

**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

**MOTION RECORD  
(RETURNABLE ON A DATE TO BE DETERMINED  
BY REGIONAL SENIOR JUSTICE THOMAS)**

February 5, 2018

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**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

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TAB “1”

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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- and -

**BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,  
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Respondents

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

**NOTICE OF MOTION**

(Returnable on a date to be determined by Regional Senior Justice Thomas)

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 Regional Senior Justice Thomas to be heard on a date to be determined by Regional Senior Justice Thomas, 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 appended hereto as Schedule "A":
  - (a) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated effective January 11, 2018 between the Receiver, as vendor, and Taplane Inc. (the "**Purchaser**"), as purchaser, for the real property legally described as Part Lot 143 Con 2 (PT Old Banwell Road closed by LT336126) designated as Parts 9 & 12 PL 12R19305 subject to easement over Parts 9 & 12 PL 12R19305 as in LT336127, together with row over Parts 8 & 11 PL

12R19305 as in LT 387015; Part Lot 144 Con 2 designated as Parts 3 & 6 PL 12R19305, subject to easement over Part 3 PL 12R19305 as in R1541523, together with right over Parts 2, 5, 8 & 11 PL 12R19305 as in R1539706; subject to and together with an easement as in CE267537; City of Windsor, Essex County (PIN 1566-0890 (LT)) and municipally known as 3155 Banwell Road (the "**Real Property**") and directing the Receiver to complete the transaction contemplated thereby and thereafter to file a copy of the Receiver's Certificate with the Court (the "**Transaction**");

- (b) vesting in the Purchaser, all of Royal Timbers' right, title and interest in and to the Real Property free and clear of any and all claims and encumbrances upon closing of the Transaction and delivery of the Receiver's Certificate to the Purchaser;
- (c) sealing the Confidential Supplement to the Eleventh Report dated February 5, 2018 (the "**Confidential Supplement**") until the earlier of (i) the completion of the Transaction by the Receiver filing a copy of the Receiver's Certificate with the Court and (ii) a further order of the Court.

2. an Order substantially in the form appended hereto as Schedule "B":

- (a) if necessary, an Order 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 Eleventh Report of the Receiver dated February 5, 2018 and all appendices thereto (the "**Eleventh Report**"), the Confidential Supplement and all supplementary motion materials, if any, and directing that any further service of same be dispensed with such that this motion is properly returnable on a date to be determined by Regional Senior Justice Thomas;
- (b) approving the Eleventh Report and the Confidential Supplement and the activities and actions of the Receiver described therein; and
- (c) approving the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs'

Trust Account Statement of Receipts and Disbursements, each as defined in the Eleventh Report.

- (d) Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Approval of the Transaction

- (a) pursuant to the Appointment Order, the Receiver has the power to, among other things, sell, convey, transfer, lease or assign any of the property, assets and undertaking of Royal Timbers, including, without limitation, the Real Property, or any part or parts thereof out of the ordinary course of business without the approval of the Court in respect of any transaction not exceeding \$50,000 provided that the aggregate consideration for all such transactions does not exceed \$200,000, and otherwise the Receiver must obtain Court approval;
- (b) the Appointment Order empowers the Receiver to apply for a vesting order or other orders to convey title to the Real Property in and to the Purchaser free and clear of any liens or encumbrances affecting the Real Property;
- (c) the Transaction is commercially reasonable and represents the highest and best price available for the Real Property; and
- (d) it is in the best interests of the stakeholders that the Transaction be completed.

Sealing Order

- (a) the Confidential Supplement and the appendices thereto contain sensitive and confidential information, the disclosure of which would be detrimental to the interests of the stakeholders;
- (b) the Confidential Supplement contains commercially sensitive information which if disclosed could undermine the integrity of the marketing and sale process should the Transaction not be completed for any reason; and
- (c) section 137(2) of the *Courts of Justice Act*, RSO 1990., c C43 ("CJA").

Approval of the Eleventh 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.

Other

- (a) the Appointment Order;
- (b) Section 100 of the CJA;
- (c) Rules 1.04, 1.05, 2.03, 3.02(1), 16 and 37 of the Ontario *Rules of Civil Procedure*; and
- (d) 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 Eleventh Report;
- (b) the Confidential Supplement;
- (c) all other pleadings and materials previously filed in these proceedings; and
- (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

February 5, 2018

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## SCHEDULE "A"

Court File No. CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.	)	_____ DAY, THE ____ DAY
	)	
JUSTICE THOMAS	)	OF FEBRUARY, 2018

BETWEEN:

**KEVIN D'AMORE**

Applicant

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation 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 11, 2018 (the "**APS**") between the Receiver, as vendor, and Taplane Inc. (the "**Purchaser**"), as purchaser, and directing the Receiver to complete the transaction contemplated thereby and vesting all of Royal Timbers' right, title and interest in and to the Real Property in Taplane Inc., in respect of the real property described on Schedule "A" (the

“**Real Property**”) and appended as Appendix “A” to the Confidential Supplement to the Eleventh Report of the Receiver dated February 5, 2018 (the “**Eleventh Report**”), and vesting in the Purchaser all of Royal Timbers’ right, title and interest in and to the Real Property, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Eleventh Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn February \_\_\_\_, 2018, 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 Real Property 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 Timbers’ right, title and interest in and to the Real Property 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; and (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 Real Property are hereby expunged and discharged as against the Real Property.

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 Real Property described in Schedule "A" hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property 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 Real Property shall stand in the place and stead of the Real Property, 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 Real Property with the same priority as they had with respect to the Real Property immediately prior to the sale, as if the Real Property 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 Real Property 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 ORDERS that the Confidential Supplement shall be sealed until the earlier of the completion of the Transaction and further order of this Court.

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

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## Schedule A – Real Property

The lands and premises legally described as:

Part Lot 143 Con 2 (PT Old Banwell Road closed by LT336126) designated as Parts 9 & 12 PL 12R19305 subject to easement over Parts 9 & 12 PL 12R19305 as in LT336127, together with row over Parts 8 & 11 PL 12R19305 as in LT 387015; Part Lot 144 Con 2 designated as Parts 3 & 6 PL 12R19305, subject to easement over Part 3 PL 12R19305 as in R1541523, together with right over Parts 2, 5, 8 & 11 PL 12R19305 as in R1539706; subject to and together with an easement as in CE267537; City of Windsor, Essex County (PIN 01566-0890 (LT)).

**Schedule 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

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 February \_\_\_, 2018, the Court approved an Agreement of Purchase and Sale dated effective January 11, 2018 (the "**APS**") between the Receiver, as vendor, and Taplane Inc., as purchaser (the "**Purchaser**") in respect of the real property legally described on Schedule B1 hereto (the "**Real Property**") and appended as Appendix "A" to the Confidential Supplement of the Receiver dated February 5, 2018, and vesting in the Purchaser all of Royal Timbers' right, title and interest in and to the Real Property, which vesting is to be effective with respect to the Real Property 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 Real Property; (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 Real Property 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 B1 – Real Property**

The lands and premises legally described as:

Part Lot 143 Con 2 (PT Old Banwell Road closed by LT336126) designated as Parts 9 & 12 PL 12R19305 subject to easement over Parts 9 & 12 PL 12R19305 as in LT336127, together with row over Parts 8 & 11 PL 12R19305 as in LT 387015; Part Lot 144 Con 2 designated as Parts 3 & 6 PL 12R19305, subject to easement over Part 3 PL 12R19305 as in R1541523, together with right over Parts 2, 5, 8 & 11 PL 12R19305 as in R1539706; subject to and together with an easement as in CE267537; City of Windsor, Essex County (PIN 01566-0890 (LT)).

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

1. Instrument No. CE569187 – Notice of Court Order registered on June 18, 2013

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

- 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 Real Property 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 Real Property;
- 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 Real Property;
- f) Instrument No. 12R19305 – Plan Reference;
- g) Instrument No. LT336126 – Bylaw;
- h) Instrument No. LT336127 – Transfer Easement;
- i) Instrument No. R1539703 – Agreement - Site Plan Control;
- j) Instrument No. LT387020 – Notice - Site Plan Control Agreement;
- k) Instrument No. R1539705 – Application Annex Restrictive Covenants;
- l) Instrument No. LT387024 – Notice Agreement – Access & Easement Agreement;
- m) Instrument No. R1539706 – Agreement – Access & Easement Agreement;
- n) Instrument No. R1541523 – Transfer Easement;
- o) Instrument No. CE259459 – Application Consolidation Parcels;
- p) Instrument No. CE341496 – Notice – Site Plan Control; and
- q) Instrument No. CE449307 – LR's Order.

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

**MILLER THOMSON LLP**

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Receiver of Banwell Development  
Corporation and Royal Timbers Inc.

KEVIN D'AMORE

and

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

Court File No: CV-11-17088

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**

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## SCHEDULE "B"

Court File No. CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.	)	MONDAY, THE ____ DAY
	)	
JUSTICE THOMAS	)	OF FEBRUARY, 2018

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 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 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 Eleventh Report of the Receiver dated February 5, 2018 and all appendices thereto (the "**Eleventh Report**"), the Confidential Supplement to the Eleventh Report dated February 5,

2018 (the "**Confidential Supplement**") and all supplementary motion materials, if any, and directing that any further service of same be dispensed with such that this motion is properly returnable on a date to be determined during the week of February 12, 2018;

- (b) approving the Eleventh Report and the activities and actions of the Receiver described therein; and
- (c) approving the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs' Trust Account Statement of Receipts and Disbursements, each as defined in the Eleventh Report.

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

ON READING the Eleventh Report and on hearing the submissions of counsel for the Receiver, and such other persons on the Service List as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn February \_\_\_\_, filed.

1. THIS COURT ORDERS that 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 Eleventh Report, and the Confidential Supplement are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the Eleventh Report and the activities and actions of the Receiver described therein are hereby approved.

3. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs' Trust Account Statement of Receipts and Disbursements be and the same are hereby approved.

---

*Justice, Ontario Superior Court of Justice*



KEVIN D'AMORE

and

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

Court File No: CV-11-17088

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**ORDER**

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Receiver of Banwell Development  
Corporation and Royal Timbers Inc.

KEVIN D'AMORE

and

Applicant

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

Court File No: CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**NOTICE OF MOTION**  
(on a date to be determined by  
Regional Senior Justice Thomas)

**MILLER THOMSON LLP**

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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**

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

**February 5, 2018**

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## Appendices

- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - Tenth Report of the Receiver dated March 14, 2017 (without appendices)
- Appendix C** - Tecumseh Parcels Approval and Vesting Order dated March 27, 2017
- Appendix D** - Supplementary Report to the Tenth Report of the Receiver dated May 24, 2017 (without appendices)
- Appendix E** - Timber Bay Crescent Reserve Blocks Order dated May 29, 2017
- Appendix F** - Phase 2 Reserve Blocks Order dated May 29, 2017
- Appendix G** - Phase 4 Reserve Blocks Order dated May 29, 2017
- Appendix H** - Simba Mortgages and D'Amore Advances Order dated May 29, 2017
- Appendix I** - Statement of Receipts and Disbursements – Banwell
- Appendix J** - Statement of Receipts and Disbursements – Royal Timbers
- Appendix K** - Statement of Receipts and Disbursements – Real Ranchs Trust Account

# 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. Mr. Justice Thomas has made several Orders since the commencement of proceedings, including, but not limited to the following:
- 1.2.5 By 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.
- 1.2.6 By Order dated December 13, 2013 (the “**Commercial Plaza Approval and Vesting Order**”), Mr. Justice Thomas, among other things, approved the Commercial Plaza Transaction, vesting all of Royal Timbers’ right, title and interest in the Commercial Plaza in Avila Investments Limited, 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.
- 1.2.7 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.



- 1.2.8 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.
- 1.2.9 By Order dated March 3, 2015 Mr. Justice Thomas, among other things, approved the sale process and power of sale transactions for 22 lots owned by Real Ranchs Inc. ("the **Real Ranchs' Lots**"), discharging BMO and Simba Group Developments Limited ("**Simba**") mortgage security from title to the Real Ranchs' Lots; and directing the Receiver to hold the net proceeds from the sale of the Real Ranchs' Lots in a segregated trust account. The Order also approved the sale of the commercial lot municipally known as 3990 Wildwood Drive, Windsor ("**Block 200**") to 838605 Ontario Limited and vested all of Royal Timbers' right, title and interest in Block 200 in 8388605 Ontario Limited.
- 1.2.10 The Order dated March 3, 2015 also authorized the Receiver to pay BMO the full amount of Banwell indebtedness to BMO when such funds are available to the Receiver.
- 1.2.11 By Order dated June 24, 2015 (the "**Phase 3 Lands Approval and Vesting Order**") Mr. Justice Thomas approved the sale of Lots 103-106, Block 121 and Block 122 Plan 12M-533, Windsor (the "**Phase 3 Lands**") to Hadi Custom Homes Inc. ("**Hadi**") and vested all of Banwell's right, title and interest in the Phase 3 Lands in Hadi.
- 1.2.12 By further Order dated June 24, 2015 (the "**Simba Distribution Order**") Mr. Justice Thomas approved the distribution to Simba and D'Amore Estate of an amount equal to all amounts secured by the Simba and D'Amore mortgages, as defined in the Eighth Report to the Court dated June 12, 2015, as and when funds are available to the Receiver provided that prior to making such distribution written notice is provided to the Service List.

- 1.2.13 By Order dated October 6, 2015 (the “**Phase 3 One Foot Reserve Block Order**”) Mr. Justice Thomas approved the sale of certain one foot reserve blocks over the Phase 3 Lands to Hadi and deleting from title all claims and encumbrances to the Phase 3 One Foot Reserve Blocks, except permitted encumbrances.
- 1.2.14 The Receiver submitted a Tenth Report to the Court dated March 14, 2017 (the “**Tenth Report**”) in support of a motion for, among other things, an Order approving the sale of the commercial lots owned by Banwell being Part Lots 142 & 143, Concession 1 (McNiff’s), Designated as Parts 22, 23, 25, 27 on Reference Plan 12R-21671 and Part 1 on Reference Plan 12R-22066, Except Plan 12M-546; City of Windsor, Essex County, (the “**Tecumseh Parcels**”) to Goodwill Industries – Essex Kent Lambton Inc. (“**Goodwill**”) and directing the Receiver to enter into and complete the transaction contemplated therein (the “**Tecumseh Parcels Transaction**”) and vesting in Goodwill all of the Banwell’s right, title and interest in the Tecumseh Parcels free and clear of any and all claims and encumbrances.
- 1.2.15 The Tenth Report was also submitted in support of a motion for an Order approving the transfer of the one foot reserve blocks located at the rear of Lots 99, 100 and 101, 12M-503 (the “**Timber Bay Crescent Reserve Blocks**”) in Phase 1 of the Royal Timbers subdivision to the City of Windsor (the “**City**”); declaring the \$871,000 advanced to the Companies during 2009 by D’Amore as repayable to the estate of Patrick D’Amore (the “**D’Amore Estate**”); and approving the schedule prepared by the Receiver of the Simba and D’Amore mortgages as the basis for future mortgage payouts by the Receiver. A copy of the Tenth Report (without appendices) is attached as **Appendix B**.
- 1.2.16 By Order dated March 27, 2017 (the “**Tecumseh Parcels Approval and Vesting Order**”) Mr. Justice Thomas approved the Tecumseh Parcels Transaction and vested all of Banwell’s right, title and interest in Goodwill. The Order also fixed a date of May 29, 2017 for the hearing of the other relief sought by the Receiver in the Tenth Report. A copy of the Tecumseh Parcels Approval and Vesting Order is attached as **Appendix C**.

