

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

MOTION RECORD
(RETURNABLE MARCH 3, 2015)

Volume 1 of 2

February 20, 2015

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Corporation and Royal Timbers Inc.

INDEX

ONTARIO
SUPERIOR COURT OF JUSTICE

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE

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SCOTT D'AMORE and ROYAL TIMBERS INC.

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

NOTICE OF MOTION
(returnable March 3, 2015)

BDO CANADA LIMITED ("BDO"), in its capacity as court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc. ("**Royal Timbers**") pursuant to the Order of Mr. Justice Thomas dated June 5, 2013 (the "**Appointment Order**"), will make a motion to Mr. Justice Thomas to be heard on Tuesday, March 3, 2015 at 2:00 p.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

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

THE MOTION IS FOR :

1. An Order substantially in the form attached hereto as **Schedule "A"**:
 - (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Sixth Report of the Receiver dated February 20, 2015 and all appendices thereto (the "**Sixth Report**"), and any supplementary motion materials, if any, and

directing that any further service of same be dispensed with such that this motion is properly returnable on March 3, 2015;

- (b) approving the Sixth Report and the activities and conduct of the Receiver described therein;
- (c) approving the process proposed by the Receiver in the Sixth Report for the completion of the power of sale of the 22 lots (the "**Real Ranchs' Lots**") owned by Real Ranchs Inc. in respect of which Banwell is a mortgagee;
- (d) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated December 19, 2014 between the Receiver, as vendor, and 1362279 Ontario Ltd. ("**136 Ontario**"), as purchaser, for the sale of 21 of the 22 Real Ranchs' Lots and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**136 Ontario Transaction**");
- (e) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and Hadi Custom Homes Inc., as purchaser, for the sale of one of the Real Ranchs' Lots and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**Hadi Transaction**");
- (f) discharging the mortgage security of Bank of Montreal ("**BMO**") and Simba Group Developments Limited ("**Simba**") from title to the Real Ranchs' Lots upon completion of the 136 Ontario Transaction and Hadi Transaction;
- (g) directing the Receiver to hold the net proceeds from the sale of the Real Ranchs' Lots in a segregated interest bearing trust account from which no expenses or fees of the receivership shall be paid or funds disbursed without further order of the Court and that the net proceeds shall stand in the place and stead of the Real Ranchs' Lots with all claims and encumbrances attaching to the net proceeds with the same priority as they had immediately prior to the completion of the 136 Ontario Transaction and Hadi Transaction;
- (h) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and 1128631 Ontario Ltd. operating as Bungalow Group, as purchaser, in respect

of lot 100, plan 12M-503, Windsor ("**Lot 100**") and authorizing and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**Bungalow Transaction**");

- (j) authorizing the Receiver to accept the Offer to Settle of the City of Windsor dated June 4, 2012 with respect to Court action number LC080015 and to complete the settlement contemplated thereby;
 - (i) approving the distribution to BMO of an amount equal to all amounts owing to BMO by Banwell as and when funds are available to the Receiver to make such distribution;
 - (k) sealing the Confidential Supplement to the Sixth Report until further order of the Court;
 - (l) approving the Receiver's Interim Statements of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending February 13, 2015; and
 - (m) approving the professional fees and disbursements (the "**Professional Fees**") of BDO, as Receiver, and Miller Thomson LLP, counsel to the Receiver.
2. An Order substantially in the form attached hereto as **Schedule "B"** approving the sale transaction contemplated by an Agreement of Purchase and Sale dated effective January 31, 2015 between the Receiver, as vendor, and 838605 Ontario Ltd. ("**838 Ontario**"), as purchaser, in respect of the real property described as Part Lot 143, Concession 1, designated as parts 2, 25, 47 and 59, Plan 12R22842; Windsor; S/T & T/W an easement as in CE267537 (PIN 01566-0893), authorizing and directing the Receiver to enter into and complete the transaction contemplated thereby and vesting the said property in 838 Ontario free and clear of all encumbrances, save and except permitted encumbrances (the "**838 Ontario Transaction**").
3. such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

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

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

Approval of the 136 Ontario Transaction and Hadi Transaction

- (a) the transactions are commercially reasonable and represent the highest and best price available for the Real Ranchs' Lots;
- (b) it is in the best interests of the stakeholders that the transactions be completed;
- (c) to provide good title to the purchasers and complete the power of sale proceeding for the Real Ranchs' Lots, the mortgage security of BMO and Simba must be discharged;
- (d) the process proposed by the Receiver to facilitate the completion of the 136 Ontario Transaction and Hadi Transaction is commercially reasonable and preserves the interests of all stakeholders in the proceeds of the Real Ranchs' Lots;
- (e) the assistance of the Court is required to facilitate the completion of the 136 Ontario Transaction and Hadi Transaction; and
- (f) Section 12 of the *Mortgages Act*, R.S.O. 1990 c.M-40.

The Bungalow Transaction

- (a) the transaction is commercially reasonable and represents the highest and best price available for Lot 100; and
- (b) it is in the best interests of the stakeholders that the transaction be completed.

The 838 Ontario Transaction

- (a) the transaction is commercially reasonable and represents the highest and best price available for Block 200; and
- (b) it is in the best interests of the stakeholders that the transaction be completed.

Settlement of Court Action No. LC080015

- (a) the proposed settlement is commercially reasonable; and
- (b) it is in the best interests of the stakeholders that the Offer to Settle be accepted and the settlement completed.

Distribution to BMO

- (a) the Receiver has received an opinion from its independent legal counsel, Miller Thomson LLP, that, subject to the customary assumptions and qualifications, the security held by BMO over the assets realized upon by the Receiver to date is valid and enforceable; and
- (b) as funds are received by the Receiver from transactions to be completed and from vendor take back mortgages on transactions already completed, the Receiver anticipates having sufficient funds available to satisfy the indebtedness of Banwell to BMO.

Sealing Order

- (a) the Confidential Supplement and the appendices thereto contain sensitive and confidential information, the disclosure of which at this time would be detrimental to the interests of the stakeholders.

Approval of Professional Fees

- (a) pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property as security for the Professional Fees, both before and after the making of the Appointment Order;

- (b) pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice; and
- (c) it is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and Miller Thomson LLP in connection with these receivership proceedings.

Other

- (d) The Appointment Order;
- (e) Section 100 of the CJA;
- (f) Rules 1.04, 1.05, 2.03, 3.02(1), 16 and 37 of the Ontario *Rules of Civil Procedure*; and
- (g) Such other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Sixth Report of the Receiver and the appendices attached thereto dated February 20, 2015;
- (b) the Confidential Supplement to the Sixth Report;
- (c) the Fee Affidavit of Stephen N. Cherniak sworn February 20, 2015 and the exhibits attached thereto;
- (d) the Fee Affidavit of Sherry Kettle sworn February 19, 2015 and the exhibits attached thereto;
- (e) all other pleadings and materials previously filed in these proceedings; and
- (f) Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 20, 2015

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KEVIN D'AMORE
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

**NOTICE OF MOTION
(RETURNABLE MARCH 3, 2015)**

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Lawyers for BDO Canada Limited,
Receiver of Banwell Development Corporation

Schedule "A"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

| | | |
|--------------------|---|----------------------|
| THE HONOURABLE MR. |) | TUESDAY, THE 3RD DAY |
| |) | |
| JUSTICE THOMAS |) | OF MARCH, 2015 |

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

- (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Sixth Report of the Receiver dated February 20, 2015 and all appendices thereto (the "Sixth

Report"), and any supplementary motion materials, if any, and directing that any further service of same be dispensed with such that this motion is properly returnable on March 3, 2015;

- (b) approving the Sixth Report and the activities and conduct of the Receiver described therein;
- (c) approving the process proposed by the Receiver in the Sixth Report for the completion of the power of sale of the 22 lots (the "**Real Ranchs' Lots**") owned by Real Ranchs Inc. in respect of which Banwell is a mortgagee;
- (d) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated December 19, 2014 between the Receiver, as vendor, and 1362279 Ontario Ltd. ("**136 Ontario**"), as purchaser, for the sale of 21 of the 22 Real Ranchs' Lots and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**136 Ontario Transaction**");
- (e) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and Hadi Custom Homes Inc., as purchaser, for the sale of one of the Real Ranchs' Lots and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**Hadi Transaction**");
- (f) discharging the mortgage security of Bank of Montreal ("**BMO**") and Simba Group Developments Limited ("**Simba**") from title to the Real Ranchs' Lots upon completion of the 136 Ontario Transaction and Hadi Transaction;
- (g) directing the Receiver to hold the net proceeds from the sale of the Real Ranchs' Lots in a segregated interest bearing trust account from which no expenses or fees of the receivership shall be paid or funds disbursed without further order of the Court and that the net proceeds shall stand in the place and stead of the Real Ranchs' Lots with all claims and encumbrances attaching to the net proceeds with the same priority as they had immediately prior to the completion of the 136 Ontario Transaction and Hadi Transaction;
- (h) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and 1128631 Ontario Ltd. operating as Bungalow Group, as purchaser, in respect of lot 100,

plan 12M-503, Windsor ("**Lot 100**") and authorizing and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**Bungalow Transaction**");

- (i) authorizing the Receiver to accept the Offer to Settle of the City of Windsor dated June 4, 2012 with respect to Court action number LC080015 and to complete the settlement contemplated thereby;
- (j) approving the distribution to BMO of an amount equal to all amounts owing to BMO by Banwell as and when funds are available to the Receiver to make such distribution;
- (k) sealing the Confidential Supplement to the Sixth Report until further order of the Court;
- (l) approving the Receiver's Interim Statements of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending February 13, 2015; and
- (m) approving the professional fees and disbursements (the "**Professional Fees**") of BDO, as Receiver, and Miller Thomson LLP, counsel to the Receiver.

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

ON READING the Sixth Report and the Confidential Supplement to the Sixth Report dated February 20, 2105 (the "**Confidential Supplement**") and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Julie Los sworn February 20, 2015, filed:

1. THIS COURT ORDERS that the time for and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Receiver's Sixth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used herein and defined in the Sixth Report shall have the same meaning as in the Sixth Report.
3. THIS COURT ORDERS that the Sixth Report and the activities and conduct of the Receiver described in the Sixth Report are hereby approved.

4. THIS COURT ORDERS that the 136 Ontario Transaction is hereby approved, and the execution of the 136 Ontario APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the 136 Ontario Transaction and for the conveyance to 136 Ontario of the Real Ranchs' Lots to which the 136 Ontario Transaction relate.

5. THIS COURT ORDERS that the Hadi Lot 27 Transaction is hereby approved, and the execution of the Hadi Lot 27 APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Hadi Lot 27 Transaction and for the conveyance to Hadi of the lands to which the Hadi Transaction relate.

6. THIS COURT ORDERS that the Bungalow Transaction is hereby approved, and the execution of the Bungalow APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Bungalow Transaction and for the conveyance to Bungalow of the lands to which the Bungalow Transaction relate.

