

**TAB "E"**

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE )  
JUSTICE THOMAS )  
 )  
 ) TUESDAY, THE 23<sup>rd</sup> DAY  
 OF JULY, 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

**SALES PROCESS ORDER**

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

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

- (b) approving the Second Report and the activities and conduct of the Receiver described therein;
- (c) extending the date by which consolidated Court Action Nos. 55047 and 06-CV-6763 shall be set down for trial as required by the Order of Justice Gates dated May 29, 2013 by the length of the stay of proceedings imposed by the Appointment Order;
- (d) approving and authorizing the Receiver to enter into a property management agreement with Wintru Developments Inc. ("**Wintru**") substantially in the form attached as Appendix E to the Second Report;
- (e) approving the sales process (the "**Lot Sales Process**") with respect to the residential building lots comprising the Royal Timbers Subdivision, more particularly described on Schedule "A" to the draft Omnibus Approval and Vesting Order attached as Schedule "B" hereto (the "**Banwell Lots**" or the "**Lots**"), and authorizing the Receiver to carry out the Lot Sales Process;
- (f) approving the form of Agreement of Purchase and Sale with respect to the sale of the Banwell Lots, substantially in the form attached to the Sales Process Order (the "**Form of Lot Sales Agreement**"), together with any amendments thereto deemed necessary and appropriate by the Receiver;
- (g) authorizing the Receiver to accept an offer or offers to purchase any or all of the Banwell Lots provided that the sale price for each Lot to which such offer(s) is subject is acceptable to the Receiver having regard to the appraised value for such Lot(s) and prior sales of similar lots and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Banwell;
- (h) approving the Receiver's proposed marketing plan and sale process for the Commercial Plaza (as defined in the Second Report) as set out in Section 7 of the Second Report (the "**Commercial Plaza Sales Process**");
- (i) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period June 5 to July 4, 2013

(the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**");

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

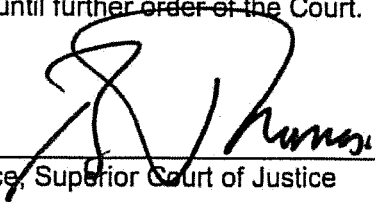
was heard this day at the Courthouse, 80 Dundas Street, London Ontario.

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

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

4. THIS COURT ORDERS that the Receiver is hereby approved and authorized to enter into a property management agreement with Wintru substantially in the form appended as Appendix E to the Second Report.
5. THIS COURT ORDERS that the Lot Sales Process with respect to the Banwell Lots is hereby approved and the Receiver is hereby authorized to carry out the Lot Sales Process.
6. THIS COURT ORDERS that the Form of Lot Sale Agreement with respect to the sale of the Banwell Lots, substantially in the form attached hereto as Schedule "A", together with any amendments thereto deemed necessary and appropriate by the Receiver, is hereby approved.
7. THIS COURT ORDERS that the Receiver is hereby authorized to accept an offer or offers to purchase any or all of the Banwell Lots provided that the sale price for each Lot is acceptable to the Receiver having regard to the appraised value for such Lot(s) and prior sales of similar lots and the terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Banwell.
8. THIS COURT ORDERS that the Commercial Plaza Sales Process is hereby approved.
9. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements are hereby approved.
10. THIS COURT ORDERS that the BDO Fees for the period commencing May 2, 2013 through July 5, 2013 as described in the Second Report and in the Affidavit of Stephen N. Cherniak sworn July 9, 2013 and the MT Fees for the period May 16, 2013 to June 26, 2013 as described in the Second Report and the Affidavit of Sherry A. Kettle sworn July 12, 2013, as appended to the Second Report, are hereby approved.
11. THIS COURT ORDERS AND DIRECTS and authorizes the Receiver, *nunc pro tunc*, to redact paragraph 6.12 from the Second Report served on any party other than the Court.

