

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 JUNE 24, 2015)**

June 12, 2015

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Lawyers for BDO Canada Limited, Court-  
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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BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,  
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APPLICATION UNDER SECTION 207 OF THE *BUSINESS CORPORATIONS*  
*ACT*, R.S.O. 1990, C. B. 16, AS AMENDED

**NOTICE OF MOTION**  
**(returnable June 24, 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 Wednesday, June 24, 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 Eighth Report of the Receiver dated June 12, 2015 and all appendices thereto (the "Eighth Report"), and all supplementary motion materials, if any, and

directing that any further service of same be dispensed with such that this motion is properly returnable on June 24, 2015;

- (b) approving the Eighth Report and the activities and conduct of the Receiver described therein;
  - (c) approving the distribution to Simba Group Developments Limited and the estate of Patrick D'Amore of an amount equal to all amounts secured by the Simba and D'Amore Mortgages, as defined in the Eighth Report, as and when funds are available to the Receiver to make such distribution;
  - (d) sealing the Confidential Supplement to the Eighth Report until further order of the Court or the completion of the Hadi Transaction, defined below, whichever is earlier;
  - (e) approving the Receiver's Interim Statements of Receipts and Disbursements for each of Banwell, Royal Timbers and the Real Ranchs trust account for the period ending June 9, 2015; and
  - (f) approving the professional fees and disbursements (the "**Professional Fees**") of BDO, as Receiver, and Miller Thomson LLP, counsel to the Receiver.
2. An Order substantially in the form attached hereto as **Schedule "B"** approving the sale transaction contemplated by an Agreement of Purchase and Sale dated effective June 2, 2015 between the Receiver, as vendor, and Hadi Custom Homes Inc. ("**Hadi**"), as purchaser, in respect of the Phase 3 Lands, as defined in the Eighth Report, authorizing and directing the Receiver to enter into and complete the transaction contemplated thereby and vesting the said property in Hadi free and clear of all encumbrances, save and except permitted encumbrances (the "**Hadi Transaction**").
3. such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Approval of the Eighth Report and the Receiver's Activities and the Statements of Receipts and Disbursements

- (a) the Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order and other orders made in these receivership proceedings.

The Hadi Transaction

- (a) the transaction is commercially reasonable and represents the highest and best price available for the Phase 3 Lands; and
- (b) it is in the best interests of the stakeholders that the transaction be completed.

Distribution to Simba Group Developments Limited and the estate of Patrick D'Amore

- (a) the Receiver has received an opinion from its independent legal counsel, Miller Thomson LLP, that, subject to the customary assumptions and qualifications, the security held by Simba Group Developments Limited and Patrick D'Amore, now deceased, over the assets realized upon by the Receiver to date and yet to be realized upon is valid and enforceable; and
- (b) as funds are received by the Receiver from transactions to be completed and from vendor take back mortgages on transactions already completed, the Receiver anticipates having sufficient funds available to satisfy the indebtedness secured by the mortgages held by Simba Group Developments Limited and Patrick D'Amore.

Sealing Order

- (a) the Confidential Supplement and the appendices thereto contain sensitive and confidential information, the disclosure of which pending the completion of the Hadi Transaction would be detrimental to the interests of the stakeholders.

Approval of Professional Fees

- (a) pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property as security for the



Professional Fees, both before and after the making of the Appointment Order;

- (b) pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice; and
- (c) it is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and Miller Thomson LLP in connection with these receivership proceedings.

Other

- (d) The Appointment Order;
- (e) Section 100 of the CJA;
- (f) Rules 1.04, 1.05, 2.03, 3.02(1), 16 and 37 of the Ontario *Rules of Civil Procedure*; and
- (g) Such other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Eighth Report of the Receiver and the appendices attached thereto dated June 12, 2015;
- (b) the Confidential Supplement to the Eighth Report;
- (c) the Fee Affidavit of Stephen N. Cherniak sworn June 12, 2015 and the exhibits attached thereto;
- (d) the Fee Affidavit of Sherry Kettle sworn June 11, 2015 and the exhibits attached thereto;
- (e) all other pleadings and materials previously filed in these proceedings; and

- (f) Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 12, 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 MARCH 3, 2015)**

**MILLER THOMSON LLP**  
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Lawyers for BDO Canada Limited,  
Receiver of Banwell Development Corporation

TAB A



SCHEDULE "A"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.

)

WEDNESDAY, THE 24TH DAY

JUSTICE THOMAS

)

)

OF JUNE, 2015

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

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

service of same be dispensed with such that this motion is properly returnable on June 24, 2015;

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

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

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

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

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

4. THIS COURT ORDERS that the Receiver is authorized to distribute to Simba Group Developments Limited and the Estate of Patrick D'Amore an amount equal to the amount secured by the Simba and D'Amore Mortgages as and when funds are available to the Receiver to make such distribution;

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

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

7. THIS COURT ORDERS that the Professional Fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the fee affidavits of Stephen Cherniak sworn June 12, 2015 and Sherry Kettle sworn June 11, 2015 be and the same are hereby approved.

---

KEVIN D'AMORE

and

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

**TAB B**

SCHEDULE "B"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

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

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,  
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Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "Receiver"), for, *inter alia*, an order approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale dated effective June 2, 2015 (the "APS"), between the Receiver, as vendor, and, Hadi Custom Homes Inc., as purchaser (the "Purchaser"), in respect of the real property described on Schedule "A" (the "Lands") and appended as Appendix "A" to the Confidential Supplement to the Eighth Report of the Receiver dated June 12, 2015 (the "Eighth Report"), and vesting in the Purchaser

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

ON READING the Eighth 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 June 12, 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 Banwell's right, title and interest in and to the Lands shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Thomas dated June 5, 2013; (ii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** (the "**Permitted Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands.

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

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

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

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

6. THIS COURT ORDERS that, notwithstanding:

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

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

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully



requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

---

**Schedule A – Lands**

The lands and premises legally described as:

LOT 103, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 90 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0669 (LT))

LOT 104, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 91 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0670 (LT))

LOT 105, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 92 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0671 (LT))

LOT 106, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 93 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0672 (LT))

BLOCK 121, PLAN 12M533, WINDSOR; (PIN 01566-0687 (LT))

BLOCK 122, PLAN 12M533, WINDSOR; (PIN 01566-0688 (LT))

**Schedule B**

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

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

B. Pursuant to an Order of the Court dated June 24, 2015, the Court approved an Agreement of Purchase and Sale dated effective June 2, 2015 (the "**APS**") between the Receiver, as vendor, and Hadi Custom Homes Inc. (the "**Purchaser**") in respect of the real property legally described on Schedule B1 hereto (the "**Lands**") and appended as Appendix "A" to the Confidential Supplement of the Receiver dated June 12, 2015, and vesting in the Purchaser all of Banwell's right, title and interest in and to the Lands, which vesting is to be effective with respect to the Lands upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Lands; (ii)

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

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

THE RECEIVER CERTIFIES the following:

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

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

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

22

**Schedule B1 – Lands**

The lands and premises legally described as:

LOT 103, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 90 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0669 (LT))

LOT 104, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 91 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0670 (LT))

LOT 105, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 92 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0671 (LT))

LOT 106, PLAN 12M533, WINDSOR; S/T EASEMENT OVER PT 93 PL 12R-22439 AS IN CE194979; WINDSOR; (PIN 01566-0672 (LT))

BLOCK 121, PLAN 12M533, WINDSOR; (PIN 01566-0687 (LT))

BLOCK 122, PLAN 12M533, WINDSOR; (PIN 01566-0688 (LT))

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

**KEVIN D'AMORE**

and

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
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Lawyers for BDO Canada Limited,  
Receiver of Banwell Development  
Corporation and Royal Timbers Inc.

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**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. CE269334 – Charge in the principal amount of \$908,765 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.
3. Instrument No. CE269359 – Charge in the principal amount of \$240,496 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.
4. Instrument No. CE569187 – Application to register court order registered on June 18, 2013.

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

**(unaffected by the Vesting Order)**

- a) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- b) 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) Any gas or oil lease in respect of the Lands;
- g) Instrument No. CE166202 – Notice of Subdivision Agreement;
- h) Instrument No. CE191966 – Notice of Subdivision;
- i) Instrument No. CE193237 – Plan Document Agreement;
- j) Instrument No. 12M533 – Plan of Subdivision;
- k) Instrument No. CE193800 – Application to Annex Restrictive Covenant;
- l) Instrument No. 12R22439 – Reference Plan; and
- m) Instrument No. CE194979 – Transfer Easement.



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**  
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London, ON Canada N6A 5R8

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

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**TAB 2**

**SCHEDULE "B"**

Court File No.      CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

**COMMERCIAL LIST**

THE HONOURABLE — MR.

)  
)  
)

~~WEEKDAY~~ WEDNESDAY, THE #24TH

JUSTICE — THOMAS

DAY

OF MONTH, ~~20YR~~ JUNE, 2015

BETWEEN:

~~PLAINTIFF~~

Plaintiff

KEVIN D'AMORE

Applicant

- and -

~~DEFENDANT~~

Defendant

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

Respondents

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

### APPROVAL AND VESTING ORDER

THIS MOTION, made by [RECEIVER'S NAME] BDO Canada Limited, in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor") for of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "Receiver"), for, *inter alia*, an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] Agreement of Purchase and Sale dated effective June 2, 2015 (the "APS"), between the Receiver, as vendor, and Hadi Custom Homes Inc., as purchaser (the "Purchaser"), in respect of the real property described on Schedule "A" (the "Lands") and appended as Appendix "A" to the Confidential Supplement to the Eighth Report of the Receiver dated [DATE] June 12, 2015 (the "Eighth Report"), and vesting in the Purchaser the Debtor all of Banwell's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") Lands, was heard this day at 330 University the Courthouse, 245 Windsor Avenue, Toronto Windsor, Ontario.

ON READING the Eighth Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list and such other persons as may be present

and on noting that no other persons appeared, although properly served as appears from the affidavit of [NAME] Julie Los sworn [DATE] June 12, 2015, filed<sup>1</sup>:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the ~~Sale Agreement~~APS by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the ~~Purchased Assets~~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 A**~~"B"~~ hereto (the "**Receiver's Certificate**"), all of the ~~Debtor~~Banwell's right, title and interest in and to the ~~Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup>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**"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice [NAME] Thomas dated [DATE]; (ii) ~~all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) June 5, 2013; (ii) those~~

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

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

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

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

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

Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D "D"** (the "**Permitted Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the ~~Purchased Assets~~Lands are hereby expunged and discharged as against the ~~Purchased Assets~~Lands.

3. THIS COURT ORDERS that upon ~~the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver~~ [Land Titles Division of {LOCATION}] Essex (No. 12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the ~~subject real property identified~~Lands described in Schedule B "**A**" hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the ~~Real Property~~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<sup>7</sup> from the sale of the ~~Purchased Assets~~Lands shall stand in the place and stead of the ~~Purchased Assets~~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 ~~Purchased Assets~~Lands with the same priority as they had with respect to the ~~Purchased Assets~~Lands immediately prior to the sale<sup>8</sup>, as if the ~~Purchased Assets~~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.

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

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

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

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

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

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

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

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

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

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

The lands and premises legally described as:

LOT 103. PLAN 12M533. WINDSOR: S/T EASEMENT OVER PT 90 PL 12R-22439 AS IN CE194979: WINDSOR: (PIN 01566-0669 (LT))

LOT 104. PLAN 12M533. WINDSOR: S/T EASEMENT OVER PT 91 PL 12R-22439 AS IN CE194979: WINDSOR: (PIN 01566-0670 (LT))

LOT 105. PLAN 12M533. WINDSOR: S/T EASEMENT OVER PT 92 PL 12R-22439 AS IN CE194979: WINDSOR: (PIN 01566-0671 (LT))

LOT 106. PLAN 12M533. WINDSOR: S/T EASEMENT OVER PT 93 PL 12R-22439 AS IN CE194979: WINDSOR: (PIN 01566-0672 (LT))

BLOCK 121. PLAN 12M533. WINDSOR: (PIN 01566-0687 (LT))

BLOCK 122. PLAN 12M533. WINDSOR: (PIN 01566-0688 (LT))

Schedule B

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

~~COMMERCIAL LIST~~

BETWEEN:

~~PLAINTIFF~~

Plaintiff

KEVIN D'AMORE

Applicant

- and -

~~DEFENDANT~~

Defendant

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

Respondents

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

## RECEIVER'S CERTIFICATE

### RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Mr. Justice Thomas of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ June 5, 2013, BDO Canada Limited ("BDO") was appointed as the receiver (the "Receiver") of the ~~undertaking, property and assets of [DEBTOR] (the "Debtor").~~ assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc.

B. Pursuant to an Order of the Court dated ~~[DATE]~~, June 24, 2015, the Court approved the ~~agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement")~~ between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the "Purchaser") and provided ~~for the~~ an Agreement of Purchase and Sale dated effective June 2, 2015 (the "APS") between the Receiver, as vendor, and Hadi Custom Homes Inc. (the "Purchaser") in respect of the real property legally described on Schedule B1 hereto (the "Lands") and appended as Appendix "A" to the Confidential Supplement of the Receiver dated June 12, 2015, and vesting in the Purchaser ~~all of the Debtor~~ Banwell's right, title and interest in and to the ~~Purchased Assets~~ Lands, which vesting is to be effective with respect to the ~~Purchased Assets~~ 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 ~~Purchased Assets~~ Lands; (ii) that the conditions to ~~Closing~~ closing as set out in section ~~•~~ of the ~~Sale Agreement~~ APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the ~~Purchased Assets~~ Lands payable on the ~~Closing Date~~ closing pursuant to the ~~Sale Agreement~~ APS;

2. The conditions to ~~Closing~~closing as set out in section ~~•~~ of the ~~Sale Agreement~~APS have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

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

Name:

Title:

**Schedule B1 – Purchased Assets Lands**

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BLOCK 121. PLAN 12M533. WINDSOR: (PIN 01566-0687 (LT))

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KEVIN D'AMORE

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

and

Applicant

Respondents

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

MILLER THOMSON

One London

255 Queens Avenue, Suite

London, ON Canada N6A 5R8

Tony Van Klink LSUC#: 290

Tel: 519.931.

Fax: 519.858.

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 Real Property~~

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.
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3. Instrument No. CE269359 – Charge in the principal amount of \$240,496 given by Banwell Development Corporation to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.
4. Instrument No. CE569187 – Application to register court order registered on June 18, 2013.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property 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) Any gas or oil lease in respect of the Lands;
- g) Instrument No. CE166202 – Notice of Subdivision Agreement;
- h) Instrument No. CE191966 – Notice of Subdivision;
- i) Instrument No. CE193237 – Plan Document Agreement;
- j) Instrument No. 12M533 – Plan of Subdivision;
- k) Instrument No. CE193800 – Application to Annex Restrictive Covenant;
- l) Instrument No. 12R22439 – Reference Plan; and
- m) Instrument No. CE194979 – Transfer Easement.



KEVIN D'AMORE

and

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

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APPROVAL AND VESTING ORDER

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Receiver of Banwell Development  
Corporation and Royal Timbers Inc.

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10:56:47 AM

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Description	#14189967v1<Legal> - SCHEDULE B - Approval and Vesting Order June 24, 2015 (Banwell)
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Format change	
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Moved to	0
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Format changed	0
Total changes	315

TAB 3

**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**

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

**June 12, 2015**

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## Appendices

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- Appendix B** - Reasons of Mr. Justice Thomas dated May 13, 2015
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- Appendix D** - Statement of Receipts and Disbursements – Banwell
- Appendix E** - Statement of Receipts and Disbursements – Royal Timbers
- Appendix F** - Statement of Receipts and Disbursements – Real Ranchs Trust Account
- Appendix G** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn June 12, 2015
- Appendix H** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn June 11, 2015

## 1. INTRODUCTION AND BACKGROUND

---

### 1.1 Introduction

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

### 1.2 Background

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

- 1.2.4 Since its appointment on June 5, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of the Commercial Plaza and numerous residential building lots contained in the Royal Timbers Subdivision. A number of reports have been filed by the Receiver in these proceedings wherein these activities and transactions are described in greater detail. Mr. Justice Thomas has made several Orders since the commencement of proceedings, including, but not limited to the following:
- 1.2.5 By Order dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**"), as amended by Order dated December 2, 2013 (the "**Amended Omnibus Approval and Vesting Order**") Mr. Justice Thomas prospectively approved the sales transactions in respect of each of the remaining lots in the Royal Timbers Subdivision and prospectively vested all of Banwell's right, title and interest in and to the lots subject to certain conditions and restrictions.
- 1.2.6 By Order dated December 13, 2013 (the "**Commercial Plaza Approval and Vesting Order**"), Mr. Justice Thomas, among other things, approved the Commercial Plaza Transaction, vesting all of Royal Timbers' right, title and interest in the Commercial Plaza in Avila Investments Limited, directed the Receiver to hold the net proceeds and declared that the Encumbrances attached to such net proceeds in the same manner and to the same extent as they attached to the Commercial Plaza prior to completing the Commercial Plaza Transaction.
- 1.2.7 By Order dated January 27, 2014 (the "**Distribution Order**"), Mr. Justice Thomas, among other things, authorized the Receiver to pay \$1,917,494.69, plus per diem interest and legal costs from January 20, 2014 to the date of payment in full and final satisfaction of all claims of BMO against Royal Timbers.



- 1.2.8 Under the terms of the Appointment Order, the Receiver's mandate was to refinance or realize upon the Property as may be required to repay the debts owing by the Companies to BMO and to pay the realty taxes owing upon the Property. In Reasons dated June 10, 2014, Mr. Justice Thomas made an order expanding the Receiver's mandate and ordered a full receivership of the Companies.
- 1.2.9 By Order dated March 3, 2015 Mr. Justice Thomas, among other things, approved the sale process and power of sale transactions for 22 lots owned by Real Ranchs Inc. ("the **Real Ranchs' Lots**"), discharging BMO and Simba Group Developments Limited ("**Simba**") mortgage security from title to the Real Ranchs' Lots; and directing the Receiver to hold the net proceeds from the sale of the Real Ranchs' Lots in a segregated trust account. The Order also approved the sale of the commercial lot municipally known as 3990 Wildwood Drive, Windsor ("**Block 200**") to 838605 Ontario Limited and vested all of Royal Timbers' right, title and interest in Block 200 in 8388605 Ontario Limited.
- 1.2.10 The Order dated March 3, 2015 also authorized the Receiver to pay BMO the full amount of Banwell indebtedness to BMO when such funds are available to the Receiver.
- 1.2.11 The Receiver submitted a Seventh Report to the Court dated April 10, 2015 (the "**Seventh Report**") to provide the Court with information on the status of litigation that the Companies are parties to and the Receiver's position with respect to the Cross-Motion of 928579 Ontario Limited ("**928579 Ontario**")
- 1.2.12 928579 Ontario sought an Order directing the Receiver to pay certain amounts to Wintru Developments Inc. ("**Wintru**") for management and administrative services provided. 928579 Ontario also sought an Order directing the Receiver to accept an offer from 782777 Ontario Limited to purchase certain unserviced residential lands described in detail in this report as the Phase 3 Lands.
- 1.2.13 In reasons issued May 13, 2015, Mr. Justice Thomas held that the Receiver was not required to pay the amounts claimed for management and administrative

services and declined to make the Order sought by 928579 Ontario with respect to the Phase 3 Lands.

1.2.14 The May 13, 2015 reasons of Mr. Justice Thomas are attached as **Appendix B**.

## 2. Terms of Reference

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

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3.1 This constitutes the Receiver's Eighth Report to the Court (the "**Eighth 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 Seventh Report;
  - (ii) the Receiver's recommendation with respect to the sale of unserved residential development land known as Lots 103-106, Block 121 and Block 122 Plan 12M-533 (PIN 1566-0669, 1566-0670, 1566-0671, 1566-0672, 1566-0687, 1566-0688 (LT)), Windsor ("**Phase 3 Lands**");
  - (iii) the status of certain litigation that the Companies are parties to; and
  - (iv) the review by the Receiver and its legal counsel of the mortgage security held by Simba and Patrick D'Amore.
  
- (b) In support of an order of the Court:
  - (i) approving the Eighth Report and the activities of the Receiver described therein;
  - (ii) sealing the Confidential Supplement to the Eighth Report until further Order of the Court;
  - (iii) approving the Agreement of Purchase and Sale dated effective June 2, 2015 between the Receiver, as vendor, and Hadi Custom Homes Inc. ("**Hadi**"), as purchaser, (the "**Phase 3 Lands APS**"), in respect of the Phase 3 Lands and directing the Receiver to enter into and complete the transaction contemplated therein (the "**Phase 3 Lands Transaction**") and thereafter to file the Receiver's certificate;

- (iv) vesting in Hadi all of Banwell's right, title and interest in and to the Phase 3 Lands free and clear of any and all claims and encumbrances;
- (v) authorizing the Receiver to make distributions to Simba and the estate of Patrick D'Amore, as funds are available, of the amount secured by the Simba and D'Amore Mortgages, as defined below;
- (vi) approving the Receiver's interim Statement of Receipts and Disbursements for each of Banwell, Royal Timbers and Real Ranchs Trust Account for the period ending June 9, 2015 (the "**Banwell Statement of Receipts and Disbursements**", the "**Royal Timbers Statement of Receipts and Disbursements**" and "**Real Ranchs Trust Account Statement of Receipts and Disbursements**", respectively);
- (vii) approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**"); and
- (viii) 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

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- 4.1 In its Seventh Report the Receiver reported to the Court on its activities through April 10, 2015.
- 4.2 In this the Eighth Report, the Receiver reports on its activities since the date of the Seventh Report.

### Sale of Royal Timbers subdivision lots

- 4.3 On April 24, 2015, pursuant to the Amended Omnibus Approval and Vesting Order, the Receiver completed the sale of Lots 12, 16, 17, 18, 20, 21 and 23, Plan 12M-546 to Hadi.
- 4.4 The Receiver has completed the sale of 59 residential lots owned by Banwell. The Receiver has also completed the sale of the 22 Real Ranchs' Lots. In addition, the Receiver completed the sale of Lot 100 under power of sale, for a total of 82 lots sold to date.
- 4.5 At this time one serviced residential lot owned by Banwell remains available for sale.
- 4.6 For a majority of the lots sold by the Receiver, a portion of the purchase price was satisfied by a vendor take back ("VTB") mortgage. Where the Receiver holds a VTB mortgage over more than one lot, the mortgages granted to the Receiver provide for partial discharges, with the Receiver to receive payment of a portion of the VTB mortgage as individual homes are completed and sold. Since the Seventh Report the Receiver has received VTB mortgage payouts and provided partial discharges of several mortgages.
- 4.7 On transactions that have been completed to the date of the Eighth Report, the outstanding VTB mortgage principal at June 9, 2015 is \$2,519,500.
- 4.8 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 the Sixth Report.

### **Commercial Lands**

- 4.9 The Receiver has commissioned appraisals of the several parcels of commercial lands owned by Banwell and Royal Timbers.
- 4.10 The Receiver obtained two marketing proposals for the sale of the commercial property municipally known as 3155 Banwell Road, Windsor ("**3155 Banwell**") and entered into a listing agreement with CBRE Limited. The listing price of \$349,900 was determined with reference to the appraisals and the Receiver's experience based on the sale of Block 200.