- 1.2.17 The Receiver submitted a Supplementary Report to the Tenth Report (the “**Tenth Report Supplement**”), dated May 24, 2017 in support of a motion for an Order approving the conveyance by Banwell to the City of the one foot reserve blocks described as Blocks 129, 131, 133, 135, 137, 139, 141, 143, 145 and 147, Plan 12M-533 (the “**Phase 2 Reserve Blocks**”) and the one foot reserve blocks described as Blocks 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63, Plan 12M-546 (the “**Phase 4 Reserve Blocks**”) and vesting title to the Phase 2 Reserve Blocks and Phase 4 Reserve Blocks in the City. A copy of the Tenth Report Supplement (without appendices) is attached as **Appendix D**.
- 1.2.18 By Order dated May 29, 2017 (the “**Timber Bay Crescent Reserve Blocks Order**”) Mr. Justice Thomas approved the transfer of the one foot reserve blocks located at the rear of Lots 99 and 101, 12M-503 to the City, but not the transfer of the one foot reserve block located at the rear of Lot 100, 12M-503, since Lot 100 12M-503 was not registered in the name of Banwell, but was sold by the Receiver under power of sale. A copy of the **Timber Bay Crescent Reserve Blocks Order** is attached as **Appendix E**.
- 1.2.19 By Order dated May 29, 2017 (the “**Phase 2 Reserve Blocks Approval and Vesting Order**”) Mr. Justice Thomas approved the transfer of the Phase 2 Reserve Blocks to the City and vesting in the City all of the Banwell’s right, title and interest in the Phase 2 Reserve Blocks free and clear of any and all claims and encumbrances. A copy of the Phase 2 Reserve Blocks Order is attached as **Appendix F**.
- 1.2.20 By Order dated May 29, 2017 (the “**Phase 4 Reserve Blocks Approval and Vesting Order**”) Mr. Justice Thomas approved the transfer of the Phase 4 Reserve Blocks to the City and vesting in the City all of the Banwell’s right, title and interest in the Phase 4 Reserve Blocks free and clear of any and all claims and encumbrances. A copy of the Phase 4 Reserve Blocks Order is attached as **Appendix G**.
- 1.2.21 By further Order dated May 29, 2017, (the “**Simba Mortgages and D’Amore Advances Order**”) Mr. Justice Thomas, among other things, approved the schedule prepared by the Receiver, and included as Appendix F to the Tenth

Report, as the basis for future payments to be made by the Receiver under the Simba and D'Amore mortgages, and declared that that the \$871,000 advanced to the Companies during 2009 by D'Amore is properly repayable to the estate of D'Amore. A copy of Simba Mortgages and D'Amore Advances Order is attached as **Appendix H**.

## 2. Terms of Reference

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

---

- 3.1 This constitutes the Receiver's Eleventh Report to the Court (the "**Eleventh 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 Tenth Report;
    - (ii) the Receiver's recommendation with respect to the sale of the commercial lot owned by Royal Timbers being Part Lot 143 Con 2 (PT Old Banwell Road closed by LT336126) designated as Parts 9 & 12 PL 12R19305 subject to easement over Parts 9 & 12 PL 12R19305 as in LT336127, together with row over Parts 8 & 11 PL 12R19305 as in LT 387015; Part Lot 144 Con 2 designated as Parts 3 & 6 PL 12R19305, subject to easement over Part 3 PL 12R19305 as in R1541523, together with right over Parts 2, 5, 8 & 11 PL 12R19305 as in R1539706; subject to and together with an easement as in CE267537; City of Windsor, Essex County (PIN 1566-0890 (LT)), and municipally known as 3155 Banwell Road ( "**3155 Banwell**"); and
    - (iii) the status of the litigation that the Companies are party to.
  - (b) In support of an order of the Court:
    - (i) approving the Agreement of Purchase and Sale dated effective January 11, 2018 between the Receiver, as vendor, and Taplane Inc. ("**Taplane**"), as purchaser, in respect of 3155 Banwell (the "**3155 Banwell APS**"), and directing the Receiver to enter into and complete the transaction contemplated therein (the "**3155 Banwell Transaction**") and thereafter to file the Receiver's certificate;
    - (ii) vesting in Taplane all of Royal Timbers' right, title and interest in and to 3155 Banwell free and clear of any and all claims and encumbrances;

- (iii) approving the Eleventh Report and the activities of the Receiver described therein;
- (iv) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell, Royal Timbers and Real Ranchs Trust Account for the period ending January 31, 2018 (the "**Banwell Statement of Receipts and Disbursements**", the "**Royal Timbers Statement of Receipts and Disbursements**" and "**Real Ranchs Trust Account Statement of Receipts and Disbursements**", respectively);
- (v) sealing the Confidential Supplement to the Eleventh Report (the "**Confidential Supplement**") until further Order of the Court.

## 4. Receiver's Activities

---

- 4.1 In its Tenth Report the Receiver reported to the Court on its activities through March 14, 2017.
- 4.2 In this the Eleventh Report, the Receiver reports on its activities since the date of the Tenth Report.

### Royal Timbers subdivision

- 4.3 The Tenth Report included a detailed chronology of the Receivers' activities in completing the sale of the residential lots in the Royal Timbers subdivision and completion of roads, sidewalks and infrastructure prior to the assumption by the City. It was the Receiver's target to complete the hand off of Phase 2 of the Royal Timbers subdivision ("**Phase 2**") to the City by summer 2017.
- 4.4 The Receiver completed substantially all of Phase 2. Additional work completed included: replacement of the pump that services the storm water retention pond (the "**Pond**"), as required by the City; extensive electrical diagnostic and electrical panel re-work to make the pumping station electronically communicate with the City's systems; clean-up and modifications to the Pond; and miscellaneous sidewalk, curb and asphalt repairs.
- 4.5 The Receiver was unable to complete the 'curb to curb' grading, re-seeding and final landscaping of the Pond area required by the City, prior to the winter months. The engineer engaged by the Receiver, RC Spencer Associates Inc. ("**Spencer**"), recommended to the City that all of Phase 2 be accepted and assumed, save and except for the Pond. Spencer recommended that the letter of credit in favour of the City be reduced to an amount equivalent to the approximate cost of the remaining Pond work, which is scheduled for Spring 2018. Spencer obtained three (3) quotations for this work.
- 4.6 Subsequently, and without prior dialogue with the Receiver or Spencer, the City advised the Receiver that it required a third party consultant to review the storm



water management design, and that it was not in a position to assume Phase 2 until the review was completed.

- 4.7 In consultation with Spencer, the Receiver has communicated its position to the City that approvals were obtained from the Essex Region Conservation Authority, Ministry of the Environment and the City in 2005, and that a third party review is not warranted. This issue is currently unresolved.
- 4.8 Since the Tenth Report, the Receiver undertook the completion of Phase 4 of the Royal Timbers subdivision ("**Phase 4**"), including roadways, sidewalks and catch basins. The Receiver engaged Spencer to oversee the project on behalf of the Receiver.
- 4.9 The Receiver selected Coco Concrete Inc. to complete the concrete portion of the project and Mill-Am Corporation to complete the asphalt work.
- 4.10 Phase 4 is now completed. All concrete and asphalt work has been completed at a total cost of \$148,745, exclusive of HST. In addition, the Receiver incurred costs for landscaping and lawn restoration, and the flushing of storm and sanitary sewers and camera inspections of sewer drain connections, as required by the City.
- 4.11 Spencer has recommended to the City that Phase 4 be fully accepted and assumed, and all security in favour of the City be released.

#### **Robinet Road Services Cost Sharing**

- 4.12 Section 4 of the Tenth Report Supplement outlined the arrangements under which Robinet Road property owners would reimburse Banwell for a portion of the cost of installing services at the rear of their lots, thus making the rear half of their lots suitable for severance.
- 4.13 On July 19, 2017, the Receiver received \$72,445.77, plus GST of \$5,071.21, for a total of \$77,516.98, directly from the owners of 3060 Robinet Road. On September 15, 2017, the Receiver received from the City the balance of funds applicable to the cost sharing for Phase 2 of the Royal Timbers subdivision, in the amount of

\$523,430.40, plus GST of \$36,640.13, for a total of \$560,070.53. The full amount of \$595,876.17, plus GST of \$41,711.33 has been received.

- 4.14 Pursuant to the Phase 2 Reserve Blocks Approval and Vesting Order, the Receiver instructed MT to arrange for the conveyance of the Phase 2 Reserve Blocks to the City and vesting of the Phase 2 Reserve Blocks in the City. This process was completed on October 4, 2017.

### **Commercial Lands**

- 4.15 As reported in the Tenth Report, Royal Timbers owns seven (7) parcels of vacant commercial development land located on the west side of Banwell Road, south of Tecumseh Road. The municipal addresses of the parcels are 3175, 3195, 3215, 3235, 3255, 3275 and 3295 Banwell Road Windsor. With reference to the legal description of each parcel, the parcels are generally identified as Block 300 through Block 900 (the "**Banwell Road Commercial Lands**").
- 4.16 The Banwell Commercial Lands range in size from 0.67 acres to 2.32 acres per parcel, totalling approximately 9.64 acres. Blocks 300 and 400 are graded and have water and sewer services to the building site. Blocks 500 to 900 are not serviced to the site.
- 4.17 As outlined in the Tenth Report the Receiver undertook a sale process for the Banwell Road Commercial Lands from which no offers acceptable to the Receiver were received.
- 4.18 Effective April 18, 2016 the Receiver entered into a listing agreement with Royal LePage Binder Real Estate ("**LePage**") for Blocks 300 and 400 at a listing price of \$1,299,000. The listing price was determined based on the appraised value, comparable sales subsequent to the date of the Receiver's appraisals and the input of the realtor. The listing agreement has been periodically renewed. The Receiver has not completed the sale of Blocks 300 and 400, and the parcels continue to be listed for sale.
- 4.19 Effective April 18, 2016 the Receiver entered into a listing agreement with LePage for Blocks 500 through 900 at a listing price of \$2,499,000. The listing price was

determined based on the appraised value, comparable sales subsequent to the date of the Receiver's appraisals and the input of the realtor. The listing agreement has been periodically renewed. The Receiver has not completed the sale of Blocks 500 through 900, and the parcels continue to be listed for sale

- 4.20 At various points, the Receiver has accepted offers to purchase both Blocks 300 and 400 and Blocks 500 to 900, but in all cases the purchaser(s) was unable or elected not to proceed with the transaction.
- 4.21 Based on the Receiver's sale process, input received from LePage based on their experience, and feedback received from offerors and conditional purchasers, the Receiver believes the saleability of Blocks 300 to 900 has been impacted by several factors, including, but not limited to the following:
- a) The parcels of land are irregularly shaped and of varying sizes. Consequently, some of the parcels have disproportionately more or less frontage on Banwell Road.
  - b) Access between the parcels is by a road to be constructed, that passes through the middle of some of the parcels and is subject to an easement that is registered on title to all of the parcels.
  - c) All of the parcels are subject to a lengthy mutual services agreement, registered on title, that governs cost sharing for maintenance of roadways and other issues between the respective owners of Blocks 300 to 900, an existing parcel of land developed several years ago, and known as Block 100 ("**Block 100**"), and the parcel of land previously sold by the Receiver and known as Block 200. There are several Shared Together and Together With easements registered over all of the parcels comprising Blocks 300 to 900 with regard to access and servicing.
  - d) Uncertainty over the timeframe and allocation of costs between the City, two existing residential developers in the area, and the developer(s) of the Banwell Commercial Lands for the construction of a signalized intersection at the corner of Banwell Road and Palmetto Street. The intersection would be

located approximately midway between Block 900 to the north and Block 300 to the south, and would provide access to the Banwell Commercial Lands.

- 4.22 The Receiver has engaged a consultant, MGS Real Estate Consulting Inc. (“MGS”) to evaluate options for the Banwell Commercial Lands, including engaging in preliminary discussions with the City. Possible options may include: re-location of the roadway between parcels; deletion of existing site plans registered on title; removal of the mutual services agreement; and creation of a new reference plan for 10 rectangular parcels of approximately one acre each having equal frontage on Banwell Road. This process is at a relatively early stage.

### **Simba Mortgages**

- 4.23 Pursuant to the Simba Mortgages and D’Amore Advances Order and the Simba Distribution Order, on July 6, 2017 the Receiver fully repaid the Simba mortgages registered as instruments CE 163211, CE269334, CE269241 and CE269359. The total amount repaid was \$1,456,425.90.

### **Other Matters**

- 4.24 The Receiver worked with the Companies’ external accountants in preparing annual financial statements for each of the companies. Financial statements have been prepared, and income tax returns filed for the fiscal years through May 31, 2017.

## 5. Receiver's Sale of 3155 Banwell Road

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- 5.1 3155 Banwell Road, Windsor ("**3155 Banwell**") consists of a fully serviced parcel of commercial land comprising approximately 0.57 acres. It is located near the corner of Banwell Road and Tecumseh Road in Windsor, adjacent to a national brand service station that occupies the south west corner.
- 5.2 3155 Banwell Road was previously listed for sale with CBRE Limited at a listing price of \$349,900. On June 15, 2016 the Receiver entered into a listing agreement for 3155 Banwell with LePage at a listing price of \$325,000. The listing agreement has been periodically renewed.
- 5.3 After some negotiations, on January 11, 2018 the Receiver entered into the 3155 Banwell APS for the sale of 3155 Banwell to Taplane. A copy of the 3155 Banwell APS is attached as **Appendix A** to the Confidential Supplement.
- 5.4 The Receiver is seeking approval for the sale of 3155 Banwell pursuant to the 3155 Banwell APS and a Vesting Order in respect of 3155 Banwell.
- 5.5 Prior to the appointment of the Receiver, the Companies commissioned an appraisal of the Banwell Commercial Lands and 3155 Banwell from Valco Consultants Inc. of London, Ontario ("**Valco**"). The appraisal report originally dated December 11, 2012, and revised July 29, 2013 (the "**Valco Commercial Appraisal**") is attached as **Appendix B** to the Confidential Supplement.
- 5.6 The Receiver commissioned an appraisal of 3155 Banwell by Metrix Realty Group of London, Ontario ("**Metrix**"). The appraisal report of Metrix dated April 4, 2014 (the "**Metrix 3155 Banwell Appraisal**") is attached as **Appendix C** to the Confidential Supplement.
- 5.7 The Receiver's analysis of the 3155 Banwell Transaction is contained in the Confidential Supplement.
- 5.8 The Receiver requests that the Court make an order sealing the Confidential Supplement to avoid the negative impact which the dissemination of the

confidential information contained therein might have should the 3155 Banwell 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.

- 5.9 It is the Receiver's view that that the 3155 Banwell Transaction is appropriate in the circumstances.
- 5.10 The Receiver is of the view that it has maximized the realization available and the 3155 Banwell Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the 3155 Banwell Transaction is in the best interest of the creditors and other stakeholders of the Companies.
- 5.11 The Receiver recommends that this Court approve the completion of the 3155 Banwell Transaction.

## 6. Litigation

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- 6.1 By endorsement dated October 8, 2015, Justice Thomas lifted the stay of proceedings imposed upon the Consolidated Action and severed the Consolidated Action from the receivership.
- 6.2 On July 26, 2016 Miller Thomson obtained an Order removing itself as lawyers of record for the Companies in the Consolidated Action.
- 6.3 No stakeholder came forward to take over carriage of the Consolidated Action. Accordingly, D'Amore Construction (2000) Ltd. ("**DAC**") obtained an Order striking the Companies' pleadings. DAC thereafter brought a motion for summary judgment.
- 6.4 DAC's summary judgment motion was heard by Regional Senior Justice Thomas on February 1, 2018. The motion was unopposed. Summary judgment was granted as follows:
- a) for the sum of \$487,376.73 for work done and materials supplied under the contract between DAC and Banwell ("**Contract Amount**");
  - b) for the sum of \$439,448.72 for pre-judgment interest to the date of the Appointment Order ("**Pre-Receiver's Interest Amount**");
  - c) for the sum of \$256,693.98 for the period after the date of the Appointment Order until October 24, 2017, together with additional interest accruing thereon ("**Post-Receiver's Interest Amount**");
  - d) costs in the amount of \$50,000 against Banwell; and
  - e) costs in the amount of \$25,000 against Banwell and Royal Timbers, jointly and severally.
- 6.5 Under the terms of the Judgment, the Contract Amount and Pre-Receiver's Interest Amount constitute a provable claim in the receivership of Banwell and are to be accepted by the Receiver as an unsecured claim for distribution purposes in

the Banwell receivership estate. The Post-Receiver's Interest Amount constitutes a provable claim in the Banwell receivership and is to be accepted by the Receiver as an unsecured claim for distribution purposes in the Banwell estate with respect to any surplus funds remaining available for distribution after payment in full of all claims as of the date of the receivership.



