

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE LEDERMAN

MONDAY, THE 4th
DAY OF OCTOBER, 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 BRUCE R. SMITH LIMITED and
JOHN HENRY SMITH LAND INC.

Applicants

SANCTION ORDER

(JOHN HENRY SMITH LAND INC.)

THIS MOTION, made by the Applicant, John Henry Smith Land Inc. (the "**Applicant**"), for an Order approving and sanctioning the plan of compromise and arrangement of John Henry Smith Land Inc. ("**Landco**") dated July 7, 2010, (as may be amended, restated, modified or supplemented in accordance with its terms from time to time, the "**Plan**"), as approved by the Applicant's creditors, which Plan is attached as Schedule "A" to this Order and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the Notice of Motion, the Affidavit of John Henry Smith, sworn September 23, 2010, the Eighth Report of the Monitor dated September 24, 2010 (the

“Eighth Report”), all filed, and upon hearing the submissions of counsel to the Applicant and the Monitor and such other interested parties as were present; upon being advised that all persons received notice of this hearing in accordance with the Order of this Court dated July 13, 2010 (the **“Creditors’ Meeting Order”**) and that no person has filed a Notice of Appearance in accordance with the Creditors’ Meeting Order seeking to object to the Plan and that none of the persons who might be interested in these proceedings, other than those who are otherwise named on the Service List attached to the Notice of Motion, was served with the Notice of Motion or the Motion Record herein; and on being satisfied that the Applicant has acted, and is acting, in good faith and with due diligence and that circumstances exist that make this Order appropriate:

DEFINITIONS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Plan.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Eighth Report and the Motion Record in support of this Motion be and it is hereby abridged, such that this Motion is properly returnable today and that further service of the Notice of Motion and the Motion Record is hereby dispensed with and that service in the manner effected by the Applicant is validated in all respect.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient service, delivery and notice of the Plan, the Information Package (as defined in the Creditors' Meeting Order) and the Notice of the Creditors' Meeting attached as Schedule "B" to the Creditors' Meeting Order to all Affected Creditors.

4. **THIS COURT ORDERS** that the Creditors' Meeting was duly convened, held and conducted in conformity with the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") and all other Orders of this Court in the CCAA Proceedings, including the Creditors' Meeting Order.

SANCTION OF THE PLANS

5. **THIS COURT ORDERS AND DECLARES** that:

- (a) the Plan has been approved by the Required Majority of Creditors present and voting either in person or by proxy at the Creditors' Meeting all in conformity with the CCAA and the terms of the Creditors' Meeting Order;
- (b) the Applicant has acted and is acting in good faith and with due diligence, and has complied with the provisions of the CCAA and the Orders of this Court made in the CCAA Proceedings in all respects;
- (c) the Court is satisfied that the Applicant has not done nor purported to do anything that is not authorized by the CCAA: and
- (d) the Plan and the transactions contemplated by it are fair and reasonable.

6. **THIS COURT ORDERS AND DECLARES** that the Plan (including the compromises, arrangements, reorganizations, corporate transactions and releases set out therein) is hereby sanctioned and approved pursuant to Section 6 of the CCAA and, at the Effective Time, will be effective and will enure to the benefit of and be binding upon the Applicant, all Affected Creditors and all other Persons as provided for in the Plan or in this Order.

PLAN IMPLEMENTATION

7. **THIS COURT ORDERS** that the Applicant and the Monitor, as the case may be, are hereby authorized and directed to take all steps and actions necessary or appropriate (as determined by the Applicant or the Monitor, as applicable) to implement the Plan and the transactions contemplated thereby in accordance with and subject to its terms, and such steps and actions are hereby approved.

8. **THIS COURT ORDERS** that the Applicant and the Monitor, as the case may be, are authorized to make the distributions and take the steps in respect of the Proven Claims as provided for by the Plan, and such distributions and actions are hereby approved.

9. **THIS COURT ORDERS AND DECLARES** that, upon the Monitor filing with this Court a copy of a certificate, substantially in the form attached as Appendix "A" to the Plan (the "**Monitor's Certificate**") certifying that all of the conditions precedent set out in Section 4.03 of the Plan have been satisfied or waived in accordance with the Plan, such conditions precedent shall be deemed to be satisfied or waived, the Plan shall

become immediately effective and the Plan Implementation Date shall be the date as set out in such certificate.

10. **THIS COURT ORDERS AND DECLARES** that, subject to the performance by the Applicant of its obligations under the Plan, and except to the extent, if any, expressly contemplated or amended by the Plan or this Order, all obligations or agreements to which the Applicant is a party will be and remain in full force and effect, unamended, as at the Effective Time unless disclaimed or repudiated by the Applicant pursuant to the Amended Initial Order prior to the Disclaimer and Termination Deadline specified in the Claims Procedure Order, and no Person who is a party to any such obligations or agreements may on or following the Effective Time accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution, buy-out, divestiture, forced sale, option or other remedy) under or in respect of any such obligation or agreement by reason of:

- (a) The Applicant having sought or obtained relief under the CCAA or that the Plan has been implemented by the Applicant;
- (b) Any defaults or events of default arising as a result of the financial condition or insolvency of the Applicant prior to the Plan Implementation Date;
- (c) The effect upon the Applicant of the completion of any of the transactions contemplated under the Plan;

- (d) Any compromises, settlements, restructurings or reorganizations effected pursuant to the Plan; or
- (e) Any other event(s) which occurred on or prior to the Effective Time and is not continuing after the Effective Time or which is or continues to be suspended or waived under the Plan, which would have entitled such Person to enforce rights or remedies. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicant in respect of any Unaffected Claim.

11. **THIS COURT ORDERS** that from and after the Effective Time, all Persons will be deemed to have waived any and all defaults of any of the Applicant then existing or previously committed by any of the Applicant or caused by any of the Applicant, any of the provisions hereof or steps contemplated hereby, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, security agreement, indenture, mortgage, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Applicant, and all notices of default, acceleration of payments and demands for payment under any instrument (including any guarantee), will be deemed to have been rescinded.

12. **THIS COURT ORDERS** that, as of the Plan Implementation Date, each Affected Creditor shall be deemed to have consented and agreed to all of the provisions of the Plan in their entirety and, in particular, each Affected Creditor shall be deemed:

- (a) To have executed and delivered to the Monitor and the Applicant all consents, releases, assignment, waivers or agreements required to implement and carry out the Plan in its entirety; and
- (b) To have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Applicant as of the Plan Implementation Date (other than those entered into by the Applicant on or after the Filing Date) and the provisions of the Plan, the provisions of the Plan and this Order take precedence and priority and the provisions of such agreement or other arrangements shall be deemed to be amended accordingly.

