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**Creditors' Issues:  
Forbearance Agreements and Settlement Agreements**

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**This paper was prepared for The Continuing Legal Education Society of  
British Columbia's course on Bankruptcy & Insolvency Basics for Lawyers**

**February 22, 2011**

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and SETTLEMENT AGREEMENTS***

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***CREDITORS' ISSUES: FORBEARANCE AGREEMENTS  
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**I. INTRODUCTION**

Creditors and debtors often enter into agreements with respect to the repayment of indebtedness. These forbearance agreements or “standstill agreements” are useful tools whereby both creditors and debtors can work together to reach a common goal without the immediate need for realization of assets in a formal insolvency proceeding.

In contrast, a settlement agreement is designed to bring finality to all or some part of the credit arrangement with the debtor. As such, particular care has to be taken under a settlement agreement to insure that what is being settled and released does not affect other parties or other issues that are not being resolved under the agreement.

**II. TERMS**

When acting for a creditor proposing to enter into a forbearance agreement with a debtor, it is important to consider any potential weaknesses your client may have with respect to the debt owed. Often several events will have occurred since the inception of the loans that could give rise to one or more defences. If the creditor is giving the debtor an extension of time to pay the debt, a forbearance agreement may be used to block these defences using the forbearance terms as consideration for contractual assurances from the borrower. Attached hereto as Appendix “A” is a Sample Forbearance Agreement which provides an example of some of the more common terms found in such agreements.

The three most important terms to include in a forbearance agreement are an acknowledgement of the amount of the indebtedness, an acknowledgment of the validity of the security, and a waiver of any counterclaim and/or right of set-off. Depending upon the circumstances of the debt and of the debtor-creditor relationship, terms regarding additional security and added supervision can also be included.

With respect to taking an additional security interest in one or more of the debtor’s assets, it is important that creditors bear in mind that the taking of security to secure a past debt owed by the debtor could possibly be seen as a fraudulent preference under the *Fraudulent Preference Act*<sup>1</sup> or a fraudulent conveyance under the *Fraudulent Conveyance Act*<sup>2</sup>. See below for a further discussion of these possible issues.

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<sup>1</sup> R.S.B.C. 1996, c. 164.

<sup>2</sup> R.S.B.C. 1996, c. 163.

Added supervision may come from an appointment of a monitor to supervise and report on the debtor's activities to evaluate the prospects of the debtor carrying on in business. In either case, it is important that the monitors do not take over the management activities of the debtor or else issues of lender liability will arise.

Should the forbearance agreement contain any concessions by the creditor (for example settling the debt by the payment of a lesser sum or waiver of certain fees or interest), it is advisable to ensure that any such concessions are only effective upon completion of the debtor's responsibilities under the agreement. This will both act as an incentive for the debtor to live up to its commitments and will protect the creditor should the debtor fail to do so.

Finally, any guarantors of the debtor's indebtedness must also consent to any forbearance agreements entered into thereby avoiding a "material alteration" defence.

Settlement agreements are not as fluid as forbearance agreements. While debtors relinquish their rights under a forbearance agreement and thus are open to a court's interpretation when a debtor seeks insolvency relief, a settlement agreement is not the subject of any action by the debtor as it constitutes the final bargain and a complete resolution of whatever issues are being settled. More likely, any issue before the court would be a declaration that an issue has been resolved or that an issue against another party has been finally resolved by reason of operation of law based on the settlement agreement. See Appendix "B" for a sample Settlement Agreement.

### **III. COMMON PITFALLS AND ENFORCEABILITY ISSUES**

#### **A. Settlement Agreements – Unintentional Release**

Issues regarding settlement agreements usually revolve around the unintentional release or discharge of other parties to the credit arrangement or the debt. If the credit facilities do not involve any other parties other than the ones being fully released, the issue is simply one of drafting to ensure all parties are fully released and there is no loophole which a party could subsequently use to commence proceedings against another. If there are other parties or other issues, the process becomes more complicated.

