

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 APRIL 21, 2015)

April 10, 2015

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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

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- 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

NOTICE OF MOTION
(returnable April 21, 2015)

BDO CANADA LIMITED ("BDO"), in its capacity as court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of Banwell Development Corporation ("**Banwell**") and Royal Timbers Inc. ("**Royal Timbers**") pursuant to the Order of Mr. Justice Thomas dated June 5, 2013 (the "**Appointment Order**"), will make a motion to Mr. Justice Thomas to be heard on Tuesday, April 21, 2015 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

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

THE MOTION IS FOR :

1. An Order substantially in the form attached hereto as **Schedule "A"**:
 - (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Seventh Report of the Receiver dated April 10, 2015 and all appendices thereto (the "**Seventh Report**"), and any supplementary motion materials, if any, and

directing that any further service of same be dispensed with such that this motion is properly returnable on April 21, 2015;

- (b) approving the Seventh Report and the activities and conduct of the Receiver described therein; and
- (c) 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 April 7, 2015; and

2. such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

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

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

- (a) the Seventh Report of the Receiver and the appendices attached thereto dated April 10, 2015;
- (b) all other pleadings and materials previously filed in these proceedings; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

April 10, 2015

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KEVIN D'AMORE
Applicant

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

NOTICE OF MOTION
(RETURNABLE APRIL 21, 2015)

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Receiver of Banwell Development
Corporation

TAB "A"

SCHEDULE "A"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.)	TUESDAY, THE 21 ST DAY
)	
JUSTICE THOMAS)	OF APRIL, 2015

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

- (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Seventh Report of the Receiver dated April 10, 2015 and all appendices thereto (the "Seventh Report"), and any supplementary motion materials, if any, and directing that any

further service of same be dispensed with such that this motion is properly returnable on April 21, 2015;

- (b) approving the Seventh Report and the activities and conduct of the Receiver described therein; and
- (c) 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 April 7, 2015.

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

ON READING the Seventh 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 _____ sworn April __, 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 Seventh 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 Seventh Report shall have the same meaning as in the Seventh Report.
3. THIS COURT ORDERS that the Seventh Report and the activities and conduct of the Receiver described in the Seventh Report are hereby approved.
4. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs Trust Account Statement of Receipts and Disbursements be and the same are hereby approved.

KEVIN D'AMORE

Applicant

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

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

ORDER

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Receiver of Barwell Development
Corporation and Royal Timbers Inc.

TAB "2"

**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**

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

April 10, 2015

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- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - Sixth Report to the Court of Receiver dated February 20, 2015 (without appendices)
- Appendix C** - Real Ranchs' Lots Sales Order dated March 3, 2015
- Appendix D** - Block 200 Approval and Vesting Order dated March 3, 2015
- Appendix E** - Litigation Chart
- 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

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 approved 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, vested 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 The Receiver submitted a Sixth Report to the Court dated February 20, 2015 (the "**Sixth Report**") in support of a motion for, among other things, an Order approving the process for the power of sale of 22 lots owned by Real Ranchs Inc. ("the **Real Ranchs' Lots**) and sales transactions for 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 Sixth Report was also submitted in support of a motion for, among other things, an Order approving the sale of the commercial lot municipally known as 3990 Wildwood Drive, Windsor ("**Block 200**") to 838605 Ontario Limited ("**838 Ontario**") and directing the Receiver to complete the transaction (the "**Block 200 Transaction**") and vesting in 838 Ontario all of Royal Timbers' right, title and interest in Block 200 free and clear of any and all claims and encumbrances (the "**Encumbrances**"). A copy of the Sixth Report (without appendices) is attached as **Appendix B**.
- 1.2.10 By Orders dated March 3, 2015 (the "**Real Ranchs' Lots Sale Order**" and "**Block 200 Approval and Vesting Order**"), Mr. Justice Thomas, among other things, approved the sale process and sale transactions for the Real Ranchs Lots, approved the Block 200 Transaction, vested all of Royal Timbers' right, title and interest in Block 200 in 838 Ontario, 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 Block 200 prior to completing the Block 200 Transaction. A copy of the Real Ranchs Lots Sale Order and Block 200 Approval and Vesting Order are attached as **Appendix C and Appendix D** respectively.

2. Terms of Reference

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

- 3.1 This constitutes the Receiver's Seventh Report to the Court (the "**Seventh 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 Sixth Report;
 - (ii) the status of litigation that the Companies are parties to;
 - (iii) the Receiver's position with respect to the Cross-Motion of 928579 Ontario Limited;
 - (b) In support of an order of the Court:
 - (i) approving the Seventh Report and the activities of the Receiver described therein; and
 - (ii) 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.

4. Receiver's Activities

- 4.1 In its Sixth Report the Receiver reported to the Court on its activities through February 20, 2015.
- 4.2 In this the Seventh Report, the Receiver reports on its activities since the date of the Sixth Report.

Distribution to BMO

- 4.3 Pursuant to the Real Ranchs' Lots Sale Order, on April 7, 2015 the Receiver paid \$500,752.08 to BMO in full payment of Banwell's indebtedness to BMO.
- 4.4 BMO continues to provide Letters of Credit in favour of the City of Windsor of approximately \$536,000 as security for Banwell's obligations in the Royal Timbers subdivision. When sufficient funds are available from the repayment of VTB mortgages, the Receiver will purchase a term deposit in this amount, to be held in trust to secure BMO's liability under the Letters of Credit.

