phone call and subsequent emails with Miller Thomson on revisions to supplement and revised appraisal methodology description; calls with M. Troup on block 120 paving postponement and Hadi lot sale options; emails Miller Thomson on plaza property tax statements; review Mac's common area cost 2007 -2103 calculation approach; review draft plaza statement of adjustments and email with Miller Thomson re: tenant deposits and other revisions
		156.45	Total Time

Staff	Position	Hourly Rate	Time
Cherniak, S	Sr. Vice President	\$400	48
Finnegan, M	Administrative	\$125	13.1
Flett, D	Vice President	\$275	81.5
Hooper, L	Administrative	\$90	0.9
Prieur, C	Sr. Estate Administrator	\$200	12.15
Szypula, C	Sr. Vice President	\$400	0.8
		156.45	



Invoice # 87660522
Banwell Developments Corp
HST Reg # 101518124RT0001

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

January 15, 2014

Re: Banwell Development Corporation and Royal Timbers Inc.

For professional services rendered for the period December 10, 2013 through January 15, 2014
as per the attached detail:

Our Fee	\$18,500.00
Disbursements (courier)	<u>61.12</u>
Sub Total	\$18,561.12
HST	2,412.95
Total	<u><u>\$20,974.07</u></u>

REMITTANCE ADVICE

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

Invoice #	87660522
Amount	\$20,974.07

January 15, 2014

For professional services rendered

Staff	Date	Time	Narrative
Finnegan, M	10-Dec-13	1	Prepare monthly R&D report. Emails from Marina re bills. Email re cash deposit. Update GL with amount
Finnegan, M	11-Dec-13	1.5	Prepare payroll for remaining month of December, 2013. Emails from Marina re bill payments
Cherniak, S	11-Dec-13	2	Monthly reporting to stakeholders. Update on Hadi block 120 deal and calls and emails from Miller Thomson re same. Update on issues at plaza re closing. Emails to/from Chomczyk/Marina re repairs. Review of statement of adjustments for plaza sale.
Flett, D	11-Dec-13	2.2	Review revised draft statement of adjustments for plaza; review Block 120 issues and status; memo to Miller Thomson re: paving postponement and Block 120 closing date; review correspondence from City Windsor on Block 120 applications; review monthly receiver reporting; review tenant issue and insurance policy coverage; email with Miller Thomson on Block 120 closing arrangements and timing; review and sign receiver cheques
Szypula, C	11-Dec-13	0.5	Review 4th report to Court.
Prieur, C	11-Dec-13	0.75	Phone call with Murray/Local Thai/Marina re items removed from vacant unit belonging to Local Thai
Prieur, C	12-Dec-13	1.5	Attend location re: Local Thai items in vacant unit - met with Murray & Local Thai.
Hooper, L	12-Dec-13	0.2	Banking
Flett, D	12-Dec-13	2.4	Call with M. Troup on Thai restaurant issues; review and sign receiver cheques; call with Marina on utilities; memo re common area utility transfer and new account set-up/transfer; email with J Abbs of City Windsor on by-law applications and review hold symbol removal docs received by mail; email on Thai restaurant issues and equipment; email with Miller Thomson on plaza closing issues and arrangements
Cherniak, S	12-Dec-13	1.5	Emails re closing, utilities, garbage collection from Avila. Emails from Miller Thomson re Thai estoppel certificate. Update on Thai chattels. Update on Block 120 deal. Emails re Hooker and financial information.
Cherniak, S	13-Dec-13	3.4	Attend at court re sale approval motion. Meet with M. Troup re Thai restaurant chattels. Execute sale documents. Calls to Ken Beallor and Tony re heat to vacant unit. Calls and emails with C. Prieur re Thai unit and repairs thereto. Call with Laba re Hadi homes deal. Email re city lawsuit.

Banwell Developments Corporation
And Royal Timbers Inc.

Staff	Date	Time	Narrative
Flett, D	13-Dec-13	3.2	Call with Miller Thomson on restaurant issues, restaurant repair and block 120 sale; emails re; utilities and account transfer; draft email response to purchaser lawyer re: concerns over heat to vacant unit; email Miller Thomson on block 120 closing and by-law status; call re Thai restaurant issues; review emails from Miller Thomson on plaza closing and documents
Finnegan, M	13-Dec-13	0.4	Copy and send sale closing docs to Miller Thomson along with wire transfer bank details
Prieur, C	13-Dec-13	2.5	Meet with Local Thai re; rent/invoices for credit, meet with Marina re: common fee consolidation for Mac's.
Hooper, L	15-Dec-13	0.1	Issued chqs
Prieur, C	16-Dec-13	1.5	Call and attend at Local Thai restaurant re rent issue
Finnegan, M	16-Dec-13	0.5	File admin - scanning and sending documents to various legal reps re plaza sale.
Flett, D	16-Dec-13	2.2	Call with M. Troup on restaurant wall/plumbing repair issues and review; call/email with M. Troup on Block 120 paving and closing date; email with Miller Thomson Block 120 sale; call/emails re Local Thai and chattel issues; call with M Troup on utility hook ups and vacant unit clean out; review restaurant repair status, restaurant chattels, various email re: plaza closing
Cherniak, S	16-Dec-13	4.5	Deal with various closing issues. Sign receiver's certificate. Various emails and phone calls re Thai restaurant repairs. Call to Tony Bagnara. Various emails with Miller Thomson re closing issues. Emails re Hadi homes deal extension. Various calls and emails with M. Troupy re clean out of items from vacant unit, Hadi Homes, invoice for clean out of vacant unit, repairs to Thai restaurant, utility hook up to vacant unit. Review and execute undertaking for vacant unit. Organize Avila visit.
Cherniak, S	17-Dec-13	2.5	Updates on closing. Updates on Bagnara visit and Thai restaurant repairs and rent collection. Calls from M. Troup. Call from BMO re update. Emails from Bagnara re update on utilities. Deal with no heat at day care unit. Union gas connection to vacant unit.
Flett, D	17-Dec-13	0.3	Review email from and respond to tenant, Alexander Daycare on issues; review of various email on closing inspection, utility arrangements and Thai restaurant rent.
Finnegan, M	17-Dec-13	1.2	Banking - Pay various bills. Deposit plaza sale funds. Reimburse Banwell for advances made to Royal Timbers account.
Prieur, C	17-Dec-13	5.5	Meet with purchaser for final inspection and walk through, , meet repair tech for heating issue at daycare, meet with Local Thai re: collection of OS rent , meet Union Gas to reactivate gas in vacant unit
Hooper, L	18-Dec-13	0.2	Issued chqs
Flett, D	18-Dec-13	2.4	Review property tax status; calls with M Troup on Wintru invoices, restaurant repairs and vacant unit arrangements; utilities; email with V. Grillo of City Windsor on unpaid property taxes and review schedules provided, summarize with memo on balances owing; emails with tenant - Alexander Daycare; review Wintru invoices and various emails.