The pivotal issue to keep in mind where there are other parties or issues is that the relationship between all debtor and debtor-related entities is one of a surety. Any impairment of the rights between debtors will likely result in a release of all parties whether or not such was the intent of the creditor. For example, at the simplest level, if you release the primary debtor you will automatically release the guarantors.

#### **B. Reporting Issues - Notice in Insolvency Proceedings**

Debtors, who have entered into arrangements with their creditors, would do well to bear in mind the need to make full and fair disclosure of all material facts relevant to the debtor's position to the extent that it is known should they commence proceedings under the *Companies' Creditors*

*Arrangement Act* (“CCAA”)<sup>3</sup> or the *Bankruptcy and Insolvency Act* (the “BIA”). Failure to include full details of their financial position, including any forbearance or settlement agreements entered into, may be deemed by the court to be material non-disclosures.<sup>4</sup>

### C. Fraudulent Preference Act / Fraudulent Conveyance Act

Both the *Fraudulent Conveyance Act* and the *Fraudulent Preference Act* provide that, in certain circumstances, a disposition of property (which would include a debtor granting a security interest) will be void as against other creditors of the debtor if the disposition was made to delay, hinder, or defraud those other creditors.

The *Fraudulent Conveyance Act* reads as follows:

1. If made to delay, hinder or defraud creditors and others of their just and lawful remedies
  - (a) a disposition of property, by writing or otherwise,
  - (b) a bond,
  - (c) a proceeding, or
  - (d) an order

is void and of no effect against a person or the person’s assignee or personal representative whose rights and obligations by collusion, guile, malice or fraud are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.

2. This Act does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud.

The relevant provisions to the *Fraudulent Preference Act* are as follows:

3. Subject to section 6, a disposition of property by a person at a time when the person is in insolvent circumstances, is unable to pay the person’s debts in full, or knows that he or she is on the eve of insolvency, is void as against an injured creditor, if made

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<sup>3</sup> See for example: *Re Hester Creek Estate Winery Ltd.*, 2004 BCSC 345.

<sup>4</sup> *Supra* note 3.

- (a) with intent to defeat, hinder, delay or prejudice creditors or some of them, and
- (b) to or for a creditor with intent to give the creditor preference over other creditors or some of them.

...

- 6. (1) Nothing in sections 3, 4 and 5 applies, if the money paid, or the property disposed of bears a fair and reasonable relative value to the consideration, to a sale in good faith, to a payment made in the ordinary course of business to innocent persons, to a payment to a creditor, or to a disposition in good faith of property of any kind made in any of the following circumstances:

...

- (b) by way of security for a present actual advance of money in good faith;

...

- 6. (5) Nothing in this section invalidates a security given to a creditor for an existing debt if, because of the giving of the security, an advance in money is made to the debtor by the creditor in the belief in good faith that the advance will enable the debtor to continue the debtor's business and to pay the debtor's debts in full.

To establish a fraudulent preference, the transfer must have occurred when the debtor was insolvent or on the eve of insolvency, *i.e.* they must have been unable to meet their obligations as they generally became due and/or ceased paying their obligations in the ordinary course of business as they came due. In order to establish a fraudulent conveyance, it is not necessary to show that the debtor was insolvent at the time the transfer was made, only that they foresaw potential creditors who might be defeated by the conveyance.<sup>5</sup> All that must be shown is that the transferor, in making the transfer, did so with intent to delay, hinder, or defraud creditors.

While the fraudulent intent required by each Act is essentially a matter of fact to be proved in the circumstances of each particular case,<sup>6</sup> it is interesting to note the following comments made by Mister Justice Bouck in *Bank of Montreal v. Ngo*:

Pressure need not be the sole ingredient which compels a debtor to part with his money or his property in favour of one creditor over another. A mere honest

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<sup>5</sup> *Jaston & Co. v. McCarthy*, (1996), 41 C.B.R. (3d) 212 (B.C.S.C.), varied on other grounds, (1998), 59 B.C.L.R. (3d) 168 (C.A.).