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

  
\_\_\_\_\_  
Justice, Superior Court of Justice

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

SCHEDULE "A"

BANWELL DEVELOPMENT CORPORATION

Lot No. \_\_\_\_\_

Plan \_\_\_\_\_, Windsor, Ontario  
Property Identifier No. \_\_\_\_\_

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

AGREEMENT OF PURCHASE AND SALE

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

1. The purchase price of the Property is \_\_\_\_\_ Dollars (\$) ) in lawful money of Canada (the "Purchase Price"), payable as follows:
  - (a) To the Vendor's solicitors, in trust, (the "Vendor's Solicitors") by certified cheque or bank draft, as a deposit pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Closing Date the sum of TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$2,500.00) (the "Deposit") submitted within forty eight (48) hours of acceptance of this Agreement;
  - (b) The balance of the Purchase Price and the Security Deposit by certified cheque or bank draft on the Closing Date, subject to the adjustments hereinafter set forth; and
  - (c) The Vendor's Solicitors shall hold such funds in trust in accordance with this Agreement of Purchase and Sale.
2. (a) The transfer of title to the Property shall be completed on \_\_\_\_\_, 201\_\_ (the "Closing Date").
- (b) The Purchaser's address for delivery of any notices pursuant to this Agreement is as follows:

Address: \_\_\_\_\_

City: \_\_\_\_\_

Province: Ontario

Postal Code: \_\_\_\_\_

Telephone (B): \_\_\_\_\_

(H): \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail address: \_\_\_\_\_

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

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**SIGNED, SEALED** ) 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 east 2,000 square feet; and
  - (C) any multi-level house (being a raised ranch, bi-level, tri-level, or four level) shall have a combined main floor and first floor area of

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

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



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

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

**Fence Acknowledgement**

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

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

**Acceptance of Interest**

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

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

**Closing Documents**

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

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

**Extension of Closing**

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

**Covenants of the Vendor**

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

- (d) any easements, rights of way, or right of re-entry in favour of a Developer, not materially or adversely impairing the present use of the Property;
- (e) any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- (f) any minor encroachments which might be revealed by an up to date survey of the Property; and
- (g) any gas or oil lease in respect of the Property.

#### **Covenants of the Purchaser**

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

#### **Representations and Warranties of the Vendor**

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

#### **Representations and Warranties of the Purchaser**

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

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

**Conditions for the Benefit of Vendor and the Purchaser**

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

**Environmental Condition**

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

**Governmental Approvals**

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

**Taxes**

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

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

**Unwanted Chattels**

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

**Fixtures/Chattels**

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

**Property Taxes**

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

**Conditions**

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

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

**Independent Advice**

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

**Receipt of Information**

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

**Notices**

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

**General Provisions**

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

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



**SCHEDULE "A"**

Legal Description of the Property

[to be completed]

**SCHEDULE "B"**Legal Description of Royal Timbers Subdivision

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

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

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

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

KEVIN D'AMORE

and

Applicant

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

Court File No: CV-11-17088

Respondents

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

SALES PROCESS ORDER

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

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

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

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**TAB "F"**

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE ) TUESDAY, THE 23<sup>rd</sup> DAY  
JUSTICE THOMAS ) OF JULY, 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

**AMENDED OMNIBUS APPROVAL AND VESTING ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

7. THIS COURT ORDERS that, notwithstanding:

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

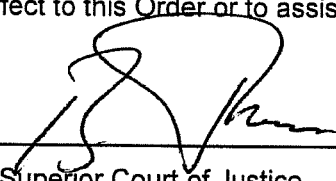
the vesting of the Purchased Assets in each applicable Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Banwell and shall not be void or voidable by creditors of Banwell, nor shall it constitute nor be deemed to be a settlement, fraudulent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

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

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



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

  
\_\_\_\_\_  
Justice, Superior Court of Justice

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

Schedule "A" – Banwell Lots

Legal Description

Banwell Development Corporation						
Royal Timbers Subdivision - Lot Inventory						
Description				PIN		
<b>Phase 1</b>						
Plan 12M-503	Lot	60		1566	-	0424
Plan 12M-503	Lot	99		1566	-	0463
Plan 12M-503	Lot	101		1566	-	0465
<b>Phase 2</b>						
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