Sale of Royal Timbers subdivision lots

- 4.5 On March 19, 2015, pursuant to the Real Ranchs Lots Sale Order, the Receiver completed the sale of Lot 27, Plan 12M-546 to Hadi Custom Homes Inc. ("Hadi").
- 4.6 On March 31, 2015, pursuant to the Real Ranchs Lots Sale Order, the Receiver completed the sale of Lot 100, Plan 12M-503 ("Lot 100") to 1128631 Ontario Ltd. o/a Bungalow Group ("Bungalow").
- 4.7 On March 31, 2015, pursuant to the Amended Omnibus Approval and Vesting Order, the Receiver also completed the sale of Lot 99 and Lot 101, Plan 12M-503 to Bungalow.
- 4.8 On April 2, 2015, pursuant to the Real Ranchs Lots Sale Order, the Receiver completed the sale of Lots 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 42, 43, 45, 46, 47, 48, 49, 50, 51 and 52, Plan 12M-546 to 1362279 Ontario Ltd. ("136 Ontario").

- 4.9 On April 2, 2015, pursuant to the Amended Omnibus Approval and Vesting Order, the Receiver also completed the sale of Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13, Plan 12M-546 to 136 Ontario.
- 4.10 The Receiver has completed the sale of 52 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 75 lots sold to date.
- 4.11 On March 25, 2015 the Receiver entered into an Agreement of Purchase and Sale with Hadi for the sale of 7 lots that are included in the Amended Omnibus Approval and Vesting Order (the "Hadi 7 lot APS"). These lots were subject to a first right of refusal granted to Amine Construction Limited ("Amine") under a previously completed Agreement of Purchase and Sale with Amine for five lots. The Receiver provided Amine and its legal counsel with notice of an offer by Hadi for the lots and Amine did not exercise the right of first refusal. The scheduled closing date of the Hadi 7 lot APS is May 29, 2015.
- 4.12 At this time, 5 lots owned by Banwell remain available for sale, of which 4 require roadwork and servicing to be completed before they will be saleable. There are additional, unserviced lands in Phase 3 of the subdivision which are discussed in Section 4.16 of this report.
- 4.13 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. On transactions that have been completed to the date of the Seventh Report, the outstanding VTB mortgage principal at April 7, 2015 is \$2,269,500.
- 4.14 In addition, Banwell holds a VTB mortgage from Petvin Homes Inc. ("Petvin") 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 Sections 4.18 to 4.21 of the Sixth Report.

Block 200

- 4.15 On April 2, 2015, pursuant to the Block 200 Approval and Vesting Order, the Receiver completed the sale of Block 200

Offer for Phase 3

- 4.16 The Receiver received an offer to purchase lands in the Royal Timbers subdivision consisting of Lots 103, 104, 105 and 106, Plan 12M-533 ("**Lots 103-106**"), Block 121, Plan 12M-533 ("**Block 121**") and Block 122, Plan 12M-533 ("**Block 122**") (collectively, the "**Phase 3 Lands**"). The offer is from a related party.
- 4.17 Lots 103-106 are located within Phase 2 of the Royal Timbers subdivision, adjacent to existing homes, but there is no road or servicing to Lots 103-106
- 4.18 Block 121 and 122 are considered to be Phase 3 of the Royal Timbers subdivision. A draft plan has been prepared to create 9 lots in Block 121 and 7 lots in Block 122. There is no road or servicing to Block 121 and 122. In order to create serviced building lots, McRobbie Road would have to be extended from Mulberry Road through to Wildwood Drive.
- 4.19 The Receiver obtained two appraisals of the Phase 3 Lands. Considering that the offer price was less than the appraised values obtained by the Receiver, and other factors as discussed below, the Receiver did not accept the offer.
- 4.20 Since Phase 3 is not serviced, there are few directly comparable sales and valuation of the land is more subjective. Taking into account the subjectivity of the valuation process and that the offer was submitted by a related party, it is the Receiver's view that the Phase 3 Lands should be more widely exposed to the market.

5. Litigation

5.1 Section 5 of the Second Report provided a summary of several court actions that the Companies are party to. The current status of the litigation is as follows¹:

A. **Banwell**

5.2. Banwell is plaintiff in the following Court actions:

- (a) **Court Action No. Unknown:** Banwell is seeking damages of \$1,275,000 from D'Amore Construction (2000) Ltd. ("**D'Amore Construction**") resulting from D'Amore Construction's alleged failure to meet a contractual deadline of May 1, 2005 for the completion of servicing Phase 2 of the Royal Timbers Subdivision. Banwell claims damages for lot sales that could not be completed, as well as the subsequent decline in the value of these lots due to softening market conditions, arising from the delay. A settlement conference has taken place. No offers to settle have been served.
- (b) **Court Action No. 06-CV-006763:** This action was commenced as Court File No. 55047 in London, Ontario. Banwell, together with Royal Timbers, as plaintiffs, seek damages of \$500,000 from D'Amore Construction arising from apparent deficiencies in the grading of the Vacant Commercial Lands during the approximate period 2005 to 2007. The Companies allege that D'Amore Construction filled the lands to a level higher than that specified in the Grading Plan. In addition, fill was used that was not suitable for the application. The Companies' claim damages for the costs incurred to remove the excess and

¹ See Litigation Chart at **Appendix E**.

unsuitable fill. No settlement conference has taken place and no offers to settle have been served.

By Order of Justice Campbell Dated September 28, 2010, this action was consolidated with Court Action No. 06-CV-6763, which is described further below, and transferred to Windsor (the "**Consolidated Action**").

Pursuant to the Order of Justice Gates dated May 29, 2013 at a status hearing in the Consolidated Action, a timetable was established. Productions were exchanged prior to the receivership but the remaining steps in the timetable were not completed by the parties because of the stay of proceedings arising from the Appointment Order. By Order of Justice Quinn dated April 22, 2014, the date by which the Consolidated Action shall be set down for trial was extended by the length of the stay of proceedings imposed by the Appointment Order. By Order dated May 2, 2014, Justice Campbell set out the title of proceedings for the Consolidated Action which is continued under Court File No. 06-CV-006763.

