

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**APPLICANT**

**MOTION RECORD  
(Discharge of Monitor)**

**October 7, 2011**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**John T. Porter (LSUC# 23844T)**  
Tel: 416-304-0557  
Fax: 416-304-1313

Solicitors for A. John Page & Associates Inc.,  
in its capacity as the Court-appointed Monitor  
of the Applicant

# INDEX

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**APPLICANT**

**MOTION RECORD INDEX**

<b>TAB</b>	<b>DOCUMENT</b>
<b>1.</b>	Notice of Motion dated October 7, 2011
<b>2.</b>	Fourteenth Report of the Monitor dated October 7, 2011
<b>A</b>	Initial Order dated March 23, 2010
<b>B</b>	Plan Filing and Creditor Meeting Order dated March 4, 2011
<b>C</b>	Stay Extension Order dated March 4, 2011
<b>D</b>	Plan Sanction Order dated April 21, 2011
<b>E</b>	Reasons for Decision of the Honourable Madam Justice Pepall on the Preferred Shareholder Motion dated November 16, 2010
<b>F</b>	Preferred Shareholder Order dated November 16, 2010
<b>G</b>	Monitor's Memorandum on the McVey Claim (without exhibits)
<b>H</b>	Monitor's Memorandum on the Debono Claims (without exhibits)
<b>I</b>	Order Dated December 9, 2010

<b>TAB</b>	<b>DOCUMENT</b>
<b>3.</b>	Affidavit of James H. Grout sworn on October 7, 2011
<b>A</b>	Detailed invoices
<b>B</b>	Schedule summarizing each invoice in Exhibit "A"
<b>C</b>	Schedule summarizing the billing rates and year of call for each lawyer that has completed work on this file between December 1, 2010 to discharge
<b>4.</b>	Affidavit of A. John Page sworn on October 7, 2011
<b>A</b>	Summarizing Invoices
<b>B</b>	Related Invoices
<b>C</b>	Schedule summarizing the hours and applicable billing rates of the individuals involved in the monitoring of the Applicant
<b>5.</b>	Draft Order

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985 c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.

Applicant

**NOTICE OF MOTION  
(Discharge of Monitor)**

**A. John Page & Associates Inc.**, in its capacity as the Court-appointed Monitor of the Applicant (the "**Monitor**"), will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on a date to be fixed by Order of the Registrar or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

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

**THE MOTION IS FOR:**

- (a) an Order that this motion is properly returnable at that time and dispensing with further service thereof;
- (b) an Order approving the Monitor's Eleventh Report dated December 8, 2010 (the "**Eleventh Report**"), the Monitor's Twelfth Report dated February 24, 2011 and the Supplement to the Twelfth Report dated March 2, 2011 (the "**Twelfth Report**"), the Monitor's Thirteenth

Report dated April 6, 2011 (the “**Thirteenth Report**”) and the Monitor’s Fourteenth Report dated October 7, 2011 (the “**Fourteenth Report**”) (collectively, the “**Reports**”) and the conduct and activities of the Monitor as set out in the Reports;

(c) an Order sealing from the public record the unredacted versions of the McVey Claim Memorandum and the Debono Claims Memorandum attached as Exhibits “G” and “H” to the Fourteenth Report;

(d) an Order approving the fees and disbursements of the Monitor and its legal counsel for the period December 1, 2010 to and including the date of the Monitor’s discharge;

(e) an Order requiring the Applicant to pay the fees and disbursements of the Monitor and its legal counsel within two days of the making of the Order approving them by way of certified cheque or bank draft;

(f) an Order discharging and releasing the Monitor; and

(g) such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. pursuant to the Initial Order of the Honourable Madam Justice Pepall dated March 23, 2010 (the “**Initial Order**”), the Applicant obtained protection from its creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and the Monitor was appointed;

2. pursuant to paragraph 28 of the Initial Order, the Applicant is required to pay the accounts of the Monitor and its legal counsel on a bi-weekly basis;

3. pursuant to paragraph 29 of the Initial Order, the Monitor and its legal counsel are required to pass their accounts from time to time before a Judge of this Honourable Court;

4. on March 4, 2011 this Honourable Court made an Order authorizing the Applicant to file a Plan of Compromise and Arrangement and to hold a meeting of its creditors to vote upon the Plan of Compromise and Arrangement;

5. the Applicant filed its Plan of Compromise and Arrangement on March 4, 2011;

6. the Applicant held a meeting of its creditors to vote upon the Plan of Compromise and Arrangement on April 16, 2011 at which time the Plan of Compromise and Arrangement was approved by its creditors;

7. the Honourable Court made an Order sanctioning the Plan of Compromise and Arrangement on April 21, 2011;

8. the Monitor's remaining duties were to complete and file its memoranda regarding the claims of John McVey, Larry Debono, Frances Debono and LARR Engineered Prototypes (the "**McVey and Debono Memoranda**") and to complete and supply to the Interim Operating Officer (the "**IOO**") a memorandum it had been preparing on its overall review of any preferential transactions and transfers at undervalue (the "**Preferential and TUV Memorandum**");

9. these memoranda are being filed with this Honourable Court as part of the Fourteenth Report;



10. it is appropriate that the exhibits attached to the McVey and Debono Memoranda be sealed;
11. the Monitor has completed its Preferential and TUV Memorandum and has provided a copy to the IOO;
12. the Monitor has completed its duties and it is appropriate for the Monitor to be discharged;
13. the Applicant has failed to pay the accounts of the Monitor and its legal counsel for the period February 1, 2011 to August 31, 2011 in breach of paragraph 28 of the Initial Order; and
14. the such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

- (a) the Eleventh Report (without Exhibits);
- (b) the Twelfth Report (without Exhibits);
- (c) the Thirteenth Report (without Exhibits);
- (d) the Fourteenth Report;
- (e) the Affidavit of A. John Page sworn October 7, 2011;
- (f) the Affidavit of James H. Grout sworn October 7, 2011; and

(g) such further and other material as counsel may advise and this Honourable Court may permit.

October 7, 2011

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**John T. Porter (LSUC# 23844T)**  
Tel: (416) 304-1616  
Fax: (416) 304-1313

Solicitors for A. John Page & Associates  
Inc., in its capacity as the Court-appointed  
Monitor of the Applicant

TO: THIS HONOURABLE COURT

AND TO: THE ATTACHED SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.

APPLICANT  
Court File No. 10-8630-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceedings commenced at **Toronto**

**NOTICE OF MOTION**  
**(Discharge of Monitor)**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**John T. Porter (LSUC# 23844T)**  
Tel: (416) 304-1616  
Fax: (416) 304-1313

Solicitors for A. John Page & Associates Inc., in its  
capacity as the Court-appointed Monitor of the  
Applicant

# TAB 2

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF  
NELSON FINANCIAL GROUP LTD.

APPLICANT

FOURTEENTH REPORT OF A. JOHN PAGE & ASSOCIATES INC.  
IN ITS CAPACITY AS THE MONITOR OF THE APPLICANT

October 7, 2011

**Introduction**

1. By Order of this Honourable Court dated March 23, 2010 (the “**Initial Order**”), Nelson Financial Group Ltd. (“**Nelson**” or the “**Applicant**”) obtained protection pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). A copy of the Initial Order is attached hereto as **Exhibit “A”**.
2. Pursuant to the Initial Order, A. John Page & Associates Inc. was appointed as the Monitor of the Applicant (the “**Monitor**”).
3. The Monitor is preparing this Report in support of the motion for its discharge. In particular, the purpose of this Report is to:
  - (a) advise this Honourable Court on the Monitor’s conduct and activities since the Eleventh Report of the Monitor dated December 8, 2010 (the “**Eleventh Report**”), the Twelfth Report of the Monitor dated February 24, 2011 (the “**Twelfth Report**”) and the Thirteenth Report of the Monitor dated April 6, 2011 (the “**Thirteenth Report**”); and

- (b) provide this Honourable Court with the results of the Monitor's investigation into the potential claims of certain investors of Nelson.

#### **Conduct and Activities of the Monitor**

- 4. On February 14, 2011, the Interim Operating Officer (the "**IOO**") served a Notice of Motion in this proceeding for a plan filing, meeting and stay extension order and filed a Plan of Arrangement dated February 11, 2011 (the "**Plan**").
- 5. In response to the Notice of Motion, the Monitor prepared and filed the Twelfth Report.
- 6. On March 3, 2011, the IOO, the Representative Counsel, the Monitor and their respective counsel attended before this Honourable Court at a 9:30 a.m. chambers appointment to discuss the provisions of a plan filing, meeting and stay extension order.
- 7. On March 4, 2011, this Honourable Court made a plan filing and meeting order (the "**Plan Filing and Creditor Meeting Order**") and a stay extension order (the "**Stay Extension Order**") on the consent of the IOO, the Representative Counsel and the Monitor. Copies of the Plan Filing and Creditor Meeting Order and the Stay Extension Order are attached hereto as **Exhibits "B" and "C"**, respectively.
- 8. Pursuant to the Plan Filing and Creditor Meeting Order, the Monitor was required to do the following:
  - (a) prepare a report under the terms of section 23(1)(d.1) and section 23(1)(i) of the CCAA containing an update on the restructuring process, the current state of the assets and business of the Applicant, the Monitor's views of the Plan and the recommendations of the Monitor as to the approval of the Plan including his opinion of any alternative outcomes available to the Creditors (the "**Monitor's Plan Report**");
  - (b) file the Monitor's Plan Report with this Honourable Court, post it on the Monitor's website and provide it to the Applicant to be sent by the IOO by mail and email to Eligible Voting Creditors;

- (c) post copies of any amendments to the Plan on the Monitor's website as soon as practicable; and
  - (d) present the Monitor's Plan Report at the meeting of creditors on April 16, 2011 (the "**Creditors Meeting**") and to respond to all inquiries with respect thereto.
9. In accordance with the Plan Filing and Creditor Meeting Order, the Monitor prepared the Monitor's Plan Report which was in the form of the Monitor's Thirteenth Report to the Court. In the spirit of cooperation, the Monitor provided drafts of its Thirteenth Report to the IOO and the Representative Counsel, who provided their comments to the Monitor through their counsel, Mr. Jones.
10. In addition, in accordance with the Plan Filing and Creditor Meeting Order, the Monitor:
- (a) posted the Thirteenth Report on the Monitor's website on April 6, 2011;
  - (b) provided a final, executed copy of the Thirteenth Report to the IOO to be sent by mail and email to Eligible Voting Creditors;
  - (c) posted copies of the amendments to the Plan on the Monitor's website as they were provided to the Monitor by the IOO; and
  - (d) presented the Thirteenth Report at the Creditors Meeting and responded to all inquiries with respect thereto.
11. At a meeting held on April 16, 2011, the Eligible Voting Creditors of Nelson approved the Plan.
12. By Order of this Honourable Court dated April 21, 2011, this Honourable Court sanctioned the Plan (the "**Plan Sanction Order**"). A copy of the Plan Sanction Order is attached hereto as **Exhibit "D"**.
13. As the Plan has been sanctioned, the Monitor respectfully requests that this Honourable Court approve the Monitor's activities, approve the Monitor's fees and discharge the

Monitor. The Monitor and its legal counsel each have filed fee affidavits with this Honourable Court.

14. The Initial Order obligates the Applicant to pay the fees and disbursements of the Monitor and its legal counsel on a bi-weekly basis.
15. The Applicant has failed to pay the fees and disbursements of the Monitor and its Counsel for the period February 1 to August 31, 2011.

#### **Monitor's Investigation into Certain Claims**

16. On October 18 and 19, 2010, the Honourable Madam Justice Pepall heard the Representative Counsel's motion for a determination that all claims and potential claims of the preferred shareholders of Nelson were "equity claims" within the meaning of the CCAA (the "**Preferred Shareholder Motion**").
17. On November 16, 2010, the Honourable Madam Justice Pepall issued Reasons for Decision in which she found that all claims and potential claims of the Preferred Shareholders were equity claims with possibly two exceptions being the claims of Larry and Frances Debono and Larr Engineered Prototypes (the "**Debonos**") and Mr. John McVey (the "**Reasons for Decision**"). A copy of the Reasons for Decision are attached hereto as **Exhibit "E"**.
18. Pursuant to the Reasons for Decision and by Order of this Honourable Court dated November 16, 2010 (the "**Preferred Shareholder Order**"), the Monitor was directed to:
  - (a) investigate the claim filed by John McVey that he is entitled to be treated as a creditor and not as a Preferred Shareholder as his promissory note should never have been converted into preferred shares, the conversion was unauthorized and the signatures on the term sheets are not his own (the "**McVey Claim**");
  - (b) investigate the claims made by the Debonos that they are entitled to be treated as creditors and not as Preferred Shareholders in so far as they claim that they lent declared and paid dividends on their preferred shares to the Applicant (the "**Debono Claims**");



- (c) consider resolutions of the McVey Claim and the Debono Claims based upon its investigations; and
- (d) report to the Court on its recommendations on notice to the affected parties.

A copy of the Preferred Shareholder Order is attached hereto as **Exhibit “F”**.

- 19. Pursuant to the Preferred Shareholder Order, the Monitor has investigated the McVey Claim and the Debono Claims. A copy of the Monitor’s memoranda dated April 15, 2011 (without exhibits) on the McVey Claim and the Debono Claims are attached hereto as **Exhibits “G” and “H”**, respectively.
- 20. The memoranda with all the exhibits were provided to the IOO and the Representative Counsel.
- 21. The memorandum on the McVey Claim with all of the exhibits was provided to Mr. McVey.
- 22. The memorandum on the Debono Claims with all of the exhibits was provided to the Debonos.
- 23. The Monitor is also filing complete copies of the McVey Claim and Debono Claims memoranda (i.e. with exhibits) with this Honourable Court on a confidential basis as they contain personal and confidential information concerning Mr. McVey and the Debonos. Accordingly, the Monitor respectfully requests that this Honourable Court make a sealing order with respect thereto so that they remain permanently sealed from the public record.
- 24. The Monitor’s recommendations are set out in the memoranda. In short, for the reasons set out in the memoranda, the Monitor is of the view that the McVey Claim and the Debono Claims are equity claims and, accordingly, they should not be treated as creditors.
- 25. On October 18, 2010, each of Mr. McVey and Mr. Debono made submissions to the Honourable Madam Justice Pepall regarding their potential claims.

**Monitor's analysis of potential preferential transactions and transfers at undervalue made by Nelson**

26. By Order of this Honourable Court dated December 9, 2010 (the "**December 9 Order**"), the Monitor was required to complete and supply to the IOO the memorandum it had been preparing on its overall review of any preferential transactions and transfers at undervalue (the "**Preferential and TUV Memorandum**") A copy of the December 9 Order is attached hereto as **Exhibit "I"**.
27. Pursuant to the December 9 Order, the Monitor has completed its Preferential and TUV Memorandum and, on April 25, 2011, provided a copy of it to the IOO.


All of which is respectfully submitted this 7<sup>th</sup> day of October, 2011.

**A. JOHN PAGE & ASSOCIATES INC. IN ITS  
CAPACITY AS THE MONITOR OF NELSON  
FINANCIAL GROUP LTD.**

per:

Name:

Title:

  
\_\_\_\_\_  
A. JOHN PAGE, FCA, CA, CIRP  
PRESIDENT

**Court File No: 10-8630-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NELSON FINANCIAL GROUP LTD.**

**APPLICANT**

**EXHIBITS TO THE FOURTEENTH REPORT OF A. JOHN PAGE & ASSOCIATES  
INC. IN ITS CAPACITY AS THE MONITOR OF THE APPLICANT**

**October 7, 2011**

Initial Order dated March 23, 2010	A
Plan Filing and Creditor Meeting Order dated March 4, 2011	B
Stay Extension Order dated March 4, 2011	C
Plan Sanction Order dated April 21, 2011	D
Reasons for Decision of the Honourable Madam Justice Pepall on the Preferred Shareholder Motion dated November 16, 2010	E
Preferred Shareholder Order dated November 16, 2010	F
Monitor's Memorandum on the McVey Claim (without exhibits)	G
Monitor's Memorandum on the Debono Claims (without exhibits)	H
Order of Madam Justice Pepall dated December 9, 2010	I

# EXHIBIT A

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM )  
 )  
JUSTICE PEPALL )

TUESDAY, THE 23<sup>rd</sup>  
DAY OF MARCH, 2010

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C., 1985 c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD. (the "Applicant")**

**Applicant**

**INITIAL ORDER**

THIS APPLICATION, made by the Applicant, Nelson Financial Group Ltd. ("Nelson Financial" or the "Applicant"), without notice, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Marc Boutet sworn March 22, 2010 and the Exhibits thereto, and the Report of A. John Page & Associates Inc. in its capacity as the Proposed Monitor to the Applicant dated March 22, 2010 and the Exhibits thereto, and on hearing the submissions of counsel for Nelson Financial, and counsel for A. John Page & Associates Inc., and on reading the consent of A. John Page & Associates Inc. to act as the Monitor,

## **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.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

10. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and



- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

11. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

13. THIS COURT ORDERS that until and including April 22, 2010, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

14. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS**

15. THIS COURT ORDERS that during the Stay Period, 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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Business or the Applicant, 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 Applicant, and that the Applicant shall be entitled to the continued use of its current premises, 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

17. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

19. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant

after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 herein.

21. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

#### **APPOINTMENT OF MONITOR**

22. THIS COURT ORDERS that A. John Page & Associates Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (d) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

24. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

26. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis.

29. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of

\$1,000,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 31 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

31. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000.00); and

Second – Directors' Charge (to the maximum amount of \$200,000.00).

32. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge and the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, save and except the Encumbrances in favour of Glen Mackie and Lisa Mackie and Foscarini Mackie Holdings Inc., to the extent they are determined to be valid and enforceable and properly perfected by counsel to the Monitor.

34. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

35. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

36. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

37. THIS COURT ORDERS that, subject to paragraph 38 of this Order, the Monitor shall (i) without delay, publish in the Globe and Mail newspaper a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the



estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

38. THIS COURT ORDERS that notwithstanding the provisions of paragraph 23(1)(a)(ii) of the CCAA, the Monitor shall not be obliged to publish and/or make publicly available the name or address of (i) any current and former Nelson Financial employees on account of employment-related liabilities, and (ii) any person holding securities issued by the Applicant which includes, but is not limited to, any person holding Notes and Pref Shares as defined in the Affidavit of Marc Boutet sworn March 22, 2010.

39. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

40. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.johnpage.com](http://www.johnpage.com).

#### **GENERAL**

41. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

42. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

43. 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 Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

44. THIS COURT ORDERS that each of the Applicant and the Monitor 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 Monitor 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.

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

46. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.

DePall, J.

LE 7104

MAR 23 2016

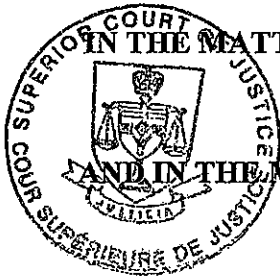
PER / PAR JV

<p style="text-align: center;">Court File No. 10-8630-00CL</p> <p style="text-align: center;"><b>IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36, AS AMENDED</b></p> <p style="text-align: center;"><b>AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.</b></p>	
<p style="text-align: right;"><b>Applicant</b></p>	
<p style="text-align: center;"><b>ONTARIO</b></p> <p style="text-align: center;"><b>SUPERIOR COURT OF JUSTICE</b></p> <p style="text-align: center;">(PROCEEDING COMMENCED AT TORONTO)</p>	
<p style="text-align: center;"><b>INITIAL ORDER</b></p>	
<p><b>GOWLING LAFLEUR HENDERSON LLP</b> Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5</p> <p style="text-align: right;"><b>Clifton P. Prophet / Frank Lamie</b> LSUC No.: 34345K / 54035S</p> <p style="text-align: right;">Telephone: (416) 862-3509 / (416) 862-3609 Facsimile: (416) 862-7661</p> <p style="text-align: right;"><b>SOLICITORS FOR THE APPLICANT</b></p>	

# EXHIBIT B

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE MR. ) FRIDAY, THE 4<sup>TH</sup>**  
**JUSTICE MORAWETZ ) DAY OF MARCH, 2011**



**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**ORDER  
(Plan Filing and Creditor Meeting)**

**THIS MOTION**, made by the Interim Operating Officer of the Applicant, Nelson Financial Group Ltd. (the "Applicant"), seeking the relief set out in the Notice of Motion dated February 11, 2010, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and the Motion Record and the First Report dated February 18, 2011 of Sherry Townsend in her capacity as Interim Operating Officer appointed by the Order of this Court made November 22, 2010 (the "IOO"), and on being advised of the consents of counsel for the IOO on behalf of the Applicant, the Representative Counsel and A. John Page & Associates Inc., in its capacity as the Court-appointed monitor of the Applicant (the "Monitor"), and on being advised that the Ontario Securities Commission is not opposed, no other persons appearing although duly served;

### **Service**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this Motion be and its is hereby abridged and that the service of the Notice of Motion and Motion Record herein as affected by the Applicant is hereby validated in all respects.

### **Plan of Compromise and Arrangement**

2. **THIS COURT ORDERS** that the Plan of Compromise and Arrangement in respect of Nelson Financial Group Ltd. dated February 11, 2011 as amended on February 24, 2011 and in the form attached as Schedule "A" hereto (the "Plan") is hereby accepted for filing and the Applicant shall seek acceptance and sanctioning of the Plan, subject to such amendments as may advised and permitted in accordance with the terms of the Plan, in the manner set forth herein.

3. **THIS COURT ORDERS** that, except where otherwise defined, capitalized terms in this Order have the meanings assigned to such in the Plan.

### **The Meeting of Creditors**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized to call, hold and conduct a meeting of the Eligible Voting Creditors for the purpose of considering, and if deemed advisable, passing, with or without variation, a resolution to approve the Plan in respect of the Applicant (the "Meeting").

5. **THIS COURT ORDERS** that the Meeting shall be held on Saturday, April 16, 2011 (the "Meeting Date") at 11:00 a.m. (Toronto time) at a publically accessible facility to be arranged by the Applicant in the Greater Toronto Area, Ontario and the Applicant is

hereby authorized, with the consent of the Chair (as defined in paragraph 11 of this Order), to adjourn the Meeting to such time and place as it deems necessary or desirable.

6. **THIS COURT ORDERS** that on or before March 10, 2011, the Applicant shall send or have sent by prepaid post to each Eligible Voting Creditor who has filed a proof of claim in accordance with the Claims Procedure Order to the address set forth on the proof of claim filed by the Eligible Voting Creditor or, in the case of any Creditor whose Claim is deemed to be a Proven Claim by the terms of the Claims Procedure Order, at the last known address for such creditor as shown on the records of the Applicant and, in addition, shall send by electronic transmission to those Eligible Voting Creditors that have provided the Applicant and/or the Representative Counsel with email addresses: (a) a Notice of Meeting in the form attached as Schedule "B" hereto; (b) a copy of this Order (without attachments); (c) a copy of the Plan; and (d) forms of proxy and voting letter substantially in the forms attached as Schedules to the Plan amended to reflect the time, date and place of the Meeting.

7. **THIS COURT ORDERS** that the Applicant shall prepare an information circular for the Meeting describing the background of the Applicant, the assets and undertaking of the Applicant, the business proposed to be conducted in the future by the Applicant, the terms and effect of the Plan, the qualifications of the proposed management including those persons recommended by the IOO for nomination for appointment under the Articles of Reorganization as directors of the Applicant and the forecast of the anticipated financial performance of the Applicant under its expected business plan (the "Information Circular") and shall provide a draft of the Information Circular to Staff of the Ontario Securities Commission and the Monitor on or before Wednesday, March 9, 2011.

8. **THIS COURT ORDERS** that on or before April 8, 2011, the Applicant shall send the Information Circular to all Creditors who had been sent the Notice of Meeting in the same manner set out in paragraph 6 of this Order. Before the Information Circular is sent to the Creditors who had been sent the Notice of Meeting, the Applicant shall obtain confirmation from Staff of the Ontario Securities Commission that it does not oppose the contents of the Information Circular as it relates to the requirement to provide prospectus level disclosure to the Creditors.

9. **THIS COURT ORDERS** that the Monitor shall prepare a report under the terms of section 23(1)(d.1) and section 23(1)(i) of the CCAA and containing an update on the restructuring process, the current state of the assets and business of the Applicant, the Monitor's views of the Plan and the recommendations of the Monitor as to the approval of the Plan including his opinion of any alternative outcomes available to the Creditors (the "Monitor's Report") and the Monitor's Report shall be filed with this Court, posted on the Monitor's website and sent by the Applicant to the Eligible Voting Creditors in the same manner set out in paragraph 6 of this Order by no later than ~~Friday~~ <sup>Wednesday</sup>, April 8, 2011.

10. **THIS COURT ORDERS** that the Applicant be and is hereby authorized to modify, amend or supplement the Plan by way of a supplementary or amended plan of compromise and arrangement at any time or from time to time prior to the Meeting or at the Meeting, in which case any such supplementary plan of compromise and arrangement shall, for all purposes, be and is deemed to be a part of and incorporated into the Plan, and any such modification, amendment or modification shall be forthwith copied and advised to the Monitor and to the Creditors. The Monitor shall post a copy of any amended Plan on its website as soon as practicable.



11. **THIS COURT ORDERS** that Greg S. Macleod, CA,CIRP shall be engaged by the Applicant to preside as the chairperson of the Meeting (the "Chair") and shall decide all matters relating to the rules and procedures at, and the conduct of, the Meeting.

12. **THIS COURT ORDERS** that, for the purposes of voting to approve the Plan, there shall be one class of Eligible Voting Creditors of the Applicant as set forth in the Plan.

13. **THIS COURT ORDERS** that Eligible Voting Creditors of the Applicant shall be entitled to attend and vote at the Meeting in respect of the Applicant's Eligible Voting Creditors in person, by proxy, or by voting letter and that any proxies or voting letters shall be delivered to the Chair at his business address to be included in the Notice of Meeting prior to the Meeting Date and to the Chair or the Scrutineer at the Meeting.

14. **THIS COURT ORDERS** that the Chair shall appoint and instruct Ronald S. Dale, C.A. of the firm of Bongard Dale Fried LLP to act as the Scrutineer of the Meeting to review the attendance of creditor, to examine and record all proxies and voting letters and to record the votes cast for or against any resolution duly placed before the meeting as determined by the Chair and to report on any such vote to the Chair.

15. **THIS COURT ORDERS** that the Chair and the Scrutineer be and is hereby authorized to accept and rely upon proxies and voting letters substantially in the form of such attached as Schedules "C" and "D" to the Plan or in such other form as the Chair determines to be functionally and substantively identical and acceptable.

16. **THIS COURT ORDERS** that the only persons entitled to attend the Meeting are (a) the Eligible Voting Creditors of the Applicant, including their proxy holders, family

members and the legal counsel for any such creditor; (b) the IOO; (c) the Representative Counsel and the Special Counsel; (d) the Monitor; (e) the Applicant; and the Chair and the Scrutineer, in each case together with their respective authorized representatives, officers, directors and legal counsel. The Monitor shall present the Monitor's Report at the Meeting and respond to all inquiries with respect thereto.

17. **THIS COURT ORDERS** that the quorum required at the Meeting shall be any one Eligible Voting Creditor of the Applicant present in person, by voting letter or by proxy.

18. **THIS COURT ORDERS** that the amount of the Proven Claim that each Eligible Voting Creditor is entitled to vote at the Meeting shall be as established in accordance with the Claims Procedure Order and the Monitor shall provide to the Applicant and to the Chair a final report listing all Proven Claims and any Disputed Claims, including the name of the Creditor and the Claim amount in each case, determined under the Claims Procedure Order on or before before March 9, 2011.

19. **THIS COURT ORDERS** that, subject to further Order of the Court, where the Claim of an Eligible Voting Creditor has not become a Proven Claim by the Meeting Date, that Eligible Voting Creditor's Claim, for the purpose of voting on the Plan only, shall be in the amount of 50% of the Claim set out in the proof of claim filed by the Eligible Voting Creditor pursuant to the Claims Procedure Order.

20. **THIS COURT ORDERS** that the Chair shall direct a vote with respect to a resolution to approve the Plan as amended and under consideration at the Meeting and containing such other related provisions as the Applicant may consider appropriate.

21. **THIS COURT ORDERS** that, following the vote to approve the Plan, the Scrutineer shall tally the vote and report to the Chair and the Chair shall determine whether the Plan under consideration has been accepted by the majority required by section 6 of the *Companies' Creditors Arrangement Act* (the "CCAA").

22. **THIS COURT ORDERS** that, if the Plan is accepted by the required majority of Eligible Voting Creditors, the Chair shall then call for nominations for persons to be designated as the directors of the Applicant in the Articles of Reorganization and the Chair shall then conduct an election by the Meeting to select five (5) persons to be so designated.

23. **THIS COURT ORDERS** that, if the Plan is accepted by the required majority of Eligible Voting Creditors, the Applicant shall bring a Motion seeking an Order sanctioning the Plan in accordance with section 6 of the CCAA and, if so sanctioned, directing the filing of the Articles of Reorganization pursuant to s.186 of the Ontario *Business Corporations Act* shall be returnable on Wednesday, April 20, 2011, or such earlier or later date as the Court may order.

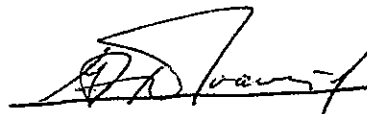
**Further and Other Orders**

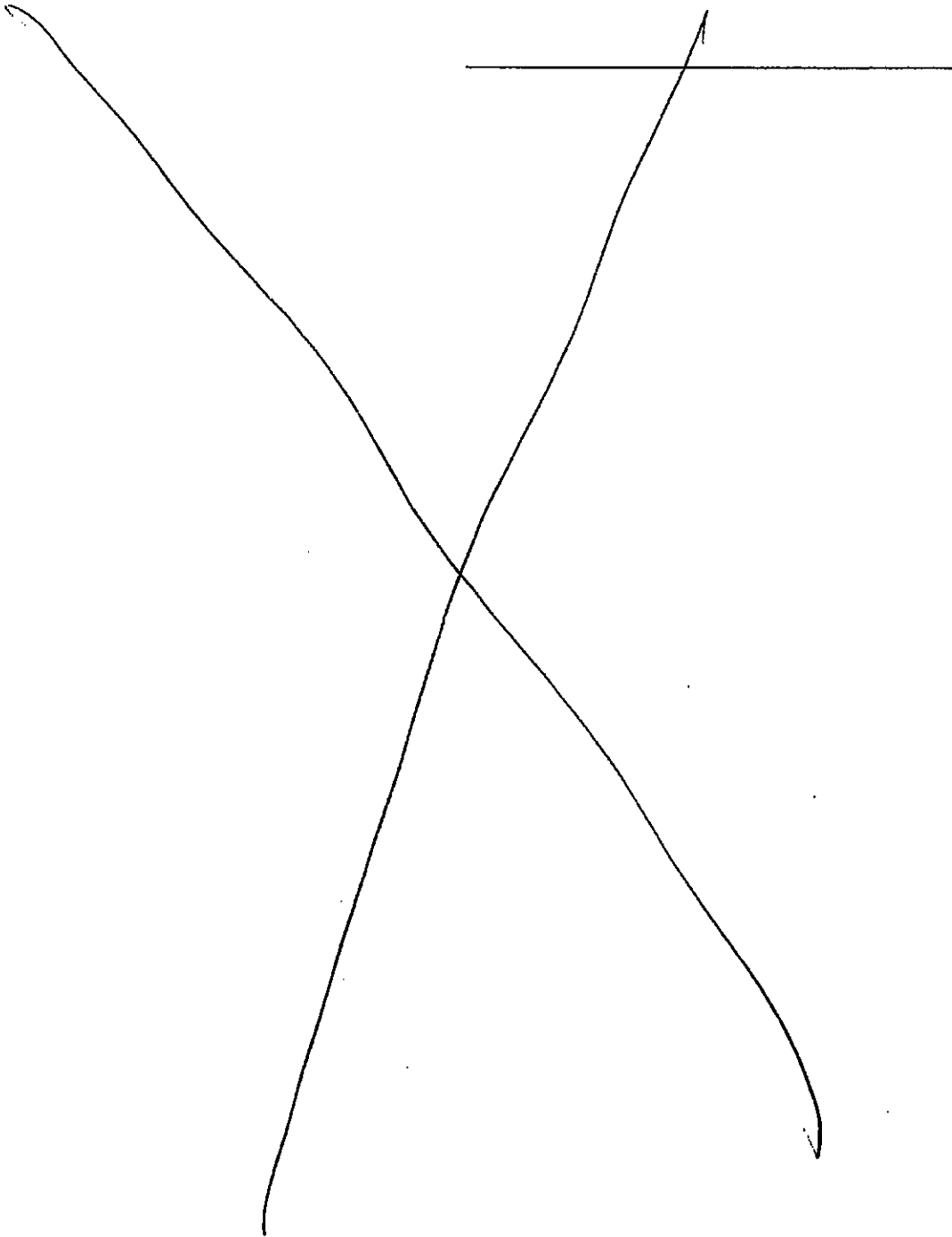
24. **THIS COURT ORDERS** that the Applicant, the IOO, the Representative Counsel or the Monitor may, from time to time, apply to this Court for directions in the discharge of their powers and duties under or in respect of the proper execution of this Order, including without limitation the holding of the Meeting or any adjournment thereof.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAR 04 2011

PER / PAR:





98

## **Schedule “A”**

### **Plan of Arrangement**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**PLAN OF COMPROMISE AND ARRANGEMENT OF  
NELSON FINANCIAL GROUP LTD.**

**FEBRUARY 11, 2011**

**(As Amended To February 24, 2011)**

## TABLE OF CONTENTS

	Page
<b>ARTICLE 1 DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
1.1 Definitions.....	1
1.2 Article and Section Reference .....	8
1.3 Extended Meanings.....	8
1.4 Interpretation Not Affected by Headings.....	8
1.5 Inclusive Meaning.....	8
1.6 Currency.....	9
1.7 Statutory References .....	9
1.8 Successors and Assigns.....	9
1.9 Governing Law .....	9
1.10 Severability of Plan Provisions.....	9
1.11 Timing Generally.....	9
1.12 Time of Payments and Other Actions.....	10
1.13 Schedules .....	10
<b>ARTICLE 2 PURPOSE AND EFFECT OF PLAN .....</b>	<b>10</b>
2.1 Purpose.....	10
2.2 Intended Effect of the Plan .....	10
2.3 Releases.....	11
<b>ARTICLE 3 CLASSIFICATION OF CLAIMS .....</b>	<b>11</b>
3.1 Classification of Claims.....	11
3.2 Affected Persons .....	11
3.3 Claims Excluded by the Plan .....	11
3.4 Defences to Excluded Claims .....	12
3.5 Crown Claims .....	12
<b>ARTICLE 4 TREATMENT OF CREDITORS .....</b>	<b>12</b>
4.1 Treatment of Convenience Class .....	12
4.2 Cash Exit Option.....	12
4.3 Treatment of Proven Claims.....	12
4.4 Excluded Claims.....	13

**TABLE OF CONTENTS**  
(continued)

	Page
<b>ARTICLE 5 CREDITORS' MEETING .....</b>	<b>13</b>
5.1 Creditors' Meeting and Conduct.....	13
5.2 Voting by Creditors.....	13
5.3 Acceptance of Plan .....	14
<b>ARTICLE 6 CONDITIONS OF PLAN IMPLEMENTATION .....</b>	<b>14</b>
6.1 Sanction Order .....	14
6.2 Conditions of Plan Implementation .....	16
6.3 Representative Counsel's Certificate.....	17
<b>ARTICLE 7 IMPLEMENTATION OF THE PLAN .....</b>	<b>17</b>
7.1 Articles of Reorganization .....	17
7.2 Effectuating Documents.....	17
7.3 Administrative Charge .....	17
7.4 Discharge of Monitor and Representative Counsel .....	18
<b>ARTICLE 8 PROVISIONS GOVERNING DISTRIBUTIONS.....</b>	<b>18</b>
8.1 Distributions on Proven Claims .....	18
8.2 Required Delivery to Receive Distribution.....	18
8.3 Distributions by the Applicant.....	18
8.4 Interest on Affected Claims .....	18
8.5 Distributions in respect of Transferred or Assigned Claims.....	18
8.6 Undeliverable and Unclaimed Distributions.....	19
8.7 Tax Matters .....	19
<b>ARTICLE 9 AMENDMENTS TO THE PLAN .....</b>	<b>20</b>
9.1 Amendments to Plan Prior to Approval.....	20
9.2 Amendments to Plan Following Approval .....	20
<b>ARTICLE 10 PLAN IMPLEMENTATION AND EFFECT OF THE PLAN .....</b>	<b>21</b>
10.1 Implementation .....	21
10.2 Effect of the Plan Generally.....	21
10.3 Compromise Effective for All Purposes .....	21
10.4 Contracts .....	21



# **TABLE OF CONTENTS** (continued)

	<b>Page</b>
10.5 Plan Releases .....	21
10.6 Stay of Proceedings.....	22
10.7 Exculpation .....	22
10.8 Waiver of Defaults.....	23
10.9 Consents and Releases .....	23
10.10 Deeming Provisions .....	23
<b>ARTICLE 11 POST IMPLEMENTATION MATTERS .....</b>	<b>23</b>
11.1 Lending, Financing and Disclosure .....	23
11.2 Derivative rights and the Litigation Trust.....	24
<b>ARTICLE 12 GENERAL PROVISIONS .....</b>	<b>24</b>
12.1 Different Capacities .....	24
12.2 Further Assurances.....	24
12.3 Set-Off.....	24
12.4 Paramountcy .....	24
12.5 Revocation, Withdrawal, or Non-Consummation .....	25
12.6 Preservation of Rights of Action.....	25
12.7 Notices .....	25
 <b>SCHEDULES</b>	
Form of Representative Counsel’s Certificate.....	A
Articles of Reorganization .....	B
Form of Capital Recovery Debenture .....	C
Form of Receipt, Release and Assignment.....	D
Declaration of Trust – Litigation Trust.....	E
Form of Proxy .....	F
Form of Voting Letter .....	G

**PLAN OF COMPROMISE AND ARRANGEMENT OF  
NELSON FINANCIAL GROUP LTD.**

**PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)**

**FEBRUARY 11, 2010**

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Plan (including the Schedules hereto), unless otherwise stated or the context should otherwise require, the capitalized terms and phrases used but not defined herein have the following meanings:

**"Administration Charge"** means the Administration Charge granted under the Initial Order;

**"Administration Charge Reserve"** has the meaning set out in Section 5.2(a) of this Plan;

**"Affected Claim"** means a Claim that is not an Excluded Claim. For greater certainty, "Affected Claims" include all Pre-Filing Claims, Equity Claims and Subsequent Claims;

**"Applicable Law"** means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, treaties, orders, judgments and decrees, and all official requests, directives, rules, guidelines, orders, policies, practices and other requirements of any Authorized Authority;

**"Applicant"** means Nelson Financial Group Ltd.;

**"Articles of Reorganization"** means the Articles of Reorganization to be filed under and subject to the terms and conditions of this Plan, cancelling all issued and outstanding shares of the Applicant, authorizing the new share capital of the Applicant, changing the name of the Applicant to Provider Capital Group Inc. and substantially in the form annexed as Schedule "B" to this Plan;

**"Authorized Authority"** means, in relation to any Person, transaction or event, any:

- (a) federal, provincial, territorial, state, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign;
- (b) agency, authority, commission, instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any Taxing Authority;
- (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; or

- (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, transaction or event;

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“**Business Day**” means, with respect to any action to be taken, any day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario, Canada;

“**Canadian Dollars**”, “**CDNS**” or “**\$**” means dollars denominated in lawful currency of Canada;

“**Capital Recovery Debenture**” means the Debenture to be issued by the Applicant in implementation of this Plan on the terms of and substantially in the form of that attached hereto as Schedule “C”;

“**Cash Exit Option**” means the option available to all Proven Creditors to elect to take a payment of 25 cents on the dollar in full satisfaction of their Proven Claim on and subject to the terms and conditions of Section 4.2 of this Plan;

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended;

“**CCAA Court**” means the Ontario Superior Court of Justice;

“**CCAA Proceedings**” means the proceedings commenced by the Applicant under the CCAA on January 29, 2010 in the CCAA Court, Court File No. CV-10-8630-00CL;

“**Charges**” has the meaning given to it in paragraph 32 of the Initial Order as amended by the Orders of June 15, 2010 appointing the Representative Counsel and Order of November 22, 2010 appointing the Interim Operating Officer;

“**Claim**” means any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, secured or unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the BIA if the Applicant were bankrupt, and for greater certainty, includes, without limitation (i) any Tax

Claim, (ii) any claims by any Person for obligations or indebtedness owing by the Applicant in respect of any Equity Claim, and (iii) any Subsequent Claim;