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

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

Schedule "B" – Form of Receiver's Certificate

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

RECEIVER'S CERTIFICATE

RECITALS

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

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

(a) the Court's approval of this Transaction in respect of the Purchased Assets (as defined below) as described in the Sale Agreement (as defined below);

(b) the Court's authorization of the Receiver entering into the Agreement of Purchase and Sale made as of \_\_\_\_\_ [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver and \_\_\_\_\_ [NAME OF PURCHASER] (the "Purchaser"); and

(c) the vesting in and to the Purchaser all of Banwell's right, title and interest in and to the lands and premises legally described on Exhibit "A" to this Receiver's Certificate (the

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

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

THE RECEIVER CERTIFIES the following:

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

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

Per: \_\_\_\_\_  
Name:  
Title:

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

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

KEVIN D'AMORE

Applicant

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

Court File No: CV-11-17088

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

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

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

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



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

Description				PIN		
<b>Phase 1</b>						
<b>Plan 12M-503</b>	<b>Lot</b>	<b>60</b>		<b>1566</b>	<b>-</b>	<b>0424</b>
<ol style="list-style-type: none"> <li>Instrument No. CE573510 - Notice of Court Order.</li> <li>Instrument No. CE93353 – Charge in the principal amount of \$58,800 given by Affinity Custom Homes and Contracting Inc. to Banwell Development Corporation registered on August 3, 2004.</li> <li>Instrument No. CE95821 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on August 13, 2004.</li> </ol>						
<b>Plan 12M-503</b>	<b>Lot</b>	<b>99</b>		<b>1566</b>	<b>-</b>	<b>0463</b>
<ol style="list-style-type: none"> <li>Instrument No. CE573510 - Notice of Court Order.</li> <li>Instrument No. CE103476 – Charge in the principal amount of \$491,300 given by Thibert Homes Inc. to Banwell Development Corporation registered on September 17, 2004.</li> <li>Instrument No. CE103750 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on September 17, 2004.</li> </ol>						
<b>Plan 12M-503</b>	<b>Lot</b>	<b>101</b>		<b>1566</b>	<b>-</b>	<b>0465</b>
<ol style="list-style-type: none"> <li>Instrument No. CE573510 - Notice of Court Order.</li> <li>Instrument No. CE103476 – Charge in the principal amount of \$491,300 given by Thibert Homes Inc. to Banwell Development Corporation registered on September 17, 2004.</li> <li>Instrument No. CE103750 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on September 17, 2004.</li> </ol>						
<b>Phase 2</b>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>12</b>		<b>1566</b>	<b>-</b>	<b>0578</b>
<ol style="list-style-type: none"> <li>Instrument No. CE569187 - Notice of Court Order.</li> <li>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.</li> <li>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.</li> </ol>						

<b>Plan 12M-533</b>	<b>Lot</b>	<b>15</b>		<b>1566</b>	<b>-</b>	<b>0581</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>16</b>		<b>1566</b>	<b>-</b>	<b>0582</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>17</b>		<b>1566</b>	<b>-</b>	<b>0583</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>18</b>		<b>1566</b>	<b>-</b>	<b>0584</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>20</b>		<b>1566</b>	<b>-</b>	<b>0586</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						

April 24, 2007.						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>21</b>		<b>1566</b>	<b>-</b>	<b>0587</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>23</b>		<b>1566</b>	<b>-</b>	<b>0589</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>26</b>		<b>1566</b>	<b>-</b>	<b>0592</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>27</b>		<b>1566</b>	<b>-</b>	<b>0593</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>28</b>		<b>1566</b>	<b>-</b>	<b>0594</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> </ol>						

3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>29</b>		<b>1566</b>	<b>-</b>	<b>0595</b>
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>30</b>		<b>1566</b>	<b>-</b>	<b>0596</b>
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>38</b>		<b>1566</b>	<b>-</b>	<b>0604</b>
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>39</b>		<b>1566</b>	<b>-</b>	<b>0605</b>
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>43</b>		<b>1566</b>	<b>-</b>	<b>0609</b>
1. Instrument No. CE569187 - Notice of Court Order.						