<sup>6</sup> *Ocean Construction Supplies Ltd. v. Creative Prosperity Capital Corp.* and *First Royal Enterprises Ltd. v. Armadillo's Restaurant Ltd.* (1995) 15 B.C.L.R. (3d) 254 (C.A.).

demand by a creditor for payment is sufficient to invoke the doctrine. For there to be a preference, the payment by the debtor must be voluntary. Where there is pressure, the preference is not voluntary: *Beattie v. Wenger* (1897) 24 O.R. 72 at 76 and 81. Honest pressure on the part of the creditor rebuts the presumption of intent on a debtor's part to act in fraud of the law: *Slater v. Oliver* (1884) 7 O.R. 158 at 165 (Ont. C.A.).<sup>7</sup>

Both the *Fraudulent Conveyance Act* and the *Fraudulent Preference Act* provide certain good faith exceptions and provide that dispositions of property made for good or reasonable consideration will not fall under the auspices of each Act. As such, a granting of security for further advances will likely not be challenged as a fraudulent preference or conveyance. The question then is whether forbearance alone of enforcing a pre-existing debt is good consideration for receiving a security interests in the debtor's assets.

While it is generally accepted that past consideration is no consideration, a conveyance to secure an existing debt may be a conveyance for good consideration when there is an aspect of forbearance in suing on the debt, *i.e.* additional benefit accruing to the grantor at the time of disposition.<sup>8</sup> In *Glegg v. Bromley*<sup>9</sup> the Court stated:

I think that where a creditor asks for and obtains a security for an existing debt the inference is that, but for obtaining the security, he would have taken action which he forbears to take on the strength of the security, and I cannot think that this inference is rebutted by the fact that the reason why he asks for the further security is his desire to obtain a benefit for himself at the expense of another creditor who may shortly be in a position to take the subject-matter of the proposed security in execution.<sup>10</sup>

#### **D. “Preference” under s. 95 of the *Bankruptcy and Insolvency Act***

Section 95 of the *Bankruptcy and Insolvency Act* (the “BIA”)<sup>11</sup>, provides as follows:

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<sup>7</sup> (1985), 66 B.C.L.R. 171 (S.C.) at para. 44.

<sup>8</sup> *Bank of Montreal v. Chu*; *Alton v. Harrison* (1969), 4 Ch. App. 622; *Martindale v. Booth* (1932), 3 B. & Ad. 498, 110 E.R. 180

<sup>9</sup> [1912] 3 K.B. 474 as cited in *Chan v. Stanwood*, 2002 BCCA 474.

<sup>10</sup> *Ibid.* at pp. 491-2.

<sup>11</sup> R.S.C 1985, c. B-3.

95. (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person
- (a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and
  - (b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.
95. (2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.

A “date of the initial bankruptcy event” is defined in s. 2 of the BIA as the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
  - i. referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
  - ii. in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,



- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- (f) proceedings under the *Companies' Creditors Arrangement Act*.<sup>12</sup>

A “charge” within the meaning of s. 95 includes any encumbrance, lien, or claim against the property of a debtor and, as such, includes the granting of security.

The presumption of a preference is a rebuttable one. If it can be demonstrated that the debtor was pursuing a purpose other than that of favouring one creditor over others, the presumption will be displaced.<sup>13</sup> A creditor, who received an alleged preference, may also rebut the presumption if it can show that the payment, charge, transfer, or etcetera was given by the debtor in the *bona fide* expectation that it would enable the debtor to get out of financial difficulties and to continue in business<sup>14</sup> and the debtor's that it would be able to continue on was reasonable in the circumstances.<sup>15</sup>

#### **E. A Note on Professional Responsibility**

In light of the above discussions on fraudulent preferences and conveyances, counsel retained by either creditors or debtors would do well to bear in mind Chapter 4, Rule 6 of the *Professional Conduct Handbook*, which provides that:

- 6. A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud, including a fraudulent conveyance preference or settlement.