7. THIS COURT ORDERS that the charge in the principal amount of \$8,000,000 in favour of Bank of Montreal registered in the Essex Land Registry office on August 8, 2005 as Instrument CE163177 (the "**BMO Charge**") and the charge in the principal amount of \$282,800 in favour of Simba Group Developments Limited and Patrick D'Amore registered in the Essex Land Registry office on August 10, 2005 as Instrument CE163205 (the "**Simba Charge**") against the lands described on **Schedule "A"** to this Order shall be discharged from title to those lands upon completion of the 136 Ontario Transaction;

8. THIS COURT ORDERS that BMO and Simba shall execute such documents as are necessary to discharge the BMO Charge and Simba Charge, respectively, from title to the lands described on **Schedule "A"** upon completion of the 136 Ontario Transaction;

9. THIS COURT ORDERS that the BMO Charge and Simba Charge shall be discharged from title to the lands described on **Schedule "B"** to this Order upon completion of the Hadi Lot 27 Transaction;

10. THIS COURT ORDERS that BMO and Simba shall execute such documents as are necessary to discharge the BMO Charge and Simba Charge, respectively, from title to the lands described on **Schedule "B"** upon completion of the Hadi Lot 27 Transaction;

11. THIS COURT ORDERS that all proceeds (the "**Real Ranchs' Lots Proceeds**") from the 136 Ontario Transaction and Hadi Lot 27 Transaction shall be held by the Receiver in a segregated interest bearing trust account and that no expenses of the receivership, including Professional Fees, shall be paid therefrom and will not be disbursed by the Receiver without the approval of the Court;

12. THIS COURT ORDERS that the Real Ranchs' Lots Proceeds shall stand in the place and stead of the Real Ranchs' Lots and all charges, claims and encumbrances existing against the Real Ranchs' Lots as of the date of completion of the 136 Ontario Transaction and Hadi Lot 27 Transaction shall attach to the Real Ranchs' Lots Proceeds with the same priority as they had with respect to the Real Ranchs' Lots immediately prior to the completion of the 136 Ontario Transaction and Hadi Lot 27 Transaction as if the Real Ranchs' Lots had not been sold and remained in the possession or control of the Receiver;

13. THIS COURT ORDERS that the Receiver is hereby authorized and directed to accept the Offer to Settle with respect to Court action number LC080015 and to take such additional steps and execute such additional documents as may be necessary or desirable to complete the settlement contemplated thereby;

14. THIS COURT ORDERS that the Receiver is authorized to distribute to BMO an amount equal to the BMO Indebtedness as and when funds are available to the Receiver to make such distribution;

15. THIS COURT ORDERS the Confidential Supplement be sealed until further order of the Court;

16. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements be and the same are hereby approved;

17. THIS COURT ORDERS that the Professional Fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the fees affidavits of Stephen Cherniak sworn February 20, 2015 and Sherry Kettle sworn February 19, 2015 be and the same are hereby approved;

Schedule A – Lands

The lands and premises legally described as:

- Lot 14, Plan 12M546, Windsor (PIN 01566-0836(LT))
- Lot 15, Plan 12M546, Windsor (PIN 01566-0837(LT))
- Lot 16, Plan 12M546, Windsor (PIN 01566-0838(LT))
- Lot 17, Plan 12M546, Windsor (PIN 01566-0839(LT))
- Lot 18, Plan 12M546, Windsor (PIN 01566-0840(LT))
- Lot 20, Plan 12M546, Windsor (PIN 01566-0842(LT))
- Lot 21, Plan 12M546, Windsor (PIN 01566-0843(LT))
- Lot 22, Plan 12M546, Windsor (PIN 01566-0844(LT))
- Lot 23, Plan 12M546, Windsor (PIN 01566-0845(LT))
- Lot 24, Plan 12M546, Windsor (PIN 01566-0846(LT))
- Lot 25, Plan 12M546, Windsor (PIN 01566-0847(LT))
- Lot 42, Plan 12M546, Windsor (PIN 01566-0864(LT))
- Lot 43, Plan 12M546, Windsor (PIN 01566-0865(LT))
- Lot 45, Plan 12M546, Windsor (PIN 01566-0867(LT))
- Lot 46, Plan 12M546, Windsor (PIN 01566-0868(LT))
- Lot 47, Plan 12M546, Windsor (PIN 01566-0869(LT))
- Lot 48, Plan 12M546, Windsor (PIN 01566-0870(LT))
- Lot 49, Plan 12M546, Windsor (PIN 01566-0871(LT))
- Lot 50, Plan 12M546, Windsor (PIN 01566-0872(LT))
- Lot 51, Plan 12M546, Windsor (PIN 01566-0873(LT))
- Lot 52, Plan 12M546, Windsor (PIN 01566-0874(LT))

Schedule B – Lands

The lands and premises legally described as:

Lot 27, Plan 12M546, Windsor (PIN 01566-0849(LT))

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

ORDER

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Schedule "B"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

| | | |
|--------------------|---|----------------------|
| THE HONOURABLE MR. |) | TUESDAY, THE 3RD DAY |
| |) | |
| JUSTICE THOMAS |) | OF MARCH, 2015 |

B E T W E E N:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("**Royal Timbers**") pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "**Receiver**"), for, *inter alia*, an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale dated effective January 21, 2015 (the "**APS**"), between the Receiver, as vendor, and, 838605 Ontario Limited, as purchaser (the "**Purchaser**"), in respect of the real property described on **Schedule "A"** (the "**Lands**") and appended as Appendix "G" to the Confidential Supplement to the Sixth Report of the Receiver dated February 20, 2015 (the "**Sixth Report**"), and vesting in the

Purchaser all of Royal Timber's right, title and interest in and to the Lands, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Sixth Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Julie Los sworn February 20, 2015, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Lands to the 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 (the "**Receiver's Certificate**"), all of Royal Timber's right, title and interest in and to the Lands shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Thomas dated June 5, 2013; (ii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** (the "**Permitted Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands.
3. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Lands described in Schedule "A" hereto in

fee simple, and is hereby directed to delete and expunge from title to the Lands described in Schedule "A" hereto all of the Claims listed in **Schedule "C"** hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Lands shall stand in the place and stead of the Lands, 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 Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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, notwithstanding:

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

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

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

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

Schedule A – Lands

The lands and premises legally described as:

Part Lot 143, Concession 1, designated as Parts 2, 25, 47 and 59, Plan 12R22842;
Windsor; S/T & T/W an easement as in CE267537 (PIN 01566-0893).

Schedule B

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

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

B. Pursuant to an Order of the Court dated March 3, 2015, the Court approved an Agreement of Purchase and Sale dated effective January 21, 2015 (the "**APS**") between the Receiver, as vendor, and 838605 Ontario Limited (the "**Purchaser**") in respect of the real property legally described as Part lot 143, Concession 1, designated as Parts 2, 25, 47 and 59, Plan 12R22842; Windsor; S/T & T/W an easement as in CE267537 (PIN 01566-0893) (the "**Lands**") and appended as Appendix "G" to the Confidential Supplement of the Receiver dated February 20, 2015, and vesting in the Purchaser all of Royal Timber's right, title and interest in and to the Lands, which vesting is to be effective with respect to the Lands 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 Lands; (ii) that the conditions to closing as set out in the APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____

Name:

Title:

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

1. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
2. Instrument No. CE171659 – Postponement given by Simba Group Developments Limited and Patrick D'Amore to Bank of Montreal registered on September 20, 2005.
3. Instrument No. CE269241 – Charge in the principal amount of \$102,246 given by Royal Timbers Inc. to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.
4. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.

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

(unaffected by the Vesting Order)

- a) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- b) Any registered restrictions or covenants that run with the Lands provided the same have been complied with in all material respects;
- c) 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 Lands;
- d) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- e) Any minor encroachments which might be revealed by an up to date survey of the Lands;
- f) Instrument No. D37712178 – Application for First Registration;
- g) Instrument No. LT336126 – Bylaw;
- h) Instrument No. CE185377 – Application for Absolute Title;
- i) Instrument No. CE191966 – Notice – Subdivision Agreement;
- j) Instrument No. CE247184 – Notice – Site Plan Agreement;
- k) Instrument No. 12R22842 – Plan Reference;
- l) Instrument No. CE267537 – Transfer Easement;
- m) Instrument No. CE361644 - Notice – Site Plan Agreement;
- n) Instrument No. CE447653 – Notice – Shared Parking Agreement;
- o) Instrument No. CE447656 – Notice – Mutual Services Agreement;
- p) Instrument No. CE449307 – LR's Order; and
- q) Instrument No. CE467451 – Notice – Site Plan Amendment Agreement.

KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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Receiver of Banwell Development
Corporation and Royal Timbers Inc.

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

APPROVAL AND VESTING ORDER

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

TAB 2

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

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

February 20, 2015

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Appendices

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- Appendix F** - Fourth Report to the Court of Receiver dated December 9, 2013 (without appendices)
- Appendix G** - Commercial Plaza Approval and Vesting Order dated December 13, 2013
- Appendix H** - Fifth Report to the Court of Receiver dated January 21, 2014 (without appendices)
- Appendix I** - Notice of Sale Under Mortgage – Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27 42, 43, 45, 46, 47, 48, 49, 50, 51 and 52, Plan 12M-546
- Appendix J** - Sample Parcel Register for Real Ranchs Inc. lots
- Appendix K** - Correspondence from James Branoff regarding outstanding balances on Simba mortgages
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- Appendix M** - Statement of Receipts and Disbursements – Banwell
- Appendix N** - Statement of Receipts and Disbursements – Royal Timbers
- Appendix O** - Legal opinion of Miller Thomson LLP dated January 20, 2014 on the validity of the Bank of Montreal security
- Appendix P** - Legal opinion of Miller Thomson LLP dated February 20, 2015 on the validity of the Bank of Montreal security
- Appendix Q** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn February 20, 2015
- Appendix R** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn February 19, 2015

1. Introduction and Background

1.1 Introduction

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

1.2 Background

- 1.2.1 At all material times, the Companies were engaged in the development of the lands located just west of Banwell Road in the City of Windsor, Ontario (the “**Lands**”). Banwell developed and sold that part of the Lands comprised of residential building lots in what is known as the Royal Timbers Subdivision (the “**Royal Timbers Subdivision**”) and Royal Timbers developed the commercial portion of the Lands, including the construction and subsequent leasing of a commercial plaza located at the southwest corner of the Lands at the junction of Banwell Road and Wildwood Drive, Windsor, Ontario (the “**Commercial Plaza**”).
- 1.2.2 Banwell was originally a joint venture between Mr. Murray Troup (“**Troup**”) and Mr. Patrick D’Amore (“**D’Amore**”), with ownership held equally by Troup, through his holding company, 928579 Ontario Limited and D’Amore, as trustee for his sons Kevin D’Amore (“**Kevin**”) and Scott D’Amore (“**Scott**”), as beneficiaries. In August 2011, D’Amore passed away resulting in D’Amore’s 50% shareholding in Banwell vesting equally in each of Kevin and Scott.
- 1.2.3 Royal Timbers is the wholly-owned subsidiary of Banwell.

- 1.2.4 Since its appointment on June 5, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of the Commercial Plaza and numerous residential building lots contained in the Royal Timbers Subdivision. A number of reports have been filed by the Receiver in these proceedings wherein these activities and transactions are described in greater detail. In particular, the Receiver submitted a Second Report to the Court dated July 12, 2013 in support of a motion for, among other things, a Sales Process Order with respect to the proposed sales process for the Commercial Plaza (the "**Second Report**"). A copy of the Second Report (without appendices) is attached as **Appendix B**.
- 1.2.5 By Order dated July 23, 2013 (the "**Sales Process Order**"), among other things, Mr. Justice Thomas approved the sales process for the Commercial Plaza. A copy of the Sales Process Order is attached as **Appendix C**.
- 1.2.6 By further Order dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**"), as amended by Order dated December 2, 2013 (the "**Amended Omnibus Approval and Vesting Order**") Mr. Justice Thomas prospectively approved the sales transactions in respect of each of the remaining lots in the Royal Timbers Subdivision and prospectively vested all of Banwell's right, title and interest in and to the lots subject to certain conditions and restrictions.
- 1.2.7 The Receiver submitted a Third Report to the Court dated November 25, 2013 in support of a motion for, among other things, an amendment to the Omnibus Approval and Vesting Order to include within the scope of the Omnibus Approval and Vesting Order nine (9) residential building lots to be created within Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) ("**Block 120**") and deleting certain instruments from title to Block 120 (the "**Third Report**"). A copy of the Third Report (without appendices) is attached as **Appendix D**.
- 1.2.8 By Order dated December 2, 2013, Mr. Justice Thomas, among other things, approved an amendment to the Omnibus Approval and Vesting Order to include Block 120 within the scope of the Omnibus Approval and Vesting Order. A copy of the Amended Omnibus Approval and Vesting Order is attached as **Appendix E**.

