

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

B E T W E E N:

GROSVENOR PARK MEDIA FUND L.P.

Plaintiff

-and-

ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD.,  
ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE  
JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS  
INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS  
INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS  
LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS  
MURRAY, KALLAN KAGAN and PETER KOZIK

Defendants

**FACTUM COMPENDIUM OF SPIN MASTER LTD.**

July 17, 2020

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RCP-E 37A (July 1, 2007)

**ONTARIO  
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**TAB A.**

**ONTARIO  
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B E T W E E N:

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MURRAY, KALLAN KAGAN and PETER KOZIK

Defendants

**RESPONDING FACTUM OF SPIN MASTER LTD.  
(RE: Motion for Distribution Approval)**

June 19, 2020

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**ONTARIO  
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**B E T W E E N:**

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**RESPONDING FACTUM OF SPIN MASTER LTD.  
(RE: Motion for Distribution Approval)**

**PART I - OVERVIEW**

1. The Receiver, Deloitte Restructuring Inc. (the “**Receiver**”), brings this Motion for advice and directions concerning the making of distributions relating to proceeds from various computer animation and film tax credits arising from the production of a children’s entertainment show, *Rusty Rivets* (the “**Tax Credits**”).

2. The Tax Credits constitute property held in trust by the bankrupt, Arc Productions Ltd. and its subsidiaries and affiliates (“**Arc**”), for the benefit of Spin Master Riveting Productions Inc. (“**Spin Master**”). As such, they are in no way impressed with or affected by the security interests

of Arc's creditors, including the Plaintiff Grosvenor Park Media Fund LP ("GP"). The Tax Credits are the property of Spin Master.

3. The Tax Credits are subject to an express, or alternatively, implied trust for Spin Master's benefit. There is no doubt that Arc and Spin Master always intended for Arc to collect, hold and distribute the Tax Credits for Spin Master. The Production Services Agreement between Arc and Spin Master (the "**Spin Master PSA**") expressly provides that Spin Master "alone shall be entitled to all Tax Credits" which Arc would claim and collect "in trust" on behalf of Spin Master. Spin Master expressly agreed to pre-pay the Tax Credits on the basis that, when received by Arc, they would be held in trust and ultimately paid by Spin Master. There is no doubt that the Tax Credits at issue on this Motion bear all of the hallmarks of a trust, including certainty of intention, subject-matter and object.

4. In the alternative, this Court ought to impose a constructive or *Quistclose* trust on the Tax Credits in favour of Spin Master in order to avoid an unjust enrichment to GP. Arc was under both a contractual, equitable and agency obligation to hold the Tax Credits for Spin Master's benefit "in trust" and to pay the Tax Credits to Spin Master once they were received. The Tax Credits were only ever intended as Spin Master's property. GP would receive a windfall if trust funds were allocated as security for Arc's obligations to it. There is no juristic reason for such enrichment. Moreover, there are good policy reasons for imposing a trust in this case. The goal of the Tax Credits, i.e. to incentivize the employment of Canadian and Ontario labour in the production and film industries, would be significantly undermined if Tax Credits were to be used as collateral for secured creditors, as GP proposes.

5. In the further alternative, the Tax Credits were the object of an absolute assignment from Arc to Spin Master, such that they did not create a security interest under the *Bankruptcy and Insolvency Act* or the *Personal Property Security Act* in favour of GP or anyone else.

6. Accordingly, the Tax Credits constitute the property of Spin Master and are not in any way impressed with GP's security interest. The Receiver ought to distribute the proceeds relating to the Tax Credits to Spin Master.

## **PART II - FACTS**

### **The Parties and the Spin Master PSA**

7. Spin Master is an Ontario corporation which carries on business as a distributor of children's products, directly and indirectly, throughout the world. Spin Master is also involved in the distribution of episodes of various children's television and other entertainment shows.<sup>1</sup>

8. Arc was in the business of providing animation and computer graphic services to the film and television industry. Arc was at all material times a sophisticated commercial party.

9. Spin Master and Arc entered into a Production Services Agreement, i.e. the Spin Master PSA, on August 11, 2014.<sup>2</sup> Similar agreements were entered into with BK2BRAC Holdings Inc. ("**BK2BRAC**" or "**Disney**") and Blazing Productions Ltd. ("**Blazing**") (collectively, the "**PSAs**").<sup>3</sup>

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<sup>1</sup> Affidavit of Chris HARRS, sworn June 17, 2020 ("**HARRS Affidavit**"), Responding Motion Record of Spin Master Ltd., dated June 19, 2020 ("**Spin RMR**"), Tab 5, p.41, para. 2.

<sup>2</sup> Production Services Agreement between Spin Master and Arc ("**Spin Master PSA**"), Spin RMR, Tab 5(A), p.46-82.

<sup>3</sup> Fifteenth Report of Deloitte Restructuring Inc., Receiver of Arc Productions Ltd. et. al, dated April 9, 2020 ("**15<sup>th</sup> Report**") at para. 9.

10. The Spin Master PSA provided that Arc was to “provide and arrange for production services” for an animated series, *Rusty Rivets*.<sup>4</sup>

11. Under the Spin Master PSA, Arc contracted to compile information and submit tax recovery claims on behalf of Spin Master. In the ordinary course, Spin Master was entitled to receive the proceeds of these tax credits. The purpose of the tax credits was to maintain and promote production labour in the entertainment industry within Canada and Ontario.<sup>5</sup>

### **Tax Credits Held “In Trust” Under Spin Master PSA**

12. The Spin Master PSA expressly requires that the tax credits be held in trust for Spin Master’s benefit.

13. In particular, section 6(a) of the Spin Master PSA provides that Spin Master agreed to produce *Rusty Rivets* so as to qualify for the federal Canadian Film or Video Production Tax Credit (the “**Federal Credit**”), the Ontario Film and Television Tax Credit (“**OFTTC Tax Credit**”) and the Ontario Computer Animation and Special Effects Tax Credit (“**OCASE Tax Credits**”) (collectively, the OFTTC, Federal and OCASE Tax Credits shall be referred to as the “**Tax Credits**”).<sup>6</sup>

14. Critically, for the purposes of this proceeding, section 6(a) provides that: (i) Arc acknowledged that Spin Master “alone” would be entitled to all the Tax Credits available, including the OCASE Tax Credit; and (ii) Arc would claim the Tax Credits “in trust” on behalf of Spin Master:

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<sup>4</sup> Spin Master PSA, Spin RMR, Tab 5(A), p.46.

<sup>5</sup> Harrs Affidavit, Spin RMR, Tab 5, p.41, para. 4.

<sup>6</sup> Spin Master PSA, Spin RMR, Tab 5(A), p. 50-51, at s.6(a).

- 6(a) ...For avoidance of doubt, [Arc] acknowledges and agrees that [**Spin Master alone shall be entitled to all Tax Credits** available in respect of the Services, Elements and / or Episodes, including the OCASE Tax Credit, which [Arc] shall **claim and collect in trust on behalf of [Spin Master]**].<sup>7</sup> [**emphasis added**]

15. Within three (3) days of applying for the OCASE Tax Credit, Arc had a duty under the Spin Master PSA to remit the entirety of the tax credit to Spin Master:

- 6(b) [Arc] shall be responsible for the timely preparation and submission of all applications relating to the OCASE Tax Credit and [Arc] shall cooperate with [Spin Master] to maximize the Tax Credits and assist with the collection thereof. With regards to the OCASE Tax Credit, [Arc] **shall remit one hundred percent (100%) of all such tax credit to [Spin Master]** within three (3) business days of [Arc's] receipt of same.<sup>8</sup> [**emphasis added**]

16. In addition to these obligations, Arc was under a duty to deliver status reports, documents, cost statements, the OCASE Tax Credit application and various books and records for Spin Master's benefit.<sup>9</sup>

### **Trust / Agency Relationship between Arc and Spin Master Evident in the Spin Master PSA's Factual Matrix**

17. At the time the Spin Master PSA was negotiated, there were generally two ways that production companies could deal with tax credits for Canadian productions:

- (a) A production company could pay for production fees, less the tax credits that would be received at a later date by a studio, plus financial costs associated with the studio essentially financing those tax credits; or
- (b) A production company could front the entire production costs, including tax credits, and then the studio would agree to hold any tax credits once received in

<sup>7</sup> Spin Master PSA, Spin RMR, Tab 5(A), p. 50-51, at s.6(a).

<sup>8</sup> Spin Master PSA, Spin RMR, Tab 5(A), p.51, at s.6(b).

<sup>9</sup> Spin Master PSA, Spin RMR, Tab 5(A), p.51, at s.6(c).

trust, and then remit those tax credits to the production company. This would amount to a lower overall cost since there would be no financing element.<sup>10</sup>

18. Spin Master wished to keep its overall costs lower, so it chose the second option. Accordingly, it agreed to pre-pay the Tax Credits on the basis that when they eventually were received by Arc, they would be received in trust and paid out to Spin Master. Otherwise, the economics of the transaction would not have worked.<sup>11</sup>

19. Although some production companies choose to let the studio fund production tax credits, given Spin Master's liquidity and cash reserves, it chose, in effect, to fund the Tax Credits, thus reducing the overall cost of the production.<sup>12</sup>

20. At the time that the Spin Master PSA was negotiated, there were discussions between the senior management of Arc and Spin Master that Spin Master would pay an amount equal to what the parties believed were to be the Tax Credits. The amount of the Tax Credits now received by the Receiver in this proceeding were received pursuant to the terms of the Spin Master PSA. The fact that Arc was later placed in receivership, as set out below, does not change the nature of the Tax Credits. The Tax Credits never belonged to Arc or the Receiver. They should be immediately paid over to Spin Master.<sup>13</sup>

21. Moreover, Spin Master never signed a subordination agreement with Arc that would subordinate Spin Master's interests in the Tax Credits in favour of GP.<sup>14</sup> In any event, it is Spin Master's position in this proceeding that a subordination agreement would not on its own have

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<sup>10</sup> Harrs Affidavit, Spin RMR, Tab 5, p.41, at para. 4.

<sup>11</sup> Harrs Affidavit, Spin RMR, Tab 5, p.41-42, at para. 4.

<sup>12</sup> Harrs Affidavit, Spin RMR, Tab 5, p. 42, at para. 4.

<sup>13</sup> Harrs Affidavit, Spin RMR, Tab 5, p.42, para. 5.

<sup>14</sup> Harrs Affidavit, Spin RMR, Tab 5, p.42, para. 6.



changed the nature of the trust relationship applicable to the Tax Credits. Only to the extent that Spin Master was owed cash by Arc would a subordination agreement have assisted with the claims of the Receiver. One cannot subordinate a claim to a third party to an asset that one owns. An entirely different agreement would be required. No one at Spin Master recalls such a subordination agreement ever being signed.<sup>15</sup>

22. Moreover, at the time that GP, which claims to be a creditor of Arc in this proceeding, entered into discussions with Arc, it apparently conducted a significant and in-depth review of the various assets and classes of assets which Arc owned. At no point was GP provided with any information or certificate in which Spin Master agreed to forgo or assign its trust claim to any third party.<sup>16</sup>

23. Notably, the credit agreement between GP and the Defendants in this proceeding, including the borrowing base certificates delivered thereunder, makes no reference to Spin Master or the *Rusty River* Tax Credits.<sup>17</sup> There is no reference to other parties with whom Arc entered into PSAs, such as Blazing Productions Ltd. (“**Blazing**”), either. However, reference is made to several other companies that were using Arc as a producer. Moreover, the tax credits received in relation to those other companies have been referenced in a borrowing base certificate delivered by Arc to GP, in order for the Defendants in this proceeding to obtain advances from GP.<sup>18</sup>

24. GP knew full well that Spin Master was entitled to the Tax Credits, without deduction or set-off. The manner in which the credit agreement was drafted and the borrowing base certificates

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<sup>15</sup> Harrs Affidavit, Spin RMR, Tab 5, p.42, para. 6..

<sup>16</sup> Harrs Affidavit, Spin RMR, Tab 5, p.43, para. 7.

<sup>17</sup> Credit Agreement, dated December 10, 2015, being Exhibit “B” to the Harrs Affidavit, Spin RMR, Tab 5(B), p. 84-210.

<sup>18</sup> Borrowing Base Certificate, dated July 13, 2016, Spin RMR, Tab 5(C), p.212-235.

were completed constitutes clear and independent evidence that GP did not provide any financing for the *Rusty Rivets* productions. It is Spin Master's position on this Motion that GP should not now get the benefit of funds that belong to Spin Master.<sup>19</sup>

### **Distributions of Tax Credits Subject to Court Order**

25. On July 29, 2016, GP brought a motion seeking the appointment of an Interim Receiver over Arc and certain other property. That motion was granted by the Honourable Justice Wilton-Siegel and an interim receiver was appointed pursuant to an Interim Receivership Order, dated July 29, 2016 (the "**Original Interim Receivership Order**").<sup>20</sup>

26. Under the Original Interim Receivership Order, the interim receiver was not to implement the powers provided to it pending a return hearing on August 2, 2016.<sup>21</sup> The Lender then sought and obtained a Fresh as Amended Interim Receivership Order on August 2, 2016 (the "**August 2, 2016 Order**").<sup>22</sup> The Receivership Order was ultimately granted by the Honourable Justice Penny on August 10, 2016.<sup>23</sup>

27. The Ontario Superior Court then made an Order authorizing the Receiver to assign Arc into bankruptcy on January 27, 2017.<sup>24</sup>

28. The Receiver has done so and the Office of the Superintendent of Bankruptcy issued a Certificate of Appointment of Deloitte Restructuring as trustee of Arc on January 31, 2017.

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<sup>19</sup> Harrs Affidavit, Spin RMR, Tab 5, p. 43, para. 9.

<sup>20</sup> 15<sup>th</sup> Report, at para. 4.

<sup>21</sup> 15<sup>th</sup> Report, at para. 4.

<sup>22</sup> Fresh as Amended interim Receivership Order of Penny J. dated August 2, 2016, Spin RMR, Tab 1, p.1-16; 15<sup>th</sup> Report at para. 5.

<sup>23</sup> Receivership Order of Justice Penny, dated August 10, 2016, Spin RMR, Tab 2, p. 17-32; 15<sup>th</sup> Report, at para. 6.

<sup>24</sup> Order of the Superior Court, dated January 27, 2017, Spin RMR, Tab 3, p.33-35.

29. The Honourable Justice Newbould granted a Distribution Order on April 18, 2017 (the “**Distribution Order**”).<sup>25</sup>

30. Under the Distribution Order, the Receiver was, amongst other things, authorized to “distribute to GP from time to time all funds coming into the hands, subject to such reserves as the Receiver may deem prudent in the circumstances, up to the amount of \$43,953,400”. However, the Distribution Order further provides that “any distributions by the Receiver hereunder of proceeds of the realization or collection of tax credits of Arc, where the Receiver has notice of the interests of parties other than GP claiming ownership, security interests, or both in such tax credits or their proceeds, shall only be made upon further Order of the Court on notice to GP and to such other parties”.<sup>26</sup>

31. Since the Receiver’s 13<sup>th</sup> Report, the Receiver states it has collected Tax Credits and accrued interest, net of directly attributable professional fees and costs, related to the PSAs with Spin Master, Blazing and BK2BRAC, as follows: (a) Spin Master--\$754,612; and (b) BK2BRAC--\$395,000.<sup>27</sup> After taking into account an appropriate reserve and the pending tenth distribution of \$1,050,000 to GP as outlined in the Receiver’s Fourteenth Report, there are available funds on hand to permit a distribution of \$1,149,702.<sup>28</sup>

32. As the Receiver has identified in its Fifteen Report, on this Motion, Spin Master takes the position that Arc’s contractual obligations under the Spin Master PSA creates a proprietary interest

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<sup>25</sup> Distribution Order of the Honourable Justice Newbould, dated April 18, 2017, RMR, Tab 4, p. 36-39; 15<sup>th</sup> Report, at para. 7.

<sup>26</sup> Distribution Order of the Honourable Justice Newbould, dated April 18, 2017, RMR, Tab 4, p. 37-38, paras. 4-5; 15<sup>th</sup> Report, at para. 7.

<sup>27</sup> 15<sup>th</sup> Report, at para. 12 and Appendix “C” to the 15<sup>th</sup> Report.

<sup>28</sup> 15<sup>th</sup> Report, at para. 14.

in the net proceeds / Tax Credits, such that they are not impressed with GP's security interest.<sup>29</sup> Spin Master takes the position that the Tax Credits are being held by the Receiver in trust for Spin Master.<sup>30</sup>

33. The Tax Credits should not be and are not included, nor have they been historically included, in any of the collateral owned by the Defendants against which GP had a charge, either at the time that GP acquired its interest in the collateral or thereafter.<sup>31</sup>

### **PART III - ISSUES, LAW & AUTHORITIES**

34. This Motion gives rise to the following issue:

- (a) Does Spin Master have a proprietary or trust interest in the Tax Credits such that they are not divisible amongst creditors like GP?

#### **A. Spin Master Has a Proprietary Trust Interest in the Tax Credits**

35. Section 136(1) of the *Bankruptcy and Insolvency Act* (the "BIA") sets out the priority of payment realized from the "property" of a bankrupt, subject to the rights of secured creditors.<sup>32</sup>

36. "Property" under the *BIA* is defined broadly as "any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property".<sup>33</sup>

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<sup>29</sup> 15<sup>th</sup> Report, at para. 16.

<sup>30</sup> Harrs Affidavit, Spin RMR, Tab 5, p. 41, para. 3.

<sup>31</sup> Harrs Affidavit, Spin RMR, Tab 5, p. 41, para. 3.

<sup>32</sup> *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c.B-3 at s.136\(1\)](#).

<sup>33</sup> *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c.B-3 at s. 2](#).

37. Under subsection 67(1)(a) of the *BIA*, trust property is expressly excluded from distribution amongst creditors of the bankrupt as follows:

67(1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person...<sup>34</sup> [emphasis added]

38. For the reasons set out below, Spin Master submits that the Tax Credits were held in an express, implied, constructive or *Quistclose* trust by Arc pursuant to the Spin Master PSA. Spin Master acquired a proprietary interest in the Tax Credits, such that they amount to “property held by the bankrupt in trust” under section 67(1)(a) of the *BIA*. Accordingly, Spin Master’s trust claim does not comprise the “property of the bankrupt” to be divisible among secured creditors, such as GP. Spin Master’s trust claim was also not subject to the provisions of the receivership order on the same basis: the receivership order applied to the property and assets of Arc. Spin Master’s Tax Credits are not the property of Arc.

*i. Tax Credits Held in an Express or Implied Trust for Spin Master*

39. The creation of an express or implied trust requires the presence of three certainties: intention, subject matter, and object. Express or "true trusts" arise from the acts and intentions of the settlor and are distinguishable from other trusts arising by operation of law.<sup>35</sup>

40. With respect to the certainty of intention, it can be inferred from the contractual documents and all the circumstances surrounding the transactions.<sup>36</sup> Where the parties have in their

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<sup>34</sup> [Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3 at s.67\(1\).](#)

<sup>35</sup> [Century Services Inc. v. Canada \(Attorney General\), 2010 SCC 60, per Deschamps J. at para. 83.](#)

[Bank of Nova Scotia v. Societe General \(Canada\), \[1988\] A.J. No. 332 \(C.A.\), per Stratton J.A.](#)

agreement evidenced an unequivocal intention to create a trust, extremely “strong indications must be found to exist” to alter the plain meaning of the language and find that no trust exists.<sup>37</sup>

41. With respect to the certainty of “subject matter”, the Ontario Court of Appeal in its 2019 decision, *Royal Bank of Canada v. A-1 Asphalt Maintenance Ltd.*,<sup>38</sup> affirmed that the subject-matter is “ascertained when it is a fixed amount or a specified piece of property”. In *A-1 Asphalt*, the Court held that a statutory trust under the *Construction Lien Act* took priority over the interests of a secured creditor under section 67(1)(a) of the *BIA* because the statutory trust met the requirements of a common law trust, including the requirement of certainty of subject-matter.

42. The Court held that such certainty is ascertainable when a method by which the subject-matter can be identified is available from the terms of the trust or otherwise.<sup>39</sup> This means that the co-mingling of trust funds with other monies will not defeat the claim to a trust where those funds are ascertainable:

Commingling of this kind does not deprive trust property of the required element of certainty of subject matter. Commingling of trust money with other money can destroy the element of certainty of subject matter, but only where commingling makes it impossible to identify or trace the trust property.<sup>40</sup> [emphasis added]

43. In this case, all of the elements of an express or implied trust have been established:

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<sup>36</sup> [\*Ontario \(Securities commission\) v. Portus Alternative Asset Management Inc.\*, \[2006\] O.J. No. 1121 \(Sup. Ct.\), per Campbell J. at para. 68.](#)

<sup>37</sup> [\*A & A Jewellers Limited v Royal Bank of Canada\* \(2001\), 53 O.R. \(3d\) 97 \(C.A.\), per Moldaver J.A. at para. 37. See also \*Air Canada v. M & L Travel Ltd.\*, \[1993\] S.C.J. No. 118, per Iacobucci J. at para. 23.](#)

<sup>38</sup> [2019 ONCA 9, per Sharpe J.A.](#)

<sup>39</sup> [\*Royal Bank of Canada v A-1 Asphalt Maintenance Ltd\*, supra at para. 80.](#)

<sup>40</sup> [\*Royal Bank of Canada v A-1 Asphalt Maintenance Ltd\*, supra at paras. 87 & 97-99.](#)

- (a) ***Certainty of Intention.*** There is no doubt that the parties intended for Arc to collect and hold the Tax Credits in trust for Spin Master. This is evidenced by the express terms of the Spin Master PSA and the circumstances surrounding its execution. Section 6(a) of the Spin Master PSA expressly provides that Arc “acknowledges and agrees that [Spin Master] alone shall be entitled to all Tax Credits...including the OCASE Tax Credit, which [Arc] shall claim and collect in trust on behalf of [Spin Master]” [emphasis added]. At no point has Arc disputed that the Tax Credits were to be held in trust for Spin Master. As stated in the Spin Master PSA, Arc was required to “remit one hundred percent (100%) [of the OCASE Tax Credit] to [Spin Master] within three (3) business days of [Arc’s] receipt of same”.

Moreover, the circumstances surrounding the execution of the Spin Master PSA make it clear that the Tax Credits were held in trust and were never included in any collateral owned by the Defendants against which GP had a charge.

Spin Master wanted to keep its overall costs lower, so it agreed to pre-pay the Tax Credits on the basis that when the Tax Credits were received by Arc, they would be received in trust and paid out to Spin Master. Moreover, at no time was GP provided with any information or certificate in which Spin Master agreed to forgo or to assign its trust in the Tax Credits to any third party. GP should not now obtain the benefit of the funds that belong to Spin Master. The Credit Agreement and the borrowing certificates thereunder between GP and the Defendants make no reference to Spin Master or the Tax Credits.

Accordingly, the parties' intention to create an express trust for Spin Master's benefit is clear;

- (b) ***Certainty of Subject-Matter.*** There is no doubt that the Tax Credits can be identified with sufficient exactness under the Spin Master PSA so as to be ascertained at the time the trust was created. Section 6(a) expressly identifies the applicable credits as the Ontario File and Television Tax Credit, i.e. the OFTTC Tax Credit, the Ontario Special Effects Tax Credit, i.e. the OCASE Tax Credit, as well the federal Tax Credits. Under sections 6(a) and (b) of the Spin Master PSA, the OCASE Tax Credit is expressly identified as the tax credit to be collected "in trust" on behalf of Spin Master. Whether or not the Tax Credits were co-mingled with other funds held by Arc does not deprive the Tax Credits of the required element of certainty of subject matter, as set out in the case law above. The amounts of the Tax Credits are easily identifiable or traceable; and
- (c) ***Certainty of Object.*** Section 6(a) of the Spin Master PSA is clear that the Tax Credits were to be held "in trust" by Arc for Spin Master's benefit. Spin Master is expressly and easily identified under the PSA. The Tax Credits held for Spin Master's benefit are easily identified and traceable.

44. Accordingly, there is no doubt that the Tax Credits are the subject-matter of an express or implied trust under Spin Master PSA. They do not constitute the "property" of the bankrupt for the purpose of section 67(1)(a) of the *BIA*.

- ii. ***In the Alternative, Tax Credits Are Subject to a Constructive Trust for Spin Master's Benefit***



45. In addition to an express trust, the Courts may impose a constructive trust in order to defeat an unjust enrichment by a secured creditor.

46. The test for unjust enrichment requires a benefit in the hands of the defendant, a corresponding deprivation suffered by the plaintiff and the absence of a juristic reason for the retention of the benefit by the defendant.<sup>41</sup>

47. The test for finding a constructive trust based on wrongful conduct is as follows:

- (a) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
- (b) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
- (c) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
- (d) There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case, e.g., the interests of intervening creditors must be protected.<sup>42</sup>

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<sup>41</sup> [\*Garland v. Consumers' Gas Co.\*, 2004 SCC 25, per Iacobucci J. at para. 30.](#)

<sup>42</sup> [\*Re Redstone Investment Corp.\*, 2015 ONSC 533, per Morawetz R.S.J. at para. 68.](#)

48. Broadly speaking, a constructive trust may be imposed where “good conscience” so requires it:

It thus emerges that a constructive trust may be imposed where good conscience so requires. The inquiry into good conscience is informed by...the dual reasons for which constructive trusts have traditionally been imposed: to do justice between the parties and to maintain the integrity of institutions dependent on trust-like relationships. Finally, it is informed by the absence of an indication that a constructive trust would have an unfair or unjust effect on the defendant or third parties, matters which equity has always taken into account. Equitable remedies are flexible; their award is based on what is just in all the circumstances of the case.<sup>43</sup> [emphasis added]

49. In this case, Spin Master submits that if this Honourable Court finds that the Tax Credits are not the subject of an express or implied trust, the Court should impose a constructive trust for the following reasons:

- (a) Arc was under a contractual and equitable obligation to pay the OCASE Tax Credits, within three days of receipt, to Spin Master. As section 6(a) of the Spin Master PSA makes clear, Arc acted as agent for Spin Master to both “claim and collect” and “remit” the Tax Credits “in trust”. Spin Master relied on Arc to fulfill its duties as its agent. If the Tax Credits are not remitted back to Spin Master, as the parties intended, Arc would be in breach of its equitable obligations to Spin Master, as principal;
- (b) Spin Master has a legitimate reason for protecting its proprietary interest in the Tax Credits. The Tax Credits were only ever intended as Spin Master’s property. They were never intended to act as security for Arc’s obligations to GP or other secured creditors. To ignore the fact that the Tax Credits were held in trust for Spin Master would deprive Spin Master of its proprietary interests;

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<sup>43</sup> [Cummings Estate v. Peopledge HR Services Inc., 2013 ONSC 2781, per Newbould J. at para. 17, citing Soulos v. Korkontzilas, \[1997\] 2 S.C.R. 217, per McLachlin J. at para. 34.](#)

- (c) The imposition of a constructive trust would not be unjust in the circumstances of this case. It would protect Spin Master's proprietary rights and affirm the agency-principal relationship established between Arc and Spin Master. It would also affirm their contractual rights to each other. By contrast, ignoring the trust relationship between Arc and Spin Master in this case would allow the Tax Credits to be used as collateral for secured creditors, an outcome never intended by any of the parties;
- (d) The secured creditors, including GP, would receive a windfall if trust funds were allocated as security for Arc's obligations to them. By contrast, as the beneficiary of a trust, Spin Master would suffer a corresponding deprivation. There is no juristic reason for GP's enrichment in this case. Spin Master's entry into the Spin Master PSA with Arc deliberately factored in the cost of the Tax Credits, as per industry standard. Granting the tax credits to GP as a secured creditor of Arc would result in an unjust enrichment, contrary to the express terms of the Spin Master PSA, the equitable obligations owed by Arc as agent of Spin Master, and industry customs and standards; and
- (e) There are good policy reasons for imposing a constructive trust in this case. The obvious purpose of the Tax Credit scheme is to incentivize the employment of Canadian and Ontario labour in the production and film industries. The purpose of the Tax Credits is to keep production labour in Canada and Ontario. That goal is undermined from a policy perspective if the Tax Credits can be used as a collateral for loans and secured creditors. It was not the Legislature's intention to undermine the Tax Credit program in Ontario (and Canada) by allowing funds intended to

promote the use of Ontario labour in the film industry to act as security for creditors like GP. Moreover, if Spin Master is denied its proprietary rights in the Tax Credits, the effect would be that Spin Master “double paid” for a certain portion of the production services and certainly more than Spin Master ever contracted to pay. The denial of the payment of the Tax Credits to Spin Master on this Motion would negate the entire rationale for its deal with Arc and its selection of Ontario as the forum in which to produce Rusty Rivets.

50. Accordingly, should this Honourable Court find that the Tax Credits were not impressed with an express or implied trust, Spin Master submits that the Court should impose a constructive trust on these funds to the benefit of Spin Master.

*iii. In the Further Alternative, Tax Credits Impressed with a a Quistclose Trust*

51. A *Quistclose* trust arises when funds are advanced for a specific purpose, but cannot be or are not used for that purpose.<sup>44</sup>

52. A *Quistclose* trust will be found where:

- (a) The funds are advanced for a specific purpose;
- (b) The funds are paid to the party in receivership at a time when the party was operating under court supervised creditors' protection or under the supervision of the Monitor; and
- (c) If the funds are returned, there is no effect on the other creditors of the party under receivership. The funds were never the property of the party under receivership and its creditors have no entitlement to the funds in question.<sup>45</sup>

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<sup>44</sup> [Re Redstone Investment Corp., supra at para. 83.](#)

<sup>45</sup> [Re Redstone Investment Corp., supra at para. 84.](#)

53. Accordingly, a *Quistclose* trust is imposed in equity to ensure that the funds used solely for their intended purpose and returned to the parties who advanced them.

54. In *Cummings Estate v. Peopledge HR Services Inc.*,<sup>46</sup> a 2013 decision of the Ontario Superior Court, the Court held that funds never intended for the respondent payroll processing company, Peopledge, or its creditors were impressed with an equitable *Quistclose* or constructive trust where “good conscience” so required:

...it would appear to be inequitable to permit the general creditors of Peopledge other than the Customers who provided the funds to now be paid their claims from those funds. It was never intended that Peopledge or its creditors would have any beneficial interest in these funds. The issue is whether there is a basis in law to achieve this result. In my view there is.

...

If any particular Customer of Peopledge had a trust agreement with Peopledge, this *Quistclose* type of trust would not be necessary to impress the payroll funds advanced to Peopledge with a trust. For any Customer of Peopledge without an express trust agreement, I accept that a trust as in *Quistclose* should be recognized.

...

...In this case, Peopledge and its general creditors would be enriched by having the ability to access the payroll funds advanced by Customers to Peopledge. The Customers, and their employees, would be deprived by not having the funds paid to them and there would be no juristic reason for this to occur. It was never intended that Peopledge, or its creditors, would have any beneficial interest in the payroll funds advanced by Customers.<sup>47</sup> [emphasis added]

55. Spin Master submits in the alternative that there are good reasons to impose a *Quistclose* trust in this case.

56. The Tax Credits were advanced for a specific purpose, i.e. to reimburse Spin Master for employing Canadian and Ontario Labour in the production of “Rusty Rivets Season One”. The Tax Credits were paid when Arc was in receivership. The Tax Credits were never Arc’s property

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<sup>46</sup> [2013 ONSC 2781, per Newbould J.](#)

<sup>47</sup> [Cummings Estate v. Peopledge HR Services Inc., supra at paras. 13, 14 & 18.](#)

and Arc's secured creditors have no basis to claim otherwise. It would be inequitable to permit Arc's general creditors to be paid their claims from the Tax Credits, which were never intended for that purpose. It would unjustly enrich GP and provide little incentive for production companies in Canada to employ and use Canadian labour.

57. In the circumstances, a *Quistclose* trust should be impressed on the Tax Credits.

***iv. Complete and Absolute Assignment of Tax Credit***

58. Where there has been the assignment of a debt and the assignor becomes bankrupt or otherwise seeks protection from its creditors, the debt does not form part of the bankrupt's estate. If the assignor receives payment of the principal of the debt, these receipts are held in trust for the assignee. They are unavailable for distribution amongst the assignor's creditors:

...the Agreement in this case completely and irrevocably assigned to Pythe Navis 6% of all proceeds received from the insurer in respect of the loss. No suggestion of a lien, charge or security interest arises either on the face of the document or otherwise. In the absence of any persuasive argument to the contrary, I see no error in the trial judge's conclusion that the Agreement effected a 'complete' (to use a neutral term) assignment of part of the insurance proceeds to Pythe Navis and did not create a security interest for purposes of the BIA or otherwise...<sup>48</sup> [emphasis added]

59. In this case, Arc as assignor received the Tax Credits in trust for Spin Master as assignee. Under the Spin Master PSA and in equity, this constitute a "complete assignment", such that it cannot form the subject-matter of GP's security interest under section 67(1)(a) of the *BIA*.

60. Accordingly, the Tax Credits amount to a proprietary trust interest under section 67(1)(a) and are not at all impressed with GP's security interest.

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<sup>48</sup> [See, for example, \*Re Redstone Investment Corp.\*, 2015 ONSC 533, per Morawetz R.S.J. at para. 54, citing \*Pythe Navis Adjusters Corp. v. Columbus Hotel Co. \(1991\)\*, 2014 BCCA 262, per Newbury J.A. at para. 32.](#)

**v. *The PPSA does not Apply to the Tax Credits***

61. Section 2 of the *Personal Property Security Act* (the “*PPSA*”)<sup>49</sup> provides that the *Act* only applies to every transaction that in substance creates a security interest:

2. Subject to subsection 4 (1), this *Act* applies to,

(a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,

(i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and

(ii) an assignment, lease or consignment that secures payment or performance of an obligation.<sup>50</sup>

62. “Security interest” is defined under the *PPSA* as:

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or performance of an obligation,

(a) the interest of a transferee of an account or chattel paper, and

(b) the interest of a lessor of goods under a lease for a term of more than one year.<sup>51</sup>

63. “Collateral” is defined under the *PPSA* as “personal property that is subject to a security interest”.<sup>52</sup>

64. In this case, the Tax Credits do not constitute “collateral” under the *PPSA*. The Tax Credits are not the personal property of Arc that secure payment or the performance of an obligation of Arc. Arc could not grant a security interest in property it did not own.

65. Accordingly, the Tax Credits do not meet the definition of “collateral” for the purposes of subsection 2(1) of the *PPSA*. The *PPSA* simply does not apply.

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<sup>49</sup> [R.S.O. 1990, c.P.10.](#)

<sup>50</sup> [PPSA, supra at ss. 2, 4\(1\) & 20\(1\).](#)

<sup>51</sup> [PPSA, supra at s.1\(1\).](#)

<sup>52</sup> [PPSA, supra at s.1\(1\). See generally Centennial Plymouth Chrysler \(1973\) Ltd. \(c.o.b. Klean Auto Leasing\) v. Conlin, \[2000\] O.J. No. 709 \(Sup. Ct.\), per Marchand J.](#)

**PART IV - ORDER REQUESTED**

66. For all the foregoing reasons, Spin Master seeks an Order that the Tax Credits constitute trust property in favour of Spin Master and are not in any way impressed with GP's security interest. Spin Master seeks an Order that the Receiver distribute the proceeds relating to the Tax Credits to Spin Master. Spin Master seeks the costs of this Motion, payable by GP and the Receiver, on a substantial indemnity scale.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of June, 2020.



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S. Fay Sulley / Marco P. Falco, Torkin Manes  
LLP, Lawyers for the Responding Party, Spin  
Master Ltd.



## SCHEDULE “A”

### LIST OF AUTHORITIES

*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60

*Bank of Nova Scotia v. Societe General (Canada)*, [1988] A.J. No. 332 (C.A.)

*Ontario (Securities commission) v. Portus Alternative Asset Management Inc.*, [2006] O.J. No. 1121 (Sup. Ct.)

*A & A Jewellers Limited v Royal Bank of Canada* (2001), 53 O.R. (3d) 97 (C.A.)

*Air Canada v. M & L Travel Ltd.*, [1993] S.C.J. No. 118

*Royal Bank of Canada v A-1 Asphalt Maintenance Ltd.*, 2019 ONCA 9.

*Garland v. Consumers’ Gas Co.*, 2004 SCC 25

*Re Redstone Investment Corp.*, 2015 ONSC 533

*Cummings Estate v. Peopledge HR Services Inc.*, 2013 ONSC 2781

*Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217

*Re Redstone Investment Corp*, 2013 ONSC 2781

*Pythe Navis Adjusters Corp. v. Columbus Hotel Co. (1991)*, 2014 BCCA 262

*1231640 Ontario Inc.*, 2007 ONCA 810

*Centennial Plymouth Chrysler (1973) Ltd. (c.o.b. Klean Auto Leasing) v. Conlin*, [2000] O.J. No. 709 (Sup. Ct.)

## SCHEDULE “B”

### 1. **BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, c. B-3**

#### **Property of bankrupt**

**67 (1)** The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person;

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;

(b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);

(b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or

(b.3) without restricting the generality of paragraph (b), property in a *registered retirement savings plan*, a *registered retirement income fund* or a *registered disability savings plan*, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that

- (i) is not subject to the operation of this Act, or
- (ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the *Family Orders and Agreements Enforcement Assistance Act*, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

#### **Marginal note:Deemed trusts**

(2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

### **Marginal note:Exceptions**

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a “federal provision”) nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

- (a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or
- (b) the province is a ***province providing a comprehensive pension plan*** as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a ***provincial pension plan*** as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

### **Vesting of property in trustee**

**71** On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

R.S., 1985, c. B-3, s. 71 1997, c. 12, s. 67 2004, c. 25, s. 44.

## **2. PERSONAL PROPERTY SECURITY ACT, R.S.O. 1990, c.P.10**

1 (1) In this Act,

“collateral” means personal property that is subject to a security interest; (“bien grevé”)

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or performance of an obligation,

- (a) the interest of a transferee of an account or chattel paper, and
- (b) the interest of a lessor of goods under a lease for a term of more than one year.

2. Subject to subsection 4 (1), this Act applies to,
- (a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,
    - (i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and
    - (ii) an assignment, lease or consignment that secures payment or performance of an obligation;
  - (b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation; and
  - (c) a lease of goods under a lease for a term of more than one year even though the lease may not secure payment or performance of an obligation. R.S.O. 1990, c. P.10, s. 2; 2006, c. 34, Sched. E, s. 2.
  - (h) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or
    - (i) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1990, c. P.10, s. 4 (1); 2006, c. 8, s. 124; 2017, c. 2, Sched. 3, 8 (1).

- 4 (1) Except as otherwise provided under this Act, this Act does not apply,
- (a) to a lien given by statute or rule of law, except as provided in subclause 20 (1) (a) (i) or section 31;
  - (b) to a deemed trust arising under any Act, except as provided in subsection 30 (7);
  - (c) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;
  - (d) to a transaction under the *Pawnbrokers Act*;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 4 (1) (d) of the *Act* is repealed and the following substituted: (See: 2019, c. 4, Sched. 2, s. 2)

- (d) to a transaction between a pledgor and a person who carries on the business of taking, by way of pawn or pledge, any article for the repayment of money lent on the basis of the pawn or pledge;
- (e) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property, other than,
  - (i) an interest in a fixture, or
  - (ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property;
- (f) to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies;

(g) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose unless the vendor remains in apparent control of the business after the sale;

(h) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or

(i) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1990, c. P.10, s. 4 (1); 2006, c. 8, s. 124; 2017, c. 2, Sched. 3, 8 (1).

4(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. R.S.O. 1990, c. P.10, s. 4 (2).

s. 20 (1) Except as provided in subsection (3), until perfected, a security interest,  
(a) in collateral is subordinate to the interest of,  
(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or  
(ii) a person who causes the collateral to be seized through execution, attachment, garnishment, charging order, equitable execution or other legal process, or  
(iii) all persons entitled by the *Creditors' Relief Act, 2010* or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has caused seizure of the collateral, or the proceeds of such property;  
(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;  
(c) in chattel paper, documents of title, instruments or goods is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;  
(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest. R.S.O. 1990, c. P.10, s. 20 (1); 2006, c. 8, s. 132; 2010, c. 16, Sched. 4, s. 28.

20(2) The rights of a person,  
(a) who has a statutory lien referred to in subclause (1) (a) (i) arise,  
(i) in the case of the bankruptcy of the debtor, at the effective date of the bankruptcy, or  
(ii) in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of the Act creating the lien;

(b) under clause (1) (b) in respect of the collateral are to be determined as of the date from which the person's representative status takes effect. R.S.O. 1990, c. P.10, s. 20 (2).

20(3) A purchase-money security interest that is perfected by registration,  
(a) in collateral, other than an intangible, before or within 15 days after,  
    (i) the debtor obtains possession of the collateral, or  
    (ii) a third party, at the request of the debtor, obtains possession of the collateral,  
        whichever is earlier; or  
(b) in an intangible before or within 15 days after the attachment of the security interest in the intangible,  
has priority over an interest set out in subclause (1) (a) (ii) and is effective against a person described in clause (1) (b). R.S.O. 1990, c. P.10, s. 20 (3); 2010, c. 16, Sched. 5, s. 4 (2); 2017, c. 2, Sched. 3, 8 (2).

**GROSVENOR PARK MEDIA FUND L.P.**  
Plaintiff

-and- **ARC PRODUCTIONS LTD., et al.**  
Defendants

Court File No. CV-16-11472-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**RESPONDING FACTUM OF SPIN MASTER LTD.**

**TORKIN MANES LLP**

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Lawyers for Spin Master Ltd.

RCP-E4C (May 1, 2016)

**TAB B.**



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

B E T W E E N:

GROSVENOR PARK MEDIA FUND L.P.