2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.					
<b>Plan 12M-533</b>	<b>Lot</b>	<b>48</b>		<b>1566</b>	<b>- 0614</b>
1. Instrument No. CE569187 - Notice of Court Order.					
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.					
<b>Plan 12M-533</b>	<b>Lot</b>	<b>49</b>		<b>1566</b>	<b>- 0615</b>
1. Instrument No. CE569187 - Notice of Court Order.					
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.					
<b>Plan 12M-533</b>	<b>Lot</b>	<b>50</b>		<b>1566</b>	<b>- 0616</b>
1. Instrument No. CE569187 - Notice of Court Order.					
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.					
<b>Plan 12M-533</b>	<b>Lot</b>	<b>51</b>		<b>1566</b>	<b>- 0617</b>
1. Instrument No. CE569187 - Notice of Court Order.					
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.					
3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.					

<b>Plan 12M-533</b>	<b>Lot</b>	<b>103</b>		<b>1566</b>	<b>-</b>	<b>0669</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>104</b>		<b>1566</b>	<b>-</b>	<b>0670</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>105</b>		<b>1566</b>	<b>-</b>	<b>0671</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>106</b>		<b>1566</b>	<b>-</b>	<b>0672</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>116</b>		<b>1566</b>	<b>-</b>	<b>0682</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.</li> </ol>						

April 24, 2007.						
<b>Plan 12M-533</b>	<b>Lot</b>	<b>117</b>		<b>1566</b>	<b>-</b>	<b>0683</b>
<ol style="list-style-type: none"> <li>Instrument No. CE569187 - Notice of Court Order.</li> <li>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.</li> <li>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.</li> </ol>						
<b>Plan 12M-533</b>	<b>Block</b>	<b>120</b>		<b>1566</b>	<b>=</b>	<b>0686</b>
<ol style="list-style-type: none"> <li><u>Instrument No. CE569187 - Notice of Court Order.</u></li> <li><u>Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</u></li> <li><u>Instrument No. CE269359 – Charge in the principal amount of \$240,496 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 25, 2007.</u></li> </ol>						
<b>Phase 4</b>						
<b>Plan 12M-546</b>	<b>Lot</b>	<b>2</b>		<b>1566</b>	<b>-</b>	<b>0824</b>
<ol style="list-style-type: none"> <li>Instrument No. CE569187 - Notice of Court Order.</li> <li>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.</li> <li>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.</li> <li>Instrument No. CE171657 – Postponement registered September 20, 2005.</li> <li>Instrument No. CE171658 – Postponement registered September 20, 2005.</li> <li>Instrument No. CE261562 – Notice registered February 28, 2007.</li> </ol>						
<b>Plan 12M-546</b>	<b>Lot</b>	<b>3</b>		<b>1566</b>	<b>-</b>	<b>0825</b>
<ol style="list-style-type: none"> <li>Instrument No. CE569187 - Notice of Court Order.</li> <li>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.</li> <li>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</li> </ol>						

August 10, 2005.						
4. Instrument No. CE171657 – Postponement registered September 20, 2005.						
5. Instrument No. CE171658 – Postponement registered September 20, 2005.						
6. Instrument No. CE261562 – Notice registered February 28, 2007.						
<b>Plan 12M-546</b>	<b>Lot</b>	<b>4</b>		<b>1566</b>	<b>-</b>	<b>0826</b>
<b>Plan 12M-546</b>	<b>Lot</b>	<b>6</b>		<b>1566</b>	<b>-</b>	<b>0828</b>
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.						
4. Instrument No. CE171657 – Postponement registered September 20, 2005.						
5. Instrument No. CE171658 – Postponement registered September 20, 2005.						
6. Instrument No. CE261562 – Notice registered February 28, 2007.						
<b>Plan 12M-546</b>	<b>Lot</b>	<b>7</b>		<b>1566</b>	<b>-</b>	<b>0829</b>
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.						
4. Instrument No. CE171657 – Postponement registered September 20, 2005.						
5. Instrument No. CE171658 – Postponement registered September 20, 2005.						
6. Instrument No. CE261562 – Notice registered February 28, 2007.						
<b>Plan 12M-546</b>	<b>Lot</b>	<b>8</b>		<b>1566</b>	<b>-</b>	<b>0830</b>
1. Instrument No. CE569187 - Notice of Court Order.						
2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.						
3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.						



