

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

**MOTION RECORD
(MOTION RETURNABLE JULY 23, 2013)**

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SERVICE LIST

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TAB “1”

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

NOTICE OF MOTION
(returnable July 23, 2013)

BDO CANADA LIMITED (“**BDO**”), in its capacity as Court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of Banwell Development Corporation (“**Banwell**”) and Royal Timbers Inc. (“**Royal Timbers**” and collectively with Banwell, the “**Companies**”) pursuant to the Order of The Honourable Justice Thomas dated June 5, 2013 (the “**Appointment Order**”), will make a motion to The Honourable Justice Thomas to be heard on Tuesday, July 23, 2013 at 9:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 80 Dundas Street, London, Ontario.

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

THE MOTION IS FOR:

1. a Sales Process Order substantially in the form appended hereto as **Schedule “A”** (the “**Sales Process 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 (the "**Consolidated Action**") shall be set down for trial as required by the Order of Justice Gates dated May 29, 2013 (the "**Gates Order**") 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;

2. an Omnibus Approval and Vesting Order substantially in the form appended hereto as **Schedule “B”** (the “**Omnibus Approval and Vesting Order**”):

- (a) prospectively approving the sale transactions (each such transaction, a “**Transaction**” and together, the “**Transactions**”) in respect of the Banwell Lots, more particularly described on Schedule “A” to the Omnibus Approval and Vesting Order;
- (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, together with any amendments or modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as a “**Lot 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” to the

Omnibus Approval and Vesting Order (the “**Receiver’s Certificate**”), all of Banwell's right, title and interest in and to the Lot(s) described in each applicable Lot 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” and in paragraph 2 of the Omnibus Approval and Vesting Order, save and except for those encumbrances listed on Schedule “D” of the Omnibus Approval and Vesting Order, in relation to the Purchased Assets,

THE GROUNDS FOR THE MOTION ARE:

Lot Sales Process

1. The Receiver proposes that both Murray Troup (“**Troup**”) and Scott D’Amore (“**Scott**”) solicit interest in the Banwell Lots as agent for the Receiver and receive compensation on a per sales lot basis at the rate of \$2,500/Lot;
2. 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; and
 - (d) A sales commission of \$2,500 per lot is reasonable relative to market rates and the expected range of purchase price for each Lot.
3. The Form of Lot Sales Agreement incorporates Purchaser’s Building Covenants and Deed Restrictions applicable to the sale of all Lots in the Royal Timbers Subdivision and includes terms and conditions consistent with a sale by a Court appointed Receiver.

Commercial Plaza Sales Process

4. The Receiver proposes to conduct the Commercial Plaza Sales Process as follows:
- (a) conduct an Invitation for Offers process to maximize exposure of the Commercial Plaza to the market;
 - (b) 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 and 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;
 - (c) utilize the resources of both Wintru and Scott to solicit other interested parties;
 - (d) parties expressing an interest in obtaining detailed information about the Commercial Plaza will be required to execute a Confidentiality and Non-Disclosure Agreement (“**NDA**”);
 - (e) a Confidential Information Memorandum (“**CIM**”) containing information relating to the Commercial Plaza, including photographs, summary of tenant leases, historical financial information and terms and conditions of the Receiver’s sale process will be prepared and provided to any interested party who has executed the NDA;
 - (f) an electronic data room (“**data room**”) will be established 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., with access to the data room controlled and monitored by the Receiver.
 - (g) 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;
 - (h) the terms and conditions of the sale will include, *inter alia*, the following:
 - (i) a statement that the process should not be construed as a ‘Sale by Tender’;

- (ii) the highest or any offer will not necessarily be accepted and the Receiver reserves the right to reject any or all offers without explanation;
- (iii) the Receiver shall establish a deadline for the receipt of offers, but shall have the discretion to accept an offer either before or after the deadline;
- (iv) acceptance of all offers is subject to approval of the Court;
- (v) a deposit in certified funds equal to ten (10) per cent of the offer price must accompany all offers;
- (vi) 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;
- (vii) sale is on an "as is, where is" basis without representations and warranties of any kind;
- (viii) offer to be submitted using the draft form Agreement of Purchase and Sale contained in the data room; and
- (ix) transfer of title to be by way of vesting order.

Omnibus Approval and Vesting Order

5. Pursuant to paragraph 3(l) of the Appointment Order, the Receiver has the power to, among other things, sell, convey, transfer, lease or assign any of the assets, undertakings and properties of the Companies (the "**Property**") or any part or parts thereof in the ordinary course of business without the approval of the Court in respect of any transaction not exceeding \$50,000 provided that the aggregate consideration for all such transactions does not exceed \$200,000, and otherwise the Receiver must obtain Court approval;

6. Pursuant to paragraph 3(m) of the Appointment Order, the Receiver may apply for a vesting order or other orders to convey title to the Property to a purchaser free and clear of any liens or encumbrances affecting the Property;
7. 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;
8. The Receiver will avoid the cost and expense associated with returning to Court for approval of each individual Lot sale if the Omnibus Approval and Vesting Order is granted;
9. 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 and expects to have the Land Registrar's preapproval and acceptance of the form of Omnibus Approval and Vesting Order and the form of Receiver's Certificate prior to the return of the Receiver's motion herein;
10. 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 Purchasers, a report advising of the purchase price for each Lot;
11. The Receiver has acted and continues to act honestly and in good faith;
12. The Receiver recommends that the Court prospectively approve the Transactions;
13. The Receiver recommends and requests that the Court prospectively authorize the execution of the Lot Sale Agreement for each Transaction, together with any amendments or modifications thereto deemed necessary by the Receiver;
14. The Receiver requests that this Honourable Court direct the Receiver to complete the Transactions and to grant an Order vesting the applicable Lot(s) in favour of the applicable Purchaser upon the delivery by the Receiver to such Purchaser of a Receiver's Certificate, free and clear of all encumbrances including those listed on Schedule "C" and in paragraph 2 of the Omnibus Approval and Vesting Order, save

and except for those encumbrances listed on Schedule "D" of the Omnibus Approval and Vesting Order, in relation to the Purchased Assets;

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

Property Management

16. In view of Wintru's knowledge of and previous experience with the Commercial Plaza, the Receiver recommends to the Court that Wintru continue as property manager of the Commercial Plaza during the Commercial Plaza Sales Process;
17. The Receiver anticipates a sale of the Commercial Plaza within the next few months and, thus, does not believe it is prudent to change the property manager at this time;
18. The Receiver recommends that it be authorized to enter into a property management agreement with Wintru in the form attached as Appendix E to the Second Report;
19. The Receiver believes that the property management fee and leasing commission proposed to be paid to Wintru are reasonable and reflect market conditions and rates;
20. Pursuant to subparagraph 3(d), the Receiver is empowered to retain such persons as it deems necessary to assist the Receiver with the exercise of the Receiver's powers and duties;
21. As agent of the Receiver, Wintru has no control over or possession of the revenues of the Commercial Plaza and is not permitted to execute documents or otherwise bind the Receiver;

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

22. The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
23. The Receiver seeks approval of the Second Report and the Receiver's activities detailed therein;
24. The Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements are detailed in the Second Report;

Approval of Professional Fees

25. 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;
26. 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;
27. The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
28. It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and MT in connection with these receivership proceedings;

Sealing Order

29. The unredacted version of the Second Report filed with the Court contains commercially sensitive information which if disclosed could undermine the integrity of the marketing and sale process of the Banwell Lots;
30. No party will be prejudiced if the unredacted information in the Second Report filed with the Court remains sealed until further order of the Court;
31. S. 137(2) of the CJA;

The Gates Order

32. The Appointment Order imposed a stay of proceedings in respect of all proceedings to which the Companies or either of them are a party (the "**Stay**");
33. Pursuant to the Gates Order, the Consolidated Action must be set down for trial by April 30, 2014, otherwise it will be dismissed;
34. To ensure that the parties to the Consolidated Action are not prejudiced by the Stay and the Consolidated Action is not in jeopardy of being dismissed, the Receiver recommends that the date by which the Consolidated Action be set down for trial be extended by the length of the Stay.

Other

35. The Appointment Order;
36. Section 101 of the CJA;
37. *Business Corporations Act*, R.S.O. 1990, c. B.16, ss. 248(3)(b) and 209;
38. Rules 1.04, 1.05, 3.02(1), 16 and 37 of the Ontario *Rules of Civil Procedure*; and
39. Such other grounds as counsel may advise and this Honourable Court may permit.

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

1. the Second Report and the appendices attached thereto dated July 12, 2013;
2. the fees Affidavit of Stephen N. Cherniak sworn July 9, 2013 and the exhibits attached thereto;
3. the fees Affidavit of Sherry A. Kettle sworn July 12, 2013 and the exhibits attached thereto; and
4. all other pleadings and materials previously filed in these proceedings; and
5. such further and other evidence as counsel may advise and this Honourable Court may permit.

July 12, 2013

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Applicant

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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 JULY 23, 2013)

MILLER THOMSON LLP

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

TAB "A"

SCHEDULE "A"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE

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TUESDAY, THE 23rd DAY

JUSTICE THOMAS

)

OF JULY, 2013

)

B E T W E E N:

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

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 |) | Signature _____ |
| AND DELIVERED |) | |
| 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 Banwell 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 least 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

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

SALES PROCESS ORDER

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

TAB “B”

ONTARIO
SUPERIOR COURT OF JUSTICE

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

B E T W E E N:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

OMNIBUS APPROVAL AND VESTING ORDER

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

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

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

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

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

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

1. THIS COURT ORDERS AND DECLARES that each Transaction is hereby prospectively approved, and the execution of each applicable Sale Agreement by the Receiver is hereby authorized and approved, with any amendments or modifications thereto deemed necessary by the Receiver. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of any Transaction and for the conveyance of the Purchased Assets to each applicable Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto, all of Banwell's right, title and interest in and to the Purchased Assets described in the applicable Sale Agreement and listed on Exhibit "A" of the applicable Receiver's Certificate in respect of such Sale Agreement shall vest absolutely in and to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Thomas dated June

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

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

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

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

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

7. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Justice, Superior Court of Justice

Schedule "A" – Banwell Lots

Legal Description

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

| | | | | | | |
|----------------|-----|-----|--|------|---|------|
| Plan 12M-533 | Lot | 39 | | 1566 | - | 0605 |
| Plan 12M-533 | Lot | 43 | | 1566 | - | 0609 |
| Plan 12M-533 | Lot | 48 | | 1566 | - | 0614 |
| Plan 12M-533 | Lot | 49 | | 1566 | - | 0615 |
| Plan 12M-533 | Lot | 50 | | 1566 | - | 0616 |
| Plan 12M-533 | Lot | 51 | | 1566 | - | 0617 |
| Plan 12M-533 | Lot | 103 | | 1566 | - | 0669 |
| Plan 12M-533 | Lot | 104 | | 1566 | - | 0670 |
| Plan 12M-533 | Lot | 105 | | 1566 | - | 0671 |
| Plan 12M-533 | Lot | 106 | | 1566 | - | 0672 |
| Plan 12M-533 | Lot | 116 | | 1566 | - | 0682 |
| Plan 12M-533 | Lot | 117 | | 1566 | - | 0683 |
| | | | | | | |
| | | | | | | |
| 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 | 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

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Alissa K. Mitchell LSUC#: 35104E
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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

1. 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.
2. 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.
3. Instrument No. CE569187 - Notice of Court Order.
4. 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.
5. Instrument No. CE171657 – Postponement registered September 20, 2005.
6. Instrument No. CE171658 – Postponement registered September 20, 2005.
7. 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

OMNIBUS APPROVAL AND VESTING ORDER

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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

**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 Banwell;
and

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

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

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

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

6. Receiver's sale process for residential building lots

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

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

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

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

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

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

6.12 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- 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

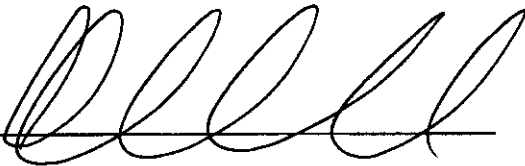
10.1. The Receiver recommends and respectfully requests that this Court:

- 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 a solid horizontal line.

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

TAB “A”

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

JUSTICE

) *WEDNESDAY*, THE *5th*
Bruce G. Thomas)

DAY OF JUNE 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

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

Respondents and Bank of Montreal ("BMO") and the Consent of the Respondents Banwell Development Corporation, Royal Timbers Inc. (hereinafter referred to as the "Corporations") and the respondents Scott D'Amore Executor for the Estate of Patrick D'Amore, Scott D'Amore ("Scott"), Kevin D'Amore ("Kevin"), 928579 Ontario Limited ("928579"), and of Simba Group Developments Limited and BMO and on reading the consent of BDO Canada Limited. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 248(3)(b) and 209 of the *Business Corporations Act* R.S.O. 1990 c. B16 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, BDO Canada Limited is hereby appointed Receiver-Manager, without security, of all of the assets, undertakings and properties of the Corporations acquired for, or used in relation to a business carried on by the Corporations, including all proceeds thereof (the "**Property**"). The Receivership shall not terminate prior to repayment of the amounts owing by the Corporations to BMO. The Receiver's mandate is to forthwith refinance or realize upon the Property as may be required in order to repay the debts owing by the Corporations to BMO and to pay realty taxes owing upon the Property. For greater certainty, the implementation of the July 26, 2012 Order will not delay or hinder the Receiver from carrying out its mandate.

RECEIVER'S POWERS

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

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

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

- b. to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c. to manage, operate, and carry on the business of the Corporations, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Corporations;
- d. to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- e. to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Corporations or any part or parts thereof;
- f. to receive and collect all monies and accounts now owed or hereafter owing to the Corporations and to exercise all remedies of the Corporations in collecting such monies, including, without limitation, to enforce any security held by the Corporations;
- g. to settle, extend or compromise any indebtedness owing to the Corporations;
- h. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Corporations, for any purpose pursuant to this Order;

- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Corporations;
- j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Corporations, the Property or the Receiver, and to settle or compromise any such proceedings save and except for the proceedings that relate to the July 26, 2012 Order. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- k. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- l. to sell, convey, transfer, lease or assign the Property or any part or parts thereof in the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply. The Receiver is permitted to sell, convey or transfer the assets of Banwell Development Corporation and to use the proceeds to pay the debts of Royal Timbers Inc.

- m. to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- n. to report to, meet with and discuss with BMO and such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- o. to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- p. to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Corporations;
- q. to exercise any shareholder, partnership, joint venture or other rights which the Corporations may have; and
- r. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Corporations, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith

advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

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

REPORT TO COURT

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

FINANCIAL REPORTING TO STAKEHOLDERS

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE CORPORATIONS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Corporations shall remain the employees of the Corporations until such time as the Receiver, on the Corporation's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities other than such amounts as the Receiver may specifically agree in writing to pay, or under the *Wage Earner Protection Program Act*.

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

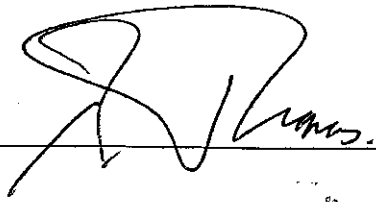
24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

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

GENERAL

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

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| ENTERED AT WINDSOR | |
| In Book No. | 24 |
| Document No. | 729 |
| MAY - 5 2013 | |
| VB | |



 JUSTICE J. J. WILLIAMS

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO.

AMOUNT \$ _____

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

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

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

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

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

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

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

DATED the 5th day of June, 2013.