Banwell Developments Corporation
And Royal Timbers Inc.

Staff	Date	Time	Narrative
Cherniak, S	18-Dec-13	1	Emails re property tax. Various emails re utilities. Emails from M. Troup.
Cherniak, S	19-Dec-13	1.2	Review of M. Troup invoices. Call from M. Troup. Property tax payment. Emails from Hooker re accounting records. Emails re Banwell lands.
Flett, D	19-Dec-13	1.4	Review Wintru invoices; review property tax balance owing and prepare requisition for payment for each; review emails from M. Troup on Robinet, lot 117 water and revised Wintru invoices.
Finnegan, M	19-Dec-13	1.2	General admin. Banking. Cheque requisitions. Deposit and rent roll update.
Hooper, L	19-Dec-13	0.1	Issued chqs
Hooper, L	19-Dec-13	0.1	Bank rec
Hooper, L	20-Dec-13	0.1	Issued chq
Prieur, C	20-Dec-13	0.75	Attend re: reconnection of water meter
Finnegan, M	20-Dec-13	1.5	Pay bills
Flett, D	30-Dec-13	0.3	Review status of issues; review block 120 status and deferred closing and memo to file on follow-up items
Flett, D	2-Jan-14	0.4	Call with M. Troup on plaza closing; email with Marina on plaza rents; review CAM and distribution issues
Cherniak, S	2-Jan-14	0.3	Deal with cheque issue. Strategize re fifth report.
Flett, D	7-Jan-14	0.5	Review City Windsor correspondence on block 120 H symbol; email with J. Abbs of City Windsor on part lot exemption application and review by-law; review 12M-533 plan and email with J. Abbs
Finnegan, M	7-Jan-14	0.5	Prepare Royal Timbers HST return
Finnegan, M	8-Jan-14	0.5	Prepare and send payroll cheque
Cherniak, S	8-Jan-14	0.3	Review of invoices. Email re Hadi deal. Email from Miller Thomson re City of Windsor lawsuit.
Hooper, L	8-Jan-14	0.1	Issued chq
Cherniak, S	9-Jan-14	0.2	Update from M. Troup on lot severance issues.
Flett, D	9-Jan-14	0.1	Email with J. Abbs of City Windsor and M. Troup
Finnegan, M	9-Jan-14	1	Filed Royal Timbers HST return. Forward tenant January rent to new owner.
Finnegan, M	10-Jan-14	1	Prepare monthly R&D report. Pay bills
Cherniak, S	10-Jan-14	0.5	Monthly reporting. Email from M. Troup re update on reimbursement of services.
Cherniak, S	13-Jan-14	1.2	Monthly report. Emails re property tax to City of Windsor. Email from Lerner. Call with M. Troup re Banwell. Call with Miller Thomson re distribution motion.
Flett, D	13-Jan-14	0.7	Email Miller Thomson re: status of Block 120 applications; review City of Windsor property tax schedules and provide City with schedule of accounts to be kept current by Receiver; update lot sales schedule; review and sign receiver cheques
Flett, D	14-Jan-14	1.8	Email and attachment to Miller Thomson on Block 120 by-laws; email from Miller Thomson on schedule and distribution; review issues and start preparation of Receiver's 5th report

Banwell Developments Corporation
And Royal Timbers Inc.

Staff	Date	Time	Narrative
Cherniak, S	14-Jan-14	0.8	Call with C. Kuehl re distribution motion. Call with Miller Thomson re distribution motion. Discussion re contents of report.
Cherniak, S	15-Jan-14	0.4	Emails from M. Troup re cost allocations re severances and update on shareholder valuation. Call from City of Windsor. Discuss court report.
		61.9	Total Time

Staff	Position	Location	Hourly Rate	Time
Cherniak, S	Sr. Vice President	London	\$400	19.8
Finnegan, M	Administrative	London	\$175	10.3
Flett, D	Vice President	London	\$275	17.9
Hooper, L	Administrative	London	\$125	0.9
Prieur, C	Sr. Estate Administrator	Windsor	\$200	12.5
Szypula, C	Sr. Vice President	London	\$400	0.5
				61.9

TAB “K”

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

AFFIDAVIT OF SHERRY KETTLE

I, SHERRY KETTLE, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate lawyer with the law firm of Miller Thomson LLP ("MT"), lawyers for BDO Canada Limited ("BDO"), in its capacity as Court-appointed Receiver (the "Receiver") of the property, assets and undertakings of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers") and, as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. I make this Affidavit further to my previous fee affidavits sworn July 12, 2013 and November 15, 2013 in these proceedings and in support of the Receiver's motion (the "Motion") for, among other things, having the fees and disbursements of MT, as legal counsel to the Receiver, approved.

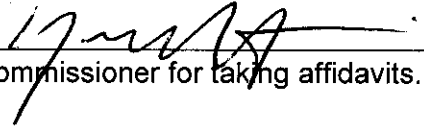
3. Attached hereto to this my Affidavit and marked as **Exhibit "A"** are copies of the invoices rendered by MT to BDO which reflect, *inter alia*, fees and disbursements of MT relating to the period November 12, 2013 through December 19, 2013 (the "Period"). I affirm that the invoices rendered by MT and appended hereto as Exhibit "A" (the "**MT Invoices**") accurately reflect the services provided by MT in connection with the Period and the fees and

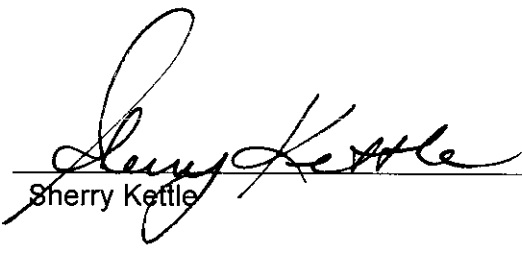
disbursements claimed by it. During the Period, the total fees billed were \$45,023.50, the disbursements billed were \$2,037.44, plus applicable taxes in the amount of \$6,082.31. Attached hereto to this my Affidavit and marked as **Exhibit "B"** is a statement summarizing MT's fees for the Period. Lawyers and staff at MT have collectively expended a total of 143.80 billable hours in connection with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".

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

5. This Affidavit is sworn in connection with the Motion, namely, among other things, the approval of the fees and disbursements of MT, as legal counsel to the Receiver, and for no improper purpose.