Plaintiff

-and-

ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD.,  
ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE  
JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS  
INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS  
INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS  
LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS  
MURRAY, KALLAN KAGAN and PETER KOZIK

Defendants

**REPLY FACTUM OF THE RESPONDING PARTY SPIN MASTER LTD.  
(RE: Motion for Distribution Approval)**

July 17, 2020

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## **PART I - OVERVIEW**

1. In reply to GP's Factum on this Motion, Spin Master submits the following:

- (a) ***The PPSA Does not Apply to Defeat Spin Master's Trust Interest in the Tax Credits.*** On this Motion, GP conveniently ignores the fundamental nature of the Tax Credits as trust property in favour of Spin Master in order to give primacy to its interests under the *PPSA*. However, GP's position is inconsistent with Canadian case law which makes it clear that proprietary trust interests are not "security interests" or "collateral" for the purposes of provincial *PPSA* legislation. Rather, they constitute "property held by the bankrupt in trust" under section 67(1)(a) of the *BIA*. In any event, Ontario law is clear that equity can intervene to impose a trust in order to advance the principle of commercial morality, even if to do so would defy the ordinary statutory ranking of creditors. In this case, Spin Master does not stand on the same footing as an ordinary creditor of Arc. The law of trust and equity is not an "archaic form of security", as GP alleges. To the contrary, equity in this case would ensure that creditors such as GP do not undermine Arc's and Spin Master's clear intent to treat the Tax Credits as trust property.
- (b) ***The Tax Credits are Held in Trust and are not "Disguised" Security Interests.*** Throughout its factum, GP repeatedly attempts to cast the Tax Credits in favour of Spin Master as a "disguised security interest" for which there is no "certainty of subject matter" so as to constitute a trust. With respect, GP attempts to create uncertainty where there is none. Section 6(a) of the Spin Master PSA expressly identifies the applicable Tax Credits. The fact that the exact amounts that would

be received by Arc could not be determined with exact precision until production work was carried out does not lead to a fatal uncertainty of subject-matter, as GP suggests. All parties understood what the Tax Credits were. They remain clear and ascertainable;

- (c) ***GP's Reliance on Deemed Statutory Trusts is Misplaced.*** In its factum, GP places extensive reliance on the law governing priorities with respect to statutory deemed trusts under subsections 67(2) and (3) of the *BIA*. It is not entirely clear why GP relies on these subsections. The issue is not whether the Tax Credits give rise to a statutory deemed trust, but whether the Tax Credits are trust property for the purposes of subsection 67(1) of the *BIA*. To the extent that Spin Master relies on any case law concerning a statutory deemed trust, it is to illustrate the requirements of a trust at common law;
- (d) ***There is a Clear Equitable Wrong leading to GP's Unjust Enrichment.*** Contrary to GP's position, if GP is awarded the Tax Credits on this Motion, it would allow them to be used as collateral for secured creditors, an outcome never envisioned by Arc or Spin Master and contrary to the express intention by the parties to hold the Tax Credits in trust. GP's effort on this Motion to cast the Tax Credits as an ordinary security interest would undermine their very purpose, which is to incentivize the employment of Canadian and Ontario labour in film production, not act as collateral for secured creditors. The equities clearly favour recognizing the relationship between Arc and Spin Master *vis-à-vis* the Tax Credits for what it truly is—a trust relationship.

2. Accordingly, Spin Master seeks an Order that the Tax Credits are trust property to be distributed to Spin Master in these proceedings.

3. For ease of reference, Spin Master relies in this Factum on all terms as defined in the Responding Factum of Spin Master Ltd., dated June 19, 2020.

## **PART II - ARGUMENT**

### **i. PPSA Does Not Apply. There is No Security Interest or Collateral in the Tax Credits as Trust Property.**

4. Section 2(1) of Ontario’s *PPSA* states that the *Act* applies to every transaction that “in substance creates a security interest...”.<sup>1</sup>

5. A “security interest” is defined under the *PPSA* as:

...an interest in personal property that **secures payment or performance of an obligation**, and includes, whether or not the interest secures payment or performance of an obligation,

(a) the interest of a transferee of an account or chattel paper, and

(b) the interest of a lessor of goods under a lease for a term of more than one year.<sup>2</sup> [**emphasis added**]

6. GP argues that the Tax Credits constitute an interest of a “transferee of an account”, such that they amount to a “security interest” for the purposes of the *PPSA*, whether or not that interest is “premised on the payment of an obligation”.<sup>3</sup> This argument could have merit, but for the fact that it ignores the fundamental nature of the Tax Credits as the subject-matter of a an express, implied, resulting or constructive trust, not the “transfer of an account”.

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<sup>1</sup> [PPSA, supra at s.2\(1\).](#)

<sup>2</sup> [PPSA, supra at s.1\(1\).](#)

<sup>3</sup> Factum of the Plaintiff, undated (“**GP Factum**”), at paras. 40 & 42.

7. The Tax Credits do not meet the definition of “security interest” or “collateral” under the *PPSA*. The proper analysis is to understand them as trust property for the purposes of subsection 67(1)(a) of the *BIA*. This analysis accords with Canadian case law that excludes trust property from the application of provincial *PPSA* legislation where “security interests” are not at issue.

8. In *Re Ellingsen*, a 2000 decision of the British Columbia Court of Appeal,<sup>4</sup> a purchaser obtained possession of a truck from a dealership, before financing for the truck was arranged. The purchase agreement was conditional on the arrangement of financing for the truck. No security interest was registered in the vehicle under the B.C. *PPSA*. Ultimately, financing was never arranged and the purchaser made an assignment into bankruptcy. The dealership claimed a beneficial interest to the truck. It claimed that the purchaser only held bare legal title to the truck and that the purchaser was a trustee of the beneficial interest in favour of the dealership. The dealership argued that the *PPSA* had no application because the purchaser never held a “security interest” in the truck.

9. Citing both the B.C. *PPSA* and section 67(1) of the *BIA*, the British Columbia Court of Appeal agreed with the dealership and imposed a constructive trust. In so doing, the Court rejected the Trustee in Bankruptcy’s argument that the constructive trust in this case amounted to a “security interest” as defined under the *PPSA*:

The Trustee submits, in the alternative, that any equitable interest supporting a trust in the circumstances amounts to a security interest for the purposes of the *PPSA*, in the sense that that interest only existed as a method for securing payment of the truck.

...

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<sup>4</sup> [\(2000\), 1 P.P.S.A.C. \(3d\) 307 \(B.C.C.A.\), per Donald J.](#)

**...I do not know how it could be said that a constructive trust secures a payment or the performance of an obligation; rather its purpose is to prevent an unjust outcome.**<sup>5</sup> [emphasis added]

10. The Court further held that the *PPSA* did not provide a “juristic reason” for the enrichment. There was never anything to register under the *PPSA* as there was no “security interest” in the truck and the truck did not amount to “collateral”:

If [the dealership’s] interest is a security interest the consequences of not registering the interest are prescribed by s. 20(b)(i) of the *PPSA*. The collateral goes into the general estate by operation of statute and hence a juristic reason exists for the enrichment. **It is necessary to repeat, in order to deal with this point, that in my opinion [the dealership’s] interest was not a security interest within the meaning of the Act. There was nothing to register. The truck was not collateral to any enforceable contract.** The substance of the transaction, not its form, must determine whether a security interest was created...It follows that s. 20(b)(i) does not provide a juristic reason in answer to a claim of unjust enrichment.<sup>6</sup> [emphasis added]

11. Moreover, the Court concluded that the imposition of a constructive trust would not reorder the priority of other creditors, because the dealership, as the beneficiary of a constructive trust, did not have the same status as an “ordinary creditor”. This is the same argument advanced by GP on this Motion.<sup>7</sup> The Court in *Re Ellingson* expressly rejected it:

...In my judgment, for the reasons I have given, [the dealership] **does not stand on the same footing as the general creditors and as a result I do not think the remedy I would impose unfairly deprives other creditors of an asset to which they have any reasonable entitlement.**<sup>8</sup> [emphasis added]

12. A similar line of reasoning was applied by Saskatchewan Court of Queen’s Bench in Bankruptcy in the 1991 case, *Graff v. Bitz Estate (Trustee of)*.<sup>9</sup>

<sup>5</sup> *Re Ellingsen, supra* at paras. 27 & 28. Note that “security interest” for the purposes of Ontario’s *PPSA* is similarly defined as “an interest in personal property **that secures payment or performance of an obligation**, and includes, whether or not the interest secures payment or performance of an obligation...”: see *PPSA, supra* at s.1(1).

<sup>6</sup> *Re Ellingsen, supra* at para. 30.

<sup>7</sup> GP Factum, at para. 64.

<sup>8</sup> *Re Ellingsen, supra* at para. 37.

<sup>9</sup> [1991] S.J. No. 605 (Q.B.), per Hunter J.



13. In *Graff*, Bitz operated a specialty car business. Bitz purchased a Porche and the applicant advanced him money to purchase the Porche for himself. The vehicle remained registered in Bitz's name. Bitz declared bankruptcy. The Trustee in Bankruptcy claimed that the applicant's advance was simply a loan and that the applicant was merely an unsecured creditor. The Trustee argued that the applicant's interest in the Porche was therefore subordinate to that of the Trustee under the Saskatchewan *PPSA*. The applicant argued that Bitz held the Porche in trust for the applicant.

14. Relying on subsection 67(1) of the *BIA*, the Court concluded that Bitz held the Porche in a resulting trust for the applicant. The Court rejected the argument that, as the beneficiary of a resulting trust, the applicant was simply an unsecured creditor:

**The Trustee argues that in the instant case, Mr. Graff [the applicant] could have protected himself by registering a security interest under The Personal Property Security Act. He did not do so and he, therefore, ranks as an unsecured creditor.**

I do not agree with the Trustee that the receipt for the \$6,300.00 U.S. executed by Mr.'s Graff and Bitz evidences a loan. It is very clear from the receipt that the funds were to be used by Mr. Bitz for the purchase of a specific article, namely, a "1985 1/2 Porsche 944". Furthermore, it was specified that this vehicle was to be purchased from "MPLS Auto Auction". In this respect, there is a clear description of the article to be purchased, absent only the serial number of the vehicle. Further, it is clear that Mr. Graff supplied the funds for the specific purpose of purchasing the Porsche and that Mr. Graff was the "owner" of the vehicle. It is true that once Mr. Bitz had completed the purchase on behalf of Mr. Graff, he did not register ownership in the vehicle to Mr. Graff. The evidence of a contractual relationship between Mr. Bitz and Graff was not in the purchase of the vehicle, it was the agreement to share any net profit that in the event the Porsche was sold and Mr. Bitz would then receive 40% as the selling agent.

So far as the requirements necessary to establish an express trust, it is clear that the elements of certainty of subject and certainty of object are satisfied. The issue is whether there is certainty of intent. There is no question but that the parties did not use "trust" language. However, as noted by Registrar Ferron in *Re 389179 Ontario Limited, supra*, all three elements need only be satisfied for the purpose of an express trust but not for a resulting trust. **I am satisfied that the elements have been established to find that the Porsche belonged to Mr. Graff and that Mr. Bitz had possession and registered ownership of the vehicle (as to the later, not with the express permission of Mr. Graff) and that the Porsche was held by Mr. Bitz on a resulting trust for Mr. Graff.**

Because the elements of a resulting trust have been satisfied, this case is clearly distinguishable from the situation of an inventory financier and **I find that the arrangement between Mr. Bitz and Mr. Graff did not constitute a security interest (purchase-money or otherwise) within the**

**meaning of the Personal Property Security Act, supra**, as suggested by the trustee in bankruptcy.  
<sup>10</sup> **[emphasis added]**

15. The reasoning in the *Ellingsen* and *Bitz Estate* cases, *supra*, is consistent with Ontario authority which has made it clear that it is appropriate for equity to intervene to impose a remedial trust, despite the reality that to do so defy the formal statutory process of, for example, the *BIA*.<sup>11</sup>

16. Accordingly, GP's emphasis on the Tax Credits as amounting to nothing more than a security interest or unsecured obligation under the *PPSA*<sup>12</sup> ignores:

- (a) The fundamental nature of the Tax Credits as an express, implied, constructive, resulting, *Quistclose* trust or an absolute assignment;
- (b) That the trust created between Spin Master and ARC under Spin Master PSA or otherwise means that the Tax Credits could not constitute a "security interest" or "collateral" under the *PPSA*;
- (c) That as the beneficiary of a trust relationship, Spin Master does not stand on the same footing as a general creditor of Arc; and
- (d) Ontario law is clear that equity may intervene to impose a remedial trust, despite the fact that to do so could defy the ordinary statutory ranking of creditors under the *PPSA* or the *BIA*.

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<sup>10</sup> [\*Graff v. Bitz Estate, supra.\*](#)

<sup>11</sup> [See \*Wilson Estate \(Re\)\*, \[2019\] O.J. No. 1067, per Chiappetta J. at paras. 45-47, citing \*Re Ascent\*, 9 P.P.S.A.C. \(3d\) 176 \(Sup. Ct.\), per Deputy Registrar Whittie at para. 17.](#)

<sup>12</sup> GP Factum, at para. 39.

17. The law of trust and equity is not an “archaic form of security” that allows Spin Master to circumvent the *PPSA* regime, as GP suggests.<sup>13</sup> To the contrary, equity in this case ensures that creditors such of GP do not undermine Arc’s and Spin Master’s clear intent to treat the Tax Credits as trust property.

18. Accordingly, GP’s submission that the *PPSA* regime governs this dispute at the expense of equity is misplaced and ought to be rejected.

**ii. The Tax Credits, as Trust Property, are not “Disguised” Security Interests**

19. Throughout its factum, GP attempts to cast the Tax Credit trust in favour of Spin Master as a “disguised security interest”.<sup>14</sup> GP argues that the Spin Master PSA does not create a trust in the Tax Credits because there was allegedly no “certainty of subject[-matter]” at the time the contracts were entered into.<sup>15</sup> GP states because no tax credits could be applied until eligible expenses were incurred, it would not be known exactly what amounts would be received by Arc.<sup>16</sup> With respect, this argument misses the mark. It tries to create “uncertainty” where there is none.

20. In *Royal Bank of Canada v. A-1 Asphalt Maintenance*, the Ontario Court of Appeal held that language as broad as “all amounts, owing to a contractor or subcontractor, whether or not due or payable” was sufficient to create certainty of subject-matter for the purposes of a trust.<sup>17</sup> In this case, the Spin Master PSA is even more specific. Section 6(a) of the Spin Master PSA expressly identifies the applicable credits as the Ontario File and Television Tax Credit, the OCASE Tax

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<sup>13</sup> GP Factum, at para. 46.

<sup>14</sup> GP Factum, at para. 54.

<sup>15</sup> GP Factum, at para. 56.

<sup>16</sup> GP Factum, at para. 56.

<sup>17</sup> [\*Royal Bank of Canada v. A-1 Asphalt Maintenance Ltd.\*, 2019 ONCA 9, per Sharpe J.A. at para. 84.](#)

Credit as well as the federal Tax Credits. The fact that the exact amounts that would be received by Arc could not be determined with exact precision until work was carried out does not lead to an uncertainty of subject matter, as GP suggests.<sup>18</sup>

**iii. The Law Regarding Statutory Deemed Trusts is Irrelevant**

21. In its Factum, GP's places extensive reliance on the law governing priorities with respect to statutory deemed trusts under subsections 67(2) and (3) of the *BIA*.<sup>19</sup> It is not entirely clear why GP is relying on these subsections. GP's argument is misplaced and misconstrues Spin Master's position.

22. Sections 67(2) and (3) of the *BIA* largely concern "statutory deemed trusts" as set out in other statutes and have nothing to do with the express language of subsection 61(1)(a) of the *BIA*, on which Spin Master relies, which provides that the property of a bankrupt divisible among its creditors shall not comprise...property held by the bankrupt in trust for any other person".<sup>20</sup> To the extent that GP relies on the statutory deemed trust provisions under the *BIA*, its argument should be dismissed.

23. The cases on which Spin Master relies<sup>21</sup> which involve deemed statutory trusts, such as trusts under the *Construction Lien Act* (the "*CLA*"), are not being cited because Spin Master is taking the position on this Motion that the Tax Credits are the subject-matter of a deemed statutory trust under the *CLA*, for example. Rather, these cases are material to the extent they deal generally

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<sup>18</sup> GP Factum, at para. 56.

<sup>19</sup> GP Factum, at para. 55.

<sup>20</sup> *BIA*, *supra* at s.67(1)(a).

<sup>21</sup> [\*See, for example, Royal Bank of Canada v. A-1 Asphalt Maintenance, 2019 ONCA 9, per Sharpe J.A. at para. 9.\*](#)

with “trusts” and the requirements of a trust for the purpose of the exemption under section 61(1)(a) of the *BIA*. This is why GP cites no authority to substantiate its position in this regard.<sup>22</sup>

**iv. There is Clear Equitable Wrong Leading to GP’s Unjust Enrichment**

24. GP argues that Spin Master cannot point to a “separate, free-standing equitable wrong that occurred” such that Spin Master is entitled to a constructive trust.<sup>23</sup> This position misconstrues the test for a constructive trust which requires that Spin Master show the absence of a juristic reason for the retention of the Tax Credits by GP. It does not require Spin Master to show that an equitable wrong occurred.

25. In any event, if GP is entitled to the Tax Credits, contrary to the trust created by Arc and Spin Master, an equitable wrong has clearly occurred—it would allow the Tax Credits to be used as collateral for secured creditors, an outcome never envisioned or intended by any of the parties. It would further undermine the very purpose of the Tax Credits, which is to incentivize the employment of Canadian and Ontario labour in film production. The equities clearly favour recognizing the relationship between Arc and Spin Master *vis-à-vis* the Tax Credits for what it truly is—a trust relationship.

**PART III - ORDER REQUESTED**

26. Accordingly, for all the foregoing reasons, Spin Master seeks an Order that the Tax Credits constitute trust property in favour of Spin Master and are in no way impressed with GP’s security interest over Arc. Spin Master also seeks an order that the Receiver distribute the proceeds relating

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<sup>22</sup> GP Factum, at para. 56.

<sup>23</sup> GP Factum, at para. 62.

to the Tax Credit to Spin Master. Spin Master further seeks the costs of this Motion, payable by GP and the Receiver, on a substantial indemnity scale.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 17<sup>th</sup> day of July, 2020.

A handwritten signature in blue ink, appearing to be 'S. Fay Sulley / Marco P. Falco', is written over a horizontal line.

S. Fay Sulley / Marco P. Falco, Torkin Manes  
LLP, Lawyers for the Responding Party, Spin  
Master Ltd.

## **SCHEDULE “A”**

### **LIST OF AUTHORITIES**

1. *Ellingsen (Trustee of) v. Hallmark Ford Sales Ltd.*, 2000 BCCA 458
2. *Graff v. Bitz* (Trustee in Bankruptcy), 1991
3. In the Matter of the Bankruptcy of The Testamentary Estate of Jeffrey James Wilson, 2019 ONSC 1278
4. *Re Ascent*, 9 P.P.S.A.C. (3d) 176 (Sup. Ct.)
5. *Royal Bank of Canada v. A-1 Asphalt Maintenance*, 2019 ONCA 9

## SCHEDULE “B”

### 1. PERSONAL PROPERTY SECURITY ACT, R.S.O. 1990, C. P.10

1 (1) In this Act,

“collateral” means personal property that is subject to a security interest; (“bien grevé”)

\*\*\*

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or performance of an obligation,

- (a) the interest of a transferee of an account or chattel paper, and
- (b) the interest of a lessor of goods under a lease for a term of more than one year; (“sûreté”)

2. Subject to subsection 4 (1), this Act applies to,

(a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,

(i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and

(ii) an assignment, lease or consignment that secures payment or performance of an obligation;

(b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation; and

(c) a lease of goods under a lease for a term of more than one year even though the lease may not secure payment or performance of an obligation. R.S.O. 1990, c. P.10, s. 2; 2006, c. 34, Sched. E, s. 2.

4 (1) Except as otherwise provided under this Act, this Act does not apply,

(a) to a lien given by statute or rule of law, except as provided in subclause 20 (1) (a) (i) or section 31;

(b) to a deemed trust arising under any Act, except as provided in subsection 30 (7);

(c) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;



(d) to a transaction under the *Pawnbrokers Act*;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 4 (1) (d) of the *Act* is repealed and the following substituted: (See: 2019, c. 4, Sched. 2, s. 2)

(d) to a transaction between a pledgor and a person who carries on the business of taking, by way of pawn or pledge, any article for the repayment of money lent on the basis of the pawn or pledge;

(e) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property, other than,

(i) an interest in a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property;

(f) to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies;

(g) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose unless the vendor remains in apparent control of the business after the sale;

(h) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or

(i) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1990, c. P.10, s. 4 (1); 2006, c. 8, s. 124; 2017, c. 2, Sched. 3, 8 (1).

#### Rights under *Sale of Goods Act*

(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. R.S.O. 1990, c. P.10, s. 4 (2).

20 (1) Except as provided in subsection (3), until perfected, a security interest,

(a) in collateral is subordinate to the interest of,

(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or

(ii) a person who causes the collateral to be seized through execution, attachment, garnishment, charging order, equitable execution or other legal process, or

(iii) all persons entitled by the *Creditors' Relief Act, 2010* or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has caused seizure of the collateral, or the proceeds of such property;

(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

(c) in chattel paper, documents of title, instruments or goods is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;

(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest. R.S.O. 1990, c. P.10, s. 20 (1); 2006, c. 8, s. 132; 2010, c. 16, Sched. 4, s. 28.

Idem

(2) The rights of a person,

(a) who has a statutory lien referred to in subclause (1) (a) (i) arise,

(i) in the case of the bankruptcy of the debtor, at the effective date of the bankruptcy, or

(ii) in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of the Act creating the lien;

(b) under clause (1) (b) in respect of the collateral are to be determined as of the date from which the person's representative status takes effect. R.S.O. 1990, c. P.10, s. 20 (2).

Purchase-money security interest

(3) A purchase-money security interest that is perfected by registration,

(a) in collateral, other than an intangible, before or within 15 days after,

(i) the debtor obtains possession of the collateral, or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is earlier; or

(b) in an intangible before or within 15 days after the attachment of the security interest in the intangible,

has priority over an interest set out in subclause (1) (a) (ii) and is effective against a person described in clause (1) (b). R.S.O. 1990, c. P.10, s. 20 (3); 2010, c. 16, Sched. 5, s. 4 (2); 2017, c. 2, Sched. 3, 8 (2).

## **2. Bankruptcy Insolvency Act, R.S.C. 1985, c.B-3.**

67(1) (1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person;

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;

(b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);

(b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or

(b.3) without restricting the generality of paragraph (b), property in a *registered retirement savings plan*, a *registered retirement income fund* or a *registered disability savings plan*, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that

(i) is not subject to the operation of this Act, or

(ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the *Family Orders and Agreements Enforcement Assistance Act*, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

Marginal note:Deemed trusts

(2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

Marginal note:Exceptions

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the Income Tax Act, subsection 23(3) or (4) of the Canada Pension Plan or subsection 86(2) or (2.1) of the Employment Insurance Act (each of which is in this subsection referred to as a “federal provision”) nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the Income Tax Act and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the Income Tax Act, or

(b) the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the Canada Pension Plan, that law of the province establishes a *provincial pension plan* as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the Canada Pension Plan, and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

**GROSVENOR PARK MEDIA FUND L.P.**  
Plaintiff

-and- **ARC PRODUCTIONS LTD., et al.**  
Defendants

Court File No. CV-16-11472-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**REPLY FACTUM OF THE RESPONDING  
PARTY SPIN MASTER LTD**

**TORKIN MANES LLP**

Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto ON M5C 2W7

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Lawyers for Spin Master Ltd.

RCP-E 4C (May 1, 2016)

**TAB 1.**

Court File No. CV-16-11472-00CL

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

BETWEEN:

GROSVENOR PARK MEDIA FUND L.P.

Plaintiff

-and-

ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD.,  
ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE  
JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS  
INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS  
INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS  
LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS  
MURRAY, KALLAN KAGAN and PETER KOZIK

Defendants

**AFFIDAVIT OF CHRIS HARRS**

I, Chris Harrs, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

1. I am the General Counsel of Spin Master Ltd. ("**Spin Master**") and, as such I have personal knowledge of the matters to which I hereinafter depose, and where my knowledge is based on other than my own information, I identify it as such together with the source of my information and attest to the fact that I verily believe the information is true.

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2. Spin Master is an Ontario corporation which carries on business as a distributor of children's products, directly and indirectly, throughout the world, which also includes children's episodes of various television and other shows.

3. In these proceedings, the only matter that is in dispute from Spin Master's perspective is who is entitled to certain tax credits (the "**Tax Credits**") relating to a series of episodes known as "Rusty Rivets" that are being held by Deloitte, in its capacity as Court-appointed Receiver of Arc Productions Inc. ("**Arc**") and all of the other defendants. Based upon my involvement in the production services agreement ("**PSA**"), which is attached to this my Affidavit, the Tax Credits are, pursuant to section 6(a) of the PSA, being held by the Receiver in trust for Spin Master and that such Tax Credits should not be and are not included and have not been historically included in any of the collateral owned by the Defendants against which the Plaintiff had a charge, either at the time that the Plaintiff acquired its interest in the collateral or thereafter.

**Attached hereto and marked as Exhibit "A" is a true copy of the production services agreement dated August 11, 2014.**

4. Based upon our information, knowledge and belief there were two ways that production companies could deal with tax credits for Canadian productions. The purpose of the tax credits was to keep production labour in Canada. A production company could either pay for production fees less the tax credits that would be received at a later date by a studio plus financing costs associated with the studio essentially financing those tax credits or it could front the entire production costs including tax credits and then the studio would agree to hold any tax credits once received in trust and then remit those tax credits to the production company, which would amount to a lower overall cost since there would be no financing element. Spin Master wished to keep its



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overall costs lower so it went the second way and agreed to prepay the Tax Credits on the basis that when the Tax Credits were received by Arc, they would be received in trust and paid out to Spin Master. Otherwise, the economics of the transaction would not have worked. Although some production companies choose to let the studio fund the tax credits, given Spin Master's liquidity and case reserves, it chose to essentially fund the Tax Credits, thus reducing the overall cost of the production.

5. At the time that the PSA was negotiated, I am aware that there were discussions between senior management of Arc and Spin Master that Spin Master would pay an amount equal to what the parties believed were to be the tax credits. The amounts of the Tax Credits received by Deloitte were received pursuant to the terms of the PSA and the fact that there was a subsequent receivership of Arc does not change the nature of the Tax Credits in question. Those Tax Credits have never belonged to Arc or the Receiver and should be immediately paid over to Spin Master.

6. It is my understanding that other companies were asked to sign subordination agreements in favour of the Plaintiff with respect to their tax credit claims. Spin Master never signed a subordination agreement. In any event, a subordination agreement on its own would not have changed the nature of the trust relationship. Only to the extent that Spin Master was owed cash by Arc, would a subordination agreement have assisted with the claims of the Receiver. You cannot subordinate a claim to a third party to an asset that you own. An entirely different agreement would be required and we just do not have any such agreements in our possession and nor does anyone at Spin Master recall such an agreement being signed. I have worked at Spin Master for 17 years and I was involved either directly or indirectly with all matters relating to the Tax Credits and as such.

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7. Furthermore, the Plaintiff is a sophisticated party and we understand from discussions with former representatives of Arc that the Plaintiff did a significant and in-depth review of the various assets and classes of assets that Arc owned. At no time was the Plaintiff provided with any information or certificate in which Spin Master agreed to forgo or assign its trust claim to any third party.

8. I have reviewed the credit agreement between the Plaintiff and the Defendants. There is no reference to Spin Master or the Rusty Rivets tax credits in that credit agreement or the borrowing base certificates delivered thereunder. There is no reference to Blazing Saddles either, but there is reference to several other companies that were using Arc as a producer and the tax credits received in relation to the other companies have been referenced in a borrowing base certificate delivered by Arc to the Plaintiff in order for the Defendants to obtain advances from the Plaintiffs.

**Attached hereto and marked as Exhibit "B" is a true copy of the credit agreement dated December 10, 2015.**

**Attached hereto and marked as Exhibit "C" is a true copy of the borrowing base certificate dated July 13, 2016.**

9. The Plaintiff knew full well that Spin Master was entitled to the Tax Credits, without deductions or set-off. The manner in which the loan agreement was drafted and the borrowing base certificates were completed is clear and independent evidence that the Plaintiff did not provide any financing for the Rusty Rivets productions, so now it should not get the benefit of funds that belong to someone else, being Spin Master.

**SWORN BEFORE ME** via Zoom Video Conference on June 18, 2020 (call commenced at 11:00 AM)



**ROBERT BARBIERO**

Commissioner for Taking Affidavits  
(or as may be)

Commissioned in the City of Toronto in the Province of Ontario on June 18, 2020, at 11:22 AM



**CHRIS HARRS**

Signed in the City of Toronto in the Province of Ontario on June 18, 2020, at 11:20 AM

RCP-E 4D (July 1, 2007)

**TAB 2.**

SPIN MASTER RIVETING PRODUCTIONS INC. 450 Front Street West, Toronto, Ontario, M5V 1B6

## PRODUCTION SERVICES AGREEMENT

### *“RUSTY RIVETS SEASON ONE”*

This production services agreement (the “**Agreement**”) is dated August 11, 2014, by and between SPIN MASTER RIVETING PRODUCTIONS INC. (“**Producer**”), an Ontario corporation whose principal business is the development, production and exploitation of film and television properties whose address is 450 Front Street West, Toronto, Ontario M5V 1B6 and ARC PRODUCTIONS LTD., an Ontario corporation in the film or video production services business in connection with animated television productions whose address is 230 Richmond Street East, Toronto, Ontario M5A 1P4 (“**Contractor**”):

**WHEREAS** Producer has agreed to engage the services of Contractor, on an independent contractor basis, to provide and arrange for production services with respect to Producer’s original animated series currently entitled, “*Rusty Rivets*” (the “**Series**”) in accordance with the terms and conditions of this Agreement;

**AND WHEREAS** Contractor has agreed to provide and arrange for the production services for the Series in accordance with the terms and conditions of this Agreement;

**AND WHEREAS** Contractor acknowledges that completion of the production services provided herein does not guarantee future work between Producer and Contractor with respect to the Series;

**NOW THEREFORE** this Agreement witnesses that in consideration for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties, and the mutual covenants contained herein, the parties hereto agree as follows:

1. SERVICES:

(a) Producer hereby engages Contractor to supply, and Contractor agrees to supply, such production premises, facilities, personnel, materials and services as are agreed by the parties (collectively, the “**Services**”) in connection with the production of up to twenty-six (26) commercial half-hour episodes (individually an “**Episode**” and collectively the “**Episodes**”) of the Series. Each Episode consists of two (2) x 11-minute scripted segments intended for television broadcast in a commercial half-hour time slot.

(b) The Services shall include the production and delivery of the elements (individually, an “**Element**” and collectively the “**Elements**”) set forth in Schedule “**A**” to this Agreement.

(c) Contractor represents and warrants that the Services shall include the non-exclusive services of Dan Mokriy or his successor, as approved by Producer. Contractor acknowledges and agrees that in connection with the provision of the Services, Producer shall have the right to approve, without limitation, all persons who are engaged by Contractor to provide key services such as line producing and director. Producer shall give Contractor written notice of approval or disapproval within two (2) business days of such notice. In addition, Producer shall have a right of meaningful consultation, as that expression is commonly understood, for such other persons providing such other services including without limitation, art director, animation director, storyboard, and Leica editing services, and modeling supervisor in connection with the Episodes. Producer shall not hinder nor delay the Services under this Agreement. In the event of disapproval or non-consent, the reasons shall be stated in writing, otherwise known as notice. Failure to give such notice to Contractor as aforesaid shall be deemed to be consent or approval. The Services shall be rendered in accordance with the approved production schedule (“**Production Schedule**”) and approved production budget (“**Budget**”) attached hereto as Schedules “**B**” and

SPIN MASTER RIVETING PRODUCTIONS INC. 450 Front Street West, Toronto, Ontario, M5V 1B6

“C”, respectively. As consideration for the Services rendered and rights granted hereunder, Producer shall pay Contractor for Services in accordance with the payment schedule attached hereto as Schedule “D” to this Agreement (“**Payment Schedule**”).

(d) The Production Schedule may be revised by Producer in its sole reasonable discretion upon reasonable written notice to Contractor, but subject to the agreement of Contractor (acting reasonably) (and the term “**Production Schedule**” as used herein shall mean the then current and mutually approved production schedule in effect from time to time). Contractor shall be responsible for any expenditure required to complete and deliver the Elements in accordance with this Agreement, as agreed and set out in the Budget. Contractor shall render the Services and deliver the Elements in a first class, competent, professional manner in accordance with the instructions, directions and requests of Producer, including those involving matters of artistic taste or judgment as set out in Paragraph 9. Contractor shall provide Producer with the following:

(i) regular weekly production updates in the form of a production report which shall include accurate descriptions of the progress of each Element and shall be supplied by Contractor to Producer within two (2) business days after the end of each week; and,

(ii) regular monthly cost reports, in each case, the form and substance of which shall be subject to Producer’s reasonable approval.

(e) Timely completion and delivery of the Elements in accordance with the aforementioned quality requirements and the Production Schedule are of the essence to this Agreement. Contractor acknowledges that Producer will incur additional costs and damages if deliveries from Contractor are not received by Producer on the dates set out in the Production Schedule. Other than delays caused by late delivery of the Producer Materials (as defined in Paragraph 3) and/or the failure of Producer to approve or disapprove Elements submitted by Contractor for approval under Paragraph 4(a), if Contractor fails to make any delivery of any Element on the date due in accordance with the Production Schedule for any reason, the costs of the Contractor’s Services of such delays shall be borne by Contractor.

(f) All Elements shall be delivered digitally to Producer at such locations as designated from time to time by Producer.

## 2. CONSIDERATION:

(a) As full consideration for the Services, materials and rights and benefits granted under this Agreement and subject to the terms of this Agreement, Producer shall pay Contractor a fee equal to \$9,000,000 Canadian dollars excluding HST (the “**Fee**”), payable in accordance with the Payment Schedule. Contractor shall provide Producer with invoices in accordance with the Payment Schedule that set out an accurate allocation of the amount of the Fee attributable to the labour component of the Services. Contractor hereby directs Producer to make payments of all amounts due under this Agreement by way of electronic funds transfer (“**EFT**”) on Contractor’s provision of EFT payment directions within five (5) business days of the dates and amounts indicated on the Payment Schedule. Contractor acknowledges that such EFT payments constitute sufficient and complete discharge of Producer’s payment obligations pursuant to this Agreement. Producer shall pay any bank service charges incurred in connection with the EFT payments.

(b) All expenses which, if incurred, would cause the Budget to be exceeded either in nature or amount of expense shall require the prior written approval of Producer and once approved by Producer shall constitute “**Approved Overages**” hereunder. Approved Overages shall be addressed as follows:

SPIN MASTER RIVETING PRODUCTIONS INC. 450 Front Street West, Toronto, Ontario, M5V 1R6

- (i) All Approved Overages are to be detailed in a written estimate in budget form incorporating a line item detail of all costs to be incurred and any fees approved (“**Overage Form**”);
- (ii) All Approved Overages are to be given a name and number;
- (iii) Patricia Burns or her successor is authorized to sign off on the Overage Form for any Approved Overage under \$35,000;
- (iv) Any Approved Overage over \$35,000 requires the signature of Jennifer Dodge or her successor;
- (v) Once a signed copy of the Overage Form is completed, it will be sent to Contractor (e-mail will suffice) and filed with Producer and each Approved Overage is to be invoiced together with a copy the signed Overage Form by Contractor and will be paid in accordance with mutually agreed payment schedule.

(c) Any such expense incurred by Contractor that has not been so approved by Producer shall be the sole responsibility of Contractor, except for overages cause solely by requests, changes and/or additions made or approved by Producer in writing but not originally contemplated as part of the Budget.

(d) Producer and Contractor agree that all costs in respect of meals, catering and per diem allowances for in-house meals (“**Meals and Allowances Expenses**”) payable to crew members rendering services on the Series form part of the Budget. Additional expenses incurred by Contractor that have not been approved by Producer which cause the Meals and Allowances Expenses within the Budget to be exceeded shall be the sole responsibility of Contractor, unless otherwise approved by Producer, in writing (e-mail will suffice).

3. MATERIALS AND SPECIFICATIONS TO BE SUPPLIED BY PRODUCER: Producer shall supply the following to Contractor (collectively, the “**Producer Materials**”):

- (a) Scripts for each Episode;
- (b) Reference materials, as available;
- (c) Producer; and,
- (d) Voice recorded lines and edited nat pause.

All other facilities, equipment, and materials necessary to render the Services shall be the sole responsibility of Contractor.

4. CREATIVE CONTROL AND APPROVALS:

(a) Producer shall have full creative control and final right of approval over all Services and all materials including, without limitation, the Elements, to be delivered by Contractor hereunder. To ensure that the Elements meet Producer’s specifications, Contractor shall submit the Elements for approval to Producer or to an authorized representative of Producer as Producer shall designate and advise Contractor from time to time. Until otherwise notified in writing, the initial authorized representative shall be Patricia Burns. Producer shall have sole approval over each Element submitted by Contractor and shall use its best efforts to either approve or disapprove in writing each Element within five (5) business days after Producer’s receipt of such submission (where the Production Schedule allows). Each Element submitted to Producer for approval shall not be deemed approved until it is specifically approved by Producer. If Producer disapproves of a submission, Producer shall give

SPIN MASTER RIVETING PRODUCTIONS INC., 450 Front Street West, Toronto, Ontario, M5V 1B6

Contractor specific reasons in writing therefor, and Contractor shall conform such disapproved submission to Producer's requirements and shall resubmit same to Producer until such time as Producer approves such Element. All of Producer's approvals and/or disapprovals herein shall be exercised reasonably and consistent with quality levels required for the Series and the Production Schedule. Producer shall grant approval, or provide notes, in a timely manner; provided that if any approval or requests for changes are not given within five (5) business days after materials are received by Producer, Contractor may, at its election and upon written notice to Producer (e-mail will suffice): (i) postpone its delivery obligations by any period of delay caused by Producer's failure to make approvals or provide notes within any (and all) single five (5) business day period(s); or, (ii) submit a written quote pursuant to Subparagraph 2(b) above. Any delay or postponement due to Producer's failure to provide approvals and/or notes pursuant to this Subparagraph 4(a) and Subparagraph 2(b) above shall be deemed a Producer Delay (as defined below).

(b) Producer shall have the right to assign one (1) or more representatives to exercise Producer's approval rights hereunder and to supervise, direct and control the production of the Elements by Contractor hereunder. On reasonable notice, such representative shall have access to Contractor's facilities during such times as they are being used to produce the Elements. Contractor shall communicate with Producer's designated representative on a consistent and regular basis with respect to all operations related to the Services of Contractor. The exercise by Producer of its rights of direction, control and approval rights under this Agreement shall not create an employment relationship between Producer and Contractor or create any liability on the part of Producer as such. Contractor hereby acknowledges and agrees that Producer's representatives hereunder are Patricia Burns and Jennifer Dodge and David Sharples, subject to change at Producer's sole discretion.

#### 5. EMPLOYEES AND INDEPENDENT CONTRACTORS:

(a) Producer acknowledges that Contractor may hire employees and/or engage independent contractors (each a "**Third Party**" and collectively "**Third Parties**") in connection with the provision of the Services hereunder. No less than ninety eight (98%) of all Third Parties engaged by Contractor must be Canadian citizens or permanent residents of Canada unless Producer gives written consent prior to Contractor's engagement of Third Party. Prior to any Third Party commencing any Services in connection with this Agreement, Contractor shall ensure that the Third Party executes and delivers to Contractor a written agreement in the form attached as Schedule "E" attached to this Agreement under which the Third Party assigns to Contractor all right, title and interest in and to the results and proceeds of the Third Party's services and waives any moral rights that the Third Party may have in and to the results and proceeds of the Third Party's services ("**Third Party Agreement**"). The Third Party Agreement shall provide that Contractor may assign Contractor's rights and benefits and that Contractor's assignee shall be entitled to invoke the Third Party's waiver of moral rights.

(b) Contractor shall promptly provide Producer with copies of all Third Party Agreements upon written request by Producer. Contractor shall deliver a list of all Third Parties (including names and addresses) who worked on the Elements and/or Episodes.



(c) Contractor shall cause applicable Third Parties to complete, sign and deliver the following to Producer:

- (i) a signed copy of the Declaration of Residency (Ontario);
- (ii) each Third Party's CAVCO personnel number, where applicable (i.e. for key creative); and,
- (iii) any other similar or related documentation reasonably requested by Producer, including without limitation, proof of Canadian citizenship for all key creative personnel working on the Elements and/or Series.

(d) Without limiting the foregoing, all Third Party Agreements Contractor enters into shall contain terms and conditions customary in the children's animated television industry for such services, material or rights, including without limitation:

- (i) the right to suspend or terminate for events of Force Majeure, as defined below, (with no compensation, other than that accrued prior to such suspension or termination, being payable unless otherwise pre-approved by Producer); and,
- (ii) the right to terminate for any reason upon no more than two (2) weeks' notice (or payment of the equivalent) unless otherwise pre-approved by Producer.

In addition, any residual, contingent compensation or credit obligations incorporated into any Third Party Agreement, other than any union or guild requirements shall be subject to Producer approval. Notwithstanding the foregoing, the parties acknowledge that some of the Services may be provided by full-time employees of Contractor; any employment agreements with those Contractor employees shall not be included as Third Party Agreements. Furthermore, Contractor shall be solely liable for all obligations and liabilities in connection with such employment contracts, including without limitation, severance pay to the extent same exceeds the minimum notice requirements for employees in Ontario working only for a duration less than or equal to the duration of this Agreement.

#### 6. CANADIAN PRODUCTION:

(a) The parties mutually acknowledge that Producer intends to produce the Series so as to qualify as "Canadian Content" in accordance with the applicable rules, policies, procedures and regulations administered by, as the case may be, the Canada Media Fund (the "CMF"), the Canadian Audio-Visual Certification Office ("CAVCO") or the Canadian Radio-television and Telecommunications Commission ("CRTC") for wholly Canadian productions. The parties further mutually acknowledge that Producer intends to produce the proposed Series so as to qualify for the federal Canadian Film or Video Production Tax Credit ("Federal Credit") pursuant to the *Income Tax Act* (Canada) and the guidelines of CAVCO (collectively the "Federal Tax Credit Provisions"). Additionally, the parties mutually acknowledge that Producer intends to produce the Series so as to qualify for the Ontario Film and Television Tax Credit ("OFTTC Tax Credit") and the Ontario Computer Animation and Special Effects Tax Credit ("OCASE Tax Credit" together with OFTTC Tax Credit the, "Ontario Credit") contemplated in Section 43.10 and Section 43.8 respectively of the *Corporations Act* (Ontario), and all other applicable legislation, regulations, bulletins, guidelines and policies (draft or otherwise) issued in connection therewith ("Ontario Tax Credit Provisions") (the Federal Credit and the Ontario Credit shall be collectively referred to herein as the "Tax Credits") and if applicable, other sources of financing accessible to Canadian producers from Canadian funding agencies. Contractor agrees to cooperate with Producer to the extent necessary

SPIN MASTER RIVETING PRODUCTIONS INC. 450 Front Street West, Toronto, Ontario, M5V 1B6

for the Series to qualify as set forth above. For avoidance of doubt, Contractor acknowledges and agrees that Producer alone shall be entitled to all Tax Credits available in respect of the Services, Elements and/or Episodes, including the OCASE Tax Credit, which Contractor shall claim and collect in trust on behalf of Producer.

(b) Contractor shall be responsible for the timely preparation and submission of all applications relating to the OCASE Tax Credit and Contractor shall cooperate with Producer to maximize the Tax Credits and assist with the collection thereof. With regards to the OCASE Tax Credit, Contractor shall remit one hundred percent (100%) of all such tax credit to Producer within three (3) business days of Contractor's receipt of same.

