

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

**MOTION RECORD
(RETURNABLE MARCH 27, 2017)**

March 14, 2017

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Appointed Receiver of Banwell Development
Corporation and Royal Timbers Inc.

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KEVIN D'AMORE

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**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

**NOTICE OF MOTION
(returnable March 27, 2017)**

BDO CANADA LIMITED ("BDO"), in its capacity as court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers") pursuant to the Order of Mr. Justice Thomas dated June 5, 2013 (the "Appointment Order"), will make a motion to Mr. Justice Thomas to be heard on Monday, March 27, 2017 at 3:00 p.m. or as soon after that time as the motion can be heard, at the Courthouse, 425 Grand Ave W., Chatham, Ontario.

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

THE MOTION IS FOR :

1. An Order granting leave for this motion to be heard in Chatham.
2. 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 Tenth Report of the Receiver dated March 14, 2017 and all appendices thereto (the "Tenth Report"), the Confidential Supplement to the Tenth 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 March 27, 2017;

3. An Order substantially in the form attached hereto as Schedule "A" approving the sale transaction contemplated by an Agreement of Purchase and Sale dated effective February 3, 2017 between the Receiver, as vendor, and Goodwill Industries – Essex Kent Lambton Inc., as assignee, as purchaser, for the real property legally described as 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 "Real Property") and directing the Receiver to complete the transaction contemplated thereby and vesting all of Banwell's right, title and interest in and to the Real Property in Goodwill Industries – Essex Kent Lambton Inc., (the "Goodwill Transaction");
4. Sealing the Confidential Supplement until the earlier of the completion of the Goodwill Transaction and further order of the Court;
5. An Order fixing the date, time and place for the hearing of a motion for an Order,
 - (a) approving the transfer of the Timber Bay Crescent Reserve Blocks, as defined in the Tenth Report, to the City of Windsor;
 - (b) approving 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, as defined in the Tenth Report;
 - (c) declaring that the \$871,000 advanced to Banwell and Royal Timbers during 2009 by Patrick D'Amore is properly repayable to the Estate of Patrick D'Amore;
 - (d) approving the Tenth 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, each as defined in the Tenth Report; and

- (f) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees").

6. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Leave for motion to be heard in Chatham

- (a) the Goodwill Transaction is scheduled to be completed on March 28, 2017. The only available time before Justice Thomas in Windsor does not allow sufficient time for service of this motion; and
- (b) rule 37.03 of the *Rules of Civil Procedure*.

Approval of the Goodwill Transaction

- (a) the transaction is commercially reasonable and represents the highest and best price available for the Real Property; and
- (b) it is in the best interests of the stakeholders that the Goodwill 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; and
- (b) section 137(2) of the CJA.

Distribution under the Simba and D'Amore Mortgages

- (a) there is a dispute among the stakeholders as to the proper date from which interest should be calculated under the mortgages; and
- (b) the Receiver has reviewed the available records and determined the dates, in its opinion, from which interest should be calculated.

Repayment of the \$871,000

- (a) The Receiver has received an opinion from its independent legal counsel, Miller Thomson LLP, that the \$871,000 advanced during 2009 by Patrick D'Amore to Banwell and Royal Timbers is properly payable to the Estate of Patrick D'Amore.

Approval of the Tenth 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.

The Timber Bay Crescent Reserve Blocks Transaction

- (a) it is in the best interests of the stakeholders that the transaction be approved and completed.

Approval of Professional Fees

- (a) pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property as security for the Professional Fees, both before and after the making of the Appointment Order;
- (b) pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice; and
- (c) it is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver, Miller Thomson LLP and Affleck Greene McMurtry LLP in connection with these receivership proceedings.

Other

- (d) The Appointment Order;
- (e) Section 100 of the CJA;

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

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

- (a) the Tenth Report;
- (b) the Confidential Supplement;
- (c) Fee Affidavits in support of the Professional Fees claimed;
- (d) all other pleadings and materials previously filed in these proceedings; and
- (e) Such further and other evidence as counsel may advise and this Honourable Court may permit.

March 14, 2017

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Court appointed Receiver of Banwell Development Corporation and Royal Timbers Inc.

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Mark P. Nazarewich, Senior Legal Counsel
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SCHEDULE "A"

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

B E T W E E N:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation ("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 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 ____, 2017, filed:

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

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “B” hereto (the “Receiver’s Certificate”), all of 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.

3. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Lands described in Schedule “A” hereto in

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

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

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

6. THIS COURT ORDERS that, notwithstanding:

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

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.

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

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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

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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

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
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Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**NOTICE OF MOTION
(RETURNABLE MARCH 27, 2017)**

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Receiver of Banwell Development Corporation

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

**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 C** - Phase 3 one foot reserve block Order dated October 6, 2015
- Appendix D** - Order dated October 6, 2015
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- Appendix G** - MT letter to the Receiver dated February 2, 2017
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- Appendix I** - Statement of Receipts and Disbursements – Royal Timbers
- Appendix J** - 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 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

- 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

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

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 Ranchs' 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

- 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

- 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

- 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

- 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.

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

9. Litigation

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

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

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
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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.

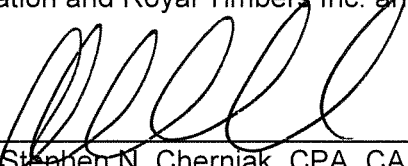
12. Recommendations

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 “A”

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE *Bruce G. Thomas*) *WEDNESDAY*, THE *5TH*
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, S c o t t D ’ A m o r e (“**Scott**”), Kevin D’Amore (“**Kevin**”), 928579 Ontario Limited (“928579”), and of Simba Group Developments Limited and BMO and on reading the consent of BDO Canada Limited. to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER’S POWERS

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

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

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

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

- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Corporations;
- j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Corporations, the Property or the Receiver, and to settle or compromise any such proceedings save and except for the proceedings that relate to the July 26, 2012 Order. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- k. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- l. to sell, convey, transfer, lease or assign the Property or any part or parts thereof in the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

REPORT TO COURT

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

FINANCIAL REPORTING TO STAKEHOLDERS

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE CORPORATIONS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

GENERAL

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

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

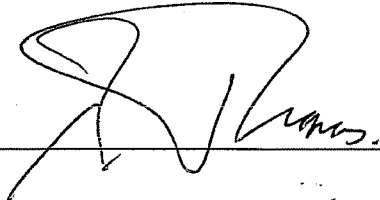
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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

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In Book No.	24
Document No.	729
JUN 5 2013	
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 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 5th day of June,
2013.