BDO Canada Limited

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

Per:

Name:

Title:

KEVIN D'AMORE

-and- BANWELL DEVELOPMENT
CORPORATION et al
Defendants

Plaintiff

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDSOR

ORDER
~~AF/DAVITON/SERVICE~~

ROBINS APPELBY & 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”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

May 29, 2013

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Appendices

- Appendix A** - Parcel Register for Lot 44
- Appendix B** - Search results under the PPSA for Banwell and Royal Timbers with a file currency date of May 27, 2013
- Appendix C** - Execution Certificates dated May 28, 2013 for Banwell and Royal Timbers along with the Writ Details Reports dated May 28, 2013 for Royal Timbers
- Appendix D** - Endorsement of The Honourable Justice Thomas dated May 15, 2013

1. Introduction and Background

1.1 Introduction

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

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

1.2 Background

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

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

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

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

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

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

- (a) Take possession of and exercise control over all of the Property.
- (b) Take possession of and exercise control of any and all proceeds, receipts and disbursements arising out of or from the Property.
- (c) Receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, changing the locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable.
- (d) Manage, operate and carry on the business of the Companies, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Companies.
- (e) Receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting

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

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

2. Purpose of the Proposed Receiver's First Report

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

3. Proposed Receiver's Activities

- 3.1 In anticipation of the Appointment Order being granted on June 5, 2013, the Proposed Receiver seeks approval to enter into and complete the Transaction as part of its anticipated mandate to facilitate the sale of the Property and repayment of the obligations of the Companies to BMO.
- 3.2 An arm's length party, Kirson, as purchaser, entered into the APS with Banwell, as vendor, for the purchase of Lot 44. Prior to completing a sale of Lot 44 to Kirson pursuant to the APS, Kirson constructed a home on lands comprising Lot 44 for purposes of ultimate re-sale of the home and lands comprising Lot 44. A copy of the APS is attached as **Appendix "A" to the Confidential Supplement**.
- 3.3 After construction of the home on Lot 44 by Kirson, Banwell has been unable to complete the Transaction as proceeds from a sale of Lot 44 are insufficient to satisfy the obligations due to the holders of the mortgages registered against title the Lands, including Lot 44.
- 3.4 On May 28, 2013, Banwell, as vendor under the APS, assigned its interests under the APS to BDO, as Proposed Receiver, in order to facilitate the completion of the Transaction to Kirson without further delay. Kirson and the Proposed Receiver amended the APS (the "**Amended APS**") to provide for terms and conditions of sale consistent with a sale by a court-appointed Receiver. A copy of the Assignment and Amendment Agreement is attached as **Appendix "B" to the Confidential Supplement**. A copy of the Amended APS is attached as **Appendix "C" to the Confidential Supplement**.

4. Proposed Receiver's Sale of Lot 44

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

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

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

5. Recommendations

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

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

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

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



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

TAB “C

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

June 20, 2013

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Appendices

Appendix A - Appointment Order dated June 5, 2013

1. Introduction and Background

1.1 Introduction

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

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

1.2 Background

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

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

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

2. Terms of Reference

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

3. Purpose of the Receiver's Second Report

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

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

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

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

4. Receiver's Activities

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

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

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

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

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

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

6. Recommendations

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

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

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


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

TAB“D”

RENT ROLL

Property Owner: Royal Timbers Inc.
Property Address: 3335 Banwell Road

| UNIT # | TENANT | LEASE TYPE | TERM | LEASE COMMENCE DATE | RENT COMMENCE DATE | TERMINATION DATE | SQ.FT | Date of Increase | RATE/SQ.FT (\$) | MONTHLY RATE (\$) | RENT TERM 1 (\$/ANNUALLY) | RENT TERM 2 (\$/ANNUALLY) | RENT TERM 3 (\$/ANNUALLY) | COMMON FEES (\$/ANNUALLY (Est. \$8.50/sq.ft.)) |
|--------|---------------------------|------------|--------------|---------------------|--------------------|------------------|----------|-----------------------|-----------------|-------------------|---------------------------|---------------------------|---------------------------|--|
| 100 | For Lease | N/N/N | | | | | 1,536.00 | | \$ 18.00 | | | | | |
| 200 | The Loco Thai Lounge Inc. | N/N/N | 8YRS & 3 MTH | 1/10/2012 | 1/10/2012 | 3/31/2021 | 1,536.00 | 10/01/2012-3/31/2014 | \$18.00 X 15 MT | \$2,304.00 | \$27,648.00 | | | \$13,056.0 |
| 300 | Edward Jones | N/N/N | 5YRS & 2 MTH | 7/1/2008 | 9/1/2008 | 6/30/2013 | 1,178.00 | 09/01/2008-06-31/2011 | \$14.00 X 3YRS | \$1,374.33 | \$16,492.00 | | | \$10,013.0 |
| | | | | | | | | | \$20.00 X 2 YRS | \$2,560.00 | \$30,720.00 | | | |
| | | | | | | | | | \$15.00 X 1YR | \$1,472.50 | \$17,670.00 | | | |
| | | | | | | | | | \$16.00 X 1YR | \$1,570.67 | \$18,848.00 | | | |
| | | | | | | | | | \$16.00 X 5YR | \$1,570.67 | \$18,848.00 | | | |
| 400 | For Lease | N/N/N | | | | | | | | | | | | |
| 500 | Alexander's Day Care | N/N/N | 10YRS | 5/1/2007 | 5/1/2007 | 2/28/2017 | 6,150.00 | 06/01/07- 05/31/08 | \$18.00 X 1YR | \$9,225.00 | \$110,700.00 | | | \$52,275.0 |
| | | | | | | | | 06/01/08 - 05/31/09 | \$19.00 X 1YR | \$9,737.50 | \$116,850.00 | | | |
| | | | | | | | | 06/1/09-03/31/2017 | \$20.00 X 8YR | \$10,250.00 | \$123,000.00 | | | |

Property Owner: Royal Timbers Inc.
Property Address: 3993 Wildwood

| UNIT # | TENANT | LEASE TYPE | TERM | LEASE COMMENCE DATE | RENT COMMENCE DATE | TERMINA. DATE | SQ.FT | Date of Increase | RATE/SQ.FT (\$) | MONTHLY RATE (\$) | RENT TERM 1 (\$/ANNUALLY) | RENT TERM 2 (\$/ANNUALLY) | RENT TERM 3 (\$/ANNUALLY) | COMMON FEES (\$/ANNUALLY (Est. \$7.00/sq.ft.)) |
|--------|-------------------------|------------|--------|---------------------|--------------------|---------------|----------|------------------|------------------|-------------------|---------------------------|---------------------------|---------------------------|--|
| 100 | Mac's Convenience Store | N/N/N | 10 YRS | 5/1/2006 | 5/1/2006 | 4/30/2011 | 3,000.00 | | \$25.00 x 10 yrs | \$6,250.00 | \$75,000.00 | | | \$10,867.4 |
| | | | | 5/1/2011 | 5/1/2011 | 4/30/2016 | | | \$27.00 x 5 yrs | \$6,750.00 | \$81,000.00 | | | |

TAB "E

PROPERTY MANAGEMENT AGREEMENT

THIS AGREEMENT made effective as of the 5th day of June, 2013.

BETWEEN:

BDO CANADA LIMITED solely in its capacity as court-appointed receiver and manager of Banwell Development Corporation and Royal Timbers Inc.

(the "Receiver")

- and -

WINTRU DEVELOPMENTS INC.

(the "Manager")

RECITALS:

- A. The Manager is, *inter alia*, engaged in the business of managing, operating, leasing and maintaining real estate;
- B. The Receiver was appointed receiver and manager of the property, assets and undertaking of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers") pursuant to an order of the Honourable Justice Thomas of the Ontario Superior Court of Justice dated June 5, 2013 (the "Appointment Order");
- C. The Receiver wishes the Manager to undertake and perform all management and maintenance operations at certain commercial property owned by Royal Timbers in accordance with the terms of this Agreement.

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

ARTICLE 1 - DEFINITIONS, APPOINTMENTS & ACCEPTANCE

1.1 Definitions

As used herein, the following terms shall have the following meanings:

- (a) "Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person is deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the Receivership of voting

securities, by contract or otherwise and the term “controlled” has a corresponding meaning;

- (b) “Agreement” means this Property Management Agreement;
- (c) “Appointment Order” has the meaning set forth in the recitals and as may be amended from time to time;
- (d) “Buildings” means the commercial building located on the Lands municipally known as 3335 Banwell Road, Windsor, Ontario and 3993 Wildwood Drive, Windsor, Ontario, County of Essex, and all other fixtures, amenities and improvements constructed on the Lands in connection therewith;
- (e) “Business Day” means any day of the week excluding Saturday, Sunday and statutory holidays in the Province of Ontario;
- (f) “Commencement Date” means June 5, 2013;
- (g) “Event of Insolvency” means any event whereby a party commits an act of insolvency, becomes bankrupt, makes a general arrangement with its creditors or becomes subject to the provisions of the *Winding-up and Restructuring Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada), or shall go into liquidation, either voluntary or under an order of a court of competent jurisdiction, or otherwise acknowledges its insolvency, or whereby a liquidator, receiver, receiver and manager or trustee in bankruptcy is appointed to or of it or of any substantial part of its property and assets with the consent or acquiescence of it or whereby such appointment shall remain unvacated and unstayed for thirty (30) days after written notice thereof from one party to the other party, or whereby an encumbrancer takes possession of the party’s property and assets or any substantial part thereof, or whereby a distress or execution or other similar process is levied or enforced upon or against the party or any substantial part of its property and assets and the same remains unsatisfied for such period as would permit the same to be sold;
- (h) “Gross Revenues” means the total income generated from the Property from all sources, including, without limitation, rents, amounts received for the use of parking or storage spaces, collected chargebacks and all other income whatsoever generated from Tenants or otherwise from the Property, except for the following:
 - (1) security deposits and utility deposits (unless such deposits have been applied as rental income) or other refundable sums;
 - (2) rents (including payments and estimated payments of additional rent such as real estate taxes and common area maintenance charges) paid in advance until the month in which such payments or estimated payments are to apply as rental;
 - (3) the principal amount of loan repayments by tenants; and

(4) any interest income.

For the sake of clarity, Gross Revenues include lost rent insurance payments, but do not otherwise include insurance proceeds received as a result of damage to or destruction of any Property and Gross Revenues do not include any sales or value added tax on rents (including, without limitation, HST);

- (i) "Lands" means the real property on which the Buildings are located and described on Schedule "A" hereto;
- (j) "Leases" means all leases of space in the Property, all agreements and offers to lease space in the Property, and all licences, concessions or occupancy agreements with respect to space in the Property;
- (k) "Manager's Duties" means the management duties of the Manager as specifically set out in this Agreement;
- (l) "Person" includes any individual, partnership, trustee, trust, unincorporated association, corporation, firm, body corporate, joint venture, association or syndicate;
- (m) "Property" means the Lands and the Buildings;
- (n) "Property Expenses" means all costs and expenses relating to the management, maintenance and operation of the Property;
- (o) "Property Management Service Fees" means a fee equal to five percent (5%) of the Gross Revenues of the Property;
- (p) "Reporting Period" means the period commencing on the first day of a particular calendar month and ending on the last day of such particular calendar month;
- (q) "Tenant" means any tenant, licensee, concessionaire or occupant under a Lease;
- (r) "Term" means the period commencing on the Commencement Date and ending on the Termination Date; and
- (s) "Termination Date" means the date upon which this Agreement is terminated pursuant to Section 6.1.

1.2 Additional Definitions

In addition, any terms defined in the body of this Agreement shall have the meanings as defined herein.

1.3 Appointment and Acceptance

The Receiver hereby appoints the Manager as the manager of the Property, and the Manager hereby accepts such appointment, with the sole and exclusive right and obligation to undertake and perform all of the Manager's Duties, as an independent contractor and upon and subject to the terms hereof, for the Term.

The Receiver acknowledges and agrees that the business of the Manager and its Affiliates includes the management of commercial properties as well as other forms of real estate. As such, this Agreement shall in no way restrict the business of the Manager or its Affiliates. Notwithstanding its interest in other properties, whether as owner or manager, the Manager agrees to act diligently and in good faith in the performance of the Manager's Duties hereunder.

ARTICLE 2 - TERM

2.1 Term

The term of this Agreement shall be for the Term.

ARTICLE 3 - DUTIES AND RESPONSIBILITIES OF THE MANAGER

3.1 General

The Manager shall have full responsibility for the management, operation, maintenance and leasing of the Property as provided for herein during the Term and the Manager shall perform its duties and exercise the powers and authorities herein granted in an efficient and economical manner, for the account and at the expense of the Receiver (except where expressly provided to the contrary), subject to the Receiver's direction and the terms and provisions of this Agreement, the Appointment Order and any further Order of the Court. In all events, the Manager shall perform its duties and responsibilities hereunder in the same manner as would a prudent manager of similar quality commercial developments located in the geographic proximity of the Property.

In performing its duties pursuant to this Agreement, the Manager shall deal at "arm's length" with all third parties and, except as expressly authorized (i) under the provisions of this Agreement; (ii) pursuant to the Appointment Order; or (iii) pursuant to any further Order of the Court, shall not make any payment to or enter into any arrangement with respect to any portion of the Property with any of the Manager's Affiliates. Subject to the foregoing, the Manager and its Affiliates shall be entitled to submit a bid for the performance of any work at the Property for which competitive bids are obtained, if any.

3.2 Collections, etc. from Tenants

The Manager shall act diligently to collect all rents, deposits and other charges, including recoveries and/or escalations, which may at any time become due from any Tenant or from any other Person in connection with the use of the Property or any portion thereof. All such collections shall be promptly remitted to the Receiver.

3.3 Maintenance, Repair, and Leasing

The Manager shall at the Receiver's expense, maintain, repair and lease the Property in the same manner as would a prudent Receiver of similar quality property in the City of Windsor, taking into account size, age and location, and to that end, shall make periodic inspections of the Property, and shall arrange for and supervise the making or installation of

such maintenance, repairs, improvements and alterations, and shall undertake leasing activities as may be approved by the Receiver.

3.4 Tenant Complaints

The Manager shall receive the complaints of Tenants of the Property and shall attend to such complaints subject to the limitations imposed by or pursuant to this Agreement.

3.5 Licence and Permits

The Manager shall obtain, at the Receiver's expense, and renew as necessary, all licences, permits and approvals which may be required in connection with the operation and maintenance of the Property and in compliance with all restrictions registered on title to the Lands and all laws and regulations of applicable governmental authorities in the course of said operation and maintenance.

3.6 Supplies and Equipment

The Manager shall, for the account and at the expense of the Receiver, purchase, provide and pay for all janitorial and maintenance supplies, tools and equipment necessary to the efficient and economical operation and maintenance of the Property. All such supplies, tools and equipment shall be delivered to and stored at the Property and shall be used only in connection with the management, operation and maintenance of the Property. The Manager shall use commercially reasonable efforts to purchase all goods, supplies and services at the lowest cost available from reputable sources.

3.7 Right to Contract on Behalf of Receiver

The Manager shall not have the right to contract on behalf of the Receiver in any capacity.

3.8 Payment of Contracts and Suppliers

The Manager shall promptly submit all invoices for all Property Expenses to the Receiver for payment.

3.9 Approval and Execution of Leases

Unless otherwise specifically directed by the Receiver, all advertising, promotion and negotiations of Leases and lease renewals shall be the direct responsibility of the Manager in consultation with and subject, at all times, to the approval of the Receiver. The Manager shall use diligent efforts to perform all of the landlord's covenants and obligations contained in the Leases. Notwithstanding the foregoing and for greater certainty, the Manager does not have the authority to bind and commit the Receiver with respect to leasing matters and shall not execute Leases or any renewals thereof on behalf of the Receiver. The Receiver retains sole authority for the approval and execution of the Leases or any renewals thereof.