- 1.2.9 The Receiver submitted a Fourth Report to the Court dated December 9, 2013 (the "**Fourth Report**") in support of a motion for, among other things, an Order approving the sale of the Commercial Plaza to Avila Investments Limited ("**Avila**") and directing the Receiver to complete the transaction (the "**Commercial Plaza Transaction**") and vesting in Avila all of Royal Timbers' right, title and interest in and to the Commercial Plaza free and clear of any and all claims and encumbrances (the "**Encumbrances**"). A copy of the Fourth Report (without appendices) is attached as **Appendix F**.
- 1.2.10 By Order dated December 13, 2013 (the "**Commercial Plaza Approval and Vesting Order**"), Mr. Justice Thomas, among other things, approved the Commercial Plaza Transaction, vested all of Royal Timbers' right, title and interest in the Commercial Plaza in Avila, directed the Receiver to hold the net proceeds and declared that the Encumbrances attached to such net proceeds in the same manner and to the same extent as they attached to the Commercial Plaza prior to completing the Commercial Plaza Transaction. A copy of the Commercial Plaza Approval and Vesting Order is attached as **Appendix G**.
- 1.2.11 The Commercial Plaza Transaction was completed in accordance with the terms of the Commercial Plaza Approval and Vesting Order on December 16, 2013.
- 1.2.12 The Receiver submitted a Fifth Report to the Court dated January 20, 2014 (the "**Fifth Report**") in support of a motion for, among other things, an Order authorizing the Receiver to distribute certain amounts in full and final satisfaction of all claims of BMO against Royal Timbers pursuant to a Charge/Mortgage of Land registered against title to the Commercial Plaza. A copy of the Fifth Report (without appendices) is attached as **Appendix H**.
- 1.2.13 By Order dated January 27, 2014 (the "**Distribution Order**"), Mr. Justice Thomas, among other things, authorized the Receiver to pay \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment in full and final satisfaction of all claims of BMO against Royal Timbers.

- 1.2.14 Under the terms of the Appointment Order, the Receiver's mandate was to refinance or realize upon the Property as may be required to repay the debts owing by the Companies to BMO and to pay the realty taxes owing upon the Property. In Reasons dated June 10, 2014, Mr. Justice Thomas made an order expanding the Receiver's mandate and ordered a full receivership of the Companies.

2. Terms of Reference

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

3.1 This constitutes the Receiver's Sixth Report to the Court (the "**Sixth 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 Fifth Report;
 - (ii) the Receiver's recommendation with respect to the sale by power of sale of 22 lots owned by Real Ranchs Inc. (the "**Real Ranchs' Lots**") over which Banwell holds a mortgage;
 - (iii) the Receiver's recommendation with respect to the sale under power of sale of Lot 100, Plan 12M-503, Windsor (PIN 1566-0464 (LT)), ("**Lot 100**") over which Banwell holds a mortgage; and
 - (iv) the Receiver's recommendation with respect to the sale of the commercial lot owned by Royal Timbers being Part Lot 143, Concession 1, designated as parts 2, 25, 47 and 59, Plan 12R22842; Windsor; S/T & T/W an easement as in CE267537 (PIN 1566-0893 (LT)), municipally known as 3990 Wildwood Drive, Windsor ("**Block 200**");
- (b) In support of an order of the Court:
 - (i) approving the Sixth Report, the Receiver's Confidential Supplement to the Sixth Report dated February 20, 2015 (the "**Confidential Supplement**") and the activities of the Receiver described therein;
 - (ii) sealing the Confidential Supplement until further Order of the Court;
 - (iii) approving the process proposed by the Receiver for the completion of the power of sale of the Real Ranchs' Lots, including the establishment of a trust bank account, separate from the Receiver's Banwell and

Royal Timbers accounts, to hold the net proceeds of the sales of Real Ranchs lots;

- (iv) discharging the mortgage security of BMO and Simba Group Developments Limited ("**Simba**") from title to the Real Ranchs' Lots upon the closing of the sale transactions for the Real Ranchs' Lots and declaring that the net proceeds from the sale of the Real Ranchs' Lots are to stand in the place and stead of the Real Ranchs' Lots with all claims and encumbrances attaching to the net proceeds with the same priority as they had immediately prior to the completion of the sale of the Real Ranchs' Lots;
- (v) approving the Agreement of Purchase and Sale dated December 19, 2014 between the Receiver, as vendor, and 1362279 Ontario Ltd. ("**136 Ontario**"), as purchaser, (the "**136 Ontario APS**"), for the sale of 21 of the 22 Real Ranchs' Lots and directing the Receiver to enter into and complete the transaction contemplated therein (the "**136 Ontario Transaction**");
- (vi) approving the Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and Hadi Custom Homes Inc. ("**Hadi**"), as purchaser, (the "**Hadi Lot 27 APS**"), for the sale of one of the Real Ranchs' Lots, namely, Lot 27 and directing the Receiver to enter into and complete the transaction contemplated therein (the "**Hadi Lot 27 Transaction**");
- (vii) approving the Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and 1128631 Ontario Ltd. o/a Bungalow Group ("**Bungalow**"), as purchaser, (the "**Bungalow APS**"), in respect of Lot 100 and directing the Receiver to enter into and complete the transaction contemplated therein (the "**Bungalow Transaction**");
- (viii) approving the Agreement of Purchase and Sale dated effective January 21, 2015 between the Receiver, as vendor, and 838605

Ontario Limited ("**838 Ontario**"), as purchaser, (the "**Block 200 APS**"), in respect of Block 200 and directing the Receiver to enter into and complete the transaction contemplated therein (the "**Block 200 Transaction**") and thereafter to file the Receiver's certificate;

- (ix) vesting in 838 Ontario all of Royal Timber's right, title and interest in and to Block 200 free and clear of any and all claims and encumbrances;
- (x) authorizing the Receiver to accept the City of Windsor (the "**City**") Offer to Settle dated June 4, 2012 with respect to Court Action No. LC080015 and to complete the settlement contemplated thereby;
- (xi) approving the distribution to BMO of an amount equal to the amount owing to BMO by Banwell and secured by the BMO security as and when funds are available to the Receiver to make such distribution;
- (xii) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period ending February 13th, 2015 (the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**", respectively);
- (xiii) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**"); and
- (xiv) 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

- 4.1 In its Fifth Report the Receiver reported to the Court on its activities through January 20, 2014.
- 4.2 In this the Sixth Report, the Receiver reports on its activities since the date of the Fifth Report

Distribution to BMO

- 4.3 Pursuant to the Distribution Order, on February 7, 2014 the Receiver paid \$1,923,020.05 to BMO in full payment of Royal Timbers' indebtedness to BMO.

Sale of Royal Timbers subdivision lots

- 4.4 As reported in the Fifth Report, the Agreement of Purchase and Sale between the Receiver and Hadi with respect to the nine (9) residential building lots comprising Block 120 ("**Block 120 APS**"), was amended to extend the completion date to April 30, 2014, with the balance of the purchase price, net of deposits paid, to be paid in full in certified funds on closing.
- 4.5 The paving of the section of McRobbie Road, onto which the Block 120 lots front, was completed in spring 2014, but later than planned due to extended winter conditions and later than normal opening of Windsor area asphalt plants.
- 4.6 The Block 120 APS was further amended to extend the completion date and revert to a portion of the purchase price being satisfied by a vendor take back ("**VTB**") mortgage in the amount of \$262,500, maturing on August 29, 2014. The transaction was completed on June 6, 2014.
- 4.7 Hadi experienced delays in obtaining building permits from the City for some of the Block 120 lots. The Receiver agreed to extend the maturity of the VTB mortgage on an interest free basis for 60 days. The VTB mortgage was paid in full on October 30, 2014.

- 4.8 Since the Fifth Report, and not including the sale of Block 120, which was reported on in the Fifth Report, the Receiver has sold 20 additional lots in Phase II and Phase IV of the Royal Timbers Subdivision. The sales were completed between June 6, 2014 and January 7, 2015. For all sales a portion of the purchase price was satisfied by a VTB mortgage, with maturity dates ranging from August 31, 2015 to November 28, 2016.
- 4.9 Where the Receiver holds a VTB mortgage over more than one lot, the mortgages granted to the Receiver provide for partial discharges, with the Receiver to receive payment of a portion of the VTB mortgage as individual homes are completed and sold. On transactions that have been completed to the date of the Sixth Report, the outstanding VTB mortgage principal at February 20, 2015 is \$841,000.
- 4.10 To date, the Receiver has completed the sale of 39 residential lots owned by Banwell. The Receiver has also sold an additional 13 lots owned by Banwell that have not yet closed, with completion dates scheduled for March 2015. At this time, 12 serviced lots owned by Banwell remain available for sale, of which 4 require roadwork to be completed before they will be saleable.
- 4.11 The Receiver has also entered into agreements, subject to Court approval, for the sale of the 22 Real Ranchs' Lots. The sale of the Real Ranchs' Lots is discussed in Sections 5 and 6 of the Sixth Report.

Completion of Phase II sidewalks

- 4.12 Banwell completed curbs and base asphalt roads in Phase II of the Royal Timbers subdivision in approximately 2005. In May 2014 the City notified Banwell, pursuant to the registered subdivision agreement, that it was required to complete concrete sidewalks on certain streets located in Phase II of the subdivision. The project consisted of approximately 1,700 metres of sidewalks.
- 4.13 The Receiver engaged RC Spencer Associates Inc. ("**Spencer**") to act as the consulting engineer for the construction of the sidewalks. Spencer established specifications for the project, communicated with residents and requested tenders from three Windsor area concrete companies.

- 4.14 The Receiver engaged Coco Concrete Inc. to carry out the sidewalk construction and Spencer oversaw the project on behalf of the Receiver, including attending the final inspection by the City.
- 4.15 The total cost of the project including grass and landscaping remediation, engineering and third party concrete testing was approximately \$229,700, excluding HST.
- 4.16 Previously, Banwell posted a Letter of Credit in favour of the City in the amount of \$450,000 as security for the satisfactory completion of roads, curbs and sidewalks in Phase II of the subdivision. Additional security was posted for Phase IV of the subdivision
- 4.17 On December 22, 2014 Spencer advised the City that the construction of the sidewalks had been completed in accordance with the subdivision agreement and based on the surface road work still to be completed, recommended that the Letter of Credit security be reduced to \$285,000. The request is under review by the City.

Petvin Homes Inc. VTB mortgage amendment

- 4.18 In 2005 Banwell entered into an Agreement of Purchase and Sale with Petvin Homes Inc. ("Petvin") for the purchase of ten (10) lots in Phase II of the Royal Timbers Subdivision. Banwell held a VTB mortgage for a portion of the purchase price. Petvin completed construction of homes on seven (7) of the lots and Banwell provided partial discharges of the VTB mortgage over these lots. No homes were constructed on the remaining three (3) lots and Banwell continues to hold a VTB mortgage on Lots 2, 3 and 4, Plan 12M-533, with an outstanding principal amount of \$164,700 (the "Petvin VTB Mortgage")
- 4.19 The Petvin VTB mortgage had an outstanding balance at December 9, 2014 of approximately \$354,453, including accrued interest of \$189,753. However, it was the Receiver's view that that value of the three lots only marginally exceeded the outstanding principal of the Petvin VTB Mortgage. Under a power of sale proceeding, the accrued interest would be only partially collectible at best.

- 4.20 The Receiver entered into an agreement with Petvin whereby Petvin would pay the sum of \$25,000 and all accrued but unpaid interest would be waived. The Receiver would provide a 12 month interest free period, after which the Petvin VTB Mortgage would mature on November 30, 2015. Further, Petvin agreed to commence construction of a model home on Lot 2, 12M-533 within 30 days. A formal mortgage amendment was executed by the Receiver, Petvin and BMO on November 24, 2014 and Petvin paid \$25,000 to the Receiver.
- 4.21 Petvin commenced construction of the model home, as agreed, in January 2015.