5.3. Banwell is defendant in the following Court actions:

- (a) Two (2) foreclosure actions commenced by Simba Group Developments Ltd. ("**Simba**") and The estate of D'Amore having Court File Nos. CV-13-18974 and CV-13-18975. In each, Banwell has issued a Counterclaim claiming damages of \$5,000,000.
- (b) **Court Action No. 06-CV-006763:** D'Amore Construction issued a lien claim against Banwell and BMO in the amount of \$498,000. BMO was named as a defendant in this action because it involved a lien claim. The lien claim was

dismissed and thus BMO is no longer involved in the Consolidated Action. Notwithstanding the dismissal of the action to enforce the lien, the plaintiff is at liberty to continue the action for breach of contract, unjust enrichment and *quantum meruit*. As noted above, this action was consolidated with Court File No. 55047 and continued under Court File No. 06-CV-006763.

B. Royal Timbers

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

- (a) See Section 5.2 (b).
- (b) **Court Action No. LC080015:** Royal Timbers was seeking damages of \$86,330 from the City of Windsor (the "City") resulting from the extended closure of Banwell Road in 2007 for water main and sewer replacement. In the Sixth Report the Receiver recommended the Court approve the acceptance of an Offer to Settle from the City for the sum of \$30,000, inclusive of costs. By Order dated March 3, 2015 the Court authorized the Receiver to accept the Offer to Settle and take steps to complete the settlement.

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

- (a) **Court Action No. CV-07-10224:** J. Lepera Contracting Inc. ("Lepera") provided servicing to the Companies under two contracts. Under an 'outside servicing' contract, Lepera claimed approximately \$55,000 from Royal Timbers, who ultimately consented to judgment and the amount was paid into court.
- (b) **Court Action No. CV-07-009805:** Lepera claims a lien in the amount of \$385,449. By Judgment dated March 23, 2012 (the "Judgment"), the action

was dismissed as against Royal Timbers and cost orders totalling approximately \$100,000 have been made in favour of Royal Timbers against Lepera. Lepera has filed an appeal of the Judgment to the Divisional Court (the "Appeal"). The Certificate of Perfection was filed with the Divisional Court in London on June 14, 2013. The Receiver notified the Trial Coordinator for the Divisional Court at London of the stay of proceedings in effect and provided a copy of the Appointment Order. On August 9, 2013, Justice Thomas dismissed Lepera's motion to lift the stay of proceedings. Lepera sought leave to appeal the Order of Justice Thomas dated August 9, 2013. Lepera abandoned that motion. Lepera brought another motion to lift the stay of proceedings and for leave to continue its appeal to the Divisional Court; that motion has not yet been scheduled.

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

5.6. Banwell and Royal Timbers are defendants in the following Court action.

- a) **Court Action No. CV-13-00019763-000:** Kevin is claiming damages of \$435,500 for breach of contract or restitution relating to this 50 per cent share of an \$871,000 shareholder loan owing by Banwell and Royal Timbers to the estate of D'Amore. The Receiver accepted service of the Statement of Claim in order to preserve any rights that Kevin may have with respect to the Court Action. Counsel for Kevin have advised they do not intend to take any steps while the Receivership is in place.

6. Cross-Motion of 928579 Ontario Limited

- 6.1 February 25, 2015, The Respondent 928579 Ontario Limited delivered a notice of motion dated February 25, 2015 returnable on March 3, 2015, a cross-motion seeking an Order directing the Receiver to pay Wintru Developments Inc. ("**Wintru**") the sum of \$13,305.75 on account of management services provided by Wintru to the Companies and the sum of \$46,612.50 to reimburse Wintru for administrative functions performed by Wintru for the Companies (the "**928579 Cross-Motion**").
- 6.2 Wintru is a company owned and controlled by Troup.
- 6.3 The 928579 Cross-Motion could not be heard on March 3, 2015 and is scheduled to be heard by the Court on April 21, 2015.
- 6.4 The Receiver's position with respect to the 928579 Cross-Motion is set out below.
- 6.5 Wintru's claim for \$46,612.50 on account of administrative services is based on invoices in the amount of \$3,750.00, plus HST, that were submitted monthly to the Receiver for "Reimbursement for administrative expenses" attached as Exhibit "A" to the Affidavit of J. Murray Troup sworn February 25, 2015 in the 928579 Cross-Motion Record (the "**Troup Affidavit**") The Receiver did not agree to such a monthly reimbursement and has not paid the invoices as issued for the following reasons:
- a) Wintru maintains an office at Suite 100, 4747 Pleasant Place, Windsor, Ontario ("**Suite 100**"). The Receiver understands that the commercial building located at 4747 Pleasant Place is owned by Wintru.
 - b) Although certain records of the Companies are stored at Suite 100, it is the Receiver's view that the Companies do not require a dedicated office. The Receiver has communicated its position to Troup.
 - c) The Receiver understands that Suite 100 functions as Troup's primary place of business, including business interests and matters unrelated to the

Companies.

- d) Since its appointment, the Receiver has paid the full salary of Troup's assistant, Ms. Marina Ognjanovski ("**Marina**"). Only a portion of Marina's duties are directly related to the Companies or the activities of the Receiver and the portion has decreased significantly since the sale of the Commercial Plaza in December 2013.
 - e) In addition, since its appointment, the Receiver has paid the expenses for the Wintru telephone line and photocopier lease at Suite 100.
 - f) From the date of the Appointment Order through March 31, 2015, the Receiver has paid \$68,967.03 for Marina's wages and related payroll source deductions and \$2,865.68 for telephone and photocopier expenses, for a total \$71,832.71.
- 6.6 It is the Receiver's view that the Receiver's payment of \$71,832.71 of Wintru expenses adequately compensates Troup for any costs of maintaining Suite 100 that would be attributable to the Companies or the Receiver's activities.
- 6.7 The Wintru claim of \$13,305.75 is for various tasks as set out in the Wintru invoices and summary Statement of Account dated January 15, 2015 attached as Exhibit "B" to the Troup Affidavit.
- a) The Receiver has reviewed the Wintru invoices for management services and does not dispute that the tasks described in the invoices were carried out.
 - b) The Sales Process Order authorized the Receiver to pay Troup a commission of \$2,500.00 for each Banwell lot sold.
 - c) The Receiver paid a commission to Via Sales & Leasing Inc., ("**Via Sales**"), a company controlled by Troup, for the leasing of a vacant unit in the Commercial Plaza.
 - d) To April 7, 2015, the Receiver has paid commissions and/or consulting fees to Wintru and Via Sales totaling \$190,909.20

- 6.8 The Receiver has paid \$262,741.91 either directly to, or for the benefit of, Wintru and Via Sales. It is the Receiver's position that in totality the compensation paid to Troup, Wintru and Via Sales is fair and reasonable for the services provided and no further compensation is necessary.