3.10 Notice to Receiver

The Manager shall notify the Receiver immediately of any lawsuit, expropriation proceeding, rezoning or other governmental order or action or any threat thereof that becomes known to the Manager that might adversely affect the Property or any interest of the Receiver

3.11 Indemnification of Receiver

The Manager shall indemnify and hold harmless the Receiver and each officer, director and employee thereof, against any loss, expense, damage, claim, liability, obligation, judgment or injury, arising directly or indirectly, in whole or in part out of the wilful misconduct or gross negligence of the Manager, or any of its officers, directors or employees, in connection with this Agreement or the Manager's services or work hereunder (except to the extent covered by the insurance of the Receiver), whether within or beyond the scope of its duties or authority hereunder. The provisions of this Section 3.12 shall survive termination of this Agreement.

3.12 Taxes and Assessments

The Receiver will have sole responsibility for payment of all taxes, assessments, rents and other impositions applicable to the Property.

3.13 Confidentiality

The Manager shall not, either while this Agreement is in force or at any time thereafter, voluntarily disclose to any Person any information concerning the private internal affairs of the Receiver, Banwell and/or Royal Timbers other than with the Receiver's express written prior approval and the Manager shall not, either while this Agreement is in force or thereafter, use any such information for its own benefit or to the detriment of the Receiver and, to the extent that it is within the reasonable power of the Manager to do so, the Manager will ensure that no such information is so disclosed or used by its officers, employees, or agents, provided that nothing in this Section shall preclude disclosure of such information by the Manager in pleadings or in evidence in the course of any legal proceedings between the Manager and the Receiver or any other legal proceedings under the circumstances whereby the Manager is obligated by law to disclose such information provided the Manager gives immediate written notice and details of such disclosure and the circumstances of such disclosure to the Receiver.

ARTICLE 4 - ACCOUNTING RECORD KEEPING

4.1 Accounting Office

The Manager, at its own expense, shall maintain or cause to be maintained at the Manager's accounting office, adequate books and records in connection with the management of the Property. The Receiver shall have the right and at all reasonable times during normal business hours to audit, examine and make copies of or extracts from the books of accounts maintained by the Manager pursuant to this Agreement. Such right may be exercised through any agent or employee designated by the Receiver.

4.2 Receipts and Records

The Manager shall at all times during the term of this Agreement secure and maintain at its accounting office copies of all invoices for Property Expenses, copies of all Leases, correspondence, contracts, inventories, records of rental income, deposits, land charges and warranties with respect to the Property and its operation. The Manager shall at all times keep and maintain in accordance with accounting principles approved by the Receiver and consistently applied, full, true and accurate books of accounts fully reflecting all matters relating to the Property, including all income expenditures, assets and liabilities thereof. The books of account shall be kept in such a manner as to clearly separate all income and expenses and to identify from which sources they are attributable.

4.3 Monthly Reports

The Manager shall render to the Receiver within fifteen (15) days after the close of each Reporting Period an unaudited balance sheet and income statement, a brief variance analysis, a leasing activity report, an operational report, a summary of significant events, a status report on any major repairs, a Tenant arrears report, and a statement of fees paid to the Manager in the period together with the supporting calculation.

All reports provided by the Manager under this Section shall be provided to the Receiver electronically and the Manager shall use commercially reasonable efforts to provide such reports in a format that is compatible with the Receiver's IT systems.

4.4 Other Reports

The Manager shall, if and when requested from time to time by the Receiver, prepare and furnish to the Receiver, such other reports or statements as the Receiver may reasonably require, subject to the payment to the Manager of such fee for such other reports and statements as the Manager and the Receiver may agree. In the event that the Manager and the Receiver do not agree on the fee to be paid to the Manager, then the Manager shall not be obligated to prepare or furnish any such other reports or statements.

4.5 Property of Receiver

The records, reports, books or accounts and other documents and materials relating to the management, operation, leasing and maintenance of the Property shall be the property of the Receiver.

ARTICLE 5 - COMPENSATION OF MANAGER

5.1 Management Compensation

- a) Property Management Services Fees. During the term of this Agreement, the Receiver agrees to pay to the Manager for the performance of the Manager's Duties the Property Management Services Fees, plus applicable taxes (including HST). The Property Management Services Fees shall be calculated monthly and shall be paid by the Receiver on the first (1st) day of each Reporting Period for which it is earned. Within thirty (30) days after the end of each calendar year, the Manager will submit a statement to the Receiver indicating the aggregate of the monthly instalments of Property Management Services Fees paid to the Manager for that calendar year pursuant to this Section, a computation of the Property Management Services Fees actually earned for that calendar year and the Gross Revenues on which that computation is based. If the aggregate of the monthly instalments paid in the calendar year differs from the actual Property Management Services Fees shown as earned in the statement, an appropriate adjustment shall be made between the parties. The parties shall further adjust if any readjustments are made in the Gross Revenues upon which the statement is based.
- b) Leasing Commission. During the term of this Agreement, the Receiver agrees to pay to the Manager a leasing commission in respect of any new Lease(s) equal to 3.5% of the gross rents payable over the term of such Lease(s) and such leasing commission shall be payable to the Manager upon execution of such Lease(s) by the tenant.

ARTICLE 6 - TERMINATION OF AGREEMENT

6.1 Termination on sale

This Agreement may be terminated by the Receiver at any time, without penalty with such termination to be effective on the date that notice of termination is given to the Manager. This Agreement may be terminated by any Person by Order of the Court.

6.2 Effect of Termination on Accrued Rights

Termination of this Agreement shall in no way affect or impair any right which has accrued to any party hereto prior to the date when such termination becomes effective.

6.3 Reporting at Termination

Upon termination of this Agreement in whole or in part for any reason, the Manager shall promptly deliver to the Receiver:

- (a) a final accounting of income and expense for the Property as of the date of termination;

- (b) any balance of monies of the Receiver or Tenant security deposits, or both, held by the Manager with respect to the Property, and
- (c) all written and computer or mechanical readable data and all materials belonging to the Receiver, including, without limitation, all records, contracts, Leases, receipts, deposits, unpaid bills and other papers or documents which pertain to the Property. The Manager will be permitted to retain copies of any documents or records of the Property reasonably required for future reference. The Receiver shall thereafter and from time to time until the seventh anniversary of the termination of this Agreement produce the originals of such records, books of account and documents whenever the Manager reasonably requires them for its purposes in connection with its prior management of the Property.

6.4 Rights of Termination

Any termination of this Agreement shall terminate all rights and obligations under this Agreement except rights and obligations with respect to amounts owing or to remedies, if either the Manager or the Receiver shall be entitled to an accounting as to the fees or other monies payable to the Manager or by the Manager or shall otherwise be entitled to remedies at law or in equity.

ARTICLE 7 - INSURANCE

7.1 Comprehensive General Liability Insurance

The Receiver shall continue and maintain the existing policy of Commercial General Liability Insurance on the Property in an amount of not less than \$2,000,000 for bodily injury claims and \$2,000,000 for property damage claims on an individual property basis. The Receiver will request that it be added as an additional named insured.

7.2 Property Insurance

The Receiver shall continue and maintain the existing policy of insurance for replacement coverage against loss or damage to which the Property is exposed or may become exposed including, without limitation, insurance against physical damage to the Property and against loss occasioned by business interruption. The Receiver will request that it be added as an additional named insured.

7.3 Notice of Claim

- (a) The Manager shall notify the Receiver in writing with as much specificity as the Receiver shall require as soon as possible after receipt of notice of an injury occurring in, on or about the Property, or any claim against the Receiver and/or the Manager which involves the Property. The Manager shall take no steps (such as an admission of liability) which might operate to bar the Receiver from obtaining any protection afforded by any policies of insurance that might apply, or which might operate to prejudice the defence in any legal proceedings involving the Receiver or the Property, or otherwise prevent the Receiver from protecting itself against any such claim, demand or legal proceeding. The Manager shall

fully co-operate with the Receiver in the defence of any such claim, demand or legal proceeding.

- (b) The Manager shall forward to the Receiver forthwith upon receipt or service, any legal document, including but not limited to, a Statement of Claim, Statement of Defence, Crossclaim, Counterclaim, Third Party Claim or Offer to Settle, received or served upon the Manager in connection with any claim against the Receiver or the Manager in connection with the Property.

ARTICLE 8 - AUTHORITY OF MANAGER

8.1 Limitation of Authority

When language is used in this Agreement indicating that a particular matter, decision or determination requires the consent, direction, approval or other action of the Receiver, the same shall mean that the matter in question must be approved in writing by the Receiver. Unless specifically authorized in this Agreement, or by prior written approval of the Receiver, and not to limit the generality of the foregoing, the Manager shall not have the authority to do any of the following:

- (a) obtain loans for the Receiver, whether secured or unsecured, or give or grant options, rights of first refusal, deeds of trust, mortgages, pledges, security interests, or otherwise encumber the Property or any portion thereof or any interest of the Receiver therein; obtain replacements of any mortgage or mortgages; prepay in whole or in part, refinance, increase, modify, consolidate or extend any obligation affecting the Property or any portion thereof, or rent, lease, license, sell, exchange or convey the Property or any portion thereof;
- (b) cause the Receiver to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any Person or to enter into any supervisory management agreements, real estate and insurance brokerage agreements or loan brokerage agreements;
- (c) release, compromise, assign or transfer any claim, right or benefit of the Receiver, except in the ordinary course of managing and operating the Property, provided that the Receiver's prior written approval has been received;
- (d) grant easements or other property rights in the Property;
- (e) sell or lease the Property or any part thereof on behalf of the Receiver;
- (f) enter into any contract on behalf of the Receiver with an Affiliate of the Receiver or the Manager or a Person as to which the Receiver or the Manager would have a conflict of interest and, with respect to any such contract, make any amendment, modification or rescission thereof, declare a default thereunder, institute, settle or compromise a claim with respect thereto, waive any rights of the Receiver against the other party thereto, or consent to the assignment of any rights or the delegation of any duties by the other party thereto; and

ARTICLE 9 - GENERAL PROVISIONS

9.1 Notices

- (a) Delivery of Notices. Any notice, certificates, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by fax or other similar means of electronic communication, in each case to the applicable address set out below:

If to the Manager, to:

WINTRU DEVELOPMENTS INC.
100 – 4747 Pleasant Place
Windsor, ON N8Y 5B4

Attention: J. Murray Troup
Fax: 519.252.1018

If to the Receiver, to:

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

Attention: Stephen N. Cherniak
Fax: 519.439.4351

with a copy to:

Miller Thomson LLP
Suite 2010
255 Queens Avenue
London, ON N6A 5R8

Attention: Alissa K. Mitchell
Fax: 519.858.8511

- (b) Receipt of Notice. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent prior to 4:30 p.m. on such day (local time at the place of receipt). Otherwise, such communication shall be deemed to have been given and made to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof, provided however that no such communication shall be mailed during any actual or apprehended disruption of

postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

- (c) Change of Address. Any party may from time to time change its address under this Section by notice to the other party given in the manner provided in this Section.

9.2 Validity of Provisions

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

9.3 Waiver and Modification

No consent or waiver, expressed or implied by any party to or of any breach or default by any other party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default hereunder. Failure on the part of any party to complain of any act, or failure to act of any other party or to declare another party in default, regardless of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Neither this Agreement nor any provision hereof may be amended, waived, modified or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver, modification or discharge is sought.

9.4 Successors

The provisions of this Agreement shall, subject to the terms and conditions hereof, be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto, provided, however, this Agreement shall at all times remain personal to the Manager and its Affiliates and may not be assigned by the Manager or its Affiliates without the prior consent of the Receiver.

9.5 Litigation

In the event of any litigation between the parties hereto to enforce any provision of the Agreement or any right of any party hereto, the unsuccessful party to such litigation agrees to pay to the successful party all costs and expenses, including reasonable legal fees and costs incurred therein subject to Orders of Court. Moreover, if any party without default is made a party to litigation unrelated to this Agreement or the Property instituted by or against any other party, such other party shall indemnify the party without fault against and save it harmless from all costs and expenses, including reasonable legal fees and costs incurred by it in connection therewith, subject to such other party having the right to assume carriage of the defence of the party without default through its own legal counsel. If it assumes carriage of the defence on behalf of the party without default, the other party shall keep the party without default reasonably informed as to the progress of the proceedings, seek its instructions as necessary and advise it prior to the settlement of any such proceeding.

9.6 Specific Remedies

All parties shall, in addition to all rights provided herein or as may be provided by law, be entitled to the remedies of specific performance and injunction to enforce their rights hereunder.

9.7 Headings

The headings of the Articles, Sections and paragraphs of this Agreement are inserted solely for convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

9.8 Gender and Number

Where the context so requires, the use of the neuter gender shall include the masculine and feminine genders, and masculine gender shall include the feminine and neuter genders and the singular shall include the plural and vice versa.

9.9 Assistance

Each party hereby expressly agrees that if any controversy, litigation or court proceeding is prosecuted or defended by any other party in connection with this Agreement or the operation of the Property, it will render all reasonable assistance to the other party.

9.10 Construction

In all cases, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any party.

9.11 Entire Agreement

This Agreement, together with any written amendments executed in connection herewith or modifications or amendments to any of the same hereafter entered into by the parties hereto shall constitute the entire agreement between the parties hereto relative to the subject matter hereof and shall supersede any prior agreement or understanding, if any, whether written or oral, which any party may have had relating to the subject matter hereof.

9.12 Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9.13 Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario.

9.14 Time of Essence

Time is of the essence in the performance of this Agreement and of each provision hereof.

9.15 Amendments

This Agreement shall be subject to amendment only in writing and signed by the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties.

BDO CANADA LIMITED solely in its capacity as court-appointed receiver of the property, assets and undertaking of royal timbers inc.

By: _____

Stephen N. Cherniak, CPA, CA,
CIRP

Senior Vice President

I have authority to the bind the
Company

WINTRU DEVELOPMENTS INC.

By: _____

J. Murray Troup
President

I have authority to the bind the
Company

TAB "F"

LITIGATION CHART

| | Court File No. | Plaintiff or Defendant | Nature of Proceeding | Damages Claimed | Other Parties | Opposing Parties | Status of Proceedings |
|----------------------|----------------|------------------------|----------------------|--------------------------------|--|---|---|
| A | | | | | | | |
| ROYAL TIMBERS | | | | | | | |
| | LC080015 | Plaintiff | Tort / Arbitration | \$86,330 | | City of Windsor | - Offers exchanged. - No settlement. |
| | CV-07-10224 | Defendant | Lien claim | \$55,000 | | J. Lepera Contracting Inc. | - Judgment issued. - Writ filed and judgment amount garnished and held by Sheriff. |
| | CV-07-009805 | Defendant | Lien claim | \$385,449 | Sonoma Windsor, a U.S. Trust, Sonoma Windsor FI Ltd. and Sonoma Windsor LP | J. Lepera Contracting Inc. | - Action dismissed as against Royal Timbers. - Cost orders made in favour of Royal Timbers in approximate amount of \$100,000. - Appeal to the Divisional Court pending. - Appeal perfected. |
| | CV-13-18976 | Defendant | Foreclosure | \$5,000,000 (by counter-claim) | J. Lepera Contracting Inc. | Simba Group Developments Ltd. and The Estate of Patrick D'Amore | Defended action. Counterclaim issued by Royal Timbers) |
| B | | | | | | | |
| BANWELL | | | | | | | |
| | Unknown | Plaintiff | Breach of Contract | \$1,275,000 | | D'Amore Construction (2000) Ltd. | - Settlement Conference conducted |
| | 06-CV-6763 | Defendant | Lien Claim | \$498,000 | BMO (defendant) | D'Amore Construction (2000) Ltd. | Consolidated with Court Action No. 5547 and subject to Order of the Honourable Justice Gates dated May 29, 2013. Action must be set down for trial by April 30, 2014 |

| | Court File No. | Plaintiff or Defendant | Nature of Proceeding | Damages Claimed | Other Parties | Opposing Parties | Status of Proceedings |
|------------------------------------|----------------|------------------------|---|--|--|---|--|
| | CV-13-18974 | Defendant | Foreclosure | \$5,000,000 (by way of counter-claim) | | Simba Group Developments Ltd. and The Estate of Patrick D'Amore | - Statement of Defence and Counterclaim issued by Banwell |
| | CV-13-18975 | Defendant | Foreclosure | \$5,000,000 (by way of counter-claim) | Real Ranchs Inc. Windsor Family Credit Union Limited | Simba Group Developments Ltd. and The Estate of Patrick D'Amore | - Statement of Defence and Counterclaim issued by Banwell |
| C ROYAL TIMBERS AND BANWELL | | | | | | | |
| | 55047 | Plaintiffs | Breach of Contract and Negligence | \$500,000 | | D'Amore Construction (2000) Ltd. | - Consolidated with Court Action No. 06-CV-6763 and subject to Order of the Honourable Justice Gates dated May 29, 2013. - Action to be set down for trial by April 30, 2014. |
| | CV-11-17088 | Respondents | Application for Winding-Up Order pursuant to OBCA | N/A | 928579 Ontario Limited and Scott D'Amore | Kevin D'Amore | - BDO Canada Limited appointed as Receiver of Banwell and Royal Timbers by Order dated June 5, 2013. - Stay of proceedings imposed. |

E&O Excepted.