**"Claims Bar Date"** means 4:00 p.m. (Toronto Time) on September 15, 2010, or such other date as may be ordered by the CCAA Court;

**"Claims Procedure Order"** means the Order of the Honourable Madam Justice Pepall dated July 27, 2010, as may be amended, restated or varied by subsequent Orders of the CCAA Court;

**"Common Share"** means a common share to be issued upon the Implementation of this Plan as authorized pursuant to the Articles of Reorganization;

**"Convenience Class"** means the Creditors who are unsecured creditors in respect of the provision of goods or services to the Applicant with Proven Claims of \$1,000.00 or who elect to waive any amount of their Proven Claim in excess of \$1,000.00 and receive payment under Section 4.1 of this Plan;

**"Creditor"** means, subject to the Claims Procedure Order and Section 8.4 of this Plan, any holder of an Affected Claim, in that capacity;

**"Creditors' Meeting"** means the meeting of Proven Creditors called for the purposes of considering and voting in respect of this Plan, which has been set by the Creditors' Meeting Order and, subject to such Order, to take place at 10:00 a.m. (Toronto Time) on March 26, 2011 and any postponements, adjournments or amendments thereof;

**"Creditors' Meeting Order"** means the Order of the CCAA Court ordering and declaring, among other things, the procedures to be followed in connection with the Creditors' Meeting, as amended, restated or varied from time to time by any subsequent Order of the CCAA Court;

**"Crown"** means Her Majesty in right of Canada or a province of Canada;

**"Crown Claim"** means any Claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or

- (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

**“Derivative Right”** means any right or cause of action in law or in equity held by a Creditor in respect of or derived from a Proven Claim including without limitation any right of the Creditor to recover damages for fraudulent misrepresentation, negligent misrepresentation, conversion, breach of statutory duty or any other wrongful act, against any associate or affiliate of the Applicant or any employee or third party owing fiduciary or other duties at law to the Applicant or to any associate or affiliate of the Applicant, and any right to trace advances made by the Creditor and included in the Proven Claim to or investments made in the Applicant into amounts, property, rights or things held by, held in trust for or owing from any associate or affiliate of the Applicant to the Creditor, provided that in each case the relationship of or to the associate or affiliate of the Applicant and of the Creditor to any such shall be determined as at the Filing Date;

**“Disallowed Claim”** means a Disputed Claim (or any portion thereof) which has been finally disallowed in accordance with the Claims Procedure Order;

**“Disputed Claim”** means all or that portion of an Affected Claim proof of which was filed with the Monitor in compliance with the Claims Procedure Order and that has not been allowed or accepted as proven by the Monitor, which is the subject of a Notice of Dispute or Notice of Revision or Disallowance, and which has not been resolved by the Claims Officer, by agreement or by further Order of the CCAA Court, as applicable. For greater certainty, once a Disputed Claim is finally determined, it shall become either a Proven Claim or a Disallowed Claim, as the case may be;

**“Disputed Claims Reserve”** shall have the meaning set out in Section 6.2;

**“Eligible Voting Creditor”** means a Creditor having a Proven Claim or a Disputed Claim but shall not include any Creditor in respect of an Equity Claim;

**“Equity Claim”** has the meaning set out in the CCAA and includes any Claim as a Creditor in respect of any shares of the Debtor issued and outstanding on or before the Filing Date and subject to the Order of the Honourable Madame Justice Pepall dated November 16, 2010;

**“Excluded Claim”** has the meaning set forth in Section 3.3 of this Plan;

**“Filing Date”** means March 23, 2010, being the date of the Initial Order;

**“Final Distribution Date”** means a Business Day to be chosen by the Monitor, in consultation with the Applicant, on which final distributions are to be made on account of Proven Claims and which shall be a date that occurs after all Disputed Claims have been finally determined in accordance with the Claims Procedure Order;

**“GST”** means goods and services tax under the *Excise Tax Act* (Canada), R.S.C., 1985, c. E-15, as amended to the date of this Plan;

**“Initial Distribution Date”** means a Business Day to be chosen by the Applicant, on which initial distributions of Common Shares and of New Special Shares are to be made on account of Proven Claims;

**“Initial Order”** means the Order granted by the CCAA Court in the CCAA Proceedings on March 23, 2010, as amended, restated, varied or extended from time to time by subsequent Orders of the CCAA Court;

**“Interim Operating Officer”** means the Interim Operating Officer, Ms. Sherry Townsend, appointed by the CCAA Court pursuant to the Order of the Honourable Madame Justice Pepall made on November 22, 2010 and any successor Interim Operating Officer hereafter appointed by the CCAA Court;

**“ITA”** means the *Income Tax Act* (Canada), R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), as amended to the date of this Plan;

**“Lien”** means any mortgage, charge, pledge, assignment by way of security, lien, hypothec, security interest, deemed trust or other encumbrance granted or arising pursuant to a written agreement or statute or otherwise created by law;

**“Litigation Trust”** means the trust established under the terms of the Declaration of Trust annexed to this Plan as Schedule “D” providing for the enforcement the Derivative Rights for the benefit of all Participating Creditors upon such Declaration of Trust being executed by the Applicant upon the implementation of the Plan;

**“Monitor”** means A. John Page & Associates Inc., in its capacity as the monitor of the Applicant in the CCAA Proceedings, and not in its corporate or personal capacity;

**“Monitor’s Website”** means the website maintained by the Monitor located at the following address: <http://www.ajohnpage.com/html/files.html>;

**“New Special Share”** means the New Special Share to be issued by the Applicant upon the implementation of this Plan and having the rights as authorized under the terms of the Articles of Reorganization;

**“Notice of Dispute”** means a written notice, substantially in the form attached as Schedule “4” to the Claims Procedure Order, delivered to the Monitor by a Creditor disputing either a Notice of Claim or Notice of Revision or Disallowance issued by the Monitor, with reasons for its dispute;

**“Notice of Revision or Disallowance”** means a written notice, substantially in the form attached as Schedule “5” to the Claims Procedure Order, delivered to a Creditor advising that the Monitor has revised or disallowed all or part of such Creditor’s Filed Claim (as defined in the Claims Procedure Order) for the purposes of voting and/or distribution and providing the reasons for the revision or disallowance;

**“Order”** means any order of the CCAA Court made in the CCAA Proceedings;

**“Participating Creditor”** means a Creditor who shall have elected to take benefits under the Plan and who shall have executed and delivered to the Applicant the Receipt, Release and Assignment required pursuant to Section 8.2 of this Plan;

**“Permitted Liens”** means any Lien arising or granted in relation to any of the Applicant’s property, assets and undertaking as a result of a borrowing transaction authorized by the by-laws of the Applicant, approved in accordance with the requirements of the Capital Recovery Debentures then outstanding, approved by special resolution of the voting shareholders of the Applicant or otherwise arising in the ordinary course of the operation of the business of the Applicant by operation of any law of general application;

**“Person”** shall be broadly interpreted and includes, without limitation, any individual, corporation, limited or unlimited liability company, general or limited partnership, association, firm, trust, unincorporated organization, joint venture, venture capital fund, administrator or committee in respect of a registered pension plan, unincorporated association or organization, syndicate, committee, the government of a country, province or political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality or department of such government or political subdivision, or any other entity, howsoever constituted, and the trustees, executors, administrators, or other legal representatives of an individual;

**“Plan”** means this Plan of Compromise and Arrangement, as it may be amended, restated, or supplemented from time to time in accordance with the provisions hereof;

**“Plan Implementation Date”** means a Business Day, as determined by the Applicant, once all conditions precedent to the implementation of this Plan set out in Section 6.2 have been satisfied or waived;

**“Plan Termination Date”** means that date being 90 days after the date of the granting of the Sanction Order;

**“Pre-Filing Claim”** means any Claim other than (i) an Excluded Claim, and (ii) a Subsequent Claim;

**“Proof of Assignment”** means a notice of transfer or assignment of an Affected Claim executed by a Creditor and the transferee or assignee, together with satisfactory evidence of such transfer or assignment as may be reasonably required by the Applicant, in accordance with Paragraph 11 of the Claims Procedure Order;

**“Proof of Claim”** means a proof of claim, in substantially the form attached as Schedule 3 to the Claims Procedure Order, as submitted to the Monitor by a Creditor in accordance with the Claims Procedure Order;

**“Proven Claim”** means the Claim of a Creditor, as finally determined in accordance with the Claims Procedure Order or any other order of the CCAA Court but for greater certainty shall not include any Equity Claim;

**“Proven Creditor”** means a Creditor holding a Proven Claim;

**“Receipt, Release and Assignment”** means the receipt, release and assignment required to be executed and delivered by all Creditors receiving distributions under this Plan in accordance with Section 8.2 of this Plan and in the form of Schedule “D”;

**“Representative Counsel”** means Douglas Turner, Q.C. in his capacity as Representative Counsel for the Noteholders of the Applicant pursuant to his appointment by the CCAA Court

under the Order of the Honorable Madame Justice Pepall made on June 15, 2010 as amended by the Order made on November 22, 2010 and as such may be amended by further orders of the Court and such shall also include Richard B. Jones in his capacity as Special Counsel to the Representative Counsel as appointed pursuant to the Court Order of June 15, 2010 and such shall include any successor or replacement performing the same or similar functions as may be appointed by Order of the CCAA Court from time to time;

**“Representative Counsel’s Certificate”** has the meaning attributed to it in section 6.3 hereof;

**“Sanction Date”** means the date that the Sanction Order is granted;

**“Sanction Order”** means an Order sanctioning this Plan, ordering the filing of the Articles of Reorganization and giving all necessary directions regarding the implementation of this Plan, which shall include the provisions set forth in Sections 6.1, 8.1 and 8.5 of this Plan;

**“Secured Claim”** means any Claim or portion thereof that is secured by a validly attached and existing Lien on the property of the Applicant that was duly and properly registered or perfected in accordance with Applicable Law at the Filing Date or in accordance with the Initial Order, but only to the extent of the realizable value of the property of the Applicant subject to such security, still in the possession of the Applicant, having regard to, among other things, the priority of such security;

**“Subsequent Claim”** means any right or claim of any Person, that may be asserted in whole or in part against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, present or future, arising after the Filing Date (but before the Plan is sanctioned by the Court) by reason of any obligation incurred by the Applicant before the Filing Date, including any indebtedness, liability, or obligation resulting from the termination of employment, or the disclaimer or resiliation by the Applicant in the CCAA Proceedings of an agreement that existed before the Filing Date, and any interest that may accrue thereon for which there is an obligation to pay, and costs payable at law or in equity in respect thereof, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature and that is provable under the BIA, but a “Subsequent Claim” shall not include an “Excluded Claim”;

**“Tax” or “Taxes”** means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

**“Tax Claim”** means any Claim against the Applicant for any Taxes in respect of any taxation year or period ending on or prior to the Filing Date, and in any case where a taxation year or period commences on or prior to the Filing Date, for any Taxes in respect of or attributable to the portion of the taxation period commencing prior to the Filing Date and up to and including the



Filing Date. For greater certainty, a "Tax Claim" shall include, without limitation, any and all Claims of any Taxing Authority in respect of transfer pricing adjustments and any Canadian or non-resident Tax related thereto; and

**"Taxing Authorities"** means Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of each and every province or territory of Canada and any political subdivision thereof, and any Canadian or foreign governmental authority exercising taxing powers in administering and/or collecting Taxes.

## **1.2 Article and Section Reference**

The terms **"this Plan"**, **"hereof"**, **"hereunder"**, **"herein"**, and similar expressions refer to this Plan, and not to any particular article, section, subsection, paragraph or clause of this Plan and include any variations, amendments, modifications or supplements hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph shall, unless otherwise stated, refer to an article, section, subsection, paragraph or clause of this Plan.

## **1.3 Extended Meanings**

In this Plan, where the context so requires, any word importing the singular number shall include the plural and vice versa, and any word or words importing gender shall include all genders.

## **1.4 Interpretation Not Affected by Headings**

The division of this Plan into articles, sections, subsections, paragraphs and clauses and the insertion of a table of contents and headings are for convenience of reference and shall not affect the construction or interpretation of this Plan.

## **1.5 Inclusive Meaning**

As used in this Plan, the words **"include"**, **"includes"**, **"including"** or similar words of inclusion means, in any case, those words as modified by the words **"without limitation"** and **"including without limitation"**; so that references to included matters shall be regarded as illustrative rather than exhaustive.

## **1.6 Currency**

Unless otherwise stated herein, all references to currency in this Plan are to Canadian Dollars. For the purposes of voting or distribution, Affected Claims shall be denominated in Canadian Dollars and all cash distributions under this Plan shall be paid in Canadian Dollars. Any Affected Claim in a currency other than Canadian Dollars will be deemed to have been converted to Canadian Dollars at the spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian Dollars as at noon on the Filing Date, which rate for greater certainty for the conversion of United States Dollars to Canadian Dollars was 1.0650.

## **1.7 Statutory References**

Any reference in this Plan to a statute includes all regulations made thereunder, all amendments to such statute or regulations in force from time to time to the date of this Plan and any statute or regulation that supplements or supersedes such statute or regulation to the date of this Plan.

## **1.8 Successors and Assigns**

The rights, benefits and obligations of any Person named or referenced in this Plan shall be binding on and shall inure to the benefit of any heir, administrator, executor, legal personal representative, successor or assign, as the case may be, or a trustee, receiver, interim receiver, receiver and manager, liquidator or other Person acting on behalf of such Person, as permitted hereunder.

## **1.9 Governing Law**

This Plan, shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. Any dispute or issue in connection with, or related to the interpretation, application or effect of this Plan and all proceedings taken in connection with this Plan and its revisions shall be subject to the exclusive jurisdiction of the CCAA Court.

## **1.10 Severability of Plan Provisions**

If any provision of this Plan is illegal, invalid or unenforceable, or becomes illegal, invalid or unenforceable on or following the Plan Implementation Date in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Plan, or the legality, validity or enforceability of that provision in any other jurisdiction.

## **1.11 Timing Generally**

Unless otherwise specified, all references to time herein, and in any document issued pursuant hereto, shall mean local time in Toronto, Ontario, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day.

## **1.12 Time of Payments and Other Actions**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the payment to the next succeeding Business Day if the last day of the period is not a Business Day. Wherever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day.

### **1.13 Schedules**

The following are the Schedules to this Plan, which are incorporated by reference into this Plan and form an integral part hereof:

Schedule "A" -	Form of Representative Counsel's Certificate
Schedule "B" -	Articles of Reorganization
Schedule "C" -	Form of Capital Recovery Debenture
Schedule "D" -	Form of Receipt, Release and Assignment
Schedule "E" -	Declaration of Trust – Litigation Trust
Schedule "F" -	Form of Proxy
Schedule "G" -	Form of Voting Letter

## **ARTICLE 2 PURPOSE AND EFFECT OF PLAN**

### **2.1 Purpose**

The purpose of this Plan is to provide for a compromise and arrangement of all Affected Claims against the Applicant in order to enable the business of the Applicant to continue as a going concern, in the expectation that a greater benefit will be derived by the Applicant and its stakeholders from the continued operation of the business of the Applicant and the distributions under the Plan than would result from the sale or forced liquidation of its assets.

### **2.2 Intended Effect of the Plan**

The effect of the Plan is that each Creditor holding a Proven Claim will receive a Capital Recovery Debenture in the principal amount of \$25.00, New Special Share with a stated capital and redemption value of \$25.00 and one Common Share with a stated capital of \$1.00 in full satisfaction of each \$100.00 of such Proven Claim. The value of the consideration being provided to Creditors under the Plan is determined by the Applicant to be the stated capital of the Shares and is less than the amount of the Proven Claims. Subject to a capped pool of funds, Proven Claims may elect to receive payment of 25% of the amount of the Proven Claim as an alternative and in full satisfaction of all rights and Claims against the Applicant and under this Plan. Convenience Class Proven Claims and Excluded Claims will be paid in full.

All Equity Claims will be discharged by the Plan and receive nothing under it. Under the Articles of Reorganization, all of the common shares, Series A Preferred Shares and Series B Preferred Shares previously issued by the Applicant and outstanding on to the Filing Date will be cancelled and of no further force or effect as against the Applicant. After the Implementation of the Plan, all of the Proven Claims of Affected Creditors will be satisfied in full by the issuance of Common Shares and New Special Shares, such shares issued in Implementation of the Plan will

be the only share capital of the Applicant then issued and outstanding, and all other Claims will be discharged and released.

### **2.3 Releases**

The Plan provides for the release of Claims that Affected Creditors may have against the former director of the Applicant, Marc Boutet, that arose before the Filing Date and that relate to the obligations of the Applicant where he is by law liable solely in his capacity as a director for the payment of such obligations. This limited release does not affect or include any claims that relate to the contractual rights of any Creditor or that are based on allegations of misrepresentations made by Mr. Boutet or by any person other than the Applicant for which he is responsible as a matter of law to Creditors or any wrongful or oppressive conduct that he or persons for whom he is responsible may have committed. Otherwise, the Plan does not affect any claims that any of the Affected Creditors, including any persons holding Equity Claims, has or may have had as of the Filing Date against Mr. Boutet or any person or corporation other than the Applicant.

## **ARTICLE 3 CLASSIFICATION OF CLAIMS**

### **3.1 Classification of Claims**

For the purposes of considering and voting on this Plan and receiving a distribution hereunder, all Proven Claims shall be grouped into a single class and all Equity Claims shall be in a separate class. The Equity Claims shall not be entitled to vote on this Plan or to receive any distribution hereunder.

### **3.2 Affected Persons**

On the implementation of the Plan, this Plan shall be binding upon the Applicant, the Creditors, and their respective heirs, executors, administrators, legal representatives, successors and assigns in accordance with its terms, but shall not affect Excluded Claims.

### **3.3 Claims Excluded by the Plan**

This Plan does not compromise, release or otherwise affect the following Claims (collectively, "**Excluded Claims**"), and, subject to Section 3.4 hereof, such Excluded Claims shall be addressed by the Applicant in the ordinary course:

- (a) Claims for goods or services provided to the Applicant on or after the Filing Date;
- (b) Claims of the nature secured by the Administration Charge;
- (c) Crown Claims; and
- (d) Secured Claims, to the extent that they are Proven Claims.

### **3.4 Defences to Excluded Claims**

Nothing in this Plan shall affect the Applicant's rights and defences, both legal and equitable, with respect to any Excluded Claims or any rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Excluded Claims. Nothing herein shall constitute a waiver of any right of the Applicant to dispute the entitlement to or quantum of an Excluded Claim.

### **3.5 Crown Claims**

All Crown Claims in respect of all amounts that were outstanding at the Filing Date or related to the period ending on the Filing Date shall be paid in full to the Crown within six months of the Sanction Order, as required by section 6(3) of the CCAA.

## **ARTICLE 4 TREATMENT OF CREDITORS**

### **4.1 Treatment of Convenience Class**

Proven Claims in the Convenience Class shall be paid by the Applicant upon the Implementation Date the lesser of the amount of the Proven Claim or a maximum of \$1,000.00 in full satisfaction of the Proven Claim.

### **4.2 Cash Exit Option**

During the period from the passing of the resolution of Creditors approving the Plan until ten (10) days after the Sanction Date, any Proven Creditor shall have the option to elect in writing to take a payment of 25 cents on the dollar of such Creditor's Proven Claim in full satisfaction of all but not less than all of such Claim and of all rights and entitlements under this Plan. The Applicant shall satisfy Cash Exit Options only to the extent of a maximum of \$10,000,000 of Proven Claims. If more than \$10,000,000 of Proven Claims elect to take the Cash Exit Option, such electing Claims shall only be satisfied *pro rata* and the remaining balance of each Proven Claim shall continue as a Proven Claim under this Plan. Creditors electing and receiving a Cash Exit Option distribution under the Plan shall not participate thereafter in any benefits under this Plan in respect of the Proven Claim so satisfied including, without limitation, any rights under or future distributions from the Litigation Trust.

### **4.3 Treatment of Proven Claims**

In full and final satisfaction of its Proven Claims, the Applicant shall on the Implementation Date issue and deliver to each Proven Creditor:

- (a) a Capital Recovery Debenture in the principal amount of \$25.00 for each \$100.00 of the amount of the Proven Claim of the Proven Creditor, provided that a Proven Creditor shall have the right to elect in writing to receive on the Plan Implementation Date a New Special Share in the place of each \$25.00 of principal amount of Capital Recovery Debenture that it would otherwise have been entitled to receive;

- (b) One (1) New Special Share from treasury with a redemption value and stated capital of \$25.00 for each \$100.00 of the amount of the Proven Claim of the Proven Creditor, rounded to the nearest integral number of hundreds of dollars, and such share shall be issued as a fully paid and non-assessible share and otherwise on and subject to the terms and conditions of the Articles of Reorganization; and
- (c) One (1) Common Share from treasury for each \$100.00 of the amount of the Proven Claim of the Proven Creditor, rounded to the nearest integral number of hundreds of dollars, issued with a stated capital of \$1.00 and as a fully paid and non-assessible share and otherwise on and subject to the terms and conditions of the Articles of Reorganization.

#### **4.4 Excluded Claims**

All Excluded Claims shall be paid by the Applicant in accordance with and subject to the terms of Sections 3.3, 3.4 and 3.5 hereof.

### **ARTICLE 5 CREDITORS' MEETING**

#### **5.1 Creditors' Meeting and Conduct**

The Creditors' Meeting to consider and vote on this Plan shall be held and conducted by the Representative Counsel as chairman and in accordance with the terms of the Creditors' Meeting Order.

#### **5.2 Voting by Creditors**

Each Eligible Voting Creditor shall be entitled to cast a single vote on this Plan at the Creditors' Meeting which vote shall be tabulated in the aggregate dollar amount of such Creditor's Proven Claim and Disputed Claim, if any. The Chair of the Creditors' Meeting shall keep a separate record and tabulation of the votes cast by each Eligible Voting Creditor and of any votes cast in respect of Disputed Claims. The Chair shall report the result of the vote and the tabulation of votes by numbers of Creditors voting to approve or reject the Plan and by the amount of Proven Claims and Disputed Claims voting to approve or reject the Plan to the Creditors' Meeting and to the CCAA Court. If the vote on the approval or rejection of the Plan by Eligible Voting Creditors is decided by the votes in respect of the Disputed Claims, the Applicant shall seek an order for an expedited determination of any material Disputed Claims and an appropriate deferral of the application for the Sanction Order and any other applicable dates in the Plan. The fact that a Disputed Claim is allowed for voting purposes shall not preclude the Applicant and the Representative Counsel from disputing the Disputed Claim for distribution purposes.

#### **5.3 Acceptance of Plan**

If the Plan is approved by the required majorities of Eligible Voting Creditors entitled to vote at the Creditors' Meeting, being a majority in number of Eligible Voting Creditors present and voting either in person or by proxy, representing two thirds in value of the aggregate Proven Claims of such Eligible Voting Creditors present, then this Plan shall be approved and shall be

deemed to have been agreed to, accepted and approved by the Creditors and shall be binding upon all Affected Creditors, if the Sanction Order is granted.

## **ARTICLE 6**

### **CONDITIONS OF PLAN IMPLEMENTATION**

#### **6.1 Sanction Order**

If this Plan is approved by the required majorities of Creditors entitled to vote at the Creditors' Meeting, the Applicant shall bring a motion before the CCAA Court seeking the Sanction Order as soon as reasonably practicable. The Sanction Order requested shall provide, among other things, that:

- (a) (i) this Plan has been approved by the required majorities of Creditors entitled to vote at the Creditors' Meeting in conformity with the CCAA; (ii) the Applicant acted in good faith and has complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the CCAA Court is satisfied that the Applicant has not done nor purported to do anything that is not authorized by the CCAA; and (iv) this Plan and the transactions contemplated by it are fair and reasonable;
- (b) this Plan (including the compromises, arrangements, discharges and releases set out herein) shall be sanctioned and approved pursuant to Section 6 of the CCAA and will be binding and effective as herein set out on the Applicant, all Creditors and all other Persons as provided for in this Plan or in the Sanction Order;
- (c) subject to the performance by the Applicant of its respective obligations under this Plan, and except to the extent expressly contemplated by this Plan or the Sanction Order, all obligations or agreements to which the Applicant is a party, other than agreements which were terminated or repudiated by the Applicant prior to the deadline specified in the Creditors' Meeting Order and in accordance with the Initial Order, will be and shall remain in full force and effect as at the Plan Implementation Date, unamended except as they may have been amended by agreement of the parties subsequent to the Filing Date in accordance with the Plan, and no Person who is a party to any such obligations or agreements shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:
  - (i) any defaults or events of default arising as a result of the insolvency of the Applicant prior to the Plan Implementation Date;
  - (ii) any change of control of the Applicant arising from implementation of the Plan;
  - (iii) the fact that the Applicant has sought or obtained relief under the CCAA or that this Plan has been implemented by the Applicant;

- (iv) the effect on the Applicant of the completion of any of the transactions contemplated by this Plan;
  - (v) any compromises or arrangements effected pursuant to this Plan; or
  - (vi) any other event(s) which occurred on or prior to the Plan Implementation Date which would have entitled any Person to enforce rights and remedies, subject to any express provisions to the contrary in any agreements entered into with the Applicant after the Filing Date. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicant in respect of any Excluded Claim;
- (d) the Articles of Reorganization, including the cancellation of all previously outstanding shares in the capital stock of the Applicant, shall be approved and ordered to be filed in accordance with section 186 of the *Business Corporations Act*;
  - (e) the Court declares that the issued and outstanding shares in the capital stock of the Applicant as of the Filing date have no economic value and the holders of such shares have no economic interest in the Applicant or under the Plan;
  - (f) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgment, or other remedy or recovery with respect to any Claim released, discharged or terminated pursuant to this Plan shall be permanently enjoined;
  - (g) the releases effected by this Plan shall be approved, and declared to be binding and effective as of the Plan Implementation Date upon all Creditors and all other Persons affected by this Plan and shall enure to the benefit of all such Persons; and
  - (h) all Charges established by the Initial Order or any other Order of the CCAA Court, shall be terminated, released and discharged effective on the Plan Implementation Date, save and except insofar as the Administration Charge has attached to the Administration Charge Reserve established by the Monitor, the Representative Counsel, the Interim Operating Officer and the Applicant pursuant to Section 1.1 herein.

## 6.2 Conditions of Plan Implementation

The implementation of this Plan shall be conditional upon the fulfillment or waiver, where applicable, of the following conditions on or before the Plan Implementation Date:

- (a) this Plan shall have been approved by the required majorities of Creditors entitled to vote at the Creditors' Meeting;
- (b) the CCAA Court shall have approved the Plan and ordered the filing of Articles of Reorganization in relation to the Applicant under the *Business Corporations Act* (Ontario), and in particular s.186 thereof, providing for the issuance of the



New Special Shares and Common Shares in accordance with the Plan, the cancellation of all Existing Preferred Shares and common shares;

- (c) the Sanction Order shall have been granted by the CCAA Court in a form acceptable to the Applicant and shall be in full force and effect and not reversed, stayed, varied, modified or amended;
- (d) all applicable appeal periods in respect of the Sanction Order shall have expired and in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court;
- (e) all approvals, orders, determinations or consents required pursuant to Applicable Law (including approvals under the *Investment Canada Act* and the *Competition Act*, if applicable,) shall have been obtained on terms and conditions satisfactory to the Applicant, acting reasonably, and shall remain in full force and effect on the Plan Implementation Date;
- (f) all necessary corporate action and proceedings of the Applicant shall have been taken to approve this Plan and to enable the Applicant to execute, deliver and perform its obligations under the Capital Recovery Debentures, the shares, agreements, documents and other instructions to be executed and delivered by it pursuant to this Plan;
- (g) all agreements, resolutions, documents and other instruments, which are necessary to be executed and delivered by any director or officer of the Applicant in order to implement this Plan and perform their obligations under this Plan shall have been executed and delivered; and
- (h) the Representative Counsel shall file the Representative Counsel's Certificate with the CCAA Court and deliver a copy thereof to the Applicant.

Except for the conditions set out in 6.2(a), (b), (c) and (h), each of the conditions set out in this Section 6.2 may be waived in whole or in part by the Applicant by written notice to the Representative Counsel and to the Monitor. If a condition set out above has not been satisfied or waived in accordance with this Section 6.2 on or before the date of the Plan Termination Date, this Plan shall automatically terminate, in which case the Applicant shall not be under any further obligation to implement this Plan.

### **6.3 Representative Counsel's Certificate**

Upon written notice from the Applicant or the IOO (or respective counsel on their behalf) to the Representative Counsel that the conditions set out in Section 6.2, other than condition 6.2(h), have been satisfied or waived, the Representative Counsel shall, as soon as possible following receipt of such written notice, deliver to the Applicant and file with the CCAA Court a certificate which states that all conditions precedent set out in Section 6.2 have been satisfied or waived and in substantially the form of the Representative Counsel's Certificate.

## **ARTICLE 7**

### **IMPLEMENTATION OF THE PLAN**

#### **7.1 Articles of Reorganization**

Upon the granting of the Sanction Order, the Applicant shall file the Articles of Reorganization in accordance with the terms of the Sanction Order and the Interim Operating Officer shall be authorized to take all steps necessary on behalf of the Applicant to do so. On the Plan Implementation Date, the Applicant shall issue the New Special Shares and Common Shares to the Proven Creditors in accordance with its obligations under the Plan. As Disputed Claims are determined, any resulting additional Proven Claims shall be forthwith arranged by the issuance of further New Special Shares and Common Shares in accordance with the Plan. When all Disputed Claims have been determined and satisfied in accordance with the Plan, the Applicant shall give notice to the Monitor and to the Representative Counsel of the Final Distribution Date.

#### **7.2 Effectuating Documents**

The Interim Operating Officer or such officers as shall be elected or appointed and designated by the board of directors of the Applicant put in place under the Articles of Reorganization shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures and other agreements or documents, and take such other actions, as may be necessary or appropriate, to effectuate and further evidence the terms and conditions of this Plan. The secretary or assistant secretary of the Applicant shall be authorized to certify or attest to any of the foregoing actions documents or things.

#### **7.3 Administration Charge**

On the Plan Implementation Date, (i) all outstanding, invoiced obligations, liabilities, fees and disbursements of the type secured by the Administration Charge shall be fully paid by the Applicant, and (ii) a reserve for any uninvoiced amounts of the type secured by the Administration Charge as of the Plan Implementation Date (together with an estimated amount for future accruals) shall be fully funded by the Applicant ("Administration Charge Reserve"). The amount of the Administration Charge Reserve shall be agreed to by the Monitor, the Representative Counsel, the Interim Operating Officer and the Applicant, acting reasonably, and the Administration Charge Reserve shall be administered by the Representative Counsel. Subject to Section 6.1(h), upon payment of the amounts secured by the Administration Charge, or the funding of the Administration Charge Reserve, the Administration Charge shall be and be deemed to be discharged from the assets of the Applicant and attach to the Administration Charge Reserve, if applicable. On the date of the Final Distribution, to the extent that the Administration Charge Reserve exceeds the actual costs paid or payable from the Administration Charge Reserve, the excess amount shall be returned to the Applicant.

#### **7.4 Discharge of Monitor and Representative Counsel**

When all distributions in accordance with the Plan have been made by the Applicant, the Monitor and the Representative Counsel shall be discharged.

## **ARTICLE 8**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **8.1 Distributions on Proven Claims**

On the Initial Distribution Date, Proven Creditors will be entitled to receive distributions in accordance with Section 4.1, 4.2 and 4.3 hereof, provided, however, that with respect to a Creditor that is the holder of both a Proven Claim and a Disputed Claim, the Applicant may elect, in its sole discretion, to withhold distribution on such Creditor's Proven Claim on the Initial Distribution Date and make a single distribution to such Proven Creditor on the Final Distribution Date.

#### **8.2 Required Delivery to Receive Distribution**

To be entitled to receive a distribution under the Plan, a Proven Creditor must execute and deliver against delivery of its distribution a Receipt, Release and Assignment containing a receipt for the distribution, a release of all Claims and an assignment to the Applicant, in trust, of all of its Derivative Rights. The Receipt, Release and Assignment shall be substantially in the form of the Receipt, Release and Assignment annexed as Schedule "D" to this Plan.

#### **8.3 Distributions by the Applicant**

All distributions to be made under this Plan to a Proven Creditor shall be sent by regular mail to such Proven Creditor to the address provided by the Creditor on its Receipt, Release and Assignment delivered to the Applicant under the requirement of Section 8.2 of the Plan or such other address as the Proven Creditor may from time to time notify the Applicant in accordance with Section 12.7 of this Plan.

#### **8.4 Interest on Affected Claims**

No interest or penalties shall accrue or be paid on an Affected Claim from and after or in respect of the period following the Filing Date and no holder of an Affected Claim will be entitled to any interest in respect of such Affected Claim accruing on or after or in respect of the period following the Filing Date. All interest accruing on any Affected Claim after or in respect of the period following the Filing Date shall be forever extinguished and released under this Plan.

#### **8.5 Distributions in respect of Transferred or Assigned Claims**

The Applicant and the Monitor shall not be obligated to deliver any distributions under this Plan to any transferee or assignee of an Affected Claim unless a Proof of Assignment has been delivered to the Monitor and the Applicant no later than five Business Days prior to the Initial Distribution Date or Final Distribution Date, as applicable to such assigned Affected Claim.

#### **8.6 Undeliverable and Unclaimed Distributions**

If any delivery or distribution to be made pursuant to Sections 4.2, 4.3 and 8.1 of this Plan is not made because the Proven Creditor refuses or neglects to execute and return to the Applicant an executed Receipt, Release and Assignment required under Section 8.2 within 180 days following the Sanction Date or the delivery or distribution is returned as undeliverable and remains unclaimed by the Proven Creditor for 90 days thereafter, the Claim of the Proven Creditor with

respect to such undelivered or unclaimed distribution shall be discharged and forever barred, notwithstanding any federal or provincial laws to the contrary, and any Common Shares and New Special Shares issued the Proven Creditor or allocable to the undeliverable or unclaimed distribution, shall be cancelled by the Applicant. Nothing contained in this Plan shall require the Applicant to attempt to locate any holder of any undeliverable or unclaimed distributions.

## **8.7 Tax Matters**

- (a) **Allocation of Distributions.** All distributions made pursuant to this Plan in respect of a Proven Claim shall be applied first in consideration of the outstanding principal amount of such Proven Claim, and secondly in consideration of the accrued and unpaid interest and penalties, if any, which form part of such Proven Claim. Notwithstanding any other provision of this Plan, including subsection (b) below, each Proven Creditor that is to receive a distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Authorized Authority on account of such distribution.

The Applicant has determined that the aggregate fair value of its assets and undertaking on a going-concern basis is such that the attributed fair market value of the distributions made by it under this Plan amounts to not more than fifty one percent (51%) of the aggregate of the Proven Claims. The Applicant will reflect that value in its books of account and will make its income tax and other filings on that basis.

- (b) **Withholding Rights.** All distributions hereunder shall be subject to any withholding and reporting requirements imposed by any Applicable Law or any Taxing Authority and the Applicant shall deduct, withhold and remit from any distributions hereunder payable to a Proven Creditor or to any Person on behalf of any Proven Creditor, such amounts as the Applicant determines that it is required to deduct and withhold with respect to such payment under the ITA or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the Proven Creditor in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate Taxing Authority. The Applicant shall have no liability with respect to any claim arising from any failure to make withholdings from any distribution on account of a Proven Claim.

## **ARTICLE 9 AMENDMENTS TO THE PLAN**

### **9.1 Amendments to Plan Prior to Approval**

The Applicant reserves the right to file any variation or modification of, or amendment or supplement to, this Plan by way of a supplementary or amended and restated plan or plans of compromise or arrangement or both filed with the CCAA Court at any time or from time to time prior to the commencement of the Creditors' Meeting, provided that the Applicant obtains the

prior consent of the Monitor to any such variation, modification, amendment or supplement. Any such supplementary or amended and restated plan or plans of compromise or arrangement or both shall, for all purposes, be deemed to be a part of and incorporated into this Plan. Any such variation, modification, amendment or supplement shall be posted on the Monitor's Website on the day on which it is filed with the CCAA Court and notice will be provided to the CCAA Proceedings service list. Creditors are advised to check the Monitor's Website regularly. Creditors who wish to receive written notice of any variation, modification, amendment or supplement to the Plan should contact the Monitor in the manner set out in Section 12.7 of this Plan. Creditors in attendance at the Creditors' Meeting will also be advised of any amendment made to the Plan.

In addition, the Applicant may propose a variation, modification of, or amendment or supplement to this Plan during the Creditors' Meeting, provided that (a) the Applicant obtains the prior consent of the Monitor to any such variation, modification, amendment or supplement, and (b) notice of such variation, modification, amendment or supplement is given to all Eligible Voting Creditors present in person or by proxy at the Creditors' Meeting prior to the vote being taken, in which case any such variation, modification, amendment or supplement shall, for all purposes, be deemed to be part of the Plan. Any variation, amendment, modification or supplement at the Creditors' Meeting will be promptly posted on the Monitor's Website and filed with the CCAA Court as soon as practicable following the Creditors' Meeting.

## **9.2 Amendments to Plan Following Approval**

After the Creditors' Meeting (and both prior to and subsequent to the obtaining of the Sanction Order), the Applicant may at any time and from time to time vary, amend, modify or supplement this Plan without the need for obtaining an Order of the CCAA Court or providing notice to the Creditors, if the Applicant and the Representative Counsel, acting reasonably and in good faith, determine that such variation, amendment, modification or supplement is of a technical or administrative nature that would not be materially prejudicial to the interests of any of the Creditors under this Plan and is necessary in order to give effect to the substance of this Plan or the Sanction Order. The Representative Counsel shall post a notice of such variance, amendment, modification or supplement to the Plan on the Noteholders' Website, together with the varied, amended, modified or supplemented language.

# **ARTICLE 10 PLAN IMPLEMENTATION AND EFFECT OF THE PLAN**

## **10.1 Implementation**

On the Plan Implementation Date, subject to the satisfaction or waiver of the conditions contained in Section 6.2 of this Plan, the Applicant shall file the Articles of Reorganization in accordance with the terms of the Sanction Order and shall then proceed to issue the Capital Recovery Debentures, the New Special Shares and the Common Shares in accordance with the terms of this Plan in order to implement it. Upon the filing of the Articles of Reorganization and the authorization and issuance of the Shares, this Plan shall be binding upon all Creditors in accordance with the terms of this Plan and the Sanction Order.

## **10.2 Effect of the Plan Generally**

The payment, compromise or satisfaction of any Affected Claims under this Plan, if sanctioned and approved by the CCAA Court, shall be binding upon each Creditor, his, her or its heirs, executors, administrators, legal personal representatives, successors and assigns, as the case may be, for all purposes and this Plan will constitute: (a) full, final and absolute settlement of all rights of any Creditor against the Applicant in respect of the Affected Claims; and (b) an absolute release and discharge of all indebtedness, liabilities and obligations of or in respect of the Affected Claims against the Applicant, including any interest or costs accruing thereon whether before or after the Filing Date.

## **10.3 Compromise Effective for All Purposes**

No Person who has a Claim as a guarantor, surety, indemnitor or similar covenant in respect of any Claim which is compromised under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim which is compromised under this Plan shall be entitled to any greater rights than the Creditor whose Claim was compromised under this Plan. Accordingly, the payment, compromise or other satisfaction of any Claim under this Plan, if sanctioned and approved by the CCAA Court, shall be binding upon such Creditor, its heirs, executors, administrators, successors and assigns for all purposes and, to such extent, shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, surety, indemnitor, director, joint covenantor, principal or otherwise.

## **10.4 Contracts**

As of the Plan Implementation Date, each contract to which the Applicant is a party as at the Filing Date, as it may have been modified, amended or varied after the Filing Date remains in full force and effect as at the Plan Implementation Date (other than in respect of Claims that are affected by this Plan) unless such contract: (a) is the subject of a notice of repudiation or disclaimer delivered prior to the deadline specified in the Creditors' Meeting Order, or (b) has expired or terminated pursuant to its terms.

## **10.5 Plan Releases**

On the Plan Implementation Date:

- (a) The Applicant shall be forever released from all Affected Claims;
- (b) In consideration of the performance by the Applicant of the Plan, each Creditor of the Applicant shall be deemed to have released, subject to section 5.1(2) of the CCAA, the former director of the Applicant, Marc Boutet, and his heirs, successors and assigns from any claims that relate to the obligations of the Applicant where he is by law liable solely by reason of and in his capacity as a director for the payment of such obligations;

provided, however, that nothing in this Section 10.5 shall release (i) any Person from any liability for fraud, fraudulent misrepresentation, gross negligence, wilful misconduct, or criminal conduct, (ii) any Excluded Claim, or (iii) any Person's right to enforce the Applicant's obligations under this Plan.

