

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
(MOTION RETURNABLE DECEMBER 13, 2013)

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Windsor, ON N8N 0B4
Att: Dan Dimitrievski

AND TO: **The Loco Thai Lounge Inc.**
3335 Banwell Road, Unit 200
Windsor, ON N8N 0B4
Att: Sayasith Phothitay

AND TO: **Bella Vita Hair Design and Day Spa Inc.**
3335 Banwell Road
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Attention: Bogdan Chamyey, President

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

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TAB “1”

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

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Respondents

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

NOTICE OF MOTION
(Approval of Commercial Plaza Sale)
(returnable December 13, 2013)

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" or the "Debtor" and collectively with Banwell, the "Companies") pursuant to the Order of Justice Thomas dated June 5, 2013 (the "Appointment Order"), will make a motion to The Honourable Justice Thomas on Friday, December 13, 2013 at 11:00 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 appended hereto as **Schedule "A"**:
 - (a) if necessary, abridging the time for and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Fourth Report of the Receiver dated December 9, 2013 and all

appendices thereto (the "**Receiver's Fourth Report**"), and directing that any further service of same be dispensed with such that this motion is properly returnable on December 13, 2013;

- (b) approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale dated effective November 22, 2013 (the "**APS**") between the Receiver, as vendor, and Avila Investments Ltd. ("**Avila**" or the "**Purchaser**") in respect of the real property legally described as (a) Block 105, Plan 12M-503, Windsor, Essex County, Ontario (PIN 01566-0469 (LT)) and municipally known as 3993 Wildwood Drive, Windsor; and (b) Block 106, Plan 12M-503, save and except Part 1 on 12R-22290, Windsor, Essex County, Ontario (PIN 01566-0749 (LT) and municipally known as 3335 Banwell Road, Windsor (collectively, the "**Commercial Plaza**") and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013 (the "**Confidential Supplement**");
- (c) authorizing and directing the Receiver to enter into the APS and complete the Transaction by taking such additional steps and executing such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser and, thereafter, to deliver the Receiver's Certificate to the Purchaser and to file a copy of the Receiver's Certificate with the Court;
- (d) upon closing of the Transaction and delivery of the Receiver's Certificate to the Purchaser, vesting in the Purchaser, all of the Debtor's right, title and interest in and to the Purchased Assets free and clear of any and all claims and encumbrances;
- (e) sealing the Confidential Supplement to the Fourth Report of the Receiver dated December 9, 2013 and all appendices thereto (the "**Confidential Supplement**") until the Receiver has filed a copy of the Receiver's Certificate with the Court following the closing of the Transaction;

- (f) approving the Receiver's Fourth Report and the Confidential Supplement and the activities and conduct of the Receiver described therein; and
- (g) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Pursuant to the Appointment Order, the Receiver has the power to, among other things, sell, convey, transfer, lease or assign any of the property, assets and undertaking of Royal Timbers, including, without limitation, the Purchased Assets, or any part or parts thereof out of the ordinary course of business without the approval of the 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 otherwise the Receiver must obtain Court approval;
- (b) The Appointment Order further empowers the Receiver to apply for a vesting order or other orders to convey title to the Purchased Assets in and to the Purchaser free and clear of any liens or encumbrances affecting the Purchased Assets;
- (c) The Receiver has conducted a sales process in accordance with the Commercial Plaza Sales Process which sales process was approved by Order of the Honourable Mr. Justice Thomas dated July 23, 2013 (the "**Sales Process Order**");
- (d) The Receiver, as vendor, entered into the APS with respect to the Commercial Plaza with a closing date five (5) Business Days following the date on which the Receiver obtains the Approval and Vesting Order (as defined in the APS) , or as may be reasonably agreed upon by the parties;
- (e) The Receiver is of the view that the Transaction is fair and commercially reasonable in the circumstances and that the purchase price payable by Avila in connection with the Transaction represents fair market value for the Purchased Assets;

- (f) The Receiver is of the view that through its implementation of the Commercial Plaza Sales Process as approved by the Court, (i) it has maximized the realization available; (ii) the Transaction is commercially reasonable; and (iii) the Transaction is in the best interests of the creditors and other stakeholders of the Companies;
- (g) The Receiver has acted and continues to act honestly and in good faith;
- (h) The Receiver has not acted improvidently;
- (i) The Receiver recommends approval of the APS and the Transaction;
- (j) The Receiver requests this Honourable Court to approve the APS and to authorize and direct the Receiver to complete the Transaction and to grant an Order vesting the Purchased Assets in favour of the Purchaser;
- (k) *Bankruptcy and Insolvency Act (Canada)* (the "BIA"), s. 247; and
- (l) *Courts of Justice Act*, R.S.O. 1990, c. C. 43 ("CJA"), s. 100;

Sealing Order

- (m) The Confidential Supplement contains commercially sensitive information which if disclosed could undermine the integrity of the marketing and sale process should the Transaction not be completed for any reason;
- (n) No party will be prejudiced if the information in the Confidential Supplement remains sealed pending closing of the Transaction and filing of the Receiver's Certificate;
- (o) S. 137(2) of the CJA;

Approval of the Fourth Report and the Receiver's Activities

- (p) The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order and the Sales Process Order;

- (q) The Receiver seeks approval of the Receiver's Fourth Report and the Confidential Supplement and the Receiver's activities and conduct detailed therein;

Other

- (r) The Appointment Order;
- (s) The Sales Process Order;
- (t) Section 101 of the CJA;
- (u) Sections 243 of the BIA;
- (v) Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;
- (w) Rules 1.04, 1.05, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
- (x) 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:

- (y) The Receiver's Fourth Report of the Receiver and the appendices attached thereto dated December 9, 2013;
- (z) The Confidential Supplement to the Receiver's Fourth Report and the appendices attached thereto dated December 9, 2013, to be filed; and
- (aa) Such further and other evidence as counsel may advise and this Honourable Court may permit.

December 9, 2013

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

Schedule "A"

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 13TH DAY
)	
JUSTICE THOMAS)	OF DECEMBER, 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation ("Banwell") and Royal Timbers Inc. ("Royal Timbers" and collectively with Banwell, the "Companies") pursuant to the Order of The Honourable Justice Thomas dated June 5, 2013 (the "Receiver"), for an order approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale dated effective November 22, 2013 (the "APS"), between the Receiver, as vendor, and, and Avila Investments Ltd., as purchaser (the "Purchaser"), in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save

& except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the "**Commercial Plaza**") and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013 (the "**Confidential Supplement**"), and vesting in the Purchaser all of Royal Timber's right, title and interest in and to the Commercial Plaza, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Fourth Report to the Court of the Receiver dated December 9, 2013 (the "**Receiver's Fourth Report**") and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn December 9, 2013, 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 Fourth 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 the activities and conduct of the Receiver described in the Receiver's Fourth Report and the Confidential Supplement are hereby approved.
3. THIS COURT ORDERS that the Confidential Supplement be and is hereby sealed until the Transaction is completed and the Receiver's Certificate is filed with the Court.
4. 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 Purchased Assets to the Purchaser.
5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of Royal Timber's right, title and interest in and to the Purchased Assets and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all leases, subleases and occupancy agreements (other than those forming part of the permitted encumbrances set out on Schedule "D" hereto), security

interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Thomas dated June 5, 2013; (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) all claims by the tenants under the Leases (as defined on Schedule "D" hereto) in the Commercial Plaza with respect to year end rent adjustments; (iv) 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 Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. 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 comprising the Commercial Plaza identified in Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the lands comprising the Commercial Plaza all of the Claims listed in Schedule "C" hereto.

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

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

9. THIS COURT ORDERS that, notwithstanding:

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

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

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

11. 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

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

B. Pursuant to an Order of the Court dated December 13, 2013, the Court approved an Agreement of Purchase and Sale dated effective November 22, 2013 (the "**APS**") between the Receiver, as vendor, and Avila Investments Limited (the "**Purchaser**") in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the "**Commercial Plaza**") and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013, and

vesting in the Purchaser all of Royal Timbers right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to closing as set out in the 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 Purchased Assets payable on closing pursuant to the APS;
- 2. The conditions to closing as set out in the APS have been satisfied or waived by the Receiver and the Purchaser; and
- 3. The Transaction has been completed to the satisfaction of the Receiver.
- 4. This Certificate was delivered by the Receiver at _____[TIME] on _____[DATE].

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

Per: _____
Name:
Title:

Schedule B – Purchased Assets

Commercial Plaza

The lands and premises legally described as:

Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)); and

Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT))

(collectively, the “**Commercial Plaza**”),

Other Assets

All leases, easements, rights-of-way or privileges appurtenant or belonging to the Commercial Plaza and together with all buildings, fixtures, chattels, licenses, equipment and machinery owned by the Royal Timbers, if any, located on or at the Commercial Plaza or directly or indirectly used in or arising from or in any manner related to the Commercial Plaza, the buildings or fixtures.

Schedule C – Claims to be deleted and expunged from title to the Commercial Plaza

Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.
5. Instrument No. CE207420 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.

Block 1 06 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.

5. Instrument No. CE207474 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.
10. Instrument No. CE513669 - Notice of Lease given by Royal Timbers Inc. to Solar Power Network Inc. registered on April 11, 2012.

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

(unaffected by the Vesting Order)

- (i) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- (ii) Any registered restrictions or covenants that run with the Commercial Plaza provided the same have been complied with in all material respects;
- (iii) 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 Commercial Plaza;
- (iv) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- (v) Any minor encroachments which might be revealed by an up to date survey of the Commercial Plaza;
- (vi) The following leases (collectively the "Leases"):
 - (a) Lease with Mac's Convenience Stores Inc. dated the 11th day of May, 2005;
 - (b) Lease with Edward Jones, an Ontario Limited Partnership, dated April 14, 2008, amended by agreement made May 23, 2013;
 - (c) Lease with Alexander Daycare Limited (Alexander's Daycare Center) dated December 23, 2006;
 - (d) The Loco Thai Lounge Inc. dated September 25, 2012; and
 - (e) Lease with Bella Vista Hair Design and Day Spa Inc. dated August 2, 2013.
- (vii) Instrument No. 12R15293 – Reference Plan;
- (viii) Instrument No. 12R20732 – Reference Plan;
- (ix) Instrument No. CE51657 – Notice of Subdivision Agreement;
- (x) Instrument No. CE56048 – Notice of Subdivision Agreement;
- (xi) Instrument No. CE58400 – Plan Document;
- (xii) Instrument No. 12M503 – Plan of Subdivision;
- (xiii) Instrument No. 12R21325 – Reference Plan;
- (xiv) Instrument No. CE171086 – Notice;
- (xv) Instrument No. CE194026 – Notice;

KEVIN D'AMORE

Applicant

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

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

MILLER THOMSON LLP
One London Place
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London, ON Canada N6A 5R8

Alissa K. Mitchell LSUC#: 35104E
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Receiver of Banwell Development
Corporation and Royal Timbers Inc.