BDO Canada Limited

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

Per:

Name:

Title:

KEVIN D'AMORE

-and- BANWELL DEVELOPMENT
CORPORATION et al

Plaintiff

Defendants

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
WINDORD

ORDER
AFFIDAVIT OF SERVICE

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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

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

September 25, 2015

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Appendices

- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - Eighth Report of the Receiver dated June 12, 2015 (without appendices)
- Appendix C** - Phase 3 Lands Approval and Vesting Order dated June 24, 2015
- Appendix D** - Simba Distribution Order dated June 24, 2015
- Appendix E** - Agreement of Purchase and Sale dated August 7, 2015 between BDO Canada Limited, Receiver of Banwell Development Corporation and Hadi Custom Homes Inc. for the purchase of Blocks 149, 151, 153, 155, 157, 159, 161, 163, 165, 167, 169, 171, 173 and 175 (Reserves), Plan 12M-533, City of Windsor
- Appendix F** Statement of Receipts and Disbursements – Banwell
- Appendix G** Statement of Receipts and Disbursements – Royal Timbers
- Appendix H** Statement of Receipts and Disbursements – Real Ranchs Trust Account
- Appendix I** Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn September 24, 2015
- Appendix J** Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn September 25, 2015

1. Introduction and Background

1.1 Introduction

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

1.2 Background

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

- 1.2.4 Since its appointment on June 5, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of the Commercial Plaza and numerous residential building lots contained in the Royal Timbers Subdivision. A number of reports have been filed by the Receiver in these proceedings wherein these activities and transactions are described in greater detail. 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 The Receiver submitted an Eighth Report to the Court dated June 12, 2015 (the "**Eighth Report**") in support of a motion for an Order approving 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 directing the Receiver to complete the transaction (the "**Phase 3 Lands Transaction**") and vesting in Hadi all of the Banwell's right, title and interest in the Phase 3 Lands free and clear of any and all claims and encumbrances (the "**Encumbrances**"). The Eighth Report was also submitted to provide the Court with information on the status of litigation that the Companies are parties to and the results of the review by the Receiver and its legal counsel of the mortgage security held by Simba and D'Amore. A copy of the Eighth Report (without appendices) is attached as **Appendix B**.
- 1.2.12 By Order dated June 24, 2015 (the "**Phase 3 Lands Approval and Vesting Order**") Mr. Justice Thomas approved the Phase 3 Lands Transaction and vested

all of Banwell's right, title and interest in Hadi. A copy of the Phase 3 Lands Approval and Vesting Order is attached as **Appendix C**.

- 1.2.13 By further Order dated June 24, 2015 (the "**Simba Distribution Order**") Mr. Justice Thomas approved the distribution to Simba and the estate of D'Amore of an amount equal to all amounts secured by the Simba and D'Amore mortgages, as defined in the Eighth Report, as and when funds are available to the Receiver provided that prior to making such distribution written notice is provided to the Service List. A copy of the Simba Distribution Order is attached as **Appendix D**.

2. Terms of Reference

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

3.1 This constitutes the Receiver's Ninth Report to the Court (the "**Ninth 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 Eighth Report;
 - (ii) the Receiver's recommendation with respect to the conveyance of the one foot reserve blocks registered in favour of Banwell, being Blocks 149, 151, 153, 155, 157, 159, 161, 163, 165, 167, 169, 171, 173 and 175 (Reserves), Plan 12M-533, City of Windsor (the "**Phase 3 one foot reserve blocks**");
 - (iii) the Receiver's recommendation with respect to Court Action No. 06-CV-006763 (the "**Consolidated Action**")
- (b) In support of an order of the Court:
 - (i) approving the Ninth Report and the activities of the Receiver described therein;
 - (ii) sealing the Confidential Supplement to the Ninth Report until further Order of the Court;
 - (iii) approving the Agreement of Purchase and Sale dated effective August 7, 2015 between the Receiver, as vendor, and Hadi as purchaser, (the "**Phase 3 one foot reserve block APS**"), in respect of the Phase 3 one foot reserves and directing the Receiver to complete the transaction contemplated therein, *nunc pro tunc*, (the "**Phase 3 one foot reserve block Transaction**");
 - (iv) deleting from title all claims and encumbrances to the Phase 3 one foot reserve blocks, except permitted encumbrances;

- (v) 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 September 22, 2015 (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);
- (vi) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**"); and
- (vii) approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**").

4. Receiver's Activities

- 4.1 In its Eighth Report the Receiver reported to the Court on its activities through June 12, 2015.
- 4.2 In this the Ninth Report, the Receiver reports on its activities since the date of the Eighth Report.

Royal Timbers subdivision

- 4.3 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.
- 4.4 The completion of the Phase 3 Lands Transaction is further discussed in Section 5 of the Ninth Report.
- 4.5 As outlined in the Eighth Report, the Receiver has completed the sale of 59 residential lots owned by Banwell. The Receiver has also completed the sale of the 22 Real Ranchs' 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.
- 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. Since the Eighth Report the Receiver has received VTB mortgage payouts and provided partial discharges of several mortgages.
- 4.7 On transactions that have been completed to the date of the Ninth Report, the outstanding VTB mortgage principal at September 22, 2015 is \$1,967,500.00.
- 4.8 In addition, Banwell holds a VTB mortgage from Petvin Homes Inc. ("**Petvin**")

maturing on November 30, 2015, with an outstanding principal of \$164,700. The Petvin VTB mortgage originates from the sale of lots prior to the appointment of the Receiver and was discussed in detail in the Sixth Report of the Receiver.

- 4.9 With all lots in Phase 2 of the Royal Timbers subdivision sold, and homes constructed on most of the lots, the Receiver is of the view that the roadways and sidewalks in Phase 2 should be completed and turned over to the City of Windsor (the "**City**"). As outlined in the Sixth Report of the Receiver, 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 will incur greater than normal costs for base asphalt repair and replacement. Ultimately, the extent of base asphalt repair required will be determined by City specifications and standards.
- 4.11 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.
- 4.12 Based on the tenders received to date, the total cost of the Phase 2 completion will likely exceed \$700,000. The Receiver is holding sufficient funds to pay for the Phase 2 completion and will attempt to complete Phase 2 prior to December 2015. The Receiver has engaged Coco Concrete Inc. to carry out the concrete portion of the project and is currently reviewing the asphalt quotations received.

Commercial Lands

- 4.13 As outlined in the Eighth Report, on May 29, 2015 the Receiver entered into a listing agreement with CBRE Limited ("**CBRE**") for the sale of the commercial property municipally known as 3155 Banwell Road, Windsor ("**3155 Banwell**"). This listing price was \$349,900.
- 4.1 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.