## **10.6 Stay of Proceedings**

Any and all proceedings, including, without limitation, suits, actions, extra-judicial proceedings, enforcement processes or other remedies commenced, taken or proceeded with or that may be commenced, taken or proceeded with by any Person having a Claim, and by any employees, shareholders, customers, suppliers, contractors, lenders, equipment lessors, licensors, licensees, sub-licensors, sub-licensees, governments of any nation, province, state or municipality or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in Canada or elsewhere and any corporation or other entity owned or controlled by or which is the agent of any of the foregoing, or by any other Person, firm, corporation or entity wherever situate or domiciled, against or in respect of the Applicant or in respect of any property, assets, rights, concessions and undertaking wherever located, whether held by the Applicant, in whole or in part, directly or indirectly, as principal, agent or nominee, beneficially or otherwise, whether pursuant to the BIA or otherwise, shall be permanently stayed as reflected in the Sanction Order.

## **10.7 Exculpation**

None of (i) the Applicant; (ii) the Monitor; (iii) the Representative Counsel; (iv) the Special Counsel to the Representative Counsel; (v) the Interim Operating Officer; and (vi) any of their respective directors, officers, employees, agents, professional advisors (including legal counsel) or successors and assigns, shall have or incur any liability to any holder of a Claim or Equity Claim in the Applicant, or other party in interest, or any of their respective members, officers, directors, employees, professional advisors (including legal counsel) or agents or any of their successors and assigns, for any act or omission in connection with, related to, or arising out of the CCAA Proceedings, the pursuit of the approval, implementation or administration of the Plan, or the property to be distributed under the Plan, including the negotiation and solicitation of support for the approval of the Plan, except for wilful misconduct or gross negligence, and, in all respects, all such persons and each other their respective members, officers, directors, employees, professional advisors (including legal counsel) or agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

## **10.8 Waiver of Defaults**

From and after the Plan Implementation Date, and subject to any express provisions to the contrary in any amending agreement entered into with the Applicant after the Filing Date, all Persons shall be deemed to have waived any and all defaults of the Applicant then existing or previously committed by the Applicant or caused by the Applicant or any of the provisions hereof or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in every contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease, personal property lease or other agreement, written or oral, any amendments or supplements thereto, existing between such Person and the Applicant. Any and all notices of default, acceleration of payments and demands for payments under any instrument, or other notices, including without limitation, any notices of intention to proceed to enforce security, arising from any of such aforesaid defaults shall be deemed to have been rescinded and withdrawn. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicant in respect of any Excluded Claim.

## **10.9 Consents and Releases**

From and after the Plan Implementation Date, all Persons with a Claim shall be deemed to have consented and to have agreed to all of the provisions of this Plan as an entirety. In particular, each Creditor shall be deemed to have granted, and executed and delivered to the Applicant all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety.

## **10.10 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

# **ARTICLE 11 POST IMPLEMENTATION MATTERS**

## **11.1 Lending, Financing and Disclosure**

From and after the Plan Implementation Date and for as long as any of the Capital Recovery Debentures are outstanding, and without limiting the representations, warranties or covenants contained in the Capital Recovery Debentures, the Applicant covenants to and in favour of the Proven Creditors as follows:

- (a) the Applicant shall prepare or cause to be prepared annual audited financial statements, which shall be distributed to all Creditors who receive New Special Shares and Common Shares under this Plan;
- (b) the Applicant shall prepare or cause to be prepared unaudited interim financial statements, on a quarterly basis, which shall be distributed by email or posting on the website of the Applicant to all Creditors who receive New Special Shares and Common Shares upon Implementation; and
- (c) the Applicant shall not grant, create, assume or suffer to exist any Lien affecting any of its property, assets or undertaking, except for a Permitted Lien.

## **11.2 Derivative Rights and the Litigation Trust**

From and after the Plan Implementation Date, the Trustees from time to time under the Litigation Trust shall have the exclusive authority and capacity to assert and enforce the Derivative Rights or any of them assigned to the Litigation Trust by each Participating Creditors.

# **ARTICLE 12 GENERAL PROVISIONS**

## **12.1 Different Capacities**

Creditors whose Claims are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, each such Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity shall not affect the Creditor in any other capacity, unless expressly agreed by the Creditor in writing or unless the Claims overlap or are otherwise duplicative.



## **12.2 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan may be deemed to occur without any additional act or formality other than as may be expressly set out herein, each of the Persons affected hereto shall make, do, and execute or cause to be made, done or executed all such further acts, deeds, agreements, assignments, transfers, conveyances, discharges, assurances, instruments, documents, elections, consents or filings as may be reasonably required by the Applicant in order to implement this Plan.

## **12.3 Set-Off**

The law of set-off applies to all Claims made against the Applicant and to all actions instituted by it for the recovery of debts due to the Applicant in the same manner and to the same extent as if the Applicant was plaintiff or defendant, as the case may be.

## **12.4 Paramountcy**

Without limiting any other provision hereof, from and after the Plan Implementation Date, in the event of any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed, or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease, personal property lease or other agreement, written or oral and any and all amendments or supplements thereto existing between the Applicant and any other Persons affected by this Plan, the terms, conditions and provisions of this Plan shall govern and shall take precedence and priority.

To the extent the Plan is inconsistent with the report of the Monitor filed in connection with the Plan, the provisions of the Plan shall govern and shall take precedence and priority.

## **12.5 Revocation, Withdrawal, or Non-Consummation**

The Applicant reserves the right to revoke or withdraw this Plan at any time prior to the Plan Implementation Date and to file subsequent plans of compromises or arrangement (or to file no subsequent plan), in each case with the consent of the Monitor. If the Applicant revokes or withdraws this Plan, or if the Sanction Order is not issued, (a) this Plan shall be null and void in all respects, (b) any Affected Claim, any settlement or compromise embodied in this Plan (including the fixing or limiting of any Affected Claim to an amount certain), assumption or termination, repudiation of contracts or leases effected by this Plan, any document or agreement executed pursuant to this Plan shall be deemed null and void, and (c) nothing contained in this Plan, and no action taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Affected Claims by or against the Applicant or any Person; (ii) prejudice in any manner the rights of the Applicant or any Person in any further proceedings involving the Applicant, or (iii) constitute an admission of any sort by the Applicant or any Person.

## **12.6 Preservation of Rights of Action**

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan,

following the Plan Implementation Date, the Applicant will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Applicant may hold against any Person or entity without further approval of the CCAA Court.

## 12.7 Notices

Any notice or communication to be delivered hereunder will be in writing and will reference this Plan and may, subject to as hereinafter provided, be made or given by personal delivery or by facsimile or email transmission addressed to the respective parties as follows:

- (a) if to the Applicant, the Interim Operating Officer or the Representative Counsel:

Nelson Financial Group Ltd.  
900 Dillingham Road  
Pickering, Ontario L1W 1Z6

Attention: Ms. Sherry Townsend  
Interim Operating Officer

Fax: (905) 839-1761  
E-mail: [stownsend@providercapitalgroup.com](mailto:stownsend@providercapitalgroup.com)

with a copy to:

Richard B. Jones  
Barrister & Solicitor  
100 Yonge Street, Suite 1201  
Toronto, Ontario  
M5C 2W1

Fax: (416) 863-0092  
Email: [richard.jones@sympatico.ca](mailto:richard.jones@sympatico.ca)

and a copy to:

Douglas Turner Q.C.  
Barrister & Solicitor  
63 Albert Street, P.O. Box 760  
Uxbridge, Ontario L9P 1E5

Fax: (905) 852-6197  
E-mail: [doug@pdturner.com](mailto:doug@pdturner.com)

- (b) if to a Creditor:

To the last known address (including fax number or email address) for such Creditor set out in the books and records of the Applicant or, if a Creditor filed a Proof of Claim, the address specified in the Proof of Claim filed by such Creditor or such other address as the Creditor may from time to time notify the Applicant and the Monitor in accordance with this Section.

(c) if to the Monitor:

A. John Page & Associates Inc.  
100 Richmond Street West, Suite 447  
Toronto, Ontario M5H 3K6

Attention: John Page  
Fax: (416) 364-4894  
E-mail: [ajpage@ajohnpage.com](mailto:ajpage@ajohnpage.com)

with a copy to:

Thornton Grout Finnigan LLP  
Barristers & Solicitors  
Suite 3200, Canadian Pacific Tower  
100 Wellington Street West, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario M5K 1K7

Attention: James H. Grout  
Fax: (416) 304-1313  
E-mail: [jgrout@tgf.ca](mailto:jgrout@tgf.ca)

or to such other address as any party may from time to time notify the others in accordance with this Section. All such notices and communications which are delivered will be deemed to have been received on the date of delivery. All such notices and communications which are faxed or emailed will be deemed to be received on the date faxed or emailed if sent before 5:00 p.m. (Toronto Time) on a Business Day and otherwise will be deemed to be received on the Business Day next following the day upon which such fax or email was sent.

**EXECUTED** at Pickering, Ontario as of this     day of March, 2011

**NELSON FINANCIAL GROUP LTD.**

Per: \_\_\_\_\_  
Sherry Townsend  
Interim Operating Officer

**SCHEDULE "A"**

**FORM OF REPRESENTATIVE COUNSEL'S CERTIFICATE**

Court File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**REPRESENTATIVE COUNSEL'S CERTIFICATE**

**RECITALS**

- A. Pursuant to the order of this Honourable Court dated March 23, 2010 (the "Initial Order") Nelson Financial Group Ltd. ("the Applicant") filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended.
- B. The Applicant has filed a Plan of Compromise and Arrangement under the CCAA dated February , 2011 (the "Plan"), which Plan has been approved by the Creditors and the Court; and
- C. Unless otherwise indicated herein, initially capitalized terms used herein have the meaning set out in the Plan.

**THE REPRESENTATIVE COUNSEL HEREBY CERTIFIES** that it has been advised by the Applicant and the Interim Operating Officer in accordance with Section 6.3 of the Plan that the conditions precedent set out in Section 6.2 of the Plan, other than the delivery of this certificate, have been satisfied or waived in accordance with the Plan on , 2010 and that accordingly, the Plan Implementation Date is , 2011.

**DATED** at Toronto, Ontario, this day of , 2011.

---

**DOUGLAS TURNER, Q.C.** in his capacity as the Representative Counsel for the Noteholders of Nelson Financial Group Ltd. and not in his personal capacity

**SCHEDULE "B"**  
**ARTICLES OF REORGANIZATION**

Text for Articles of Reorganization

Page 1

1. NELSON FINANCIAL GROUP LTD.
2. PROVIDER CAPITAL GROUP INC.
3. 1990 Sept 4
4. 2011 March \*
- 5.

1. The issued and outstanding Class A common shares, Class B common shares, Series A Preferred Shares and Series B Preferred Shares are cancelled and of no further force or effect.

[Page 1A through 1D]

2. The classes and shares that the Corporation is authorized to issue from and after the date of filing of these Articles of Reorganization shall be as follows:
  - a) The Corporation is authorized to issue an unlimited number of Common Shares and 1,000,000 New Special Shares;
  - b) The rights, privileges, restrictions and conditions attaching to the Common Shares shall include the following: Payment of Dividends: The holders of the Common Shares shall be entitled to receive dividends if, as and when declared by the Board of Directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends in such amounts and payable in such manner as the Board of Directors may from time to time determine. Subject to the rights of the holders of any other class of shares of the Corporation entitled to receive dividends in priority to or rateably with the holders of the Common Shares, the Board of Directors may in their sole discretion declare dividends on the Common Shares to the exclusion of any other class of shares in the Corporation.
    - (i) Participation upon Liquidation, Dissolution or Winding-Up: In the event of the Liquidation, Dissolution or Winding-Up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of the Common Shares shall, subject to the rights of the holders of any other class of shares of the Corporation entitled to receive the asset for the Corporation upon such a distribution in priority to or rateably with the holders of the Common Shares, be entitled to participate rateably in any distribution of the assets of the Corporation.

- (ii) Voting Rights: The holders of the Common Shares shall be entitled to receive notice of and to attend all annual and special meetings of the shareholders of the Corporation and to one vote in respect of each Common Share held at all such meetings.
- c) The rights, privileges, restrictions and conditions attaching to the New Special Shares are as follows:
  - (i) The New Special Shares authorized to be issued shall consist of 1,000,000 shares.
  - (ii) Except as required by the *Business Corporations Act*, the holders of the New Special Shares shall not be entitled to receive notice of or to attend any meeting of shareholders of the Corporation except for a meeting at which the holders of the New Special Shares are entitled to vote separately as a class.
  - (iii) The holders of the New Special Shares, in priority to the holders of the Common Shares and all other shares ranking junior to the New Special Shares, shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the board of directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends, fixed preferential cumulative cash dividends at the rate of Six (6%) percent per annum on the Redemption Price (as hereinafter defined) per share. The holders of the New Special Shares shall not be entitled to any dividends other than or in excess of the preferential cumulative cash dividends hereinbefore provided.
  - (iv) Except with the consent in writing of the holders of all of the New Special Shares outstanding, no dividend shall at any time be declared and paid on or set apart for payment on the Common Shares or on any other shares ranking junior to the New Special Shares in any financial year unless and until the approved preferential cumulative cash dividends on all of the New Special Shares outstanding have been declared and paid or set apart for payment.
  - (v) Redemption
    - (a) Subject to the *Business Corporations Act*, the Corporation may redeem or purchase the New Special Shares in accordance with the following terms and conditions. In these share provisions, "Redemption Price" shall be equal to Twenty Five (\$25.00) dollars per share. The "Redemption Amount" for each New Special Share shall be the Redemption Price, together with all cumulative dividends which shall have accrued thereon but shall be unpaid or undeclared and which shall be treated as accruing to the date of such redemption.
    - (b) The Corporation may redeem all or from time to time any of the outstanding New Special Shares on payment to the holders thereof

of the Redemption Amount. If less than all of the outstanding shares are to be redeemed, the shares to be redeemed shall be selected by lot or, disregarding fractions, *pro rata* to the number of shares registered in the name of each shareholder or in such other manner as the directors may determine with the written consent of all of the holders of the New Special Shares.

- (c) At least thirty (30) days before any redemption date, the Corporation shall give written notice of redemption to each holder of the shares to be redeemed. The notice shall set out the Redemption Amount, the redemption date, the place of redemption and the number of shares to be redeemed. Accidental failure to give such notice shall not affect the validity of any redemption.
- (d) On or after the redemption date, the Corporation shall cause the Redemption Amount to be paid over to the order of the holders of the shares to be redeemed, on surrender of the certificates representing such shares at the redemption place. Such shares shall thereupon be redeemed. From and after the redemption date, the holders of the shares called for redemption shall cease to be entitled to any rights of shareholders in respect thereof except to receive the Redemption Amount, unless it is not paid or deposited in accordance with (in which case their rights shall remain unimpaired).
- (e) The Corporation may at any time deposit the Redemption Amount of any New Special Shares called for redemption with any Canadian chartered bank or trust company or solicitors of the Corporation named in the Notice of Redemption or in a subsequent notice to the holders of the shares in respect of which the deposit is made, in a special account for the holders of such shares. On the date of deposit, or redemption date if later, the shares in respect of which such deposit is made shall be redeemed and from and after such date the rights of their holders shall be limited to severally receiving out of the monies so deposited, without interest, the Redemption Amount of their redeemed shares upon surrender to such bank, trust company or solicitors, as the case may be, of the certificates representing such shares. Any interest earned on any such deposit belongs to the Corporation.

In the event of the liquidation, dissolution or winding up of the Corporation or any distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of the New Special Shares shall be entitled to receive the Redemption Amount of such shares and shall not share further in any final distribution.



[Description of office to right of signature line] – “Interim Operating Officer”

[Down a few lines – to be added to form]:

“Attachment: Order of Superior Court of Justice in Court File No. 10-8630-00CL made on April  
\*, 2011”

[Add Page Numbers 1A etc.]

[Last Page (execution page) is numbered page 2]

**SCHEDULE "C"**  
**FORM OF CAPITAL RECOVERY DEBENTURE**

**PROVIDER CAPITAL GROUP INC.**

**CAPITAL RECOVERY DEBENTURE**

\$ ,000.00

April , 2011

**ARTICLE 1 - PROMISE TO PAY**

- 1.1 **Promise to Pay.** **Provider Capital Group Inc.** (the "**Corporation**") for value received hereby acknowledges itself indebted to and promises to pay to or to the order of \_\_\_\_\_ (the "**Creditor**") and any subsequent Holder of this Debenture at Pickering, Ontario, the principal amount of [25% of *Proven Claim Amount*] (\$[•]) (the "**Principal Amount**"), in lawful money of Canada, without interest, until payment in full of all amounts owing to the Holder hereunder in accordance with its terms.

This Debenture is one of a Series of Capital Recovery Debentures issued by the Corporation in the aggregate Principal Amount of not more than Ten Million (\$10,000,000.00) Dollars as part of the Implementation of the Plan of Arrangement of the Corporation. All of the Debentures in the Series shall rank in all respects *pari passu*. The rights to enforce any default under the Debenture is subject to the prior consent, waiver and amendment of and by certain majorities of the Holders of Debentures in the Series as provided in Article 7.

This Debenture is issued on and shall be subject to the following terms and conditions:

**ARTICLE 2 - INTERPRETATION**

2.1 **Definitions.** In this Debenture, capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan. Unless there is something in the subject matter or context inconsistent therewith:

- (a) "**Applicable Law**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations, and all applicable official directives, orders, judgments and decrees of Governmental Bodies;
- (b) "**Business Day**" means any day, other than Saturday, Sunday or any statutory holiday in Toronto, Ontario;
- (c) "**Corporation**" means the party described as such in Article 1 hereof, its successors and permitted assigns;

- (d) **"Creditor"** means the party described as such in Article 1 hereof, its successors and permitted assigns;
- (e) **"Debenture"** refers to this debenture and any other debenture issued and outstanding in the Series and not to any particular Article, Section, subsection, paragraph, clause, subdivision or other portion thereof, and includes any and every instrument supplemental or ancillary hereto or in implementation hereof;
- (f) **"Default"** means any event which with the giving of notice or passage of time or both would constitute an Event of Default;
- (g) **"Encumbrance"** means any mortgage, lien, pledge, assignment, charge, security interest, lease intended as security, title retention agreement, rights reserved in any Governmental Body, registered lease of real property, hypothec, levy, execution, seizure, attachment, garnishment or other similar encumbrance and includes any contractual restriction which, if contravened, may give rise to an encumbrance;
- (h) **"Event of Default"** has the meaning attributed to such term in Section 6.1;
- (i) **"Generally Accepted Accounting Principles"** means generally accepted accounting principles in Canada from time to time;
- (j) **"Governmental Body"** means any government, parliament, legislature, or any regulatory authority, agency, commission or board of any government, parliament or legislature, or any court or (without limitation to the foregoing) any other laws, regulation or rule-making entity (including, without limitation, any central bank, fiscal or monetary authority or authority regulating banks), having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator);
- (k) **"Holder"** means the Creditor and any successor, transferee or lawful assignee of all but not less than all of the rights of the Holder under this Debenture provided that no such shall be recognized as such by the Corporation until an irrevocable transfer of this Debenture or other evidence satisfactory to the Corporation shall have been delivered to the Corporation and the Corporation shall have confirmed the recording of the Holder as such;
- (l) **"Intellectual Property"** means all computer software programs, trade marks, trade mark registrations and pending trade mark applications, patents and pending patent applications and copyrights and all other intellectual property of the Corporation;
- (m) **"Permitted Encumbrance"** means an Encumbrance granted by the Corporation in the course of securing funded debt from an arms length financial institution and used in the expansion of the business of the Corporation when the Corporation is in good standing under all of the Debentures and was profitable in its last completed fiscal year;
- (n) **"Person"** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated

association, trust, trustee, executor, administrator or other legal personal representative, government or governmental authority or entity, however designated or constituted;

- (o) **"Plan"** means the Plan of Arrangement of the Corporation dated February 11, 2011 as amended in accordance with its terms and as approved and sanctioned by the Order of the Superior Court of Justice made on April , 2011;
- (p) **"Principal Amount"** has the meaning ascribed to such term in Article 1 hereof;
- (q) **"Series"** means the series of all of the Capital Recovery Debentures issued by the Corporation upon the implementation of the Plan and in the aggregate Principal Amounts of not more than \$10,000,000.00;
- (r) **"Subsidiaries"** means any corporation which is or hereafter becomes directly or indirectly controlled by the Corporation and for the purposes of this definition, the Corporation shall be deemed to control a corporation if the Corporation beneficially owns, directly or indirectly, shares to which are attached more than 50% of the voting rights ordinarily exercisable at meetings of shareholders of such corporation, and the Corporation shall be deemed to own beneficially shares beneficially owned by a corporation controlled by it, and so indefinitely, and **"Subsidiary"** means any one of them; and
- (s) **"Taxes"** means all taxes of any kind or nature whatsoever including, without limitation, income taxes, sales or goods and services taxes, levies, stamp taxes, royalties, duties, and all fees, deductions, compulsory loans and withholdings imposed, levied, collected, withheld or assessed as of the date hereof or at any time in the future, by any Governmental Body of or within Canada or any other jurisdiction whatsoever having power to tax, together with penalties, fines, additions to tax and interest thereon.

**2.2 Number, Gender, Etc.** Words importing the singular include the plural and vice versa and words importing gender include all genders.

**2.3 Interpretation Not Affected By Headings, Etc.** The division of this Debenture into articles, sections, subsections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Debenture.

**2.4 Monetary References.** Any reference in this Debenture to "Dollars", "dollars" or the sign "\$" shall be deemed to be a reference to lawful money of Canada.

**2.5 Day Not a Business Day.** In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the first Business Day thereafter.

**2.6 Invalidity of Provisions.** Each of the provisions contained in this Debenture is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof or thereof.

### ARTICLE 3 - REPAYMENT

3.1 **Principal Repayment.** The Principal Amount shall be paid by the Corporation to the Holder in equal monthly installments of 0.5% of the Principal Amount to be paid on the first day of each month from May 1, 2011 to April 1, 2021 and the then remaining balance of the Principal Amount, if any, shall be payable in full on May 1, 2021.

3.2 **Optional Prepayment.** Subject to the terms and conditions of this Debenture, the Corporation shall at any time when not in Default hereunder, have the privilege of prepaying, on any Business Day, all or any part of the outstanding Principal Amount without bonus or penalty, provided that:

- (a) any such prepayment shall not result in any breach by the Corporation of or any Default by the Corporation under the terms and conditions of this Debenture; and
- (b) any such prepayment shall only be made on at least two Business Days' prior notice to the Holder, which notice, once given, shall be irrevocable and binding upon the Corporation.

### ARTICLE 4 – CONVERSION RIGHTS

4.1 The Holder shall have the right at any time or times to convert all or any part of the then outstanding balance of the Principal Amount into New Special Shares of the Corporation at the rate of \$25.00 of principal for each share. The Corporation shall issue such shares on the first day of the month following receipt by it of such notice. Cumulative dividend rights on New Special Shares shall cumulate from such date of issue.

4.2 The Holder may exercise such conversion right by giving notice in writing in the form annexed as Schedule "A" to this Debenture and surrendering this Debenture for endorsement to reduce the Principal Amount if only part is converted or to cancel the Debenture if the entire balance is converted.

4.3 Upon and after the conversion of any part of this Debenture, the monthly payment of principal required to be made by the Corporation under this Debenture shall be adjusted in the proportion that the remaining balance of the Principal Amount bears to the balance of the Principal Amount immediately before the conversion *mutatis mutandis*.

### ARTICLE 5 - REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **Representations and Warranties.** The Corporation represents and warrants to the Holder as follows and acknowledges that the Holder is relying on such representations and warranties without independent inquiry thereon in entering into this Debenture:

- (a) **Corporate Organization.** The Corporation is duly incorporated and organized and is validly subsisting and in good standing under the laws of the Province of Ontario. The

Corporation is duly qualified as a foreign or extra-provincial corporation, as the case may be, and is in good standing, in all jurisdictions outside of its jurisdiction of incorporation where it carries on business;

- (b) **Corporate Power.** The Corporation has full corporate right, power and authority to enter into and perform its obligations under this Debenture and has full corporate right, power and authority to own and operate its assets and to carry on its business as now conducted and as presently proposed to be conducted;
- (c) **Conflict with Other Instruments.** The execution, delivery and performance by the Corporation of this Debenture and any other agreement contemplated or referred to herein do not and will not conflict with or result in a breach of any term or provision of any of:
  - (i) the articles, by-laws or other constating documents of the Corporation;
  - (ii) any Applicable Law applicable to the Corporation or any of its assets;
  - (iii) the Plan or any other material agreement to which the Corporation is a party or which is binding on or affecting the Corporation; or
  - (iv) the Sanction Order or any writ, order, judgment, injunction or determination which is binding on or affects the Corporation or any of its assets;nor will the execution, delivery and performance by the Corporation of this Debenture and any other agreement contemplated or referred to herein result in, require or permit:
  - (i) the imposition of any Encumbrance in or with respect to any of its assets; or
  - (ii) the acceleration of the maturity of any debt obligation of the Corporation under any contractual provision binding on or affecting the Corporation or any of its assets.
- (d) **Authorization.** The execution and delivery of this Debenture by the Corporation and the performance of its obligations hereunder have been duly authorized by all necessary corporation action on the part of the Corporation, its directors and shareholders.
- (e) **No Consents Required.** No consent, approval, order, authorization, licence, exemption or designation of or by any Governmental Body is required in connection with the execution, delivery and performance by the Corporation of this Debenture; and no registration, qualification, designation, declaration or filing with any Governmental Body is or was necessary to enable or empower the Corporation to enter into and to perform its obligations under this Debenture except such as have been made or obtained and are in full force and effect as of the date hereof;

- (f) ***Due Execution and Enforceability.*** This Debenture has been duly executed and delivered by the Corporation and constitutes a legal, valid and binding obligation of the Corporation enforceable against it in accordance with its terms, subject only to the effect of any bankruptcy, insolvency, moratorium or similar laws affecting the enforceability of creditors' rights generally, the discretion that a court of competent jurisdiction may exercise in the granting of equitable remedies, and the statutory powers of a court of competent jurisdiction to stay proceedings and stay the execution of judgment in proceedings before it;
- (g) ***No Default.*** The Corporation is not in violation of its articles of incorporation, as amended, its by-laws or any shareholders' agreement, if any, to which it is a party;
- (h) ***Ownership of Assets.*** The Corporation is the sole and beneficial owner of its assets and, where appropriate, is duly registered as the owner thereof, with a good and marketable title thereto, free and clear of all Encumbrances except Permitted Encumbrances;
- (i) ***Insurance.*** The assets of the Corporation are insured against loss or damage covering such risks, in such amounts and on such terms as such assets are commonly insured against for not less than the full replacement cost thereof. The Corporation is not in default with respect to any of the provisions contained in any such insurance policies and the Corporation has given all notices required under each of the insurance policies in a due and timely fashion;
- (j) ***No Burdensome Agreements.*** The Corporation is not a party to any agreement or instrument or subject to any restriction (including any restriction set forth in its constituting documents) materially and adversely affecting its operations, business, financial condition or its assets;
- (k) ***No Litigation.*** Other than the CCAA proceeding, there are no actions, suits, grievances or proceedings threatened or taken before or by any Governmental Body or by any elected or appointed public official or private person, which challenges the validity or propriety of the transactions contemplated under this Debenture, or any of the documents, instruments and agreements executed or delivered in connection therewith or related thereto which could be reasonably anticipated to have a material adverse effect on the business, operations, properties, assets, capitalization, financial condition or prospects of the Corporation and the Corporation is not in default under any material applicable statute, rule, order, decree or regulation of any Governmental Body having jurisdiction over it or any of its assets;
- (l) ***Taxes.*** The Corporation has filed all tax returns which are required to be filed and has paid all Taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it and adequate provision for payment has been made for Taxes not yet due, except as otherwise disclosed to the Holder;
- (m) ***Use of Lands.*** The Corporation is not aware, after making all reasonable inquiry, that the uses to which the owned or leased by the Corporation are being put are in material breach of any statutes, by-laws, ordinances, regulations, covenants, restrictions or official plans;

- (n) **Work Orders.** There are no material outstanding work orders, deficiency notices, remedial or removal orders or other similar compliance orders from any Governmental Body (each a “**Work Order**”) relating to the lands owned or leased by the Corporation or the operation of the Corporation's business from or required by any Governmental Body, nor are any material matters relating to the lands owned or leased by the Corporation or the operation of the Corporation's business under discussion with any such departments or authorities relating to any Work Orders;
- (o) **Intellectual Property.** The Corporation and the Subsidiaries possess all the trademarks, trade names, copyrights, patents, licenses and other Intellectual Property or rights material to the conduct of their respective businesses as now conducted and presently proposed to be conducted, without knowledge of any circumstances which could give rise to any conflict with the rights of others;
- (p) **No Infringement.** The Corporation and the Subsidiaries are not knowingly infringing or alleged to be infringing on the rights of any third party with respect to any patent, trademark, trade name, copyright (or any application or registration respecting any thereof), licence, discovery, improvement, process, formula, know-how, data, plan, specification, drawing or the like and the Corporation does not know of any facts which may result in the assertion against the Corporation or a Subsidiary of a claim for such an infringement;
- (q) **Permits, etc.** The Corporation and the Subsidiaries possess all licenses, permits, approvals and consents of, and has performed all registrations required by, all Governmental Bodies and other third parties as required to properly conduct their respective businesses and own, lease and operate the Charged Assets; and
- (r) **Compliance with Laws.** The Corporation and the Subsidiaries have complied and are complying in all material respects with all federal, provincial and local laws, rules, regulations, notices, approvals, ordinances and orders applicable to its business, property, assets and operations.

**5.2 Survival of Representations and Warranties.** The representations and warranties herein set forth or contained in any certificates or documents delivered to the Holder shall survive the execution and delivery of this Debenture and, notwithstanding such execution and delivery, shall remain in full force and effect.

**5.3 Affirmative Covenants.** So long as this Debenture remains outstanding, and unless the Holder otherwise consents in writing, the Corporation covenants and agrees with the Holder that:

- (a) **Punctual Payment.** The Corporation shall pay or cause to be paid all amounts payable to the Holder hereunder on the dates and in the manner specified herein;
- (b) **Preservation of Corporate Existence.** The Corporation shall preserve and maintain its corporate existence and rights and the corporate existence and rights of each of its Subsidiaries.



- (c) **Conduct of Business.** The Corporation shall do or cause to be done, and shall cause each Subsidiary to do or cause to be done, all things necessary or desirable to maintain its corporate existence in its present jurisdiction of incorporation, and to maintain its corporate power and capacity to own its properties and assets;
- (d) **Compliance with Applicable Law and Contracts.** The Corporation shall, and shall cause each of its Subsidiaries to, comply with the requirements of all Applicable Law and all obligations which, if contravened, could give rise to an Encumbrance over any of the Charged Assets, and all insurance policies and all contracts to which it is a party or by which it or its properties are bound, non-compliance with which would, singly or in the aggregate, have a material adverse effect upon its business, property, financial condition or prospects or upon its ability to perform its obligations under this Debenture;
- (e) **Insurance.** The Corporation shall keep, and shall cause each of the Subsidiaries to keep, its assets insured with reputable insurers, in amounts not less than the replacement cost thereof and against such losses as are insured against by comparable corporations engaged in comparable businesses;
- (f) **Payment of Taxes and Claims.** The Corporation shall, and shall cause each of its Subsidiaries to:
  - (i) pay and discharge all lawful claims for labour, material and supplies;
  - (ii) pay and discharge all Taxes payable by it;
  - (iii) withhold and collect all Taxes required to be withheld and collected by it and remit such Taxes to the appropriate Governmental Body at a time and in the manner required; and
  - (iv) pay and discharge all obligations incidental to any trust imposed upon it by statute which, if unpaid, might become an Encumbrance upon any of its assets;
- (g) **Keeping of Books.** Keep proper books of record and account in which full and correct entries shall be made of all financial transactions, assets and businesses of the Corporation in accordance with Generally Accepted Accounting Principles;
- (h) **Reporting Requirements.** Furnish to the Holder:
  - (i) annually, as soon as available and in any event within ninety (90) days after the end of each fiscal year:
    - (A) the consolidated audited financial statements of the Corporation and the unconsolidated financial statements for each of its Subsidiaries for such fiscal year, consisting of balance sheets, statements of operations, retained earnings and changes in financial positions setting forth the corresponding figures of the previous fiscal year in comparative form, together with the unqualified opinion of the auditors thereon;

(B) a certificate of the Corporation signed on its behalf by a senior officer of the Corporation stating that as of the date of such certificate that no Event of Default has occurred and that no material adverse change has occurred in its business or operations during the most recent fiscal year or, if such is not the case, describing such Event of Default or material adverse change;

(ii) promptly upon becoming aware thereof, notice of any material fact or material change which has had, is having, or is expected to have, a material adverse effect on the business or condition, financial or otherwise, of the Corporation; and

(iii) such other information respecting the business and affairs, financial or otherwise, or its assets, as the Holder may from time to time reasonably request;

(i) **Notice of Default.** Advise the Holder forthwith upon becoming aware of the occurrence of a Default or an Event of Default hereunder and deliver to the Holder at least annually a certificate signed by a senior officer of the Corporation certifying the particulars of any Default or Event of Default which shall have occurred and the steps being taken to remedy the same, in form and substance satisfactory to the Holder; and

(j) **Subsidiaries.** Maintain directly or indirectly (through the ownership of a wholly-owned incorporated entity) ownership of all issued and outstanding shares of each of the Subsidiaries.

**5.4 Negative Covenants.** So long as this Debenture remains outstanding and unless the a majority by Principal Amount of the Holders of Debentures in the Series consents in writing or at a meeting, the Corporation covenants and agrees that it shall not, nor shall it permit any of its Subsidiaries to:

(a) **Not To Encumber Property.** Create, grant, assume or suffer to exist any Encumbrance upon any of its properties or assets other than Permitted Encumbrances;

(b) **Change of Business.** Make any material change in the nature of its business or enter into or commence any business activities which are not conducted by it as at the date hereof;

(c) **Mergers.** Enter into or permit any Subsidiary to enter into any transaction (whether by way of reconstruction, reorganization, arrangement, consolidation, amalgamation, merger, joint venture, transfer, sale, lease or otherwise) whereby any part of the Charged Assets would become the property of any Person other than the Corporation or its Subsidiaries, as the case may be, or whereby all or any material part of the undertaking, property and assets of any Person other than the Corporation or its Subsidiaries, as the case may be, would become the property of the Corporation or its Subsidiaries, as the case may be, or in the case of any amalgamation involving the Corporation or its Subsidiaries of the continuing company resulting therefrom;

- (d) **Guarantees.** Guarantee, endorse or otherwise become surety for or upon the obligations of any Person;
- (e) **Dividends and other Distributions.** Unless all payments under this Debenture are current, declare or pay any dividends on or make any other payment or distribution in respect of any shares of its capital or make any change in its issued or authorized share capital either by way of redemption or otherwise; and
- (f) **Cross-Default.** Default in its obligations under any indebtedness to its bankers or any other contract whose default may reasonably be expected to have a material adverse effect on the Corporation or its Subsidiaries.

## ARTICLE 6 - DEFAULT

6.1 **Events of Default.** The Corporation shall be in default under this Debenture if any one or more of the following events (each an “Event of Default”) occurs, the Holder may, subject to the rights of the Holders of all other Debentures in the Series, including those rights and powers provided in Article 7 hereof, and to the extent permitted by Applicable Law, declare the outstanding Principal Amount hereunder to be immediately due and payable:

- (a) the Corporation defaults in payment of all or any part of the outstanding Principal Amount when due and such default continues for a period of five (5) Business Days after notice has been given to the Corporation by the Holder specifying such default and requiring the Corporation to rectify same;
- (b) the Corporation is in breach of or defaults in observing or performing any other covenant or condition of this Debenture on its part to be observed or performed and if such default continues for a period of twenty (20) Business Days after notice has been given to the Corporation by the Holder specifying such default and requiring the Corporation to rectify the same or cause to be rectified the same;
- (c) the Corporation or a Subsidiary defaults in the payment when due of any amount payable by it to another creditor and such default is not waived or cured within the applicable cure period, if any, in respect of such payment or the Corporation or a Subsidiary, as applicable, is diligently and in good faith contesting such default through all reasonable lawful means;
- (d) any representation and warranty made in this Debenture is found to be false or incorrect in any way so as to make it materially misleading when made or deemed to have been made;
- (e) an order is made or an effective resolution is passed for the winding-up or liquidation of the Corporation or in the event of any other dissolution of the Corporation by operation of law; or
- (f) the Corporation ceases or threatens to cease to carry on business or becomes insolvent or bankrupt or ceases paying its debts generally as they become due, other than any such

debts as are contested in good faith and by appropriate proceedings and for which adequate provision has been made, or the Corporation commits any act of bankruptcy or makes an assignment for the benefit of creditors or otherwise acknowledges its insolvency, or a trustee, receiver, receiver and manager or liquidator is appointed for the Corporation or any material part of the assets of any of its Subsidiaries, or bankruptcy, reorganization, proposal (including, without limitation, the serving of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or the commencement of proceedings under the CCAA in respect of the Corporation), arrangement, moratorium, compromise or similar proceedings shall be instituted by or against the Corporation or any of its Subsidiaries under the laws of any jurisdiction.

**6.2 Notice to other Holders in the Series.** If the Corporation receives a notice from any Holder of the Debenture declaring the outstanding Principal Amount to be due by reason of an Event of Default, the Corporation shall forthwith give notice to the Holders of all outstanding Debentures in the Series of such declaration and stating whether it admits or contests the claimed Event of Default. If so advised, the Corporation shall on not less than 14 days nor more than 21 days notice convene a meeting of the Holders of the outstanding Debentures. Pending the convening and until the adjournment of such meeting, the Holder shall not exercise any remedy under this Debenture.

**6.3 Remedies.** Upon the occurrence and continuation of an Event of Default, the Holder may in conjunction with and subject to the rights of the Holders of other Debentures in the Series, in addition to exercising any other rights available to it under Applicable Law, proceed to demand payment of the balance of the Principal Amount of the Debenture. The Holder shall take no other steps to enforce payment without complying with the requirements of Section 7.2.

## **ARTICLE 7 – SERIES RIGHTS, ENFORCEMENT AND WAIVERS**

**7.1 Series.** This Debenture is one of the Series issued by the Corporation under and in the course of the implementation of its Plan sanctioned by the Court pursuant to the CCAA. The rights of the Holder are subject to the rights of the holders of all other debentures issued in the Series.

**7.2 Consent to Enforcement.** An Event of Default under any Debenture in the Series shall only be enforceable by proceedings against the Corporation by the Holder if the Holders of twenty (20%) percent of the Principal Amount of the Debentures outstanding in the Series shall have consented to such enforcement by an instrument or instruments in writing executed by such Holders and no Holder may take any steps to enforce rights including by action or otherwise unless and until such consent shall have been obtained.

**7.3 Waivers and Amendment.** The terms of all Debentures in the Series may be amended and any Default or Events of Default may be waived or amended by an instrument or instruments in writing executed by a majority of the Holders of a two thirds majority by Principal Amount of the Debentures in the Series. In the alternative, such waiver or amendment shall be effective if made by a resolution passed by a two thirds majority of those present and voting in person or by proxy at a meeting of the Holders of the Debentures in the Series convened on not less than 14

days notice in writing delivered by ordinary mail to the address of the Holder as recorded on the records of the Corporation.

## **ARTICLE 8 - MISCELLANEOUS**

8.1 **Notice.** Any demand, notice or other communication (hereinafter in this section referred to as a “**Communication**”) to be given in connection with this Debenture shall be given in writing and may be given by personal delivery or facsimile transmission addressed to the recipient as follows:

(a) If to the Holder:

At such address and facsimile number designated by the Holder to the Corporation in writing.

(b) If to the Corporation:

Provider Capital Group Inc.  
900 Dillingham Road  
Pickering, Ontario L1W 1Z6

Attention: Ms. Sherry Townsend  
Interim Operating Officer

Fax: (905) 839-1761  
E-mail: stownsend@providercapitalgroup.com

or such other address, facsimile number or individual as may be designated by notice by any party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and any Communication given by facsimile transmission shall be conclusively deemed to have been given on the day following the date of transmittal thereof.

8.2 **No Creditor Liability.** The Corporation acknowledges that the Holder has requested and reviewed and may in the future request and review information pertaining to this Debenture. The Corporation hereby agrees that, in the course of undertaking such due diligence investigation, the Holder has not influenced and shall not influence or exercise any control over the Corporation's decisions regarding the indebtedness evidenced by this Debenture, and that any and all determinations which the Holder has made or may make, or opinions which it or any of its respective employees may express in the course of such investigations have been, and shall be made or expressed, as the case may be, solely for its own purposes acting in good faith. The Corporation further expressly agrees that the Holder may disclose to any potential assignee or participant of all or a part of the Debenture any and all information which the Holder may obtain about the Corporation's business and affairs without incurring any liability to the Corporation for so doing; provided that such potential assignee agrees to treat such information as confidential in

accordance with procedures and standards of confidentiality no less rigorous than those maintained by the Holder.