RELEASES AND DISCHARGES

13. **THIS COURT ORDERS** that the releases referred to in Section 4.09 of the Plan are hereby sanctioned, approved, and given full force and effect as of the Plan Implementation Date subject to: a) the rights of the Affected Creditors to receive distributions in respect of their claims in accordance with the Plan; and b) the rights and obligations of the Affected Creditors under the Plan and this Order.

14. **THIS COURT ORDERS** that effective on the Plan Implementation Date, except as otherwise provided in the Plan or this Order, and subject to the provisions of Section 5.1(2) of the CCAA, each Affected Creditor or other Person in consideration of the distributions made under the Plan will be deemed to have forever released and discharged (i) the Applicant and its present and former directors, officers, employees,

agents, affiliates and professional advisors (including legal counsel and the Financial Advisor) and associates (ii) the Monitor and its present and former partners, directors, officers, employees, agents, affiliates, professional advisors (including legal counsel) and associates, and (iii) any Person who may claim contribution or indemnification against or from the Applicant, from any and all demands, Claims, including Claims of any past and present officers, directors or employees for contribution and indemnity, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Affected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, dealing, event or other occurrence existing or taking place on or prior to the Effective Time in any way relating to, arising out of or in connection with the Applicant, its assets or property, the business or affairs of the Applicant (whenever and however conducted), the transactions and events giving rise to any Claims, this Plan or the CCAA Proceedings, other than Unaffected Claims and the right to enforce the Applicant's obligations under this Plan, provided, however that nothing in this paragraph shall release (i) and Person from fraud, gross negligence, willful misconduct, or criminal conduct, (ii) any Unaffected Claim, or (iii) any Person's right to enforce the Applicant's obligations under the Plan.

15. **THIS COURT ORDERS** that, all Charges established by the Amended Initial Order, other than the Administration Charge, or any other Order of the Court, shall be terminated, released and discharged effective as at the Effective Time.

16. **THIS COURT ORDERS AND DECLARES** that, notwithstanding any of the terms of the Plan or this Order, the Applicant shall not be released and discharged from (i) the obligations in respect of Unaffected Claims; and (ii) its obligation to pay the liabilities, costs, charges, fees, disbursements and expenses (including legal costs) of the Monitor, the Monitor's counsel or the Applicant's counsel in respect of the CCAA Proceedings and the implementation of the Plan, including the liabilities, costs, charges, fees, disbursements and expenses (including legal costs) of the Monitor with respect to the administration of the claims process under the Claims Procedure Order.

17. **THIS COURT CONFIRMS AND ORDERS** that, the provisions of the Claims Procedure Order are hereby confirmed and shall operate in addition to the provisions of this Order and the Plan, and without limiting the provisions of the Claims Procedure Order, an Affected Creditor that did not file a Proof of Claim in accordance with the provisions of the Claims Procedure Order is forever stayed and barred from making any Claim against the Applicant and shall not be entitled to any distribution under the Plan in respect of such Affected Creditor's Claim, and such Affected Creditor's Claim is forever extinguished.

18. **THIS COURT ORDERS** that effective on the Plan Implementation Date, the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action released, discharged or terminated pursuant to the Plan shall be permanently enjoined.

THE MONITOR

19. **THIS COURT ORDERS** that the activities and conduct of the Monitor in relation to the Applicant, the CCAA Proceedings, the claims procedure process and in conducting and administering the Creditors' Meeting on September 14, 2010 (as more particularly described in the Eighth Report) be and are hereby ratified and approved.

20. **THIS COURT ORDERS** that the Eighth Report, and the actions and activities of the Monitor and its legal counsel as described therein, are hereby approved.

21. **THIS COURT ORDERS** that, effective upon the filing of the Discharge Certificate (described below), all claims of any Person, whether such claims are direct, indirect, derivative or otherwise, against the Monitor, as well as its present and former partners, directors, officers, employees, agents, affiliates, professional advisors (including legal counsel) and associates, arising from or relating to the Monitor's capacity, conduct or the services provided by the Monitor to the Applicant in the CCAA Proceedings, shall be and are hereby stayed, extinguished and forever barred from enforcement and the Monitor shall have no liability in respect thereof.

22. **THIS COURT ORDERS** that, until its discharge as provided for in this Order, the appointment of The Fuller Landau Group Inc. as Monitor pursuant to the Amended Initial Order shall not expire or terminate on the Plan Implementation Date and shall continue, unless otherwise ordered by this Court, for the purposes of allowing, and shall be effective until, the completion by the Monitor of all its duties in relation to the claims process and all matters relating thereto as set out in the Claims Procedure Order and the completion by the Monitor of all other matters for which it is responsible in

connection with the Plan, or pursuant to the Orders of this Court made in the CCAA Proceedings. The Monitor shall have a full right of payment and indemnity from the Applicant for all costs, charges, expenses (including legal costs), and any all liabilities and obligations it shall suffer or incur or be under, in carrying out its continuing responsibilities and duties in relation to the CCAA Proceedings, any Order made in these proceedings, or otherwise.

23. **THIS COURT ORDERS** that the Monitor shall be discharged of its duties and obligations pursuant to the Plan and all Orders made in the CCAA Proceedings, upon the filing with this Court of a certificate (the "**Discharge Certificate**") of the Monitor certifying that the matters set out in paragraph 22 above are completed to the best of the Monitor's knowledge. The Monitor shall have no powers or duties pursuant to the Amended Initial Order from and after the date of filing of the Discharge Certificate, and all such powers and duties of the Monitor shall terminate as of the date of filing of the Discharge Certificate, but the protections of the Monitor as described in paragraph 21 herein shall not terminate.

24. **THIS COURT ORDERS** that the Administration Charge shall be terminated, released and discharged from and after the date of the filing of the Discharge Certificate.

CLAIMS AGAINST DIRECTORS AND OFFICERS

25. **THIS COURT ORDERS** that any and all steps or proceedings, including, administrative orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any or all past,

present and future directors and officers of the Applicant in respect of all Affected Claims are hereby stayed.

EXTENSION OF STAY PERIOD AND OTHER ORDERS

26. **THIS COURT ORDERS** that:

- (a) Except to the extent that the Amended Initial Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Amended Initial Order shall remain in full force and effect until the Plan Implementation Date; and
- (b) All other Orders made in the CCAA Proceeding shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by or are inconsistent with this Order or any further Order of this Court.