Property taxes

- 4.22 As noted in the Fifth Report, upon receiving funds from the completion of the sale of the Commercial Plaza, in accordance with its original mandate under the Appointment Order the Receiver paid the City all the outstanding property taxes through December 31, 2013 on all properties owned by Royal Timbers and Banwell.
- 4.23 The Receiver paid all 2014 property tax installments and has paid the first 2015 property tax installment, on properties owned by Royal Timbers and Banwell.
- 4.24 Banwell is a mortgagee on the Real Ranchs' Lots. In July 2014, the Receiver was notified of the City's intention to register a tax arrears lien against the Real Ranchs' Lots, resulting in a minimum administrative fee of \$1,450 per lot that would stand in priority to the mortgagees, once it was registered.
- 4.25 The Receiver considered it to be in the best interests of the stakeholders of Banwell to avoid incurring the tax arrears lien fee. On August 12, 2014 the Receiver paid \$103,475 to the City for the outstanding property taxes on the Real Ranchs' Lots. The Receiver did not pay the outstanding property taxes on three (3) other lots owned by Real Ranchs that are under power of sale by Windsor Family Credit Union ("WFCU"), as discussed in greater detail in Section 5.
- 4.26 Subsequently, the Receiver paid 2014 property tax installments and has paid the first 2015 property tax installment on the Real Ranchs' Lots.

Other

- 4.27 The Receiver prepared statements of its receipts and disbursements for the period from June 1, 2014 to May 31, 2014 for each of Banwell and Royal Timbers. It provided these statements along with various supporting documentation to the Companies' external accountants for the preparation of the fiscal 2014 financial statements and income tax returns.
- 4.28 In order to comply with a City by-law notice and to assist in the marketing of the building lots and commercial lands owned by the Companies, the Receiver removed several signs in the Banwell Road area and replaced them with new signage.
- 4.29 The Receiver has arranged for the ongoing maintenance and compliance with City by-laws of unsold residential building lots.

5. Receiver's Sale of Real Ranchs Inc. Lots

- 5.1 The Second Report (Paragraph 4.19) provided background information on 28 lots that were sold by Banwell to Real Ranchs pursuant to an Agreement of Purchase and Sale dated September 27, 2006. Troup is the sole officer, director and shareholder of Real Ranchs. The lots are located in Phase IV of the Royal Timbers subdivision.
- 5.2 The 28 lots were sold by Banwell to Real Ranchs for only nominal cash consideration and a VTB mortgage in the amount of \$1,590,200 ("**Real Ranchs' VTB**"). The mortgages held by BMO and Simba remained registered, in first and second position respectively, following the sale of the 28 lots to Real Ranchs. Simba was owned by D'Amore and was the original owner of the lands prior to development.
- 5.3 On March 16, 2007 the Real Ranchs' VTB was assigned by Banwell to BMO as further security for its borrowings.
- 5.4 By a Mortgage Amendment Agreement dated May 25, 2009 the principal amount of the Real Ranchs' VTB was reduced to \$1,397,200. The Receiver understands that the principal amount of the Real Ranchs' VTB was reduced by Banwell to bring it more in line with market values of the lots at the time.
- 5.5 Of the 28 lots sold to Real Ranchs, one lot was sold by Real Ranchs in 2010 to a third party and a home constructed on the lot.
- 5.6 Five (5) of the remaining 27 lots were financed by WFCU, with BMO and Simba postponing their mortgage security on these lots. Two of the WFCU financed lots were sold by Real Ranchs in 2009 and 2011 respectively.
- 5.7 The other three (3) lots financed by WFCU are currently under power of sale proceedings by WFCU. The Receiver understands that there are Agreements of Purchase and Sale in place for those three lots and no realizations are expected by the Receiver from those three lots.

- 5.8 In the course of the Receiver's sale process for the Banwell owned lots in the Royal Timbers Subdivision, certain parties also expressed interest in purchasing the lots owned by Real Ranchs. In order to be in a position to sell the Real Ranchs' Lots, the Receiver issued a Notice of Sale Under Mortgage on the Real Ranchs' Lots. The Notice of Sale under Mortgage is attached as **Appendix I**.
- 5.9 The Receiver's legal counsel prepared an Agreement of Purchase and Sale that incorporates the terms and conditions of the form of Lot Sales Agreement previously approved by the Court for the sale of Banwell owned lots, together with certain conditions to reflect that the Receiver is selling the Real Ranchs' Lots under power of sale.
- 5.10 The Receiver has entered into agreements of purchase and sale to sell all 22 of the Real Ranchs' Lots. The Receiver has entered into an Agreement of Purchase and Sale with 136 Ontario for 21 of the Real Ranchs' Lots and an Agreement of Purchase and Sale with Hadi for one of the Real Ranch's Lots. It is the Receivers view that the completion of those sales is in the best interests of the stakeholders of the Companies.
- 5.11 The Real Ranchs' Lots are being sold by the Receiver under power of sale. The Real Ranchs' Lots remain subject to prior mortgages in favour of BMO and Simba. A copy of a representative parcel register for one of the Real Ranchs' lots with the registration particulars of the BMO and Simba mortgages is attached as **Appendix J**. Because Banwell's interest in the Real Ranchs' Lots is as mortgagee, not owner, it is not clear that the Court is able to vest the Real Ranchs' Lots in the purchasers free and clear of the BMO and Simba mortgages. Instead, it is necessary for the Receiver to give title to the purchasers under the power of sale provisions in the Real Ranchs' VTB.
- 5.12 The Receiver is aware that certain creditors and stakeholders of the Companies may be disputing the validity of the Simba security against the Real Ranchs' Lots or the quantum of the indebtedness secured thereunder. As a result, the Receiver is proposing a mechanism which will allow the sales of the Real Ranchs' Lots to be completed while preserving the rights of all parties to the net proceeds thereof pending a determination of the validity of the Simba security.

- 5.13 The Receiver proposes that all net proceeds from the sale of the Real Ranchs' Lots be held by the Receiver in a bank account that is under the control of the Receiver, but separate from the Receiver's Banwell and Royal Timbers accounts (the "**Real Ranchs' Trust Account**"). As funds are received on the VTB mortgages following closing, those funds would be deposited to the Real Ranchs' Trust Account.
- 5.14 No expenses of the receivership, including professional fees, would be paid from the Real Ranchs' Trust Account and no funds would be distributed from the Real Ranchs' Trust Account without the approval of the Court. The funds in the Real Ranchs' Trust Account would stand in the place and stead of the Real Ranchs' Lots with all claims and encumbrances attaching to the funds with the same priority as they had immediately prior to the completion of the sale of the Real Ranchs' Lots.
- 5.15 Because the Real Ranchs' Lots must be sold by the Receiver under power of sale, discharges of the BMO and Simba mortgages are required to facilitate the completion of those sales and to give the purchasers good title. The Receiver seeks an order of the court discharging the BMO and Simba mortgages on the completion of the sale of the Real Ranchs' Lots and ordering that the net proceeds from the sales will be held by the Receiver in the Real Ranchs' Trust Account under the terms set forth above, pending further order of the Court.
- 5.16 It is the Receiver's understanding that under Section 12 of the *Mortgages Act*, the Court has the authority to make an order discharging a mortgage when a discharge of the mortgage cannot be obtained because the amount owing under the mortgage is disputed upon payment into Court of the amount claimed as owing together with an additional amount for interest and costs.
- 5.17 Based on correspondence provided by Simba's legal counsel, it is the Receiver's understanding that Simba claims an outstanding balance of \$405,193.51 on its mortgage against the Real Ranchs' Lots as of July 1, 2014. A copy of that correspondence is attached as **Appendix K**.

Sale of 21 Real Ranchs' Lots to 136 Ontario

- 5.18 On December 19, 2014 the Receiver entered into an Agreement of Purchase and Sale with 136 Ontario for the sale of 21 of the 22 Real Ranchs' Lots consisting of Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 42, 43, 45, 46, 47, 48, 49, 50, 51 and 52, Plan 12M-546.
- 5.19 The scheduled closing date is March 31, 2015. A portion of the purchase price is to be satisfied by a VTB mortgage.
- 5.20 A copy of the Agreement of Purchase and Sale with 136 Ontario is attached as Appendix A to the Confidential Supplement.
- 5.21 On December 19, 2013, the Receiver also entered into an Agreement of Purchase and Sale with 136 Ontario for the sale of 11 Banwell lots consisting of Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13, Plan 12M-546. The 11 Banwell lots are included in the Amended Omnibus Approval and Vesting Order.
- 5.22 The sale of the 11 Banwell lots is contingent on the completion of the sale of the 21 Real Ranchs' Lots and vice versa.
- 5.23 Prior to the appointment of the Receiver, the Companies commissioned an appraisal of the Banwell lots from Valco Consultants Inc. of London, Ontario ("**Valco**"), dated February 12, 2013, which included the Real Ranchs' Lots (the "**Valco Appraisal**"). The Valco Appraisal has been previously filed with the Court.
- 5.24 The Valco Appraisal was revised to correct certain errors in the sizes of lots used in the appraisal process, as well as other adjustments, and a revised Appraisal dated September 4, 2013 was issued (the "**Revised Valco Appraisal**"). The Revised Valco Appraisal is attached as **Appendix B** to the Confidential Supplement.
- 5.25 The Receiver commissioned an appraisal of the Real Ranchs' Lots by Metrix Realty Group of London, Ontario ("**Metrix**"). The appraisal report of Metrix dated December 3, 2014 (the "**Metrix Real Ranchs' Appraisal**") is attached as **Appendix C** to the Confidential Supplement.

- 5.26 The Receiver's analysis of the proposed sale of the 21 Real Ranchs' Lots to 136 Ontario is contained in the Confidential Supplement.
- 5.27 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have should the sale to 136 Ontario fail to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the transaction does not close and could negatively impact the future sale of other lots owned by Banwell in the Royal Timbers Subdivision.
- 5.28 It is the Receiver's view that that the proposed sale of the 21 Real Ranchs' Lots to 136 Ontario is appropriate in the circumstances.
- 5.29 The Receiver is of the view that it has maximized the realization available and the 136 Ontario Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the 136 Ontario Transaction is in the best interest of the creditors and other stakeholders of the Companies.
- 5.30 The Receiver recommends that this Court approve the completion of the 136 Ontario Transaction.

Sale of Lot 27 to Hadi

- 5.31 On January 28, 2015 the Receiver entered into the Hadi Lot 27 APS, for the sale of one of the Real Ranchs' Lots, being Lot 27, Plan 12M-546.
- 5.32 The scheduled closing date is March 16, 2015. A portion of the purchase price is to be satisfied by a VTB mortgage.
- 5.33 A copy of the Hadi Lot 27 APS is attached as **Appendix D** to the Confidential Supplement.
- 5.34 Lot 27 was included in the Revised Valco Appraisal and the Metrix Real Ranchs' Appraisal, which are attached as **Appendix B** and **Appendix C** respectively to the Confidential Supplement.

- 5.35 The Receiver's analysis of the Hadi Lot 27 Transaction is contained in the Confidential Supplement.
- 5.36 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have should the Hadi Lot 27 Transaction fail to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the transaction does not close and could negatively impact the future sale of other lots owned by Banwell in the Royal Timbers Subdivision.
- 5.37 It is the Receiver's view that that the Hadi Lot 27 Transaction is appropriate in the circumstances.
- 5.38 The Receiver is of the view that it has maximized the realization available and the Hadi Lot 27 Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Hadi Lot 27 Transaction is in the best interest of the creditors and other stakeholders of the Companies.
- 5.39 The Receiver recommends that this Court approve the completion of the Hadi Lot 27 Transaction.