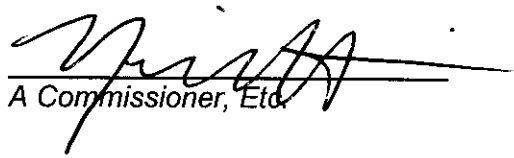
SWORN before me at the City of London,
in the County of Middlesex, this 17th day of
January, 2014


A Commissioner for taking affidavits.

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Sherry Kettle

**Nell Kenneth Stuart Harris, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires May 13, 2016**

Attached are Exhibits "A" and "B" to the
Affidavit of Sherry Kettle sworn the
17th day of January, 2014


A Commissioner, Etc.

**Neil Kenneth Stuart Harris, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires May 13, 2016**

ACCOUNT

November 29, 2013

Invoice Number 2538921

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

Attention: Stephen N. Cherniak

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

Re: Receivership of Banwell Development Corporation
Our File No. 082873.0010

Date	Initials	Description	Hours
11/12/2013	AM	Telephone conversation with Steve Cherniak regarding sale of commercial plaza; Telephone conversation with Ken Beallor;	0.80
11/13/2013	AM	Review and respond to various electronic mail messages from Steve Cherniak; Review power of sale notice re Real Ranches Inc.; Conference call with David Flett and Steve Cherniak; Electronic mail message to Ken Beallor; Review electronic mail message from Steve Cherniak re WFCU POS proceedings;	0.60
11/15/2013	AM	Telephone conversation with Steve Cherniak and David Flett; Electronic mail message to Steve Cherniak; Telephone conversation with Ken Beallor;	0.60
TOTAL HOURS			2.00
OUR FEE:			\$950.00

Initials	Name	Title	Rate	Hours	Amount
5404 AM	A. Mitchell	Partner	475.00	2.00	950.00

TAXABLE DISBURSEMENTS

Copywork	13.90	
TOTAL TAXABLE	<u>13.90</u>	\$13.90

TOTAL FEES AND DISBURSEMENTS: **\$963.90**

Harmonized Sales Tax (R119440766)

On Fees		\$123.50
On Disbursements		\$1.81

TOTAL AMOUNT DUE: **\$1,089.21**

E.&O.E.



MILLER THOMSON LLP
MILLERTHOMSON.COM

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

T 519.931.3500
F 519.858.8511

ACCOUNT

December 17, 2013

Invoice Number 2544942

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

Attention: Stephen N. Cherniak

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

Re: Receivership of Banwell Development Corporation
Our File No. 082873.0010

Date	Initials	Description	Hours
11/04/2013	KB	Review of Agreement of Purchase and Sale on 9 lots; discussion with Sherry Kettle on new BDO sale of 9 lots, committee of adjustments consent and depositing reference plan; complete subsearch on block.	0.40
11/05/2013	KB	Meeting with Sherry regarding procedure for registration of reference plan and obtaining by-law exempting part lot control on the sale of Block 120, Plan 12M533; telephone call with David Flett pertaining to issues prior to closing.	0.70
11/14/2013	SK	Draft motion materials re amending the omnibus approval and vesting order;	1.30
11/15/2013	SK	E-mail correspondence with Receiver; Draft motion materials re amending omnibus approval and vesting order; Meeting with Ms. Barker re land registrar and draft order;	2.30
11/18/2013	AM	Electronic mail message to Sherry Kettle re approval motion for Commercial Plaza; Exchange of electronic mail messages with Janet Ford; Electronic mail message to Ken Beallor;	0.30
11/18/2013	SK	Draft motion materials;	9.10

Date	Initials	Description	Hours
11/18/2013	KB	Review of legal descriptions in amended Omnibus and Vesting Order.	0.30
11/19/2013	AM	Review and respond to electronic mail message from Janet Ford; Review electronic mail message from David Flett re contents of third report; Electronic mail message to Ken Beallor re return date for motion; Telephone conversation with Steve Cherniak;	0.30
11/19/2013	SK	E-mail correspondence with Mr. Flett re draft Receiver's report; Receive Receiver's fee affidavit and update motion materials re same;	0.30
11/20/2013	AM	Review revised offer of Avila; Exchange of electronic mail messages with Ken Beallor; Telephone conversation with Steve Cherniak; Telephone conversation with Ken Beallor;	0.90
11/21/2013	AM	Review and revise motion materials; Review and respond to electronic mail messages from Cynthia Kuehl; Review telephone messages from Steve Cherniak; Telephone conversation with Steve Cherniak; Revise Avila APA and circulate to counsel for Avila and the Receiver;	1.40
11/21/2013	SK	E-mail correspondence with Ms. Barker re requisition date; Meeting with Ms. Barker re same; Telephone conference with Mr. Flett re same; Instructions to Ms. Barker re same; Review letter to counsel re same;	0.60
11/22/2013	AM	Exchange of electronic mail messages with Ken Beallor; Revise and circulate APA: Review authorizations; Provide comments to purchaser's counsel; Review further revised form of APA; Telephone conversation with Steve Cherniak; Telephone conversation with Ken Beallor; Circulate execution version	1.80
11/22/2013	SK	E-mail correspondence with Mr. Flett re reference plan; Telephone conference with Mr. Flett re same; Memo to Ms. Mitchell re same; E-mail correspondence with Ms. Barker re same;	0.40
11/25/2013	AM	Review and revise motion materials and amended Approval and Vesting Order; Numerous discussions with Sherry Kettle; Discussion with Kelly Barker; Telephone discussion with Steve Cherniak; Review and respond to electronic mail messages from Ken Beallor; Review and revise Receiver's Third Report and Confidential Supplement; Exchange of electronic mail messages with Steve Cherniak and David Flett re Reference Plan issues; Further revise and finalize Third Report and Confidential Supplement;	9.20