27. **THIS COURT ORDERS AND DECLARES** that the stay of proceedings established by the Amended Initial Order continues and is hereby extended until and including November 12, 2010.

GENERAL PROVISIONS

28. **THIS COURT ORDERS** that the Applicant, the Monitor and any other interested parties are hereby granted leave to apply to this Court for such further advice, directions or assistance as may be necessary to give effect to the terms of the Plan.

EFFECT, RECOGNITION AND ASSISTANCE

29. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and abroad and as against all Persons against whom it may apply.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition (including assistance pursuant to section 17 of the CCAA, as applicable) of any court or any judicial, regulatory or administrative body in any province or territory or Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that this Order shall be posted on the website maintained by the monitor (www.fullerlandau.com/site/brucersmith.htm) and shall only be required to be served upon those parties who have either formally entered an appearance in these proceedings or those parties who appeared at the hearing of the motion for this Order.



ENTERED AT / INSCRIT A TORONTO RCP-E 59A (July 1, 2007)
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 04 2010

PER / PAR: JSN

SCHEDULE "A"

Court File No. 09-8399-00CL

**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 BRUCE R. SMITH LIMITED and
JOHN HENRY SMITH LAND INC.**

Applicants

**PLAN OF COMPROMISE AND ARRANGEMENT OF
JOHN HENRY SMITH LAND INC.**

JULY 7, 2010

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**PLAN OF COMPROMISE AND ARRANGEMENT OF JOHN HENRY SMITH LAND
INC. PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
DATED FOR REFERENCE JULY 7, 2010**

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

In this Plan (including the Schedules and Appendices hereto), unless otherwise stated or the context otherwise requires:

- (a) “**Administration Charge**” means the Administration Charge granted under the Amended Initial Order;
- (b) “**Affected Claim**” means any Claim that is not an Unaffected Claim and for greater certainty all Unsecured Claims are “Affected Claims”;
- (c) “**Affected Creditor**” means any Person who has an Affected Claim in respect of that Affected Claim and may, where the context requires, include the assignee of an Affected Claim in accordance with the Claims Procedure Order, or a trustee, interim receiver, receiver, receiver and manager, liquidator, agent or other Person acting on behalf of such Person;
- (d) “**Amended Initial Order**” means the initial order granted the Court on October 8, 2009, as amended and restated by the Amended and Restated Initial Order granted by the Court on October 16, 2009, as further amended by Order of the Court granted March 10, 2010, and as it may be amended, restated or supplemented from time to time;
- (e) “**Applicant**” means Landco;
- (f) “**BRS**” means Bruce R. Smith Limited;
- (g) “**Business Day**” means any day except Saturday, Sunday or any day on which banks are generally not open for business in Toronto, Ontario;
- (h) “**CCAA**” means *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended from time to time;
- (i) “**CCAA Proceedings**” means the proceedings in respect of the Applicant before the Court commenced pursuant to the CCAA, Court File No. 09-8399-00CL;
- (j) “**Charges**” means the Directors' Charge and the Administration Charge;
- (k) “**Claim**” means (i) any right or claim of any Person that may be made in whole or in part against the Applicant, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the Filing Date, at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to property or assets or to a trust or deemed trust (statutory, express, implied, resulting, constructive or

otherwise) or for any other reason whatsoever against any property or assets, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, 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, or 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 not referred to above that, in whole or part, would have been claims provable in bankruptcy had the Applicant become bankrupt at the Filing Date, together with any other rights or claims, whether or not asserted, made after the Filing Date in any way, directly or indirectly related to any action taken or power exercised prior to the Filing Date, including, without limitation, any Tax Claim and (ii) any Restructuring Claim;

- (l) **“Claims Procedure Order”** means the Order of the Court in the CCAA Proceedings made on July 13, 2010, as such Order may be amended, restated or supplemented from time to time which Order, among other things, established a procedure for the submission of Claims and the barring of Affected Claims not submitted in accordance with, and within the applicable time period established by, such Order;
- (m) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (n) **“Creditors’ Meeting”** means the meeting of Affected Creditors called for the purpose of considering, and if deemed appropriate, passing a resolution approving the Plan which meeting has been scheduled by the Creditors’ Meeting Order to take place on September 14, 2010, 2010 at 1:00 p.m. (Toronto time), and any postponements, adjournments or amendments thereof;
- (o) **“Creditors’ Meeting Order”** means the Order of the Court in the CCAA Proceedings made on July 13, 2010, as such Order may be amended, restated or supplemented from time to time, which Order, among other things, sets the date and time of the Creditors’ Meeting and establishes meeting procedures for the Creditors’ Meeting;
- (p) **“Directors’ Charge”** means the Directors’ Charge granted under the Amended Initial Order;
- (q) **“Disallowed Claim”** means a Disputed Claim which has finally been disallowed in accordance with the Claims Procedure Order;
- (r) **“Disclaimer or Termination Deadline”** means July 21, 2010, being the deadline for the Applicant to issue a Notice of Disclaimer or Termination;
- (s) **“Disputed Claim”** means a Claim (i) that at the relevant time is not a Proven Claim or a Disallowed Claim, (ii) in respect of which a Proof of Claim has been filed in accordance with the Claims Procedure Order and is not barred pursuant to the Claims Procedure Order, (iii) for which a Notice of Revision or Disallowance has been sent by the Monitor, and (iv) that has not been fully determined by the Court in accordance with the Claims Procedure Order;

- (t) **“Distribution Payment Dates”** means the dates the distribution payments are to be made pursuant to Section 3.05;
- (u) **“Effective Time”** means the first moment on the Plan Implementation Date after the Monitor’s Certificate is filed with the Court;
- (v) **“Filing Date”** means March 10, 2010;
- (w) **“Financial Advisor”** means KPMG Inc., in its capacity as financial advisor to the Applicant;
- (x) **“First Distribution Payment Date”** means the last Business Day of the month in which the Plan Implementation Date occurs;
- (y) **“Governmental Authority”** means the Crown, any government, municipality, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation or agent, court, board, tribunal, dispute settlement panel or body or other law, rule or regulation-making entity:
 - (i) having or purporting to have jurisdiction on behalf of any nation, province, state or other geographic or political subdivision thereof; or
 - (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;
- (z) **“GST Claim”** means any Claim of any Person relating to any taxes, duties, fees, premiums, assessments, imposts, levies and other charges imposed under Part 9 of the *Excise Tax Act* (Canada), excluding all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, accruing before the Filing Date;
- (aa) **“Landco”** means John Henry Smith Land Inc.;
- (bb) **“Last Distribution Payment Date”** means the date the last distribution payment is made pursuant to Section 3.05;
- (cc) **“Liens”** 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, which has been duly and properly registered or perfected in accordance with applicable legislation on the Filing Date;
- (dd) **“Monitor”** means The Fuller Landau Group Inc., in its capacity as court-appointed monitor of the Applicant;
- (ee) **“Monitor’s Certificate”** means the certificate to be delivered and filed by the Monitor pursuant to Section 4.05;
- (ff) **“Notice of Disclaimer or Termination”** means a written notice issued on or after the Filing Date and prior to the Disclaimer or Termination Deadline by the Applicant advising a Person of the disclaimer, restructuring, repudiation, resiliation or termination of any indenture, contract, agreement (including any employment or