6. Receiver's Sale of Phase I Lots – The Bungalow Transactions

- 6.1 In 2003 Banwell entered into an Agreement of Purchase and Sale with J L Fontes Development Inc. ("**JL Fontes**") and Thibert Homes Inc. ("**Thibert**") for the purchase of eighteen (18) lots in Phase I of the Royal Timbers Subdivision. Banwell held a VTB mortgage for a portion of the purchase price, with a term of 24 months. JL Fontes and Thibert completed construction of homes on the majority of the lots, with Banwell providing partial discharges of the VTB mortgage, but later encountered financial difficulties. Two of the lots were returned to Banwell as part of a settlement. JL Fontes continued to own Lot 100, Plan 12M-503 (previously defined as "Lot 100") but no home was constructed on the lot. The owner of Lot 100 is currently John Fontes Construction Inc. ("**Fontes**"). Fontes is in default on the VTB mortgage, which has an outstanding principal balance of \$57,800 (the "**Fontes VTB Mortgage**").
- 6.2 The Fontes VTB Mortgage has a balance outstanding at November 21, 2014 of \$137,346, including accrued interest of \$77,046. In order to be in a position to sell Lot 100 for the benefit of the creditors of Banwell, the Receiver issued a Notice of Sale Under Mortgage on Lot 100. The Notice of Sale under Mortgage is attached as **Appendix L**.
- 6.3 The Receiver's legal counsel prepared an Agreement of Purchase and Sale that incorporates the terms and conditions of the form of Lot Sales Agreement previously approved by the Court for the sale of Banwell owned lots, together with certain conditions to reflect that the Receiver is selling the lot under power of sale.
- 6.4 On January 28, 2015 the Receiver entered into an Agreement of Purchase and Sale with Bungalow for the sale of Lot 100.
- 6.5 A copy of the Bungalow Lot 100 APS is attached as **Appendix E** to the Confidential Supplement.
- 6.6 On January 28, 2015 the Receiver also entered into an Agreement of Purchase

and Sale for the sale of Lots 99 and 101 to Bungalow (the “**Bungalow Lots 99 and 101 APS**”). Lots 99 and 101 are owned by Banwell and are included in the Amended Omnibus Approval and Vesting Order.

- 6.7 The scheduled closing date of the sale of Lot 100 and the sale of Lots 99 and 101 is March 27, 2015. Under both the Bungalow Lot 100 APS and the Bungalow Lots 99 and 101 APS, a portion of the purchase price will be satisfied by a vendor take back mortgage.
- 6.8 Lot 100 was not included in the Revised Valco Appraisal.
- 6.9 Lot 100 was included in the Metrix Appraisal dated July 31, 2013, which was previously filed with the Court and is also included as **Appendix F** to the Confidential Supplement.
- 6.10 The Receiver’s analysis of the Bungalow Lot 100 Transaction is contained in the Confidential Supplement.
- 6.11 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have should the Bungalow Lot 100 Transaction fail to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the transaction does not close and could negatively impact the future sale of other lots owned by Banwell in the Royal Timbers Subdivision.
- 6.12 It is the Receiver’s view that that the Bungalow Lot 100 Transaction is appropriate in the circumstances.
- 6.13 The Receiver is of the view that it has maximized the realization available and the Bungalow Lot 100 Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Bungalow Lot 100 Transaction is in the best interest of the creditors and other stakeholders of the Companies.
- 6.14 The Receiver recommends that this Court approve the completion of the Bungalow Lot 100 Transaction.

7. Receiver's sale of Block 200

- 7.1 As noted in the Second Report, Royal Timbers owns nine (9) parcels of vacant commercial land on Banwell Road and Banwell owns two (2) adjacent parcels of vacant commercial land located on Tecumseh Road (the "**Commercial Lands**").
- 7.2 Block 200 is a fully serviced parcel of vacant land comprising approximately 0.82 acres, located adjacent to the Royal Timbers Subdivision, the Commercial Plaza and a medical building.
- 7.3 After negotiations, on January 22, 2015 the Receiver entered into the Block 200 APS, for the sale of Block 200 to 838 Ontario. A copy of the Block 200 APS is attached as **Appendix G** to the Confidential Supplement.
- 7.4 Under an agreement with Royal Timbers, M.R. Dunn Contractors Ltd. ("**Dunn**") provided the site servicing to Block 200 and another parcel of the Commercial Lands. The site servicing work was completed, but holdback amounts were not paid to Dunn. Dunn obtained judgement against Royal Timbers in the amount of \$47,893 plus costs.
- 7.5 Dunn has filed an execution against Royal Timbers. The Execution Certificates and Writ Details Reports were attached as **Appendix C** to the First Report of the Proposed Receiver.
- 7.6 The Receiver is seeking a Vesting Order in respect of Block 200.
- 7.7 Prior to the appointment of the Receiver, the Companies commissioned an appraisal of the Commercial Lands from Valco, which included Block 200. The appraisal report dated July 29, 2013 (the "**Valco Commercial Appraisal**") is attached as **Appendix I** to the Confidential Supplement.
- 7.8 The Receiver commissioned an appraisal of Block 200 by Metrix. The appraisal report of Metrix dated April 30, 2014 (the "**Metrix Block 200 appraisal**") is attached as **Appendix J** to the Confidential Supplement.

- 7.9 The Receiver's analysis of the Block 200 Transaction is contained in the Confidential Supplement
- 7.10 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have should the Block 200 Transaction fail to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the transaction does not close.
- 7.11 It is the Receiver's view that that the Block 200 Transaction is appropriate in the circumstances.
- 7.12 The Receiver is of the view that it has maximized the realization available and the Block 200 Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Block 200 Transaction is in the best interest of the creditors and other stakeholders of the Companies.
- 7.13 The Receiver recommends that this Court approve the completion of the Block 200 Transaction.

8. City of Windsor Lawsuit

- 8.1 In Section 5 of the Second Report the Receiver summarized various litigation involving Banwell or Royal Timbers.
- 8.2 Under Court Action No. LC080015, Royal Timbers was seeking damages of \$86,300 from the City resulting from the extended closure of Banwell Road in 2007 for water main and sewer replacement. Royal Timbers claimed damages for rent rebates paid to a tenant of the Commercial Plaza.
- 8.3 On June 12, 2012, prior to the appointment of the Receiver, the City submitted an Offer to Settle Court Action No. LC080015 (the "**Offer to Settle**") for the sum of \$30,000, inclusive of costs.
- 8.4 The Receiver's analysis of the Offer to Settle is contained in the Confidential Supplement.
- 8.5 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact which the dissemination of the confidential information contained therein might have, should the matter not be settled for any reason on the terms of the Offer to Settle. Publication of the Receiver's analysis could undermine the Receiver's position if the lawsuit could not be settled for any reason.
- 8.6 It is the Receiver's view that acceptance of the Offer to Settle is appropriate in the circumstances and commercially reasonable in all respects.
- 8.7 Given the foregoing the Receiver is of the view that acceptance of the Offer to Settle is in the best interests of the creditors and other stakeholders of the Companies.
- 8.8 The Receiver recommends that this Court approve the acceptance of the Offer to Settle and the completion of the settlement contemplated thereby.

9. Statement of Receipts and Disbursements of the Receiver

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

9.2 Receipts - Banwell

- a) *Sale of Lots (\$1,143,476.11)* — The Receiver received net proceeds totalling \$1,143,476.11 from completing the sales of 39 lots in the Royal Timbers subdivision. Proceeds received are net of VTB mortgages received as consideration and property tax arrears paid to the City.
- b) *VTB mortgage payouts (\$360,000.00)* — Three VTB mortgages have matured and the full principal was repaid.
- c) *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. Royal Timbers has repaid this amount and other funds advanced by Banwell.
- d) *GST / HST refunds (\$118,027.63)* — The Receiver received \$118,027.63 in refunds on HST returns filed.
- e) *Security Deposits on Sale of Lots (\$57,000)* — The Receiver received security deposits totalling \$57,000 from completing the sales of Lots. These deposits are refundable to the applicable purchaser on the completion of construction of a house on the Lot and fulfillment of certain conditions.

- f) *Petvin Homes mortgage amendment (\$25,000.00)* — The Receiver received \$25,000.00 from the Petvin mortgage amendment outlined in Section 4 of the Sixth Report.
- g) *Income Tax Refund (\$20,479.00)* — The Receiver received a \$20,479.00 refund from the 2010 income tax return.
- h) *Insurance refunds (\$3,353.64)* — The Receiver received \$3,353.64 in insurance policy refunds.
- i) *Interest earned on VTB mortgages (\$3,124.83)* — The Receiver earned \$3,124.83 in interest on VTB mortgages that have been paid out.

9.3 Disbursements - Banwell

- a) *Property taxes (\$481,640.25)* — The Receiver paid \$481,640.25 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, current 2014 property taxes and the first installment of 2015 property taxes,
- b) *Construction (\$269,325.88)* – The Receiver paid \$269,325.88 in construction costs for the paving of Block 120, Phase II sidewalk construction and other projects.
- c) *Receiver's fees (\$218,037.13)* – BDO's accounts for the period May 2, 2013 through January 15, 2014 in the amount of \$245,870.33, excluding HST, were previously approved by the Court. For certain BDO accounts, one half of the account was paid from the Banwell account. Where the BDO account related primarily to the Commercial Plaza, the account was paid from the Royal Timbers account. In total, \$89,112.12 was paid from the Banwell account.

The Receiver paid BDO accounts for the period January 15, 2014 to November 20, 2014 in the amount of \$128,925.01 from the Banwell account and is seeking approval of the Court of these invoices.

- d) *Legal fees (\$140,685.78)* – MT's legal fees for the period from May 16, 2013 to December 31, 2013 in the amount of \$187,088.24, excluding HST, were previously approved by the Court. For certain MT accounts, one half of the

account was from the Banwell account. Where the MT account related primarily to the Commercial Plaza, the account was paid from the Royal Timbers account. In total, \$89,764.57 was paid from the Banwell account.

The Receiver paid MT accounts for the period January 1, 2014 to December 24, 2014 in the amount of \$50,921.21 from the Banwell account and is seeking approval of the Court of these invoices

- e) *Receiver's Certificate (\$125,000.00)* – The Receiver repaid BMO under the Receiver's certificate.
- f) *HST Paid (\$109,325.30)* — The Receiver paid \$109,325.30 in HST on its disbursements.
- g) *Sales commissions (\$96,250.00)* – The Receiver paid commissions of \$96,250.00 on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.
- h) *Professional fees - Engineering (\$32,500.00)* – The Receiver paid \$32,500.00 to RC Spencer Associates Inc. for engineering fees, for the paving of Block 120, Phase II sidewalk construction and other projects.
- i) *Appraisal fees (\$29,294.35)* — The Receiver paid \$16,794.35 to Metrix and Valco for appraisals of the Banwell Lots. \$12,500 was paid to Tracey Business Advisors Inc. for an estimate of the fair market value of Banwell and Royal Timbers. This payment was approved by two of the three shareholders of Banwell.
- j) *Accounting fees (\$25,600.00)* — The Receiver paid \$25,600.00 to Hyatt Lassaline LLP for the preparation of the 2011, 2012 and 2013 Banwell financial statements and income tax returns. The 2014 financial statements are in the process of being completed.
- k) *Repairs and Maintenance (\$16,734.77)* – The Receiver paid \$16,734.77 for landscaping and repairs and maintenance to the Banwell Lots and subdivision infrastructure.

- l) *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.
- m) *City of Windsor application fees (\$5,012.00)* — The Receiver paid \$5,012.00 to the City of Windsor to process By-Law applications and signage permit applications.
- n) *Advertising (\$5,010.00)* — The Receiver paid \$5,010.00 for advertising and new signage.
- o) *Utilities (\$4,601.77)* — The Receiver paid \$4,601.77 for utilities.
- p) *Insurance (\$3,702.24)* — The Receiver paid \$3,702.24 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- q) *Survey fees (\$3,473.25)* — The Receiver paid \$3,473.25 to Verhaegen Stubberfield Brewer Bezaire Inc. for the preparation of the Block 120 Reference Plan.
- r) *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 Phase I Lots.
- s) *Interest on Receiver's Certificate (\$1,114.72)* — The repayment of the Receiver's certificate of \$126,114.72 included accrued interest of \$1,114.72, of which one half was allocated to and paid by Royal Timbers.
- t) *Other professional fees (\$1,000.00)* — The Receiver paid \$1,000.00 to DuCharme, McMillen & Associates for the preparation of a property tax rebate application.