4.	Instrument No. CE171657 – Postponement registered September 20, 2005.
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.
6.	Instrument No. CE261562 – Notice registered February 28, 2007.
<b>Plan 12M-546</b>	
<b>Lot</b>	<b>9</b>
<b>1566</b>	<b>-</b>
	<b>0831</b>
1.	Instrument No. CE569187 - Notice of Court Order.
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.
6.	Instrument No. CE261562 – Notice registered February 28, 2007.
<b>Plan 12M-546</b>	
<b>Lot</b>	<b>10</b>
<b>1566</b>	<b>-</b>
	<b>0832</b>
1.	Instrument No. CE569187 - Notice of Court Order.
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.
6.	Instrument No. CE261562 – Notice registered February 28, 2007.
<b>Plan 12M-546</b>	
<b>Lot</b>	<b>11</b>
<b>1566</b>	<b>-</b>
	<b>0833</b>
1.	Instrument No. CE569187 - Notice of Court Order.
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.

5.	Instrument No. CE171658 – Postponement registered September 20, 2005.
6.	Instrument No. CE261562 – Notice registered February 28, 2007.
<b>Plan 12M-546</b>	
<b>Lot</b>	<b>12</b>
<b>1566</b>	<b>-</b>
	<b>0834</b>
1.	Instrument No. CE569187 - Notice of Court Order.
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.
6.	Instrument No. CE261562 – Notice registered February 28, 2007.
<b>Plan 12M-546</b>	
<b>Lot</b>	<b>13</b>
<b>1566</b>	<b>-</b>
	<b>0835</b>
1.	Instrument No. CE569187 - Notice of Court Order.
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.
6.	Instrument No. CE261562 – Notice registered February 28, 2007.
<b>Plan 12M-546</b>	
<b>Lot</b>	<b>29</b>
<b>1566</b>	<b>-</b>
	<b>0851</b>
1.	Instrument No. CE569187 - Notice of Court Order.
2.	Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
3.	Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
4.	Instrument No. CE171657 – Postponement registered September 20, 2005.
5.	Instrument No. CE171658 – Postponement registered September 20, 2005.

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

Plan 12M-546	Lot	33	1566	-	0855
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 - Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE163205 - Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.</li> <li>4. Instrument No. CE171657 - Postponement registered September 20, 2005.</li> <li>5. Instrument No. CE171658 - Postponement registered September 20, 2005.</li> <li>6. Instrument No. CE261562 - Notice registered February 28, 2007.</li> </ol>					
Plan 12M-546	Lot	34	1566	-	0856
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 - Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE163205 - Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.</li> <li>4. Instrument No. CE171657 - Postponement registered September 20, 2005.</li> <li>5. Instrument No. CE171658 - Postponement registered September 20, 2005.</li> <li>6. Instrument No. CE261562 - Notice registered February 28, 2007.</li> </ol>					
Plan 12M-546	Lot	35	1566	-	0857
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 - Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE163205 - Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.</li> <li>4. Instrument No. CE171657 - Postponement registered September 20, 2005.</li> <li>5. Instrument No. CE171658 - Postponement registered September 20, 2005.</li> <li>6. Instrument No. CE261562 - Notice registered February 28, 2007.</li> </ol>					