arrangement), lease (including any lease of personal, real, movable or immovable property), permit, license or arrangement existing on the Filing Date whether written or oral;

- (gg) “**Order**” means any order of the Court in the CCAA Proceedings;
- (hh) “**Person**” shall be broadly interpreted and includes, without limitation, any individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, syndicate, Government Authority, Tax Authority, or any other entity, wherever situate or domiciled, whether or not having legal status;
- (ii) “**Plan**” means this plan of compromise and arrangement filed by the Applicant, as such plan may be amended, restated or supplemented from time to time in accordance with its terms;
- (jj) “**Plan Implementation Date**” means the date on which the Monitor’s Certificate is filed with the Court;
- (kk) “**Proof of Assignment**” means a written notice of transfer or assignment of an Affected Claim executed by an Affected Creditor and the transferee or assignee, together with satisfactory evidence of such transfer or assignment as may be reasonably required by the Monitor and/or the Applicant;
- (ll) “**Proof of Claim**” means a proof of claim, in substantially the form attached as Schedule “2” to the Claims Procedure Order, as submitted to the Monitor by an Affected Creditor in accordance with the Claims Procedure Order;
- (mm) “**Proven Claim**” means the Affected Claim of an Affected Creditor, as finally determined in accordance with the Claims Procedure Order, and any other Order of the Court and/or this Plan;
- (nn) “**Required Majority**” means (i) an affirmative vote of two-thirds in value of Proven Claims voted in accordance with the voting procedures established under the Creditors’ Meeting Order (whether in person or by proxy) and (ii) a majority in number of all such voting Affected Creditors holding Proven Claims;
- (oo) “**Restructuring Claim**” means any right of any Person against the Applicant in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, repudiation, disclaimer, rescission or termination after the Filing Date, of any indenture, contract, agreement (including any employment agreement or arrangement), lease (including any lease of personal, real, movable or immovable property), permit, license or arrangement existing on the Filing Date whether written or oral, and for greater certainty shall also include any Claims arising pursuant to section 33(5) of the CCAA; provided, however, that a “Restructuring Claim” shall not include Unaffected Claims;
- (pp) “**Sanction Order**” means the Order of the Court in the CCAA Proceedings to be made sanctioning this Plan, and which shall contain the terms set out in Section 4.02

of this Plan, as such Order may be amended, restated or supplemented by the Court, in form and content satisfactory to the Applicant and the Monitor;

- (qq) **“Secured Claim”** means any Claim or portion thereof which is secured by a validly attached and existing security interest or any other encumbrance, including statutory liens, charges, mortgages, debentures, pledges, hypothecs, trusts or statutory deemed trusts or outstanding real property taxes, on the property of the Applicant which was duly and properly registered or perfected in accordance with applicable legislation at the Filing Date or in accordance with the Amended Initial Order, including, for greater certainty, the claims of Tepper Holdings Inc., G.E. Canada Equipment Finance G.P., Royal Bank of Canada and RoyNat Inc.;
- (rr) **“Severance and Termination Claim”** means any Claim that is, or arises from, or is in any way related to, the termination or dismissal of the employment of any employee by the Applicant (i) prior to the Filing Date and (ii) after the Filing Date if such employee has received a Notice of Disclaimer or Termination prior to the Disclaimer or Termination Deadline which is effective prior to the date on which the Sanction Order is made, including, without limitation, any statutory severance or termination pay in lieu of notice or mass termination notice of any common law damages arising from or connected with the termination or dismissal of employment from or by the Applicant;
- (ss) **“Tax”** or **“Taxes”** means any and all amounts subject to a withholding or remitting obligation and any and all taxes, duties, fees, and other governmental charges, duties, impositions and liabilities of any kind whatsoever whether or not assessed by the Taxing Authorities (including any Claims by any of the Taxing Authorities), including all interest, penalties, fines, fees, other charges and additions with respect to such amount, but excluding GST Claims;
- (tt) **“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, but excluding GST Claims. 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;
- (uu) **“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;
- (vv) **“Unaffected Claims”** means:
 - (i) the Secured Claims;
 - (ii) the GST Claims;

- (d) unless otherwise specified, all references in this Plan to Articles, Sections and Schedules are references to Articles, Sections and Schedules of or to this Plan;
- (e) the words “herein” and “hereto” refer to this Plan in its entirety rather than to any particular portion of this Plan;
- (f) the division of this Plan into Articles, Sections and paragraphs and the insertion of captions and headings to Articles and Sections are for convenience of reference only and are not intended to affect the interpretation of, or to be part of, this Plan;
- (g) where the context requires, a word or words importing the singular shall include the plural and vice versa;
- (h) the words “includes” and “including” are not limiting;
- (i) the word “or” is not exclusive;

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

Section 1.03 Date for Any Action

In the event that any date on which any action is required to be taken under this Plan by any of the parties is not a Business Day, that action will be required to be taken on the next succeeding day which is a Business Day.

Section 1.04 Time

All times expressed in this Plan are local time Toronto, Ontario, Canada unless otherwise stipulated.

Section 1.05 Statutory References

Any reference in this Plan to a statute includes all regulations made thereunder and all amendments to such statute or regulations in force, from time to time, or any statute or regulations that supplement or supersede such statute or regulations.

Section 1.06 Conversion

All Affected Claims denominated in a currency other than lawful money of Canada are to be converted to the equivalent thereof in lawful money of Canada at the Bank of Canada spot rate of exchange at the noon rate on the Filing Date.