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<sup>12</sup> *Ibid.* s. 2.

<sup>13</sup> *Re Norris* (1996), 44 C.B.R. (3d) 218 (Alta. C.A.).

<sup>14</sup> *Re Trafalgar Motors* (1952), 33 C.B.R. 87 (Ont. S.C.); *Catalina Exploration & Development Ltd. (Re)* [1971] 5 W.W.R. 284 (Alta. Q.B.).

<sup>15</sup> *Principal Group Ltd. (Trustee of) v. Anderson* (1994), 2 C. B.R. (3d) 216 (Alts Q.B.).

IV. APPENDIX "A"

SAMPLE FORBEARANCE AGREEMENT

THIS AGREEMENT is made as of the \_\_\_\_ day of Month, 2011.

BETWEEN:

NAME and address of creditor  
(the "**Creditor**")

AND:

NAME and address of borrower  
(the "**Borrower**")

AND:

NAME and address of guarantor(s)  
(the "**Guarantor**")

AND:

NAME and address of firm  
(the "**Monitor**")

**WHEREAS:**

- A. Pursuant to certain credit agreements, as amended from time to time, the Creditor established and authorized certain credit facilities in favour of the Debtor (collectively, the "**Credit Agreement**");
- B. The Borrower is indebted to the Creditor as at [date] in the amounts set out in Schedule "A" hereto, inclusive of principal and interest, without any claim of set-off or

counterclaim, and interest continues to accrue on those amounts (collectively, the “**Indebtedness**”);

- C. The Guarantor has executed guarantees and postponements of claim with respect to the Indebtedness in the amounts and on the dates as set out in Schedule “B” hereto (collectively, the “**Guarantee**”);
- D. The Indebtedness and the Guarantees are secured, *inter alia*, by certain security (the “**Security**”), details of which are set out in Schedule “C” hereto;
- E. Demand was made on account of the Indebtedness on [date];
- F. The Borrower and the Guarantor have requested the Creditor forbear from enforcement of the Security in order to allow it time to repay the Indebtedness, to which the Creditor has agreed, subject to the terms and conditions of this Agreement; and
- G. The Monitor has agreed to act as agent for the Debtor to assist in the implementation of the terms of this Agreement.

**WITNESSES THAT** in consideration of the promises and covenants hereinafter set forth, the parties covenant and agree as follows:

- 1. The Borrower and the Guarantor (collectively, the “**Parties**”) confirm the accuracy of the facts and matters set out in paragraphs A to G above and agree that the same shall be contractual and not a mere recital and that the same will form an integral part hereof.
- 2. The Parties agree that except as set out herein, the Creditor is not under any obligation whatsoever to provide further loans, overdraft facilities or other credit facilities to the Debtor.
- 3. The Parties acknowledge and agree that all of the Credit Agreement, Security, and Guarantees are valid and enforceable in accordance with their terms and are not released, amended or merged in any manner as a result of the execution of this Agreement and shall

remain in full force and effect following the execution of this Agreement for the benefit of the Creditor at its sole discretion, save and except as provided in this Agreement.

4. Each of the Parties acknowledges, covenants and agrees that whatever interest, claim or right any of them may have in and to any of the undertakings, properties and assets of the Borrower shall be postponed, subordinated and subject to the rights of the Creditor under the Security.
5. The Creditor agrees and covenants that, notwithstanding paragraph 20 hereof and provided that no event of default (as hereafter defined) occurs, it will not take steps to enforce the Security until after [date], or such later date as may be agreed to by the Creditor at its sole discretion.
6. The Borrower will make the following payments to the Creditor:
  - a) [amount] on or before [date];
  - b) etc.
7. In addition to the amounts set forth in paragraph 6 above, the Borrower will pay interest on the aggregate amount of the Indebtedness from time to time calculated at the rate of [interest rate] payable on the [when interest is to be payable] during the term of this Agreement.
8. The Borrower shall repay the Indebtedness on or before [date] or such later date as the Creditor may agree and continue to pay interest monthly.
9. The Parties covenant and agree that all reasonable fees and disbursements paid by the Creditor to its solicitors and counsel (on the basis of complete indemnification on a solicitor and its own client basis) in connection with advising the Creditor in relation to its affairs under the Indebtedness, the Security, and this Agreement and all matters incidental or relating thereto, including enforcement of same, and whether past, present or future,