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

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KEVIN D'AMORE

Applicant

and

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

Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

NOTICE OF MOTION
(RETURNABLE DECEMBER 13, 2013)

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

TAB “2”

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

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

December 9, 2013

Table of Contents

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2. Terms of Reference.....	4
3. Purpose of the Receiver's Fourth Report.....	5
4. Receiver's Activities	6
5. Sale of the Commercial Plaza.....	7
6. Recommendations	10

Appendices

- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - First Report to the Court of Proposed Receiver dated May 29, 2013 (without appendices)
- Appendix C** - First Report to the Court of Receiver dated June 20, 2013 (without appendices)
- Appendix D** - Second Report to the Court of Receiver dated July 12, 2013 (without appendices)
- Appendix E** - Sales Process Order dated July 23, 2013
- Appendix F** - Amended Omnibus Approval and Vesting Order dated December 2, 2013
- Appendix G** - Third Report to the Court of Receiver dated November 25, 2013 (without appendices)

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, Banwell was engaged in the development and sale of residential building lots (the “**Royal Timbers Subdivision**”) on lands located just west of Banwell Road in the City of Windsor, Ontario (the “**Lands**”). At all material times, Royal Timbers was engaged in the development, 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 (“**928579**”) 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 Royal Timbers is the owner of that portion of the Lands comprising the Commercial Plaza.
- 1.2.5 Since its appointment on June 5, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of numerous residential building lots contained in the Royal Timbers Subdivision. A number of reports have been filed by the Receiver in these proceedings wherein these activities and transactions are described in greater detail. In particular, the Receiver submitted a Second Report to the Court dated July 12, 2013 in support of a motion for, among other things, a Sales Process Order with respect to the proposed sales process in respect of the Commercial Plaza (the "**Second Report**"). A copy of the Second Report (without appendices) is attached as **Appendix D**.
- 1.2.6 By Order dated July 23, 2013 (the "**Sales Process Order**"), among other things, Mr. Justice Thomas approved the sales process for the Commercial Plaza. A copy of the Sales Process Order is attached as **Appendix E**.
- 1.2.7 By further Order dated July 23, 2013 (the "**Omnibus Approval and Vesting Order**"), as amended by Order dated December 2, 2013 (the "**Amended Omnibus Approval and Vesting Order**") Mr. Justice Thomas prospectively approved the sales transactions in respect of each of the remaining lots in the Royal Timbers Subdivision and prospectively vested all of Banwell's right, title and interest in and to the applicable Lot(s) subject to certain conditions and

restrictions. A copy of the Amended Omnibus Approval and Vesting Order is attached as **Appendix F**.

1.2.8 The Receiver submitted a Third Report to the Court dated November 25, 2013 in support of a motion for, among other things, an amendment to the Omnibus Approval and Vesting Order adding Block 120, Plan 12M-533, Windsor (PIN 01566-0686(LT)) ("**Block 120**") to Schedule A to the Omnibus Approval and Vesting Order and deleting certain instruments from title to Block 120. A copy of the Third Report (without appendices) is attached as **Appendix G**.

1.2.9 By Order dated December 2, 2013, Mr. Justice Thomas, among other things, approved an amendment to the Omnibus Approval and Vesting Order adding Block 120 to Schedule A to the Omnibus Approval and Vesting Order .

2. Terms of Reference

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

3.1 This constitutes the Receiver's Fourth Report to the Court (the "**Receiver's Fourth Report**") in this matter and is filed:

- (a) To provide this Court with information on:
 - (i) The Receiver's advice and recommendation with respect to the sale of the Commercial Plaza; and
- (b) In support of an order of the Court:
 - (i) approving the Receiver's Fourth Report, the Receiver's Confidential Supplement to the Receiver's Fourth Report dated December 9, 2013 (the "**Confidential Supplement**") and the activities of the Receiver described therein;
 - (ii) approving the Agreement of Purchase and Sale dated effective November 22, 2013 (the "**APS**") between the Receiver, as vendor, and Avila Investments Ltd. ("**Avila**") as purchaser, in respect of the Commercial Plaza and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**") and directing the Receiver to enter into and complete the transaction contemplated therein (the "**Transaction**") and, thereafter, to file the Receiver's Certificate with the Court;
 - (iii) granting a vesting order in respect of the sale of the Purchased Assets; and
 - (iv) sealing the Confidential Supplement until the Receiver has filed a copy of the Receiver's Certificate with the Court following the closing of the Transaction.

4. Receiver's Activities

- 4.1 In its Third Report to the Court dated November 25, 2013 (the "Receiver's Third Report"), the Receiver reported to the Court on its activities for the period July 12, 2013 through November 25, 2013.
- 4.2 This, the Receiver's Fourth Report, has been prepared solely to provide the Court with information on the Receiver's recommendation with respect to the sale of the Purchased Assets and to seek the Court's approval of the APS.

5. Sale of the Commercial Plaza

- 5.1 The Commercial Plaza consists of two (2) separate parcels of land, municipally known as 3335 Banwell Road (“**3335 Banwell**”), Windsor and 3993 Wildwood Drive, Windsor (“**3993 Wildwood**”).
- 5.2 3335 Banwell is an 11,500 square foot, multi-tenant plaza, located on approximately 0.93 acres of land, with frontage along Banwell Road. 3993 Wildwood is a 3,000 square foot, single tenant retail plaza located on 0.77 acres of land, with frontage along Wildwood Drive.
- 5.3 As a result of the Commercial Plaza Sales Process (as defined in the Sales Process Order), which was outlined in the Receiver’s Third Report, the Receiver entered into negotiations with Avila (the “**Purchaser**”) to finalize an Agreement of Purchase and Sale with respect to the Purchased Assets including the Commercial Plaza. The Receiver and Avila entered into the APS effective November 22, 2013. The APS was subject to a due diligence period expiring November 29, 2013 and subsequently extended by agreement of the parties to December 4, 2013.
- 5.4 Avila completed its due diligence and on December 4, 2013 provided the Receiver with notice of waiver of the conditions contained in the APS.
- 5.5 A copy of the APS is attached as **Appendix B** to the Confidential Supplement.
- 5.6 The Receiver was provided with a copy of an appraisal of the lands comprising the Commercial Plaza commissioned by the Companies prior to the appointment of the Receiver. The Receiver commissioned a second appraisal of the lands comprising the Commercial Plaza. Both appraisals are included in the Confidential Supplement

as **Appendix C** and **Appendix D**.

- 5.7 Details of the offers received for the Purchased Assets were provided in the Confidential Supplement to the Receiver's Third Report.
- 5.8 The Receiver's analysis of the Transaction is contained in the Confidential Supplement to the Receiver's Fourth Report.
- 5.9 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact the dissemination of the confidential information would have if the Transaction fails 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.
- 5.10 During the negotiation process with Avila, the Receiver consulted with the stakeholders and obtained their input and concurrence. BMO and Scott support the Receiver in recommending the Transaction. Troup and Kevin do not object to the Receiver completing the Transaction.
- 5.11 The Transaction is scheduled to be completed by no later than December 20, 2013 in the event that the Court grants an Approval and Vesting Order.
- 5.12 It is the Receiver's view that the Transaction is appropriate in the circumstances.
- 5.13 The Receiver conducted the Commercial Plaza Sales Process as approved by the Court pursuant to the Sales Process Order.
- 5.14 The Receiver is satisfied that the property subject to the Transaction was properly exposed to the relevant market place, that the offer process was conducted in a fair and commercially reasonable manner and the Transaction represents fair market value for the Purchased Assets.
- 5.15 The Receiver is of the view that it has maximized the realization available and the Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Transaction is in the best interests of the

stakeholders.

- 5.16 The Receiver recommends that this Court approve the completion of the Transaction.
- 5.17 The Receiver requests that this Honourable Court grant an Approval and Vesting Order in favour of Avila substantially in the form agreed by the parties and appended as Schedule "C" to the APS.

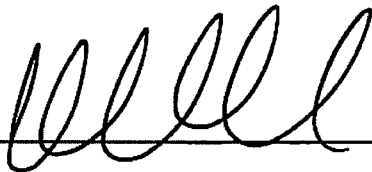
6. Recommendations

6.1. The Receiver recommends and respectfully requests that this Court grant an Order:

- a) approving the Receiver's Fourth Report, the Confidential Supplement and the activities and actions of the Receiver described therein;
- b) approving the APS and authorizing and directing the Receiver to enter into and complete the Transaction and, thereafter to file the Receiver's Certificate with the Court;
- c) granting an Approval and Vesting Order in respect of the Purchased Assets in favour of the Purchaser;
- d) sealing the Confidential Supplement until the Transaction has been completed and the Receiver's Certificate filed.

All of which is Respectfully Submitted this 9th day of December, 2013.

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



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

TAB "A"

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

JUSTICE

Bruce G. Thomas

) *WEDNESDAY*, THE *5TH*

DAY OF JUNE 2013

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

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

Respondents

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

ORDER

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER’S POWERS

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

REPORT TO COURT

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

FINANCIAL REPORTING TO STAKEHOLDERS

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE CORPORATIONS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

GENERAL

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

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

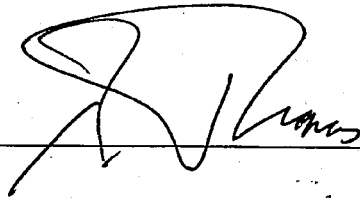
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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

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



 JUSTICE

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. acquired for, or used in relation to a business carried on by the Corporations, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the ____ day of June, 2013 (the "Order") made in an action having Court file number _____ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

- 5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

- 6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

- 7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 5th day of June, 2013.

BDO Canada Limited

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

Per:

Name:

Title:

KEVIN D'AMORE

-and- BANWELL DEVELOPMENT
CORPORATION et al
Defendants

Plaintiff

Court File No. CV-11-17088

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDORD

ORDER
AFFIDAVIT OF SERVICE

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Lawyers for the Bank of Montreal

TAB "B"

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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

**FIRST REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED, IN ITS
CAPACITY AS PROPOSED RECEIVER OF BANWELL DEVELOPMENT CORPORATION
AND ROYAL TIMBERS INC.**

May 29, 2013

HS 49

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5. Recommendations	10

Appendices

- Appendix A** - Parcel Register for Lot 44
- Appendix B** - Search results under the PPSA for Banwell and Royal Timbers with a file currency date of May 27, 2013
- Appendix C** - Execution Certificates dated May 28, 2013 for Banwell and Royal Timbers along with the Writ Details Reports dated May 28, 2013 for Royal Timbers
- Appendix D** - Endorsement of The Honourable Justice Thomas dated May 15, 2013

1. Introduction and Background

1.1 Introduction

- 1.1.1 By motion within these court proceedings returnable on June 5, 2013 in Windsor (the "**Appointment Motion**"), Bank of Montreal ("**BMO**") is seeking, *inter alia*, an Order of this Honourable Court (the "**Appointment Order**") appointing BDO Canada Limited ("**BDO**" or the "**Proposed Receiver**") as receiver of all of the 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 This report is submitted by BDO, in its capacity as Proposed Receiver of the Companies.