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

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7.1 The Receiver maintains a bank account with BMO in London, Ontario for each of Banwell, Royal Timbers and the Real Ranchs Trust Account. Attached as **Appendix I, Appendix J and Appendix K** respectively, are the Banwell Statement of Receipts and Disbursements, Royal Timbers Statement of Receipts and Disbursements and Real Ranchs Trust Account Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements through January 31, 2018 are as follows:

### 7.2 Receipts - Banwell

- a) *Sale of Lots (\$1,712,405.29)* — The Receiver received net proceeds totalling \$1,712,405.29 from completing the sales of 60 serviced lots in the Royal Timbers subdivision and the unserviced Phase 3 Lands. Proceeds received are net of VTB mortgages received as consideration and property tax arrears paid to the City of Windsor. The net proceeds include VTB registration fees of \$3,842.00 paid by the purchasers.
- b) *Sale of Tecumseh Parcels (\$1,039,729.77)* — The Receiver received \$1,039,729.77 from the sale of the Tecumseh Parcels. The proceeds received were net of real estate commissions and property tax adjustments on closing
- c) *VTB Mortgage Payouts (\$2,145,500.00)* — Several VTB mortgages matured and the full principal was repaid. In addition, the Receiver provided partial discharges of mortgages where a builder completed and sold a home and repaid the applicable VTB mortgage on closing. The VTB mortgages have been repaid on all of the lots sold. The Receiver has received \$2,145,500.00.
- d) *City of Windsor – Robinet Road cost sharing (\$595,876.17)* — The Receiver received \$595,876.17 from the City for the Robinet Road services cost sharing arrangement applicable to Phase 2 of the Royal Timbers subdivision.

- e) *GST / HST refunds (\$393,632.05)* — The Receiver received \$393,632.05 in refunds on HST returns filed.
- f) *Petvin Homes VTB mortgage (\$190,039.00)* — The Receiver received \$25,000 from the Petvin mortgage amendment outlined in Section 4 of the Sixth Report of the Receiver. Subsequently, the full principal in the amount of \$164,700 was repaid, plus a mortgage discharge fee of \$339.
- g) *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.
- h) *Security Deposits on Sale of Lots (\$84,000)* — The Receiver received security deposits totalling \$84,000 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.
- i) *GST collected on Robinet Road cost sharing (\$41,711.34)* — The cost sharing payment from the City included HST of \$41,711.34.
- j) *Income Tax Refund (\$20,479.00)* — The Receiver received a \$20,479.00 refund from the 2010 income tax return.
- k) *Royal Timbers bank account (\$13,914.53)* — The Receiver received the balance of funds from the Royal Timbers company bank account in the amount of \$13,914.53.
- l) *Interest earned GIC's (\$10,189.31)* — The Receiver earned \$10,189.31 in interest on funds on hand invested in GIC's.
- m) *VTB mortgage discharge fees (\$7,117.00)* — The Receiver received \$7,117.00 in discharge fees, including HST, on the repayment of VTB mortgages.
- n) *Vacancy rebate (\$3,353.64)* — The Receiver received a rebate of \$3,353.64 of property taxes on vacant units in the Commercial Plaza.

- o) *Interest earned on VTB mortgages (\$3,124.83)* — The Receiver earned \$3,124.83 in interest on VTB mortgages that have been paid out.
- p) *CRA payroll audit refund (\$2,700.32)* — The Receiver received a refund of \$2,700.32 from CRA's audit of 2015 payroll records.

### 7.3 Disbursements - Banwell

- a) *Construction (\$1,124,637.54)* – The Receiver has paid \$1,124,637.54 in construction costs for: Block 120 paving and sidewalks; Phase 2 sidewalks, curb repair, base asphalt repair and surface paving, sewer flushing and camera inspection, storm water retention pond rehabilitation, pump replacement and electrical; and other projects.
- b) *Receiver's fees (\$619,604.24)* – BDO's interim accounts through January 19, 2017 have been approved by the Court and \$509,917.34, excluding HST, was paid from the Banwell account. BDO's interim accounts for the period January 20, 2017 to December 20, 2017 in the amount of \$109,686.90 excluding HST, were paid from the Banwell account and are subject to Court approval.
- c) *Property taxes (\$483,618.51)* — The Receiver paid \$483,618.51 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, and 2014 through 2017 property taxes on a current basis. Royal Timbers property taxes for 2017 were paid from the Banwell account. Property taxes previously paid on Real Ranchs' lots have been repaid from the Real Ranchs Trust Account.
- d) *HST Paid (\$333,199.34)* — The Receiver paid \$333,194.34 in HST on its disbursements.
- e) *Legal fees (\$331,991.63)* – MT's accounts through December 31, 2016 have been approved by the Court and \$289,020.41, excluding HST, was paid from the Banwell account. MT's interim accounts for the period January 1, 2017 to November 30, 2017 in the amount of \$42,971.22 were paid from the Banwell account and are subject to Court approval.

- f) *Sales commissions (\$148,750.00)* – The Receiver paid commissions of \$148,750.00 on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.
- g) *Professional fees - Engineering (\$144,161.57)* – The Receiver paid \$144,161.57 to RC Spencer Associates Inc. for engineering and supervision fees in connection with the following: Block 120 paving; Phase 2 sidewalk construction, curb repair, base asphalt repair and surface paving, storm water retention pond rehabilitation and pump electrical; Phase 4 sidewalk construction and surface paving; and other projects.
- h) *Receiver's Certificate (\$125,000.00)* – The Receiver repaid BMO under the Receiver's certificate.
- i) *Accounting fees (\$58,900.00)* — The Receiver paid \$58,900.00 to Hyatt Lassaline LLP for the preparation of Banwell financial statements and income tax returns.
- j) *Legal fees re: Lepera Appeal (\$51,804.16)* – The legal fees of AGM from May 21, 2015 are \$62,221.21, excluding HST, and are subject to Court approval. Of this amount, \$51,804.16, excluding HST, has been paid from the Banwell account.
- k) *Repairs and Maintenance (\$45,534.23)* – The Receiver paid \$45,534.23 for landscaping, grass/weed cutting, snow removal and repairs and maintenance to the lots and subdivision infrastructure.
- l) *Appraisal fees (\$40,947.45)* — The Receiver paid \$28,447.45 to Metrix and Valco for appraisals of the Banwell Lots and commercial parcels. Tracey Business Advisors Inc. was paid \$12,500.00 for an estimate of the fair market value of Banwell and Royal Timbers
- m) *Letter of Credit fees (\$36,666.64)* — The Receiver has paid annual fees to BMO in the amount of \$36,666.64 to maintain letters of credit posted with the City of Windsor.

- n) *HST remitted (\$28,904.22)* — The Receiver remitted HST collected on the Robinet Road cost sharing, less input credits for the applicable period.
- o) *Advertising (\$16,838.45)* — The Receiver paid \$16,838.45 for new signage and advertising of the Banwell Road Commercial Lands Sale Process.
- p) *Utilities (\$10,380.03)* — The Receiver paid \$10,380.03 for utilities, including the installation of electrical service.
- q) *Insurance (\$6,235.92)* — The Receiver paid \$6,235.92 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- r) *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.
- s) *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.
- t) *Other professional fees (\$3,381.25)* — The Receiver paid \$3,381.25 for other professional fees, including DuCharme, McMillen & Associates for the preparation of property tax rebate applications.
- u) *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.
- v) *Copier lease (\$1,119.92)* — The Receiver paid \$1,119.92 to maintain a photocopier lease on an interim basis.
- w) *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.

#### 7.4. 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) Sale of Block 200 (\$422,808.32) – The Receiver received \$422,808.32 from the sale of Block 200. The proceeds received were net of real estate commissions and property tax adjustments on closing.
- c) *Rental income (\$215,013.30)* – The Receiver received \$215,013.30 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.
- d) *City of Windsor settlement (\$30,000.00)* — The Receiver received \$30,000.00 in settlement of a lawsuit with the City of Windsor arising from road construction delays on Banwell Road.
- e) *GST / HST refunds (\$28,879.10)* — The Receiver received \$28,879.10 in refunds on HST returns filed.
- f) *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.
- g) *Security deposit (\$5,000.00)* – The Receiver received a security deposit of \$5,000.00 on the leasing of Unit 100 of the Commercial Plaza. On the closing of the sale of the Commercial Plaza, credit was given to the purchaser for this amount and other tenant security deposits.
- h) *Insurance premium refund (\$3,530.52)* – On the sale of the Commercial Plaza, the Receiver received \$3,530.52 as a refund of the unused insurance premium.

#### 7.5. Disbursements – Royal Timbers

- a) *Property taxes (\$322,483.14)* — The Receiver paid \$322,483.14 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, and 2014 through 2016 property taxes on a current basis.
- b) *Receiver's fees (\$196,358.65)* – BDO's interim accounts through January 19, 2017 have been approved by the Court and \$196,358.65, excluding HST, was paid from the Royal Timbers account.
- c) *Legal fees (\$158,846.60)* – MT's accounts through December 21, 2016 have been approved by the Court and \$158,846.60, excluding HST, was paid from the Royal Timbers account.
- d) *HST Paid (62,907.88)* — The Receiver paid \$62,907.88 in HST on its disbursements.
- e) *Payroll (\$56,222.08)* – The Receiver paid net wages of \$56,222.08 to Marina Ognjanovski, who provided administrative support, until April 2015, to the management of the Commercial Plaza as well as to the ongoing management and maintenance of the vacant Banwell lands.
- f) *Accounting fees (\$39,150.00)* — The Receiver paid \$39,150.00 to Hyatt Lassaline LLP for the preparation Royal Timbers financial statements and income tax returns.
- g) *Repairs and Maintenance (\$21,853.73)* – The Receiver paid \$21,853.73 for repairs and maintenance to the Commercial Plaza and grass cutting on Royal Timbers lands.
- h) *Payroll source deductions (\$21,266.73)* – The Receiver remitted \$21,266.73 to the Receiver General for source deductions on employee wages.
- i) *Appraisal fees (\$22,498.90)* — The Receiver paid \$22,498.90 to Metrix and Valco for appraisals of the Commercial Plaza and Banwell Road Commercial Lands.

- j) *Legal fees re: Lepera Appeal - (\$10,417.05)* — The legal fees of AGM from May 21, 2015 are \$62,221.21, excluding HST, and are subject to Court approval. Of this amount, \$10,417.05, excluding HST, has been paid from the Royal Timbers account.
- k) *Advertising (\$9,042.34)* – The Receiver paid \$9,042.34 in advertising the Invitation for Offers process for the Commercial Plaza.
- l) *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.
- m) *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.
- n) *Insurance (\$7,473.60)* — The Receiver paid \$7,473.60 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- o) *HST remitted (\$6,830.45)* — The Receiver remitted \$6,830.45 in HST collected on rents, net of HST paid on its disbursements.
- p) *Utilities (\$3,263.57)* — The Receiver paid \$3,263.57 for utilities for the vacant units and common area at the Commercial Plaza
- q) *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.
- r) *Commissions on Unit 100 (\$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.
- s) *Commissions on Block 200 (\$4,200.00)* — The Receiver paid a commission on the sale of Block 200 of \$4,200.00.



- t) *Utilities (\$3,263.57)* — The Receiver paid \$3,263.57 for utilities.
- u) *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.
- v) *WSIB (\$1,165.28)* – The Receiver paid WSIB premiums of \$1,165.28.

#### 7.6. **Receipts – Real Ranchs Trust Account**

- a) *Sale of Lots (\$276,979.55)* – The Receiver received \$276,979.55 from the sale of the Real Ranchs Lots. The proceeds received are net of VTB mortgages received as consideration, closing adjustments and VTB registration fees.
- b) *VTB Mortgage Payouts (\$862,000)* — The Receiver provided partial discharges of mortgages where a builder completed and sold a home and repaid the applicable VTB mortgage on closing. The VTB mortgages have been repaid on all but a portion of one of the sold lots. The Receiver has received \$865,500, less an allowance to a mortgagor of \$3,500.00 for servicing deficiencies.
- c) *Security Deposits on Sale of Lots (\$17,250.00)* — The Receiver received security deposits totaling \$17,250.00 from completing the sales of Lots. These deposits are refundable to the applicable purchaser on the completion of construction of a house on the Lot and fulfillment of certain conditions.
- d) *HST refunds (\$6,695.00)* — The Receiver received \$6,695.00 in refunds on HST returns filed.
- e) *Interest earned GIC's (\$4,633.90)* — The Receiver earned \$4,633.90 in interest on funds on hand invested in GIC's
- f) *VTB mortgage discharge fees (\$3,500.00)* — The Receiver received \$3,500.00 in discharge fees, including HST, on the repayment of VTB mortgages.

### 7.7. Disbursements – Real Ranchs Trust Account

- a) *Construction (\$164,533.55)* – The Receiver has paid \$164,533.55 in construction costs for: Phase 4 sidewalks and curb repairs, surface paving, sewer flushing and camera inspection and landscaping.
- b) *Property taxes (\$116,635.53)* — The Receiver originally paid property tax arrears and 2014 and 2015 current installments on the Real Ranchs' Lots totalling \$116,635.63 from the Banwell account. This amount has been repaid to Banwell.
- c) *Sales commissions (\$36,800.00)* – The Receiver paid commissions of \$36,800.00 on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.
- d) *HST Paid (\$28,539.36)* — The Receiver paid \$28,539.36 in HST on its disbursements
- e) *WCFU Re: M. Troup (\$18,200.00)* – Commissions paid to Via Sales were net of \$18,200.00 held back by the Receiver, details of which were provided in the Seventh Report of the Receiver. The Receiver remitted \$18,200.00 to Windsor Family Credit Union.

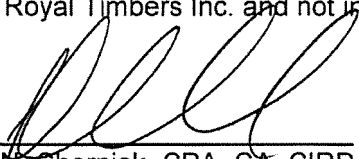
## 8. Recommendations

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- 8.1 The Receiver recommends and respectfully requests that this Court grant an Order:
- a) approving the 3155 Banwell APS and authorizing and directing the Receiver to enter into and complete the 3155 Banwell Transaction;
  - b) vesting in Taplane all of Royal Timbers' right, title and interest in and to the 3155 Banwell free and clear of any and all claims and encumbrances;
  - c) sealing the Confidential Supplement filed with the Court from the public record until the earlier of the completion of the transaction contemplated by the 3155 Banwell APS or further order of the Court;
  - d) approving the Receiver's Eleventh Report and the activities and actions of the Receiver described therein;
  - e) approving the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs Trust Account Statement of Receipts and Disbursements; and

All of which is Respectfully Submitted this 5th day of February, 2018.

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



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

# APPENDIX “A”

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
JUSTICE

*Bruce G. Thomas* ) *WEDNESDAY*, THE *5<sup>th</sup>*  
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 10<sup>th</sup> day of each month (and if the 10<sup>th</sup> is not a business day, the first business day following the 10<sup>th</sup> day of each month) to BMO, Scott, Kevin and 928579, including, but not limited to, a statement of receipts and disbursements related to the Corporations and their operations.

***NO PROCEEDINGS AGAINST THE RECEIVER***

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

***NO PROCEEDINGS AGAINST THE CORPORATIONS OR THE PROPERTY***

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

***NO EXERCISE OF RIGHTS OR REMEDIES***

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

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

***NO INTERFERENCE WITH THE RECEIVER***

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

***CONTINUATION OF SERVICES***

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

***RECEIVER TO HOLD FUNDS***

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

**EMPLOYEES**

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

**PIPEDA**

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

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

#### ***LIMITATION ON THE RECEIVER'S LIABILITY***

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

#### ***RECEIVER'S ACCOUNTS***

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

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

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

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

**FUNDING OF THE RECEIVERSHIP**

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

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

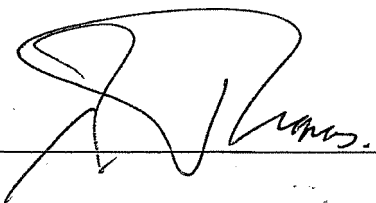
24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

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

**GENERAL**

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

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

  
\_\_\_\_\_  
JUSTICE



**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

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

- 5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
  
- 6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
  
- 7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 5<sup>th</sup> 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

*Plaintiff*

*Defendants*

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT  
WINDORD

ORDER  
~~AFFIDAVIT OF SERVICE~~

**ROBINS APPLEBY & 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**

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

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

**March 14, 2017**

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## Appendices

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- Appendix B** - Ninth Report of the Receiver dated September 25, 2015 (without appendices)
- Appendix C** - Phase 3 one foot reserve block Order dated October 6, 2015
- Appendix D** - Order dated October 6, 2015
- Appendix E** - Simba Distribution Order dated June 24, 2015
- Appendix F** - Simba Mortgage Summary prepared by Receiver
- Appendix G** - MT letter to the Receiver dated February 2, 2017
- Appendix H** - Statement of Receipts and Disbursements – Banwell
- Appendix I** - Statement of Receipts and Disbursements – Royal Timbers
- Appendix J** - Statement of Receipts and Disbursements – Real Ranchs Trust Account

## 1. Introduction and Background

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### 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. Mr. Justice Thomas has made several Orders since the commencement of proceedings, including, but not limited to the following:
- 1.2.5 By 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.
- 1.2.6 By Order dated December 13, 2013 (the “**Commercial Plaza Approval and Vesting Order**”), Mr. Justice Thomas, among other things, approved the Commercial Plaza Transaction, vesting all of Royal Timbers’ right, title and interest in the Commercial Plaza in Avila Investments Limited, 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.
- 1.2.7 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.