Date	Initials	Description	Hours
11/25/2013	SK	E-mail correspondence with Ms. Mitchell; Meeting with Ms. Mitchell and Ms. Barker; Revise draft Amended Omnibus Approval and Vesting Order; Meeting with Ms. Barker; E-mail to Ms. Carroll (Land Registry Office); E-mail correspondence with Mr. Cherniak; Meeting with Ms. Mitchell; Telephone call to Mr. Flett (left voice message); Voice message from Ms. Carroll; Telephone call to Ms. Carroll (left voice message); Telephone conference with Ms. Carroll; E-mail correspondence with Mr. Flett; Finalize motion materials; Draft letter to file motion materials;	6.30
11/25/2013	KB	Review of addition of Block 120 Plan 12M-533 to Omnibus Order; telephone call to Registry Office regarding description.	0.60
11/26/2013	AM	Telephone conversation with Steve Cherniak; Finalize Confidential Supplement; Review estoppel certificates; Review correspondence from Mulroy Shulgran re Lepara appeal; Exchange of electronic mail messages with Steve Cherniak; Telephone conversation with David Taub;	1.70
11/26/2013	SK	Prepare motion confirmation; Instructions to assistant re filing motion materials; Telephone conference with Ms. Carroll re draft amended Omnibus Approval and Vesting Order; E-mail correspondence with Ms. Mitchell re same;	0.70
11/27/2013	AM	Telephone conversation with Steve Cherniak; Review and respond to numerous electronic mail messages from Steve Cherniak; Telephone conversation with Mulroy Shulgran re Lepara appeal; Review and respond to electronic mail message from James Branoff; Review status of estoppel certificates; Telephone conversation with Mulroy Shulgran; Electronic mail message to Ken Beallor re estoppel certificates; Discussion with Sherry Kettle regarding statement of law re fees; Electronic mail message to Janet Ford; Review message from Peter Greene re fees;	1.40
11/27/2013	SK	Draft Statement of Law; Research re receiver's fees; E-mail correspondence with Ms. Mitchell re motion confirmation; Review e-mail correspondence re adjournment request; E-mail correspondence with Ms. Gray re Receiver's Certificate;	4.80
11/28/2013	VW	Perform execution search as per SWO Search request;	0.30
11/28/2013	AM	Review and respond to electronic mail message from Peter Greene;	0.60

Date	Initials	Description	Hours
11/28/2013	SK	Request and review searches; Draft security opinion; E-mail correspondence with Mr. Flett re status of reference plan; Review letter from Mr. Laba; Review e-mail correspondence with Ms. Barker, Ms. Mitchell and Mr. Flett re same; Meeting with Ms. Barker re requisitions and closing date; Review and revise letter to Mr. Laba; Review and revise Statement of Law;	6.30
11/28/2013	KB	Meeting with Sherry Kettle and Alissa Mitchell regarding the response letter to purchaser's request to extend requisition date and closing date on Block 120; draft response letter for Sherry Kettle to review.	1.00
11/29/2013	AM	Review and revise Statement of Law re Receiver's costs; Prepare for return of motion on December 2, 2013; Discussion with Sherry Kettle; Telephone conversation with Ken Beallor; Telephone conversation with Steve Cherniak re various issues re Commercial Plaza inspection and return of motion;	1.40
11/29/2013	SK	Draft Statement of Law; Meeting with Ms. Mitchell re same; Finalize Statement of Law; Prepare service letter re same; Prepare letter to Ms. Ford re same; Meeting with Ms. Barker re requisitions and closing date on Block 120; Finalize letter to Mr. Laba; Review letter from Mr. Laba; E-mail to client re same; Meeting with Ms. Mitchell re security opinion; E-mail correspondence with Ms. Gray re Receiver's Certificate;	4.30
11/29/2013	KB	Email with BDO regarding the registration of the reference plan and closing Block 120; telephone call to the City of Windsor pertaining to taxes; meeting with Sherry regarding closing.	0.60
11/29/2013	DK	Obtain Verbal Personal Property Securities Act Printout, Corporate Profile, Bankruptcy Certificate, Certificate of Status and Bank Act Certificate for Banwell Development Corporation and provide same to Ms. Kettle;	0.50
11/29/2013	DK	Obtain Verbal Personal Property Securities Act Printout, Corporate Profile, Bankruptcy Certificate, Certificate of Status and Bank Act Certificate for Royal Timbers Inc. and provide same to Ms. Kettle;	0.50
11/29/2013	DK	Obtain Verbal Personal Property Securities Act Printout, Corporate Profile, Bankruptcy Certificate, Certificate of Status and Bank Act Certificate for Royal Timbers Subdivision and provide same to Ms. Kettle;	0.50
11/29/2013	DK	Obtain Business Names List for Banwell Development Corporation and provide same to Ms. Kettle;	0.10

TOTAL HOURS 60.90

OUR FEE: \$18,994.50

	Initials	Name	Title	Rate	Hours	Amount
5404	AM	A. Mitchell	Partner	475.00	19.00	9,025.00
5715	SK	S. Kettle	Associate	255.00	36.40	9,282.00
5768	DK	D. Kavanagh	Clerk	140.00	1.60	224.00
5720	KB	K. Barker	Clerk	120.00	3.60	432.00
5050	VW	V. Wood	Clerk	105.00	0.30	31.50

TAXABLE DISBURSEMENTS

Couriers	16.23	
Agent's Fees	92.00	
Copywork	355.30	
Postage	1.34	
Colour Copies	63.00	
Visa - PPSA Registration	24.00	
Visa Charge - Bankruptcy Search/Bank	58.00	
TOTAL TAXABLE	<u>609.87</u>	\$609.87

NON-TAXABLE DISBURSEMENTS

Business Name Registration or Report	8.00	
Issue Notice of Motion	127.00	
TOTAL NON-TAXABLE	<u>135.00</u>	\$135.00

TOTAL FEES AND DISBURSEMENTS: \$19,739.37

Harmonized Sales Tax (R119440766)

On Fees	\$2,469.29
On Disbursements	\$79.28

TOTAL AMOUNT DUE: \$22,287.94

E.&O.E.

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MILLER THOMSON LLP
MILLERTHOMSON.COM

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

T 519.931.3500
F 519.858.8511

ACCOUNT

December 31, 2013

Invoice Number 2558325

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

Attention: Stephen N. Cherniak

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

Re: Receivership of Banwell Development Corporation
Our File No. 082873.0010

Date	Initials	Description	Hours
12/01/2013	AM	Prepare for motion to amend OAVO and report to court;	2.30
12/01/2013	SK	Draft notice of motion re sale of commercial lands; Review correspondence;	1.50
12/02/2013	AM	Prepare for and attend in Windsor on motion to amend omnibus approval and vesting order and approval of fees; Visit Commercial Plaza; Return to London; Circulate issued orders;	7.20
12/02/2013	SK	Review fee affidavit and prepare for motion in Windsor; Travel to/from Windsor; Attend motion re amending Omnibus Approval and Vesting Order and contested approval of fees;	7.00
12/03/2013	AM	Attend to ancillary matters relating to December 2, 2013 motion; Circulate orders issued December 2, 2013; Electronic mail message to Steve Cherniak re estoppel certificates; Exchange of electronic mail messages with Ken Beallor;	0.90
12/03/2013	SK	Discussion with assistant re security documentation;	0.20