<b>Plan 12M-546</b>	<b>Lot</b>	<b>36</b>	<b>1566</b>	<b>-</b>	<b>0858</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.</li> <li>4. Instrument No. CE171657 – Postponement registered September 20, 2005.</li> <li>5. Instrument No. CE171658 – Postponement registered September 20, 2005.</li> <li>6. Instrument No. CE261562 – Notice registered February 28, 2007.</li> </ol>					
<b>Plan 12M-546</b>	<b>Lot</b>	<b>37</b>	<b>1566</b>	<b>-</b>	<b>0859</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.</li> <li>4. Instrument No. CE171657 – Postponement registered September 20, 2005.</li> <li>5. Instrument No. CE171658 – Postponement registered September 20, 2005.</li> <li>6. Instrument No. CE261562 – Notice registered February 28, 2007.</li> </ol>					
<b>Plan 12M-546</b>	<b>Lot</b>	<b>38</b>	<b>1566</b>	<b>-</b>	<b>0860</b>
<ol style="list-style-type: none"> <li>1. Instrument No. CE569187 - Notice of Court Order.</li> <li>2. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</li> <li>3. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.</li> <li>4. Instrument No. CE171657 – Postponement registered September 20, 2005.</li> <li>5. Instrument No. CE171658 – Postponement registered September 20, 2005.</li> <li>6. Instrument No. CE261562 – Notice registered February 28, 2007.</li> </ol>					

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

**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.

Respondents

Court File No: CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

AMENDED OMNIBUS APPROVAL AND VESTING ORDER

**MILLER THOMSON LLP**

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

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

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

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**TAB "G"**

171  
44

Court File No. CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**KEVIN D'AMORE**

**Applicant**

- and -

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

**Respondents**

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

**November 25, 2013**

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**8. Fees and Disbursements of the Receiver and Counsel to the Receiver .....26**

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## Appendices

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

# 1. Introduction and Background

---

## 1.1 Introduction

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

## 1.2 Background

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

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

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



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

## **2. Terms of Reference**

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

### 3. Purpose of the Receiver's Third Report

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

- (a) To provide this Court with information on:
  - (i) the Receiver's activities since the date of the Second Report and to seek approval of the Third Report, and the Receiver's activities as outlined therein;
  - (ii) the results and current status of the Receiver's sale process for the Commercial Plaza;
  - (iii) the potential recovery to the Receiver for the reimbursement of costs incurred by Banwell in the servicing of the rear portion of lots located on Robinet Road;
  
- (b) In support of an order of the Court:
  - (i) approving the Third Report, the Receiver's Confidential Supplement to the Third Report (the "Confidential Supplement") and the activities of the Receiver described therein;
  - (ii) sealing the Confidential Supplement until further Order of the Court;
  - (iii) amending the Omnibus Approval and Vesting Order to add Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) ("Block 120") to Schedule "A" to the Omnibus Approval and Vesting Order and to delete certain instruments from title to Block 120 as set out on Schedule "C" to the Omnibus Approval and Vesting Order in the form attached as Schedule "A" to the draft Order appended as Schedule "A"

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

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

---

## 4. Receiver's Activities

### Banwell Lots

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

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

**Block 120, Plan 12M-533**

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

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

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

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



### Commercial Plaza

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

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

**Receiver's Certificate**

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

## 5. Robinet Road Lots Servicing Reimbursement

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

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

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

## **6. Receiver's Sale Process for the Commercial Plaza**

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

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

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

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

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

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

## 7. Statement of Receipts and Disbursements of the Receiver

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

### 7.2 Receipts - Banwell

- a) *Sale of Lots (\$566,622.90)* — The Receiver received net proceeds totalling \$566,622.90 from completing the sales of Lots 39, 40, 43, 44, 47, 48, 49, 50, 51 and 117 Plan 12M-533, City of Windsor. Proceeds received are net of property tax arrears paid to the City of Windsor.
  
- b) *Receiver's Certificate #1 (\$125,000.00)* — The Receiver received \$125,000 from BMO under a Receiver's Certificate, of which \$96,505.68 was transferred to Royal Timbers in order for Royal Timbers to pay its share of property tax arrears.
  
- c) *Security Deposits on Sale of Lots (\$10,500.00)* — The Receiver received security deposits totalling \$10,500.00 from completing the sales of Lots. These deposits are refundable to the purchaser on the completion of construction of a house on the Lot and fulfillment of certain conditions.



### 7.3 Disbursements - Banwell

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

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

#### 7.4. Receipts – Royal Timbers

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

#### 7.5. Disbursements – Royal Timbers

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

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

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

- o) *Utilities (\$2,121.77)* – The Receiver paid \$2,121.77 for utilities for the unleased units and common area at the Commercial Plaza.
  