9.4. Receipts – Royal Timbers

- a) *Sale of Commercial Plaza (\$2,435,730.42)* – The Receiver received \$2,435,730.42 from the sale of the Commercial Plaza. The proceeds received were net of property tax arrears paid to the City of Windsor and closing

adjustments in favour of the purchaser for tenant security deposits and the purchaser's portion of December 2013 rents collected by the Receiver.

- b) *Rental income (\$214,992.30)* – The Receiver received \$190,992.51 in rental income for the months of June through December 2013 from the tenants of the Commercial Plaza. The Receiver received \$23,999.79 from the sole tenant of 3993 Wildwood who paid the actual amount of property taxes directly to Royal Timbers.
- c) *GST / HST refunds (\$13,258.29)* — The Receiver received \$13,258.29 in refunds on HST returns filed.
- d) *Sale of chattels (\$9,040.00)* – On the leasing of Unit 100, the new tenant, Bella Vita paid \$8,000.00, plus HST of \$1,040.00 for chattels that were owned by the previous tenant and abandoned when that tenant vacated Unit 100.
- e) *Security deposit (\$5,000.00)* – The Receiver received a security deposit of \$5,000.00 on the leasing of Unit 100. On the closing of the sale of the Commercial Plaza, credit was given to the purchaser for this amount and other tenant security deposits. The Receiver has no further obligation to the tenant with respect to the deposit.

9.5. Disbursements – Royal Timbers

- a) *Property taxes (\$247,383.32)* — The Receiver paid \$247,383.32 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, current 2014 property taxes and the first installment of 2015 property taxes.
- u) *Receiver's fees (\$156,758.26)* – BDO's accounts for the period May 2, 2013 through January 15, 2014 in the amount of \$245,870.33, excluding HST, were previously approved by the Court. For certain BDO accounts, one half of the account was paid from the Royal Timbers account. Where the BDO account related primarily to the Commercial Plaza, the account was paid fully from the Royal Timbers account. In total, \$156,758.26 was paid from the Royal Timbers account.

- v) *Legal fees (\$113,868.55)* – MT’s legal fees for the period from May 16, 2013 to December 31, 2013 in the amount of \$187,088.24, excluding HST, were previously approved by the Court. For certain MT accounts, one half of the account was paid from the Royal Timbers account. Where the MT account related primarily to the Commercial Plaza, the account was paid fully from the Royal Timbers account. In total, \$97,316.77 was paid from the Royal Timbers account.

The Receiver paid MT accounts for the period January 1, 2014 to December 24, 2014 in the amount of \$16,551.77 from the Royal Timbers account and is seeking approval of the Court of these invoices

- b) *HST Paid (47,305.08)* — The Receiver paid \$47,305.08 in HST on its disbursements.
- c) *Payroll (\$46,238.72)* – The Receiver paid net wages of \$47,238.72 to Marina Ognjanovski, who provided administrative support to the management of the Commercial Plaza as well as to the ongoing management and maintenance of the vacant Banwell lands.
- d) *Accounting fees (\$24,350.00)* — The Receiver paid \$24,350.00 to Hyatt Lassaline LLP for the preparation of Royal Timbers financial statements and income tax returns.
- e) *Appraisal fees (\$19,103.90)* — The Receiver paid \$19,103.90 to Metrix and Valco for appraisals of the Commercial Plaza and Commercial Lands.
- f) *Repairs and Maintenance (\$18,684.19)* – The Receiver paid \$18,684.19 for repairs and maintenance to the Commercial Plaza.
- g) *Payroll source deductions (\$14,199.53)* – The Receiver remitted \$14,199.53 to the Receiver General for source deductions on employee wages
- h) *Advertising (\$9,042.34)* – The Receiver paid \$9,042.34 in advertising the Invitation for Offers process for the Commercial Plaza.

- i) *Receiver General – tenant chattel proceeds (\$9,040.00)* – The Receiver remitted the chattel proceeds of \$9,040.00 to the Receiver General, to be applied to the former tenant's source deduction arrears.
- j) *Property Management Fees (\$8,642.98)* — The Receiver paid \$8,642.98 to Wintru for its property management of the Commercial Plaza during the period June 5, 2013 through December 16, 2013.
- k) *HST remitted (\$6,830.45)* — The Receiver remitted \$6,830.45 in HST collected on rents, net of HST paid on its disbursements.
- l) *Legal fees – Wolf Hooker (\$5,727.15)* – The Receiver paid \$5,727.15 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 has assisted in the shareholder litigation.
- m) *Insurance (\$5,024.16)* — The Receiver paid \$5,024.16 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- n) *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.
- o) *Utilities (\$3,263.57)* — The Receiver paid \$3,263.57 for utilities for the vacant units and common area at the Commercial Plaza.
- p) *City of Windsor application fee (\$1,172.00)* – The Receiver paid an application fee to the City of Windsor of \$1,172.00 for the "Removal of the Zoning Hold Symbol" on the Commercial Plaza.

10. Distribution to Bank of Montreal

- 10.1 Provided Court approval is granted authorizing the Receiver to complete the Block 200 Transaction and the sales of the Real Ranchs' Lots and the other pending sales of Banwell owned lots are completed as scheduled, the Receiver anticipates having sufficient funds to repay the amounts owed by Banwell to BMO as the proceeds from those sales and the various VTB mortgages are received.
- 10.2 The Receiver has obtained an independent legal of MT on the validity and enforceability of the BMO security against the lands owned by the Companies which have been sold by the Receiver to date, the Lands owned by the Companies which are subject to pending sales and the Real Ranchs' Lots. Those opinions provide that, subject to the customary assumptions and qualifications, the security held by BMO is valid and enforceable. A copy of the Miller Thomson opinion dated January 20, 2014 with respect to the validity of the BMO security against, *inter alia*, the Commercial Plaza was previously filed with the Court together with the Receiver's Fifth Report and is attached as Appendix O hereto. A copy of MT's opinion dated February 18, 2015 with respect to the validity of the BMO security against Block 200, the Banwell owned lots in the Royal Timbers Subdivision and the Real Ranchs' Lots is attached as Appendix P.
- 10.3 Banwell remains indebted to BMO on account of principal, interest and professional fees (the "**BMO Indebtedness**"). The BMO Indebtedness is secured by, *inter alia*, the mortgage security held by BMO over Block 200, the Banwell owned lots in the Royal Timbers Subdivision and the Real Ranchs' Lots.
- 10.4 The Receiver seeks an order authorizing the Receiver to distribute to BMO an amount equal to the BMO Indebtedness as and when funds are available to the Receiver to make such distribution.

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

- 11.1 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**”).
- 11.2 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.
- 11.3 Attached as **Appendix Q** is the fee affidavit of Stephen N. Cherniak sworn February 20, 2015 containing BDO’s interim accounts as Receiver for the following periods:
- o January 15, 2014 to February 21, 2014
 - o February 21, 2014 to May 15, 2014
 - o May 15, 2014 to July 15, 2014
 - o July 15, 2014 to September 23, 2014
 - o September 23, 2014 to November 20, 2014
 - o November 21, 2014 to January 15, 2015
- 11.4 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.
- 11.5 Attached as **Appendix R** is the fee affidavit of Sherry Kettle, sworn February 19, 2015 containing the interim accounts of MT for the period January 1, 2014 to December 24, 2014.

11.6 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.

12. Recommendations

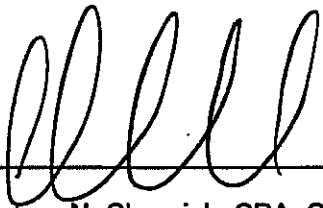
12.1 The Receiver recommends and respectfully requests that this Court grant an Order:

- a) approving the Receiver's Sixth Report, the Confidential Supplement and the activities and actions of the Receiver described therein;
- b) sealing the Confidential Supplement filed with the Court from the public record until further order of the Court;
- c) approving the process proposed by the Receiver for the power of sale proceedings of the Real Ranchs' Lots;
- d) discharging the mortgage security of BMO and Simba over the Real Ranchs' Lots on the completion of the 136 Ontario Transaction and Hadi Lot 27 Transaction;
- e) directing that the net proceeds from the sale of the Real Ranchs' Lots be held by the Receiver in the Real Ranch's Trust Account on the terms set forth in the Sixth Report and that such proceeds shall stand in the place and stead of the Real Ranchs' Lots with all claims and encumbrances attaching to the proceeds with the same priority as they had immediately prior to the completion of the sale of the Real Ranchs' Lots;
- f) approving the 136 Ontario APS and authorizing and directing the Receiver to enter into and complete the 136 Ontario Transaction;
- g) approving the Hadi Lot 27 APS and authorizing and directing the Receiver to enter into and complete the Hadi Lot 27 Transaction;
- h) approving the Bungalow APS and authorizing and directing the Receiver to enter into and complete the Bungalow Transaction;

- i) approving the Block 200 APS and authorizing and directing the Receiver to enter into and complete the Block 200 Transaction and thereafter to file the Receiver's certificate;
- j) vesting in 838 Ontario all of Royal Timbers right, title and interest in and to Block 200 free and clear of any and all claims and encumbrances;
- k) authorizing the Receiver to accept the Offer to Settle of the City of Windsor dated June 4, 2012 with respect to Court Action No. LC080015 and to complete the settlement contemplated thereby;
- l) approving the Barwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements;
- m) approving the distribution to BMO of an amount equal to the BMO Indebtedness as and when funds are available to the Receiver to make such distribution; and
- n) approving the Professional Fees;

All of which is Respectfully Submitted this 20th day of February, 2015.

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



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

APPENDIX "A"

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) WEDNESDAY, THE 5TH.
JUSTICE BRUCE G. THOMAS) DAY OF JUNE 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Corporations;
- j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Corporations, the Property or the Receiver, and to settle or compromise any such proceedings save and except for the proceedings that relate to the July 26, 2012 Order. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- k. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- l. to sell, convey, transfer, lease or assign the Property or any part or parts thereof in the ordinary course of business,

- i. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
- ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

REPORT TO COURT

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

FINANCIAL REPORTING TO STAKEHOLDERS

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE CORPORATIONS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

GENERAL

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

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

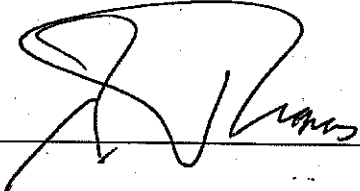
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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

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



 JUSTICE JJ

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. acquired for, or used in relation to a business carried on by the Corporations, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the _____ day of June, 2013 (the "Order") made in an action having Court file number _____ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the 5th day of June,
2013.