Date	Initials	Description	Hours
12/04/2013	AM	Telephone conversation with Steve Cherniak (x2); Review outstanding estoppel certificates; Electronic mail message to Ken Beallor re estoppel certificates and waiver of conditions; Review message from Cynthia Kuehl; Review various e-mail messages from Ken Beallor and respond thereto; Attend to issues relating to Inspection Period and waiver of conditions; Review letter from Mike Laba regarding return of security deposits;	1.50
12/04/2013	SK	Review various e-mail correspondence re sale of Commercial Plaza and the Block 120 Lots; Meeting with Ms. Barker re various issues;	0.60
12/05/2013	ASR	Review APS and provide comments; E-mail correspondence with questions;	0.60
12/05/2013	AM	Review Bella Vita lease and bill of sale; Exchange of electronic mail messages with Steve Cherniak; Review and respond to electronic mail messages from Ken Beallor re service list; Telephone conversation with Steve Cherniak (X2); Telephone conversation with Ken Beallor;	1.70
12/05/2013	SK	Review e-mail correspondence from Mr. Flett;	0.10
12/09/2013	ASR	E-mail correspondence regarding closing matters;	0.20
12/09/2013	AM	Review and revise Fourth report of the Receiver; Review and revise Notice of Motion; Discussion with Sherry Kettle; Telephone conversation with Andrew Roth; Review and revise Confidential Supplement to the Receiver's Fourth Report; Telephone conversation with Steve Cherniak;	4.40
12/09/2013	SK	Review and revise Receiver's draft fourth report and confidential supplement;	6.40
12/10/2013	ASR	Review APS and tenancy matters; E-mail correspondence with lawyer for purchaser; Review and amend statement of adjustments; Instructions to clerk;	0.60
12/10/2013	SK	Prepare motion confirmation; Review and revise confidential supplement; E-mail correspondence with receiver re same; Telephone conference with Mr. Flett;	3.00
12/10/2013	JL	Revised Statement of Adjustments; various e-mail correspondence;	0.20
12/10/2013	JL	Review of Agreement and Estoppel Certificates; various e-mail correspondence; prepare Statement of Adjustments;	2.60
12/11/2013	ASR	Attend to closing documentation;	0.30

Date	Initials	Description	Hours
12/11/2013	AM	Review and respond to various electronic mail messages from Andrew Roth re Commercial Plaza closing; Review monthly reporting from Steve Cherniak; Review correspondence from Michael Laba re extension to 9 lot sale to Hadi; Review e-mail from David Flett;	0.40
12/11/2013	JL	E-mail correspondence with other lawyer and client;	0.20
12/11/2013	JL	Various e-mail correspondence with purchaser's lawyer; draft Application for Vesting Order; revise Statement of Adjustments;	0.60
12/12/2013	ASR	Instructions regarding closing documentation; Attend to funds flow; Review and revise security documentation; E-mail correspondence regarding Loco Thai equipment issue;	0.50
12/12/2013	AM	Review electronic mail message from Doug Scanlon (Mac's) and telephone conversation therewith; Telephone conversation with Mark N., solicitors for the City of Windsor; Telephone conversation with Ed Hooker and electronic mail message thereto; Prepare for return of motion on December 13, 2013; Telephone conversation with Steve Cherniak;	1.40
12/12/2013	JL	Prepare Statement of Trust; draft closing documents; discussions with A. Roth;	0.70
12/12/2013	JL	Revise documents; review of various e-mail correspondence; compose e-mail to Purchaser's lawyer;	0.40
12/13/2013	ASR	Review A&D and DRA and comments regarding same; Receive and review additional closing documentation; Attend to issue with respect to utilities;	0.60
12/13/2013	AM	Prepare for and attend on motion to approve sale of commercial plaza and obtain vesting order; Telephone call to Ken Beallor; Telephone conversation with Mike Laba;	4.20
12/13/2013	SK	Meeting with Ms. Barker re requisition and closing dates; E-mail correspondence with receiver re same; E-mail communication with Ms. Mitchell re same;	0.40
12/13/2013	JL	Discussion with A. Roth; revise documents; various e-mail correspondence;	0.70
12/13/2013	JL	Revise signing documents; compose e-mail to client;	0.50
12/16/2013	ASR	Attend to issue with respect to utilities; Attend to closing issues and flow of funds; E-mail correspondence and telephone attendance; Attend to closing;	0.90

Date	Initials	Description	Hours
12/16/2013	AM	Review and respond to electronic mail message from Steve Cherniak; Telephone conversation with Steve Cherniak; Telephone conversation with Michael Laba; Review and respond to electronic mail message from Mulroy Shulgan; Review and revise undertaking re damage; Telephone conversation with Andrew Roth; Review and respond to electronic mail message from Ken Beallor; Attend to various matters re closing;	1.80
12/16/2013	SK	E-mail correspondence re Block 120 closing and vendor take back mortgage;; Discussion with Ms. Barker re same;	0.10
12/16/2013	JL	Various e-mail correspondence with Torkin Manes LLP and client to facilitate closing; review of documents; discussions with A. Roth; draft payout letters for property tax arrears; prepare accounting documents; attend to various matters to facilitate closing;	2.90
12/17/2013	AM	Echange of electronic mail messages with Steve Cherniak re various post-closing matters;	0.30
12/17/2013	SK	Discussion with Ms. Mitchell re security opinion; E-mail correspondence with Ms. Mitchell re same; Review documents and parcel registers re Royal Timbers and Commercial Plaza; Draft security opinion;	1.80
12/17/2013	JL	Prepare outgoing couriers; compose e-mail to client regarding deposit of sale proceeds;	0.20
12/18/2013	AM	Discussion with Greg Fedoryn and David Taub re distribution issues; Review electronic mail message from Greg Fedoryn; Discussion with Steve Cherniak;	0.30
12/18/2013	SK	Draft security opinion re BMO; E-mail correspondence with Ms. Mitchell re security; Meeting with Ms. Barker re security;	7.50
12/18/2013	KB	Receipt of email concerning date of closing sale of lots; discussions with Alissa Mitchell and Sherry Kettle regarding setting new closing dates; email to purchaser's solicitor to advise.	0.60
12/18/2013	LK	Obtain Verbal Personal Property Securities Act Printout for Royal Timbers Development and provide same to Ms. Kettle;	0.10
12/18/2013	LK	Obtain Bank Act certificate for Royal Timbers Development and provide same to Ms. Kettle;	0.10
12/18/2013	LK	Obtain Verbal Personal Property Securities Act Printout for Fairfield Investments and provide same to Ms. Kettle;	0.10
12/18/2013	LK	Obtain Bank Act certificate for Fairfield Investments and provide same to Ms. Kettle;	0.10