**8.3 Evidence of Debt.** The indebtedness of the Corporation in respect of or in connection with the Debenture shall, absent manifest error, be conclusively evidenced by the books and records of the Corporation. At the request of the Holder from time to time the Corporation shall provide the Holder with a statement of the indebtedness of the Corporation to the Holder.

**8.4 Assignment.** The Corporation may not assign this Debenture without the written consent of the Holder. The Holder may assign and transfer this Debenture in whole or in part. The Corporation shall execute any and all documents reasonably required by the Holder in connection with any such assignment, provided that such documents do not prejudice the rights of the Corporation under this Debenture or result in any increase in any amounts payable by the Corporation.

**8.5 Amendment, Waiver.** No amendment or waiver of this Debenture will be binding unless executed in writing by the Corporation if it is to be bound thereby, or, subject to the rights of the requisite majorities of the Holders of other Debentures issued in the Series by the Corporation to waive defaults or to consent to certain amendments as provided in Article 7 hereof, by the Holder if it is to be bound thereby. No waiver of any provision of this Debenture will constitute a waiver of any other provision nor will any waiver of any provision of this Debenture constitute a continuing waiver unless otherwise expressly provided.

**8.6 Binding Effect.** This Debenture shall be binding upon and shall enure to the benefit of the Holder and shall be binding upon and shall enure to the benefit of the Corporation and its successors and permitted assigns.

**8.7 Entire Agreement.** This Debenture constitutes the entire agreement between the Holder and the Corporation and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether written or oral, express or implied, with respect to the subject matter hereof and shall not be amended or modified in any respect except with written agreement signed by the parties hereto.

**8.8 Governing Law.** This Debenture shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Corporation hereby irrevocably submits to the jurisdiction of the Courts of the Province of Ontario in respect of any action, suit or proceeding arising out of or relating to this Debenture and hereby irrevocably agrees that all claims in respect of any such action, suit or proceeding may be heard and determined in any such Court.

IN WITNESS WHEREOF the Corporation has duly executed this Debenture this \_\_\_\_\_ day of April, 2011.

**PROVIDER CAPITAL GROUP INC.**

Per: \_\_\_\_\_  
President  
I have authority to bind the corporation

### **Notice of Conversion of Debenture**

The undersigned Holder of this Debenture hereby converts the outstanding Principal Amount [or in the alternative, the amount of \$ \_\_\_\_\_.00 of the outstanding Principal Amount] of this Debenture into New Special Shares of the Corporation at the rate of \$25.00 per New Special Share to be issued a sfully paid and non-assessable shares with dividends cumulating thereon from the date of issue which shall be the first day of the next month following the delivery of this Notice together with the Debenture for endorsement as to the balance if any of the Principal Amount to be outstanding after such conversion and all on and subject to the terms of Article 4 of the Debenture.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_

\_\_\_\_\_  
Full name of Holder  
Address:

**SCHEDULE "D"**  
**FORM OF RECEIPT, RELEASE AND ASSIGNMENT**

**RECEIPT, RELEASE AND ASSIGNMENT**

**TO: PROVIDER CAPITAL GROUP INC.**  
900 Dillingham Road  
Pickering, ON L1W 1Z6  
  
Attention: The President

**WHEREAS** Nelson Financial Group Ltd. has filed Articles of Reorganization and has changed its name to Provider Capital Group Inc. (the "Corporation"); and

**AND WHEREAS** the Plan of Arrangement of Nelson Financial Group Ltd. has been approved by the requisite majorities of its creditors and sanctioned by an Order of the Ontario Superior Court of Justice and such Plan is now being implemented.; and

**AND WHEREAS** the Undersigned [**Insert Full Name of Proven Creditor**] represents and warrants that it is a Proven Creditor of Nelson Financial Group Ltd. holding a Proven Claim in the amount of [**Insert Amount of Proven Claim**].

**NOW THEREFORE**, in accordance with the Plan of Arrangement of Nelson Financial Group Ltd. dated February 11, 2011, as amended, and as approved and sanctioned by the Order of the Superior Court of Justice of Ontario made on April [\*], 2011, (the "Plan"), the undersigned hereby acknowledges receipt of the following securities delivered to it and registered in its name in satisfaction of its Proven Claim in accordance with the Plan:



- i) A Capital Recovery Debenture issued by Provider Capital Group Inc. in the Principal Amount of \$**[Insert Amount equal to .25 times the Proven Claim]**;
- ii) A certificate registered in the name of the undersigned and representing **[Insert Number being the Amount of the Proven Claim divided by 100 and rounded to the nearest integer]** New Special Shares in the capital stock of Provider Capital Group Inc.; and,
- iii) A certificate registered in the name of the undersigned and representing **[Same Number as in (iii) above]** Common Shares in the capital stock of Provider Capital Group Inc.

Further, in consideration of the delivery of such securities, the undersigned accepts the foregoing securities in full satisfaction for all of its Proven Claims against Nelson Financial Group Ltd. and hereby releases the Corporation of and from any and all claims that it had as of March 23, 2010, together with any claim for interest or costs in respect of any such claim.

Further and for the same consideration, the undersigned hereby assigns, transfers and sets over to Provider Capital Group Inc., as Trustee, and to the other trustees from time to time under the Litigation Trust as provided for under the terms of the Plan, all of its rights, claims and causes of action in law or in equity in respect of any loss or damages that it may have suffered or any other right that it may have by reason of its investment in Nelson Financial Group Ltd. and including, without limitation, any and all claims for damages for fraudulent misrepresentation, negligent misrepresentation, conversion, breach of statutory duty or any other wrongful act and any claims to trace or recover any part of any investment made by the undersigned in Nelson Financial Group Ltd. or any other property or investment into which any such may have been converted or transferred by any person, against any associate or affiliate of Nelson Financial

Group Ltd. or any third party who owed or owes any duties at law or in equity to the undersigned, to Nelson Financial Group Ltd. or to any associate or affiliate of Nelson Financial Group Ltd. For greater certainty, the rights assigned and transferred hereunder shall include rights to recover by tracing in law or in equity any advances previously made by the undersigned in respect of its investment in Nelson Financial Group Ltd. into accounts, property, rights or things held by or owing from or to any associate or affiliate of Nelson Financial Group Ltd., including, without limitation, Nelson Investment Group Ltd., Nelson Mortgage Group Ltd., Nelson Capital Group Ltd., Marc Boutet or any affiliate or associate of any of them, with such relationship to be determined as at March 23, 2010. The undersigned will execute such assignments or consents, including consents to proceedings to be taken in its name provided that the Litigation Trust shall indemnify it for any costs or liabilities in connection therewith, as may be requested at any time and from time to time by the trustees of the Litigation Trust. If this assignment is given by a Creditor who has elected the Cash Exit Option under Section 4.2 of the Plan, the Creditor acknowledges and confirms that it shall have no right or entitlement to receive any future benefits under from or out of the Litigation Trust.

The Receipt, Release and Assignment above shall enure to the benefit of the successors and lawful assigns of the Corporation and of the trustees under the Litigation Trust and shall be binding upon the undersigned Creditor and its heirs, administrators, successors and assigns. Any capitalized terms in this instrument not otherwise defined shall have the meaning attributed to such in the Plan. This instrument shall be governed by the laws of the Province of Ontario and any proceeding to interpret or enforce its terms shall be subject to the exclusive jurisdiction of the Ontario Superior Court of Justice and the parties consent to and attorn to the jurisdiction of that Court.

**DULY EXECUTED** as an Instrument under seal at \_\_\_\_\_,  
\_\_\_\_\_, this \_\_\_\_\_ day of April, 2011.

(s)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Proven Creditor

Print Full Name of Proven Creditor: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Email (if any): \_\_\_\_\_

## **SCHEDULE "E"**

### **DECLARATION OF TRUST – LITIGATION TRUST**

#### **LITIGATION TRUST**

#### ***Provider Capital Group Inc.(the "Company")***

**THIS TRUST DEED** made as of April , 2011 establishes a litigation trust with respect to certain causes of action held by creditors of and arising from the insolvency of Nelson Financial Group Ltd. for the collective benefit of those creditors of the Company who participated in the Plan of Arrangement approved and sanctioned by Order of the Ontario Superior Court of Justice by Order dated April , 2011, a true copy of which is annexed as schedule 1. The Trust is established for the purposes of the Plan of Arrangement and it is to be interpreted with reference to the Plan

#### **1. PARTIES:**

1.1 **TRUSTEES:** The Trustees appointed by the Court or their successors as provided for in schedule 2, (the "Trustees") and

1.2 **BENEFICIARIES:** The Creditors as described in schedule 3 as amended from time to time pursuant to the terms of this Trust (the "Creditors").

#### **2. PURPOSE OF LITIGATION TRUST:**

2.1 This trust is created for the benefit of the Creditors to preserve, protect, and enforce all causes of action and inchoate rights the Creditors have had in respect of or through their investment in the Company against any persons, other than the Company, by reason of acts of persons affecting such investment prior to the commencement of the proceedings under the *Companies' Creditors Arrangement Act* RSC 1985, c. C-36, as amended and the Orders of the Court for the period March 22, 2010 to April , 2011 (the "litigation trust assets").

2.2 The litigation trust assets include all Derivative Rights, as defined in the Plan of Arrangement, which a Creditor had against third parties, which rights were assigned to and were vested in the Trustees in the implementation of the Plan.

2.3 The duties of the Trustees are to enforce the Derivative Rights of the Creditors against such parties as the Trustees in their unfettered discretion deem advisable under the powers, rights, and duties granted by this trust.

2.4 The Creditors listed in schedule 3 by virtue of approval of the Plan of Arrangement confirmed by Court Order dated April , 2011 and the execution of the Plan of Arrangement

documents have hereby established this litigation trust on behalf of the Creditors who are to be deemed settlers and grantors and beneficial owners of the litigation trust assets who have transferred, assigned, and delivered to the trust their right, title, and interest in the litigation trust assets.

**3. VESTING OF ASSETS AND POWERS OF TRUSTEES:**

3.1 The litigation trust assets are hereby vested in the Trustees who are authorized to perform those acts necessary to accomplish the purposes of the litigation trust, which are, without limitation, evaluating and determining strategy with respect to causes of action, and litigating, settling, transferring, releasing or abandoning any and all causes of action on behalf of the litigation trust, in each case, on any terms and conditions as the Trustees may determine in good faith based on the best interests of the Creditors, which powers to include the powers to:

- (1) hold legal title (on behalf of the trust as Trustees, but not individually) to the litigation trust assets, including, but not limited to, any causes of action;
- (2) retain counsel or other professionals to conduct any actions in any court or administrative tribunal or any other body;
- (3) protect and enforce the rights to the trust assets by any method deemed appropriate in their sole discretion, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;
- (4) prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle, in accordance with the terms set forth herein, the litigation trust assets;
- (5) pay expenses and make disbursements necessary to preserve, liquidate, and enhance the trust assets out of an initial fund of \$250,000.00 contributed to the trust by Nelson, plus such additional funds which Nelson shall contribute after written demand from the Trustees, provided that such additional advances shall not exceed \$250,000.00; in addition, after consultation with the Creditors, the Trustees may obtain further financing to further the purposes of the trust;

(6) assume such other powers as may be vested in or assumed by the trust as may be necessary and proper to carry out the provisions of the trust;

(7) make any arrangement deemed by the Trustees in their unfettered discretion for the payment of any proper expenses of the trust, including the borrowing of any money on any security that may be required;

(8) operate any bank accounts; and

(9) report to and distribute from time to time in the discretion of the Trustees any proceeds from the trust litigation assets to the beneficiaries.

For the purposes aforesaid, the Trustees may apply at any time to the Court for directions.

The Trustees may also commence any proceeding using the name of the Company or any successor name or corporation, including any assignees or creditors.

#### **4. LIMITATIONS ON TRUSTEES POWERS:**

4.1 The Trustees shall not carry on any business.

4.2 The Trustees shall not hold or represent any interest adverse to the interests of the trust.

#### **5. DUTIES AND RIGHTS OF TRUSTEES:**

5.1 Replacement of Trustees: Any trustee may resign on two weeks' notice in writing to the other Trustees. The remaining Trustees shall forthwith appoint a successor to the retiring trustee which shall be confirmed by the Court.

5.2 A trustee may remove by a vote of any two of the remaining Trustees by instrument in writing and served personally on the trustee. Such removal and an appointment of a replacement trustee shall be confirmed by the Court.

5.3 The Trustees shall be entitled to receive compensation at reasonable and comparable professional rates plus reimbursement of out-of-pocket costs and expenses incurred in connection with the duties of trustee.

5.4 The fees, costs and expenses of all professionals retained by the Trustees in connection with the performance of the Trustee's duties shall be initially paid from funds as provided by section 4.1(5).

5.5 The Trustees shall not be liable for any action reasonably taken or not taken in accordance with the advice of a Professional or Non-Professional; and persons dealing with the Trustees shall look only to the litigation trustee assets to satisfy any liability incurred by the Trustees to such person in carrying out the terms of this trust, and the Trustees shall not have any personal obligation to satisfy any such liability, except to the extent that actions taken or not taken by the Trustee are determined to be solely due to the trustee's own gross negligence, wilful misconduct, fraud or breach of fiduciary duty.

5.6 The Trustees shall not incur any liability or obligation as a result of their appointment or the carrying out of any of their duties under the trust, save and except for gross negligence or wilful misconduct. Nelson and the Creditors shall indemnify and hold the Trustees harmless with respect to any liability incurred by the Trustees in fulfilment of their duties under the trust, and no action may be commenced in any court against the Trustees without leave of the Ontario Superior Court of Justice.

5.7 Any indemnity shall survive any termination or replacement of any trustee.

## 6. ACCEPTANCE OF TRUSTS

6.1 The Trustees accept the terms of the trust as evidenced by their signatures hereto under seal at Toronto, Ontario this        day of April 2011

WITNESS:

-----  
-----  
-----

Schedule 2:

The Trustees shall be Officers of the Court appointed by the Ontario Superior Court of Justice and the first Trustees are:

Sherry Townsend  
Douglas Turner Q.C.  
Richard B. Jones, Barrister.



**SCHEDULE "F"**

**FORM OF PROXY**

File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**PROXY**

I/We \_\_\_\_\_  
(Name of Creditor)

a Proven Creditor of Nelson Financial Group Ltd. hereby irrevocably appoint

☐ (a) \_\_\_\_\_ or ☐ (b) \_\_\_\_\_  
(insert name of proxy)

to be my/our proxy to vote at the meeting of the Creditors of Nelson Financial Group Ltd. to be held on April 16, 2011 or any adjournment of such meeting in respect of the approval of the Plan of Arrangement, any related matters or other matters that may properly come before such meeting, except as to the receipt of any distributions under the Plan, with power to appoint another proxy in his or her place.

**DATED** this \_\_\_\_\_ day of March, 2011.

\_\_\_\_\_  
Print Name of Creditor

\_\_\_\_\_  
Signature of Creditor or, if the Creditor is a corporation, signature of an authorized signing officer of the corporation

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

**SCHEDULE "G"**  
**FORM OF VOTING LETTER**

Court File No. CV-10-8630-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**VOTING LETTER**

**THE UNDERSIGNED** has reviewed the Plan of Compromise or Arrangement dated February 11, 2011 (the "**Plan**") and hereby instructs Douglas Turner Q.C., in his capacity as Representative Counsel for the Noteholders of Nelson Financial Group Ltd. and chair of the meeting of creditors to be held on April 16, 2011 to record a vote by the undersigned and in the amount of the Proven Claim of the undersigned in respect of the Plan, as follows (please check one of the boxes below; if neither box is checked or if both boxes are checked, your vote will be counted in favour of the Plan) and to vote on behalf of the undersigned in respect of any other business that may come before the meeting of creditors or any adjournment thereof:

- ☐ **VOTE FOR** approval of the Plan
- ☐ **VOTE AGAINST** approval of the Plan.

**DATED** this \_\_\_\_\_ day of March, 2011.

\_\_\_\_\_  
Print Name of Creditor

\_\_\_\_\_  
Signature of Creditor or, if the Creditor is a  
corporation, signature of an authorized signing  
officer of the corporation

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(If signing for a corporation)

Court File No. CV-10-8630-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.

Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**PLAN OF COMPROMISE  
AND ARRANGEMENT OF  
NELSON FINANCIAL GROUP LTD.**

**RICHARD B. JONES**  
Barrister & Solicitor  
100 Yonge Street, Suite 1201  
Toronto, ON M5C 2W1

**Richard B. Jones**  
LSUC No.: 11575V  
Telephone: (416) 863-0576  
Facsimile: (416) 863-0092

**COUNSEL FOR THE  
INTERIM OPERATING OFFICER**

**Schedule "B"**

Court File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**NOTICE OF MEETING OF THE CREDITORS  
OF NELSON FINANCIAL GROUP LTD.**

**NOTICE IS HEREBY GIVEN** that a meeting of the Eligible Voting Creditors<sup>1</sup> of Nelson Financial Group Ltd. will be held at the [to be determined by the Applicant within the Greater Toronto Area] Ontario, on **Saturday, the 16<sup>th</sup> day of April, 2011 at 11:00 a.m.** (Toronto time) for the following purposes:

1. to consider and vote on, with or without variation, a resolution to approve the Plan of Compromise and Arrangement (the "Plan") proposed by the Applicant under the *Companies' Creditors Arrangement Act*, R.S.C. 1985,

---

<sup>1</sup> Capitalized terms not otherwise defined have the meanings ascribed to them in the Plan or in the CCAA Meeting Order.

c. C-36, as amended, and dated February 11, 2011 amended as of February 24, 2011 as such may be amended;

2. if a resolution to approve the Plan shall have been passed by the requisite majorities of the Eligible Voting Creditors present in person or by proxy, to proceed to accept nominations and to elect and designate persons to be named in the Articles of Reorganization to be the directors of Provider Capital Group Inc., formerly named Nelson Financial Group Ltd.;
3. if a resolution to approve the Plan shall have been passed by the requisite majorities of the Eligible Voting Creditors present in person or by proxy, to consider and if seen fit to nominate the firm of Bongard Dale Fried LLP to be designated as the auditors of Provider Capital Group Inc. pursuant to the Articles of Reorganization; and,
4. to transact such other business as may properly become before the Meeting or any adjournment(s) thereof.

The Plan is being considered pursuant to the Creditors' Meeting Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on March 4, 2011. The Plan, if the resolution of Creditors to approve it is passed by the requisite majorities, must then be approved by an order of the Court (the "Sanction Order") before it can be implemented. A motion seeking a Sanction Order is scheduled to be heard on April 20, 2011 at 10:00 a.m., or such later date as may be scheduled by the Applicant or ordered by the Court, at 330 University Avenue, Toronto, Ontario. Any change to the date or location of the motion will be posted on the Monitor's website.

Eligible Voting Creditors requiring information or additional copies of the Plan, the Creditors' Meeting Order, the form of Proxy or the Voting Letter for the Meeting may obtain such by contacting the Applicant or by visiting the Monitor's website at [www.ajohnpage.com](http://www.ajohnpage.com) and downloading such documents. The documents are not available in a French version.

The Plan enclosed with this Notice remains subject to change or amendment in accordance with its terms. Alterations, amendments, modifications and supplements will be filed with the Court, provided to all Eligible Voting Creditors at the Meeting but prior notice thereof may be limited to postings on the Monitor's website.

Eligible Voting Creditors who are not attending the Meeting in person and who wish to vote on the resolution to approve the Plan are required to date, sign and return either the enclosed form of Proxy or the enclosed form of Voting Letter in the enclosed pre-addressed envelope so that it is received by the Chair of the Meeting at the following address by no later than 5:00 p.m. (Toronto time) on Friday, April 15, 2011:

Greg S. Macleod, CA, CIRP  
G. S. MacLeod Associates Inc.  
P.O.Box 1635  
Burlington  
Ontario L7R 5A1

Proxies and voting letters will also be accepted if deposited with the Chair at the Meeting or, for purposes of voting at an adjourned, postponed or other rescheduled Meeting, if received by the Chair prior to 5:00 p.m. Eastern time on the Business Day immediately proceeding any adjourned, postponed or otherwise rescheduled Meeting. The Proxy or

Voting Letter will not be valid and will not be acted upon, voted or recorded unless it is completed as specified in the form of Proxy or Voting Letter and the related instructions.

The Monitor has filed numerous reports on the business and financial affairs of the Applicant with the Court and all such reports are posted and available on the Monitor's website. Further reports may be filed prior to the Meeting and those will include a report of the Monitor addressed to the Court as to the fairness and reasonableness of the Plan.

Creditors may obtain any additional information or materials related to the Meeting from the Applicant:

Nelson Financial Group Ltd.  
900 Dillingham Road  
Pickering  
Ontario L1W 1Z6

Attention: Ms. Sherry Townsend  
Interim Operating Officer

Tel: 905-839-1761  
Email: [stownsend@providercapitalgroup.com](mailto:stownsend@providercapitalgroup.com)@pdturner.com

**DATED** at Pickering, Ontario, this 10<sup>th</sup> day of March, 2011.

**NELSON FINANCIAL GROUP LTD.**

Per: \_\_\_\_\_  
Ms. Sherry Townsend  
Interim Operating Officer

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.

Court File No. CV-10-8630-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

---

ORDER  
(Plan Filing and Creditor Meeting)

---

**Richard B. Jones**  
Barrister & Solicitor  
Suite 1201, Scotia Plaza  
100 Yonge Street  
Toronto, ON M5C 2W1

**Richard B. Jones** (LSUC No. 11575V)  
Tel: 416-863-0576  
Fax: 416-863-0092  
Email: richard.jones@sympatico.ca

Special Counsel for the Interim Operating Officer and for  
the Representative Counsel for the Noteholders of the  
Applicant



# EXHIBIT C

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 4<sup>TH</sup>  
 )  
JUSTICE MORAWETZ ) DAY OF MARCH, 2011



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**ORDER**

**THIS MOTION**, made by the Interim Operating Officer of the Applicant, Nelson Financial Group Ltd. (the "Applicant"), seeking the relief set out in the Notice of Motion dated February 11, 2010, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and the Motion Record and the First Report dated February 18, 2011 of Sherry Townsend in her capacity as Interim Operating Officer appointed by the Order of this Court made November 22, 2010 (the "IOO"), and on being advised of the consents of counsel for the IOO on behalf of the Applicant, the Representative Counsel and A. John Page & Associates Inc., in its capacity as the Court-appointed monitor of the Applicant (the "Monitor"), and on being advised that the Ontario Securities Commission is not opposed, no other persons appearing although duly served;

### **Service**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this Motion be and it is hereby abridged and that the service of the Notice of Motion and Motion Record herein as affected by the Applicant is hereby validated in all respects.

### **Stay Extension**

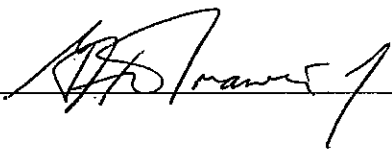
2. **THIS COURT ORDERS** that the Applicant shall immediately restore the Monitor's remote access to the Applicant's QuickBooks accounting records.

3. **THIS COURT ORDERS** that the IOO shall continue to provide the weekly financial reports regarding the Applicant and copies of bank statements of the Applicant (the "Weekly Reporting") to the Monitor in accordance with the Order of this Court dated December 1, 2010 and that, in the circumstances of this case, the Monitor shall only need perform a cursory review of the Weekly Reporting and shall not be required to review the Weekly Reporting with the IOO unless the Monitor is of the view that a material adverse change may exist in the circumstances.

4. **THIS COURT ORDERS** that the Monitor shall only need perform a cursory review of any cash flow projections prepared by the IOO on behalf of the Applicant and shall not be required to review any such cash flow projections with the IOO nor report to the Court with respect to their reasonableness unless the Monitor is of the view that a material adverse change may exist in the circumstances.

5. **THIS COURT ORDERS** that the IOO shall immediately advise the Monitor if the IOO causes the Applicant to enter into any new lending arrangements.

6. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated March 23, 2010, be and it is hereby extended to May 31, 2011.



---

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAR 04 2011

PER / PAR:



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C., 1985 c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD. (the "Applicant")**

---

Court File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

---

**ORDER**  
(Stay Extension to May 31, 2011)

---

**Richard B. Jones**  
Barrister & Solicitor  
Suite 1201, Scotia Plaza  
100 Yonge Street  
Toronto, ON M5C 2W1

**Richard B. Jones** (LSUC No. 11575V)  
Tel: 416-863-0576  
Fax: 416-863-0092  
Email: [richard.jones@sympatico.ca](mailto:richard.jones@sympatico.ca)

Special Counsel for the Interim  
Operating Officer and for the  
Representative Counsel for Noteholders  
of the Applicant

# EXHIBIT D

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR.  
JUSTICE MORAWETZ

*RD* *MD*  
) ~~THUR~~ WEDNESDAY, THE 21<sup>st</sup>  
)  
DAY OF APRIL, 2011

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985 c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.

Applicant

**ORDER  
(Plan Sanction)**

THE MOTION, made by Sherry Townsend in her capacity as the Interim Operating Officer of Nelson Financial Group Ltd. appointed by this Court (the "IOO"), seeking approval and sanction of the Plan of Compromise and Arrangement of the Applicant, Nelson Financial Group Ltd., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA") was heard on April 20, 2011 at 330 University Avenue, Toronto, Ontario and decision reserved to this day.

ON READING the Notice of Motion and the Motion Record, including the Report dated April 17, 2011 of Greg S. MacLeod, CA, CIRP, in his capacity as Chair of the Creditors' Meeting held on April 16, 2011, the Thirteenth Report of the Monitor dated April 6, 2011, the Second Report of the IOO dated April 18, 2011, the Information Circular dated March 22, 2011 and the Plan of Compromise and Arrangement of the Applicant, Nelson Financial Group Ltd., dated February 11, 2011 (as amended to April

*HR* and the affidavit of Richard B. Jones, sworn April 20, 2011 and *HR* 12, 2011) and on hearing the submissions of counsel for the IOO on behalf of the Applicant, the Representative Counsel, A. John Page & Associates Inc. in its capacity as the Court-appointed Monitor of the Applicant (the "Monitor") and Staff of the Ontario Securities Commission, no other persons appearing although duly served;

#### **Service**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this motion be and it is hereby abridged and the service of the Notice of Motion and Motion Record herein as effected by the Applicant is hereby validated in all respects and any further service is dispensed with.

#### **Definitions**

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order or in the Plan Filing and Meeting Order shall have the meanings ascribed to them in the Plan of Compromise and Arrangement in respect of the Applicants dated February 11, 2011 as amended to April 12, 2011 (the "Plan").

#### **Approval of the Report of the Chair of the Creditors' Meeting**

3. **THIS COURT ORDERS** that the Report of Greg S. MacLeod dated April 17, 2011 in respect of the conduct of the Creditors' Meeting chaired by him in accordance with the Order of this Court made on March 4, 2011 (the "Plan Filing and Meeting Order"), and the activities of the Chair as described in that Report are hereby approved.



**Sanction of the Plan**

4. **THIS COURT ORDERS AND DECLARES** that the Plan in the form attached hereto as Schedule "A", shall be and is hereby sanctioned and approved pursuant to section 6 of the CCAA and the compromises and arrangements contemplated under the Plan are approved, binding and effective as set out in the Plan and in this Order upon all Affected Creditors.
5. **THIS COURT ORDERS** that the articles of incorporation of the Applicant shall be amended by way of the filing of Articles of Reorganization, including the changing of its corporate name, the cancellation of all presently issued and authorized shares in its capital stock, the authorization of New Special Shares and Common Shares and the appointment of a board of directors of five persons, being Bruce Clark, Rina Mancini, John McCabe, Sherry Townsend and Tina Young, all as provided in the Articles of Reorganization in the form attached hereto as Schedule "B" and the said Articles are hereby approved pursuant to section 186 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA"), including without limitation pursuant to section 186(2) and (3)(b) of the OBCA.

**Plan Implementation**

6. **THIS COURT ORDERS** that the Applicant and the IOO are hereby authorized to take all actions necessary or appropriate to implement and give effect to the Plan in accordance with its terms, <sup>and</sup> ~~and including, without limitation, (i) to deliver forthwith the Articles of Reorganization to the Director appointed under the OBCA for filing, (ii) to convene a meeting of the board of directors of the~~

~~Applicant, (iii) to proceed to implement and consummate the issue of the Capital Recovery Debentures, the New Special Shares, the Common Shares and make the payments in respect of the rights of creditors with Proven Claims pursuant to the Plan, and (iv) to execute and deliver all such other instruments, releases, indentures, agreements and other documents necessary or desirable in connection with the Plan or to make it fully effective.~~ MB?

#### **Plan Releases**

7. **THIS COURT ORDERS** that, on the Plan Implementation Date, the releases provided for under section 10.5 of the Plan shall, to the extent not specifically prohibited by the CCAA and in any event subject to the limitations of section 5.1(2) of the CCAA, become effective provided, however, that nothing herein shall release any person, other than the Applicant, from any liability for fraud, fraudulent misrepresentation, gross negligence, willful misconduct or criminal conduct.
8. **THIS COURT ORDERS** that, upon the Plan Implementation Date, each Affected Claim shall be settled, compromised and released in accordance with the Plan and the ability of any Affected Creditor to proceed against the Applicant or any of the assets or property of the Applicant in respect of, in connection with or relating to such Affected Claim is hereby permanently stayed, subject only to the right of the Affected Creditor to receive distributions in accordance with the Plan.

#### **Consequential Matters**

9. **THIS COURT ORDERS** that the Monitor is released from any responsibility to and shall not hereafter monitor the operations, assets, cash flows or other activities of the Applicant but shall upon the request of the IOO assist in matters relating to the implementation of the Plan as needed including, among others, by providing to the IOO its preference review memorandum and any information available concerning any Creditors that the Applicant cannot contact or locate.
10. **THIS COURT ORDERS** that the Monitor is hereby authorized, *nunc pro tunc*, to redact the exhibits to the memorandum reporting on the Results of the Claims Procedure dated March 9, 2001, which is attached as Exhibit "B" to the Thirteenth Report of the Monitor dated April 6, 2011 (the "Thirteenth Report"), which redacted version was served upon any party other than this Court.
11. **THIS COURT ORDERS** that the unredacted version of the memorandum of the Monitor attached as Exhibit "B" to the Thirteenth Report and filed with this Court shall remain sealed until further Order of this Court.
12. **THIS COURT ORDERS** that the Monitor is authorized and directed to post the Report of the Chair of the Meeting with a form of the Voting Record in which the names of the Creditors are redacted attached thereto.
13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and other countries and as against all Persons against whom it may otherwise be enforceable.

14. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any Court or any judicial, regulatory or administrative body in any province or territory of Canada (including, without limitation, the assistance of any Court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other Court or any judicial regulatory administrative body of the United States of America and the States or other subdivisions of the United States of America and of any other nation or state to act in aid of to be complimentary to this Court in carrying out the terms of this Order.
15. **THIS COURT ORDERS AND DECLARES** that it continues to have and shall reserve to itself jurisdiction to make any and all further orders as may be necessary to complete or give effect to all matters ancillary to or arising in the course of these proceedings or in the course of the implementation of the Plan and that any of the Applicant and the Trustees from time to time of the Nelson Litigation Trust established pursuant to the Plan, the Representative Counsel, the IOO or the Monitor may apply to this Court for such further orders, advice, directions or assistance as may be necessary to complete any outstanding matters or to give effect to the terms of and the intention of the Plan.

A handwritten signature in black ink, appearing to read "J. Morawetz", is written over a horizontal line.

Morawetz, J.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**THE HONOURABLE MR. JUSTICE MORAWETZ** ) **WEDNESDAY, THE 21<sup>st</sup>**  
 ) **DAY OF APRIL, 2011**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985 c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

Applicant

**ORDER  
(Plan Sanction)**

**THE MOTION**, made by Sherry Townsend in her capacity as the Interim Operating Officer of Nelson Financial Group Ltd. appointed by this Court (the "IOO"), seeking approval and sanction of the Plan of Compromise and Arrangement of the Applicant, Nelson Financial Group Ltd., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA") was heard on April 20, 2011 at 330 University Avenue, Toronto, Ontario and decision reserved to this day.

**ON READING** the Notice of Motion and the Motion Record, including the Report dated April 17, 2011 of Greg S. MacLeod, CA, CIRP, in his capacity as Chair of the Creditors' Meeting held on April 16, 2011, the Thirteenth Report of the Monitor dated April 6, 2011, the Second Report of the IOO dated April 18, 2011, the Information Circular dated March 22, 2011 and the Plan of Compromise and Arrangement of the Applicant, Nelson Financial Group Ltd., dated February 11, 2011 (as amended to April

12, 2011) and on hearing the submissions of counsel for the IOO on behalf of the Applicant, the Representative Counsel, A. John Page & Associates Inc. in its capacity as the Court-appointed Monitor of the Applicant (the "Monitor") and Staff of the Ontario Securities Commission, no other persons appearing although duly served;

#### **Service**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this motion be and it is hereby abridged and the service of the Notice of Motion and Motion Record herein as effected by the Applicant is hereby validated in all respects and any further service is dispensed with.

#### **Definitions**

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order or in the Plan Filing and Meeting Order shall have the meanings ascribed to them in the Plan of Compromise and Arrangement in respect of the Applicants dated February 11, 2011 as amended to April 12, 2011 (the "Plan").

#### **Approval of the Report of the Chair of the Creditors' Meeting**

3. **THIS COURT ORDERS** that the Report of Greg S. MacLeod dated April 17, 2011 in respect of the conduct of the Creditors' Meeting chaired by him in accordance with the Order of this Court made on March 4, 2011 (the "Plan Filing and Meeting Order"), and the activities of the Chair as described in that Report are hereby approved.

**Sanction of the Plan**

4. **THIS COURT ORDERS AND DECLARES** that the Plan in the form attached hereto as Schedule "A", shall be and is hereby sanctioned and approved pursuant to section 6 of the CCAA and the compromises and arrangements contemplated under the Plan are approved, binding and effective as set out in the Plan and in this Order upon all Affected Creditors.
5. **THIS COURT ORDERS** that the articles of incorporation of the Applicant shall be amended by way of the filing of Articles of Reorganization, including the changing of its corporate name, the cancellation of all presently issued and authorized shares in its capital stock, the authorization of New Special Shares and Common Shares and the appointment of a board of directors of five persons, being Bruce Clark, Rina Mancini, John McCabe, Sherry Townsend and Tina Young, all as provided in the Articles of Reorganization in the form attached hereto as Schedule "B" and the said Articles are hereby approved pursuant to section 186 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA"), including without limitation pursuant to section 186(2) and (3)(b) of the OBCA.

**Plan Implementation**

6. **THIS COURT ORDERS** that the Applicant and the IOO are hereby authorized to take all actions necessary or appropriate to implement and give effect to the Plan in accordance with its terms and including, without limitation, (i) to deliver forthwith the Articles of Reorganization to the Director appointed under the OBCA for filing, (ii) to convene a meeting of the board of directors of the

Applicant, (iii) to proceed to implement and consummate the issue of the Capital Recovery Debentures, the New Special Shares, the Common Shares and make the payments in respect of the rights of creditors with Proven Claims pursuant to the Plan, and (iv) to execute and deliver all such other instruments, releases, indentures, agreements and other documents necessary or desirable in connection with the Plan or to make it fully effective.

#### **Plan Releases**

7. **THIS COURT ORDERS** that, on the Plan Implementation Date, the releases provided for under section 10.5 of the Plan shall, to the extent not specifically prohibited by the CCAA and in any event subject to the limitations of section 5.1(2) of the CCAA, become effective provided, however, that nothing herein shall release any person, other than the Applicant, from any liability for fraud, fraudulent misrepresentation, gross negligence, willful misconduct or criminal conduct.
8. **THIS COURT ORDERS** that, upon the Plan Implementation Date, each Affected Claim shall be settled, compromised and released in accordance with the Plan and the ability of any Affected Creditor to proceed against the Applicant or any of the assets or property of the Applicant in respect of, in connection with or relating to such Affected Claim is hereby permanently stayed, subject only to the right of the Affected Creditor to receive distributions in accordance with the Plan.

#### **Consequential Matters**



9. **THIS COURT ORDERS** that the Monitor is released from any responsibility to and shall not hereafter monitor the operations, assets, cash flows or other activities of the Applicant but shall upon the request of the IOO assist in matters relating to the implementation of the Plan as needed including, among others, by providing to the IOO its preference review memorandum and any information available concerning any Creditors that the Applicant cannot contact or locate.
10. **THIS COURT ORDERS** that the Monitor is hereby authorized, *nunc pro tunc*, to redact the exhibits to the memorandum reporting on the Results of the Claims Procedure dated March 9, 2001, which is attached as Exhibit "B" to the Thirteenth Report of the Monitor dated April 6, 2011 (the "Thirteenth Report"), which redacted version was served upon any party other than this Court.
11. **THIS COURT ORDERS** that the unredacted version of the memorandum of the Monitor attached as Exhibit "B" to the Thirteenth Report and filed with this Court shall remain sealed until further Order of this Court.
12. **THIS COURT ORDERS** that the Monitor is authorized and directed to post the Report of the Chair of the Meeting with a form of the Voting Record in which the names of the Creditors are redacted attached thereto.
13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and other countries and as against all Persons against whom it may otherwise be enforceable.

14. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any Court or any judicial, regulatory or administrative body in any province or territory of Canada (including, without limitation, the assistance of any Court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other Court or any judicial regulatory administrative body of the United States of America and the States or other subdivisions of the United States of America and of any other nation or state to act in aid of to be complimentary to this Court in carrying out the terms of this Order.
15. **THIS COURT ORDERS AND DECLARES** that it continues to have and shall reserve to itself jurisdiction to make any and all further orders as may be necessary to complete or give effect to all matters ancillary to or arising in the course of these proceedings or in the course of the implementation of the Plan and that any of the Applicant and the Trustees from time to time of the Nelson Litigation Trust established pursuant to the Plan, the Representative Counsel, the IOO or the Monitor may apply to this Court for such further orders, advice, directions or assistance as may be necessary to complete any outstanding matters or to give effect to the terms of and the intention of the Plan.

---

Morawetz, J.