TAB “G”

JUL 26 2012 10:54AM

No. 1678 P. 2/20

CITATION: D'Amore v. Troup
COURT FILE NO.: CV-11-16379
CITATION: D'Amore v. Banwell Development
COURT FILE NO.: CV-11-17088
2012 ONSC 4323
DATE: 20120726

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

COURT FILE NO: CV-11-16379

PATRICK D'AMORE IN TRUST, deceased, by his
Litigation Administrator, Scott D'Amore

Plaintiff

Raymond G. Colautti, for the Plaintiff

- and -

J. MURRAY TROUP, 928579 ONTARIO
LIMITED, POPP PARETE RUSSO LLP, BRIAN
POPP and BCP CONSULTANTS INC.

Defendants

Robert J. Reynolds, for the Defendants, J. Murray
Troup and 928579 Ontario Limited

AND BETWEEN:

COURT FILE NO.: CV-11-16379

J. MURRAY TROUP and 928579 ONTARIO
LIMITED

Plaintiffs by Counterclaim

Robert J. Reynolds, for the Plaintiffs by Counterclaim

- and -

PATRICK D'AMORE

Defendant by Counterclaim

Raymond G. Colautti, for the Defendant by
Counterclaim

AND BETWEEN:

COURT FILE NO.: CV-11-17088

KEVIN D'AMORE

Applicant

Cynthia B. Kuehl and Lucas E. Lung, for the
Applicant

- and -

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

Respondents

Raymond G. Colautti, for the Respondent, Scott
D'Amore

Robert J. Reynolds, for the Respondents Banwell and
928579

HEARD: June 25, 2012

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REASONSTHOMAS J.:

- [1] Two matters were argued before me on June 25, 2012; an application to wind up Banwell Development Corporation together with other requested related relief, and a motion in a separate action seeking management powers for one of the parties. This judgment provides a determination of those argued matters and contemplates the potential of the court continuing to be included in the "fine tuning" of the granted relief and case managing the proceedings. The parties filed extensive materials for which I am grateful and much of the early sections of this judgment rely upon the content of the factums, particularly as they set out the historical context of the matters in dispute. I am content that they provide a fair and accurate chronology.

OVERVIEW

- [2] There have been ongoing disputes between the shareholders of Banwell Development Corporation (the "Corporation"), which principal business is the ownership, development and sale of land in Windsor, Ontario. The applicant, Kevin D'Amore ("Kevin"), has brought an application for an order pursuant to s. 207(1) of the *Business Corporations Act*, R.S.O. 1990, c B.16 (the "Act"), to wind up the businesses of the Corporation and its wholly-owned subsidiary, Royal Timbers Inc. ("Royal Timbers"), and appoint a receiver/manager to manage the sale of the assets of the Corporation and Royal Timbers.
- [3] Scott D'Amore ("Scott"), who, like Kevin, holds 25 percent of the shares of the Corporation, supports the relief sought in this application but only after a court-directed attempt to buy out Kevin's interest. 928579 Ontario Limited ("928579"), which owns the remaining 50 percent of the shares of the Corporation, opposes the relief sought in the application, but in a motion brought in a separate action, which is returnable at the same time, 928579 and its principal, J. Murray Troup ("Troup"), seek other relief in recognition that the Corporation is unable to function under its governing by-laws and agreements including the appointment of Troup as the sole manager.

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- [4] The Corporation is clearly deadlocked. The Corporation has not held a shareholders' meeting since 2008. The Corporation has not provided its shareholders with audited or unaudited financial statements since 2007. The shareholders are embroiled in an action (Court File No. CV-11-16379) in which there are claims and counterclaims alleging, among other things, mismanagement, negligence, breach of contract, breach of trust and fiduciary duty, oppression, fraud, deceit and self-dealing (the "Action"), all related to the management of the Corporation.
- [5] Troup's motion in the action seeks an interim order appointing him to manage the Corporation and Royal Timbers pending final disposition of the action. The parties have agreed that the affidavits and cross-examination transcripts from both this application and Troup's motion can be relied upon by the parties in both proceedings.
- [6] The current shareholders of the Corporation are Kevin, Scott and 928579. Kevin and Scott own 25 percent of the shares of the Corporation. 928579 owns 50 percent of the shares of the Corporation. Troup is the president of the Corporation. In addition, Troup is the sole shareholder, director and officer of 928579.

BACKGROUND

- [7] On March 11, 2003, the Corporation was incorporated by Patrick D'Amore ("Patrick") and Troup. At or immediately following the time of incorporation, the Corporation issued a total of 2,000 shares which were allocated as follows:
 - (a) 1,000 shares to 928579; and
 - (b) 1,000 shares to Patrick, in his capacity as trustee for his sons, Kevin and Scott.
- [8] The principal business of the Corporation was to hold and develop a property in Windsor, Ontario ("Property"), which, prior to the incorporation of the Corporation, was owned by Patrick and Simba Group Developments Limited ("Simba"), a company owned and controlled by Patrick. Patrick and Troup decided to pursue the development of the Property as a joint venture. Patrick provided land and financing to the Corporation and Troup provided management services.

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- [9] It is clear to me that the business relationship between Patrick and Troup was in the nature of an incorporated partnership.
- [10] Financing for the development was obtained from the Bank of Montreal ("BMO"), which was granted a first mortgage on the Property. Patrick and Simba had a vendor take-back mortgage which was postponed and is the second mortgage on the Property. Discharges of both the BMO and Simba mortgages are required in order to sell any lots of land.
- [11] On or about August 26, 2003, the Corporation, 928579, Patrick and Troup entered into a unanimous shareholder agreement ("USA"). The USA included numerous provisions regarding the structure and management of the Corporation. The USA provided for, among other things:
- (a) Both Patrick and Troup would each have the power to designate a director and at least 51 percent of the total number of directors would be required to constitute quorum for a board meeting (article 2.2);
 - (b) The officers of the Corporation would be Troup, as president, and Patrick, as vice-president and secretary (article 2.4);
 - (c) All cheques drawn on the Corporation's bank accounts would need to be signed by two of the shareholders (article 2.4);
 - (d) Quorum at shareholders meetings, whether special or general, would be a majority (51 percent) of the shareholders entitled to vote and the chairman of any shareholder meeting would not have a second or casting vote (article 2.5);
 - (e) The auditor of the Corporation would be Popp, Parete, Russo LLP ("PPR LLP") until changed by prior agreement in writing by the shareholders (article 2.6);
 - (f) The shareholders would have the right to examine the books and records of the Corporation on a weekly basis (article 2.6);

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- (g) All day to day decisions relating to the business of the Corporation would require the consent of majority of the shareholders. In the event of death or long-term disability of Patrick Troup would make all day-to-day decisions relating to the business of the Corporation save and except certain significant matters that would still require consent in writing by a majority of the shareholders (article 2.8);
- (h) The Corporation would not amend its articles, or amalgamate or merge with any other corporation, or authorize the delivery of articles of dissolution, or make any capital expenditure over \$10,000, or authorize the acquisition of any other business or undertaking or the sale of its assets, business or undertaking, or enact or pass any by-law or special resolution, or allot or issue any further shares, unless, in each case, there was consent in writing of all of the shareholders (article 5.1);
- (i) The books and records of the Corporation would be open for inspection and examination by each shareholder and shareholder's authorized representatives during business hours upon reasonable notice for the purpose of audit and otherwise (article 5.2);
- (j) No commissions, management fees, remuneration or compensation to the directors would be paid to the principals or the shareholders as a result of their activities on behalf of the Corporation (article 5.3);
- (k) The Corporation would, within 90 days after the end of each financial year, deliver to each of the shareholders financial statements prepared by the Corporation's accountants (article 5.9);
- (l) If the Corporation would sell all or any portion of its property, the costs of sale, including real estate commissions, legal costs and other charges, would be borne by the Corporation and the net proceeds of sale would be applied in the following priority:

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- (i) the repayment of all sums required to obtain partial discharges of mortgage from financial institutions or Patrick, as set out in the USA;
 - (ii) the repayment of all voluntary shareholder loans; and
 - (iii) the balance of the net proceeds of the sale not required for corporate purposes would be allocated and paid to each of the shareholders in their proportionate share (article 6.2); and
- (m) No shareholder would directly or indirectly transfer any shares of the Corporation, except with the consent of the other shareholder (article 8.1).
- [12] Beginning in or around 2009, disputes arose between Patrick and Troup regarding the management of the Corporation.
- [13] In or around October 2009, Patrick retained a forensic accountant to conduct a review of the financial statements and records of the Corporation because he was suspicious of Troup.
- [14] By 2011, the relationship between Patrick and Troup had completely broken down. The last shareholders' meeting was held in 2008 and the Corporation has not provided its shareholders with audited or unaudited financial statements since 2007.
- [15] According to Troup, the estimated value of the Corporation and Royal Timbers in early 2009, once the developments were fully realized, was \$25,572,330. Troup has alleged that this estimated value has since decreased due to certain actions by Patrick, which he alleges have caused the Corporation "irreparable harm".
- [16] It is common ground that the Corporation is deadlocked and has been since at least the summer of 2009.
- [17] On May 31, 2011, Patrick, in his capacity as trustee for Kevin and Scott, commenced the action against Troup and 928579. Patrick also named PPR LLP, its principal and an affiliate of PPR LLP as defendants in the action. In the claim, Patrick alleged breach of contract, negligence, breach of fiduciary duty and oppression under the Act. Specifically,

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Patrick alleged, among other things, that Troup had improperly diverted funds of the Corporation to himself and to companies controlled by him through a series of unauthorized agreements and resolutions.

- [18] On or about July 4, 2011, Troup and 982579 issued a statement of defence and counterclaim. In the counterclaim, which was commenced against Patrick personally, Troup alleged oppression, deceit, fraud and other acts of wrongdoing on the part of Patrick, all related to the management and governance of the Corporation.
- [19] In the counterclaim, Troup and 982579 sought various relief, including the appointment of a receiver/manager over the Corporation and Royal Timbers for the purpose of winding up the affairs of the Corporation and Royal Timbers and distributing their property.
- [20] Patrick passed away on July 11, 2011.
- [21] The allegations in the claim and counterclaim in the action reveal that, by the summer of 2011, the Corporation was encountering significant operational difficulties. Many of these operational difficulties appear to relate to the lack of sufficient operating capital, despite the revenue earned from the previous sale of certain lots of land.
- [22] Following Patrick's death, the shares of Patrick held in trust for Kevin and Scott were transferred to them in August 2011. As of that date, Kevin and Scott each have held 500 shares and have been 25 percent shareholders of the Corporation. Kevin and Scott are to some extent estranged. Scott was active in his father's business while Kevin was not.
- [23] The first significant disputes between the shareholders arose in the context of a transaction with a company called Hadi Custom Homes Inc. ("Hadi"). Hadi wanted to purchase seven lots for \$420,000. That required the discharge of both mortgages. BMO refused to discharge without the consent of all shareholders. It took months for the parties to agree on the terms.
- [24] An issue arose related to a shareholder loan in the amount of \$871,000 that was made by Patrick to the Corporation. Scott took the position that, pursuant to article 6.2 of the USA,

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repayment of the shareholder loan had priority and needed to be satisfied prior to any distribution to the shareholders.

- [25] Ultimately, the Hadi transaction was allowed to close, but only at the eleventh hour and with the shareholders reserving their rights to contest the Corporation's payment of tax arrears and legal fees related to a separate construction lien action. There was no resolution of the issues relating to the shareholder loan. At the request of Scott's counsel, it was agreed by the parties that whatever was done to facilitate the closing was a "one time thing", would not be considered a precedent and would be without prejudice to each party's position regarding any outstanding issues, including the shareholder loan. BMO's current position is that it will not provide any further partial discharges to facilitate the sale of lots unless all of the shareholders consent to the sale.
- [26] Since September 2011, there have been numerous calls for a shareholders' meeting. No meeting has been held, or even scheduled, because the parties could not agree on who would attend, whether the shareholders could bring their litigation counsel, and even who that counsel should be. Kevin and Scott demand financial information together with a management report, while Troup looks upon the potential meeting as simply an attempt by Kevin to create evidence of the dysfunctional environment to fuel his application to wind up the business.
- [27] Having received no information and there being no shareholders' meeting scheduled, Kevin commenced this application on November 16, 2011. Shortly thereafter, Troup commenced this motion in the action. Both the application and Troup's motion were originally returnable on December 6, 2011. However, the parties agreed to adjourn both matters to be heard during a special appointment on June 25, 2012.
- [28] On December 12, 2011, Troup's counsel advised that he had spoken to PPR LLP, the auditors of the Corporation and Royal Timbers. Troup's counsel advised that on payment of its account in the amount of approximately \$37,000, PPR LLP would be willing to release the financial statements. He further stated that the estimated cost of preparing the current year's statements would be \$4,300 plus HST for the Corporation, and \$3,700 plus

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HST for Royal Timbers. It was only on the date these matters were argued that Troup's counsel confirmed that the Corporation had the funds to pay the accountants.

- [29] No information has been exchanged and, while there is some evidence of interest by prospective purchasers, no business is being conducted.
- [30] On or about April 11, 2012, Scott brought to Kevin's attention a letter from BMO, dated March 5, 2012, advising that it was giving written notice of default of the mortgage as a result of the Corporation's failure to provide current financial statements within 120 days of the Corporation's year end and municipal tax certificates confirming that all real estate taxes have been paid.

SUMMARY POSITIONS OF THE PARTIES

- [31] Kevin argues that the parties are in deadlock and that fairness and equity require an order winding up the corporation. This would allow for an independent receiver to sell off the inventory of real property, pay off the debts and distribute the balance to the shareholders. He suggests any other remedy would be folly in light of the significant impasse. He says he is not in a position to comment upon the allegations raised in the action since he has not been involved in the business and has not been provided with any information.
- [32] Scott is the litigation administrator for Patrick and executor of his estate. In his action he demands relief from Troup for monies he claims Troup expropriated from the Corporation. He seeks security or repayment of an \$871,000 shareholder loan made by Patrick to the Corporation.
- [33] He disputes his brother's request for a winding-up order, at least at this time, and suggests that the court prescribe a reordering of the corporate interests by allowing one of the brothers to buy the other out of the deadlock. This would be followed by a new agreement between he or Kevin, and Troup, or the purchase of all shares by the then remaining sole shareholder.

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- [34] In the action, Troup denies any wrongdoing and counterclaims for significant corporate losses he states were occasioned by Patrick failing to pay the corporate taxes of Simba and allowing for its dissolution.
- [35] He argues that a winding-up order should be a remedy of last resort. He states that Kevin has rushed his application when lesser remedies could have been attempted and without resorting to the arbitration clauses contained in the unanimous shareholder agreement. He seeks to be empowered to manage the business to allow him to move forward to sell land, deal with BMO, obtain financial statements and satisfy outstanding taxes.
- [36] Significantly for me, all parties seek the assistance of the court to break out of their corporate stalemate.