## 5. Sale of Phase 3 lands

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- 5.1 The Seventh Report described the “**Phase 3 Lands**” and outlined the basis for the Receiver rejecting an offer from 782777 Ontario Limited (“**782777 Ontario**”), a corporation controlled by Troup, to purchase the Phase 3 Lands. It was the Receiver’s view that the Phase 3 Lands should be more widely exposed to the market.
- 5.2 As noted in the Background section of this report, Troup brought a motion requiring the Receiver to accept the Offer of 782777 Ontario for the Phase 3 Lands. The Court dismissed the motion.
- 5.3 Accordingly, the Receiver conducted an Invitation for Offers sales process with respect to the Phase 3 Lands. The Receiver prepared an information package on the Phase 3 Lands and requested the shareholders of Banwell to provide names of any known parties who may be interested in purchasing the Phase 3 Lands.
- 5.4 The Receiver advised parties who had previously purchased lots from the Receiver of the Phase 3 Lands sales process. In addition, the Receiver placed an advertisement in the Windsor Star on May 14, 2015 advising of the Receiver’s sale process for the Phase 3 Lands.
- 5.5 The Receiver established a deadline for offers of Friday May 29, 2015 (the “**Offer Deadline**”).
- 5.6 The Receiver provided the information package by electronic mail to seven (7) interested parties.
- 5.7 The Receiver received two offers to purchase the Phase 3 lands on or before the Offer Deadline. Particulars of the offers are contained in the Confidential Supplement.
- 5.8 As a result of the Phase 3 Lands Sale Process, the Receiver entered into an agreement of purchase and sale with Hadi for the Phase 3 Lands effective June 2, 2015 (the “**Phase 3 Lands APS**”).



- 5.9 A copy of the Phase 3 APS is attached as **Appendix A** to the Confidential Supplement.
- 5.10 The Receiver commissioned an appraisal of the Phase 3 Lands, in their unserviced state, from Metrix Realty Group of London, Ontario ("**Metrix**"). Selected portions of the appraisal report dated April 9, 2015 (the "**Metrix Phase 3 Lands appraisal**") are attached as **Appendix B** to the Confidential Supplement.
- 5.11 The Receiver commissioned an appraisal of the Phase 3 Lands, in their unserviced state, from Valco Real Estate Appraisers & Consultants of London, Ontario ("**Valco**"). Selected portions of the appraisal report dated April 13, 2015 (the "**Valco Phase 3 Lands appraisal**") are attached as **Appendix C** to the Confidential Supplement.
- 5.12 The Receiver's analysis of the Phase 3 Lands Transaction is contained in the Confidential Supplement.
- 5.13 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 Phase 3 Lands Transaction fail to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the transaction does not close.
- 5.14 The Phase 3 Lands Transaction is scheduled to be completed on July 31, 2015 in the event that the Court grants an Approval and Vesting Order.
- 5.15 It is the Receiver's view that that the Phase 3 Lands Transaction is appropriate in the circumstances.
- 5.16 The Receiver is of the view that it has maximized the realization available and the Phase 3 Lands Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Phase 3 Lands Transaction is in the best interest of the creditors and other stakeholders of the Companies.

- 5.17 The Receiver recommends that this Court approve the completion of the Phase 3 Lands Transaction.
- 5.18 The Receiver requests that the Court grant an Approval and Vesting Order in favour of Hadi.

## **6. Review of Simba and Patrick D'Amore Security**

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- 6.1 The Receiver's counsel has completed its review of 14 mortgages held by Simba and Patrick D'Amore (the "Simba and D'Amore Mortgages") over the lands owned by Banwell and Royal Timbers. The report and opinion of MT, without appendices, is attached as **Appendix C**.
- 6.2 A copy of MT's report and opinion, with appendices, was circulated to the service list on June 8, 2015.
- 6.3 It is the opinion of MT that the Simba and D'Amore Mortgages are valid and enforceable, with only the BMO collateral mortgage standing in priority to those mortgages.
- 6.4 The indebtedness secured by the BMO collateral mortgage has been repaid in full from the proceeds of the receivership. Accordingly, the Receiver seeks the approval of the Court to distribute funds to Simba and the estate of Patrick D'Amore to satisfy the amounts secured by the Simba and D'Amore Mortgage, as funds become available from the realization of lands owned by Banwell and Royal Timbers.
- 6.5 As noted in MT's report and opinion, the proceeds from certain lands charged by the Simba and D'Amore Mortgages have been utilized to repay the indebtedness charged by the BMO collateral mortgage and to fund the expenses of the receivership. The Receiver recommends to the Court that the doctrines of marshalling and subrogation be applied to permit the payment of the amounts secured by the Simba and D'Amore Mortgages against those lands from the proceeds of the other lands charged by the BMO collateral mortgage.

## 7. Litigation

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7.1 In the Seventh Report, the Receiver summarized the litigation that the Companies are parties to. Following is an update on the status of the appeal in the construction lien action involving J. Lepera Contracting Inc. ("Lepera") and what has been referred to in these proceedings as the "Consolidated Action".

### The Lepera Appeal (Court Action CV-07-009805)

7.2 Lepera's appeal to the Divisional Court from the dismissal of its construction lien action was stayed by the Appointment Order. On April 21, 2015, Lepera brought a motion for an order lifting the stay to allow the appeal to proceed. In Reasons dated May 13, 2015, Justice Thomas ordered the stay be lifted to permit the appeal to proceed.

7.3 Subsequent to the release of Justice Thomas' Reasons, counsel for Lepera has written to the Divisional Court office and requested that the appeal be scheduled. The Receiver has not yet been advised of the hearing date for the appeal.

7.4 Given the familiarity of Peter Greene and his firm with this litigation, from having acted as trial counsel, it is the view of the Receiver and MT, that Mr. Greene and his firm are best suited to act for the Receiver on the appeal. The Receiver is mindful of the concern raised by the Court at the last attendance before the Court on April 21, 2015 of a potential conflict which Mr. Greene and his firm may have by virtue of their status as creditors in the receivership estate. The Receiver and MT have considered whether a disqualifying conflict exists and have concluded that it does not. On that basis and given the time sensitivity of the matter, the Receiver retained Mr. Greene and his firm to act as counsel for the Receiver on the appeal. However, should the Court continue to have concerns regarding the potential conflict and determine that a disqualifying conflict does exist, it would be the Receiver's intention to have Mr. Greene and his firm complete the preparation of the responding factum for the appeal and for MT to review the factum before it is filed and to argue the appeal.

**The Consolidated Action (Court Action No. 06-CV-006763)**

- 7.5 As advised to the Court on April 21, 2015, it is the Receiver's intention, with the assistance of MT, to complete a full objective review of the Consolidated Action to enable the Receiver to make a recommendation to the Court on the prosecution of the Consolidated Action.
- 7.6 A request was made on April 24, 2015 by MT of counsel of record in the Consolidated Action to provide the entire file for the Consolidated Action for MT's review. The file (consisting of 3 bankers boxes of documents) was received by MT on May 27, 2015. MT's review of the file is not yet complete. An update on the status of that review will be provided to the Court on June 24, 2015.

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

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8.1 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 D, Appendix E and Appendix F** respectively, are the Banwell Statement of Receipts and Disbursements, Royal Timbers Statement of Receipts and Disbursements and Real Ranchs Trust Account Statement of Receipts and Disbursements. The Sixth Report provided details of the Receiver's receipts and disbursements through February 13, 2015. The Seventh Report provided details of material changes from February 13, 2015 to April 7, 2015. Details of material changes since April 10, 2015 are as follows:

### 8.2 Receipts - Banwell

- a) *Sale of Lots (\$1,357,449.39)* — The Receiver received net proceeds totalling \$1,357,449.39 from completing the sales of 60 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 \$3,672.50 paid by the purchaser.
- b) *VTB Mortgage Payouts (\$455,500.00)* — Three VTB mortgages have matured and the full principal was repaid. In addition, the Receiver has provided partial discharges of mortgages where a builder has completed and sold a home and repaid the applicable VTB mortgage on closing..
- c) *Security Deposits on Sale of Lots (\$84,000.00)* — The Receiver received security deposits totalling \$84,000.00 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.

### 8.3 Disbursements - Banwell

- a) *Property taxes (\$492,459.99)* — The Receiver paid \$492,459.99 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, current 2014 property taxes and the first three 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 (\$41,601.55)* – BDO's account for the period January 14, 2015 to March 10, 2015 in the amount of \$41,601.55 was paid from the Banwell bank account. This account is subject to Court approval.
- c) *Legal fees (\$32,749.94)* - MT's account for the period January 2, 2015 to February 27, 2015 in the amount of \$32,749.94 was paid from the Banwell bank account. This account is subject to Court approval.
- d) *Sales commissions (\$148,750.00)* – The Receiver paid commissions of \$148,750.00 on the closing of the sale of Lots in accordance with the Lot Sales Process approved by the Court.
- e) *HST Paid (\$134,002.39)* — The Receiver paid \$134,002.39 in HST on its disbursements.
- f) *Professional fees - Engineering (\$36,298.50)* – The Receiver paid \$36,298.50 to RC Spencer Associates Inc. for engineering fees for the paving of Block 120, Phase II sidewalk construction, Lot 116 servicing, Phase II completion cost estimate and other projects.
- g) *Appraisal fees (\$32,201.85)* — The Receiver paid \$19,701.85 to Metrix and Valco for appraisals of the Banwell Lots. \$12,500.00 was paid to Tracey Business Advisors Inc. for an estimate of the fair market value of Banwell and Royal Timbers.

#### 8.4. Receipts – Royal Timbers

- a) City of Windsor settlement (\$30,000.00) – The Receiver received \$30,000.00 from the City of Windsor in settlement of the lawsuit discussed in Section 8 of the Sixth Report.

#### 8.5. Disbursements – Royal Timbers

- a) *Property taxes (\$264,701.90)* — The Receiver paid \$264,701.90 to the City of Windsor for property tax arrears from 2010 through December 31, 2013, current 2014 property taxes and the first three installments of 2015 property taxes.
- b) *Payroll (\$56,222.08)* – The Receiver paid net wages of \$56,222.08 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. Ms. Ognjanovski's employment was terminated, effective April 24, 2015, and the amount paid by the Receiver includes termination pay.
- c) *Payroll source deductions (\$21,266.73)* – The Receiver remitted \$21,266.73 to the Receiver General for source deductions on employee wages.

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

- a) *Mortgage Payouts (\$39,500.00)* — The Receiver provided a partial discharge of the mortgage on Lot 15 12M-546 upon the repayment the applicable VTB mortgage by 1362279 Ontario Ltd.

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

- a) *WCFU Re: M. Troup (\$18,200.00)* – 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, as outlined in the Sixth Report. The Receiver subsequently remitted \$18,200.00 to Windsor Family Credit Union.

- b) *Property taxes* — The Receiver paid property tax arrears and 2014 and 2015 current installments on the Real Ranchs' Lots totalling \$116,635.63 from the Banwell account. This amount will be repaid to Banwell when funds are available from the sale of lots and repayment of VTB mortgages.

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

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9.1 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").

9.2 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.

9.3 Attached as **Appendix G** is the fee affidavit of Stephen N. Cherniak sworn June 12, 2015 containing BDO's interim accounts as Receiver for the following periods:

- o January 14, 2015 to March 10, 2015
- o March 11, 2015 to May 17, 2015

9.4 The Receiver's fees to date for Banwell and Royal Timbers are as follows:

Fees paid and Court approved	-	\$405,813.84
Fees paid, but not yet Court approved	-	\$ 41,601.55
Fees neither paid, nor Court approved	-	\$ 58,165.75
		<u>\$505,581.14</u>

9.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.

9.6 Attached as **Appendix H** is the fee affidavit of Sherry Kettle, sworn June 11, 2015

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containing the interim accounts of MT for the period January 2, 2015 to May 31, 2015.

9.7 MT's fees to date for Banwell and Royal Timbers are as follows:

Fees paid and Court approved	-	\$276,930.84
Fees paid, but not yet Court approved	-	\$ 32,749.94
Fees neither paid, nor Court approved	-	\$ 74,195.10
		<u>\$383,875.88</u>

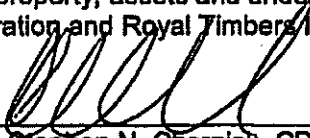
9.8 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees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

**10. Recommendations**

- 10.1 The Receiver recommends and respectfully requests that this Court grant an Order:
- a) approving the Receiver's Eighth 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 the completion of the sale transaction for the Phase 3 Lands or further order of the Court, whichever is earlier;
  - c) approving the Phase 3 Lands APS and authorizing and directing the Receiver to enter into and complete the Phase 3 Lands Transaction and thereafter to file the Receiver's certificate;
  - d) vesting in Hadi all of Banwell's right, title and interest in and to the Phase 3 Lands free and clear of any and all claims and encumbrances;
  - e) authorizing the Receiver to make distributions to Simba and the estate of Patrick D'Amore to satisfy the amounts secured by the Simba and D'Amore Mortgages, as funds are available;
  - f) approving the Banwell Statement of Receipts and Disbursements, the Royal Timbers Statement of Receipts and Disbursements and the Real Ranchs Trust Account Statement of Receipts and Disbursements; and
  - g) approving the Professional fees

All of which is Respectfully Submitted this 12th day of June, 2015.

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



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

# APPENDIX "A"

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
JUSTICE

*Bruce G. Thomas*

) *WEDNESDAY*, THE *5<sup>th</sup>*

DAY OF JUNE 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

**ORDER**

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

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

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

**SERVICE**

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

**APPOINTMENT**

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

**RECEIVER'S POWERS**

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

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

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

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



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

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

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

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

***DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER***

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

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

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

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

**REPORT TO COURT**

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

***FINANCIAL REPORTING TO STAKEHOLDERS***

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

***NO PROCEEDINGS AGAINST THE RECEIVER***

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

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

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

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

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

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

***NO INTERFERENCE WITH THE RECEIVER***

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

***CONTINUATION OF SERVICES***

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

***RECEIVER TO HOLD FUNDS***

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

**EMPLOYEES**

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

**PIPEDA**

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

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

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

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

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

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

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

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

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

#### **FUNDING OF THE RECEIVERSHIP**

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

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

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

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

#### **GENERAL**



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

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

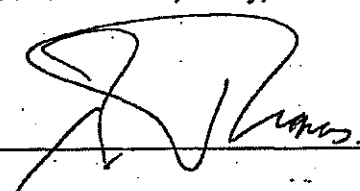
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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

ENTERED AT WINDSOR
In Book No. 24
re Document No. 729
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 \_\_\_\_\_  
 JUSTICE JJ

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

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

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

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

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

DATED the 5<sup>th</sup> day of June, 2013.

BDO Canada Limited

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

Per:

Name:  
Title:

KEVIN D'AMORE

-and-

BANWELL DEVELOPMENT  
CORPORATION et al

*Plaintiff*

*Defendants*

Court File No. CV-11-17088

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT  
WINDSOR

ORDER  
AFFIDAVIT OF SERVICE

ROBINS APPLEBY & TAUB LLP  
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Lawyers for the Bank of Montreal

## APPENDIX "B"

CITATION: D'Amore v. Banwell Development Corp., 2015 ONSC 2969  
COURT FILE NO.: CV-11-17088  
DATE: 20150513

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

)  
)  
)  
) Cynthia B. Kuehl and Lucas E. Lung, no one appearing

)  
)  
) Tony Van Klink, for BDO Canada Limited, Court-Appointed Receiver of Banwell Development Corporation and Royal Timbers Inc.

)  
) Craig J. Allen, for D'Amore Construction (2000) Ltd.

)  
) Raymond G. Colautti, for Simba Group Developments Ltd.

)  
) James K. Ball, for M.R. Dunn Contractors Ltd.

)  
) Robert J. Reynolds, for the Respondents 928579 Ontario Limited

)  
)  
)  
) HEARD: April 21, 2015

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

**THOMAS J.:**

[1] On April 21, 2015, the following four motions were before me:

- 1) D'Amore Construction (2000) Ltd. ("D'Amore Construction") has applied for a lifting of the stay on consolidated action 6763;

- 2) J. Lepera Contracting ("Lepera") has applied for a lifting of the stay on its litigation against Royal Timbers Inc.;
- 3) 928579 Ontario Limited ("928579") has applied for an order directing the Receiver ("BDO") to:
  - a) pay Wintru Developments Inc. ("Wintru") \$18,108.25 for management services;
  - b) pay Wintru \$50,850 for administrative functions;
  - c) enter into an agreement of purchase and sale with 782777 Ontario Limited to sell to that numbered company 3.4 unserviced acres Royal Timbers property (Phase III) for \$276,000.
- 4) BDO has applied for:
  - a) approval of its activities and conduct, and its Seventh Report dated April 10, 2015;
  - b) approval of its Interim Statements of Receipts and Disbursements for the period ending April 7, 2015 with respect to Banwell, Royal Timbers, and Real Ranchs.

#### Background

- [2] Banwell is a corporation which principal business is the ownership, development and sale of land in Windsor, Ontario. Royal Timbers is a wholly owned subsidiary of Banwell.
  - [3] Banwell was incorporated by Patrick D'Amore ("Patrick") and Murray Troup ("Troup") in 2003. Banwell was to hold and develop property which prior to its incorporation was owned by Simba Group Development Limited ("Simba"), a company owned and controlled by Patrick. Each of Patrick and Troup owned 50 percent of the shares of Banwell.
  - [4] Patrick died in 2011 leaving his shares to his sons, Kevin and Scott D'Amore, ("Kevin and Scott") equally. The remaining 50 percent of the Banwell shares are owned by 928579 Ontario Limited ("Troup").
  - [5] On June 5, 2013 the Bank of Montreal ("BMO") obtained an order from me appointing BDO as Interim Receiver of the assets of Banwell and Royal Timbers. Pursuant to that order, all proceedings involving Royal Timbers and Banwell were stayed.
  - [6] It now appears that the debt to BMO has been repaid as a result of the efforts of BDO in selling off much of the real estate held by Banwell.
  - [7] The shareholders of Banwell continue in a stalemate and on June 10, 2014, I expanded the Receiver's mandate beyond the BMO debt and ordered a full receivership of the companies.
-

1) The Lepera Motion

- [8] On August 8, 2007, Lepera registered a Claim for Lien against the lands owned by Royal Timbers. Lepera claimed payment of \$385,449.68 as a result of the construction services it provided to build a Fairfield Inn & Suites.
- [9] On September 11, 2007, Lepera issued its Statement of Claim against Royal Timbers, Sonoma Windsor, Sonoma Windsor FI Ltd. and Sonoma Windsor LP with respect to payment pursuant to the Claim for Lien and alternatively, on a *quantum meruit* basis.
- [10] The Sonoma companies did not defend the action and default judgment was granted against those Defendants on April 3, 2008.
- [11] The trial of the action against Royal Timbers was heard in October and November, 2011: Gates J. subsequently dismissed Lepera's claim for a lien against Royal Timbers' interest and dismissed the *quantum meruit* claim.
- [12] On April 12, 2012, Lepera applied to the Divisional Court. The appeal was scheduled to be heard on November 18, 2013. The appeal was stayed by my order.
- [13] In a previous motion heard on August 9, 2013 to lift the stay in so far as it applied to the Lepera appeal, I ruled, in part, as follows:

Unlike the situation considered by the Bankruptcy and Insolvency Act, the stay imposed by my June 5<sup>th</sup>, 2013 order is not permanent. My failure to lift the stay now does not forever extinguish the right to have this appeal heard. In fact, I may be encouraged to lift the stay after BMO has been satisfied, even if the receivership were to remain in place. The dismissal here cannot prejudice further application by Lepera...

In conclusion then, the appeal rights of Lepera, while affected by the stay, are not denied. The appeal can continue to be argued in due course...

- [14] Lepera's position is simply that it had a legal right to argue its appeal and it has waited long enough. It argues that I can take direction from the terms of s. 69.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 which permits a declaration that the stay is inoperative if:
- a) the creditor or person is likely to be materially prejudiced by the continued operation of the stay; or
  - b) it is equitable on other grounds to make such a declaration.

- [15] I considered Lepera's claim of prejudice in my ruling of August 9, 2013.

Lepera claims prejudice if it is not allowed to continue with this action because of the following: It has expended considerable monies in the



prosecution of its claim and appeal; considerable time has been expended by Lepera in the prosecution of its claim and appeal; the action has been ongoing for a period of six years; a considerable amount of money is at stake; the appeal material has been prepared by Lepera and provided to Royal Timbers and to the court; the appeal materials are voluminous; the appeal was perfected and a date for hearing set. It is argued Lepera is entitled to monies claimed due and owing as alleged in its statement of claim and it will be denied rights to which it is entitled as a construction lien claimant of Royal Timbers.

- [16] In 2013, BDO, as Receiver, argued against lifting the Lepera stay as it would divert focus from its mandate of satisfying the BMO debt. It claimed there was no real prejudice. BDO now suggests that the resolution of this appeal is simply a matter of timing. Is it appropriate to get on with this litigation now or later?
- [17] The Receiver appears to recognize the validity of mortgages registered by Simba across the Banwell and Royal Timbers holdings. If correct, Simba would need to be paid before the repayment of unsecured creditors. BDO suggests as it has concentrated on the BMO debt, it could now concentrate on the Simba debt, but it recognizes that the Lepera litigation must be confronted at some point. Mr. Van Klink, counsel for BDO, posits that the Banwell assets should be substantial enough to satisfy all creditors; any distribution to shareholders coming last.
- [18] Mr. Ball appeared for the execution creditor, M.R. Dunn Contractors Ltd. ("Dunn"). He argues that the stay should remain in place. He points out that the portion of property against which the lien is registered has not been sold. The Receiver, in his view, should continue to liquidate property, including this piece, and all secured, preferred, and unsecured creditors should be recognized prior to any stay being lifted. He suggests that otherwise the creditors are funding this litigation and adversely affecting their ability to be repaid.
- [19] Mr. Ball suggests if the lien property is sold funds in the amount of the lien could be sequestered thereby eliminating any prejudice to Lepera.
- [20] Mr. Colautti appears for Simba. His position is that Simba is a secured creditor who has had to wait for the satisfaction of the BMO debt. It is suggested that the outstanding Simba mortgages are in excess of \$3 million with interest accumulating. Approximately \$252,000 is owed to Simba on the parcel in question. It is Simba's position that my April 2013 reasoning is still sound. The stay should remain in place while Simba, as the next in line, is repaid. There is no real prejudice to Lepera.
- [21] I recognize that Lepera bears the onus of convincing me that grounds exist to lift the stay on its litigation so the appeal can be argued.
- [22] I find that the stay should be lifted.
- [23] While the action was tried by Lepera unsuccessfully, it has a right to have its appeal heard. The claim for lien was registered almost eight years ago; the action tried in the fall

of 2011; the appeal launched three years ago; my ruling declining to lift the stay almost two years ago. It is time to have the appeal determined. The appeal will either be dismissed bringing this action to an end, or, if successful, the Receiver will need to decide whether to continue to defend or settle. At that time, Lepera's position as a potential creditor will be determined.

[24] The Receiver's position is important to me. From the information received I do not believe the lifting of this stay will divert the attention of BDO or its counsel from its primary task. It seems other counsel are in place to argue the appeal. As well, I do not believe, with the assets available, the position of the other creditors is prejudiced. The fact that this Royal Timbers litigation must be financed by the funds BDO has acquired from asset sales is not a reason to deny the relief sought (see: *Re Catahan* 2003 CanLII 64266 (SCJ); *Re Scott* 2014 ONSC 5567, at paras. 32-33).

[25] I find that Lepera would be prejudiced if I continue to stay its litigation, and leave its status as a creditor undetermined, while the assets of Banwell and Royal Timbers are liquidated. It is, as well, equitable to lift the stay in these circumstances. Specifically I do not believe that Simba or Dunn will be prejudiced.

[26] Therefore, I am granting the following orders in this motion:

- a) An order lifting the stay of proceedings against Royal Timbers ordered on June 5, 2013 as it relates to Lepera's claim and appeal;
- b) An order granting Lepera leave to continue the appeal filed with the Divisional Court, bearing Court File No.: 1963/12 from the judgment of Gates J. dated March 23, 2012.