BDO Canada Limited

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

Per:

Name:

Title:

KEVIN D'AMORE

-and- BANWELL DEVELOPMENT
CORPORATION et al
Defendants

Plaintiff

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDORD

ORDER
AFFIDAVIT OF SERVICE

ROBINS APPELBY & TAUB LLP
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Lawyers for the Bank of Montreal

APPENDIX "B"

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

July 12, 2013

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Appendices

- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - First Report to the Court of Proposed Receiver dated May 29, 2013 (without appendices)
- Appendix C** - First Report to the Court of Receiver dated June 20, 2013 (without appendices)
- Appendix D** - Commercial Plaza Rent Roll
- Appendix E** - Proposed Property Management Agreement with Wintru Developments Inc.
- Appendix F** - Litigation Chart
- Appendix G** - Reasons for Judgment of the Honourable Justice Thomas dated July 26, 2012
- Appendix H** - Schedule of Banwell Lots
- Appendix I** - Form of Lot Sales Agreement
- Appendix J** - Banwell Statement of Receipts and Disbursements
- Appendix K** - Royal Timbers Statement of Receipts and Disbursements
- Appendix L** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn July 9, 2013
- Appendix M** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn July 12, 2013

1. Introduction and Background

1.1 Introduction

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

1.2 Background

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

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

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

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2. Terms of Reference

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

3. Purpose of the Receiver's Second Report

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

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

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

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

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

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

4. Receiver's Activities

- 4.1 As approved by the Lots 40 and 47 Approval and Vesting Order, on July 12, 2013, the Receiver is scheduled to complete the sale of Lot 40. The sale of Lot 47 is scheduled to be completed on September 30, 2013.
- 4.2 At the time of the Receiver's appointment, Wintru, a company of which Troup is the sole officer and director, was acting as the property manager of the Commercial Plaza. As property manager, Wintru was responsible for the leasing of vacant units, collection of rents and supervision of maintenance and repairs.
- 4.3 Following its appointment, representatives of the Receiver met with Troup and obtained information relating to the business operations and current status of Banwell and Royal Timbers. At that time, it was expressly stated by the Receiver to Troup that Wintru had been retained by the Receiver and, therefore, would report, only, to the Receiver and, moreover, that Wintru and, more importantly, Troup, has no authority to make decisions or execute documents on behalf of or as agent for Royal Timbers and/or Banwell and/or BDO in its capacity as Receiver, without the prior approval of the Receiver.
- 4.4 Prior to the receivership, Banwell had one (1) office employee. The Receiver entered into a limited term employment agreement with Marina Ognjanovski on June 21, 2013 at the same rate of pay as she enjoyed immediately prior to the appointment of the Receiver.

- 4.5 The Receiver did not establish new accounts with Canada Revenue Agency for source deductions and HST; rather, the Receiver has elected to continue to file returns using the Companies' existing accounts. The rationale for maintaining the Companies' existing accounts is that it is expected Banwell will carry on in business once the Receiver's mandate is complete.
- 4.6 As required by the terms of the Appointment Order, the Receiver opened two (2) bank accounts at BMO to account for the separate receipts of Banwell and Royal Timbers.
- 4.7 Tenants of the Commercial Plaza pay rent on the first business day of each month. The Receiver obtained and reviewed copies of the Commercial Plaza tenant leases and a summary of the monthly rent roll prepared by Wintru. A rent roll for the tenants of the Commercial Plaza is attached as **Appendix D**.
- 4.8 The Commercial Plaza has six (6) units of which four (4) are occupied and two (2) are vacant. Troup advised the Receiver that he has met with a party interested in leasing one (1) of the vacant units. As of the writing of this report, the two (2) units remain vacant. In discussions with Troup, the Receiver was advised that preliminary discussions with one (1) proposed tenant involved lease payments of \$16/square foot for the first two (2) years and \$18/square foot for the last three (3) years. If acceptable to the proposed tenant, such terms would be acceptable to the Receiver as they are above market rates.
- 4.9 At the time of the Receiver's appointment, one (1) tenant had not paid the full rent due on June 1, 2013. Since that time, the Receiver has collected the balance of the June rent owing and made arrangements through Wintru for future rents and

common area maintenance payments to be forwarded to the Receiver.

- 4.10 All rents are paid directly to the Receiver and deposited to the Receiver's Royal Timbers Bank account established with BMO. Troup does not receive or handle the rents.
- 4.11 The Receiver has assumed payment of utilities and other ongoing expenses of the Commercial Plaza.

Property Management of the Commercial Plaza

- 4.12 Prior to the Receiver's appointment, Wintru was paid a property management fee equal to six (6) per cent of gross rents, billed and paid on a yearly basis. The Receiver understands this fee was increased by Royal Timbers approximately two (2) years ago from five (5) per cent. As at the date of the Receiver's appointment, no formal written property management agreement existed between Royal Timbers and Wintru.
- 4.13 Commercial property management fees vary depending on the nature and size of the property being managed, the number of tenants and other factors. Based on the Receiver's knowledge and prior experience and after consulting with other real estate professionals, the Receiver concluded that the six (6) per cent fee paid to Wintru was marginally in excess of market rates for property management fees.
- 4.14 In view of Wintru's knowledge and experience with the Commercial Plaza, the Receiver recommends to the Court that Wintru continue as property manager of the Commercial Plaza. As well, given that the Receiver anticipates a sale of the Commercial Plaza within the next few months, the Receiver does not believe it

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

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

Real Ranchs Inc.

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

Property Tax Arrears

- 4.20 Property taxes with respect to the Lands have not been regularly paid and there are significant arrears dating back to 2010. It appears the Companies have had insufficient cash flow to keep property taxes current; however, the Receiver has not assessed and confirmed the cause of the extensive arrears.
- 4.21 In addition to the Banwell Lots and the Commercial Plaza, Royal Timbers owns nine (9) adjacent parcels of commercial land on Banwell Road and Banwell owns two (2) adjacent parcels of commercial land located on Tecumseh Road (the "**Vacant Commercial Lands**").
- 4.22 The Receiver was contacted by a representative of the City of Windsor Finance Department with respect to the property tax arrears and the Receiver obtained confirmation of the amounts owing in respect of all the Lands including the Vacant

Commercial Lands.

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

Builder Security Deposits

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

following an inspection post closing and post construction.

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

Vendor Take Back Mortgages

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

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

Secured Creditors

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

5. Litigation

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

A. Banwell

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

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

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

¹ See Litigation Chart at **Appendix F**

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

5.4. Banwell is defendant in the following Court actions:

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

B. Royal Timbers

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

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

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

- (a) **Court Action No. CV-07-10224:** J. Lepera Contracting Inc. ("Lepera") provided servicing to the Companies under two contracts. Under an 'outside servicing' contract, Lepera claimed approximately \$55,000 from Royal Timbers, who ultimately consented to judgment and this amount was paid into court.

- (b) **Court Action No. CV-07-009805:** Lepera claims a lien in the amount of \$385,449. By Judgment dated March 23, 2012 (the "**Judgment**"), the action was dismissed as against Royal Timbers and cost orders totalling approximately \$100,000 have been made in favour of Royal Timbers against Lepera. Lepera has filed an appeal of the Judgment to the Divisional Court and such appeal has been perfected and is pending (the "**Appeal**").

- (c) **Court Action No. CV-13-18976:** Simba and The estate of D'Amore seek foreclosure. Royal Timbers has issued a Statement of Defence and Counterclaim claiming damages of 5,000,000.

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

C. Former Tenants - Claims

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

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

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

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

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

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

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

July 26, 2012 Reasons for Judgment

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

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

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

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

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

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

6. Receiver's sale process for residential building lots

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

any kind;

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

8. Statements of Receipts and Disbursements of the Receiver

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

8.2 Receipts - Banwell

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

8.3 Disbursements - Banwell

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

8.4. Receipts – Royal Timber

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

8.5. Disbursements – Royal Timber

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

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

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

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

10. Recommendations

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

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

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

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

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

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

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

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

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

APPENDIX "C"

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

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

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;

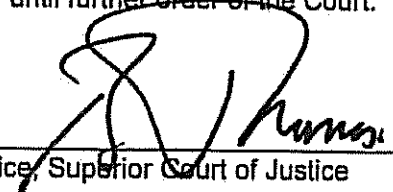
was heard this day at the Courthouse, 80 Dundas Street, London Ontario.

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. | 84 |
| 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 _____, 201____, this _____ day of _____

| | | |
|---|---|----------------------|
| SIGNED, SEALED AND DELIVERED in the presence of WITNESS (as to all Purchaser's signatures, if more than one purchaser) |) | Signature _____ |
| |) | |
| |) | |
| |) | Purchaser Name _____ |
| |) | |
| |) | |
| |) | 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 fulfillment of the requirements herein, the Purchaser shall obtain written undertaking from such Owner requiring him/her to complete all of the matters specified and to obtain executed written confirmation that said Owner will be bound by the terms hereof.
- (r) The Purchaser hereby agrees to comply with the provisions and requirements noted herein and further agrees to rectify and correct any default forthwith upon receiving notice thereof. Failure of the Purchaser to rectify any such default on a

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

Fence Acknowledgement

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

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

Acceptance of Interest

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

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

Closing Documents

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

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

Extension of Closing

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

Covenants of the Vendor

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

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

Covenants of the Purchaser

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

Representations and Warranties of the Vendor

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

Representations and Warranties of the Purchaser

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

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

Conditions for the Benefit of Vendor and the Purchaser

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

Environmental Condition

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

Governmental Approvals

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

Taxes

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

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

Unwanted Chattels

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

Fixtures/Chattels

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

Property Taxes

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

Conditions

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

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

Independent Advice

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

Receipt of Information

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

Notices

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

General Provisions

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

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

SCHEDULE "A"

Legal Description of the Property

[to be completed]

SCHEDULE "B"

Legal Description of Royal Timbers Subdivision

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

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

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

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

KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

SALES PROCESS ORDER

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

APPENDIX "D"

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

November 25, 2013

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Appendices

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

1. Introduction and Background

1.1 Introduction

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

1.2 Background

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

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

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

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

2. Terms of Reference

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

3. Purpose of the Receiver's Third Report

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

(a) To provide this Court with information on:

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

(b) In support of an order of the Court:

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

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

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

4. Receiver's Activities

Banwell Lots

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

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

Block 120, Plan 12M-533

4.6 The Banwell Lots include Block 120. A previously prepared draft plan of subdivision for Block 120 provides for the creation of nine (9) residential building lots within Block 120 (the "Block 120 Lots"), however, the Reference Plan whereby a description and a Parcel Identification Number for each of the Block 120 Lots (the "Block 120 Reference Plan") had not been approved and registered at the time of the Receiver's motion seeking the Omnibus Approval and Vesting Order. Accordingly, the Block 120 Lots were not included in the Royal Timbers Subdivision lot inventory set out in Schedule "A" to the Omnibus Approval and Vesting Order.

4.7 The Block 120 Lots front onto McRobbie Road and are fully serviced except for approximately 473 feet of base asphalt on McRobbie Road. In order to fully complete and sell the Block 120 Lots, the Receiver estimates the cost of paving, surveying and engineering fees to be approximately \$40,000 to \$50,000.

4.8 On November 2, 2013 the Receiver entered into an Agreement of Purchase and Sale in the Form of Lot Sales Agreement to Hadi for the Block 120 Lots (the "Block

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

4.9 An appraisal of the real property comprising, in part, the Banwell Lots was commissioned by the Companies from Valco prior to the Receiver's appointment (February 14, 2013) (the "Valco Appraisal"). The Valco Appraisal has been previously filed by the Receiver in these proceedings to support the approval of prior Lot sales and the granting of the Omnibus Approval and Vesting Order.

4.10 Having regard to the appraised value of the Block 120 Lots contained in the Valco Appraisal (appended as Appendix "E" to the Confidential Supplement to the First Report of the Proposed Receiver) and the appraised value of the Block 120 Lots contained in the Metrix Appraisal (as defined in the Confidential Supplement to the Third Report and appended as Appendix "A" thereto) prior Receiver sales of similar sized and serviced Lots, the Receiver believes the sale of the Block 120 Lots to Hadi pursuant to the Block 120 APS to be in the best interests of the stakeholders of Banwell and was obtained in accordance with the Lot Sales Process previously approved by the Court.

4.11 The Block 120 APS requires the Receiver to complete the paving and Block 120 Reference Plan and registration of the Individual Block 120 Lots. In addition, as a result of the Receiver discovering that a zoning hold symbol 'H' was inadvertently still in place over the Block 120 zoning designation, it was determined that it was necessary for the Receiver to make applications to the City of Windsor for a 'Part Lot Control Exemption' and for 'Removal of the Zoning Hold Symbol' (the "By-Law Applications"). On November 7, 2013, the Receiver filed the By-Law Applications with the City of Windsor.