- 1.2.8 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.
- 1.2.9 By Order dated March 3, 2015 Mr. Justice Thomas, among other things, approved the sale process and power of sale transactions for 22 lots owned by Real Ranchs Inc. ("the **Real Ranchs' Lots**"), discharging BMO and Simba Group Developments Limited ("**Simba**") mortgage security from title to the Real Ranchs' Lots; and directing the Receiver to hold the net proceeds from the sale of the Real Ranchs' Lots in a segregated trust account. The Order also approved the sale of the commercial lot municipally known as 3990 Wildwood Drive, Windsor ("**Block 200**") to 838605 Ontario Limited and vested all of Royal Timbers' right, title and interest in Block 200 in 8388605 Ontario Limited.
- 1.2.10 The Order dated March 3, 2015 also authorized the Receiver to pay BMO the full amount of Banwell indebtedness to BMO when such funds are available to the Receiver.
- 1.2.11 By Order dated June 24, 2015 (the "**Phase 3 Lands Approval and Vesting Order**") Mr. Justice Thomas approved the sale of Lots 103-106, Block 121 and Block 122 Plan 12M-533, Windsor (the "**Phase 3 Lands**") to Hadi Custom Homes Inc. ("**Hadi**") and vested all of Banwell's right, title and interest in the Phase 3 Lands in Hadi.
- 1.2.12 By further Order dated June 24, 2015 (the "**Simba Distribution Order**") Mr. Justice Thomas approved the distribution to Simba and D'Amore Estate of an amount equal to all amounts secured by the Simba and D'Amore mortgages, as defined in the Eighth Report to the Court dated June 12, 2015, as and when funds are available to the Receiver provided that prior to making such distribution written notice is provided to the Service List.

- 1.2.13 The Receiver submitted a Ninth Report to the Court dated September 25, 2015 (the "**Ninth Report**") in support of a motion for an Order approving the Agreement of Sale, dated effective August 7, 2015, between the Receiver, as vendor, and Hadi, as purchaser (the "**APS**") in respect of certain one foot reserve blocks over the Phase 3 Lands (the "**Phase 3 One Foot Reserve Blocks**"), directing the Receiver to complete the transaction (the "**Phase 3 One Foot Reserve Block Transaction**") and deleting from title all claims and encumbrances to the Phase 3 one foot reserve blocks, except permitted encumbrances. The Ninth Report was also submitted to provide the Court with the Receiver's recommendation with respect to Court Action No. 06-CV-006763 (the "**Consolidated Action**"). A copy of the Ninth Report (without appendices) is attached as **Appendix B**.
- 1.2.14 By Order dated October 6, 2015 (the "**Phase 3 One Foot Reserve Block Order**") Mr. Justice Thomas approved the APS, directed the Receiver to complete the Phase 3 one foot reserve block Transaction, and deleted from title all claims and encumbrances to the Phase 3 One Foot Reserve Blocks, except permitted encumbrances. The Phase 3 One Foot Reserve Block Order is attached as **Appendix C**.
- 1.2.15 By further Order dated October 6, 2015, (the "**October 6, 2015 Order**") Mr. Justice Thomas, among other things, approved the Ninth Report and the activities and conduct of the Receiver described therein. The October 6, 2015 Order is attached as **Appendix D**.

## 2. Terms of Reference

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

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- 3.1 This constitutes the Receiver's Tenth Report to the Court (the "**Tenth 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 Ninth Report;
    - (ii) the Receiver's recommendation with respect to the sale of the commercial lots owned by Banwell being Part Lots 142 & 143, Concession 1 (McNiff's), Designated as Parts 22, 23, 25, 27 on Reference Plan 12R-21671 and Part 1 on Reference Plan 12R-22066, Except Plan 12M-546; City of Windsor, Essex County (PIN 1566-0821 (LT)), (the "**Tecumseh Parcels**");
    - (iii) one foot reserve blocks located at the rear of Lots 99, 100 and 101, 12M-503 (the "**Timber Bay Crescent Reserve Blocks**") in Phase 1 of the Royal Timbers subdivision;
    - (iv) the status of payouts of the Simba and D'Amore mortgages over the Banwell and Royal Timbers lands;
    - (v) the funds advanced to Banwell and Royal Timbers by D'Amore in the amount of \$871,000; and
    - (vi) the status of the litigation that the Companies are party to.
  - (b) In support of an order of the Court:
    - (i) approving the Agreement of Purchase and Sale dated effective February 3, 2017 between the Receiver, as vendor, and HVM Holdings Inc. ("**HVM**"), as purchaser, and assigned by HVM to Goodwill Industries – Essex Kent Lambton Inc. ("**Goodwill**"), in respect of the Tecumseh Parcels (the "**Tecumseh Parcels APS**"), and directing the Receiver to enter into and complete the transaction

contemplated therein (the "**Tecumseh Parcels Transaction**") and thereafter to file the Receiver's certificate;

- (ii) vesting in Goodwill all of Banwell's right, title and interest in and to the Tecumseh Parcels free and clear of any and all claims and encumbrances;
- (iii) approving the transfer of the Timber Bay Crescent Reserve Blocks to the City and authorizing the Receiver to complete the transaction;
- (iv) approving the Receiver's schedule of the Simba and D'Amore mortgages as the basis for future mortgage payouts;
- (v) declaring the \$871,000 advanced to the Companies during 2009 by D'Amore as repayable to the estate of Patrick D'Amore (the "**D'Amore Estate**")
- (vi) approving the Tenth Report and the activities of the Receiver described therein;
- (vii) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell, Royal Timbers and Real Ranchs Trust Account for the period ending January 12, 2017 (the "**Banwell Statement of Receipts and Disbursements**", the "**Royal Timbers Statement of Receipts and Disbursements**" and "**Real Ranchs Trust Account Statement of Receipts and Disbursements**", respectively);
- (viii) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
- (ix) approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**"), Affleck Greene McMurtry LLP ("**AGM**"), counsel to the Receiver in the J. Lepera Contracting Inc. appeal ("**AGM Fees**" and collectively with the BDO Fees, the "**Professional Fees**"); and

- (x) sealing the Confidential Supplement to the Tenth Report (the “Confidential Supplement”) until further Order of the Court.

## 4. Receiver's Activities

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4.1 In its Ninth Report the Receiver reported to the Court on its activities through September 25, 2015.

4.2 In this the Tenth Report, the Receiver reports on its activities since the date of the Ninth Report.

### **Royal Timbers subdivision**

4.3 As outlined in the Eighth Report, the Receiver has completed the sale of 59 residential lots owned by Banwell in Phases 1, 2 and 4 of the Royal Timbers subdivision. The Receiver has also completed the sale of the 22 Real Ranches' Lots. In addition, the Receiver completed the sale of Lot 100 under power of sale, for a total of 82 lots sold to date. At this time one serviced residential lot owned by Banwell remains available for sale, being the irregularly shaped Lot 60 in Phase 1 of the subdivision.

4.4 In addition, on August 10, 2015, pursuant to the Phase 3 Lands Approval and Vesting Order, the Receiver completed the sale of Lots 103-106 and Blocks 121 and 122, Plan 12M-533 to Hadi. The Phase 3 Lands Transaction was outlined in detail in the Ninth Report.

4.5 Subsequently, pursuant to the Phase 3 One Foot Reserve Block Order, the Receiver completed the sale of the related Phase 3 one foot reserve blocks to Hadi.

4.6 For a majority of the lots sold by the Receiver, a portion of the purchase price was satisfied by a vendor take back ("**VTB**") mortgage. 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. The Receiver has now received VTB mortgage payouts and provided partial discharges on all but one of the lots sold.



- 4.7 On transactions that have been completed to the date of the Tenth Report, the outstanding VTB mortgage principal at February 28, 2017 is \$39,500.00.
- 4.8 In addition, Banwell held a VTB mortgage from Petvin Homes Inc. ("**Petvin**"), discussed in detail in the Sixth Report, which originated from the sale of lots prior to the appointment of the Receiver. The principal balance of \$164,700 was repaid as scheduled on November 30, 2015.
- 4.9 As outlined in the Ninth Report, with all lots in Phase 2 of the Royal Timbers subdivision sold, and homes constructed on most of the lots, the Receiver commenced the process to complete the roadways, sidewalks and infrastructure in Phase 2 and turn it over to the City. At the request of the City, the Receiver previously completed the Phase 2 sidewalks.
- 4.10 The completion of the Phase 2 roads includes the repair of concrete curbs, raising of catch basins, removal and repair of base asphalt to the extent necessary, and application of surface asphalt (the "**Phase 2 completion**"). Several years have elapsed between the base asphalt and the application of surface asphalt. As a result, the Receiver anticipated greater than normal costs for the repair and replacement of base asphalt and sub-surface. Ultimately, the extent of base asphalt repair is determined by City specifications and standards.
- 4.11 The Phase 2 completion also requires the rehabilitation of a storm retention pond and ensuring the adjoining pumping station is mechanically sound and functioning to City standards.
- 4.12 The Receiver engaged RC Spencer Associates Inc. ("**Spencer**") to prepare a preliminary estimate of cost, prepare tenders and oversee the project on behalf of the Receiver.
- 4.13 From the tenders submitted, the Receiver selected Coco Concrete Inc. to complete the concrete portion of the project and Mill-Am Corporation to complete the asphalt work. Various other contractors have been engaged for such functions as: landscaping and lawn restoration; fence repair and replacement; sewer flushing and underground camera documentation and pump replacement.

- 4.14 The Phase 2 completion is now substantially complete. All concrete and asphalt work has been completed at a total cost of \$663,989, exclusive of HST. In addition, the Receiver incurred costs for the flushing of storm and sanitary sewers and camera inspections of sewer drain connections, as required by the City. Flushing costs were higher than normal due to the time that has elapsed since the installation of the sewers, and the dumping of debris by contractors engaged by home builders and home owners.
- 4.15 Work still to be completed prior to acceptance by the City includes the following: Draining and cleaning of sludge and debris from the storm retention pond, accumulated during several years of inadequate maintenance; replacement of the pump serving the storm retention pond as it has exceeded its serviceable life and will not be accepted by the City in its current state; and replacement of a section of fence incorrectly installed on a homeowner's land rather than Banwell owned property.
- 4.16 Barring any further unforeseen deficiencies, the Receiver expects to complete the hand off of Phase 2 to the City by summer 2017.

#### **Commercial Lands**

- 4.17 The Eighth Report outlined the sale process for the commercial property municipally known as 3155 Banwell Road, Windsor ("**3155 Banwell**"). 3155 Banwell is a fully serviced parcel of vacant land comprising approximately 0.57 acres. It is located near the corner of Banwell Road and Tecumseh Road, adjacent to a national brand service station that occupies the south west corner
- 4.18 On July 24, 2015 the Receiver accepted a conditional offer to purchase 3155 Banwell that could not be completed. The Receiver continued to list 3155 Banwell for sale with CBRE Limited ("**CBRE**") at a list price of \$349,900.
- 4.19 Following the expiry of the listing agreement with CBRE, and effective June 15, 2016, the Receiver entered into a new listing agreement with Royal LePage Binder Real Estate ("**LePage**") at a list price of \$325,000.
- 4.20 The listing agreement expired on December 16, 2016 and was renewed until June

30, 2017.

- 4.21 In addition to 3155 Banwell and the Tecumseh parcels, Royal Timbers owns seven (7) parcels of vacant commercial development land located on the west side of Banwell Road, south of Tecumseh Road. The municipal addresses of the parcels are 3175, 3195, 3215, 3235, 3255, 3275 and 3295 Banwell Road Windsor. With reference to the legal description of each parcel, the parcels are generally identified as Block 300 through Block 900 (the "**Banwell Road Commercial Lands**").
- 4.22 The Banwell Commercial Lands range in size from 0.67 acres to 2.32 acres per parcel, totalling approximately 9.64 acres. Blocks 300 and 400 are graded and have water and sewer services to the building site. Blocks 500 to 900 are not serviced to the site.
- 4.23 The Receiver undertook a sale process for the Banwell Road commercial lands (the "**Banwell Road Commercial Lands Sale Process**"). Details of the sale process conducted by the Receiver are provided below.
- 4.24 The Receiver sought offers for either Blocks 300 and 400, or Blocks 500 to 900, or all seven parcels en bloc.
- 4.25 Advertisements were placed in: The Windsor Star on February 5, 2016 and February 11, 2016; The London Free Press on February 4, 2016 and February 11, 2016; and The Globe and Mail on February 8, 2016 and February 17, 2016.
- 4.26 The Receiver circulated highlights of the Banwell Commercial Lands Sales Process on its own internal network of approximately 400 partners in ninety-five (95) BDO offices across Canada.
- 4.27 The Receiver established a deadline for offers of Friday March 11, 2016 at 5:00 p.m.
- 4.28 Thirteen (13) parties expressed interest in obtaining detailed information about the Banwell Road Commercial Lands and were provided with a Confidentiality and Non-Disclosure Agreement ("**NDA**") for execution.

- 4.29 The Receiver established an electronic data room ("**Data Room**") to make relevant information available to interested parties. This information included: Copies of registrations on title for subdivision agreements, site plan control agreements and other permitted encumbrances; Zoning information and by-laws; Information on municipal services; and details of property taxes and assessments.
- 4.30 The Data Room was maintained by a third party, Venue Client Services ("**Venue**"). Venue is part of RR Donnelly, a publicly traded, multinational company. Venue provides electronic data room services to major financial institutions and BDO has successfully utilized Venue services on other receivership and corporate finance engagements.
- 4.31 Access to the Data Room was restricted to parties who executed the NDA and was controlled and monitored by the Receiver. Eight (8) parties executed the NDA and were provided with access to the Data Room.
- 4.32 No offers were received that were acceptable to the Receiver.
- 4.33 The Receiver then sought listing proposals from four (4) experienced commercial real estate agents in the Windsor area. The Receiver selected Mr. Greg Barlow of Lepage to list the Banwell Road Commercial Lands for sale.
- 4.34 Effective April 18, 2016 the Receiver entered into a listing agreement with LePage for Blocks 300 and 400 at a listing price of \$1,299,000. The listing price was determined based on the appraised value, comparable sales subsequent to the date of the Receiver's appraisals and the input of the realtor.
- 4.35 Effective April 18, 2016 the Receiver entered into a listing agreement with LePage for Blocks 500 through 900 at a listing price of \$2,499,000. The listing price was determined based on the appraised value, comparable sales subsequent to the date of the Receiver's appraisals and the input of the realtor.
- 4.36 The Banwell Road Commercial Lands listing agreements with LePage expired on October 17, 2016 and were renewed until March 17, 2017.
- 4.37 The Receiver has accepted a conditional offer for Blocks 300 and 400. The

purchaser has until March 31, 2017 to satisfy various conditions.