1.2 Background

- 1.2.1 At all material times, Banwell was engaged in the development and sale of residential building lots (the "**Royal Timbers Subdivision**") on lands located just west of Banwell Road in the City of Windsor, Ontario (the "**Lands**"). At all material times, Royal Timbers, the wholly owned subsidiary of Banwell, was engaged in the development, 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 effectively a joint venture between Mr. Murray Troup ("**Troup**") and Mr. Patrick D'Amore ("**D'Amore**"), with ownership held equally by Mr. Troup, through his holding company, 928579 Ontario Limited ("**928579**") and Mr. D'Amore, as trustee for his sons Kevin D'Amore ("**Kevin**") and Scott D'Amore ("**Scott**"), as beneficiaries. As noted above, Royal Timbers is a wholly owned subsidiary of Banwell.

- 1.2.3 On or about July 8, 2005, BMO entered into a credit facilities agreement with Banwell that provided for a non-revolving demand facility in the amount of \$4,204,350 (the "**Banwell Credit Facility**"). This amount was comprised of \$404,350 remaining on a previous credit facility and a new credit facility of \$3,800,000.
- 1.2.4 On or about February 20, 2006, BMO entered into a credit facilities agreement with Royal Timbers that provided for a non-revolving demand facility in the amount of \$2,150,000 (the "**Royal Timbers Credit Facility**").
- 1.2.5 As security for the Banwell Credit Facility, BMO was granted, among other security, a first mortgage over that portion of the Lands comprising the Royal Timbers Subdivision (the "**Banwell Lands**").
- 1.2.6 As security for the Royal Timbers Credit Facility, BMO was granted, among other security, a first mortgage over that portion of the Lands comprising the Commercial Plaza (the "**Royal Timbers Lands**").
- 1.2.7 In or around 2009, a dispute developed between the then shareholders of Banwell resulting in an eventual impasse that remains unresolved and is the subject of this litigation. The Companies have not held a shareholder meeting since 2008.
- 1.2.8 In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell being vested equally in each of Kevin and Scott.
- 1.2.9 On March 5, 2012, BMO provided to the Companies formal notice of default under their respective loan agreements. The default arose from the Companies' breach of their covenant to provide BMO with accountant-prepared financial statements and municipal tax certificates confirming that taxes were paid current contained in their respective loan agreements.

- 1.2.10 BMO was prepared to delay enforcement proceedings against the Companies to allow the shareholders time to resolve their dispute provided interest payments on the credit facilities were kept current
- 1.2.11 On March 1, 2013, Royal Timbers defaulted in payment of the interest due to BMO.
- 1.2.12 As a result, on March 22, 2013, BMO made demand for repayment of both the Banwell Credit Facility and the Royal Timbers Credit Facility.
- 1.2.13 As of March 19, 2013, Banwell and Royal Timbers were indebted to BMO in the approximate amounts of \$990,000 and \$1,801,000 respectively.
- 1.2.14 It appears that BMO holds a first-ranking mortgage on Lot 44 (defined below) comprising a portion of the Banwell Lands. Simba Group Developments Limited and Patrick D'Amore appear to hold a second-ranking mortgage on Lot 44. A copy of a Parcel Register for Lot 44 prepared on May 28, 2013 is attached hereto as **Appendix "A"**.
- 1.2.15 Searches conducted of the *Personal Property Security Act* (Ontario) (the "**PPSA**") registry system reveal only the all-encompassing registration in favour of BMO. Copies of the search results under the PPSA for the Companies with a file currency date of May 27, 2013 are attached hereto as **Appendix "B"**.
- 1.2.16 An executions search conducted May 28, 2013 revealed no executions filed against Banwell. An executions search conducted on May 28, 2013 with respect to Royal Timbers discloses two (2) executions, namely, J. Lepera Contracting Inc. and M.R. Dunn Contractors Ltd. Copies of the Execution Certificates dated May 28, 2013 for Banwell and Royal Timbers along with the Writ Details Reports dated May 28, 2013 for Royal Timbers are collectively attached hereto as **Appendix "C"**.
- 1.2.17 Within these court proceedings, a motion was brought for the appointment of an interim receiver/manager to operate the business of Banwell and Royal Timbers. The

motion was heard by The Honourable Justice Thomas in Windsor on May 14, 2013. Justice Thomas determined that the appointment of a receiver was appropriate for the orderly conduct of the business and to repay the debts of the Companies to BMO. Pursuant to the endorsement of Justice Thomas dated May 15, 2013 (the "Endorsement"), leave was granted to BMO to bring a motion for the appointment of BDO as receiver with proper notice on all secured parties and execution creditors. A copy of the Endorsement is attached hereto as **Appendix "D"**.

1.2.18 As directed by the terms of Endorsement and in order to facilitate the sale of the Property and repayment of the obligations of the Companies to BMO, BMO served notice of the Appointment Motion returnable at 10:00 a.m on June 5, 2013 in Windsor, Ontario. The form of Appointment Order sought by BMO on the return of the Appointment Motion, if granted, will empower but not obligate the Proposed Receiver to, among other things:

- (a) Take possession of and exercise control over all of the Property.
- (b) Take possession of and exercise control of any and all proceeds, receipts and disbursements arising out of or from the Property.
- (c) Receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, changing the 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.
- (d) Manage, operate and carry on the business of the Companies, 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 Companies.
- (e) Receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting

such monies, including, without limitation, to enforce any security held by the Companies.

- (f) 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 Proposed Receiver in its discretion may deem appropriate.
- (g) Sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business 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 with the approval of the Court in which the purchase price exceeds these monetary thresholds.

2. Purpose of the Proposed Receiver's First Report

2.1 This constitutes the Proposed Receiver's First Report to the Court (the "**First Report**") in this matter and is filed to:

- (a) Seek approval of the First Report, the Proposed Receiver's Confidential Supplement to the First Report (the "**Confidential Supplement**") and the Proposed Receiver's activities as outlined therein;
- (b) Provide the Proposed Receiver's recommendation with respect to the sale of Lot 44, Plan 12M-533, Windsor (PIN 01566-0610 (LT)) and municipally known as 11234 Urban Lane, Windsor ("**Lot 44**");
- (c) Request approval of the agreement of purchase and sale dated December 28, 2012 (the "**APS**") between the Proposed Receiver, as vendor and assignee, and Kirson Quality Homes Ltd. ("**Kirson**"), as purchaser, as amended, in respect of Lot 44 and an Order authorizing and directing the Proposed Receiver to enter into and complete the transaction contemplated by the Amended APS (defined below) (the "**Transaction**") and, thereafter, to file the Proposed Receiver's Certificate;
- (d) Obtain a Vesting Order in respect of the sale of Lot 44; and
- (e) Request that the Court seal the Confidential Supplement until the Proposed Receiver has filed a copy of the Proposed Receiver's Certificate with the Court following the closing of the Transaction.

3. Proposed Receiver's Activities

- 3.1 In anticipation of the Appointment Order being granted on June 5, 2013, the Proposed Receiver seeks approval to enter into and complete the Transaction as part of its anticipated mandate to facilitate the sale of the Property and repayment of the obligations of the Companies to BMO.
- 3.2 An arm's length party, Kirson, as purchaser, entered into the APS with Banwell, as vendor, for the purchase of Lot 44. Prior to completing a sale of Lot 44 to Kirson pursuant to the APS, Kirson constructed a home on lands comprising Lot 44 for purposes of ultimate re-sale of the home and lands comprising Lot 44. A copy of the APS is attached as **Appendix "A" to the Confidential Supplement**.
- 3.3 After construction of the home on Lot 44 by Kirson, Banwell has been unable to complete the Transaction as proceeds from a sale of Lot 44 are insufficient to satisfy the obligations due to the holders of the mortgages registered against title the Lands, including Lot 44.
- 3.4 On May 28, 2013, Banwell, as vendor under the APS, assigned its interests under the APS to BDO, as Proposed Receiver, in order to facilitate the completion of the Transaction to Kirson without further delay. Kirson and the Proposed Receiver amended the APS (the "**Amended APS**") to provide for terms and conditions of sale consistent with a sale by a court-appointed Receiver. A copy of the Assignment and Amendment Agreement is attached as **Appendix "B" to the Confidential Supplement**. A copy of the Amended APS is attached as **Appendix "C" to the Confidential Supplement**.

4. Proposed Receiver's Sale of Lot 44

- 4.1 As noted above, on or about December 28, 2012, Banwell and Kirson entered into the APS in respect to the sale of Lot 44 from Banwell to Kirson. The Proposed Receiver's analysis of the Transaction is contained in the Confidential Supplement.
- 4.2 Two appraisals of the real property comprising the Banwell Lands, including Lot 44, were commissioned by the Companies and/or its shareholders. The appraisal report of Finlay Appraisal and Consultation Services ("**Finlay**") is attached as **Appendix "D"** to the Confidential Supplement. The appraisal report of Valco Real Estate Appraiser & Consultants ("**Valco**") is attached as **Appendix "E"** to the Confidential Supplement.
- 4.3 The Proposed 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 Transaction failed to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the Transaction does not close and could negatively impact the future sale of other lots owned by Banwell in the Royal Timbers subdivision.
- 4.4 On or about January 2, 2013, Banwell accepted the offer from Kirson for the purchase of Lot 44. The offer provided for Kirson to construct a single family residence on the property, with the completion of the sale of Lot 44 to Kirson to correspond to the completion date of Kirson's sale to a subsequent and the ultimate homeowner.
- 4.5 Kirson has completed construction and sold the home located on Lot 44, the sale of which was originally scheduled to close on May 17, 2013. Once the Appointment Order is granted, the Proposed Receiver seeks to complete the Transaction between Banwell and Kirson, subject to the approval of this Court.
- 4.6 The Proposed Receiver intends to complete the Transaction as soon as possible

following Court approval and the granting of the appropriate Vesting Order to facilitate a transfer of Lot 44 to Kirson free of any and all encumbrances.