ANALYSIS

- [37] Section 207 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 ("*OBCA*"), sets out the statutory criteria for the winding up sought in this application.

Winding up by court

207. (1) A corporation may be wound up by order of the court,

(a) where the court is satisfied that in respect of the corporation or any of its affiliates,

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

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(b) where the court is satisfied that,

(i) a unanimous shareholder agreement entitled a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred,

(ii) proceedings have been begun to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,

(iii) the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and it is advisable to wind it up, or

(iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up; or

(c) where the shareholders by special resolution authorize an application to be made to the court to wind up the corporation.

Court order

(2) Upon an application under this section, the court may make such order under this section or section 248 as it thinks fit.

[38] Section 207(2) allows for the oppression remedy orders available in s. 248(3) OBCA to be applied in a successful winding-up application. These give the court wide latitude in crafting interim and final orders to assist in the orderly dissolution of the business.

Court order

248 (3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

(a) an order restraining the conduct complained of;

(b) an order appointing a receiver or receiver-manager;

(c) an order to regulate a corporation's affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;

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- (d) an order directing an issue or exchange of securities;
 - (e) an order appointing directors in place of or in addition to all or any of the directors then in office;
 - (f) an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;
 - (g) an order directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the money paid by the security holder for securities;
 - (h) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
 - (i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 154 or an accounting in such other form as the court may determine;
 - (j) an order compensating an aggrieved person;
 - (k) an order directing rectification of the registers or other records of a corporation under section 250;
 - (l) an order winding up the corporation under section 207;
 - (m) an order directing an investigation under Part XIII be made; and
 - (n) an order requiring the trial of any issue. R.S.O. 1990, c. B.16, s. 248 (3).
- [39] Kevin's application draws my attention to s. 207(1)(b)(iv) of the *OBICA*. These subsections allow for a winding-up order if it would be "just and equitable for some reason, other than the bankruptcy or insolvency of the corporation...". A finding that winding up would be just and equitable then empowers the court to utilize any of the remedies available in s. 248(3): (*Clarfield v. Manley* (1993), 14 B.L.R. (2d) 295 at paras. 28 and 29 (*Clarfield*); *Wittlin v. Bergman* (1995), 25 O.R. (3d) 761 (C.A.) (*Wittlin*); *Muscillo v. Bulk Transfer Systems Inc.*, [2009] O.J. No. 3061 (S.C.J.) at para. 22 (*Muscillo*)).

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[40] In *Fakis v. Martap Developments 87 Ltd.*, [2012] O.J. No. 1662 (S.C.J.) D.M. Brown J. discussed the developing application of the terms "just and equitable" to this statutory provision:

[41] The words "just and equitable" are regarded as words "of the widest significance", to be given a broad interpretation. They act as a kind of bridge between the statutory grounds for winding-up and "the principles of equity developed in relation to partnerships." Lord Wilberforce [sic], in *Ebrahimi v. Westbourne Galleries Ltd.*, articulated the core meaning of the concept of "just and equitable" in the context of the winding up of a corporation. In the *Ebrahimi* case he noted that the words "just and equitable" recognized "the fact that a limited company is more than a mere judicial entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structure..."

...

In terms of the application of the "just and equitable" concept to particular circumstances, Lord Wilberforce stated:

The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction on the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

[41] Arguably, all these elements identified by Lord Wilberforce in *Ebrahimi* are present in this application.

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- [42] In *Muscillo* at para. 23, the court discussed the significance of the quasi-partnership and the breakdown of trust and confidence:

If the relationship of trust and confidence between partners in corporate guise has broken down and the continuation of the business between them operating as equal partners is not possible, such a situation is enough to trigger the courts powers under s. 207. See *Osborne v. Bucef* [1998] O.J. No. 3736 at para. 4. The concept of shareholders operating in a corporate guise, sometimes referred to as a quasi-partnership, giving rise to rights of winding-up or other equitable relief, has long been recognized as articulated in the decision of Lord Wilberforce in *Ebrahimi v. Westbourne Galleries Ltd. et al.*, [1973] A.C. 360.

- [43] It seems clear to me that the USA created by Patrick and Troup acknowledged the quasi-partnership relationship that existed between them in the operation of the corporation including Royal Timbers. The action herein, including the counterclaim, provide substantial evidence of the loss of trust and confidence.
- [44] I recognize that a winding-up order is to be used as an order of last resort where equity cannot be achieved without a corporate dissolution. (*Clarfield* at para. 44). I have commented already on the obvious deadlock. If not resolved, the corporation is clearly "doomed to fall in the foreseeable future" (*Whitlin* at para. 8). The question becomes whether a lesser remedy can be crafted that will create an equitable resolution and meet the reasonable expectations of the parties. (*King City Holdings v. Preston Springs Gardens Incorporated*, [2011] O.J. No. 1464 (S.C.J.) at para. 16).
- [45] Counsel for Troup argues that I should find this discussion premature and force these disputes in a segmented way into the "hopper" of arbitration as contemplated by the USA. It is argued that the law and strong public policy considerations require that step. (*Armstrong v. Northern Eyes Inc.* (2000), 48 O.R. (3d) 442 (General Division (Div. Ct.)).
- [46] I do not find that argument compelling in these circumstances. The differences between the parties are so deeply engrained and the lack of trust so fundamental that there would be an unending string of arbitrations, presupposing that an arbitration process could even be engaged. For the same reasons, Troup cannot be empowered to manage the corporation as presently structured. Something more drastic is required.

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- [47] I am attracted to the proposal presented by Scott's counsel. It is clear that the present relationship between these three parties must be severed. Scott proposes a buy-sell conclusion which I have alluded to above. I am mindful of the concerns raised by Kevin's counsel that the brothers are not of equal means or expertise and that, therefore, they would not be "disentangling themselves on a level playing field" (*Finer v. Poplaw*, [2003] O.J. No. 3981 (S.C.J.) at para. 33). I have little in the record argued before me to make that finding but I believe a refinement of Scott's proposal can achieve the desired purpose.
- [48] The order I am about to make was discussed by counsel in the context of the latter stages of the argument, and while not fully embraced by everyone, I believe all recognized it as a less intrusive option than an unfettered dissolution.
- [49] A buy-sell order can only be imposed upon fully informed parties and, therefore, part of my order must include disclosure of financial information and records. I am instructed by the concerns raised by the Court of Appeal in *Witlin* and it is my intention to address those concerns in this order.
- [50] I have before me an application to wind up the corporation pursuant to s. 207 of the *OBCA*.
- [51] There are strong reasons present here that would allow for a finding pursuant to s. 207(1)(b)(iv). I think, however, something short of liquidation or dissolution is in the best interests of all parties. Kevin and Scott may or may not choose to carry on in the business, although Scott seems more inclined to do so. Each is, however, entitled to fair value for their interest. Troup has devoted almost 10 years to this corporation. I say that recognizing that the trial of the action must be left to determine the efficacy of the business practices of both Troup and Patrick.
- [52] Section 207(2) *OBCA* allows me latitude to make the order that follows.

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CONCLUSION

[53] I make the following order:

- (a) I am appointing myself case management judge for the proceedings pursuant to the terms of Rule 77 and rule 37.15 of the *Rules of Civil Procedure*. I recognize the parties sought that appointment prior to the argument of these matters and I will rectify any oversight now;
- (b) There is much still in dispute here and it would be unrealistic to assume that this judgment will tie up all the loose ends. The parties are encouraged to speak to me about issues with this judgment or its implementation as they may arise;
- (c) The accountants and auditors, Popp Parete Russo LLP, are to be paid, by the corporation, the amounts outstanding to allow for the release of the financial statements they have already prepared. It is my belief from the materials that the account is approximately \$37,000 and that they hold financial statements for the 2009 and 2010 corporate tax years. This order relates to the statements for both the Corporation and Royal Timbers. It may make good sense for these auditors to be paid to complete the current year's statements as well, but I leave that up to the parties, at least for the time being. All parties are to receive copies of these statements. Once these statements are received, steps must be taken to satisfy the concerns of BMO and CRC.
- (d) Kevin and Scott are entitled to access the financial records of the business. Disclosure should be viewed as extensive and inclusive. I have reviewed Appendix I appended to the factum of Scott and the answer given by Troup to questions 671-716 of his cross-examination. I find none of the requests there offensive. All parties should have access to those records and copies of most can be produced electronically by disc. Troup should take the necessary steps forthwith to disclose the material in his and the corporate possession. I am

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optimistic that with my direction above, I need not itemize the disclosure but if I am wrong then I may be spoken to for the purposes of a defined list.

- (e) All parties shall agree on an independent professional business valuator to value the shares. The expense of the valuation is to be shared equally. The valuation is to determine the present value of the shares. If the parties cannot agree on the valuator, they shall each appoint an independent valuator and the share value will be determined by the median value. Full disclosure must be made to the valuator or valutors. A defined time limit must be imposed on the valuation process and if the parties cannot agree, I may be spoken to.
- (f) Once the valuation process has concluded, a starting price must be determined for the bidding, buy-sell process. If the parties cannot agree on that price, I will order it.
- (g) A set period of time would be ordered within which Scott and Kevin would be directed to negotiate a buyout by Scott of Kevin's shares in Banwell. If the time for negotiation expires, and there is no agreement, then Scott and Kevin would be directed to submit sealed bids to purchase each other's shares and outstanding shareholder's loans, again within a defined timeline and taking into account the previously determined starting price. The bids by Scott and Kevin would be submitted to and opened by a special referee chosen by the parties or designated by the court. The highest bidder between Scott and Kevin would then be required to purchase the other's shares for the amount of the bid.

After completion of the purchase/sale of Scott and Kevin's shares, the successful purchaser or bidder thereof as the case may be, would then be entitled to engage in a sealed bidding process with Troup whereby the successful D'Amore party and Troup would each submit sealed bids to purchase all of the opposing interest's shares and outstanding shareholder loans from the other. The bids would be submitted to a special referee who would be designated by the parties or selected by the court. The sealed bids

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would be opened and the highest bid would be required to purchase the other party's shares and outstanding shareholder's loan at the bid price.


As an alternative to the above, the successful bidder as between Scott and Kevin would have the option of entering into an amended shareholder's agreement with Troup.

(h) I am unable to determine on the material before me the appropriate amount or nature of the loan from Patrick to the Corporation. If, after financial disclosure is completed, the parties agree that \$871,000 was advanced by Patrick it seems to me appropriate it should be treated as a shareholder loan, payable to the estate, with security by way of charge against the corporate lands.

(i) The motion of Troup argued before me is dismissed. It is not appropriate to add Kevin and Scott to the counterclaim or to allow Troup to fully manage the Corporation. It is my hope that the existing stalemate will encourage the parties to focus on the direction provided by this order.

(j) The action herein will proceed in the normal course, if not resolved, and will be case managed by me.

(k) I have not heard argument on costs. It is my view that success was truly shared and that no one position was fully embraced by the court. If the parties unfortunately feel differently, and costs cannot be resolved, I may be spoken to, to set a schedule for the delivery of written submissions.


Bruce Thomas
Justice

Released: July 26, 2012

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CITATION: D'Amore v. Troup
COURT FILE NO.: CV-11-16379
CITATION: D'Amore v. Banwell Development
COURT FILE NO.: CV-11-17088
2012 ONSC 4323
DATE: 20120726

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

PATRICK D'AMORE IN TRUST, deceased, by his Litigation
Administrator, Scott D'Amore Plaintiff

- and -

J. MURRAY TROUP, 928579 ONTARIO LIMITED, POPP
PARTE RUSSO LLP, BRIAN POPP and BCP CONSULTANTS
INC. Defendants

AND BETWEEN:

J. MURRAY TROUP and 928579 ONTARIO LIMITED
Plaintiffs by Counterclaim

- and -

PATRICK D'AMORE Defendant by Counterclaim

AND BETWEEN:

KEVIN D'AMORE Applicant

- and -

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

REASONS

Thomas J.

Released: July 26, 2012

TAB “H”

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 |
| | | | | | | |
| 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 | 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 |

TAB “I”

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 Banwell 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.

TAB “J”

**BDO Canada Limited Court Appointed Receiver of
Banwell Developments Corporation
Statement of Receipts and Disbursements
June 5, 2013 through July 4, 2013**

Receipts:

| | | |
|----------------------|-------------------|-------------|
| Sale of Lot 44 | \$70,000.00 | |
| Less: Property taxes | <u>(4,342.95)</u> | |
| | | \$65,657.05 |

Disbursements:

| | | |
|-------------------------------------|---------------|-----------|
| BMO - Letter of Credit admin charge | \$6,750.00 | |
| Legal fees | 5,706.22 | |
| HST on disbursements | 788.15 | |
| Fees to renew corporation name | 185.80 | |
| Utilities | <u>111.08</u> | |
| | | 13,541.25 |

Excess receipts over disbursements \$52,115.80

Represented by:

Balance in Receiver's account \$52,115.80

TAB “K”

**BDO Canada Limited Court Appointed Receiver of
Royal Timbers Inc.
Statement of Receipts and Disbursements
June 5, 2013 through July 4, 2013**

Receipts:

| | | |
|------|--------------------|-------------|
| Rent | <u>\$51,131.13</u> | \$51,131.13 |
|------|--------------------|-------------|

Disbursements:

| | | |
|------------------------------------|---------------|-----------|
| Legal fees | \$5,706.23 | |
| Payroll (net) | 2,101.76 | |
| Repair & maint | 1,022.41 | |
| HST on disbursements | 949.79 | |
| Payroll source deductions remitted | 858.99 | |
| Utilities | 413.88 | |
| Office copier lease | <u>269.75</u> | |
| | | 11,322.81 |

| | |
|---|---------------------------|
| Excess receipts over disbursements | <u><u>\$39,808.32</u></u> |
|---|---------------------------|

Represented by:

| | |
|-------------------------------|---------------------------|
| Balance in Receiver's account | <u><u>\$39,808.32</u></u> |
|-------------------------------|---------------------------|

TAB “L”

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

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

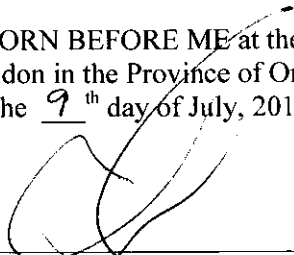
AFFIDAVIT OF STEPHEN N. CHERNIAK

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. Since May 2, 2013 the Receiver has been engaged in the following:
 - Review materials /Draft Order from the Bank of Montreal in respect of the Banwell file;
 - Prepare the first report of the Proposed Receiver for the sale of Lot 44;
 - Attendance at Court re the approval of the sale of Lot 44 and approval of the Receivership Order;
 - Meet with representatives of Banwell in order to review the assets of Banwell and Royal Timbers;
 - Establish bank accounts and protocols and procedures for the Receiver to manage operations of Banwell and Royal Timbers;
 - Review the appraisal of the Banwell and Royal Timbers and commission second appraisal;
 - Review of the leases currently in place with the tenants of Royal Timbers;
 - Prepare the First Report of the Receiver in order to facilitate the sale of Lots 40 and 47;
 - Review the status of the lawsuits whereby Banwell and Royal Timbers are either plaintiff or defendant;

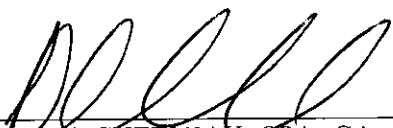
- Develop a strategy in order to market the assets of Royal Timbers (the “Commercial Plaza”) and the assets of Banwell (“Lots”);
 - Review of the status of outstanding property taxes and various phone calls and correspondence with the City of Windsor re same;
 - Begin drafting the Receiver’s second report to the Court to obtain approval of the Receiver’s marketing plan and to obtain an Omnibus Order in order to allow the Receiver to sell residential lots without Court approval of each lot sale; and
 - Various phone calls and correspondence with the stakeholders and their respective counsel.
4. In the course of performing the duties pursuant to the Order and as set out above at paragraph 2, the Receiver’s staff expended 167.15 hours for the period of May 2, 2013 through July 5, 2013. Attached hereto and marked as Exhibit “A” to this my Affidavit is the account of the Receiver together with a summary sheet.
 5. 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.
 6. 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.
 7. 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.
 8. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
 9. 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 9th day of July, 2013



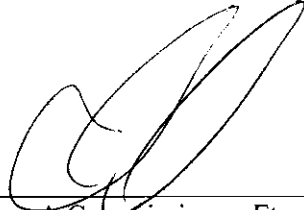
Commissioner for Taking Affidavits

**CHESTER RICHARD SZYPULA, A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO, FOR
BDO CANADA LIMITED, TRUSTEE IN BANKRUPTCY.
EXPIRES AUGUST 17, 2015.**



STEPHEN N. CHERNIAK, CPA • CA • CIRP

Attached is Exhibit A
To the Affidavit of Stephen N. Cherniak
Sworn the 9th day of July, 2013.



