

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
as amended**

**B E T W E E N:**

**GRAND RIVER ENTERPRISES SIX NATIONS LIMITED**

Applicant

- and -

**LANWEST MFG. TECHNOLOGIES INC.**

Respondent

**MOTION RECORD  
(Returnable February 9, 2017)  
(Re: Approval and Vesting re: Caledonia Property; Fee Approval)**

**SCARFONE HAWKINS LLP**  
One James Street South, 14<sup>th</sup> Floor  
Hamilton, ON L8P 4R5

Michael J. Valente  
e-mail: [mvalente@shlaw.ca](mailto:mvalente@shlaw.ca)  
Tel : 905-523-1333 ext. 235  
Fax : 905-523-5878

Lawyers for BDO Canada Limited in its  
capacity as Receiver and Manager, Trustee  
in Bankruptcy and Proposal Trustee of  
Lanwest Mfg. Technologies Inc.

**TO:** **BDO CANADA LIMITED**  
25 Main Street West, Suite 805  
Hamilton, ON L8P 1H1

Brad Newton  
e-mail: [bnewton@bdo.ca](mailto:bnewton@bdo.ca)  
Tel : 905-524-1008 ext. 2853  
Fax : 905-570-0249

Receiver and Manager, Trustee in Bankruptcy and Proposal Trustee of Lanwest  
Mfg. Technologies Inc.

**AND TO:** **KPMG INC.**  
Bay Adelaide Centre  
393 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Nicholas Brearton  
e-mail: [nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca)  
Tel : 416-777-8500  
Fax : 416-777-3364

Former Proposal Trustee and Private Receiver of Lanwest Mfg. Technologies  
Inc.

**AND TO:** **BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
Box 40, Commerce Court West  
Toronto, Ontario M5L 1A9

Steven J. Weisz LSUC#: 32102C  
Tel: 416-863-2616  
Fax: 416-863-2653  
[steven.weisz@blakes.com](mailto:steven.weisz@blakes.com)

Michael McGraw LSUC#: 46679C  
Tel: 416-863-4247  
Fax: 416-863-2653  
[michael.mcgraw@blakes.com](mailto:michael.mcgraw@blakes.com)

Lawyers for Grand River Enterprises Six Nations Limited

**AND TO: AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street  
Suite 1800, Box 754  
Toronto, ON  
M5J 2T9

Steven L. Graff  
e-mail: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)  
Tel: 416-865-7726  
Fax: 416-863-1515

Lawyers for Royal Bank of Canada

**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE**  
Ministry of the Attorney General  
Ministry of Finance – Oshawa Legal Services Branch

Steven Groeneveld  
e-mail: [steven.groeneveld@ontario.ca](mailto:steven.groeneveld@ontario.ca)  
Tel: 905-440-2470  
Fax: 905-436-4510

Lawyers for the Minister of Finance

**AND TO: DEPARTMENT OF JUSTICE CANADA**  
Ontario Reg. Office, Tax Law Services Section  
3400-130 King Street West  
Toronto, ON M5X 1K6

Diane Winters  
E-mail: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)  
Tel: 416-973-3172  
Fax: 416-973-0810

Angela Shen  
Email: [angela.shen@justice.gc.ca](mailto:angela.shen@justice.gc.ca)  
Tel.: (416) 952-7284  
Fax: (416) 973-0810

**AND TO: DEPARTMENT OF JUSTICE CANADA**  
99 Bank Street, Room 1103  
Ottawa, ON K1A 0H8

André LeBlanc, General Counsel  
Tax Law Services  
e-mail: [andre.leblanc@justice.gc.ca](mailto:andre.leblanc@justice.gc.ca)  
Tel : 613-670-6473  
Fax : 613-941-2293

**AND TO: REVENU QUÉBEC**  
1600 René-Lévesque West Boulevard  
3rd Floor, Branch R23CPF  
Montréal, QC H3H 2C2

Zaki Zemmouchi  
e-mail: [zaki.zemmouchi@revenuquebec.ca](mailto:zaki.zemmouchi@revenuquebec.ca)  
Tel : 514-415-5009  
Fax : 514-285-3833

**AND TO: KRONIS, ROTSZTAIN, MARGLES, CAPPEL LLP**  
Barristers and Solicitors  
Suite 1000 – 8 King Street East  
Toronto, ON M5C 1B5

Mervyn D. Abramowitz (LSUC #28323R)  
e-mail: [mabramowitz@krmc-law.com](mailto:mabramowitz@krmc-law.com)  
Tel: 416-306-9874  
Fax: 416-306-9874

Philip Cho (LSUC #45615U)  
e-mail: [pcho@krmc-law.com](mailto:pcho@krmc-law.com)  
Tel: 416-281-5494  
Fax: 416-306-9874

Lawyers for The Guarantee Company of North America

# INDEX

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
as amended**

**BETWEEN:**

**GRAND RIVER ENTERPRISES SIX NATIONS LIMITED**

Applicant

- and -

**LANWEST MFG. TECHNOLOGIES INC.**

Respondent

**MOTION RECORD  
(Returnable February 9, 2017)  
(Re: Approval and Vesting re: Caledonia Property; Fee Approval)**

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**TAB 1**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
as amended

B E T W E E N:

GRAND RIVER ENTERPRISES SIX NATIONS LIMITED

Applicant

- and -

LANWEST MFG. TECHNOLOGIES INC.