[27] If the parties who presented argument choose to address the issue of costs, I will receive written submissions (no more than five pages each) within 30 days of the release of these reasons, otherwise there will be no order. I will say that I believe the motion, particularly in light of my earlier ruling, needed to be argued and the argument presented by all counsel was succinct and appropriate.

## 2) The D'Amore Construction Motion

[28] Mr. Sasso, counsel for D'Amore Construction, has brought a motion to lift the stay on a consolidated action which incorporates three pieces of litigation. It seems Banwell is a plaintiff on two separate actions against D'Amore Construction and D'Amore Construction is a plaintiff in a lien claim proceeding against Banwell. All proceedings have been consolidated.

[29] I did not hear argument on this motion as D'Amore Construction was content to adjourn the motion to allow the Receiver to assess all three actions and determine its position. Mr. Van Klink undertook to engage in that review. His position is consistent with the need to take a broader view of the tasks related to this receivership now that the BMO debt has been satisfied.

[30] As a result, I have adjourned that motion without a fixed date to be brought back on seven days notice with an instruction to ensure that counsel for all secured and unsecured creditors (the predetermined Service List) are served.

3) The 928579 Motion

a) Management Services

- [31] 928579 claims \$18,108.25 from BDO for management services it alleges were performed by Troup. Its position is that these services were undertaken over and above any services compensated by sales commissions. It is argued that these services were most often done at the request of BDO and significantly assisted the Receiver in its task of marketing and selling the real estate inventory.
- [32] I am reminded that all offers for real property sales were brought to BDO by Troup. The argument suggests that without Troup's efforts very little would have been accomplished by BDO. All services were invoiced and all invoices but a few remain unpaid.
- [33] It is suggested the only reason for the Receiver's position is that since 928579 is a Banwell shareholder, the Receiver has declined payment to keep peace with the other shareholders.
- [34] The argument of 928579 resembles a claim for unjust enrichment or *quantum meruit* and really draws from the perceived equities of the relationship between Troup and BDO.
- [35] It is clear the other shareholders, Scott and Kevin, resist all requests for payment by 928579, as does Simba.
- [36] BDO's position is quite simple. There is a Sales Process Order in place which outlines the payment of a commission of \$2,500 to anyone bringing forward an offer on a Banwell lot; payable on closing. Payments by BDO to companies controlled by Troup for commissions or consulting fees total \$190,909.20 to date.
- [37] BDO recognizes the efforts of Troup and does not minimize those but believes there has been adequate compensation paid through commissions. The Receiver states it needs to account to all interested parties, including creditors, and cannot make payments on invoices where there was no agreement or contractual arrangement.
- [38] BDO acknowledges that it did pay several invoices when the Troup related corporations expended monies to promote the receivership or provided specific requested services (an application to the City for water services). BDO's position is nothing more is owed.
- [39] I agree with the position of the Receiver. If 928579 felt it should be compensated for further services rendered by Troup it should have attempted to negotiate a contract like the one authorizing the payment of commissions. There was a written management contract for Troup to manage the commercial plaza. It paid him \$7,750.66. To simply start issuing invoices for services does not create a contractual relationship. Furthermore the Troup - BDO relationship was mutually beneficial. By working along with the

Receiver Troup was helping himself through the receipt of commissions and ultimately as a shareholder.

- [40] The fact that Scott and Kevin did not offer the same services does not assist the argument. The equities of the circumstances do not favour the further payment for management services.

b) Administrative Services

- [41] 928579 (through Wintru) claims \$50,850 from BDO for administrative services. It bases the claim on invoices of \$3,750 per month. 928579 claims this amount has been paid since 2006 on the agreement of shareholders and should be continued to be paid by BDO.
- [42] 928579 suggests that the Banwell businesses have always been at the same location as the Wintru offices on Pleasant Place. There is a phone line supplied, photocopier and secretary. The Banwell records are kept there. The Receiver chose not to acquire its own offices and hire its own staff and therefore the \$3,700 per month should continue to be paid.
- [43] BDO points out that it has paid the full salary of Wintru's (Troup's) assistant since its appointment even though she was never occupied full-time with BDO's work. That payment amounts to \$68,967.03.
- [44] BDO says it has paid to Wintru \$2,865.68 for telephone and photocopier expense. The Receiver believes that it has paid adequate compensation for administrative services and office expenses.
- [45] I agree with the Receiver's position. Again, as mentioned above, if 928579 (or Wintru) wanted to be paid for its offices beyond the agreement to pay salary and hard costs it needed to negotiate an agreement with the Receiver. It did not. It chose to simply issue invoices. They were never paid. There was no obligation to do so.
- [46] 928579 cannot rely on a historical relationship when the playing field was completely altered by the appointment of BDO. In any event, the fees that were paid to Troup related corporations were clearly disputed by Patrick and were part of an action he commenced.
- [47] I find the Receiver is under no obligation to pay the \$50,850 claimed for these services.

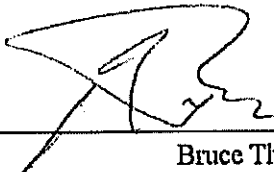
c) Phase III Property

- [48] The unsold inventory of Royal Timbers includes 3.4 acres of unserviced land. These lands consist of multiple lots but for the purposes of these reasons will be referred to as the Phase III property.
- [49] 928579, through a related corporation, offered to purchase the Phase III property for \$276,000 by unconditional offer. Apparently, a local builder wishes to develop the property. 928579 estimates costs of \$920,000 to service the lots. It suggests the \$276,000 is above the value estimated by the 2013 Valco appraisal, acquired by the shareholders.

- [50] 928579 requests a direction to BDO requiring the Receiver to enter into this agreement. It argues that this is good value for unserviced land which has thus far attracted no interest.
- [51] BDO responds that it has been focussed on the sale of serviced lots and it is now time to turn its attention to the balance of the inventory, of which Phase III is a part. Mr. Van Klink advises that BDO has acquired two confidential appraisals which show the value of the Phase III property to be in excess of this offer. He believes this property has not, as yet, been properly exposed to the market. He reminds me that it is the function of the Receiver to determine if transactions are commercially reasonable and that maximization of potential return is achieved. This is its duty owed to the court, to all creditors, and shareholders. It believes it can do better than this proposed transaction.
- [52] The Receiver has sold 75 residential lots to date. It has sold the commercial plaza. Sales are in excess of \$5 million. I have detailed reports on all transactions. I have approved the sales and on each occasion the Receiver has provided its professional opinion based on appraised value, the nature of the property, and the circumstances of the transaction. I do not intend to second-guess the Receiver on the sale of this particular parcel.
- [53] I decline to make the direction requested. As I mentioned in the section above, if the parties who argued the 928579 motion wish me to consider costs I will receive written submissions (no more than five pages each) within 30 days of the release of these reasons, failing which there will be no order.

4) The Seventh Report

- [54] BDO has applied for:
- a) approval of its activities and conduct and its Seventh Report dated April 10, 2015;
  - b) approval of its Interim Statements of Receipts and Disbursements for the period ending April 7, 2015 with respect to Banwell, Royal Timbers and Real Ranchs.
- [55] As expressed in oral reasons delivered on the returnable date of the motion, I have reviewed and approved both the Seventh Report and Interim Statements of Receipts and Disbursements. There was no opposition to the motion and an order directing the relief sought was signed by me on April 21, 2015.

  
\_\_\_\_\_  
Bruce Thomas  
Justice

CITATION: D'Amore v. Banwell Development Corp., 2015 ONSC 2969

**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

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**REASONS**

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Thomas J.

Released: May 13, 2015

# APPENDIX "C"

June 5, 2015

**Delivered Via E-mail/Original by Courier**

BDO Canada Limited  
252 Pall Mall Street, Suite 103  
London, ON N6A 5P6

Attention: Stephen N. Cherniak, CPA, CA,  
CIRP

Tony Van Klink  
Direct Line: 519.931.3509  
tvanklink@millerthomson.com

File: 082873.0010

Dear Sir:

**Re: Royal Timbers Inc. ("Royal Timbers") and Banwell Development Corporation  
("Banwell" and collectively, the "Debtors")**

By Order of the Honourable Mr. Justice Thomas dated June 5, 2013 (the "Appointment Order"), BDO Canada Limited (the "Receiver") was appointed as receiver of the assets, undertakings and properties of the Debtors.

At the date of the Appointment Order, Simba Group Developments Limited ("Simba") and Patrick D'Amore ("Patrick"), now deceased, were the holders of the 14 mortgages (the "Mortgages") listed on Schedule "A" to this letter. Ten of the Mortgages were granted to Simba and Patrick by Royal Timbers. The other four Mortgages were granted to Simba and Patrick by Banwell.

Following is our report to you and our opinion on the validity and enforceability of the Mortgages.

Enclosed with this letter is a bound volume of documents which are referred to in this report by the tab number in that volume at which the documents may be found.

**Assumptions and Qualifications**

The opinions expressed in this letter are subject to the qualifications and assumptions set forth on Schedule "B" to this letter.

**Searches**

We have conducted the following searches concerning the Debtors:



1. Corporation Profile Reports – we obtained a corporation profile report from the Ministry of Government Services for the Province of Ontario with respect to Banwell dated November 28, 2013 which confirms that Banwell was incorporated under its present name on March 11, 2003. We also obtained a corporation profile report from the Ministry of Government Services for the Province of Ontario with respect to Royal Timbers dated November 28, 2013 which confirms that Royal Timbers was incorporated under its present name on June 24, 2005;
2. Certificates of Status – we obtained a certificate of status from the Ministry of Government Services for the Province of Ontario with respect to Banwell which confirms that Banwell had not been dissolved as of November 28, 2013. We also obtained a certificate of status from the Ministry of Government Services for the Province of Ontario with respect to Royal Timbers which confirms that Royal Timbers had not been dissolved as of November 28, 2013;
3. Land Titles – we have performed subsearches of the lands charged by the Mortgages which confirm that at the date of the Appointment Order all of the lands charged by the Mortgages were subject to a prior collateral charge in favour of Bank of Montreal (the “BMO Collateral Mortgage”). Other than the BMO Collateral Mortgage there are no other registered charges prior in time to the Mortgages; and
4. *Planning Act* – we have completed all searches necessary to determine whether the Mortgages complied with section 50 of the *Planning Act* at the date of registration. Based on those searches, we confirm that the Mortgages complied with section 50 of the *Planning Act* at the date of registration.

**Registration of The Mortgages**

Copies of the Mortgages are at tabs 1-14. The Mortgages were registered electronically in the Essex Land Registry office on the dates indicated on Schedule A to this letter. Each of the registered Mortgages indicates that it was signed by J. Murray Troup on behalf of Banwell or Royal Timbers as the case may be. The corporation profile reports obtained with respect to the Debtors indicate that Mr. Troup was an officer and director of both Debtors.

**Opinion**

Subject to the qualifications and assumptions set forth on Schedule “B” to this letter, we are of the opinion that:

1. as of the date of the Appointment Order, the Mortgages were valid and enforceable charges against the lands charges thereby; and
2. there are no charges registered prior in time to the Mortgages against the lands charged by the Mortgages, save and except the BMO Collateral Mortgage.

**Consideration for the Mortgages – Was Value Given?**

For the purposes of our opinion above, we have assumed (as is usual in enforceability opinions of this nature) that consideration and value was given for the Mortgages. Whether or not consideration and value was given for a security instrument is a factual issue. As the



issue of consideration and value for the Mortgages may be raised, we have reviewed whether there is satisfactory evidence of consideration and value having been provided for the Mortgages.

James Branoff, the lawyer for Simba, has advised that each of the Mortgages originated from one of five vendor take back mortgages granted by Banwell to Simba and Patrick in consideration for lands transferred by them to Banwell. As the development of those lands and other lands owned by Banwell progressed, four of the five vendor take back mortgages were restructured and replaced by new mortgages over parts of the Banwell/Royal Timbers development. Mr. Branoff has provided a summary, a copy of which is at tab 15 (the "Branoff Summary") outlining the origin and history of the Mortgages. The original mortgage to which each of the Mortgages can be traced is shown on Schedule "A".

Our review of the Mortgages and the original mortgages from which they are derived follows.

Mortgage Number CE163211

Mortgage number CE163211 in the principal amount of \$229,123.47 (tab 1) was registered against PIN's 01566-0469 and 01566-0470 on August 10, 2005. Together, PINs 01566-0469 and 01566-0470 comprise the commercial plaza lands sold by the Receiver in December, 2013 for consideration of \$2,750,000.

According to the Branoff Summary, mortgage number CE163211 was derived from a vendor take back mortgage registered as number CE50056 (tab 16). The lands charged by mortgage number CE50056 encompassed the commercial plaza lands together with other lands. As those lands were developed and divided, mortgage number CE50056 was discharged and mortgage number CE163211 registered to reflect the portion of mortgage number CE50056 which was attributable to the commercial plaza lands.

We have conducted searches and obtained copies of registered instruments in the Essex Land Registry office which disclosed the following:

- (a) on December 16, 2003, Simba transferred to Banwell by instrument number CE49964 the lands comprised by PIN 01566-0363 for a stated consideration of \$1,086,000 (tab 17);
- (b) on December 16, 2003, Patrick transferred to Banwell by instrument number CE49965 the lands comprised by PINs 01566-0116, 01566-0117, 01566-0118 and 01566-0119 for a stated consideration of \$12,803.47 (tab 18);
- (c) the lands transferred by Simba and Patrick as referred to in (a) and (b) above were the lands which later became the commercial plaza lands as well as other lands;
- (d) the aggregate stated consideration for the transfer of the lands referred to in (a) and (b) above was \$1,098,803.47. The land transfer tax affidavits attached to the transfers provide that the consideration for the transfers was provided in cash. The amount of any mortgages given back to the vendors is recorded in the land transfer tax affidavits as \$0;



- (e) on the same date that the lands referred to in (a) and (b) above were transferred by Simba and Patrick to Banwell, charge number CE50056 from Banwell to Simba and Patrick in the amount of \$1,097,803.47 was registered against title to the lands transferred. The aggregate consideration for the two transfers was \$1,098,803.47, \$1,000 greater than the amount of charge number CE50056;
- (f) on August 10, 2005, Banwell transferred the commercial plaza lands portion of the lands charged by mortgage number CE50056 to Royal Timbers by two transfers (tab 19) for an aggregate consideration of \$229,123.47. On that same date, mortgage number CE50056 was discharged by instrument number CE163212 (tab 20) from title to the commercial plaza lands and mortgage number CE163211 in the amount of \$229,123.47 was registered against the commercial plaza lands.

The sequence and dates of registration of the various instruments are consistent with the Branoff Summary and strongly support the conclusion that mortgage number CE163211 was intended to replace the portion of mortgage number CE50056 attributable to the commercial plaza.

Was mortgage number CE50056 a vendor take back mortgage? The sequencing of the documents and dollar amounts strongly support the conclusion that it was. However, the land transfer tax affidavits included in the two transfers by which the lands charged by that mortgage were originally transferred to Banwell indicate that no vendor take back mortgage was provided and the full consideration for the transfers was paid in cash.

The affiant of the land transfer tax affidavits was Mr. Troup. Mr. Troup also authorized the registration by Banwell of mortgage number CE50056 and by Royal Timbers of the replacement mortgage number CE163211. Mr. Troup was adverse in interest to Simba and Patrick. It seems highly unlikely that Mr. Troup would authorize the registration on behalf of Banwell of the original mortgage number CE50056 and the replacement mortgage 20 months later by Royal Timbers if the purchase price for the transferred lands had, in fact, been paid in cash.

While an inquiry should be made of Mr. Troup to ascertain whether the consideration for the transfers from Simba and Patrick was paid in cash as indicated by the land transfer tax affidavits (and if he indicates that it was, to provide evidence of that payment), the sequencing of the documents and fact of registration of the mortgages themselves support the conclusion that mortgage number CE50056 was a vendor take back mortgage and that mortgage number CE163211 was intended to replace the portion of that mortgage attributable to the commercial plaza lands.

#### The Other 13 Mortgages

According to the Branoff Summary, the rest of the mortgages (13 in total – tabs 2-14) can all be traced back to four vendor take back mortgages granted by Banwell to Simba and Patrick on August 10, 2005 (the "August, 2005 Mortgages"), the particulars of which are as follows:

The logo consists of the letters 'M' and 'T' stacked vertically. The 'M' is a bold, serif capital letter, and the 'T' is a bold, sans-serif capital letter positioned directly below the 'M'.

<u>Instrument Number</u>	<u>Amount</u>
CE163204 (tab 21)	\$1,374,260.77
CE163205 (tab 13)	\$282,800.00
CE163206 (tab 22)	\$429,565.66
CE163207 (tab 23)	\$1,460,650.54

We have conducted searches and obtained copies of registered instruments in the Essex Land Registry office which disclosed the following:

- (a) on August 10, 2005, by a transfer registered as instrument number CE163172 (tab 24) Simba transferred to Banwell the lands comprised by PINs 01566-0540, 01566-0153 and 01566-0030 for a stated consideration of \$2,588,556.89. The land transfer tax affidavit indicates that the consideration for the transfer was satisfied by a vendor take back mortgage;
- (b) on August 10, 2005, by a transfer registered as instrument number CE163171 (tab 25) Patrick transferred to Banwell the lands comprised by PIN 01566-0355 for a stated consideration of \$756,337.77. The land transfer tax affidavit attached to that transfer indicates that the full amount of the consideration was satisfied by a vendor take back mortgage; and
- (c) the lands charged by the August 2005 Mortgages include the lands transferred by Simba and Patrick to Banwell as described in (a) and (b) above. The August 2005 Mortgages also include six other parcels of land transferred to Banwell by third parties or by Banwell as beneficial owner to Banwell as trustee (tab 26).

The land transfer tax affidavits for the transfers by which Simba and Patrick transferred the lands described in paragraphs (a) and (b) above indicate that the consideration for the transfers was to be fully satisfied by vendor take back mortgages. The dates and sequencing of the registrations are consistent with the August 2005 Mortgages being vendor take back mortgages. We are, however, unable to reconcile the total amount of the consideration reflected in the transfers from Patrick and Simba (\$3,344,894.66) with the aggregate amount of the August 2005 Mortgages (\$3,547,278).

Of the four August 2005 Mortgages only one of those mortgages remained registered at the date of the Appointment Order (mortgage number CE163205 – tab 13 – remained registered against the phase four residential lands in the Royal Timbers subdivision). The other three August 2005 Mortgages had been discharged and replaced by 12 other mortgages (12 of the 14 mortgages listed on Schedule "A") at the date of the Appointment Order. Those 12 mortgages are reviewed below.



**Mortgage Numbers CE269334 and CE269359**

Mortgage number CE269334 in the principal amount of \$908,565.14 (tab 11) was registered against sixty-four lots in phase two of the Royal Timbers subdivision on April 24, 2007. Mortgage number CE269359 in the principal amount of \$240,495.63 (tab 12) was registered against lots 120, 121 and 122 in phase three of the Royal Timbers subdivision on April 25, 2007.

According to the Branoff Summary, mortgage numbers CE269334 and CE269359 replaced one of the August 2005 Mortgages – mortgage number CE163204 in the amount of \$1,374,260.77. The two replacement mortgages total \$1,149,060.77. According to the Branoff Summary, the difference between the amount of the original vendor take back mortgage and the two replacement mortgages is attributable to the fact that as lot sales occurred payments were made on the original vendor take back mortgage to reduce the outstanding balance.

We have conducted searches and obtained copies of registered instruments in the Essex Land Registry office which disclose the following:

- (a) on April 24, 2007, mortgage number CE269334 in the amount of \$908,765.14 was registered;
- (b) on April 25, 2007, mortgage number CE269359 in the amount of \$240,495.63 was registered; and
- (c) on April 25, 2007, mortgage number CE163204 was discharged by instrument number CE269387 (tab 27).

There is no means to verify through searches in the land registry office that mortgage number CE269334 and mortgage number CE269359 were intended to replace mortgage number CE163204 as indicated in the Branoff Summary. We do, however, note the following:

- (a) the aggregate amount of mortgage number CE269334 and mortgage number CE269359 is the same as the amount of mortgage number CE163204;
- (b) mortgage number CE163204 was discharged on the same date that mortgage number CE269334 and mortgage number CE269359 were registered; and
- (c) the registration of mortgage number CE269334 and mortgage number CE269359 was authorized by Mr. Troup on behalf of Banwell. As Mr. Troup is adverse in interest to Simba and Patrick, it is unlikely that he would have authorized the registration of mortgage number CE269334 and mortgage number CE269359 unless the explanation in the Branoff Summary was correct.

While there is no means to verify through searches in the land registry office that mortgage number CE269334 and mortgage number CE269359 were intended to replace mortgage number CE163204, the documents and observations referred to above are consistent with that conclusion.

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**Mortgage Number CE269275**

According to the Branoff Summary, mortgage number CE269275 in the amount of \$429,565.66 (tab 14) was registered on April 24, 2007 against the phase three commercial lands comprised by PIN 01566-0821 to replace one of the August 2005 Mortgages - mortgage number CE163206 - after that mortgage was inadvertently discharged.

There is no means to verify through searches in the land registry office the explanation in the Branoff Summary that mortgage number CE163206 was inadvertently discharged and that mortgage number CE269275 was intended to replace mortgage number CE163206. We do, however, note the following:

- (a) the amount of the two mortgages is the same; and
- (b) the registration of mortgage number CE269275 was authorized by Mr. Troup on behalf of Banwell. As Mr. Troup was adverse in interest to Simba and Patrick, it is unlikely that he would have authorized the registration of mortgage number CE269275 unless the explanation in the Branoff Summary was correct.

While there is no means to verify through searches in the land registry office that the explanation in the Branoff Summary is correct, the documents and observations referred to above are consistent with that explanation.

**Mortgage Numbers CE269240, CE269241, CE269243, CE269244, CE269246, CE269247, CE269248, CE269250 and CE269253**

These nine mortgages (tabs 2-10) in the aggregate amount of \$1,460,650.54 were all registered on April 24, 2007. Each mortgage charges an individual block of the phase two commercial lands.

According to the Branoff Summary, these nine mortgages were registered to replace one of the August 2005 Mortgages - mortgage number CE163207 in the amount of \$1,460,650.59 - which encompassed, among other lands, the phase two commercial lands. Mortgage number CE163207 was discharged on July 25, 2007 (tab 28).

There is no means to verify through searches in the land registry office that the 9 mortgages registered on April 24, 2007 replaced mortgage number CE163207. We do, however, note the following:

- (a) the aggregate amount of the 9 mortgages is the same as the amount of mortgage number CE163207;
- (b) mortgage number CE163207 was discharged shortly after the 9 mortgages were registered; and
- (c) the registration of the 9 mortgages was authorized by Mr. Troup on behalf of Royal Timbers. As Mr. Troup was adverse in interest to Simba and Patrick, it is unlikely that he would have authorized the registration of the 9 mortgages unless the explanation in the Branoff Summary was correct.

While there is no means to verify through searches in the land registry office that the explanation in the Branoff Summary is correct, the documents and observations referred to above are consistent with that explanation.

#### **Statement of Account**

Mr. Branoff has provided a statement of the balance outstanding on the Mortgages as of July 1, 2014. A copy of that statement is at tab 29. That statement shows an aggregate balance outstanding on the Mortgages as of July 1, 2014 of \$3,680,739.17.

We have not verified the accuracy of the interest calculation on that statement. Nor are we able to verify that the principal balance shown on that statement for each of the Mortgages is accurate. With the exception of mortgage numbers CE269334 and CE269240, the principal balance shown as outstanding on the statement is the same as the principal balance on the vendor take back mortgages from which the Mortgages were derived. If accurate, that means that no payments were made on those mortgages at any time after registration. We have no means to verify whether any payments were made or not.

An inquiry should be made of Mr. Troup as to (a) whether any principal payments were made on the Mortgages and, if so, evidence of those payments be provided, and (b) whether he believes the principal balance shown on the statement as being outstanding is correct.