A Commissioner, Etc

CHESTER RICHARD SZYPULA, A COMMISSIONER, ETC.,
PROVINCE OF ONTARIO, FOR
BDO CANADA LIMITED, TRUSTEE IN BANKRUPTCY.
EXPIRES AUGUST 17, 2015.

**Summary of Receiver's Accounts for the period
May 2, 2013 through July 5, 2013**

| Invoice Date | Hours Expended | Invoice Total |
|---------------------|-----------------------|----------------------|
| July 8, 2013 | 167.15 | \$57,651.40 |
| | <hr/> | <hr/> |
| | 167.15 | \$57,651.40 |



Invoice # 87530758
 Banwell Developments Corp
 HST Reg # 101518124RT0001

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

July 8, 2013

Re: Banwell Development Corporation and Royal Timbers Inc.

For professional services rendered for the period May 2, 2013 through July 5, 2013 as per the attached detail:

| | |
|-------------------------|--------------------|
| Our Fee | \$51,000.00 |
| Disbursements (courier) | <u>\$18.94</u> |
| Sub Total | \$51,018.94 |
| HST | \$6,632.46 |
| Total | <u>\$57,651.40</u> |

REMITTANCE ADVICE

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

Invoice # 87530758

Amount \$57,651.40

Banwell Developments Corporation /Royal Timbers Inc.

July 8, 2013

For professional services rendered

| Staff | Date | Time | Narrative |
|-------------|-----------|------|---|
| Cherniak, S | 2-May-13 | 1.0 | Review of draft order. Calls to counsel and Windsor office |
| Finnegan, M | 2-May-13 | 0.4 | Prepare CV and Consent |
| Cherniak, S | 6-May-13 | 0.5 | Calls to Miller Thomson re potential file. |
| Cherniak, S | 10-May-13 | 0.5 | Call to counsel re Simba affidavit. Review of affidavit. Respond. |
| Cherniak, S | 13-May-13 | 1 | Emails and calls re Banwell. Call to Windsor office and Reynolds re Simba affidavit. |
| Cherniak, S | 15-May-13 | 0.5 | Emails from Bank counsel. Call from BMO. Email to Miller Thomson re conflict search. |
| Cherniak, S | 16-May-13 | 0.5 | Emails from Miller Thomson. |
| Cherniak, S | 22-May-13 | 0.5 | Review of correspondence from BMO re sale to Kirson Quality Homes - Lot 44. |
| Cherniak, S | 23-May-13 | 1.5 | Review of email from counsel for BMO. Call to David Taub, counsel for BMO. Call to Miller Thomson. Review of motion record. |
| Cherniak, S | 24-May-13 | 0.7 | Email from Miller Thomson. Call from Valco re appraisal. Review of Valco appraisal. |
| Flett, D | 24-May-13 | 2.5 | Review court materials for background; review appraisals; work on first report to court re: sale of lot 44 |
| Flett, D | 27-May-13 | 2.2 | Prepare first report to court re: completion of lot 44 sale |
| Cherniak, S | 27-May-13 | 0.6 | Email update on Branoff (lot 44). Email to RBC. Call to Miller Thomson. |
| Cherniak, S | 28-May-13 | 1.6 | Call to Alissa Mitchell re report. Various emails re updates on file. Review of agreement and purchase of sale on lot 44. Review of draft court report. |
| Flett, D | 28-May-13 | 2.5 | Review Kirson APS and legal correspondence; prepare receiver first report to court re: lot 44 |
| Flett, D | 29-May-13 | 0.5 | Review draft assignment and amendment agreement; review court reports as revised by lawyer; review of various email regarding lot 44 sale |
| Cherniak, S | 29-May-13 | 2.8 | Review of edits to receivers report. Calls and email from Miller Thomson. Call and emails from lawyer for purchaser of lot 44. Call to Reynolds. Changes to revised agreement of purchase and sale. |
| Cherniak, S | 30-May-13 | 1.2 | Call to Reynolds re document execution. Call from Miller Thomson. Review of emails. Re-sign docs. |
| Cherniak, S | 31-May-13 | 0.5 | Emails re court materials. |
| Cherniak, S | 3-Jun-13 | 0.5 | Review of D'Amore affidavit. Email to Reynolds re meeting with Troup. Email from Kuehl re sealing of confidential report. |
| Flett, D | 3-Jun-13 | 0.5 | Review Scott D'Amore affidavit and background; review proposed receiver engagement and issues |

Banwell Developments Corporation /Royal Timbers Inc.

| Staff | Date | Time | Narrative |
|-------------|-----------|------|--|
| Flett, D | 4-Jun-13 | 0.4 | Review motion record and final receivers report, prior to June 5 court date |
| Cherniak, S | 4-Jun-13 | 1.5 | Review of Factum. Call from Alissa Mitchell. Review of emails re attendance. Confirm meeting with Banwell. |
| Szypula, C | 4-Jun-13 | 0.6 | Review of First Report to Court |
| Prieur, C | 5-Jun-13 | 5.5 | Attend court for hearing of appointment order, meeting with Murray Troup & Marina, tour of properties with M. Troup, email to Marina |
| Cherniak, S | 5-Jun-13 | 5.5 | Attendance at court. Meet with Murray Troup. Tour of properties. Review of emails from counsel. Review of order. |
| Flett, D | 5-Jun-13 | 5.5 | Attend at court for hearing of appointment order and lot 44 vesting; travel to offices of Banwell/Wintru and meeting with Murray Troup and Marina on background, receiver activities and process, plaza and land sale status, property management arrangements and other issues; tour sub-division, plaza and view vacant commercial land; discussion and issues with M. Troup while viewing |
| Flett, D | 6-Jun-13 | 2.5 | Prepare detailed list of information required and email to Marina of Wintru; 2nd email to Marina re: details of lot sales currently under construction; review and compare residential lots appraisals; review area maps to identify land assets under receivership. |
| Cherniak, S | 6-Jun-13 | 3 | Deal with banking issues. Review of orders. Call to counsel. Call to appraisers. Emails and calls to BMO. Review of file. Review of info request list. |
| Finnegan, M | 6-Jun-13 | 0.3 | Providing initial docs to BMO re opening of trust bank accounts |
| Cherniak, S | 7-Jun-13 | 1.5 | Deal with banking. Call with Jim Telford re appraisals. Call to Hyatt Lassaline. Call from Miller Thomson re sale of lot 44. |
| Flett, D | 7-Jun-13 | 2.5 | Review appraisal status and requirements; set up and commence preparation of Receiver's second report |
| Flett, D | 10-Jun-13 | 4.5 | Review assignment of pending lot sales, property management arrangements and status of various items; prepare Second report to court including details of commercial plaza sale process; email to Marina re: property management agreement |
| Cherniak, S | 10-Jun-13 | 3.7 | Emails and call with BMO re account opening and legal accounts. Call with Alissa Mitchell re report and closing issues on lot 44. Call with Murray Troup re update. Call with appraiser re new appraisal at property. Administrative issues. Emails to Branoff re questions on BMO counsel accounts. Email to Miller Thomson re same. |
| Cherniak, S | 11-Jun-13 | 1.1 | Email and respond to BMO. Deal with banking. Email from Scott D'Amore. Updates on accounting. |
| Flett, D | 11-Jun-13 | 1.2 | Review trial balances; continue with Second Report of Receiver; review information status; review precedent for Receiver 2nd report and process for lot sales |
| Finnegan, M | 11-Jun-13 | 2.5 | Work on opening trust accounts with BMO |
| Prieur, C | 11-Jun-13 | 0.75 | Call to Adam Brissen (Hyatt Lassaline) re: status of 2011/2012 y-ends, f/u with Marina re: progress |

Banwell Developments Corporation /Royal Timbers Inc.

| Staff | Date | Time | Narrative |
|-------------|-----------|------|--|
| Prieur, C | 12-Jun-13 | 1 | Review lease agreements, accounts payable listings, property tax billings |
| Finnegan, M | 12-Jun-13 | 2 | Finalize bank acct opening. Deposits |
| Flett, D | 12-Jun-13 | 5 | Review court report issues and properties to be appraised; prepare and forward summary of property to be appraised and instructions to Dan Van Houte of Metrix Realty; review and organize information and documents provided by M. Troup by email - financials, appraisals, leases etc; review of Royal Timbers plaza appraisals; Continue with 2nd receiver report - lot sale process; review omnibus order precedents re: future lot sales |
| Cherniak, S | 12-Jun-13 | 1.2 | Email from Branoff. Emails from Murray Troup re appraisals. Brief review. Strategize re report. Bank account opening. Call to BMO. Deal with appraiser. |
| Cherniak, S | 13-Jun-13 | 0.5 | Review and respond to emails. |
| Flett, D | 13-Jun-13 | 4.5 | Continue with Receiver Second report - residential lot process and sales of lots 40,47. Email on accounts payable, property tax questions, rent payments and other items; review insurance policy; review precedent report re: use of omnibus order; review lot 40, 47 sale agreements and email with M. Troup and A. Mitchell of MT on status and timing; email with M Troup on appraisals |
| Finnegan, M | 13-Jun-13 | 0.5 | Prepare payroll and send to Windsor |
| Prieur, C | 13-Jun-13 | 1 | Email to Marina re; o/s information required re: lease agreements/monthly rent requirements, review property tax notices & A/P listing, emails to Marina. Email re wages for Marina |
| Hooper, L | 13-Jun-13 | 0.1 | Issued chqs |
| Prieur, C | 14-Jun-13 | 1 | Meet with Marina, email to Marina |
| Finnegan, M | 14-Jun-13 | 0.5 | Pay bills |
| Flett, D | 14-Jun-13 | 4.8 | Continue with 2nd receiver report - future residential lot sales and omnibus order; review report approach - report for Hadi lot sales only vs. Full report; Review of appraisals and prepare confidential supplement for court report re: Hadi lot sales; review Real Ranchs tax bills and ownership status; various email with M. Troup on documents requested and property management arrangements; phone call with S. Kettle, Miller Thomson re: lot sale approach, appraisal and report status and other items. |
| Cherniak, S | 14-Jun-13 | 3.7 | Review of new lot sales. Review of property tax info. Review of leases. Review of insurance policy. Call from Murray Troup re update. Call to Miller Thomson re report and timing. Deal with HST, payroll returns. Update on status of financial statements. |
| Cherniak, S | 17-Jun-13 | 1 | Review of emails. Calls to Miller Thomson re review of Branoff emails. |
| Flett, D | 17-Jun-13 | 3 | Prepare Receiver 2nd report and confidential supplement - analysis of Hadi transactions on lot 40 and 47; email with D. Van Houte of Metrix on property management; email with M. Troup on unit 100 and 400 status, proposed leasing fee arrangement, property management and other issues; review Banwell site plan for background |

Banwell Developments Corporation /Royal Timbers Inc.

| Staff | Date | Time | Narrative |
|-------------|-----------|------|--|
| Finnegan, M | 17-Jun-13 | 0.5 | Source remittance to CRA |
| Finnegan, M | 18-Jun-13 | 0.4 | Letter re renewal of Banwell corporation number |
| Flett, D | 18-Jun-13 | 4.5 | Review schedule D to APS and email with M. Troup on security deposits; review property management arrangements and fees; prepare 2nd report of Receiver for lot 40 and 47 sales only; Prepare confidential supplement for 2nd report - lot sales and analysis vs. Sale of lot 44; review of emails with J. Branoff and Receiver counsel on issues; memo on omnibus and vesting order; review bank account statements re: garnishment; review final draft 2nd report and supplement . |
| Cherniak, S | 18-Jun-13 | 4.3 | Responding to numerous emails. Calls with Miller Thomson re Branoff. Review of draft second report and supplement. Execute documents re registering court order. Review of expenses. Review of schedule re security deposits. Respond to email from Hadi Homes. Review of correspondence from Affleck Greene. |
| Cherniak, S | 19-Jun-13 | 2.5 | Deal with funds in trust issues re lot sales. Calls and emails with Miller Thomson. Review of Miller Thomson changes to reports. Emails to BMO re transfers of rental revenue. Review of July 2012 order. |
| Flett, D | 19-Jun-13 | 1.5 | Review Macs' lease and summary schedule; review proposed lease of unit 100; email with M. Troup re: Popp Parette garnishment; review lot 40,47 closing issues and email from Receiver counsel; review Miller Thomson revision to Receiver's report and confidential supplement; review July 26-12 judges reasons for background |
| Finnegan, M | 19-Jun-13 | 0.5 | Prepare payroll. Deposit |
| Hooper, L | 19-Jun-13 | 0.15 | Issued chqs |
| Hooper, L | 20-Jun-13 | 0.1 | Issued chq |
| Finnegan, M | 20-Jun-13 | 1 | Pay bills. Deposit. Prepare and send term and task letter for employee |
| Flett, D | 20-Jun-13 | 2.5 | Prepare Receiver 2nd report to Court without lots 40 and 47 details moved to Receiver First Report - revised intro and background, lots sales process, Omnibus order, receiver activities, recommendations to Court |
| Cherniak, S | 20-Jun-13 | 2.5 | Deal with problems re title to lots. Review of emails from Miller Thomson and BMO counsel. Call to Murray Troup re title issue. Review of correspondence from Hooker. Call to Miller Thomson. Call from Scott D'Amore. Review of a/p summaries. Finalize reports and execute assignment docs. |
| Flett, D | 21-Jun-13 | 2.2 | Prepare 2nd receiver report - Receiver activities, R &D ; review property management arrangements and proposed leasing fees; Include property management in Report |
| Prieur, C | 21-Jun-13 | 1 | Meet with Marina re: o/s items, |
| Prieur, C | 24-Jun-13 | 0.2 | Review email from A. Brisson (Hyatt) |
| Finnegan, M | 24-Jun-13 | 0.5 | File admin re payables |

Banwell Developments Corporation /Royal Timbers Inc.