- 4.7 The Proposed Receiver is not seeking to distribute the proceeds of the Transaction at this time and intends to hold the proceeds from the Transaction pending further order of this Honourable Court.
- 4.8 It is the Proposed Receiver's view that the Transaction is appropriate in the circumstances.
- 4.9 The Proposed Receiver is satisfied that the Transaction represents fair market value for Lot 44.
- 4.10 The Proposed Receiver is of the view that it has maximized the realization available and the Transaction is commercially reasonable in all respects. Given the forgoing, the Proposed Receiver is of the view that the Transaction is in the best interests of the creditors and other stakeholders of the Companies.
- 4.11 BMO supports the Proposed Receiver entering into and completing the Transaction.
- 4.12 The Proposed Receiver recommends that this Court approve the completion of the Transaction.
- 4.13 The Proposed Receiver requests a Vesting Order be made in favour of Kirson as the purchaser of Lot 44.

5. Recommendations

5.1. The Proposed Receiver recommends and respectfully requests that this Court grant an Order:

- (a) Approving the First Report, the Confidential Supplement and the activities of the Proposed Receiver described therein;
- (b) Approving the Amended APS and authorizing and directing the Proposed Receiver to enter into and complete the Transaction and, thereafter to file the Proposed Receiver's Certificate;
- (c) Making a Vesting Order in respect of Lot 44; and
- (d) Sealing the Confidential Supplement until the Proposed Receiver has filed a copy of the Proposed Receiver's Certificate with the Court following the closing of the Transaction.

All of which is Respectfully Submitted this 29th day of May, 2013.

BDO Canada Limited in its capacity as Proposed Court Appointed Receiver of Banwell Development Corporation and Royal Timbers Inc. and not in any personal capacity.



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

TAB "C"

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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

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

June 20, 2013

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Appendices

Appendix A - Appointment Order dated June 5, 2013

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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 the 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 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, Banwell was engaged in the development and sale of residential building lots (the "Royal Timbers Subdivision") on lands located just west of Banwell Road in the City of Windsor, Ontario (the "Lands"). At all material times, Royal Timbers, the wholly owned subsidiary of Banwell, was engaged in the development, 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 effectively a joint venture between Mr. Murray Troup ("Troup") and Mr. Patrick D'Amore ("D'Amore"), with ownership held equally by Mr. Troup, through his holding company, 928579 Ontario Limited ("928579") and Mr. D'Amore, as trustee for his sons Kevin D'Amore ("Kevin") and Scott D'Amore ("Scott"), as beneficiaries. As noted above, Royal Timbers is a wholly owned subsidiary of Banwell.

- 1.2.3 In or around 2009, a dispute developed between the then shareholders of Banwell resulting in an eventual impasse that remains unresolved and is the subject of this litigation. The Companies have not held a shareholder meeting since 2008.
- 1.2.4 In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell being vested equally in each of Kevin and Scott.
- 1.2.5 Within these court proceedings, a motion was brought for the appointment of an interim receiver/manager to operate the business of Banwell and Royal Timbers. The motion was heard by The Honourable Justice Thomas in Windsor on May 14, 2013. Justice Thomas determined that the appointment of a receiver was appropriate for the orderly conduct of the business and to repay the debts of the Companies to BMO. Pursuant to the endorsement of Justice Thomas dated May 15, 2013 (the "Endorsement") leave was granted to BMO to bring a motion for the appointment of BDO as receiver with proper notice to all secured parties and execution creditors.
- 1.2.6 As directed by the Endorsement, on June 5, 2013 BMO brought a motion seeking the appointment of BDO as receiver and manager of the Property.
- 1.2.7 On June 5, 2013, the Honourable Justice Thomas granted the relief sought by BMO on its motion and issued the Appointment Order.
- 1.2.8 Immediately following the issuance of the Appointment Order, the Receiver sought an order approving the sale of Lot 44, Plan 12M-533, Windsor, ("Lot 44") located in the Royal Timbers Subdivision, to Kirson Quality Homes Ltd. ("Kirson") and vesting title to Lot 44 in Kirson on closing. In support of the relief sought by the Receiver, BDO, in its capacity as the Proposed Receiver, submitted a Report to the Court dated May 29, 2013. On June 5, 2013, following its appointment, the Receiver obtained the approval of the Court for the completion of the sale to Kirson and vesting title to Lot 44 in and to Kirson on closing (the "Lot 44 Approval and Vesting Order").

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2. Terms of Reference

- 2.1 In preparing this First 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.

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3. Purpose of the Receiver's Second Report

3.1 This constitutes the Receiver's First Report to the Court (the "First Report") in this matter and is filed in support of:

- (a) an order approving of the First Report, the Receiver's Confidential supplement to the First Report (the "Confidential Report") and the Receiver's activities as outlined therein;
- (b) the Receiver's recommendation with respect to the sale of Lot 40, Plan 12M-533, Windsor (PIN 01566-606 (LT)), municipally known as 3003 Troup Crescent ("Lot 40");
- (c) the Receiver's recommendation with respect to the sale of Lot 47, Plan 12M-533, Windsor (PIN 01566-613 (LT)), municipally known as 11265 Urban Lane ("Lot 47");
- (a) an order approving the agreement of purchase and sale dated March 5, 2013 with a closing date of July 4, 2013 (the "Lot 40 APS") between the Receiver, as vendor, and Hadi Customs Homes Inc. ("Hadi"), as purchaser, as amended, in respect of Lot 40 and an Order authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Amended Lot 40 APS (defined below) (the "Lot 40 Transaction") and, thereafter, to file the Receiver's Certificate;
- (b) a vesting order in favour of Hadi in respect of the Lot 40 Transaction;
- (c) an order approving the agreement of purchase and sale dated May 23, 2013 with a closing date of September 30, 2013 (the "Lot 47 APS") between the Receiver, as vendor, and Hadi as purchaser, as amended, in respect of Lot 47 and an Order authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Amended Lot 47 APS (defined

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below) (the "Lot 47 Transaction") and, thereafter, to file the Receiver's Certificate;

- (d) a vesting order in favour of Hadi in respect of the sale of Lot 47; and
- (e) and order sealing the Confidential Report until further order of the Court.

4. Receiver's Activities

- 4.1 Pursuant to the Lot 44 Approval and Vesting Order, on June 7, 2013, the Receiver completed the sale of Lot 44 to Kirson and filed a copy of the Receiver's Certificate with the Court following the closing of the transaction.
- 4.2 Prior to BDO's appointment as Receiver, Hadi, as purchaser, entered into the Lot 40 APS and the Lot 47 APS with Banwell, as vendor, for the purchase of Lots 40 and 47, respectively.
- 4.3 As permitted under the Lot 40 APS, Hadi constructed a home on lands comprising Lot 40 for purposes of the ultimate re-sale of these home and lands. A copy of the Lot 40 APS is attached as Appendix "A" to the Confidential Supplement. Hadi has resold Lot 40 and both the Lot 40 Transaction and the re-sale of Lot 40 to the ultimate homeowner are scheduled to be completed on July 4, 2013.
- 4.4 Hadi has commenced construction of a model home on the lands comprising Lot 47, but has not yet re-sold the home and lands comprising Lot 47. A copy of the Lot 47 APS is attached as Appendix "D" to the Confidential Supplement.
- 4.5 The Receiver is empowered under the Appointment Order to assume the obligations of Banwell, as vendor under the Lot 40 APS and the Lot 47 APS in order to facilitate the completion of the transactions contemplated thereby to Hadi. The Receiver assumed the obligations of Banwell under the Lot 40 APS and Hadi and the Receiver amended the Lot 40 APS to provide for terms and conditions of sale consistent with a sale by a court-appointed Receiver pursuant to an assumption and amending agreement dated June 19, 2013 (the "Amended Lot 40 APS"). A copy of the Assumption and Amending Agreement is attached as Appendix "B" to the Confidential Supplement. A copy of the Amended Lot 40 APS is attached as Appendix "C" to the Confidential Supplement.
- 4.6 On June 19, 2013, the Receiver assumed the obligations of Banwell under the Lot 47 APS and Hadi and the Receiver amended the Lot 47 APS to provide for terms

and conditions of sale consistent with a sale by a court-appointed Receiver pursuant to an assumption and amending agreement dated June 19, 2013 (the "Amended Lot 47 APS"). A copy of the Assumption and Amending Agreement is attached as Appendix "E" to the Confidential Supplement. A copy of the Amended Lot 47 APS is attached as Appendix "F" to the Confidential Supplement.

- 4.7 As required by paragraph 7 of the Appointment Order, the Receiver intends to serve its Second Report to this Court containing details of its marketing plan with respect to the Commercial Plaza and the balance of the lots comprising the Royal Timbers Subdivision by no later than July 19, 2013. At the same time, the Receiver will report therein on all of its activities to date. The Receiver intends to return to Court to seek approval of the Second Report and in particular the marketing plan contained therein on further motion (the "Approval Motion").
- 4.8 In order to complete the Lot 40 Transaction by July 4, 2013 as required under the Amended Lot 40 APS and to facilitate the re-sale of Lot 40 to the homeowner on that same date, the Receiver could not delay in bringing this motion until the return of the Approval Motion.
- 4.9 On the return of the Approval Motion, the Receiver intends, also, to seek the Court's approval of an Omnibus Approval and Vesting Order with respect to the balance of the lots comprising the Royal Timbers Subdivision. It is intended that such an order will allow the Receiver to complete individual lot sales without the necessity of having to return to court to seek the Court's separate approval of each transaction.

5. Receiver's Sale of Lot 40 and Lot 47

- 5.1 On or about March 5, 2013, Banwell and Hadi entered into the Lot 40 APS in respect to the sale of Lot 40 from Banwell to Hadi. The Receiver's analysis of the Lot 40 Transaction is contained in the Confidential Supplement.
- 5.2 On or about May 23, 2013, Banwell and Hadi entered into the Lot 47 APS in respect to the sale of Lot 47 from Banwell to Hadi. The Receiver's analysis of the Lot 47 Transaction is contained in the Confidential Supplement.
- 5.3 The Lot 40 Transaction and the Lot 47 Transaction are collectively referred to as the "Hadi Transactions"
- 5.4 An appraisal of the real property comprising the Banwell Lands, including Lot 40 and Lot 47, was commissioned by the Companies prior to the appointment of the Receiver. The appraisal report of Valco Real Estate Appraiser & Consultants ("Valco") is attached as Appendix "G" to the Confidential Supplement.
- 5.5 The Receiver commissioned an appraisal of the Banwell Lands by Metrix Realty Group ("Metrix"). However, the Metrix appraisal will not be completed in time for the Receiver to obtain Court approval of the Hadi Transactions and complete the Lot 40 Transaction on July 4, 2013.
- 5.6 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 either of the Hadi Transactions 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 either of the Hadi Transactions does not close and could negatively impact the future sale of other lots comprising the Royal Timbers Subdivision.
- 5.7 The Receiver intends to complete the Hadi Transactions as soon as possible following Court approval and the granting of the appropriate Vesting Orders to facilitate a transfer of Lots 40 and 47 to Hadi free of any and all claims and encumbrances.