4

5



987  
Schedule "A" 987

File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**PLAN OF COMPROMISE AND ARRANGEMENT OF  
NELSON FINANCIAL GROUP LTD.**

**FEBRUARY 11, 2011**

**(As Amended To April 12, 2011)**

## TABLE OF CONTENTS

	Page
<b>ARTICLE 1 DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
1.1 Definitions.....	1
1.2 Article and Section Reference .....	8
1.3 Extended Meanings.....	8
1.4 Interpretation Not Affected by Headings.....	8
1.5 Inclusive Meaning.....	8
1.6 Currency.....	9
1.7 Statutory References .....	9
1.8 Successors and Assigns.....	9
1.9 Governing Law .....	9
1.10 Severability of Plan Provisions.....	9
1.11 Timing Generally .....	9
1.12 Time of Payments and Other Actions.....	10
1.13 Schedules .....	10
<b>ARTICLE 2 PURPOSE AND EFFECT OF PLAN.....</b>	<b>10</b>
2.1 Purpose.....	10
2.2 Intended Effect of the Plan .....	10
2.3 Releases.....	11
<b>ARTICLE 3 CLASSIFICATION OF CLAIMS .....</b>	<b>11</b>
3.1 Classification of Claims.....	11
3.2 Affected Persons .....	11
3.3 Claims Excluded by the Plan .....	11
3.4 Defences to Excluded Claims .....	12
3.5 Crown Claims .....	12
<b>ARTICLE 4 TREATMENT OF CREDITORS .....</b>	<b>12</b>
4.1 Treatment of Convenience Class .....	12
4.2 Cash Exit Option.....	12
4.3 Treatment of Proven Claims.....	12
4.4 Excluded Claims.....	13

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>ARTICLE 5 CREDITORS' MEETING .....</b>	<b>13</b>
5.1 Creditors' Meeting and Conduct.....	13
5.2 Voting by Creditors.....	13
5.3 Acceptance of Plan .....	14
<b>ARTICLE 6 CONDITIONS OF PLAN IMPLEMENTATION .....</b>	<b>14</b>
6.1 Sanction Order .....	14
6.2 Conditions of Plan Implementation .....	16
6.3 Representative Counsel's Certificate.....	17
<b>ARTICLE 7 IMPLEMENTATION OF THE PLAN .....</b>	<b>17</b>
7.1 Articles of Reorganization .....	17
7.2 Effectuating Documents.....	17
7.3 Administrative Charge .....	17
7.4 Discharge of Monitor and Representative Counsel .....	18
<b>ARTICLE 8 PROVISIONS GOVERNING DISTRIBUTIONS.....</b>	<b>18</b>
8.1 Distributions on Proven Claims .....	18
8.2 Required Delivery to Receive Distribution.....	18
8.3 Distributions by the Applicant.....	18
8.4 Interest on Affected Claims .....	18
8.5 Distributions in respect of Transferred or Assigned Claims.....	18
8.6 Undeliverable and Unclaimed Distributions.....	19
8.7 Tax Matters .....	19
<b>ARTICLE 9 AMENDMENTS TO THE PLAN .....</b>	<b>20</b>
9.1 Amendments to Plan Prior to Approval.....	20
9.2 Amendments to Plan Following Approval .....	20
<b>ARTICLE 10 PLAN IMPLEMENTATION AND EFFECT OF THE PLAN .....</b>	<b>21</b>
10.1 Implementation .....	21
10.2 Effect of the Plan Generally.....	21
10.3 Compromise Effective for All Purposes .....	21
10.4 Contracts .....	21

## TABLE OF CONTENTS

(continued)

	Page
10.5 Plan Releases .....	21
10.6 Stay of Proceedings.....	22
10.7 Exculpation .....	22
10.8 Waiver of Defaults .....	23
10.9 Consents and Releases .....	23
10.10 Deeming Provisions .....	23
<b>ARTICLE 11 POST IMPLEMENTATION MATTERS .....</b>	<b>23</b>
11.1 Lending, Financing and Disclosure .....	23
11.2 Derivative rights and the Litigation Trust.....	24
<b>ARTICLE 12 GENERAL PROVISIONS .....</b>	<b>24</b>
12.1 Different Capacities .....	24
12.2 Further Assurances.....	24
12.3 Set-Off.....	24
12.4 Paramountcy .....	24
12.5 Revocation, Withdrawal, or Non-Consummation .....	25
12.6 Preservation of Rights of Action.....	25
12.7 Notices .....	25
<b>SCHEDULES</b>	
Form of Representative Counsel's Certificate.....	A
Articles of Reorganization .....	B
Form of Capital Recovery Debenture .....	C
Form of Receipt, Release and Assignment.....	D
Declaration of Trust – Litigation Trust.....	E
Form of Proxy .....	F
Form of Voting Letter .....	G
Form of Cash Option Election .....	H

**PLAN OF COMPROMISE AND ARRANGEMENT OF  
NELSON FINANCIAL GROUP LTD.**

**PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)**

**FEBRUARY 11, 2010**

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Plan (including the Schedules hereto), unless otherwise stated or the context should otherwise require, the capitalized terms and phrases used but not defined herein have the following meanings:

**“Administration Charge”** means the Administration Charge granted under the Initial Order;

**“Administration Charge Reserve”** has the meaning set out in Section 5.2(a) of this Plan;

**“Affected Claim”** means a Claim that is not an Excluded Claim. For greater certainty, **“Affected Claims”** include all Pre-Filing Claims, Equity Claims and Subsequent Claims;

**“Applicable Law”** means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, treaties, orders, judgments and decrees, and all official requests, directives, rules, guidelines, orders, policies, practices and other requirements of any Authorized Authority;

**“Applicant”** means Nelson Financial Group Ltd.;

**“Articles of Reorganization”** means the Articles of Reorganization to be filed under and subject to the terms and conditions of this Plan, cancelling all issued and outstanding shares of the Applicant, authorizing the new share capital of the Applicant, changing the name of the Applicant to Provider Capital Group Inc. and appointing persons designated by the Creditors' Meeting to be the board of directors of the Applicant and otherwise substantially in the form annexed as Schedule “B” to this Plan;

**“Authorized Authority”** means, in relation to any Person, transaction or event, any:

- (a) federal, provincial, territorial, state, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign;
- (b) agency, authority, commission, instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory or



administrative powers or functions of or pertaining to government, including any Taxing Authority;

- (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; or
- (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, transaction or event;

**"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

**"Business Day"** means, with respect to any action to be taken, any day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario, Canada;

**"Canadian Dollars"**, **"CDN\$"** or **"\$"** means dollars denominated in lawful currency of Canada;

**"Capital Recovery Debenture"** means the Debenture to be issued by the Applicant in implementation of this Plan on the terms of and substantially in the form of that attached hereto as Schedule "C";

**"Cash Exit Option"** means the option available to all Proven Creditors to elect to take a payment of 25 cents on the dollar of the Claim amount in full satisfaction of their Proven Claim on and subject to the terms and conditions of Section 4.2 of this Plan;

**"Cash Option Election"** means the election form required under section 4.2 of the Plan on the terms of and substantially in the form of that attached hereto as Schedule "H";

**"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended;

**"CCAA Court"** means the Ontario Superior Court of Justice;

**"CCAA Proceedings"** means the proceedings commenced by the Applicant under the CCAA on March 22, 2010 in the CCAA Court, Court File No. CV-10-8630-00CL;

**"Chair"** means Greg S. MacLeod or such other person as may be appointed from time to time by the Court under the Creditors' Meeting Order to act as chairman of the Creditors' Meeting;

**"Charges"** has the meaning given to it in paragraph 32 of the Initial Order as amended by the Orders of June 15, 2010 appointing the Representative Counsel and Order of November 22, 2010 appointing the Interim Operating Officer;

**"Claim"** means any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by

reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, secured or unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the BIA if the Applicant were bankrupt, and for greater certainty, includes, without limitation (i) any Tax Claim, (ii) any claims by any Person for obligations or indebtedness owing by the Applicant in respect of any Equity Claim, and (iii) any Subsequent Claim;

**"Claims Bar Date"** means 4:00 p.m. (Toronto Time) on September 15, 2010, or such other date as may be ordered by the CCAA Court;

**"Claims Procedure Order"** means the Order of the Honourable Madam Justice Pepall dated July 27, 2010, as may be amended, restated or varied by subsequent Orders of the CCAA Court;

**"Common Share"** means a common share to be issued upon the Implementation of this Plan as authorized pursuant to the Articles of Reorganization;

**"Convenience Class"** means the Creditors who are unsecured creditors in respect of the provision of goods or services to the Applicant with Proven Claims of \$1,000.00 or who elect to waive any amount of their Proven Claim in excess of \$1,000.00 and receive payment under Section 4.1 of this Plan;

**"Creditor"** means, subject to the Claims Procedure Order and Section 8.4 of this Plan, any holder of an Affected Claim, in that capacity;

**"Creditors' Meeting"** means the meeting of Proven Creditors called for the purposes of considering and voting in respect of this Plan, which has been set by the Creditors' Meeting Order and, subject to such Order, to take place at 11:00 a.m. (Toronto Time) on April 16, 2011 and any postponements, adjournments or amendments thereof;

**"Creditors' Meeting Order"** means the Order of the CCAA Court ordering and declaring, among other things, the procedures to be followed in connection with the Creditors' Meeting, as amended, restated or varied from time to time by any subsequent Order of the CCAA Court;

**"Crown"** means Her Majesty in right of Canada or a province of Canada;

**"Crown Claim"** means any Claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;

- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
  - (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;

**"Derivative Right"** means any right or cause of action in law or in equity held by a Creditor in respect of or derived from a Proven Claim including without limitation any right of the Creditor to recover damages for fraudulent misrepresentation, negligent misrepresentation, conversion, breach of statutory duty or any other wrongful act, against any associate or affiliate of the Applicant or any employee or third party owing fiduciary or other duties at law to the Applicant or to any associate or affiliate of the Applicant, and includes any right to trace advances made by the Creditor and included in the Proven Claim to or into investments made by or through the Applicant into amounts, property, rights or things held by, held in trust for or owing from any associate or affiliate of the Applicant to the Creditor, provided that in each case the relationship of or to the associate or affiliate of the Applicant and of the Creditor to any such shall be determined as at the Filing Date;

**"Disallowed Claim"** means a Disputed Claim (or any portion thereof) which has been finally disallowed in accordance with the Claims Procedure Order;

**"Disputed Claim"** means all or that portion of an Affected Claim proof of which was filed with the Monitor in compliance with the Claims Procedure Order and that has not been allowed or accepted as proven by the Monitor, which is the subject of a Notice of Dispute or Notice of Revision or Disallowance, and which has not been resolved by the Claims Officer, by agreement or by further Order of the CCAA Court, as applicable. For greater certainty, once a Disputed Claim is finally determined, it shall become either a Proven Claim or a Disallowed Claim, as the case may be;

**"Disputed Claims Reserve"** shall have the meaning set out in Section 6.2;

“**Eligible Voting Creditor**” means a Creditor having a Proven Claim or a Disputed Claim but shall not include any Creditor in respect of an Equity Claim;

“**Equity Claim**” has the meaning set out in the CCAA and includes any Claim as a Creditor in respect of any shares of the Debtor issued and outstanding on or before the Filing Date and subject to the Order of the Honourable Madame Justice Pepall dated November 16, 2010;

“**Excluded Claim**” has the meaning set forth in Section 3.3 of this Plan;

“**Filing Date**” means March 23, 2010, being the date of the Initial Order;

“**Final Distribution Date**” means a Business Day to be chosen by the Monitor, in consultation with the Applicant, on which final distributions are to be made on account of Proven Claims and which shall be a date that occurs after all Disputed Claims have been finally determined in accordance with the Claims Procedure Order;

“**GST**” means goods and services tax under the *Excise Tax Act* (Canada), R.S.C., 1985, c. E-15, as amended to the date of this Plan;

“**Initial Distribution Date**” means a Business Day to be chosen by the Applicant, on which initial distributions of Common Shares and of New Special Shares are to be made on account of Proven Claims;

“**Initial Order**” means the Order granted by the CCAA Court in the CCAA Proceedings on March 23, 2010, as amended, restated, varied or extended from time to time by subsequent Orders of the CCAA Court;

“**Interim Operating Officer**” means the Interim Operating Officer, Ms. Sherry Townsend, appointed by the CCAA Court pursuant to the Order of the Honourable Madame Justice Pepall made on November 22, 2010 and any successor Interim Operating Officer hereafter appointed by the CCAA Court;

“**ITA**” means the *Income Tax Act* (Canada), R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), as amended to the date of this Plan;

“**Lien**” means any mortgage, charge, pledge, assignment by way of security, lien, hypothec, security interest, deemed trust or other encumbrance granted or arising pursuant to a written agreement or statute or otherwise created by law;

“**Litigation Trust**” means the trust established under the terms of the Declaration of Trust annexed to this Plan as Schedule “E” providing for the enforcement of the Derivative Rights for the benefit of all Participating Creditors upon such Declaration of Trust being executed by the Applicant upon the implementation of the Plan;

“**Monitor**” means A. John Page & Associates Inc., in its capacity as the monitor of the Applicant in the CCAA Proceedings, and not in its corporate or personal capacity;

**"Monitor's Website"** means the website maintained by the Monitor located at the following address: <http://www.ajohnpage.com/html/files.html>;

**"New Special Share"** means the New Special Share to be issued by the Applicant upon the implementation of this Plan and having the rights as authorized under the terms of the Articles of Reorganization;

**"Notice of Dispute"** means a written notice, substantially in the form attached as Schedule "4" to the Claims Procedure Order, delivered to the Monitor by a Creditor disputing either a Notice of Claim or Notice of Revision or Disallowance issued by the Monitor, with reasons for its dispute;

**"Notice of Revision or Disallowance"** means a written notice, substantially in the form attached as Schedule "5" to the Claims Procedure Order, delivered to a Creditor advising that the Monitor has revised or disallowed all or part of such Creditor's Filed Claim (as defined in the Claims Procedure Order) for the purposes of voting and/or distribution and providing the reasons for the revision or disallowance;

**"Order"** means any order of the CCAA Court made in the CCAA Proceedings;

**"Participating Creditor"** means a Creditor who shall have elected to take benefits under the Plan and who shall have executed and delivered to the Applicant the Receipt, Release and Assignment required pursuant to Section 8.2 of this Plan;

**"Permitted Liens"** means any Lien arising or granted in relation to any of the Applicant's property, assets and undertaking as a result of a borrowing transaction authorized by the by-laws of the Applicant, approved by special resolution of the voting shareholders of the Applicant or otherwise arising in the ordinary course of the operation of the business of the Applicant by operation of any law of general application;

**"Person"** shall be broadly interpreted and includes, without limitation, any individual, corporation, limited or unlimited liability company, general or limited partnership, association, firm, trust, unincorporated organization, joint venture, venture capital fund, administrator or committee in respect of a registered pension plan, unincorporated association or organization, syndicate, committee, the government of a country, province or political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality or department of such government or political subdivision, or any other entity, howsoever constituted, and the trustees, executors, administrators, or other legal representatives of an individual;

**"Plan"** means this Plan of Compromise and Arrangement, as it may be amended, restated, or supplemented from time to time in accordance with the provisions hereof;

**"Plan Implementation Date"** means a Business Day, as determined by the Applicant, once all conditions precedent to the implementation of this Plan set out in Section 6.2 have been satisfied or waived;

**"Plan Termination Date"** means that date being 90 days after the date of the granting of the Sanction Order;

**“Pre-Filing Claim”** means any Claim other than (i) an Excluded Claim, and (ii) a Subsequent Claim;

**“Proof of Assignment”** means a notice of transfer or assignment of an Affected Claim executed by a Creditor and the transferee or assignee, together with satisfactory evidence of such transfer or assignment as may be reasonably required by the Applicant, in accordance with Paragraph 11 of the Claims Procedure Order;

**“Proof of Claim”** means a proof of claim, in substantially the form attached as Schedule 3 to the Claims Procedure Order, as submitted to the Monitor by a Creditor in accordance with the Claims Procedure Order;

**“Proven Claim”** means the Claim of a Creditor, as finally determined in accordance with the Claims Procedure Order or any other order of the CCAA Court but for greater certainty shall not include any Equity Claim;

**“Proven Creditor”** means a Creditor holding a Proven Claim;

**“Receipt, Release and Assignment”** means the receipt, release and assignment required to be executed and delivered by all Creditors receiving distributions under this Plan in accordance with Section 8.2 of this Plan and in the form of Schedule “D”;

**“Representative Counsel”** means Douglas Turner, Q.C. in his capacity as Representative Counsel for the Noteholders of the Applicant pursuant to his appointment by the CCAA Court under the Order of the Honorable Madame Justice Pepall made on June 15, 2010 as amended by the Order made on November 22, 2010 and as such may be amended by further orders of the Court and such shall also include Richard B. Jones in his capacity as Special Counsel to the Representative Counsel as appointed pursuant to the Court Order of June 15, 2010 and such shall include any successor or replacement performing the same or similar functions as may be appointed by Order of the CCAA Court from time to time;

**“Representative Counsel’s Certificate”** has the meaning attributed to it in section 6.3 hereof;

**“Sanction Date”** means the date that the Sanction Order is granted;

**“Sanction Order”** means an Order sanctioning this Plan, ordering the filing of the Articles of Reorganization and giving all necessary directions regarding the implementation of this Plan, which shall include the provisions set forth in Sections 6.1, 8.1 and 8.5 of this Plan;

**“Secured Claim”** means any Claim or portion thereof that is secured by a validly attached and existing Lien on the property of the Applicant that was duly and properly registered or perfected in accordance with Applicable Law at the Filing Date or in accordance with the Initial Order, but only to the extent of the realizable value of the property of the Applicant subject to such security, still in the possession of the Applicant, having regard to, among other things, the priority of such security;

**“Subsequent Claim”** means any right or claim of any Person, that may be asserted in whole or in part against the Applicant, whether or not asserted or made, in connection with any

indebtedness, liability or obligation of any kind whatsoever, present or future, arising after the Filing Date (but before the Plan is sanctioned by the Court) by reason of any obligation incurred by the Applicant before the Filing Date, including any indebtedness, liability, or obligation resulting from the termination of employment, or the disclaimer or resiliation by the Applicant in the CCAA Proceedings of an agreement that existed before the Filing Date, and any interest that may accrue thereon for which there is an obligation to pay, and costs payable at law or in equity in respect thereof, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature and that is provable under the BIA, but a "Subsequent Claim" shall not include an "Excluded Claim";

**"Tax" or "Taxes"** means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

**"Tax Claim"** means any Claim against the Applicant for any Taxes in respect of any taxation year or period ending on or prior to the Filing Date, and in any case where a taxation year or period commences on or prior to the Filing Date, for any Taxes in respect of or attributable to the portion of the taxation period commencing prior to the Filing Date and up to and including the Filing Date. For greater certainty, a "Tax Claim" shall include, without limitation, any and all Claims of any Taxing Authority in respect of transfer pricing adjustments and any Canadian or non-resident Tax related thereto; and

**"Taxing Authorities"** means Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of each and every province or territory of Canada and any political subdivision thereof, and any Canadian or foreign governmental authority exercising taxing powers in administering and/or collecting Taxes.

## **1.2 Article and Section Reference**

The terms **"this Plan"**, **"hereof"**, **"hereunder"**, **"herein"**, and similar expressions refer to this Plan, and not to any particular article, section, subsection, paragraph or clause of this Plan and include any variations, amendments, modifications or supplements hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph shall, unless otherwise stated, refer to an article, section, subsection, paragraph or clause of this Plan.

## **1.3 Extended Meanings**

In this Plan, where the context so requires, any word importing the singular number shall include the plural and vice versa, and any word or words importing gender shall include all genders.

#### **1.4 Interpretation Not Affected by Headings**

The division of this Plan into articles, sections, subsections, paragraphs and clauses and the insertion of a table of contents and headings are for convenience of reference and shall not affect the construction or interpretation of this Plan.

#### **1.5 Inclusive Meaning**

As used in this Plan, the words “include”, “includes”, “including” or similar words of inclusion means, in any case, those words as modified by the words “without limitation” and “including without limitation”; so that references to included matters shall be regarded as illustrative rather than exhaustive.

#### **1.6 Currency**

Unless otherwise stated herein, all references to currency in this Plan are to Canadian Dollars. For the purposes of voting or distribution, Affected Claims shall be denominated in Canadian Dollars and all cash distributions under this Plan shall be paid in Canadian Dollars. Any Affected Claim in a currency other than Canadian Dollars will be deemed to have been converted to Canadian Dollars at the spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian Dollars as at noon on the Filing Date, which rate for greater certainty for the conversion of United States Dollars to Canadian Dollars was 1.0650.

#### **1.7 Statutory References**

Any reference in this Plan to a statute includes all regulations made thereunder, all amendments to such statute or regulations in force from time to time to the date of this Plan and any statute or regulation that supplements or supersedes such statute or regulation to the date of this Plan.

#### **1.8 Successors and Assigns**

The rights, benefits and obligations of any Person named or referenced in this Plan shall be binding on and shall inure to the benefit of any heir, administrator, executor, legal personal representative, successor or assign, as the case may be, or a trustee, receiver, interim receiver, receiver and manager, liquidator or other Person acting on behalf of such Person, as permitted hereunder.

#### **1.9 Governing Law**

This Plan, shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. Any dispute or issue in connection with, or related to the interpretation, application or effect of this Plan and all proceedings taken in connection with this Plan and its revisions shall be subject to the exclusive jurisdiction of the CCAA Court.



### **1.10 Severability of Plan Provisions**

If any provision of this Plan is illegal, invalid or unenforceable, or becomes illegal, invalid or unenforceable on or following the Plan Implementation Date in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Plan, or the legality, validity or enforceability of that provision in any other jurisdiction.

### **1.11 Timing Generally**

Unless otherwise specified, all references to time herein, and in any document issued pursuant hereto, shall mean local time in Toronto, Ontario, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day.

### **1.12 Time of Payments and Other Actions**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the payment to the next succeeding Business Day if the last day of the period is not a Business Day. Wherever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day.

### **1.13 Schedules**

The following are the Schedules to this Plan, which are incorporated by reference into this Plan and form an integral part hereof:

- Schedule "A" - Form of Representative Counsel's Certificate
- Schedule "B" - Articles of Reorganization
- Schedule "C" - Form of Capital Recovery Debenture
- Schedule "D" - Form of Receipt, Release and Assignment
- Schedule "E" - Declaration of Trust – Litigation Trust
- Schedule "F" - Form of Proxy
- Schedule "G" - Form of Voting Letter
- Schedule "H" - Form of Cash Option Election

## **ARTICLE 2**

### **PURPOSE AND EFFECT OF PLAN**

#### **2.1 Purpose**

The purpose of this Plan is to provide for a compromise and arrangement of all Affected Claims against the Applicant in order to enable the business of the Applicant to continue as a going concern, in the expectation that a greater benefit will be derived by the Applicant and its stakeholders from the continued operation of the business of the Applicant and the distributions under the Plan than would result from the sale or forced liquidation of its assets.

#### **2.2 Intended Effect of the Plan**

The effect of the Plan is that each Creditor holding a Proven Claim will receive a Capital Recovery Debenture in the principal amount of \$25.00, New Special Share with a stated capital and redemption value of \$25.00 and one Common Share with a stated capital of \$1.00 in full satisfaction of each \$100.00 of such Proven Claim. The value of the consideration being provided to Creditors under the Plan is determined by the Applicant to be the stated capital of the Shares and is less than the amount of the Proven Claims. Subject to a capped pool of funds, Proven Claims may elect to receive payment of 25% of the amount of their Proven Claim or such part as they may elect as an alternative and in full satisfaction of all rights and Claims against the Applicant and under this Plan. Convenience Class Proven Claims and Excluded Claims will be paid in full.

All Equity Claims will be discharged by the Plan and receive nothing under it. Under the Articles of Reorganization, all of the common shares, Series A Preferred Shares and Series B Preferred Shares previously issued by the Applicant and outstanding on the Filing Date will be cancelled and of no further force or effect as against the Applicant. After the Implementation of the Plan, all of the Proven Claims of Affected Creditors will be satisfied in full by the issuance of Common Shares and New Special Shares, such shares issued in Implementation of the Plan will be the only share capital of the Applicant then issued and outstanding, and all other Claims will be discharged and released.

#### **2.3 Releases**

The Plan provides for the release of Claims that Affected Creditors may have against the former director of the Applicant, Marc Boutet, that arose before the Filing Date and that relate to the obligations of the Applicant where he is by law liable solely in his capacity as a director for the payment of such obligations. This limited release does not affect or include any claims that relate to the contractual rights of any Creditor or that are based on allegations of misrepresentations made by Mr. Boutet or by any person other than the Applicant for which he is responsible as a matter of law to Creditors or any wrongful or oppressive conduct that he or persons for whom he is responsible may have committed. Otherwise, the Plan does not affect any claims that any of the Affected Creditors, including any persons holding Equity Claims, has or may have had as of the Filing Date against Mr. Boutet or any person or corporation other than the Applicant.

## **ARTICLE 3 CLASSIFICATION OF CLAIMS**

### **3.1 Classification of Claims**

For the purposes of considering and voting on this Plan and receiving a distribution hereunder, all Proven Claims shall be grouped into a single class and all Equity Claims shall be in a separate class. The Equity Claims shall not be entitled to vote on this Plan or to receive any distribution hereunder.

### **3.2 Affected Persons**

On the implementation of the Plan, this Plan shall be binding upon the Applicant, the Creditors, and their respective heirs, executors, administrators, legal representatives, successors and assigns in accordance with its terms, but shall not affect Excluded Claims.

### **3.3 Claims Excluded by the Plan**

This Plan does not compromise, release or otherwise affect the following Claims (collectively, “**Excluded Claims**”), and, subject to Section 3.4 hereof, such Excluded Claims shall be addressed by the Applicant in the ordinary course:

- (a) Claims for goods or services provided to the Applicant on or after the Filing Date;
- (b) Claims of the nature secured by the Administration Charge;
- (c) Crown Claims; and
- (d) Secured Claims, to the extent that they are Proven Claims.

### **3.4 Defences to Excluded Claims**

Nothing in this Plan shall affect the Applicant’s rights and defences, both legal and equitable, with respect to any Excluded Claims or any rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Excluded Claims. Nothing herein shall constitute a waiver of any right of the Applicant to dispute the entitlement to or quantum of an Excluded Claim.

### **3.5 Crown Claims**

All Crown Claims in respect of all amounts that were outstanding at the Filing Date or related to the period ending on the Filing Date shall be paid in full to the Crown within six months of the Sanction Order, as required by section 6(3) of the CCAA.

## ARTICLE 4 TREATMENT OF CREDITORS

### 4.1 Treatment of Convenience Class

Proven Claims in the Convenience Class shall be paid by the Applicant upon the Implementation Date the lesser of the amount of the Proven Claim or a maximum of \$1,000.00 in full satisfaction of the Proven Claim.

### 4.2 Cash Exit Option

During the period from the passing of the resolution of Creditors approving the Plan until ten (10) days after the Sanction Date, any Proven Creditor shall have the option to elect in writing by delivering the Cash Option Election in the form attached as Schedule "H" to take a payment of 25 cents on the dollar of such Creditor's Proven Claim or such part thereof as the Creditor shall elect in full satisfaction of all but not less than all of such Claim and of all rights and entitlements under this Plan. The Applicant shall satisfy Cash Exit Options only to the extent of a maximum of \$10,000,000 of electing Proven Claims. If more than \$10,000,000 of Proven Claims elect to take the Cash Exit Option, such electing Claims shall only be satisfied *pro rata* and the remaining balance of each Proven Claim shall continue as a Proven Claim under this Plan. Creditors electing and receiving a Cash Exit Option distribution under the Plan shall not participate thereafter in any benefits under this Plan in respect of the Proven Claim so satisfied including, without limitation, any rights under or future distributions from the Litigation Trust.

### 4.3 Treatment of Proven Claims

In full and final satisfaction of its Proven Claims, the Applicant shall on the Implementation Date issue and deliver to each Proven Creditor:

- (a) a non-interest bearing convertible Capital Recovery Debenture in the principal amount of \$25.00 for each \$100.00 of the amount of the Proven Claim of the Proven Creditor, provided that a Proven Creditor shall have the right to elect in writing to receive on the Plan Implementation Date one (1) New Special Share in the place of each \$25.00 of principal amount of Capital Recovery Debenture that it would otherwise have been entitled to receive;
- (b) One (1) New Special Share from treasury with a redemption value and stated capital of \$25.00 for each \$100.00 of the amount of the Proven Claim of the Proven Creditor, rounded to the nearest integral number of hundreds of dollars, and such shares shall be issued as a fully paid and non-assessible shares and otherwise on and subject to the terms and conditions of the Articles of Reorganization; and
- (c) One (1) Common Share from treasury for each \$100.00 of the amount of the Proven Claim of the Proven Creditor, rounded to the nearest integral number of hundreds of dollars, issued with a stated capital of \$1.00 and as a fully paid and

non-assessible share and otherwise on and subject to the terms and conditions of the Articles of Reorganization.

#### **4.4 Excluded Claims**

All Excluded Claims shall be paid by the Applicant in accordance with and subject to the terms of Sections 3.3, 3.4 and 3.5 hereof.

### **ARTICLE 5 CREDITORS' MEETING**

#### **5.1 Creditors' Meeting and Conduct**

The Creditors' Meeting to consider and vote on this Plan shall be held and conducted by the Chair as chairman and with a scrutineer as appointed by and in accordance with the terms of the Creditors' Meeting Order.

#### **5.2 Voting by Creditors**

Each Eligible Voting Creditor shall be entitled to cast a single vote on this Plan at the Creditors' Meeting which vote shall be tabulated in the aggregate dollar amount of such Creditor's Proven Claim and Disputed Claim, if any. The Chair of the Creditors' Meeting shall keep a separate record and tabulation of the votes cast by each Eligible Voting Creditor and of any votes cast in respect of Disputed Claims. The Chair shall report the result of the vote and the tabulation of votes by numbers of Creditors voting to approve or reject the Plan and by the amount of Proven Claims and Disputed Claims voting to approve or reject the Plan to the Creditors' Meeting and to the CCAA Court. If the vote on the approval or rejection of the Plan by Eligible Voting Creditors is decided by the votes in respect of the Disputed Claims, the Applicant shall seek an order for an expedited determination of any material Disputed Claims and an appropriate deferral of the application for the Sanction Order and any other applicable dates in the Plan. The fact that a Disputed Claim is allowed for voting purposes shall not preclude the Applicant and the Representative Counsel from disputing the Disputed Claim for distribution purposes.

#### **5.3 Acceptance of Plan**

If the Plan is approved by the required majorities of Eligible Voting Creditors entitled to vote at the Creditors' Meeting, being a majority in number of Eligible Voting Creditors present and voting either in person or by proxy, representing two thirds in value of the aggregate Proven Claims of such Eligible Voting Creditors present, then this Plan shall be approved and shall be deemed to have been agreed to, accepted and approved by the Creditors and shall be binding upon all Affected Creditors, if the Sanction Order is granted.

#### **5.4 Selection of Directors**

If the Plan is approved by the required majorities of Eligible Voting Creditors entitled to vote at the Creditors' Meeting, the Meeting shall then be open for nominations and shall proceed to select five (5) persons as the Creditors' selection of persons to be designated in the Articles of Reorganization to constitute the board of directors of the Applicant upon the filing of the Articles

of Reorganization pursuant to the Order of the Court in accordance with section 186 of the OBCA.

## **ARTICLE 6**

### **CONDITIONS OF PLAN IMPLEMENTATION**

#### **6.1 Sanction Order**

If this Plan is approved by the required majorities of Creditors entitled to vote at the Creditors' Meeting, the Applicant shall bring a motion before the CCAA Court seeking the Sanction Order as soon as reasonably practicable. The Sanction Order requested shall provide, among other things, that:

- (a) (i) this Plan has been approved by the required majorities of Creditors entitled to vote at the Creditors' Meeting in conformity with the CCAA; (ii) the Applicant acted in good faith and has complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the CCAA Court is satisfied that the Applicant has not done nor purported to do anything that is not authorized by the CCAA; and (iv) this Plan and the transactions contemplated by it are fair and reasonable;
- (b) this Plan (including the compromises, arrangements, discharges and releases set out herein) shall be sanctioned and approved pursuant to Section 6 of the CCAA and will be binding and effective as herein set out on the Applicant, all Creditors and all other Persons as provided for in this Plan or in the Sanction Order;
- (c) subject to the performance by the Applicant of its respective obligations under this Plan, and except to the extent expressly contemplated by this Plan or the Sanction Order, all obligations or agreements to which the Applicant is a party, other than agreements which were terminated or repudiated by the Applicant prior to the deadline specified in the Creditors' Meeting Order and in accordance with the Initial Order, will be and shall remain in full force and effect as at the Plan Implementation Date, unamended except as they may have been amended by agreement of the parties subsequent to the Filing Date in accordance with the Plan, and no Person who is a party to any such obligations or agreements shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:
  - (i) any defaults or events of default arising as a result of the insolvency of the Applicant prior to the Plan Implementation Date;
  - (ii) any change of control of the Applicant arising from implementation of the Plan;

- (iii) the fact that the Applicant has sought or obtained relief under the CCAA or that this Plan has been implemented by the Applicant;
  - (iv) the effect on the Applicant of the completion of any of the transactions contemplated by this Plan;
  - (v) any compromises or arrangements effected pursuant to this Plan; or
  - (vi) any other event(s) which occurred on or prior to the Plan Implementation Date which would have entitled any Person to enforce rights and remedies, subject to any express provisions to the contrary in any agreements entered into with the Applicant after the Filing Date. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicant in respect of any Excluded Claim;
- (d) the Articles of Reorganization, including the cancellation of all previously outstanding shares in the capital stock of the Applicant and the designation of those persons selected by the Creditors' Meeting in accordance with section 5.4 hereof to be the board of directors of the Applicant, shall be approved and ordered to be filed in accordance with section 186 of the *Business Corporations Act*;
  - (e) the Court declares that the issued and outstanding shares in the capital stock of the Applicant as of the Filing date have no economic value and the holders of such shares have no economic interest in the Applicant or under the Plan;
  - (f) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgment, or other remedy or recovery with respect to any Claim released, discharged or terminated pursuant to this Plan shall be permanently enjoined;
  - (g) the releases effected by this Plan shall be approved, and declared to be binding and effective as of the Plan Implementation Date upon all Creditors and all other Persons affected by this Plan and shall enure to the benefit of all such Persons; and
  - (h) all Charges established by the Initial Order or any other Order of the CCAA Court, shall be terminated, released and discharged effective on the Plan Implementation Date, save and except insofar as the Administration Charge has attached to the Administration Charge Reserve established by the Monitor, the Representative Counsel, the Interim Operating Officer and the Applicant pursuant to Section 1.1 herein.

## 6.2 Conditions of Plan Implementation

The implementation of this Plan shall be conditional upon the fulfillment or waiver, where applicable, of the following conditions on or before the Plan Implementation Date:

- (a) this Plan shall have been approved by the required majorities of Creditors entitled to vote at the Creditors' Meeting;
- (b) the CCAA Court shall have approved the Plan and ordered the filing of Articles of Reorganization in relation to the Applicant under the *Business Corporations Act* (Ontario), and in particular s.186 thereof, providing for the issuance of the New Special Shares and Common Shares in accordance with the Plan, the cancellation of all Existing Preferred Shares and common shares and the designation of those persons selected by the Creditors' Meeting in accordance with section 5.4 hereof to be the board of directors of the Applicant;
- (c) the Sanction Order shall have been granted by the CCAA Court in a form acceptable to the Applicant and shall be in full force and effect and not reversed, stayed, varied, modified or amended;
- (d) all applicable appeal periods in respect of the Sanction Order shall have expired and in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court;
- (e) all approvals, orders, determinations or consents required pursuant to Applicable Law (including approvals under the *Investment Canada Act* and the *Competition Act*, if applicable,) shall have been obtained on terms and conditions satisfactory to the Applicant, acting reasonably, and shall remain in full force and effect on the Plan Implementation Date;
- (f) all necessary corporate action and proceedings of the Applicant shall have been taken to approve this Plan and to enable the Applicant to execute, deliver and perform its obligations under the Capital Recovery Debentures, the shares, agreements, documents and other instructions to be executed and delivered by it pursuant to this Plan;
- (g) all agreements, resolutions, documents and other instruments, which are necessary to be executed and delivered by any director or officer of the Applicant in order to implement this Plan and perform their obligations under this Plan shall have been executed and delivered; and
- (h) the Representative Counsel shall file the Representative Counsel's Certificate with the CCAA Court and deliver a copy thereof to the Applicant.

Except for the conditions set out in 6.2(a), (b), (c) and (h), each of the conditions set out in this Section 6.2 may be waived in whole or in part by the Applicant by written notice to the Representative Counsel and to the Monitor. If a condition set out above has not been satisfied or waived in accordance with this Section 6.2 on or before the date of the Plan Termination Date, this Plan shall automatically terminate, in which case the Applicant shall not be under any further obligation to implement this Plan.



### **6.3 Representative Counsel's Certificate**

Upon written notice from the Applicant or the IOO (or respective counsel on their behalf) to the Representative Counsel that the conditions set out in Section 6.2, other than condition 6.2(h), have been satisfied or waived, the Representative Counsel shall, as soon as possible following receipt of such written notice, deliver to the Applicant and file with the CCAA Court a certificate which states that all conditions precedent set out in Section 6.2 have been satisfied or waived and in substantially the form of the Representative Counsel's Certificate.

## **ARTICLE 7 IMPLEMENTATION OF THE PLAN**

### **7.1 Articles of Reorganization**

Promptly following the granting of the Sanction Order, the Applicant shall file the Articles of Reorganization in accordance with the terms of the Sanction Order and the Interim Operating Officer shall be authorized to take all steps necessary on behalf of the Applicant to do so. On the Plan Implementation Date, the Applicant shall issue the New Special Shares and Common Shares to the Proven Creditors in accordance with its obligations under the Plan. As Disputed Claims are determined, any resulting additional Proven Claims shall be forthwith arranged by the issuance of further New Special Shares and Common Shares in accordance with the Plan. When all Disputed Claims have been determined and satisfied in accordance with the Plan, the Applicant shall give notice to the Monitor and to the Representative Counsel of the Final Distribution Date.

### **7.2 Effectuating Documents**

The Interim Operating Officer or such officers as shall be elected or appointed and designated by the board of directors of the Applicant put in place under the Articles of Reorganization shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures and other agreements or documents, and take such other actions, as may be necessary or appropriate, to effectuate and further evidence the terms and conditions of this Plan. The secretary or assistant secretary of the Applicant shall be authorized to certify or attest to any of the foregoing actions documents or things.

### **7.3 Administration Charge**

On the Plan Implementation Date, (i) all outstanding, invoiced obligations, liabilities, fees and disbursements of the type secured by the Administration Charge shall be fully paid by the Applicant, and (ii) a reserve for any uninvoiced amounts of the type secured by the Administration Charge as of the Plan Implementation Date (together with an estimated amount for future accruals) shall be fully funded by the Applicant ("Administration Charge Reserve"). The amount of the Administration Charge Reserve shall be agreed to by the Monitor, the Representative Counsel, the Interim Operating Officer and the Applicant, acting reasonably, and the Administration Charge Reserve shall be administered by the Representative Counsel. Subject to Section 6.1(h), upon payment of the amounts secured by the Administration Charge, or the funding of The Administration Charge Reserve, the Administration Charge shall be and be

deemed to be discharged from the assets of the Applicant and attach to the Administration Charge Reserve, if applicable. On the date of the Final Distribution, to the extent that the Administration Charge Reserve exceeds the actual costs paid or payable from the Administration Charge Reserve, the excess amount shall be returned to the Applicant.

#### **7.4 Discharge of Monitor and Representative Counsel**

When all distributions in accordance with the Plan have been made by the Applicant, the Monitor and the Representative Counsel shall be discharged.

### **ARTICLE 8 PROVISIONS GOVERNING DISTRIBUTIONS**

#### **8.1 Distributions on Proven Claims**

On the Initial Distribution Date, Proven Creditors will be entitled to receive distributions in accordance with Section 4.1, 4.2 and 4.3 hereof as may be applicable, provided, however, that with respect to a Creditor that is the holder of both a Proven Claim and a Disputed Claim, the Applicant may elect, in its sole discretion, to withhold distribution on such Creditor's Proven Claim on the Initial Distribution Date and make a single distribution to such Proven Creditor on the Final Distribution Date.

#### **8.2 Required Delivery to Receive Distribution**

To be entitled to receive a distribution under the Plan, a Proven Creditor must execute and deliver before delivery of its distribution a Receipt, Release and Assignment containing a receipt for the distribution, a release of all Claims and an assignment to the Litigation Trust, of all of its Derivative Rights. The Receipt, Release and Assignment shall be substantially in the form of the Receipt, Release and Assignment annexed as Schedule "D" to this Plan and including necessary modifications in respect of Creditors electing in whole or in part to exercise the Cash Exit Option or electing to take all or part of their entitlement to receive Capital Recovery Debentures as New Special Shares immediately.

#### **8.3 Distributions by the Applicant**

All distributions to be made under this Plan to a Proven Creditor shall be sent by regular mail to such Proven Creditor to the address provided by the Creditor on its Receipt, Release and Assignment delivered to the Applicant under the requirement of Section 8.2 of the Plan or such other address as the Proven Creditor may from time to time notify the Applicant in accordance with Section 12.7 of this Plan.

#### **8.4 Interest on Affected Claims**

No interest or penalties shall accrue or be paid on an Affected Claim from and after or in respect of the period following the Filing Date and no holder of an Affected Claim will be entitled to any interest in respect of such Affected Claim accruing on or after or in respect of the period following the Filing Date. All interest accruing on any Affected Claim after or in respect of the period following the Filing Date shall be forever extinguished and released under this Plan.

## **8.5 Distributions in respect of Transferred or Assigned Claims**

The Applicant and the Monitor shall not be obligated to deliver any distributions under this Plan to any transferee or assignee of an Affected Claim unless a Proof of Assignment has been delivered to the Monitor and the Applicant no later than five Business Days prior to the Initial Distribution Date or Final Distribution Date, as applicable to such assigned Affected Claim.

## **8.6 Undeliverable and Unclaimed Distributions**

If any delivery or distribution to be made pursuant to Sections 4.2, 4.3 and 8.1 of this Plan is not made because the Proven Creditor refuses or neglects to execute and return to the Applicant an executed Receipt, Release and Assignment required under Section 8.2 within 180 days following the Sanction Date or the delivery or distribution is returned as undeliverable and remains unclaimed by the Proven Creditor for 90 days thereafter, the Claim of the Proven Creditor with respect to such undelivered or unclaimed distribution shall be discharged and forever barred, notwithstanding any federal or provincial laws to the contrary, and any Common Shares and New Special Shares issued the Proven Creditor or allocable to the undeliverable or unclaimed distribution, shall be cancelled by the Applicant. Nothing contained in this Plan shall require the Applicant to attempt to locate any holder of any undeliverable or unclaimed distributions. Notwithstanding the foregoing, the Applicant or the Court shall have the right in its discretion to extend such time limits in equitable circumstances where such non-compliance is due to honest mistake by the Creditor or excusable inability, such as death, disability or third party delays.