(c) In connection with the Services rendered and the Elements delivered, Contractor shall deliver the following:

- (i) weekly production status reports;
- (ii) monthly production cost statements and status reports with respect to the Services pertaining to production expenses incurred since the last report and production expenses incurred to the date of the current report (with comparisons to budgeted amounts in the Budget);
- (iii) upon completion of the Services, a final aggregate cost report and a breakdown of labour expenditures, which shall match the cost report;
- (iv) upon completion of the Services, a breakdown of the non-provincial (Ontario) and non-Canadian costs, if applicable, and if not applicable, Contractor shall indicate same in writing;
- (v) a copy of the excerpt from OCASE Tax Credit application ("**OCASE Application**") as it relates to the Series filed by Contractor, including Contractor's labour expenditures as they relate to the OCASE Application; and,
- (vi) upon written request by Producer, any and all documents consistent herewith that Producer may reasonably deem necessary to evidence and effectuate any and all of Producer's rights hereunder.

(d) Solely and exclusively with respect to the Series in order for the Producer to have access to all supporting documents related to claims of Tax Credits, Contractor shall keep and maintain full, true and accurate books and records and shall keep all invoices, vouchers, receipts and other records evidencing all production expenses incurred in connection herewith, which shall be made available to Producer or its designee at all times reasonably required by Producer and which shall be subject to audit and inspection by Producer or its designee upon five (5) business days' written notice to Contractor, at Producer's own expense. Such examination shall be conducted during regular business hours and in such a manner so as to not unreasonably disrupt Contractor's regular business activity.

7. **TERM:** Unless terminated as provided herein, the term of this Agreement (the "**Term**") shall commence September 2, 2014 and continue in accordance with the Production Schedule until completion of all Services and delivery to, and acceptance by Producer of all of the Elements.

8. **QUALITY:** The Elements shall be of first class quality and shall be produced to meet as a minimum the quality standards of the “*Rusty Rivets*” animation sizzle provided to Contractor, all in accordance with the Producer Materials and the technical specifications as notified to Contractor by Producer, copies of which are attached hereto as Schedule “F” (“**Technical Specifications**”). The Elements shall in all respects be technically suitable for broadcasting according to North American (NTSC) quality standards. Neither acceptance by Producer of any of the Elements, nor any other act or omission of Producer hereunder shall relieve Contractor from responsibility for the technical quality of the Elements in accordance herewith. Delivery hereunder shall not be deemed complete until the earlier of (i) Producer’s confirmation of acceptance in writing, and (ii) accepted or deemed acceptance by the initial televised broadcast of the Series.

9. **RETAKE/ADDITIONS/CHANGES/CORRECTIONS:**

(a) Subject to the Budget and the assumptions included therein under Schedule “C”, Contractor will comply with all reasonable instructions of Producer and its representatives in connection with the Services and will make all revisions reasonably required by Producer. Contractor agrees that Producer may request an unlimited number of technical retakes (for example, without limitation, for technical errors) and such technical retakes, additions, changes and/or revisions will be completed by Contractor at no additional cost to Producer. Notwithstanding the foregoing, if Producer orders revisions (including requests for “**creative changes**”) to the Elements that have been prepared and delivered in accordance with the Producer Materials and Technical Specifications and Producer’s prior written approvals, and if Contractor anticipates that such revisions will cause the Budget to be exceeded, Contractor shall immediately notify Producer of the amount of the anticipated cost overrun in the form of a written quote and shall also indicate if such revisions shall cause a delay in the then current Production Schedule. Producer will then within three (3) business days confirm in writing whether or not Contractor shall proceed with the revisions on the basis of the approved quote and revised Production Schedule (if applicable) and such approval shall be deemed an Approved Overage.

(b) Contractor agrees that any and all revisions, retakes, corrections, added scenes or other material requested shall be delivered to Producer in accordance with the Production Schedule. Producer acknowledges that Contractor may incur additional costs due to any one or more of the following (each, a “**Producer Delay**”):

- (i) any material delay in the delivery of Producer Materials as contemplated by the Production Schedule;
- (ii) any material delay in the exercise of Producer’s approvals including with respect to Subparagraph 4(a); and,
- (iii) extensions to the Production Schedule (excluding any extension for reasons of Force Majeure or as a result of a delay or breach by Contractor).

In the Event of a Producer Delay, if Contractor or Producer considers that such Producer Delay might cause a projected cost overrun, Contractor or Producer, as the case may be, shall notify the other in writing and Contractor shall notify Producer of the anticipated cost of the cost overrun and present all commercially reasonable options for dealing with the cost overrun having regard to the most expeditious and quality conscious options, after consultation with Producer. Producer shall notify Contractor of the option to be followed and Contractor shall proceed in accordance with the option chosen, with Producer responsible for all reasonable verifiable costs associated therewith, payable as mutually agreed by both parties acting reasonably, such costs to be deemed an Approved Overage.

#### 10. OWNERSHIP:

(a) Contractor will render services to Producer in connection with the Series, and Contractor hereby acknowledges, certifies and agrees that all results and proceeds of every kind of service heretofore rendered by or on behalf of Contractor, including any Third Parties, in connection with the Elements, the Services and the Series, and all rights, title and interest thereto, including, without limitation, all derivatives, combinations, compilations and other permutations and all copyrights, trade-mark, patent and design rights, (including all rights of renewal and extension thereto), shall be the sole property of and shall be credited to Producer. To the extent possible or required under the applicable laws, including, without limitation, the U.S. and Canadian copyright laws, the results, products and proceeds of any and all services in whatever stage of completion as may exist from time to time, produced or worked upon by and/or on behalf of Contractor, including any Third Parties, (collectively, “**Results and Proceeds**”) shall be considered a “work-done-in-the-course-of-employment” pursuant to Canadian copyright law and a “work-made-for-hire,” pursuant to U.S. copyright law, and Contractor acknowledges that Producer shall be the author and copyright owner of the Results and Proceeds. If such Results and Proceeds are not legally capable of being considered as a “work-done-in-the-course-of-employment” or a “work-made-for-hire,” then in such event Contractor hereby grants, transfers and assigns to Producer in perpetuity all right, title and interest, including, without limitation, copyright, and all extensions, renewals, revivals and resuscitations thereof, Contractor may have in or to such Results and Proceeds throughout the universe in all languages and in all media now known or hereafter devised. In the event that under any current or future copyright law of any jurisdiction, any of the rights in or to the Results and Proceeds are subject to a right of termination or reversion, then to the extent and as soon as legally permissible, Contractor agrees to accord Producer rights of first negotiation for thirty (30) days and last refusal for fifteen (15) days (to match any third party offer) in connection therewith.

(b) Contractor assigns to Producer in perpetuity all rental and lending rights under national laws (whether implemented pursuant to the EC Rental and Lending Rights Directive or otherwise) (collectively, “**Rental and Lending Rights**”) to which Contractor may now be or hereafter become entitled with respect to the Results and Proceeds, the Series and all or any derivative works derived therefrom. Contractor agrees not to institute, support, maintain or authorize directly or indirectly any litigation or proceedings instituted or maintained on the ground that Producer’s (or its designee’s) exercise of the rights granted Producer in the Results and Proceeds or the Series in any way constitutes an infringement or violation of any such rental or lending right as aforesaid. Contractor acknowledges that the compensation to which Contractor is entitled pursuant to this Agreement includes compensation for the assignment of the Rental and Lending Rights provided for in this paragraph, that said compensation is an adequate part of the revenues derived or to be derived from the Rental and Lending Rights and that said compensation is a fair, equitable and complete buy-out of all Rental and Lending Rights.

(c) Contractor hereby grants Producer the right to change, add to, take from, translate, reformat or reprocess the Results and Proceeds in any manner Producer may in its sole discretion determine. To the fullest extent allowable under the applicable law, Contractor hereby waives all right of “droit moral” or any similar laws or legal principles, and agrees not to institute, maintain or permit directly or indirectly any litigation or proceedings instituted or maintained on the ground that Producer’s exercise of its rights in the Results and Proceeds in any way constitutes an infringement or violation of any right of “droit moral” or is in any way a defamation or mutilation of the Results and Proceeds, or any part thereof, or contains unauthorized modifications or translations. Contractor expressly acknowledges that many parties will contribute to the Series that may embody all or part of the Results and Proceeds. Accordingly, if under any applicable law the above waiver or assignment by Contractor of “moral rights” or “droit moral” is not effective, Contractor agrees to exercise such rights in a manner which recognizes the contribution of and will not have an adverse effect upon such other parties.

(d) Contractor shall undertake prudent precautions to ensure that the Producer Materials and the Elements shall be protected from unauthorized taking or copying. Materials including, without limitation, the Producer Materials which are provided to Contractor by Producer or created by Contractor hereunder shall be only used by Contractor for the purposes allowed hereunder.

(e) At any time during the Term and/or following the termination of this Agreement, subject to payment of any amounts due and payable as part of the Fee or otherwise as required in accordance with this Agreement, upon reasonable notice and during normal business hours, Producer shall have the right at its sole discretion and without Contractor's permission to take possession of and/or remove any and all materials comprising the Elements and the Episodes (including, but not limited to Producer Materials provided by Producer and the Results and Proceeds produced by Contractor hereunder) from Contractor's premises and/or control. For the avoidance of doubt, Producer's obligation to pay the compensation herein or other amounts forming part of the Budget shall not be accelerated by virtue of this Subparagraph (e). Contractor shall not remove any such materials from its premises without the prior written consent of Producer, other than in connection with its backup procedures to store duplicate materials offsite. Except as herein provided, Contractor shall not permit access to or release such materials (or components thereof) to any party or parties whatsoever other than Contractor's personnel (for the sole purpose of rendering the Services hereunder), Producer's authorized representatives and any other representatives appointed or authorized by Producer hereunder, or as compelled by a court of law. After the expiration of this Agreement, unless otherwise notified by Producer, Contractor shall only be obliged to retain the duplicate materials comprising the Elements and the Episodes for a maximum period of six (6) months from the final delivery of such materials to Producer, at which time, Contractor shall notify Producer in writing to obtain its instructions either to (i) return all such duplicate materials to Producer or (ii) to destroy such materials.

(f) Notwithstanding anything to the contrary contained herein, Contractor shall retain ownership and possession of any proprietary research and development, mechanical devices, processes or applications, software and plug-ins solely owned and/or developed by Contractor prior to and/or while creating the Elements (the "**Contractor Technology**"). Contractor hereby grants to Producer and Producer's distributor(s) a perpetual, royalty-free license throughout the universe to utilize the Contractor Technology and the right to license to Producer's and such distributor's sublicensees and subdistributors the Contractor Technology solely in connection with the development, production and exploitation of the Episodes and/or the Series and any and all related ancillary productions – e.g., trailers, DVD bonus material, proof of concept, video game, interactive, multimedia, commercial tie-ups, an merchandising rights of every kind, but excluding subsequent production(s) (the "**Contractor Technology License**").

#### 11. CREDITS:

(a) Provided that the Services are satisfactorily performed and completed, and subject to the approval of broadcasters, distributors, financiers and any applicable restrictions and/or approvals of CAVCO, CRTC, any provincial agencies administering refundable tax credit programs, and other Canadian funding agencies, Contractor shall be accorded the following screen credits on each Episode of the Series for which the Services are rendered, in substantially the following form: "**Animation by Arc Productions Ltd. [Arc logo]**".

(b) Producer shall also grant Contractor's production personnel appropriate screen credit in the tail credits of all copies of the Episodes that use the Elements subject to the providing evidence of Canadian citizenship by the execution and delivery to Producer of: (i) applicable CAVCO Personnel Numbers, where applicable (i.e. key creative) (ii) a Declaration of Residency (Ontario); and (iii) a photocopy of personnel's Canadian Passport or Citizenship Card or Permanent Resident Card (Canada).

(c) Except as specified above, all aspects of such credits will be within Producer's sole discretion, including without limitation, colour, size, placement, duration, style and prominence. No casual or inadvertent failure by Producer and no failure by any third party to provide such credits shall be considered a breach of this Agreement. Upon receipt of written notice from Contractor specifying the precise nature of any failure to accord credit as provided herein, Producer agrees to use commercially reasonable efforts to cure prospectively any such failure, but Producer shall have no obligation to recall copies of the Episodes or other materials.

(d) Following initial television broadcast of each Episode, Producer hereby grants to Contractor permission to use elements or portions of the Episodes ("Snippets") solely for promotional purposes only in connection with (i) Contractor's in-house portfolio use; (ii) the solicitation of future work as part of Contractor's pitch portfolio; and, (iii) in presentation and demonstrative use for non-commercial purposes including streaming parts or all of the Snippets on Contractor's website (collectively, "Contractor's Reel"). Use of the Snippets in Contractor's Reel shall, at all times be inclusive of direct reference to Producer as copyright owner and Contractor shall clearly mark Producer's copyright ownership in all materials including without limitation, print, audio-visual, and digital materials. Audio-visual and digital use of the Snippets shall be permitted in streaming format only and shall not exceed 0:30 seconds of running time without the prior written approval of Producer.

12. **NO OBLIGATION:** Producer shall have no obligation to use Contractor's Services rendered hereunder and Producer shall be free at any time to utilize its own production services or those of any third party in lieu of or in addition to Contractor's Services. Further, Producer shall have no obligation to produce, broadcast, release or distribute the Episodes or Series and/or to include any of the Elements in said Episodes and/or Series.

13. **CONFIDENTIALITY:** Neither Contractor nor Producer shall disclose, reveal, or make available to any third party the content of the Producer Materials, Episodes or Series, or any information acquired hereunder relating to the techniques or operations of Producer or the financing of the Series, or Contractor's provision of Services for Producer hereunder, or any materials which Contractor or Producer may have gained access to during the Term, provided that Contractor or Producer may reveal the same or any part thereof to members of its staff who require such information in the execution of their duties provided, however, that due precaution shall be exercised by Contractor or Producer and that agreement is first obtained from every such staff member that such techniques, information and the content of the Series will not be used or disclosed other than for the activities of Contractor or Producer hereunder and that this restriction shall not apply to know how, techniques, or contents of the Series that have become publicly available or common knowledge and are not protected by patent and/or copyright. The parties agree that any violation by the Contractor of the terms hereof shall result in irreparable harm to Producer or its related businesses thereby entitling Producer to injunctive relief. Any application for such injunctive relief shall be without prejudice to any remedies otherwise available to Producer, at law or at equity, for such violation.

14. **INDEPENDENT CONTRACTORS:** Producer and Contractor are independent contractors with respect to each other. Nothing contained herein shall create any partnership, joint venture, agency or employment relationship between the parties hereto. Nothing herein shall give, or is intended to give, any rights of any kind to any third person.

15. **REPRESENTATIONS AND WARRANTIES:**

(a) Contractor represents and warrants to Producer as follows:

(i) Contractor has the full right, power and authority to enter into this Agreement, to grant the rights herein granted and to perform fully all of its obligations hereunder, and there is no obligation or disability or claim or litigation pending or threat of insolvency or otherwise that would in any way prevent or restrict Contractor from fully performing this Agreement;

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(ii) Contractor is solely responsible for and shall deduct and withhold all necessary amounts from payments made to Third Parties in accordance with applicable laws and Contractor shall pay all sums of money to all Third Parties and it shall not violate any Third Party Agreements;

(iii) this Agreement and the Services to be provided hereunder are not subject to any guild or collective bargaining agreement and Contractor has obtained or will obtain and will comply with all required authorizations, approvals, licenses or permits from all Canadian government authorities in order for it to enter into and perform its obligations under this Agreement;

(iv) the Results and Proceeds prepared hereunder shall be either solely based on the Producer Materials provided by Producer or wholly original with Contractor and, to the best of Contractor's knowledge, no part of the Results and Proceeds supplied by Contractor nor Producer's exercise of any rights acquired hereunder by it shall violate any right of any third party or violate any applicable law;

(v) the Results and Proceeds shall comply with the first class technical and production quality standards set forth herein;

(vi) none of the rights herein granted to Producer by Contractor have been transferred to any third party and said rights are and shall remain free from any liens, claims, and encumbrances whatsoever in favour of any other party;

(vii) Contractor is a taxable Canadian corporation as defined in the *Income Tax Act* (Canada), and Contractor is continued under the laws of the Province of Ontario and has and during the Term will continue to have a permanent establishment in Ontario; and,

(viii) Contractor undertakes and agrees to cooperate with the completion guarantor (if any) throughout the production of the Series, including in the event of any takeover of the Series by the completion guarantor.

(b) Producer represents and warrants to Contractor as follows:

(i) Producer has the full right, power and authority to enter into this Agreement, and to perform fully all of its obligations hereunder;

(ii) to the best of Producer's knowledge, information and belief, none of the literary or dramatic material contained in the Producer Materials will violate or infringe any copyright, moral rights, rights to privacy or any other right of any person nor will such material appropriate the personality of any person, or Producer has obtained or will obtain valid written clearances from all persons or entities whose rights might be violated or infringed in connection with the Episodes or Series; and,

(iii) Producer owns or controls all rights including without limitation, copyright, necessary in the literary or dramatic material upon which the Episodes are based to produce and exploit the Episodes in so far as necessary for this Agreement.

#### 16. INDEMNIFICATION:

(a) Contractor shall indemnify, defend and hold harmless Producer and its parent, subsidiary and/or commonly owned or operated entities (“**Producer Related Entities**”) and its and their respective agents, officers, directors, employees, successors, licensees, and assignees, from and against, any and all claims, actions, suits, costs liabilities, liens, judgments, losses, penalties, obligations, damages or expenses of any nature whatsoever, including without limitation, reasonable outside legal fees and expenses and court costs, (collectively, the “**Damages**”) imposed on, incurred by, or asserted against Producer and Producer Related Entities and its and their respective agents, officers, directors, employees, successors, licensees, and assignees by any third party, arising out of or related to, any breach of any representation, warranty, covenant or obligation of Contractor contained in or made pursuant to this Agreement and resulting from a claim or proceeding of any nature by any person brought against one or more of Contractor, any Third Parties and Producer as a result of the creation of the Elements and/or the rendering of the Services, provided however, that the foregoing indemnity will not apply to any matter covered by Producer’s indemnity.

(b) Producer shall indemnify, defend and hold harmless Contractor and its parent, subsidiary and/or commonly owned or operated entities (“**Contractor Related Entities**”) and its and their respective agents, officers, directors, employees, successors, licensees, and assignees, from and against, any Damages, imposed on, incurred by, or asserted against Contractor and Contractor Related Entities and its and their respective agents, officers, directors, employees, successors, licensees, and assignees by any third party, arising out of or related to, any breach of any representation, warranty, covenant or obligation of Producer contained in or made pursuant to this Agreement and/or resulting from a claim or proceeding of any nature by any person brought against one or more of Producer, any Third Parties or Contractor as a result of the creation of the Producer Materials and/or the Elements, the Series, and the development, production and exhibition thereof, provided however, that the foregoing indemnity will not apply to any matter covered by Contractor’s indemnity.

(c) Producer may decide, in its sole discretion, whether to dispute or contest in appropriate proceedings any act, omission, demand, action, suit, proceeding, claim, assessment, assertion, judgment, or settlement that may give rise to a right to indemnification under this Agreement (collectively, the “**Claims**”). Producer shall have the exclusive right to undertake and control the carriage, contest, or defence of any Claim. Producer and Contractor shall act to mitigate any damage arising out of or related to any Claim. Contractor shall use all reasonable efforts to assist Producer and its counsel in evaluating, asserting, or defending such Claim. Producer may, at its option, elect to settle the Claim, provided that Producer shall not settle any Claim or part thereof that could affect Contractor’s rights without the prior written consent of Contractor, which will not be unreasonably withheld or unduly delayed. Contractor will have the right, at its own expense, to retain its own counsel to consult with counsel for Producer regarding the contest or defence of any Claim or any settlement negotiations.

#### 17. TERMINATION FOR CAUSE:

(a) Producer may terminate the provision of Services under this Agreement at any time upon written notice to Contractor if:

(i) Contractor is in material default of any provision of this Agreement including, without limitation, if Contractor fails to render the Services in accordance with, and/or to deliver any Elements on or before the date(s) required by, this Agreement (unless such failure is due to Producer Delay);



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(ii) the technical and/or creative and/or artistic quality of the Elements does not meet Producer's requirements as outlined within this Agreement;

(iii) any broadcaster or distributor of the Episodes requires it, in the exercise of their reasonable creative approval rights; or,

(iv) Contractor becomes insolvent or is unable to pay Contractor's debts as they become due, or if Contractor makes an assignment for the benefit of creditors, or acquiesces in the filing of a petition for bankruptcy or the appointment of a receiver, or if Contractor seeks the protection of any applicable bankruptcy or insolvency law.

(b) In the event that Producer terminates this Agreement based upon subparagraphs 17(a)(i) or (ii) above, Producer will first give Contractor five (5) business days to cure any such default or quality failure. If the default or failure is not cured to Producer's satisfaction within that period, the Agreement will automatically terminate upon expiry of that five (5) business day period.

18. TERMINATION WITHOUT CAUSE: In addition to any other right that it may have, Producer shall have the right to terminate Contractor's Services under this Agreement for any reason upon thirty (30) days' written notice to Contractor subject to the termination provisions set out in Paragraph 22.

19. TAKE-OVER RIGHTS: Producer shall have the irrevocable right, to take over the development, pre-production and/or production of the Series, and/or to assume complete and sole control over all matters regarding the Series, and/or to require Contractor to terminate the services of any person rendering services with respect to the Series and the right to terminate this Agreement ("**Take-Over Rights**"), upon giving written notice to Contractor of its election to do so, if at any time during the production or prior to delivery of the Series, the following occurs: (i) the production of the Series is ten percent (10%) of more behind the Production Schedule for reasons that are not caused by actions taken or refused to be taken by Producer; and/or, (ii) Contractor commits a material default ("**Default**") in the timely performance of its obligations here under, other than pursuant to subsection (i) above, including without limitation, its obligation to produce and deliver the Series in accordance with the Budget, Approved Overages and Production Schedule. Contractor hereby agrees to cooperate fully with Producer in connection with the exercise of its Take-Over Rights and to take such reasonable steps and execute, acknowledge and deliver such documents as Producer may reasonably require in connection therewith. In the event that Producer exercises its Take-Over Rights, Contractor shall immediately and irrevocably assign, transfer and convey to Producer any and all rights granted to Contractor hereunder including for greater certainty, the Contractor Technology License. Nothing in this Paragraph 19 shall be construed so as to limit or impair any other rights or remedies Producer may have under this Agreement, or at law, or in equity by reason of any Default by Contractor in the performance of any of its obligations under this Agreement, nor shall the exercise by Producer of its Take-Over Rights constitute an election of remedies.

20. DEFAULT AND REMEDIES:

(a) In the event Producer is in material breach of any provision of this Agreement, Contractor's sole remedy shall be an action at law for damages and in no event will such breach entitle Contractor to rescind this Agreement or any of the rights granted hereunder or to enjoin or restrain the production, exploitation, distribution or broadcast of the Episodes or Series, or the exploitation of any right granted to Producer herein.

(b) All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative and shall not in any way limit any other remedy, right, undertaking, obligation or agreement of either party, except as specified herein.

Production Services Agreement – Rusty Rivets (X'n Copy)

(c) If Producer fails to pay the compensation herein as required by this Agreement in accordance with the Payment Schedule, and fails to cure such failure within five (5) business days after receipt of notice from Contractor, Contractor shall have the right to terminate this Agreement. In the event of such termination, Producer shall promptly pay to Contractor all amounts due and payable in accordance with the Payment Schedule accrued to the date of termination for the Elements completed and delivered as of same date and Contractor shall concurrently deliver to Producer all Elements comprising the Episodes. For the avoidance of doubt, Producer's obligation to pay amounts pursuant to the Payment Schedule shall not be accelerated by virtue of this Subparagraph (c).

21. **FORCE MAJEURE:** If Producer is unable to continue the production of the Series, or a substantial portion thereof, by virtue of governmental regulation or order, labour dispute, war (declared or undeclared), civil disturbance, act of terrorism, epidemic or other health emergency, or other calamity such as fire, earthquake, hurricane or other acts of God, or because of other similar or dissimilar causes beyond the control of Producer (all of which events are hereinafter sometimes referred to as "**Force Majeure**"), Producer shall have the right to suspend the operation of this Agreement, the provision of the Services hereunder and payment therefore for the duration of such event of Force Majeure upon written notice to Contractor at Producer's election and to add a period equal to such suspension to the Term, subject to Contractor's availability. Producer shall reinstate Contractor's Services upon Notice to Contractor at any time or times during the event of Force Majeure, or within one (1) week after the end of the event of Force Majeure. If the period of suspension is five (5) or more consecutive days or ten (10) or more days in the aggregate, Producer or Contractor shall have the right to terminate this Agreement provided that if the event of Force Majeure can be remedied by the replacement of Contractor's computers, Contractor shall have a period of no more than three (3) weeks to replace those computers, after which time Producer may exercise its right to terminate if the computer specific event of Force Majeure is not fully remedied.

22. **EFFECT OF TERMINATION:** If this Agreement is terminated for any reason, whether by lapse of time, mutual consent, operation of law, exercise of a right of termination pursuant to Paragraphs 17, 18, 19, 20, or 21 or otherwise, the termination shall release and discharge Producer from all further obligations to Contractor, including, without limitation, the obligation to pay Contractor any further compensation except for the Fee, Approved Overages and any reasonable, verifiable out-of-pocket expenses, if any, due and payable for Services requested, performed, and delivered up to and including the date of termination. For greater clarity, upon termination of this Agreement, Contractor will either pay Producer, or Producer will pay Contractor, an amount equal to the difference between the monies received by Contractor from Producer as of the date of termination, including any Approved Overages not yet reimbursed. A positive difference shall be paid by Contractor to Producer, and a negative difference by Producer to Contractor. All overdue amounts will bear interest at the prime rate of HSBC plus two percent (2%). Upon the termination of this Agreement and payment by Producer to Contractor of no less than fifty percent (50%) of all sums then due, Contractor shall immediately deliver to Producer or its designee all materials and properties (including without limitation, all documents, records, books, preprint and print material) in its possession or under its control relating to the Elements or Episodes. For greater clarity, upon payment by Producer to Contractor of all fees due and payable to Contractor subject to this Paragraph, the termination of this Agreement for any reason shall not affect Producer's ownership of the Results and Proceeds, Elements, or Episodes or any rights granted to Producer hereunder including for greater certainty the Contractor Technology License, or relieve Contractor of its obligations pursuant to its representations, warranties and indemnities hereunder and Producer shall have the right to exercise any or all of the rights of Contractor with respect to the Series, under the Third Party Agreements.

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23. NOTICES AND PAYMENTS:

(a) To Contractor. All notices from Producer to Contractor shall be given in writing by mail, postage prepaid, messenger service or electronically mailing (i.e. e-mail) and shall be addressed as indicated below. The date three (3) days after mailing in Canada, the date one (1) day after sending by messenger service, and the same date of e-mailing or of personal delivery shall be deemed to be the date of service.

(b) To Producer. All notices from Contractor to Producer shall be given in writing by mail, postage prepaid, by messenger service or electronically mailing (i.e. e-mail) addressed as indicated below. The date three (3) days after mailing in Canada, the date one (1) day after sending by messenger service, and the same date of e-mailing or of personal delivery shall be deemed to be the date of service.

(c) Addresses. Payments and written notices to Contractor shall be sent to Contractor at the address set forth below. Written notices to Producer shall be sent at the addresses set forth below. The address of Contractor and of Producer may be changed to such other address as Contractor or Producer may hereafter specify by written notice given to the other party.

Producer: Spin Master Riveting Productions Inc.  
450 Front Street West  
Toronto, Ontario M5V 1B6  
Attention: Business and Legal Affairs – Entertainment  
Telephone: 416-364-6002  
E-Mail: [ChrisH@spinmaster.com](mailto:ChrisH@spinmaster.com)

Contractor: Arc Productions Ltd.  
230 Richmond Street East  
Toronto, Ontario, M5A 1P4  
Attention: Peter Kozik  
Phone: 416-682-5248  
Email : [peter.kozik@arcproductions.com](mailto:peter.kozik@arcproductions.com)

24. ASSIGNMENT: Producer and any subsequent assignee shall have the right to assign this Agreement, and its rights hereunder, and/or to delegate its obligations hereunder, to any party, and such assignment or delegation shall be binding upon Contractor and shall inure to the benefit of such assignee. In the event of such assignment or delegation, Producer shall remain secondarily liable hereunder, unless such assignment or delegation is to a so-called “major” or “mini-major” motion picture distributor or television network, any similarly financially responsible party, or any party which substantially controls, is substantially controlled by or is under common control with Producer or which through merger, consolidation or acquisition succeeds to substantially all of the assets of Producer, and such assignee or delegee assumes in writing all of Producer’s obligations hereunder, in which event Producer shall be released and discharged from all of its obligations hereunder, and Contractor shall look solely to such assignee or delegee, as the case may be, for performance thereof. Producer and any subsequent assignee shall notify Contractor of any assignment but a failure to provide such notice shall not affect the validity of any such assignment or constitute a breach of this Agreement. Contractor agrees that this Agreement is personal to it and that Contractor shall not sell, assign, license or otherwise transfer any of its rights or duties under this Agreement.

25. **SEVERABILITY:** Nothing contained in this Agreement shall be construed to require the commission of any act contrary to any applicable law, statute, ordinance, order, or regulation, and wherever there is any conflict between any provision of this Agreement and any of the foregoing, such law, statute, ordinance, order, or regulation shall prevail, provided however, in such event the provision of this Agreement so affected shall be limited only to the extent necessary to permit compliance with the minimum legal requirement; no other provision of this Agreement shall be affected thereby; and all such other provisions shall continue in full force and effect. The parties shall negotiate in good faith to replace any invalid, illegal or unenforceable provision with a valid provision, the effect of which comes as close as possible to that of such invalid, illegal or unenforceable provision.
26. **FURTHER DOCUMENTS:** Contractor shall execute or procure the execution of any and all further instruments which Producer may deem reasonable necessary, desirable or proper to carry out the purposes of this Agreement.
27. **INSURANCE:** Contractor shall be added as a named insured to Producer's errors and omissions ("E&O"), general liability, and general production insurance policies to the extent that Producer obtains and maintains such policies and subject to the terms, conditions and restrictions of such policies and any endorsements thereto. Producer will be added as an additional insured to Contractor's general liability insurance to the extent that Contractor obtains and maintains such policy and subject to the terms, conditions and restrictions of such policy and any endorsements thereto.
28. **ATTORNEY-IN-FACT:** In the event Contractor fails to take any action or execute any document consistent herewith and necessary to assign any rights of copyright or any agreements, contracts, licences, clearances, releases or consents as required pursuant to the terms hereof, Contractor hereby appoints Producer, or Producer's designee(s) as Contractor's attorney-in-fact to do all such acts and execute all such documents as may reasonably be requested by Producer, and it is hereby acknowledged that this power is coupled with an interest.
29. **PRIOR AGREEMENTS / MODIFICATIONS:** This Agreement and the attached Schedules set forth the entire agreement between the parties relating to its subject matter and supersedes all prior agreements and understandings between the parties hereto, whether oral or written, pertaining to the subject matter hereof. This Agreement can only be modified by a written instrument executed by the parties hereto.
30. **CURRENCY:** All dollar amounts referred to in this Agreement are in the lawful currency of Canada unless otherwise specified herein.
31. **WAIVERS / PARAGRAPH HEADINGS:** No waiver of any term or condition of this Agreement shall be construed as a waiver of any other term or condition hereof; nor shall any waiver of any default under this Agreement be construed as a waiver of any other default hereunder. The descriptive headings of the paragraphs of this Agreement are for convenience only and do not constitute a part of this Agreement.
32. **GOVERNING LAW:** This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
33. **SURVIVAL:** All representations, warranties and indemnities made herein by Contractor, and all rights granted to Producer and Contractor herein shall survive the execution, delivery, suspension, expiration and termination of this Agreement or any provision hereof.

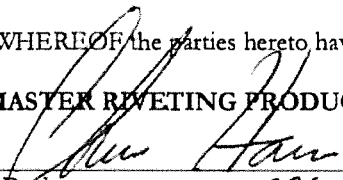
34. SCHEDULES: the following schedules are attached to this Agreement and form an integral part hereof:

- Schedule "A" - Services / Elements / Facilities / Personnel / Deliverables
- Schedule "B" - Production Schedule
- Schedule "C" - Budget
- Schedule "D" - Cash Flow / Payment Schedule
- Schedule "E" - Third Party Agreement
- Schedule "F" - Technical Specifications

35. EXECUTION: This Agreement may be executed in any number of counterparts and by facsimile or electronic transmission, each of which including electronic transmissions when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically in either Tagged Image Format Files (TIFF) or Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object such treatment.

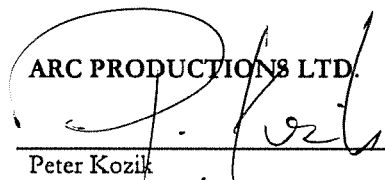
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

**SPIN MASTER RIVETING PRODUCTIONS INC.**

By: ~~Jennifer Dodge~~  \_\_\_\_\_  
CHRIS HARRS

Its: SECRETAR \_\_\_\_\_  
I have the authority to bind this corporation

**ARC PRODUCTIONS LTD.**

By:  \_\_\_\_\_  
Peter Kozik

EVP & CFO \_\_\_\_\_  
Its: I have the authority to bind this corporation

SPIS MASTER RIVETING PRODUCTIONS INC. 450 Front Street West, Toronto, Ontario, M5V 1B6

**Schedule "A"**

**Services / Elements / Facilities / Personnel / Deliverables**



	<b>Rusty Rivets: Assumptions</b>
Description	CGI Animated Series
Running Time	52 Episodes x 11 Minutes + 40 second opening
Shot Production	572 Minutes + 40 Seconds
Delivery Format	1080p @ 24 FPS
Production Schedule	102 weeks
Total Shots	To average 165 shots per 11 Min. (avg. 4.00 sec. per shot)
Avg Characters/Shot	2

#### Client Provides:

Final scripts.  
 Final Production Dialogue - provided prior to the start of Boards.  
 Composer / Score.  
 All post production.  
 Executive Producer.

#### Client Approvals:

5 day turnaround on all Spin Master and broadcast approvals.  
 - Design: Characters & Background sketches, Expression sheets, and final design of key Characters, Sets and Props.  
 - Asset approval stages: Models and surfacing for key Characters, Environments and Props.  
 Allow for a notes pass at each of the following stages:  
 - Leica/Animatic  
 - Animation  
 - Final compositing  
 Productivity assumes that revisions will average no more than 25% of shots per episode.  
 Any changes made after approval may incur additional expenses.

#### General Assumptions

Budget assumes production schedule provided to Arc.  
 All assumptions are subject to establishing a "final look" of picture that is similar to the "Rusty Rivets" animation sample provided to Arc.  
 Bid assumes no dynamic hair or cloth (simulations).  
 Production is non-stereoscopic.

## Arc Provides:

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### ASSET DEPARTMENT ASSUMPTIONS:

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#### Art

Art Department responsible for:  
Creating Design through (Art) Pack for hand-off to Asset departments.  
Creative follow through with Asset departments and Lighting dept.  
Episodic Design – includes Characters, Props and Sets  
Colour Keys to support sequences through Lighting.  
Matte Paintings - as needed.

#### Assets: Rigging / Surfacing

In order to maximize efficiencies in the production, secondary & tertiary characters will need to be contained to certain body types.  
To enable maximum productivity, Arc needs the ability to prioritize production approval schedule of Characters, Props and Sets.  
Set and Prop Modeling and Rigging is driven by Pre-Vis approval, so that only what is required on screen is created.  
Assume no cloth or hair simulation.

#### Bid assumes the following asset builds:

4 x Main Characters  
13 x Secondary Characters (Includes Bits)  
18 x Tertiary Characters  
20 x Sets  
60 x Key Props  
800 x Props

---

### SHOT DEPARTMENT ASSUMPTIONS:

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#### Story

Creates story panels to help pre-visualize the sequences from the script.

#### Editorial

Oversees Editorial reels through production.

#### Bluebook

This is a key internal meeting with Director and Arc leadership to finalize, technically plan, and review each shot for complexity.  
Key lighting and effects shots are called out here.

#### Layout

Shots are technically set up with final assets for Animation.  
Assume that moving cameras will not exceed more than 20% of shots per Episode.  
Note: While 20% of shots contain moving cameras, dynamic camera moves will be very limited in use.



**Animation**

Technical and performance Rig testing period prior to production.

This bid assumes 2 teams of 1 Lead managing a crew of approx. 10 Animators each.

Productivity averages 27 sec/wk per artist.

Assumes average character density of 2 per shot.

Assumes that layout will aim to avoid shot compositions containing more than 10 characters.

Note: Crowds to be established in a wide shot and then immediately pared down on a following closer shot.

**Shot Finaling**

Finesse animation and address any technical issues prior to hand off.

Shots are set dressed with final assets.

Camera is finalized at this point.

Technical Check-Pass of final shot with surfaced assets and one-light render.

**Sweatbox**

Director and dept leadership reviews sequences - Check-Pass render - internal review notes for Lighting & Effects.

**EFX**

Special Effects are any visuals that are not a character.

For example - mud, smoke and debris.

This schedule assumes 10% of the total shots per 22 min. require unique effects.

Effects team may create additional stock effects for re-use in compositing.

**Lighting & Compositing**

1 team consisting of 1 Key/Lead Lighter and 3 shot Lighters.

The Key Lighters are responsible for the environment or set lighting, which inform the key shots which then inform the rest of the shots. These are then tweaked by the Lighter as needed.

Productivity peaks at an average of 50 shots/wk per artist.

All artists handle Lighting and Compositing work for their shots.

---

**ADDITIONAL ASSUMPTIONS:**

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**Technical Support**

Technical Directors to handle all necessary show centric development and troubleshoot issues during production.

**Marketing Materials**

Any additional materials beyond production scope will need to be budgeted separately.

Any additional materials requiring earlier delivery could result in additional charges.

Budget does not include DVD materials, including menu screen or additional features.

**Deliverables****Master Program**

Arc will provide final episodes as a conformed sequence of uncompressed 16bit .tiff files with a resolution of 1920x1080.

File name and numbering to be determined.

**Additional Elements**

Textless elements for shots with text overlays or titles. Shots with text in background will not be provided separately.

Reference Quicktime - 960x540 - H264 codec - This will be created from the master program conform.

Editorial Quicktime - 1920x1080 in either H264, ProRes or DNxHD - This will be created from the master program conform.

Editorial & Reference Quicktime files will either be MOS or include a guide track if provided.