Date	Initials	Description	Hours
12/19/2013	VW	Perform execution and property search as per SWO Search request;	0.40
12/19/2013	VW	Perform property search as per SWO Search request;	0.50
12/19/2013	AM	Review and respond to electronic mail message with Theresa Gray re filing of RC; Electronic mail message to Ken Beallor; Address issues relating to sale of 9 lots to Hadi;	0.10
12/19/2013	SK	Draft security opinions re BMO and Simba; Request and review searches;	11.20

TOTAL HOURS 80.90

OUR FEE: \$25,079.00

Initials	Name	Title	Rate	Hours	Amount
5404	AM	A. Mitchell	Partner	26.50	12,587.50
5212	ASR	A. Roth	Partner	3.70	1,147.00
5715	SK	S. Kettle	Associate	39.80	10,149.00
5767	JL	J. Lehmann	Clerk	9.00	945.00
5720	KB	K. Barker	Clerk	0.60	72.00
5790	LK	L. Klassen	Clerk	0.40	84.00
5050	VW	V. Wood	Clerk	0.90	94.50

TAXABLE DISBURSEMENTS

Meals	96.00	
Couriers	160.26	
Mileage/Parking	176.99	
Agent's Fees	37.00	
Copywork	273.10	
Long Distance Telephone	1.08	
Postage	21.24	
Fax	2.00	
Colour Copies	81.00	
Online Searches - Teranet	189.00	
Visa Charge - Bankruptcy Search/Bank	28.00	
Process Server Fees	74.00	
TOTAL TAXABLE	1139.67	\$1,139.67

NON-TAXABLE DISBURSEMENTS

Miscellaneous - Non Taxable	12.00	
Issue Notice of Motion	127.00	
TOTAL NON-TAXABLE	139.00	\$139.00

TOTAL FEES AND DISBURSEMENTS: \$26,357.67

Harmonized Sales Tax (R119440766)
On Fees \$3,260.27

On Disbursements

\$148.16

TOTAL AMOUNT DUE:

\$29,766.10

E.&O.E.

EXHIBIT "B"
Miller Thomson's Fees

Hours	Year of Call		Rate 2013		Inv.#2538921 Nov 29/13	Inv.#2544942 Dec 17/13	Inv.#2558325 Dec 31/13	Total Invoices
	Year of Call	Rate 2013	Year of Call	Rate 2013				
A. Mitchell					2.00	19.00	26.50	47.50
S. Kettle					0.00	36.40	39.80	76.20
K. Barker - Clerk					0.00	3.60	0.60	4.20
A. Roth					0.00	0.00	3.70	3.70
J. Lehmann - Clerk					0.00	0.00	9.00	9.00
L. Klassen - Clerk					0.00	0.00	0.40	0.40
V. Wood - Clerk					0.00	0.30	0.90	1.20
D. Kavanagh - Clerk					0.00	1.60	0.00	1.60
					2.00	60.90	80.90	143.80

Total \$	Year of Call	Rate 2013	Inv.#2538921 Nov 29/13	Inv.#2544942 Dec 17/13	Inv.#2558325 Dec 31/13	Total Invoices
\$475.00	1994		\$950.00	\$9,025.00	\$12,587.50	\$22,562.50
\$255.00	2007		\$0.00	\$9,282.00	\$10,149.00	\$19,431.00
\$120.00	N/A		\$0.00	\$432.00	\$72.00	\$504.00
\$310.00	2004		\$0.00	\$0.00	\$1,147.00	\$1,147.00
\$105.00	N/A		\$0.00	\$0.00	\$945.00	\$945.00
\$210.00	N/A		\$0.00	\$0.00	\$84.00	\$84.00
\$105.00	N/A		\$0.00	\$31.50	\$94.50	\$126.00
\$140.00	N/A		\$0.00	\$224.00	\$0.00	\$224.00
			\$950.00	\$18,994.50	\$25,079.00	\$45,023.50

Summary	Total \$
Fees	\$950.00
Disbursements	\$13.90
HST	\$125.31
Total	\$1,089.21
	\$22,287.94
	\$29,766.10
	\$45,023.50
	\$2,037.44
	\$6,082.31
	\$53,143.25

KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

AFFIDAVIT OF SHERRY KETTLE

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, Court-appointed
Receiver of Banwell Development Corporation
and Royal Timbers Inc.

TAB “L”



MILLER THOMSON LLP
MILLERTHOMSON.COM

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

T 519.931.3500
F 519.858.8511

January 20, 2014

Via E-mail (Original by Courier)

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

Alissa K. Mitchell
Direct Line: 519.931.3510
amitchell@millerthomson.com

File: 082873.0010

Attention: Stephen N. Cherniak

Dear Sir:

Re: Royal Timbers Inc. ("Royal Timbers")

BDO Canada Limited in its capacity as Court-appointed receiver of the assets, undertakings and properties of Royal Timbers (in that capacity, the "Receiver") pursuant to the Order of the Honourable Mr. Justice Thomas dated June 5, 2013 (the "Appointment Order"), has requested our opinion as to the validity, enforceability and priority of the security granted by Royal Timbers (collectively, the "Security"), in favour of Bank of Montreal ("BMO"), including certain mortgage and related security and the mortgage security granted by Royal Timbers in favour of Simba Group Developments Limited and Patrick D'Amore, now the Estate of Patrick D'Amore (collectively, "Simba").

ASSUMPTIONS AND QUALIFICATIONS

The opinions expressed in this letter are subject to the qualifications and assumptions set forth on Schedule "B" hereto and otherwise set forth herein. In addition, our opinions expressed herein are based upon the searches summarized below.

This opinion relates only to the mortgage security held by BMO and Simba with respect to the lands and premises described on Schedule "A" hereto (the "Commercial Plaza Lands"). BMO holds no mortgage security over lands of Royal Timbers other than the Commercial Plaza Lands.

SEARCHES

We have conducted the following searches with respect to Royal Timbers:

1. **Corporate Search**

We have obtained a Corporation Profile Report for Royal Timbers from the Ontario Ministry of Government Services produced on November 28, 2013, confirming that:

- (a) Royal Timbers was incorporated on June 24, 2005;

- (b) Royal Timbers' Ontario corporation number is 1659462;
- (c) Patrick D'Amore ("**D'Amore**") and Murray Troup ("**Troup**") are listed as the directors of Royal Timbers. D'Amore is the Secretary and Treasurer, and Troup is the President of Royal Timbers;
- (d) Royal Timber's status is "active";

2. **Certificate of Status**

We obtained a Certificate of Status from the Ministry of Government Services of Ontario produced on November 28, 2013 which confirms that Royal Timbers had not been dissolved as at that date.

3. **Bank Act (Canada)**

We conducted a search of registrations under the *Bank Act* against Royal Timbers in the Province of Ontario which search was current as of November 28, 2013. That search disclosed that there were no outstanding registrations against Royal Timbers.