| Staff | Date | Time | Narrative |
|-------------|-----------|------|--|
| Flett, D | 24-Jun-13 | 2.5 | Review of property tax status and Receiver report content; call with C. Prieur on taxes, payables, garnishment and other items and review C. Prieur email on payables. Continue with Receiver 2nd report - Receiver activities; review/analysis of City of Windsor tax schedule and memo on arrears attributable to commercial plaza |
| Cherniak, S | 24-Jun-13 | 3.3 | Review of accounts payable. Call from Miller Thomson re Branoff email. Call and email to BMO re payment request. Call from city of Windsor re property taxes. Review of schedule. Calls to/from Murray Troup re lot sales. Review of emails from Miller Thomson re security review requests and lot sales. |
| Cherniak, S | 25-Jun-13 | 1.1 | Emails from Branoff. Discussions re report strategy. Emails from Miller Thomson re court attendance. |
| Flett, D | 25-Jun-13 | 1.6 | Review security deposit issue and review Schedule D to APS; email with M. Troup and E. Hooker on details of security deposits; Continue with Receiver 2nd report - Receiver activities - property taxes, recommendations |
| Hooper, L | 25-Jun-13 | 0.1 | Issued cheques |
| Finnegan, M | 26-Jun-13 | 0.8 | Pay bills. Prepare and send payroll cheque |
| Flett, D | 26-Jun-13 | 1.5 | 2nd report of Receiver - review and revise/edit; Add to Receiver activities; review email from C. Prieur on rent and operations |
| Cherniak, S | 26-Jun-13 | 3.1 | Attend court re sale of lot sales 40 and 47. Meet with Branoff and D'Amore. Review file with Miller Thomson. Review of emails re court order, appraisal and lot diagrams. |
| Cherniak, S | 27-Jun-13 | 1.2 | Call from Jim Branoff re Troup and resale of lot 50. Call to Murray Troup. Review of emails from Murray Troup and Ed Hooker. Call from Jim Telford of Valco. Email to Metrix re attendance at company. |
| Flett, D | 27-Jun-13 | 1.2 | Review email and information on security deposits from E. Hooker, lawyer; review lot plan and unsold lot information provided by M. Troup; Receivers 2nd report - Receiver activities, property taxes; |
| Hooper, L | 27-Jun-13 | 0.05 | Issued chq |
| Flett, D | 28-Jun-13 | 1.8 | Review diagrams of unsold Banwell lots and compare to Valco appraisal; review tax bills and identify Banwell vs. Real Ranchs phase 4 lots; Continue with 2nd report of Receiver - Receiver activities and R and D; detailed memo to M. Troup for clarification on status of specific lots |
| Finnegan, M | 2-Jul-13 | 1 | Bill payment. Prepare r & d's |
| Flett, D | 2-Jul-13 | 1.1 | Review lot inventory/ Valco appraisal issues and report content; review emails from M. Troup on security deposits and various issues and information requests; download 2013 final tax bills; review May 31, 2012 Banwell/Royal Timbers financial and equity summary prepared by M. Troup |
| Cherniak, S | 2-Jul-13 | 1.6 | Call from Murray Troup re lot issues. Calls and emails from Metrix re attendance. Review of accounting issues. Review of property tax bills. Email from BMO. Respond. Review of legal claim correspondence. Email from Scott D'Amore. Respond. Emails to/from Miller Thomson re offer on lot 51. |

Banwell Developments Corporation /Royal Timbers Inc.

| Staff | Date | Time | Narrative |
|-------------|----------|---------------|--|
| Cherniak, S | 3-Jul-13 | 2.8 | Call to Miller Thomson re Scott D'Amore and lawsuits. Call to Scott D'Amore. Call from Murray Troup and appraiser. Call from Jim Branoff. Review of draft report. Call from city of Windsor re property taxes. Review of updated property tax schedule. |
| Prieur, C | 3-Jul-13 | 1.5 | Meet with Marina re: collection on rent, phone/email with Marina. Discussion/email with Mark Armata re: property management proposal |
| Flett, D | 3-Jul-13 | 1.5 | Review issues and court report content - litigation, security deposits; review insurance policy; various email with M. Troup; review obtaining property manager proposals; additions to 2nd court report. |
| Flett, D | 4-Jul-13 | 3.2 | Review/organize security deposit information, litigation correspondence etc prior to meeting with M. Troup; phone call with John Carter of Metrix on leases and day care playground issue; Meet with M. Troup and review litigation, former tenant status, builder security deposit arrangements, lot inventory and subdivision phase status, maintenance. |
| Finnegan, M | 4-Jul-13 | 2.8 | Edits to report. Pay bills. Prepare payroll cheque and send. Deposit rent cheques. Update R&D for 2 nd report. |
| Cherniak, S | 4-Jul-13 | 3.1 | Edits to report. Review of emails from Metrix re questions on appraisal methodology. Review email from BMO re Lepera litigation. Conference call with Peter Greene and Miller Thomson re litigation. Call to Miller Thomson re outcome of call. Email from Branoff. Respond to Branoff queries re draft report. |
| Cherniak, S | 5-Jul-13 | 2.5 | Edits to report. Call to Miller Thomson. Emails from Branoff re Lot 61. Call from M. Troup. Review of property manager proposals. Update on meeting with M. Troup. |
| Finnegan, M | 5-Jul-13 | 0.8 | Edits to report. Pay bills. |
| Flett, D | 5-Jul-13 | 6.5 | Review timing of Receiver report; review property management proposals received. Edits to report; litigation section, Receiver activities, builder deposits. Forward leases to J. Carter of Metrix. Email Ed Hooker on VTB mortgages and builder security deposits; review M. Troup emails on lot sale and lot servicing issues. |
| | | 167.15 | Total Time |

| Staff | Position | Hourly Rate | Time |
|-------------|--------------------------|-------------|--------|
| Cherniak, S | Sr. Vice President | \$400 | 65.9 |
| Finnegan, M | Administrative | \$125 | 14.5 |
| Flett, D | Vice President | \$275 | 73.70 |
| Hooper, L | Administrative | \$90 | 0.5 |
| Prieur, C | Sr. Estate Administrator | \$200 | 11.95 |
| Szypula, C | Sr. Vice President | \$400 | 0.6 |
| | | | 167.15 |

TAB “M”

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 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. 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 May 16, 2013 through June 26, 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 \$40,192.50, the disbursements billed were \$1,675.47, plus applicable taxes in the amount of \$5,402.03. 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

Attached are Exhibits "A" and "B" to the
Affidavit of Sherry Kettle sworn the
12th day of July, 2013



A Commissioner, Etc.

**Robert James Sinclair, a Commissioner, etc.,
County of Middlesex, for Miller Thomson LLP,
Barristers and Solicitors.
Expires September 7, 2015.**

ACCOUNT

June 12, 2013

Invoice Number 2479112

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 |
|------------|----------|---|-------|
| 05/16/2013 | AM | To receipt of initial instructions from client, consideration of matter and instructions to staff | 0.20 |
| 05/23/2013 | AM | Telephone conversation with Steve Cherniak; Review endorsement of Justice Thomas; Telephone conversation with David Taub; | 1.10 |
| 05/23/2013 | SK | E-mail correspondence with Ms. Mitchell re motion; | 0.10 |
| 05/27/2013 | AM | Review various communication from David Taub re sale of Lot 44; review letter from Branoff; | 0.20 |
| 05/28/2013 | AM | Telephone conversation with Sherry Kettle; Exchange of electronic mail messages re motion for approval; Telephone conversation with Steve Cherniak; | 1.20 |

| Date | Initials | Description | Hours |
|-------------|-----------------|--|--------------|
| 05/28/2013 | SK | Review documents; Review correspondence; Request searches; Telephone conference with Mr. Cherniak; Telephone conference with Ms. Mitchell; Draft Assignment and Amendment Agreement; Draft Schedule "B" to Agreement of Purchase and Sale; Telephone conference with Ms. Mitchell; E-mail correspondence with Mr. Chernia re draft Assignment and Amendment Agreement; Draft motion materials; | 7.60 |
| 05/28/2013 | JL | Review and respond to SWO Search request; e-mail correspondence with lawyer; obtain parcel register and execution certificates; compose e-mail to lawyer enclosing same; | 0.30 |
| 05/28/2013 | HM | Obtain Verbal Personal Property Securities Act Printout for Banwell Development Corporation and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Verbal Personal Property Securities Act Printout for Royal Timbers Inc. and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Bankruptcy certificate for Royal Timbers Inc. and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Bankruptcy certificate for Banwell Development Corporation and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Corporation Profile Report for Banwell Development Corporation and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Corporation Profile Report for Royal Timbers Inc. and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Bankruptcy certificate for Royal Timbers Inc. and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Bankruptcy certificate for Banwell Development Corporation and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Certificate of Status for Banwell Development Corporation and provide same to Ms. Kettle; | 0.10 |
| 05/28/2013 | HM | Obtain Certificate of Status for Royal Timbers Inc. and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | AM | Review and revise motion materials; Telephone conversation with Steve Cherniak; Review and respond to various electronic mail messages; Discussion with Sherry Kettle; | 3.90 |

| Date | Initials | Description | Hours |
|-------------|-----------------|--|--------------|
| 05/29/2013 | SK | Review BMO motion record; Review and revise draft proposed receiver's report; Review and revise draft confidential supplement to same; Prepare notice of motion, draft order (approval of activities), approval and vesting order, black-lined approval and vesting order; E-mail correspondence with Ms. Mitchell; E-mail correspondence with Mr. Cherniak; Telephone correspondence with Mr. Cherniak; Voice message from Mr. Kiritsis; E-mail correspondence with Mr. Kiritsis; Revise Schedule "B" to amended agreement of purchase and sale; Request and review searches; Prepare motion record and confidential supplement; Prepare service letter; E-mail correspondence with Mr. Cherniak re status of Assignment and Amendment Agreement; | 12.80 |
| 05/29/2013 | JL | Review and respond to SWO Search requests; obtain execution certificates; compose e-mail to lawyer enclosing same; | 0.30 |
| 05/29/2013 | HM | Obtain Verbal Personal Property Securities Act Printout for Royal Timbers Subdivision and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | HM | Obtain Bank Act certificate for Royal Timbers Subdivision and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | HM | Obtain Verbal Personal Property Securities Act Printout for Royal Timbers Development and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | HM | Obtain Bank Act certificate for Royal Timbers Development and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | HM | Obtain Verbal Personal Property Securities Act Printout for Fairfield Investments and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | HM | Obtain Bank Act certificate for Fairfield Investments and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | HM | Obtain Business Names List for Banwell Development Corporation and provide same to Ms. Kettle; | 0.10 |
| 05/29/2013 | HM | Obtain Expired Business Names List for Banwell Development Corporation and provide same to Ms. Kettle; | 0.10 |
| 05/30/2013 | AM | Review and respond to electronic mail message from David Taub; Telephone conversation with Ilias Kiristis; Telephone conversation with Steve Cherniak; Discussion with Sherry Kettle; Attend to finalizing and serving motion materials; | 1.00 |

| Date | Initials | Description | Hours |
|------------|----------|---|-------|
| 05/30/2013 | SK | E-mail correspondence with Mr. Cherniak; Review executed Assignment and Amendment Agreement; E-mail correspondence with Ms. Mitchell; Meeting with Ms. Mitchell; Telephone conference with Mr. Cherniak; Telephone conference with Mr. Kiritsis; Revise motion materials; | 2.50 |
| 05/31/2013 | AM | Review and revise approval and vesting order; Telephone conversation with Cynthia Kuehl; Prepare factum; Address issues re filing of Finlay appraisals; | 1.60 |
| 05/31/2013 | SK | E-mail correspondence with Ms. Mitchell; Revise draft approval and vesting order; Prepare black-lined version of approval and vesting order; Draft motion confirmation; | 0.80 |

TOTAL HOURS 35.40

OUR FEE: \$10,838.00

TAXABLE DISBURSEMENTS

| | | |
|---------------------------------------|--------|----------|
| Couriers | 11.00 | |
| Certificate of Status | 52.00 | |
| Corporate or Securities file searches | 24.00 | |
| Agent's Fees | 46.10 | |
| Copywork | 73.00 | |
| Long Distance Telephone | 5.94 | |
| Fax | 10.00 | |
| Online Searches - Teranet | 114.00 | |
| Visa - PPSA Registration | 40.00 | |
| Visa Charge - Bankruptcy Search/Bank | 86.00 | |
| TOTAL TAXABLE | 462.04 | \$462.04 |

NON-TAXABLE DISBURSEMENTS

| | | |
|------------------------|--------|----------|
| Issue Notice of Motion | 127.00 | |
| TOTAL NON-TAXABLE | 127.00 | \$127.00 |

TOTAL FEES AND DISBURSEMENTS: \$11,427.04

Harmonized Sales Tax (R119440766)

| | |
|------------------|------------|
| On Fees | \$1,408.94 |
| On Disbursements | \$60.07 |

TOTAL AMOUNT DUE: \$12,896.05

E.&O.E.

ACCOUNT

June 19, 2013

Invoice Number 2481085

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 |
|------------|----------|---|-------|
| 06/02/2013 | SK | Draft factum; | 3.20 |
| 06/03/2013 | AM | Review responding affidavit of Scott D'amore; Review and revise factum; | 3.60 |
| 06/03/2013 | SK | Draft factum, prepare brief of authorities; | 3.50 |
| 06/04/2013 | AM | Finalize and serve factum and brief of authorities; Telephone conversation with Steve Cherniak; Telephone conversation with counsel to the receiver; Electronic mail message to service list regarding receivership mandate; | 4.10 |
| 06/04/2013 | SK | Revise and finalize factum and brief of authorities; Prepare service letter and service e-mail; Review affidavit of service; Instructions re agent for filing factum and brief of authorities; Review correspondence; | 1.50 |
| 06/05/2013 | AM | Prepare for and attend on return of receivership motion and approval and vesting motion in Windsor; Attend to having orders issued and served on service list; Telephone conversation with Peter Greene (Solicitor for Royal Timbers; | 10.10 |

| Date | Initials | Description | Hours |
|-------------|-----------------|--|--------------|
| 06/05/2013 | SK | Telephone conference call with Ms. Mitchell re motion, approval and vesting order and upcoming closing on sale of real property; Provide instructions to Ms. Barker re closing of real estate transaction; | 0.60 |
| 06/05/2013 | KB | Receive and review Agreement of Purchase and Sale; telephone call to Mr. Kiritsis, solicitor for the purchaser, to advise of Receiving Order and Vesting Order; obtain tax certificate; telephone call to Mr. Hooker, previous solicitor for vendor/debtor in regard to obtaining the purchaser's deposits; draft Vesting Order for registration and sale documents; draft utility letters and tax department notifications. | 3.90 |
| 06/06/2013 | AM | Meeting with Kelly Barker to review closing documents re Lot 44; Review and revise correspondence to solicitors for purchaser and Banwell Development Corporation; Telephone conversation with Steve Cherniak re various issues; | 0.70 |
| 06/06/2013 | SK | Meeting with Ms. Barker re closing; Meeting with Ms. Mitchell re next steps; | 0.40 |
| 06/06/2013 | KB | Obtain Receivership Order and Receiver's Certificate; review documents with Alissa Mithcell and amend correspondence; scan and email correspondence and documents to Mr. Hooker and Mr. Kiritsis; complete letter and documents for signature by Mr. Cherniak and courier to BDO office; obtain signatures on closing documents from Ms. Mitchell. | 3.00 |
| 06/07/2013 | AM | Telephone conversation with Steve Cherniak re various issues; | 0.30 |
| 06/07/2013 | SK | Research re omnibus motion to approve sales; E-mail correspondence with Ms. Barker re closing; Discussion with Ms. Barker re same; | 0.50 |
| 06/07/2013 | KB | Prepare closing letter to Mr. Kiritsis; email documents for closing; receipt and review of closing documents from purchaser; obtain deposit proceeds from Mr. Hooker's office; email to Mr. Kiritsis regarding deposit proceeds; telephone call with Mr. Cherniak; complete closing of transaction. | 1.50 |
| 06/10/2013 | AM | Discussion with Kelly Barker re closing; Telephone conversation with Steve Cherniak; Review and respond to various electronic mail messages from Steve Cherniak re payment of accounts; | 1.40 |

| Date | Initials | Description | Hours |
|-------------|-----------------|---|--------------|
| 06/10/2013 | KB | Complete cheque requisitions; meeting with Alissa Mitchell regarding request by purchaser's solicitor for costs incurred by purchaser due to debtor-seller postponing closing; letter to tax department City of Windsor to pay outstanding taxes letter and proceeds to Mr. Hooker's office. | 0.90 |
| 06/11/2013 | AM | Review electronic mail message from Steve Cherniak; Review court documents re omnibus approval and vesting order and electronic mail message to David Flett re same; | 0.40 |
| 06/12/2013 | AM | Telephone conversation with Steve Cherniak; Review and respond to electronic mail message from Jim Branoff; Attend to registration of the Appointment Order; | 1.20 |
| 06/13/2013 | AM | Review APS's re additional lot sales; Electronic mail message to Steve Cherniak; Discussion with Sherry Kettle and Kelly Barker; | 0.80 |
| 06/13/2013 | KB | Telephone call to Mr. Laba's office regarding Agreements of Purchase and Sale and deposits between Banwell and Hadi Custom Homes; email to Mr. Laba's clerk regarding closing dates; meeting with Sherry Kettle and Alissa Mitchell regarding agreements, closing dates and obtaining vesting orders. | 1.00 |
| 06/14/2013 | KB | Telephone call and exchange of emails on issue of closing transaction on July 4th, 2013 and whether extension of closing is possible; email regarding deposit cheques on July 4th closing; email to Sherry Kettle and Alissa Mitchell regarding status of closings. | 0.70 |

TOTAL HOURS 43.30

OUR FEE: \$14,528.50

TAXABLE DISBURSEMENTS

| | | |
|-------------------------|---------------|----------|
| Couriers | 55.57 | |
| Mileage/Parking | 169.91 | |
| Agent's Disbursements | 33.00 | |
| Copywork | 82.05 | |
| Long Distance Telephone | 1.75 | |
| Postage | 0.63 | |
| TOTAL TAXABLE | <u>342.91</u> | \$342.91 |

TOTAL FEES AND DISBURSEMENTS: \$14,871.41

Harmonized Sales Tax (R119440766)

| | |
|------------------|------------|
| On Fees | \$1,888.71 |
| On Disbursements | \$44.58 |

TOTAL AMOUNT DUE:

\$16,804.70

E.&O.E.