**Delivery**

All material will be delivered on USB 3.0 hard drives

SPIN MASTER RIVETING PRODUCTIONS INC. 450 Front Street West, Toronto, Ontario, M5V 1B6

**Schedule "B"**

**Production Schedule**

[Copy of Production Schedule as Excel]



Date	Nov 11				Nov 12				Nov 13				Nov 14				Nov 15				Nov 16				Nov 17				Nov 18				Nov 19				Nov 20				Nov 21				Nov 22				Nov 23				Nov 24				Nov 25				Nov 26				Nov 27				Nov 28				Nov 29				Nov 30																																																																																																																																																																																																																																																																																																																																																															
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RUSTY NUTS - Season 1  
52 Episodes x 1 min

Season	Episode	11-Mar	12-Mar	13-Mar	14-Mar	15-Mar	16-Mar	17-Mar	18-Mar	19-Mar	20-Mar	21-Mar	22-Mar	23-Mar	24-Mar	25-Mar	26-Mar	27-Mar	28-Mar	29-Mar	30-Mar	31-Mar	1-Apr	2-Apr	3-Apr	4-Apr	5-Apr	6-Apr	7-Apr	8-Apr	9-Apr	10-Apr	11-Apr	12-Apr	13-Apr	14-Apr	15-Apr	16-Apr	17-Apr	18-Apr	19-Apr	20-Apr	21-Apr	22-Apr	23-Apr	24-Apr	25-Apr	26-Apr	27-Apr	28-Apr	29-Apr	30-Apr	1-May	2-May		
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SPIN MASTER RIVETING PRODUCTIONS INC., 450 Front Street West, Toronto, Ontario, M5V 1B6

**Schedule "C"**

**Budget**

**[INSERT HERE]**

ARC PRODUCTIONS LTD - CONFIDENTIAL

**Rusty Rivets**  
**Animated Series - 572 Minutes (52 x 11 minutes + 30 Second Opening)**  
 August 6, 2014

Acct No	Description	Total
0500	DIRECTOR	293,250
	<b>Total Above the Line</b>	<b>\$ 293,250</b>
1200	PRODUCTION STAFF	469,660
2100	STORYBOARDS	660,905
2200	VIS DEV/ART	283,993
4300	MODELING / RIGGING	669,990
4400	SURFACING	278,300
4500	TECHNICAL DIRECTION	445,740
4600	PRE-VIS / LAYOUT	299,805
4700	ANIMATION	1,537,550
4800	SHOT FINALING	238,050
4900	EFFECTS	97,750
5000	LIGHTING/COMPOSITING	367,166
5300	GENERAL EXPENSES	23,600
5400	PRODUCTION STUDIO RENTAL	855,700
5500	PRODUCTION EQUIPMENT & SUPPLIES	748,738
	<b>Total Below the Line</b>	<b>\$ 6,976,946</b>
6100	EDITORIAL	194,810
	<b>Total Below the Line Post</b>	<b>\$ 194,810</b>
7200	INDIRECT STUDIO SUPPORT	1,433,298
7600	ARC PRODUCTION FEE	428,571
	<b>Total Below the Line Other</b>	<b>\$ 1,861,869</b>
	<b>Total Above the Line</b>	<b>\$ 293,250</b>
	<b>Total Below the Line</b>	<b>\$ 9,033,625</b>
	<b>TOTAL PRODUCTION COST</b>	<b>\$ 9,326,875</b>
	<b>GROSS - GRAND TOTAL (\$CAD)</b>	<b>\$ 9,326,875</b>
	<b>DISCOUNT ON ARC STUDIO FEES</b>	<b>\$ (326,875)</b>
	<b>REVISED GROSS - GRAND TOTAL (\$CAD)</b>	<b>\$ 9,000,000</b>

## ARC PRODUCTIONS LTD - CONFIDENTIAL

Acct No	Description	Amt	Units	X	Rate	Subtotal	Total
<b>0500 DIRECTOR</b>							
0501	DIRECTOR	102	weeks	1	2,500	255,000	255,000
0599	FRINGE	15%	allow	1	255,000	38,250	38,250
<b>Account Total for 0500</b>						<b>\$</b>	<b>293,250</b>
<b>TOTAL ABOVE THE LINE</b>						<b>\$</b>	<b>293,250</b>
<b>1200 PRODUCTION STAFF</b>							
1201	LINE PRODUCER	102	weeks	1	1,700	173,400	173,400
1205	PRODUCTION MANAGER (PRE, POST & DELIVERABLES, COMP)	97	weeks	1	1,200	116,400	116,400
1205	PRODUCTION COORDINATOR (ART & ASSETS)	82	weeks	1	900	73,800	73,800
1205	PRODUCTION COORDINATOR (LAYOUT & ANIMATION)	56	weeks	1	800	44,800	44,800
1299	FRINGE	15%	allow	1	408,400	61,260	61,260
<b>Account Total for 1200</b>						<b>\$</b>	<b>469,660</b>
<b>2100 STORYBOARDS</b>							
2102	ASSISTANT DIRECTOR	98	weeks	1	1,500	147,000	147,000
2104	STORYBOARD ARTIST #1	58	weeks	1	1,700	98,600	98,600
2104	STORYBOARD ARTIST #2	58	weeks	1	1,700	98,600	98,600
2104	STORYBOARD ARTIST #3	54	weeks	1	1,700	91,800	91,800
2104	STORYBOARD ARTIST #4	53	weeks	1	1,700	90,100	90,100
2104	STORYBOARD REVISIONIST	54	weeks	1	900	48,600	48,600
2199	FRINGE	15%	allow	1	574,700	86,205	86,205
<b>Account Total for 2100</b>						<b>\$</b>	<b>660,905</b>
<b>2200 VIS DEV/ART</b>							
2204	ART DIRECTOR	99	weeks	1	1,350	133,650	133,650
2210	DESIGNER #1	78	weeks	1	1,100	85,800	85,800
2210	DESIGNER #2	25	weeks	1	1,100	27,500	27,500
2299	FRINGE	15%	allow	1	246,950	37,043	37,043
<b>Account Total for 2200</b>						<b>\$</b>	<b>283,993</b>
<b>4300 MODELING &amp; RIGGING</b>							
4302	ASSET LEAD	80	weeks	1	1,350	108,000	108,000
4306	MODELER #1	75	weeks	1	1,000	75,000	75,000
4306	MODELER #2	75	weeks	1	1,000	75,000	75,000
4306	MODELER #3	54	weeks	1	1,000	54,000	54,000
4308	RIGGER #1	75	weeks	1	1,100	82,500	82,500
4308	RIGGER #2	75	weeks	1	1,100	82,500	82,500
4308	RIGGER #3	66	weeks	1	1,100	72,600	72,600
4308	RIGGER #4	30	weeks	1	1,100	33,000	33,000
4399	FRINGE	15%	allow	1	582,600	87,390	87,390
<b>Account Total for 4300</b>						<b>\$</b>	<b>669,990</b>
<b>4400 SURFACING</b>							
4406	SURFACER #1	74	weeks	1	1,100	81,400	81,400
4406	SURFACER #2	56	weeks	1	1,100	61,600	61,600
4406	SURFACER #3	45	weeks	1	1,100	49,500	49,500
4406	SURFACER #4	45	weeks	1	1,100	49,500	49,500
4499	FRINGE	15%	allow	1	242,000	36,300	36,300
<b>Account Total for 4400</b>						<b>\$</b>	<b>278,300</b>
<b>4500 TECHNICAL DIRECTION</b>							
4501	CG SUPERVISOR	102	weeks	1	2,300	234,600	234,600
4502	TECHNICAL DIRECTOR	102	weeks	1	1,500	153,000	153,000
4599	FRINGE	15%	allow	1	387,600	58,140	58,140
<b>Account Total for 4500</b>						<b>\$</b>	<b>445,740</b>



## ARC PRODUCTIONS LTD - CONFIDENTIAL

Acct No	Description	Amt	Units	X	Rate	Subtotal	Total
<b>4600 PRE-VIS / LAYOUT</b>							
4602	PRE-VIS/LAYOUT LEAD	62	weeks	1	1,350	83,700	83,700
4604	PRE-VIS/LAYOUT ARTIST	59	weeks	3	1,000	177,000	177,000
4699	FRINGE	15%	allow	1	260,700	39,105	39,105
<b>Account Total for 4600</b>							<b>\$ 299,805</b>
<b>4700 ANIMATION</b>							
4704	LEAD ANIMATOR (TEAM 1)	74	weeks	1	1,450	107,300	107,300
4704	LEAD ANIMATOR (TEAM 2)	74	weeks	1	1,450	107,300	107,300
4706	SR/INT ANIMATOR (TEAM 1)	61	weeks	6	1,000	366,000	366,000
4706	JR ANIMATOR (TEAM 1)	61	weeks	4	800	195,200	195,200
4706	SR/INT ANIMATOR (TEAM 2)	61	weeks	6	1,000	366,000	366,000
4706	JR ANIMATOR (TEAM 2)	61	weeks	4	800	195,200	195,200
4799	FRINGE	15%	allow	1	1,337,000	200,550	200,550
<b>Account Total for 4700</b>							<b>\$ 1,537,550</b>
<b>4800 SHOT FINALING</b>							
4808	SHOT FINALER	60	weeks	3	1,150	207,000	207,000
4899	FRINGE	15%	allow	1	207,000	31,050	31,050
<b>Account Total for 4800</b>							<b>\$ 238,050</b>
<b>4900 EFFECTS</b>							
4906	EFFECTS ARTIST	68	weeks	1	1,250	85,000	85,000
4999	FRINGE	15%	allow	1	85,000	12,750	12,750
<b>Account Total for 4900</b>							<b>\$ 97,750</b>
<b>5000 LIGHTING/COMPOSITING</b>							
5004	KEY LIGHTER	89	weeks	1	1,350	120,150	120,150
5006	LIGHTING/COMPOSITING ARTIST	59	weeks	3	1,000	177,000	177,000
5011	RENDER WRANGLER	30	weeks	1	750	22,125	22,125
5099	FRINGE	15%	allow	1	319,275	47,891	47,891
<b>Account Total for 5000</b>							<b>\$ 367,166</b>
<b>5300 GENERAL EXPENSES</b>							
5303	CELL PHONES (PRODUCER, DIRECTOR & CG SUPERVISOR)	1	allow	1	3,600	3,600	3,600
5305	CREW MEALS	1	allow	1	5,000	5,000	5,000
5306	TRAVEL & LIVING (CABS)	1	allow	1	5,000	5,000	5,000
5308	LEGAL	1	allow	1	5,000	5,000	5,000
5309	PRODUCER INCIDENTALS	1	allow	1	5,000	5,000	5,000
<b>Account Total for 5300</b>							<b>\$ 23,600</b>
<b>5400 ARC STUDIO RENTAL</b>							
5401	STUDIO RENT	4278.5	weeks	130	556,205	556,205	556,205
5402	UTILITIES	4278.5	weeks	30	128,355	128,355	128,355
5403	FURNITURE, FIXTURES & MAINTENANCE	4278.5	weeks	25	106,963	106,963	106,963
5404	PHONE, INTERNET & OFFICE SUPPLIES	4278.5	weeks	15	64,178	64,178	64,178
<b>Account Total for 5400</b>							<b>\$ 855,700</b>
<b>5500 PRODUCTION EQUIPMENT &amp; SUPPLIES</b>							
5501	IT HARDWARE, INFRASTRUCTURE & RENDER FARM	4278.5	weeks	115	492,028	492,028	492,028
5502	SHOTGUN	4278.5	weeks	15	64,178	64,178	64,178
5503	MAYA LICENSES	4278.5	weeks	20	85,570	85,570	85,570
5505	STUDIO & RENDER LICENSES (ADOBE SUITE, RENDER etc.)	1	allow	1	106,963	106,963	106,963
<b>Account Total for 5500</b>							<b>\$ 748,738</b>
<b>Total Below the Line</b>							<b>\$ 6,976,946</b>

## ARC PRODUCTIONS LTD - CONFIDENTIAL

Acct No	Description	Amt	Units	X	Rate	Subtotal	Total
<b>6100 EDITORIAL</b>							
6104	EDITOR	86	weeks	1	1,300	111,800	111,800
6106	ASSISTANT EDITOR	72	weeks	1	800	57,600	57,600
6199	FRINGE	15%	allow	1	169,400	25,410	25,410
<b>Account Total for 6100</b>						\$	<b>194,810</b>
<b>Total Post Production</b>						\$	<b>194,810</b>
<b>7200 INDIRECT STUDIO SUPPORT</b>							
7201	STUDIO LEADERSHIP	1	allow	1	148,817	148,817	148,817
7202	DEPARTMENTAL LEADERSHIP	1	allow	1	186,022	186,022	186,022
7203	SOFTWARE DEV & PROD ENGINEERING	1	allow	1	372,043	372,043	372,043
7204	IT SUPPORT	1	allow	1	204,624	204,624	204,624
7205	FACILITIES	1	allow	1	111,613	111,613	111,613
7206	PRODUCTION ACCOUNTING & FINANCE	1	allow	1	148,817	148,817	148,817
7207	HUMAN RESOURCES & PAYROLL	1	allow	1	74,409	74,409	74,409
7299	FRINGE	15%	allow	1	1,246,346	186,952	186,952
<b>Account Total for 7200</b>						\$	<b>1,433,298</b>
<b>7600 ARC PRODUCTION FEE</b>							
7601	PRODUCTION FEE	1	allow	1	428,571	428,571	428,571
<b>Account Total for 7600</b>						\$	<b>428,571</b>
<b>Total Below the Line Other</b>						\$	<b>1,861,869</b>
<b>Total Below the Line</b>						\$	<b>9,033,625</b>
<b>TOTAL PRODUCTION COST</b>						\$	<b>9,326,875</b>
<b>GRAND TOTAL</b>						\$	<b>9,326,875</b>

**Schedule "D"**

**Cash Flow / Payment Schedule**

## ARC PRODUCTIONS LTD - CONFIDENTIAL



## Rusty Rivets

### Payment Schedule

August 18, 2014

Date	Payment
Advance - Due on Signing	\$900,000
October 5, 2014	\$179,742
November 2, 2014	\$125,848
December 7, 2014	\$218,266
January 4, 2015	\$175,160
February 1, 2015	\$194,336
March 1, 2015	\$255,295
April 5, 2015	\$503,186
May 3, 2015	\$447,751
June 7, 2015	\$584,002
July 5, 2015	\$421,037
August 2, 2015	\$469,667
September 6, 2015	\$579,208
October 4, 2015	\$454,600
November 1, 2015	\$451,860
December 6, 2015	\$507,291
January 3, 2016	\$423,095
February 7, 2016	\$464,829
March 6, 2016	\$355,288
April 3, 2016	\$264,262
May 1, 2016	\$264,127
June 5, 2016	\$205,388
August 7, 2016	\$105,762
Holdback - Due on Final Delivery	\$450,000
<b>Total (\$CAD)</b>	<b>\$9,000,000</b>

## Schedule "E"

## Third Party Agreement

Dated \_\_\_\_\_, 201\_

**CERTIFICATE OF ENGAGEMENT**

\_\_\_\_\_ ("Contractor") certifies that Contractor has rendered and will continue to render services to Arc Productions Ltd., ("Arc") in connection with the first season of the series currently entitled "*Rusty Rivets*" (Episodes 1 to 26) (the "Series"), and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Contractor, Contractor hereby acknowledges, certifies and agrees to the following:

1. Contractor will render and has rendered services to Arc in connection with the Series, and Contractor hereby acknowledges, certifies and agrees that all results and proceeds of every kind of services heretofore rendered by Contractor in connection with the Series, and all rights, title and interest thereto, including, without limitation, all derivatives, combinations, compilations and other permutations and all copyrights (including all rights of renewal and extension thereto), shall be the sole property of and shall be credited to . To the extent possible or required under the applicable laws, including, without limitation, the U.S. and Canadian copyright laws, the results, products and proceeds of any and all services in whatever stage of completion as may exist from time to time, produced or worked upon by Contractor (collectively, "**Results and Proceeds**") shall be considered a "work-done-in-the-course-of-employment" pursuant to Canadian copyright law and a "work-made-for-hire," pursuant to U.S. copyright law, and Contractor acknowledges that Arc shall be the author and copyright owner of the Results and Proceeds. If such Results and Proceeds are not legally capable of being considered as a "work-done-in-the-course-of-employment" or a "work-made-for-hire," then in such event Contractor hereby grants, transfers and assigns to Arc in perpetuity all right, title and interest, including, without limitation, copyright, and all extensions, renewals, revivals and resuscitations thereof, Contractor may have in or to such Results and Proceeds throughout the universe in all languages and in all media now known or hereafter devised. In the event that under any current or future copyright law of any jurisdiction, any of the rights in or to the Results and Proceeds are subject to a right of termination or reversion, then to the extent and as soon as legally permissible, Contractor agrees to accord Arc rights of first negotiation for thirty (30) days and last refusal for fifteen (15) days (to match any third party offer) in connection therewith.

2. Contractor assigns to Arc in perpetuity all rental and lending rights under national laws (whether implemented pursuant to the EC Rental and Lending Rights Directive or otherwise) (collectively, "**Rental and Lending Rights**") to which Contractor may now be or hereafter become entitled with respect to the Results and Proceeds, the Series and all or any derivative works derived therefrom. Contractor agrees not to institute, support, maintain or authorize directly or indirectly any litigation or proceedings instituted or maintained on the ground that Arc's (or its designee's) exercise of the rights granted to Arc in the Results and Proceeds or the Series in any way constitutes an infringement or violation of any such rental or lending right as aforesaid. Contractor acknowledges that the compensation to which Contractor is entitled pursuant to this Agreement includes compensation for the assignment of the Rental and Lending Rights provided for in this paragraph, that said compensation is an adequate part of the revenues derived or to be derived from the Rental and Lending Rights and that said compensation is a fair, equitable and complete buy-out of all Rental and Lending Rights.

3. Contractor hereby grants Arc the right to change, add to, take from, translate, reformat or reprocess the Results and Proceeds in any manner Arc may in its sole discretion determine. To the fullest extent allowable under the applicable law, Contractor hereby waives all right of "droit moral" or any similar laws or

legal principles, and agrees not to institute, maintain or permit directly or indirectly any litigation or proceedings instituted or maintained on the ground that Arc's exercise of its rights in the Results and Proceeds in any way constitutes an infringement or violation of any right of "droit moral" or is in any way a defamation or mutilation of the Results and Proceeds, or any part thereof, or contains unauthorized modifications or translations. Contractor expressly acknowledges that many parties will contribute to the Series that may embody all or part of the Results and Proceeds. Accordingly, if under any applicable law the above waiver or assignment by Contractor of "moral rights" or "droit moral" is not effective, Contractor agrees to exercise such rights in a manner which recognizes the contribution of and will not have an adverse affect upon such other parties.

4. The parties mutually acknowledge that Spin Master Riveting Productions Inc. ("**Producer**") intends to produce the proposed Series so as to qualify as "Canadian Content" in accordance with the applicable rules, policies, procedures and regulations administered by, as the case may be, the Canada Media Fund (the "**CMF**"), the Canadian Audio-Visual Certification Office ("**CAVCO**") or the Canadian Radio-television and Telecommunications Commission ("**CRTC**") for wholly Canadian productions. The parties further mutually acknowledge that Producer intends to produce the proposed Series so as to qualify for tax incentives pursuant to the *Income Tax Act* (Canada) and relevant provincial refundable tax credit programs and, if applicable, other sources of financing accessible to Canadian producers from Canadian funding agencies. Contractor agrees to cooperate with Producer to the extent necessary for the Series to qualify as set forth above. In particular, the Series must comply with the Essential Requirements for Youth Programming as such terms are defined by the CMF. Without limiting the generality of the foregoing, Contractor agrees to deliver the following to Arc upon execution of the Agreement:

- (a) a signed copy of the Declaration of Residency (Ontario);
- (b) CAVCO personnel number, if applicable;
- (c) evidence of Canadian citizenship by the execution and delivery to Arc of a Declaration of Residency (Ontario) and a photocopy of Contractor's Canadian Passport or Citizenship Card or Permanent Resident Card (Canada); and,
- (d) any other similar or related documentation reasonably requested by Arc.

5. Contractor shall, upon request, execute, acknowledge and deliver to Arc any and all documents Arc may reasonably deem necessary to evidence and effectuate all or any of Arc's rights hereunder. Contractor hereby irrevocable appoints Arc as Contractor's attorney-in-fact with full power to execute, acknowledge, deliver and record in the Canadian Copyright Office, the U.S. Copyright Office or elsewhere any and all such documents Contractor fails to execute, acknowledge and deliver. Such appointment shall be coupled with an interest and irrevocable.

6. Contractor hereby represents and warrants that, except with respect to material supplied to Contractor by Arc, the Results and Proceeds are and will be wholly original, do not and will not defame, infringe or violate the rights of privacy of other rights of any third party and are not the subject of any litigation or claim that might give rise to litigation. Contractor hereby agrees to defend, indemnify and hold harmless Arc, its licensees and assigns against any claims, liabilities, loss, cost or damage (including reasonable attorneys' fees) arising out of or in connection with any breach or alleged breach of any of the aforesaid representations, warranties or certifications. Arc shall similarly indemnify Contractor against any loss, cost or damage (including reasonable outside attorneys' fees) arising out of or in connection with any breach of any of Arc's representations to Contractor, provided such claim is not the result of a breach by Contractor or Contractor's negligence. Arc's rights in and to the Results and Proceeds hereunder may be freely assigned and licensed and

such assignment and/or licence shall be binding upon Contractor and inure to the benefit of such assignee and/or licensee.

7. Contractor hereby covenants and agrees that Contractor shall not have or be deemed to have any encumbrance upon any of the rights conveyed to Arc herein or proceeds derived therefrom, and that no act or omission by Arc, nor any other act, omission or event of any kind shall terminate or otherwise adversely affect Arc's ownership of the rights conveyed herein. Contractor's sole remedy for any breach by Arc shall be an action at law to recover such damages as may have been actually suffered by Contractor as a result thereof and Contractor hereby irrevocably waives any right to cancel or terminate this Agreement or to seek and/or obtain injunction or other equitable relief hereunder.

8. Contractor hereby agrees not to disclose or reveal the content of the Episodes or Series, or any information acquired hereunder relating to the techniques or operations of Arc or Producer or the financing of the Series. The foregoing restriction shall not apply to know-how, techniques, or contents of the Series that have become publicly available or are common knowledge and are not protected as a trade secret and/or by patent and/or copyright.

IN WITNESS WHEREOF, this document has been executed as of the date first written above.

**ARC PRODUCTIONS LTD.**

By: \_\_\_\_\_

\_\_\_\_\_ *[insert name]*

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

HST Registration No.

**Schedule "F"**  
**Technical Specifications**



## RUSTY RIVETS - TECH SPECS FOR DELIVERY TO POST PRODUCTION HOUSE

1. Offline and online at 23.98
2. Source files as PNG, TGA or TIFF sequences. Each shot (aka scene) in its own folder with the name of the folder referencing the scene and take number. The files in the file sequences themselves should also reflect the name, scene and take numbers. For example:

JT\_424a\_SC067a\_Tk1\_0001.png

JT\_424a\_SC067a\_Tk1\_0002.png

JT\_424a\_SC067a\_Tk1\_0003.png

etc...

\*\*\*note\*\*\* Keep the file path of the offline files consistent. The workflow works really well when we can recreate the same file path in online as was used in offline. For example if the file sequence folders are in a directory on drive x: (or a specific volume on a mac) try to have all of them in the same place. Don't import reshoots from the 'downloads' folder, or from a flash drive. Try to be consistent. (remember, wish list)

3. The source files should be 1280x720. Alpha channels are NOT required, unless there is an editorial need. For example a scene that is to be composited in online.
4. I would suggest offline resolution at DNX36. It's very decent quality and will allow the editor to see problems in the original files. Remember the Avid media for offline should be made from the SAME file sequence that the online media will be made from. That means do not use quicktime proxy files from the animation house for offlining. Online is done at 1920x1080 DNX175X.
5. For delivery to online we need three elements:
  1. A copy of the final Avid sequence sent in a bin (.avb file). The sequence should be 'collapsed' and have all the reshoots (this is a 'wish list'). Any notes for online can be put in as 'markers'.
  2. A copy of the exact same quicktime that will be sent to audio for mix (with offline audio too).
  3. All of the source media in their folders maintaining the directory structure that they were imported from in offline.

**TAB 3.**

be appropriate for their purposes. Unless otherwise provided, all dollar amounts contained in this Fifteenth Report are expressed in Canadian Dollars. Unless otherwise provided, all other capitalized items not otherwise defined in this Fifteenth Report are as defined in the First through Fourteenth Reports.

**C. Purposes of the Report**

3. The Receiver files this Fifteenth Report to seek the Court's advice and direction, on notice to all affected parties, with respect to the appropriate process to determine entitlement to receive a further distribution of \$1,149,702 being net tax credit recoveries and accrued interest, net of directly attributable professional fees and costs, which may be the subject of proprietary claims by certain Third Party Claimants (defined below).

**D. Background**

4. On July 29, 2016, Grosvenor Park Media Fund L.P. ("GP") brought a motion seeking the appointment of an Interim Receiver over ARC and certain other property. That motion was granted by the Honourable Mr. Justice Wilton-Siegel and the Interim Receiver was appointed pursuant to the Interim Receivership Order dated July 29, 2016 (the "Original Interim Receivership Order"). Pursuant to the endorsement accompanying the Original Interim Receivership Order, the fact of the receivership order was to remain confidential and the Interim Receiver was not to implement the powers provided to it pending a return conference on August 2, 2016.

5. On August 2, 2016, the Lender sought and obtained the Fresh as Amended Interim Receivership Order (the “August 2, 2016 Order”).
6. On August 10, 2016, the Receivership Order was granted by the Honourable Mr. Justice Penny.
7. On April 18, 2017, the Honourable Justice Newbould granted a Distribution Order (the “Distribution Order”), which, among other things, authorized the Receiver to “distribute to GP from time to time all funds coming into its hands, subject to such reserves as the Receiver may deem prudent in the circumstances, up to the amount of \$43,953,400”. Paragraph 5 of the Distribution Order states that “any distributions by the Receiver hereunder of proceeds of the realization or collection of tax credits of Arc, where the Receiver has notice of the interests of parties other than GP claiming ownership, security interests, or both in such tax credits or their proceeds, shall only be made upon further Order of the Court on notice to GP and to such other parties”.
8. Copies of the Court orders, the First to Fourteenth Reports, and other materials relevant to the Receivership can be accessed from the Receiver’s website at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca)

**E. Additional Recoveries Which May Be Subject to Third Party Claims**

9. The Receiver is aware that BK2BRAC Holdings Inc. (“BK2BRAC” or “Disney”), Spin Master Riveting Productions Inc. (“Spin Master”), and Blazing Productions Ltd. (“Blazing”) (collectively, the “Third Party Claimants”) are parties to Production Services

Agreements (“PSAs”) with Arc whereby Arc had contracted to compile information and submit tax recovery claims on behalf of the individual Third Party Claimants who would have been entitled to receive the proceeds of these tax credit applications in the ordinary course.

10. Generally, these PSAs assign Arc’s rights and claims to tax credits resulting from certain productions to the Third Party Claimants. Copies of the relevant PSAs are attached herein as Appendix “A”.
11. In addition, the Receiver understands that certain obligations of Arc were secured by the security interest granted to BK2BRAC, which was perfected by a June 28, 2013 registration in favour of BK2BRAC, and subordinated to the security held by GP by agreement between BK2BRAC and GP dated December 10, 2015 (the “Subordination Agreement”). The relevant page extracted from an August 4, 2016 PPSA search against Arc outlining the BK2BRAC registration together with a copy of the Subordination Agreement are attached herein as Appendix “B”.
12. Since the Thirteenth Report, the Receiver has collected tax recoveries and accrued interest, net of directly attributable professional fees and costs, related to PSAs with Third Party Claimants of \$1,149,702, detailed in the attached Appendix “C” and as follows:
  - (a) BK2BRAC – \$395,090; and
  - (b) Spin Master – \$754,612.

13. The Receiver has calculated that the professional fees and costs directly attributable to the collection of these amounts to date are \$29,855 for BK2BRAC and \$8,369 for Spin Master.
14. Attached as Appendix “D” is the Receiver’s Statement of Receipts and Disbursements for the period from August 2, 2016 to February 29, 2020 which indicates that, after taking into account an appropriate reserve and the pending tenth distribution of \$1,050,000 to GP as outlined in the Fourteenth Report, there are available funds on hand to permit this distribution of \$1,149,702.
15. The Fourth Report of the Receiver dated December 5, 2016 reported on the Receiver’s review of the validity and enforceability of GP’s security in respect of the assets, properties and undertakings of Arc and the opinion (the “Security Opinion”) of the Receiver’s independent legal counsel, Goldman Sloan Nash & Haber LLP (“GSNH”). According to the Security Opinion, it is GSNH’s opinion that, subject to the customary qualifications and limitations included therein, GP’s security is valid and enforceable against all assets, properties and undertakings of Arc.
16. The Receiver has consulted GSNH with respect to the interests of GP and the Third Party Claimants related to the recoveries from these PSAs with Third Party Claimants. The Receiver is advised by GSNH that there is uncertainty as to whether the security interest of GP constitutes a first-ranking charge over net tax recoveries relating to PSAs with these Third Party Claimants, or whether Arc’s contractual obligation in these PSAs to

## **APPENDIX “C”**

**In the matter of the Receivership of Arc Productions Ltd.**  
**Schedule of Film Tax Credits Potentially Subject to Third Party PSAs, Before Fees and Disbursements**  
**as at February 29, 2020**

<i>Third Party</i>	<i>Status</i>	<i>Year</i>	<i>Production</i>	<i>Tax Credit</i>	<i>C\$</i>	
Disney	Received	2014	Meet the Piston Peak Team, I (1-4)	OCASE	144,967	
			The Pirate Fairy	OCASE	19,990	
			Tink'n About Animals	OCASE	106,817	
			Vitaminamulch: Air Spectacular	OCASE	125,748	
			Accrued Interest		27,423	
					424,945	
				Fees and disbursements	(29,855)	
				Total	395,090	
	Outstanding		2013	Meet the Piston Peak Team, I (1-4)	OCASE	2,627
				The Pirate Fairy	OCASE	95,644
Vitaminamulch: Air Spectacular				OCASE	59,608	
					157,879	
			Total	552,969		
Spin Master	Received	2014	Rusty Rivets, I	OCASE	22,804	
			Accrued Interest		1,573	
		2015	Rusty Rivets, I	OCASE	384,213	
			Accrued Interest		18,658	
		2016	Rusty Rivets, I	OCASE	330,152	
			Accrued Interest		5,581	
						762,981
					Fees and disbursements	(8,369)
			Total	754,612		
Blazing	Outstanding	2015	Blazing Samurai	PSTC	7,964	
				OPSTC	22,387	
		2016	Blazing Samurai	PSTC	188,683	
				OPSTC	503,179	
				OCASE	324,271	
				Total	1,046,484	
Total tax credits potentially subject to third party PSAs, received to date					1,134,691	
Accrued interest					53,235	
Fees and disbursements					(38,224)	
Total tax credits potentially subject to third party PSAs, received to date net of fees and disbursements					1,149,702	
Outstanding tax credits potentially subject to third party PSAs					1,204,363	
<b>Total tax credits potentially subject to third party PSAs</b>					<b>2,354,065</b>	



**TAB 4.**

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**CREDIT AGREEMENT**

Dated as of December 10th, 2015

among

**ARC PRODUCTIONS LTD.,**

as Borrower,

**THE SUBSIDIARIES OF THE BORROWER PARTY**

**HERETO, as Guarantors**

and

**GROSVENOR PARK MEDIA FUND LP**

as Lender

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Exhibit C	– Compliance Certificate
Exhibit D	– Loan Notice
Exhibit E	– Illustrative Example – Covenant 6.11(b)

## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of December 10, 2015, among Arc Productions Ltd. a corporation organized under the laws of the Province of Ontario, Canada (the "Borrower"), the Guarantors referred to herein (the "Guarantors") and Grosvenor Park Media Fund LP (the "Lender") with reference to the following facts:

### RECITALS

A. The Borrower has requested that the Lender provide four distinct Tranches of up to \$45,326,500 in the aggregate for use as set forth herein (the "Credit Facility").

B. To provide assurance for the repayment of the Loans and other Obligations of the Borrower hereunder and under the other Loan Documents, the Guarantors have provided guaranties of the Obligations to the Lender pursuant to the Loan Party Guarantees. In addition, to provide assurance for the repayment of the Loans and other Obligations, the Borrower and the Guarantors have agreed to grant a Lien on the Collateral in favour of the Lender pursuant to the Security Documents.

C. Subject to, and upon the terms and conditions set forth herein, the Lender is willing to make Loans to the Borrower as provided herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Account Control Agreement" means an account control agreement among a Loan Party, the Lender and the applicable depository bank at which such Loan Party maintains a bank account, which shall provide that the Loan Party is entitled to operate such bank account in the normal course prior to the delivery of the notice referenced therein by the Lender of it rights, in a form reasonably acceptable to the Lender.

"Administration Fees" means a non-refundable fee in an amount equal to Seventy-Five Thousand Dollars (\$75,000) payable in accordance with Section 2.6(b) until satisfaction of the Obligations in full.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" means this Credit Agreement.

"Arc Holdings" means Arc Holdings Inc.

"Arc Investments" means Arc Investments Ltd.

"Arc Investments Shareholders" means the following Persons: Kallan Kagan, Peter Kozik and J. Thomas Murray.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for their most recently completed fiscal year, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Availability" means, as of any date of determination thereof, the following:

(a) in respect of Tranche A, the positive difference, if any, between the Tranche A Commitment and the total outstanding amount of Loans drawn under Tranche A;

(b) in respect of Tranche B, the positive difference, if any, between the Tranche B Commitment and the total outstanding amount of Loans drawn under Tranche B, provided however that availability under Tranche B shall expire on June 30, 2016;

(c) in respect of Tranche C, the positive difference, if any, between (a) the lesser of (i) the Tranche C Commitment on such date and (ii) the Borrowing Base on such date; and (b) the total outstanding amounts of the Loans drawn under Tranche C on such date, provided, however, that availability under Tranche C shall be limited to the 2016 calendar year; and

(d) in respect of Tranche D, the positive difference, if any, between (a) the lesser of (i) the Tranche D Commitment on such date and (ii) the Borrowing Base on such date; and (b) the total outstanding amounts of the Loans drawn under Tranche D on such date, provided, however that availability under Tranche D shall be limited to the 2017 calendar year.

"Bank Act (Canada)" means the Bank Act, S.C. 1991, c. 46.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. §101 et seq.

"Base Rate" means for any day a fluctuating rate per annum equal to the rate of interest in effect for such day as publicly announced from time to time by Bank of America in Los Angeles, California as its "prime rate" for U.S. Dollar loans. Such "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such "prime rate" announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.



“Base Rate Margin” means an amount equal to seven and three-quarters percent (7.75) per annum.

“Blocked Account Agreement” means a blocked account agreement among a Loan Party, the Lender and the applicable depository bank at which a bank account has been established for the purposes of collecting the Canadian Tax Credit Proceeds.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrowing” means a borrowing made by the Lender to the Borrower pursuant to Section 2.02 hereof.

“Borrowing Base” means, at any date for which the amount thereof is to be determined, an amount equal to the aggregate (without double counting) of the following:

- (i) in respect of Tranche A: Ninety-Five Percent (95%) of the Qualifying Tax Credit Receivable(s) as supported by a Tax Credit Comfort Letter, converted into Dollars at the exchange rate specified in the associated Hedge Agreements; and
- (ii) in respect of Tranche C and D: Ninety Percent (90%) of the earned portion of a Qualifying Tax Credit Receivable accompanied by a cost report in support of the exigible expenditure to which the Qualifying Tax Credit Receivable relates, converted into Dollars at the exchange rate specified in the associated Hedge Agreements,

provided, however in each instance, the Qualifying Tax Credit Receivable is not an Overdue Tax Credit Receivable.

“Borrowing Base Certificate” means a certificate prepared and delivered by the Borrower to the Lender in accordance with the terms hereof which sets forth a detailed calculation of the Borrowing Base, substantially in the form of Exhibit A to this Agreement.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of California and/or the Province of Ontario.

“Callidus” means Callidus Capital Corporation.

“Callidus Credit Agreement” means the credit agreement dated April 4, 2014, as amended, issued by Callidus and accepted by the Borrower and those guarantors referenced therein.

“Callidus Payout Letter” means the undertaking of Callidus to execute the Callidus Release and Discharge and effect the discharges referenced therein upon payment of the Callidus Indebtedness.

“Callidus Release and Discharge” means the full, complete and unconditional release and discharge, in form and substance acceptable to the Lender, of all security interests granted by an Obligor (as defined in the Callidus Credit Agreement) to and in favour of Callidus pursuant to the Callidus Credit Agreement.

“Callidus Indebtedness” means the payment of all outstanding indebtedness due to Callidus pursuant to the Callidus Credit Agreement reflected in the Callidus Payout Letter.

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

“Canadian Dollars” or “C\$” means lawful money of Canada.

“Canadian Pension Plan” means any “registered pension plan” as defined under the *Tax Act* administered or contributed to by (or to which there is or may be an obligation to contribute by) a Loan Party or its Subsidiaries, in respect of any person’s employment in Canada or a province or territory thereof with such Loan Party or Subsidiary, all related funding agreements and all related agreements, arrangement and understandings in respect of, or related to, any benefits to be provided thereunder.

“Canadian Tax Credit Proceeds” means the proceeds derived from a Qualifying Tax Credit Receivable.

“Canadian Tax Credits” means a Loan Party’s right in any production services tax credits or other similar benefits relating to an eligible Production pursuant to: (a) the regulations to the *Tax Act*, as jointly administered by CAVCO and CRA (the “Federal Tax Credits”); and (b) the regulations to the *Corporations Tax Act* (Ontario), as jointly administered by the OMDC and CRA (the “Ontario Tax Credits”), including the Ontario Computer Animation and Special Effects tax credits in respect of digital animation and special effects activities undertaken by a Loan Party (the “OCASE Tax Credit”).

“Capital Expenditures” means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures (whether paid in cash or accrued as a liability) by such Person during that period which, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items included in cash flows (including Capital Leases) and (b) to the extent not covered by clause (a) hereof, the aggregate of all expenditures properly capitalized in accordance with GAAP by such Person to acquire, by purchase or otherwise, the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any other Person (other than the portion of such expenditures allocable in accordance with GAAP to net current assets).

“Capital Lease” as applied to any Person, shall mean any lease of any property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Cash & Availability before Permitted Payments” means the cash and borrowing capacity available to the Borrower to cover the interest and fees of the Lender and the Permitted

Payments over the Projected Measurement Period, calculated as the sum of (i) the cash and Cash Equivalents of the Borrower as of the date of measurement; (ii) the Availability; (iii) the incremental Availability earned over the Projected Measurement Period; (iv) the Consolidated Cash Flow from Operating Activities over the Projected Measurement Period; (v) the Consolidated Cash Flow from Investing Activities over the Projected Measurement Period; and (vi) the projected interest and fees, as described in paragraphs 2.05 and 2.06, respectively, payable during the Projected Measurement Period; less the expected Canadian Tax Credit Proceeds over the Projected Measurement Period.

“Cash Equivalents” means: (i) marketable securities issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition; (ii) time deposits, demand deposits, certificates of deposit, acceptances or prime commercial paper or repurchase obligations for underlying securities of the types described in clause (i) entered into with, the Lender or any commercial bank having a short-term deposit rating of at least A-2 or the equivalent thereof by Standard & Poor’s Corporation or at least P-2 or the equivalent thereof by Moody’s Investors Service, Inc.; (iii) commercial paper with a rating of A-1 or A-2 or the equivalent thereof by Standard & Poor’s Corporation or P-1 or P-2 or the equivalent thereof by Moody’s Investors Service, Inc. and in each case maturing within twelve months after the date of acquisition; (iv) any money market, mutual fund or other pooled investment vehicle which invests at least 90% of its assets in Cash Equivalents of the types described in clauses (i) through (iii) above; (v) any book-based securities, negotiable instruments or securities represented by instruments in bearer or registered form which evidence any of (a) direct obligations of, or obligations fully guaranteed as to the timely payment of principal and interest by, the Government of Canada having remaining terms to maturity of no more than 365 days, (b) direct obligations of, or obligations fully guaranteed as to the timely payment of principal and interest by, the Government of a province of Canada having remaining terms to maturity of no more than 365 days, (c) demand deposits, term deposits or certificates of deposits (having original maturities of no more than 365 days) of banks or trust companies chartered or licensed under the Laws of Canada or any province thereof; provided that, at the time of the investment or contractual commitment to invest therein, the short-term debt rating of such bank or trust company shall have a rating of at least R-1 (middle) from Dominion Bond Rating Service Limited or of at least an equivalent rating from Canadian Bond Rating Service, (d) commercial paper (having a remaining term to maturity of no more than 365 days) having, at the time of the investment or contractual commitment to invest therein, a rating of at least R-1 (middle) from Dominion Bond Rating Service Limited or of at least an equivalent rating from Canadian Bond Rating Service or (e) notes issued by or bankers’ acceptances (having original maturities of no more than 365 days) accepted by any bank or trust company referred to in (c) above; or (vi) investments reasonably acceptable to the Lender and equivalent to those referenced in clauses (i) through (v) above denominated in foreign currencies customarily used by persons for cash management purposes.

“CAVCO” means the Canadian Audio-Visual Certification Office of Heritage Canada.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the compliance by the Lender with any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that notwithstanding anything to the contrary herein, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change in Management" means (a) J. Thomas Murray shall cease to be the Chief Executive Officer of the Borrower; (b) Kallan Kagan shall cease to be the President and Chief Creative Officer of the Borrower; or (c) Peter Kozik shall cease to be the Chief Financial Officer of the Borrower, provided in each case that the Borrower fails to hire a replacement for any such Person, reasonably satisfactory to the Lender, within 120 days after such Person ceases to hold his specified position with the Borrower.

"Change of Control" means and shall be deemed to have occurred if (a) Arc Holdings shall at any time not own, in the aggregate, directly, beneficially and of record, at least 92.5% of the voting power of the outstanding voting Equity Interests of the Borrower or (b) Arc Investments shall at any time not own, in the aggregate directly, beneficially and of record, 100% of the voting power of the outstanding voting Equity Interests of Arc Holdings or (c) the Arc Investments Shareholders shall at any time not own, in the aggregate, directly, beneficially and of record, 100% of the voting power of the outstanding voting Equity Interests of Arc Investments; or (d) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person or (e) the Borrower ceases to be "Canadian controlled" within the meaning of the Investment Canada Act, as in effect as of the Closing Date, and as it may thereupon be amended from time to time, and such change in status of the Borrower would reasonably be expected to have a Material Adverse Effect provided, however, in respect of the occurrences set out in subparagraphs (a), (b) and (c) above, any changes to the Equity Interests referred to therein owing to the establishment of an employee stock option plan that has been approved by the Lender shall not be deemed a "Change of Control" for the purposes of this definition.

"Closing Date" means the first date all the conditions precedent in Sections 3.01 and 3.02 are satisfied or waived.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means with respect to each Loan Party, all of such Loan Party's right, title and interest in and to all personal and real property, tangible and intangible, wherever located or situated and whether now owned, presently existing or hereafter acquired or created, including, but not limited to, all goods, accounts, instruments, intercompany obligations, contract rights

(including, without limitation, all rights of any Loan Party under each Material Agreement, partnership and joint venture interests, documents, chattel paper, general intangibles, goodwill, equipment, machinery, inventory, investment property (including any Pledged Securities), copyrights, trademarks, trade names, insurance proceeds, cash, deposit accounts, letter-of-credit rights, and supporting obligations and any proceeds thereof, products thereof or income therefrom of every kind and character, whether now in existence or hereafter to be made or produced, and whether or not in possession of such Loan Party expressly including any and all such Loan Party's right, title and interest in the Canadian Tax Credits and the Canadian Tax Credit Proceeds; provided, however, that notwithstanding anything in this Agreement to the contrary, the term "Collateral" shall not include any (i) "intent-to-use" trademark applications for which a statement of use has not been filed and accepted with the United States Patent and Trademark Office or the Canadian Intellectual Property Office or any intellectual property if the grant of a security interest therein would result in the cancellation or voiding of such intellectual property by the applicable Governmental Authority or (ii) any agreement, license or permit or any property or rights governed by an agreement, license or permit to which any Loan Party is a party, only to the extent and for so long as the terms of such agreement, license or permit or any requirement of applicable Law (x) provided further that Collateral shall include, and the security interest granted in the Collateral shall attach to, any proceeds, substitutions or replacements of any such excluded items referred to herein unless such proceeds, substitutions or replacements would constitute excluded items hereunder.

"Commitment" means, collectively, the Tranche A Commitment, the Tranche B Commitment, the Tranche C Commitment and the Tranche D Commitment.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Consolidated Cash Flow from Investing Activities" means, for any Projected Measurement Period, the negative sum of (i) Capital Expenditures and (ii) capitalized investments in Development & Production Activities.

"Consolidated Cash Flow from Operating Activities" means, for any Projected Measurement Period, the sum, without double-counting, of (i) the Consolidated Net Income; (ii) Consolidated Fixed Asset Amortization; (iii) Consolidated Interest Charges; (iv) change in Consolidated Current Assets; (v) change in Consolidated Current Liabilities; and (vi) change in long-term capital leases obligations, long-term deferred rent, and other long-term liabilities as disclosed on the Borrower's consolidated balance sheet.

"Consolidated Current Assets" means, at any date of determination, for the Loan Parties, on a consolidated basis, all current assets of such Loan Parties calculated in accordance with GAAP.

"Consolidated Current Liabilities" means, at any date of determination, for the Loan Parties, on a consolidated basis, all liabilities that should be classified as current liabilities in accordance with GAAP.

"Consolidated Fixed Asset Amortization" means for any applicable period of determination, for the Loan Parties, on a consolidated basis, the aggregate amortization and

depreciation expense with respect to all tangible assets, including, property, plant and equipment in accordance with GAAP.

"Consolidated Interest Charges" means, for any Projected Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under all Capital Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a consolidated basis.

"Consolidated Net Income" means, at any date of determination and for the Loan Parties, on a consolidated basis the net income (or loss) for that period determined in accordance with GAAP, excluding, however, (a) any gains or losses during that period on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and any other gains or losses from extraordinary items during that period, any Taxes on any such excluded gains and any Tax deductions or credits on account of any such excluded losses and (b) any net earnings or losses during that period of any Person in which any Loan Party has an ownership interest unless such net earnings shall have actually been received by that Loan Party in the form of cash distributions.

"Contractual Obligation" means, as to any Loan Party, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Copyright Mortgage" means a copyright mortgage and assignment executed by the Loan Parties organized under the Laws of Canada or any province or territory thereof or having registered copyrights in Canada and the Lender in a form agreed between such Loan Parties and the Lender, as the same may be amended, supplemented or otherwise modified, confirmed, renewed or replaced from time to time.

"CRA" means the Canada Revenue Agency, or any successor Canadian governmental agency or authority.

"Credit Facility" has the meaning given to such term in Recital A hereto.