- 5.8 The Receiver is not seeking to distribute the proceeds of the Hadi Transactions at this time and intends to hold the proceeds from the Hadi Transactions pending further order of the Court.
- 5.9 It is the Receiver's view that the Hadi Transactions are appropriate in the circumstances.
- 5.10 The Receiver is satisfied that the Hadi Transactions represent fair market value for each of Lots 40 and 47.
- 5.11 The Receiver is of the view that it has maximized the realization available and the Hadi Transactions are commercially reasonable in all respects. Given the forgoing, the Receiver is of the view that the Hadi Transactions are in the best interests of the creditors and other stakeholders of the Companies.
- 5.12 BMO supports the Receiver entering into and completing the Hadi Transactions.
- 5.13 The Receiver recommends that this Court approve the completion of the Hadi Transactions.
- 5.14 The Receiver requests that Vesting Orders be made in favour of Hadi as the purchaser of Lot 40 and Lot 47.

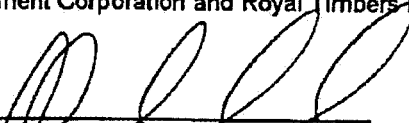
6. Recommendations

6.1. The Receiver recommends and respectfully requests that this Court grant an Order:

- a) Approving the First Report of the Receiver, the Confidential Supplement and the activities of the Receiver described therein;
- b) Approving the Lot 40 APS and authorizing and directing the Receiver to enter into and complete the Lot 40 Transaction and, thereafter to file the Receiver's Certificate with the Court;
- c) Vesting title to Lot 40 in and to Hadi;
- d) Approving the Lot 47 APS and authorizing and directing the Receiver to enter into and complete the Lot 47 Transaction and, thereafter to file the Receiver's Certificate with the Court;
- e) Vesting title to Lot 47 in and to Hadi;
- f) Sealing the Confidential Supplement until further order of the Court;

All of which is respectfully submitted this 20th day of June, 2013.

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



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

TAB "D"

**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

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

July 12, 2013

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Appendices

- Appendix A** - Appointment Order dated June 5, 2013
- Appendix B** - First Report to the Court of Proposed Receiver dated May 29, 2013 (without appendices)
- Appendix C** - First Report to the Court of Receiver dated June 20, 2013 (without appendices)
- Appendix D** - Commercial Plaza Rent Roll
- Appendix E** - Proposed Property Management Agreement with Wintru Developments Inc.
- Appendix F** - Litigation Chart
- Appendix G** - Reasons for Judgment of the Honourable Justice Thomas dated July 26, 2012
- Appendix H** - Schedule of Banwell Lots
- Appendix I** - Form of Lot Sales Agreement
- Appendix J** - Banwell Statement of Receipts and Disbursements
- Appendix K** - Royal Timbers Statement of Receipts and Disbursements
- Appendix L** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn July 9, 2013
- Appendix M** - Fee affidavit of Sherry Kettle for the interim accounts of Miller Thomson LLP sworn July 12, 2013

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 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, Banwell was engaged in the development and sale of residential building lots (the “**Royal Timbers Subdivision**”) on lands located just west of Banwell Road in the City of Windsor, Ontario (the “**Lands**”). At all material times, Royal Timbers was engaged in the development, 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 effectively 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 (“**928579**”) and D’Amore, as trustee for his sons Kevin D’Amore (“**Kevin**”) and Scott D’Amore (“**Scott**”), as beneficiaries. Royal Timbers is the wholly-owned subsidiary of Banwell.

- 1.2.3 Banwell is the owner of that portion of the Lands comprising the Royal Timbers Subdivision. Royal Timbers is the owner of that portion of the Lands comprising the Commercial Plaza.
- 1.2.4 In August 2011, D'Amore passed away resulting in D'Amore's 50% shareholding in Banwell vesting equally in each of Kevin and Scott.
- 1.2.5 Within these court proceedings and pursuant to the Endorsement of Mr. Justice Thomas dated May 15, 2013, Bank of Montreal ("BMO") brought a motion seeking the appointment of BDO as receiver and manager of the Property.
- 1.2.6 On June 5, 2013, the Honourable Justice Thomas granted the relief sought by BMO on its motion and issued the Appointment Order.
- 1.2.7 Immediately following the issuance of the Appointment Order, the Receiver sought an order approving the sale of Lot 44, Plan 12M-533, Windsor, ("Lot 44") located in the Royal Timbers Subdivision, to Kirson Quality Homes Ltd. ("Kirson") and vesting title to Lot 44 in Kirson on closing. In support of the relief sought by the Receiver, BDO, in its capacity as the Proposed Receiver, submitted a Report to the Court dated May 29, 2013. A copy of the First Report of the Proposed Receiver (without appendices) is attached as **Appendix B**. On June 5, 2013, immediately following its appointment, the Receiver obtained the approval of the Court to complete the sale to Kirson and vest title to Lot 44 in and to Kirson on closing (the "**Lot 44 Approval and Vesting Order**").
- 1.2.8 Following its appointment, the Receiver sought an order approving the sale of Lot 40, Plan 12M-533, Windsor, ("Lot 40") and Lot 47, Plan 12M-533, Windsor, ("Lot

47"), both located in the Royal Timbers Subdivision, to Hadi Custom Homes Inc. ("Hadi") and vesting title to Lots 40 and 47 in Hadi on closing. In support of the relief sought, the Receiver submitted a Report to the Court dated June 20, 2013. A copy of the First Report of the Receiver (without appendices) is attached as **Appendix C** (the "**First Report**"). On June 25, 2013, the Receiver obtained the approval of the Court to complete the sale to Hadi and vest title to Lots 40 and 47 in and to Hadi on closing (the "**Lots 40 and 47 Approval and Vesting Order**").

2. Terms of Reference

- 2.1 In preparing this Second 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 Second Report

3.1 This constitutes the Receiver's Second Report to the Court (the "**Second 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 First Report and to seek approval of the Second Report, and the Receiver's activities as outlined therein;
 - (ii) the arrangements in place for the ongoing property management of the Commercial Plaza;
 - (iii) the Receiver's payment of 2010 and prior property tax arrears with respect to the Commercial Plaza; and
 - (iv) the Receiver's proposed plan for the marketing and sale of the balance of the unsold serviced residential building lots comprising the Royal Timbers Subdivision (the "**Banwell Lots**" or the "**Lots**") and the Receiver's proposed plan for the marketing and sale of the Commercial Plaza,
- (b) In support of an order of the Court (the "**Sales Process Order**"):
 - (i) approving the Second Report and the activities of the Receiver described herein;

- (ii) extending the date by which the Consolidated Action (defined below) shall be set down for trial as required by the Order of Mr. Justice Gates dated May 29, 2013 (the "**Gates Order**") by the length of the stay of proceedings imposed by the Appointment Order;
- (iii) approving and authorizing the Receiver to enter into a property management agreement with Wintru Developments Inc. ("**Wintru**") substantially in the form appended as Appendix E hereto;
- (iv) approving the sales process with respect to the Banwell Lots (the "**Lot Sales Process**") and authorizing the Receiver to carry out the Lots Sales Process;
- (v) approving the form of Agreement of Purchase and Sale with respect to the sale of the Banwell Lots, substantially in the form attached as Appendix I hereto (the "**Form of Lot Sales Agreement**") together with any amendments thereto deemed necessary and appropriate by the Receiver;
- (vi) authorizing the Receiver to accept an offer or offers to purchase any or all of the Banwell Lots provided that the sale price for each Lot is acceptable to the Receiver having regard to the appraised value for such Lot(s) and prior sales of similar lots and the terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Banwell;

- (vii) approving the Receiver's proposed sale process for the Commercial Plaza as set out in Section 7 of the Second Report (the "**Commercial Plaza Sales Process**");
 - (viii) approving the Receiver's Statement of Receipts and Disbursements for each of Banwell and Royal Timbers for the period June 5 to July 4, 2013 (the "**Banwell Statement of Receipts and Disbursements**" and the "**Royal Timbers Statement of Receipts and Disbursements**");
 - (ix) approving BDO's accounts for professional fees and disbursements as Receiver ("**BDO Fees**");
 - (x) approving the fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**") and collectively with the BDO Fees, the "**Professional Fees**";
 - (xi) authorizing and directing the Receiver to redact paragraph 6.12 from this Second Report served on any party other than the Court; and
 - (xii) sealing the unredacted version of this Second Report filed with the Court until further order of the Court;
- (a) In support of an order of the Court (the "**Omnibus Approval and Vesting Order**"):
- (i) prospectively approving the Lot sales transactions (each such transaction, a "**Transaction**" and all such transactions, the "**Transactions**") in respect of the Banwell Lots and authorizing the execution of an agreement of purchase and sale in respect of each Lot

by the Receiver, as vendor and the purchaser of each Lot (each purchaser hereinafter referred to as the "**Purchaser**") substantially in the form of the Form of Lot Sales Agreement, together with any amendments or modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as a "**Lot Sale Agreement**"); and

- (ii) upon the delivery of a Receiver's Certificate (as such term is defined in the draft Omnibus Approval and Vesting Order) by the Receiver to a Purchaser confirming the satisfaction or waiver of the conditions precedent under the applicable Lot Sale Agreement, vesting all of Banwell's right, title and interest in and to the Lot(s) described in such applicable Lot Sale Agreement (the "**Purchased Assets**") in and to the applicable Purchaser, free and clear of all encumbrances, save and except for those encumbrances listed in Schedule D to the draft Omnibus Approval and Vesting Order.

4. Receiver's Activities

- 4.1 As approved by the Lots 40 and 47 Approval and Vesting Order, on July 12, 2013, the Receiver is scheduled to complete the sale of Lot 40. The sale of Lot 47 is scheduled to be completed on September 30, 2013.
- 4.2 At the time of the Receiver's appointment, Wintru, a company of which Troup is the sole officer and director, was acting as the property manager of the Commercial Plaza. As property manager, Wintru was responsible for the leasing of vacant units, collection of rents and supervision of maintenance and repairs.
- 4.3 Following its appointment, representatives of the Receiver met with Troup and obtained information relating to the business operations and current status of Banwell and Royal Timbers. At that time, it was expressly stated by the Receiver to Troup that Wintru had been retained by the Receiver and, therefore, would report, only, to the Receiver and, moreover, that Wintru and, more importantly, Troup, has no authority to make decisions or execute documents on behalf of or as agent for Royal Timbers and/or Banwell and/or BDO in its capacity as Receiver, without the prior approval of the Receiver.
- 4.4 Prior to the receivership, Banwell had one (1) office employee. The Receiver entered into a limited term employment agreement with Marina Ognjanovski on June 21, 2013 at the same rate of pay as she enjoyed immediately prior to the appointment of the Receiver.