4. **Personal Property Security Act (Ontario) PPSA**

We obtained a search of registrations against Royal Timbers under the PPSA which search was current as of November 27, 2013. That search disclosed one (1) registration which is described on **Schedule "C"** hereto.

5. **Insolvency Search**

We conducted a search of the records of the Office of the Superintendent of Bankruptcy Canada for Royal Timbers for the period 1978 to November 26, 2013. That search disclosed no records.

6. **Executions Search**

We conducted an executions search in the County of Essex (Windsor) against Royal Timbers which search was current as of November 28, 2013. That search disclosed two (2) executions described on **Schedule "D"** hereto. The lien claims asserted by these execution creditors do not relate to the Commercial Plaza Lands.

7. **Real Property Searches**

We have conducted a search of title to the Commercial Plaza Lands. The particulars of the encumbrances and other instruments registered against title to the Commercial Plaza Lands are summarized on **Schedule "E"** hereto.

SECURITY REVIEW

A. BMO SECURITY

Evidence of Indebtedness

1. Commitment Letter

We reviewed a copy of a letter dated February 9, 2006 from BMO to Royal Timbers in respect of BMO's proposal of banking facilities for the construction of the Royal Timbers Centre (the "**Commercial Plaza**") in Windsor, Ontario (the "**Commitment Letter**"). The Commitment Letter names the Borrower as Royal Timbers and the Guarantors as Troup and D'Amore. The Commitment Letter is signed by MacKinnon and Traub on behalf of BMO. The acceptance page attached to the Commitment Letter is dated February 20, 2006 and appears to be signed by Troup and D'Amore, on behalf of Royal Timbers and by Troup and D'Amore in their individual capacities as guarantors.

The Commitment Letter provides for the following credit facilities in relation to Royal Timbers:

- (a) \$2,150,000 non-revolving demand loan, to assist with the construction of the Commercial Plaza with advances available in tranches ("**BMO Facility #1**");
- (b) \$100,000 non-revolving commercial letter of credit, to be issued in favour of local utilities and the municipality relative to the Commercial Plaza ("**BMO Facility #2**"); and
- (c) \$2,150,000 commercial mortgage, to repay Royal Timbers Facility #1 and provide long-term permanent financing for the Commercial Plaza ("**BMO Facility #3**").

2. Letter of Credit Indemnity and Processing Agreement

We reviewed a copy of a Letter of Credit Indemnity and Processing Agreement, dated March 26, 2006 in favour of BMO (the "**LOC Indemnity**"). The LOC Indemnity appears to have been signed by D'Amore and Troup on behalf of Royal Timbers.

Security Documents

For the purposes of providing our opinion, we have reviewed the following documents:

1. Security Agreement

We reviewed a copy of a Security Agreement (the "**BMO GSA**") in favour of BMO dated March 22, 2006. The BMO GSA appears to have been executed by D'Amore and Troup on behalf of Royal Timbers. The BMO GSA purports to grant a security interest in all present and future real and personal property of Royal Timbers.

The BMO GSA purports to secure payment of all present and future indebtedness of Royal Timbers to BMO and interest thereon and for the payment and discharge of all other present



and future liabilities and obligations, direct or indirect, absolute or contingent of Royal Timbers to BMO.

2. Acknowledgment

We reviewed an Acknowledgment dated March 29, 2008 in favour of BMO wherein Royal Timbers acknowledges and agrees, among other things, that notwithstanding the repayment of BMO Facility #1 and the discharge of the BMO Construction Charge (defined below) and the BMO GAR#1 (defined below), the Original Security, as defined therein, remains in full force and effect and secures all of the covenants and obligations of Royal Timbers, as borrower, pursuant to the Commitment Letter and secures the full amount of BMO Facility #3 pursuant to the Commitment Letter.

3. Collateral Charge/Mortgage of Land

We have reviewed a copy of a Charge/Mortgage of Land with respect to the Commercial Plaza Lands registered as instrument no. CE205660 on March 29, 2006 in the principal amount of \$2,250,000.00 payable on demand with interest thereon at BMO's prime rate of interest plus 1% per annum (the "**BMO Construction Charge**").

4. Conventional Charge/Mortgage of Land

We have reviewed a copy of a Charge/Mortgage of Land with respect to the Commercial Plaza Lands registered as instrument no. CE325206 on April 25, 2008 in the principal amount of \$2,080,000.00 with principal and interest (payable at the rate of 6.07% per annum) payable in monthly instalments of \$14,895.33 each (the "**BMO Charge**").

5. Notice of Assignment of Rents

We reviewed a copy of a Notice of Assignment of Rents granted by Royal Timbers in favour of BMO (the "**BMO GAR#1**") in respect of the Commercial Plaza Lands. The BMO GAR#1 was registered as instrument no. CE205661 on March 29, 2006 against title to the Commercial Plaza Lands.

We reviewed a copy of a Notice of Assignment of Rents granted by Royal Timbers in favour of BMO in respect of the Commercial Plaza Lands (the "**BMO GAR #2**"). The BMO GAR#2 was registered as instrument no. CE325207 on April 25, 2008 against title to the Commercial Plaza Lands.

6. Postponements

We reviewed a copy of a Postponement of Interest in favour of BMO registered as instrument no. CE205701 on March 29, 2006 against the Commercial Plaza Lands (the "**Postponement #1**"). Postponement #1 purports to postpone and subordinate a mortgage registered by Simba on December 16, 2003 as instrument no. CE163211 (the "**Simba Charge**") and all existing and future indebtedness secured thereby to the BMO Construction Charge.

We reviewed a copy of a Postponement of Interest in favour of BMO registered as instrument no. CE207474 on April 6, 2006 against Block 106 (the "**Postponement #2**"). Postponement #2 purports to postpone and subordinate the Simba Charge and all existing and future indebtedness secured thereby to the BMO GAR #1.



We reviewed a copy of a Postponement of Interest in favour of BMO registered as instrument no. CE207420 on April 6, 2006 against Block 105 (the "**Postponement #3**"). Postponement #3 purports to postpone and subordinate the Simba Charge and all existing and future indebtedness secured thereby to the BMO GAR #1.

We reviewed a copy of a Postponement of Interest in favour of BMO registered as instrument no. CE325226 on April 25, 2008 against the Commercial Plaza Lands (the "**Postponement #4**"). Postponement #4 purports to postpone and subordinate the Simba Charge and all existing and future indebtedness secured thereby to the BMO Charge.