- p) *City of Windsor application fee (\$1,172.00)* – The Receiver paid an application fee to the City of Windsor of \$1,172.00 for the “Removal of the Zoning Hold Symbol” on the Commercial Plaza.

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

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8.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees (the "Receiver's Charge").

8.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.

8.3 Attached as **Appendix I** is the fee affidavit of Stephen N. Cherniak sworn November 18, 2013 containing BDO's interim accounts as Receiver for the following periods:

- o July 6, 2013 to August 5, 2013
- o August 6, 2013 to September 5, 2013
- o September 6, 2013 to October 4, 2013
- o October 5, 2013 to November 5, 2013

8.4 The Receiver submits that the hourly rates charged by the Receiver and its staff are

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

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



## 9. Recommendations

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

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

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

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



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

**TAB “3”**

**Schedule "A"**

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE  
**COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE THOMAS )

FRIDAY, THE 13TH  
DAY

OF, ~~20~~DECEMBER, 2013

BETWEEN:

KEVIN D'AMORE

Plaintiff

Applicant

- and -

Defendant

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

Respondents

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

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited, in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [ ] (the "Debtor") of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers" and collectively with Banwell, the "Companies") pursuant to the Order of The Honourable Justice Thomas dated June 5, 2013 (the "Receiver"), for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") Agreement of Purchase and Sale dated effective November 22, 2013 (the "APS"), between the Receiver and [ ] (the "Purchaser") dated [ ] and appended, as vendor, and, and Avila Investments Ltd., as purchaser (the "Purchaser"), in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the "Commercial Plaza") and other assets described in the APS (together with the Commercial Plaza, the "Purchased Assets"), appended as Appendix "B" to the Report Confidential Supplement of the Receiver dated [ ] December 9, 2013 (the "Report" "Confidential Supplement"), and vesting in the Purchaser the Debtor all of Royal Timber's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") Commercial Plaza, was heard this day at 330 University the Courthouse, 245 Windsor Avenue, Toronto Windsor, Ontario.

ON READING the Report Fourth Report to the Court of the Receiver dated December 9, 2013 (the "Receiver's Fourth Report") and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, [ ] and such other persons as may be present and on noting that no 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 [ ] December 9, 2013, filed<sup>†</sup>:

1. THIS COURT ORDERS that the time for and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Receiver's Fourth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.

<sup>†</sup> 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. THIS COURT ORDERS that the activities and conduct of the Receiver described in the Receiver's Fourth Report and the Confidential Supplement are hereby approved.

3. THIS COURT ORDERS that the Confidential Supplement be and is hereby sealed until the Transaction is completed and the Receiver's Certificate is filed with the Court.

4. 1.-THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the ~~Sale Agreement~~APS by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

5. 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 "A"** hereto (the "**Receiver's Certificate**"), all of the ~~Debtor~~Royal Timber's right, title and interest in and to the Purchased Assets ~~described in the Sale Agreement~~ [and listed on **Schedule "B"** hereto]<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all leases, subleases and occupancy agreements (other than those forming part of the permitted encumbrances set out on Schedule "D" hereto), security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"<sup>5</sup>) including, without limiting the generality of

<sup>2</sup> ~~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.~~

<sup>3</sup> ~~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.~~

<sup>4</sup> ~~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.~~

<sup>5</sup> ~~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~~

the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~¶~~Thomas dated ~~¶~~June 5, 2013; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) all claims by the tenants under the Leases (as defined on Schedule "D" hereto) in the Commercial Plaza with respect to year end rent adjustments; (iv) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D "D" (the "Permitted Encumbrances")**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. ~~3.~~-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 {}Essex (No. 12)] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property lands comprising the Commercial Plaza identified in Schedule "B" hereto ~~(the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property lands comprising the Commercial Plaza all of the Claims listed in Schedule "C" hereto.

7. ~~4.~~-THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the ~~Purchased Assets~~Commercial Plaza with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been

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

<sup>6</sup> ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

<sup>7</sup> ~~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".~~

<sup>8</sup> ~~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~~

sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "A" 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.~~

9. ~~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 Royal Timbers and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor Royal Timbers;

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

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

constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

11. ~~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.

