

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE REGIONAL SENIOR) TUESDAY, THE 13th DAY
JUSTICE THOMAS) OF FEBRUARY, 2018

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("**Royal Timbers**") pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "**Receiver**"), for, *inter alia*, an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale dated effective January 11, 2018 (the "**APS**") between the Receiver, as vendor, and Taplane Inc. (the "**Purchaser**"), as purchaser, and directing the Receiver to complete the transaction contemplated thereby in respect of the real property described on Schedule "A" (the "**Real Property**") and appended as Appendix "A" to the Confidential Supplement to the Eleventh Report of the Receiver dated February 5, 2018 (the "**Eleventh Report**"), and vesting in the Purchaser, or as directed by the Purchaser on closing, all of Royal Timbers' right, title and

interest in and to the Real Property, was heard this day at the Courthouse, ~~245 Windsor~~ ^{80 DUNDAS ST.} Avenue, ^{LONDON} Windsor, Ontario.



ON READING the Eleventh Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn February 7, 2018, filed:

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

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser, or as directed by the Purchaser on closing, substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**"), all of Royal Timbers' right, title and interest in and to the Real Property shall vest absolutely in the Purchaser, or as directed by the Purchaser on closing, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Thomas dated June 5, 2013; and (ii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D" (the "**Permitted Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Real Property are hereby expunged and discharged as against the Real Property.

3. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby

directed to enter the Purchaser, or as directed by the Purchaser on closing, as the owner of the Real Property described in Schedule "A" hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property described in Schedule "A" hereto all of the Claims listed in Schedule "C" hereto.

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

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

6. THIS COURT ORDERS that, notwithstanding:

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

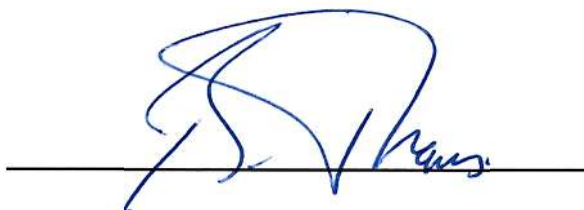
the vesting of the Real Property in the Purchaser, or as directed by the Purchaser on closing, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Royal Timbers and shall not be void or voidable by creditors of Royal Timbers, nor shall it constitute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

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

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

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

ENTERED AT WINDSOR	
In Book No.	29
Document No.	178
on	FEB 15 2010
by	EB



Schedule A – Real Property

The lands and premises legally described as:

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

Schedule B

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

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

B. Pursuant to an Order of the Court dated February ___, 2018, the Court approved an Agreement of Purchase and Sale dated effective January 11, 2018 (the "**APS**") between the Receiver, as vendor, and Taplane Inc., as purchaser (the "**Purchaser**") in respect of the real property legally described on Schedule B1 hereto (the "**Real Property**") and appended as Appendix "A" to the Confidential Supplement of the Receiver dated February 5, 2018, and vesting in the Purchaser, or as directed by the Purchaser on closing, all of Royal Timbers' right, title and interest in and to the Real Property, which vesting is to be effective with respect to the Real Property upon the delivery by the Receiver to the Purchaser, or as directed by the Purchaser on closing, of a certificate confirming (i) the payment by the Purchaser of the

Purchase Price for the Real Property; (ii) that the conditions to closing as set out in the APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____
Name:
Title:

Schedule B1 – Real Property

The lands and premises legally described as:

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

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

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

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

- a) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- b) Any registered restrictions or covenants that run with the Real Property provided the same have been complied with in all material respects;
- c) Any easements, rights of way, or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Real Property;
- d) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- e) Any minor encroachments which might be revealed by an up to date survey of the Real Property;
- f) Instrument No. 12R19305 – Plan Reference;
- g) Instrument No. LT336126 – Bylaw;
- h) Instrument No. LT336127 – Transfer Easement;
- i) Instrument No. R1539703 – Agreement - Site Plan Control;
- j) Instrument No. LT387020 – Notice - Site Plan Control Agreement;
- k) Instrument No. R1539705 – Application Annex Restrictive Covenants;
- l) Instrument No. LT387024 – Notice Agreement – Access & Easement Agreement;
- m) Instrument No. R1539706 – Agreement – Access & Easement Agreement;
- n) Instrument No. R1541523 – Transfer Easement;
- o) Instrument No. CE259459 – Application Consolidation Parcels;
- p) Instrument No. CE341496 – Notice – Site Plan Control; and
- q) Instrument No. CE449307 – LR's Order.

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Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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Receiver of Banwell Development
Corporation and Royal Timbers Inc.

KEVIN D'AMORE

and

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ONTARIO LIMITED, SCOTT D'AMORE and ROYAL
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