PPSA REGISTRATIONS

A financing statement was registered in favour of BMO on March 29, 2006 as registration no. 20060329 1703 1462 3039 (File No. 623791548) in respect of collateral classifications "Inventory", "Equipment", "Accounts", "Other" including "Motor Vehicles", whereby the security interest held by BMO as granted by Royal Timbers pursuant to the BMO GSA was perfected. Such security interest has remained continuously and properly perfected since March 29, 2006.

B. SIMBA SECURITY

Charge/Mortgage of Land

We have been provided with a copy of the Simba Charge in the principal amount of \$229,123.47 with interest thereon as 6.0% per annum which was registered against title to the Commercial Plaza Lands as instrument no. CE163211 on August 10, 2005.

OPINIONS

Subject to the assumptions and qualifications set out on Schedule "A" to this letter and otherwise set forth herein, we are of the opinion that:

1. the BMO GSA is valid, binding and enforceable against the Receiver and Royal Timbers;
2. the BMO Construction Charge is valid, binding and enforceable against the Receiver and Royal Timbers;
3. the BMO Charge is valid, binding and enforceable against the Receiver and Royal Timbers;
4. the BMO GAR#1 is valid, binding and enforceable against the Receiver and Royal Timbers
5. the BMO GAR#2 is valid, binding and enforceable against the Receiver and Royal Timbers;
6. Postponement #1 is valid, binding and enforceable against the parties thereto in accordance with its terms;



7. Postponement #2 is valid, binding and enforceable against the parties thereto in accordance with its terms;
8. Postponement #3 is valid, binding and enforceable against the parties thereto in accordance with its terms;
9. Postponement #4 is valid, binding and enforceable against the parties thereto in accordance with its terms; and
10. the Simba Charge is valid, binding and enforceable against the Receiver and Royal Timbers.

This opinion is given for the sole benefit of the Receiver (and its successors and assigns) and may not be relied upon by or distributed to any other person without our prior written consent.

Yours truly,

Miller Thomson LLP



Alissa K. Mitchell
AKM/sj

SCHEDULE "A"
COMMERCIAL PLAZA LANDS

1. Block 105, Plan 12M503, Windsor, Ontario having PIN 01566-0469 (LT); and
2. Block 106, Plan 12M503, Windsor, Ontario having PIN 01566-0479 (LT).



SCHEDULE "B"

GENERAL ASSUMPTIONS

Genuineness and Authenticity

We assume the genuineness of all signatures and the authenticity of all documents or copies thereof.

Equity and other Statutory Limitations

The opinions herein expressed are subject to any equities between the parties of which we have no notice or knowledge.

Proper Corporate Authorization

We assume that the Security has been executed by proper signing officers of Royal Timbers, and BMO or Simba, as the case may be, and duly authorized by all necessary corporate action and that the individuals signing any documents had the legal capacity to do so and that the authorization, execution and delivery of the Security by Royal Timbers and the performance of its obligations thereunder, does not breach any constating or trust documents of Royal Timbers or any laws to which Royal Timbers is subject.

Accuracy of PPSA Register and Public Records

We have assumed the accuracy of all public records, indices and filing systems which we have searched or have caused inquiries to be made and that same are current. We also assume that the registration disclosed by the PPSA search which we have conducted accurately reflect the contents of and all registrations affecting Royal Timbers made by all secured parties.

Laws of Ontario

The opinions expressed herein are limited to property of Royal Timbers located in the Province of Ontario. The opinions expressed herein are, as well, limited to the laws of the Province of Ontario and all federal laws applicable in the Province of Ontario.



Attachment

The Province of Ontario does not have a system for registering absolute title to personal property, so that we cannot confirm that Royal Timbers holds (or held, as the case may be) title respectively to any of the personal property subject to the Security.

We assume, therefore, that Royal Timbers either owned or had rights akin to ownership in respect of the personal property which is the subject matter of the Security to permit the security interests created in favour of BMO or Simba, as the case may be, to attach within the meaning of the PPSA.

Consideration and Outstanding Indebtedness

We assume that consideration was given by BMO and Simba to Royal Timbers to support the granting of the Security and that Royal Timbers remain indebted to BMO and Simba.

GENERAL QUALIFICATIONS

1. The effect of any applicable bankruptcy, insolvency, reorganization, preference, moratorium, liquidation or similar laws relating to or affecting creditors' rights generally.
2. The equitable and statutory powers of the courts to stay proceedings before them.
3. The execution of judgments and equitable remedies, such as specific performance and injunctions, which are available only at the discretion of a court of competent jurisdiction.
4. The equitable and statutory powers of the courts to relieve against penalties or forfeiture and to impose such terms as the court sees fit.
5. The powers of the Receiver being circumscribed by or subject to the review of the court.

SCHEDULE "C"

SUMMARY OF PPSA REGISTRATIONS AGAINST ROYAL TIMBERS INC
 FILE CURRENCY DATE OF NOVEMBER 27, 2013

REGISTRATION NO. AND FILE NO.	BUSINESS DEBTOR NAME	SECURED PARTY	COLLATERAL CLASSIFICATION	COLLATERAL DESCRIPTION AND MISCELLANEOUS
20060329 1703 1462 3039 File No. 623791548 Reg. Period: 12 years Expiry Date: March 29, 2018	Royal Timbers Inc.	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	

Schedule "D"
EXECUTION SEARCHES

An execution search conducted with the Sheriff of the County of Essex (Windsor) against Royal Timbers Inc. as of November 28, 2013 revealed the following executions:

<u>Registrant</u>	<u>Execution No.</u>	<u>Issue Date</u>	<u>Description</u>
J. Lepera Contracting Inc.	11-0002871	December 23, 2011	Judgment (Court File No. CV-07-10224) in the amount of \$55,000.00 together with interest at the rate of 3% per annum, starting October 18, 2011. Costs for lawyers, issuance, filing and garnishment total \$535.00.
M.R.Dunn Contractors Ltd.	13-0000828	May 8, 2013	Judgment (Court File No. SC-10-00036716-0000) in the amount of \$47,893.46 plus costs of \$2,000.00 together with interest at the rate of 26.8 per annum, starting May 11, 2012. Costs for issuing and filing fees total \$135.00.

Schedule "E"

**ENCUMBRANCES AND INSTRUMENTS REGISTERED
AGAINST TITLE TO THE COMMERCIAL PLAZA LANDS**

Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.
5. Instrument No. CE207420 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.

Block 1 06 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.

5. Instrument No. CE207474 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.
10. Instrument No. CE513669 - Notice of Lease given by Royal Timbers Inc. to Solar Power Network Inc. registered on April 11, 2012.

KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

MOTION RECORD
(RETURNABLE JANUARY 27, 2014)

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, Court-appointed Receiver of Banwell Development Corporation and Royal Timbers Inc.