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**Schedule A – Form of Receiver's Certificate**Court 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.RespondentsAPPLICATION UNDER SECTION 207 OF THE BUSINESS CORPORATIONS  
ACT, R.S.O. 1990, C. B. 16, AS AMENDED**RECEIVER'S CERTIFICATE****RECITALS**

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

B. Pursuant to an Order of the Court dated ~~[], December 13, 2013,~~ the Court approved the ~~agreement of purchase and sale made as of [] (the "Sale Agreement"~~an Agreement of Purchase and Sale dated effective November 22, 2013 (the "APS") between the Receiver ~~[], as vendor,~~ and Avila Investments Limited (the "Purchaser") and ~~provided for the "Purchaser")~~ in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the "Commercial Plaza") and other assets described in the APS (together with the Commercial Plaza, the "Purchased Assets"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013, and vesting in the Purchaser ~~all of the Debtor's~~Royal Timbers right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to ~~Closing~~closing as set out in ~~section of the Sale Agreement~~APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

~~[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 Royal Timbers Inc. and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**Schedule B — Purchased Assets**

**Commercial Plaza**

The lands and premises legally described as:

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

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

(collectively, the “Commercial Plaza”).

**Other Assets**

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

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

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

**Schedule C – Claims to be deleted and expunged from title to Real Property**

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

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

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

4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.
5. Instrument No. CE207474 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.
10. Instrument No. CE513669 - Notice of Lease given by Royal Timbers Inc. to Solar Power Network Inc. registered on April 11, 2012.

**Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property Commercial Plaza**

**(unaffected by the Vesting Order)**

- (i) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- (ii) Any registered restrictions or covenants that run with the Commercial Plaza provided the same have been complied with in all material respects;
- (iii) Any easements, rights of way, or right of re-entry in favour of a Developer, not materially or adversely impairing the present use of the Commercial Plaza;
- (iv) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- (v) Any minor encroachments which might be revealed by an up to date survey of the Commercial Plaza;
- (vi) The following leases (collectively the "Leases"):
  - (a) Lease with Mac's Convenience Stores Inc. dated the 11th day of May, 2005;
  - (b) Lease with Edward Jones, an Ontario Limited Partnership, dated April 14, 2008, amended by agreement made May 23, 2013;
  - (c) Lease with Alexander Daycare Limited (Alexander's Daycare Center) dated December 23, 2006;
  - (d) The Loco Thai Lounge Inc. dated September 25, 2012; and
  - (e) Lease with Bella Vista Hair Design and Day Spa Inc. dated August 2, 2013.
- (vii) Instrument No. 12R15293 – Reference Plan;
- (viii) Instrument No. 12R20732 – Reference Plan;
- (ix) Instrument No. CE51657 – Notice of Subdivision Agreement;
- (x) Instrument No. CE56048 – Notice of Subdivision Agreement;
- (xi) Instrument No. CE58400 – Plan Document;
- (xii) Instrument No. 12M503 – Plan of Subdivision;
- (xiii) Instrument No. 12R21325 – Reference Plan;
- (xiv) Instrument No. CE171086 – Notice;
- (xv) Instrument No. CE194026 – Notice;

KEVIN D'AMORE

and

Applicant

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

Respondents

Court File No: CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

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

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



KEVIN D'AMORE

and

Applicant

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

Respondents

Court File No: CV-11-17088

ONTARIO  
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APPROVAL AND VESTING ORDER

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

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

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

Document comparison by Workshare Professional on Monday, December 09, 2013 4:01:30 PM

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Document 2 ID	interwovenSite://MTDMS.MILLERTHOMSON.CORP/Legal/10281793/4
Description	#10281793v4<Legal> - Approval and Vesting Order re Commercial Plaza (BDO re Banwell)
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Total changes	391

KEVIN D'AMORE

Applicant

and

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

Respondents

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**MOTION RECORD  
(RETURNABLE DECEMBER 13, 2013)**

**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.