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 Disbursement. The Sixth Report provided details of the Receiver's receipts and disbursements through February 13, 2015. Details of material changes since February 13, 2015 are as follows:

7.2 Receipts - Banwell

- a) *Sale of Lots (\$1,303,775.55)* — The Receiver received net proceeds totalling \$1,303,775.55 from completing the sales of 53 lots in the Royal Timbers subdivision. 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 \$3,390.00 paid by the purchaser.
- b) *Loan from Royal Timbers (\$250,000.00)* — On the completion of the sale of Block 200, Royal Timbers advanced \$250,000.00 to Banwell to fund the payout of Banwell's indebtedness to BMO. This amount will be repaid from the proceeds of VTB mortgages held by Banwell.
- c) *Security Deposits on Sale of Lots (\$73,500.00)* — The Receiver received security deposits totalling \$73,500.00 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.

7.3 Disbursements - Banwell

- a) *Property taxes (\$484,758.99)* — The Receiver paid \$484,758.99 to the City of Windsor for property tax arrears from 2010 through December 31, 2013,

current 2014 property taxes and the first two 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. Banwell paid 2015 current installments on lots owned by Royal Timbers in the amount of \$11,749.58. This amount has been repaid.

- b) *Receiver's fees (\$249,055.63)* – BDO's account for the period November 21, 2014 to January 15, 2015 in the amount of \$31,018.50 was approved by the Order of Justice Thomas dated March 3, 2015. The Receiver paid this account from the Banwell bank account.
- c) *Legal fees (\$163,062.26)* - MT's account for the period October 10, 2014 to December 31, 2014 in the amount of \$22,376.48 was approved by the Order of Justice Thomas dated March 3, 2015. The Receiver paid this account from the Banwell bank account.
- d) *HST Paid (\$121,071.30)* — The Receiver paid \$121,070.30 in HST on its disbursements.
- e) *Sales commissions (\$131,250.00)* – The Receiver paid commissions of \$131,250.00 on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.

7.4. Receipts – Royal Timbers

- a) *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 sales commissions paid.

7.5. Disbursements – Royal Timbers

- a) *Property taxes (\$259,132.90)* — The Receiver paid \$259,132.90 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, current 2014 property taxes and the first two installments of 2015 property taxes.

- b) *Payroll (\$49,916.80)* – The Receiver paid net wages of \$49,916.80 to Marina Ognjanovski, who provided administrative support to the management of the Commercial Plaza as well as to the ongoing management and maintenance of the vacant Banwell lands.
- c) *Payroll source deductions (\$19,050.23)* – The Receiver remitted \$19,050.23 to the Receiver General for source deductions on employee wages.

7.6. Receipts – Real Ranchs Trust Account

- d) *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. The net proceeds include VTB registration fees of \$565.00 paid by the purchasers.
- a) *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.

7.7. Disbursements – Real Ranchs Trust Account

- a) *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. The amount paid to Via Sales was net of \$18,200.00 held back by the Receiver.

Troup had provided a provided a personal guarantee to Windsor Family Credit Union ("WFCU") on five lots owned by Real Ranchs Inc. that were financed by WFCU. Four of the five lots have been sold, with one lot remaining to be sold. WFCU also held mortgage security over the Real Ranchs' Lots and in order to complete the sale of the Real Ranchs' lots it was necessary for the Receiver to guarantee any shortfall to WFCU on the five lots. Accordingly, the Receiver held back the estimated shortfall of \$18,200.00 from the commissions paid to Via Sales as Troup is the sole shareholder / principal of Via Sales.

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

- c) *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. Recommendations

- 8.1 The Receiver recommends and respectfully requests that this Court grant an Order:
- a) approving the Receiver's Seventh Report, and the activities and actions of the Receiver described therein; and
 - b) 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.

All of which is Respectfully Submitted this 10th day of April, 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

TAB "A"

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

REPORT TO COURT

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

FINANCIAL REPORTING TO STAKEHOLDERS

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE CORPORATIONS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

GENERAL

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

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

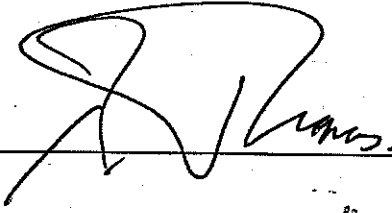
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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

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



 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'AMUKE

-and- BANWELL DEVELOPMENT CORPORATION et al

Plaintiff

Defendants

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDORD

ORDER
AFFIDAVIT OF SERVICE

ROBINS APPLEBY & TAUB LLP
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120 Adelaide Street West, Suite 2600
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Lawyers for the Bank of Montreal

TAB "B"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

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

February 20, 2015

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- Appendix M** - Statement of Receipts and Disbursements – Banwell
- Appendix N** - Statement of Receipts and Disbursements – Royal Timbers
- Appendix O** - Legal opinion of Miller Thomson LLP dated January 20, 2014 on the validity of the Bank of Montreal security
- Appendix P** - Legal opinion of Miller Thomson LLP dated February 20, 2015 on the validity of the Bank of Montreal security
- Appendix Q** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn February 20, 2015
- Appendix R** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn February 19, 2015