Section 1.07 Appendices

The following is the Appendix to the Plan:

Appendix A – Monitor’s Certificate

ARTICLE 2 - PURPOSE OF THE PLAN

Section 2.01 Purpose of the Plan

The purpose of the Plan is to restructure the business and affairs of the Applicant in order to enable its business to continue to operate, in the expectation that all Persons with an interest in the Applicant will derive a greater benefit from continued operation of its business than would result from the immediate sale or forced liquidation of its assets.

ARTICLE 3 – TREATMENT OF CREDITORS

Section 3.01 Classes of Affected Claims

For the purpose of voting on this Plan and receiving distributions hereunder, the Affected Claims shall be grouped into a single class.

Section 3.02 Approval by Creditors

In order to be approved, this Plan must receive an affirmative vote by the Required Majority.

Section 3.03 Persons Affected

This Plan will become effective at the Effective Time in accordance with its terms and will be binding on and enure to the benefit of the Applicant, the Affected Creditors, any trustee, interim receiver, receiver, receiver and manager, liquidator, agent or other Person acting on behalf of any such Affected Creditor and all other Persons named or referred to in, or subject to, this Plan and their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

Section 3.04 Persons Not Affected

This Plan does not affect Unaffected Claims (other than as set out in Section 4.09 of this Plan). Except as otherwise provided herein, Unaffected Claims will be paid in accordance with the arrangements between the Applicant and the holders of such Claims in effect on the Filing Date or such other arrangements as may be mutually agreed between them following the Filing Date. Nothing in this Plan will affect the Applicant's rights and defences, both legal and equitable, with respect to setoffs or recoupments against Unaffected Claims.

Section 3.05 Treatment of Unsecured Creditors

(1) If the Plan is approved by the Required Majority, at the Effective Time each Affected Claim will be compromised, and thereafter each Affected Creditor with a Proven Claim will receive, in full and final satisfaction of, and in exchange for, such Proven Claim a distribution equal to the lesser of:

- (a) the amount of its Proven Claim; and,
- (b) \$30,000.00

payable in five (5) equal quarterly installments over a twelve (12) month period, with the first quarterly payment being made on the First Distribution Payment Date.

(2) An Affected Creditor with a Disputed Claim will not be entitled to receive a distribution under this Plan in respect thereof unless and until such Disputed Claim becomes a Proven Claim.

Section 3.06 Certain Crown Claims and Employee Claims

(1) Within six (6) months after the date of the Sanction Order, the Applicant will pay in full all amounts owed, if any, to Her Majesty in Right of Canada or a province of the kind referred to in Section 6(3) of the CCAA.

(2) Immediately following the date of the Sanction Order, the Applicant will pay in full all amounts owed, if any, to employees of the kind referred to in Section 6(5) of the CCAA.

Section 3.07 Interest on Claims

Unless otherwise specifically provided for in this Plan or in the Sanction Order, interest will not accrue or be paid on Unsecured Claims after or in respect of the period following the Filing Date, and no holder of Unsecured Claims will be entitled to any interest in respect of such Claim accruing on or after or in respect of the period following the Filing Date.

Section 3.08 Timing of Distributions

(1) Within two (2) Business Days before each Distribution Payment Date, the Applicant shall provide to the Monitor the funds required to pay the distributions to the Affected Creditors with Proven Claims pursuant to Section 3.05, which funds shall include an amount in respect of any outstanding Disputed Claims, which amount in respect of Disputed Claims shall be deposited into the Disputed Claims Reserve and disbursed or released in accordance with Section 3.09. The Monitor shall make all required distributions under this Plan from the funds provided to the Monitor by the Applicant for that purpose.

(2) The distributions to be made to Affected Creditors in respect of Proven Claims pursuant to Section 3.05(1) will be made by the Monitor to the Affected Creditors with Proven Claims in accordance with Section 3.05.

(3) All cash distributions to be made under this Plan to Affected Creditors with Proven Claims shall be made by the Monitor by cheque and will be sent via mail, to such Affected Creditor to the address specified in the Proof of Claim filed by such Affected Creditor or the address listed on any Proof of Assignment provided to the Monitor pursuant to Section 3.10 hereof, or such other address as the Affected Creditor may from time to time notify the Monitor in accordance with Section 5.04 of this Plan.

(4) Notwithstanding any other provision of this Plan, the timing of distributions to Affected Creditors with Proven Claims under this Plan may be affected by the withholding and reporting requirements of the Applicant or the Monitor, on behalf of the Applicant, as applicable, under applicable law pursuant to Section 3.12 of this Plan.

Section 3.09 Treatment of Disputed Claims

(1) The fact that a Disputed Claim is allowed for voting purposes shall not preclude the Applicant and the Monitor from disputing the Disputed Claim for distribution purposes. Distributions in relation to any Disputed Claim in existence on any Distribution Payment Date will be held in escrow by the Monitor in a separate, interest bearing account (the “**Disputed Claims Reserve**”) in an amount sufficient to make the payments under this Plan on account of the Disputed

Claims pending settlement or final determination of the Disputed Claims in accordance with the Claims Procedure Order or this Plan if the Disputed Claims thereafter become Proven Claims.

(2) To the extent that Disputed Claims become Proven Claims in accordance with this Plan, the Monitor shall distribute (on a date to be determined by the Applicant in consultation with the Monitor) to the holders of such Proven Claims from the Disputed Claims Reserve the distribution such Affected Creditors would have been entitled to receive in respect of those Proven Claims on the Distribution Payment Date had such Affected Claims not been Disputed Claims on the Distribution Payment Date. In the event that any Disputed Claim or a portion thereof has become a Disallowed Claim after the Distribution Payment Date, then the Monitor shall release the amounts in the Disputed Claims Reserve for such Disallowed Claims to the Applicant.

Section 3.10 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 (5) Business Days prior to the next Distribution Payment Date.

Section 3.11 Undeliverable and Unclaimed Distributions

If any delivery or distribution to be made pursuant to Section 3.05 hereof in respect of an Affected Claim is returned as undeliverable, or in the case of a distribution made by cheque, the cheque remains uncashed (each an “**Undeliverable Distribution**”), no other crediting or delivery will be required unless and until the Monitor and the Applicant are notified of the Affected Creditor's then current address. The Applicant's obligations to the Affected Creditor relating to any Undeliverable Distribution will expire six (6) months following the date of delivery or mailing of the cheque or other distribution, after which date the Applicant's liability to the Affected Creditor under this Plan will be forever discharged and extinguished, notwithstanding any federal or provincial laws to the contrary, and any such Undeliverable Distribution shall not be the subject of further distribution under this Plan, but shall be delivered by the Monitor to the Applicant, free and clear of any claims of any other Affected Creditors or their respective successors and assigns. Nothing in this Plan shall require the Applicant and/or the Monitor to attempt to locate any holder of any undeliverable or unclaimed distributions.