## **8.7 Tax Matters**

- (a) **Allocation of Distributions.** All distributions made pursuant to this Plan in respect of a Proven Claim shall be applied first in consideration of the outstanding principal amount of such Proven Claim, and secondly in consideration of the accrued and unpaid interest and penalties, if any, which form part of such Proven Claim. Notwithstanding any other provision of this Plan, including subsection (b) below, each Proven Creditor that is to receive a distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Authorized Authority on account of such distribution.

The Applicant has determined that the aggregate fair value of its assets and undertaking on a going-concern basis is such that the attributed fair market value of the distributions made by it under this Plan amounts to not more than fifty one percent (51%) of the aggregate of the Proven Claims. The Applicant will reflect that value in its books of account and will make its income tax and other filings on that basis.

- (b) **Withholding Rights.** All distributions hereunder shall be subject to any withholding and reporting requirements imposed by any Applicable Law or any Taxing Authority and the Applicant shall deduct, withhold and remit from any distributions hereunder payable to a Proven Creditor or to any Person on behalf of any Proven Creditor, such amounts as the Applicant determines that it is required

to deduct and withhold with respect to such payment under the ITA or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the Proven Creditor in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate Taxing Authority. The Applicant shall have no liability with respect to any claim arising from any failure to make withholdings from any distribution on account of a Proven Claim.

## **ARTICLE 9 AMENDMENTS TO THE PLAN**

### **9.1 Amendments to Plan Prior to Approval**

The Applicant reserves the right to file any variation or modification of, or amendment or supplement to, this Plan by way of a supplementary or amended and restated plan or plans of compromise or arrangement or both filed with the CCAA Court at any time or from time to time prior to the commencement of the Creditors' Meeting, provided that the Applicant obtains the prior consent of the Monitor to any such variation, modification, amendment or supplement. Any such supplementary or amended and restated plan or plans of compromise or arrangement or both shall, for all purposes, be deemed to be a part of and incorporated into this Plan. Any such variation, modification, amendment or supplement shall be posted on the Monitor's Website on the day on which it is filed with the CCAA Court and notice will be provided to the CCAA Proceedings service list. Creditors are advised to check the Monitor's Website regularly. Creditors who wish to receive written notice of any variation, modification, amendment or supplement to the Plan should contact the Monitor in the manner set out in Section 12.7 of this Plan. Creditors in attendance at the Creditors' Meeting will also be advised of any amendment made to the Plan.

In addition, the Applicant may propose a variation, modification of, or amendment or supplement to this Plan during the Creditors' Meeting, provided that (a) the Applicant obtains the prior consent of the Monitor to any such variation, modification, amendment or supplement, and (b) notice of such variation, modification, amendment or supplement is given to all Eligible Voting Creditors present in person or by proxy at the Creditors' Meeting prior to the vote being taken, in which case any such variation, modification, amendment or supplement shall, for all purposes, be deemed to be part of the Plan. Any variation, amendment, modification or supplement at the Creditors' Meeting will be promptly posted on the Monitor's Website and filed with the CCAA Court as soon as practicable following the Creditors' Meeting.

### **9.2 Amendments to Plan Following Approval**

After the Creditors' Meeting (and both prior to and subsequent to the obtaining of the Sanction Order), the Applicant may at any time and from time to time vary, amend, modify or supplement this Plan without the need for obtaining an Order of the CCAA Court or providing notice to the Creditors, if the Applicant and the Representative Counsel, acting reasonably and in good faith, determine that such variation, amendment, modification or supplement is of a technical or

administrative nature that would not be materially prejudicial to the interests of any of the Creditors under this Plan and is necessary in order to give effect to the substance of this Plan or the Sanction Order. The Representative Counsel shall post a notice of such variance, amendment, modification or supplement to the Plan on the Noteholders' Website, together with the varied, amended, modified or supplemented language.

## **ARTICLE 10**

### **PLAN IMPLEMENTATION AND EFFECT OF THE PLAN**

#### **10.1 Implementation**

On the Plan Implementation Date, subject to the satisfaction or waiver of the conditions contained in Section 6.2 of this Plan, this Plan shall be binding upon all Creditors in accordance with the terms of this Plan and the Sanction Order.

#### **10.2 Effect of the Plan Generally**

The payment, compromise or satisfaction of any Affected Claims under this Plan, if sanctioned and approved by the CCAA Court, shall be binding upon each Creditor, his, her or its heirs, executors, administrators, legal personal representatives, successors and assigns, as the case may be, for all purposes and this Plan will constitute: (a) full, final and absolute settlement of all rights of any Creditor against the Applicant in respect of the Affected Claims; and (b) an absolute release and discharge of all indebtedness, liabilities and obligations of or in respect of the Affected Claims against the Applicant, including any interest or costs accruing thereon whether before or after the Filing Date.

#### **10.3 Compromise Effective for All Purposes**

No Person who has a Claim as a guarantor, surety, indemnitor or similar covenant in respect of any Claim which is compromised under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Claim which is compromised under this Plan shall be entitled to any greater rights than the Creditor whose Claim was compromised under this Plan. Accordingly, the payment, compromise or other satisfaction of any Claim under this Plan, if sanctioned and approved by the CCAA Court, shall be binding upon such Creditor, its heirs, executors, administrators, successors and assigns for all purposes and, to such extent, shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, surety, indemnitor, director, joint covenantor, principal or otherwise.

#### **10.4 Contracts**

As of the Plan Implementation Date, each contract to which the Applicant is a party as at the Filing Date, as it may have been modified, amended or varied after the Filing Date remains in full force and effect as at the Plan Implementation Date (other than in respect of Claims that are affected by this Plan) unless such contract: (a) is the subject of a notice of repudiation or disclaimer delivered prior to the deadline specified in the Creditors' Meeting Order, or (b) has expired or terminated pursuant to its terms.

## **10.5 Plan Releases**

On the Plan Implementation Date:

- (a) The Applicant shall be forever released from all Affected Claims;
- (b) In consideration of the performance by the Applicant of the Plan, each Creditor of the Applicant shall be deemed to have released, subject to section 5.1(2) of the CCAA, the former director of the Applicant, Marc Boutet, and his heirs, successors and assigns from any claims that relate to the obligations of the Applicant where he is by law liable solely by reason of and in his capacity as a director for the payment of such obligations;

provided, however, that nothing in this Section 10.5 shall release (i) any Person from any liability for fraud, fraudulent misrepresentation, gross negligence, wilful misconduct, or criminal conduct, (ii) any Excluded Claim, or (iii) any Person's right to enforce the Applicant's obligations under this Plan.

## **10.6 Stay of Proceedings**

Any and all proceedings, including, without limitation, suits, actions, extra-judicial proceedings, enforcement processes or other remedies commenced, taken or proceeded with or that may be commenced, taken or proceeded with by any Person having a Claim, and by any employees, shareholders, customers, suppliers, contractors, lenders, equipment lessors, licensors, licensees, sub-licensors, sub-licensees, governments of any nation, province, state or municipality or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in Canada or elsewhere and any corporation or other entity owned or controlled by or which is the agent of any of the foregoing, or by any other Person, firm, corporation or entity wherever situate or domiciled, against or in respect of the Applicant or in respect of any property, assets, rights, concessions and undertaking wherever located, whether held by the Applicant, in whole or in part, directly or indirectly, as principal, agent or nominee, beneficially or otherwise, whether pursuant to the BIA or otherwise, shall be permanently stayed as reflected in the Sanction Order.

## **10.7 Exculpation**

None of (i) the Applicant; (ii) the Monitor; (iii) the Representative Counsel; (iv) the Special Counsel to the Representative Counsel; (v) the Interim Operating Officer; and (vi) any of their respective directors, officers, employees, agents, professional advisors (including legal counsel) or successors and assigns, shall have or incur any liability to any holder of a Claim or Equity Claim in the Applicant, or other party in interest, or any of their respective members, officers, directors, employees, professional advisors (including legal counsel) or agents or any of their successors and assigns, for any act or omission in connection with, related to, or arising out of the CCAA Proceedings, the pursuit of the approval, implementation or administration of the Plan, or the property to be distributed under the Plan, including the negotiation and solicitation of support for the approval of the Plan, except for wilful misconduct or gross negligence, and, in all respects, all such persons and each other their respective members, officers, directors,

employees, professional advisors (including legal counsel) or agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

#### **10.8 Waiver of Defaults**

From and after the Plan Implementation Date, and subject to any express provisions to the contrary in any amending agreement entered into with the Applicant after the Filing Date, all Persons shall be deemed to have waived any and all defaults of the Applicant then existing or previously committed by the Applicant or caused by the Applicant or any of the provisions hereof or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in every contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease, personal property lease or other agreement, written or oral, any amendments or supplements thereto, existing between such Person and the Applicant. Any and all notices of default, acceleration of payments and demands for payments under any instrument, or other notices, including without limitation, any notices of intention to proceed to enforce security, arising from any of such aforesaid defaults shall be deemed to have been rescinded and withdrawn. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicant in respect of any Excluded Claim.

#### **10.9 Consents and Releases**

From and after the Plan Implementation Date, all Persons with a Claim shall be deemed to have consented and to have agreed to all of the provisions of this Plan as an entirety. In particular, each Creditor shall be deemed to have granted, and executed and delivered to the Applicant all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety.

#### **10.10 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **ARTICLE 11 POST IMPLEMENTATION MATTERS**

#### **11.1 Lending, Financing and Disclosure**

From and after the Plan Implementation Date and for as long as any of the Capital Recovery Debentures are outstanding, and without limiting the representations, warranties or covenants contained in the Capital Recovery Debentures, the Applicant covenants to and in favour of the Proven Creditors as follows:

- (a) the Applicant shall prepare or cause to be prepared annual audited financial statements, which shall be distributed to all Creditors who receive New Special Shares and Common Shares under this Plan and to their successors, assigns and transferees;

- (b) the Applicant shall prepare or cause to be prepared unaudited interim financial statements, on a quarterly basis, which shall be distributed by email or posting on the website of the Applicant to all Creditors who receive New Special Shares and Common Shares upon Implementation and to their successors, assigns and transferees; and
- (c) the Applicant shall not grant, create, assume or suffer to exist any Lien affecting any of its property, assets or undertaking, except for a Permitted Lien.

#### **11.2 Derivative Rights and the Litigation Trust**

From and after the Plan Implementation Date, the Trustees from time to time under the Litigation Trust shall have the exclusive authority and capacity to assert and enforce the Derivative Rights or any of them assigned to the Litigation Trust by each Participating Creditor.

### **ARTICLE 12 GENERAL PROVISIONS**

#### **12.1 Different Capacities**

Creditors whose Claims are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, each such Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity shall not affect the Creditor in any other capacity, unless expressly agreed by the Creditor in writing or unless the Claims overlap or are otherwise duplicative.

#### **12.2 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan may be deemed to occur without any additional act or formality other than as may be expressly set out herein, each of the Persons affected hereto shall make, do, and execute or cause to be made, done or executed all such further acts, deeds, agreements, assignments, transfers, conveyances, discharges, assurances, instruments, documents, elections, consents or filings as may be reasonably required by the Applicant in order to implement this Plan.

#### **12.3 Set-Off**

The law of set-off applies to all Claims made against the Applicant and to all actions instituted by it for the recovery of debts due to the Applicant in the same manner and to the same extent as if the Applicant was plaintiff or defendant, as the case may be.

#### **12.4 Paramountcy**

Without limiting any other provision hereof, from and after the Plan Implementation Date, in the event of any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed, or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease, personal property lease or other agreement, written or oral and any and all amendments or



supplements thereto existing between the Applicant and any other Persons affected by this Plan, the terms, conditions and provisions of this Plan shall govern and shall take precedence and priority.

To the extent the Plan is inconsistent with the report of the Monitor filed in connection with the Plan or the Information Circular distributed by the Applicant in connection with the Creditors' Meeting, the provisions of the Plan shall govern and shall take precedence and priority.

#### **12.5 Revocation, Withdrawal, or Non-Consummation**

The Applicant reserves the right to revoke or withdraw this Plan at any time prior to the Plan Implementation Date and to file subsequent plans of compromises or arrangement (or to file no subsequent plan), in each case with the consent of the Monitor. If the Applicant revokes or withdraws this Plan, or if the Sanction Order is not issued, (a) this Plan shall be null and void in all respects; (b) any Affected Claim, any settlement or compromise embodied in this Plan (including the fixing or limiting of any Affected Claim to an amount certain), assumption or termination, repudiation of contracts or leases effected by this Plan, any document or agreement executed pursuant to this Plan shall be deemed null and void, and (c) nothing contained in this Plan, and no action taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Affected Claims by or against the Applicant or any Person; (ii) prejudice in any manner the rights of the Applicant or any Person in any further proceedings involving the Applicant, or (iii) constitute an admission of any sort by the Applicant or any Person.

#### **12.6 Preservation of Rights of Action**

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, following the Plan Implementation Date, the Applicant will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Applicant may hold against any Person or entity without further approval of the CCAA Court.

#### **12.7 Notices**

Any notice or communication to be delivered hereunder will be in writing and will reference this Plan and may, subject to as hereinafter provided, be made or given by personal delivery or by facsimile or email transmission addressed to the respective parties as follows:

- (a) if to the Applicant, the Interim Operating Officer or the Representative Counsel:

Nelson Financial Group Ltd.  
900 Dillingham Road  
Pickering, Ontario L1W 1Z6

Attention: Ms. Sherry Townsend  
Interim Operating Officer

Fax: (905) 839-1761  
E-mail: stownsend@providercapitalgroup.com

with a copy to:

Richard B. Jones  
Barrister & Solicitor  
100 Yonge Street, Suite 1201  
Toronto, Ontario  
M5C 2W1

Fax: (416) 863-0092  
Email: richard.jones@sympatico.ca

and a copy to:

Douglas Turner Q.C.  
Barrister & Solicitor  
63 Albert Street, P.O. Box 760  
Uxbridge, Ontario L9P 1E5

Fax: (905) 852-6197  
E-mail: doug@pdturner.com

- (b) if to a Creditor:

To the last known address (including fax number or email address) for such Creditor set out in the books and records of the Applicant or, if a Creditor filed a Proof of Claim, the address specified in the Proof of Claim filed by such Creditor or such other address as the Creditor may from time to time notify the Applicant and the Monitor in accordance with this Section.

- (c) if to the Monitor:

A. John Page & Associates Inc.  
100 Richmond Street West, Suite 447  
Toronto, Ontario M5H 3K6

Attention: John Page  
Fax: (416) 364-4894  
E-mail: [ajpage@ajohnpage.com](mailto:ajpage@ajohnpage.com)

with a copy to:

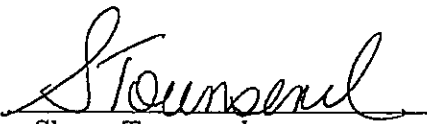
Thornton Grout Finnigan LLP  
Barristers & Solicitors  
Suite 3200, Canadian Pacific Tower  
100 Wellington Street West, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario M5K 1K7

Attention: James H. Grout  
Fax: (416) 304-1313  
E-mail: [jgrout@tgf.ca](mailto:jgrout@tgf.ca)

or to such other address as any party may from time to time notify the others in accordance with this Section. All such notices and communications which are delivered will be deemed to have been received on the date of delivery. All such notices and communications which are faxed or emailed will be deemed to be received on the date faxed or emailed if sent before 5:00 p.m. (Toronto Time) on a Business Day and otherwise will be deemed to be received on the Business Day next following the day upon which such fax or email was sent.

**EXECUTED** at Pickering, Ontario as of this 12<sup>th</sup> day of April, 2011

**NELSON FINANCIAL GROUP LTD.**

Per:   
Sherry Townsend  
Interim Operating Officer

**SCHEDULE "A"**

**FORM OF REPRESENTATIVE COUNSEL'S CERTIFICATE**

Court File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**REPRESENTATIVE COUNSEL'S CERTIFICATE**

**RECITALS**

- A. Pursuant to the order of this Honourable Court dated March 23, 2010 (the "Initial Order") Nelson Financial Group Ltd. ("the Applicant") filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended.
- B. The Applicant has filed a Plan of Compromise and Arrangement under the CCAA dated February 11, 2011 (the "Plan"), which Plan has been approved by the Creditors and the Court; and
- C. Unless otherwise indicated herein, initially capitalized terms used herein have the meaning set out in the Plan.

**THE REPRESENTATIVE COUNSEL HEREBY CERTIFIES** that it has been advised by the Applicant and the Interim Operating Officer in accordance with Section 6.3 of the Plan that the conditions precedent set out in Section 6.2 of the Plan, other than the delivery of this certificate, have been satisfied or waived in accordance with the Plan on \_\_\_\_\_, 2011 and that accordingly, the Plan Implementation Date is \_\_\_\_\_, 2011.

**DATED** at Toronto, Ontario, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

---

**DOUGLAS TURNER, Q.C.** in his capacity as the Representative Counsel for the Noteholders of Nelson Financial Group Ltd. and not in his personal capacity

**SCHEDULE "B"**  
**ARTICLES OF REORGANIZATION**

Text for Articles of Reorganization

Page 1

1. NELSON FINANCIAL GROUP LTD.
2. PROVIDER CAPITAL GROUP INC.
3. 1990 Sept 4
4. 2011 March \*
- 5.

1. The issued and outstanding Class A common shares, Class B common shares, Series A Preferred Shares and Series B Preferred Shares are cancelled and of no further force or effect.

[Page 1A through 1D]

2. The classes and shares that the Corporation is authorized to issue from and after the date of filing of these Articles of Reorganization shall be as follows:
  - a) The Corporation is authorized to issue an unlimited number of Common Shares and 1,000,000 New Special Shares;
  - b) The rights, privileges, restrictions and conditions attaching to the Common Shares shall include the following: Payment of Dividends: The holders of the Common Shares shall be entitled to receive dividends if, as and when declared by the Board of Directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends in such amounts and payable in such manner as the Board of Directors may from time to time determine. Subject to the rights of the holders of any other class of shares of the Corporation entitled to receive dividends in priority to or rateably with the holders of the Common Shares, the Board of Directors may in their sole discretion declare dividends on the Common Shares to the exclusion of any other class of shares in the Corporation.
    - (i) Participation upon Liquidation, Dissolution or Winding-Up: In the event of the Liquidation, Dissolution or Winding-Up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of the Common Shares shall, subject to the rights of the holders of any other class of shares of the Corporation entitled to receive the asset for the Corporation upon such a distribution in priority to or rateably with the holders of the Common Shares, be entitled to participate rateably in any distribution of the assets of the Corporation.

- (ii) Voting Rights: The holders of the Common Shares shall be entitled to receive notice of and to attend all annual and special meetings of the shareholders of the Corporation and to one vote in respect of each Common Share held at all such meetings.
- c) The rights, privileges, restrictions and conditions attaching to the New Special Shares are as follows:
  - (i) The New Special Shares authorized to be issued shall consist of 1,000,000 shares.
  - (ii) Except as required by the *Business Corporations Act*, the holders of the New Special Shares shall not be entitled to receive notice of or to attend any meeting of shareholders of the Corporation except for a meeting at which the holders of the New Special Shares are entitled to vote separately as a class.
  - (iii) The holders of the New Special Shares, in priority to the holders of the Common Shares and all other shares ranking junior to the New Special Shares, shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the board of directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends, fixed preferential cumulative cash dividends at the rate of Six (6%) percent per annum on the Redemption Price (as hereinafter defined) per share. The holders of the New Special Shares shall not be entitled to any dividends other than or in excess of the preferential cumulative cash dividends hereinbefore provided.
  - (iv) Except with the consent in writing of the holders of all of the New Special Shares outstanding, no dividend shall at any time be declared and paid on or set apart for payment on the Common Shares or on any other shares ranking junior to the New Special Shares in any financial year unless and until the approved preferential cumulative cash dividends on all of the New Special Shares outstanding have been declared and paid or set apart for payment.
  - (v) Redemption
    - (a) Subject to the *Business Corporations Act*, the Corporation may redeem or purchase the New Special Shares in accordance with the following terms and conditions. In these share provisions, "Redemption Price" shall be equal to Twenty Five (\$25.00) dollars per share. The "Redemption Amount" for each New Special Share shall be the Redemption Price, together with all cumulative dividends which shall have accrued thereon but shall be unpaid or undeclared and which shall be treated as accruing to the date of such redemption.

- (b) The Corporation may redeem all or from time to time any of the outstanding New Special Shares on payment to the holders thereof of the Redemption Amount. If less than all of the outstanding shares are to be redeemed, the shares to be redeemed shall be selected by lot or, disregarding fractions, *pro rata* to the number of shares registered in the name of each shareholder or in such other manner as the directors may determine with the written consent of all of the holders of the New Special Shares.
- (c) At least thirty (30) days before any redemption date, the Corporation shall give written notice of redemption to each holder of the shares to be redeemed. The notice shall set out the Redemption Amount, the redemption date, the place of redemption and the number of shares to be redeemed. Accidental failure to give such notice shall not affect the validity of any redemption.
- (d) On or after the redemption date, the Corporation shall cause the Redemption Amount to be paid over to the order of the holders of the shares to be redeemed, on surrender of the certificates representing such shares at the redemption place. Such shares shall thereupon be redeemed. From and after the redemption date, the holders of the shares called for redemption shall cease to be entitled to any rights of shareholders in respect thereof except to receive the Redemption Amount, unless it is not paid or deposited in accordance with (in which case their rights shall remain unimpaired).
- (e) The Corporation may at any time deposit the Redemption Amount of any New Special Shares called for redemption with any Canadian chartered bank or trust company or solicitors of the Corporation named in the Notice of Redemption or in a subsequent notice to the holders of the shares in respect of which the deposit is made, in a special account for the holders of such shares. On the date of deposit, or redemption date if later, the shares in respect of which such deposit is made shall be redeemed and from and after such date the rights of their holders shall be limited to severally receiving out of the monies so deposited, without interest, the Redemption Amount of their redeemed shares upon surrender to such bank, trust company or solicitors, as the case may be, of the certificates representing such shares. Any interest earned on any such deposit belongs to the Corporation.

In the event of the liquidation, dissolution or winding up of the Corporation or any distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of the New Special Shares shall be entitled to receive the Redemption Amount of such shares and shall not share further in any final distribution.

6 The following five (5) persons are hereby designated to be the directors of the Corporation to hold office from the date of filing of these Articles until their successors shall be elected at the next annual general meeting of the shareholders of the Corporation:

Name	Address
[to be determined by the Creditor's Meeting]	

Page 2

7. Provider Capital Group Inc.

[Description of office to right of signature line] – “Interim Operating Officer”

[Down a few lines – to be added to form]:

“Attachment: Order of Superior Court of Justice in Court File No. 10-8630-00CL made on April \*, 2011”

[Add Page Numbers 1A etc.]

[Last Page (execution page) is numbered page 2]



SCHEDULE "C"  
FORM OF CAPITAL RECOVERY DEBENTURE

PROVIDER CAPITAL GROUP INC.  
CAPITAL RECOVERY DEBENTURE

\$ ,000.00

May 1, 2011

ARTICLE 1 - PROMISE TO PAY

- 1.1 **Promise to Pay. Provider Capital Group Inc.** (the "Corporation") for value received hereby acknowledges itself indebted to and promises to pay to or to the order of \_\_\_\_\_ (the "Creditor") and any subsequent Holder of this Debenture at Pickering, Ontario, the principal amount of [25% of *Proven Claim Amount*] (\$[•]) (the "Principal Amount"), in lawful money of Canada, without interest, until payment in full of all amounts owing to the Holder hereunder in accordance with its terms.

This Debenture is one of a Series of Capital Recovery Debentures issued by the Corporation in the aggregate Principal Amount of not more than Ten Million (\$10,000,000.00) Dollars as part of the Implementation of the Plan of Arrangement of the Corporation. All of the Debentures in the Series shall rank in all respects *pari passu*. The rights to enforce any default under the Debenture is subject to the prior consent, waiver and amendment of and by certain majorities of the Holders of Debentures in the Series as provided in Article 7.

This Debenture is issued on and shall be subject to the following terms and conditions:

ARTICLE 2 - INTERPRETATION

- 2.1 **Definitions.** In this Debenture, capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan. Unless there is something in the subject matter or context inconsistent therewith:
- (a) "Applicable Law" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations, and all applicable official directives, orders, judgments and decrees of Governmental Bodies;
  - (b) "Business Day" means any day, other than Saturday, Sunday or any statutory holiday in Toronto, Ontario;

- (c) **“Corporation”** means the party described as such in Article 1 hereof, its successors and permitted assigns;
- (d) **“Creditor”** means the party described as such in Article 1 hereof, its successors and permitted assigns;
- (e) **“Debenture”** refers to this debenture and any other debenture issued and outstanding in the Series and not to any particular Article, Section, subsection, paragraph, clause, subdivision or other portion thereof, and includes any and every instrument supplemental or ancillary hereto or in implementation hereof;
- (f) **“Default”** means any event which with the giving of notice or passage of time or both would constitute an Event of Default;
- (g) **“Encumbrance”** means any mortgage, lien, pledge, assignment, charge, security interest, lease intended as security, title retention agreement, rights reserved in any Governmental Body, registered lease of real property, hypothec, levy, execution, seizure, attachment, garnishment or other similar encumbrance and includes any contractual restriction which, if contravened, may give rise to an encumbrance;
- (h) **“Event of Default”** has the meaning attributed to such term in Section 6.1;
- (i) **“Generally Accepted Accounting Principles”** means generally accepted accounting principles in Canada from time to time;
- (j) **“Governmental Body”** means any government, parliament, legislature, or any regulatory authority, agency, commission or board of any government, parliament or legislature, or any court or (without limitation to the foregoing) any other laws, regulation or rule-making entity (including, without limitation, any central bank, fiscal or monetary authority or authority regulating banks), having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator);
- (k) **“Holder”** means the Creditor and any successor, transferee or lawful assignee of all but not less than all of the rights of the Holder under this Debenture provided that no such shall be recognized as such by the Corporation until an irrevocable transfer of this Debenture or other evidence satisfactory to the Corporation shall have been delivered to the Corporation and the Corporation shall have confirmed the recording of the Holder as such;
- (l) **“Intellectual Property”** means all computer software programs, trade marks, trade mark registrations and pending trade mark applications, patents and pending patent applications and copyrights and all other intellectual property of the Corporation;
- (m) **“Permitted Encumbrance”** means an Encumbrance granted by the Corporation in the course of securing funded debt from an arms length financial institution and used in the expansion of the business of the Corporation when the Corporation is in good standing under all of the Debentures and was profitable in its last completed fiscal period;

- (n) **"Person"** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, government or governmental authority or entity, however designated or constituted;
- (o) **"Plan"** means the Plan of Arrangement of the Corporation dated February 11, 2011 as amended in accordance with its terms and as approved and sanctioned by the Order of the Superior Court of Justice made on April 20, 2011;
- (p) **"Principal Amount"** has the meaning ascribed to such term in Article 1 hereof;
- (q) **"Series"** means the series of all of the Capital Recovery Debentures issued by the Corporation upon the implementation of the Plan and in the aggregate Principal Amounts of not more than \$10,000,000.00;
- (r) **"Subsidiaries"** means any corporation which is or hereafter becomes directly or indirectly controlled by the Corporation and for the purposes of this definition, the Corporation shall be deemed to control a corporation if the Corporation beneficially owns, directly or indirectly, shares to which are attached more than 50% of the voting rights ordinarily exercisable at meetings of shareholders of such corporation, and the Corporation shall be deemed to own beneficially shares beneficially owned by a corporation controlled by it, and so indefinitely, and **"Subsidiary"** means any one of them; and
- (s) **"Taxes"** means all taxes of any kind or nature whatsoever including, without limitation, income taxes, sales or goods and services taxes, levies, stamp taxes, royalties, duties, and all fees, deductions, compulsory loans and withholdings imposed, levied, collected, withheld or assessed as of the date hereof or at any time in the future, by any Governmental Body of or within Canada or any other jurisdiction whatsoever having power to tax, together with penalties, fines, additions to tax and interest thereon.

**2.2 Number, Gender, Etc.** Words importing the singular include the plural and vice versa and words importing gender include all genders.

**2.3 Interpretation Not Affected By Headings, Etc.** The division of this Debenture into articles, sections, subsections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Debenture.

**2.4 Monetary References.** Any reference in this Debenture to "Dollars", "dollars" or the sign "\$" shall be deemed to be a reference to lawful money of Canada.

**2.5 Day Not a Business Day.** In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the first Business Day thereafter.

2.6 **Invalidity of Provisions.** Each of the provisions contained in this Debenture is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof or thereof.

### ARTICLE 3 - REPAYMENT

3.1 **Principal Repayment.** The Principal Amount shall be paid by the Corporation to the Holder in equal monthly installments of 0.5% of the Principal Amount to be paid on the first day of each month from June 1, 2011 to April 1, 2021 and the then remaining balance of the Principal Amount, if any, shall be payable in full on May 1, 2021.

3.2 **Optional Prepayment.** Subject to the terms and conditions of this Debenture, the Corporation shall at any time when not in Default hereunder, have the privilege of prepaying, on any Business Day, all or any part of the outstanding Principal Amount without bonus or penalty, provided that:

- (a) any such prepayment shall not result in any breach by the Corporation of or any Default by the Corporation under the terms and conditions of this Debenture; and
- (b) any such prepayment shall only be made on at least two Business Days' prior notice to the Holder, which notice, once given, shall be irrevocable and binding upon the Corporation.

### ARTICLE 4 – CONVERSION RIGHTS

4.1 The Holder shall have the right at any time or times to convert all or any part of the then outstanding balance of the Principal Amount into New Special Shares of the Corporation at the rate of \$25.00 of principal for each share. The Corporation shall issue such shares on the first day of the month following receipt by it of such notice. Cumulative dividend rights on New Special Shares shall cumulate from such date of issue.

4.2 The Holder may exercise such conversion right by giving notice in writing in the form annexed as Schedule "A" to this Debenture and surrendering this Debenture for endorsement to reduce the Principal Amount if only part is converted or to cancel the Debenture if the entire balance is converted.

4.3 Upon and after the conversion of any part of this Debenture, the monthly payment of principal required to be made by the Corporation under this Debenture shall be adjusted in the proportion that the remaining balance of the Principal Amount bears to the balance of the Principal Amount immediately before the conversion *mutatis mutandis*.

## ARTICLE 5 - REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **Representations and Warranties.** The Corporation represents and warrants to the Holder as follows and acknowledges that the Holder is relying on such representations and warranties without independent inquiry thereon in entering into this Debenture:

- (a) **Corporate Organization.** The Corporation is duly incorporated and organized and is validly subsisting and in good standing under the laws of the Province of Ontario. The Corporation is duly qualified as a foreign or extra-provincial corporation, as the case may be, and is in good standing, in all jurisdictions outside of its jurisdiction of incorporation where it carries on business;
- (b) **Corporate Power.** The Corporation has full corporate right, power and authority to enter into and perform its obligations under this Debenture and has full corporate right, power and authority to own and operate its assets and to carry on its business as now conducted and as presently proposed to be conducted;
- (c) **Conflict with Other Instruments.** The execution, delivery and performance by the Corporation of this Debenture and any other agreement contemplated or referred to herein do not and will not conflict with or result in a breach of any term or provision of any of:
  - (i) the articles, by-laws or other constating documents of the Corporation;
  - (ii) any Applicable Law applicable to the Corporation or any of its assets;
  - (iii) the Plan or any other material agreement to which the Corporation is a party or which is binding on or affecting the Corporation; or
  - (iv) the Sanction Order or any writ, order, judgment, injunction or determination which is binding on or affects the Corporation or any of its assets;nor will the execution, delivery and performance by the Corporation of this Debenture and any other agreement contemplated or referred to herein result in, require or permit:
  - (i) the imposition of any Encumbrance in or with respect to any of its assets; or
  - (ii) the acceleration of the maturity of any debt obligation of the Corporation under any contractual provision binding on or affecting the Corporation or any of its assets.
- (d) **Authorization.** The execution and delivery of this Debenture by the Corporation and the performance of its obligations hereunder have been duly authorized by all necessary corporation action on the part of the Corporation, its directors and shareholders.

- (e) **No Consents Required.** No consent, approval, order, authorization, licence, exemption or designation of or by any Governmental Body is required in connection with the execution, delivery and performance by the Corporation of this Debenture; and no registration, qualification, designation, declaration or filing with any Governmental Body is or was necessary to enable or empower the Corporation to enter into and to perform its obligations under this Debenture except such as have been made or obtained and are in full force and effect as of the date hereof;
- (f) **Due Execution and Enforceability.** This Debenture has been duly executed and delivered by the Corporation and constitutes a legal, valid and binding obligation of the Corporation enforceable against it in accordance with its terms, subject only to the effect of any bankruptcy, insolvency, moratorium or similar laws affecting the enforceability of creditors' rights generally, the discretion that a court of competent jurisdiction may exercise in the granting of equitable remedies, and the statutory powers of a court of competent jurisdiction to stay proceedings and stay the execution of judgment in proceedings before it;
- (g) **No Default.** The Corporation is not in violation of its articles of incorporation, as amended, its by-laws or any shareholders' agreement, if any, to which it is a party;
- (h) **Ownership of Assets.** The Corporation is the sole and beneficial owner of its assets and, where appropriate, is duly registered as the owner thereof, with a good and marketable title thereto, free and clear of all Encumbrances except Permitted Encumbrances;
- (i) **Insurance.** The assets of the Corporation are insured against loss or damage covering such risks, in such amounts and on such terms as such assets are commonly insured against for not less than the full replacement cost thereof. The Corporation is not in default with respect to any of the provisions contained in any such insurance policies and the Corporation has given all notices required under each of the insurance policies in a due and timely fashion;
- (j) **No Burdensome Agreements.** The Corporation is not a party to any agreement or instrument or subject to any restriction (including any restriction set forth in its constating documents) materially and adversely affecting its operations, business, financial condition or its assets;
- (k) **No Litigation.** Other than the CCAA proceeding, there are no actions, suits, grievances or proceedings threatened or taken before or by any Governmental Body or by any elected or appointed public official or private person, which challenges the validity or propriety of the transactions contemplated under this Debenture, or any of the documents, instruments and agreements executed or delivered in connection therewith or related thereto which could be reasonably anticipated to have a material adverse effect on the business, operations, properties, assets, capitalization, financial condition or prospects of the Corporation and the Corporation is not in default under any material applicable statute, rule, order, decree or regulation of any Governmental Body having jurisdiction over it or any of its assets;

- (l) **Taxes.** The Corporation has filed all tax returns which are required to be filed and has paid all Taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it and adequate provision for payment has been made for Taxes not yet due, except as otherwise disclosed to the Holder;
- (m) **Use of Lands.** The Corporation is not aware, after making all reasonable inquiry, that the uses to which the owned or leased by the Corporation are being put are in material breach of any statutes, by-laws, ordinances, regulations, covenants, restrictions or official plans;
- (n) **Work Orders.** There are no material outstanding work orders, deficiency notices, remedial or removal orders or other similar compliance orders from any Governmental Body (each a "Work Order") relating to the lands owned or leased by the Corporation or the operation of the Corporation's business from or required by any Governmental Body, nor are any material matters relating to the lands owned or leased by the Corporation or the operation of the Corporation's business under discussion with any such departments or authorities relating to any Work Orders;
- (o) **Intellectual Property.** The Corporation and the Subsidiaries possess all the trademarks, trade names, copyrights, patents, licenses and other Intellectual Property or rights material to the conduct of their respective businesses as now conducted and presently proposed to be conducted, without knowledge of any circumstances which could give rise to any conflict with the rights of others;
- (p) **No Infringement.** The Corporation and the Subsidiaries are not knowingly infringing or alleged to be infringing on the rights of any third party with respect to any patent, trademark, trade name, copyright (or any application or registration respecting any thereof), licence, discovery, improvement, process, formula, know-how, data, plan, specification, drawing or the like and the Corporation does not know of any facts which may result in the assertion against the Corporation or a Subsidiary of a claim for such an infringement;
- (q) **Permits, etc.** The Corporation and the Subsidiaries possess all licenses, permits, approvals and consents of, and has performed all registrations required by, all Governmental Bodies and other third parties as required to properly conduct their respective businesses and own, lease and operate the Charged Assets; and
- (r) **Compliance with Laws.** The Corporation and the Subsidiaries have complied and are complying in all material respects with all federal, provincial and local laws, rules, regulations, notices, approvals, ordinances and orders applicable to its business, property, assets and operations.

**5.2 Survival of Representations and Warranties.** The representations and warranties herein set forth or contained in any certificates or documents delivered to the Holder shall survive the execution and delivery of this Debenture and, notwithstanding such execution and delivery, shall remain in full force and effect.

5.3 **Affirmative Covenants.** So long as this Debenture remains outstanding, and unless the Holder otherwise consents in writing, the Corporation covenants and agrees with the Holder that:

- (a) **Punctual Payment.** The Corporation shall pay or cause to be paid all amounts payable to the Holder hereunder on the dates and in the manner specified herein;
- (b) **Preservation of Corporate Existence.** The Corporation shall preserve and maintain its corporate existence and rights and the corporate existence and rights of each of its Subsidiaries.
- (c) **Conduct of Business.** The Corporation shall do or cause to be done, and shall cause each Subsidiary to do or cause to be done, all things necessary or desirable to maintain its corporate existence in its present jurisdiction of incorporation, and to maintain its corporate power and capacity to own its properties and assets;
- (d) **Compliance with Applicable Law and Contracts.** The Corporation shall, and shall cause each of its Subsidiaries to, comply with the requirements of all Applicable Law and all obligations which, if contravened, could give rise to an Encumbrance over any of the Charged Assets, and all insurance policies and all contracts to which it is a party or by which it or its properties are bound, non-compliance with which would, singly or in the aggregate, have a material adverse effect upon its business, property, financial condition or prospects or upon its ability to perform its obligations under this Debenture;
- (e) **Insurance.** The Corporation shall keep, and shall cause each of the Subsidiaries to keep, its assets insured with reputable insurers, in amounts not less than the replacement cost thereof and against such losses as are insured against by comparable corporations engaged in comparable businesses;
- (f) **Payment of Taxes and Claims.** The Corporation shall, and shall cause each of its Subsidiaries to:
  - (i) pay and discharge all lawful claims for labour, material and supplies;
  - (ii) pay and discharge all Taxes payable by it;
  - (iii) withhold and collect all Taxes required to be withheld and collected by it and remit such Taxes to the appropriate Governmental Body at a time and in the manner required; and
  - (iv) pay and discharge all obligations incidental to any trust imposed upon it by statute which, if unpaid, might become an Encumbrance upon any of its assets;
- (g) **Keeping of Books.** Keep proper books of record and account in which full and correct entries shall be made of all financial transactions, assets and businesses of the Corporation in accordance with Generally Accepted Accounting Principles;



(h) **Reporting Requirements.** Furnish to the Holder:

(i) annually, as soon as available and in any event within ninety (90) days after the end of each fiscal year:

(A) the consolidated audited financial statements of the Corporation and the unconsolidated financial statements for each of its Subsidiaries for such fiscal year, consisting of balance sheets, statements of operations, retained earnings and changes in financial positions setting forth the corresponding figures of the previous fiscal year in comparative form, together with the unqualified opinion of the auditors thereon;

(B) a certificate of the Corporation signed on its behalf by a senior officer of the Corporation stating that as of the date of such certificate that no Event of Default has occurred and that no material adverse change has occurred in its business or operations during the most recent fiscal year or, if such is not the case, describing such Event of Default or material adverse change;

(ii) promptly upon becoming aware thereof, notice of any material fact or material change which has had, is having, or is expected to have, a material adverse effect on the business or condition, financial or otherwise, of the Corporation; and

(iii) such other information respecting the business and affairs, financial or otherwise, or its assets, as the Holder may from time to time reasonably request;

(i) **Notice of Default.** Advise the Holder forthwith upon becoming aware of the occurrence of a Default or an Event of Default hereunder and deliver to the Holder at least annually a certificate signed by a senior officer of the Corporation certifying the particulars of any Default or Event of Default which shall have occurred and the steps being taken to remedy the same, in form and substance satisfactory to the Holder; and

(j) **Subsidiaries.** Maintain directly or indirectly (through the ownership of a wholly-owned incorporated entity) ownership of all issued and outstanding shares of each of the Subsidiaries.