1. Introduction and Background

1.1 Introduction

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

1.2 Background

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

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

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

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

2. Terms of Reference

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

3. Purpose of the Receiver's Sixth Report

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

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

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

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

4. Receiver's Activities

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

Distribution to BMO

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

Sale of Royal Timbers subdivision lots

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

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

Completion of Phase II sidewalks

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

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

Petvin Homes Inc. VTB mortgage amendment

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

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

Property taxes

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

Other

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

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

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

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

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

Sale of 21 Real Ranchs' Lots to 136 Ontario

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

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

Sale of Lot 27 to Hadi

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

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

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

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

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

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

7. Receiver's sale of Block 200

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

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

8. City of Windsor Lawsuit

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

9. Statement of Receipts and Disbursements of the Receiver

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

9.2 Receipts - Banwell

- a) *Sale of Lots (\$1,143,476.11)* — The Receiver received net proceeds totalling \$1,143,476.11 from completing the sales of 39 lots in the Royal Timbers subdivision. Proceeds received are net of VTB mortgages received as consideration and property tax arrears paid to the City.
- b) *VTB mortgage payouts (\$360,000.00)* — Three VTB mortgages have matured and the full principal was repaid.
- c) *Receiver's Certificate #1 (\$125,000.00)* — The Receiver received \$125,000 from BMO under a Receiver's Certificate, of which \$96,505.68 was transferred to Royal Timbers in order for Royal Timbers to pay its share of property tax arrears. Royal Timbers has repaid this amount and other funds advanced by Banwell.
- d) *GST / HST refunds (\$118,027.63)* — The Receiver received \$118,027.63 in refunds on HST returns filed.
- e) *Security Deposits on Sale of Lots (\$57,000)* — The Receiver received security deposits totalling \$57,000 from completing the sales of Lots. These deposits are refundable to the applicable purchaser on the completion of construction of a house on the Lot and fulfillment of certain conditions.

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

9.3 Disbursements - Banwell

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

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

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

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

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

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

- l) *Letter of Credit Administrative Charge (\$6,750.00)* — The Receiver paid BMO's annual fee to maintain Banwell's letter of credit posted with the City of Windsor.
- m) *City of Windsor application fees (\$5,012.00)* — The Receiver paid \$5,012.00 to the City of Windsor to process By-Law applications and signage permit applications.
- n) *Advertising (\$5,010.00)* — The Receiver paid \$5,010.00 for advertising and new signage.
- o) *Utilities (\$4,601.77)* — The Receiver paid \$4,601.77 for utilities.
- p) *Insurance (\$3,702.24)* — The Receiver paid \$3,702.24 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- q) *Survey fees (\$3,473.25)* — The Receiver paid \$3,473.25 to Verhaegen Stubberfield Brewer Bezaire Inc. for the preparation of the Block 120 Reference Plan.
- r) *Refund of Security deposits (\$2,298.31)* — The Receiver paid \$2,298.31 to refund the unused portion of security deposits posted by home builders on prior sales of Phase I Lots.
- s) *Interest on Receiver's Certificate (\$1,114.72)* — The repayment of the Receiver's certificate of \$126,114.72 included accrued interest of \$1,114.72, of which one half was allocated to and paid by Royal Timbers.
- t) *Other professional fees (\$1,000.00)* — The Receiver paid \$1,000.00 to DuCharme, McMillen & Associates for the preparation of a property tax rebate application.

9.4. Receipts – Royal Timbers

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

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

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

9.5. Disbursements – Royal Timbers

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

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

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

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

- i) *Receiver General – tenant chattel proceeds (\$9,040.00)* – The Receiver remitted the chattel proceeds of \$9,040.00 to the Receiver General, to be applied to the former tenant's source deduction arrears.
- j) *Property Management Fees (\$8,642.98)* — The Receiver paid \$8,642.98 to Wintru for its property management of the Commercial Plaza during the period June 5, 2013 through December 16, 2013.
- k) *HST remitted (\$6,830.45)* — The Receiver remitted \$6,830.45 in HST collected on rents, net of HST paid on its disbursements.
- l) *Legal fees – Wolf Hooker (\$5,727.15)* – The Receiver paid \$5,727.15 for the legal account of Royal Timbers legal counsel in order to have a reconciliation of the lawyer's trust accounts prepared. This reconciliation was necessary to complete the financial statements of Royal Timbers and Banwell, which has assisted in the shareholder litigation.
- m) *Insurance (\$5,024.16)* — The Receiver paid \$5,024.16 for the insurance premiums on the combined Banwell and Royal Timbers policy.
- n) *Commissions paid (\$4,659.20)* — In accordance with the terms of the Property Management Agreement approved by the Court, the Receiver paid \$4,659.20 to Wintru on the leasing of Unit 100.
- o) *Utilities (\$3,263.57)* — The Receiver paid \$3,263.57 for utilities for the vacant units and common area at the Commercial Plaza.
- p) *City of Windsor application fee (\$1,172.00)* – The Receiver paid an application fee to the City of Windsor of \$1,172.00 for the "Removal of the Zoning Hold Symbol" on the Commercial Plaza.

10. Distribution to Bank of Montreal

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

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

- 11.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees (the "Receiver's Charge").
- 11.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 11.3 Attached as **Appendix Q** is the fee affidavit of Stephen N. Cherniak sworn February 20, 2015 containing BDO's interim accounts as Receiver for the following periods:
- o January 15, 2014 to February 21, 2014
 - o February 21, 2014 to May 15, 2014
 - o May 15, 2014 to July 15, 2014
 - o July 15, 2014 to September 23, 2014
 - o September 23, 2014 to November 20, 2014
 - o November 21, 2014 to January 15, 2015
- 11.4 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 11.5 Attached as **Appendix R** is the fee affidavit of Sherry Kettle, sworn February 19, 2015 containing the interim accounts of MT for the period January 1, 2014 to December 24, 2014.