- 4.2 CBRE recommended the sale of 3155 Banwell by a modified tender process, with a deadline for offers of July 22, 2015 (the “**3155 Banwell Sale Process**”).
- 4.3 As a result of the 3155 Banwell Sale Process, and after negotiations, on July 24, 2015 the Receiver accepted an offer to purchase 3155 Banwell for greater than the listing price. The Agreement of Purchase and Sale was subject to certain conditions.
- 4.4 On September 18, 2015 the purchaser of 3155 Banwell advised that the conditions could not be fulfilled and a mutual release was executed.
- 4.5 The Receiver will continue to list 3155 Banwell for sale with CBRE at a list price of \$349,900.
- 4.6 Banwell is the owner of two adjacent parcels of vacant commercial land, located on Tecumseh Road East, comprising approximately 3.8 acres (the “**Tecumseh parcels**”). On June 25, 2015 the Receiver entered into a listing agreement with CBRE. The listing price of \$1,499,000 was determined with reference to appraisals obtained and the input of the realtor.
- 4.7 On September 21, 2015 the Receiver reduced the listing price for the Tecumseh parcels to \$1,420,000.
- 4.8 In addition to 3155 Banwell and the Tecumseh parcels, Banwell and Royal Timbers own seven (7) parcels of commercial land located on the west side of Banwell Road, south of Tecumseh Road. The Receiver intends to list these properties for sale with an experienced commercial realtor in October 2015.

5. Phase 3 Lands – Banwell one foot reserve blocks

- 5.1 The Eighth Report outlined the Receiver's sale of the Phase 3 Lands to Hadi and recommended the Court approve the Phase 3 Lands transaction. By the Phase 3 Lands Approval and Vesting Order Mr. Justice Thomas approved the Phase 3 Lands Transaction and vested all of Banwell's right, title and interest in Hadi.
- 5.2 The Phase 3 Lands are subject to Subdivision Agreement with the City, registered on title as CE 166602 (the "**Subdivision Agreement**"). The developer of the Phase 3 Lands will extend McRobbie Road south of Mulberry Road to Wildwood Drive. The Subdivision Agreement provides for the developer to recover a portion of its servicing costs from property owners on the east side of Robinet Road (the "**Robinet Road property owners**"). At some future date, the Robinet Road property owners may elect to sever the rear portion of their lots to create serviced lots fronting onto McRobbie Road that can be connected into the new municipal services. The Robinet Road property owners are required to pay for their respective share of the servicing costs (the "**Robinet Road Lots Servicing Reimbursement**").
- 5.3 In order to secure the developer's costs of servicing McRobbie Road, a one foot reserve block was registered on title to the Robinet Road Lots in favour of each of the City and Banwell.
- 5.4 The Robinet Road Lots Servicing Reimbursement applies to both the developed Phase 2 of the Royal Timbers subdivision as well as Phase 3, which is still to be developed. The Robinet Road Lots Servicing Reimbursement was also discussed in Section 5 of the Third Report of the Receiver dated November 25, 2013.
- 5.5 The Phase 3 one foot reserve blocks are registered in favour of Banwell against the Robinet Road lots backing onto the McRobbie Road road allowance. It is the Receiver's view that the Phase 3 one foot reserve blocks should be under the control of the party that develops the Phase 3 Lands and incurs the servicing costs. However, the Phase 3 one foot reserve blocks were not included in the

Phase 3 Lands APS between the Receiver and Hadi.

- 5.6 The Phase 3 Lands Transaction was completed on August 10, 2015.
- 5.7 As a condition of the completion of Phase 3 Lands Transaction, on August 7, 2015 the Receiver entered into the Phase 3 one foot reserve blocks APS with Hadi to convey the Phase 3 one foot reserve blocks to Hadi for nominal consideration. The Phase 3 one foot reserve block APS contains the same terms and conditions as the Phase 3 Lands APS. The Phase 3 one foot reserve block APS is attached as **Appendix E** to the Ninth Report.
- 5.8 On August 10, 2015 the Receiver transferred the Phase 3 one foot reserve blocks to Hadi subject to an undertaking to discharge all charges, except permitted encumbrances. The Receiver recommends that the Court approve the completion of the Phase 3 one foot reserve block Transaction, *nunc pro tunc*.
- 5.9 The Receiver requests that the Court grant an Order deleting the Appointment Order and discharging a charge registered in favour of Bank of Montreal from title to the Phase 3 one foot reserve blocks.

6. Litigation – The Consolidated Action

- 6.1 As discussed in Section 7.5 of the Eighth Report, the Receiver and MT undertook a full review of the Consolidated Action.
- 6.2 The review and analysis of the Consolidated Action is contained in the Confidential Supplement. MT provided its recommendation to the Receiver in a letter dated September 22, 2015 which is attached as **Appendix A** to the Confidential Supplement.
- 6.3 The Receiver agrees with MT's recommendation and recommends to the Court that the stay of proceedings in the Receivership Order be lifted to permit the claim being made by D'Amore Construction (2000) Ltd. against Banwell in the Consolidated Action to proceed and that the claims being made by the Companies in the Consolidated Action either (a) be excluded from the property of the receivership to enable the Companies to continue the pursuit of those claims outside of the receivership as they see fit or, (b) be assigned for consideration to the shareholders of the Companies. Given the sensitive nature of the contents of MT's letter, the Receiver seeks a sealing order with respect to that letter.

7. Statement of Receipts and Disbursements of the Receiver

7.1 The Receiver maintains a bank account with BMO in London, Ontario for each of Banwell, Royal Timbers and the Real Ranchs Trust Account. Attached as **Appendix F, Appendix G and Appendix H** 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. The Sixth Report provided full details of the Receiver's receipts and disbursements through February 13, 2015. The Seventh and Eighth Reports provided details only of material changes since the previous report. The Eighth Report included a Statements of Receipts and Disbursements to June 9, 2015. Details of accounts with material changes since June 9, 2015 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. The net proceeds include VTB registration fees of \$3,842.00 paid by the purchasers.
- b) *VTB Mortgage Payouts (\$968,000.00)* — Several VTB mortgages have matured and the full principal was repaid. In addition, the Receiver has provided partial discharges of mortgages where a builder has completed and sold a home and repaid the applicable VTB mortgage on closing. The Receiver has received \$968,000.00.
- c) *GST/HST refunds (\$208,476.40)* — The Receiver has filed HST returns and received refunds totalling \$208,476.40.