#### **The "Subrogation/Marshalling" Issue**

Counsel for Simba has raised the concern that Simba's rights as mortgagee should not be prejudiced as a result of proceeds from sales of lands over which Simba holds security having been used in their entirety to repay the amounts owing to Bank of Montreal or fund the expenses of the receivership thereby leaving no funds available to repay the amounts secured by the Mortgages over those lands.

For example, Simba claims an outstanding balance under the mortgage held by it over the commercial plaza lands of \$364,125.77 as of July 1, 2014. The proceeds from the sale of the commercial plaza lands have been used to reduce the Bank of Montreal debt and fund the expenses of the receivership, including the payment of property taxes on lands owned by Banwell. As such, it might be argued that there are no funds remaining in the receivership estate to pay the balance outstanding on the mortgage held by Simba and Patrick over the commercial plaza lands. Because each of the Mortgages relate to particular parcels of lands, a similar situation may exist for the other mortgages held by Simba and Patrick.

The issue arises only because of the timing of the sale of the various parcels of land in the receivership proceeding. If all of the lands were sold at the same time, the amounts owing to Bank of Montreal and the receivership expenses would have been spread across and paid from the proceeds of the assets as a whole, thus leaving funds available from the sale of each of the individual parcels of land to be applied against the balance outstanding on the Mortgages. If after allocating the Bank of Montreal debt and expenses of the receivership in that manner the remaining proceeds from the individual parcels of land were sufficient to pay each of the Mortgages attributable to the particular parcel, the outstanding balance on the Mortgages would be paid in full.

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In our view, Simba and Patrick's right to receive payment of amounts owing under the Mortgages should not be prejudiced simply because some parcels of land were sold more quickly than others, resulting in the Bank of Montreal debt and receivership expenses being paid from the proceeds of the lands sold early in the receivership process rather than from the proceeds of the receivership as a whole. Such a result would be inequitable.

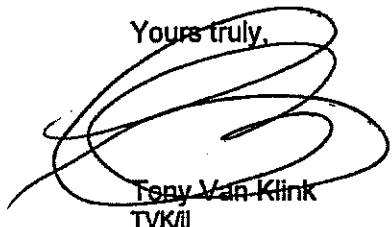
In our view, the ultimate priorities of the creditors in the receivership must be considered as a whole and distributions from the receivership estate made based on their rights as they existed at the outset of the receivership. For distribution purposes, the order in which particular assets have been realized upon by the Receiver should be immaterial.

The doctrine of marshalling may be used by the court to prevent the interests of Simba and Patrick as mortgagee from being prejudiced. The doctrine of marshalling is an equitable remedy intended to prevent a creditor who can resort to two funds for payment of its debt from defeating another creditor who can resort to only one of those funds (*807933 Ontario Inc. v. Paddon and Associates*, 1998 CanLII 3766 (ON CA)). If the creditor having the ability to satisfy its claim from multiple funds satisfies its claim from the only property to which the other creditor has resort for its claim, the subordinate creditor is subrogated to the superior creditors' rights against the other security (*Aldrich v. Cooper* (1803) 8 Ves 382, 32 ER 402 (L.C.)). The claim of Bank of Montreal and the expenses of the receivership may each be satisfied from multiple sources. Each of the Mortgages however may only be satisfied from a single source, namely, the particular lands charged by each of the Mortgages. As such, the doctrine of marshalling may be applied to prevent the rights of Simba and Patrick under the Mortgages from being defeated.

A brief summary of the doctrine of marshalling from Halsbury's Laws of England, 4<sup>th</sup> Edition, is at tab 30.

The Receiver should recommend to the Court that the doctrine of marshalling be applied.

Yours truly,



Tony Van Klink  
TVK/jl





## SCHEDULE "A"

(Mortgages)

<u>Chargor</u>	<u>Instrument</u>	<u>Amount</u>	<u>Date of Registration</u>	<u>Property</u>	<u>Root Mortgage</u>
Royal Timbers	CE163211	\$229,123.47	August 10, 2005	Commercial, Plaza	CE50056
Royal Timbers	CE269240	\$137,301.15	April 24, 2007	Commercial, Block 100	CE163207
Royal Timbers	CE269241	\$102,245.54	April 24, 2007	Commercial, Block 200	CE163207
Royal Timbers	CE269243	\$252,692.54	April 24, 2007	Commercial, Block 300	CE163207
Royal Timbers	CE269244	\$103,706.19	April 24, 2007	Commercial, Block 400	CE163207
Royal Timbers	CE269246	\$289,208.81	April 24, 2007	Commercial, Block 500	CE163207
Royal Timbers	CE269247	\$96,402.94	April 24, 2007	Commercial, Block 700	CE163207
Royal Timbers	CE269248	\$83,257.08	April 24, 2007	Commercial, Block 700	CE163207
Royal Timbers	CE269250	\$194,266.52	April 24, 2007	Commercial, Block 800	CE163207
Royal Timbers	CE269253	\$201,569.77	April 24, 2007	Commercial, Block 900	CE163207
Barwell	CE269334	\$908,765.14	April 24, 2007	Residential, Phase 2	CE163204
Barwell	CE269359	\$240,495.63	April 25, 2007	Residential, Phase 3	CE163204
Barwell	CE163205	\$282,800.00	August 10, 2005	Residential, Phase 4	CE163205
Barwell	CE269275	\$429,565.66	April 24, 2007	Commercial, Phase 5	CE163206



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## SCHEDULE "B"

### **Genuineness and Authenticity**

We assume the genuineness of all signatures and the authenticity of all documents or copies thereof.

### **Equity and other Statutory Limitations**

The opinions herein expressed are subject to any equities between the parties of which we have no notice or knowledge.

### **Proper Corporate Authorization**

We assume that the security documents described in the attached letter have been executed by proper signing officers of the Debtors duly authorized.

### **Accuracy of Public Records**

We have assumed the accuracy of all public records, indexes and filing systems which we have searched or have caused inquiries to be made.

### **Laws of Ontario**

The opinions expressed herein are limited to the laws of the Province of Ontario and all federal laws applicable therein.

### **Consideration and Value Provided**

We have assumed that consideration and value was provided for the Mortgages.

M  
T

# APPENDIX "D"

**BDO Canada Limited Court Appointed Receiver of  
Banwell Development Corporation  
Statement of Receipts and Disbursements  
June 5, 2013 through June 9, 2015**

<b>Receipts:</b>	
Sale of Lots	\$ 3,542,050.00
Less: VTB mortgages	(2,145,500.00)
Less: property tax arrears	(42,773.11)
Add: VTB registration fee	<u>3,672.50</u>
	\$ 1,357,449.39
VTB mortgage payouts	455,500.00
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	84,000.00
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>1,071.50</u>
	<u>2,558,522.06</u>

<b>Disbursements:</b>	
City of Windsor - Property taxes	\$ 492,459.99
Receiver's fees	290,657.18
Construction (Paving, concrete, electrical, servicing)	271,260.14
Legal Fees	195,812.20
Consulting/commission fees on lot sales	148,750.00
HST paid on disbursements	134,002.39
Repayment of Receiver's Certificate # 1	125,000.00
Funds advanced to Royal Timbers Receiver's account	114,158.71
Professional fees - engineering	36,298.50
Appraisal fees	32,201.85
Accounting fees (Hyatt Lassaline LLP)	25,600.00
Repair and maintenance	17,014.77
BMO - Letter of Credit admin charge	6,750.00
City of Windsor - application fees	5,012.00
Advertising	5,010.00
Utilities	4,925.84
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
Copier lease	1,119.92
Interest paid on Receiver's Certificate # 1	1,114.72
Other professional fees	1,562.50
Miscellaneous legal	568.75
Fees to renew corporation name	<u>185.80</u>
	1,918,939.06

**Excess receipts over disbursements** \$ 639,583.00

<b>Represented by:</b>	
Payment to secured creditor (BMO)	500,752.08
Balance in Receiver's account	138,830.92
	<u>\$ 639,583.00</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.

# APPENDIX "E"

BDO Canada Limited Court Appointed Receiver of  
Royal Timbers Inc.  
Statement of Receipts and Disbursements  
June 5, 2013 through June 9, 2015

Receipts:

Sale of Plaza	\$ 2,750,000.00	
Less: property tax arrears	(278,730.30)	
Less: December rent and security deposits (credited to purchaser)	<u>(35,539.28)</u>	
		\$ 2,435,730.42
Sale of Block 200	427,500.00	
Less: sales commission	(4,830.76)	
Add: credit for property taxes paid	<u>139.08</u>	
		422,808.32
Rent collected from commercial tenants		214,992.30
Advance of funds from Banwell		114,158.71
City of Windsor - settlement		30,000.00
HST refunds		13,258.29
Sale of chattels to new tenant		9,040.00
Security deposit on Lease of unit 100		5,000.00
Insurance premium refund		3,530.52
Utilities refund		<u>639.98</u>
		3,249,158.54

Disbursements:

City of Windsor - property taxes	264,701.90	
Loan to Banwell re repayment of Banwell Loan to BMO	250,000.00	
Receiver's fees	156,758.26	
Repayment of funds to Banwell	114,716.07	
Legal fees	113,868.55	
Payroll (net)	56,222.08	
HST on disbursements	47,851.08	
Accounting fees (Hyatt Lassaline LLP)	24,350.00	
Appraisal fees	19,103.90	
Payroll source deductions remitted	21,266.73	
Repair & maintenance	18,684.19	
Advertising - re sale of plaza	9,042.34	
Receiver General (remit tenant chattel proceeds)	9,040.00	
Wintru - property management fees	8,642.98	
HST remitted	6,830.45	
Legal fees (Wolf Hooker Professional Corp)	5,727.15	
Insurance	5,024.16	
Commission on unit 100 lease	4,659.20	
Commission on Block 200	4,200.00	
Utilities	3,263.57	
City of Windsor - zoning issue hold removal	1,172.00	
Miscellaneous	535.75	
WSIB premium	<u>521.32</u>	
		1,146,181.68

Excess receipts over disbursements

\$ 2,102,976.86

Represented by:

Payment to secured creditor (BMO)	1,923,020.05	
Balance in Receiver's account	<u>179,956.81</u>	
	<u>\$ 2,102,976.86</u>	

# APPENDIX "F"

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**BDO Canada Limited**  
**Real Ranchs Trust Account**  
**Statement of Receipts and Disbursements**  
**January 6, 2015 through June 9, 2015**

**Receipts:**

Sale of Lots	\$ 1,144,000.00	
Less: VTB mortgages	(869,000.00)	
Add: VTB mortgage payouts	39,500.00	
Add: property tax credited	1,414.55	
Add: VTB mortgage fees	<u>734.50</u>	
		\$ 316,649.05
Security deposits collected on sale of lots		<u>17,250.00</u>
		<u>333,899.05</u>

**Disbursements:**

Consulting/commission fees on lot sales	36,800.00	
WFCU re: M. Troup	18,200.00	
HST paid on disbursements	<u>7,150.00</u>	
		62,150.00

**Excess receipts over disbursements**

\$ 271,749.05

**Represented by:**

Balance in Receiver's account

\$ 271,749.05



# APPENDIX "G"

**ONTARIO SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF BANWELL DEVELOPMENT CORPORATION AND  
ROYAL TIMBERS INC.**

**AFFIDAVIT OF STEPHEN N. CHERNIAK**

**I, Stephen N. Cherniak, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:**

1. I am a Senior Vice-President of BDO Canada Limited, the Receiver of Banwell Development Corporation and Royal Timbers Inc., ("Banwell" and "Royal Timbers") and as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated June 5, 2013 BDO Canada Limited was appointed as Receiver of Banwell and Royal Timbers (the "Receiver").
3. The Receiver's First Report to the Court was approved by Justice Thomas on June 25, 2013.
4. The Receiver's Second Report to the Court was approved by Justice Thomas on July 23, 2013. The first account of the Receiver for the period May 2, 2013 to July 5, 2013 was also approved by the Order of Justice Thomas on July 23, 2013.
5. The Receiver's Third Report to the Court was approved by Justice Thomas on December 2, 2013. The second account of the Receiver for the period July 5, 2013 to November 5, 2013 was also approved by the Order of Justice Thomas on December 2, 2013.
6. The Receiver's Fourth Report to the Court was approved by Justice Thomas on December 13, 2013.
7. The Receiver's Fifth Report to the Court was approved by Justice Thomas on January 27, 2014. The third account of the Receiver for the period November 5, 2013 to January 15, 2014 was also approved by the Order of Justice Thomas on January 27, 2014.

8. The Receiver's Sixth Report to the Court was approved by Justice Thomas on March 3, 2015. The fourth account of the Receiver for the period January 15, 2014 to January 15, 2015 was also approved by the Order of Justice Thomas on March 3, 2015.

9. The Receiver's Seventh Report to the Court was approved by Justice Thomas on April 21, 2015.

10. Since the date of the Receiver's last account the Receiver has been engaged in the following:

- Complete the Sixth Report of the Receiver to provide the Court with information on the sale of 36 residential building lots to various parties, including 22 lots owned by Real Ranchs Inc. (the "Real Ranchs' lots"), to obtain an Order to approve the Agreements of Purchase and Sale for the numerous residential building lots and commercial Block 200, to distribute funds to the Bank of Montreal ("BMO") in full payment of Banwell's indebtedness to BMO when funds are available, and to attend Court hearing on March 3, 2015;
- Review the cross-motion materials of M. Troup / 928579 Ontario Limited ("928579 Ontario") prior to the March 3, 2015 hearing;
- Resolve issue of Windsor Family Credit Union ("WFCU") mortgage over the Real Ranchs lots and M. Troup guarantee of WFCU indebtedness with WFCU, WFCU legal counsel, Troup and Receiver's legal counsel;
- Review 2015 City of Windsor ("City") tax bills and identify sold lots where ownership was not changed in City records, and prepare schedule of taxes to be repaid by City and correspondence;
- Commission appraisals of the Phase III residential lands from two appraisers. Review the subdivision agreement terms, appraisal methodology and draft appraisals with the respective appraisers;
- Commission appraisals of various commercial parcels and provide relevant information to appraisers;
- Complete the sale of Lot 27 Plan 12M-546 to Hadi Custom Homes Inc. ("Hadi") on March 19, 2015;
- Complete the sale of three (3) lots in Phase I to 11228631 Ontario Ltd. on March 31, 2015;

- Complete the sale of 11 lots in Phase IV and 21 of the Real Ranchs' lots to 1362279 Ontario Ltd on April 2, 2015;
- Complete the sale of Block 200 to 838605 Ontario Limited on April 2, 2015;
- Negotiate the sale of 7 building lots in Phase II of the Royal Timbers subdivision to Hadi and enter into Agreement of Purchase and Sale;
- Complete the Seventh Report of the Receiver to provide the Court with information on the status of litigation that the Companies are parties to, and the Receiver's position with respect to the Cross-Motion of 928579 Ontario and to attend Court hearing on April 21, 2015;
- Negotiate amendments to VTB mortgage terms on the sale of 7 Phase II lots to Hadi and complete the sale on April 24, 2015;
- Request listing proposals for the sale of 3155 Banwell Road, Windsor and review proposals received;
- Prepare and compile documents for Phase III Lands sale process, including letter to prospective purchasers, terms and conditions of sale, agreement of purchase and sale prepared by Receiver's legal counsel, and various appendices;
- Telephone calls and electronic mail correspondence with Phase III Lands interested parties;
- Receive requests for partial mortgage discharges on VTB mortgages, receive principal payments and execute discharge documents;
- Oversee and approve maintenance and repairs to the Banwell lots and infrastructure;
- Provide monthly reporting of Receipts and Disbursements to the stakeholders; and
- Various phone calls and correspondence with the stakeholders and their respective counsel.

11. In the course of performing the duties pursuant to the Order and as set out above at paragraph 10, and since the date of the Sixth Report the Receiver's staff expended 303.95 hours for the period of January 15, 2015 through May 17, 2015. Attached hereto and marked as Exhibit "A" to this my Affidavit are the accounts of the Receiver together with a summary sheet.

12. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
13. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
14. Although the assets of Banwell and Royal Timber are located in Windsor and the Receiver's primary office is located in London the Receiver has not charged for travel time or travel expenses.
15. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
16. This Affidavit is sworn in support of the motion for approval of the Receiver's fees and disbursements and for no other or improper purposes.

SWORN BEFORE ME at the City of  
Toronto in the Province of Ontario  
on the 12<sup>th</sup> day of June, 2015



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Commissioner for Taking Affidavits



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STEPHEN A. CHERNIAK, CPA, CA, CIRP

**Gary Vincenzo Carrato, a Commissioner, etc.,  
Province of Ontario, for BDO Canada LLP, Chartered  
Accountants and Consultants and BDO Canada Limited,  
Trustee in Bankruptcy, and their subsidiaries, branches,  
and affiliates. Expires April 19, 2017**

Attached is Exhibit A  
To the Affidavit of Stephen N. Cherniak  
Sworn the 12<sup>th</sup> day of June, 2015.



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A Commissioner, Etc

*Gary Vincenzo Carrato, a Commissioner, etc.,  
Province of Ontario, for BDO Canada LLP, Chartered  
Accountants and Consultants and BDO Canada Limited,  
Trustee in Bankruptcy, and their subsidiaries, associates  
and affiliates. Expires April 19, 2017.*

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**Summary of Receiver's Accounts for the period  
January 15, 2015 through May 17, 2015**

**EXHIBIT "A"**

<b>Invoice Date</b>	<b>Hours Expended</b>	<b>Invoice Total</b>
March 11, 2015	123.90	\$47,009.75
May 21, 2015	180.05	65,727.30
	303.95	\$112,737.05



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Invoice # 88044537  
Banwell Developments Corp  
HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
245 Windsor Ave  
Windsor, ON N9A 1J2

March 11, 2015

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**Re: Banwell Development Corporation and Royal Timbers Inc.**

For professional services rendered for the period January 14, 2015 through March 10, 2015 as per the attached detail:

Our Fee	\$41,500.00
Disbursements (courier & parking)	<u>101.55</u>
Sub Total	41,601.55
HST	5,408.20
Total	<u>\$47,009.75</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
103-252 Pall Mall Street  
London, ON N6A 5P6

Invoice #	88044537
Amount	\$47,009.75



March 11, 2015

For professional services rendered

Staff	Date	Time	Narrative
Hooper, L	14-Jan-15	0.1	Issued cheques.
Hooper, L	15-Jan-15	0.1	Issued cheque for court fees.
Cherniak, S	16-Jan-15	0.3	Review email from S. D'Amore re Block 200 services easement. Email to Miller Thomson. Respond to S. D'Amore.
Finnegan, M	16-Jan-15	0.2	Bill payment.
Flett, D	16-Jan-15	0.2	Review email from M Troup on Block 200, Robinet and other matters.
Hooper, L	16-Jan-15	0.2	Banking
Cherniak, S	19-Jan-15	0.4	Review of easement information for Block 200 from Miller Thomson. Send to S. D'Amore. Review information to go to Hyatt Lassaline re financial statements.
Finnegan, M	19-Jan-15	0.8	File administration. Update fee schedule.
Cherniak, S	20-Jan-15	0.3	Update on court date for sale. Email from M. Troup re WFCU position. Call from M. Troup re number of issues including Real Ranch deal re Hadi, WFCU and payments to M. Troup.
Finnegan, M	20-Jan-15	0.2	Finish gathering fiscal 2014 Statement of Adjustments and send to Hyatt Lassaline.
Flett, D	20-Jan-15	0.4	Review email from M. Troup on Bungalow, invoices; review email re: Block 200; Schedule A for Lot 27 to M Troup; calls with M Troup on Lot 27 and bungalow.
Hooper, L	20-Jan-15	0.1	Issued cheques.
Cherniak, S	21-Jan-15	0.5	Email from Hyatt Lassaline re HST. Review of offer from Hadi re Real Ranch Lot. Review of revised offer on Block 200.
Finnegan, M	21-Jan-15	0.6	CRA request for HST return review. Pull documents and provide to CRA. File administration.
Flett, D	21-Jan-15	0.4	Call with M Troup; review various emails; review draft Lot 27 sale agreement and memo; review court date and 6th report.
Hooper, L	21-Jan-15	0.1	Issued cheque.
Cherniak, S	22-Jan-15	0.2	Send executed offer on Block 200. Update from M. Troup on Bungalow Homes deal.
Finnegan, M	22-Jan-15	0.3	Prepare and send payroll cheque.
Flett, D	22-Jan-15	0.2	Call with M Troup on Lot 60; review appraisal; review of various emails.
Cherniak, S	23-Jan-15	0.5	Email from Reynolds on Lepera. Respond and send to Miller Thomson. Review of Dunn Factum on Lepera.
Finnegan, M	23-Jan-15	0.5	Pay bills.
Flett, D	23-Jan-15	0.4	Review email on Lepera; call with M Troup on Lot 60 and

Staff	Date	Time	Narrative
			review appraisals; review Block 200, 6th report timetable.
Cherniak, S	26-Jan-15	0.6	Email and call from M. Troup re Dunn Paving lien. Email from Miller Thomson re availability of two Lots in Real Ranch. Respond.
Finnegan, M	26-Jan-15	0.5	File December, 2014 HST return.
Flett, D	26-Jan-15	0.5	Call with M Troup on Lepera Motion; brief review of Lepera factum; email to S. Cherniak re: Troup/Lepera; review J Lehman email and Lot inventory re: Hadi Homes enquiry on Phase 4 Lots; review Phase 4 Lot status with S. Cherniak.
Cherniak, S	27-Jan-15	0.2	Update on Bungalow Homes and Flett call with M. Troup. Email to S. D'Amore re Block 200 deal.
Flett, D	27-Jan-15	0.4	Call with M Troup on 3 Lot sale to Bungalow, Hadi, phase 3 and other issues; memo to S. Cherniak to update; review emails re: Block 200.
Cherniak, S	28-Jan-15	0.7	Execute APS's for Bungalow, Hadi deal. Calls from M. Troup. Email from Miller Thomson re Lepera leave motion. Review of correspondence re BMO Line of Credit. Spencer invoicing issue.
Flett, D	28-Jan-15	2.4	Review Bungalow Phase 1 and Hadi Lot 27 offers; review accepted offers with S. Cherniak and forward to M Troup; review recent Lot APS and update Lots sales / appraisal comparison summary schedule and VTB amounts and terms; email to Miller Thomson with Bungalow and Lot 27 APS and notes on sales, timing and property taxes; email with R Spencer on Phase II engineer consulting.
Cherniak, S	29-Jan-15	0.8	Review of Spencer invoice. Numerous emails from M. Troup re billing. Review of correspondence from Greene. Email to Miller Thomson re same.
Finnegan, M	29-Jan-15	0.5	Prepare and send payroll cheque.
Flett, D	29-Jan-15	0.8	Calls with M Troup on several matters including Bungalow deal, Lot 60, Block 200; review emails from M Troup re: Via Sales invoices; review of other emails re: P. Greene, RC Spencer.
Hooper, L	29-Jan-15	0.1	Issued cheque
Cherniak, S	30-Jan-15	0.4	Emails from M. Troup re Rauti deal. Respond. Review of correspondence with WFCU.
Finnegan, M	30-Jan-15	0.5	Pay bills
Flett, D	30-Jan-15	0.2	Review of email re: Line of Credit reduction.
Cherniak, S	2-Feb-15	0.2	Discussion re potential Lot sale. Discuss Bungalow security deposit.
Finnegan, M	2-Feb-15	0.6	Update 2015 property tax schedule.
Flett, D	2-Feb-15	1.9	Phone call with M Troup; review issues with S. Cherniak - Lot 60 appraisal, Phase I builder security deposits, Petvin status; prepare Receiver's 6th report.