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

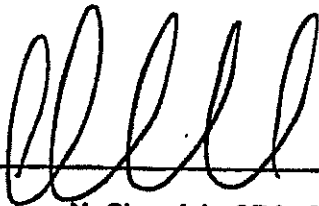
12. Recommendations

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

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

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

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



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

TAB "C"

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

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

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

- (b) approving the Sixth Report and the activities and conduct of the Receiver described therein;
- (c) approving the process proposed by the Receiver in the Sixth Report for the completion of the power of sale of the 22 lots (the "**Real Ranchs' Lots**") owned by Real Ranchs Inc. in respect of which Banwell is a mortgagee;
- (d) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated December 19, 2014 between the Receiver, as vendor, and 1362279 Ontario Ltd. ("**136 Ontario**"), as purchaser, for the sale of 21 of the 22 Real Ranchs' Lots and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**136 Ontario Transaction**");
- (e) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and Hadi Custom Homes Inc., as purchaser, for the sale of one of the Real Ranchs' Lots and directing the Receiver to enter into and complete the transaction contemplated thereby (the "**Hadi Transaction**");
- (f) discharging the mortgage security of Bank of Montreal ("**BMO**") and Simba Group Developments Limited ("**Simba**") from title to the Real Ranchs' Lots upon completion of the 136 Ontario Transaction and Hadi Transaction;
- (g) directing the Receiver to hold the net proceeds from the sale of the Real Ranchs' Lots in a segregated interest bearing trust account from which no expenses or fees of the receivership shall be paid or funds disbursed without further order of the Court and that the net proceeds shall stand in the place and stead of the Real Ranchs' Lots with all claims and encumbrances attaching to the net proceeds with the same priority as they had immediately prior to the completion of the 136 Ontario Transaction and Hadi Transaction;
- (h) approving the sale transaction contemplated by an Agreement of Purchase and Sale dated January 28, 2015 between the Receiver, as vendor, and 1128631 Ontario Ltd. operating as Bungalow Group, as purchaser, in respect of lot 100, plan 12M-503, Windsor ("**Lot 100**") and authorizing and directing the Receiver to

enter into and complete the transaction contemplated thereby (the "**Bungalow Transaction**");

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

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

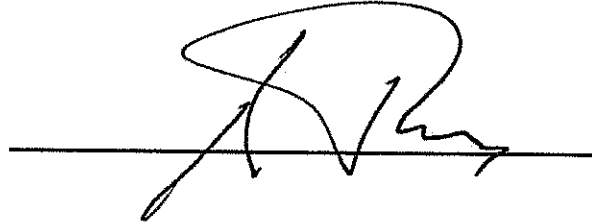
ON READING the Sixth Report and the Confidential Supplement to the Sixth Report dated February 20, 2105 (the "**Confidential Supplement**") and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly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

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

4. THIS COURT ORDERS that the 136 Ontario Transaction is hereby approved, and the execution of the 136 Ontario APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the 136 Ontario Transaction and for the conveyance to 136 Ontario of the Real Ranchs' Lots to which the 136 Ontario Transaction relate.
5. THIS COURT ORDERS that the Hadi Lot 27 Transaction is hereby approved, and the execution of the Hadi Lot 27 APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Hadi Lot 27 Transaction and for the conveyance to Hadi of the lands to which the Hadi Transaction relate.
6. THIS COURT ORDERS that the Bungalow Transaction is hereby approved, and the execution of the Bungalow APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Bungalow Transaction and for the conveyance to Bungalow of the lands to which the Bungalow Transaction relate.
7. THIS COURT ORDERS that the charge in the principal amount of \$8,000,000 in favour of Bank of Montreal registered in the Essex Land Registry office on August 8, 2005 as Instrument CE163177 (the "**BMO Charge**") and the charge in the principal amount of \$282,800 in favour of Simba Group Developments Limited and Patrick D'Amore registered in the Essex Land Registry office on August 10, 2005 as Instrument CE163205 (the "**Simba Charge**") against the lands described on **Schedule "A"** to this Order shall be discharged from title to those lands upon completion of the 136 Ontario Transaction;
8. THIS COURT ORDERS that BMO and Simba shall execute such documents as are necessary to discharge the BMO Charge and Simba Charge, respectively, from title to the lands described on **Schedule "A"** upon completion of the 136 Ontario Transaction;
9. THIS COURT ORDERS that the BMO Charge and Simba Charge shall be discharged from title to the lands described on **Schedule "B"** to this Order upon completion of the Hadi Lot 27 Transaction;

10. THIS COURT ORDERS that BMO and Simba shall execute such documents as are necessary to discharge the BMO Charge and Simba Charge, respectively, from title to the lands described on **Schedule "B"** upon completion of the Hadi Lot 27 Transaction;
11. THIS COURT ORDERS that all proceeds (the **"Real Ranchs' Lots Proceeds"**) from the 136 Ontario Transaction and Hadi Lot 27 Transaction shall be held by the Receiver in a segregated interest bearing trust account and that no expenses of the receivership, including Professional Fees, shall be paid therefrom and will not be disbursed by the Receiver without the approval of the Court;
12. THIS COURT ORDERS that the Real Ranchs' Lots Proceeds shall stand in the place and stead of the Real Ranchs' Lots and all charges, claims and encumbrances existing against the Real Ranchs' Lots and having priority over the Real Ranchs' VTB as of the date of completion of the 136 Ontario Transaction and Hadi Lot 27 Transaction shall attach to the Real Ranchs' Lots Proceeds with the same priority as they had with respect to the Real Ranchs' Lots immediately prior to the completion of the 136 Ontario Transaction and Hadi Lot 27 Transaction as if the Real Ranchs' Lots had not been sold and remained in the possession or control of the Receiver;
13. THIS COURT ORDERS that the Receiver is hereby authorized and directed to accept the Offer to Settle with respect to Court action number LC080015 and to take such additional steps and execute such additional documents as may be necessary or desirable to complete the settlement contemplated thereby;
14. THIS COURT ORDERS that the Receiver is authorized to distribute to BMO an amount equal to the BMO Indebtedness as and when funds are available to the Receiver to make such distribution;
15. THIS COURT ORDERS the Confidential Supplement be sealed until further order of the Court;
16. THIS COURT ORDERS that the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements be and the same are hereby approved;

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

A handwritten signature in black ink, appearing to be 'S. Cherniak', is written over a horizontal line.