Section 3.12 Tax Matters

(1) All distributions made pursuant to this Plan to the Affected Creditors will be first in consideration for the outstanding principal amount of the Affected Claims and secondly in consideration for accrued and unpaid interest and penalties, if any, which form part of such Affected Claims. Notwithstanding any provisions of this Plan, each Affected Creditor that is to receive a distribution pursuant to this Plan will have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority on account of such distribution.

(2) All distributions hereunder shall be subject to any withholding and reporting requirements imposed by law or any Taxing Authority. The Applicant and the Monitor, on behalf of the Applicant, as applicable, will be entitled to deduct and withhold from any distribution or consideration otherwise payable to any Affected Creditor or to any Person on behalf of any Affected Creditor such amounts as the Applicant or the Monitor, as applicable, is (a) required to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada), the *Employment*

Insurance Act (Canada) or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case as amended or succeeded, or (b) entitled to withhold under section 116 of the *Income Tax Act (Canada)* or any corresponding provisions of provincial law. To the extent that amounts are so withheld, such withheld amounts will be treated for all purposes as having been paid to the Affected Creditor in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate Taxing Authority.

Section 3.13 Monitor's Fees and Costs

The fees and costs of the Monitor and its legal counsel in administering the Plan and completing the distributions under this Plan shall, subject to assessment by the Court, be paid in priority to the distributions to be made under Section 3.05 of this Plan and shall continue to be secured by the Administration Charge.

Section 3.14 Reviewable Transactions

Section 36.1 of the CCAA and Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act (Canada)* and any similar provision of any federal or provincial statute shall not apply to any payments or transfers of property made by the Applicant prior to the Filing Date or any payments, transactions or distributions pursuant to this Plan.

ARTICLE 4- IMPLEMENTATION OF THE PLAN

Section 4.01 Application for Sanction Order

If this Plan is approved by the Required Majority, the Applicant will forthwith apply to the Court for the Sanction Order. Subject to the Sanction Order being granted and the satisfaction of the conditions set out in Section 4.03, this Plan will be implemented by the Applicant.

Section 4.02 Effect of Sanction Order

In addition to sanctioning this Plan, the Applicant will seek a Sanction Order that will, with effect from and after the Effective Time and without limitation to any other terms that it may contain:

- (a) declare that (i) this Plan has been approved by the Required Majority in conformity with the CCAA; (ii) the Applicant has complied with the provisions of the CCAA and the Orders made in these proceedings in all respects; (iii) the 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) order that the Plan (including the compromises, arrangements, reorganizations, corporate transactions and releases set out therein) is sanctioned and approved pursuant to Section 6 of the CCAA and, at the Effective Time, will be effective and will enure to the benefit of and be binding upon the Applicant, all Affected Creditors and all other Persons as provided for in this Plan or in the Sanction Order;
- (c) permanently enjoin the commencement or prosecution, whether directly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action released, discharged or terminated pursuant to this Plan;

- (d) stay any and all steps or proceedings, including, administrative orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any or all past, present and future directors and officers of the Applicant in respect of all Affected Claims;
- (e) declare that the stay of proceedings under the Amended Initial Order continues until the Plan Implementation Date;
- (f) order that all Charges established by the Amended Initial Order, other than the Administration Charge, or any other Order of the Court, shall be terminated, released and discharged effective as at the Effective Time;
- (g) declare that, subject to the performance by the Applicant of its obligations under the Plan, and except to the extent, if any, expressly contemplated or amended by the Plan or the Sanction Order, all obligations or agreements to which the Applicant is a party will be and remain in full force and effect, unamended, as at the Effective Time unless disclaimed or repudiated by the Applicant pursuant to the Amended Initial Order prior to the deadline specified in the Claims Procedure Order, and no Person who is a party to any such obligations or agreements may on or following the Effective Time accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution, buy-out, divestiture, forced sale, option or other remedy) under or in respect of any such obligation or agreement by reason of:
 - (i) the Applicant having sought or obtained relief under the CCAA or that this Plan has been implemented by the Applicant;
 - (ii) any defaults or events of default arising as a result of the financial condition or insolvency of the Applicant prior to the Plan Implementation Date;
 - (iii) the effect upon the Applicant of the completion of any of the transactions contemplated under this Plan;
 - (iv) any compromises, settlements, restructurings or reorganizations effected pursuant to this Plan; or
 - (v) any other event(s) which occurred on or prior to the Effective Time and is not continuing after the Effective Time or which is or continues to be suspended or waived under the Plan, which would have entitled such Person to enforce rights or remedies. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicant in respect of any Unaffected Claim.

Section 4.03 Conditions Precedent to the Implementation of the Plan

(1) The implementation of this Plan on the Plan Implementation Date is subject to the satisfaction of the following conditions precedent:

- (a) this Plan has been approved pursuant to the CCAA by the Required Majority;

- (b) the Sanction Order has been issued by the Court and shall be in full force and effect and has not been reversed or stayed or varied, modified or amended without the Applicant's consent;
- (c) all applicable appeal periods in respect of the Sanction Order have expired and any appeals therefrom have been finally disposed of by the applicable appellate tribunal;
- (d) all relevant Persons have executed, delivered and filed all documents and other instruments and the Applicant has obtained all consents and approvals that, in the opinion of the Applicant, acting reasonably, are necessary to implement the provisions of the Plan and the Sanction Order;
- (e) all necessary corporate action and proceedings of the Applicant shall have been taken to approve this Plan and enable the Applicant to execute, deliver and perform its obligations under the agreements, documents and other instruments to be executed and delivered by it pursuant to this Plan;
- (f) approval of the Plan of Compromise of BRS by the required majority of creditors under the CCAA, the issuance of a sanction order with respect to the Plan of Compromise of BRS satisfactory to the Applicant and the satisfaction or waiver of all other conditions precedent to the Plan of Compromise of BRS other than those relating to this Plan;

(2) Each of the conditions set forth in Section 4.03(1) above, except for the conditions set forth in Sections 4.03(1)(a) and (b), may be waived in whole or in part by the Applicant, with a copy to the Monitor, without any other notice to parties in interest or the Court and without a hearing.

Section 4.04 Implementation

The Plan will become effective at the Effective Time. All the agreements and other instruments that have to be entered into or executed and all other actions that have to be taken in order for the transactions and agreements to be completed and occur or be effective at the Effective Time will be entered into, executed, taken and completed in escrow prior to the Effective Time.