Staff	Date	Time	Narrative
Finnegan, M	3-Feb-15	1	Updates to 2015 property tax schedule.
Flett, D	3-Feb-15	2.6	Prepare Receiver 6th report.
Finnegan, M	4-Feb-15	0.7	Prepare and send payroll cheque. Emails from Marina re HST assessments received.
Flett, D	4-Feb-15	1.7	Continue with Receiver's 6th report.
Cherniak, S	5-Feb-15	0.4	Review and execute notice of fulfillment. Send to D'Amore and Miller Thomson. Update Miller Thomson on report.
Flett, D	5-Feb-15	1.3	Call with M Troup; prepare Receiver 6th report; review timing with S. Cherniak.
Flett, D	6-Feb-15	0.8	Call with M Troup; prepare 6th report and Confidential Supplement to same.
Flett, D	9-Feb-15	3.5	Prepare Receiver 6th report and Confidential Supplement to same; review letter from Miller Thomson re: City of Windsor litigation.
Hooper, L	9-Feb-15	.1	Issued cheque.
Cherniak, S	10-Feb-15	0.4	Review details of report with D. Flett. Email from M. Troup re Lot 60.
Finnegan, M	10-Feb-15	0.5	Pay bills.
Flett, D	10-Feb-15	5.2	Call with M Troup on commercial lands; review 6th report issues with S. Cherniak – Real Ranch Lots and taxes; lawsuit, Block 200; Working on Receiver 6th report and Confidential Supplement to same.
Cherniak, S	11-Feb-15	0.7	Email from M. Troup re potential sale of commercial lands. Discussion with D. Flett re report. Review of Miller Thomson legal opinion. Call to Miller Thomson re updated opinion. Send monthly reporting.
Finnegan, M	11-Feb-15	2	Draft Royal Timbers R & D for court report.
Flett, D	11-Feb-15	5.5	Review Miller Thomson opinion on Simba security; Prepare Receiver 6th Report and Confidential Supplement.
Hooper, L	11-Feb-15	0.1	Issued cheques.
Cherniak, S	12-Feb-15	1	Emails from M. Troup re main commercial parcel. Review report with D. Flett. Email from Miller Thomson re Lot sales. Respond with marked Lot sale schedule.
Finnegan, M	12-Feb-15	2.2	Prepare and send payroll, send property tax installment. Draft Banwell R & D for court report.
Flett, D	12-Feb-15	6.5	Email with M Troup re: commercial lands; review Valco and Metrix appraisals; prepare Confidential Supplement to 6th Report - Lot sales, Block 200.
Hooper, L	12-Feb-15	0.1	Banking
Cherniak, S	13-Feb-15	1.5	Call with Miller Thomson re validity of Simba and BMO security. Review of 6th Report and Confidential Supplement.

Staff	Date	Time	Narrative
Flett, D	13-Feb-15	4.5	Call with M Troup on commercial parcels; review and revise draft R&D's and review Receiver accounting re: Lot sale proceeds and tax arrears, VTB mortgage payouts, discharge fees etc; prepare Receiver 6th Report and Confidential Supplement; review Banwell accounts and reconcile additional HST input.
Flett, D	14-Feb-15	2.8	Revise R&D's; prepare Receiver 6th Report - R&D, fees sections; revisions to report and Confidential Supplement.
Cherniak, S	16-Feb-15	2	Review further edits to 6 <sup>th</sup> Report and Confidential Supplement. Review R&D.
Cherniak, S	17-Feb-15	0.6	Finalize draft report to send to Miller Thomson. Emails from M. Troup. Email to D'Amore re Referenced Plan for Block 200. Reconcile Lot sales.
Flett, D	17-Feb-15	2.6	Revisions to 6th report; review Receiver accounting with M. Finnegan; review Block 200 reference plan status with S. Cherniak and review emails; forward draft 6th Report and Confidential Supplement to Miller Thomson; email from M Troup re: commercial land.
Cherniak, S	18-Feb-15	0.5	Call with Miller Thomson re conversation with BMO counsel re Real Ranchs. Review edits to Confidential Supplement and rationale.
Flett, D	18-Feb-15	3.6	Prepare appraisal extracts for Confidential Supplement; review Valco commercial land appraisal; Revisions to Section 5 - Block 200 - Confidential Supplement; review Block 200 appraised values with S. Cherniak; review 6th Report R&D - fees section; Prepare affidavit of fees.
Hooper, L	18-Feb-15	0.1	Issued cheque
Cherniak, S	19-Feb-15	1.3	Review of Miller Thomson email to Taub re Real Ranch section of report. Review Miller Thomson edits of Report and Confidential Supplement. Email to Miller Thomson.
Finnegan, M	19-Feb-15	0.5	Prepare and send payroll.
Flett, D	19-Feb-15	4.5	Review appraisal extracts for 6th Report Confidential Supplement with S. Cherniak and forward to Miller Thomson; review Miller Thomson revised 6th Report and discuss with S. Cherniak; review current Lot inventory and reconcile to Omnibus Order; prepare Affidavit of fees for 6th Report; email with Miller Thomson on 6th Report and edits, revisions.
Hooper, L	19-Feb-15	0.1	Issued cheques
Szypula, C	19-Feb-15	1	Second Partner Report review of 6 <sup>th</sup> Report and Confidential Supplement.
Cherniak, S	20-Feb-15	1.2	Finalize report. Review and execute fee affidavit. Review of Miller Thomson legal opinion on BMO security for Banwell/Real Ranch Lots. Review of BMO outstandings.
Finnegan, M	20-Feb-15	0.5	Pay bills

Staff	Date	Time	Narrative
Flett, D	20-Feb-15	2.3	Prepare affidavit of fees; email with Miller Thomson on report revisions and affidavit; review Miller Thomson opinion on BMO security; review BMO Banwell loan and Line of Credit statement.
Cherniak, S	23-Feb-15	0.2	Emails from Scott D'Amore re counsel for purchaser and Reference Plan. Respond.
Flett, D	23-Feb-15	0.5	Brief review of Motion Record; email with S. Cherniak, Miller Thomson and Verhaegen re: reference plan.
Cherniak, S	24-Feb-15	0.2	Email from Miller Thomson re court. Update on purchaser requests for Block 200.
Flett, D	24-Feb-15	0.1	Email with Miller Thomson and S. D'Amore.
Cherniak, S	25-Feb-15	2.2	Emails from D'Amore re Real Ranch. Respond. Call with D'Amore. Review of Miller Thomson draft letter to Greene. Call with Miller Thomson re D'Amore position, M. Troup lawsuit, and Greene letter. Email from Miller Thomson re adjourning M. Troup lawsuit. Email to new D'Amore counsel.
Finnegan, M	25-Feb-15	0.5	Prepare T4 and review source deduction payments made for 2014.
Flett, D	25-Feb-15	1.6	Review email from Miller Thomson; S. Cherniak and S D'Amore re: Real Ranchs; review email from Hyatt Lassaline re: 2014 financial statements and review bank account status, statements; review M Troup Cross Motion materials and discuss with S. Cherniak; review draft Miller Thomson letter.
Hooper, L	25-Feb-15	0.1	Issued cheque
Cherniak, S	26-Feb-15	1.5	Review of emails to/from Counsel to D'Amore). Call from S. D'Amore. Call with Miller Thomson re D'Amore's position. Review of emails from Greene and response.
Flett, D	26-Feb-15	1.3	Memo and attachments to Hyatt Lassaline on questions for 2014 Financial statements; email from M Troup on invoices; call with Mill-Am on McRobbie Road paving holdback and email with M Troup on status; further email with Hyatt Lassaline on BMO Royal Timbers payout amount; review Peter Greene email.
Cherniak, S	27-Feb-15	2.5	Numerous emails and two calls with Miller Thomson re dealing with Simba request re Court on Tuesday. Call and emails with Greene. Email re Murray and dealing with his compensation motion.
Flett, D	27-Feb-15	1.8	Calls with M Troup on Cross Motion, offer on Banwell commercial and unsecured creditors and forward A/P listing; email to S. Cherniak on M Troup call; review Bungalow sale agreements and email Miller Thomson re: security deposits on Phase I Lot sales; review Peter Greene / Miller Thomson emails; email to Miller Thomson to clarify professional fees and Receiver R&D presentation.

Staff	Date	Time	Narrative
Cherniak, S	1-Mar-15	1.7	Thorough review of numerous to/from T. Van Klink/Trottier re Real Ranch issue. Email to S D'Amore re same. Thorough review of numerous emails T. Van Klink /Greene. Review of emails to Ball re Simba security. Review of Miller Thomson email re revised Receivership Order for Justice Thomas to sign. Review of emails re Mill-Am invoice. Review of M. Troup Motion Record.
Cherniak, S	2-Mar-15	2.2	Calls with Scott D'Amore re Real Ranch/Simba issue. Call and review of email from Miller Thomson re Receiver response to Simba. Various emails re Lepera issue. Emails from Peter Greene re response. Review of Miller Thomson opinion on Simba.
Finnegan, M	2-Mar-15	0.5	File Banwell HST return.
Flett, D	2-Mar-15	0.4	Review various emails from P. Greene and T Van Klink and brief review of revised order; email from Miller Thomson re: Bungalow Lots; brief review of financial overview prepared by M Troup.
Cherniak, S	3-Mar-15	3.2	Update on Trottier/D'Amore. Attend court. Meet with stakeholders after court. Discuss with Miller Thomson Troup/Rauti Phase III issue. Update D. Flett with respect to content of seventh report.
Flett, D	3-Mar-15	0.3	Review 6th report R & D section re: professional fees calculation; review 7th report content with S. Cherniak.
Cherniak, S	4-Mar-15	1.5	Email to Scott D'Amore and Miller Thomson re Kevin D'Amore lawsuit. Long call with M. Troup re Rauti deal, M. Troup invoices and Receiver response thereto, cost recovery on services from City of Windsor. Review file for BMO indebtedness for Hyatt Lassaline.
Flett, D	4-Mar-15	2.1	Review BMO Royal Timbers payout correspondence and summary email to Hyatt Lassaline; review issues, 7th report and Phase 3 offer with S. Cherniak; review Rauti offer; prepare schedule / summary of VTB mortgages.
Hooper, L	4-Mar-15	0.1	Issued cheques
Cherniak, S	5-Mar-15	0.6	Long call with M. Troup. Update D. Flett on conversation as it will be included in the report. Review of orders.
Finnegan, M	5-Mar-15	0.5	Prepare and send payroll.
Flett, D	5-Mar-15	0.4	Email with M Troup Mill-Am; review 7th report issues and content, pending Phase III offer with S. Cherniak.
Cherniak, S	6-Mar-15	0.5	Discussion with D. Flett re appraisal methodology for phase III appraisal. Email from D'Amore re Block 200 close date. Execute amendment. Send to D'Amore/realtor and to Miller Thomson.
Flett, D	6-Mar-15	2.6	Review Rauti phase III offer; review Valco Lot appraisal re: phase III and 103-106 and subdivision plans; call with Metrix re: Phase III Lot appraisal; review appraisals to be obtained and Valco methodology with S. Cherniak; review emails re: Block 200 sale; email with M Troup re: paving holdback.

Staff	Date	Time	Narrative
Cherniak, S	8-Mar-15	0.1	Respond to D'Amore email re lawsuit.
Cherniak, S	9-Mar-15	0.4	Get update on closings scheduled this month. Review of emails re same.
Flett, D	9-Mar-15	2.1	Review Lot sale status with S. Cherniak and review agreements of purchase and sale; emails and call with M Troup on Bungalow and Hadi Lot 27 closing dates and legal counsel; email to Miller Thomson on Banwell / Real Ranchs Lot closings; call Miller Thomson on Lot 27 mortgage charges; call with Metrix on Phase III appraisal.
Cherniak, S	10-Mar-15	2.5	Deal with WFCU issue re blanket charge over Lot 27 and Hadi Lots. Review of emails with Miller Thomson. Call to Miller Thomson re issue. Call and email with WFCU re same. Respond to question. Send monthly reporting. Deal with property tax issue re overpayment on Lots sold. Review email sent to City of Windsor. Review or correspondence from M. Troup re outstandings to WFCU. Call with M. Troup re commission on Commercial Lot deal. Instruct to have Metrix complete appraisal on Commercial Block.
Finnegan, M	10-Mar-15	1	Prepare source deduction payment. Prepare monthly R & D report.
Flett, D	10-Mar-15	4.5	Review, Real Ranchs documents, Lot 27 charges and Miller Thomson memo on mortgages with S. Cherniak; email with S Kettle re: WFCU mortgages; phone call with M Troup re: status of WFCU powers of sale and review; email with M Troup re: WFCU and review statement; forward 2015 property tax bills and to Miller Thomson for each of pending Lot sale transactions; review M Troup emails re: Phase II Line of Credit with City of Windsor; review 2015 property tax bills and identify Banwell Lots sold; review WFCU Lot taxes with S. Cherniak; prepare schedule of February property taxes overpaid on sold Lots and email to V. Grillo of City of Windsor re: refund or allocation of overpayment.
<b>123.9 Total Time</b>			

Staff	Position	Location	Hourly Rate	Time
Cherniak, S	Sr. Vice President	London	\$450	34
Finnegan, M	Administrative	London	\$125	14.6
Flett, D	Vice President	London	\$325	72.9
Hooper, L	Administrative	London	\$125	1.4
Szypula, C	Sr. Vice President	London	\$450	1.0
				123.9



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Invoice # 88162174  
Banwell Developments Corp  
HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
245 Windsor Ave  
Windsor, ON N9A 1J2

May 21, 2015

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**Re: Banwell Development Corporation and Royal Timbers Inc.**

For professional services rendered for the period March 11, 2015 through May 17, 2015 as per the attached detail:

Our Fee	\$58,000.00
Disbursements (courier, mileage & parking)	<u>165.75</u>
Sub Total	58,165.75
HST	7,561.55
Total	<u>\$65,727.30</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
103-252 Pall Mall Street  
London, ON N6A 5P6

Invoice #	88162174
Amount	\$65,727.30



May 21, 2015

For professional services rendered

Staff	Date	Time	Narrative
Cherniak, S	11-Mar-15	2	Email to Miller Thomson re letter to City of Windsor re settlement. Numerous calls with WFCU re discharge of mortgage on Real Ranchs lots. Review of email from Miller Thomson to McTague. Review of request for extension for Hadi lot deal. Emails re property tax overpayment and city response. Emails re property tax for Bungalow deal. Call with M. Troup re WFCU and commercial deal. Review of email to Metrix requesting commercial lots appraisal. Email from M. Troup re Simba mortgage.
Finnegan, M	11-Mar-15	2	Pay bill. Update fees rendered and paid schedule. Prepare monthly R & D report. Fax to CRA re source deduction schedule. File administration. Prepare sets of signing documents for signature for upcoming closings.
Flett, D	11-Mar-15	3.4	Call with Kevin of City Windsor re: sold Banwell lots not transferred and overpayment; review overpayment resolution with S. Cherniak; email with J. Lehman of Miller Thomson re: City notification on lot sales; review Lot 27 closing documents; review Valco commercial appraisal and 12R registered plan; call with J. Carter of Metrix re blocks 500-900 appraisal and detailed memo to J. Carter with legal descriptions and details; calls with M. Troup on Phase III interest, appraisals; review Real Ranchs sale agreement re: default date and email with S. Kettle of Miller Thomson.
Hooper, L	11-Mar-15	0.1	Issued cheques
Cherniak, S	12-Mar-15	0.6	Email from City of Windsor re tax arrears. Review of email re commercial land appraisal. Execute documents for Hadi Real Ranchs deal. Call from Rauti.
Finnegan, M	12-Mar-15	0.5	Bill payments.
Flett, D	12-Mar-15	0.4	Email with City of Windsor and J. Lehman of Miller Thomson re: property taxes; email with M. Troup and J. Carter of Metrix re: commercial and Phase III appraisals.
Cherniak, S	13-Mar-15	0.6	Numerous calls with M. Troup re Hadi deal and lot for WFCU. Call from Scott D'Amore re shareholder litigation.
Cherniak, S	16-Mar-15	1	Emails from RC Spencer re bill. Emails re Hadi closing delay. Review of correspondence from Miller Thomson. Call and email from Tony Van Klink re WFCU issue. Respond.
Finnegan, M	16-Mar-15	0.5	Pay bills.
Flett, D	16-Mar-15	2.2	Call with M. Troup and email to J. Carter of Metrix with legal descriptions for phase 3 residential appraisal; review RC Spencer invoice and email to RC Spencer on Phase 2 work status; calls with M. Troup, emails and review with S. Cherniak re: Lot 27 closing and WFCU discharge; review March, 2015 property tax installment schedule and reconcile to lot inventory
Hooper, L	16-Mar-15	0.1	Issued cheques.

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Staff	Date	Time	Narrative
Cherniak, S	17-Mar-15	1	Emails and call with Miller Thomson re treatment of WFCU shortfall and M. Troup guarantee. Emails to/from counsel for WFCU. Call from M. Troup re Bungalow deal. Review of email.
Finnegan, M	17-Mar-15	0.5	Update 2015 property tax schedule
Flett, D	17-Mar-15	0.4	Review T Van Klink and S. Cherniak emails re; WFCU discharge and Real Ranchs lot sales; review WFCU mortgage issues with S. Cherniak; review Real Ranchs trust account and accounting with M. Finnegan.
Cherniak, S	18-Mar-15	0.6	Deal with Hadi Real Ranchs closing issues. Review of email from Miller Thomson re closing. Call with Valco re updated appraisal on Phase 3. Discuss with D. Flett
Flett, D	18-Mar-15	1.2	Review obtaining phase 3 Valco appraisal with S. Cherniak; call with M. Troup on lot 27 closing, M. Troup invoices; review M. Troup emails and Via Sales invoices and instructions to M. Finnegan; review of Miller Thomson and other emails re: Lot 27.
Hooper, L	18-Mar-15	0.1	Banking
Hooper, L	18-Mar-15	0.1	Issued cheques
Flett, D	19-Mar-15	1.5	Emails with J. Lehman of Miller Thomson and S. Cherniak on Lot 27 closing and review property tax calculations and amended versus original adjustments; calls with M. Troup on Lot 27 closing issues; Bungalow closing date; RC Spencer/ Phase 2; review 2012 Valco lot appraisal and call to Valco; emails with M. Troup on lot 27 closing and confirm courier with M. Finnegan; review M. Troup email on Robinet servicing.
Cherniak, S	21-Mar-15	0.8	Numerous emails and responses re lot 27 closing. Email re block 200 closing and deposit. Response. Email from M. Troup re cost sharing.
Finnegan, M	23-Mar-15	0.5	Deposit
Flett, D	23-Mar-15	1.8	Review original Fontes agreement of purchase and sale re: lot 100 default date; memo to J. Lehman of Miller Thomson with lot 100 default date, confirm amounts due on closing for pending lot sales, block 200 deposit and commission; provide block 200 tax info to J. Lehman; email with S. Cherniak and S. D'Amore on Block 200 deposit; update lot sales, VTB schedules; review lot 27 sale accounting with M. Finnegan; call with M. Troup on Phase II offer, lot closings.
Hooper, L	23-Mar-15	0.1	Issued chq
Cherniak, S	24-Mar-15	1.4	Review of RC Spencer letter re cost sharing. Update on appraisal of phase 3. Email to Valco re appraiser. Update on Valco strategy. 2 calls from M. Troup re offer on phase 3. Emails to/from Miller Thomson re closings. Email re realtor deposit not being sent to Miller Thomson re block 200.
Finnegan, M	24-Mar-15	0.2	Review HST return assessment.
Flett, D	24-Mar-15	2.2	Update S. Cherniak on status of lot sales, appraisals, other issues; emails with J. Lehman of Miller Thomson on lot closings; call and email with M. Troup on Bungalow sale and funds due on closing; call with L. Mirtisch of Valco re: Phase 3 appraisal; detailed memo to J. Telford of Valco re: details lots 103-106 and blocks 121,122 appraisal.

Staff	Date	Time	Narrative
Cherniak, S	25-Mar-15	1.3	Email to Montaleone re deposit for Block 200. Begin review of draft appraisal on phase 3. Review of Hadi offer on 7 remaining lots. Review and execute right of first refusal to Amine. Discuss offer with D. Flett. Review of revised offer from Hadi.
Flett, D	25-Mar-15	1.7	Calls with M. Troup on phase 3 appraisal, offer on 7 phase 2 lots; preliminary review of draft Metrix appraisal; review Hadi 7 lot offer and notice of first right of refusal; review VTB amounts and pay downs and email to M. Troup on revisions; review amended schedule C; forward signed notice to M. Troup.
Cherniak, S	26-Mar-15	1.2	Execute closing documents on four properties. Numerous emails to/from Miller Thomson re closing documents. Call from R. Tomas re Habib closing. Call to WFCU re M. Troup. Execute revised Hadi offer.
Finnegan, M	26-Mar-15	3	Prepare and send payroll. Prepare, copy documents for signing for upcoming closings and send to lawyers after signing.
Flett, D	26-Mar-15	4.2	Review revised Hadi 7 lot offer Schedule C and forward to M. Troup; review draft statements of adjustments and trust statements for 4 pending lot closings; email with J. Lehman of Miller Thomson on adjustment revisions; review Habib agreements of purchase and sale and email with S. Cherniak and J. Lehman on other closing queries and arrangements including security deposits; call with J. Telford of Valco on Phase 3 appraisal; prepare schedule of receiver lot sale for Valco; review draft Metrix appraisal; review Phase 3 and 103-106 appraisal approach with S. Cherniak and approach to servicing costs; review lot plans and email reply to S. D'Amore re: serviced lots available for sale; review emails re: Block 200 closing.
Cherniak, S	27-Mar-15	1.5	Call to M. Troup re holdback on Real Ranchs commission. Call from WFCU. Numerous emails/calls from M. Troup re holdback amount. Deal with closing on 99,100 101. Email to Miller Thomson and email to BMO re executed documents re assignment. Call and email from M. Troup re timing of right of first refusal. Update on phase 3 offer and block 500-900 offer. Emails re property taxes.
Finnegan, M	27-Mar-15	0.6	Deposit. Receipt of lot sale deposit cheque and forward to Miller Thomson. Prepare cheque for Via Sales.
Flett, D	27-Mar-15	2.8	Review Windsor tax overpayment refund and confirm amounts; 2 calls with J. Carter of Metrix on Phase 3 appraisal approach, comparable property ranges and preliminary subdivision analysis findings; call with J. Telford of Valco on Phase 3 appraisal approach and timing; forward lot sales to date summary to Valco and Metrix; update S. Cherniak on appraisal status; review emails from Miller Thomson on lot sale closing issues and status; email with S. D'Amore re: lot 23; review M. Troup email re: Amine first right on phase 2 lots;
Hooper, L	27-Mar-15	0.1	Issued cheques.
Cherniak, S	30-Mar-15	0.5	Update on closing for Bungalow. Call from M. Troup re phase 3 offer. Update on appraisers progress/methodology on Phase 3.
Flett, D	30-Mar-15	0.9	Call with J. Carter of Metrix on lot sales to date and absorption; review Metrix appraisal approach with S. Cherniak and review Phase 3 servicing and value issues; call with M. Troup on Bungalow closings; review email from J. Lehman on Bungalow.