## 5. Receiver's Sale of Tecumseh Parcels

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- 5.1 The Tecumseh Parcels consist of two adjacent parcels of vacant commercial land on Tecumseh Road East and comprising approximately 3.8 acres. On June 25, 2015 the Receiver entered into a listing agreement for the Tecumseh Parcels with CBRE at a listing price of \$1,499,000.
- 5.2 On September 21, 2015 the Receiver reduced the listing price for the Tecumseh Parcels to \$1,420,000.
- 5.3 No offers satisfactory to the Receiver were received. Following the expiry of the listing agreement with CBRE, and effective June 29, 2016, the Receiver entered into a new listing agreement with LePage for the Tecumseh Parcels at a listing price of \$1,330,000. The listing price was determined based on the appraised value, the Receiver's experience to date and the input of the realtor.
- 5.4 The listing agreement expired on December 29, 2016 and was renewed until May 31, 2017.
- 5.5 After some negotiations, on February 3, 2017 the Receiver entered into the Tecumseh Parcels APS for the sale of the Tecumseh Parcels to HVM. A copy of the Tecumseh Parcels APS is attached as **Appendix A** to the Confidential Supplement.
- 5.6 Subsequently, HVM advised the Receiver of its intention to assign the Tecumseh Parcels APS to Goodwill, and the Receiver provided its consent to the assignment, subject to certain conditions.
- 5.7 The Receiver is seeking approval for the sale of the Tecumseh Parcels pursuant to the Tecumseh Parcels APS and a Vesting Order in respect of the Tecumseh Parcels.
- 5.8 Prior to the appointment of the Receiver, the Companies commissioned an appraisal of the Tecumseh Parcels from Valco Consultants Inc of London, Ontario ("**Valco**"). The appraisal report dated February 4, 2013 (the "**Valco Tecumseh**")

**Appraisal**") is attached as **Appendix C** to the Confidential Supplement.

- 5.9 The Receiver commissioned an appraisal of the Tecumseh Parcels by Metrix Realty Group of London, Ontario ("**Metrix**"). The appraisal report of Metrix dated June 1, 2015 (the "**Metrix Tecumseh Appraisal**") is attached as **Appendix D** to the Confidential Supplement.
- 5.10 The Receiver's analysis of the Tecumseh Parcels Transaction is contained in the Confidential Supplement.
- 5.11 The Receiver requests that the Court make an order sealing the Confidential Supplement to avoid the negative impact which the dissemination of the confidential information contained therein might have should the Tecumseh Parcels 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.
- 5.12 It is the Receiver's view that that the Tecumseh Parcels Transaction is appropriate in the circumstances.
- 5.13 The Receiver is of the view that it has maximized the realization available and the Tecumseh Parcels Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Tecumseh Parcels Transaction is in the best interest of the creditors and other stakeholders of the Companies.
- 5.14 The Receiver recommends that this Court approve the completion of the Tecumseh Parcels Transaction.

## 6. Phase 1 – Timber Bay Crescent Reserve Blocks

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- 6.1 In January 2017 the City issued 2017 Interim tax bills to the Receiver for two new accounts on Timber Bay Crescent in Phase 1 of the Royal Timbers subdivision. The Receiver had no knowledge of the accounts and made enquiries to both the City and the Municipal Property Assessment Corporation (“MPAC”) that were not conclusive.
- 6.2 With the assistance of its legal counsel, the Receiver determined that the tax accounts originated from the Timber Bay Crescent Reserve Blocks.
- 6.3 In 2015 the Receiver sold the three remaining lots in Phase 1, known as Lots 99, 100 and 101, Plan 12M-503, Windsor (“**Lots 99-101**”) to 1128631 Ontario Ltd o/a Bungalow Group (“**Bungalow**”). These sales were outlined in Section 6 of the Sixth Report of the Receiver.
- 6.4 The original reference plan for Timber Bay Crescent had created one foot reserve blocks at the rear of each of Lots 99-101, legally known as: PT BLOCK 108, PL 12M503 DESIGNATED AS PART 17, PL 12R22431 (PIN 1566-0780 (LT)); PT BLOCK 108, PL 12M503 DESIGNATED AS PART 16, PL 12R22431 (PIN 1566-0779 (LT)); PT BLOCK 108, PL 12M503 DESIGNATED AS PART 15, PL 12R22431 (PIN 1566-0778 (LT)) (defined earlier as the “**Timber Bay Crescent Reserve Blocks**”).
- 6.5 Under the Subdivision Agreement with the City, registered on title as CE51657, these reserve blocks were to have been transferred to the City prior to the issuance of construction permits, but this was not done.
- 6.6 In 2016 Bungalow completed the construction of homes on the lots and the sale of the homes to individual homeowners. The sale of the completed homes by Bungalow appears to have triggered new property tax accounts for the Timber Bay Crescent Reserve Blocks in the name of the legal owner of the lots prior to the sale to Bungalow in 2015.



- 6.7 The Receiver's legal counsel contacted the City's legal department, who have agreed that in order to rectify this situation, the Timber Bay Crescent Reserve Blocks should be transferred to the City.
- 6.8 The Receiver seeks the authorization of the Court to complete the transfer of the Timber Bay Crescent Reserve Blocks to the City.

## 7. Simba and D'Amore Mortgages

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- 7.1 The Eighth Report of the Receiver included the report and opinion of MT on 14 mortgages held by Simba and D'Amore (the "**Simba and D'Amore Mortgages**") over the lands owned by Banwell and Royal Timbers.
- 7.2 It was the opinion of MT that the Simba and D'Amore Mortgages are valid and enforceable, with only the BMO collateral mortgage standing in priority to these mortgages.
- 7.3 The Receiver sought the approval of the Court to distribute funds to Simba and the estate of D'Amore to satisfy the amounts secured by the Simba and D'Amore Mortgages as funds become available from the realization of lands owned by Banwell and Royal Timbers.
- 7.4 The Simba Distribution Order dated June 24, 2015 authorized the Receiver to make distributions to Simba and the D'Amore estate as funds are available, subject to certain protocols, including providing written notice of any intended distribution to the Service List for the receivership. The purpose of providing notice prior to completing any distribution was to permit the stakeholders in the receivership to raise any objections they might have to the proposed distribution. The Simba Distribution Order is attached as **Appendix E**.
- 7.5 On April 15, 2016 the Receiver provided written notice of its intention to pay out the mortgage registered as instrument CE163205 against the Real Ranchs lands. No objections were received by the Receiver, and on May 2, 2016 the Receiver paid \$451,654.97 to legal counsel for Simba and the D'Amore Estate in trust, in full payment of mortgage number CE 163205. The payment consisted of principal of \$282,800.00 and accrued interest of \$168,854.97.
- 7.6 Subsequently, the Receiver provided written notice of its intention to pay out the mortgage registered as instrument CE269359 against the lands comprising Phase 3 of the Royal Timbers subdivision (Blocks 120, 121 and 122, 12M-533)

- 7.7 The terms of mortgage CE 269359 provide for an interest free period until “a date which is the earlier of December 16, 2013 and 21 months from the date construction of services has been commenced for the relevant phase of the development to which this charge secures payment” (the “**Interest Commencement Date**”). Interest is to be calculated from the Interest Commencement Date forward.
- 7.8 In its proposed distribution the Receiver included interest from May 1, 2009. Through his legal counsel, Troup objected to the Interest Commencement Date used by the Receiver in its calculation of interest. Troup asserted that the Interest Commencement Date was December 16, 2013. Simba, through its legal counsel asserted that the Interest Commencement Date was May 1, 2009, as established by an amending schedule that was not registered on title.
- 7.9 In view of the dispute, the Receiver paid the principal balance only. On June 17, 2016, as directed by Simba and the D’Amore Estate, the Receiver paid the principal balance of \$240,495.83 to Windsor Family Credit Union (“**WFCU**”).
- 7.10 On August 17, 2016 the Receiver provided written notice of its intention to pay out the mortgage registered as Instrument CE 163211 against the Commercial Plaza, and again encountered disputes among the parties with respect to the Interest Commencement Date. Accordingly, the Receiver paid the principal balance only. On September 19, 2016, as directed by Simba and D’Amore Estate, the Receiver paid the principal balance of \$229,123.47 to WFCU.
- 7.11 The Receiver seeks the direction of the Court with respect to the Interest Commencement Dates of the Simba mortgages. The Receiver has prepared a summary of the Simba and D’Amore mortgages, excluding Mortgage CE 163295 which has been repaid in full in accordance with the Simba Distribution Order (the “**Simba Mortgage Summary**”). The Simba Mortgage Summary is attached as **Appendix F**. The Simba Mortgage Summary includes the Receiver’s recommendation as to the Interest Commencement Date and the basis of the Receiver’s recommendation.
- 7.12 The Receiver seeks the approval of the Court of the Simba Mortgage Summary as

the basis for future payments by the Receiver of the Simba and D'Amore Mortgages.

## 8. Funds advanced by Patrick D'Amore

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- 8.1 As noted in Section 1.2.2, D'Amore was a 50% shareholder of Banwell as Trustee for his sons Kevin and Scott, as beneficiaries. In August 2011, D'Amore passed away resulting in D'Amore's ownership in Banwell vesting equally in each of Kevin and Scott.
- 8.2 During 2009 D'Amore advanced approximately \$871,000 to the Companies to provide operating funds and repay a portion of the Companies' loans to BMO. There is agreement among the primary stakeholders, being Scott, Kevin and Troup, that the \$871,000 was advanced as loans. However, there is disagreement as to whether the \$871,000 is repayable to Kevin and Scott, as shareholders, or the estate of Patrick D'Amore.
- 8.3 After the Simba mortgages have been repaid the claims of the secured creditors will have been paid in full. Thereafter, the claims of the unsecured creditors are to be paid next. In anticipation of same, it is necessary to determine to whom the \$871,000 is to be repaid.
- 8.4 The issue of to whom the \$871,000 is payable was previously the subject matter of a motion brought by Scott D'Amore in September, 2013. That motion has been stayed because of the receivership. The Receiver's counsel has reviewed the materials previously filed by the parties on that motion. MT's letter to the Receiver, summarizing its findings is attached as **Appendix G**. It is MT's opinion that the \$871,000 is repayable to the D'Amore Estate.
- 8.5 As recommended by MT, the Receiver seeks an Order of the Court declaring that the \$871,000 is properly repayable to the D'Amore Estate.

### **Unsecured Creditors of the Companies**

- 8.6 In addition to the D'Amore Loans, the Receiver is aware of the following other unsecured creditors. Outstanding balances are based on the Companies' records at June 12, 2013.

<b>Debtor Company</b>	<b>Creditor</b>	<b>Amount</b>
Banwell	Southridge Homes	\$10,000.00
Royal Timbers	Affleck Greene McMurty LLP	159,538.66
Royal Timbers	Dunn Paving Limited (Judgment)	49,893.46

## 9. Litigation

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### 9.1 Consolidated Action

9.2 By Endorsement dated October 8, 2015, Justice Thomas lifted the stay of proceedings imposed upon the Consolidated Action and severed the Consolidated Action from the Receivership.

9.3 During the course of the Receivership, MT, on behalf of the Receiver, had gone on record on behalf of the Companies for the purpose of extending the deadline for setting the Consolidated Action down for trial and to amend the title of proceeding. After the October 8, 2015 Endorsement, no stakeholder came forward to take over carriage of the Consolidated Action from MT and the Receiver. Accordingly, on July 26, 2016 MT obtained an Order removing itself as lawyers of record for the Companies in the Consolidated Action.

### 9.4 Lepera Litigation

9.5 The appeal by J. Lepera Contracting Inc. from the Judgment of Justice Gates dismissing its construction lien claim was heard by the Divisional Court on April 22, 2016. By Reasons for Judgment dated October 6, 2016, the appeal was dismissed with costs fixed in the amount of \$7,500.

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

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10.1 The Receiver maintains a bank account with BMO in London, Ontario for each of Banwell, Royal Timbers and the Real Ranchs Trust Account. Attached as **Appendix H, Appendix I and Appendix J** respectively, are the Banwell Statement of Receipts and Disbursements, Royal Timbers Statement of Receipts and Disbursements and Real Ranchs Trust Account Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements through February 28, 2017 are as follows:

### 10.2 Receipts - Banwell

- a) *Sale of Lots (\$1,712,405.29)* — The Receiver received net proceeds totalling \$1,712,405.29 from completing the sales of 60 serviced lots in the Royal Timbers subdivision and the unserviced Phase 3 Lands. Proceeds received are net of VTB mortgages received as consideration and property tax arrears paid to the City of Windsor. The net proceeds include VTB registration fees of \$3,842.00 paid by the purchasers.
- b) *VTB Mortgage Payouts (\$2,145,500.00)* — Several VTB mortgages matured and the full principal was repaid. In addition, the Receiver provided partial discharges of mortgages where a builder completed and sold a home and repaid the applicable VTB mortgage on closing. The VTB mortgages have been repaid on all of the lots sold. The Receiver has received \$2,145,500.00.
- c) *GST / HST refunds (\$274,032.01)* — The Receiver received \$274,032.01 in refunds on HST returns filed.
- d) *Petvin Homes VTB mortgage (\$190,039.00)* — The Receiver received \$25,000 from the Petvin mortgage amendment outlined in Section 4 of the Sixth Report of the Receiver. Subsequently, the full principal in the amount of \$164,700 was repaid, plus a mortgage discharge fee of \$339.



- e) *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.
- f) *Security Deposits on Sale of Lots (\$84,000)* — The Receiver received security deposits totalling \$84,000 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.
- g) *Income Tax Refund (\$20,479.00)* — The Receiver received a \$20,479.00 refund from the 2010 income tax return.
- h) *Interest earned GIC's (\$7,795.48)* — The Receiver earned \$7,795.48 in interest on funds on hand invested in GIC's.
- i) *VTB mortgage discharge fees (\$7,117.00)* — The Receiver received \$7,117.00 in discharge fees, including HST, on the repayment of VTB mortgages.
- j) *Vacancy rebate (\$3,353.64)* — The Receiver received a rebate of \$3,353.64 of property taxes on vacant units in the Commercial Plaza.
- k) *Interest earned on VTB mortgages (\$3,124.83)* — The Receiver earned \$3,124.83 in interest on VTB mortgages that have been paid out.
- l) *CRA payroll audit refund (\$2,700.32)* — The Receiver received a refund of \$2,700.32 from CRA's audit of 2015 payroll records.

### 10.3 Disbursements - Banwell

- a) *Construction (\$989,829.30)* — The Receiver has paid \$989,829.30 in construction costs for: Block 120 paving and sidewalks; Phase II sidewalks, curb repair, base asphalt repair and surface paving, sewer flushing; and other projects.

- b) *Receiver's fees (\$509,917.34)* – BDO's interim accounts through August 14, 2015 have been approved by the Court and \$349,799.76, excluding HST, was paid from the Banwell account. BDO's interim accounts for the period August 15, 2015 to January 19, 2017 in the amount of \$160,117.58 excluding HST, were paid from the Banwell account and are subject to Court approval.
- c) *Property taxes (\$437,405.70)* — The Receiver paid \$437,405.70 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, and 2014 through 2017 property taxes on a current basis. The first installment of 2017 taxes for Royal Timbers, in the amount of \$8,209.29, was paid from the Banwell account. Property taxes previously paid on Real Ranchs' lots have been repaid from the Real Ranchs Trust Account.
- d) *HST Paid (\$289,506.88)* — The Receiver paid \$289,506.88 in HST on its disbursements.
- e) *Legal fees (\$289,020.41)* – MT's accounts through August 31, 2015 have been approved by the Court and \$247,743.11, excluding HST, was paid from the Banwell account. MT's interim accounts for the period September 1, 2015 to December 31, 2016 in the amount of \$41,276.88 were paid from the Banwell account and are subject to Court approval.
- f) *Sales commissions (\$148,750.00)* – The Receiver paid commissions of \$148,750.00 on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.
- g) *Receiver's Certificate (\$125,000.00)* – The Receiver repaid BMO under the Receiver's certificate.
- h) *Professional fees - Engineering (\$98,094.20)* – The Receiver paid \$98,094.20 to RC Spencer Associates Inc. for engineering and supervision fees in connection with the following: Block 120 paving; Phase II sidewalk construction, curb repair, base asphalt repair and surface paving, storm retention pond rehabilitation; and other projects.