7.3 Disbursements - Banwell

- a) *Property taxes (\$505,352.60)* — The Receiver paid \$505,362.60 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, current 2014 property taxes and the first five installments of 2015 property taxes. The amount paid includes property tax arrears and 2014 and 2015 current installments on the Real Ranchs' Lots totalling \$116,335.63 which will be repaid to Banwell from the Real Ranchs Trust Account.
- b) *Receiver's fees (\$330,257.51)* – BDO's account for the period March 11, 2015 to May 17, 2015 in the amount of \$58,165.75, excluding HST, was approved by the Court on June 24, 2015 and one half was subsequently paid from the Banwell account. Also, one half of BDO's account for the period May 17, 2015 to June 19, 2015 in the amount of \$21,034.85, excluding HST, was paid from the Banwell bank account. This account is subject to Court approval.
- c) *Legal fees (\$228,700.97)* – MT's accounts for the period March 1, 2015 to May 31, 2015 in the amount of \$65,777.53, excluding HST, were approved by the Court on June 24, 2015 and one half was subsequently paid from the Banwell account.
- d) *HST Paid (\$145,566.80)* — The Receiver paid \$145,566.80 in HST on its disbursements.
- e) *Appraisal fees (\$40,946.85)* — The Receiver paid \$28,446.85 to Metrix and Valco for appraisals of the Banwell Lots and commercial parcels. \$12,500.00 was paid to Tracey Business Advisors Inc. for an estimate of the fair market value of Banwell and Royal Timbers.
- f) *Accounting fees (\$30,600.00)* — The Receiver paid \$30,600.00 to Hyatt Lassaline LLP for the preparation of Banwell financial statements and income tax returns.

7.4. Receipts – Royal Timbers

- a) There have been no material receipts in the Royal Timbers account since June 9, 2015.

7.5. Disbursements – Royal Timbers

- a) *Property taxes (\$275,722.53)* — The Receiver paid \$275,722.53 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, current 2014 property taxes and the first five installments of 2015 property taxes.
- b) *Receiver's fees (\$196,358.65)* – BDO's account for the period March 11, 2015 to May 17, 2015 in the amount of \$58,165.75, excluding HST, was approved by the Court on June 24, 2015 and one half was subsequently paid from the Royal Timbers account. Also, one half of BDO's account for the period May 17, 2015 to June 19, 2015 in the amount of \$21,034.85, excluding HST, was paid from the Royal Timbers bank account. This account is subject to Court approval.
- c) *Legal fees (\$146,757.30)* – MT's accounts for the period March 1, 2015 to May 31, 2015 in the amount of \$65,777.53, excluding HST, were approved by the Court on June 24, 2015 and one half was subsequently paid from the Royal Timbers account.
- d) *HST Paid (\$59,947.87)* — The Receiver has paid \$59,947.870 in HST on its disbursements
- e) *Accounting fees (\$30,650.00)* — The Receiver paid \$30,650.00 to Hyatt Lassaline LLP for the preparation Royal Timbers financial statements and income tax returns.
- f) *Appraisal fees (\$22,498.90)* — The Receiver paid \$22,498.90 to Metrix and Valco for appraisals of the Commercial Plaza and Commercial Lands.

- g) *Legal fees Affleck Greene - (\$10,417.05)* — The Receiver paid \$10,417.05 to Affleck Greene McMurtry LLP for the legal fees of Peter Greene in connection with the Lepera Appeal, as discussed in the Eighth Report.

7.6. Receipts – Real Ranchs Trust Account

- a) *Mortgage Payouts (\$79,000.00)* — Since June 9, 2015, the Receiver provided a partial discharge of the mortgage on Lot 27 12M-546 upon the repayment the applicable VTB mortgage of \$39,500.00 by Hadi.

7.7. Disbursements – Real Ranchs Trust Account

- a) There have been no disbursements from the Real Ranchs Trust Account since June 9, 2015.
- b) *Property taxes* — The Receiver 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 will be repaid to Banwell when funds are available from the sale of lots and repayment of VTB mortgages.

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

- 8.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees (the “**Receiver’s Charge**”).
- 8.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 8.3 Attached as **Appendix I** is the fee affidavit of Stephen N. Cherniak sworn September 24, 2015 containing BDO’s interim accounts as Receiver for the following periods:
- o May 17, 2015 to June 19, 2015
 - o June 19, 2015 to August 14, 2015
- 8.4 The Receiver’s fees to date, excluding HST, for Banwell and Royal Timbers are as follows:
- | | | |
|---------------------------------------|---|---------------------|
| Fees paid and Court approved | - | \$505,581.14 |
| Fees paid, but not yet Court approved | - | 21,034.85 |
| Fees neither paid, nor Court approved | - | 19,542.25 |
| | | <u>\$546,158.24</u> |
- 8.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 8.6 Attached as **Appendix J** is the fee affidavit of Sherry Kettle, sworn September 25,

2015 containing the interim accounts of MT for the period June 1, 2015 to August 31, 2015.

8.7 MT's fees to date, excluding HST, for Banwell and Royal Timbers are as follows:

Fees paid and Court approved	-	\$375,458.27
Fees paid, but not yet Court approved	-	\$ 0.00
Fees neither paid, nor Court approved	-	<u>31,131.44</u>
		<u>\$406,589.71</u>

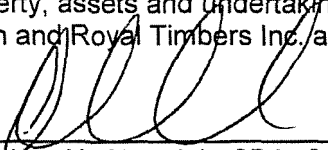
8.8 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees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

9. Recommendations

- 9.1 The Receiver recommends and respectfully requests that this Court grant an Order:
- a) approving the Receiver's Ninth Report, the Confidential Supplement and the activities and actions of the Receiver described therein;
 - b) sealing the Confidential Supplement filed with the Court from the public record until further order of the Court;
 - c) approving the Phase 3 one foot reserve block APS and authorizing and directing the Receiver to complete the Phase 3 one foot reserve block Transaction, *nunc pro tunc*;
 - d) deleting from title all claims and encumbrances to the Phase 3 one foot reserve blocks, except permitted encumbrances;
 - 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
 - f) approving the Professional fees

All of which is Respectfully Submitted this 25th day of September, 2015.