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

Commercial Plaza

- 4.17 The Receiver also learned that the Commercial Plaza was subject to a zoning hold symbol 'H' that is intended to restrict development of the property until certain conditions are met. Construction of the Commercial Plaza was completed in 2006 and it appears to have been an administrative oversight of the City of Windsor that the holding symbol was not lifted. The Receiver submitted an application to the City of Windsor for the removal of the zoning hold symbol and a by-law has been passed removing the zoning hold symbol with respect to the Commercial Plaza.

- 4.18 At the time of the appointment of the Receiver, Unit 100 of 3335 Banwell Road of the Commercial Plaza was vacant ("Unit 100"). The Receiver and the Receiver's property manager, Wintru Developments Inc. ("Wintru") entered into negotiations with a prospective tenant. On August 22, 2013, the Receiver entered into a lease of Unit 100 with Bella Vita Hair Design and Spa Inc. ("Bella Vita") for a term commencing on August 15, 2013 and expiring on September 30, 2018. Full details of the terms of the lease are provided in the Confidential Supplement to the Third Report. A commission was paid to Wintru in accordance with the Property Management Agreement between the Receiver and Wintru and previously approved by this Court.

- 4.19 In addition, Bella Vita purchased certain chattels located on the premises comprising Unit 100 that had been abandoned by the previous tenant when it vacated the unit. The purchase price of \$8,000, plus HST, was considered to be fair market value for the chattels purchased. The purchase price, plus HST, has been paid to the Receiver.

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

Receiver's Certificate

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

5. Robinet Road Lots Servicing Reimbursement

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

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

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

6. Receiver's Sale Process for the Commercial Plaza

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

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

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

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

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

6.14 In the event the purchaser, upon the expiration of the due diligence period elects to terminate the Commercial Plaza APA, the Receiver intends to seek listing proposals from three (3) commercial real estate brokers who are experienced with similar properties, and list the Commercial Plaza for sale on the Multiple Listing Service.

6.15 Further details of the Commercial Plaza Sales Process undertaken to date and the offers received are set in the Confidential Supplement.

7. Statement of Receipts and Disbursements of the Receiver

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

7.2 Receipts - Banwell

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

7.3 Disbursements - Banwell

- a) *Receiver's Certificate (\$126,114.72)* – The Receiver repaid BMO under the Receiver's certificate in the amount of \$126,114.72, including accrued interest.

- b) *Legal fees (\$88,144.33)* – MT's legal fees for the period from May 16, 2013 to June 26, 2013 in the amount of \$41,867.97, excluding HST, were previously approved by the Court and one half of these accounts was paid by the Receiver from the Banwell account. The Receiver paid all of MT's interim accounts for the period July 2, 2013 through July 31, 2013 from the Banwell account. The Receiver paid one half of MT's interim accounts for the periods August 1, 2013 through August 30, 2013 and September 3, 2013 through September 30, 2013 from the Banwell account. The Receiver is seeking approval of the Court for these invoices.

- c) *Receiver's fees (\$43,041.44)* – BDO's account for the period May 2, 2013 through July 5, 2013 in the amount of \$51,018.94, excluding HST, was previously approved by the Court and one half of the account was paid from the Banwell account. The Receiver paid one half of BDO's account for the period July 5, 2013 through August 5, 2013 in the amount of \$35,063.93 from the Banwell account and is seeking approval of the Court of this invoice.

- d) *Sales commissions (\$24,237.50)* – The Receiver paid commissions on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.

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

7.4. Receipts – Royal Timbers

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

7.5. Disbursements – Royal Timbers

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

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

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

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

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

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

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

8.5 Attached as Appendix J is the fee affidavit of Sherry Kettle, sworn November 15, 2013 containing the interim accounts of MT for the period July 2, 2013 to November 8, 2013.

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

9. Recommendations

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

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

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

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



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

APPENDIX "E"

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

| | | |
|----------------|---|-----------------------------------|
| THE HONOURABLE |) | TUESDAY, THE 23 rd 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:

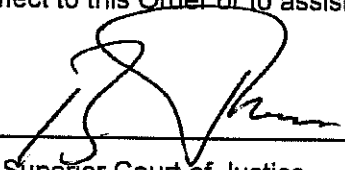
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Banwell and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made 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 08 DEC 2013
by [Signature]

Schedule "A" – Banwell Lots

Legal Description

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

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

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

Schedule "B" – Form of Receiver's Certificate

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated June 5, 2013, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc.
- B. Pursuant to an Order of the Honourable Justice Thomas of the Court dated July 23, 2013, the Court granted an omnibus approval and vesting order (the "**Omnibus Approval and Vesting Order**"), providing for among other things:
- (a) the Court's approval of this Transaction in respect of the Purchased Assets (as defined below) as described in the Sale Agreement (as defined below);
 - (b) the Court's authorization of the Receiver entering into the Agreement of Purchase and Sale made as of _____ [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver and _____ [NAME OF PURCHASER] (the "**Purchaser**"); and
 - (c) the vesting in and to the Purchaser all of Banwell's right, title and interest in and to the lands and premises legally described on **Exhibit "A"** to this Receiver's Certificate (the

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

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____
Name:
Title:

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

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

KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

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

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

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

| | | | | | | |
|---|------------|------------|--|-------------|----------|-------------|
| Description | | | | PIN | | |
| Phase 1 | | | | | | |
| Plan 12M-503 | Lot | 60 | | 1566 | - | 0424 |
| <ol style="list-style-type: none"> Instrument No. CE573510 - Notice of Court Order. 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. Instrument No. CE95821 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on August 13, 2004. | | | | | | |
| Plan 12M-503 | Lot | 99 | | 1566 | - | 0463 |
| <ol style="list-style-type: none"> Instrument No. CE573510 - Notice of Court Order. 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. Instrument No. CE103750 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on September 17, 2004. | | | | | | |
| Plan 12M-503 | Lot | 101 | | 1566 | - | 0465 |
| <ol style="list-style-type: none"> Instrument No. CE573510 - Notice of Court Order. 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. Instrument No. CE103750 – Transfer of Charge from Banwell Development Corporation to Bank of Montreal registered on September 17, 2004. | | | | | | |
| Phase 2 | | | | | | |
| Plan 12M-533 | Lot | 12 | | 1566 | - | 0578 |
| <ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. | | | | | | |

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

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

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

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

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

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|--|--------------|------------|--|-------------|----------|-------------|
| April 24, 2007. | | | | | | |
| Plan 12M-533 | Lot | 117 | | 1566 | - | 0683 |
| <ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007. | | | | | | |
| Plan 12M-533 | Block | 120 | | 1566 | - | 0686 |
| <ol style="list-style-type: none"> <u>Instrument No. CE569187 - Notice of Court Order.</u> <u>Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.</u> <u>Instrument No. CE269359 – Charge in the principal amount of \$240,496 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 25, 2007.</u> | | | | | | |
| Phase 4 | | | | | | |
| Plan 12M-546 | Lot | 2 | | 1566 | - | 0824 |
| <ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005. Instrument No. CE171657 – Postponement registered September 20, 2005. Instrument No. CE171658 – Postponement registered September 20, 2005. Instrument No. CE261562 – Notice registered February 28, 2007. | | | | | | |
| Plan 12M-546 | Lot | 3 | | 1566 | - | 0825 |
| <ol style="list-style-type: none"> Instrument No. CE569187 - Notice of Court Order. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005. Instrument No. CE163205 – Charge in the principal amount of \$282,000 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on | | | | | | |

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

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

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|---------------------|------------|-----------|--|-------------|----------|-------------|
| Plan 12M-546 | Lot | 10 | | 1566 | - | 0832 |
|---------------------|------------|-----------|--|-------------|----------|-------------|

- 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.

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|---------------------|------------|-----------|--|-------------|----------|-------------|
| Plan 12M-546 | Lot | 11 | | 1566 | - | 0833 |
|---------------------|------------|-----------|--|-------------|----------|-------------|

- 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.

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

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

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|---------------------|------------|-----------|--|-------------|----------|-------------|
| Plan 12M-546 | Lot | 13 | | 1566 | - | 0835 |
|---------------------|------------|-----------|--|-------------|----------|-------------|

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

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

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

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

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

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

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

(unaffected by the Vesting Order)

Generally

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

Lots in Plan 12M533

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

Lots in Plan 12M546

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

Lots in Plan 12M-503

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

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

AMENDED OMNIBUS APPROVAL AND VESTING ORDER

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APPENDIX "F"

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

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

December 9, 2013

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

1. Introduction and Background

1.1 Introduction

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

1.2 Background

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

beneficiaries. In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell vesting equally in each of Kevin and Scott.

- 1.2.3 Royal Timbers is the wholly-owned subsidiary of Banwell.
- 1.2.4 Royal Timbers is the owner of that portion of the Lands comprising the Commercial Plaza.
- 1.2.5 Since its appointment on June 5, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of numerous residential building lots contained in the Royal Timbers Subdivision. A number of reports have been filed by the Receiver in these proceedings wherein these activities and transactions are described in greater detail. In particular, the Receiver submitted a Second Report to the Court dated July 12, 2013 in support of a motion for, among other things, a Sales Process Order with respect to the proposed sales process in respect of the Commercial Plaza (the "Second Report"). A copy of the Second Report (without appendices) is attached as Appendix D.
- 1.2.6 By Order dated July 23, 2013 (the "Sales Process Order"), among other things, Mr. Justice Thomas approved the sales process for the Commercial Plaza. A copy of the Sales Process Order is attached as Appendix E.
- 1.2.7 By further Order dated July 23, 2013 (the "Omnibus Approval and Vesting Order"), as amended by Order dated December 2, 2013 (the "Amended Omnibus Approval and Vesting Order") Mr. Justice Thomas prospectively approved the sales transactions in respect of each of the remaining lots in the Royal Timbers Subdivision and prospectively vested all of Banwell's right, title and interest in and to the applicable Lot(s) subject to certain conditions and

restrictions. A copy of the Amended Omnibus Approval and Vesting Order is attached as **Appendix F**.

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

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

2. Terms of Reference

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

3. Purpose of the Receiver's Fourth Report

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

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

4. Receiver's Activities

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

5. Sale of the Commercial Plaza

- 5.1 The Commercial Plaza consists of two (2) separate parcels of land, municipally known as 3335 Banwell Road ("3335 Banwell"), Windsor and 3993 Wildwood Drive, Windsor ("3993 Wildwood").
- 5.2 3335 Banwell is an 11,500 square foot, multi-tenant plaza, located on approximately 0.93 acres of land, with frontage along Banwell Road. 3993 Wildwood is a 3,000 square foot, single tenant retail plaza located on 0.77 acres of land, with frontage along Wildwood Drive.
- 5.3 As a result of the Commercial Plaza Sales Process (as defined in the Sales Process Order), which was outlined in the Receiver's Third Report, the Receiver entered into negotiations with Avila (the "Purchaser") to finalize an Agreement of Purchase and Sale with respect to the Purchased Assets including the Commercial Plaza. The Receiver and Avila entered into the APS effective November 22, 2013. The APS was subject to a due diligence period expiring November 29, 2013 and subsequently extended by agreement of the parties to December 4, 2013.
- 5.4 Avila completed its due diligence and on December 4, 2013 provided the Receiver with notice of waiver of the conditions contained in the APS.
- 5.5 A copy of the APS is attached as **Appendix B** to the Confidential Supplement.
- 5.6 The Receiver was provided with a copy of an appraisal of the lands comprising the Commercial Plaza commissioned by the Companies prior to the appointment of the Receiver. The Receiver commissioned a second appraisal of the lands comprising the Commercial Plaza. Both appraisals are included in the Confidential Supplement

as Appendix C and Appendix D.

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

stakeholders.

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

6. Recommendations

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

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

All of which is Respectfully Submitted this 9th day of December, 2013.

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



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

KEVIN D'AMORE
Applicant

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

Respondents

Court File No: CV-11-17088

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