Staff	Date	Time	Narrative
Cherniak, S	31-Mar-15	0.8	Calls from M. Troup re Bungalow, Habib closing and Phase 3 offer. Emails to/from Miller Thomson re Habib closing. Draft email re Hadi closing. Email to BMO re schedules for Habib closing.
Finnegan, M	31-Mar-15	0.5	Prepare sale documents for signature and return to Miller Thomson.
Flett, D	31-Mar-15	0.2	Review S. Cherniak and S. Kettle, J. Lehman of Miller Thomson emails re: Habib lot sale closing, Bungalow lot sale closing, and other matters.
Cherniak, S	1-Apr-15	1.3	Deal with issues re closing of Banwell/Real Ranchs lots sale to Habib. Calls and emails re with Miller Thomson re closing issues re insurance and clear title. Email to Miller Thomson re Hadi 7 lot deal. Deal with M. Troup cheques re commission. Discussion with D. Flett re M. Troup offer on phase 3 lots. Emails to/from Habib lawyer re closing.
Finnegan, M	1-Apr-15	0.5	Prepare and send weekly payroll. Prepare source deduction payment and send.
Flett, D	1-Apr-15	2.4	Review Hadi 7 lot offer and update lot sales and comparison to appraisal schedules; review emails on closing of lots sales (32) to Habib; review and forward property tax information for Hadi 7 lots to J. Lehman of Miller Thomson; review Habib sale status and insurance issue with S. Cherniak; call with M. Troup on 32 lot closing; review Via Sales invoices and forward to M. Finnegan for payment; review draft Metrix appraisal for Phase 3 and lots 103-106 and note queries.
Cherniak, S	2-Apr-15	1	Emails from Miller Thomson re closings of Real Ranch/Banwell. Deal with M. Troup cheques. Discuss with D. Flett seventh report. Email from Miller Thomson re M. Troup affidavit. Respond.
Finnegan, M	2-Apr-15	0.5	Calls/email from Banwell re bills, and general admin matters.
Flett, D	2-Apr-15	1.8	Review Miller Thomson emails on lot closings; update lot sale and VTB schedules; assemble Statement of Adjustment and Trust Ledger for five closings for M. Finnegan and review receiver accounting for net proceeds; review seventh report content, M. Troup cross motion and issues with S. Cherniak.
Flett, D	4-Apr-15	5.5	Review Ascend GL's; Prepare draft Receiver's seventh report.
Cherniak, S	6-Apr-15	1.2	Review cheques on 5 deals. Review allocation. Email to BMO re payout. Call from BMO. Numerous calls from M. Troup re deal on Phase 3. Call to Miller Thomson re same. Review of deal.
Flett, D	6-Apr-15	5.2	Prepare Receiver seventh report, response to M. Troup cross motion; analyze Receiver accounting and Real Ranchs / Royal Timbers property taxes paid by Banwell; review response to M. Troup motion with S. Cherniak; seventh report - R&D section; review draft Metrix appraisal of Phase 3 with S. Cherniak; call with J. Carter of Metrix re: draft appraisal; review Phase 3 offer with S. Cherniak; call with S. Kettle of Miller Thomson re: seventh report timing, litigation and response to M. Troup cross motion.
Cherniak, S	7-Apr-15	1.7	Work on litigation summary and complete review of M. Troup litigation for seventh report. Call with Valco re Phase 3 appraisal. Call with Tony Van Klink re thoughts on M. Troup deal. Review of BMO payout calculation and approve cheque. Email BMO. Review and approval of M. Troup invoice re block 200. Deal with allocation of funds issue re BMO cheque.

Staff	Date	Time	Narrative
Finnegan, M	7-Apr-15	5	Review and deposit various property sale cheques and post to GL. Review and reconcile R & D re sales figures and property taxes etc. Update R & D for Court report.
Flett, D	7-Apr-15	5	Review Receiver accounting for lot sales, 21 lot sale security deposits and Statement of Adjust with M. Finnegan; Review litigation status for report with S. Cherniak; Review M. Troup cross motion materials; Prepare Receiver seventh report and additions to Litigation section; prepare report litigation and Troup sections only and forward to S Kettle of Miller Thomson; review Phase 3 offer and valuations with S. Cherniak; review emails on BMO payout; sign Receiver cheques.
Hooper, L	7-Apr-15	0.1	Issued cheques
Cherniak, S	8-Apr-15	1.4	Emails from M. Troup re paying WFCU. Update re Metrix appraisals on Phase 3. Review report strategy with D. Flett. Review of seventh report.
Finnegan, M	8-Apr-15	1.3	Edits to Court R & D's. Prepare and send cheque to BMO.
Flett, D	8-Apr-15	4.6	Review seventh report background with S. Cherniak; Prepare seventh report; lengthy call with J. Carter of Metrix re: draft Phase 3 appraisal; review/revise statements of receipts and disbursements; review Real Ranchs trust and Banwell accounting with M. Finnegan.
Cherniak, S	9-Apr-15	0.5	Emails to/from WFCU re cheque. Emails to/from Miller Thomson re discharges. Update on seventh report.
Finnegan, M	9-Apr-15	0.6	Prepare and send payroll and pay various bills
Flett, D	9-Apr-15	1.8	Revisions to seventh report and forward to S. Kettle of Miller Thomson; review draft Metrix appraisal of Phase 3; emails with R. Spencer of RC Spencer and call, notes with B. Ropat on Phase 2 curb repair, top asphalt and turn over to City of Windsor; email with J. Lehman on mortgage discharge request.
Hooper, L	9-Apr-15	0.1	Issued cheques.
Cherniak, S	10-Apr-15	1.3	Review of form of discharge for lot sales. Calls with Valco re appraisal on Phase 3. Call with M. Troup re offer not accepted. Review and discussion of Miller Thomson edits to seventh report. Review of monthly reports.
Finnegan, M	10-Apr-15	1	Prepare monthly R&D report.
Flett, D	10-Apr-15	3.8	Email with J. Lehman of Miller Thomson re: mortgage discharge documents, Amine discharge request, and provide summary schedule of Receiver VTB's; review revised Metrix appraisal with S. Cherniak; review April, 2015 property installments with M. Finnegan; call with J. Telford of Valco on appraisal and Phase 3 subdivision agreement; call with S. Kettle of Miller Thomson on Receiver report - unsold lot status, property taxes , litigation; email to S. Kettle with revised S 4.12; revised Miller Thomson revisions to Receiver report and litigation chart and email to S. Kettle with further comments, revisions.
Hooper, L	10-Apr-15	0.1	Issued cheques.
Flett, D	11-Apr-15	0.7	Prepare tax account schedule of lots sold March 19 - April 2 to confirm City ownership transfer; email to K. Brosseau of City of Windsor re: lots sold.

Staff	Date	Time	Narrative
Cherniak, S	13-Apr-15	2.7	Review of discharge request. Emails from counsel re Miller Thomson motion record for seventh report. Discuss emails with Miller Thomson. Prepare monthly reporting for Banwell, Royal Timbers and Real Ranchs. Send to stakeholders. Call from S. D'Amore re Phase 3. Call from Valco re appraisal for phase 3. Review of subdivision agreement. Discuss with D. Flett. Update on RC Spencer costing to complete Phase 2. Discuss issues with Miller Thomson re seventh report motion. Discuss litigation.
Flett, D	13-Apr-15	5.5	Review property tax payment and sign; email with J. Lehman of Miller Thomson on mortgage discharge; review B. Ropat call and Phase 2 completion issues, timing with S. Cherniak; review subdivision agreement; call with J. Carter of Metrix re; subdivision agreement and Robinet servicing; review Robinet servicing issues and process with S. Cherniak; review Valco commercial appraisal and prepared summary schedule of unsold commercial and residential parcels; review various email on litigation; email with S. Kettle of Miller Thomson on final seventh report.
Cherniak, S	14-Apr-15	1.2	Review of emails and discussion with D. Flett re Phase 3 servicing and reimbursement from the City of Windsor. Emails from Miller Thomson re Hadi closing. Receipt of deposit cheque from Hadi. Emails to/from S. D'Amore re Phase 3.
Finnegan, M	14-Apr-15	0.5	Receive and send to Miller Thomson lot sale deposit cheque.
Flett, D	14-Apr-15	2.4	Revisions to unsold land inventory schedule and review with S. Cherniak; review Robinet servicing costs correspondence and phase 2,3 M Plan; review Robinet status and arrangement with S. Cherniak; review email from J. Carter of Metrix.
Hooper, L	14-Apr-15	0.1	Issued cheques
Cherniak, S	15-Apr-15	0.5	Update on discussions with M. Troup re cost reimbursement. Email from Metrix. Review of draft letter and mutual release letter to City of Windsor re settlement. Email to S. D'Amore re call.
Finnegan, M	15-Apr-15	0.5	Bill payments
Flett, D	15-Apr-15	2.2	Call with J. Carter of Metrix re: subdivision agreement and Robinet servicing; review Robinet servicing file and correspondence including RC Spencer report to City of Windsor; call with Miller Thomson on Robinet servicing cost recovery status, Phase 3 servicing timetable, M. Troup cross motion.
Cherniak, S	16-Apr-15	2.7	Update on Hadi 7 lot deal. Review of statement of adjustments and vendor take back documents. Review and execute documents for closing. Send Miller Thomson Banwell/Royal Timbers lot inventory with and without values. Review of correspondence from CRA. Instruct to be sent to Hyatt Lassaline. Review response from Hyatt Lassaline. Review of M. Troup affidavit. Call with Miller Thomson re strategy to deal with lawsuits in Court. Discuss response to M. Troup. Review of letter from Sasso re D'Amore Construction litigation.
Finnegan, M	16-Apr-15	0.5	Prepare closing documents package for signature on 7 lot deal to close April 24, 2015.

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Staff	Date	Time	Narrative
Flett, D	16-Apr-15	1.8	Calls with M. Troup re: questions on receiver calculation of payments to M. Troup; email with J. Lehman of Miller Thomson on Hadi 7 lot sale; review APS and clarify VTB repayment terms; review draft VTB schedule prepared by Miller Thomson for Hadi sale; review statement of adjustments and email to J. Lehman on revisions; email with A. Brisson of Hyatt on CRA notice; Review M. Troup affidavit.
Hooper, L	16-Apr-15	0.05	Issued chq
Cherniak, S	17-Apr-15	2.3	Numerous emails from various counsel re Lepera, D'Amore Construction and lifting of stay, Receiver's review of litigation. Review in depth of M. Troup affidavit and prepare for Court hearing. Emails to/from Peter Greene in response to questioning of transfer of funds from Royal Timbers to Banwell. Review of Miller Thomson responses to Ball emails. Review of motion to lift stay by D'Amore Construction.
Finnegan, M	17-Apr-15	0.5	Package up and send closing documents to Miller Thomson for upcoming closing
Flett, D	17-Apr-15	4.8	Review M. Troup affidavit and supporting exhibits; review invoices and support for invoices stated to be paid by Receiver; review invoices with S. Cherniak and Valco appraisal issues; memo to S. Cherniak on Exhibit B,C,D invoices; calls with M. Troup; review lot 117 servicing email correspondence; call with S. Kettle of Miller Thomson on 7th report litigation section - D'Amore action; review notes on litigation from July 2013 meeting with M. Troup and memo to S. Kettle and T. Van Klink; call with M. Troup on City Windsor Robinet servicing status.
Cherniak, S	20-Apr-15	2.1	Update on Amine discharge. Execute document. Brief reviews of Metrix block 500-900 appraisal. Update on call with M. Troup re Phase 2/3 cost reimbursement. Strategize re appraisals for Phase 3 based on conversation. Email from Miller Thomson re clarification on D'Amore lawsuit. Call with Miller Thomson re court tomorrow. Review M. Troup's affidavit and responses thereto. Review of email exchange between Simba counsel and Miller Thomson.
Flett, D	20-Apr-15	1.8	Review litigation, commercial parcel sales process and appraisals with S. Cherniak; calls with M Troup on blocks 300,400 and Phase 2 completion; review Phase 2 completion with S. Cherniak; email with B. Ropat of RC Spencer on Phase 2 completion costs; email with J. Lehman of Miller Thomson on Amine VTB discharge; review email from S. Kettle on D'Amore Construction litigation; review Robinet service documents.
Hooper, L	20-Apr-15	0.1	Banking
Cherniak, S	21-Apr-15	3.5	Attend court re Lepera motion and M. Troup motion. Review of email exchange between Trottier and Miller Thomson. Emails to M. Troup re Marina and phone. Email to RC Spencer re M. Troup. Email to Miller Thomson re Marina. Review of Windsor commercial agents.
Flett, D	21-Apr-15	2.1	Call with J. Carter of Metrix re: Phase 3 appraisal and Robinet servicing cost recovery; call with J. Telford of Valco re: Phase 3 appraisal and Robinet servicing cost recovery; review commercial appraisal status and sales process, timing with S. Cherniak; review court hearing outcome with S. Cherniak; review and sign receiver cheques; review emails from M. Troup.

Staff	Date	Time	Narrative
Hinton, B	21-Apr-15	0.4	Commercial realtor search for S. Cherniak and analyze listing and market share. Prepare correspondence detailing findings.
Hooper, L	21-Apr-15	0.1	Issued cheques
Cherniak, S	22-Apr-15	0.3	Emails to/from M. Troup re Marina.
Finnegan, M	22-Apr-15	1	Pay bills. Review details re VTB payout and deposit.
Flett, D	22-Apr-15	1.8	Review draft Metrix appraisal for blocks 500-900; prepare schedule for Metrix of commercial parcels to be appraised and emails with J. Carter of Metrix; review VTB partial discharge pay-out accounting with M. Finnegan; review various emails from M. Troup and email with S. Cherniak on commercial parcels; review email from A. Brisson of Hyatt Lassaline and review plaza agreement of purchase and sale.
Hinton, B	22-Apr-15	0.2	Matter on commercial realtor and analytics of Windsor market.
Hooper, L	22-Apr-15	0.05	Issued cheque
Cherniak, S	23-Apr-15	1.8	Respond to M. Troup email re commercial properties. Review Miller Thomson email re employment separation agreement regarding Marina. Call with Miller Thomson re same. Call with Marina re termination. Review of draft letter to Marina from Miller Thomson. Discuss strategy for Phase 3 exposure to market. Emails to/from Ropat/RC Spencer re sewer issue and paving issue. Deal with Hadi request for removal of 50% pay down after year from 7 lot deal closing tomorrow. Consider and discuss realtors for listing of commercial property.
Finnegan, M	23-Apr-15	1	Prepare and send payroll. Lengthy call with CRA re ROE documents.
Flett, D	23-Apr-15	2.5	Email with S. Kettle of Miller Thomson and A. Brisson of Hyatt on plaza purchase price allocation and review with S. Cherniak; review M. Troup and S. Cherniak email on commercial land sale process; email with B. Ropat of RC Spencer on Phase 2 completion cost estimate, McRobbie Road storm sewer blockage issue and Troup Crescent base asphalt issue; review Robinet servicing cost recovery and Phase 3 sale process and timing with S. Cherniak; calls with M. Troup on 7 lot Hadi sale VTB term change and review with S. Cherniak; email to S. Kettle and J. Lehman of Miller Thomson on change to Hadi VTB; review/sign Receiver cheques.
Hooper, L	23-Apr-15	0.05	Issued cheques
Cherniak, S	24-Apr-15	1.2	Call from Marina. Finalize employment documents for Marina. Emails re discharge on Habib lot. Update on Hadi closing. Review of amended Hadi closing docs. Email from Bagnara re asset split. Email from Miller Thomson re Lepera matter.
Finnegan, M	24-Apr-15	0.8	Pay bill. Work on termination documents for employee.
Flett, D	24-Apr-15	1.1	Email with J. Lehman of Miller Thomson on VTB term change on 7 lot sale to Hadi and on closing confirmation; email with J. Lehman on Habib mortgage discharge request, confirm pay out amount and return signed discharge statement; email to A. Brisson of Hyatt with plaza sale price allocation.
Cherniak, S	27-Apr-15	0.7	Emails to realtors re 3155 Banwell. Update on Phase 3 and cost sharing on Robinet. Strategize re timing of Phase 3 sales process. Pay bills. Review of funds received on Hadi closing.



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Staff	Date	Time	Narrative
Finnegan, M	27-Apr-15	0.6	Deposit, prepare bill payment.
Flett, D	27-Apr-15	0.9	Review Phase 3 sales process and timing with S. Cherniak; call and emails with M. Troup on Hadi closing and Robinet servicing cost recovery formula; email with J. Lehman of Miller Thomson on mortgage discharge; review S. Cherniak emails re: 3155 Banwell sale.
Hooper, L	27-Apr-15	0.1	Issued cheque.
Cherniak, S	28-Apr-15	0.7	Execute Real Ranchs lot discharge. Call with CBRE re listing 3195 Banwell. Email and call from R. Thomas re curb damage and deposits. Email response re C. Prieur to meet with Habib.
Finnegan, M	28-Apr-15	1	Change mailing address for Enwin Utilities. Email to Hyatt Lassaline re updates to authorizations on business accounts. File Royal Timbers HST returns. File Banwell HST returns.
Flett, D	28-Apr-15	0.3	Review Phase 4 curb damage issues and Phase 2 completion issues/costs with S. Cherniak; review S. Cherniak email to commercial agent.
Cherniak, S	29-Apr-15	0.3	Email to Barlow re extending deadline. Review of Greene email re Lepera and D'Amore. Update on call with M. Troup.
Flett, D	29-Apr-15	0.4	Call with M. Troup re: Robinet servicing, blocks 500-900; review Phase 3 appraisal approach with S. Cherniak; review correspondence on Robinet servicing.
Cherniak, S	30-Apr-15	0.3	Update from M. Troup on Robinet servicing costs. Review of email to Miller Thomson on APS preparation for Phase 3 proposal. Update from C. Prieur on meeting with Habib. Update on Real Ranchs lot discharge.
Flett, D	30-Apr-15	1.8	Further review of Robinet servicing cost recovery; review of RC Spencer letter to City of Windsor re: Robinet cost sharing; email with M. Troup re: Robinet Road lots; call with J. Telford of Valco re: Phase 3 appraisal, servicing costs and cost recovery; memo to S. Kettle of Miller Thomson re: Phase 3 lands Agreement of Purchase and Sale.
Cherniak, S	1-May-15	0.5	Call from Miller Thomson re sales process for remaining property. Discussion re June 24, 2015 Court date and contents of report. Update on Phase 3 costing. Review of email from J. Telford. Update on sewer repair and M. Troup involvement.
Finnegan, M	1-May-15	0.5	Deposit
Flett, D	1-May-15	1.6	Review Robinet servicing correspondence; lengthy call with M. Troup on Robinet servicing recovery south of mulberry, reserves, block 120 storm sewer issue and other matters; review receipts accounting with M. Finnegan; review McRobbie Road issue with S. Cherniak and email to M. Troup re: flushing.
Hooper, L	1-May-15	0.1	Issued cheques.
Prieur, C	1-May-15	2.5	Meet with Daniel Habib (lot purchaser) on site to document existing damage to properties purchased.
Finnegan, M	4-May-15	0.3	Pay bill
Finnegan, M	5-May-15	0.5	Prepare and file 2015 T4 summary to CRA
Hooper, L	5-May-15	0.1	Issued cheques

Staff	Date	Time	Narrative
Cherniak, S	6-May-15	0.5	Work on monthly reporting.
Finnegan, M	6-May-15	1	Prepare monthly reporting.
Flett, D	6-May-15	0.3	Call with M. Troup on Phase 3 land, storm sewer issue; review Phase 3 status with S. Cherniak.
Cherniak, S	7-May-15	0.4	Discuss appraiser approaches on Phase 3. Discuss documents required for sales process. Email to Scott D'Amore re interested parties.
Finnegan, M	7-May-15	0.3	Bill payment
Flett, D	7-May-15	5.2	Prepare letter to prospective purchasers and appendices for Phase 3 lands sale process; call with J. Telford of Valco re: Phase 3 appraisal; email with J. Carter of Metrix re: appraisal; call with M. Troup on McRobbie Road sewer issue.
Cherniak, S	8-May-15	1.2	Review sales docs for Phase 3. Email to stakeholders re monthly reporting. Review Valco appraisal methodology. Review Barlow marketing proposal for 3155 Banwell. Email update from M. Troup re debris in manhole. Review M. Troup's proposal to supervise.
Flett, D	8-May-15	4.2	Review Phase 3 sales package with S. Cherniak and revisions; Prepare/edit appendices and revisions to terms and conditions; draft email to prospective purchasers; review timing and offer process with S. Cherniak; edit ad for Windsor Star; email to S. Kettle of Miller Thomson re Agreement of Purchase and Sale; email with J. Carter of Metrix; review Valco appraisal of Phase 3 and discuss with S. Cherniak; emails with M. Troup on storm sewer blockage resolution.
Finnegan, M	11-May-15	0.5	Payment of D. Taub legal bill re BMO indebtedness.
Flett, D	11-May-15	2.2	Review email with lot buyers; email to potential interested parties re: Phase 3 sales process; review Letter of Credit fees with M. Finnegan; email with M. Troup on phase 3; review Phase 3 draft plan; memo to S. Cherniak re: info package and draft plan; review Windsor Star ad with M. Finnegan.
Hooper, L	11-May-15	0.1	Issued cheque
Flett, D	12-May-15	2.4	Review and edit phase 3 draft plan; call with M Troup on Phase 3 land sale process and value; email to Bungalow Group re: sale process; forward phase 3 land information package to interested parties; lengthy call with S Kettle of Miller Thomson on Phase 3 land sale process, subdivision agreement and agreement of purchase and sale
Flett, D	13-May-15	2.1	Review mortgage discharge documents (Lot 40 12M-546 ) email with J. Lehman of Miller Thomson on revisions and sign/return signed documents; update VTB schedule; emails with and provide Phase 3 information package to counsel for interested parties; review draft Windsor Star ad; review Justice Thomas reasons; memo to S. Cherniak on Phase 3 sale status.
Flett, D	14-May-15	1.3	Lengthy call with J. Carter of Metrix re: Phase 3 appraisal, subdivision agreement and approach to servicing costs and recovery; review Valco appraisal; brief review of Phase 4 curb damage photos.
Hooper, L	14-May-15	0.1	Banking

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Staff	Date	Time	Narrative
Flett, D	15-May-15	0.4	Email from Phase 3 interested party and forward sale package documents; phone call with Phase 3 interested party; email with J. Lehman of Miller Thomson on mortgage discharge.
Cherniak, S	17-May-15	1	Emails from BMO re D. Taub legal fees. Emails from M. Troup re Letter of Credit and invoice. Emails from D. Flett re Phase 3 documents. Update on interest in Phase 3.
		<b>180.05</b>	<b>Total Time</b>

Staff	Position	Location	Hourly Rate	Time
Hinton, B	Estate Administrator	London	\$200	0.6
Cherniak, S	Sr. Vice President	London	\$450	45.6
Finnegan, M	Administrative	London	\$125	26.7
Flett, D	Vice President	London	\$325	102.8
Hooper, L	Administrative	London	\$125	1.85
Prieur, C	Sr. Estate Administrator	Windsor	\$250	2.5
				<b>180.05</b>

## APPENDIX "H"

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

**AFFIDAVIT OF SHERRY KETTLE**

I, SHERRY KETTLE, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

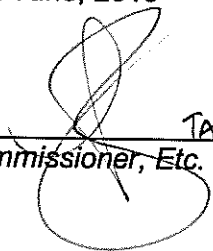
1. I am a partner with the law firm of Miller Thomson LLP ("MT"), lawyers for BDO Canada Limited ("BDO"), in its capacity as Court-appointed Receiver (the "Receiver") of the property, assets and undertakings of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers") and, as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. I make this Affidavit further to my previous fee affidavits sworn July 12, 2013, November 15, 2013, January 17, 2014 and February 19, 2015 in these proceedings and in support of the Receiver's motion (the "Motion") for, among other things, having the fees and disbursements of MT, as legal counsel to the Receiver, approved.

3. Attached hereto to this my Affidavit and marked as Exhibit "A" are copies of the invoices rendered by MT to BDO which reflect, *inter alia*, fees and disbursements of MT relating to the period January 2, 2015 through May 29, 2015 (the "Period"). The invoices rendered by MT and appended hereto as Exhibit "A" (the "MT Invoices") accurately reflect the services provided by MT in connection with the Period and the fees and disbursements



Attached are Exhibits "A" and "B" to the  
Affidavit of Sherry Kettle sworn the 11th  
day of June, 2015

  
TARAAL F. BOND  
A Commissioner, Etc.