ENTERED AT WINDSOR	
In Book No.	26
re Document No.	265
on	Mar 3 2015
by	EL

Schedule A – Lands

The lands and premises legally described as:

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

Schedule B – Lands

The lands and premises legally described as:

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

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

ORDER

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

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

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

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TAB “D”

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

APPROVAL AND VESTING ORDER

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

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

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

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

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

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

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

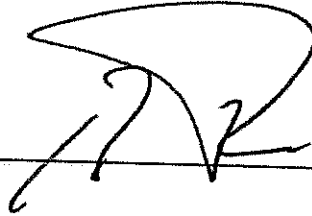
6. THIS COURT ORDERS that, notwithstanding:

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

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

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

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



A handwritten signature in black ink, appearing to be 'J.R.', is written over a horizontal line.

ENTERED AT WINDSOR	
In Book No.	<u>26</u>
re Document No.	<u>265</u>
on	<u>Mar 2015</u>
by	<u>TL</u>

Schedule A – Lands

The lands and premises legally described as:

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

Schedule B

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

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

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

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

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____
Name:
Title:

KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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

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

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

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

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

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

(unaffected by the Vesting Order)

- a) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- b) Any registered restrictions or covenants that run with the Lands provided the same have been complied with in all material respects;
- c) Any easements, rights of way, or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Lands;
- d) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- e) Any minor encroachments which might be revealed by an up to date survey of the Lands;
- f) Instrument No. D37712178 – Application for First Registration;
- g) Instrument No. LT336126 – Bylaw;
- h) Instrument No. CE185377 – Application for Absolute Title;
- i) Instrument No. CE191966 – Notice – Subdivision Agreement;
- j) Instrument No. CE247184 – Notice – Site Plan Agreement;
- k) Instrument No. 12R22842 – Plan Reference;
- l) Instrument No. CE267537 – Transfer Easement;
- m) Instrument No. CE361644 - Notice – Site Plan Agreement;
- n) Instrument No. CE447653 – Notice – Shared Parking Agreement;
- o) Instrument No. CE447656 – Notice – Mutual Services Agreement;
- p) Instrument No. CE449307 – LR's Order; and
- q) Instrument No. CE467451 – Notice – Site Plan Amendment Agreement.

KEVIN D'AMORE

Applicant

and

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

Court File No: CV-11-17088

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

APPROVAL AND VESTING ORDER

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

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

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

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TAB "E"

LITIGATION CHART

	Court File No.	Plaintiff or Defendant	Nature of Proceeding	Damages Claimed	Other Parties	Opposing Parties	Status of Proceedings
A BANWELL							
	Unknown	Plaintiff	Breach of Contract	\$1,275,000		D'Amore Construction (2000) Ltd.	- Settlement Conference conducted
	CV-13-18974	Defendant	Foreclosure	\$5,000,000 (by way of counter-claim)		Simba Group Developments Ltd. and The Estate of Patrick D'Amore	- Statement of Defence and Counterclaim issued by Banwell
	CV-13-18975	Defendants	Foreclosure	\$5,000,000 (by way of counter-claim)	Real Ranchs Inc. Windsor Family Credit Union Limited	Simba Group Developments Ltd. and The Estate of Patrick D'Amore	- Statement of Defence and Counterclaim issued by Banwell
	06-CV-6763	Defendant	Lien Claim, breach of contract, unjust enrichment and <i>quantum meruit</i>	\$498,000	BMO (defendant)	D'Amore Construction (2000) Ltd.	-Consolidated with Court Action No. 55047 and subject to Timetable Order of the Honourable Justice Gates dated May 29, 2013. -By Order of Justice Quinn dated April 22, 2014, the date by which the Consolidated Action shall be set down for trial was extended by the length of the stay of proceedings imposed by the Appointment Order. -By Order dated May 2, 2014, Justice Campbell set out the title of proceedings for the Consolidated Action which is continued under Court File No. 06-CV-006763.

	Court File No.	Plaintiff or Defendant	Nature of Proceeding	Damages Claimed	Other Parties	Opposing Parties	Status of Proceedings
B ROYAL TIMBERS							
	LC080015	Plaintiff	Tort / Arbitration	\$86,330		City of Windsor	<ul style="list-style-type: none"> - The City of Windsor delivered an offer to settle for the sum of \$30,000, inclusive of costs (the "Offer to Settle"). - By Order of Justice Thomas dated March 3, 2015, the Court authorized the Receiver to accept the City of Windsor's Offer to Settle and to complete the settlement.
	CV-07-10224	Defendant	Lien claim	\$55,000		J. Lepera Contracting Inc.	<ul style="list-style-type: none"> - Judgment issued. - Writ filed and judgment amount garnished and held by Sheriff.
	CV-07-009805	Defendant	Lien claim	\$385,449	Sonoma Windsor, a U.S. Trust, Sonoma Windsor FI Ltd. and Sonoma Windsor LP	J. Lepera Contracting Inc.	<ul style="list-style-type: none"> - By Judgment of Justice Gates dated March 23, 2012, the action was dismissed as against Royal Timbers. - Cost orders made in favour of Royal Timbers in approximate amount of \$100,000. - Appeal to the Divisional Court pending. - Certificate of Perfection filed with the Divisional Court in London on June 14, 2013. - Receiver notified Divisional Court that appeal is stayed. - Lepera's motion to lift the stay of proceedings was dismissed by Justice Thomas on August 9, 2013. - Lepera sought leave to appeal the Order of Justice Thomas dated August 9, 2013; Lepera abandoned that motion. - Lepera brought another