ACCOUNT

July 11, 2013

Invoice Number 2491048

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 |
|------------|----------|--|-------|
| 06/12/2013 | SK | E-mail from Ms. Barker re new closing dates; E-mail to Ms. Mitchell re approval and vesting order; Discussion with Ms. Barker re registration of receivership order on title to properties; | 0.30 |
| 06/13/2013 | SK | Discussion with Ms. Barker re closing of property sales; Meeting with Ms. Mitchell re closing of property sales; | 0.50 |
| 06/14/2013 | AM | Letter to purchaser's counsel re reimbursement; Review APAs re further lot sales; Discussion with Sherry Kettle re motions to approve lot sales and marketing plan; Telephone conversation with Steve Cherniak; | 1.50 |
| 06/14/2013 | SK | Meeting with Ms. Mitchell re motion materials; Telephone conversation with Mr. Flett; Meeting with Ms. Barker; | 0.50 |
| 06/17/2013 | AM | Review and respond to electronic mail message from James Branoff; Telephone conversation with Steve Cherniak; Draft motion materials re approval and vesting orders for Lot sales; Review correspondence from Peter Green and respond thereto; Draft assumption and amending agreements; | 5.20 |

| Date | Initials | Description | Hours |
|-------------|-----------------|--|--------------|
| 06/17/2013 | SK | E-mail correspondence with Ms. Barker, Ms. Mitchell and Ms. Jarrell re closing and motion re same; Telephone call to trial coordinator (left voice message); Telephone conversation with trial coordinator's office; | 0.40 |
| 06/17/2013 | KB | Complete verification of subsearches of properties; draft application to register Order; email to Mr. Laba's office regarding security deposits and closing. | 0.80 |
| 06/18/2013 | AM | Telephone conversation with Steve Cherniak; Exchange of electronic mail messages with James Branoff; Exchange of electronic mail messages with David Taub; Review and revise assumption and amending agreements; Review issue of security deposits; | 2.60 |
| 06/18/2013 | SK | E-mail correspondence with the trial coordinator in Windsor re scheduling further motions; E-mail correspondence with Ms. Mitchell re same; | 0.50 |
| 06/18/2013 | KB | Complete drafting application to register Order appointing Receiver and Acknowledgement and Direction; email to Receiver; register. | 1.00 |
| 06/19/2013 | AM | Telephone conversation with Mike Laba (x2); Telephone conversation with Steve Cherniak (x3); Review and revise motion materials including receiver's reports; Review and revise assumption and amending agreements; Discussion with Kelly re title issue; Electronic mail message to David Taub; Electronic mail message to Murray Troup; | 6.00 |
| 06/19/2013 | KB | Meeting with Alissa Mitchell regarding ownership of lots; complete subsearches and obtain copies of previous title transfers; email and telephone call to Mr. Hooker's office to locate Beneficial Ownership Agreement. | 0.70 |
| 06/20/2013 | AM | Review and respond to electronic mail message from David Flett; Review and respond to electronic mail message from David Taub; Telephone conversation with Mike Laba and electronic mail messages thereto; Finalize and serve motion record; Finalize Confidential Supplement; Finalize assumption and amending agreements; Review s. 62 LTA; Telephone conversation with Steve Cherniak; Telephone conversation with James Branoff; | 3.10 |
| 06/24/2013 | AM | Telephone conversation with Steve Cherniak; Electronic mail message to James Branoff and David Taub re security; Telephone conversation with Mike Laba; Review offer to purchase; Review and respond to electronic mail message from James Branoff re mortgage security; Review and respond to electronic mail message from Cynthia Kuehl; Finalize Confidential Supplement; | 1.70 |

| Date | Initials | Description | Hours |
|------------|----------|---|-------|
| 06/25/2013 | AM | Review and respond to electronic mail message from Cynthia Keuhl; Prepare for motion; Review and respond to electronic mail message from James Branoff; Review correspondence and attachments received from Peter Greene; | 0.90 |
| 06/25/2013 | AM | Review and respond to electronic mail message from Myron Shulgan; | 0.20 |
| 06/26/2013 | AM | Prepare for and attend on return of motion for approval and vesting of Lots 40 and 47; Travel to Windsor and return; Attend to issuance of orders; Discussion with Steve Cherniak re various issues; Discussion with Bob Reynolds, James Branoff and Scott D'Amore re outstanding litigation; Address issue of extending closing date for Lot 40 transaction; | 8.20 |

TOTAL HOURS 34.10

OUR FEE: \$14,826.00

TAXABLE DISBURSEMENTS

| | | |
|---------------------------|---------------|----------|
| Teraview service Fee | 10.00 | |
| Couriers | 64.47 | |
| Mileage/Parking | 176.99 | |
| Agent's Fees | 60.00 | |
| Copywork | 133.60 | |
| Long Distance Telephone | 2.46 | |
| Online Searches - Teranet | 109.00 | |
| TOTAL TAXABLE | <u>556.52</u> | \$556.52 |

NON-TAXABLE DISBURSEMENTS

| | | |
|--------------------------|---------------|----------|
| Registration fees | 60.00 | |
| Issue Notice of Motion | 127.00 | |
| TOTAL NON-TAXABLE | <u>187.00</u> | \$187.00 |

TOTAL FEES AND DISBURSEMENTS: \$15,569.52

Harmonized Sales Tax (R119440766)

| | |
|------------------|------------|
| On Fees | \$1,927.38 |
| On Disbursements | \$72.35 |

TOTAL AMOUNT DUE: \$17,569.25

E.&O.E.

EXHIBIT "B"
Miller Thomson's Fees

| | <u>Year of Call</u> | <u>Rate 2013</u> | <u>Inv.#2479112</u> <u>June 12, 2013</u> | <u>Inv.#2481085</u> <u>June 19, 2013</u> | <u>Inv.#2491048</u> <u>July 11, 2013</u> | <u>Total</u> <u>Invoices</u> |
|------------------|---------------------|------------------|---|---|---|---------------------------------|
| Hours | | | | | | |
| A. Mitchell | | | 9.20 | 22.60 | 29.40 | 61.20 |
| Sherry Kettle | | | 23.80 | 9.70 | 2.20 | 35.70 |
| K. Barker | | | 0.00 | 11.00 | 2.50 | 13.50 |
| Corporate Clerks | | | 2.40 | 0.00 | 0.00 | 2.40 |
| | | | 35.40 | 43.30 | 34.10 | 112.80 |
| Total \$ | | | | | | |
| A. Mitchell | 1994 | \$475.00 | \$4,370.00 | \$10,735.00 | \$13,965.00 | \$29,070.00 |
| Sherry Kettle | 2007 | \$255.00 | \$6,069.00 | \$2,473.50 | \$561.00 | \$9,103.50 |
| K. Barker | N/A | \$120.00 | \$0.00 | \$1,320.00 | \$300.00 | \$1,620.00 |
| Corporate Clerks | N/A | | \$399.00 | \$0.00 | \$0.00 | \$399.00 |
| | | | \$10,838.00 | \$14,528.50 | \$14,826.00 | \$40,192.50 |
| Summary | | | | | | |
| Fees | | | \$10,838.00 | \$14,528.50 | \$14,826.00 | \$40,192.50 |
| Disbursements | | | \$589.04 | \$342.91 | \$743.52 | \$1,675.47 |
| HST | | | \$1,469.01 | \$1,933.29 | \$1,999.73 | \$5,402.03 |
| Total | | | \$12,896.05 | \$16,804.70 | \$17,569.25 | \$47,270.00 |

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 “3”

ONTARIO
SUPERIOR COURT OF JUSTICE
~~COMMERCIAL LIST~~

THE HONOURABLE)
)
JUSTICE THOMAS) DAY

OF ~~20~~23 JULY, 2013

BETWEEN:

Plaintiff

KEVIN D'AMORE

Applicant

- and -

Defendant

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

Respondents

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) ~~THIS MOTION, made by [] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [] (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between~~providing that, upon the delivery by the Receiver and [] (the "Purchaser") dated [] and appended to the Report of the Receiver dated [] (the "Report"), and vesting in the Purchaser the Debtor's 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 assets Lot(s) described in the each applicable Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, "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 Report 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 one appearing for any other person on

the service list ~~other persons appeared~~, although properly served as appears from the affidavit of ~~[]~~ Susan Jarrell sworn ~~[]~~ July 12, 2013, filed¹:

1. THIS COURT ORDERS AND DECLARES that ~~the~~each Transaction is hereby prospectively approved,² and the execution of ~~the~~each applicable Sale Agreement by the Receiver³ is hereby authorized and approved, with such ~~minor~~any amendments ~~as or~~ modifications thereto deemed necessary by 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~~any Transaction and for the conveyance of the Purchased Assets to ~~the~~each applicable Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's ~~certificate~~Certificate to the Purchaser substantially in the form attached as **Schedule A** ~~"B"~~ hereto ~~(the "Receiver's Certificate")~~, all of the ~~Debtor~~Banwell's right, title and interest in and to the Purchased Assets described in the applicable Sale Agreement ~~{and listed on Schedule B hereto}~~⁴ 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**"⁵) including,

¹ ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

⁵ ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the~~

without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~H~~Thomas dated ~~H~~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) 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~~"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 ~~are hereby~~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 Office for the [Registry Division of {}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]⁶ (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 ~~subject real property identified in Schedule B hereto (the "Real Property")~~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 ~~Real Property~~Purchased Assets all of the Claims listed in **Schedule "C"** hereto and in paragraph 2 of this Order.~~

Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

~~5.~~ 4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ 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 sale⁸, 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.~~ 5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of ~~the~~each Receiver's Certificate, forthwith after delivery thereof.

~~6.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor 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 the Debtor Banwell and any bankruptcy order issued pursuant to any such applications; and

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect

(c) any assignment in bankruptcy made in respect of the Debtor Banwell;

the vesting of the Purchased Assets in ~~the~~each applicable Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor Banwell and shall not be void or voidable by creditors of ~~the Debtor~~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 ~~the~~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.~~

~~proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Justice, Superior Court of Justice

Schedule "A" – Banwell Lots

Legal Description

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

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|-----------------------|------------|------------|-------------|-------------|
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>39</u> | <u>1566</u> | <u>0605</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>43</u> | <u>1566</u> | <u>0609</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>48</u> | <u>1566</u> | <u>0614</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>49</u> | <u>1566</u> | <u>0615</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>50</u> | <u>1566</u> | <u>0616</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>51</u> | <u>1566</u> | <u>0617</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>103</u> | <u>1566</u> | <u>0669</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>104</u> | <u>1566</u> | <u>0670</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>105</u> | <u>1566</u> | <u>0671</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>106</u> | <u>1566</u> | <u>0672</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>116</u> | <u>1566</u> | <u>0682</u> |
| <u>Plan 12M-533</u> | <u>Lot</u> | <u>117</u> | <u>1566</u> | <u>0683</u> |
| | | | | |
| <u>Phase 4</u> | | | | |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>2</u> | <u>1566</u> | <u>0824</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>3</u> | <u>1566</u> | <u>0825</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>4</u> | <u>1566</u> | <u>0826</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>7</u> | <u>1566</u> | <u>0829</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>8</u> | <u>1566</u> | <u>0830</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>9</u> | <u>1566</u> | <u>0831</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>10</u> | <u>1566</u> | <u>0832</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>11</u> | <u>1566</u> | <u>0833</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>12</u> | <u>1566</u> | <u>0834</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>13</u> | <u>1566</u> | <u>0835</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>29</u> | <u>1566</u> | <u>0851</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>30</u> | <u>1566</u> | <u>0852</u> |

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|---------------------|------------|-----------|-------------|-------------|
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>31</u> | <u>1566</u> | <u>0853</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>32</u> | <u>1566</u> | <u>0854</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>33</u> | <u>1566</u> | <u>0855</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>34</u> | <u>1566</u> | <u>0856</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>35</u> | <u>1566</u> | <u>0857</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>36</u> | <u>1566</u> | <u>0858</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>37</u> | <u>1566</u> | <u>0859</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>38</u> | <u>1566</u> | <u>0860</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>39</u> | <u>1566</u> | <u>0861</u> |
| <u>Plan 12M-546</u> | <u>Lot</u> | <u>40</u> | <u>1566</u> | <u>0862</u> |

Schedule "B" – Form of Receiver's CertificateCourt File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

Plaintiff

KEVIN D'AMOREApplicant

- and -

Defendant

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 undertaking, property and assets of, undertakings and properties of Banwell Development Corporation (the "Debtor"). "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) B. — Pursuant to an Order of the Court dated [], the Court approved the agreement of purchase and sale made as of [] (the "Sale Agreement") between the Receiver [] and [] (the "Purchaser") and provided for the vesting in and to the Purchaser all of the Debtor 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"), which with such vesting is to be effective within respect to 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 purchase price for the Purchased Assets; (ii) that the conditions to Closing closing as set out in section of 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 Sale Agreement Omnibus Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price purchase price for the Purchased Assets payable on the Closing Date closing pursuant to the Sale Agreement;

2. The conditions to Closing closing as set out in section of the Sale Agreement have been satisfied or, to the extent such conditions could be waived, have been waived by the Receiver and the Purchaser; and

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].

~~{NAME OF RECEIVER},~~ **BDO CANADA LIMITED** solely in its capacity as **Receiver of the undertaking, property and assets of {DEBTOR},** Court-appointed receiver of Banwell Development Corporation and not in its personal capacity

Per: _____

Name:

Title:

~~Schedule B~~

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

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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 Real Property

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

1. 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.
2. 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.
3. Instrument No. CE569187 - Notice of Court Order.
4. 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.
5. Instrument No. CE171657 – Postponement registered September 20, 2005.
6. Instrument No. CE171658 – Postponement registered September 20, 2005.
7. Instrument No. CE261562 – Notice registered February 28, 2007.

**Schedule "D—" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property 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 Coy;

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.

Respondents

Court File No: CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

OMNIBUS APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

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255 Queens Avenue, Suite 2010
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| Format changed | 0 |
| Total changes | 745 |

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 JULY 23, 2013)

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Receiver of Banwell Development Corporation
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