"Debtor Relief Laws" means, collectively, the Bankruptcy Code, the Canadian Bankruptcy and Insolvency Act, and any and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of any jurisdiction from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to the Base Rate plus the Base Rate Margin plus two percent (2%) per annum.

“Development & Production Activities” has the meaning specified in Section 6.11 hereof.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dollars” or “\$” means lawful money of the United States of America.

“Environmental Claims” means any and all actions, suits, orders, decrees, demands, demand letters, claims, liens, notices of noncompliance, violation or potential responsibility or investigation (other than internal reports prepared by the Borrower or any of the Subsidiaries (a) in the ordinary course of such Person’s business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereinafter, “Claims”), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief relating to the presence, release or threatened release of Hazardous Materials or arising from alleged injury or threat of injury to health or safety (to the extent relating to human exposure to Hazardous Materials), or the environment including, without limitation, ambient air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands.

“Environmental Law” means any applicable federal, state, provincial, municipal, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the protection of environment, including, without limitation, ambient air, surface water, groundwater, land surface and subsurface strata and natural resources such as wetlands, or human health or safety (to the extent relating to human exposure to Hazardous Materials), or Hazardous Materials.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into

the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“Event of Default” has the meaning specified in Section 7.01.

“Existing PSA” means those PSAs entered into as of the date hereof and referenced on Schedule 4.22 hereof.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“FX Commitment Fee” means a non-refundable fee in an amount equal to One Hundred and Fifty Thousand Dollars (\$150,000) payable in accordance with Section 2.06(c) until satisfaction of the Obligations in full.

“GAAP” means Canadian generally accepted accounting principles as set out in the handbook prepared by the Canadian Institute of Chartered Accountants as amended, varied, supplemented, restated or renewed at any time and from time to time and, if replaced, any replacement handbook and, where the context permits, and where the handbook does not otherwise address the issue, means the standards established for the Canadian film and television production and distribution industry therein.

“Governmental Authority” means the government of Canada, the United States or any other nation, or of any political subdivision thereof, whether provincial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” means, as to any Person, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other



obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means, collectively: (i) all direct and indirect wholly-owned Subsidiaries of the Borrower as of the Closing Date and all direct and indirect wholly-owned Subsidiaries of the Borrower acquired or created by the Borrower after the Closing Date; and (ii) Arc Holdings and Arc Investments.

"Hazardous Materials" means (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

"Hedge Agreement" shall mean (a) any agreement, arrangement, device or instrument designed or intended to protect or manage exposure to fluctuations in interest rates, dollar-denominated or cross currency interest rate exchange agreements, interest rate cap or collar protection agreements or interest rate options, puts and warrants and so-called "rate swap" and "hedging" agreements; and (b) any and all cancellations, buy-backs, reversals, terminations or assignments of any of the foregoing.

"Hedge Obligations" means for any Person, any and all obligations of such Person, whether direct or indirect, absolute or contingent, and whether monetary or otherwise, at any time created, arising or existing, evidenced or acquired (including all renewals, extensions, modifications and amendments thereof and all substitutions therefore), in respect of any Hedge Agreement, including without limitation, any amounts owing in connection with the early termination thereof and interest and fees that accrue after the commencement by or against such Person of any insolvency proceeding, whether or not a claim for post-filing or post-petition

interest is allowed in such proceeding or subject to an automatic stay under Section 362(a) of the Bankruptcy Code.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(i) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(ii) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(iii) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and earnout obligations until such obligations, within 90 days of becoming due and payable, have not been paid);

(iv) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person;

(v) Capital Leases and Synthetic Lease Obligations;

(vi) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any preferred Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(vii) all Guarantees of such Person in respect of any of the foregoing.

"Indemnitees" has the meaning specified in Section 9.04(b).

"Intangible Assets" means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

"Intercreditor Agreement" means an intercreditor and subordination agreement by and between Starz Canada, the Borrower, Arc Holdings, Arc Investments and the Lender, which shall be in form and substance satisfactory to the Lender, as amended, restated, supplemented, or otherwise modified.

"Interest Act (Canada)" means the Interest Act, R.S., 1985, c.I-15.

“Interest Coverage Ratio” means the ratio of Cash & Availability before Permitted Payments to the projected interest and fees, as described in paragraphs 2.05 and 2.06, respectively, payable during the Projected Measurement Period.

“Interest Payment Date” means the sixth Business Day of each month.

“IRS” means the United States Internal Revenue Service or any successor agency.

“Laws” means, collectively, all international, foreign, federal, state, provincial, local and municipal statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lender Account” means the bank account specified in Section 2.05(c) hereof.

“Lien” means any mortgage, copyright mortgage, pledge, hypothec, debenture, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including *any* conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing); provided, however, the term “Lien” shall not include contractual restrictions or encumbrances which do not afford security of the type described above in the definition.

“Loan” means the advance of funds by the Lender to the Borrower under Article II all of which are collectively referred to as the “Loans”.

“Loan Documents” means and includes, collectively, this Agreement, the Notes, the Loan Party Guarantees, the Intercreditor Agreement, the Subordination Agreements, the Security Documents, the Tax Credit Applications, the Tax Credit Documents, the Tax Credit Comfort Letter, the Hedge Agreements and any amendments, supplements, modifications, extensions, renewals and replacements to any such documents together with all exhibits, attachments, certificates and all other agreements, instruments and documents heretofore, now or hereafter evidencing, securing, guaranteeing or otherwise relating to the Obligations, the Collateral, the security interests granted to the Lender hereunder, or any other aspect of the transactions contemplated by this Agreement.

“Loan Fee” means the fee payable by the Borrower to the Lender specified in Section 2.06(a).

“Loan Notice” means a written request for a Borrowing in the form of Exhibit D attached hereto.

“Loan Party Guarantees” means, collectively, the respective continuing guaranties made by the Guarantors in favor of the Lender, for the benefit of the Secured Parties, in each case in a form agreed to by the Lender and such Guarantors, as the same may be amended, supplemented or otherwise modified or confirmed from time to time.

“Loan Party” means, the Borrower or any Guarantor and “Loan Parties” means, collectively, all of them.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower and the other Loan Parties taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Agreements” means those agreements referenced in Section 4.22.

“Maturity Date” means the earlier of: (i) December 31, 2019 or if such date is not a Business Day, the Maturity date shall be the next preceding Business Day; and (ii) such other date as the Loans shall become due and payable pursuant to Article VII hereof.

“Maximum Availability” has the meaning specified in Section 2.01(e) hereof.

“Note” or “Notes” means the promissory note(s) in favor of the Lender referenced in Section 2.08, evidencing Loans made by the Lender to the Borrower, substantially in the form of Exhibit B.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of any Loan Party to the Lender arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OMDC” means the Ontario Media Development Corporation.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or

organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Overdue Tax Credit Receivable” has the meaning specified in Section 2.04(c) hereof.

“Permitted Investments” means:

- (a) U.S. Dollars and Canadian Dollars;
- (b) Euro, or any national currency of any participating member state of the EMU;
- (c) securities issued or directly and fully and unconditionally guaranteed or insured by the United States of America or Canadian government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 12 months or less from the date of acquisition;
- (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than \$500,000,000 in the case of banks organized in the United States of America and \$100,000,000 in the case of banks not organized in the United States of America;
- (e) repurchase obligations for underlying securities of the types described in clauses (c) and (d) having a term of not more than 30 days entered into with any financial institution meeting the qualifications specified in clause (d) above;
- (f) commercial paper rated at least P-1 by Moody's or at least A-1 by S&P and in each case maturing within 12 months after the date of creation thereof;
- (g) marketable short-term money market and similar securities having a rating of at least P-1 or A-1 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another rating agency) and in each case maturing within 12 months after the date of creation thereof;
- (h) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (g) above; and
- (i) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's.

“Permitted Liens” means any Lien permitted by Section 6.01.

“Permitted Payments” means payments to Starz Canada pursuant to the terms of the Intercreditor Agreement or a Subordinated Creditor pursuant to the terms of the Subordination Agreement to which it is a party.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Pledge Agreements” means a securities pledge agreement executed by each of the Borrower, Arc Holdings and Arc Investments and the Lender in a form agreed between such Loan Parties and the Lender, as the same may be amended, supplemented or otherwise modified, confirmed, renewed or replaced from time to time.

“Pledged Securities” means the Equity Interests pledged in favour of the Lender pursuant to the Pledge Agreements.

“PPSA” shall mean unless otherwise provided in this Agreement, the *Personal Property Security Act*, R.S.O. 1990 c.P.10 as heretofore and hereafter amended and in effect in the Province of Ontario, or, where the context requires, the legislation of the other provinces or territories of Canada, relating to security in personal property generally, including accounts receivable, as adopted by and in effect from time to time in such provinces or territories in Canada, as applicable.

“Pro Forma Interest Coverage Ratio” means the ratio of (i) Cash & Availability before Permitted Payments *less* the Permitted Payments to (ii) the projected interest and fees, as described in paragraphs 2.05 and 2.06, respectively, payable during the Projected Measurement Period.

“Production” means any film, television, new media product or other audio-visual work.

“Projected Measurement Period” means, at any date of determination, the next ninety (90) day period.

“PSA” means a production services agreement entered into by a Loan Party and the copyright holder of a Production with respect to the rendering of Canadian production services to such copyright holder in connection with such Production.

“Qualifying Tax Credit Receivable” means the Canadian Tax Credits which the Borrower or a Subsidiary is eligible to claim and receive in respect of any Production in respect of which the Borrower or the relevant Subsidiary has entered into a PSA (unless the Borrower or such Subsidiary, as the case may be, is only claiming the OCASE Tax Credit in which event such claimant may not have entered into a PSA), which receivable is confirmed in writing by the Tax Credit Consultant.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates and “Related Party” means any such Person.

“Responsible Officer” means the chief executive officer, president, chief financial officer, senior treasury manager (or similar title) of a Loan Party or any other officer authorized by the Borrower or the relevant Loan Party to act on its behalf. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed

to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any other Loan Party, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Borrower's stockholders, partners or members (or the equivalent Person thereof).

"Security Agreement" means a general security agreement executed by the Borrower and each Guarantor (other than Arc Holdings and Arc Investments) and the Lender in a form agreed between such Loan Parties and the Lender, as the same may be amended, supplemented or otherwise modified, confirmed, renewed or replaced from time to time.

"Security Documents" means, collectively, the Security Agreement, the Pledge Agreements, the Security Agreement and the Tax Credit Assignments and each other security agreement or other instrument or document executed and delivered pursuant to any of the foregoing documents to secure any of the Obligations.

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

"Starz Canada" means Starz Canada Holdco, LLC.

"Subordination Agreements" means each subordination and postponement agreement, in form and substance satisfactory to the Lender, entered into with the Lender and Subordinated Creditor pursuant to which such Subordinated Creditor: (i) subordinates the security interest granted by a Loan Party in favour of such Subordinated Creditor to the security interests granted in favour of the Lender pursuant to the Loan Documents; and (ii) postpones the payment of the debt secured thereby except as expressly provided therein.

"Subordinated Creditor" means each of: (i) John P. Barrington and the Geoff Browne Family Trust; and (ii) BK2BRAC Holdings Inc.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower and for such purposes each such the term shall exclude OZ3D Productions Ltd.

“Tax Act” means the *Income Tax Act* (Canada), as amended from time to time, and regulations promulgated thereunder.

“Tax Credit Applications” means any and all applications, agreements, instruments or documents pertaining to the Canadian Tax Credit Rights) including the CAVCO and OMDC applications, together with all enclosures, annexes, exhibits and or schedules thereto) filed with any Tax Credit Authority.

“Tax Credit Assignments” means the assignment agreements executed by a Loan Party pursuant to which such Loan Party assigns all right, title and interest it has or may have in any Canadian Tax Credits, in form agreed between such Loan Party and the Lender, as the same may be amended, supplemented or otherwise modified, confirmed, renewed or replaced from time to time.

“Tax Credit Authorities” means: (i) in respect of the Federal Tax Credits, CAVCO and CRA; and (ii) in respect of the Ontario Tax Credits including the OCASE Tax Credit, OMDC and CRA.

“Tax Credit Consultant” means such third party consultant having expertise in the qualification, application, filing, audit and collection of Canadian Tax Credits approved in writing by the Lender, in its sole discretion. PriceWaterhouseCoopers LLP is pre-approved by the Lender to render the Tax Credit Comfort Letter on the Closing Date.

“Tax Credit Comfort Letter” means the good faith written estimate by the Tax Credit Consultant of the Dollar amount of the Canadian Tax Credit Rights, accompanied by a list of assumptions used in preparing the estimate, signed by the Tax Credit Consultant which shall, on the Closing Date, be in an aggregate amount no less than C\$24,535,789.

“Tax Credit Documents” means collectively, the direction(s) to each of CAVCO, CRA and OMDC from a Loan Party and the authorization to communicate executed by each Loan Party.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any taxing authority, including any interest, additions to tax or penalties applicable thereto.

“Tranche” means Tranche A, Tranche B, Tranche C or Tranche D, as the context requires.

“Tranche A” means that portion of the Credit Facility equal to the Tranche A Commitment.

“Tranche B” means that portion of the Credit Facility equal to the Tranche B Commitment.

“Tranche C” means that portion of the Credit Facility equal to the Tranche C Commitment.



"Tranche D" means that portion of the Credit Facility equal to the Tranche D Commitment.

"Tranche D Adjustment Notice" means a written notice delivered by the Borrower to the Lender on or before September 30, 2016, requesting a reduction to the Tranche D Commitment to the amount specified in such notice.

"Tranche A Commitment" means an amount equal to Seventeen Million Five Hundred Thousand Dollars (\$17,500,000).

"Tranche B Commitment" means an amount equal to Three Million Eight hundred Twenty Six Thousand Five Hundred Dollars (\$3,826,500).

"Tranche C Commitment" means an amount equal to Twelve Million Dollars (\$12,000,000).

"Tranche D Commitment" means an amount equal to Twelve Million Dollars (\$12,000,000), unless reduced pursuant to the Tranche D Adjustment Notice in which event the Tranche D Commitment shall be equal to the reduced amount set forth in the Tranche D Adjustment Notice (the "Tranche D Adjusted Commitment").

"UCC" means the Uniform Commercial Code in the State of New York as in effect on the Closing Date and as may be thereafter be amended from time to time.

"U.S. Dollars" and "US\$" means lawful money of the United States.

"U.S. Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) subject to ERISA and established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall," Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections,

Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

**1.03 Accounting Terms.** (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and the Borrower shall so request, the Lender and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Lender financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

**ARTICLE II**  
**THE COMMITMENT**

**2.01 Loans.**

(a) Subject to the terms and conditions set forth herein, on the Closing Date the Lender agrees to make loans (each such loan, a "Loan" and, collectively, the "Loans") to the Borrower in Dollars in an amount up to the Tranche A Commitment.

(b) Subject to the terms and conditions set forth herein, from the Closing Date until (but including) June 30, 2016 the Lender agrees to make Loans to the Borrower in Dollars in an amount up to the Tranche B Commitment.

(c) Subject to the terms and conditions set forth herein and subject to Availability, the Lender agrees to make Loans to the Borrower in Dollars in an amount up to the Tranche C Commitment during the 2016 calendar year and up to the Tranche D Commitment during the 2017 calendar year.

(d) No payment with respect to the Loans may be re-borrowed. The Loans shall be Base Rate Loans.

(e) Notwithstanding anything to the contrary, at no time shall the aggregate amount of all outstanding Loans under each of Tranche A, Tranche B, Tranche C and Tranche D exceed Twenty Five Million Dollars (\$25,000,000) (the "Maximum Availability"). If the aggregate amount of all outstanding Loans exceed the Maximum Availability, the Lender may refuse to make or otherwise restrict the making of Loans on such terms as the Lender may determine until the aggregate amount of all outstanding Loans has been reduced. Any and all outstanding loans in excess of the Maximum Availability shall be payable by the Borrower on demand

**2.02 Borrowings.** All Borrowings shall be made upon the Borrower's irrevocable notice to the Lender, which may be given by telephone. Each such Loan Notice must be received by the Lender not later than 11:00 a.m. five (5) Business Days prior to the requested date of any Borrowing. Each telephonic notice by the Borrower pursuant to this Section 2.02 must be confirmed promptly by delivery to the Lender of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day), and (ii) the principal amount of the Loan to be borrowed.

**2.03 Prepayments.**

(a) The Borrower may, upon notice from the Borrower to the Lender, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Lender not later than 11:00 a.m. on the date of prepayment of Base Rate Loans; and (ii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000, in excess thereof or, if less, the

entire principal amount thereof then outstanding Tranche. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. For purposes of clarity, all voluntary prepayments of Loans shall be applied to reduce the scheduled principal instalments of the such Loans in the inverse order of their maturities.

#### 2.04 Repayment of Loans.

(a) The Borrower shall repay to the Lender on the Maturity Date the aggregate principal amount of the Loans made to the Borrower outstanding on such date.

(b) Prior to the Maturity Date, the Borrower shall repay to the Lender the following: (i) the aggregate principal amount of the Loans advanced under Tranche B in twenty-four (24) equal instalments commencing July 1, 2016; (ii) the aggregate principal amounts of the Loans advanced under Tranche A, C and D upon receipt by a Loan Party of any and all Canadian Tax Credit Proceeds.

(c) In the event any Qualifying Tax Credit Receivable (i) included in the Borrowing Base on the Closing Date remains outstanding for a period in excess of thirty (30) months following the Closing Date, or (ii) included in the Borrowing Base following the Closing Date remains outstanding for a period in excess of thirty (30) months from the June 30<sup>th</sup> tax filing date on which such Qualifying Tax Credit Receivable was claimed (each of (i) and (ii), an "Overdue Tax Credit Receivable"), Loans advanced against such Overdue Tax Credit Receivable shall be immediately due and payable to the Lender without further notice or formality.

**2.05 Interest.** (a) Subject to the provisions of subsection (b) below, each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate, plus, the Base Rate Margin;

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) While any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be calculated by the Lender in arrears monthly on the first Business Day of each month and the Lender shall notify the Borrower of such amount on such date. Interest on each Loan shall be due and payable in Dollars in arrears monthly on the Interest Payment Date of each month and at such other times as may be specified herein by making payment to Bank of America, N.A., 100 West 33<sup>rd</sup> Street, New York, New York 10001 USA, ABA: 026-009-593, SWIFT: BOFAUS3N, Account Name: Grosvenor Park Media Fund LP, Account Number: 1453031856 (the "**Lender Account**"). Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) For the purposes of the Interest Act (Canada), (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a period (the "deemed period") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed period, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

## 2.06 Fees.

(a) Loan Fee. The Borrower shall pay to the Lender a loan fee equal to two percent (2%) of the principal amount of each Tranche of the Commitment (the "Loan Fee"). The Loan Fee in respect of Tranche A and B shall be capitalized into the Tranche A Commitment and the Tranche B Commitment, respectively, on the Closing Date. The Loan Fee in respect of Tranche C shall be payable in four quarterly instalments at the beginning of each calendar quarter commencing on January 1, 2016. The Loan Fee in respect of Tranche D shall be payable in four quarterly instalments commencing on the date of the first Borrowing under Tranche D and thereafter at the beginning of the following three calendar quarters provided, however, in the event the Borrower has delivered a Tranche D Adjustment Notice, the Loan Fee in respect of Tranche D shall be the greater of: (i) two percent (2%) of the principal amount of the Tranche D Adjusted Commitment; or (ii) One Hundred and Twenty Thousand Dollars (\$120,000) and payable as aforesaid. If, however, the Tranche D Adjusted Commitment as set out in the Tranche D Adjustment Notice has been reduced to zero (\$0), the Loan Fee in respect of Tranche D shall be payable in full on January 1, 2017. At the option of the Borrower, any quarterly instalment of the Loan Fee in respect of Tranche C and Tranche D may be capitalized into the Tranche C Commitment and the Tranche D Commitment, respectively, upon written notice by the Borrower to the Lender prior to its due date. Payment of the Loan Fee shall be effected by making payment to the Lender Account.

(b) Administration Fees. The Borrower shall pay to the Lender the Administration Fee in monthly instalments equal to one-twelfth (1/12) of the Administration Fee on the Interest Payment Date of each month. The Administration Fees shall be deemed fully earned on the

Closing Date and on each anniversary thereof and shall not be refundable for any reason whatsoever. Payment of the Administration Fee shall be effected by making payment to the Lender Account.

(c) **FX Commitment Fee.** The Borrower shall pay to the Lender the FX Commitment Fee in monthly instalments equal to one-twelve (1/12) of the FX Commitment Fee on the Interest Payment Date of each month. The FX Commitment Fee shall be deemed fully earned on the Closing Date and on each anniversary thereof and shall not be refundable for any reason whatsoever. Payment of the FX Commitment Fee shall be effected by making payment to the Lender Account.

**2.07 Computation of Interest and Fees.** All computations of interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.09, bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.08 Evidence of Debt.** The Loans shall be evidenced by one or more promissory notes payable to the order of the Lender, in substantially the form of Exhibit B (each a "Note" and collectively the "Notes"), duly executed by the Borrower and dated the date of the Loan.

**2.09 Payments Generally.** All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to Obligations shall be made to the Lender not later than 2:00 p.m. on the date specified herein. All payments received by the Lender after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

**2.10 Withholding Gross Up.** Lender's agreement to make Loans to Borrower at the interest rate, for the fees and on the other terms specified herein is based upon the understanding that all payments of interest and fees will be made on the basis that Lender will receive, net of any non-United States tax or withholding obligations which may otherwise exist, at Lender's office in the United States the full amount of interest and fees set forth herein. In the event that Borrower is obligated to withhold such sum, Borrower shall pay to Lender such additional sums as is necessary in order to result in Lender receiving the amount of fees and interest equal to that provided for in this Agreement. Borrower shall indemnify and hold Lender harmless against, and shall reimburse Lender, upon demand, any taxes, interest or penalties that may become payable by Lender as a result of any failure by Borrower to pay the same when due.

**2.11 Increased Costs.** Notwithstanding anything to the contrary set forth in this Agreement, Borrower shall pay to Lender promptly upon demand, such amounts as are necessary to compensate the Lender for Additional Costs (as defined below) resulting from any Change in Law which (i) subjects Lender to any tax, duty or other charge with respect to the Loan, or changes the basis of taxation of any amounts payable to the Lender under the Loan (other than taxes imposed on the overall net income of Lender by the jurisdiction in which Lender's principal office is located or its business is conducted), provided that Lender shall not transfer any Loan to a foreign Affiliate of Lender if such transfer would require payment of any additional tax, duty, governmental reserve, fee or other charge that Borrower is required to pay or to indemnify Lender against pursuant to this Agreement, (ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of Lender or (iii) imposes on Lender any other condition outside the reasonable control of Lender affecting such Loan, or any of such extensions of credit or liabilities. Lender will immediately notify Borrower of any event occurring after the date hereof which would entitle Lender to compensation pursuant to this Section after it obtains knowledge thereof and determines to request such compensation. Determinations by Lender of the existence or effect of any Change in Law on its costs of making or maintaining the Loan, or portions thereof, or on amounts receivable by it in respect thereof, and of the additional amounts required to compensate Lender in respect of Additional Costs, shall be conclusive, provided that such determinations are made on a good faith basis and in a non-discriminatory manner.

For purposes of this Section 2.11, the term "Additional Costs" shall mean any costs actually incurred, losses or expenses incurred by the Lender which the Lender reasonably determines are directly attributable to its making or maintaining the Loan, or its obligation to make any Loan advances, or any reduction in any amount receivable by the Lender under this Agreement.

### ARTICLE III CONDITIONS OF LENDING

**3.01 Conditions to Effectiveness.** Notwithstanding any other provision of this Agreement and without affecting in any manner the rights of the Lender hereunder, the Borrower shall not have any rights under this Agreement, and the Lender shall not be obligated to make any Loan on the Closing Date hereunder, until the following conditions (except for those required to be met following the Closing Date) have been satisfied or provided for in a manner satisfactory to the Lender, or waived in writing by the Lender:

(a) The Lender's receipt of the following, each of which shall be originals or photocopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Lender:

- (i) executed counterparts of this Agreement by the Lender and the Borrower;

- (ii) Note(s) duly executed by the Borrower;
- (iii) the Loan Party Guarantees executed by each of the Guarantors;
- (iv) the Security Documents duly executed by each Loan Party;
- (v) the Tax Credit Applications, the Tax Credit Documents duly executed by the appropriate Loan Parties, and the Tax Credit Comfort Letter;
- (vi) the Intercreditor Agreement, duly executed by all parties thereto other than the Lender;
- (vii) the Subordination Agreements, duly executed by the Subordinated Creditors;
- (viii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Lender may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;
- (ix) such documents and certifications as the Lender may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;
- (x) favorable legal opinions of Blake, Cassels & Graydon LLP, counsel to the relevant Loan Parties, addressed to the Lender;
- (xi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;
- (xii) a certificate signed by a Responsible Officer of the Borrower certifying that the conditions specified in Sections 3.02(a) and (b) have been satisfied;
- (xiii) a Borrowing Base Certificate as of a date which is no earlier than fifteen (15) days prior to the Closing Date;
- (xiv) Blocked Account Agreements duly executed by all parties thereto other than the Lender and the Account Control Agreements within sixty (60) days following the Closing Date;



(xv) Callidus Release and Discharge or the Callidus Payout Letter,

(b) Any fees required to be paid to the Lender on or before the Closing Date shall have been paid or shall be paid concurrently herewith;

(c) Unless waived by the Lender, the Borrower shall have paid, or shall pay concurrently herewith, all accrued, reasonable and documented fees, charges and disbursements of counsel to the Lender (directly to such counsel if requested by the Lender) on the Closing Date;

(d) All Lien filings, recordings and searches necessary or desirable in connection with the Security Documents shall have been duly made or shall be made (or shall have been delivered to the Lender for filing) concurrently herewith (other than for post-closing filings agreed in writing by the Lender) and all filing and recording fees and taxes shall have been duly paid or shall be paid concurrently herewith;

(e) All landlord waivers and access letters requested by the Lender with respect to real property interests of the Borrower and the other Loan Parties shall have been obtained within sixty (60) days following the Closing Date;

(f) The Lender shall be reasonably satisfied with the amount, types and terms and conditions of all insurance maintained by the Borrower and the other Loan Parties; and the Lender shall have received endorsements naming the Lender as an additional insured or loss payee, as the case may be, under all insurance policies to be maintained with respect to the properties of the Borrower and the other Loan Parties forming part of the Collateral;

(g) The Lender shall have received satisfactory evidence that the Lender shall have valid and perfected first priority Liens on the Collateral (subject only to Permitted Liens);

(h) No Material Adverse Effect shall have occurred since June 1, 2015;

(i) No Change in Management shall have occurred;

(j) There shall be no action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority against any Loan Party that could reasonably be expected to have a Material Adverse Effect;

(k) On or prior to the Closing Date, the Lender shall have completed and be satisfied with its due diligence investigations including, without limitation, the Borrower's responses to the Due Diligence Request attached hereto as Schedule 3.01(k) and the documents and financial information delivered by the Borrower to the Lender in connection therewith; and

(l) The Borrower shall have entered into arrangements satisfactory to the Lender to hedge its exposure to fluctuations in currently exchange rates within thirty (30) Business Days following the Closing Date.

**3.02 Conditions to all Borrowings.** The obligation of the Lender to honor any Loan Notice is subject to the following conditions precedent:

(a) The representations and warranties of (i) the Borrower contained in Article IV and (ii) each applicable Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Loan Notice, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 3.02, the representations and warranties contained in subsections (a) and (b) of Section 4.05 shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 5.01;

(b) No Default shall exist, or would result from such proposed Loan Notice or the application of the proceeds thereof;

(c) The Lender shall have received a Loan Notice in accordance with the requirements hereof;

(d) The Lender shall have received a Borrowing Base Certificate delivered pursuant to Section 5.02(f) demonstrating that the Borrower has sufficient Availability to accommodate the Loans reflected in such Loan Notice;

(e) The Lender shall be satisfied that each Loan Party entitled to claim a Qualifying Tax Credit Receivable included in the Borrowing Base Certificate referenced in Section 3.02(d) has delivered to the Lender the Loan Documents referenced in Section 3.01(a)(ii)–3.01(a)(v), 3.01(a)(viii), 3.01(a)(ix), 3.01(a)(xi) and 3.01(a)(xiv) duly executed by a Responsible Officer of such Loan Party and any other Person which is a party to any such Loan Documents (other than the Lender);

(f) No Change in Management shall have occurred;

(g) No Material Adverse Effect shall have occurred.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

Except as otherwise provided in Section 4.19, the Borrower represents and warrants to the Lender that:

**4.01 Existence, Qualification and Power.** Each of the Loan Parties (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as

applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license.

**4.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict in any material respect with or result in any material breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or by which such Person or the properties of such Person are bound, other than where any such violation could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law in any material respect.

**4.03 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

**4.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

**4.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Loan Parties in all material respects as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Loan Parties as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) Since the date of the most recent audited financial statements delivered pursuant to Section 5.01(a), there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**4.06 Solvency.**

The Borrower is not entering into the arrangements contemplated hereby and by the other Loan Documents, nor does it intend to make any transfer or incur any obligations hereunder or thereunder, with actual intent to hinder, delay or defraud either present or future creditors. On

and as of the Closing Date, on a pro forma basis after giving effect to all indebtedness (including the Loans) expected to be borrowed (i) the Borrower expects that the cash available to the Borrower, after taking into account all other anticipated uses of the cash (including the payments on or in respect of debt referred to in clause "(iii)" of this Section 4.06), will be sufficient to satisfy all final judgments for money damages which have been docketed against the Borrower or which may be rendered against the Borrower in any action in which the Borrower is a defendant (taking into account the reasonably anticipated maximum amount of any such judgment and the earliest time at which such judgment might be entered); (ii) the sum of the present fair saleable value of the assets of the Borrower will exceed the probable liability of the Borrower on its debts when due; (iii) the Borrower will not have incurred nor is the Borrower intended to, or is it believed that the Borrower will, incur debts beyond its ability to pay such debts as such debts mature (taking into account the timing and amounts of cash to be received by the Borrower from any source, and of amounts to be payable on or in respect of debts of the Borrower and the amounts referred to in clause (ii)); and (iv) the Borrower believes that it will have sufficient capital with which to conduct its present and proposed business and that the property of the Borrower does not constitute unreasonably small capital with which to conduct its present or proposed business. For the purpose of this Section 4.06, "debt" means any liability on a claim, and "claim" means (x) the right to payment whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (y) the right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

**4.07 Litigation.** As of the Closing Date, there are no material actions, claims, investigations, suits or other proceedings at law or in equity by or before any arbitrator or arbitration panel, or any Governmental Authority (including, but not limited to, matters relating to environmental liability) or any material investigation by any Governmental Authority of the affairs of, or, to the best of the Borrower's knowledge, threatened action, suit or other proceedings naming, against or affecting, any Loan Party or of any of its respective properties or revenues except as set forth on Schedule 4.07 hereto. As of the Closing Date or any subsequent date on which this representation shall be (or shall be deemed to be) repeated, there shall be no such pending or, to the best of the Borrower's knowledge, threatened actions, suits, proceedings or investigations against or affecting any Loan Party or any of its respective properties or revenues which (a) purport to affect in a material way this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

**4.08 No Default.** No Loan Party is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**4.09 Ownership of Real Property; Liens.** Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary in the ordinary conduct of its business, except for such defects in title or interest as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The

real property of the Borrower and each other Loan Party is subject to no Liens, other than Permitted Liens.

#### **4.10 Environmental Compliance.**

(a) Except as could not reasonably be expected to have a Material Adverse Effect: (i) the Loan Parties are, and to the best of their knowledge, have been, in compliance, and possess all permits, licenses and registrations required pursuant to, with all Environmental Laws; (ii) no Loan Party is subject to any Environmental Claim or any other liability under any Environmental Law; (iii) no Loan Party is conducting any investigation, removal, remedial or other corrective action pursuant to any Environmental Law at any location; and (iv) no underground storage tank or related piping, or any impoundment or other disposal area containing Hazardous Materials is located at, on or under any real property currently owned or leased by any of the Loan Parties.

(b) None of the Loan Parties has treated, stored, transported, released or disposed or arranged for disposal or transport for disposal of Hazardous Materials at, on, under or from any currently or formerly owned or leased real estate or facility in a manner that could reasonably be expected to have a Material Adverse Effect.

**4.11 Insurance.** The properties of the Loan Parties are insured with the insurance companies listed on Schedule 4.11 or such other financially sound and reputable insurance companies not Affiliates of the Borrower, in similar amounts, with similar deductibles and covering similar risks as are customarily carried by companies engaged in similar businesses as the Borrower or the other applicable Loan Party operates.

**4.12 Taxes.** Each Loan Party has filed all Federal, provincial and other material tax returns and reports required to be filed, and has paid all Federal, provincial income and other material taxes, assessments, fees and other governmental charges levied or imposed by a taxing authority upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party that would, if made, have a Material Adverse Effect. None of the Loan Parties is party to any tax sharing agreement.

**4.13 ERISA Compliance.** Neither the Borrower nor any ERISA Affiliate maintains, contributes, has an obligation to contribute, or in the past five years has maintained, contributed to or had an obligation to contribute, to any U.S. Plan.

**4.14 Canadian Pension Plans.** No Loan Party sponsors or administers or has sponsored or administered a Canadian Pension Plan.

**4.15 Places of Business; Locations of Collateral.** The registered office of each Loan Party is, on the Closing Date as set forth on Schedule 4.15 hereto. All of the places where each Loan Party keeps and intends to keep the primary records concerning the material Collateral on the date hereof or keeps or intends to keep any other material Collateral are listed on Schedule 4.15 hereto.

#### 4.16 Copyrights, Trademarks and Other Rights.

(a) As of the Closing Date, Schedule 4.16 hereto lists (x) all registered copyrights and, to the best of the knowledge of the Loan Parties, all other copyrights, in each case registered, applied for or otherwise owned by any Loan Party and identifies the relevant Loan Party that is the current registered owner of each such copyright and (y) the respective registration numbers and applicable dates of each such registration or application.

(b) As of the Closing Date, Schedule 4.16 hereto (i) lists all material registered trademarks and, to the best of the knowledge of the Loan Parties, all other registered trademarks, in each case registered, applied for or otherwise owned by any Loan Party and identifies the relevant Loan Party which registered or filed each such trademark and (ii) specifies as to each, the jurisdictions in which such trademark has been filed or registered, including the respective registration or application numbers and applicable dates of registration or application. Each trademark listed on Schedule 4.16 and owned solely by a Loan Party listed thereon will be included in the applicable Security Document.

(c) Except as disclosed on Schedule 4.07, all material applications and registrations for all copyrights, trademarks, service marks, trade names and service names solely and exclusively owned by any Loan Party are current and in good standing and are not subject to the payment of any taxes or maintenance fees or the taking of any other actions by such applicable Loan Parties to maintain their validity or effectiveness within three months from the date of this Agreement and, to the knowledge of the relevant Loan Parties after reasonable due inquiry, are valid and enforceable (or will be upon registration).

(d) As of the Closing Date, each of the Loan Parties owns, or has rights under a transfer of ownership or license or by operation of law to use, all trademarks, trade names, copyrights, patents and other intellectual property material to its business as of the Closing Date.

**4.17 Subsidiaries; Equity Interests.** As of the Closing Date, the Borrower has no Subsidiaries other than those disclosed in Part (a) of Schedule 4.17, and all of the outstanding Equity Interests comprising Pledged Securities under the Pledge Agreements in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 4.17 free and clear of all Liens subject to Permitted Liens. As of the Closing Date, the Borrower has no equity investments in any other corporation or entity other than those disclosed in Part (b) of Schedule 4.17. All of the outstanding Equity Interests held by Arc Holdings in the Borrower, all Equity Interests held by Arc Investments in Arc Holdings and all Equity Interests held by the Arc Investment Shareholders in Arc Investments have been validly issued and are fully paid and nonassessable.

#### 4.18 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

**4.19 Disclosure.** The Borrower has disclosed to the Lender all material agreements, instruments and corporate or other restrictions to which it or any of the Loan Parties is, as of the Closing Date, subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (in writing) by or on behalf of any Loan Party to the Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time, and that actual results may vary materially from the projections.

**4.20 Compliance with Laws.** Each Loan Party is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**4.21 Taxpayer Identification Number; Other Identifying Information.** The true and correct Canadian taxpayer identification number of the Borrower and all other Loan Parties is set forth on Schedule 4.21

**4.22 Material Agreements.**

(a) Schedule 4.22 is a true and complete listing as of the date hereof, of: (i) all credit agreements, indentures, and other agreements related to any Indebtedness for borrowed money of any Loan Party (other than the Loan Documents), (ii) each PSA; and (iii) each material agreement or instrument to which it is a party (collectively the "Material Agreements"). The Borrower shall deliver or make available to the Lender a true and complete copy of each agreement (or most recent draft) described on Schedule 4.22, including all exhibits and schedules.

(b) No Loan Party is in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any Material Agreement to which it is a party which could individually or in the aggregate result in a Material Adverse Effect.

**4.23 Security Interest.** This Agreement and the other Loan Documents, when executed, delivered and effective, will create and grant to and in favour of the Lender upon the filing of the appropriate UCC-1 and PPSA financing statements with the filing offices listed on

Schedule 4.23 valid and first priority perfected security interests in the Collateral subject only to the Permitted Liens.

## ARTICLE V AFFIRMATIVE COVENANTS

So long as any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 5.01, 5.02, and 5.03) cause each other Loan Party to:

**5.01 Financial Statements.** Deliver to the Lender, in form and detail reasonably satisfactory to the Lender:

(a) as soon as available, but in any event within 120 days after the end of each subsequent fiscal year of the Borrower, a consolidated and consolidating balance sheet of the Borrower and its Subsidiaries that are Loan Parties as at the end of such fiscal year, and the related consolidated and consolidating statements of income or operations, changes in Shareholders' Equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of Price-Waterhouse-Coopers LLP or another independent certified public accountant of nationally recognized standing reasonably acceptable to the Lender, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualification or exception (other than those provided in prior fiscal years) as to the scope of such audit, and such consolidating statements to be certified by the chief executive officer, president or chief financial officer of the Borrower to the effect that such statements are fairly present in all material respects the consolidated financial position of the Borrower and its Subsidiaries that are Loan Parties as at the dates indicated and the results of their operations for the period indicated; and

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ending March 31, 2016), a consolidated and consolidating balance sheet of the Borrower and its Subsidiaries that are Loan Parties as at the end of such fiscal quarter, the related consolidated and consolidating statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related consolidated and consolidating statements of changes in Shareholders' Equity, and cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, president or chief financial officer of the Borrower as fairly presenting, in all material respects, the financial condition, results of operations, Shareholders' Equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by the chief executive officer, president or chief financial officer of the Borrower to the



effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Borrower and its Subsidiaries.

**5.02 Certificates; Other Information.** Deliver to the Lender, in form and detail reasonably satisfactory to the Lender:

(a) concurrently with the delivery of the financial statements referred to in Sections 5.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, president or chief financial officer of the Borrower;

(b) promptly after any request by the Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Subsidiary, or any audit of any of them;

(c) concurrently with the delivery of the financial statements referred to in Sections 5.01(a) and (b), a summary narrative report by management of the Borrower outlining the business, financial condition and results of operations of the Loan Parties, in a form reasonably acceptable to the Lender;

(d) concurrently with the delivery of the financial statements referred to in Sections 5.01(a) and (b), an updated version of Schedule 4.22 hereto, listing all agreements executed during the preceding quarter that are required to be listed on Schedule 4.22 and all material amendments to existing Material Agreements executed during the preceding quarter;

(e) within 60 days after the end of each fiscal year of the Borrower, an updated annual business plan of the Borrower and its Subsidiaries that are Loan Parties, including a release schedule and forecasted financial statements consisting of balance sheets, cash flow statements and income statements, with supporting detail and underlying assumptions, all covering the next four fiscal quarters;

(f) as soon as available, but in any event within fifteen (15) calendar days after the 25<sup>th</sup> of each month, a Borrowing Base Certificate, as at the 25<sup>th</sup> of such month, duly certified by the chief executive officer, the president or the chief financial officer of the Borrower; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party, any PSA, status of any Tax Credit Application, status of any Canadian Tax Credits or any Qualifying Tax Credit Receivable, or otherwise regarding the Collateral, or compliance with the terms of the Loan Documents, as the Lender (which request, unless an Event of Default exists, shall be made through the Lender) may from time to time at reasonable intervals reasonably request.

**5.03 Notices.** Promptly notify the Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or, to the actual knowledge of the Borrower, will result in a Material Adverse Effect; and

(c) of any material change in accounting policies or financial reporting practices by the Borrower or any other Loan Party.

Each notice pursuant to this Section 5.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 5.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**5.04 Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its obligations and liabilities, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such other Loan Party; and (b) all lawful claims which, if unpaid, would by law become a Lien (other than Permitted Liens) upon its property unless contested in good faith.

**5.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 6.04 or 6.05; and (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except in each case where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.07 Maintenance of Insurance.** Maintain with the insurance companies listed on Schedule 4.11 or other financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of similar types and amounts as are customarily carried under similar circumstances by such other Persons.

**5.08 Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**5.09 Books and Records.** Maintain true and complete books and records of its financial operations and matters involving the assets and business of the Borrower or such other Loan Party, as the case may be.

**5.10 Inspection Rights.** Permit representatives and outside auditors of the Lender (and after the occurrence and during the continuance of an Event of Default, the Lender) to visit and inspect any of its properties, to examine its corporate, financial and operating records pertaining to the Collateral, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all as the Lender may reasonably deem appropriate, at such reasonable intervals during normal business hours (and, unless an Event of Default shall have occurred and be continuing, with no more frequency than is reasonable), upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Lender (or any of its respective representatives or outside auditors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice. The Lender agrees to use reasonable commercial efforts to prevent any inspections or examinations conducted under this Section 5.10 from constituting any material interference with the operations of any Loan Party. The Lender's reasonable documented out-of-pocket costs related to such inspections or examinations shall be for the account of the Borrower; provided, however, that, so long as no Default or Event of Default shall have occurred and be continuing, Borrower shall not be responsible to reimburse Lender for the costs of more than two inspections or examinations per year.

**5.11 Use of Proceeds.** Use the proceeds of the Loans for no other purpose than as set out below and permitted hereunder:

(a) Tranche A: To pay the Callidus Indebtedness and a portion of the Loan Fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000);

(b) Tranche B: To pay the Callidus Indebtedness and a portion of the Loan Fee in the amount of Seventy Six Thousand Five Hundred Dollars (\$76,500) and working capital;

(c) Tranche C: To fund working capital of the Borrower;

(d) Tranche D: To fund working capital of the Borrower; and

not in contravention of any Laws or of any Loan Document.

**5.12 Approvals and Authorizations.** Maintain all authorizations, consents, approvals and licenses from, exemptions of, and filings and registrations with, each Governmental Authority of the jurisdiction in which it is organized and existing, and all approvals and consents of each other Person in such jurisdiction, in each case that are required in connection with the Loan Documents.