	Court File No.	Plaintiff or Defendant	Nature of Proceeding	Damages Claimed	Other Parties	Opposing Parties	Status of Proceedings
							motion to lift the stay of proceedings and for leave to continue its appeal to the Divisional Court; that motion has not yet been scheduled.
	CV-13-18976	Defendant	Foreclosure	\$5,000,000 (by counter-claim)	J. Lepera Contracting Inc.	Simba Group Developments Ltd. and The Estate of Patrick D'Amore	Defended action. Counterclaim issued by Royal Timbers.
C	ROYAL TIMBERS AND BANWELL						
	06-CV-6763	Plaintiffs	Breach of Contract and Negligence	\$500,000		D'Amore Construction (2000) Ltd.	<ul style="list-style-type: none"> - This action was commenced under Court File No. 55047. - Consolidated with Court Action No. 06-CV-6763, transferred to Windsor and subject to Timetable Order of the Honourable Justice Gates dated May 29, 2013. - By Order of Justice Quinn dated April 22, 2014, the date by which the Consolidated Action shall be set down for trial was extended by the length of the stay of proceedings imposed by the Appointment Order. - By Order dated May 2, 2014, Justice Campbell set out the title of proceedings for the Consolidated Action which is continued under Court File No. 06-CV-006763.
	CV-11-17088	Respondents	Application for Winding-Up Order pursuant to	N/A	928579 Ontario Limited and Scott D'Amore	Kevin D'Amore	- BDO Canada Limited appointed as Receiver of Banwell and Royal Timbers by Order dated June 5, 2013.

	Court File No.	Plaintiff or Defendant	Nature of Proceeding	Damages Claimed	Other Parties	Opposing Parties	Status of Proceedings
	CV-13-19763	Defendants	OBCA Breach of contract and/or restitution	\$435,500		Kevin D'Amore	<ul style="list-style-type: none"> - Stay of proceedings imposed. - Statement of Claim issued September 11, 2013. - Notice of Requirement to Mediate dated February 21, 2014. - The Receiver accepted service of the Statement of Claim in order to preserve any rights that Kevin D'Amore may have with respect to the action. - Counsel for Kevin D'Amore have advised they do not intend to take any steps while the Receivership is in place.

E&O Excepted.

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TAB "F"

**BDO Canada Limited Court Appointed Receiver of
Banwell Development Corporation
Statement of Receipts and Disbursements
June 5, 2013 through April 7, 2015**

Receipts:

Sale of Lots	\$ 3,104,550.00	
Less: VTB mortgages	(1,760,500.00)	
Less: property tax arrears	(43,664.45)	
Add: VTB registration fee	<u>3,390.00</u>	
		1,303,775.55
VTB mortgage payouts		360,000.00
Loan from Royal Timbers		250,000.00
Receiver's Certificate # 1		125,000.00
GST/HST refunds		118,027.63
Royal Timbers - repayment of advances including Receiver's Certificate # 1		114,158.71
Security deposits collected on sale of lots		73,500.00
Petvin Homes mortgage amendment		25,000.00
Income Tax refund (2010)		20,479.00
Insurance refund		3,353.64
Interest earned on VTB mortgages		3,124.83
City of Windsor - indemnity refund re sewer connection permit		800.00
Royal Timbers - share of interest on Receiver's Certificate # 1		557.36
VTB mortgage discharge fees		<u>450.00</u>
		<u>\$ 2,398,226.72</u>

Disbursements:

City of Windsor - Property taxes	\$ 484,758.99	
Construction (Paving, concrete, electrical, servicing)	271,260.14	
Receiver's fees	249,055.63	
Legal Fees	163,062.26	
Consulting/commission fees on lot sales	131,250.00	
Repayment of Receiver's Certificate # 1	125,000.00	
HST paid on disbursements	121,071.30	
Funds advanced to Royal Timbers Receiver's account	114,158.71	
Professional fees - engineering	32,500.00	
Appraisal fees	29,294.35	
Accounting fees (Hyatt Lassaline LLP)	25,600.00	
Repair and maintenance	16,734.77	
BMO - Letter of Credit admin charge	6,750.00	
City of Windsor - application fees	5,012.00	
Advertising	5,010.00	
Utilities	4,725.58	
Insurance	3,702.24	
Survey fees re: Block 120	3,473.25	
Refund of security deposits on Phase I, Lots 47, 49	2,298.31	
Interest paid on Receiver's Certificate # 1	1,114.72	
Copier lease	1,031.72	
Other professional fees	1,000.00	
Miscellaneous legal	568.75	
Fees to renew corporation name	<u>185.80</u>	
		<u>\$ 1,798,618.52</u>

Excess receipts over disbursements\$599,608.20**Represented by:**

Payment to secured creditor (BMO)	500,752.08
Balance in Receiver's account	<u>98,856.12</u>
	<u><u>599,608.20</u></u>

NOTE:

Funds advanced by Banwell to Royal Timbers to fund day to day expenses have now been repaid including share of interest on Receiver's Certificate.

TAB "G"

TAB "H"

BDO Canada Limited
Real Ranchs Trust Account
Statement of Receipts and Disbursements
January 6, 2015 through April 7, 2015

Receipts:

Sale of Lots	\$ 1,144,000.00	
Less: VTB mortgage	(869,000.00)	
Add: property tax credited	1,414.55	
Add: VTB mortgage fee	565.00	
		\$ 276,979.55
Security deposits collected on sale of lots		17,250.00
		294,229.55

Disbursements:

Consulting/commission fees on lot sales	36,800.00	
HST paid on disbursements	7,150.00	
		\$ 43,950.00

Excess receipts over disbursements **\$250,279.55**

Represented by:

Balance in Receiver's account	\$ 250,279.55
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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

MOTION RECORD
(RETURNABLE APRIL 21, 2015)

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