Section 4.05 Monitor's Certificate

Upon written notice from the Applicant that all of the conditions set out in Section 4.03(1) have been satisfied or waived in accordance with this Plan, the Monitor will deliver to the Applicant, and file with the Court, a copy of a Monitor's Certificate stating that each of the conditions set out in Section 4.03 has been satisfied or waived. The Monitor's Certificate to be filed will be in the form of Appendix "A" attached.

Section 4.06 Effect of Plan Generally

The payment, compromise or satisfaction of any Affected Claims under this Plan, if sanctioned and approved by the Court, shall be binding upon each Affected 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 Affected 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 and all Liens granted by the Applicant in respect thereof including any interest or costs accruing thereon (whether before or after the Filing Date).

Section 4.07 Cancellation of Certificates

As of the Last Distribution Payment Date, all debentures, charges, encumbrances, certificates, agreements, invoices, securities and other instruments evidencing Affected Claims will not entitle any holder thereof to any compensation or participation other than as expressly provided for in this Plan, respectively, and will be cancelled and deemed null and void.

Section 4.08 Set Off

The law of set-off applies to all Affected Claims made against the Applicant and to all actions instituted by the Applicant 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.

Section 4.09 Plan Releases

Effective at the Effective Time and subject to the terms and conditions of this Plan:

- (a) The Applicant shall be forever released and discharged from all Affected Claims.
- (b) Except as otherwise provided in this Plan or the Sanction Order, and subject to the provisions of Section 5.1(2) of the CCAA, each Affected Creditor or other Person in consideration of the distributions made under this Plan will be deemed to have forever released and discharged (i) the Applicant and its present and former directors, officers, employees, agents, affiliates and professional advisors (including legal counsel and the Financial Advisor) and associates (ii) the Monitor and its present and former partners, directors, officers, employees, agents, affiliates, professional advisors (including legal counsel) and associates, and (iii) any Person who may claim contribution or indemnification against or from the Applicant, from any and all demands, Claims, including Claims of any past and present officers, directors or employees for contribution and indemnity, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Affected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, dealing, event or other occurrence existing or taking place on or prior to the Effective Time in any way relating to, arising out of or in connection with the Applicant, its assets or property, the business or affairs of the Applicant (whenever and however conducted), the transactions and events giving rise to any Claims, this Plan or the CCAA Proceedings, other than Unaffected Claims and the right to enforce the Applicant's obligations under this Plan.
- (c) The Applicant shall be deemed to have forever released and discharged each of its (i) present and former directors, officers and employees, agents, and professional advisors (including legal counsel and the Financial Advisor) and (ii) the Monitor and its present and former partners, directors, officers, employees, agents, affiliates, professional advisors (including legal counsel) and associates, from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, whether known or unknown, matured or unmatured, foreseen or

unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, dealing, event or other occurrence existing or taking place on or prior to the Effective Time in any way relating to, arising out of or in connection with the Applicant, its assets or property, the business or affairs of the Applicant (whenever and however conducted), the transactions and events giving rise to any Claims, this Plan or the CCAA Proceedings, that could be asserted by or on behalf of the Applicant;

provided, however, that nothing in this Section 4.09 shall release (i) any Person from fraud, gross negligence, willful misconduct, or criminal conduct, (ii) any Unaffected Claim, or (iii) any Person's right to enforce the Applicant's obligations under this Plan.

Section 4.10 Knowledge of Claims

Each Person to which Section 4.09 applies shall be deemed to have granted the releases set forth in Section 4.09 notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true and without regard to the subsequent discovery existence of such different or additional facts, and such Person expressly waives any and all rights that it may have under any applicable law which would limit the effect of such releases to those Claims or causes of action known or suspected to exist at the time of the granting of the release.

Section 4.11 Waiver of Defaults

From and after the Effective Time, all Persons will be deemed to have waived any and all defaults of any of the Applicant then existing or previously committed by any of the Applicant or caused by any of the Applicant, any of the provisions hereof or steps contemplated hereby, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, security agreement, indenture, mortgage, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Applicant, and all notices of default, acceleration of payments and demands for payment under any instrument (including any guarantee), will be deemed to have been rescinded.

Section 4.12 Exculpation

Neither the Applicant, the Monitor nor any of their respective present or former partners, directors, officers, employees, agents, affiliates, professional advisors (including legal counsel and the Financial Advisor) and associates shall have or incur any liability to any holder of a Claim or equity interest in the Applicants, or other party in interest, or any of their respective members, officers, directors, employees, professional advisors (including legal counsel and the Financial Advisor) 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 sanction of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, including the negotiation and solicitation of the Plan, except for wilful misconduct or gross negligence, and subject to the provisions of Section 5.1(2) of the CCAA. In all respects, the Applicant, the Monitor and each of their present and former partners, directors, officers, employees, agents, affiliates, professional advisors (including legal counsel and the Financial Advisor) and associates shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Section 4.13 Consents and Releases

From and after the Effective Date, all Affected Creditors shall be deemed to have consented and to have agreed to all of the provisions of this Plan as an entirety. In particular, each Affected 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.

Section 4.14 Responsibilities of Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings with respect to the Applicant and is not responsible or liable for any obligations of the Applicant. The Monitor will have the powers granted to it by this Plan, by the CCAA and by any Order, including the Amended Initial Order.

ARTICLE 5- MISCELLANEOUS

Section 5.01 Paramountcy

From and after the Effective Time, in the event of any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, by-law of the Applicant, 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 the Plan as at the Effective Time, the terms, conditions and provisions of this Plan and the Sanction Order shall govern and shall take precedence and priority. For greater certainty, all Affected Creditors will be deemed irrevocably for all purposes to consent to all transactions contemplated in and by this Plan.

Section 5.02 Amendments to the 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 any one or more thereof) with the Court at any time or from time to time prior to the commencement of the Creditors' Meetings, with the prior consent of the Monitor. **Affected Creditors who wish to receive written notice of any variation, modification, amendment or supplement to the Plan should contact the Monitor at the contact details set out in Section 5.04 of this Plan.** Any such supplementary or amended and restated plan or plans of compromise or arrangement (or any one or more thereof) 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 (www.fullerlandau.com/site/brucersmith.htm) on the day on which it is filed with the Court, served on the CCAA Proceedings service list, and notice will be given to all Affected Creditors who have filed proxies with the Monitor, to the extent that such Affected Creditors are not otherwise on the service list or have requested written notice in accordance with this Section. Affected Creditors are advised to check the Monitor's website regularly. Affected Creditors in attendance at the Creditors' Meetings will also be advised of any amendment made to the Plan.