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”

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.) TUESDAY, THE 6TH DAY
JUSTICE THOMAS) OF OCTOBER, 2015

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver 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:

- (a) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated effective August 7, 2015 (the "APS") between the Receiver, as vendor, and Hadi Custom Homes Inc. ("Hadi"), as purchaser, in respect of the Phase 3 one foot reserve blocks, as defined in the Ninth Report of the Receiver dated September 25, 2015 (the "Ninth Report"), and directing the Receiver to

complete the transaction contemplated thereby, *nunc pro tunc* (the "**Transaction**");

- (b) discharging and deleting all claims and encumbrances registered against title to the Phase 3 one foot reserve blocks, described in **Schedule "A"**, except permitted encumbrances

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

ON READING the Ninth Report and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn September 25, 2015, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved and the execution of the APS by the Receiver is hereby authorized and approved, *nunc pro tunc*. 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.
2. THIS COURT ORDERS that the Charge registered as Instrument Number CE163177 (the "**Charge**") in favour of Bank of Montreal, in the Land Registry Office of Essex (No. 12), registered against title to the lands and premises described in **Schedule "A"** hereto (the "**Lands**") is hereby discharged and the Land Registrar is directed to delete such instrument from the Lands.
3. THIS COURT ORDERS that the Receivership Order registered as Instrument Number CE569187 in favour of BDO Canada Limited, in the Land Registry Office of Essex (No. 12), registered against title to the Lands is hereby discharged and the Land Registrar is directed to delete such instrument from the Lands.
4. THIS COURT ORDERS that for the purposes of determining the nature and priority of 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, the net proceeds from the sale of the Lands shall stand in the place and stead of the Lands, and all claims and encumbrances shall attach to the net proceeds from the sale of the Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not

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

- 5. THIS COURT ORDERS 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 Transaction 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.

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

7. 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.



ENTERED AT WINDSOR
In Book No. <u>26</u>
re Document No. <u>1203</u>
on <u>06 Dec</u> 20 <u>15</u>
by <u>[Signature]</u>

SCHEDULE A - Lands

The lands and premises legally described as:

Block 149 (Reserve), Plan 12M533- Windsor; PIN: 01566-0715 (LT)
Block 151 (Reserve), Plan 12M533- Windsor; PIN: 01566-0717 (LT)
Block 153 (Reserve), Plan 12M533- Windsor; PIN: 01566-0719 (LT)
Block 155 (Reserve), Plan 12M533- Windsor; PIN: 01566-0721 (LT)
Block 157 (Reserve), Plan 12M533- Windsor; PIN: 01566-0723 (LT)
Block 159 (Reserve), Plan 12M533- Windsor; PIN: 01566-0725 (LT)
Block 161 (Reserve), Plan 12M533- Windsor; PIN: 01566-0727 (LT)
Block 163 (Reserve), Plan 12M533- Windsor; PIN: 01566-0729 (LT)
Block 165 (Reserve), Plan 12M533- Windsor; PIN: 01566-0731 (LT)
Block 167 (Reserve), Plan 12M533- Windsor; PIN: 01566-0733 (LT)
Block 169 (Reserve), Plan 12M533- Windsor; PIN: 01566-0735 (LT)
Block 171 (Reserve), Plan 12M533- Windsor; PIN: 01566-0737 (LT)
Block 173 (Reserve), Plan 12M533- Windsor; PIN: 01566-0739 (LT)
Block 175 (Reserve), Plan 12M533- Windsor; PIN: 01566-0741 (LT)

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

ORDER

MILLER THOMSON LLP

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

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Tel: 519.931.3509
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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

THE HONOURABLE MR.)	TUESDAY, THE 6TH DAY
)	
JUSTICE THOMAS)	OF OCTOBER, 2015

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

- (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Ninth Report of the Receiver dated September 25, 2015 and all appendices thereto (the "**Ninth Report**"), the Confidential Supplement to the Ninth Report (the "**Confidential Supplement**") and all supplementary motion materials, if any, and directing that

– 2 –

any further service of same be dispensed with such that this motion is properly returnable on October 6, 2015;

- (b) approving the Ninth Report and the activities and conduct of the Receiver described therein;
- (c) sealing the Confidential Supplement to the Ninth Report until further order of the Court;
- (d) 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 September 22, 2015 (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;
- (e) approving the professional fees and disbursements (the "**Professional Fees**") of BDO, as Receiver; and Miller Thomson LLP, counsel to the Receiver; and
- (f) such further and other relief as this Honourable Court deems just.

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

ON READING the Ninth Report and the Confidential Supplement to the Ninth Report dated September 25, 2015 (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 September 25, 2015, filed:

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

3. THIS COURT ORDERS that the Ninth Report and the activities and conduct of the Receiver described in the Ninth Report are hereby approved.

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

5. 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; and

6. 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 September 24, 2015 and Sherry Kettle sworn September 25, 2015 be and the same are hereby approved.



ENTERED AT WINDSOR	
In Book No.	<u>26</u>
re Document No.	<u>1204</u>
on	<u>16 OCT</u> , 20 <u>15</u>
by	<u>[Signature]</u>

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

ORDER

MILLER THOMSON LLP

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London, ON Canada N6A 5R8

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

APPENDIX “E”

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.) WEDNESDAY, THE 24TH DAY
JUSTICE THOMAS) OF JUNE, 2015

B E T W E E N:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

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. pursuant to the Order of Mr. Justice Thomas dated June 5, 2013, for an Order,

- (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Eighth Report of the Receiver dated June 12, 2015 and all appendices thereto (the "Eighth Report"), 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 June 24, 2015;

- (b) approving the Eighth Report and the activities and conduct of the Receiver described therein;
- (c) approving the distribution to Simba Group Developments Limited and the estate of Patrick D'Amore of an amount equal to all amounts secured by the Simba and D'Amore Mortgages, as defined in the Eighth Report, as and when funds are available to the Receiver to make such distribution;
- (d) sealing the Confidential Supplement to the Eighth Report until further order of the Court or the completion of the Hadi Transaction, as defined in the Eighth Report, whichever is earlier;
- (e) approving the Receiver's Interim Statements of Receipts and Disbursements for each of Banwell, Royal Timbers and the Real Ranchs trust account for the period ending June 9, 2015; and
- (f) approving the professional fees and disbursements (the "**Professional Fees**") of BDO, as Receiver, and Miller Thomson LLP, counsel to the Receiver.

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

ON READING the Eighth Report and the Confidential Supplement to the Eighth Report dated June 24, 2105 (the "**Confidential Supplement**") and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Julie Los sworn June 12, 2015, filed:

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

4. THIS COURT ORDERS that the Receiver is authorized to distribute to Simba Group Developments Limited and the Estate of Patrick D'Amore an amount equal to the amount secured by the Simba and D'Amore Mortgages as and when funds are available to the Receiver to make such distribution provided that prior to making any such distribution the Receiver shall provide written notice (the "Notice") to the Service List of its intention to do so and shall be at liberty to make such distribution unless the Receiver receives an objection to same within 10 days of the giving of the Notice;

5. THIS COURT ORDERS the Confidential Supplement be sealed until further order of the Court or the completion of the Hadi Transaction, whichever is earlier;

6. 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; and

7. 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 June 12, 2015 and Sherry Kettle sworn June 11, 2015 be and the same are hereby approved.