ACCOUNT

March 10, 2015

Invoice Number 2715168

BDO Canada Limited  
252 Pall Mall Street  
Suite 103  
London, ON N6A 5P6

Attention: Stephen N. Cherniak

**TO PROFESSIONAL SERVICES RENDERED** in  
connection with the following matter including:

**Re: Receivership of Banwell Development Corporation**  
**Our File No. 082873.0010**

Date	Initials	Description	Hours
01/02/2015	ASR	Attend to response to requisitions;	0.20
01/02/2015	JL	Review of requisition letter and prepare response; draft closing documents, Application, Charge, Statement of Adjustments and Statement of Trust;	1.20
01/05/2015	AVK	Telephone call with Mr. Cherniak	0.20
01/05/2015	SK	E-mail correspondence with Ms. Lehman re Lot 15 12M533, 3072 Troup Cresc. closing; Prepare Receiver's Certificate re same; Review draft closing documents; E-mail correspondence with Ms. Lehman re same; Review APS re March 31 closing 11 lots; Review APS re March 31 closing 21 lots; E-mail correspondence with Ms. Lehman re same;	1.80
01/05/2015	JL	Various e-mail correspondence;	0.50
01/06/2015	SK	E-mail correspondence with Ms. Lehman re Lot 15 deposit cheque; Telephone conference with Ms. Lehman re same;	0.20
01/07/2015	ASR	Attend to issue with respect to VTB; Instructions to clerk; Telephone attendance on lawyer for buyer; Attend to closing;	0.50



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Date	Initials	Description	Hours
01/07/2015	SK	Voice message from Ms. Lehman; E-mail correspondence with Ms. Lehman; Telephone conference with Ms. Lehman; Voice message from Ms. Keefner; E-mail correspondence with Receiver re Amine request for Lot 15 closing re VTBM; Further telephone conference with Ms. Lehman re amendments to closing documents; E-mail correspondence with counsel for Amine re same; Further e-mail correspondence with counsel for Amine re VTBM; Telephone conference with Ms. Lehman re same; Further e-mail correspondence with the Receiver re same;	1.10
01/07/2015	JL	Various e-mail correspondence; draft closing letters; discussions with S. Kettle regarding VTB;	2.30
01/08/2015	JL	Various e-mail correspondence; prepare outgoing couriers and closing letters;	0.50
01/09/2015	SK	Prepare letter to Ms. Gray re filing receiver's certificate re Lot 15 (3072 Troup Crescent); E-mail correspondence with Mr. Cherniak and Mr. Van Klink re court date; E-mail correspondence with Ms. Ford re scheduling motion; E-mail response from Mr. Ford re same; E-mail correspondence with Mr. Van Klink re same;	0.50
01/12/2015	AVK	Telephone call with Mr. Cherniak re Real Ranchs lot sale and status of sale of commercial lands	0.30
01/12/2015	AVK	Telephone call with Mr. Cherniak re Real Ranchs lot sale and status of sale of commercial lands	0.30
01/12/2015	SK	E-mail correspondence with Mr. Cherniak re scheduling Receiver's motion;	0.10
01/13/2015	AVK	Review receiver's monthly report	0.10
01/15/2015	SK	Voice message from Ms. Ford re availability of Justice Thomas; E-mail correspondence from Ms. Ford; E-mail correspondence from various counsel re hearing re-scheduling issues; E-mail correspondence with Mr. Van Klink; Telephone conference with Ms. Ford re availability of Justice Thomas; Discussion with Mr. Van Klink; Telephone call to Mr. Shulgan (left voice message); Voice message from Mr. Shulgan; Telephone call to Ms. Marusic (left voice message);	0.90
01/15/2015	JV	Prepare draft report to client for sale of Lot 116, Plan 12M-533; prepare draft report to client for sale of Lots to Amine Construction; prepare draft reports for sale to Hadi Custom Homes of Lots 38 & 40, Plan 12M-546; prepare draft report for sale of Lot 15, Plan 12M-533;	3.50

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Date	Initials	Description	Hours
01/16/2015	SK	Telephone conference with Ms. Medaglia re Lepera motion; E-mail correspondence with Ms. Ford re same; Discussion with Mr. Van Klink re same; Review e-mail correspondence from Mr. Cherniak re Block 200; E-mail correspondence with Ms. Lehman re same;	0.80
01/16/2015	JV	Prepare report for multiple lot sale to Hadi Custom Homes;	0.70
01/19/2015	SK	Various e-mail correspondence with Ms. Lehman re Block 200; E-mail correspondence with Mr. Cherniak re same; Telephone conference with Ms. Lehman re same; E-mail correspondence with Ms. Ford re motion scheduling; E-mail correspondence with Mr. Van Klink re same; E-mail correspondence with the Receiver re same; Further e-mail correspondence with Ms. Ford confirming motion date; E-mail correspondence with Receiver re same;	1.20
01/19/2015	JL	Various e-mail correspondence; obtain and review parcel register and title documents; discussions with S. Kettle;	0.80
01/26/2015	JL	Various e-mail correspondence;	0.10
01/28/2015	SK	Review voice message from Mr. Khalil; Telephone conference with Mr. Khalil; Prepare letter to Mr. Khalil and Ms. Medaglia; E-mail correspondence with Mr. Cherniak and Mr. Flett;	0.60
01/30/2015	JL	Review of five new files;	1.50
02/03/2015	SK	Receive deposit cheques re lots 99, 100, 101 and 27; Prepare memo to Ms. Lehman re same;	0.10
02/06/2015	JL	Review of Agreement for sale of Block 200;	0.30
02/12/2015	AVK	Review Simba and BMO mortgage documents; review parcel registers; review package of materials from Mr. Branoff regarding Simba mortgages and history of same; consideration of distribution issues	6.00
02/13/2015	ASR	Review search requirements; Instructions to clerk;	0.30
02/13/2015	TV	Receive and review instructions from T. Van Klink regarding file procedure; consult with A. Roth regarding file procedure; commence initial Teraview due diligence searches; receive and review results; strategic planning with A. Roth regarding search procedure; commence in-depth property searches;	1.60
02/13/2015	AVK	Further review of property searches; telephone call with Mr. Cherniak re Simba mortgages and distribution issues; review BMO mortgage security and drafting opinion thereon	3.20
02/13/2015	JV	Obtain parcel registers;	0.30
02/17/2015	ASR	Review title search results with clerk;	0.50

Date	Initials	Description	Hours
02/17/2015	TV	Continue conducting multiple Teraview and property due diligence searches; receive and review results; commence additional Teraview document searches; receive and review results; draft memorandum regarding title matters; strategic planning with A. Roth regarding due diligence search results;	3.90
02/17/2015	AVK	Revising opinion on Bank of Montreal security; reviewing and revising draft Receiver's Sixth Report	2.60
02/17/2015	SK	E-mail correspondence with Mr. Sasso's office re D'Amore Construction;	0.20
02/18/2015	TV	Draft memorandum to T. Van Klink regarding file status; strategic planning with A. Roth regarding memorandum; finalize memorandum and forward to T. Van Klink; commence additional searches; receive and review results; draft further memorandum to T. Van Klink regarding existing mortgage security;	0.70
02/18/2015	AVK	Telephone call with David Taub re Real Ranchs issue; telephone call with Mr. Cherniak; revising and editing draft Receiver's report; revising opinion on BMO security	5.30
02/18/2015	SK	E-mail correspondence with Mr. Van Klink re fee affidavit; Request documents re same;	0.10
02/19/2015	AVK	Reviewing and revising confidential supplement to Receiver's report; revising Receiver's report; drafting Notice of Motion and draft orders; e-mail to Mr. Taub re Real Ranchs and providing consent to order being sought	7.60
02/19/2015	SK	Prepare fee affidavit; Review and revise draft approval and vesting order;	5.20
02/19/2015	JV	Obtain instruments; telephone conference with Sherry Kettle;	0.40
02/20/2015	AVK	E-mails to and from Mr. Taub; e-mails to and from Mr. Flett; finalize Receiver's Sixth Report, Confidential Supplement, Notice of Motion, draft Orders and opinion on Bank of Montreal security	3.20
02/20/2015	SK	Review and revise approval and vesting order; Revise notice of motion; Revise receiver's report and correspondence with receiver re same; Prepare service letter; Prepare letter to agent re filing motion materials; Finalize motion materials; Review affidavit of service; Commission affidavit of service;	6.50
02/20/2015	AH	Attend office of BDO Canada to commission affidavit of Mr. Steve Cherniak;	0.60
02/20/2015	JV	Obtain instruments; telephone call from Teraview; telephone call to Essex Land Registry Office;	0.50

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Date	Initials	Description	Hours
02/23/2015	SK	Telephone conference with Ms. Lehman re upcoming sales; E-mail correspondence with Mr. Flétt re Block 200 approval and vesting order; Provide instructions re motion confirmation;	0.40
02/23/2015	JL	Discussion with S. Kettle;	0.20
02/24/2015	SK	E-mail correspondence with Mr. Flett re Block 200 sale; E-mail correspondence with Ms. Ford re motion confirmation;	0.20
02/25/2015	AVK	Consider correspondence from Mr. Greene and draft response to same; review file documents; e-mail to Mr. Colautti; review Wintru Developments motion record; telephone call with Mr. Cherniak; e-mail to lawyer for Wintru Developments	2.30
02/25/2015	SK	E-mail correspondence with Mr. Layfield re draft approval and vesting order;	0.10
02/26/2015	AVK	E-mails to and from Mr. Trottier re Real Ranchs issue; telephone call with Mr. Cherniak; e-mails to and from Ms. Ford re receiver's motion; revise draft Order to amend receivership appointment order; e-mails to and from Mr. Reynolds re Wintru cross motion; e-mail to service list re draft Order amending receivership order; Telephone call with lawyer for Simba re Real Ranchs lots and e-mail to Mr. Cherniak thereon; review documents relating to Simba mortgages and e-mail to clerk thereon	4.50
02/26/2015	SK	E-mail correspondence with Mr. Layfield re sale of Block 200; Prepare letter to Ms. Medaglia re scheduling of Lepera motion and delivery of additional motion materials;	0.20
02/27/2015	TV	Receive and review instructions from T. Van Klink regarding file procedure; commence various Teraview due diligence searches; receive and review results; draft memorandum to T. Van Klink with attachments and forward;	0.70
02/27/2015	AVK	E-mail to clerk re additional Real Ranchs title documents; telephone call with Mr. Cherniak regarding Simba and response to Mr. Greene; drafting response to Mr. Greene; e-mail to Mr. Cherniak; e-mails from and to Mr. Ball; e-mails to and from Mr. Trottier re Simba and sale of Real Ranchs lots; further e-mails to and from Mr. Greene; review title documents re Simba VTB over Real Ranchs lands and e-mail to clerk thereon	6.20
02/27/2015	SK	E-mail correspondence with Mr. Layfield re Bloc 200 AVO;	0.10
<b>TOTAL HOURS</b>			<b>83.90</b>
<b>OUR FEE:</b>			<b>\$31,186.50</b>

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	Initials	Name	Title	Rate	Hours	Amount
5212	ASR	A. Roth	Partner	330.00	1.50	495.00
5403	AVK	A. Van Klink	Partner	525.00	41.80	21,945.00
5715	SK	S. Kettle	Associate	280.00	20.30	5,684.00
5767	JL	J. Lehman	Clerk	140.00	7.40	1,036.00
5805	JV	J. Valade	Clerk	150.00	5.40	810.00
5231	TV	T. Vogel	Clerk	165.00	6.90	1,138.50
5783	AH	A. Hentz	Student	130.00	0.60	78.00

**TAXABLE DISBURSEMENTS**

Teraview service Fee	10.00	
Couriers	21.49	
Agent's Fees	80.00	
Copywork	297.50	
Long Distance Telephone	27.95	
Fax	7.50	
Online Searches - Teranet	932.00	
<b>TOTAL TAXABLE</b>	<b>1376.44</b>	<b>\$1,376.44</b>

**NON-TAXABLE DISBURSEMENTS**

Registration fees	60.00	
Filing Fee	127.00	
<b>TOTAL NON-TAXABLE</b>	<b>187.00</b>	<b>\$187.00</b>

**TOTAL FEES AND DISBURSEMENTS: \$32,749.94**

**Harmonized Sales Tax (R119440766)**

On Fees	\$4,054.25
On Disbursements	\$178.94

**TOTAL AMOUNT DUE: \$36,983.13**

E.&O.E.

ACCOUNT

May 11, 2015

Invoice Number 2739757

BDO Canada Limited  
252 Pall Mall Street  
Suite 103  
London, ON N6A 5P6

Attention: Stephen N. Cherniak

**TO PROFESSIONAL SERVICES RENDERED in**  
connection with the following matter including:

**Re: Receivership of Banwell Development Corporation**  
**Our File No. 082873.0010**

Date	Initials	Description	Hours
03/01/2015	AVK	Reviewing materials; prepare for motion; consider and prepare outline for response to Mr. Trottier re Real Ranchs issue	2.20
03/02/2015	ASR	Review title matters; Review and revise memo with respect to compliance of charge with the Planning Act;	0.40
03/02/2015	TV	Receive and review instructions from T. Van Klink regarding file procedure; consult with A. Roth regarding file procedure; commence Teraview due diligence searches; receive and review results; strategic planning with A. Roth regarding due diligence search results; commence in-depth property searches; receive and review results; draft memorandum regarding transfer/deed title matters; draft memorandum regarding mortgage security matters; strategic planning with A. Roth regarding memorandum; finalize memorandums with attachments and forward to T. Van Klink;	4.30

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Date	Initials	Description	Hours
03/02/2015	AVK	Draft e-mail to Mr. Trottier re Real Ranchs; telephone call with Mr. Cherniak; e-mails to clerk re Real Ranchs searches; prepare opinion on Simba security over Real Ranchs lots; revise draft approval order (paragraph 12); review e-mail from Mr. Binetti re status of J. Lepera appeal; review e-mails from Mr. Greene and Mr. Cherniak re fees approval; telephone call with Mr. Taub; e-mails to Mr. Cherniak and Mr. Trottier re Real Ranchs; prepare for motion	6.30
03/02/2015	SK	Review correspondence re Lepera appeal; Telephone conference with Ms. Hagerty re Lepera appeal to Divisional Court; E-mail correspondence with Mr. Van Klink re same; E-mail correspondence with Mr. Binetti; E-mail correspondence with Ms. Medaglia;	0.60
03/02/2015	JL	Review of e-mail correspondence from client re Lots 99, 100 & 101;	0.10
03/03/2015	AVK	E-mails from and to Mr. Trottier re consent to relief being sought regarding Real Ranchs lots; attend on motion for approval of Sixth Report, including travel to and from; attend to entry of orders at court office; telephone call with Mr. Cherniak re next steps	7.80
03/05/2015	AVK	Conference with Sherry Kettle re steps to be taken	0.20
03/05/2015	SK	Meeting with Mr. Van Klink re next steps; Prepare letter to service list attaching three orders of Mr. Justice Thomas;	0.50
03/09/2015	SK	Review receiver's report and prepare for real estate closings; Telephone conference with Ms. Lehman re same; E-mail correspondence with Mr. Flett re same; Review documents for Lot 27 closing; Meeting with Mr. Van Klink re Lot 27 charges; Telephone conference with Mr. Flett re same; Request parcel register for Lot 27; E-mail correspondence with Ms. Lehman re Lot 27 closing;	3.30
03/09/2015	JL	Discussion with S. Kettle regarding upcoming sale transactions;	0.30
03/10/2015	AVK	Telephone call with Mr. Cherniak re sale of lot 27 to Hadi Custom Homes and WFCU mortgage	0.20
03/10/2015	SK	Receive requisition letters from Mr. Gervais; E-mail correspondence with Ms. Lehman re same; E-mail correspondence with Mr. Cherniak re Lot 27 and WFCU mortgage; E-mail correspondence with Mr. Flett re same; Discussion with Mr. Van Klink re same; Telephone call to Mr. Udell (left voice message); Review and revise draft documents for Lot 27 closing (power of sale); E-mail correspondence with Ms. Lehman re same;	2.50

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Date	Initials	Description	Hours
03/10/2015	JL	Prepare closing documents; various e-mail correspondence; draft Teraview documents; prepare Statement of Trust & Statement of Adjustments; review of property tax information for upcoming sale transactions;	2.80
03/10/2015	JV	Obtain parcel register;	0.20
03/11/2015	AVK	Telephone call with Bill Sasso re consolidated action involving D'Amore Construction	0.30
03/11/2015	SK	Review and revise closing documents for Lot 27; Voice message from Mr. Udell; Telephone conference with Mr. Udell; E-mail correspondence with Mr. Udell; E-mail correspondence with Ms. Lehman re closings; E-mail correspondence with Mr. Flett and Mr. Cherniak re Lot 27 closing; E-mail correspondence with Mr. Taub re Lot 27 closing and discharge of BMO mortgage; Telephone conference with Mr. Taub's assistant Ms. Bugden; E-mail correspondence with Ms. Bugden; E-mail correspondence with Mr. Trottier re Lot 27 closing and discharge of Simba/D'Amore mortgage; Telephone conference with Mr. Laba re Lot 27 closing and possible extension; E-mail correspondence with Receiver re same;	3.50
03/11/2015	JL	Draft and revise documents; various e-mail correspondence;	3.40
03/12/2015	ASR	Follow up regarding closing matters; Review matter pertaining to discharge requirements; Telephone attendance on lawyer for purchaser; Telephone attendance on land registry office; Instructions to clerk; E-mail correspondence;	0.70
03/12/2015	SK	E-mail correspondence with Mr. Trottier re discharge of Simba charge re Lot 27; E-mail correspondence with Ms. Lehman re same; Telephone conference with Mr. Laba; Telephone call to Mr. Sundeen (left voice message); E-mail correspondence with Ms. Musyj; Telephone conference with Mr. Marcotte re discharge of Simba mortgage; E-mail correspondence with Mr. Marcotte; E-mail correspondence with Ms. Lehman and Mr. Roth re same; Further e-mail correspondence with Mr. Marcotte; Further e-mail correspondence with Mr. Roth;	1.90
03/12/2015	JL	Draft documents; various e-mail correspondence; telephone conference with Land Registry Office;	7.10
03/13/2015	ASR	Telephone attendance on solicitor regarding charge; Attend to transfer of lots;	0.60



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Date	Initials	Description	Hours
03/13/2015	SK	E-mail correspondence with Ms. Lehman and Mr. Roth re Lot 27 closing; Telephone call to Mr. Sundeen re Windsor Family Credit Union mortgage (left voice message); Telephone conference with Mr. Laba re extension for Lot 27 closing; E-mail correspondence with Ms. Lehman re same; Telephone conference with Mr. Cherniak re City of Windsor settlement; Telephone conference with Ms. Lehman re upcoming closings; E-mail correspondence with Mr. Marcotte;	1.80
03/13/2015	JL	Various e-mail correspondence; draft documents; compose extension letter; review of requisition letter and prepare response; discussions with A. Roth & S. Kettle;	1.90
03/14/2015	SK	Review and revise closing documents for various March closings; E-mail correspondence with Ms. Lehman and Mr. Roth re same;	3.40
03/15/2015	SK	Review and revise closing documents for various March closings; E-mail correspondence with Mr. Roth and Ms. Lehman; E-mail correspondence with Mr. Taub re discharge of BMO mortgage; E-mail correspondence with Mr. Udell re discharge of WFCUL mortgage;	2.20
03/16/2015	AVK	Telephone call with Mr. Udell re discharge of WFCU mortgage against Real Ranchs lots; e-mail to Mr. Cherniak; telephone call with Mr. Cherniak; e-mails from and to clerk re sale of lot 27	0.70
03/16/2015	JL	Various e-mail correspondence;	0.60
03/17/2015	AVK	E-mails from and to Mr. Cherniak re WFCU charge on Real Ranches lots; telephone call with Mr. Cherniak; e-mail to Mr. Udell re power of sale of Real Ranchs lots and terms for discharging WFCU mortgages; e-mails from and to Mr. Cherniak and Mr. Udell; receive executed discharges and e-mail to clerk thereon	1.20
03/18/2015	ASR	Attend to issue with transferor;	0.30
03/18/2015	AVK	Telephone call with Mr. Roth re deed for sale of lot 27 to Hadi Custom Homes; telephone call with Mr. Laba	0.20
03/18/2015	JL	Various e-mail correspondence; draft closing letters; prepare documents for registration;	2.30
03/19/2015	ASR	Attend to issues with respect to closing; Telephone attendance on lawyer for purchase; Extend closing;	0.80
03/19/2015	SK	E-mail correspondence with Mr. Layfield re Block 200 closing; E-mail correspondence with Ms. Lehman re same;	0.10

Date	Initials	Description	Hours
03/19/2015	JL	Various e-mail correspondence; revise documents; discussions with A. Roth; telephone conferences with Essex Land Registry Office;	2.60
03/20/2015	ASR	Review closing matters; Correspondence regarding pre-approval of transfer; Follow up on BMO mortgage transfer;	0.50
03/20/2015	JL	Draft final report to client; draft and revise documents; various e-mail correspondence;	4.10
03/24/2015	ASR	Review outstanding matters pertaining to closing;	0.20
03/24/2015	JL	Various e-mail correspondence; draft correspondence to client with signing documents; follow up with purchaser's solicitors regarding closing;	1.20
03/25/2015	AVK	Review Simba mortgage schedule and e-mail to clerk re searches required	0.80
03/25/2015	SK	E-mail correspondence with Ms. Lehman re Block 200 closing; Telephone conference with Ms. Lehman re March closings; Revise statutory declaration of chargee's solicitor for closings; Prepare memo to Ms. Lehman re same; Review revised VTB mortgage; E-mail correspondence with Ms. Lehman re same; Review Block 200 closing documents; E-mail correspondence with Ms. Lehman re same;	3.00
03/25/2015	JL	Telephone conference with other lawyer; discussion with S. Kettle;	0.50
03/26/2015	ASR	Attend to issue with respect to multiple deeds;	0.20
03/26/2015	TV	Receive and review instructions from T. Van Klink regarding file procedure; commence Teraview due diligence searches; receive and review results; draft memorandum to T. Van Klink with attachments and forward;	1.80
03/26/2015	SK	E-mail correspondence with Ms. Lehman re various real estate closings; Telephone conference with Ms. Lehman re same; E-mail correspondence with Mr. Layfield re Block 200 closing; Voice message from Ms. Lehman re various March closings; Telephone conference with Ms. Lehman re same; Telephone call to Mr. Taub re notice of change of lawyers in consolidated action 06-CV-006763 (left voice message); E-mail correspondence with Ms. Parent re requisition letter; E-mail correspondence with Mr. Farhat re potential closing;	2.00
03/26/2015	JL	Revise documents; prepare closing letters; various e-mail correspondence; discussions with S. Kettle & A. Roth;	3.60
03/27/2015	ASR	E-mail correspondence regarding power of sale transfer; Provide additional documentation as requested; Review closing matters;	0.40