- 4.5 The Receiver did not establish new accounts with Canada Revenue Agency for source deductions and HST; rather, the Receiver has elected to continue to file returns using the Companies' existing accounts. The rationale for maintaining the Companies' existing accounts is that it is expected Banwell will carry on in business once the Receiver's mandate is complete.
- 4.6 As required by the terms of the Appointment Order, the Receiver opened two (2) bank accounts at BMO to account for the separate receipts of Banwell and Royal Timbers.
- 4.7 Tenants of the Commercial Plaza pay rent on the first business day of each month. The Receiver obtained and reviewed copies of the Commercial Plaza tenant leases and a summary of the monthly rent roll prepared by Wintru. A rent roll for the tenants of the Commercial Plaza is attached as **Appendix D**.
- 4.8 The Commercial Plaza has six (6) units of which four (4) are occupied and two (2) are vacant. Troup advised the Receiver that he has met with a party interested in leasing one (1) of the vacant units. As of the writing of this report, the two (2) units remain vacant. In discussions with Troup, the Receiver was advised that preliminary discussions with one (1) proposed tenant involved lease payments of \$16/square foot for the first two (2) years and \$18/square foot for the last three (3) years. If acceptable to the proposed tenant, such terms would be acceptable to the Receiver as they are above market rates.
- 4.9 At the time of the Receiver's appointment, one (1) tenant had not paid the full rent due on June 1, 2013. Since that time, the Receiver has collected the balance of the June rent owing and made arrangements through Wintru for future rents and

common area maintenance payments to be forwarded to the Receiver.

- 4.10 All rents are paid directly to the Receiver and deposited to the Receiver's Royal Timbers Bank account established with BMO. Troup does not receive or handle the rents.
- 4.11 The Receiver has assumed payment of utilities and other ongoing expenses of the Commercial Plaza.

Property Management of the Commercial Plaza

- 4.12 Prior to the Receiver's appointment, Wintru was paid a property management fee equal to six (6) per cent of gross rents, billed and paid on a yearly basis. The Receiver understands this fee was increased by Royal Timbers approximately two (2) years ago from five (5) per cent. As at the date of the Receiver's appointment, no formal written property management agreement existed between Royal Timbers and Wintru.
- 4.13 Commercial property management fees vary depending on the nature and size of the property being managed, the number of tenants and other factors. Based on the Receiver's knowledge and prior experience and after consulting with other real estate professionals, the Receiver concluded that the six (6) per cent fee paid to Wintru was marginally in excess of market rates for property management fees.
- 4.14 In view of Wintru's knowledge and experience with the Commercial Plaza, the Receiver recommends to the Court that Wintru continue as property manager of the Commercial Plaza. As well, given that the Receiver anticipates a sale of the Commercial Plaza within the next few months, the Receiver does not believe it

would be prudent to change the property manager at this time.

- 4.15 However, in view of Scott's concerns with respect to Troup's continued involvement as expressed to the Receiver, the Receiver requested proposals to manage the Commercial Plaza from two (2) other property management companies.
- 4.16 Of these proposals, one (1) proposal called for a property management fee equal to six (6) per cent of gross rents. The other proposal was prepared on a flat, monthly fee basis and resulted in a proposed fee of approximately \$350 less per month than the amount proposed to be paid to Wintru. While one (1) proposal is less than the rate proposed to be charged by Wintru, the Receiver does not believe the nominal cost savings associated with this proposal warrants a change of property manager during the anticipated short period of time prior to a sale of the Commercial Plaza.
- 4.17 The Receiver has prepared a draft property management agreement which provides for, among other things, a fee of five (5) per cent of gross rents payable monthly. The form of property management agreement is attached as **Appendix E**. The Receiver recommends that it be authorized to enter into a property management agreement with Wintru in the form attached as Appendix E.
- 4.18 In addition, Wintru will be paid a commission if successful in leasing any of the vacant units in the Commercial Plaza. This fee will be calculated as 3.5 per cent of the gross rent payable over the term of the applicable lease. Based on the Receiver's knowledge of commercial real estate leasing commissions, the Receiver believes this fee is reasonable and reflects market conditions and rates.

Real Ranchs Inc.

4.19 Real Ranchs Inc. ("**Real Ranchs**") is a company of which Troup is sole officer, director and shareholder. The Receiver understands that 28 of 52 lots in Phase IV of the Royal Timbers Subdivision were sold by Banwell to Real Ranchs pursuant to an Agreement of Purchase and Sale dated September 27, 2006 (the "**RRI Sale Agreement**"). The RRI Sale Agreement was executed by Troup on behalf of Real Ranchs, as purchaser, and by D'Amore on behalf of Banwell, as vendor. The Receiver understands that BMO agreed to the sale and the Lots remain subject to BMO's mortgage security albeit the Lots are now the property of Real Ranchs. As such, the Receiver has no authority to deal with these Lots under the Appointment Order.

Property Tax Arrears

- 4.20 Property taxes with respect to the Lands have not been regularly paid and there are significant arrears dating back to 2010. It appears the Companies have had insufficient cash flow to keep property taxes current; however, the Receiver has not assessed and confirmed the cause of the extensive arrears.
- 4.21 In addition to the Banwell Lots and the Commercial Plaza, Royal Timbers owns nine (9) adjacent parcels of commercial land on Banwell Road and Banwell owns two (2) adjacent parcels of commercial land located on Tecumseh Road (the "**Vacant Commercial Lands**").
- 4.22 The Receiver was contacted by a representative of the City of Windsor Finance Department with respect to the property tax arrears and the Receiver obtained confirmation of the amounts owing in respect of all the Lands including the Vacant

Commercial Lands.

- 4.23 Total property taxes due in respect of the Lands, including all arrears, penalties and interest and the 2013 interim taxes (calculated at 50 per cent of 2012 final taxes), was \$589,349.41 as at June 24, 2013.
- 4.24 The City of Windsor confirmed to the Receiver that a payment of \$116,700.71 was required to pay 2010 and prior property tax arrears, penalties and interest. The Receiver determined that it was prudent to pay this portion of the property tax arrears in order to reduce the amount of penalties and high rate of interest accruing.
- 4.25 As permitted by the terms of the Appointment Order, the Receiver has requested \$125,000 from BMO under a Receiver's Certificate and will use the majority of these funds to satisfy 2010 and prior years' property tax arrears totalling \$116,700.71 owing to the City of Windsor.
- 4.26 The interest accruing on the Receiver's borrowings under the Receiver's Borrowing Certificate is far less than the interest accruing on the property tax arrears.

Builder Security Deposits

- 4.27 On the sale of a Lot, Banwell's standard form Agreement of Purchase and Sale required the purchaser/builder to pay a security deposit of \$1,500 (\$750 on a semi-detached Lot) to Banwell on closing. This security deposit was intended to be held by Banwell as security for any damage caused by the Purchaser to curbs, installation of sidewalks and as security for other obligations of the purchaser. The security deposit is to be refunded (less any back charges owed by Banwell),

following an inspection post closing and post construction.

- 4.28 The refundable portion of the security deposits held by Banwell for Lots located in Phase 1 of the Royal Timbers Subdivision was returned by Banwell prior to the appointment of the Receiver.
- 4.29 The Receiver is in the process of compiling a detailed list of the security deposits currently held by Banwell. Based on sales of approximately ninety (90) Lots in Phase 2 and two (2) Lots in Phase 4, the Receiver estimates, on a preliminary basis, that Banwell held security deposits totalling approximately \$138,000 as at the date of the receivership.
- 4.30 The Form of Lot Sale Agreement provides for a security deposit to be paid by the applicable Purchaser on closing.

Vendor Take Back Mortgages

- 4.31 On the sale of certain Lots, Banwell received a vendor take back mortgage in part payment of the purchase price (the "VTB"). The VTB was to be repaid with proceeds from the subsequent resale of homes constructed by the purchaser on the Lot.
- 4.32 Two (2) such VTBs remain outstanding, the particulars of which are as follows:
- a) Fontes Construction: \$39,800 (Balance at May 31, 2012. Updated balance to be obtained); and
 - b) Petvin Homes: \$181,435 (Balance at May 31, 2012. Updated balance to be obtained).

4.33 In addition, Banwell holds a VTB from the sale of twenty-eight (28) Lots to Real Ranchs referred to in paragraph 4.19 above. The principal amount of the VTB is approximately \$1,350,000. The Receiver understands this amount does not include an interest component which remains to be determined.

Secured Creditors

4.34 The First Report of the Proposed Receiver noted that an executions search conducted on May 28, 2013 revealed no executions against Banwell. An executions search conducted on May 28, 2013 with respect to Royal Timbers revealed executions filed by J. Lepera Contracting Inc. ("**Lepera**") and M.R. Dunn Contractors Ltd. ("**Dunn**"). The Execution Certificates and Writ Details Reports were attached as Appendix C to the First Report of the Proposed Receiver.

5. Litigation

5.1. The Companies are parties to the following Court actions (the "**Court Actions**")¹:

A. **Banwell**

5.2. Banwell, together with Royal Timbers, are plaintiffs:

- (a) **Court Action No. 55047**: The companies seek damages of \$500,000 from D'Amore Construction (2000) Ltd. ("**D'Amore Construction**") arising from apparent deficiencies in the grading of the Vacant Commercial Lands during the approximate period 2005 to 2007. The Companies allege that D'Amore Construction filled the lands to a level higher than that specified in the Grading Plan. In addition, fill was used that was not suitable for the application. The Companies' claim damages for the costs incurred to remove the excess and unsuitable fill. No settlement conference has taken place and no offers to settle have been served. This action was consolidated with Court Action No. 06-CV-6763 (the "**Consolidated Action**") and must be set down for trial by April 30, 2014.

5.3. With respect to the Consolidated Action, the Receiver notified the Registrar for the Ontario Superior Court of Justice in Windsor of the Stay of Proceedings imposed by the terms of the Appointment Order. The Receiver advised the Court that it would

¹ See Litigation Chart at **Appendix F**

be seeking to obtain an Order extending the time period by which to set the Consolidated Action down for trial as required by the Gates Order be extended by the length of the stay of proceedings.

5.4. Banwell is defendant in the following Court actions:

- (a) **Court Action Nos. CV-13-18974 and CV-13-18975:** These are foreclosure actions commenced by Simba Group Developments Ltd. ("**Simba**") and The estate of D'Amore. Banwell has issued a Counterclaim claiming damages of \$5,000,000.
- (b) **Court Action No. 06-CV-006763:** D'Amore Construction issued a lien claim in the amount of \$488,000. This action forms part of the Consolidated Action and is subject to the Gates Order and must be set down for trial by April 30, 2014.