Respondent

NOTICE OF MOTION  
(Returnable February 9, 2017)  
(Re: Approval and Vesting re: Caledonia Property; Fee Approval)

BDO Canada Limited (“**BDO**”), in its capacity as receiver and manager (the “**Receiver**”) of the respondent, Lanwest Mfg. Technologies Inc. (“**Lanwest**”) will make a motion to the Court at 10:00 a.m. on February 9, 2017 on the Commercial List, or as soon after that time as the parties can be heard, at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.

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



1. **THE MOTION IS FOR** an Order, substantially in the form as attached hereto as Schedule "A":

- (a) if necessary, abridging and validating the time for service of the Notice of Motion, the Second Report to Court of the Receiver dated February 6, 2017 and the Confidential Supplement to the Second Report (together, the "**Second Report**") and the Motion Record so that this motion is properly returnable today and dispensing with further service thereof;
- (b) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Botelho Investments Limited (the "**Purchaser**") dated December 7, 2016 and appended to and described in the Second Report and vesting in the Purchaser all of Lanwest's right, title and interest in and to the assets described in the Sale Agreement, in particular, the real property of Lanwest known municipally as 107 Greens Road, Caledonia, Ontario (the "**Caledonia Property**") as more particularly described in the Sale Agreement (the "**Purchased Assets**");
- (c) approving the Second Report, the activities of the Receiver as described therein and the Receiver's Statement of Receipts and Disbursements as at January 31, 2017 attached thereto;
- (d) sealing the Confidential Supplement to the Second Report until the closing of the Transaction;
- (e) approving the fees and disbursements of the Receiver and its counsel, as described in the Second Report and the fee affidavits attached as Appendices "F" and "G" thereto; and
- (f) such further and other relief as the Receiver may request and this Court shall deem just.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to the Order of the Honourable Madam Justice Conway dated October 14, 2016, the Receiver was appointed and was authorized and directed to market and sell the Caledonia Property;
- (b) upon its appointment, the Receiver requested that three real estate brokers local to the Caledonia market provide the Receiver with listing proposals and commission quotes for the sale of the Caledonia Property. All three brokers provided quotes and estimates of value for the Caledonia Property. The Receiver also engaged Humphreys Appraisal Services to prepare an appraisal of the Caledonia Property. Further, the Receiver also had an appraisal of the Caledonia Property prepared in August 2014 by Antec Appraisal Group in Lanwest's Proposal Proceedings;
- (c) in consultation with GRE, the Receiver chose to list the property with Blair, Blanchard Stapleton Limited ("**BBSL**") and entered into a listing agreement with BBSL on November 29, 2016;
- (d) based on the appraisals; the listing agents' estimates of value for the Caledonia Property; the length of time in which the Caledonia Property has remained vacant; and the holding costs that would continue to be incurred, the Receiver recommends the approval of the Transaction. The Receiver is of the opinion that the Transaction represents the best value for the Caledonia Property in the circumstances. GRE supports the Receiver's recommendation;
- (e) the Supplemental Report should be and remain sealed by the Court until the closing of the Transaction in order to avoid any negative impact and prejudice which public disclosure of the confidential information contained therein may have if the Transaction does not close. Publication of offers, appraisals and the recommended Sale Agreement could potentially undermine the resumption of the sales process for the Caledonia Property that would be required if the Transaction does not close;

- (f) the Applicant, Grand River Enterprises Six Nations Limited does not object to the payment of the fees of the Receiver and its counsel as set out in the Second Report;
- (g) the facts and recommendations set out in the Second Report;
- (h) Rules 2.03 and 37 of the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and
- (i) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) the Second Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

DATE: February 6, 2017

**SCARFONE HAWKINS LLP**  
One James Street South, 14<sup>th</sup> Floor  
Hamilton, ON L8P 4R5

Michael J. Valente  
e-mail: [mvalente@shlaw.ca](mailto:mvalente@shlaw.ca)  
Tel : 905-523-1333 ext. 235  
Fax : 905-523-5878

Lawyers for BDO Canada Limited in its  
capacity as Receiver and Manager, Trustee  
in Bankruptcy and Proposal Trustee of  
Lanwest Mfg. Technologies Inc.