Section 5.03 Non-Material Amendments to the Plan

After the Creditors' Meetings (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 Court or providing notice to the Affected Creditors if the Applicant and the Monitor, acting reasonably and in good faith, determine that such variation, amendment, modification or supplement is of a technical or administrative nature and is necessary in order to give effect to the substance of the Plan or the Sanction Order. Approval of the Court will be required for all other amendments to the Plan. Notwithstanding the foregoing, the Applicant will not be entitled to modify any provision of this Plan without the written consent of the Monitor.

Section 5.04 Notices

Any notices or communications to be made or given hereunder must be in writing and must refer to this Plan and may, subject as hereinafter provided, be made or given by personal delivery, by courier, by prepaid mail or by facsimile addressed to the respective parties as follows:

(a) If to the Applicant:

John Henry Smith Land Inc.
R.R. #2
Simcoe, ON N3Y 4K1
Attention: Mr. John Smith
Facsimile: (519) 426-1928

With a copy to:

Scarfone Hawkins LLP
One James Street S., 14th Floor
P.O. Box 926, Depot 1
Hamilton, ON L8N 3P9

Attention: Mr. Joseph G. Speranzini
Facsimile: (905) 523-5878

and to:

KPMG Inc.
21 King Street West, Suite 510
PO Box 976
Hamilton ON L8N 3R1

Attention: Mr. Brad Newton
Facsimile: (905) 523-2200

(b) If to an Affected Creditor:

(i) to its address as listed in its Proof of Claim in respect of its Claim or in respect of an assignee or transferee, in the Proof of Assignment delivered to the Monitor or Applicant pursuant to Section 3.10 of this Plan, or

(ii) at the address set forth in any written notice of address change delivered to the Monitor.

(c) If to the Monitor:

The Fuller Landau Group Inc.
151 Bloor Street West
12th Floor
Toronto, ON M5S 1S4

Attention: Mr. David Filice
Telephone: (416) 645-6506
Fax: (416) 645-6501
Email: dfilice@fullerlandau.com

With a copy to:

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 2800
Commerce Court West
Toronto, ON M5L 1A9

Attention: Mr. Steven Weisz
Facsimile: (416) 863-2653

or to such other address as any party may from time to time notify the others in accordance with this Section 5.04. In the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by facsimile and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the communication of such interruption, unless actually received, will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by facsimile or by delivery prior to 5:00 p.m. (Toronto time) on a Business Day, when received or if received after 5:00 p.m. (Toronto time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and, in the case of notice mailed as aforesaid, on the fifth Business Day following the date on which such notice or other communication is mailed. The unintentional failure by the Applicant to give any notice contemplated hereunder to any particular Affected Creditor will not invalidate this Plan or any action taken by any Person pursuant to this Plan.

Section 5.05 Severability of Plan Provisions

If any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Applicant, will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

Section 5.06 Revocation or Non-Consummation

(1) 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 reorganization, compromise or arrangement. 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 Claim, any settlement or compromise embodied in this Plan (including the fixing or limiting of any Claim to a certain amount), assumption, termination, repudiation of executory contracts or leases effected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and
- (c) nothing contained in this Plan, and no act taken in preparation for consummation of this Plan shall,
 - (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Applicant or any other 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 other Person.

Section 5.07 Different Capacities

Affected 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 Affected Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by an Affected Creditor in any one capacity shall not affect the Affected Creditor in any other capacity, unless expressly agreed by the Affected Creditor in writing or unless the Claims overlap or are otherwise duplicative.

Section 5.08 Further Assurances

At the request of the Applicant or the Monitor, each of the Persons named or referred to in, or subject to, this Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein, notwithstanding any provision of this Plan that deems any transaction or event to occur without further formality.

Section 5.09 Governing Law

This Plan will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions will be subject to the exclusive jurisdiction of the Court.

DATED at Hamilton, Ontario this 7th day of July, 2010.

JOHN HENRY SMYTHLAND INC.

By: 

Name: John H. Smith, President

APPENDIX "A"
TO THE PLAN OF COMPROMISE AND ARRANGEMENT
OF JOHN HENRY SMITH LAND INC.
FORM OF MONITOR'S CERTIFICATE

Court File No. 09-8399-00CL

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 BRUCE R. SMITH LIMITED and
JOHN HENRY SMITH LAND INC.

MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to the Order of this Honourable Court granted October 8, 2009, as amended and restated by the Amended and Restated Initial Order granted by the Court on October 16, 2009, as further amended by Order of this Honourable Court granted March 10, 2010, as amended, restated or supplemented from time to time (the "**Amended Initial Order**") John Henry Smith Land Inc. (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 (the "**CCAA**");
- B. Pursuant to the Amended Initial Order, The Fuller Landau Group Inc. was appointed the Monitor of the Applicant (the "**Monitor**") with the powers, duties and obligations set out in the Amended Initial Order;
- C. The Applicant has filed a Plan of Compromise and Arrangement under the CCAA dated July 7, 2010 (as it may be amended, restated, or supplemented from time to time in accordance with the provisions thereof, the "**Plan**"), which Plan has been approved by the Required Majority of the Affected Creditors in accordance with the CCAA and sanctioned by Order of the Court; and
- D. Unless otherwise indicated herein, initially capitalized terms used herein have the meaning set out in the Plan.

* * * * *

THE MONITOR HEREBY CERTIFIES that it has been advised by the Applicant in accordance with Section 4.05 of the Plan that the conditions precedent set out in Section 4.03 of

the Plan have been satisfied or waived in accordance with the Plan on _____, 2010 and that accordingly, the Plan Implementation Date is _____, 2010.

DATED at Toronto, Ontario, this _____ day of _____, 2010.

THE FULLER LANDAU GROUP INC., solely in its capacity as Monitor of Applicant and not in its personal or corporate capacity

By: _____
Name:
Title:

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 BRUCE R. SMITH LIMITED ET AL
Applicants

Court File No. 09-8399 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

SANCTION ORDER

SCARFONE HAWKINS LLP

Barristers & Solicitors
One James Street South 14th Floor
P.O. Box 926, Depot 1
Hamilton ON L8N 3P9

Michael J. Valente (LSUC # 23925R)
mvalente@shlaw.ca

Tel: 905-523-1333

Fax: 905-523-5878

Lawyers for the Applicants

RCP-E 4C (July 1, 2007)