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Date	Initials	Description	Hours
03/27/2015	SK	E-mail correspondence with Mr. Farhat; E-mail correspondence with Ms. Lehman re Lot 100 and transfer of charge; Telephone conference with Ms. Lehman re same; Discussion with Mr. Van Klink re same; Telephone call to Mr. Taub re same (left voice message); E-mail correspondence with Mr. Taub re same; Voice message from Ms. Lehman re Bungalow closing; Telephone conferences with Ms. Lehman re same; E-mail correspondence re extension of Bungalow closing; E-mail correspondence with Mr. Taub re transfer of charge for Real Ranches Lots; E-mail correspondence with Mr. Cherniak re same;	2.50
03/27/2015	JL	Telephone conference with Land Registry Office; various e-mail correspondence; draft and revise documents; discussions with S. Kettle;	3.30
03/28/2015	JL	Draft and revise documents; various e-mail correspondence;	3.00
03/29/2015	SK	Review e-mail correspondence from Mr. Tomas re land registrar pre-approval of documentation; E-mail correspondence with Ms. Lehman and Mr. Roth re same; E-mail correspondence with Ms. Lehman re closing documentation;	0.50
03/30/2015	ASR	E-mail correspondence regarding pre-approval of transfer; Telephone attendance on buyer's lawyer; Receive deposit funds; Instructions to clerk; Attend to tax arrears payment; Attend to extension of closing;	0.80
03/30/2015	SK	E-mail correspondence with Ms. Lehman and Mr. Roth re 136 transaction closing; E-mail correspondence with Mr. Tomas re same; E-mail correspondence with Mr. Taub re BMO mortgage discharge re same; E-mail correspondence with Ms. Lehman re Block 200 closing; Review requisition letter and draft response; Review draft assumption agreement; E-mail correspondence with Ms. Lehman re same;	2.50
03/30/2015	JL	Various e-mail correspondence; draft documents; discussions with S. Kettle & A. Roth; telephone conference with other lawyer;	1.70
03/31/2015	ASR	Attend to numerous issues with respect to closing matters and requests from buyer's counsel for additional documentation; Attend to extension of closing;	0.40

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Date	Initials	Description	Hours
03/31/2015	SK	E-mail correspondence with Ms. Lehman re closings; E-mail correspondence with Mr. Taub re same and BMO discharge of charge and transfer of charge; E-mail correspondence with Mr. Cherniak re same; E-mail correspondence from Mr. Walia re documents for closing; Telephone conference with Ms. Lehman re closings; E-mail correspondence with Mr. Cherniak re same; Telephone call to Mr. Tomas (spoke with assistant); Further telephone conference with Ms. Lehman; Further e-mail correspondence with Mr. Cherniak re extension of closing; Further telephone conference with Ms. Lehman re same;	1.60
03/31/2015	JL	Various e-mail correspondence; draft documents; discussions with A. Roth & S. Kettle;	2.80
04/01/2015	ASR	Review title issue and telephone attendance on buyer's lawyer regarding same; Attend to closing matters;	0.60
04/01/2015	AVK	Discussion with Sherry Kettle re lot sale insurance issue	0.30
04/01/2015	SK	E-mail correspondence with Ms. Lehman; Telephone conferences with Ms. Lehman; Review e-mail correspondence with Mr. Tomas and Ms. Lehman; E-mail correspondence with Receiver re status of closing; Telephone conference with Mr. Tomas; Telephone conference with Mr. Cherniak; E-mail correspondence with Mr. Tomas; Telephone conference with Mr. Tomas; Telephone conference with Mr. Cherniak; Telephone conference with Ms. Lehman; E-mail correspondence with Mr. Tomas;	3.50
04/01/2015	JL	Various e-mail correspondence; revise documents; discussions with A. Roth & S. Kettle;	1.90
04/02/2015	ASR	Follow up on closing matters;	0.40
04/02/2015	SK	Telephone conference with Ms. Lehman re closings; E-mail correspondence with Ms. Lehman re same; Further telephone conference and e-mail correspondence with Ms. Lehman re closing; E-mail correspondence with Ms. Parent re Block 200 closing; E-mail correspondence with Mr. Flett re response to Troup/Wintru cross-motion;	1.30
04/02/2015	JL	Various e-mail correspondence; review of documents; prepare financial documents for closing; draft final reports;	4.00
04/06/2015	AVK	Review searches and instruments relating to Simba vendor take back mortgages and consideration of issues relating to same	2.50

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Date	Initials	Description	Hours
04/06/2015	SK	Review outstanding matters for Receiver's report; Telephone call to Mr. Flett re same (left voice message); Telephone conference with Mr. Flett re same; E-mail correspondence with Mr. Greene re appeal materials; Meeting with Mr. Hentz re dismissal of OMB proceeding; Meeting with Mr. Van Klink re Receiver's report and outstanding matters; Draft mutual release re City of Windsor settlement; Draft letter to counsel for City re settlement;	3.00
04/06/2015	JL	Review of registered documents; attend to post closing matters;	0.90
04/06/2015	AH	Conduct research and teleconference with Eric Davis regarding strategy for dismissing hearing before Ontario Municipal Board;	0.50
04/07/2015	AVK	Telephone call with Mr. Cherniak	0.20
04/07/2015	SK	Prepare letter to Ms. Gray re filing 11 receiver's certificates; Prepare letter to Ms. Gray re filing Block 200 receiver's certificate; Prepare letter to Ms. Gray re filing Lot 99 and 101 receiver's certificates; Draft settlement documents re City of Windsor; E-mail correspondence with Mr. Flett re Seventh Report;	0.80
04/07/2015	JL	Telephone conference with solicitor for Hadi Custom Homes regarding 7 lot deal closing on May 29, 2015;	0.10
04/07/2015	AH	Teleconference with case coordinator of Ontario Municipal Board File No. LC080015 regarding dismissing matter;	0.30
04/09/2015	JL	Various e-mail correspondence relating to discharges of VTB Charges; review of documents for new closing;	0.50
04/10/2015	AVK	Review Receiver's draft Seventh Report	0.20
04/10/2015	SK	Draft notice of motion; Draft order; Draft litigation chart; Review and revise draft receiver's report (7th report); Telephone conference with Mr. Flett re same; E-mail correspondence with Mr. Flett re same; Prepare service letter; Finalize motion record; E-mail correspondence with service list serving motion record;	7.70
04/10/2015	JL	Various e-mail correspondence relating to discharge statement for Lot 15, Plan 12M533; draft discharge statement;	0.30
04/13/2015	AVK	Telephone call with Mr. Cherniak	0.30

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Date	Initials	Description	Hours
04/13/2015	SK	Review various e-mail correspondence with Ms. Lehman and Receiver re discharges; E-mail correspondence with Ms. Lehman; Telephone call to Ms. Lehman (left voice message); Telephone conference with Ms. Lehman; Prepare and swear affidavit of service re Seventh Report; E-mail correspondence with Mr. Flett; Prepare letter to Ms. Gray re filing motion record with Court; E-mail correspondence with Mr. Sasso re Seventh Report; Update service list;	0.70
04/13/2015	JL	Discussions with S. Kettle; revise documents; various e-mail correspondence;	0.60
04/14/2015	AD	Receive instructions from T. Van Klink; obtain requested instruments CE163209, CE163210, CE16212, CE269387; provide instruments to T. Van Klink via email;	0.20
04/14/2015	AVK	Review outstanding litigation and consideration of issues relating to same; review documents relating to Simba vendor take back mortgages; request additional documents and searches relating to Simba vendor take back mortgages; dictate draft report and opinion on Simba mortgages	5.80
04/14/2015	SK	Finalize settlement documents re City of Windsor; E-mail correspondence with Mr. Cherniak re same; E-mail correspondence with Ms. Gray re receiver's certificates;	0.30
04/14/2015	JL	Various e-mail correspondence relating to change in closing date;	0.10
04/15/2015	AD	Receive instructions from T. Van Klink; obtain instrument no. CE163212; send results to T. Van Klink via email;	0.20
04/15/2015	ASR	Review request regarding Planning Act issues; Instructions to clerk; Review charge and provide comments;	0.40
04/15/2015	TV	Receive and review instructions from T. Van Klink regarding file procedure and multiple projects; consult with A. Roth regarding file status and procedure; commence initial Teraview due diligence searches;	1.10
04/15/2015	AVK	E-mails from and to Mr. Roth re Planning Act searches; review discharge of original VTB on commercial plaza	0.20
04/15/2015	SK	E-mail correspondence with Mr. Cherniak re settlement documents (City of Windsor);	0.10
04/16/2015	ASR	Attend to closing matters;	0.30

Date	Initials	Description	Hours
04/16/2015	TV	Continue conducting in-depth due diligence searches; receive and review results; strategic planning with A. Roth regarding search results; draft memorandum to T. Van Klink regarding Project #1 with attachments; consult with A. Roth regarding title memorandum and supporting documents; review subsequent instructions from T. Van Klink regarding Project #2 file procedure; conduct in-depth due diligence searches; receive and review results; strategic planning with A. Roth regarding search results; draft memorandum to T. Van Klink regarding Project #2 with attachments; consult with A. Roth regarding title memorandum and supporting documents;	1.80
04/16/2015	AVK	Review remaining lot inventory schedule; telephone call with Mr. Cherniak re outstanding litigation and position thereon; receive correspondence from Mr. Sasso; e-mail to Mr. Trottier re Simba	1.00
04/16/2015	SK	Voice message from Ms. Gray; Prepare motion confirmation; Finalize and send letter to City of Windsor re settlement; E-mail correspondence from Ms. Luscombe re factum and brief of authorities re Lepera lift stay motion;	0.50
04/16/2015	JL	Various e-mail correspondence; review of requisition letter and prepare response; draft and revise documents;	3.30
04/17/2015	ASR	Review title questions and issues; Amend memo to T. Van Klink;	0.60
04/17/2015	TV	Strategic planning with A. Roth regarding Project #1 matters; finalize memorandum to T. Van Klink regarding Project #1 with attachments and forward; consult with A. Roth regarding Project #2 matters; finalize memorandum to T. Van Klink regarding Project #2 with attachments and forward;	0.30
04/17/2015	AVK	Numerous e-mails with other counsel regarding motions to lift stay of proceedings and outstanding litigation affecting Banwell; review Lepera materials; review materials for consolidated action; receive e-mails from counsel for M.R. Dunn; Telephone call with Mr. Sasso; e-mail to Mr. Greene re use of RT funds to retire BMO Banwell indebtedness; e-mails to Mr. Cherniak; review Troup supplementary cross-motion record and consider issues raised therein	6.50
04/17/2015	SK	Voice message from Ms. Medaglia; E-mail correspondence re Lepera lift stay motion and motion confirmation; Discussion with Mr. Van Klink re same and no notice; Telephone conference with Mr. Flett re litigation; E-mail correspondence with Mr. Flett re same; E-mail correspondence with Mr. Van Klink re same; Various e-mail correspondence re upcoming motion;	0.90

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Date	Initials	Description	Hours
04/20/2015	AVK	Telephone call with Mr. Cherniak; e-mail from and to Mr. Trottier; review motion materials; prepare for motions to be heard on April 21; e-mail from and to Mr. Trottier re Simba security	2.50
04/20/2015	SK	Telephone call to Mr. Greene (left voice message); E-mail correspondence with Ms. Lehman re VTBM discharge; Review documents re Lot 15 VTBM; Voice message from Mr. Greene; Telephone conference with Mr. Greene; Further telephone conference with Mr. Greene; Telephone conference with Ms. Rivietz; E-mail correspondence with Ms. Rivietz; Review pleadings; E-mail correspondence with Mr. Cherniak and Mr. Flett;	1.70
04/20/2015	JL	Various e-mail correspondence; draft closing letter and financial documents;	0.60
04/21/2015	PJF	Email from/to S. Cherniak re: employment law advice	0.10
04/21/2015	AVK	Attend on motions to lift stay of proceedings in Lepera action, consolidated action and Troup motion for additional compensation, including travel to and from; e-mail from Mr. Cherniak and e-mail to Ms. Forte re termination of Banwell employee	7.30
04/21/2015	JL	Various e-mail correspondence; prepare outgoing courier; review of signed document package received from client;	0.60
04/22/2015	PJF	Email to S. Cherniak re: employment law advice	0.40
04/22/2015	JL	Various e-mail correspondence with other lawyer; revise documents;	0.40
04/23/2015	PJF	Telephone attendance on S. Cherniak re: employment law advice about employee termination; review and revise termination letter template and release; email to S. Cherniak attaching same	0.70
04/23/2015	AVK	Letter to service list	0.10
04/23/2015	SK	E-mail correspondence with Mr. Flett re Avila sale; Review files and respond to Mr. Flett; E-mail correspondence with Ms. Lehman re sale of 7 lots to Hadi; E-mail correspondence with Mr. Flett re same;	0.70
04/23/2015	JL	Various e-mail correspondence; prepare schedules for Vesting Orders;	0.80
04/24/2015	ASR	Attend to closing;	0.30
04/24/2015	AVK	E-mail to Mr. Greene	0.20
04/24/2015	JL	Various e-mail correspondence; draft and revise documents; review of various correspondence;	2.60



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Date	Initials	Description	Hours
04/27/2015	SK	Prepare letter to Ms. Gray re filing receiver's certificates;	0.10
04/27/2015	JL	Various e-mail correspondence;	0.20
04/28/2015	JL	Review of correspondence from borrower's solicitor; various e-mail correspondence;	0.30
04/29/2015	ASR	Attend to closing documents and DRA;	0.20
04/29/2015	JL	Review of e-mail correspondnce; prepare financial documents for closing;	0.30
04/30/2015	AVK	E-mail to Mr. Cherniak re sales process for remaining lands	0.10
04/30/2015	SK	Receive letter from City of Windsor re settlement; Prepare letter to Mr. Cherniak re same and mutual release;	0.20
04/30/2015	JL	Various e-mail correspondence; review of fax from other lawyer; telephone conference;	0.50

TOTAL HOURS 179.80

OUR FEE: \$52,831.00

Initials	Name	Title	Rate	Hours	Amount
5212	ASR	A. Roth	330.00	8.10	2,673.00
5403	AVK	A. Van Klink	525.00	47.10	24,727.50
5117	PJF	P. Forte	385.00	1.20	462.00
5715	SK	S. Kettle	280.00	53.40	14,952.00
5048	AD	A. Denstedt	115.00	0.40	46.00
5767	JL	J. Lehman	140.00	59.30	8,302.00
5805	JV	J. Valade	150.00	0.20	30.00
5231	TV	T. Vogel	165.00	9.30	1,534.50
5783	AH	A. Hentz	130.00	0.80	104.00

**TAXABLE DISBURSEMENTS**

Parking	3.76	
Teraview service Fee	150.00	
Couriers	96.07	
Mileage/Parking	339.82	
Agent's Fees	255.00	
Copywork	364.75	
Long Distance Telephone	19.68	
Postage	1.65	
Fax	3.55	
Online Searches - Teranet	750.00	
<b>TOTAL TAXABLE</b>	<b>1984.28</b>	<b>\$1,984.28</b>

**NON-TAXABLE DISBURSEMENTS**

Registration fees	900.00
Issue Statement of Defence	127.00

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TOTAL NON-TAXABLE	<u>1027.00</u>	\$1,027.00
<b>TOTAL FEES AND DISBURSEMENTS:</b>		<b>\$55,842.28</b>
<b>Harmonized Sales Tax (R119440766)</b>		
On Fees		\$6,868.03
On Disbursements		\$257.96
<b>TOTAL AMOUNT DUE:</b>		<b><u>\$62,968.27</u></b>

E.&O.E.

ACCOUNT

June 10, 2015

Invoice Number 2751348

BDO Canada Limited  
252 Pall Mall Street  
Suite 103  
London, ON N6A 5P6

Attention: Stephen N. Cherniak

**TO PROFESSIONAL SERVICES RENDERED** in  
connection with the following matter including:

**Re: Receivership of Banwell Development Corporation**  
**Our File No. 082873.0010**

Date	Initials	Description	Hours
05/01/2015	AVK	Telephone call with Mr. Cherniak re Simba mortgages, outstanding litigation and sale of commercial lands	0.30
05/01/2015	AH	Draft correspondence requesting dismissal of OMB matter on consent of the parties;	0.70
05/04/2015	SK	Review and finalize letter to dismiss City of Windsor proceeding;	0.10
05/04/2015	JL	Follow up on outstanding certification of cancellation for Lot 100; revise final reports;	1.70
05/08/2015	AVK	Review receiver's monthly report	0.10

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Date	Initials	Description	Hours
05/08/2015	SK	Review and finalize reporting letter re Lots 26-30, Plan 12M-533; Review and finalize reporting letter re Lot 15, Plan 12M-533; Review and finalize reporting letter re Lot 40, Plan 12M-546; Review and finalize reporting letter re Lot 38, Plan 12M-546; Review and finalize reporting letter re Lot 116, 12M-533; Review and finalize reporting letter re Lots 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 12M546; Review and revise reporting letter re Lot 27, Plan 12M546; Review and revise reporting letter re Lots 12, 16, 17, 18, 20, 21 and 23, Plan 12M533; Review and revise reporting letter re Lots 2, 3, 4 6, 7, 8, 9, 10, 11, 12, 13 Plan 12M546; Review and revise reporting letter re Lot 100, Plan 12M503; Review and revise reporting letter re Block 200; Review and revise reporting letter re Lots 99 and 101, Plan 12M503; Review and revise reporting letter re Lots 14-18, 20-25, 42-43, 45-52, Plan 12M546;	3.90
05/11/2015	SK	Review and finalize real estate reporting letters;	2.90
05/12/2015	SK	Voice messages from Mr. Flett; Review e-mail correspondence from Mr. Flett re agreement of purchase and sale for remaining residential lands and attached documents; Telephones call to Mr. Flett (left voice messages); Telephone conference with Mr. Flett re agreement of purchase and sale;	1.20
05/12/2015	JL	Various e-mail correspondence; draft discharge statement;	0.30
05/13/2015	AVK	Receive and review reasons of Thomas J for motions heard on April 21; e-mail to Mr. Cherniak; letter to service list	0.20
05/13/2015	JL	Revise discharge documents; various e-mail correspondence;	0.30
05/15/2015	JL	Prepare financial documents and closing letter; various e-mail correspondence;	0.70
05/19/2015	ASR	Review draft offer letter for Phase III and title documents;	0.20
05/19/2015	SK	E-mail correspondence with Mr. Roth; Review documents re draft agreement of purchase and sale (unserved residential lots and blocks);	0.50
05/20/2015	AD	Receive instructions from S. Kettle; obtain parcel registers for PINs 01566-0687 and 01566-0688; send results to S. Kettle via email;	0.20
05/20/2015	ASR	Telephone attendance regarding impact of subdivision agreement;	0.20
05/20/2015	AVK	E-mail from and to Mr. Greene re Lepara appeal and consolidated action	0.20

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Date	Initials	Description	Hours
05/20/2015	SK	Draft agreement of purchase and sale re Lots 103-106 and Block 121-122 Plan 12M533; Telephone conference with Mr. Roth re same; E-mail correspondence with Receiver re draft APS;	6.70
05/21/2015	ASR	Review title matters; Telephone attendance on S. Kettle regarding purchase agreement;	0.60
05/21/2015	AVK	E-mail from and to Mr. Branoff	0.10
05/21/2015	AVK	E-mail from and to Mr. Greene re Lepara appeal and consolidated action	0.20
05/21/2015	AVK	E-mail from and to Ms. Medaglia re Lepara appeal	0.10
05/21/2015	SK	E-mail correspondence with Mr. Flett re APS; Telephone conference with Mr. Flett; E-mail correspondence with Mr. Roth; Telephone conference with Mr. Roth; Review and revise draft APS; E-mail correspondence with Mr. Flett re same;	3.70
05/22/2015	AVK	Telephone call with Mr. Cherniak; e-mail to Mr. Greene; e-mail to Mr. Branoff, Mr. Reynolds e-mail to al re Lepara appeal	0.40
05/22/2015	SK	E-mail correspondence with Mr. Flett; Telephone conference with Mr. Flett; Revise draft APS; Further e-mail correspondence with Mr. Flett re same;	0.50
05/25/2015	AVK	Telephone call with Mr. Sasso; e-mail to Mr. Greene	0.20
05/27/2015	AVK	Receive correspondence from Ms. Marusic	0.10
05/27/2015	SK	E-mail correspondence with Mr. Flett re revision to APS; Revise APS; Further e-mail correspondence with Mr. Flett re same;	0.20
05/29/2015	AVK	Working on report on Simba mortgages	4.30

TOTAL HOURS 30.80

OUR FEE: \$9,635.00

Initials	Name	Title	Rate	Hours	Amount
5212	ASR	A. Roth	Partner	330.00	1.00 330.00
5403	AVK	A. Van Klink	Partner	525.00	6.20 3,255.00
5715	SK	S. Kettle	Partner	280.00	19.70 5,516.00
5048	AD	A. Denstedt	Clerk	115.00	0.20 23.00
5767	JL	J. Lehman	Clerk	140.00	3.00 420.00
5783	AH	A. Hentz	Student	130.00	0.70 91.00

**TAXABLE DISBURSEMENTS**

Couriers	68.61
Agent's Fees	105.00

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Copywork	58.10	
Postage	1.54	
Online Searches - Teranet	67.00	
TOTAL TAXABLE	<u>300.25</u>	\$300.25
<b>TOTAL FEES AND DISBURSEMENTS:</b>		<b>\$9,935.25</b>
<b>Harmonized Sales Tax (R119440766)</b>		
On Fees		\$1,252.55
On Disbursements		\$39.03
<b>TOTAL AMOUNT DUE:</b>		<b><u>\$11,226.83</u></b>

E.&O.E.

**EXHIBIT "B"**  
**Miller Thomson's Fees**

Hours	Year of Call	Rate 2015	Inv.#2715168 March 10, 2015	Inv.#2739757 May 11, 2015	Inv.#2751348 June 10, 2015	Total Invoices
T. Van Klink	1988	\$525.00	41.80	47.10	6.20	95.10
S. Kettle	2007	\$280.00	20.30	53.40	19.70	93.40
A. Roth	2004	\$330.00	1.50	8.10	1.00	10.60
P. Forte	1997	\$385.00	0.00	1.20	0.00	1.20
A. Hentz - student	N/A	\$130.00	0.60	0.80	0.70	2.10
J. Lehmann - Clerk	N/A	\$140.00	7.40	59.30	3.00	69.70
A. Denstedt	N/A	\$115.00	0.00	0.40	0.20	0.60
T. Vogel - Clerk	N/A	\$165.00	6.90	9.30	0.00	16.20
J. Valade - Clerk	N/A	\$150.00	5.40	0.20	0.00	5.60
			83.90	179.80	30.80	294.50

<b>Total \$</b>			\$21,945.00	\$24,727.50	\$3,255.00	\$49,927.50
T. Van Klink	1988	\$525.00	\$5,684.00	\$14,952.00	\$5,516.00	\$26,152.00
S. Kettle	2007	\$280.00	\$495.00	\$2,673.00	\$330.00	\$3,498.00
A. Roth	2004	\$330.00	\$0.00	\$462.00	\$0.00	\$462.00
P. Forte	1997	\$385.00	\$78.00	\$104.00	\$91.00	\$273.00
A. Hentz - student	N/A	\$130.00	\$1,036.00	\$8,302.00	\$420.00	\$9,758.00
J. Lehmann - Clerk	N/A	\$140.00	\$0.00	\$46.00	\$23.00	\$69.00
A. Denstedt	N/A	\$115.00	\$1,138.50	\$1,534.50	\$0.00	\$2,673.00
T. Vogel - Clerk	N/A	\$165.00	\$810.00	\$30.00	\$0.00	\$840.00
J. Valade - Clerk	N/A	\$150.00	\$31,186.50	\$52,831.00	\$9,635.00	\$93,652.50

Summary	Fees	Disbursements	HST	Total
	\$31,186.50	\$52,831.00	\$9,635.00	\$93,652.50
	\$1,563.44	\$3,011.28	\$300.25	\$4,874.97
	\$4,233.19	\$7,125.99	\$1,291.58	\$12,650.76
	\$36,983.13	\$62,968.27	\$11,226.83	\$111,178.23

KEVIN D'AMORE

and

Applicant

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

Respondents

Court File No: CV-11-17088

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**AFFIDAVIT OF SHERRY KETTLE**

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

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KEVIN D'AMORE  
Applicant

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

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**MOTION RECORD**  
(RETURNABLE JUNE 24, 2015)

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