shall be added to the amount owing to the Creditor as the Creditor sees fit. These legal costs shall bear interest at [*interest rate*] and shall be secured by the Security.

10. The Borrower will execute and deliver to the Creditor a consent to judgment in the amount of the Indebtedness and in the form of the consent as attached in the Schedule “D” hereto (the “**Consent**”).
11. The Borrower will execute and deliver to the Creditor the General Security Agreement in the form as attached in the Schedule “E” hereto (the “**GSA**”).
12. The Borrower will appoint the [*firm*] as Monitor with respect to its operations on the terms of the appointment letter attached as Schedule “F” hereto.
13. The Parties covenant and agree to provide the Creditor a meaningful report on a monthly basis (by the 15<sup>th</sup> day of each month) as to all activities of the Borrower during the preceding calendar month relating to the sale, disposition, or refinancing of its assets or any of its subsidiaries and relating to its general business dealings (the “**Report**”).
14. The Parties covenant and agree that the Report shall also reference the current cash flow as compared to the projection and shall include plans to remedy any material problems.
15. The Parties and each of them, hereby release and forever discharge the Creditor, and its successors and assigns of and from any and all manner of actions, causes of actions, suits, contracts, claims, demands, damages, costs and expenses of any nature or kind whatsoever, whether known or unknown, suspected or unsuspected whether at law or in equity, which it ever had or now has or which it or its heirs, executors, administrators, officers, agents, successors and assigns hereafter can, shall or may have or by reason of any cause, matter or thing whatsoever existing up to the present time and relating to the Credit Agreement, the Indebtedness, the Security, or the Creditor’s actions, errors or omissions with regard thereto.
16. The Parties and each of them, waive against the Creditor, and its successors and assigns any defence which it may have existing up to the present time to any action brought by the

Creditor to collect the Indebtedness or to enforce or realize upon the Security which said defence arises, whether by counterclaim or defence, by reason of any cause, matter, error, omission, neglect or thing caused or done, whether direct or indirect, by the Creditor, its executors, administrators, officers, agents, successors and assigns existing as at the date of this Agreement and relating to or arising from the Credit Agreement, the Indebtedness or the Security.

17. The Borrower covenants and agrees that it will not institute or cause to be instituted any proceedings, or otherwise seek any relief under the *Bankruptcy & Insolvency Act*, or *Farm Debt Mediation Act*, or seek relief pursuant to the *Law and Equity Act* or the *Personal Property Security Act*, without the prior written consent of the Creditor.
18. Except as set out herein, all other terms of the Credit Agreement will remain in full force and effect.
19. It shall be an **Event of Default** under this Agreement if:
  - a) the Borrower fails to pay all or any part of the Indebtedness in accordance with the terms of this Agreement;
  - b) the Parties fail to duly perform any covenant contained herein;
  - c) except as provided in this Agreement, the Borrower defaults under any of the Security;
  - d) the Borrower fails to notify the Creditor of the entry of final judgments totalling an amount in excess of \$5,000 against him within 5 days from the entry thereof;
  - e) any encumbrancer or creditor of the Borrower takes possession of, or commences proceedings or steps to realize upon, any property or asset of the Borrower including a distress, execution, foreclosure, forfeiture or any similar process levied or enforced there against such default is not cured within 14 days;