ENTERED AT WINDSOR	
In Book No.	<u>26</u>
re Document No.	<u>804</u> 821
on <u>29</u> <u>June</u> 20 <u>15</u>	
by	<u>CO</u>

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

ORDER

MILLER THOMSON LLP

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

APPENDIX “F”

Simba Mortgage Summary

Banwell Development Corporation

Mortgage Instrument	Lands secured	Registration Date	Principal	Due Date	Interest Rate (semi-annually)	Interest Terms	Interest Commencement Date
CE269275	Tecumseh Road Commercial parcels	April 24, 2007	\$429,565.66	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The lands have not been serviced. Therefore, the Interest Free Date is Dec. 16, 2013.</p>	December 16, 2013
CE269334	Royal Timbers Residential Phase 2 lands	April 24, 2007	\$483,765.14	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The consulting engineer RC Spencer Associates Inc. has advised the Receiver that its field book indicates the first day of construction was January 17, 2005. Therefore, the Receiver takes the position that the Interest Free Date is October 17, 2006.</p>	October 17, 2006
CE269359	Royal Timbers Residential Phase 3 lands - Block 120 Block 121 Block 122 12M-533	April 25, 2007	\$240,495.63 Repaid June 17, 2016	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p>	October 17, 2006

Simba Mortgage Summary

						<p>Blocks 121 and 122 were sold by the Receiver, unserviced on July 31, 2015. Block 120 was sold by the Receiver on June 6, 2014, but had been serviced several years earlier as part of Residential Phase 2.</p> <p>The consulting engineer RC Spencer Associates Inc. has advised the Receiver that its field book indicates the first day of Phase 2 construction was January 17, 2005. Therefore, the Receiver takes the position that the Interest Free Date is October 17, 2006.</p>	
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Royal Timbers Inc.

Mortgage Instrument	Lands secured	Registration Date	Principal	Due Date	Interest Rate (semi-annually)	Interest Terms	Interest Commencement Date
CE163211	Commercial Plaza	Aug. 10, 2005	\$229,123.47 Repaid Sept. 16, 2016	16-Mar-2007	6.00%	<p><i>"Interest free until a date (herein "the interest free date") which 21 months from the registration date of this charge."</i></p> <p>Based on the registration date of Aug. 10, 2005, the Receiver takes the position that Interest Free Date is May 10, 2007.</p>	May 10, 2007
CE269241	Royal Timbers Commercial Block 200	April 24, 2007	\$102,245.54	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p>	January 9, 2009

Simba Mortgage Summary

						The Receiver understands Block 200 comprises part of Commercial Phase 2, along with Blocks 300 and 400. Based on the servicing of Block 300 (see below) the Receiver takes the position the Interest Free Date is January 9, 2009.	
CE269243	Royal Timbers Commercial Block 300	April 24, 2007	\$252,692.54	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The Amended Trial Record of J. Lepera Contracting Inc. ("Lepera") dated September 11, 2007 indicates the site servicing of Block 300 was performed by Lepera between April 9, 2007 and June 25, 2007. Accordingly, the Receiver takes the position the Interest Free Date is January 9, 2009.</p>	January 9, 2009
CE269244	Royal Timbers Commercial Block 400	April 24, 2007	\$103,706.19	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The Receiver understands Block 400 to be part of Commercial Phase 2, along with Blocks 200 and 300. Based on the servicing of Block 300 (see above) the Receiver takes the position the Interest Free Date is January 9, 2009.</p>	January 9, 2009

Simba Mortgage Summary

CE269246	Royal Timbers Commercial Block 500	April 24, 2007	\$289,208.81	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The lands have not been serviced. Therefore, the Interest Free Date is December 16, 2013.</p>	December 16, 2013
CE269247	Royal Timbers Commercial Block 600	April 24, 2007	\$96,402.94	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The lands have not been serviced. Therefore, the Interest Free Date is December 16, 2013.</p>	December 16, 2013
CE269248	Royal Timbers Commercial Block 700	April 24, 2007	\$83,257.08	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The lands have not been serviced. Therefore, the Interest Free Date is December 16, 2013.</p>	December 16, 2013
CE269250	Royal Timbers Commercial Block 800	April 24, 2007	\$194,266.52	39 months from Interest	6.00%	<p><i>Interest free until a date (herein "the interest free 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</i></p>	December 16, 2013

Simba Mortgage Summary

				Free Date		<p><i>of the development to which this charge secures payment.</i></p> <p>The lands have not been serviced. Therefore, the Interest Free Date is December 16, 2013.</p>	
CE269253	Royal Timbers Commercial Block 900	April 24, 2007	\$210,569.77	39 months from Interest Free Date	6.00%	<p><i>Interest free until a date (herein "the interest free 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.</i></p> <p>The lands have not been serviced. Therefore, the Interest Free Date is December 16, 2013.</p>	December 16, 2013

APPENDIX “G”



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February 2, 2017

Delivered via E-mail

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Tony Van Klink
Direct Line: 519.931.3509
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File: 082873.0010

Attention: Stephen N. Cherniak

Dear Sir:

Re: Advances in the amount of \$871,000 made by Patrick D'Amore to Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers" and together with Banwell, the "Corporations")

Following is our report to you on matters relating to the \$871,000 purportedly advanced by Patrick D'Amore to the Corporations between January 16, 2009 and July 31, 2009. Our report addresses the following issues:

1. Was the \$871,000 advanced as loans?
2. If the \$871,000 was advanced as loans, are the loans repayable to the estate of Patrick D'Amore (the "Estate") or to Scott D'Amore ("Scott") and Kevin D'Amore ("Kevin") as shareholders of Banwell?
3. If the \$871,000 was advanced as loans, is a claim for the repayment of the loans statute barred under the *Limitations Act*?

Executive Summary

As discussed below, our conclusions are as follows:

1. The primary stakeholders, Scott, Kevin and Murray Troup ("Troup"), are agreed that the \$871,000 was advanced as loans. As such, for the purposes of our report we accept that the \$871,000 was advanced as loans;
2. The loans would be repayable to Scott and Kevin as shareholders of Banwell only if the loans were impressed with a trust in their favour. There is insufficient evidence in the Materials, as defined below, to support the existence of such a trust. As such, in the absence of other evidence supporting the existence of a trust, in our opinion the loans are repayable to the Estate; and
3. In our opinion, a claim for the repayment of the loans would not be statute barred under the *Limitations Act*.