**TO:** **BDO CANADA LIMITED**  
25 Main Street West, Suite 805  
Hamilton, ON L8P 1H1

Brad Newton  
e-mail: [bnewton@bdo.ca](mailto:bnewton@bdo.ca)  
Tel : 905-524-1008 ext. 2853  
Fax : 905-570-0249

Receiver and Manager, Trustee in Bankruptcy and Proposal Trustee of Lanwest  
Mfg. Technologies Inc.

**AND TO:** **KPMG INC.**  
Bay Adelaide Centre  
393 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Nicholas Brearton  
e-mail: [nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca)  
Tel : 416-777-8500  
Fax : 416-777-3364

Former Proposal Trustee and Private Receiver of Lanwest Mfg. Technologies  
Inc.

**AND TO:** **BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
Box 40, Commerce Court West  
Toronto, Ontario M5L 1A9

Steven J. Weisz LSUC#: 32102C  
Tel: 416-863-2616  
Fax: 416-863-2653  
[steven.weisz@blakes.com](mailto:steven.weisz@blakes.com)

Michael McGraw LSUC#: 46679C  
Tel: 416-863-4247  
Fax: 416-863-2653  
[michael.mcgraw@blakes.com](mailto:michael.mcgraw@blakes.com)

Lawyers for Grand River Enterprises Six Nations Limited



**AND TO:**       **AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street  
Suite 1800, Box 754  
Toronto, ON  
M5J 2T9

Steven L. Graff  
e-mail: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)  
Tel: 416-865-7726  
Fax: 416-863-1515

Lawyers for Royal Bank of Canada

**AND TO:**       **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
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Ministry of the Attorney General  
Ministry of Finance – Oshawa Legal Services Branch

Steven Groeneveld  
e-mail: [steven.groeneveld@ontario.ca](mailto:steven.groeneveld@ontario.ca)  
Tel: 905-440-2470  
Fax: 905-436-4510

Lawyers for the Minister of Finance

**AND TO:**       **DEPARTMENT OF JUSTICE CANADA**  
Ontario Reg. Office, Tax Law Services Section  
3400-130 King Street West  
Toronto, ON M5X 1K6

Diane Winters  
E-mail: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)  
Tel: 416-973-3172  
Fax: 416-973-0810

Angela Shen  
Email: [angela.shen@justice.gc.ca](mailto:angela.shen@justice.gc.ca)  
Tel.: (416) 952-7284  
Fax: (416) 973-0810

**AND TO: DEPARTMENT OF JUSTICE CANADA**  
99 Bank Street, Room 1103  
Ottawa, ON K1A 0H8

André LeBlanc, General Counsel  
Tax Law Services  
e-mail: [andre.leblanc@justice.gc.ca](mailto:andre.leblanc@justice.gc.ca)  
Tel : 613-670-6473  
Fax : 613-941-2293

**AND TO: REVENU QUÉBEC**  
1600 René-Lévesque West Boulevard  
3rd Floor, Branch R23CPF  
Montréal, QC H3H 2C2

Zaki Zemmouchi  
e-mail: [zaki.zemmouchi@revenuquebec.ca](mailto:zaki.zemmouchi@revenuquebec.ca)  
Tel : 514-415-5009  
Fax : 514-285-3833

**AND TO: KRONIS, ROTSZTAIN, MARGLES, CAPPEL LLP**  
Barristers and Solicitors  
Suite 1000 – 8 King Street East  
Toronto, ON M5C 1B5

Mervyn D. Abramowitz (LSUC #28323R)  
e-mail: [mabramowitz@krmc-law.com](mailto:mabramowitz@krmc-law.com)  
Tel: 416-306-9874  
Fax: 416-306-9874

Philip Cho (LSUC #45615U)  
e-mail: [pcho@krmc-law.com](mailto:pcho@krmc-law.com)  
Tel: 416-281-5494  
Fax: 416-306-9874

Lawyers for The Guarantee Company of North America

**TAB A**

**SCHEDULE "A"**

Court File No. CV-16-11546-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 9TH  
JUSTICE )  
 ) DAY OF FEBRUARY, 2017

B E T W E E N:

**GRAND RIVER ENTERPRISES SIX NATIONS LIMITED**

Applicant

- and -

**LANWEST MFG. TECHNOLOGIES INC.**

Respondent

**ORDER  
(Approval and Vesting re: Caledonia Property; Fee Approval)**

THIS MOTION, made by BDO Canada Limited in its capacity as receiver and manager (the "Receiver") of the undertaking, property and assets of Lanwest Mfg. Technologies Inc. (the "Debtor" or "Lanwest") for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Botelho Investments Limited (the "Purchaser") dated December 7, 2016 and appended to and described in the Second Report to Court of the Receiver dated February 6, 2017 and the Confidential Supplement to the Second Report (together, the "Second Report") and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.