- f) any encumbrancer or creditor files a Petition against the Borrower pursuant to the *Bankruptcy and Insolvency Act* and is not set aside or discontinued within 14 days;
  - g) if during the forbearance period the Creditor discovers any material fact which, in the sole and absolute judgment of the Creditor, impairs the financial condition of the Parties or the value of the Security or the undertaking, property and assets charged by the Security;
  - h) if during the forbearance period, without the written consent of the Creditor, there occurs, in the sole and absolute judgment of the Creditor, any material adverse change in the financial condition of the Borrower or the value of the Security or the undertaking, property and assets charged by the Security; and
  - i) if during the forbearance period the Creditor, in its sole and absolute judgment, considers that there has been a material adverse change in the financial condition of the Borrower.
20. The Creditor may, at its option and in its sole discretion, waive any default hereunder but such waiver shall not constitute a waiver of any subsequent event which would constitute default herein.
21. The Parties covenant and agree that upon the happening of an Event of a Default under this Agreement, the Creditor shall have the immediate right to terminate the remainder of the forbearance period herein, if any, and the entire amount then outstanding under the Indebtedness will become immediately due and payable without notice. The Creditor will thereupon be entitled to take whatever action it then deems necessary under the Credit Agreement, the Security, the Guarantee, the Consent, and the GSA without further notice.
22. *[If applicable]* In the event that the Creditor commences foreclosure proceedings to enforce the Security, either at the expiry of the forbearance period herein or after the forbearance period herein has been terminated at the Creditor's election, the Parties shall consent to a waiver of their rights to a redemption period in those foreclosure proceedings.

23. The Parties hereto, and each of them, covenant and agree that this Agreement shall in all respects be binding upon each party, its respective heirs, executors, administrators, successors, and assigns upon execution and delivery of this Agreement or any counterpart thereof by each such party.
24. This Agreement shall be governed by the law of the Province of British Columbia and the Courts of the Province of British Columbia shall have exclusive jurisdiction with respect to any disputes arising hereunder or pursuant hereto.
25. If there is any inconsistency between this Agreement and any other agreement with the Creditor concerning the Indebtedness, the provisions of this Agreement shall prevail.
26. The Parties covenant that they have received independent legal advice prior to execution of this Agreement and all related documentation and each party confirms that they enter into this Agreement of their own free will without any coercion or duress having been imposed upon them by any of the parties to this Agreement.
27. The parties hereto will execute such other and further assurances as may be necessary and will do such other acts and things as may be required in order to carry out the transactions contemplated by this Agreement.
28. This Agreement may be signed by the parties hereto in as many counterparts as may be necessary, each of which so signed will be deemed to be an original and such counterparts together will constitute one and the same instrument and notwithstanding the date of execution will be deemed to be dated as of the day and year first above written.

IN WITNESS WHEREOF the parties have caused these presents to be executed on the day and year first written above.





SIGNED, SEALED & DELIVERED by [the  
authorized signatory for] [Guarantor] in the  
presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

) [Guarantor], by [its authorized  
) signatory]:  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
) [Name]

V. APPENDIX "B"

**SAMPLE SETTLEMENT AND RELEASE AGREEMENT**

**THIS AGREEMENT** is made effective the \_\_\_\_ day of \_\_\_\_\_, 2011.

BETWEEN:

NAME and address of borrower

(the "**Debtor**")

AND:

NAME and address of creditor

(the "**Creditor**")

**WHEREAS:**

- A. Pursuant to certain credit agreements, as amended from time to time, the Creditor established and authorized certain credit facilities in favour of the Debtor (collectively, the "**Credit Agreement**");
- B. Pursuant to the Credit Agreement, the Debtor is indebted to the Creditor as at [date] in the amounts set out in Schedule "A" hereto, inclusive of principal and interest (collectively, the "**Indebtedness**");
- C. The Debtor has indicated that it would like to offer a payment of [\$] in consideration for the full settlement of the Indebtedness; and
- D. The parties to this Agreement have agreed to settle any and all outstanding matters and claims between them relating to the Credit Agreement on the terms and conditions set out in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties to this Agreement) the parties to this Agreement each confirm and agree as follows:

1. The Debtor agrees to pay the Creditor the sum of [\$] (the “**Settlement Amount**”) in full and final settlement of the Indebtedness and in complete satisfaction of any and all claims by Creditor under the Credit Agreement or otherwise relating to the Indebtedness.
2. In consideration of the payment by the Debtor of the Settlement Amount, the following security documents relating to the Credit Agreement are hereby released, including any and all mortgages, charges, assignments, security interests or other encumbrances created by any of the following:
  - (a) *[list of security to be released]*;(collectively the “**Security**”).
3. Upon receipt by Debtor’s solicitors of a copy of this Agreement executed on behalf of the Creditor, the Debtor shall, within three business days, deliver the Settlement Amount to the Creditor’s solicitors who shall hold such Settlement Amount in trust to be released to the Creditor, or as may be directed by the Creditor, upon the receipt of evidence of the discharge of the Security.
4. In consideration for and subject to full and timely satisfaction of the promises set forth in this Agreement, and except with respect to the obligations created by, acknowledged, or arising out of this Agreement, the Debtor hereby for itself, its subsidiaries, affiliates, agents, attorneys, heirs, executors, administrators, successors and assigns, release and absolutely and forever discharge the Creditor and its shareholders, officers, directors, employees, agents, insurers, attorneys, successors and assigns, licensees, subsidiaries and affiliates of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations (statutory, contractual and common law), costs, expenses, remedies, liens, actions and causes of action of every kind and nature whatsoever, known

- or unknown, asserted or unasserted, existing at any time up to the time of execution of this Agreement, arising out of or in connection with the Credit Agreement and the Indebtedness.
5. In consideration for and subject to full and timely satisfaction of the promises set forth in this Agreement, and except with respect to the obligations created by, acknowledged, or arising out of this Agreement or the agreements reflected in the exhibits hereto, the Creditor hereby for itself, its subsidiaries, affiliates, agents, attorneys, heirs, executors, administrators, successors, assigns and principals, release and absolutely and forever discharge the Debtor and its shareholders, officers, directors, employees, agents, insurers, attorneys, successors and assigns, licensees, subsidiaries and affiliates of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations (statutory, contractual and common law), costs, expenses, remedies, liens, actions and causes of action of every kind and nature whatsoever, known or unknown, asserted or unasserted, existing at any time up to the time of execution of this Agreement, arising out of or in connection with the Credit Agreement and the Indebtedness.
  6. Each party shall from time to time execute and deliver or cause to be executed and delivered all such further documents and instruments and do or cause to be done all further acts and things as may be reasonably required in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.
  7. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and each of the parties hereto attorns to the jurisdiction of the courts of British Columbia.
  8. This Agreement will enure to the benefit of and be binding upon the parties hereto and their administrators, successors and assigns.
  9. Time will be of the essence of this Agreement and of the transactions contemplated by this Agreement.

10. This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All of these counterparts will for all purposes constitute one agreement, binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

SIGNED, SEALED & DELIVERED by [the	)	[Debtor], by [its authorized
authorized signatory for] [Debtor] in the presence	)	signatory]:
of:	)	
	)	
_____	)	
Signature of Witness	)	_____
	)	[Name]
_____	)	
Name	)	
	)	
_____	)	
Address	)	
	)	
_____	)	
Occupation	)	
	)	
SIGNED, SEALED & DELIVERED by	)	[Creditor], by [its authorized
[Creditor] in the presence of:	)	signatory]:
	)	
_____	)	
Signature of Witness	)	_____
	)	[Name]
_____	)	
Name	)	
	)	
_____	)	
Address	)	
	)	
_____	)	
Occupation	)	
	)	



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