B. Royal Timbers

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

- (a) See Section 5.2.
- (b) **Court Action No. LC080015:** Royal Timbers is seeking damages of \$86,330 from the City of Windsor resulting from the extended closure of Banwell Road in 2007 for water main and sewer replacement. Royal Timbers claims damages for rent rebates paid to a tenant. Offers to settle have been exchanged. No settlement has been reached.

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

- (a) **Court Action No. CV-07-10224:** J. Lepera Contracting Inc. ("Lepera") provided servicing to the Companies under two contracts. Under an 'outside servicing' contract, Lepera claimed approximately \$55,000 from Royal Timbers, who ultimately consented to judgment and this amount was paid into court.
- (b) **Court Action No. CV-07-009805:** Lepera claims a lien in the amount of \$385,449. By Judgment dated March 23, 2012 (the "**Judgment**"), the action was dismissed as against Royal Timbers and cost orders totalling approximately \$100,000 have been made in favour of Royal Timbers against Lepera. Lepera has filed an appeal of the Judgment to the Divisional Court and such appeal has been perfected and is pending (the "**Appeal**").
- (c) **Court Action No. CV-13-18976:** Simba and The estate of D'Amore seek foreclosure. Royal Timbers has issued a Statement of Defence and Counterclaim claiming damages of 5,000,000.

5.7. With respect to the Appeal, the Receiver notified the Registrar for the Divisional Court at London of the stay of proceedings imposed by paragraph 10 of the Appointment Order and provided a copy of the Appointment Order.

C. Former Tenants - Claims

5.8. Since the opening of the Commercial Plaza, several tenants have vacated their respective units prior to the expiration of their respective lease terms. A brief summary of each potential claim of Royal Timbers for breach of contract and/or the status of claims commenced follows:

- (a) 'Once Upon a Tea Cup' was the first of several tenants occupying Unit 200. This tenant vacated without notice to Royal Timbers. Royal Timbers commenced an action for unpaid rent. The principal of Once Upon a Tea Cup subsequently moved to the United States. Royal Timbers determined the action was not worth continuing and the action was dismissed by the Court.
- (b) Royal Timbers enhanced Unit 200 with equipment purchased from the bailiff of a demised 'Soup Man' franchise located in Devonshire Mall, Windsor. Unit 200 was leased to a new venture known as 'World Famous Soup operating as Soup Man'. The Soup Man restaurant located in Unit 200 failed after a brief period. The Receiver understands that the principal of this business filed personal bankruptcy and Royal Timbers determined it was not worth pursuing legal action. No action was commenced.
- (c) Unit 200 was subsequently leased to a 'Burrito Loco' restaurant. Royal Timbers made certain modifications to the existing restaurant equipment to accommodate this tenant. The principal of 'Burrito Loco' elected to close the restaurant after a brief period, but arranged for the unit to be leased to the current tenant, 'The Loco Thai Lounge Inc.', who significantly enhanced the unit. In exchange, Royal Timbers released 'Burrito Loco' from its obligations under the lease and refunded its security deposit. 'The Loco Thai Lounge Inc' continues to occupy unit 200 and its rent obligations are current. It would appear that the damage claim of Royal Timbers against 'Burrito Loco' has been fully mitigated. No action was commenced.

- (d) For a period of time, Unit 400 was leased to a 'Gino's Pizza' franchise. The tenant vacated the unit without notice to Royal Timbers. Royal Timbers issued to the principal a statement of amounts owing; however, the principal could not be located. Royal Timbers retained the tenant's security deposit, and determined that it was not worth pursuing legal action for the balance of the rental amounts. No action was commenced.
- (e) In 2007 Unit 100 was leased to Sensation Hair-Esthetics & Spa Inc. ("**Sensations**"), a party related to Troup, for a period of 10 years. The original lease provided for Royal Timbers to provide a tenant allowance of \$25,000 for equipment and fixtures. In July 2012 Sensations closed, with significant rental arrears as well as amounts owing to suppliers. The Receiver understands that Sensations' only assets consist of certain chattels and spa supplies. The original lease provided for a personal guarantee of the principal of Sensations, but was limited to two months rent during the first and second year of the lease. Such guarantee has expired. Royal Timbers did not commence legal proceedings as it was determined that Sensations had little, if any, assets to satisfy any Judgment obtained.

5.9. The Receiver has determined that, at this stage of these receivership proceedings, its time and efforts are best directed towards realizing on the Banwell Lots and the Commercial Plaza in an effort to repay the obligations due to BMO and the property taxes in the most cost effective and timely manner. Accordingly, the Receiver has determined that it is neither cost effective nor prudent to prosecute or defend the Court Action, commence further actions or respond to the Appeal. Moreover, BMO

does not support the Receiver borrowing monies under the Receiver's Borrowing Certificates for purposes of retaining legal counsel to prosecute and/or defend the Court Actions or respond to the Appeal.

- 5.10. The Receiver wishes to ensure that the interests of all parties to the Court Actions and the Appeal, including and in particular those of the Companies, are preserved and not prejudiced as a result of the stay of proceedings imposed under the Appointment Order. Accordingly, the Receiver seeks an Order varying the Gates Order to extend the time for setting down the Consolidated Action for trial by the length of the stay of proceedings. Other than the effect of the Gates Order the Receiver is unaware of any prejudice which may be caused to any party by the stay of the Court Actions or the Appeal.

July 26, 2012 Reasons for Judgment

- 5.11. On June 25, 2012 the Honourable Justice Thomas heard arguments on issues in the within proceedings with respect to the wind-up of the Companies and issues in connection with Court Action CV-11-16379 (an action to which the Companies are not parties) relating to Troup's request to be appointed sole manager of the Companies. Pursuant to Reasons for Judgment issued July 26, 2012 (the "**2012 Reasons**"), a copy of which are attached hereto as **Appendix G**, the Court ordered, among things:

- (a) a process for the valuation and a sale mechanism for the shares of Banwell;
and

(b) that it was not appropriate to allow Troup to fully manage the Companies.

Since the issuance of the 2012 Reasons, the foreclosure actions described above were issued and BMO issued demand and notice of its intention to enforce its security. BMO ultimately sought and obtained the appointment of BDO Canada Limited as Court-appointed Receiver and manager of the property, assets and undertakings of the Companies.

5.12. Paragraph 2 of the Appointment Order provides, *inter alia*, as follows: "For greater certainty the implementation of the July 26, 2012 Order will not delay or hinder the Receiver from carrying out its mandate".

5.13. The Receiver is of the view that the foregoing provision permits the Receiver to exercise its powers under the Appointment Order, including engaging Wintru and Troup to assist the Receiver in carrying out its mandate under the Appointment Order, if it determines, in all of the circumstances, that to do so is commercially reasonable and prudent and is not prejudicial to the stakeholders.

6. Receiver's sale process for residential building lots

- 6.1 Banwell commenced development of the Royal Timbers Subdivision in approximately 2005. The development plan consisted of four (4) phases and is now well advanced, with lots sold and houses constructed on the majority of Phase I and II of the development.
- 6.2 The current status of the lots comprising the Royal Timbers Subdivision is as follows:
- a) **Phase I:** three (3) lots remain unsold of one hundred and forty eight (148) total lots developed;
 - b) **Phase II:** The Receiver has completed the sale of Lot 44. The sales of Lot 40 and Lot 47 are scheduled to close on July 12, 2013 and September 30, 2013, respectively. Twenty six (26) Lots remain unsold of one-hundred and eighteen (118) total lots developed;
 - c) **Phase III:** Servicing has not been completed for Phase III. There are twenty-five (25) lots which are not readily saleable without the completion of servicing. The Receiver does not intend to complete the servicing of these Lots at this time or include these Lots in the Lot Sales Process;
 - d) **Phase IV:** Twenty-two (22) Lots of a total of fifty-two (52) Lots remain available for sale by the Receiver.

- 6.3 In total, fifty-one (51) serviced Lots owned by Banwell remain unsold. A list of the Banwell Lots is attached as **Appendix H**.
- 6.4 An appraisal of the real property comprising, in part, the Banwell Lots was commissioned by the Companies from Valco prior to the appointment of the Receiver (the "**Valco Appraisal**"). The Valco Appraisal has been previously filed by the Receiver in these proceedings to support the approval of the sale of Lots 40, 44 and 47.
- 6.5 The Receiver has commissioned an appraisal of the Banwell Lots by Metrix Realty Group ("**Metrix**"). The appraisal is in the process of being completed and will form part of the Receiver's next report to the Court.
- 6.6 At the time of the Receiver's appointment, the sale of the Lots was being conducted by Wintru. Prior to the Receiver's appointment, Banwell was paying Wintru a commission of \$2,500 on the sale of each Lot.
- 6.7 Due to the shareholder litigation between Kevin, Scott and Troup, the sale of the Lots had slowed in the months prior to the Receiver's appointment. Troup has indicated to the Receiver that there is demand for the Banwell Lots from both builders and individual homebuyers and that he is interested in continuing to solicit interest in the Banwell Lots.
- 6.8 Scott has also indicated to the Receiver an interest in soliciting interest in the Banwell Lots and introducing interested parties to the Receiver.
- 6.9 The Receiver recommends that both Troup and Scott be authorized and approved to solicit interest in the Banwell Lots as agent for the Receiver and that the

Receiver compensate Scott and Troup, as the case may be, on a per sales lot basis at the rate of \$2,500/Lot.

6.10 The Receiver believes that continuing to sell the Lots through Wintru/Troup and Scott is the best course of action for the following reasons:

- a) Wintru/Troup and Scott have a demonstrated record of success in selling the Lots in the Royal Timbers Subdivision;
- b) Wintru/Troup and Scott have detailed knowledge of the Royal Timbers Subdivision and surrounding area;
- c) Wintru/Troup and Scott appear to have established contacts with home builders who comprise the pool of prospective purchasers for the Lots;
- d) A sales commission of \$2,500 per lot is reasonable relative to market rates and the expected purchase price for each Lot;

6.11 As noted above, the Court approved the completion of the sale of Lot 44 by Order issued June 5, 2013 and the completion of the sales of Lot 40 and 47 by Order issued June 25, 2013.

6.12 [REDACTED] Based on the purchase price paid in connection with the sale of Lots 44, 40 and 47 which exceeded the Valco Appraisal appraised value for such Lots by greater than 10% the Receiver recommends that it should accept any offer for the purchase of a Lot(s) where such offer is recommended to the Receiver by Wintru/Troup or Scott, as the case may be, and the offered purchase price exceeds the average of the Valco Appraisal and the Metrix Appraisal by a minimum of 10%. The Receiver will endeavour to exceed the 10% threshold; however, proposes to

apply the 10% as a floor where in the Receiver's opinion the sale is commercially reasonable in all respects taking into account market conditions.