- i) *Legal fees re: Lepera Appeal (\$45,804.18)* – The legal fees of AGM from May 21, 2015 are \$56,221.21, excluding HST, and are subject to Court approval. Of this amount, \$45,804.16, excluding HST, has been paid from the Banwell account.
- j) *Appraisal fees (\$40,947.45)* — The Receiver paid \$28,447.45 to Metrix and Valco for appraisals of the Banwell Lots and commercial parcels. Tracey Business Advisors Inc. was paid \$12,500.00 for an estimate of the fair market value of Banwell and Royal Timbers
- k) *Accounting fees (\$39,300.00)* — The Receiver paid \$39,300.00 to Hyatt Lassaline LLP for the preparation of Banwell financial statements and income tax returns.
- l) *Repairs and Maintenance (\$35,224.89)* – The Receiver paid \$35,224.89 for landscaping, grass/weed cutting, and repairs and maintenance to the Banwell Lots and subdivision infrastructure.
- m) *Advertising (\$16,838.45)* — The Receiver paid \$16,838.45 for new signage and advertising of the Banwell Road Commercial Lands Sale Process.
- n) *Utilities (\$9,779.33)* — The Receiver paid \$9,779.33 for utilities, including the installation of electrical service.
- o) *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.
- p) *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.
- q) *Insurance (\$4,918.32)* — The Receiver paid \$4,918.32 for the insurance premiums on the combined Banwell and Royal Timbers policy.

- r) *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.
- s) *Other professional fees (\$2,812.50)* — The Receiver paid \$2,812.50 for other professional fees, including DuCharme, McMillen & Associates for the preparation of property tax rebate applications.
- t) *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.
- u) *Copier lease (\$1,119.92)* — The Receiver paid \$1,119.92 to maintain a photocopier lease on an interim basis.
- v) *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.

#### 10.4. 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) *Sale of Block 200 (\$422,808.32)* – The Receiver received \$422,808.32 from the sale of Block 200. The proceeds received were net of real estate commissions and property tax adjustments on closing.
- c) *Rental income (\$215,013.30)* – The Receiver received \$215,013.30 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.

- d) *City of Windsor settlement (\$30,000.00)* — The Receiver received \$30,000.00 in settlement of a lawsuit with the City of Windsor arising from road construction delays on Banwell Road.
- e) *GST / HST refunds (\$28,032.59)* — The Receiver received \$28,032.59 in refunds on HST returns filed.
- f) *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.
- g) *Security deposit (\$5,000.00)* – The Receiver received a security deposit of \$5,000.00 on the leasing of Unit 100 of the Commercial Plaza. On the closing of the sale of the Commercial Plaza, credit was given to the purchaser for this amount and other tenant security deposits.
- h) *Insurance premium refund (\$3,530.52)* – On the sale of the Commercial Plaza, the Receiver received \$3,530.52 as a refund of the unused insurance premium.

#### 10.5. Disbursements – Royal Timbers

- a) *Property taxes (\$322,483.14)* — The Receiver paid \$322,483.14 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, and 2014 through 2016 property taxes on a current basis.
- b) *Receiver's fees (\$196,358.65)* – BDO's interim accounts through August 14, 2015 have been approved by the Court and \$196,358.65, excluding HST, was paid from the Royal Timbers account.
- c) *Legal fees (\$158,846.60)* – MT's accounts through August 31, 2015 have been approved by the Court and \$158,846.60, excluding HST, was paid from the Royal Timbers account.
- d) *HST Paid (62,907.88)* — The Receiver paid \$62,907.88 in HST on its disbursements.

- e) *Payroll (\$56,222.08)* – The Receiver paid net wages of \$56,222.08 to Marina Ognjanovski, who provided administrative support, until April 2015, to the management of the Commercial Plaza as well as to the ongoing management and maintenance of the vacant Banwell lands.
- f) *Accounting fees (\$39,150.00)* — The Receiver paid \$39,150.00 to Hyatt Lassaline LLP for the preparation Royal Timbers financial statements and income tax returns.
- g) *Repairs and Maintenance (\$21,853.73)* – The Receiver paid \$21,853.73 for repairs and maintenance to the Commercial Plaza and grass cutting on Royal Timbers lands.
- h) *Payroll source deductions (\$21,266.73)* – The Receiver remitted \$21,266.73 to the Receiver General for source deductions on employee wages.
- i) *Appraisal fees (\$22,498.90)* — The Receiver paid \$22,498.90 to Metrix and Valco for appraisals of the Commercial Plaza and Banwell Road Commercial Lands.
- j) *Legal fees re: Lepera Appeal - (\$10,417.05)* — The legal fees of AGM from May 21, 2015 are \$56,221.21, excluding HST, and are subject to Court approval. Of this amount, \$10,417.05, excluding HST, has been paid from the Royal Timbers account.
- k) *Advertising (\$9,042.34)* – The Receiver paid \$9,042.34 in advertising the Invitation for Offers process for the Commercial Plaza.
- l) *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.
- m) *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.

- n) *Insurance (\$7,473.60)* — The Receiver paid \$7,473.60 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- o) *HST remitted (\$6,830.45)* — The Receiver remitted \$6,830.45 in HST collected on rents, net of HST paid on its disbursements.
- p) *Utilities (\$3,263.57)* — The Receiver paid \$3,263.57 for utilities for the vacant units and common area at the Commercial Plaza
- q) *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.
- r) *Commissions on Unit 100 (\$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.
- s) *Commissions on Block 200 (\$4,200.00)* — The Receiver paid a commission on the sale of Block 200 of \$4,200.00.
- t) *Utilities (\$3,263.57)* — The Receiver paid \$3,263.57 for utilities.
- u) *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.
- v) *WSIB (\$1,165.28)* – The Receiver paid WSIB premiums of \$1,165.28.

#### 10.6. Receipts – Real Ranchs Trust Account

- a) *Sale of Lots (\$276,979.55)* – The Receiver received \$276,979.55 from the sale of the Real Ranchs Lots. The proceeds received are net of VTB mortgages received as consideration, closing adjustments and VTB registration fees.

- b) *VTB Mortgage Payouts (\$826,000.00)* — The Receiver provided partial discharges of mortgages where a builder completed and sold a home and repaid the applicable VTB mortgage on closing. The VTB mortgages have been repaid on all but one of the sold lots. The Receiver has received \$829,500.00, less an allowance to a mortgagor of \$3,500.00 for servicing deficiencies.
- c) *Security Deposits on Sale of Lots (\$17,250.00)* — The Receiver received security deposits totaling \$17,250.00 from completing the sales of Lots. These deposits are refundable to the applicable purchaser on the completion of construction of a house on the Lot and fulfillment of certain conditions.
- d) *VTB mortgage discharge fees (\$3,220.50)* — The Receiver received \$3,220.50 in discharge fees, including HST, on the repayment of VTB mortgages.
- e) *Interest earned GIC's (\$1,230.75)* — The Receiver earned \$1,230.75 in interest on funds on hand invested in GIC's

#### 10.7. Disbursements – Real Ranchs Trust Account

- a) *Property taxes (\$116,635.53)* — The Receiver originally paid property tax arrears and 2014 and 2015 current installments on the Real Ranchs' Lots totalling \$116,635.63 from the Banwell account. This amount has been repaid to Banwell.
- b) *Sales commissions (\$36,800.00)* – The Receiver paid commissions of \$36,800.00 on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.
- c) *WCFU Re: M. Troup (\$18,200.00)* – Commissions paid to Via Sales were net of \$18,200.00 held back by the Receiver, details of which were provided in the Seventh Report of the Receiver. The Receiver remitted \$18,200.00 to Windsor Family Credit Union.



- d) *HST Paid (\$7,150.00)* — The Receiver paid \$7,150.00 in HST on its disbursements.

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

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- 11.1 Pursuant to Paragraph 19 of the Appointment Order, 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 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 and such amounts shall constitute advances against the Professional Fees when and as approved by the Court.
- 11.3 The Receiver’s fees paid to date, excluding HST, for Banwell and Royal Timbers are as follows:
- |                                       |   |              |
|---------------------------------------|---|--------------|
| Fees paid and Court approved          | - | \$546,158.24 |
| Fees paid, but not yet Court approved | - | 160,117.58   |
|                                       |   | \$706,275.82 |
- 11.4 MT’s fees paid to date, excluding HST, for Banwell and Royal Timbers are as follows:
- |                                       |   |              |
|---------------------------------------|---|--------------|
| Fees paid and Court approved          | - | \$406,589.71 |
| Fees paid, but not yet Court approved | - | 41,276.88    |
|                                       |   | \$447,866.59 |
- 11.5 AGM’s fees paid to date, excluding HST, are as follows:
- |                                       |   |             |
|---------------------------------------|---|-------------|
| Fees paid, but not yet Court approved | - | \$56,221.21 |
|---------------------------------------|---|-------------|
- 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,

MT and AGM in connection with the receivership during the relevant periods. Fee Affidavits containing particulars of the fees for which approval is sought will be filed at a later date. The Receiver recommends approval of the Professional Fees by the Court.

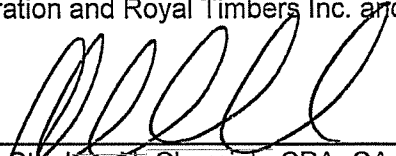
## 12. Recommendations

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- 12.1 The Receiver recommends and respectfully requests that this Court grant an Order:
- a) approving the Tecumseh Parcels APS and authorizing and directing the Receiver to enter into and complete the Tecumseh Parcels Transaction;
  - b) vesting in Goodwill all of Banwell's right, title and interest in and to the Tecumseh Parcels free and clear of any and all claims and encumbrances;
  - c) sealing the Confidential Supplement filed with the Court from the public record until the earlier of the completion of the transaction contemplated by the Tecumseh Parcels APS or further order of the Court;
  - d) approving the transfer of the Timber Bay Crescent Reserve Blocks to the City and authorizing the Receiver to complete the transaction;
  - e) approving the Receiver's schedule of the Simba and D'Amore mortgages as the basis for future mortgage payouts;
  - f) declaring that the \$871,000 advanced to the Companies during 2009 by D'Amore is properly repayable to the D'Amore Estate;
  - g) approving the Receiver's Tenth Report and the activities and actions of the Receiver described therein;
  - h) approving the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs Trust Account Statement of Receipts and Disbursements; and
  - i) approving the Professional Fees.

All of which is Respectfully Submitted this 14th day of March, 2017.

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



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

# APPENDIX “C”

Court File No. CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. ) MONDAY, THE 27TH DAY  
JUSTICE THOMAS ) OF MARCH, 2017

BETWEEN:

**KEVIN D'AMORE**

Applicant

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. 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 February 3, 2017 (the "APS"), between the Receiver, as vendor, and, Goodwill Industries – Essex Kent Lambton Inc., as assignee, as purchaser (the "Purchaser"), in respect of the real property described on Schedule "A" (the "Lands") and appended as Appendix "A" to the Confidential Supplement to the Tenth Report of the Receiver dated March 14, 2017 (the "Tenth Report"), and vesting in the Purchaser all of Banwell's right, title and interest in and to the Lands, was heard this day at the Courthouse, 425 Grand Ave E., Chatham, Ontario.

ON READING the Tenth Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, and such other persons on the Service List as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Julie Los sworn March 14, 2017, filed:

1. THIS COURT ORDERS that leave is hereby granted for this motion to be heard in Chatham.
2. 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.
3. 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 Banwell'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; and (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.
4. 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.

5. 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.

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

7. THIS COURT ORDERS that, notwithstanding:

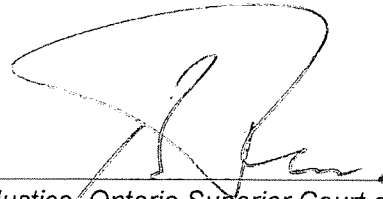
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Banwell and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made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

the vesting of the Lands in the 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) 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 that the Confidential Supplement shall be sealed until the earlier of the completion of the Transaction and further order of this Court.

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, Ontario Superior Court of Justice

ENTERED AT WINDSOR	
In Book No.	28
re Document No.	326
on	MAR 27 2017
by	K

**Schedule A – Lands**

The lands and premises legally described as:

PART LOTS 142, 143, CON 1 (MCNIFF'S) DESIGNATED AS PTS  
22, 23, 25, 27 ON PL 12R21671 AND PART 1 PL 12R22066,  
EXCEPT PL 12M546; WINDSOR (PIN 01566-0821)

**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 ("Banwell") and Royal Timbers Inc.

B. Pursuant to an Order of the Court dated March 27, 2017, the Court approved an Agreement of Purchase and Sale dated effective February 3, 2017 (the "APS") between the Receiver, as vendor, and Goodwill Industries – Essex Kent Lambton Inc., as assignee, as purchaser (the "Purchaser") in respect of the real property legally described on Schedule B1 hereto (the "Lands") and appended as Appendix "A" to the Confidential Supplement of the Receiver dated March 14, 2017, and vesting in the Purchaser all of Banwell'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 B1 – Lands**

The lands and premises legally described as:

PART LOTS 142, 143, CON 1 (MCNIFF'S) DESIGNATED AS PTS  
22, 23, 25, 27 ON PL 12R21671 AND PART 1 PL 12R22066,  
EXCEPT PL 12M546; WINDSOR (PIN 01566-0821)

KEVIN D'AMORE

and

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

Court File No: CV-11-17088

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

**MILLER THOMSON LLP**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
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 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. CE269275 – Charge in the principal amount of \$429,566 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.
3. Instrument No. CE569187 – Application to register court order registered on June 18, 2013.
4. Instrument No. CE714328 – Transmission Charge from Patrick D'Amore to Scott D'Amore registered on May 25, 2016.
5. Instrument No. CE715026 – Transfer of Charge from Simba Group Developments Limited and Scott D'Amore to Windsor Family Credit Union Limited registered on May 30, 2016.



**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 – APL (General);
- g) Instrument No. 12R11787 – Plan Reference;
- h) Instrument No. R1201053 – Agreement;
- i) Instrument No. 12R13566 – Plan Reference;
- j) Instrument No. 12R20732 – Plan Reference;
- k) Instrument No. 12R21671 – Plan Reference;
- l) Instrument No. 12R22356 – Plan Reference;
- m) Instrument No. CE185377 – APL Absolute Title;
- n) Instrument No. CE187023 – APL Consolidate; and
- o) Instrument No. CE. 195978 – No Sub Agreement .

KEVIN D'AMORE

and

Applicant

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

Respondents

Court File No: CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for BDO Canada Limited,  
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**

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

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

May 24<sup>th</sup>, 2017

## Table of Contents

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2. Terms of Reference .....	2
3. Purpose of the Supplementary Report .....	3
4. Robinet Road Services Cost Sharing .....	4
5. Recommendations .....	7

## Appendices

- Appendix A** - City of Windsor Development, Projects and Right-of-Way report to City Council dated December 22, 2016

## 1. Introduction and Background

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### 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").
- 1.1.3 The Receiver submitted a Tenth Report to the Court dated March 14, 2017 (the "Tenth Report")
- 1.1.4 The Receiver's recommendation with respect the sale of commercial lots owned by Banwell, located on Tecumseh Road East in Windsor, and defined in the Tenth Report as the "Tecumseh Parcels" was heard by Mr. Justice Thomas on March 27, 2017. By Order dated March 27, 2017 Mr. Justice Thomas approved the sale of the Tecumseh Parcels and vested all of Banwell's right, title and interest in the Tecumseh Parcels in Goodwill Industries – Essex Kent Lambton Inc. ("Goodwill")
- 1.1.5 The remainder of the relief sought by the Receiver in the Tenth Report is scheduled to be heard by Mr. Justice Thomas on May 29, 2017.
- 1.1.6 This supplementary report is prepared to provide additional information to the Court on the cost sharing arrangements with the City of Windsor for municipal services work undertaken by Banwell.
- 1.1.7 Unless otherwise defined, capitalized terms in this report have the same meaning as the Tenth Report.