**5.13 Additional Loan Parties.** Notify the Lender at the time that any Person becomes a Subsidiary, and promptly thereafter (and in any event within forty-five (45) days) deliver to the Lender a Pledge Agreement in respect of the Equity Interest of the Borrower in such Subsidiary and cause such Subsidiary to (a) become a Guarantor by executing and delivering to the Lender a

continuing guaranty substantially similar in form and substance to the other Loan Party Guarantees, (b) execute and deliver such a Security Agreement and the Tax Credit Assignments and such other documents as the Lender may reasonably require in order to obtain a first-priority Lien on the assets of such Subsidiary (subject only to Permitted Liens), (c) deliver to the Lender documents of the types referred to in clauses (viii) and (ix) of Section 3.01(a) and favorable opinions of counsel to such Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in this subsection), all in form, content and scope reasonably satisfactory to the Lender; (d) deliver to the Lender: (i) the PSA to which such Subsidiary is a party; (ii) copies of the Tax Credit Applications in respect of the Canadian Tax Credits such Subsidiary expects to claim and receive; and (iii) a Tax Credit Comfort Letter in respect of such Canadian Tax Credits.

**5.14 Copyrights and Trademarks.** Maintain all material trademark and material trade name registrations and prosecute all material trademark and material trade name applications in the name of the applicable Loan Party and take any all actions necessary to register any trademarks and trade names as such Loan Party may use which are of substantial value to such Loan Party in the name of such Loan Party in conformity with the Laws of the United States or Canada and such other jurisdiction as may be appropriate.

**5.15 Third Party Audit Rights.** Promptly notify the Lender of, and at all times allow the Lender access to the results of, all audits conducted in respect of any Loan Party by any third party under any Material Agreement including, without limitation, CRA.

**5.16 Observance of Agreements.** Duly observe and perform all material terms and conditions of each PSA and all other Material Agreements and enforce the rights of the Loan Parties under all such agreements in a manner consistent with the customary business practices of the Borrower and subject to the terms and conditions of such agreements.

**5.17 Liens.** Defend the Collateral against any and all Liens howsoever arising, other than Permitted Liens, and in any event defend against any attempted foreclosure.

**5.18 Further Assurances; Security Interests.**

(a) Upon the request of the Lender, duly execute and deliver, or cause to be duly executed and delivered, at the cost and expense of the Loan Parties, such further instruments as may be necessary or desirable in the reasonable judgment of the Lender to carry out the provisions and purposes of this Agreement and the other Loan Documents.

(b) Upon the request of the Lender, promptly execute and deliver or cause to be executed and delivered, at the cost and expense of the Loan Parties, such further instruments as may be appropriate in the reasonable judgment of the Lender, to provide the Lender a Lien in the Collateral and any and all documents (including, without limitation, the execution, amendment or supplementation of any financing statement and continuation statement or other statement and the filing of termination statements for each of the Liens indicated on Schedule 6.01 hereof for which the underlying obligation is no longer outstanding) for filing under the provisions of the UCC, the PPSA and the rules and regulations thereunder, or any other applicable Laws, and perform or cause to be performed such other ministerial acts which are reasonably necessary or

advisable, from time to time, in order to grant and maintain in favor of the Lender for the benefit of the Secured Parties the first perfected security interest in the Collateral contemplated hereunder and under the other Loan Documents, subject only to Permitted Liens.

(c) Upon the request of the Lender, promptly undertake to deliver or cause to be delivered to the Lender from time to time such other documentation, consents, authorizations and approvals in form and substance reasonably satisfactory to the Lender as the Lender shall deem reasonably necessary or advisable to perfect or maintain the Liens of the Lender.

## ARTICLE VI NEGATIVE COVENANTS

So long as the Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any other Loan Party to, directly or indirectly:

**6.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens in favour of the Lender granted pursuant to any Loan Document;
- (b) Liens securing a Capital Lease permitted hereunder;
- (c) Liens existing on the date hereof and listed on Schedule 6.01, which in each instance are subject to the Intercreditor Agreement, a Subordination Agreement or an estoppel letter, in form satisfactory to the Lender, has been executed and delivered to the Lender;
- (d) any renewals, any replacements or extensions of any Lien permitted by clauses (a) through (c) of this Section 6.01, provided that (i) such Lien does not extend to any additional property other than (x) after acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 6.03 and (y) proceeds and products thereof, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 6.03, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal, replacement or extension of the obligations secured or benefited thereby is permitted by Section 6.03;
- (e) Liens granted pursuant to a PSA, provided such Lien is subordinated in writing in favour of the Lender;
- (f) undetermined or inchoate Liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised and of which none of the Lenders has been given notice, or which relate to obligations not due or payable or, if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (g) the right reserved to, or vested in, any Governmental Authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person, or by any statutory

provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(h) Liens resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers' compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;

(i) operating leases of vehicles entered into in the ordinary course of business;

(j) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Loan Parties in the ordinary course of business permitted by this Agreement;

(k) Liens for Taxes, assessments or governmental charges or claims not yet due or which are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP, only to the extent such Liens do not result in an Event of Default;

(l) any interest or title of a lessor or secured by a lessor's interest under any lease permitted by this Agreement;

(m) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of combination of accounts or similar rights in the ordinary course of conducting day-to-day banking business in relation to deposit accounts or other funds maintained with a creditor depository institution, provided that such Liens do not relate to any deposit account that is a dedicated collection account which is subject to a Blocked Account Agreement; and

(n) other Liens expressly consented to in writing by the Lender.

**6.02 Investments.** Make any Investments, except:

(a) Investments held by the Borrower or such other Loan Party in the form of Cash Equivalents;

(b) Investments in the Borrower or any other Loan Party;

(c) Investments by a Loan Party in a special purpose company for purposes of rendering services in connection with a Production pursuant to the terms of a PSA; and

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss.

**6.03 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof listed on Schedule 6.03(b) and any modification, replacement, refinancing, refunding, renewal or extension thereof, provided that (x) the principal amount thereof does not exceed the principal amount thereof outstanding immediately prior to such modification, replacement, refinancing, refunding, renewal or extension, except by an amount equal to the unpaid accrued interest and premium thereon plus other reasonable amounts paid and fees and expenses incurred in connection with such modification, replacement, refinancing, refunding, renewal or extension and (y) the direct and contingent obligors with respect to such Indebtedness are not changed;

(c) Indebtedness arising under Capital Leases, and purchase money obligations for fixed or capital assets; provided, that the aggregate amount of all such Indebtedness at any one time outstanding pursuant to this subclause (ii) shall not exceed Four Million Canadian Dollars (C\$4,000,000);

(d) Indebtedness in respect of overdraft facilities and other cash management and similar arrangements in the ordinary course of business;

(e) intercompany Indebtedness owed by one Loan Party to another;

(f) Indebtedness subject to the Intercreditor Agreement or the Subordination Agreements, in respect of which the payments by the Borrower to Starz pursuant to the Intercreditor Agreement and the Subordinated Creditors pursuant to the Subordination Agreements, respectively, are permitted by the Lender; and

(g) production financing which has complied with the Right of First Negotiation & Last Match provisions of Section 8.01.

**6.04 Fundamental Changes.** Merge, amalgamate, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default or Event of Default exists or would result therefrom:

(a) any Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into the Borrower, provided that (i) the Borrower shall be the continuing or surviving corporation, (ii) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Guarantee, confirmed that its Loan Party Guarantee, shall continue to apply to the Borrower's obligations under this Agreement, (iii) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the applicable Security Document confirmed that its obligations thereunder shall continue to apply to the Borrower's obligations under this Agreement, and (iv) the Borrower shall have delivered to the Lender (A) an officer's certificate stating that such merger or consolidation and such supplements to this Agreement preserve the enforceability of the Loan Party Guarantee, and the

perfection and priority of the Liens under the Security Documents and (B) if reasonably requested by the Lender, an opinion of counsel to the effect that such merger or consolidation does not violate this Agreement or any other Loan Document; and

(b) any Subsidiary of the Borrower or any other Person may be merged, amalgamated or consolidated with or into any one or more other Subsidiaries of the Borrower, provided that (i) in the case of any merger, amalgamation or consolidation involving one or more Loan Parties, (A) a Loan Party shall be the continuing or surviving corporation or (B) the Borrower shall take all steps necessary to cause the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a Loan Party) to become a Loan Party, (ii) in the case of any merger, amalgamation or consolidation involving the Borrower, the Borrower shall be the continuing or surviving corporation or the Person formed by or surviving any such merger, amalgamation or consolidation shall have complied with the requirements set forth in clause (a) of this Section 6.04 as if such Person was the Borrower, (iii) in the case of any merger, amalgamation or consolidation involving one or more Guarantors, a Guarantor shall be the continuing or surviving corporation or the Person formed by or surviving any such merger, amalgamation or consolidation (if other than a Guarantor) shall execute a supplement to the Guaranty of such Guarantor and to each Security Document to which such Guarantor is a party in form and substance reasonably satisfactory to the Lender in order to become a Guarantor and grantor of Collateral, (iv) no Default or Event of Default would result from the consummation of such merger, amalgamation or consolidation, and (v) the Borrower shall have delivered to the Lender an officer's certificate stating that such merger, amalgamation or consolidation and such supplements to any Security Document preserve the enforceability of the Guaranty of such Loan Party, and the perfection and priority of the Liens of the Lender under the Security Documents.

**6.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property or property no longer needed by the Loan Party's business, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of Permitted Investments;

(c) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property; and

(d) Dispositions of property by any Loan Party to the Borrower or to another Loan Party.

**6.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests unless, in respect of the issuance of any Equity Interests, such Equity Interests are pledged to the Lender.



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**6.07 Change in Nature of Business.** Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the other Loan Parties on the date hereof or any business substantially related or incidental thereto.

**6.08 Transactions with Affiliates.** Enter into any transaction of any kind after the date hereof with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Loan Party as would be obtainable by the Borrower or such Loan Party at the time in a comparable arm's length transaction with a Person other than an Affiliate.

**6.09 Use of Proceeds re: Margin Stock.** Use the proceeds of any Borrowing, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**6.10 Proprietary Content:** The Lender acknowledges the intent of the Borrower to: (i) develop proprietary content; (ii) acquire underlying rights to content owned by a third party Person and develop such content; or (iii) participate in the development or acquisition of content in conjunction with one or more third party Person, in each instance with the intention of producing a Production (the "Development & Production Activities"). The Lender consents to the use of working capital of the Borrower, including the use of proceeds of the Loans under Tranche C and D for Development & Production Activities, provided the Borrower's cash or in kind services allocated to the Development & Production Activities shall be limited to an amount no greater than the following: (i) Six Hundred Thousand Canadian Dollars (C\$600,000) in respect of the 2016 fiscal year; (ii) Six Hundred Thousand Canadian Dollars (C\$600,000) in respect of the 2017 fiscal year; (iii) Eight Hundred Thousand Canadian Dollars (C\$800,000) in respect of the 2018 fiscal year; and (iv) One Million Canadian Dollars (C\$1,000,000) in respect of the 2019 fiscal year, unless otherwise agreed in writing by the Lender.

**6.11 Financial Covenants.**

(a) **Consolidated Net Income.** Permit Consolidated Net Income as of the last day of each fiscal quarter of the Borrower to be equal to or less than zero (\$0) on a rolling four quarter basis and provided always that at no time shall the Consolidated Net Income for any two consecutive fiscal quarters be equal to or less than zero (\$0).

(b) **Interest Coverage Ratio.** Permit the Interest Coverage Ratio as of the end of any fiscal quarter of the Borrower to be less than 2:1.

(c) **Pro Forma Interest Coverage Ratio.** Permit the payment of any Permitted Payment if Pro Forma Interest Coverage Ratio as of the end of any fiscal quarter of the Borrower is less than 2:1.

**6.12 Capital Expenditures.** Make or become legally obligated to make any Capital Expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current

operations), except for Capital Expenditures in the ordinary course of business not exceeding, in the aggregate for the Loan Parties during any fiscal year of the Borrower during the term of this Agreement, Four Million Canadian Dollars (C\$4,000,000).

**6.13 Bank Accounts.** After the date hereof, open or maintain any bank account other than (a) bank accounts maintained with an entity with which, as at the date hereof a Loan Party currently maintains a bank account or (b) with another financial institution approved by the Lender and listed on Schedule 6.13 hereto, without the prior consent of the Lender and subject, in the case of (a) and (b) above, to delivery to the Lender of an Account Control Agreement or Blocked Account Agreement (except as otherwise expressly agreed by the Lender in writing).

## ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

**7.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan, or (ii) within three Business Days after the same becomes due, any interest on any Loan or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 5.03, 5.05, 5.10, 5.11 or Article VI; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days following such Loan Party's actual knowledge thereof or the date on which such Loan Party should have reasonably known of such default; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or confirmed, and if such default is capable of cure, such default remains uncured after thirty (30) days following such Loan Party's actual knowledge thereof or the date on which such Loan Party should have reasonably known of such default; or

(e) Insolvency Proceedings, Etc. Any Loan Party institutes or consents to the institution of any proceeding with respect to itself under any Debtor Relief Law, or makes an assignment for the benefit of creditors (other than an assignment that is a Permitted Lien) or as otherwise permitted hereunder; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for thirty (30) calendar days; or any

proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(f) Inability to Pay Debts; Attachment. (i) The Borrower or any other Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(g) Judgments. There is entered against the Borrower or any other Loan Party (i) one or more final nonappealable judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding \$100,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final nonappealable judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect, or (C) such judgment or order has not been satisfied, vacated or discharged;

(h) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in writing in any manner the validity or enforceability of any Loan Document; or any Loan Party denies in writing that it has any further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document in writing; or

(i) Change of Control. There occurs any Change of Control; or

(j) Change of Management. There occurs any Change of Management.

**7.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Lender shall take any or all of the following actions:

(a) declare the commitment of the Lender to make Loans to be terminated, whereupon such Commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the *Bankruptcy Act*, the obligation of the Lender to make

Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable.

**7.03 Application of Funds.** After the exercise of remedies provided for in Section 7.02 (or after the Loans have automatically become immediately due and payable) any amounts received on account of the Obligations shall be applied by the Lender in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lender;

Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans;

Third, to payment of that portion of the Obligations constituting unpaid principal of the Loans;

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

## ARTICLE VIII

### RIGHT OF FIRST NEGOTIATION & LAST MATCH RE : PRODUCTION LOANS

#### 8.01 Right of First Negotiation & Last Match:

(a) If at any time prior to the Maturity Date, the Borrower seeks to produce a Production, Borrower agrees that the Lender shall have the right of first negotiation and last match to provide production financing in connection with such Production (the "Right of First Negotiation & Last Match"). For purposes of exercising the right of first negotiation, the Borrower undertakes and agrees to provide the Lender with all information relating to the proposed production, including synopsis, budget, financing plan, cash flow, production agreements, equity/license/funding agreements supporting the financing plan and such other documents as may be reasonably necessary to allow the Lender to make an informed decision in respect of the proposed financing for the proposed Production (the "Production Package").

(b) Within fifteen (15) Business Days following receipt of the Production Package, the Lender shall provide the Borrower with written notice of its intention to provide production financing and the terms and conditions of such financing (the "Offer to Finance"). In the event the Lender fails to provide such written notice, the Borrower shall be released of its obligation to negotiate the provision of production finance for such Production with the Lender and the Lender's rights under this Section 8.01 shall terminate.

(c) In the event the Lender has delivered an Offer to Finance which the Borrower has not accepted, the Borrower shall have the right to seek production financing for that Production from an alternate financier. The Borrower undertakes and agrees that it shall not enter into an agreement with such financier (the "Third Party Offer to Finance") unless and until the Lender shall have been provided with a copy of such Third Party Offer to Finance and a period of ten

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(10) Business Days within which to provide the Borrower with a revised Offer to Finance matching the terms of the Third Party Offer to finance (the "Revised Offer"). In the event the Lender issues the Revised Offer, the Borrower shall be bound to accept the Revised Offer. In the event the Lender fails to provide the Borrower with the Revised Offer within the aforementioned period or waives the right to do so, the Borrower shall be released of its obligation to allow the Lender to match the Third Party Offer to Finance in respect of that Production. For greater certainty, in the event the Borrower seeks to produce another Production at any time prior to the Maturity Date, the Right of First Negotiation & Last Match shall apply to the provision of production financing for that Production and every Production thereafter.

## ARTICLE IX MISCELLANEOUS

**9.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Lender and the Borrower or the applicable Loan Party, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**9.02 Notices.** Notices. Except as otherwise expressly provided herein, any notice, request, demand or other communication provided for hereunder or under any of the other Loan Documents to be given shall be in writing and shall be personally served or sent by United States mail or an internationally recognized overnight courier (e.g., FedEx, UPS or DHL) or by facsimile or electronic mail and if delivered by hand shall be deemed received upon personal delivery, if delivered by reputable overnight courier service shall be deemed delivered one (1) Business Day after delivery to such courier service, if delivered by United States or Canadian mail, shall be deemed to have been given five (5) Business Days after it is deposited in the United States or Canadian mail, registered or certified, with postage prepaid and if delivered by facsimile or electronic mail, upon sender's receipt of confirmation of proper transmission. The addresses of the parties hereto (until notice of a change thereof is served as provided in this Section) shall be as follows:

To Borrower: 230 Richmond Street East  
Toronto, Ontario M5A 1P4

Attention: J. Thomas Murray  
Fax No.: 416-682-3209  
Email: j.thomas.murray@arcproductions.com

With a copy to: Blake, Cassels & Graydon, LLP,  
199 Bay Street, Suite 4000  
Toronto, Ontario M5J 1A9

Attention: Nathan Cheifetz  
Fax No.: 416-863-2653  
Email: nathan.cheifetz@blakes.com

To Lender: 1310 Montana Avenue 2<sup>nd</sup> Floor  
Santa Monica, California 90403

Attention: Joseph Kaczorowski  
Fax No.: 310-728-1748  
Email: joe.kaczorowski@grosvenorpark.com

And to: Goodmans LLP  
Bay-Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H2S7

Attention: Carolyn Stamegna  
Fax No.: 416-979-1234  
Email: cstamegna@goodmans.ca

**9.03 No Waiver; Cumulative Remedies; Enforcement.** No failure by the Lender to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Lender in accordance with Section 7.02.

#### 9.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay, within thirty (30) days after its receipt of a reasonably detailed invoice, (i) all reasonable and documented out-of-pocket expenses incurred by the Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with the Credit Facility provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); provided that upon the Borrower's request, the Lender shall provide, on a timely basis, written notice to the Borrower of the estimated costs that will be incurred by any third party engaged by it; and (ii) all out-of-pocket expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Lender and each Related Party of any of the foregoing Persons together with the Lender's financiers and the financiers of such financiers (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Lender and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(e) Survival. The agreements in this Section shall survive the repayment, satisfaction or discharge of all the other Obligations.

**9.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Lender, the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

**9.06 Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender.

**9.07 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Laws, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.



**9.08 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

**9.09 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**9.10 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**9.11 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA.

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY

APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(g) WAIVER OF VENUE. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

9.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.13 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lender is arm's-length commercial transactions between the Borrower and its Affiliates, on the

one hand, and the Lender, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Lender is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) the Lender does not have any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and the Lender does not have any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**9.14 Electronic Execution of Assignments and Certain Other Documents.** The words "execution," "signed," "signature," and words of like import in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

**9.15 USA Patriot Act.** The Lender that is subject to the Act (as hereinafter defined) and the Lender (for itself and not on behalf of the Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

**9.16 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Lender could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business

Execution Version

Day following receipt by the Lender of any sum adjudged to be so due in the Judgment Currency, the Lender may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Lender against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Lender in such currency, the Lender agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

*[Rest of page intentionally left blank; signature pages follow]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

ABC PRODUCTIONS LTD., a corporation  
incorporated under the laws of the Province of  
Ontario

By:   
Name: Peter Korit  
Title: CFO, Executive Vice President

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**GROSVENOR PARK MEDIA FUND LP, a  
Delaware Limited Partnership**

**By: Grosvenor Park Media GP Corporation, its  
Manager**

By: 

Name: Joseph Kaczorowski

Title: President

Schedule 3.01(k) - Due Diligence Request

**DUE DILIGENCE REQUEST LIST**

In connection with the proposed financing offered Arc Productions, as borrower (the "Borrower") by Grosvenor Park Media Fund, as lender (the "Lender"), we have developed the following preliminary due diligence request list. As we are provided with the requested information and our knowledge with respect to the transaction increases, additional due diligence and related requisitions may become necessary.

We would ask that you advise us of any new information, omissions or amendments to existing information if, as and when it becomes available, and provide us with any available additional documentation relating thereto.

Please direct all materials and questions to Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario, M5H 2S7, Attention: Carolyn Stamegna.

In the chart below, please check the box where appropriate to confirm whether the requested information has been (i) previously provided to the Bank; (ii) provided with the return of this request in soft or hard copy; or (iii) to be provided or inapplicable and therefore the document does not exist. Please also provide any comments or status updates, as applicable. If at all possible, please cross-reference your responses and documentation to the item numbers referred to below. Additionally, in the event that a particular request relates to a document provided or to be provided pursuant to a different request item, please provide a cross-reference for that item. The term "Obligors" in the chart below refers to the Borrower any guarantor thereof as contemplated under the Term Sheet dated October \_\_, 2015 between the Borrower and the Lender.

Document	Previously Provided	Provided Herewith		To Be Provided/ Inapplicable	Comments
		Soft Copy	Hard Copy		
<b>1. Corporate Documents and Information</b>					
1.1	Corporate chart showing the ownership structure of the Obligors, including jurisdiction of incorporation and percentage of ownership.		X		
1.2	Copies of articles of incorporation or other constating documents of the Obligors and all amendments thereto.		X		
1.3	Copies of the current by-laws of the Obligors		X		



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Document	Previously Provided	Provided Herewith		To Be Provided/ Inapplicable	Comments
		Soft Copy	Hard Copy		
1.4	A list of jurisdictions in which each of the Obligors carries on business, maintains a registered office or holds property, as well as copies of the current registrations to carry on business in all applicable jurisdictions.	X			
1.5	Copies of the minute books of the Obligors, including minutes of meeting and resolutions of the directors, shareholders, unit holders, trustees of each of the Obligors, together with the particulars as to the issued and outstanding capital of the Obligors.	X			
1.6	Copies of any existing shareholder agreements, option plans, voting trusts, proxies or other agreements among shareholders, unit holders, holders of notes, options or warrants of any of the Obligors other than the Borrower	X			
1.7	Copies of, or details regarding, any outstanding options, rights of refusal warrants, convertible securities, pledges or other instruments giving rise to a right to acquire securities or assets of any of the Obligors other than the Borrower, including stock option plans, stock bonus or purchase plans and stock option agreements and any debt or equity instruments converting into shares or units.			N/A	
1.8	List of any names, other than current names, under which the Obligors or their respective predecessors have done business in the past 5 years.			N/A	
1.9	List of all current officers and directors of each of the Obligors.	X			
<b>2. Financial Information</b>					
2.1	Copies of the financial statements of the Obligors for the past five fiscal years and copies of the quarterly statements for the current fiscal year.	X			
2.2	Copies of any written recommendations, reports or letters to management prepared by or initiated from the auditors/accountants of the Obligors, or their financial officers, with respect to any aspect of their system of accounting, financial reporting, internal financial controls or recordkeeping.			N/A	

Document	Previously Provided	Provided Herewith		To Be Provided/ Inapplicable	Comments
		Soft Copy	Hard Copy		
2.3 List of all accounts payable and accounts receivable of each of the Obligors as at October 5, 2015		X			
2.4 List of all operating, deposit and disbursements bank accounts (including trust accounts), certificates of deposit, commercial paper, bonds and similar financial instruments of each of the Obligors and copies of all blocked account and lock box agreements of each, together with a diagram outlining how the Obligors' current cash management system operates.		X			
2.5 List of names and sales figures of [all/the [ten] largest dollar volume] customers and [all/the [ten] largest dollar volume] suppliers for each of the Obligors.		X			
2.6 Copies of any swap or hedging agreements to which the Obligors are a party.				N/A	
<b>3. Existing Debt and Liabilities</b>					
3.1 Copies of all agreements relating to banking, finance and other lines of credit and material short-term or long-term borrowings of the Obligors (and of any other persons or companies whose obligations have been guaranteed by the Obligors), including without limitation:					
(a) Credit or Loan Agreements and the particulars of any security granted in connection therewith;		X			
(b) Capitalized leases, whether secured or unsecured;		X			
(c) All letters of consent or waivers from any lending institution obtained in the last [ ] years in connection with any indebtedness that is presently outstanding;				N/A	
(d) Guarantees, security agreements, mortgages, conditional sales agreements, trust deeds, financing leases, bonds, debentures, promissory notes and indemnities; and		X			

Document	Previously Provided	Provided Herewith		To Be Provided/ Feasible	Comments
		Soft Copy	Hard Copy		
(e) Any correspondence with lenders regarding any default, acceleration or termination of any obligation of the Obligors.		X			
3.2 A list of all letters of credit for which any of the Obligors is either the account party or beneficiary.				N/A	
3.3 All guarantees and indemnification arrangements made by or in favour of any of the Obligors.		X			
3.4 All agreements (including intercreditor agreements and mortgages) relating to or creating liens, security interests or encumbrances on assets of any of the Obligors.		X			
3.5 List of any lawful claims against any of the Obligors for labour, materials, supplies or services that are due and have not yet been paid.				N/A	
3.6 List of all outstanding loans and advances of money made by any of the Obligors to any person.		X			
3.7 List of all bank accounts of the Obligors and any existing lock box or blocked account arrangements.		X			
<b>4. Contracts/Agreements</b>					
4.1 Copies of all output agreements and any previous agreements that may have expired but in respect of which an Obligor still has distribution rights.				N/A	
4.2 Copies of all contracts (other than Section 4.1 agreements) to which any of the Obligors is a party [where the revenues in any year exceed [\$25,000] or the term is in excess of [one] year].		X			
4.3 Copies of all documents evidencing the terms and conditions of any [material] acquisition, reorganization, disposition or other major change in the capital, assets or liabilities of any of the Obligors in the preceding [three] years.				N/A	

Document	Previously Provided	Provided Herewith		To Be Provided/ Inapplicable	Comments
		Soft Copy	Hard Copy		
4.4	Copies of any [material] equipment leases entered into within the [three] preceding years or proposed to be entered into by any of the Obligors.	X			
4.5	Copies of all [material] operating agreements or joint venture agreements or contracts creating present or future rights in favour of third parties affecting any [material] assets, operations or future financings of any of the Obligors, including all co-production, distribution, broadcasting, sales, agency, development, and rights and options agreements.	X			o
4.6	Copies of all [material] lease agreements whereby equipment, vehicles, etc. are leased from or to any of the Obligors.	X			
4.7	Copies of all non-competition agreements with third parties to which any of the Obligors is a party.			N/A	
4.8	Copies of all other agreements which may be material or of significance to the business or assets of any of the Obligors not otherwise identified herein.	X			
4.9	Identify all material contracts, agreements and other obligations to which any of the Obligors are a party that will require the giving of notice to, or the receipt of consent from, a third party in order for the Obligors to assign such contracts, agreements and other obligations, or in respect of any change in control.			N/A	
<b>5. Personal Property</b>					
5.1	Schedule of all material equipment, vehicles and other tangible personal property owned by the Obligors showing date of acquisition, condition, use, etc.			N/A	
5.2	Schedule of all material equipment, vehicles and other tangible personal property leased by the Obligors showing date of acquisition, condition, use, etc, including copies of all such leases.			N/A	
5.3	List of security interests, liens and encumbrances on all personal property owned or leased by the Obligors.		X		

Document	Previously Provided	Provided Herewith		To Be Provided/ (if applicable)	Comments
		Soft Copy	Hard Copy		
5.4	List of inventory of the various businesses of the Obligors as of the most recent available date and identify obsolete inventory.			N/A	
5.5	Schedule of all (a) third party facilities where materials of Obligors are stored and (b) warehouses owned or operated by the Obligors and any other locations where other assets of the Obligors are stored.			N/A	
5.6	List of all securities, instruments, intangibles, chattel paper, documents of title, securities accounts, financial assets or any other investment property owned by the Obligors.	X			This relates to account at RBC only for approx. 20k amount
5.7	Copies of all securities account agreements with any Securities Intermediaries, and all Securities Account Control Agreements or Issuer Control Agreements entered into by any of the Obligors or other secured parties of the Obligors pertaining to any securities accounts of the Obligors.	X			This relates to account at RBC only for approx. 20k amount
<b>6. Films/Intellectual Property</b>					
6.1	List of (a) proprietary titles/library and (b) [if list significant] those which generate 90% of revenues.			N/A	
6.2	List any material trade-marks, copyrights, patents or other intellectual property rights used in, or material to, the business and operations of the Obligors and particulars of any registrations relating thereto. Identify the holder of the intellectual property rights.	X			
6.3	Copies of all registered trade-marks and copyrights and pending trade-mark or copyright applications owned or on file with any of the Obligors. Identify the holder of the intellectual property rights.	X			
6.4	Copies of any intellectual property or license agreements whereby the Obligors license any intellectual property to or from others (or grant rights to or are granted rights by others). [Other than those listed in Section 4.]	X			

Document	Frequently Provided	Provided Herewith		To Be Provided/ Inapplicable	Comments
		Soft Copy	Hard Copy		
6.5	Copies of all policies of the Obligor regarding the treatment or disclosure of intellectual property, including all agreements concerning confidentiality and non-disclosure with employees, contractors, visitors or other parties.	X			
6.6	Prepare a schedule of any exclusive rights (product or geographical) granted to or by any of the Obligor. [Other than those listed in Section 4.]			N/A	
6.7	Provide detailed information concerning any claim of trade-mark infringement or other violation of an intellectual property right, or violation of any non-disclosure or non-competition agreement asserted by or against any of the Obligor during the past [five] years.			N/A	
<b>7. Governmental Authorizations.</b>					
7.1	List all licenses, permits, approvals and other authorizations required of any Governmental Authority for any of the Obligor to conduct their operations, carry on business or use their assets in accordance with all Applicable Law.			N/A	
7.2	Provide copies of all filings made by any of the Obligor to [or material correspondence of any of the Obligor with] any Governmental Authority since 0.			N/A	
7.3	(a) Provide detailed information concerning any past or present competition law claims or pending litigation and no proceedings or consent decrees applicable to any of the Obligor under any competition or antitrust legislation in any jurisdiction where the Obligor carry on business.			N/A	
	(b) List any agreements, written or oral, with any competitors of the Obligor, including memberships in any industry umbrella, advocacy or lobby group.			N/A	

Document	Previously Provided	Provided Herewith		To Be Provided/ Inapplicable	Comments
		Soft Copy	Hard Copy		
<b>8. Litigation</b>					
<b>8.1</b> Provide a detailed description (together with a copy of any judgment, decree or order of a court or regulatory body or other Governmental Authority or any settlement of any kind) of all prior material litigation or investigations by which any of the Obligors or any of their respective operations or assets continue to or may be affected.				N/A	
<b>8.2</b> Provide a detailed description of all other pending or threatened litigation or regulatory proceedings to which any of the Obligors is or may be a party or by which they or their respective operations or assets are or may be bound together with copies of all pleadings, correspondence or other documents relating to such matters.				N/A	
<b>8.3</b> Copies of all letters from counsel for the Obligors sent to the auditors/accountants of the Obligors in the last [three] years with respect to any current, pending or threatened lawsuits or any regulatory actions by or against the Obligors.		X			
<b>8.4</b> Provide an assessment of the possibility of litigation or potentially adverse claims or disputes in the following areas:				N/A	
(a) Equal employment opportunities and affirmative action claims;					
(b) Occupational health and safety matters;					
(c) Improvement, management, sale or leasing of real property;					
(d) Product liability and warranty;					
(e) Personal injury;					
(f) Intellectual property;					
(g) Environmental, pollution control or hazardous or toxic substances; and					

Document	Previously Provided	Provided Herewith		To Be Provided/Inseparatable	Comments
		Soft Copy	Hard Copy		
(h) Taxation (including any reassessments).					
<b>9. Employment, Health and Safety Matters</b>					
9.1 Detailed organizational chart of the directors, officers and senior employees of the Obligors.		X			
9.2 Copies of all existing employment, consultant or non-competition agreements with key personnel of the Obligors.		X			
9.3 Copies of any union contracts or collective bargaining agreements applicable to the Obligors, if any.				N/A	
9.4 Copies of any existing bonus, share or stock option, share purchase and other incentive plans, vacation plans or policies and other employee benefit plans, post-retirement health plans, severance plans and a summary of other severance obligations; and any pension, profit-sharing or welfare plans or health, accident, life or other group insurance plans.		X			
9.5 With respect to pension and other benefit plans,					
(a) List and describe all defined benefit plans and other benefit programs covering employees in all jurisdictions where the Obligors carry on business;		X			
(b) Summarize all plan descriptions, documents and amendments relating thereto, all funding agreements and investment management agreements, actuarial reports and valuations, collective bargaining agreements, all information returns filed with provincial pension plan commissions (or their equivalent in other jurisdictions);				N/A	
(c) List all retirees entitled to post-retirement benefits and the funding status of each;				N/A	
(d) List all inactive employees (i.e. Workers Compensation, maternal,		X			



- 10 -

Document	Previously Provided	Provided Herewith		To Be Provided/Inapplicable	Comments
		Soft Copy	Hard Copy		
paternal or parental leave or disability) including length of inactivity and return date or prognosis;					
(e) List and describe all pension and other retirement plans and identify registration documents with provincial pension plan commissions (or their equivalent in other jurisdictions), trust documents and group annuity policies, funding status, actuarial reports, funding method and any unfunded pension liabilities, benefits for retired employees and any individual unfunded pension arrangements; and				N/A	
(f) Identify all other unfunded post-retirement benefits.				N/A	
9.6 Review termination and severance pay programs and any employment agreements that contain notice or severance periods. In the absence of a formal termination program, review past policies and practice of the Obligor with respect to termination and severance.		X			
9.7 Identify the particulars of the indebtedness, if any, of the directors and senior officers and their respective associates and affiliates to the Obligor.				N/A	
9.8 Identify the particulars of any agreements between the Obligor and any of their directors, officers or other insiders or their respective associates and affiliates during the past [three] years.				N/A	Except for provided employment agreements
9.9 Copies of the policies of the Obligor with respect to the treatment of private, personal and confidential information.		X			
<b>10. Tax Matters</b>					
10.1 Identify all tax liabilities of any of the Obligor accrued as of the [Closing Date] but not yet due and payable.		X			
10.2 Identify due and unpaid Taxes, penalties, etc. of the Obligor. Provide all notices from Governmental Authorities with respect to unpaid Taxes and all related correspondence.		X			

22836162.2

Document	Previously Provided	Provided Herewith		To Be Provided/Inapplicable	Comments
		Soft Copy	Hard Copy		
10.3		X			
10.4		X			
10.5				N/A	
<b>11. Insurance</b>					
11.1					
(a)		X			
(b)				N/A	
11.2		X			
11.3		X			
11.4		X			

**SCHEDULE 4.07 - LITIGATION, AUDITS AND TAX INQUIRIES**

Not applicable

### SCHEDULE 4.11 – INSURANCE

**Insurance: Commercial**

**Policy Number:** 79572108

**Insurer:** Chubb Insurance Company of Canada

**Insured:** ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Ltd, Arc Investments Ltd., Kick Productions Ltd, In the Jungle Productions Inc, Eggs Ltd, Princess Productions Inc, Arc/Dark Crystal Productions Inc, Underzoo Productions Ltd, Hole in the Belly Productions Ltd., Sir Simon Production Ltd

**Policy Term:** June 11, 2015 to June 11, 2016

**Insurance: Crime Policy**

**Policy Number:** 82250692

**Insurer:** Chubb Insurance Company of Canada

**Insured:** ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Ltd, Arc Investments Ltd., Kick Productions Ltd, In the Jungle Productions Inc, Eggs Ltd, Princess Productions Inc, Arc/Dark Crystal Productions Inc, Underzoo Productions Ltd, Hole in the Belly Productions Ltd., Sir Simon Production Ltd

**Policy Term:** June 11, 2015 to June 11, 2016

**Insurance: Commercial General Liability**

**Policy Number:** CS516796

**Insurer:** Beacon Underwriting Ltd

**Insured:** ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Inc, Arc Investments Ltd.

**Policy Term:** June 11, 2015 to June 11, 2016

**Insurance: Commercial General Liability**

**Policy Number:** CGL00993

**Insurer:** Chubb Insurance Company of Canada

**Insured:** ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Ltd, Arc Investments Ltd., Kick Productions Ltd, In the Jungle Productions Inc, Eggs Ltd, Princess Productions Inc, Arc/Dark Crystal Productions Inc, Underzoo Productions Ltd, Hole in the Belly Productions Ltd., Sir Simon Production Ltd

**Policy Term:** June 11, 2015 to June 11, 2016

**Insurance: Umbrella Policy**

**Policy Number:** 79960529

**Insurer:** Chubb Insurance Company of Canada

**Insured:** ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Ltd, Arc Investments Ltd., Kick Productions Ltd, In the Jungle Productions Inc, Eggs Ltd, Princess Productions Inc, Arc/Dark Crystal Productions Inc, Underzoo Productions Ltd, Hole in the Belly Productions Ltd., Sir Simon Production Ltd

**Policy Term:** June 11, 2015 to June 11, 2016

**Insurance: Directors and Officers Policy**

**Policy Number: 82407402**

**Insurer: Chubb Insurance Company of Canada**

**Insured: ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Ltd, Arc Investments Ltd., Kick Productions Ltd, In the Jungle Productions Inc, Eggs Ltd, Princess Productions Inc, Arc/Dark Crystal Productions Inc, Underzoo Productions Ltd, Hole in the Belly Productions Ltd., Sir Simon Production Ltd**

**Policy Term: June 11, 2015 to June 11, 2016**

**Insurance: Mediaguard Errors and Omissions Liability Policy**

**Policy Number: 82348496**

**Insurer: Chubb Insurance Company of Canada**

**Insured: ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Ltd, Arc Investments Ltd., Kick Productions Ltd, In the Jungle Productions Inc, Eggs Ltd, Princess Productions Inc, Arc/Dark Crystal Productions Inc, Underzoo Productions Ltd, Hole in the Belly Productions Ltd., Sir Simon Production Ltd**

**Policy Term: June 11, 2015 to June 11, 2016**

**Insurance: Cyber Liability Policy**

**Policy Number: 82346553**

**Insurer: Chubb Insurance Company of Canada**

**Insured: ARC Productions Ltd., Arc Holdings Inc., BL II Productions Inc, TF I Productions Inc, Arcadia Productions Ltd, Arc Investments Ltd., Kick Productions Ltd, In the Jungle Productions Inc, Eggs Ltd, Princess Productions Inc, Arc/Dark Crystal Productions Inc, Underzoo Productions Ltd, Hole in the Belly Productions Ltd., Sir Simon Production Ltd**

**Policy Term: June 11, 2015 to June 11, 2016**

SCHEDULE 4.15 – PLACE OF BUSINESS, LOCATIONS OF COLLATERAL

330 Richmond Street East  
Toronto, ON M5A 1R4

124 Front Street East  
Toronto, ON M5A 4N3

364 Richmond Street West  
Toronto, ON M5V 2H2

134 Peter Street  
Toronto, ON M5V 2H2

330 Richmond Street East  
Toronto, ON M5A 1R4

124 Front Street East  
Toronto, ON M5A 4N3

364 Richmond Street West  
Toronto, ON M5V 2H2

## SCHEDULE 4.16 (a) - COPYRIGHTS

## SCHEDULE 4.16(b) - TRADEMARKS

The Corporation does not own or license any trademarks, industrial designs, patents, copyrights or other intellectual property, except as follows (indicate type of intellectual property and whether owned or licensed, registration number, date of registration and, if licensed, the name and address of the licensor).