ON READING the Second Report and on hearing the submissions of counsel for the Receiver and the Applicant, Grand River Enterprises Six Nations Limited ("GRE"), and other parties listed on the counsel slip, no one else appearing, although all parties on the service list were properly served as appears from the affidavits of service filed with the Court;

### **Service**

1. THIS COURT ORDERS AND DECLARES that the time for service and filing of the Notice of Motion, the Second Report and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **Approval and Vesting**

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

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 A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto 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 Justice Conway dated October 14, 2016; (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) 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) and, for greater

certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Registry Division of Haldimand (No. 18) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property 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 Purchased Assets (the "Net Proceeds") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings; and
- (b) the existing proceedings pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on BDO Canada Limited in its capacity as trustee in bankruptcy of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a 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 AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

**Approval of Second Report and Sealing**

10. THIS COURT ORDERS that the Second Report, the activities of the Receiver as described therein and the Receiver's Statement of Receipts and Disbursements as at January 31, 2017 attached thereto, be and are hereby approved.

11. THIS COURT ORDERS that the Confidential Supplement to the Second Report be and shall remain sealed until the closing of the Transaction.

**Fee Approval**

12. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as described in the Second Report and the fee affidavits attached as Appendices "F" and "G" thereto, be and are hereby approved.

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**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-16-11546-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**GRAND RIVER ENTERPRISES SIX NATIONS LIMITED**

Applicant

- and -

**LANWEST MFG. TECHNOLOGIES INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (the "Court") dated October 14, 2016, BDO Canada Limited was appointed as the receiver and manager (the "Receiver") of the undertaking, property and assets of Lanwest Mfg. Technologies Inc. (the "Debtor").
- B. Pursuant to an Order of the Court dated February 9, 2017 (the "Approval Order"), the Court approved the agreement of purchase and sale made as of December 7, 2016 (the "Sale Agreement") between the Receiver and Botelho Investments Limited (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, including the Real Property, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement 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 Approval Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement 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, in its capacity as  
Receiver of the undertaking, property and  
assets of Lanwest Mfg. Technologies Inc.,  
and not in its personal capacity**

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

**Schedule B – Purchased Assets**

PIN 38154-0217 (LT)  
PT E1/2 LT 8 RANGE 1 WEST OF PLANK RD SENECA PT 1 18R680; HALDIMAND COUNTY

**Schedule C – Claims to be deleted and expunged from title to Real Property**  
**REAL PROPERTY LIENS TO BE DISCHARGED**

**Specific Registrations**

1. Instrument No. CH54092 being Lien registered on July 22, 2014.

**Additional Registrations**

Together with such further claims (other than permitted encumbrances) as may arise and/or be registered against title to any of the Real Property described in Schedule B up to and including the time of closing of the Transaction (as set out in more detail by way of Applicant's solicitor's statement or affidavit annexed to the Application for Vesting Order.)

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

**(unaffected by the Vesting Order)**

N/A



GRAND RIVER ENTERPRISES SIX NATIONS LIMITED

- and -

LANWEST MFG. TECHNOLOGIES INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**ORDER**

**(Approval and Vesting re: Caledonia Property;  
Fee Approval)**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
199 Bay Street

Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Michael McGraw, LSUC#46679C**

Tel: 416-863-4247

Fax: 416-863-2653

Email: [michael.mcgraw@blakes.com](mailto:michael.mcgraw@blakes.com)

Lawyers for the Applicant,

Grand River Enterprises Six Nations Limited

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- and -

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Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(APPROVAL AND VESTING RE: CALEDONIA  
PROPERTY; FEE APPROVAL),  
(RETURNABLE FEBRUARY 9, 2017)**

**SCARFONE HAWKINS LLP**  
One James Street South, 14th Floor  
Hamilton, ON L8P 4R5

**Michael J. Valente**  
e-mail: [mvalente@shlaw.ca](mailto:mvalente@shlaw.ca)  
Tel : 905-523-1333 ext. 235  
Fax : 905-523-5878

Lawyers for BDO Canada Limited in its capacity as  
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**SCARFONE HAWKINS LLP**  
One James Street South, 14th Floor  
Hamilton, ON L8P 4R5

**Michael J. Valente**

e-mail: [mvalente@shlaw.ca](mailto:mvalente@shlaw.ca)

Tel : 905-523-1333 ext. 235

Fax : 905-523-5878

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Receiver and Manager, Trustee in Bankruptcy and  
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