## 2. Terms of Reference

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- 2.1 In preparing this supplementary report to the Receiver's Tenth 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 Supplementary Report

---

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

- (a) To provide this Court with information on:
  - (i) the status of the cost sharing arrangement with the City of Windsor (the "**City**") for municipal services installed by Banwell at the rear of lots located on the east side of Robinet Road (the "**Robinet Cost Sharing**"), and the proposed conveyance of certain one foot reserve blocks from Banwell to the City;
- (b) In support of an order of the Court:
  - (i) approving the conveyance by Banwell to the City of the one foot reserve blocks described as Blocks 129, 131, 133, 135, 137, 139, 141, 143, 145 and 147, Plan 12M-533 (the "**Phase 2 Reserve Blocks**") and the one foot reserve blocks described as Blocks 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63, Plan 12M-546 (the "**Phase 4 Reserve Blocks**") and vesting title to the Phase 2 Reserve Blocks and Phase 4 Reserve Blocks in the City.

## **4. Robinet Road Services Cost Sharing**

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### **Background**

- 4.1 In Section 5 of its Third Report to the Court dated November 25, 2013 (the "**Third Report**") the Receiver provided an overview of an arrangement between Banwell and the City, whereby Banwell would be reimbursed for a portion of the costs of installing municipal services at the rear of approximately 28 existing lots that front on the east side of Robinet Road (the "**Robinet Lots**" or singularly the "**Robinet Lot**"). This arrangement was defined earlier as the "Robinet Cost Sharing".
- 4.2 The Robinet Lots are approximately 280 feet deep, and back onto McRobbie Road, within each of Phases 2, 3 and 4 of the Royal Timbers subdivision. The Robinet Cost Sharing allows for the future severance by Robinet Road property owners (the "**Robinet Road Property Owners**") of the rear half of their lots, thus creating new building lots fronting onto McRobbie Road.
- 4.3 In conjunction with the application to sever the rear portion of the lot, a Robinet Road Property Owner would be required to pay Banwell for the proportionate share of servicing costs applicable to their lot.
- 4.4 In order to secure the City and Banwell's interests, and control access to the services, a one foot reserve block in favour of each of the City and Banwell abutting each of the Robinet Lots was created.
- 4.5 Subsequent to the Third Report, the Receiver determined that the Subdivision Agreement provided for the City to reimburse Banwell for the agreed upon share of servicing costs applicable to each phase, and for the City, in turn, to recover the costs on an individual basis as Robinet Road Property Owners sever the rear portion of their respective properties.

### **Phase 2**

- 4.6 The Receiver retained the consulting engineers RC Spencer Associates Inc. ("**RC Spencer**") to continue to provide cost and technical information to the City in order

to finalize the cost sharing amount for Phase 2 of the Royal Timbers subdivision.

- 4.7 On December 22, 2016, the City Development, Projects & Right-of-Way department completed its report to City Council on the Robinet Cost Sharing applicable to Phase 2 of the Royal Timbers subdivision (the "**City of Windsor Phase 2 Robinet Report**"). The recommendations contained in the report were approved by City Council on February 13, 2017. The City of Windsor Phase 2 Robinet Report is attached as **Appendix A**.
- 4.8 By August 27, 2017, the City will pay \$595,876, plus GST of \$41,711.33 to BDO as Receiver of Banwell on account of the City's share of the servicing costs for the Phase 2 lands.
- 4.9 Where a Robinet Road Property Owner wishes to commence the severance process prior to August 27, 2017, the City has authorized the Receiver to collect the homeowner's proportionate share, as set out in Appendix B to the **City of Windsor Phase 2 Robinet Report**. The City will adjust the August 27, 2017 payment to the Receiver for any amounts received directly from the Robinet Road Property Owner.
- 4.10 In order to complete its obligations under the Robinet Cost Sharing Arrangement applicable to Phase 2, and receive payment from the City or the Robinet Road Property Owner as described above, the Receiver is required to convey the Phase 2 Reserve Blocks to the City.
- 4.11 Accordingly, the Receiver requests the approval of the Court to convey the Phase 2 Reserve Blocks to the City and vest the Phase 2 Reserve Blocks in the City upon receipt by the Receiver of the City's share of the servicing costs for the Phase 2 lands in the amount of \$595,876, plus HST in the amount of \$41,711.33.

### **Phase 3**

- 4.12 By Order dated June 24, 2015 Mr. Justice Thomas approved the sale of Lots 103-106, Block 121 and Block 122 Plan 12M-533, Windsor (the "**Phase 3 Lands**") to Hadi Custom Homes Inc. ("**Hadi**") and vested all of Banwell's right, title and interest in the Phase 3 Lands in Hadi. The Phase 3 Lands had not been serviced

at the time of the sale to Hadi.

- 4.13 Subsequently, and as described in more detail in Section 5 of the Ninth Report of the Receiver to Court dated September 25, 2015 (the "**Ninth Report**"), the Receiver obtained the approval of the Court to convey the Robinet one foot reserve blocks applicable to the Phase 3 Lands to Hadi.

#### **Phase 4**

- 4.14 The Robinet Cost Sharing applicable to Phase 4 of the Royal Timbers subdivision has not yet been completed. RC Spencer will supply additional servicing cost information to the City as required, in order to finalize the Phase 4 Robinet Cost Sharing.
- 4.15 Once finalized, the Receiver will be required to convey the Phase 4 Reserve Blocks to the City.
- 4.16 In reviewing the land registrations for Phase 4, the Receiver noted that both one foot reserve blocks for each Robinet Road property are registered in the name of Banwell, rather than there being a one foot reserve block for each of the City and Banwell. This appears to have been an error in the original land registrations.
- 4.17 The City has confirmed that all of the Phase 4 Reserve Blocks are registered in Banwell's name and will need to be conveyed to the City when the Phase 4 Robinet Cost Sharing is finalized.
- 4.18 Accordingly, the Receiver requests the approval of the Court to convey the Phase 4 Reserve Blocks to the City and vest the Phase 4 Reserve Blocks in the City upon receipt by the Receiver of the City's share of the servicing costs for the Phase 4 lands.

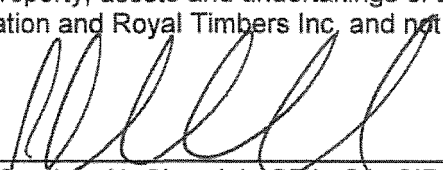
## 5. Recommendations

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- 5.1 The Receiver recommends and respectfully requests that this Court grant an Order:
- a) approving the conveyance by the Receiver to the City of the Phase 2 Reserve Blocks and Phase 4 Reserve Blocks and vesting title to the Phase 2 Reserve Blocks and Phase 4 Reserve Blocks in the City upon receipt by the Receiver of the City's share of the servicing costs for the Phase 2 lands and Phase 4 lands.

All of which is Respectfully Submitted this 24th day of May, 2017.

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

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

# APPENDIX “E”



as may be present, and on noting that no other persons appeared, although properly served as appears from the affidavit of Julie Los sworn March 14, 2017, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. 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 City.

2. THIS COURT ORDERS AND DECLARES that all of Banwell's right, title and interest in and to the Lands shall vest absolutely in the City, 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, any encumbrances or charges created by the Order of the Honourable Mr. Justice Thomas dated June 5, 2013 (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 "B"** (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 City as the owner of the Lands described in Schedule "A" hereto in fee simple.

4. 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;



- 3 -

the vesting of the Lands in the City 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) 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.

5. 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, Ontario Superior Court of Justice

ENTERED AT WINDSOR
In Book No. <u>28</u>
re Document No. <u>576</u>
on <u>MAY 29 2018</u>
by <u>YB</u>

**Schedule A – Lands**

The lands and premises legally described as:

- (a) PT BLK 108, (0.30M Reserve), Plan 12M503, Designated as PT15, PL12R22431, Windsor (PIN 01566-0778)
- (b) PT BLK 108, (0.30M Reserve), Plan 12M503, Designated as PT17, PL12R22431, Windsor (PIN 01566-0780)

**Schedule B – 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) Instrument No. CE51657 – Notice of Subdivision Agreement registered on December 24, 2003;
- c) Instrument No. CE56048 – Notice of Subdivision Agreement registered on January 27, 2004;
- d) Instrument No. 12M503 – Plan of Subdivision registered on February 9, 2004;
- e) Instrument No. 12R22431 – Plan Reference registered on January 11, 2006;
- f) Instrument No. CE200944 – By law registered on February 28, 2006;
- g) Instrument No. CE316770 – By law registered on February 28, 2008;
- h) Instrument No. CE709987 – By law registered on April 27, 2016.

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

**APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511

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

# APPENDIX “F”

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. )  
JUSTICE THOMAS )  
 )  
 )

MONDAY, THE 29TH DAY  
OF MAY, 2017

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "Receiver"), for, *inter alia*, an order approving the conveyance (the "Transaction") by the Receiver to The Corporation of the City of Windsor (the "City") of the real property described on Schedule "A" (the "Lands") and vesting in the City all of Banwell'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 Supplementary Report dated May 24, 2017 to the Tenth Report to the Court of the Receiver (the "**Supplementary Report**") and on hearing the submissions of counsel for the Receiver, and such other persons on the Service List as may be present, and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn May 25, 2017, 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 Supplementary 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 AND DECLARES that the Transaction is hereby approved. 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 City.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the City 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 Lands shall vest absolutely in the City, 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; and (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.

4. 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 City 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.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the Transaction 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 Transaction 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.

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

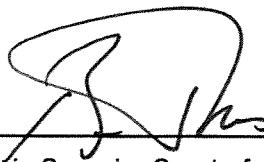
7. THIS COURT ORDERS that, notwithstanding:

- (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 Lands in the City 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) 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 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, Ontario Superior Court of Justice

ENTERED AT WINDSOR	
In Book No.	28
re Document No.	577
on	MAY 29 2017
by	

**Schedule A – Lands**

The lands and premises legally described as:

- (a) Block 129 ( Reserve), Plan 12M533, Windsor (PIN 01566-0695)
- (b) Block 131 ( Reserve), Plan 12M533, Windsor (PIN 01566-0697)
- (c) Block 133 ( Reserve), Plan 12M533, Windsor (PIN 01566-0699)
- (d) Block 135 ( Reserve), Plan 12M533, Windsor (PIN 01566-0701)
- (e) Block 137 ( Reserve), Plan 12M533, Windsor (PIN 01566-0703)
- (f) Block 139 ( Reserve), Plan 12M533, Windsor (PIN 01566-0705)
- (g) Block 141 ( Reserve), Plan 12M533, Windsor (PIN 01566-0707)
- (h) Block 143 ( Reserve), Plan 12M533, Windsor (PIN 01566-0709)
- (i) Block 145 ( Reserve), Plan 12M533, Windsor (PIN 01566-0711)
- (j) Block 147 ( Reserve), Plan 12M533, Windsor (PIN 01566-0713)

**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 ("**Banwell**") and Royal Timbers Inc.

B. Pursuant to an Order of the Court dated May 29, 2017, the Court approved the conveyance by the Receiver to The Corporation of the City of Windsor (the "**City**") of the real property legally described on Schedule B1 hereto (the "**Lands**") and vesting in the City all of Banwell'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 City of a certificate confirming the payment to the Receiver of the City's share of the servicing costs for the Lands.

THE RECEIVER CERTIFIES the following:

1. The Receiver has received the City's share of the servicing costs for the Lands;
2. 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 B1 – Lands**

The lands and premises legally described as:

- (a) Block 129 ( Reserve), Plan 12M533, Windsor (PIN 01566-0695)
- (b) Block 131 ( Reserve), Plan 12M533, Windsor (PIN 01566-0697)
- (c) Block 133 ( Reserve), Plan 12M533, Windsor (PIN 01566-0699)
- (d) Block 135 ( Reserve), Plan 12M533, Windsor (PIN 01566-0701)
- (e) Block 137 ( Reserve), Plan 12M533, Windsor (PIN 01566-0703)
- (f) Block 139 ( Reserve), Plan 12M533, Windsor (PIN 01566-0705)
- (g) Block 141 ( Reserve), Plan 12M533, Windsor (PIN 01566-0707)
- (h) Block 143 ( Reserve), Plan 12M533, Windsor (PIN 01566-0709)
- (i) Block 145 ( Reserve), Plan 12M533, Windsor (PIN 01566-0711)
- (j) Block 147 ( Reserve), Plan 12M533, Windsor (PIN 01566-0713)

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

**MILLER THOMSON LLP**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
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  
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. CE569187 – Application to register 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) Instrument No. CE166202 – Notice of Subdivision Agreement, registered on August 24, 2005;
- c) Instrument No. CE191966 – Notice of Subdivision Agreement, registered on January 4, 2006;
- d) Instrument No. CE193237 – Plan Document Agreement registered on January 12, 2006;
- e) Instrument No. 12M533 – Plan of Subdivision, registered on January 12, 2006.



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

**APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511

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

# APPENDIX “G”

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.	)	MONDAY, THE 29TH DAY
	)	
JUSTICE THOMAS	)	OF MAY, 2017

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc. pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "**Receiver**"), for, *inter alia*, an order approving the conveyance (the "**Transaction**") by the Receiver to The Corporation of the City of Windsor (the "**City**") of the real property described on Schedule "A" (the "**Lands**") and vesting in the City all of Banwell's right, title and interest in and to the Lands, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

- 2 -

ON READING the Supplementary Report dated May 24, 2017 to the Tenth Report to the Court of the Receiver (the "**Supplementary Report**") and on hearing the submissions of counsel for the Receiver, and such other persons on the Service List as may be present, and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn May 25, 2017, 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 Supplementary 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 AND DECLARES that the Transaction is hereby approved. 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 City.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the City 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 Lands shall vest absolutely in the City, 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; and (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.

4. 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 City 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.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the Transaction 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 Transaction 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.

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

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 Lands in the City 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) 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 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.

**BRUCE G. THOMAS**

---

*Justice, Ontario Superior Court of Justice*

ENTERED AT WINDOW	
In Book No.	28
re Document No.	575
on	MAY 29 2013
by	KB

**Schedule A – Lands**

The lands and premises legally described as:

- (a) Block 54 ( Reserve), Plan 12M546, Windsor (PIN 01566-0876)
- (b) Block 55 ( Reserve), Plan 12M546, Windsor (PIN 01566-0877)
- (c) Block 56 ( Reserve), Plan 12M546, Windsor (PIN 01566-0878)
- (d) Block 57 ( Reserve), Plan 12M546, Windsor (PIN 01566-0879)
- (e) Block 58 ( Reserve), Plan 12M546, Windsor (PIN 01566-0880)
- (f) Block 59 ( Reserve), Plan 12M546, Windsor (PIN 01566-0881)
- (g) Block 60 ( Reserve), Plan 12M546, Windsor (PIN 01566-0882)
- (h) Block 61 ( Reserve), Plan 12M546, Windsor (PIN 01566-0883)
- (i) Block 62 ( Reserve), Plan 12M546, Windsor (PIN 01566-0884)
- (j) Block 63 ( Reserve), Plan 12M546, Windsor (PIN 01566-0885)

- 6 -

**Schedule 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

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 ("**Banwell**") and Royal Timbers Inc.

B. Pursuant to an Order of the Court dated May 29, 2017, the Court approved the conveyance by the Receiver to The Corporation of the City of Windsor (the "**City**") of the real property legally described on Schedule B1 hereto (the "**Lands**") and vesting in the City all of Banwell'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 City of a certificate confirming the payment to the Receiver of the City's share of the servicing costs for the Lands.



THE RECEIVER CERTIFIES the following:

1. The Receiver has received the City's share of the servicing costs for the Lands;
2. 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 B1 – Lands**

The lands and premises legally described as:

- (a) Block 54 ( Reserve), Plan 12M546, Windsor (PIN 01566-0876)
- (b) Block 55 ( Reserve), Plan 12M546, Windsor (PIN 01566-0877)
- (c) Block 56 ( Reserve), Plan 12M546, Windsor (PIN 01566-0878)
- (d) Block 57 ( Reserve), Plan 12M546, Windsor (PIN 01566-0879)
- (e) Block 58 ( Reserve), Plan 12M546, Windsor (PIN 01566-0880)
- (f) Block 59 ( Reserve), Plan 12M546, Windsor (PIN 01566-0881)
- (g) Block 60 ( Reserve), Plan 12M546, Windsor (PIN 01566-0882)
- (h) Block 61 ( Reserve), Plan 12M546, Windsor (PIN 01566-0883)
- (i) Block 62 ( Reserve), Plan 12M546, Windsor (PIN 01566-0884)
- (j) Block 63 ( Reserve), Plan 12M546, Windsor (PIN 01566-0885)

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
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 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. CE163205 – Charge in the principal amount of \$282,800 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on August 10, 2005.
3. Instrument No. CE 171657 – Postponement from Simba Group Developments Limited and Patrick D'Amore to Bank of Montreal registered on September 20, 2005.
4. Instrument No. CE171658 – Postponement from Simba Group Developments Limited and Patrick D'Amore to Bank of Montreal registered on September 20, 2005.
5. Instrument No. CE261562 – Notice from Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on February 28, 2007.
6. Instrument No. CE569187 – Application to register court order registered on June 18, 2013.
7. Instrument No. CE714325 – Transmission of Charge from Patrick D'Amore to Scott D'Amore registered on May 25, 2016.
8. Instrument No. CE715026 – Transfer of Charge from Simba Group Developments Limited and Scott D'Amore to Windsor Family Credit Union Limited registered on May 30, 2016.