Materials Reviewed

For the purposes of this report, we have reviewed the materials filed by Scott, Kevin and 928579 Ontario Limited on the motion previously brought by Scott by Notice of Motion dated September 19, 2013 consisting of the following (the "Materials"):

1. Moving Party's Motion Record containing Scott's affidavit sworn September 19, 2013 ("Scott's Affidavit");
2. Supplementary Moving Party's Motion Record containing the affidavit of James Branoff sworn September 24, 2013;
3. Kevin's affidavit sworn September 23, 2013 ("Kevin's Affidavit"); and
4. Responding Motion Record of 928579 Ontario Limited containing Troup's affidavit sworn September 26, 2013.

Analysis

Was the \$871,000 advanced by Patrick as loans?

Exhibit 2 to Scott's Affidavit includes a summary of the \$871,000 purportedly advanced by Patrick. The funds advanced to Banwell total \$865,500 of which \$865,000 was advanced by cheque and the remaining \$500 by cash advances. The \$5,500 advanced to Royal Timbers was a single cash advance.

Exhibit 2 to Scott's Affidavit also includes copies of bank account statements and cheques for the funds advanced to Banwell by way of cheque. There are copies of cheques totalling \$395,000 of which \$375,000 was drawn on a TD Canada Trust account. The account statements show the account as being in the names of Patrick D'Amore, Mary Patricia D'Amore and Dominic D'Amore. The cheques themselves, however, do not include the name of Dominic D'Amore. Each of the cheques appear to bear the signature of Patricia D'Amore alone. The remaining cheque in the amount of \$20,000 was drawn on an account in the name of D'Amore Construction (Windsor) Ltd. and appears to have been signed by Patrick D'Amore. Some of those cheques bear the notation "loan" in the memo line, while others do not.

There is no copy of a cheque to support the \$470,000 advanced on June 12, 2009, although there is an account statement showing a certified cheque in that amount clearing the TD Canada Trust account on June 15, 2009. On that same date, a cheque in the amount of \$460,475 was drawn on the Banwell account in favour of Bank of Montreal which, according to Scott's Affidavit, was not accepted by Bank of Montreal and was returned to Banwell and re-deposited to its account. Based on Scott's Affidavit, the \$460,475 appears to have been funded from the \$470,000 cheque drawn on the TD Canada Trust account.

Scott's Affidavit asserts that the \$871,000 was advanced by Patrick as loans. Troup, who would have the most to gain by denying the existing of the loans, agrees in his affidavit that the \$871,000 was advanced as loans, although he states that the full \$871,000 is owing by and a debt of Banwell rather than \$865,500 being a debt of Banwell and \$5,500 being a debt of Royal Timbers.



Kevin's Affidavit does not dispute that the \$871,000 was advanced as loans. Kevin's Affidavit takes issue only with whether the loans should be repaid to the Estate or to himself and Scott as shareholders of Banwell.

Although the documents supporting the loans are not perfect – there is no cheque copy for the June 12, 2009 advance in the amount of \$470,000, not all of the cheques bear the notation "loan" on their face and there are no documents supporting the cash advances – given that Scott, Kevin and, most importantly, Troup, appear agreed that the \$871,000 was advanced as loans and remains unpaid, for the purposes of this report, we proceed on the basis that the \$871,000 was advanced as loans.

Is the \$871,000 repayable to the Estate or to the shareholders?

Patrick held 50% of the shares in Banwell, the remaining 50% being held by 928579 Ontario Limited. Patrick held the shares in trust for Scott and Kevin pursuant to Declarations of Trust dated March 11, 2003 (Exhibit A to Kevin's Affidavit). The Declarations of Trust provide that Patrick held the shares in trust for Kevin and Scott from and after March 11, 2003 and that all payments, income, profits, losses and expenses derived from the shares were to be for the benefit and account of Kevin and Scott as the beneficial owners.

Kevin's Affidavit seems to suggest that if the loans were shareholder loans, it necessarily follows that the loans are repayable to Scott and Kevin as the holders of the shares. Both Kevin and Troup refer to the loans in their totality (\$871,000) and do not make a distinction between the loans made to Banwell (\$865,000) and the loans made to Royal Timbers (\$5,500). If Kevin's position that the loans are repayable to the shareholders is correct, it would follow that the \$5,500 loan to Royal Timbers would be repayable to Banwell as the shareholder of Royal Timbers.

Characterizing the loans as shareholder loans does not mean that the loans, of necessity, must be repayable to Scott and Kevin as the present owners of the shares (and the beneficial owners of the shares at the time the loans were made). The right of a shareholder to seek repayment of loans made to a corporation is not an incident of share ownership. Although the timing and manner of repayment of a shareholder loan may be affected by a corporation's by-laws and articles or a unanimous shareholder agreement, the right of a shareholder to repayment of a loan made by the shareholder to a corporation arises from the debtor-creditor relationship between the corporation and the shareholder, not the ownership of the shares.

Patrick advanced \$871,000 to Banwell and Royal Timbers. That money was not repaid. The critical issue is not whether the loans are characterized as "shareholder loans" or "personal loans" but rather whether in making the loans, or any time thereafter, the loans become trust property for the benefit of Scott and Kevin. If they did, then the loans are now repayable to Scott and Kevin. If the loans did not become trust property, then they are repayable to the Estate. The description in the e-mails and documents in the Materials of the loans as "shareholder loans" or "shareholder advances" is simply a factor to consider in determining whether a trust was created in respect of the loans.



The Declarations of Trust extend to the shares in Banwell only, not the loans. There is no document in the Materials which extends the scope of the Declarations of Trust to include the loans as trust property under the Declarations of Trust.

If the loans are subject to a trust, that trust must exist independent of the Declarations of Trust. The Materials do not, in our view, evidence the existence of a trust independent of the Declarations of Trust. In our view, the description in the documents contained in the Materials of the loans as "shareholder loans" and "shareholder advances" is not sufficient, without more, to support the conclusion that the loans were subject to a trust for the benefit of the beneficial owners of the shares. Patrick was a shareholder in Banwell at the time the loans were made. Referring to the loans as "shareholder loans" is consistent with Patrick's ownership of the shares, as trustee. Without evidence which establishes that the references in the documents to "shareholders" were intended to be references to the beneficial owners of the shares rather than Patrick as the legal owner of the shares, characterizing the loans as "shareholder loans" does not, without more, evidence the creation of a trust by Patrick with respect to the loans for the benefit of the beneficial owners of the shares.

The fact that loans were made by Patrick at a time when he held the shares as trustee also does not, without more, mean that the loans became trust property. Loans made by a trustee do not automatically become trust property. For the loans to become trust property, the Declarations of Trust must either have been expanded to include the loans or a separate trust must have been created in respect of the loans. There is insufficient evidence in the Materials to support either the expansion of the scope of the Declarations of Trust or the creation of a separate trust in respect of the loans.