## CANADIAN TRADEMARKS

TRADEMARK	REGISTRATION NO. OR APPLICATION DATE IF NOT YET REGISTERED	OWNED/LICENSED
Ormie	1089539	Owned
The Legend of the Underzoo (a/k/a "Wow Wee Alive: Underzoo Story"; "Wow Wee Alive Cubs"; "Tale of the Underzoo"; "Tales of the Underzoo"; "Legend of the Underzoo")	1103990	Owner
Sourage of Worlds, A Dungeons & Dragons Adventure	1011924	Owned
Sourage of Worlds, A Dungeons & Dragons Adventure	1011925	Owned

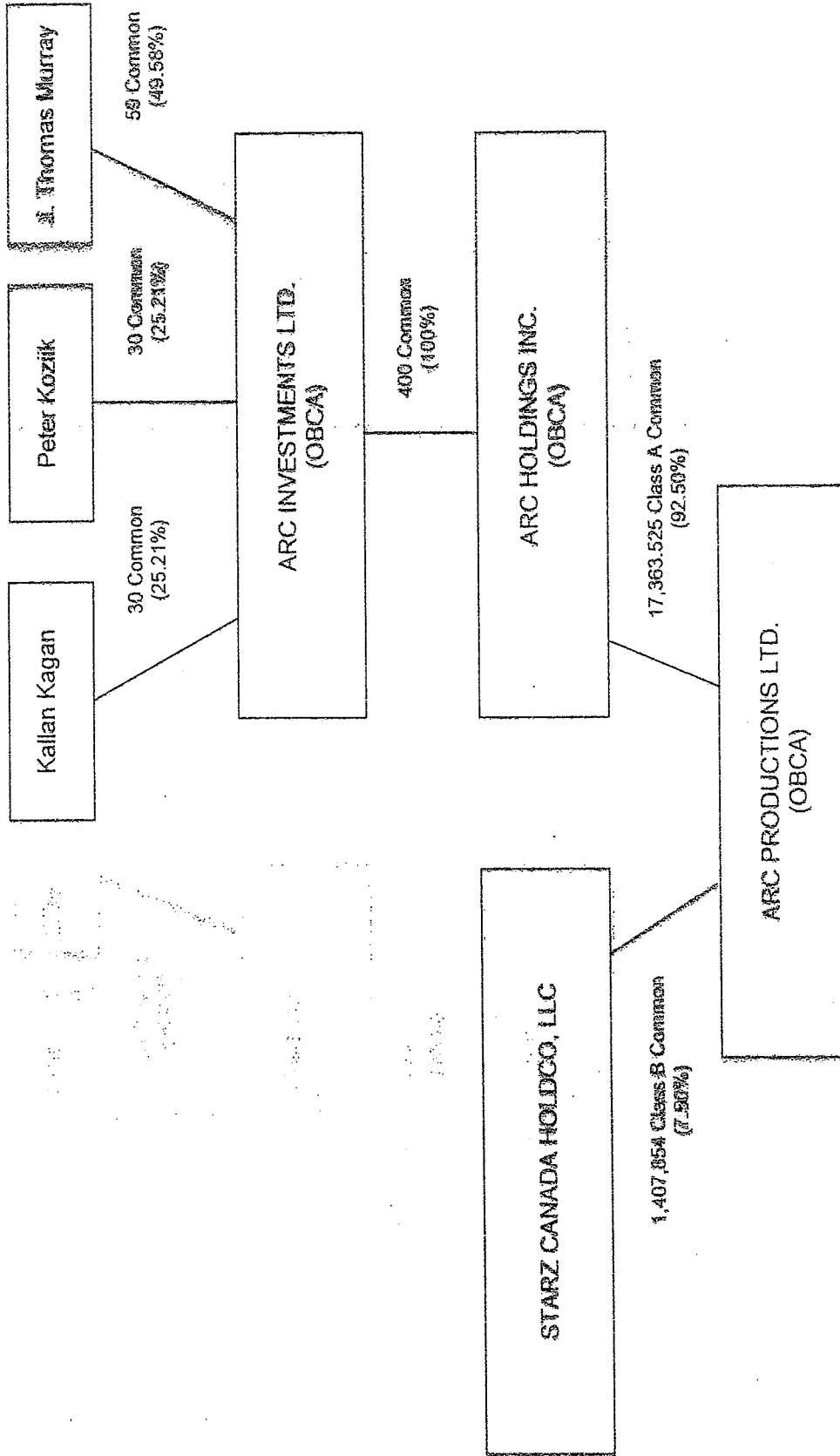
## CANADIAN DOMAIN NAMES

DOMAIN NAME	CREATED/EXPIRY	DOMAIN STATUS
Arcproductions.com	November 11, 2003/November 11, 2014	clientTransferProhibited

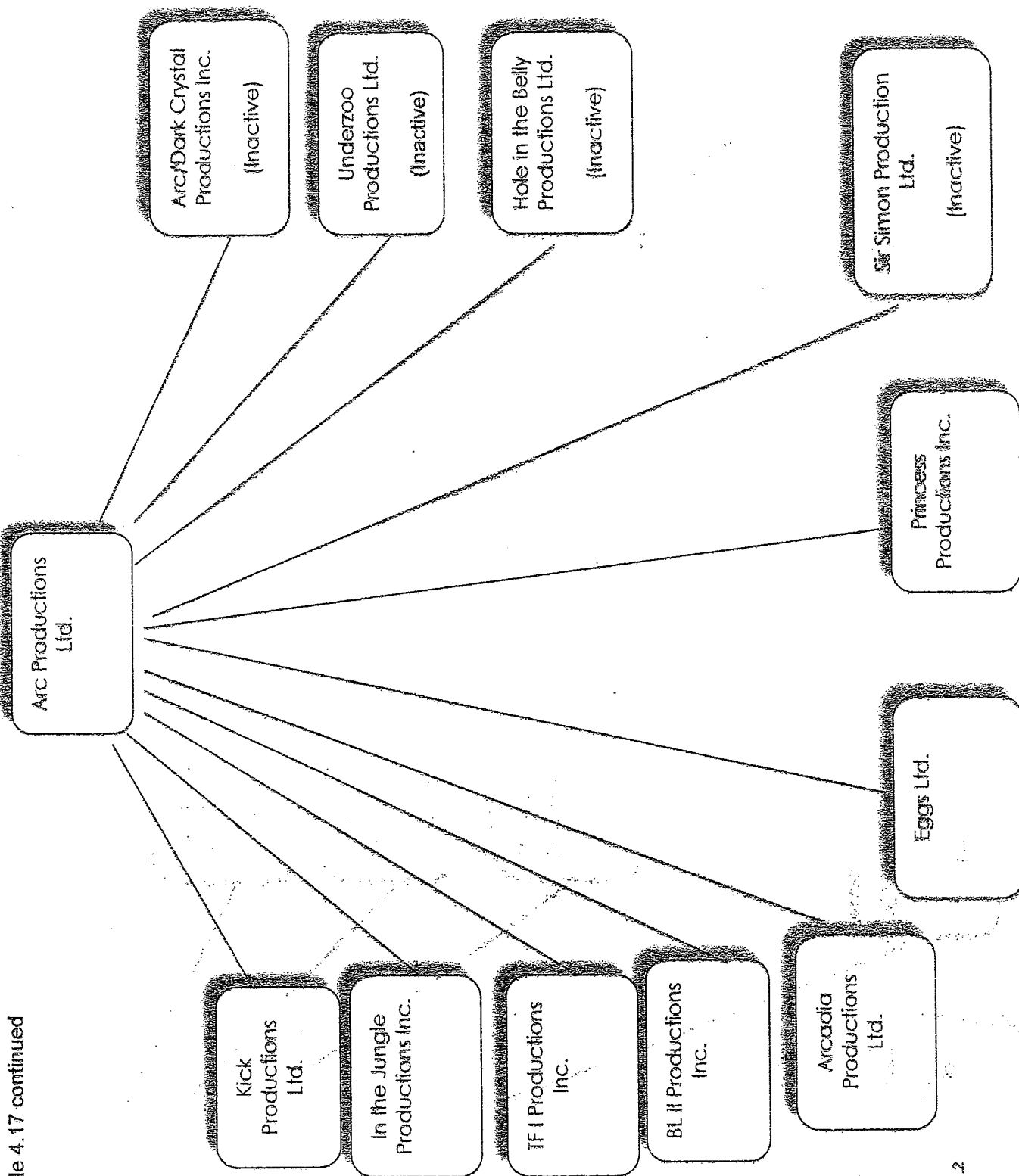
SCHEDULE 4.17 - SUBSIDIARIES, EQUITY INTEREST

ARC PRODUCTIONS LTD.

CORPORATE ORGANIZATIONAL CHART







## SCHEDULE 4.21 – TAXPAYER IDENTIFICATION NUMBER; OTHER IDENTIFYING INFORMATION

COMPANY	BUSINESS INFORMATION NUMBER	DATE OF INCORPORATION
Arc Productions Ltd.	001847816	January 1, 2007
Arc Holdings Inc.	002257908	September 23, 2010
Arc Investments Ltd.	002414208	April 9, 2014
Arcadia Productions Ltd.	002352990	December 7, 2012
BLII Productions Inc.	002308767	December 8, 2011
Arc/Dark Crystal Productions Inc.	002326884	May 4, 2012
Eggs Ltd.	002464702	May 1, 2015
Hoie in the Belly Productions Ltd.	002400820	December 19, 2013
In the Jungle Productions Inc.	002461926	April 13, 2015
Kick Productions Ltd.	002485965	October 6, 2015
Princess Productions Ltd.	002462621	April 17, 2015
Sir Simon Production Ltd.	002351619	November 28, 2012
TFI Productions Inc.	002308771	December 8, 2011
Underzoo Productions Ltd.	002368559	April 10, 2013

## SCHEDULE 4.22 – CERTAIN AGREEMENTS

COMPANY	WITH WHOM	TYPE OF AGREEMENT	DATE SIGNED
Starz Canada Holdings II B.V.	Arc Holdings Inc./Arc Productions Ltd.	Omnibus Agreement	September 7, 2011
		First Amendment to Escrow Agreement	August 7, 2012
		Second Amendment	December 22, 2011
		Third Amendment – Post Closing	April 4, 2014
		Assignment of Escrow Agreement	March 3, 2011
		Promissory Note Amendment	December 11, 2013
		Assignment Agreement	December 19, 2013
	Arc Productions Ltd.	Assignment and Waiver	April 4, 2014
Starz Entertainment	Starz Media Canada Co.	Film Production Security Agreement	February 16, 2011
Starz Media Canada Limited	Starz Canada Holdings/2257908 Ontario Inc.	Post-Closing Covenants Agreement	March 3, 2011
Starz Media Canada Co.	Starz Entertainment	Promissory Note	February 16, 2011
DreamWorks Animation	Arc Productions Ltd.	PSA – Trollhunters	August 15, 2014
	Arcadia Productions Ltd.	Assignment and Assumption Agreement	December 22, 2014
Mattel Entertainment Projects Inc.	BL II Productions Inc.	PSA – Barbie Fall 2016, Spring 2017, Fall 2017, Spring 2018, Fall 2018	November 10, 2014
		PSA – Barbie 2015 Floating Title	October 31, 2013
		First Amendment to Fall 2016-Spring 2018	February 19, 2015
BK2BRAC Holdings Inc.	Arc Productions Ltd.	PSA	March 29, 2013
		Identification of Initial Picture	September 25, 2013
		Approved Scope for Ancillary Content	July 8, 2013
		Additional Ancillary Content	May 15, 2014
		Side Letter	March 29, 2013
		Tumbleweed Test	September 1, 2015
Blazing Productions Ltd.	Arc Productions Ltd.	PSA – Blazing Samurai	September 21, 2015

DreamWorks Animation Television	Arcadia	Project Agreement #2 – Dragons: Race to the Edge	April 7, 2015
Disney Television Animation	Princess Productions Inc.	PSA – Elena of Avalor	April 3, 2015
HITC: The Movie	Arc Productions Ltd.	Contractor Agreement	November 21, 2014
Blue Sky Studios Inc.	Arc Productions Ltd.	PSA – Ice Age	April 1, 2014
Zodiak Kids Studios	Kick Productions Limited	PSA – Kai Kapow	October 28, 2015
Lego Systems A/S	Arc Productions Ltd.	PSA - Lego	November 7, 2014
Mattel Entertainment Projects Inc.	BL II Productions Inc.	PSA – Max Steel	November 10, 2014
Assemblage Entertainment	Arc Productions Ltd.	Sub-Contract Agreement	October 6, 2015
Video House	Arc Productions Ltd.	Sub-Contract Agreement	July 27, 2015
Fairhope Film Finances	Arc Productions Ltd.	Visual Effects Agreement – HUSH	April 9, 2015
Spin Master Riveting Productions Inc.	Arc Productions Ltd.	PSA – Rusty Rivets	August 11, 2014
		First Amendment	May 14, 2015
		Second Amendment	June 1, 2015
Mercury Filmworks Productions Inc.	Arc Productions Ltd.	Sub-Contract Agreement	April 17, 2015
Skechers USA, Inc. II	Arc Productions Ltd.	PSA - Skechers	December 18, 2104
T&J Animation LLC	In the Jungle Productions Inc.	PSA – Tarzan and Jane	April 1, 2015
V House Animation LLC	In the Jungle Productions Inc.	Sub-Contract Agreement	October 12, 2015
Sony Pictures Animation Inc.	Arc Productions Ltd.	PSA – The Lamb	November 3, 2015
Bureau of Magic	Arc Productions Ltd.	Work Made for Hire Agreement – There's no Place Like Oz	October 20, 2014

Gullane (Thomas) Limited	TFI Productions Inc.	PSA – Thomas 17 & 18	October 31, 2011
		First Amendment	February 29, 2012
		Second Amendment	March 9, 2012
		Third Amendment	August 3, 2012
		Fourth Amendment	September 10, 2012
		Fifth Amendment	January 4, 2013
		Sixth Amendment	January 8, 2013
		Seventh Amendment	April 10, 2013
		Eighth Amendment	July 30, 2013
		PSA – 19, Special 19 and Special 19A	April 28, 2014
		First Amendment	May 20, 2014
		Second Amendment	May 21, 2014
		Third Amendment	June 25, 2014
		Fourth Amendment	August 7, 2014
		Fifth Amendment	August 5, 2014
		Sixth Amendment	August 5, 2014
		Seventh Amendment	October 29, 2014
		Eighth Amendment	February 10, 2015
		Ninth Amendment	May 12, 2015
		Tenth Amendment	August 24, 2015
		Eleventh Amendment	November 2, 2015
		PSA – 20, Special 20 and Additional Animation	December 19, 2014
		First Amendment	January 1, 2015
		Second Amendment	February 6, 2015
House of Cool Inc.	Arc Productions Ltd.	PSA - Unilver	March 10, 2015
John P. Barrington and The Geoffrey Browne Family Trust	Tom Murray and Steven Hecht, Arc Productions Ltd.	Share Purchase Agreement	May 9, 2014
NFS Leasing Canada Ltd.	Arc Productions Ltd.	Lease Agreement – 1	June 7, 2015
		Lease Agreement - 2	June 14, 2015
		Lease Agreement – 3	August 18, 2015
		Lease Agreement – 4	August 19, 2015
		Lease Agreement – 5	November 3, 2015
Hewlett-Packard Financial Services Canada Company	Arc Productions Ltd.	Master Lease Agreement	March 30, 2011
		First Amendment	April 11, 2011
		Second Amendment	May 12, 2011

		Third, Fourth, Fifth, Sixth Amendment	June 9, 2011
		Eighth, Ninth Amendment	January 18, 2013
		Tenth Amendment	June 5, 2013
		Eleventh Amendment	January 8, 2014
		Twelfth Amendment	May 1, 2014
		Thirteenth Amendment	May 2, 2014
		Fourteenth Amendment	July 17, 2014
		Fifteenth Amendment	July 17, 2014
		Sixteenth Amendment	July 17, 2014
Allied Properties Reit (1304543 Ontario Limited)	IDT Entertainment Canada Inc/Arc Productions Ltd.	Lease – 230 Richmond St. E.	March 23, 2006
184 Front Street Leaseholds Inc.	Arc Productions Ltd.	Lease - 184 Front St. E.	May 29, 2015
1302207 Ontario Limited	Arc Productions Ltd.	Lease – 134 Peter St.	May 20, 2015
364 Richmond Street West Inc.	Arc Productions Ltd.	Lease – 364 Richmond St. W.	July 3, 2015
Walt Disney Pictures	Arc Productions Ltd.	Pixie Hollow PSA	April 23, 2012
Metacor LLP	Arc Productions Ltd.	Little Boy PSA	October 24, 2011
Platinum Films/Matt Hatter Limited/Hatter Chronicles	Starz Media Canada Ltd.	Letter of Agreement – Matt Hatter	April 6, 2011
Mattel Entertainment	Arc Productions Ltd.	PSA – Barbie's Life	April 26, 2011
	BL II Productions Ltd.	PSA – Barbie's Life 2	November 19, 2011
		PSA – Sis 13	March 23, 2012
		Voice PSA – Sis 13	May 22, 2012
		PSA – Barbie's Life 4	December 21, 2012
		PSA Barbie's Life 2015	October 31, 2013
Vanguard Animation LLC	Arc Productions Ltd.	PSA – Nut House	October 24, 2011
		Subsequent Agreement – Nut House	July 31, 2013
Columbia Pictures	Arc Productions Ltd.	Certificate of Ownership	February 23, 2012
Microsoft Corporation	Laskey Productions Inc.	PSA – Sleeper	June 20, 2012
Melmoth Productions Ltd.	Sir Simon Production Ltd./Arc Productions	PSA – Canterville Ghost	December 19, 2012

	Ltd.		
Lasser Productions South	Arc Productions Ltd.	VFX Agreement – Oculus	August 21, 2012
Lego System A/S	Arc Productions Ltd.	PSA – Lego: Marvel	November 19, 2012
Canadian Film Centre	Arc Productions Ltd.	VFX Agreement – Frost	May 10, 2012
Fairhope Film Financing LLC	Arc Productions Ltd.	VFX Agreement – Somnia	October 2, 2013
Stage 49 Ltd.	Arc Productions Ltd.	VFX Agreement – Lucky 7	April 5, 2013
Science North	Arc Productions Ltd.	PSA – Polar Quest	July 25, 2013

Schedule 4.23 - Lien Filing Offices

Ontario Personal Property Security Act Registry.



**SCHEDULE 6.01 – EXISTING LIENS**

**Personal Property Security Act (Ontario)**

CG means Consumer Goods, I means Inventory, E means Equipment, A means Accounts, O means Other, MV means Motor Vehicle Included  
 The order of registration set out below is not necessarily indicative of the priority of registration  
 The first eight digits of the Registration Number denote the year, month and day of registration

**ARC PRODUCTIONS LTD. – current to November 8, 2015**

File No.	Secured Party	Reg. No.	Collateral Class.					Debtor(s)	Comments
			CG	I	E	A	O		
1. 709492599 PPSA	NFS LEASING CANADA LTD. PEOPLE'S UNITED BANK	20150831 1633 1793 7315 Reg. 4 year(s)			X			ARC PRODUCTIONS LTD.	
Amount Secured: \$154619  No Fixed Maturity Date  General Collateral Description: ARC PRODUCTIONS LTD. MASTER LEASE # 2015-309 LEASE SCHEDULE # 3 ALL EQUIPMENT AND PERIPHERALS (COLLECTIVELY "EQUIPMENT") WHEREVER LOCATED, FINANCED UNDER AND DESCRIBED IN THE MASTER LEASE AGREEMENT INCLUDING ANY SCHEDULE THERETO (COLLECTIVELY THE "MLA") ENTERED INTO BETWEEN LESSEE AND LESSOR AND ALL OF LESSEE'S RIGHTS, TITLE AND INTEREST IN AND TO USE ANY SOFTWARE AND SERVICES (COLLECTIVELY "SOFTWARE") FINANCED UNDER AND DESCRIBED IN THE MLA, ALONG WITH ANY MODIFICATIONS OR SUPPLEMENTS TO THE MLA WHICH ARE INCORPORATED OR EVIDENCED IN WRITING AND ALL SUBSTITUTIONS, ADDITIONS, ACCESSIONS AND REPLACEMENTS TO THE EQUIPMENT OR SOFTWARE NOW OR HEREAFTER INSTALLED IN, AFFIXED TO, OR USED IN CONJUNCTION WITH THE EQUIPMENT OR SOFTWARE AND THE PROCEEDS THEREOF TOGETHER WITH ALL PAYMENTS, INSURANCE PROCEEDS, CREDITS OR REFUNDS OBTAINED BY LESSEE FROM A MANUFACTURER, LICENSOR OR SERVICE PROVIDER, OR OTHER PROCEEDS AND PAYMENTS DUE AND TO BECOME DUE AND ARISING FROM OR RELATING TO SUCH EQUIPMENT, SOFTWARE OR THE MLA. IN THE EVENT LESSEE PURCHASES ANY SUCH EQUIPMENT OR SOFTWARE, THEN LESSEE, IN ACCORDANCE WITH THE PROVISIONS OF THE MLA, HEREBY GRANTS TO LESSOR A FIRST PRIORITY SECURITY INTEREST IN ANY SUCH EQUIPMENT OR SOFTWARE PURCHASED UNTIL SUCH TIME AS LESSOR RECEIVES PAYMENT OF THE FULL PURCHASE PRICE FROM LESSEE.									
File No.	Secured Party	Reg. No.	Collateral Class.					Debtor(s)	Comments
2. 709492635	NFS LEASING CANADA LTD.	20150831 1633 1793 7316	CG	I <td>E <td>A <td>O <td>MV</td> <td>ARC PRODUCTIONS LTD.</td> </td></td></td>	E <td>A <td>O <td>MV</td> <td>ARC PRODUCTIONS LTD.</td> </td></td>	A <td>O <td>MV</td> <td>ARC PRODUCTIONS LTD.</td> </td>	O <td>MV</td> <td>ARC PRODUCTIONS LTD.</td>	MV	ARC PRODUCTIONS LTD.



PPSA (ONTARIO) SEARCH SUMMARY  
ARC PRODUCTIONS LTD.

MLA, ALONG WITH ANY MODIFICATIONS OR SUPPLEMENTS TO THE MLA WHICH ARE INCORPORATED OR EVIDENCED IN WRITING AND ALL SUBSTITUTIONS, ADDITIONS, ACCESSIONS AND REPLACEMENTS TO THE EQUIPMENT OR SOFTWARE NOW OR HEREAFTER INSTALLED IN, AFFIXED TO, OR USED IN CONJUNCTION WITH THE EQUIPMENT OR SOFTWARE AND THE PROCEEDS THEREOF TOGETHER WITH ALL PAYMENTS, INSURANCE PROCEEDS, CREDITS OR REFUNDS OBTAINED BY LESSEE FROM A MANUFACTURER, LICENSOR OR SERVICE PROVIDER, OR OTHER PROCEEDS AND PAYMENTS DUE AND TO BECOME DUE AND ARISING FROM OR RELATING TO SUCH EQUIPMENT, SOFTWARE OR THE MLA. IN THE EVENT LESSEE PURCHASES ANY SUCH EQUIPMENT OR SOFTWARE, THEN LESSEE, IN ACCORDANCE WITH THE PROVISIONS OF THE MLA, HEREBY GRANTS TO LESSOR A FIRST PRIORITY SECURITY INTEREST IN ANY SUCH EQUIPMENT OR SOFTWARE PURCHASED UNTIL SUCH TIME AS LESSOR RECEIVES PAYMENT OF THE FULL PURCHASE PRICE FROM LESSEE.

File No.	Secured Party	Reg. No.	Collateral Class					Debitors	Comments
			CG	FE	AO	AV	NY		
4. 708152967 PPSA	NFS LEASING CANADA LTD.  PEOPLE'S UNITED BANK	20150717 1700 1793 6364 (Reg. 4 year(s))		X				ARC PRODUCTIONS LTD.	

Amount Secured:  
\$201600

No Fixed Maturity Date

General Collateral Description:  
ARC PRODUCTIONS LTD. MASTER LEASE # 2015-309 LEASE SCHEDULE # 1 ALL EQUIPMENT AND PERIPHERALS (COLLECTIVELY "EQUIPMENT") WHEREVER LOCATED, FINANCED UNDER AND DESCRIBED IN THE MASTER LEASE AGREEMENT INCLUDING ANY SCHEDULE THERETO (COLLECTIVELY THE "MLA") ENTERED INTO BETWEEN LESSEE AND LESSOR AND ALL OF LESSEE'S RIGHTS, TITLE AND INTEREST IN AND TO USE ANY SOFTWARE AND SERVICES (COLLECTIVELY "SOFTWARE") FINANCED UNDER AND DESCRIBED IN THE MLA, ALONG WITH ANY MODIFICATIONS OR SUPPLEMENTS TO THE MLA WHICH ARE INCORPORATED OR EVIDENCED IN WRITING AND ALL SUBSTITUTIONS, ADDITIONS, ACCESSIONS AND REPLACEMENTS TO THE EQUIPMENT OR SOFTWARE NOW OR HEREAFTER INSTALLED IN, AFFIXED TO, OR USED IN CONJUNCTION WITH THE EQUIPMENT OR SOFTWARE AND THE PROCEEDS THEREOF TOGETHER WITH ALL PAYMENTS, INSURANCE PROCEEDS, CREDITS OR REFUNDS OBTAINED BY LESSEE FROM A MANUFACTURER, LICENSOR OR SERVICE PROVIDER, OR OTHER PROCEEDS AND PAYMENTS DUE AND TO BECOME DUE AND ARISING FROM OR RELATING TO SUCH EQUIPMENT, SOFTWARE OR THE MLA. IN THE EVENT LESSEE PURCHASES ANY SUCH EQUIPMENT OR SOFTWARE, THEN LESSEE, IN ACCORDANCE WITH THE PROVISIONS OF THE MLA, HEREBY GRANTS TO LESSOR A FIRST PRIORITY SECURITY INTEREST IN ANY SUCH EQUIPMENT OR SOFTWARE PURCHASED UNTIL SUCH TIME AS LESSOR RECEIVES PAYMENT OF THE FULL PURCHASE PRICE FROM LESSEE.

File No.	Secured Party	Reg. No.	Collateral Class					Debitors	Comments
			CG	FE	AO	AV	NY		
5. 707875875 PPSA	ROYAL BANK OF CANADA	20150709 1043 1529 1894 (Reg. 5 year(s))		X	X			ARC PRODUCTIONS LTD.	

PPSA (ONTARIO) SEARCH SUMMARY  
ARC PRODUCTIONS LTD.

File No.	Secured Party	Reg. No.	Collateral Class.					Debtor(s)	Comments
			GG	EE	AO	NY	NY		
6. 707564529 PPSA	XEROX CANADA LTD	20150629 1707 1462 6268 Reg. 6 year(s)		X			X	ARC PRODUCTIONS LTD.	
No Fixed Maturity Date									
7. 707502348 PPSA	XEROX CANADA LTD	20150626 1406 1462 5624 Reg. 6 year(s)		X			X	ARC PRODUCTIONS LTD.	
No Fixed Maturity Date									
8. 700343604 PPSA	THE GEOFFREY BROWNE FAMILY TRUST JOHN P. BARRINGTON	20141002 1029 1862 2013 Reg. 5 year(s)		X	X	X	X	ARC PRODUCTIONS LTD.	
Amount Secured: \$990000									
No Fixed Maturity Date									
	JOHN P. BARRINGTON	20141002 1551 1862 2119 A. AMENDMENT						ARC PRODUCTIONS LTD. (Reference Debtor)	
Reason for Amendment: WRONG SPELLING FOR SECURED PARTY NAME									
File No.	Secured Party	Reg. No.	Collateral Class.					Debtor(s)	Comments

PPSA (ONTARIO) SEARCH SUMMARY  
ARC PRODUCTIONS LTD.

File No.	Secured Party	Reg. No.	Collateral Class					Debtor(s)	Comments
			CG	FE	AO	MV			
9. 694626345 PPSA	CALLIDUS CAPITAL CORPORATION	20140324 1755 1793 4204 Reg. 5 year(s)	X	X	X	X	ARC PRODUCTIONS LTD.		
	CALLIDUS CAPITAL CORPORATION	20150529 1434 1793 5084 A AMENDMENT					ARC PRODUCTIONS LTD. (Reference Debtor)		
	Reason for Amendment: AMEND SECURED PARTY'S ADDRESS FROM "ROYAL TRUST TWR, 77 KING ST. W., S 4320, TORONTO, ON M5K 1K2" TO "4620 - 161 BAY STREET, P.O BOX 792, TORONTO, ON M5J 2T3".								
File No.	Secured Party	Reg. No.	Collateral Class					Debtor(s)	Comments
10. 688192776 PPSA	BK2BRAC HOLDINGS INC.	20130628 1419 1590 3302 Reg. 5 year(s)	X	X	X	X	ARC PRODUCTIONS LTD. (Corp. No.: 001847816)		
	XEROX CANADA LTD	20120620 1003 1462 8995 Reg. 6 year(s)	X			X	ARC PRODUCTIONS LTD.		
	No Fixed Maturity Date								
File No.	Secured Party	Reg. No.	Collateral Class					Debtor(s)	Comments
12. 668677194 PPSA	HEWLETT-PACKARD FINANCIAL SERVICES CANADA COMPANY	20110330 1450 8077 7688 Reg. 25 year(s)	X			X	STARZ MEDIA CANADA LIMITED		

Registration is to be amended to change the collateral classifications to Accounts and Other -- and include a general collateral description in connection with the Cash Collateral Pledge Agreement

PPSA (ONTARIO) SEARCH SUMMARY  
ARC PRODUCTIONS LTD.

13.	668020338 PPSA	STARZ CANADA HOLDINGS II B.V.	20110303 1213 1590 7610 Reg. 5 year(s)	20140717 1038 8077 8424 A. AMENDMENT	20120319 1445 8077 4086 A. AMENDMENT	Collateral Class				Debitors		Creditors			
						Secured Party	Reg. No.	General	Specific	Starz Media Canada Limited	Arc Productions Ltd.	Starz Media Canada Limited	Arc Productions Ltd.		
Reason for Amendment: ADD DEBTOR.						Reason for Amendment: ADDITION OF DEBTOR.						Reason for Amendment: ADD DEBTOR.			
No Fixed Maturity Date						General Collateral Description: MASTER LEASE, ANY AND ALL EQUIPMENT, TANGIBLE AND INTANGIBLE, LEASED PURSUANT TO SCHEDULES UNDER MASTER LEASE AGREEMENT NO. 4042663217 AND ANY PROCEEDS THEREFROM.									

PPSA (ONTARIO) SEARCH SUMMARY  
ARC PRODUCTIONS LTD.

File No.	Secured Party	Ref. No.	Collateral Class.					Debtor(s)	Comments
			CC	FI	IN	EA	VA		
14. 667734831 <sup>2</sup> PPSA	STARZ ENTERTAINMENT, LLC	20110216 1429 1590 6814 Reg. 6 year(s)	X	X	X	X	X	STARZ MEDIA CANADA CO.	
<p>Reason for Amendment: AMENDMENT TO CHANGE THE NAME OF THE SECURED PARTY FROM "STARZ CANADA HOLDINGS II B.V." TO "STARZ CANADA HOLDCO, LLC"</p>									
<p>Reason for Amendment: AMENDMENT TO REPLACE THE COLLATERAL CLASSIFICATION OF "ACCOUNTS AND OTHER" WITH "INVENTORY, EQUIPMENT, ACCOUNTS, OTHER AND MOTOR VEHICLES"</p>									
<p>Reason for Amendment: AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM "STARZ MEDIA CANADA LIMITED" TO "ARC PRODUCTIONS LTD."</p>									
	A AMENDMENT	20111223 1033 1590 3730 A AMENDMENT	X	X	X	X	X	ARC PRODUCTIONS LTD. (Reference Debtor)	ARC PRODUCTIONS LTD. (Reference Debtor)

General Collateral Description:  
ALL THE DEBTOR'S RIGHT, TITLE AND INTEREST IN AND TO THE FILM PRODUCTION CURRENTLY ENTITLED "ROBOSAPIEN", ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR RELATED THERETO OR DERIVED THEREFROM AND ANY ELEMENTS THEREOF.

<sup>2</sup> Registration is to be discharged upon payout – post closing.

PPSA (ONTARIO) SEARCH SUMMARY  
ARC PRODUCTIONS LTD.

<p>20110307 1023 1590 7734 A AMENDMENT</p>	<p>STARZ MEDIA CANADA CO. (Reference Debtor)</p>	<p>STARZ MEDIA CANADA LIMITED</p>	<p>Reason for Amendment: AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM "STARZ MEDIA CANADA CO." TO "STARZ MEDIA CANADA LIMITED"</p>
<p>20110414 1102 1590 0105 A AMENDMENT</p>	<p>STARZ MEDIA CANADA LIMITED (Reference Debtor)</p>	<p>ARC PRODUCTIONS LTD.</p>	<p>Reason for Amendment: AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM "STARZ MEDIA CANADA LIMITED" TO "ARC PRODUCTIONS LTD."</p>
<p>20140404 1524 1590 9989 A AMENDMENT</p>	<p>ARC PRODUCTIONS LTD. (Reference Debtor)</p>	<p>X X</p>	<p>Reason for Amendment: AMENDMENT TO REPLACE THE COLLATERAL CLASSIFICATION AND THE GENERAL COLLATERAL DESCRIPTION</p>
<p>General Collateral Description: THE DEBTOR HEREBY ASSIGNS, TRANSFERS AND CONVEYS TO THE SECURED PARTY ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO (I) THE ROBOSAPIEN PRODUCTION, (II) THE COLLATERAL (AS DEFINED IN THE ROBOSAPIEN SECURITY AGREEMENT) INCLUDING ALL ALL RIGHTS TO RECEIVE GROSS PROCEEDS (AS DEFINED IN THE 2011 ROBOSAPIEN NOTE) INCLUDING WITHOUT LIMITATION THE AMOUNT OF \$274,429 AND (III) THE MATERIAL CONTRACTS (AS DEFINED IN THE ROBOSAPIEN AGREEMENT) AND ALL OTHER CONTRACTS TO WHICH THE DEBTOR IS A PARTY AND THAT RELATE TO THE ROBOSAPIEN PRODUCTION, AND ALL PROCEEDS THEREFROM. ALL TERMS USED IN THIS DESCRIPTION WHICH ARE NOT DEFINED HEREIN ARE AS DEFINED IN THE ROBOSAPIEN WAIVER WAIVER AGREEMENT DATED ON OR ABOUT APRIL 4, 2014</p>			



PPSA (ONTARIO) SEARCH SUMMARY  
ARC PRODUCTIONS LTD.

File No.	Secured Party	Reg. No.	Collateral Class					Debtors	Comments	
			CG	IL	AD	AV	AA			
15. 662661324 PPSA	IBM CANADA LIMITED - LAW CLERK/PPSA ADMINISTRATOR	20100705 1450 1530 6543 Reg. 4 year(s)		X	X	X		STARZ MEDIA CANADA CO.		
<p>General Collateral Description: ALL PRESENT AND AFTER-ACQUIRED GOODS SUPPLIED, LEASED OR FINANCED BY THE SECURED PARTY, INCLUDING BUT NOT LIMITED TO, ALL OFFICE MACHINES, OFFICE EQUIPMENT, COMPUTER HARDWARE, SOFTWARE AND ALL OTHER EQUIPMENT OF ANY KIND WHATSOEVER AS WELL AS ALL ANCILLARY PRODUCTS RELATED THERETO, AND ALL UPGRADES, ADDITIONS, SUBSTITUTIONS AND ACCESSIONS THERETO AND THEREON AND ALL PROCEEDS THEREFROM OF EVERY KIND AND DESCRIPTION.</p>										
			20120105 1948 1531 7866						STARZ MEDIA CANADA CO. (Reference Debtor)	
			A AMENDMENT						ARC PRODUCTIONS LTD.	
<p>Reason for Amendment: DEBTOR NAME CHANGE</p>										
			20140602 1944 1531 3129						ARC PRODUCTIONS LTD. (Reference Debtor)	
			B RENEWAL Renew 2 year(s)							

## SCHEDULE 6.03 (b) – OTHER EXISTING INDEBTEDNESS

COMPANY	ASSETS	AMOUNT
1. Xerox Canada Ltd.	Equipment, Other A security interest in current leased office equipment and software owned by Xerox and leased by Xerox to Arc whether or not manufactured by Xerox Workcentre Scanner	\$154,425.50
	Equipment, Other A security interest in current leased office equipment and software owned by Xerox and leased by Xerox to Arc whether or not manufactured by Xerox	
2. Hewlett-Packard Financial Services Canada Limited	Equipment, Other Covers equipment listed under various lease agreement (11 agreements with a combined equipment list which consists of 7471 pieces of equipment)	\$396,824.35
3. IBM Canada Limited	Equipment, Accounts, Other Products leased, sold or financed by IBM to Arc (which may include computer hardware, software and ancillary products) and any proceeds which may arise from such products	\$0
4. RBC Visa	Corporate Visa Card	\$0
5. NFS/Scalar	Equipment, Accounts, Other Products leased, sold or financed by NFS to Arc (which may include computer hardware, software and ancillary products) and any proceeds which may arise from such products	\$1,095,315.18

22833542.2

## SCHEDULE 6.13 -- BANK ACCOUNTS

Account Number	Description
0002-1871-235	CAD Disbursement Account
0002-1871-227	CAD Payroll Account
0002-4662-833	USD Disbursement Account
0002-1871-139	Arcadia Blocked Account
0002-1871-155	TF I Blocked Account
0002-1871-198	BL II Blocked Account
0002-1871-219	Blocked CAD Deposit Account
0002-1871-171	In the Jungle Blocked Account
0002-1871-200	Princess Blocked Account
0002-1871-163	Eggs Blocked Account
0002-1871-147	Kick Blocked Account

Exhibit A – Borrowing Base Certificate

Borrowing Base Certificate

I, \_\_\_\_\_ (insert name), the undersigned Responsible Officer is the \_\_\_\_\_ (insert title) of Arc Productions Ltd. (the "Borrower") hereby certify, on behalf of the Borrower, not in my personal capacity and without any personal liability, that as of \_\_\_\_\_:

1. I am familiar with and have examined the provisions of the Credit Agreement as amended, restated, extended, supplemented or otherwise modified in writing from time to time, (the "Agreement") dated as of December 10, 2015, between the Borrower and Grosvenor Park Media Fund LP (the "Lender"), and have made reasonable investigations of corporate records and inquiries of other officers and senior personnel of the Borrower. Terms defined in the Agreement have the same meanings where used in this certificate.
2. The Borrowing Base is \_\_\_\_\_, calculated as set out on the attached Exhibit A.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ARC PRODUCTIONS LTD.

By: \_\_\_\_\_

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

Exhibit A

Grosvenor Park  
Availability Calculation

Date: 12/14/15  
Advances#: GP01

**IN CAD**

TRANCH A

Tax Credit	Files < 3 Years	Files < 2 Year	Files < 1 Year	Current	Total
OCASE	2,783,222	2,320,482	2,335,659	3,443,606	11,282,979
OPSTC	4,535,019	4,063,675	4,094,414	5,427,777	18,110,884
PSTC	1,160,995	1,166,584	1,202,176	2,088,516	5,638,271
OPSTC - Non Labour	0	0	0	560,114	560,114
OPSTC - Non Labour	(500,000)	0	0	(49,484)	(549,484)
	<u>7,969,236</u>	<u>7,570,750</u>	<u>7,632,249</u>	<u>11,670,529</u>	<u>35,042,764</u>

Less: Ineligibles  
Credit Received  
Amount Over "Letter of Comfort"

	5,404,568	5,206,309	0	0	10,610,875
	0	0	0	0	0
	<u>5,404,568</u>	<u>5,206,309</u>	<u>0</u>	<u>0</u>	<u>10,610,875</u>

Allowable Gross Collateral

	2,564,670	2,364,441	7,632,249	11,670,529	24,431,880
--	-----------	-----------	-----------	------------	------------

Advance Rate

	95%	95%	95%	95%	
--	-----	-----	-----	-----	--

Net Collateral

	2,436,437	2,246,219	7,250,637	11,277,402	23,240,295
--	-----------	-----------	-----------	------------	------------

Less: Priority Payables

					23,240,295
--	--	--	--	--	------------

Total Adjusted Availability Before Loan with Loan Limit

					23,240,295
--	--	--	--	--	------------

Less: Tranch A Loan Balance

				0	0
					19,442,317
					<u>1,557,683</u>

Net Availability Tranch A

					0
--	--	--	--	--	---

TRANCH B

Loan balance

Total Repayment

Tranch B Outstanding

					0
--	--	--	--	--	---

continued in this report to page and connect.

Name

Title

Grosvenor Park  
Availability Calculation

Date: 12/14/15  
Advances#: GP01

**IN USD**

TRANCH A

Tax Credit	Files < 3 Years	Files < 2 Year	Files < 1 Year	Current	Total
OCASE	2,677,631	1,731,710	1,745,026	2,866,363	8,420,133
OPSTC	3,375,890	3,082,893	3,055,533	4,850,360	13,515,595
PSTC	866,414	805,610	897,146	1,358,564	4,207,655
OPSTC - Non Labour	0	0	0	417,985	417,985
OPSTC - Non Labour	(372,124)	0	0	(18,928)	(410,062)
	<u>5,947,191</u>	<u>5,649,814</u>	<u>5,695,703</u>	<u>6,299,604</u>	<u>26,151,316</u>

Less: Ineligibles  
Credit Received  
Amount Over "Letter of Comfort"

	4,052,258	3,605,205	0	0	7,657,563
	0	0	0	0	0
	<u>4,052,258</u>	<u>3,605,205</u>	<u>0</u>	<u>0</u>	<u>7,657,563</u>

Allowable Gross Collateral

	1,813,933	1,754,508	5,695,703	8,889,604	18,232,753
--	-----------	-----------	-----------	-----------	------------

Advance Rate

	95%	95%	95%	95%	
--	-----	-----	-----	-----	--

Net Collateral

	1,816,236	1,676,283	5,410,823	8,415,673	17,221,115
--	-----------	-----------	-----------	-----------	------------

Total Availability Before Loan

					17,221,115
--	--	--	--	--	------------

Total Adjusted Availability Before Loan with Loan Limit

					17,900,800
--	--	--	--	--	------------

Less: Tranch A Loan Balance

					17,321,115
--	--	--	--	--	------------

Net Availability Tranch A

					0
--	--	--	--	--	---

TRANCH B

Loan balance

Total Repayment

Tranch B Outstanding

					0
--	--	--	--	--	---

Name

Title

Loan Summary		Loan Limit
Tranche A	CARDS USDS in CARDS	17,321,115 0
Tranche B		0
PIK		0
		<u>17,321,115</u>

Loan Summary		Loan Limit
Tranche A	CARDS USDS in CARDS	23,210,295 0
Tranche B		0
PIK		0
		<u>23,210,295</u>
		<u>24,500,000</u>

















Exhibit B - Note



## NOTE

U.S. \$

As of December \_\_, 2015

FOR VALUE RECEIVED, the undersigned, Arc Productions Ltd. (the "Borrower"), promises to pay to the order of Grosvenor Park Media Fund LP (the "Lender"), or holder, the principal sum of \$ Dollars (\$) in lawful money of the United States, or if less than such amount has been advanced hereunder, the aggregate unpaid balance of this Note, with interest thereon in like lawful money, at the rate provided below from the date such principal is advanced until payment in full thereof.

This Note is referred to and is executed and delivered pursuant to a credit agreement, dated as of December 10, 2015 (as it may be amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), between the Borrower and the Lender. Capitalized terms not otherwise defined herein, shall have the meanings ascribed thereto in the Loan Agreement. Reference is hereby made to the terms and conditions of the Loan Agreement for a more complete statement of the terms and conditions under which the loan evidenced hereby is made and is to be repaid. The Loan Agreement, among other things, provides (a) for the making of Loans by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time outstanding the Dollar amount first above mentioned, (b) the acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments of principal hereof prior to the maturity hereof upon the terms and conditions therein specified, and (c) for changes in the interest rate hereof upon the terms and conditions specified therein.

The outstanding principal amount hereof (including, to the extent permitted by law, on interest thereon not paid when due) shall bear interest from the date made until paid in full in cash at a fluctuating per annum rate equal to the Base Rate plus the Base Rate Margin.

All interest charges shall be computed on the basis of a year of 360 days and actual days elapsed.

No provision of this Note shall be deemed to establish or require the payment of interest at a rate in excess of the maximum rate permitted by applicable law (the "Maximum Legal Rate"). If the interest required to be paid under this Note exceeds the Maximum Legal Rate, the interest required to be paid under the Loan Agreement or this Note shall be automatically reduced to the Maximum Legal Rate. If any interest paid exceeds the then applicable interest rate, the excess of such interest over the maximum amount of interest permitted to be charged shall automatically be deemed to reduce the accrued and unpaid fees and expenses due to the Lender under this Note, if any; then to reduce the accrued and unpaid interest, if any; and then to reduce principal of the Loan; the balance of any excess interest remaining after the application of the foregoing, if any, shall be refunded to the Borrower.

If any of the Obligations owed hereunder are not paid when due (whether by acceleration or otherwise), then all of the applicable overdue Obligations shall bear interest at the Default Rate applicable thereto until so paid; and if any other Default or Event of Default occurs, then at the election of the Lender, while any such Default or Event of Default is outstanding, all of the Obligations shall bear interest at the Default Rate applicable thereto. Interest calculated at the

- 2 -

Default Rate shall be immediately due and owing and shall accrue and be payable from the date such payment was due to and including the date of payment.

All payments in respect of this Note shall be made to the Lender at Bank of America, N.A., 100 West 33<sup>rd</sup> Street, New York, New York, 10001, ABA 026-009-593, SWIFT BOFAUS3N, Account Name: Grosvenor Park Media Fund LP; US Account No. 1453031856 or at such other place as may be designated in writing by the Lender for such purpose in accordance with the terms of the Loan Agreement.