- 6.13 Prior to the Receiver's appointment, Banwell utilized the Ontario Real Estate Association standard form Agreement of Purchase and Sale, along with schedules of Purchaser's Building Covenants and Deed Restrictions ("**Covenants and Restrictions**") to sell the Lots. The Receiver has prepared a form of agreement of purchase and sale which incorporates the Covenants and Restrictions and provides for terms and conditions consistent with a sale by a Court appointed Receiver, a copy of which Form of Lot Sales Agreement is attached as **Appendix I**.
- 6.14 The Form of Lot Sales Agreement is intended to be utilized by the Receiver for the sale of the Banwell Lots.
- 6.15 The Receiver is of the view that the Banwell Lots will be more marketable and the marketing and sale process more efficient and cost effective if the Court grants an order which (a) authorizes the Receiver to enter into an agreement of purchase and sale in the Form of Lot Sales Agreement; (b) approves the sale of the Lots; and (c) vests clear title to a purchaser on a prospective basis (the "**Omnibus Approval and Vesting Order**"). Such an order, if granted, will avoid the cost and expense associated with the Receiver returning to Court for approval of each individual Lot sale.
- 6.16 MT has forwarded to the Land Registrar for the Land Registry Office of the City of Windsor (the "**Land Registrar**") a copy of the draft Omnibus Approval and Vesting Order. MT expects to have Land Registrar's preapproval and acceptance of the form of Omnibus Approval and Vesting Order and the form of Receiver's Certificate

attached as Schedule "B" to the Omnibus Approval and Vesting Order prior to the return of the Receiver's motion herein.

- 6.17 The Receiver will file with the Court, once all Transactions are completed and title to all of the Banwell Lots has been transferred to the applicable Purchasers, a report advising of the purchase price for each Lot.

7. Receiver's proposed sale process for the Commercial Plaza

- 7.1 The Commercial Plaza consists of two (2) separate parcels of land, municipally known as 3335 Banwell Road ("**3335 Banwell**"), Windsor and 3993 Wildwood Drive, Windsor ("**3993 Wildwood**").
- 7.2 3335 Banwell is an 11,500 square foot, multi-tenant plaza, located on approximately 0.93 acres of land, with frontage along Banwell Road. Currently, it is leased to three (3) tenants, comprising approximately 77 per cent of the space. As noted above, two (2) units, comprising approximately 23 per cent of the space are vacant.
- 7.3 3993 Banwell is a 3,000 square foot, single tenant retail plaza located on 0.77 acres of land, with frontage along Wildwood Drive. It is fully leased to a national tenant under a long term lease.
- 7.4 The Receiver intends to sell the Commercial Plaza by an Invitation for Offers process conducted by the Receiver.
- 7.5 The Receiver is of the view that this approach is the most effective method of maximizing exposure of the Commercial Plaza to the market and of ensuring the Commercial Plaza is sold in a commercially reasonable manner thus maximizing the recoveries for the various stakeholders of Royal Timbers.
- 7.6 The Receiver was provided with an appraisal of the Commercial Plaza that was

prepared for the Companies on February 4, 2013, prior to the appointment of the Receiver. In addition, the Receiver commissioned the Metrix Appraisal which appraises the value of both the Banwell Lands and the Commercial Plaza. Both appraisals were conducted by Accredited Appraisers of the Canadian Institute ("AACI's").

- 7.7 The Receiver intends to advertise the Invitation for Offers in both the print and online editions of The Windsor Star, the London Free Press and The Globe and Mail. In addition, the Receiver will circulate highlights of the Commercial Plaza and the sale process on its own internal network of BDO partners in ninety-five (95) BDO Canada offices across Canada. As well, the Receiver will utilize the resources of both Wintru and Scott who have indicated to the Receiver that they are aware of parties interested in purchasing the Commercial Plaza.
- 7.8 Parties expressing an interest in obtaining detailed information about the Commercial Plaza will be required to execute a Confidentiality and Non-Disclosure Agreement ("**NDA**").
- 7.9 The Receiver will prepare a Confidential Information Memorandum ("**CIM**") containing information relating to the Commercial Plaza, including photographs, a summary of tenant leases, historical financial information and terms and conditions of the Receiver's sale process.
- 7.10 The Receiver will establish an electronic data room ("**data room**") to make relevant information available to interested parties. Access to the data room will be restricted to parties who have executed the NDA. The data room will be maintained by a third party company Firmex Inc. ("**Firmex**"), with access to the data

room controlled and monitored by the Receiver. Firmex provides electronic data room services to major financial institutions and the Receiver has successfully utilized Firmex services on other receivership engagements.

- 7.11 Among other documents, the data room will contain the CIM, historical financial information, tenant leases, property tax statements, information on utilities and a form of Agreement of Purchase and Sale to be used for the submission of offers.
- 7.12 The terms and conditions of the sale will include, *inter alia*, the following:
- (a) That the process should not be construed as a 'Sale by Tender';
 - (b) The highest or any offer will not necessarily be accepted and the Receiver reserves the right to reject any or all offers without explanation;
 - (c) A deadline for the receipt of offers, but the Receiver shall have the discretion to accept an offer either before or after the deadline;
 - (d) Acceptance of all offers is subject to approval of the Court;
 - (e) A deposit in certified funds equal to ten (10) per cent of the offer price must accompany all offers;
 - (f) The balance of the purchase price is to be paid by certified funds, direct deposit or wire transfer at the time of closing. The Receiver will not accept offers that include Vendor Take Back financing as payment of the purchase price or a portion thereof;
 - (g) Sale is on an "as is, where is" basis without representations and warranties of

any kind;

- (h) Offer to be submitted using the draft form Agreement of Purchase and Sale contained in the data room; and
- (i) Transfer of title will be by way of vesting order.

8. Statements of Receipts and Disbursements of the Receiver

8.1 The Receiver maintains an account at BMO in London, Ontario for each of Banwell and Royal Timbers. Attached as **Appendix J and Appendix K**, respectively, are the Banwell Statement of Receipts and Disbursements and the Royal Timbers Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements is as follows:

8.2 Receipts - Banwell

a) *Sale of Lot 44 (\$65,657.05)* — The Receiver received net proceeds totalling \$65,657.05 from completing the sale of Lot 44, Plan 12M-533, City of Windsor. Proceeds received were net of property tax arrears paid to the City of Windsor. (Note: The sale of Lot 40 is scheduled to be completed on July 12, 2013. The Receiver has not yet received the net proceeds of sale from the sale of Lot 40).

8.3 Disbursements - Banwell

- a) *Letter of Credit Admin Charge (\$6,750.00)* — The Receiver paid BMO's annual fee on the Banwell letter of credit account.
- b) *Legal fees (\$5,706.22)* – The Receiver paid one half of MT's interim account for the period May 16 to May 31, 2013 from the Banwell account.
- c) *HST Paid (\$788.15)* — The Receiver has paid \$788.15 on its disbursements.

8.4. Receipts – Royal Timber

- a) *Rental income (\$51,131.13)* – The Receiver has received \$51,131.13 in rental income for the months of June and July from the tenants of the Commercial Plaza;

8.5. Disbursements – Royal Timber

- a) *Legal fees (\$5,706.22)* – The Receiver paid one half of MT's interim account for the period May 16 to May 31, 2013 from the Royal Timbers account.
- b) *Payroll (\$2,101.76)* – The Receiver paid net wages of \$2,101.76 to Marina Ognjanovski,
- c) *Repairs and Maintenance (\$1,022.41)* – The Receiver paid \$1,022.41 for repairs and maintenance to the Commercial Plaza,
- d) *HST Paid (949.79)* — The Receiver has paid \$949.79 on its disbursements.
- e) *Payroll source deductions (\$858.99)* – The Receiver remitted \$858.99 to the Receiver General for source deductions on employee wages.
- f) *Utilities (\$413.88)* – The Receiver paid utilities of \$413.88 for utilities for the two (2) unleased units at the Commercial Plaza.
- g) *Office Copier Lease (\$269.75)* – The Receiver has paid \$269.75 in respect of the lease for an office copier in the name of Banwell.

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

- 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 L** is the fee affidavit of Stephen N. Cherniak containing BDO's interim accounts as Receiver for the period May 2, 2013 to July 5, 2013.
- 9.4 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 9.5 Attached as **Appendix M** is the fee affidavit of Sherry Kettle containing the interim accounts of MT for the period May 16, 2013 to June 26, 2013.

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

10. Recommendations

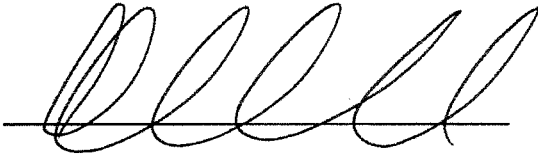
10.1. The Receiver recommends and respectfully requests that this Court:

- a) grant an Order
 - i) approving the Second Report and the activities and actions of the Receiver described therein;
 - ii) extending the date by which the Consolidated Action must be set down for trial by the length of the stay of proceedings imposed by the Appointment Order;
 - iii) approving and authorizing the Receiver to enter into the form of property management agreement with Wintru;
 - iv) approving the Lot Sales Process and authorizing the Receiver to carry out the Lot Sales Process;
 - v) approving the Form of Lot Sale Agreement, together with any amendments or modifications thereto deemed necessary and appropriate by the Receiver;
 - vi) approving the Commercial Plaza Sales Process;
 - vii) approving the Banwell Statement of Receipts and Disbursements and Royal Timbers Statement of Receipts and Disbursements;
 - viii) approving the Professional Fees;

- ix) authorizing and directing the Receiver to redact paragraph 6.12 from this Second Report served on any other party than the Court and sealing the unredacted version of this Second Report filed with the Court until further order of the Court, and
- b) grant the Omnibus Approval and Vesting Order:
 - i) prospectively approving the Transactions in respect of the Banwell Lots and authorizing the execution of an agreement of purchase and sale in respect of each Lot by the Receiver, as vendor and the Purchaser of each lot substantially in the form of the Form of Lot Sale Agreement, together with any amendments or modifications thereto deemed necessary by the Receiver; and
 - ii) providing that upon the delivery by the Receiver to a Purchaser of a Receiver's Certificate confirming the satisfaction or waiver of the conditions precedent under the applicable Lot Sale Agreement, for all of Banwell's right, title and interest in and to the Lot(s) vesting in and to the applicable Purchaser, free and clear of all encumbrances, save and except for those encumbrances listed in Schedule D to the Omnibus Approval and Vesting Order relating to the applicable Lots.

All of which is Respectfully Submitted this 12th day of July, 2013.

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

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