5.4 **Negative Covenants.** So long as this Debenture remains outstanding and unless the a majority by Principal Amount of the Holders of Debentures in the Series consents in writing or at a meeting, the Corporation covenants and agrees that it shall not, nor shall it permit any of its Subsidiaries to:

(a) **Not To Encumber Property.** Create, grant, assume or suffer to exist any Encumbrance upon any of its properties or assets other than Permitted Encumbrances;

(b) **Change of Business.** Make any material change in the nature of its business or enter into or commence any business activities which are not conducted by it as at the date hereof;

- (c) **Mergers.** Enter into or permit any Subsidiary to enter into any transaction (whether by way of reconstruction, reorganization, arrangement, consolidation, amalgamation, merger, joint venture, transfer, sale, lease or otherwise) whereby any part of the Charged Assets would become the property of any Person other than the Corporation or its Subsidiaries, as the case may be, or whereby all or any material part of the undertaking, property and assets of any Person other than the Corporation or its Subsidiaries, as the case may be, would become the property of the Corporation or its Subsidiaries, as the case may be, or in the case of any amalgamation involving the Corporation or its Subsidiaries of the continuing company resulting therefrom;
- (d) **Guarantees.** Guarantee, endorse or otherwise become surety for or upon the obligations of any Person;
- (e) **Dividends and other Distributions.** Unless all payments under this Debenture are current, declare or pay any dividends on or make any other payment or distribution in respect of any shares of its capital or make any change in its issued or authorized share capital either by way of redemption or otherwise; and
- (f) **Cross-Default.** Default in its obligations under any indebtedness to its bankers or any other contract whose default may reasonably be expected to have a material adverse effect on the Corporation or its Subsidiaries.

## ARTICLE 6 - DEFAULT

6.1 **Events of Default.** The Corporation shall be in default under this Debenture if any one or more of the following events (each an “**Event of Default**”) occurs, the Holder may, subject to the rights of the Holders of all other Debentures in the Series, including those rights and powers provided in Article 7 hereof, and to the extent permitted by Applicable Law, declare the outstanding Principal Amount hereunder to be immediately due and payable:

- (a) the Corporation defaults in payment of all or any part of the outstanding Principal Amount when due and such default continues for a period of five (5) Business Days after notice has been given to the Corporation by the Holder specifying such default and requiring the Corporation to rectify same;
- (b) the Corporation is in breach of or defaults in observing or performing any other covenant or condition of this Debenture on its part to be observed or performed and if such default continues for a period of twenty (20) Business Days after notice has been given to the Corporation by the Holder specifying such default and requiring the Corporation to rectify the same or cause to be rectified the same;
- (c) the Corporation or a Subsidiary defaults in the payment when due of any amount payable by it to another creditor and such default is not waived or cured within the applicable cure period, if any, in respect of such payment or the Corporation or a Subsidiary, as

applicable, is diligently and in good faith contesting such default through all reasonable lawful means;

- (d) any representation and warranty made in this Debenture is found to be false or incorrect in any way so as to make it materially misleading when made or deemed to have been made;
- (e) an order is made or an effective resolution is passed for the winding-up or liquidation of the Corporation or in the event of any other dissolution of the Corporation by operation of law; or
- (f) the Corporation ceases or threatens to cease to carry on business or becomes insolvent or bankrupt or ceases paying its debts generally as they become due, other than any such debts as are contested in good faith and by appropriate proceedings and for which adequate provision has been made, or the Corporation commits any act of bankruptcy or makes an assignment for the benefit of creditors or otherwise acknowledges its insolvency, or a trustee, receiver, receiver and manager or liquidator is appointed for the Corporation or any material part of the assets of any of its Subsidiaries, or bankruptcy, reorganization, proposal (including, without limitation, the serving of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or the commencement of proceedings under the CCAA in respect of the Corporation), arrangement, moratorium, compromise or similar proceedings shall be instituted by or against the Corporation or any of its Subsidiaries under the laws of any jurisdiction.

**6.2 Notice to other Holders in the Series.** If the Corporation receives a notice from any Holder of the Debenture declaring the outstanding Principal Amount to be due by reason of an Event of Default, the Corporation shall forthwith give notice to the Holders of all outstanding Debentures in the Series of such declaration and stating whether it admits or contests the claimed Event of Default. If so advised, the Corporation shall on not less than 14 days nor more than 21 days notice convene a meeting of the Holders of the outstanding Debentures. Pending the convening and until the adjournment of such meeting, the Holder shall not exercise any remedy under this Debenture.

**6.3 Remedies.** Upon the occurrence and continuation of an Event of Default, the Holder may in conjunction with and subject to the rights of the Holders of other Debentures in the Series, in addition to exercising any other rights available to it under Applicable Law, proceed to demand payment of the balance of the Principal Amount of the Debenture. The Holder shall take no other steps to enforce payment without complying with the requirements of Section 7.2.

## **ARTICLE 7 – SERIES RIGHTS, ENFORCEMENT AND WAIVERS**

**7.1 Series.** This Debenture is one of the Series issued by the Corporation under and in the course of the implementation of its Plan sanctioned by the Court pursuant to the CCAA. The rights of the Holder are subject to the rights of the holders of all other debentures issued in the Series.

7.2 **Consent to Enforcement.** An Event of Default under any Debenture in the Series shall only be enforceable by proceedings against the Corporation by the Holder if the Holders of twenty (20%) percent of the Principal Amount of the Debentures outstanding in the Series shall have consented to such enforcement by an instrument or instruments in writing executed by such Holders and no Holder may take any steps to enforce rights including by action or otherwise unless and until such consent shall have been obtained.

7.3 **Waivers and Amendment.** The terms of all Debentures in the Series may be amended and any Default or Events of Default may be waived or amended by an instrument or instruments in writing executed by a majority of the Holders of a two thirds majority by Principal Amount of the Debentures in the Series. In the alternative, such waiver or amendment shall be effective if made by a resolution passed by a two thirds majority of those present and voting in person or by proxy at a meeting of the Holders of the Debentures in the Series convened on not less than 14 days notice in writing delivered by ordinary mail to the address of the Holder as recorded on the records of the Corporation.

## ARTICLE 8 - MISCELLANEOUS

8.1 **Notice.** Any demand, notice or other communication (hereinafter in this section referred to as a “Communication”) to be given in connection with this Debenture shall be given in writing and may be given by personal delivery or facsimile transmission addressed to the recipient as follows:

(a) If to the Holder:

At such address and facsimile number designated by the Holder to the Corporation in writing.

(b) If to the Corporation:

Provider Capital Group Inc.  
900 Dillingham Road  
Pickering, Ontario L1W 1Z6

Attention: Ms. Sherry Townsend  
Interim Operating Officer

Fax: (905) 839-1761

E-mail: stownsend@providercapitalgroup.com

or such other address, facsimile number or individual as may be designated by notice by any party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and any Communication given by facsimile transmission shall be conclusively deemed to have been given on the day following the date of transmittal thereof.

8.2 **No Creditor Liability.** The Corporation acknowledges that the Holder has requested and reviewed and may in the future request and review information pertaining to this Debenture. The Corporation hereby agrees that, in the course of undertaking such due diligence investigation, the Holder has not influenced and shall not influence or exercise any control over the Corporation's decisions regarding the indebtedness evidenced by this Debenture, and that any and all determinations which the Holder has made or may make, or opinions which it or any of its respective employees may express in the course of such investigations have been, and shall be made or expressed, as the case may be, solely for its own purposes acting in good faith. The Corporation further expressly agrees that the Holder may disclose to any potential assignee or participant of all or a part of the Debenture any and all information which the Holder may obtain about the Corporation's business and affairs without incurring any liability to the Corporation for so doing; provided that such potential assignee agrees to treat such information as confidential in accordance with procedures and standards of confidentiality no less rigorous than those maintained by the Holder.

8.3 **Evidence of Debt.** The indebtedness of the Corporation in respect of or in connection with the Debenture shall, absent manifest error, be conclusively evidenced by the books and records of the Corporation. At the request of the Holder from time to time the Corporation shall provide the Holder with a statement of the indebtedness of the Corporation to the Holder.

8.4 **Assignment.** The Corporation may not assign this Debenture without the written consent of the Holder. The Holder may assign and transfer this Debenture in whole or in part. The Corporation shall execute any and all documents reasonably required by the Holder in connection with any such assignment, provided that such documents do not prejudice the rights of the Corporation under this Debenture or result in any increase in any amounts payable by the Corporation.

8.5 **Amendment, Waiver.** No amendment or waiver of this Debenture will be binding unless executed in writing by the Corporation if it is to be bound thereby, or, subject to the rights of the requisite majorities of the Holders of other Debentures issued in the Series by the Corporation to waive defaults or to consent to certain amendments as provided in Article 7 hereof, by the Holder if it is to be bound thereby. No waiver of any provision of this Debenture will constitute a waiver of any other provision nor will any waiver of any provision of this Debenture constitute a continuing waiver unless otherwise expressly provided.

8.6 **Binding Effect.** This Debenture shall be binding upon and shall enure to the benefit of the Holder and shall be binding upon and shall enure to the benefit of the Corporation and its successors and permitted assigns.

8.7 **Entire Agreement.** This Debenture constitutes the entire agreement between the Holder and the Corporation and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether written or oral, express or implied, with respect to the subject matter hereof and shall not be amended or modified in any respect except with written agreement signed by the parties hereto.

8.8 **Governing Law.** This Debenture shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Corporation hereby irrevocably submits to the jurisdiction of the Courts of the Province of Ontario in respect of any action, suit or proceeding arising out of or relating to this Debenture and hereby irrevocably agrees that all claims in respect of any such action, suit or proceeding may be heard and determined in any such Court.

**IN WITNESS WHEREOF** the Corporation has duly executed this Debenture this 1<sup>st</sup> day of May, 2011.

**PROVIDER CAPITAL GROUP INC.**

Per: \_\_\_\_\_  
President  
I have authority to bind the corporation

**Notice of Conversion of Debenture**

The undersigned Holder of this Debenture hereby converts the outstanding Principal Amount [or in the alternative, the amount of \$ \_\_\_\_\_.00 of the outstanding Principal Amount] of this Debenture into New Special Shares of the Corporation at the rate of \$25.00 per New Special Share to be issued a sfully paid and non-assessable shares with dividends cumulating thereon from the date of issue which shall be the first day of the next month following the delivery of this Notice together with the Debenture for endorsement as to the balance if any of the Principal Amount to be outstanding after such conversion and all on and subject to the terms of Article 4 of the Debenture.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_

\_\_\_\_\_  
Full name of Holder:  
Address:

## **SCHEDULE "D"**

### **FORM OF RECEIPT, RELEASE AND ASSIGNMENT**

#### **RECEIPT, RELEASE AND ASSIGNMENT**

**WHEREAS** Nelson Financial Group Ltd. has filed Articles of Reorganization and has changed its name to Provider Capital Group Inc. (the "Corporation"); and

**AND WHEREAS** the Plan of Arrangement of Nelson Financial Group Ltd. has been approved by the requisite majorities of its creditors and sanctioned by an Order of the Ontario Superior Court of Justice made on April 20, 2011 (the "Plan") and the Plan is now being implemented.; and

**AND WHEREAS** the Undersigned, **[Insert Full Name]**, represents and warrants that it is a Proven Creditor of Nelson Financial Group Ltd. holding a Proven Claim in the amount of \$ **[Insert Net Amount]**, net of any amount for which the undersigned has elected to receive the Cash Exit Option in accordance with and subject to section 4.2 of the Plan.

**NOW THEREFORE**, in accordance with the Plan, the undersigned Creditor hereby acknowledges receipt of the following securities and payment delivered to it and registered in its name in full satisfaction of its Proven Claim in accordance with the Plan:

- i) A Capital Recovery Debenture issued by Provider Capital Group Inc. in the Principal Amount of \$ **[Insert Amount equal to .25 times the Proven Claim amount]**;
- ii) A certificate registered in the name of the undersigned and representing [ **[Insert Number being the Amount of the Proven Claim divided by 100 and rounded to the nearest integer]** New Special Shares in the capital stock of Provider Capital Group Inc.;
- iii) A certificate registered in the name of the undersigned and representing [ **Same Number as in (ii) above]** Common Shares in the capital stock of Provider Capital Group Inc.; and
- iv) Payment of the sum of \$ \_\_\_\_\_ in respect of the elected Cash Exit Option portion of the original Proven Claim amount of the undersigned Creditor.

Further, in consideration of the delivery of such securities, the undersigned accepts the foregoing securities in full satisfaction for all of its Proven Claims against Nelson Financial Group Ltd. and hereby releases the Corporation of and from any and all claims that it had as of March 23, 2010, together with any claim for interest or costs in respect of any such claim.

Further and for the same consideration, the undersigned hereby assigns, transfers and sets over to Douglas Turner, Q.C., as Trustee, and to the other trustees from time to time under the

Nelson Litigation Trust as provided for under the terms of the Plan, all of its rights, claims and causes of action in law or in equity in respect of any loss or damages that it may have suffered or any other right that it may have by reason of its investment in Nelson Financial Group Ltd. and including, without limitation, any and all claims for damages for fraudulent misrepresentation, negligent misrepresentation, conversion, breach of statutory duty or any other wrongful act and any claims to trace or recover any part of any investment made by the undersigned in Nelson Financial Group Ltd. or any other property or investment into which any such may have been converted or transferred by any person, against any associate or affiliate of Nelson Financial Group Ltd. or any third party who owed or owes any duties at law or in equity to the undersigned, to Nelson Financial Group Ltd. or to any associate or affiliate of Nelson Financial Group Ltd.

For greater certainty, the rights assigned and transferred hereunder shall include rights to recover by tracing in law or in equity any advances previously made by the undersigned in respect of its investment in Nelson Financial Group Ltd. into accounts, property, rights or things held by or owing from or to any associate or affiliate of Nelson Financial Group Ltd., including, without limitation, Nelson Investment Group Ltd., Nelson Mortgage Group Ltd., Nelson Capital Group Ltd., Marc Boutet or any affiliate or associate of any of them, with such relationship to be determined as at March 23, 2010.

The undersigned agrees to execute such assignments or consents, including consents to proceedings to be taken in its name provided that the Litigation Trust shall indemnify it for any costs or liabilities in connection therewith, as may be requested at any time and from time to time by the trustees of the Nelson Litigation Trust. If this assignment is given by a Creditor who has elected the Cash Exit Option under Section 4.2 of the Plan, the Creditor acknowledges and confirms that it shall have no right or entitlement to receive any future benefits under from or out of the Nelson Litigation Trust in respect of its Claim to the extent so elected.

The Receipt, Release and Assignment above shall enure to the benefit of the successors and lawful assigns of the Corporation and of the trustees of and the beneficiaries under the Nelson Litigation Trust and shall be binding upon the undersigned Creditor and its heirs, administrators, successors and assigns. Any capitalized terms in this instrument not otherwise defined shall have the meaning attributed to such in the Plan. This instrument shall be governed by the laws of the Province of Ontario and any proceeding to interpret or enforce its terms shall be subject to the exclusive jurisdiction of the Ontario Superior Court of Justice and the parties consent to and attorn to the jurisdiction of that Court.

**DULY EXECUTED** as an Instrument under seal at \_\_\_\_\_,  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

(s)



\_\_\_\_\_  
Witness

\_\_\_\_\_  
Proven Creditor

Print Full Name of Proven Creditor: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone:  
Email (if any):

## **SCHEDULE “E”**

### **DECLARATION OF TRUST – LITIGATION TRUST**

#### **NELSON LITIGATION TRUST** ***Provider Capital Group Inc.(the “Company”)***

**THIS TRUST DEED** made as of April , 2011 establishes a litigation trust with respect to certain causes of action held by creditors of and arising from the insolvency of Nelson Financial Group Ltd. for the collective benefit of those creditors of the Company who participated in the Plan of Arrangement approved and sanctioned by Order of the Ontario Superior Court of Justice by Order dated April 20, 2011, a true copy of which is annexed as schedule 1. The Trust is established for the purposes of the Plan of Arrangement and it is to be interpreted with reference to the Plan

#### **1. PARTIES:**

1.1 **TRUSTEES:** The Trustees appointed by the Court or their successors as provided for in schedule 2, (the “Trustees”) and

1.2 **BENEFICIARIES:** The Creditors as described in schedule 3 as amended from time to time pursuant to the terms of this Trust (the “Creditors”).

#### **2. PURPOSE OF LITIGATION TRUST:**

2.1 This trust is created for the benefit of the Creditors to preserve, protect, and enforce all causes of action and inchoate rights the Creditors have had in respect of or through their investment in the Company against any persons, other than the Company, by reason of acts of persons affecting such investment prior to the commencement of the proceedings under the *Companies’ Creditors Arrangement Act* RSC 1985, c. C-36, as amended and the Orders of the Court for the period March 22, 2010 to April , 2011 (the “litigation trust assets”).

2.2 The litigation trust assets include all Derivative Rights, as defined in the Plan of Arrangement, which a Creditor had against third parties, which rights were assigned to and were vested in the Trustees in the implementation of the Plan.

2.3 The duties of the Trustees are to enforce the Derivative Rights of the Creditors against such parties as the Trustees in their unfettered discretion deem advisable under the powers, rights, and duties granted by this trust.

2.4 The Creditors listed in schedule 3 by virtue of approval of the Plan of Arrangement confirmed by Court Order dated April 20, 2011 and the execution of the Plan of Arrangement documents have hereby established this litigation trust on behalf of the Creditors who are to be deemed settlers and grantors and beneficial owners of the litigation trust assets who have transferred, assigned, and delivered to the trust their right, title, and interest in the litigation trust assets.

### **3. VESTING OF ASSETS AND POWERS OF TRUSTEES:**

3.1 The litigation trust assets are hereby vested in the Trustees who are authorized to perform those acts necessary to accomplish the purposes of the litigation trust, which are, without limitation, evaluating and determining strategy with respect to causes of action, and litigating, settling, transferring, releasing or abandoning any and all causes of action on behalf of the litigation trust, in each case, on any terms and conditions as the Trustees may determine in good faith based on the best interests of the Creditors, which powers to include the powers to:

- (1) hold legal title (on behalf of the trust as Trustees, but not individually) to the litigation trust assets, including, but not limited to, any causes of action;
- (2) retain counsel or other professionals to conduct any actions in any court or administrative tribunal or any other body;
- (3) protect and enforce the rights to the trust assets by any method deemed appropriate in their sole discretion, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;
- (4) prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle, in accordance with the terms set forth herein, the litigation trust assets;
- (5) the Trustees may commence any proceeding using the name of the "Nelson Litigation Trust" and may join as a plaintiff or co-applicant in any action with the Company and on such

arrangements as to the sharing of costs and proceeds as the Trustees and the Company may agree;

(6) pay expenses and make disbursements necessary to preserve, liquidate, and enhance the trust assets out of an initial fund of \$250,000.00 advanced to the trust by the Company, plus such additional funds which the Company shall contribute after written request from the Trustees, provided that such additional advances shall not exceed \$250,000.00; in addition, after consultation with the Creditors, the Trustees may obtain further financing to further the purposes of the trust, provided that such advances shall be reimbursed by the Trust prior to any distribution of the proceeds of the Trust actions being made to Creditor beneficiaries;

(7) assume such other powers as may be vested in or assumed by the trust as may be necessary and proper to carry out the provisions of the trust;

(8) make any arrangement deemed by the Trustees in their unfettered discretion for the payment of any proper expenses of the trust, including the borrowing of any money on any security that may be required;

(9) operate any bank accounts; and

(10) report to the board of directors of the Company as to the steps that the Trust has taken to maximize recoveries for the beneficiaries and distribute from time to time in the discretion of the Trustees any net proceeds from the trust litigation assets to the beneficiaries provided that all advances previously made to the Trust by the Company shall have been first reimbursed.

For any of the purposes aforesaid, the Trustees may apply at any time and from time to time to the Court for advice and directions pursuant to the *Trustee Act* or pursuant to the CCAA.

#### **4. LIMITATIONS ON TRUSTEES POWERS:**

4.1 The Trustees shall not carry on any business.

4.2 The Trustees shall not hold or represent any interest adverse to the interests of the trust.

**5. DUTIES AND RIGHTS OF TRUSTEES:**

5.1 Replacement of Trustees: Any trustee may resign on two weeks' notice in writing to the other Trustees. The remaining Trustees shall forthwith appoint a successor to the retiring trustee which shall be confirmed by the Court.

5.2 A Trustee may be removed by a vote of any two of the remaining Trustees by instrument in writing and served personally on the Trustee. Such removal and an appointment of a replacement trustee shall be confirmed by the Court.

5.3 The Trustees shall each be entitled to receive compensation at reasonable and comparable professional rates plus reimbursement of out-of-pocket costs and expenses incurred in connection with the duties of trustee.

5.4 The fees, costs and expenses of all professionals retained by the Trustees in connection with the performance of the Trustee's duties shall be initially paid from funds as provided by section 4.1(5).

5.5 The Trustees shall not be liable for any action reasonably taken or not taken in accordance with the advice of a Professional or Non-Professional; and persons dealing with the Trustees shall look only to the litigation trustee assets to satisfy any liability incurred by the Trustees to such person in carrying out the terms of this trust, and the Trustees shall not have any personal obligation to satisfy any such liability, except to the extent that actions taken or not taken by the Trustee are determined to be solely due to the trustee's own gross negligence, wilful misconduct, fraud or breach of fiduciary duty.

5.6 The Trustees shall not incur any liability or obligation as a result of their appointment or the carrying out of any of their duties under the trust, save and except for gross negligence or wilful misconduct. Nelson and the Creditors shall indemnify and hold the Trustees harmless with respect to any liability incurred by the Trustees in fulfilment of their duties under the trust, and no action may be commenced in any court against the Trustees without leave of the Ontario Superior Court of Justice.

5.7 Any indemnity shall survive any termination or replacement of any trustee.

## 6. ACCEPTANCE OF TRUSTS

6.1 The Trustees accept the terms of the trust as evidenced by their signatures hereto under seal at Toronto, Ontario this       day of May, 2011

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
witness

\_\_\_\_\_  
Trustee

### Schedule 2:

The Trustees shall be Officers of the Court appointed by the Ontario Superior Court of Justice and the first Trustees are:

Sherry Townsend  
Douglas Turner Q.C.  
Richard B. Jones, Barrister.

**SCHEDULE "F"**

**FORM OF PROXY**

File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**PROXY**

I/We \_\_\_\_\_  
(Name of Creditor)

a Proven Creditor of Nelson Financial Group Ltd. hereby irrevocably appoint

☐ (a) \_\_\_\_\_ or ☐ (b) \_\_\_\_\_  
(insert name of proxy)

to be my/our proxy to vote at the meeting of the Creditors of Nelson Financial Group Ltd. to be held on April 16, 2011 or any adjournment of such meeting in respect of the approval of the Plan of Arrangement, any related matters or other matters that may properly come before such meeting, except as to the receipt of any distributions under the Plan, with power to appoint another proxy in his or her place.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Print Name of Creditor

\_\_\_\_\_  
Signature of Creditor or, if the Creditor is a corporation, signature of an authorized signing officer of the corporation

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

**SCHEDULE "G"**

**FORM OF VOTING LETTER**

Court File No. CV-10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

**VOTING LETTER**

**THE UNDERSIGNED** has reviewed the Plan of Compromise or Arrangement dated February 11, 2011 (the "**Plan**") and hereby instructs Douglas Turner Q.C., in his capacity as Representative Counsel for the Noteholders of Nelson Financial Group Ltd. at the meeting of creditors to be held on April 16, 2011 to record a vote by the undersigned and in the amount of the Proven Claim of the undersigned in respect of the Plan, as follows (please check one of the boxes below; if neither box is checked or if both boxes are checked, your vote will be counted in favour of the Plan) and to vote on behalf of the undersigned in respect of any other business that may come before the meeting of creditors or any adjournment thereof:

- ☐ **VOTE FOR** approval of the Plan
- ☐ **VOTE AGAINST** approval of the Plan.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Print Name of Creditor

\_\_\_\_\_  
Signature of Creditor or, if the Creditor is a  
corporation, signature of an authorized signing  
officer of the corporation

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(If signing for a corporation)



**SCHEDULE "H"**

**FORM OF CASH OPTION ELECTION**

**TO: PROVIDER CAPITAL GROUP INC.**  
900 Dillingham Road  
Pickering, ON L1W 1Z6

Attention: The President

**WHEREAS** Nelson Financial Group Ltd. has filed Articles of Reorganization and has changed its name to Provider Capital Group Inc. (the "Corporation"); and

**AND WHEREAS** the Plan of Arrangement of Nelson Financial Group Ltd. has been approved by the requisite majorities of its creditors and sanctioned by an Order of the Ontario Superior Court of Justice (the "Plan") and the Plan is now being implemented.; and

**AND WHEREAS** the Undersigned, [Insert Full Name],  
represents and warrants that it is a Proven Creditor of Nelson Financial Group Ltd. holding a  
Proven Claim in the amount of \$ [Insert Amount].

**NOW THEREFORE** the undersigned hereby elects to accept the Cash Exit Option in respect of \$ \_\_\_\_\_, being a portion / all **[Delete whichever does not apply]** of the amount of its Proven Claim, in accordance with and subject to the terms of the Plan, including without limitation section 4.2 thereof.

The undersigned agrees that any balance of its Proven Claim in respect of which it does not so elect, together with any portion of the elected amount that may be prorated by reason of more than \$10,000,000 of Proven Claims electing the Cash Exit Option, shall be dealt with as a Proven Claim under section 4.3 of the Plan. The undersigned agrees that it will execute and deliver a Receipt, Release and Assignment before the Corporation shall make any payment to it and that it will have no further rights or entitlements under the Plan including without limitation any rights as a beneficiary under the Litigation Trust in respect of the elected amount.

**DULY EXECUTED** as an Instrument under seal at \_\_\_\_\_,  
\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

(s)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Proven Creditor

Print Full Name of Proven Creditor: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

---

Telephone:  
Email (if any):

Court File No. CV-10-8630-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.

Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**PLAN OF COMPROMISE  
AND ARRANGEMENT OF  
NELSON FINANCIAL GROUP LTD.**

**RICHARD B. JONES**  
Barrister & Solicitor  
100 Yonge Street, Suite 1201  
Toronto, ON M5C 2W1

**Richard B. Jones**  
LSUC No.: 11575V

Telephone: (416) 863-0576  
Facsimile: (416) 863-0092

**COUNSEL FOR THE  
INTERIM OPERATING OFFICER**



911152

**Form 9**  
**Business**  
**Corporations**  
**Act**

**Formule 9**  
**Loi sur les**  
**sociétés par**  
**actions**

1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)  
Dénomination sociale de la société : (Écrire en LETTRES MAJUSCULES SEULEMENT) :

[illegible]

2. The new name of the corporation if changed by the reorganization: (Set out in BLOCK CAPITAL LETTERS)  
Nouvelle dénomination sociale de la société si elle est modifiée par suite de la réorganisation : (Écrire en LETTRES MAJUSCULES SEULEMENT) :

[illegible]

3. Date of incorporation/amalgamation: / Date de la constitution ou de la fusion :

1990/09/14

Year, Month, Day / année, mois, jour

4. The reorganization was ordered by the court on / La cour a ordonné la réorganisation le

2011/04/20

Year, Month, Day / *année, mois, jour*

and a certified copy of the Order of the court is attached to these articles as Exhibit "A". / une copie certifiée conforme de l'ordonnance de la cour constitue l'annexe «A».

5. In accordance with the Order for reorganization the articles of the corporation are amended as follows:  
*Conformément à l'ordonnance de réorganisation, les statuts de la société sont modifiés de la façon suivante :*

Please refer to the attached Pages 1A to 1D, inclusive.

5.

1. The issued and outstanding Class A common shares, Class B common shares, Series A Preferred shares and Series B Preferred shares are cancelled and of no further force or effect and all of the authorized and unissued Class A common shares, Class B common shares, Series A Preferred shares and Series B Preferred shares are hereby deleted and cancelled.
2. Item 9 of the Articles of Incorporation dated September 14, 1990 is deleted in its entirety.
3. The classes and shares that the Corporation is authorized to issue from and after the date of filing of these Articles of Reorganization shall be as follows:
  - a) The Corporation is authorized to issue an unlimited number of Common Shares and 1,000,000 New Special Shares;
  - b) The rights, privileges, restrictions and conditions attaching to the Common Shares shall include the following:
    - (i) Payment of Dividends: The holders of the Common Shares shall be entitled to receive dividends if, as and when declared by the Board of Directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends in such amounts and payable in such manner as the Board of Directors may from time to time determine. Subject to the rights of the holders of any other class of shares of the Corporation entitled to receive dividends in priority to or rateably with the holders of the Common Shares, the Board of Directors may in their sole discretion declare dividends on the Common Shares to the exclusion of any other class of shares in the Corporation.
    - (ii) Participation upon Liquidation, Dissolution or Winding-Up: In the event of the Liquidation, Dissolution or Winding-Up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of the Common Shares shall, subject to the rights of the holders of any other class of shares of the Corporation entitled to receive the asset for the Corporation upon such a distribution in priority to or rateably with the holders of the Common Shares, be entitled to participate rateably in any distribution of the assets of the Corporation.
    - (iii) Voting Rights: The holders of the Common Shares shall be entitled to receive notice of and to attend all annual and special meetings of the shareholders of the Corporation and to one vote in respect of each Common Share held at all such meetings.
  - c) The rights, privileges, restrictions and conditions attaching to the New Special Shares are as follows:

- (i) The New Special Shares authorized to be issued shall consist of 1,000,000 shares.
- (ii) Except as required by the *Business Corporations Act*, the holders of the New Special Shares shall not be entitled to receive notice of or to attend any meeting of shareholders of the Corporation except for a meeting at which the holders of the New Special Shares are entitled to vote separately as a class.
- (iii) The holders of the New Special Shares, in priority to the holders of the Common Shares and all other shares ranking junior to the New Special Shares, shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the board of directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends, fixed preferential cumulative cash dividends at the rate of Six (6%) percent per annum on the Redemption Price (as hereinafter defined) per share. The holders of the New Special Shares shall not be entitled to any dividends other than or in excess of the preferential cumulative cash dividends hereinbefore provided.
- (iv) Except with the consent in writing of the holders of all of the New Special Shares outstanding, no dividend shall at any time be declared and paid on or set apart for payment on the Common Shares or on any other shares ranking junior to the New Special Shares in any financial year unless and until the approved preferential cumulative cash dividends on all of the New Special Shares outstanding have been declared and paid or set apart for payment.
- (v) Redemption
  - (a) Subject to the *Business Corporations Act*, the Corporation may redeem or purchase the New Special Shares in accordance with the following terms and conditions. In these share provisions, "Redemption Price" shall be equal to Twenty Five (\$25.00) dollars per share. The "Redemption Amount" for each New Special Share shall be the Redemption Price, together with all cumulative dividends which shall have accrued thereon but shall be unpaid or undeclared and which shall be treated as accruing to the date of such redemption.
  - (b) The Corporation may redeem all or from time to time any of the outstanding New Special Shares on payment to the holders thereof of the Redemption Amount. If less than all of the outstanding shares are to be redeemed, the shares to be redeemed shall be selected by lot or, disregarding fractions, *pro rata* to the number of shares registered in the name of each shareholder or in such other

6. The terms and conditions to which the reorganization is made subject by the Order have been complied with.  
*Les conditions que l'ordonnance impose à la réorganisation ont été respectées.*

These articles are submitted under section 186 of the *Business Corporations Act* and are signed in duplicate.  
*Les présents statuts sont déposés en vertu de l'article 186 de la Loi sur les sociétés par actions. Ils sont signés en double exemplaire.*

Nelson Financial Group Ltd.

\_\_\_\_\_  
 Name of Corporation / Dénomination sociale de la société

By/  
 Par :

\_\_\_\_\_  
 Signature / Signature

Sherry Townsend - Interim Operating Officer

\_\_\_\_\_  
 Description of Office / Fonction



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C., 1985 c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.  
Applicant

Court File No. 10-8630-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

---

**ORDER**  
**(Plan Sanction)**

---

**RICHARD B. JONES**  
Barrister & Solicitor  
Suite 1201, Scotia Plaza  
100 Yonge Street  
Toronto, ON M5C 2W1

**Richard B. Jones** (LSUC No. 11575V)  
Tel: 416-863-0576  
Fax: 416-869-0092  
Email: richard.jones@sympatico.ca

Special Counsel for Interim Operating Officer  
and for Representative Counsel



# EXHIBIT E

**CITATION:** Nelson Financial Group Ltd., 2010 ONSC 6229  
**COURT FILE NO.:** 10-8630-00CL  
**DATE:** 20101116

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.**

**COUNSEL:** *Richard B. Jones and Douglas Turner, Q.C.* Representative Counsel for  
Noteholders/Moving Party  
*J.H. Grout and S. Aggarwal* for the Monitor  
*Pamela Foy* for the Ontario Securities Commission  
*Frank Lamie* for Nelson Financial Group Ltd.  
*Robert Benjamin Mills and Harold Van Winssen* for Clifford Styles, Jackie Styles  
and Play Investments Ltd., Respondents  
*Michael Beardsley*, Self Represented Respondent  
*Clifford Holland*, Self Represented Respondent  
*Arnold Bolliger*, Self Represented Respondent  
*John McVey*, Self Represented Respondent  
*Joan Frederick*, Self Represented Respondent  
*Rakesh Sharma*, Self Represented Respondent  
*Larry Debono*, Self Represented Respondent  
*Keith McClear*, Self Represented Respondent

**REASONS FOR DECISION**

**PEPALL J.**

[1] This motion addresses the legal characterization of claims of holders of preferred shares in the capital stock of the applicant, Nelson Financial Group Ltd. ("Nelson"). The issue before me is to determine whether such claims constitute equity claims for the purposes of sections 6(8) and 22.1 of the *Companies' Creditors Arrangement Act* ("CCAA").

Background Facts

[2] Nelson was incorporated pursuant to the *Business Corporations Act* of Ontario in September, 1990. Nelson raised money from investors and then used those funds to extend credit to customers in vendor assisted financing programmes. It raised money in two ways. It issued promissory notes bearing a rate of return of 12% per annum and also issued preference shares typically with an annual dividend of 10%.<sup>1</sup> The funds were then lent out at significantly higher rates of interest.

[3] The Monitor reported that Nelson placed ads in selected publications. The ads outlined the nature of the various investment options. Term sheets for the promissory notes or the preferred shares were then provided to the investors by Nelson together with an outline of the proposed tax treatment for the investment. No funds have been raised from investors since January 29, 2010.

(a) Noteholders

[4] As of the date of the *CCAA* filing on March 23, 2010, Nelson had issued 685 promissory notes in the aggregate principal amount of \$36,583,422.89. The notes are held by approximately 321 people.

(b) Preferred Shareholders

[5] Nelson was authorized to issue two classes of common shares and 2,800,000 Series A preferred shares and 2,000,000 Series B preferred shares, each with a stated capital of \$25.00.

---

<sup>1</sup> The Monitor is aware of six preferred shareholders with dividends that ranged from 10.5% to 13.75% per annum.

The president and sole director of Nelson, Marc Boutet, is the owner of all of the issued and outstanding common shares. By July 31, 2007, Nelson had issued to investors 176,675 Series A preferred shares for an aggregate consideration of \$4,416,925. During the subsequent fiscal year ended July 31, 2008, Nelson issued a further 172,545 Series A preferred shares and 27,080 Series B preferred shares. These shares were issued for an aggregate consideration of \$4,672,383 net of share issue costs.

[6] The preferred shares are non-voting and take priority over the common shares. The company's articles of amendment provide that the preferred shareholders are entitled to receive fixed preferential cumulative cash dividends at the rate of 10% per annum. Nelson had the unilateral right to redeem the shares on payment of the purchase price plus accrued dividends. At least one investor negotiated a right of redemption. Two redemption requests were outstanding as of the *CCAA* filing date.

[7] As of the *CCAA* filing date of March 23, 2010, Nelson had issued and outstanding 585,916.6 Series A and Series B preferred shares with an aggregate stated capital of \$14,647,914. The preferred shares are held by approximately 82 people. As of the date of filing of these *CCAA* proceedings, there were approximately \$53,632 of declared but unpaid dividends outstanding with respect to the preferred shares and \$73,652.51 of accumulated dividends.

[8] Investors subscribing for preferred shares entered into subscription agreements described as term sheets. These were executed by the investor and by Nelson. Nelson issued share certificates to the investors and maintained a share register recording the name of each preferred shareholder and the number of shares held by each shareholder.

Page: 4

[9] As reported by the Monitor, notwithstanding that Nelson issued two different series of preferred shares, the principal terms of the term sheets signed by the investors were almost identical and generally provided as follows:

- the issuer was Nelson;
- the par value was fixed at \$25.00;
- the purpose was to finance Nelson's business operations;
- the dividend was 10% per annum, payable monthly, commencing one month after the investment was made;
- preferred shareholders were eligible for a dividend tax credit;
- Nelson issued annual T-3 slips on account of dividend income to the preferred shareholders;
- the preferred shares were non-voting (except where voting as a class was required), redeemable at the option of Nelson and ranked ahead of common shares; and
- dividends were cumulative and no dividends were to be paid on common shares if preferred share dividends were in arrears.

[10] In addition, the Series B term sheet provided that the monthly dividend could be reinvested pursuant to a Dividend Reinvestment Plan ("DRIP").

[11] The preferred shareholders were entered on the share register and received share certificates. They were treated as equity in the company's financial statements. Dividends were received by the preferred shareholders and they took the benefit of the advantageous tax treatment.

(c) Insolvency

[12] Mr. Boutet knew that Nelson was insolvent since at least its financial year ended July 31, 2007. Nelson did not provide financial statements to any of the preferred shareholders prior to, or subsequent to, the making of the investment.

(d) Ontario Securities Commission

[13] On May 12, 2010, the Ontario Securities Commission ("OSC") issued a Notice of Hearing and Statement of Allegations alleging that Nelson and its affiliate, Nelson Investment Group Ltd., and various officers and directors of those corporations committed breaches of the *Ontario Securities Act* in the course of selling preferred shares. The allegations include non-compliance with the prospectus requirements, the sale of shares in reliance upon exemptions that were inapplicable, the sale of shares to persons who were not accredited investors, and fraudulent and negligent misrepresentations made in the course of the sale of shares. The OSC hearing has been scheduled for the end of February, 2011.

(e) Legal Opinion

[14] Based on the Monitor's review, the preferred shareholders were documented as equity on Nelson's books and records and financial statements. Pursuant to court order, the Monitor retained Stikeman Elliott LLP as independent counsel to provide an opinion on the characterization of the claims and potential claims of the preferred shareholders. The opinion concluded that the claims were equity claims. The Monitor posted the opinion on its website and also advised the preferred shareholders of the opinion and conclusions by letter. The opinion was not to constitute evidence, issue estoppel or res judicata with respect to any matters of fact or law referred to therein. The opinion, at least in part, informed Nelson's position which was

Page: 6

supported by the Monitor, that independent counsel for the preferred shareholders was unwarranted in the circumstances.

(f) Development of Plan

[15] The Monitor reported in its Eighth Report that a plan is in the process of being developed and that preferred shareholders would have their existing preference shares cancelled and would then be able to claim a tax loss on their investment or be given a new form of preference shares with rights to be determined.

Motion

[16] The holders of promissory notes are represented by Representative Counsel appointed pursuant to my order of June 15, 2010. Representative Counsel wishes to have some clarity as to the characterization of the preferred shareholders' claims. Accordingly, Representative Counsel has brought a motion for an order that all claims and potential claims of the preferred shareholders against Nelson be classified as equity claims within the meaning of the *CCAA*. In addition, Representative Counsel requests that the unsecured creditors, which include the noteholders, be entitled to be paid in full before any claim of a preferred shareholder and that the preferred shareholders form a separate class that is not entitled to vote at any meeting of creditors. Nelson and the Monitor support the position of Representative Counsel. The OSC is unopposed.

[17] On the return of the motion, some preferred shareholders were represented by counsel from Templeman Menninga LLP and some were self-represented. It was agreed that the letters and affidavits of preferred shareholders that were filed with the court would constitute their evidence. Oral submissions were made by legal counsel and by approximately eight individuals.



Page: 7

They had many complaints. Their allegations against Nelson and Mr. Boutet range from theft, fraud, misrepresentation including promises that their funds would be secured, operation of a Ponzi scheme, breach of trust, dividend payments to some that exceeded the rate set forth in Nelson's articles, conversion of notes into preferred shares at a time when Nelson was insolvent, non-disclosure, absence of a prospectus or offering memorandum disclosure, oppression, violation of section 23(3) of the *OBCA* and of the *Securities Act* such that the issuance of the preferred shares was a nullity, and breach of fiduciary duties.

[18] The stories described by the investors are most unfortunate. Many are seniors and pensioners who have invested their savings with Nelson. Some investors had notes that were rolled over and replaced with preference shares. Mr. McVey alleges that he made an original promissory note investment which was then converted arbitrarily and without his knowledge into preference shares. He alleges that the documents effecting the conversion did not contain his authentic signature.

[19] Mr. Styles states that he and his company invested approximately \$4.5 million in Nelson. He states that Mr. Boutet persuaded him to convert his promissory notes into preference shares by promising a 13.75% dividend rate, assuring him that the obligation of Nelson to repay would be treated the same or better than the promissory notes, and that they would have the same or a priority position to the promissory notes. He then received dividends at the 13.75% rate contrary to the 10% rate found in the company's articles. In addition, at the time of the conversion, Nelson was insolvent.