In the absence of a trust with respect to the loans, the loans are repayable to the Estate.

Is the repayment of the loans statute barred under the Limitations Act?

The Materials do not disclose that there were any repayment terms for the loans. In those circumstances, the terms of repayment are determined having regard to the overall factual context in which the loans were made (*Animal House Investment Inc. v Lisgar Development Ltd.*, 2009 CanLII 23886 (ONSC); affirmed 2010 ONCA322 (CanLII), paragraph 11). As a general rule, if a loan does not have terms of repayment, the loan is to be repaid on demand or within a reasonable time (*Koch v. Cactus Cafe Jasper Ave Ltd.*, 1995 Carswell BC 2377, paragraph 15, *Glacier Creek Development Corporation v. Pemberton Benchlands Housing Corporation*, 2007 BC SC 286 (CanLII), paragraph 58, *Surette v. Surette*, 1980 Carswell NS 186, paragraph 22, *Burgess v. 041497 (N.B.) Ltd.* 1993 CanLII 9155 (NB QB), pages 13-14 and *Skuy v. Greenhough Harbour Corporation*, 2002 ONSC 6968 (CanLII) paragraph 31).

The loans were made in 2009 and fully advanced by July, 2009. The Receivership Order was made on June 5, 2013. The loans were made to assist the Corporations with their cash needs. There is nothing in the Materials to suggest that the loans were intended to be short term. To the contrary, given that the loans were made to assist the Corporations with their cashflow requirements, it is a reasonable inference that the repayment of the loans would be dependent upon the cashflow of the Corporations to make repayment. The fact that security was sought for the loans also suggests a longer term arrangement.



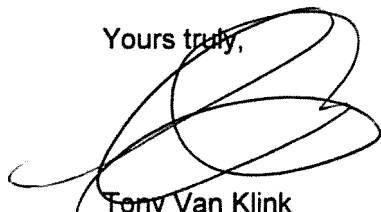
The limitation period in respect of demand obligation begins to run on the date a demand is made (*Limitations Act, 2002*, section 5(3)). A demand in respect of a demand obligation must be clear and unequivocal (*Bank of Nova Scotia v. Williamson, 2009 ONCA 754 (CanLII)*).

In paragraph 4 of his affidavit, Scott deposes that Patrick requested repayment or security for the loans. The Notice to Arbitrate attached to Kevin's Affidavit seeks, among other relief, an order requiring Banwell and Royal Timbers to repay or provide adequate security for the loans. The request that the loans be repaid or security be provided does not, in our view, constitute a clear and unequivocal demand for payment (see *Henry v. Greig, 2015 ONSC 168 (CanLII)*). The fact that security was requested as an alternative to payment is inconsistent with a demand which, if not met, would start the running of the limitation period.

The factual context in which the loans were made is inconsistent with the loans having been due and payable prior to the making of the Receivership Order (or, at a minimum more than two years prior to the date of the Receivership Order). In the absence of a clear and unequivocal demand for payment, in our opinion the limitation period had not started to run when the Receiver was appointed. Although the Receivership Order does not stay the running of a limitation period, nothing has occurred since the date of the Receivership Order to trigger the running of the limitation period.

If you have any questions or would like to discuss this matter further, do not hesitate to contact me.

Yours truly,



Tony Van Klink
TVK/jl



APPENDIX “H”

**BDO Canada Limited Court Appointed Receiver of
Banwell Development Corporation
Statement of Receipts and Disbursements
June 5, 2013 through February 28, 2017**

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
VTB mortgage payouts	2,145,500.00
GST/HST refunds	274,032.01
Loan from Royal Timbers	250,000.00
Pelvin 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
Income Tax refund (2010)	20,479.00
Interest earned on GIC's	7,795.48
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
City of Windsor - indemnity refund re sewer connection permit	800.00
Royal Timbers - share of interest on Receiver's Certificate #1	<u>557.36</u>
	4,941,062.64

Disbursements:	
Construction:	
Paving - Block 120 & Phase 2	\$ 445,666.39
Concrete - Phase 2 sidewalks & curbs	416,280.69
Sewer flushing & camera inspection	73,963.16
Landscaping, sod, storm retention pond clean-up	<u>53,919.06</u>
	989,829.30
Receiver's fees	509,917.34
City of Windsor - Property taxes	437,405.70
HST paid on disbursements	289,506.88
Legal Fees	289,020.41
Consulting/commission fees on lot sales	148,750.00
Repayment of Receiver's Certificate # 1	125,000.00
Funds advanced to Royal Timbers Receiver's account	114,158.71
Professional fees - engineering	98,094.20
Legal fees re: Lepera Appeal (Affleck, Greene, McMurtry LLP)	45,804.16
Appraisal fees	40,947.45
Accounting fees (Hyatt Lassaline LLP)	39,300.00
Repairs and maintenance	35,224.89
Advertising	16,838.45
Utilities - underground service installation	5,725.40
Utilities - storm retention pond	<u>4,053.93</u>
	9,779.33
BMO - Letter of Credit admin charge	6,750.00
City of Windsor - Application fees	5,012.00
Insurance	4,918.32
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	1,119.92
Interest paid on Receiver's Certificate # 1	1,114.72
Miscellaneous legal	568.75
Fees to renew corporation name	<u>185.80</u>
	3,217,830.39

Excess receipts over disbursements \$ 1,723,232.25

Represented by:

Payments to Secured Creditors:	
Payment to secured creditor (BMO)	500,752.08
Payment to secured creditor (WFCU)	<u>469,619.10</u>
	970,371.18
Funds held by Receiver:	
Funds invested in GIC	700,000.00
Balance in Receiver's account as at February 28, 2017	<u>52,861.07</u>
	752,861.07
	<u>\$ 1,723,232.25</u>

NOTE:

In December 2013, following the sale of the Royal Timbers Commercial Plaza, Royal Timbers ("RT") advanced \$250,000 to Banwell to fund the repayment of Banwell's indebtedness to BMO in the amount of \$502,752.08. Subsequently, Banwell made the following repayments: 1) Sept. 16 /2016 - the principal balance of the Simba Group Developments Limited mortgage on the Commercial Plaza in the amount of \$229,123.47; 2) Feb. 8 /2017 - First instalment of RT 2017 property taxes in the amount of \$8,512.03. The balance owing from Banwell to RT at Feb. 28, 2017 is \$12,364.50. All other funds advanced between RT, Banwell and Real Ranchs have been repaid.

APPENDIX “I”

APPENDIX “J”

KEVIN D'AMORE

and

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

Court File No: CV-11-17088

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD
(RETURNABLE MARCH 27, 2017)**

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