**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) Instrument No. CE195978 – Notice of Subdivision Agreement, registered on January 27, 2006;
- c) Instrument No. CE251614 – Plan Document Agreement registered on December 13, 2006;
- d) Instrument No. 12M546 – Plan of Subdivision, registered on December 13, 2006;
- e) Instrument No. CE468429 – Application to Annex Restrictive Covenant, registered on April 29, 2011.

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

**APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511

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

# APPENDIX “H”

Court File No. CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.	)	MONDAY, THE 29TH DAY
	)	
JUSTICE THOMAS	)	OF MAY, 2017

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 and Royal Timbers Inc. (collectively, the "Companies") pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "Appointment Order"), for an order,

- (a) approving Appendix "F" to the Tenth Report of the Receiver to the Court dated March 14, 2017 (the "Tenth Report") as the basis for future payments to be made by the Receiver under the Simba and D'Amore Mortgages, as defined in the Tenth Report;



- (b) declaring that the \$871,000 advanced to the Companies during 2009 by Patrick D'Amore (the "\$871,000 Loan") is properly repayable to the Estate of Patrick D'Amore;
- (c) approving the Tenth Report and the activities and actions of the Receiver described therein;
- (d) approving the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs' Trust Account Statement of Receipts and Disbursements, each as defined in the Tenth Report; and
- (e) approving the professional fees and disbursements of the Receiver and its legal counsel.


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

ON READING the Tenth Report and on hearing the submissions of counsel for the Receiver, and such other persons on the Service List as may be present, and on noting that no other persons appeared, although properly served as appears from the affidavit of Julie Los sworn March 14, 2017, filed:

1. THIS COURT ORDERS that Appendix "F" to the Tenth Report is hereby approved as the basis for future payments to be made by the Receiver under the Simba and D'Amore Mortgages, as defined in the Tenth Report.
2. THIS COURT DECLARES that the \$871,000 Loan is properly repayable to the Estate of Patrick D'Amore.
3. THIS COURT ORDERS that the Tenth Report and the activities and conduct of the Receiver described in the Tenth Report are hereby approved.
4. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs' Trust Account Statement of Receipts and Disbursements, each as defined in the Tenth Report, are hereby approved.

5. THIS COURT ORDERS that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the Fee Affidavits of Stephen Cherniak sworn May 24, 2017 and Sherry Kettle sworn May 24, 2017 be and same are hereby approved.

ENTERED AT WINDOW	
In Book No.	28
re Document No.	61
JUL 0 6 2017	
by	<i>u</i>

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

KEVIN D'AMORE

and

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

Court File No: CV-11-17088

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**ORDER**

**MILLER THOMSON LLP**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511

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

# APPENDIX “I”

**BDO Canada Limited Court Appointed Receiver of  
Banwell Development Corporation  
Statement of Receipts and Disbursements  
June 5, 2013 through January 31, 2018**

**Receipts:**

Sale of Lots	\$ 3,896,836.40	
Less: VTB mortgages	(2,145,500.00)	
Less: Property tax arrears and adjustments	(42,773.11)	
Add: VTB registration fee	<u>3,842.00</u>	
		\$ 1,712,405.29
Sale of Tecumseh lands	1,100,000.00	
Less: sales commission paid	(62,150.00)	
Add: Credit for property tax adjustment	<u>1,879.77</u>	1,039,729.77
VTB mortgage payouts		2,145,500.00
City of Windsor - cost sharing re Robinet Road services		595,876.17
GST/HST refunds		393,632.05
Loan from Royal Timbers		250,000.00
Patvin Homes VTB mortgage amendment and payout		190,039.00
Receiver's Certificate # 1		125,000.00
Royal Timbers - repayment of advances including Receiver's Certificate # 1		114,158.71
Security deposits collected on sale of lots		84,000.00
HST collected on Robinet Road cost sharing		41,711.34
Income Tax refund (2010)		20,479.00
Royal Timbers company bank account		13,914.53
Interest earned on GIC's		10,189.31
VTB mortgage discharge fees		7,117.00
Vacancy rebate		3,353.64
Interest earned on VTB mortgages		3,124.83
CRA payroll audit refund (2015)		2,700.32
Miscellaneous funds from Wolf Hooker trust account		1,725.16
City of Windsor - indemnity refund re sewer permit		800.00
Royal Timbers - share of interest on Receiver's Certificate #1		557.36
Insurance refunds		<u>216.00</u>
		<u>6,756,229.48</u>

**Disbursements:**

<b>Construction:</b>		
Paving - Block 120 & Phase 2	\$ 490,675.82	
Concrete - Phase 2 sidewalks & curbs	418,638.09	
Landscaping, sod, storm retention pond rehabilitation	129,621.97	
Sewer flushing & camera inspection	<u>85,701.66</u>	
		1,124,637.54
Receiver's fees		619,604.24
City of Windsor - Property taxes		483,618.51
HST paid on disbursements		333,199.34
Legal Fees		331,991.63
Consulting/commission fees on lot sales		148,750.00
Professional fees - engineering		144,161.57
Repayment of Receiver's Certificate # 1		125,000.00
Funds advanced to Royal Timbers Receiver's account		114,158.71
Accounting fees (Hyatt Lassaline LLP)		58,900.00
Legal fees re: Lepera Appeal (Affleck, Greene, McMurtry LLP)		51,804.16
Repairs and maintenance		45,534.23
Appraisal fees		40,947.45
BMO - Letter of Credit fees		36,666.64
HST remitted		28,904.22
Advertising		16,838.45
Utilities - underground service installation	5,726.10	
Utilities - storm retention pond	<u>4,653.93</u>	
		10,380.03
Insurance		6,235.92
City of Windsor - Application fees		5,012.00
Survey fees re: Block 120		3,473.25
Other professional fees		2,812.50
Refund of security deposits on Phase I, Lots 47, 49		2,298.31
Copier lease		1,323.30
Interest paid on Receiver's Certificate # 1		1,119.92
Miscellaneous legal and corporate		<u>1,114.72</u>
		3,738,486.64
<b>Excess receipts over disbursements</b>		<u>\$ 3,017,742.84</u>

**Represented by:****Payments to Secured Creditors:**

Bank of Montreal	500,752.08	
Simba Group Developments Limited	<u>1,926,045.00</u>	
		2,426,797.08

**Funds held by Receiver:**

Balance in Receiver's account as at January 31, 2018	<u>590,945.76</u>	
		590,945.76
		<u>\$ 3,017,742.84</u>

**NOTE:**

At January 31, 2018, \$370,647.72 is due from the Royal Timbers estate to the Banwell estate from the payment of property taxes, Simba mortgage payouts and other advances. This amount does not include any allocation of professional fees of the Receiver or its legal counsel paid by the Banwell estate.

# APPENDIX “J”



# APPENDIX “K”



**BDO Canada Limited**  
**Real Ranchs Trust Account**  
**Statement of Receipts and Disbursements**  
**January 6, 2015 through January 31, 2018**

**Receipts:**

Sale of Lots	\$ 1,144,000.00	
Less: VTB mortgages	(869,000.00)	
Add: property tax adjustments	1,414.55	
Add: VTB registration fee (incl. HST)	<u>455.00</u>	
		\$ 276,869.55
VTB mortgage payouts	865,500.00	
Less: Servicing allowance to buyer	<u>(3,500.00)</u>	
		862,000.00
Security deposits collected on sale of lots		17,250.00
HST refund		6,695.00
Interest earned on GIC		4,633.90
VTB discharge fees (incl. HST)		<u>3,500.00</u>

**Disbursements:**

Construction:			1,170,948.45
Concrete - Phase 4 sidewalks and curbs	94,378.00		
Paving - Phase 4	48,930.55		
Sewer flushing and inspection - Phase 4	13,775.00		
Landscaping and sod - Phase 4	<u>7,450.00</u>		
		164,533.55	
City of Windsor - property taxes		116,335.63	
Consulting/commission fees on lot sales		36,800.00	
HST paid on disbursements		28,539.36	
WFCU re: M. Troup loan		<u>18,200.00</u>	
			364,408.54

**Excess receipts over disbursements**

\$ 806,539.91

## Represented by:

**Payments to Secured Creditors:**

Simba Group Developments Limited	451,854.97
----------------------------------	------------

**Funds Held by Receiver:**

Balance in Receiver's account as at January 31, 2018	<u>354,684.94</u>
	<u>\$ 806,539.91</u>

TAB "3"



THIS MOTION, made by ~~[RECEIVER'S NAME]~~ BDO Canada Limited, in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor") ~~for 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 (the "~~Sale Agreement~~" Agreement of Purchase and Sale dated effective January 11, 2018 (the "APS")) between the Receiver, as vendor, and ~~[NAME OF PURCHASER]~~ (the "Purchaser") dated ~~[DATE]~~ and appended Taplane Inc. (the "Purchaser"), as purchaser, and directing the Receiver to complete the transaction contemplated thereby and vesting all of Royal Timbers' right, title and interest in and to the Real Property in Taplane Inc., in respect of the real property described on Schedule "A" (the "Real Property") and appended as Appendix "A" to the Confidential Supplement to the Eleventh Report of the Receiver dated [DATE] February 5, 2018 (the "Eleventh Report"), and vesting in the Purchaser the Debtor's sale of Royal Timbers' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") Real Property, was heard this day at ~~330 University~~ the Courthouse, 245 Windsor Avenue, Toronto Windsor, Ontario.~~

ON READING the Eleventh Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~, ~~no one appearing for any other person on the service list 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 ~~[NAME]~~ Susan Jarrell sworn ~~[DATE]~~ February     , 2018, filed<sup>1</sup>:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the ~~Sale Agreement~~ APS by the Receiver<sup>3</sup> is hereby authorized and approved,

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

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

with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the ~~Purchased Assets~~Real Property 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 A "B" hereto (the "Receiver's Certificate"), all of the ~~Debtor's~~Royal Timbers' right, title and interest in and to the ~~Purchased Assets~~ described in the Sale Agreement [~~and listed on Schedule B hereto~~]<sup>4</sup>Real Property 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"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice [NAME] dated [DATE]; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) Thomas dated June 5, 2013; and (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" "D" (the "Permitted Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the ~~Purchased Assets~~Real Property are hereby expunged and discharged as against the ~~Purchased Assets~~Real Property.

---

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

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

<sup>5</sup> ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

3. THIS COURT ORDERS that upon ~~the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver~~[[Land Titles Division of {LOCATION};Essex (No. 12) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the ~~subject real property identified~~Real Property described in Schedule B "A" hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property 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<sup>7</sup> from the sale of the ~~Purchased Assets~~Real Property shall stand in the place and stead of the ~~Purchased Assets~~Real Property, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the ~~Purchased Assets~~Real Property with the same priority as they had with respect to the ~~Purchased Assets~~Real Property immediately prior to the sale<sup>8</sup>, as if the ~~Purchased Assets~~Real Property 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, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser~~

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

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

<sup>8</sup> This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

6. ~~7.~~ THIS COURT ORDERS that, notwithstanding:

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

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

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

8. THIS COURT ORDERS that the Confidential Supplement shall be sealed until the earlier of the completion of the Transaction and further order of this Court.

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.

---



**Schedule A – ~~Form of Receiver’s Certificate~~ Real Property**

The lands and premises legally described as:

Part Lot 143 Con 2 (PT Old Banwell Road closed by LT336126) designated as Parts 9 & 12 PL 12R19305 subject to easement over Parts 9 & 12 PL 12R19305 as in LT336127, together with row over Parts 8 & 11 PL 12R19305 as in LT 387015; Part Lot 144 Con 2 designated as Parts 3 & 6 PL 12R19305, subject to easement over Part 3 PL 12R19305 as in R1541523, together with right over Parts 2, 5, 8 & 11 PL 12R19305 as in R1539706; subject to and together with an easement as in CE267537; City of Windsor, Essex County (PIN 01566-0890 (LT)).

Schedule B

Court File No. \_\_\_\_\_ CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

BETWEEN:

**PLAINTIFF**

Plaintiff

**KEVIN D'AMORE**

Applicant

- and -

**DEFENDANT**

Defendant

**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 ~~[NAME OF JUDGE]~~ Mr. Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ June 5, 2013, BDO Canada Limited ("BDO") was appointed as the receiver (the "**Receiver**") of the ~~undertaking, property and assets of [DEBTOR]~~ (the "~~Debtor~~assets,"

undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("Royal Timbers").

B. Pursuant to an Order of the Court dated ~~[DATE]~~, February, 2018, the Court approved ~~the agreement of purchase and sale made as of [DATE OF AGREEMENT]~~ (the "Sale Agreement") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the "Purchaser") and provided for ~~the~~ an Agreement of Purchase and Sale dated effective January 11, 2018 (the "APS") between the Receiver, as vendor, and Taplane Inc., as purchaser (the "Purchaser") in respect of the real property legally described on Schedule B1 hereto (the "Real Property") and appended as Appendix "A" to the Confidential Supplement of the Receiver dated February 5, 2018, and vesting in the Purchaser all of the Debtor's Royal Timbers' right, title and interest in and to the Purchased Assets Real Property, which vesting is to be effective with respect to the Purchased Assets Real Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets Real Property; (ii) that the conditions to Closing closing as set out in section 4 of the Sale Agreement APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

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

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

Name:

Title:

**Schedule B1 – Purchased Assets Real Property**

The lands and premises legally described as:

Part Lot 143 Con 2 (PT Old Banwell Road closed by LT336126) designated as Parts 9 & 12 PL 12R19305 subject to easement over Parts 9 & 12 PL 12R19305 as in LT336127, together with row over Parts 8 & 11 PL 12R19305 as in LT 387015; Part Lot 144 Con 2 designated as Parts 3 & 6 PL 12R19305, subject to easement over Part 3 PL 12R19305 as in R1541523, together with right over Parts 2, 5, 8 & 11 PL 12R19305 as in R1539706; subject to and together with an easement as in CE267537; City of Windsor, Essex County (PIN 01566-0890 (LT)).

Revised: January 21, 2014

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

1. Instrument No. CE569187 – Notice of Court Order registered on June 18, 2013

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

~~(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 Real Property 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 Real Property;
- 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 Real Property;
- f) Instrument No. 12R19305 – Plan Reference;
- g) Instrument No. LT336126 – Bylaw;
- h) Instrument No. LT336127 – Transfer Easement;
- i) Instrument No. R1539703 – Agreement - Site Plan Control;
- j) Instrument No. LT387020 – Notice - Site Plan Control Agreement;
- k) Instrument No. R1539705 – Application Annex Restrictive Covenants;
- l) Instrument No. LT387024 – Notice Agreement – Access & Easement Agreement;
- m) Instrument No. R1539706 – Agreement – Access & Easement Agreement;
- n) Instrument No. R1541523 – Transfer Easement;
- o) Instrument No. CE259459 – Application Consolidation Parcels;
- p) Instrument No. CE341496 – Notice – Site Plan Control; and
- q) Instrument No. CE449307 – LR's Order.

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

KEVIN D'AMORE

and

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

Court File No: CV-11-17088

Applicant

Respondents

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WINDSOR

APPROVAL AND VESTING ORDER

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KEVIN D'AMORE

and

Applicant

BANWELL DEVELOPMENT CORPORATION,  
928579 ONTARIO LIMITED, SCOTT D'AMORE  
and ROYAL TIMBERS INC.  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD**  
(RETURNABLE ON A DATE TO BE DETERMINED BY  
REGIONAL SENIOR JUSTICE THOMAS)

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