[20] In brief, Mr. Styles submits that:

- (a) the investment transactions were void because there was no prospectus contrary to the provisions of the *Securities Act* and the Styles were not accredited investors; the preferred shares were issued contrary to section 23(3) of the *OBCA* in that Nelson was insolvent at the relevant time and as such, the issuance was a nullity; and the conduct of the company and its principal was oppressive contrary to section 248 of the *OBCA*; and that
- (b) the Styles' claim is in respect of an undisputed agreement relating to the conversion of their promissory notes into preferred shares which agreement is enforceable separate and apart from any claim relating to the preferred shares.

#### The Issue

[21] Are any of the claims advanced by the preferred shareholders equity claims within section 2 of the *CCAA* such that they are to be placed in a separate class and are subordinated to the full recovery of all other creditors?

#### The Law

[22] The relevant provisions of the *CCAA* are as follows.

Section 2 of the *CCAA* states:

In this Act,

“Claim” means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;

“Equity Claim” means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,

- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);”

“Equity Interest” means

- (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

Section 6(8) states:

No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Section 22.1 states:

Despite subsection 22(1) creditors having equity claims are to be in the same class of creditors in relation to those claims unless the court orders otherwise and may not, as members of that class, vote at any meeting unless the court orders otherwise.

[23] Section 2 of the *Bankruptcy and Insolvency Act* (“*BIA*”) which is referenced in section 2 of the *CCAA* provides that a claim provable includes any claim or liability provable in proceedings under the Act by a creditor. Creditor is then defined as a person having a claim provable as a claim under the Act.

[24] Section 121(1) of the *BIA* describes claims provable. It states:

All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

[25] Historically, the claims and rights of shareholders were not treated as provable claims and ranked after creditors of an insolvent corporation in a liquidation. As noted by Laskin J.A. in *Re Central Capital Corporation*<sup>2</sup>, on the insolvency of a company, the claims of creditors have always ranked ahead of the claims of shareholders for the return of their capital. This principle is premised on the notion that shareholders are understood to be higher risk participants who have chosen to tie their investment to the fortunes of the corporation. In contrast, creditors choose a lower level of exposure, the assumption being that they will rank ahead of shareholders in an insolvency. Put differently, amongst other things, equity investors bear the risk relating to the integrity and character of management.

[26] This treatment also has been held to encompass fraudulent misrepresentation claims advanced by a shareholder seeking to recover his investment: *Re Blue Range Resource Corp.*<sup>3</sup> In that case, Romaine J. held that the alleged loss derived from and was inextricably intertwined with the shareholder interest. Similarly, in the United States, the Second Circuit Court of Appeal in *Re Stirling Homex Corp.*<sup>4</sup> concluded that shareholders, including those who had allegedly been defrauded, were subordinate to the general creditors when the company was insolvent. The Court stated that "the real party against which [the shareholders] are seeking relief is the body of

---

<sup>2</sup> (1996), 38 C.B.R. (3d) 1 (Ont. C.A.).

<sup>3</sup> 2000, 15 C.B.R. (4<sup>th</sup>) 169.

<sup>4</sup> (1978) 579 F. 2d 206 (2<sup>nd</sup> Cir. Ct. of App.).

general creditors of their corporation. Whatever relief may be granted to them in this case will reduce the percentage which the general creditors will ultimately realize upon their claims.” *National Bank of Canada v. Merit Energy Ltd.*<sup>5</sup> and *Earthfirst Canada Inc.*<sup>6</sup> both treated claims relating to agreements that were collateral to equity claims as equity claims. These cases dealt with separate indemnification agreements and the issuance of flow through shares. The separate agreements and the ensuing claims were treated as part of one integrated transaction in respect of an equity interest. The case law has also recognized the complications and delay that would ensue if CCAA proceedings were mired in shareholder claims.

[27] The amendments to the CCAA came into force on September 18, 2009. It is clear that the amendments incorporated the historical treatment of equity claims. The language of section 2 is clear and broad. Equity claim means a claim in respect of an equity interest and includes, amongst other things, a claim for rescission of a purchase or sale of an equity interest. Pursuant to sections 6(8) and 22.1, equity claims are rendered subordinate to those of creditors.

[28] The Nelson filing took place after the amendments and therefore the new provisions apply to this case. Therefore, if the claims of the preferred shareholders are properly characterized as equity claims, the relief requested by Representative Counsel in his notice of motion should be granted.

---

<sup>5</sup> (2001), 2001 CarswellAlta 913, aff'd 2002 CarswellAlta 23 (Alta C.A.).

<sup>6</sup> (2009) 2009 CarswellAlta 1069.

[29] Guidance on the appropriate approach to the issue of characterization was provided by the Ontario Court of Appeal in *Re Central Capital Corporation*<sup>7</sup>. Central Capital was insolvent and sought protection pursuant to the provisions of the *CCAA*. The appellants held preferred shares of Central Capital. The shares each contained a right of retraction, that is, a right to require Central Capital to redeem the shares on a fixed date and for a fixed price. One shareholder exercised his right of retraction and the other shareholder did not but both filed proofs of claim in the *CCAA* proceedings. In considering whether the two shareholders had provable debt claims, Laskin J.A. considered the substance of the relationship between the company and the shareholders. If the governing instrument contained features of both debt and equity, that is, it was hybrid in character, the court must determine the substance of the relationship between the company and the holder of the certificate. The Court examined the parties' intentions.

[30] In *Central Capital*, Laskin J.A. looked to the share purchase agreements, the conditions attaching to the shares, the articles of incorporation and the treatment given to the shares in the company's financial statements to ascertain the parties' intentions and determined that the claims were equity and not debt claims.

[31] In this case, there are characteristics that are suggestive of a debt claim and of an equity claim. That said, in my view, the preferred shareholders are, as their description implies, shareholders of Nelson and not creditors. In this regard, I note the following.

---

<sup>7</sup> *Supra*, note 2.

- (a) Investors were given the option of investing in promissory notes or preference shares and opted to invest in shares. Had they taken promissory notes, they obviously would have been creditors. The preference shares carried many attractions including income tax advantages.
- (b) The investors had the right to receive dividends, a well recognized right of a shareholder.
- (c) The preference share conditions provided that on a liquidation, dissolution or winding up, the preferred shareholders ranked ahead of common shareholders. As in *Central Capital*, it is implicit that they therefore would rank behind creditors.
- (d) Although I acknowledge that the preferred shareholders did not receive copies of the financial statements, nonetheless, the shares were treated as equity in Nelson's financial statements and in its books and records.

[32] The substance of the arrangement between the preferred shareholders and Nelson was a relationship based on equity and not debt. Having said that, as I observed in *I. Waxman & Sons*,<sup>8</sup> there is support in the case law for the proposition that equity may become debt. For instance, in that case, I held that a judgment obtained at the suit of a shareholder constituted debt. An analysis of the nature of the claims is therefore required. If the claims fall within the parameters of section 2 of the *CCAA*, clearly they are to be treated as equity claims and not as debt claims.

[33] In this case, in essence the claims of the preferred shareholders are for one or a combination of the following:

---

<sup>8</sup> (2008), 2008 CarswellOnt 1245.

- (a) declared but unpaid dividends;
- (b) unperformed requests for redemption;
- (c) compensatory damages for the loss resulting in the purchased preferred shares now being worthless and claimed to have been caused by the negligent or fraudulent misrepresentation of Nelson or of persons for whom Nelson is legally responsible; and
- (d) payment of the amounts due upon the rescission or annulment of the purchase or subscription for preferred shares.

[34] In my view, all of these claims fall within the ambit of section 2, are governed by sections 6(8) and 22.1 of the *CCAA*, and therefore do not constitute a claim provable for the purposes of the statute. The language of section 2 is clear and unambiguous and equity claims include “a claim that is in respect of an equity interest” and a claim for a dividend or similar payment and a claim for rescission. This encompasses the claims of all of the preferred shareholders including the Styles whose claim largely amounts to a request for rescission or is in respect of an equity interest. The case of *National Bank of Canada v. Merit Energy Ltd.*<sup>9</sup> is applicable in regard to the latter. In substance, the Styles’ claim is for an equity obligation. At a minimum, it is a claim in respect of an equity interest as described in section 2 of the *CCAA*. Parliament’s intention is clear and the types of claims advanced in this case by the preferred shareholders are captured by the language of the amended statute. While some, and most notably Professor Janis Sarra<sup>10</sup>, advocated a statutory amendment that provided for some judicial

---

<sup>9</sup> *Supra*, note 5.

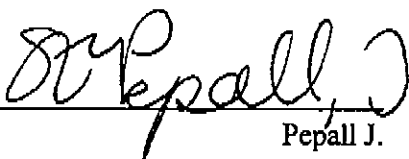
<sup>10</sup> “From Subordination to Parity: An International Comparison of Equity Securities Law Claims in Insolvency Proceedings” (2007) 16 *Int. Insolv. Rc.*, 181.



flexibility in cases involving damages arising from egregious conduct on the part of a debtor corporation and its officers, Parliament opted not to include such a provision. Sections 6(8) and 22.1 allow for little if any flexibility. That said, they do provide for greater certainty in the appropriate treatment to be accorded equity claims.

[35] There are two possible exceptions. Mr. McVey claims that his promissory note should never have been converted into preference shares, the conversion was unauthorized and that the signatures on the term sheets are not his own. If Mr. McVey's evidence is accepted, his claim would be qua creditor and not preferred shareholder. Secondly, it is possible that monthly dividends that may have been lent to Nelson by Larry Debono constitute debt claims. The factual record on these two possible exceptions is incomplete. The Monitor is to investigate both scenarios, consider a resolution of same, and report back to the court on notice to any affected parties.

[36] Additionally, the claims procedure will have to be amended. The Monitor should consider an appropriate approach and make a recommendation to the court to accommodate the needs of the stakeholders. The relief requested in the notice of motion is therefore granted subject to the two aforesaid possible exceptions.

  
Pepall J.

**CITATION:** Nelson Financial Group Ltd., 2010 ONSC 6229  
**COURT FILE NO.:** 10-8630-00CL  
**DATE:** 20101116

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN:**

IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF  
COMPROMISE  
OR ARRANGEMENT OF NELSON FINANCIAL  
GROUP LTD.

---

**REASONS FOR JUDGMENT**

---

Pepall J.

**Released:** November 16, 2010

# EXHIBIT F

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**THE HONOURABLE MADAM )**  
**JUSTICE PEPALL )**  
**)**  
**)**

**MONDAY, THE 16<sup>th</sup> DAY**  
**OF NOVEMBER, 2010**

**IN THE MATTER OF THE COMPANIES' CREDITORS**  
**ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**



**AND IN THE MATTER OF A PLAN OF COMPROMISE OR**  
**ARRANGEMENT OF NELSON FINANCIAL GROUP LTD. (the**  
**"Applicant")**

**Applicant**

**ORDER**

**THIS MOTION** made by **Douglas Turner, Q.C.**, in his capacity as the Court-appointed Representative Counsel (the "**Representative Counsel**") for the holders of promissory notes issued by the Applicant (collectively, the "**Noteholders**" and each a "**Noteholder**"), for the relief set out in the Notice of Motion dated September 2, 2010 was heard on October 18 and 19, 2010 at 330 University Avenue, Toronto, Ontario.

**ON READING** the material filed, including the Notice of Motion, the Seventh Report of the Monitor dated September 13, 2010 (the "**Seventh Report**"), the Supplemental to Seventh Report of the Monitor dated September 17, 2010, the Second Supplemental to Seventh

Report of the Monitor dated October 14, 2010, the Affidavit of Clifford Styles sworn October 14, 2010 and the Affidavits and materials filed by the unrepresented Respondents, (collectively, the “**Motion Materials**”), and on hearing from counsel for the Representative Counsel, counsel for the Monitor, counsel for the Applicant, counsel for Staff of the Ontario Securities Commission (the “**OSC**”) and counsel for Clifford Styles, Jackie Styles and Playle Investments Ltd. and on hearing submissions and argument from Michael Beardsley, Arnold Bolliger, John McVey, Joan Frederick, Rakesh Sharma, Larry Debono, Clifford Holland and Keith McLearn, self represented respondents, and no one else appearing although duly served as appears from the Affidavits of Service filed, decision having being reserved until this day:

1. **THIS COURT ORDERS** that the time for service of the Motion Materials is hereby abridged so that this Motion was properly returnable on October 18 and 19, 2010 and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS AND DECLARES** that all claims that have been or could be made by any holders of preferred shares of the Applicant (the “**Preferred Shareholders**”) against the Applicant as creditors in respect of such preferred shares, including, without limitation, any liquidated or unliquidated claims for unpaid dividends, redemption or retraction of such preferred shares, rescission or annulment of a purchase or subscription of such preferred shares, damages or other compensatory orders with respect to negligent or fraudulent misrepresentations made by or on behalf of the Applicant in connection with the sale or purchase of any such preferred shares (collectively, “**Preferred Shareholder Claims**” and each a “**Preferred Shareholder Claim**”), are to be classified as “equity claims” within the meaning of that term in the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for all purposes of these proceedings, including the claims procedure

established under the Order of this Court made on July 27, 2010 (the "Claims Procedure Order") and any plan of arrangement that may be filed by the Applicant or by any creditor in respect of the Applicant.

3. **THIS COURT ORDERS** that all Preferred Shareholder Claims shall form a separate class of claims and no holder of a Preferred Shareholder Claim shall be entitled to vote such claim at any meeting of creditors called to consider any plan of arrangement in this proceeding..
4. **THIS COURT ORDERS** that any plan of arrangement to be proposed by the Applicant or by any creditor must provide that all Claims (as such are defined in the Claims Procedure Order) that are not equity claims are to be paid in full before any Preferred Shareholder Claim is to be paid.
5. **THIS COURT ORDERS** that the Claims Procedure Order be amended to provide that the Monitor shall (a) designate all Preferred Shareholder Claims in a separate class of claims designated as "equity claims" and not as unsecured creditor claims or Claims (as such are defined in the Claims Procedure Order); (b) not be required to issue any Notices of Disallowance in respect of any Proof of Claim or Proof of Shareholding (as such terms are defined in the Claims Procedure Order) filed with the Monitor in accordance with the Claims Procedure Order with respect to a Preferred Shareholder Claim.
6. **THIS COURT ORDERS** that, notwithstanding the foregoing or the Claims Bar Date (as defined in the Claims Procedure Order), the Monitor is hereby directed to (a) investigate the claim filed by John McVey that he is entitled to be treated as a creditor and not as a Preferred Shareholder as his promissory note should never have been converted into preferred shares, the conversion was unauthorized and the signatures on the term sheets are not his own (the

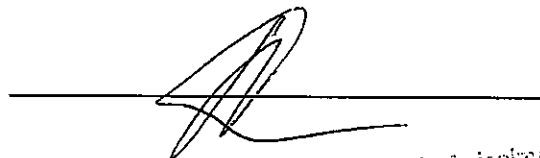
"McVey Claim"); (b) consider a resolution of the McVey Claim based upon such investigation; and (c) report to this Court with its recommendations on notice to the affected parties including John McVey, the Applicant and the Representative Counsel.

7. **THIS COURT ORDERS** that, notwithstanding the foregoing, the Monitor is directed to (a) investigate the claims made by Larry and Frances Debono and Larr Engineered Prototypes that they are entitled to be treated as creditors and not as Preferred Shareholders in so far as they claim that they lent declared and paid dividends on their preferred shares to the Applicant (the "Debono Claims"); (b) consider a resolution of the Debono Claims based upon such investigation; and (c) report to this Court with its recommendations on notice to the affected parties including Larry Debono, the Applicant and the Representative Counsel.
8. **THIS COURT ORDERS** that the Representative Counsel and the Monitor may, if so advised, make written submissions as to the disposition of costs on the motion within ten business days and that any respondents against whom costs are sought, including Clifford Styles, Jackie Styles and Playle Investments Ltd., shall then have ten business days to make written responding submissions.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAR 04 2011

PER / PAR:

A. Anisimova  
Registrar

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.**

APPLICANT

Court File No.:10-8630-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at **Toronto**

**ORDER**

**Douglas Turner Q.C.**  
63 Albert St.  
Uxbridge, Ontario  
L9P 1E5

**Representative Counsel for the Noteholders**

**Richard B. Jones**  
Barrister & Solicitor  
Suite 1201, Scotia Plaza  
100 Yonge Street  
Toronto, ON M5C 2W1

**Richard B. Jones** (LSUC No. 11575V)  
Tel: 416-863-0576  
Fax: 416-863-0092  
Email: [richard.jones@sympatico.ca](mailto:richard.jones@sympatico.ca)

**Special Counsel for the Representative Counsel for the  
Noteholders**



# EXHIBIT G

# Memorandum

---

**To:** ONTARIO SUPERIOR COURT OF JUSTICE (Commercial List)  
**From:** A. John Page  
**Date:** April 15, 2011  
**Subject:** Claim of Mr. John McVey  
Nelson - McVey File 450-7

---

## Purpose of Memorandum

In accordance with the "Claims Procedure" established pursuant to the Claims Procedure Order of Madam Justice Pepall dated July 27, 2010 Mr John McVey was sent a Notice of Shareholding in the amount of \$130,898.81 (Exhibit "A") on account of his holding of preferred shares of Nelson and related unpaid dividends.

Mr. McVey submitted a solemn declaration sworn on October 7, 2010 ("the Solemn Declaration")(Exhibit B") to support his argument that his investment should be deemed to be that of a Promissory Noteholder and not a Preferred Shareholder.

Preferred Shareholder Motion - On October 18 and 19, 2010 Madam Justice Pepall heard a motion to declare that all claims of Preferred Shareholders of Nelson were equity claims and, as such, for all intents and purposes, unable to partake in the restructuring of Nelson or share in any payout of funds or issuance of new shares and notes. Mr. McVey made oral submissions to the Court at this hearing.

On October 29, 2010 Mr. McVey faxed to the Monitor a Proof of Claim in the amount of \$130,898.81 (the "McVey Claim")(Exhibit "C"). This claim was filed after the Claims Bar Date of September 15, 2010 established pursuant to the Claims Procedure. The Monitor recommends that, if the McVey Claim is deemed to have merit as an unsecured claim and not an equity claim, then this Honourable Court should permit it to be accepted notwithstanding its late filing.

The basis for the McVey Claim is Mr. McVey's assertion that he was never aware of or acknowledged that this investment of his in Nelson had been converted arbitrarily by Marc Boutet/Nelson from that of creditor to Preferred Shareholder in 2007.

On November 16, 2010 Madam Justice Pepall issued her "Reasons for Decision". In the Reason for Decision she declared all Preferred Shareholder claims to be equity claims with

Memorandum

Page 2

two possible exceptions. One of the exceptions was that of the McVey Claim. The other related to the claims of Larry Debono, Frances Debono and Larr Engineered Prototypes ("the Debono Claims").

With regard to the McVey Claim, Madam Justice Pepall stated:

"Mr. McVey claims that his promissory note should never have been converted into preference shares, the conversion was unauthorized and that the signatures on the term sheets are not his own. If Mr. McVey's evidence is accepted his claim would be qua creditor and not preferred shareholder... The factual record on these two possible exceptions (*ie the McVey Claim and the Debono Claims*) is incomplete. The Monitor is to investigate both scenarios, consider a resolution of same, and report back to the court on notice to any affected party."

Interested parties should refer to the Reason for Decision for a fuller understanding of the decision of Madam Justice Pepall.

Paragraph 6 of the order of Madam Justice Pepall dated November 16, 2010 ("the November 16, 2010 Order") states:

- "6. This Court Orders that, notwithstanding the foregoing or the Claims Bar Date (as defined in the Claims Procedure Order), the Monitor is hereby directed to:
- a) investigate the claim filed by John McVey that he is entitled to be treated as a creditor and not as a Preferred Shareholder as his promissory note should never have been converted into preferred shares, the conversion was unauthorized and the signatures on the term sheets are not his own ("the McVey Claim");
  - b) consider a resolution of the McVey Claim based on such investigation and
  - c) report to this Court with its recommendations on notice to the affected parties including John McVey, the Applicant and the Representative Counsel."

This memorandum is being written to form part of a report to the court in compliance with the November 16, 2010 Order.

**Caveat**

In conducting its review and in reaching the conclusions below the Monitor has considered the Solemn Declaration submitted in support of Mr. McVey's opposition to the Preferred Shareholder Motion) (Exhibit "B") and the Proof of Claim submitted by Mr. McVey (Exhibit "C"). The Monitor has also been given and has requested and obtained additional information

from both Nelson and Mr. McVey. The Monitor has not audited any of this information and only some of the information provided is in sworn "affidavit" form. The Monitor has based its conclusions on the information it has received.

### Background

1. According to the records of Nelson, Mr. McVey paid US\$100,000 to Nelson by cheque dated July 15, 2004. This cheque was converted to Cdn\$130,150 by Nelson on July 16, 2004. Attached to the documentation supplied by Nelson is a copy of a handwritten letter dated July 15, 2004 from Mr. McVey to Mark Boutet of Nelson. In the letter Mr. McVey says "Please find enclosed cheque for \$100,000 - US. I'll leave the rest to you. Best regards to your folks. Thanks." (Copy of selected documents in Nelson records regarding the placing of this investment, including the July 15, 2004 letter attached as Exhibit "D")

Mr. McVey states in the Solemn Declaration that his initial investment was in October 2004. It does not seem significant but it appears that the original investment was actually made in July 2004 but the investment was only formally documented by Nelson in October 2004. Attached to the Solemn Declaration is an amortization table for an investment of \$130,150 at a rate of 8% commencing October 2, 2004. While there is no indication on this amortization table as to whether the investment is a note or a preferred share we have no reason to believe it was anything but a note, particularly since Nelson was not issuing preferred shares in 2004.

2. According to the Solemn Declaration, shortly after late May or early June 2007, Mr. McVey contacted Mr. Boutet to discuss his investments in Nelson. Mr. McVey indicates that he was told by Mr. Boutet that "he would be rolling my investment into a new venture ...He informed me that I would in future receive 10% on the \$130,000 investment". Mr. McVey claims "I was never told that the change in my investment portfolio involved a change in status and that at no time was the term Preferred Shares ever used."

Attached to the Solemn Declaration were, among other things, the following two documents:

- i) Term Sheet Preferred Share investment dated June 18, 2007 signed by Nelson and purported signed by "John McVey/xxx"
- ii) An Accredited Investor Certificate dated June 18, 2007 also signed by "John McVey/xxx"

Mr McVey states that he did not sign these documents. The Monitor has compared the signatures on the two documents to other documents which the Monitor believes

## Memorandum

Page 4

were signed by Mr. McVey. The signatures are not similar and it does seem that these two documents (together with a "Know Your Client" document dated June 12, 2007 also supplied by Mr. McVey) were not signed by him. The addition of the "/" together with two or three illegible letters after the signature leads the Monitor to believe that someone signed "per pro" or "on behalf of" Mr. McVey. The Monitor does not have any more information on the circumstances surrounding the preparation of these documents.

3. Mr. McVey has claimed that the first time he knew that his \$130,150 investment was in preferred shares of Nelson was in or about April 2010. He has attached to his Proof of Claim (Exhibit "C") a statement by Dawn Mattozzi, his former wife, sworn October 14, 2010, which states that an envelope containing information regarding the issuance of his shares was initially sent to her father's address in Pickering, was given to her by her father in early September 2007 but was not handed to Mr. McVey until August 2010. We have been presented with no evidence to refute this sworn statement.
4. Mr. McVey has also claimed, in a supplementary letter dated October 18, 2010, attached to his Proof of Claim that he did not benefit from a tax perspective from the fact that he was, apparently, receiving Canadian dividend income as he was a US resident. The Monitor has obtained from Mr. McVey copies of the CRA NR4 tax slips prepared by Nelson with regard to the income from his \$130,150 investment for the years 2008 and 2010. (Exhibit "E") (Mr. McVey is travelling and indicated that he did not have access to his 2007 or 2009 NR4 slips at this time.) Both the 2008 and 2010 NR4 slips coded the income he received on account of his preferred shares as "02-Other - Periodic payments". and not as either 09-Dividends or 61-Arm's length interest payments". Attached as Exhibit "F" is a blank NR4 (10) slip downloaded by the Monitor showing the income codes. The Monitor has not obtained copies of Mr. McVey's actual tax return but, based on the 2008 NR4 slip, believes that the NR4 slip would not, of itself, enable Mr. McVey to conclude he owned preferred shares of Nelson. As a US resident and as one who, the Monitor assumes, did not file a Canadian income tax return, he would not have been able to make use of the dividend tax credit related to the preferred share dividends he received.
5. By letter dated June 15, 2010 to the Monitor (a copy of which is attached to his Proof of Claim) Mr. McVey states that " It appears that without my being aware of the fact I was allocated preferred shares for the majority of my investment..."

## Conclusion

Based on the information that the Monitor has received, there appears to be no evidence that Mr. McVey knew, prior to Nelson's CCAA filing, that his \$130,150 investment in Nelson had, in mid 2007, been converted to preferred shares. It also appears that certain documents

Memorandum

Page 5

relating to his \$130,150 investment in mid 2007 was not signed by him. However, it also appears that Mr. McVey did not inquire as to the type of his investment in Nelson. This does not appear to be a case where Mr. McVey sought to purchase promissory notes and was, instead, issued preferred shares. It appears that Mr. McVey gave Mr. Boutet the authority to make this investment decision on his behalf. It also appears that Mr. McVey did not follow up with Mr. Boutet or anyone else at Nelson to find out what type of investment Mr. Boutet had made on his behalf.

Based on these circumstances, the Monitor is of the view that the Proof of Claim of John McVey should be disallowed and his claim against Nelson should be as a shareholder in the amount set down in the Notice of Shareholding.

\\COLLEENVOSTRO\SHARE\DATA\WP\CLIENTS\NELSON\MCVMEM1C.WPD

# EXHIBIT H

# Memorandum

---

**To:** ONTARIO SUPERIOR COURT OF JUSTICE (Commercial List)  
**From:** A. John Page  
**Date:** April 15, 2011  
**Subject:** Nelson Financial Group Ltd. ("Nelson")  
Claims of Debono et al.  
Nelson - Debono File 450-8

---

## Purpose of Memorandum

In accordance with the "Claims Procedure" established pursuant to the Claims Procedure Order of Madam Justice Pepall dated July 27, 2010 Larry and Frances Debono ("the Debonos") and Larr Engineered Prototypes ("Larr"), a company believed to be owned and/or controlled by one or both of the Debonos, were sent Notices of Shareholding in the amounts of \$594,046.93 (Exhibit "A") and \$532,676.63 (Exhibit "B") respectively on account of their holdings of preferred shares of Nelson and related unpaid dividends.

On or about September 8, 2010 Larry Debono, on behalf of the Debonos and Larr, submitted, in accordance with the Claims Procedure, Proofs of Claim for \$103,694.98 (Exhibit "C") and \$3,609.83 (Exhibit "D") respectively (collectively the "Debono Claims"). The basis for the Debono Claims is Mr. Debono's assertion that they represent dividends paid out by Nelson on preferred shares owned by the Debonos and Larr that were then lent back to Nelson as shareholder loans and not reinvested in Preferred Shares through a "DRIP" (dividend reinvestment plan). The Debonos and Larr also submitted Proofs of Shareholding in the amounts of \$490,351.94 (Exhibit "E") and \$529,066.81 (Exhibit "F") respectively.

Mr. Debono submitted an affidavit sworn October 12, 2010 (Exhibit "G") to support his argument that the amounts of the Debono Claims represented funds lent back to Nelson as shareholder loans.

Preferred Shareholder Motion - On October 18 and 19, 2010 Madam Justice Pepall heard a motion to declare that all claims of preferred shareholders of Nelson were equity claims and, as such, for all intents and purposes, unable to partake in the restructuring of Nelson or share in any payout of funds or issuance of new shares and notes. Mr. Debono made oral submissions to the Court at this hearing.

On November 16, 2010 Madam Justice Pepall issued her "Reasons for Decision". In those



## Memorandum

### Page 2

reasons she declared all preferred shareholder claims to be equity claims with two possible exceptions. One of the exceptions was that of the Debono Claims. The other related to the claim of a Mr. John McVey.

With regard to the Debono Claims Madam Justice Pepall stated:

"it is possible that monthly dividends that may have been lent to Nelson by Larry Debono constitute debt claims. The factual record on these two possible exceptions is incomplete. The Monitor is to investigate both scenarios, consider a resolution of same, and report back to the court on notice to any affected party."

Interested parties should refer to the "Reason for Decision" for a fuller understanding of the decision of Madam Justice Pepall.

By order of Madam Justice Pepall dated November 16, 2010 ("the November 16, 2010 Order") the Monitor was:

"directed to:

- a) investigate the claims made by Larry and Frances Debono and Larr Engineered Prototypes that they are entitled to be treated as creditors and not as Preferred Shareholders in so far as they claim that they lent declared and paid dividends on their preferred shares to the Applicant.
- b) consider a resolution of the Debono Claims based on such investigation and
- c) report to this Court with its recommendations on notice to the affected parties including Larry Debono, the Applicant and the Representative Counsel."

This memorandum is being written to form part of a report to the court in compliance with the November 16, 2010 Order.

### Caveat

In conducting its review and in reaching the conclusions below the Monitor has considered the two Proofs of Claims submitted by the Debonos and Larr (Exhibits "C" and "D") and the affidavit of Mr. Debono submitted in support of his testimony in the Preferred Shareholder Motion (Exhibit "G"). The Monitor has also been given and has requested and obtained additional information from both Nelson and the Debonos. The Monitor has not audited any of this information and only some of the information provided is in affidavit form. The Monitor has based its conclusions on the information it has received.

## Memorandum

Page 3

### Background

According to the records of Nelson, as at March 23, 2010:

The Debonos held four preferred share investments in Nelson. The Proof of Claim submitted by the Debonos relate to the following 3 investments:

Investment	Original Investment	Amount Claimed to be Shareholder Loan per Proof of Claim
275-3002-1011	\$300,006.73	\$90,196.64
275-3002-1866	\$60,000.00	\$6,366.29
275-3002-1883	\$70,000.00	\$7,132.05
	\$430,006.73	\$103,694.98

In addition the Debonos own one further preferred share investment (275-3002-1691, original investment \$60,000, Shareholding according to Claims Procedure \$60,345.21 including unpaid dividend of \$345.21).

Larr also had four preferred share investments in Nelson. The Proof of Claim submitted by Larr relates to just the following investment:

Investment	Original Investment	Amount Claimed to be Shareholder Loan per Proof of Claim
282-3002-1800	\$30,000.00	\$3,609.83

The Monitor has reviewed the documentation supplied by the Debonos and Larr and by Nelson relating to each of the four individual investments relating to the Debono Claims. Attached as Exhibits "H", "I", "J" and "K" are summaries of the results of those reviews together with copies of key documentation.

### General Observations

Based on the Monitor's review of the financial statements of Nelson and their Quickbooks accounting system it seems that dividends that were subject to a DRIP were accounted for by Nelson increasing the amount of preferred shares on their balance sheet by the amount of the

applicable dividends. None were accounted for as shareholder loans.

The Monitor has not been provided with any documentation that would suggest that any of the dividends paid to the Debonos were intended to be lent back to Nelson as shareholder loans. All the documentation that the Monitor has reviewed is consistent with a DRIP with all these dividends being used to purchase new preferred shares.

Mr Debono has advised the Monitor that they were never sent new additional share certificates to reflect the reinvested dividends. The Monitor is of the view that this fact does not necessarily mean that the dividends were reinvested in shareholder loans.

Mr. Debono also refers to the phrase "Dividend Compounding" and seems to suggest that one cannot compound dividends and therefore the reinvested funds must have generated interest and therefore be a shareholder loan. The Monitor does not agree. In the context in which it is used Dividend Compounding (not a formal term) seems to be consistent with the impact of a DRIP.

Four of the five investments in question have term sheets where the words "into Dividend Reinvestment Plan (DRIP)" are inscribed and the attached amortization tables have the words "Monthly, DRIP" on them. The calculations are consistent with a monthly DRIP. The T5 tax slip and the treatment of that slip by the Debonos is also consistent with a DRIP where the dividends issued by Nelson each month were reinvested in new preferred shares.

While the fifth investment (275-3002-1011) does not have a term sheet with the words DRIP on it, it has been treated since August 2007 as being subject to a DRIP without, as far as the Monitor knows, any protest by the Debonos until after the CCAA filing. The issuance of a non DRIP investment in April 2007 and its conversion to a DRIP in August 2007, without protest, is consistent with the comments by Nelson employees that this conversion was at the request of Mr. Debono. The T5 tax slips issued with respect to this investment are consistent with the DRIP treatment and were declared as such by the Debonos on their 2007, 2008 and 2009 tax returns where, by declaring all their income as dividend income, they would automatically have taken the benefit of the applicable dividend tax credit.

## Conclusion

Based on the information that we have reviewed it appears to us that the Proofs of Claim of the Debonos and Larr should be disallowed and their claims against Nelson should be as shareholders in the amounts set down in the Notices of Shareholding.

As the Monitor is of the view that the dividends were all reinvested pursuant to a DRIP there seems no grounds for a negotiated "resolution" of the Debono Claims.

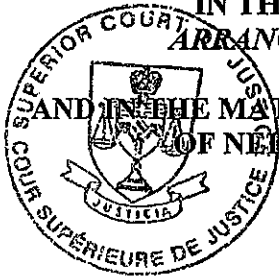
# EXHIBIT I

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM  
JUSTICE PEPALL

)  
)  
)  
)  
)

THURSDAY, THE 9<sup>TH</sup>  
DAY OF DECEMBER, 2010.



IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C., 1985 c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD. (the "Applicant")

Applicant

ORDER

THESE MOTIONS made by Douglas Turner, Q.C., in his capacity as the Representative Counsel (the "**Representative Counsel**") for the holders of promissory notes issued by the Applicant (collectively, the "**Noteholders**" and each a "**Noteholder**"), for the relief set out in its Amended Notice of Motion dated November 12, 2010 (the "**Representative Counsel Notice of Motion**") and made by A. John Page & Associates Inc., in its capacity as the Court-appointed Monitor of the Applicant (the "**Monitor**"), for the relief set out in its Notices of Motion dated November 12, 2010 and November 24, 2010 (the "**Monitor Notices of Motion**") were heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Representative Counsel Notice of Motion, the First Report of the Representative Counsel dated November 3, 2010, the Second Report of the Representative Counsel dated November 15, 2010, the Third Report of the Representative Counsel dated November 29, 2010, the Affidavit of Douglas Turner sworn November 16, 2010, the Affidavit of Richard B. Jones sworn November 17, 2010, the Monitor Notices of Motion, the Seventh Report of the Monitor dated September 13, 2010 (the "**Seventh Report**"), the Supplemental to Seventh Report of the Monitor dated September 17, 2010 (the "**Supplemental to Seventh Report**"), the Second Supplemental to Seventh Report of the Monitor dated October 14, 2010 (the "**Second Supplemental to Seventh Report**"), the Ninth Report of the Monitor dated November 15, 2010 (the "**Ninth Report**"), the Supplement to Ninth Report of the Monitor dated November 18, 2010 (the "**Supplement to Ninth Report**"), the Tenth Report of the Monitor dated November 29, 2010 (the "**Tenth Report**"), the Eleventh Report of the Monitor dated December 8, 2010, the Affidavits of A. John Page sworn October 26, 2010 and December 2, 2010 , the Affidavits of James H. Grout sworn October 29, 2010 and December 8, 2010 and the two Affidavits of Tina M. Woodside sworn November 17, 2010 (collectively, the "**Motion Materials**"), and on hearing from the Representative Counsel, special counsel for the Representative Counsel, counsel for the Monitor, counsel for the Applicant, counsel for Staff of the Ontario Securities Commission (the "**OSC**"), no one else appearing although duly served as appears from the Affidavits of Service filed:

## **SERVICE**

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

## **APPROVAL OF PROFESSIONAL COSTS**

2. **THIS COURT ORDERS** that the professional fees and disbursements of the Representative Counsel for the period May 20, 2010 to and including October 25, 2010, as set out in the Affidavit of Douglas Turner sworn November 16, 2010, be and they are hereby approved.

3. **THIS COURT ORDERS** that the professional fees and disbursements of Richard B. Jones, in his capacity as the special counsel to the Representative Counsel, for the period June 16, 2010 to and including October 21, 2010, as set out in the Affidavit of Richard B. Jones sworn November 17, 2010, be and they are hereby approved.

4. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor for the period July 1, 2010 to and including November 30, 2010, as set out in the Affidavits of A. John Page sworn October 26, 2010 and December 2, 2010, be and they are hereby approved subject to a gross reduction in the amount of \$90,816.36 inclusive of HST.

5. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, in its capacity as counsel to the Monitor, for the period July 1, 2010 to and including November 30, 2010, as set out in the Affidavits of James H. Grout sworn October 29, 2010 and December 8, 2010, be and they are hereby approved.

6. **THIS COURT ORDERS** that the professional fees and disbursements of Gowling Lafleur Henderson LLP ("**Gowlings**"), in its capacity as counsel to the Applicant, for:

- (a) the period March 16, 2010 to and including November 11, 2010 in respect of the proceedings commenced by the OSC against, among others, the Applicant and Nelson Investment Group Ltd., as set out in the Affidavit of Tina M. Woodside sworn November 17, 2010; and
- (b) for the period March 9, 2010 to November 12, 2010 in respect of these proceedings, as set out in the Affidavit of Tina M. Woodside sworn November 17, 2010,

be and they are hereby approved subject to a gross reduction in the amount of \$82,475.00 inclusive of HST.

7. **THIS COURT ORDERS** that no further claim for an assessment under the *Solicitors Act*, R.S.O. 1990, c. S.15, as amended, shall be made with respect to any other legal services provided by Gowlings to the Applicant or to any of its related entities, including, without limitation, Nelson Investment Group Ltd., for the account of or paid by the Applicant.

#### **APPROVAL OF MONITOR REPORTS**

8. **THIS COURT ORDERS** that the Seventh Report, the Supplemental to Seventh Report, the Second Supplemental to Seventh Report, the Ninth Report, the Supplement to Ninth Report, the Tenth Report and the conduct and activities of the Monitor described therein be and they are hereby approved.



## MONITOR'S ROLE

9. **THIS COURT ORDERS** that the Order of this Court dated November 22, 2010 be and it is hereby amended as follows:

- (a) the powers, responsibilities and duties of the IOO set out in paragraph 6 are not subject to any approval or supervision of the Monitor except as required by the Monitor to fulfill its statutory obligations pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"); and
- (b) paragraphs 11 and 12 are rescinded.

10. **THIS COURT ORDERS** that paragraph 4 of the Order of this Court dated December 1, 2010 be and it is hereby amended to:

- (a) include having the Monitor complete its duties pursuant to the Claims Procedure Order of this Court dated July 27, 2010, as amended by any Order of this Court, including reviewing the claims of John McVey and the claims of Larry and Frances Debono and Larr Engineered Prototypes as directed by this Court pursuant to the Reasons for Decision of this Court dated November 16, 2010;
- (b) provide that, in order for the Monitor to monitor the receipts and disbursements of the Applicant, the IOO shall provide the Monitor each week with reports providing details of the receipts and disbursements of the Applicant in the prior week with sufficient documentary support to enable the Monitor to identify the nature of the receipt or disbursement and to compare such receipt or disbursement to any cash flow forecast that the Applicant may have prepared. The IOO shall also provide the Monitor on request with a brief written account of the

performance of the Applicant and an update on the status of the restructuring and the business prospects of the Applicant. The Monitor shall not be required to visit the Applicant's premises or meet with the IOO unless so requested by the IOO or unless the Monitor is of the view that it should do so in order to fulfil its statutory obligations pursuant to the CCAA; and

- (c) provide that the Monitor shall complete and supply to the IOO the memorandum it has been preparing on its overall review of any preferential transactions and transfers at undervalue.

#### TRANSFER OF FUNDS

11. **THIS COURT ORDERS** that the Monitor shall transfer the amount of \$5 million that it is holding in trust and that it has invested in a guaranteed investment certificate ("GIC") plus any interest earned thereon (the "**Funds**") to the Applicant as soon as the Funds may be withdrawn from the GIC without penalty.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAR 04 2011

PER / PAR:

  
A. Anissimova  
Registrar

IN THE MATTER OF THE COMPANIES' CREDITORS'  
ARRANGEMENT ACT, R.S.C., 1985 c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON FINANCIAL GROUP LTD.

Applicants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at **Toronto**

**ORDER**

**THORNTON GROUT FINNIGAN LLP**

Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**James H. Grout** (LSUC# 22741H)  
**Seema Aggarwal** (LSUC# 50674J)  
Tel: 416-304-1613  
Fax: 416-304-1313

Lawyers for the Monitor.