The principal and all accrued and unpaid interest thereon shall be due and payable in full on the Maturity Date. Such payment is subject to earlier acceleration and/or mandatory prepayments as provided in the Loan Agreement. Upon the occurrence of an Event of Default the whole sum of principal and interest then due and owing hereunder shall be immediately due and payable. All payments received hereunder shall be applied in accordance with the terms of the Loan Agreement.

If this Note is not paid in full when due, the Borrower promises to pay all reasonable costs and expenses of collection and reasonable outside attorneys' fees and expenses and court costs incurred by the holder hereof on account of such collection whether or not suit is filed thereon.

The amounts and rates of all Loans made pursuant hereto and all amounts paid or repaid on this Note shall be indicated on the Lender's books with respect to this Note and shall constitute, absent manifest error, rebuttably presumptive proof of the amounts and dates of such Loans.

The Borrower waives protest, diligence, presentment, demand for payment, notice of default or nonpayment, notice of dishonor and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note, and to the fullest extent permitted by law, all rights to assert any statute of limitations to an action hereunder.

This Note shall be governed by and construed in accordance with the laws of the state of California without reference to conflicts of law principles.

[signature on next page]

IN WITNESS WHEREOF, the Borrower has executed this Note as of the date first written above.

**ARC PRODUCTIONS LTD.**

By:

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

Title:

6521900

**Exhibit C - Compliance Certificate**

## FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: \_\_\_\_\_

To: Grosvenor Park Media Fund LP

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of December 10, 2015 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among Arc Productions Ltd. a corporation organized under the laws of the Province of Ontario, Canada (the "Borrower"), the Guarantors referred to herein and Grosvenor Park Media Fund LP (the "Lender").

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the [☉] of the Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to the Lender on behalf of the Borrower, and that:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. The Borrower has delivered the year-end balance sheet and related statements of income or operations, changes in Shareholders' Equity and cash flows as required by Section 5.01(a) of the Agreement for the fiscal year of the Borrower ended as of [\_\_\_\_\_, 20\_\_\_\_], together with the report and opinion of Price-Waterhouse-Coopers LLP or another independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal quarter-end financial statements]*

1. The Borrower has delivered the year-end balance sheet and related statements of income or operations, changes in Shareholders' Equity and cash flows required by Section 5.01(b) of the Agreement for the fiscal quarter of the Borrower ended as of the above date. Such financial statements fairly present, in all material respects, the financial condition, results of operations, Shareholders' Equity, and cash flows of the Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

*[select one:]*

[To the best knowledge of the undersigned, unless otherwise consented to or waived in accordance with the Agreement, the Borrower is in compliance with each covenant and condition of the Loan Documents applicable to it, and no Default or Event of Default has occurred and is continuing.]

" 2 "

" OF "

[To the best knowledge of the undersigned, the Borrower is not in compliance with the following covenants or conditions and the following is a list of each such Default or Event of Default and its nature and status:]

2. The representations and warranties of (i) the Borrower contained in Article IV of the Agreement and (ii) each applicable Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection with the Loan Documents, are true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this Compliance Certificate, the representations and warranties contained in subsections (a) and (b) of Section 4.05 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 5.01 of the Agreement, including the statements in connection with which this Compliance Certificate is delivered.
3. The financial covenant analyses and information set forth on Schedule 1 attached hereto is true and accurate in all material respects on and as of the date of this Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of

\_\_\_\_\_

*[Signature Page to Follow]*

ARC PRODUCTIONS LTD., a corporation  
incorporated under the laws of the Province of  
Ontario

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

Name:

Title:

**II. Section 6.11(b) Interest Coverage Ratio.**

The minimum Interest Coverage Ratio is 2.0 to 1.0.

As of the Computation Date, the actual Interest Coverage Ratio is     to 1.0, calculated as follows:

- |       |  |                 |
|-------|--|-----------------|
| (i)   | Cash & Availability before Permitted Payments  | = \$[●]         |
| (ii)  | Projected interest and fees, as described in Section 2.05 and 2.06 of the Credit Agreement | = \$[●]         |
| (iii) | (i) divided by (ii)<br>[Interest Coverage Ratio]   | <u>   </u> :1.0 |

The Company [is/is not] in compliance.



**III. Section 6.11(c) Pro Forma Interest Coverage Ratio**

The minimum Pro Forma Interest Coverage Ratio is 2.0:1.0.

As of the Computation Date, the Pro Forma Interest Coverage Ratio is \_\_\_ to 1.0, calculated as follows:

- |       |   |          |
|-------|---|----------|
| (i)   | Cash & Availability before Permitted Payments   | = \$[●]  |
| (ii)  | Permitted Payments  |          |
| (iii) | (i) - (ii)  | = \$[●]  |
| (iv)  | Projected interest and fees as described in Section 2.05 and 2.06 of the Credit Agreement | = \$[●]  |
| (v)   | (iii) divided by (iv)<br>[Pro Forma Interest Coverage Ratio]                              | ___:1.00 |

**IV. Section 6.12 Capital Expenditures**

A.	Capital Expenditures made during fiscal year to date (excluding normal replacements and maintenance which are properly charged to current operations)	\$[●]
B.	Maximum permitted Capital Expenditures under Section 6.12	C\$4,000,000
C.	Excess (deficient) for covenant compliance (Line B minus Line A)	\$[●]

6521659

Exhibit D – Loan Notice

LOAN NOTICE

Grosvenor Park Media Fund LP  
1310 Montana Avenue  
2<sup>nd</sup> Floor  
Santa Monica, CA  
USA 90403

Attention: Joseph Kaczorowski

Re: Credit Agreement (the "**Credit Agreement**") dated as of December 10, 2015, by and between Grosvenor Park Media Fund LP (the "**Lender**") and Arc Productions Ltd. (the "**Borrower**")

Sirs:

Pursuant to the terms of the Credit Agreement, the Borrower hereby requests that the Lender make a loan (the "**Loan**") to the Borrower in the amount and on the date specified below.

The requested Loan is as follows: (a) the amount of the Loan is U.S.\$ \_\_\_\_\_; (b) the funding date is to be \_\_\_\_\_; and (c) the proceeds of the Loan hereby requested are to be disbursed in accordance with Exhibit A, attached hereto.

The Borrower hereby certifies to the Lender that: (a) all representations and warranties of the Loan Parties contained in the Credit Agreement and each other Loan Document is true, correct and complete in all material respects as of the date of this request; provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date; (b) all conditions precedent to the Lender's obligation to make the requested Advance have been satisfied or waived in writing by the Lender; (c) no Default has occurred and is continuing or will occur after giving effect to the Loan hereby requested; (d) no Change in Management has occurred; and (e) no Material Adverse Effect has occurred.

[signatures to follow on next page]

- 2 -

This Borrowing Certificate is executed by the undersigned as of \_\_\_\_\_, 2015

ARC PRODUCTIONS LTD.

By: \_\_\_\_\_  
Name:  
Its:

**Exhibit "A"**  
**To**  
**Borrowing Certificate**

1. Cdn\$ \_\_\_\_\_ to Callidus Capital Corporation at ●, Account No. ●, Swift/IBAN No. ●;
2. Cdn\$234,194 to Starz Canada Holdco, LLC at ●, Account No. ●, Swift/IBAN No. ●;
3. Cdn\$88,136.16 to John P. Barrington at ●, Account No. ●, Swift/IBAN No. ●;
4. Cdn\$88,136.16 to The Geoff Browne Family Trust at ●, Account No. ●, Swift/IBAN No. ●; and
5. Cdn\$ \_\_\_\_\_ to Blake, Cassels & Graydon LLP at ●, Account No. ●, Swift/IBAN No. ●.

**Exhibit E – Illustrative Example – Covenant 6.11(b)**

6514301

Grosvenor Park - Interest Coverage & Shareholder Payment Test

Text for USA language - Undefined terms are definitions in USA (except where noted to be added) cash and Cash Equivalents at quarter end before expected Permitted Payments (new definition)

Interest Coverage & Shareholder Payment Test	Illustrative Example (see note)
Closing Cash before Expected Quarter End Permitted Payments	716,928
Borrowing Base Availability	
Add: Current Availability under Borrowing Base	3,114,978
Add: Projected Borrowing Base Availability (next 90 days)	2,922,273
From Cash Flow Statement	
Add: Projected Cash Flow from Operating Activities (next 90 days) (i)	(1,524,364)
Add: Projected Cash Flow from Investing Activities (next 90 days) (ii)	(967,054)
Adjustments to Operating Activities Cash Flow	
Add: Projected GP Interest & Fees Payments (next 90 days)	689,211
Deduct: Projected Tax Credit Receipts (next 90 days)	0
Cash & Availability before Permitted Payments (next 90 days)	4,961,972
Deduct: Expected Quarter End Permitted Payments	266,435
Proforma Cash & Availability after Permitted Payments (next 90 days)	4,695,537
Projected GP Interest & Fees Payments (next 90 days)	689,211
GP Interest & Fee Coverage Ratio (before Permitted Payment)	7.20
Coverage Ratio Needs to be > 2	
Proforma GP Interest & Fee Coverage Ratio (after Permitted Payments)	6.81
Proforma Coverage Ratio Needs to be > 2 to make Permitted Payment	

(i) Projected Cash Flow from Operating Activities Calculation (next 90 days)

GAAP Net Income (Loss)	699,392
Non-Cash Items from P&L	
Depreciation & Amortization	573,609
Non-Cash Interest Expense	774,984
Changes in Non-Cash Working Capital Items from Balance Sheet	
Accounts Receivable	1,533,589
Unbilled Accounts Receivable	0
Film Tax Credits Receivable	(4,732,633)
Prepaid Expenses, Deposits, & Deferred Financing Costs	387,549
Accounts Payable and Accrued Liabilities (w/Interest Expense Adjustment)	124,713
Deferred Revenue	1,485,688
Capital Lease Liabilities	(123,497)
Deferred Rent	(997,693)
Other LT Liabilities	(1,249,044)
Projected Cash Flow from Operating Activities over next 90 days	1,524,364

(ii) Projected Cash Flow from Investing Activities Calculation (next 90 days)

Purchase of Property & Equipment	(867,055)
Investment in Productions & Development	(99,999)
Projected Cash Flow from Investing Activities over next 90 days	(967,054)

Note: Illustrative Example based on March 2015 quarter end in Arc Business Development Closing - file Name: RFP Grosvenor Park - Forecast Term Sheet V13.xls

Text for USA language - Undefined terms are definitions in USA (except where noted to be added) cash and Cash Equivalents at quarter end before expected Permitted Payments (new definition)

current Availability	
projected Availability over the Projected Measurement Period (new definition = next 90 days)	
see below	
see below	
projected interest and fees as described in paragraph 2.05 and 2.06 payable over the next 90 days	
projected Canadian Tax Credit Proceeds over the next 90 days	
Define Cash & Availability before Permitted Payments	
quarter end Permitted Payments	
projected interest and fees as described in paragraph 2.05 and 2.06 payable over the next 90 days	

All of below needs to be projections over next 90 days

Consolidated Net Income

Consolidated Fixed Asset Amortization

Consolidated Interest Charges - need to adjust for "Projected Measurement Period" in definition

change in Consolidated Current Assets

change in Consolidated Current Liabilities

text added for these items

Define Consolidated Cash Flow from Operating Activities

Capital Expenditures

capitalized Investments in Development & Production Activities

Define Consolidated Cash Flow from Investing Activities



**TAB 5.**



FINAL

Trade Date	USD/CAD Spot Indication	Trade Details	Currency Pair	CAD Notional	"Early" Window Start 1	"Outside" Window End	Forward Points	All-in Forward Rate	USD Notional	Bank of America Forex Trade #
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 1,910,128 -CAD 1,910,128	31-Jan-16	31-Mar-16	17	1.3627	\$1,401,723.05 -\$1,401,723.05	1512507955
										** Settled by purchasing CAD at spot = 1.3000 on 3/31/16 and paying USD\$67,606.18
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 1,514,770 -CAD 754,174 -CAD 538,975 -CAD 221,621	28-Feb-16	30-Apr-16	21	1.3631	\$1,111,268.43 -\$553,278.26 -\$395,403.89 -\$162,586.29	1512508027
										TF1 2013 Tax Refund received 4/29/16 - Tranche A Repayment TF1 2012 Tax Refund received 4/29/16 - Tranche A Repayment Settled by purchasing CAD at spot = 1.2538 on 4/29/16 and paying USD\$14173.46
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 977,876	31-Dec-15	31-May-16	25	1.3635	\$717,180.78	1512507329
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 43,950	31-Mar-16	30-Jun-16	28	1.3638	\$32,226.13	1512510391
3/31/2016	1.3	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 1,910,128	1-Apr-16	2-Aug-16	1	1.3001	\$1,469,216.21	1538603721
4/29/2016	1.2538	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 221,621	2-May-16	2-Aug-16	12	1.2550	\$176,590.73	
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 5,296,590	31-Mar-16	30-Sep-16	40	1.3650	\$3,880,285.71	1512509553
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 482,388	28-Sep-16	29-Mar-17	55	1.3665	\$353,009.88	1512511451
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 2,335,659	28-Oct-16	28-Apr-17	56	1.3666	\$1,709,102.15	1512512592
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 8,404,060	30-Dec-16	30-Jun-17	54	1.3664	\$6,150,512.30	1512513387
1/14/2016	1.4372	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 282,091	30-Dec-16	30-Jun-17	-27	1.4345	\$196,647.61	1519818738
3/18/2016	1.3051	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 74,174	30-Dec-16	30-Jun-17	51	1.3102	\$56,612.73	1535991448
12/10/2015	1.361	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 4,042,205	28-Sep-17	29-Mar-18	37	1.3647	\$2,961,973.33	1512513423
1/14/2016	1.4372	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 2,062,335	29-Dec-17	29-Jun-18	-100	1.4272	\$1,445,021.72	1519818744
3/18/2016	1.3051	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 1,602,140	29-Dec-17	29-Jun-18	57	1.3108	\$1,222,261.21	1535991505
5/4/2016	1.2875	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 700,000	29-Dec-17	29-Jun-18	56	1.2931	\$541,334.78	
5/24/2016	1.3142	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 1,175,000	29-Dec-17	29-Jun-18	42	1.3184	\$891,231.80	
6/24/2016	1.2975	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 600,000	29-Dec-17	29-Jun-18	84	1.3059	\$459,453.25	
1/14/2016	1.4372	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 789,250	28-Sep-18	29-Mar-19	-160	1.4212	\$555,340.56	1519818752
3/18/2016	1.3051	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 656,293	28-Sep-18	29-Mar-19	60	1.3111	\$500,566.70	1535991522
5/4/2016	1.2875	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 300,000	28-Sep-18	29-Mar-19	61	1.2936	\$231,910.95	
5/24/2016	1.3142	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 500,000	28-Sep-18	29-Mar-19	47	1.3189	\$379,103.80	
6/24/2016	1.2975	Grosvenor Park sells CAD (buys USD)	USD/CAD	CAD 250,000	29-Dec-17	29-Jun-18	115	1.3090	\$190,985.49	
		<a href="#">Add New</a>								
									CAD 32,705,760	\$24,120,567.82

Blended FX Rate 1.35593



Grosvenor Park  
Availability Calculation

Date: 7/13/16  
Advance# GP12

IN CAD

Tax Credit	Files < 4 Years	Files < 3 Year	Files < 2 Year	Files < 1 Year	Current	Total
OCASE	2,783,222	2,320,492	2,335,659	3,991,054	2,839,472	14,269,899
OPSTC	4,525,019	4,063,675	4,094,414	5,663,374	3,979,730	22,326,212
PSTC	1,160,995	1,186,584	1,202,176	2,167,362	1,537,780	7,254,896
OPSTC - Non Labour	0	0	0	929,589	525,471	1,455,060
Tax Credit Adjustments	(572,093)	(326,675)	0	(49,484)	0	(948,252)
	7,897,143	7,244,075	7,632,249	12,701,895	8,882,453	44,357,815
<b>Less: Ineligibles</b>						
Credit Received	5,926,457	5,945,778	0	0	0	11,872,235
Amount Over "Letter of Comfort"	0	0	1,381	11,098	14,182	26,661
	5,926,457	5,945,778	1,381	11,098	14,182	11,898,896
Total Gross Collateral	1,970,686	1,298,297	7,630,868	12,690,797	8,868,270	32,458,919
Total Hedged Collateral	1,970,686	1,298,297	7,630,868	12,690,797	8,868,270	32,458,919
<b>Allowable Gross Collateral</b>	<b>1,970,686</b>	<b>1,298,297</b>	<b>7,630,868</b>	<b>12,690,797</b>	<b>8,868,270</b>	<b>32,458,919</b>
Advance Rate	95%	95%	95%	95%	90%	
Net Collateral	1,872,152	1,233,382	7,249,325	12,056,257	7,981,443	30,392,560
<b>Total Borrowing Base (CAD)</b>						<b>30,392,560</b>

Tranche A	Maximum	Drawn	Remaining	Repayments
Availability	23,728,745	23,728,745	0	(1,286,345)
Current Tranche A Loan Balance				22,442,400
Availability for Draw				0
<b>Tranche B</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	5,188,460	5,188,460	0	0
Current Tranche B Loan Balance				5,188,460
<b>Tranche C</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	16,271,140	7,472,634	8,798,506	0
Current Tranche C Loan Balance				7,472,634
Availability for Draw				477,526
<b>Tranche D</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	16,271,140	0	16,271,140	
Current Tranche D Loan Balance				0
Availability for Draw				0
<b>Tranche E</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	5,423,713	5,072,187	351,526	-
Current Tranche E Loan Balance				5,072,187

Grosvenor Park  
Availability Calculation

Date: 7/13/16  
Advance# GP12  
Weighted Average FX Rate 1.35593x (Based on Hedges Currently in Place)

IN USD

Tax Credit	Files < 4 Years	Files < 3 Year	Files < 2 Year	Files < 1 Year	Current	Total
OCASE	2,052,632	1,711,368	1,722,553	2,943,411	2,094,117	10,524,081
OPSTC	3,337,211	2,996,969	3,019,639	4,176,751	2,935,059	16,465,629
PSTC	856,236	875,108	886,607	1,598,434	1,134,116	5,350,502
OPSTC - Non Labour	0	0	0	685,574	387,536	1,073,110
Tax Credit Adjustments	(421,920)	(240,924)	0	(36,494)	0	(699,338)
	5,824,160	5,342,521	5,628,800	9,367,675	6,550,828	26,163,155
<b>Less: Ineligibles</b>						
Credit Received	4,370,775	4,385,024	0	0	0	8,755,799
Amount Over "Letter of Comfort"	0	0	1,018	8,185	10,459	19,662
	4,370,775	4,385,024	1,018	8,185	10,459	8,765,002
Total Gross Collateral	1,453,385	957,497	5,627,782	9,359,490	6,540,368	23,938,522
Total Hedged Collateral	1,453,385	957,497	5,627,782	9,359,490	6,540,368	23,938,522
<b>Allowable Gross Collateral</b>	<b>1,453,385</b>	<b>957,497</b>	<b>5,627,782</b>	<b>9,359,490</b>	<b>6,540,368</b>	<b>23,938,522</b>
Advance Rate	95%	95%	95%	95%	90%	
Net Collateral	1,380,716	909,622	5,346,392	8,891,516	5,886,331	22,414,577
<b>Total Borrowing Base</b>						<b>22,414,577</b>

Tranche A	Maximum	Drawn	Remaining	Repayments
Availability	17,500,000	17,500,000	0	(948,682)
Current Tranche A Loan Balance				16,551,318
Availability for Draw				0
<b>Tranche B</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	3,826,500	3,826,500	0	0
Current Tranche B Loan Balance				3,826,500
<b>Tranche C</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	12,000,000	5,511,083	6,488,917	0
Current Tranche C Loan Balance				5,511,083
Availability for Draw				352,176
<b>Tranche D</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	12,000,000	0	12,000,000	0
Current Tranche D Loan Balance				0
Availability for Draw				0
<b>Tranche E</b>	<b>Maximum</b>	<b>Drawn</b>	<b>Remaining</b>	<b>Repayments</b>
Availability	4,000,000	3,740,749	259,251	
Current Tranche E Loan Balance				3,740,749

The undersigned is an authorized signing officer of Arc Productions Inc and represents and warrants to Grosvenor Park Media Fund LP that all of the information contained in this report is true and correct.

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

<b>Loan Summary</b>	<i>Loan Balance</i>	<i>Remaining Availability</i>	<i>Availability for Draw</i>
Tranche A	22,442,400	0	0
Tranche B	5,188,460	0	0
Tranche C	7,472,634	8,798,506	477,526
Tranche D	0	16,271,140	0
Tranche E	5,072,187	351,526	351,526
<b>Total</b>	<b>40,175,681</b>	<b>25,421,171</b>	<b>829,052</b>

*Note: Total Availability for Draw could be reduced because of maximum loan balance provision of USD \$32 million*

The undersigned is an authorized signing officer of Arc Productions Inc and represents and warrants to Grosvenor Park Media Fund LP that all of the information contained in this report is true and correct.

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

<b>Loan Summary</b>	<i>Loan Balance</i>	<i>Remaining Availability</i>	<i>Availability for Draw</i>
Tranche A	16,551,318	0	0
Tranche B	3,826,500	0	0
Tranche C	5,511,083	6,488,917	352,176
Tranche D	0	12,000,000	0
Tranche E	3,740,749	259,251	259,251
<b>Total</b>	<b>29,629,650</b>	<b>18,748,168</b>	<b>611,427</b>

*Note: Total Availability for Draw could be reduced because of maximum loan balance provision of USD \$32 million*



Grosvenor Park  
 ARC Productions Inc  
 Filed 4 Years Prior (Before 2012)

Production:	LITTLE BOY	MATT HATTER	BARBIE'S LIFE S1	THOMAS & FRIENDS	BARBIE'S LIFE S2	NUT HOUSE	Fiona's Tale	Sleeper	Pixie Hollow	BARBIE SIS-13	BARBIE'S LIFE S4
Production Agreement Date	8/27/10	7/15/11	4/26/11	1/30/12	12/22/11	N/A	2/23/12	4/1/12	4/23/12	3/23/12	12/21/12
OPSTC Application Date	2/28/11	1/3/13	6/5/11	2/7/12	2/3/12	N/A	6/29/12	6/29/12	6/29/12	6/28/12	1/29/13
OPSTC Certification Date	10/6/11	10/29/13	7/31/12	4/22/13	4/17/13	N/A	8/12/13	8/19/13	8/14/13	8/14/13	11/19/13
PSTC Application Date	2/28/11	1/3/13	7/5/11	2/3/12	2/3/12	N/A	7/3/12	6/29/12	6/29/12	6/29/12	2/19/13
PSTC Certification Date	6/6/11	9/6/11	11/2/11	3/13/12	5/15/12	N/A	9/17/12	11/8/12	10/15/12	8/21/12	8/15/13
2012 OCASE Application Date	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14
2012 OCASE Certification Date	o/s	o/s	9/23/14	7/15/14	9/23/14	o/s	o/s	o/s	o/s	9/23/14	9/23/14
OMDC Certification No. - OCASE	o/s	o/s	14D00778	14D00749	14D00778	o/s	o/s	o/s	o/s	14D00778	14D00778
OMDC Certification No. - OPSTC	11U01064	13U01363	12U01186	13U01274	13U01273	-	13U01327	13U01333	13U01331	13U01329	13U01377
CAVCO Certification No.	AC010383	AC010689-701	AC011150	011769-AC011822	AC011823	-	AC020116-1	AC 020085-001	AC 020084-005	AC 020083-001	AC 020240-001
OCASE	100,875	374,403	34,279	843,984	469,250	22,391	21,212	248,818	119,661	489,281	-
OPSTC	175,967	228,786	69,269	1,543,288	879,727	-	37,345	428,573	206,832	913,776	-
PSTC	48,335	65,840	15,431	387,094	213,095	-	11,815	116,206	54,788	237,185	-
OPSTC - Non Labour	-	-	-	-	-	-	-	-	-	-	-
Tax Credit Adjustments				(322,093)	(250,000)						
Total	325,177	669,029	118,979	2,452,273	1,312,072	22,391	70,372	793,597	381,281	1,640,242	0

Tax Credit Receipts				521,891	0	0				0	0
Tax Credit Receipts	175,967	0	69,269	1,543,288	879,727	0	37,345	428,573	206,832	913,776	0
Tax Credit Receipts	48,335	65,840	15,431	387,094	213,095	0	11,815	116,206	54,788	237,185	0
ITCs Claim Greater than PWC Comfort Letter											
Less: Tax Credits Assigned to 3rd Parties											
Tax Credits Receivable	100,875	603,189	34,279	0	219,250	22,391	21,212	248,818	119,661	489,281	0

OCASE - Outstanding	100,875	374,403	34,279	322,093	469,250	22,391	21,212	248,818	119,661	489,281	-
OPSTC - Outstanding	-	228,786	-	-	-	-	-	-	-	-	-
PSTC - Outstanding	-	-	-	-	-	-	-	-	-	-	-
OPSTC - Non Labour Outstanding	-	-	-	-	-	-	-	-	-	-	-
Tax Credit Adjustments Outstanding	-	-	-	(322,093)	(250,000)	-	-	-	-	-	-
Total	100,875	603,189	34,279	0	219,250	22,391	21,212	248,818	119,661	489,281	0

Estimated Refundable TC Comfort Letter and Net of TC Filings	100,875	603,189	34,279	843,984	469,250	22,391	21,212	248,818	119,661	489,281	0
TC Files											
Estimated Refundable TC to Earn	100,875	603,189	34,279	843,984	469,250	22,391	21,212	248,818	119,661	489,281	0

Amount Over Letter of Comfort	0	0	0	(843,984)	(250,000)	0	0	0	0	0	0
Ineligible Amount Over Letter of Comfort	0	0	0	0	0	0	0	0	0	0	0

Interest from CRA				17,084							
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Grosvenor Park  
 ARC Productions Inc  
 Filed 2 Years Prior (FY 2014)

Production:	THOMAS & FRIENDS 17 & 18	THOMAS & FRIENDS 19	BARBIE'S LIFE S4	UNDERZOO	BARBIE 2015	BARBIE 2015 DVD	SOMNIA					Total
Production Agreement Date	1/30/12	5/28/14	12/21/12	n/a	10/31/13	10/31/13	10/2/13					
OPSTC Application Date	2/7/12	5/1/14	1/29/13	n/a	2/18/14	2/18/14	3/24/14					
OPSTC Certification Date	4/22/13	o/s	11/19/13	n/a	9/30/14	o/s	12/12/14					
PSTC Application Date	2/3/12	5/1/14	2/19/13	n/a	2/18/14	2/18/14	3/24/14					
PSTC Certification Date	3/13/12	10/29/14	8/15/13	n/a	5/12/14	5/12/14	12/10/14					
2014 OCASE Application Date	7/31/15	7/31/15	7/31/15	7/31/15	7/31/15	7/31/15	7/31/15					
2014 OCASE Certification Date	o/s	o/s	o/s	n/a	o/s	o/s	o/s					
OMDC Certification No. - OCASE	o/s	o/s	o/s	n/a	o/s	o/s	o/s					
OMDC Certification No. - OPSTC	13U01274	o/s	13U01377	n/a	14U01561	o/s	14U01598					
CAVCO Certification No.	AC011769-AC011822	AC020516-001	AC 020240-001	n/a	AC020458-001	AC020458-001	020486-001					
OCASE	147,040	753,684	294,386		284,338	622,127	234,084					2,335,659
OPSTC	273,515	1,288,590	563,384	0	496,443	1,062,812	409,670					4,094,414
PSTC	80,462	383,483	164,107	0	140,336	317,345	116,443					1,202,176
OPSTC - Non Labour												0
Tax Credit Adjustment												0
Total	501,017	2,425,757	1,021,877	0	921,117	2,002,284	760,197	0	0	0	0	7,632,249
Tax Credit Receipts												0
Tax Credit Receipts												0
Tax Credit Receipts												0
ITCs Claim Greater than PWC Comfort Letter												0
Less: Tax Credits Assigned to 3rd Parties												0
Tax Credits Receivable	501,017	2,425,757	1,021,877	0	921,117	2,002,284	760,197	0	0	0	0	7,632,249
OCASE - Outstanding	147,040	753,684	294,386	0	284,338	622,127	234,084	0	0	0	0	2,335,659
OPSTC - Outstanding	273,515	1,288,590	563,384	0	496,443	1,062,812	409,670	0	0	0	0	4,094,414
PSTC - Outstanding	80,462	383,483	164,107	0	140,336	317,345	116,443	0	0	0	0	1,202,176
OPSTC - Non Labour Outstanding	0	0	0	0	0	0	0	0	0	0	0	0
Tax Credit Adjustment Outstanding	0	0	0	0	0	0	0	0	0	0	0	0
Tax Credits Receivable	(501,017)	(2,425,757)	(1,021,877)	0	(921,117)	(2,002,284)	(760,197)	0	0	0	0	(7,632,249)
Estimated Refundable TC Comfort Letter and Net of TC Filings	501,017	2,425,757	1,020,496	0	921,117	2,002,284	760,197	0	0	0	0	7,630,868
TC Files												0
Estimated Refundable TC to Earn	501,017	2,425,757	1,020,496	0	921,117	2,002,284	760,197	0	0	0	0	7,630,868
Amount Over Letter of Comfort	0	0	1,381	0	0	0	0	0	0	0	0	1,381
Ineligible Amount Over Letter of Comfort	0		1,381	0	0	0	0	0	0	0	0	1,381

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Grosvenor Park  
ARC Productions Inc  
Current Year

Production:	ARCADIA	THOMAS & FRIENDS 20	MAX STEEL	BARBIE FLOATING 2016 DVD	BARBIE DVD 2016-2018	ICE AGE HOLIDAY SPECIAL	ELENA	HUSH	DRAGONS	TARZAN	KODY KAPOW	THOMAS 21	Total
Production Agreement Date	12/22/14	12/19/14	11/10/14	2/17/15	11/10/14	5/15/15	5/3/15	3/3/15	5/7/15	4/1/15	10/28/15	3/23/16	
OPSTC Application Date	3/24/15	2/11/15	3/11/15	7/24/15	3/4/15	7/31/15	7/30/15	o/s	o/s	7/30/15	1/19/16	4/5/16	
OPSTC Certification Date	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	
PSTC Application Date	7/20/15	7/14/15	7/14/15	7/14/15	7/14/15	7/31/15	7/24/15	o/s	8/5/15	7/30/15	1/20/16	4/5/16	
PSTC Certification Date	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	
2016 OCASE Application Date	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	
2016 OCASE Certification Date	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	
OMDC Certification No. - OCASE	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	
OMDC Certification No. - OPSTC	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	
CAVCO Certification No.	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	o/s	
OCASE	305,805	442,715	242,576	1,857	363,767	48,719	760,496		153,462	299,763	147,913	72,400	2,839,472
OPSTC	426,225	617,449	338,152	2,641	509,347	65,123	1,077,327		212,573	425,475	205,914	99,504	3,979,730
PSTC	157,429	228,370	127,009	971	193,220	24,321	412,465		79,239	166,055	102,091	46,610	1,537,779.66
OPSTC - Non Labour	56,984	80,744	50,358	387	74,938	9,731	131,480		31,526	50,773	27,728	10,822	525,471.06
Tax Adjustment													0
Total	946,444	1,369,277	758,096	5,855	1,141,272	147,894	2,381,768	0	476,799	942,066	483,646	229,336	8,882,453
Tax Credit Receipts													0
Tax Credit Receipts													0
Tax Credit Receipts													0
ITCs Claim Greater than PWC Comfort Letter													0
Less: Tax Credits Assigned to 3rd Parties													0
Tax Credits Receivable	946,444	1,369,277	758,096	5,855	1,141,272	147,894	2,381,768	0	476,799	942,066	483,646	229,336	8,882,453
OCASE Outstanding	198,028	264,502	152,890	964	196,977	42,892	365,510	0	134,077	119,355	147,913	72,400	1,695,507
OPSTC - Outstanding	269,457	360,771	209,446	1,364	270,148	56,807	505,461	0	184,763	164,887	205,914	99,504	2,328,522
PSTC - Outstanding	99,363	131,250	78,271	501	102,200	21,262	186,102	0	68,465	65,790	102,091	46,610	901,906
OPSTC - Non Labour Outstanding	56,984	80,744	50,358	387	74,938	9,731	131,480	0	31,526	50,773	27,728	10,822	525,471
Tax Adjustment - Outstanding	0	0	0	0	0	0	0	0	0	0	0	0	0
Tax Credits Receivable	(623,832)	(837,267)	(490,965)	(3,216)	(644,263)	(130,692)	(1,188,553)	0	(418,831)	(400,804)	(483,646)	(229,336)	(5,451,405)
Estimated Refundable TC Comfort Letter and Net of TC Filings	2,613,045	2,381,591	849,607	1,130,474	1,127,090	270,358	2,767,717	17	990,821	1,404,462	3,432,049	2,766,216	19,733,447
TC Files													0
Estimated Refundable TC to Earn	2,613,045	2,381,591	849,607	1,130,474	1,127,090	270,358	2,767,717	17	990,821	1,404,462	3,432,049	2,766,216	19,733,447
Amount Over Letter of Comfort	(1,666,602)	(1,012,314)	(91,511)	(1,124,619)	14,182	(122,464)	(385,949)	(17)	(514,022)	(462,395)	(2,948,403)	(2,536,880)	(10,850,994)
Ineligible Amount Over Letter of Comfort	0	0	0	0	14,182	0	0	0	0	0	0	0	14,182

2,839,472.20	-	2,680,598.37	158,873.83
3,979,729.58	-	3,752,136.86	227,592.72
1,537,779.66	-	1,444,024.34	93,755.32
525,471.06	-	525,471.06	-
8,882,452.50	-	8,402,230.63	480,221.87

ok ok ok





CHANGE IN FORWARD AMOUNT	FORWARD DATE	FORWARD AMOUNT	Early Collection Date	Estimated Collections	Outside Collections Da
		479,922	28-Sep-18	29-Dec-18	29-Mar-19
		375,265	28-Sep-18	29-Dec-18	29-Mar-19
		0	28-Sep-18	29-Dec-18	29-Mar-19
		237,910	28-Sep-18	29-Dec-18	29-Mar-19
		296,356	28-Sep-18	29-Dec-18	29-Mar-19
		17,915	28-Sep-18	29-Dec-18	29-Mar-19
		578,565	28-Sep-18	29-Dec-18	29-Mar-19
		522,126	28-Sep-18	29-Dec-18	29-Mar-19
		345,249	28-Sep-18	29-Dec-18	29-Mar-19
		33,373	28-Sep-18	29-Dec-18	29-Mar-19
		0			
		1,187,192	31-Dec-17	31-Mar-18	30-Jun-18
		0			
		1,033,332	31-Dec-17	31-Mar-18	30-Jun-18
		0			
		0	31-Dec-17	31-Mar-18	30-Jun-18
		0			
		552,233	31-Dec-17	31-Mar-18	30-Jun-18
		0			
		686,767	31-Dec-17	31-Mar-18	30-Jun-18
		0			
		127,827	31-Dec-17	31-Mar-18	30-Jun-18
		0			
		1,358,836	31-Dec-17	31-Mar-18	30-Jun-18
		1,193,899	31-Dec-17	31-Mar-18	30-Jun-18
		1,037,859	31-Dec-17	31-Mar-18	30-Jun-18
		87,248	31-Dec-17	31-Mar-18	30-Jun-18
(6,419)	4-Dec-15	1,067,897	28-Sep-17	29-Dec-17	29-Mar-18
(1,761)	4-Dec-15	938,765	28-Sep-17	29-Dec-17	29-Mar-18
(25,246)	4-Dec-15	454,442	28-Sep-17	29-Dec-17	29-Mar-18
(16,143)	4-Dec-15	725,775	28-Sep-17	29-Dec-17	29-Mar-18

2,537	4-Dec-15	116,244	28-Sep-17	29-Dec-17	29-Mar-18
(24,031)	4-Dec-15	513,025	28-Sep-17	29-Dec-17	29-Mar-18
19,912	5-Dec-15	174,906	28-Sep-17	29-Dec-17	29-Mar-18
(51,151)					
(51,151)					
(0)					
		0			
(60,176)	4-Dec-15	1,015,303	31-Dec-16	31-Mar-17	30-Jun-17
		0			
48,517		1,589,784	31-Dec-16	31-Mar-17	30-Jun-17
		0			
98,223		2,055,521	31-Dec-16	31-Mar-17	30-Jun-17
		0			
92,308		1,125,491	31-Dec-16	31-Mar-17	30-Jun-17
		0			
27,940		258,668	31-Dec-16	31-Mar-17	30-Jun-17
		0			
75,974		384,161	31-Dec-16	31-Mar-17	30-Jun-17
		0			
73,479		2,331,397	31-Dec-16	31-Mar-17	30-Jun-17
356,265					
356,265					
(0)					
		900,724	28-Oct-16	28-Jan-17	28-Apr-17
		1,200,851	28-Oct-16	28-Jan-17	28-Apr-17
		234,084	28-Oct-16	28-Jan-17	28-Apr-17
		0	28-Oct-16	28-Jan-17	28-Apr-17
		0			
		526,113	31-Mar-16	30-Jun-16	30-Sep-16
		0			
		0	31-Mar-16	30-Jun-16	30-Sep-16
		0			
		2,744,427	31-Mar-16	30-Jun-16	30-Sep-16
		0			
		2,026,050	31-Mar-16	30-Jun-16	30-Sep-16

326,675	31-Jan-16		31-Mar-16
771,960	28-Feb-16		30-Apr-16
482,388	28-Sep-16	29-Dec-16	29-Mar-17

0			
43,950	31-Mar-16		30-Jun-16
0			
0			
0			
0			

322,093	31-Jan-16		31-Mar-16
742,810	28-Feb-16		30-Apr-16
102,444	31-Dec-15	28-Feb-16	28-May-16

0			
281,448	31-Dec-15	28-Feb-16	28-May-16
0			
0			
0			
0			

23,457,395

<i>By SPV</i>			<i>"Early"</i>	<i>"Estimated"</i>	<i>"Outside"</i>
Tranche	SPV	CAD Amount	Window Start 1	Window Start 2	Window End

1	APL	383,892	31-Dec-15	28-Feb-16	28-May-16
2	TFI	648,768	31-Jan-16		31-Mar-16
3	BLII	1,514,770	28-Feb-16		30-Apr-16
4	APL	526,113	31-Mar-16	30-Jun-16	30-Sep-16
5	TFI	2,026,050	31-Mar-16	30-Jun-16	30-Sep-16
6	BLII	2,744,427	31-Mar-16	30-Jun-16	30-Sep-16
7	Arcadia	0	31-Mar-16	30-Jun-16	30-Sep-16
8	APL	43,950	31-Mar-16		30-Jun-16
9	APL	482,388	28-Sep-16	29-Dec-16	29-Mar-17
10	APL	234,084	28-Oct-16	28-Jan-17	28-Apr-17
11	TFI	900,724	28-Oct-16	28-Jan-17	28-Apr-17
12	BLII	1,200,851	28-Oct-16	28-Jan-17	28-Apr-17
13	Arcadia	0	28-Oct-16	28-Jan-17	28-Apr-17
14	APL	1,015,303	31-Dec-16	31-Mar-17	30-Jun-17
15	TFI	2,331,397	31-Dec-16	31-Mar-17	30-Jun-17
16	BLII	2,055,521	31-Dec-16	31-Mar-17	30-Jun-17
17	Arcadia	1,589,784	31-Dec-16	31-Mar-17	30-Jun-17
18	Eggs	1,125,491	31-Dec-16	31-Mar-17	30-Jun-17
19	In the Jungle	258,668	31-Dec-16	31-Mar-17	30-Jun-17
20	Princess	384,161	31-Dec-16	31-Mar-17	30-Jun-17
21	APL	454,442	28-Sep-17	29-Dec-17	29-Mar-18
22	TFI	1,067,897	28-Sep-17	29-Dec-17	29-Mar-18
23	BLII	938,765	28-Sep-17	29-Dec-17	29-Mar-18
24	Arcadia	725,775	28-Sep-17	29-Dec-17	29-Mar-18
25	Eggs	513,025	28-Sep-17	29-Dec-17	29-Mar-18
26	In the Jungle	116,244	28-Sep-17	29-Dec-17	29-Mar-18
27	Princess	174,906	28-Sep-17	29-Dec-17	29-Mar-18
28	TFI	1,187,192	31-Dec-17	31-Mar-18	30-Jun-18
29	BLII	1,033,332	31-Dec-17	31-Mar-18	30-Jun-18
30	APL	0	31-Dec-17	31-Mar-18	30-Jun-18
31	Arcadia	552,233	31-Dec-17	31-Mar-18	30-Jun-18
32	In the Jungle	686,767	31-Dec-17	31-Mar-18	30-Jun-18
33	Eggs	127,827	31-Dec-17	31-Mar-18	30-Jun-18
34	Princess	1,358,836	31-Dec-17	31-Mar-18	30-Jun-18
35	Kick	1,193,899	31-Dec-17	31-Mar-18	30-Jun-18
36	TFI	1,037,859	31-Dec-17	31-Mar-18	30-Jun-18
37	BLII	87,248	31-Dec-17	31-Mar-18	30-Jun-18
38	TFI	479,922	28-Sep-18	29-Dec-18	29-Mar-19
39	BLII	375,265	28-Sep-18	29-Dec-18	29-Mar-19
40	APL	0	28-Sep-18	29-Dec-18	29-Mar-19
41	Arcadia	237,910	28-Sep-18	29-Dec-18	29-Mar-19
42	In the Jungle	296,356	28-Sep-18	29-Dec-18	29-Mar-19
43	Eggs	17,915	28-Sep-18	29-Dec-18	29-Mar-19
44	Princess	578,565	28-Sep-18	29-Dec-18	29-Mar-19
45	Kick	522,126	28-Sep-18	29-Dec-18	29-Mar-19

46	TFI	345,249	28-Sep-18	29-Dec-18	29-Mar-19
47	BLII	33,373	28-Sep-18	29-Dec-18	29-Mar-19
<b>Total</b>		<b>33,609,268</b>			

## In Aggregate

	Tranche	CAD Amount	"Early" Window Start 1	"Estimated" Window Start 2	"Outside" Window End	Associated Tax Credits
Hedged at Close	1	977,876	31-Dec-15	28-Feb-16	28-May-16	2012 OCASE, OPSTC, PSTC credits within Arc Productions Ltd
	2	1,910,128	31-Jan-16		31-Mar-16	2012, 2013 OCASE credits within TFI
	3	1,514,770	28-Feb-16		30-Apr-16	2012, 2013 OCASE credits within BLII
	4	5,296,590	31-Mar-16	30-Jun-16	30-Sep-16	2014 OPSTC, PSTC credits all companies
	5	43,950	31-Mar-16		30-Jun-16	2013 OPSTC, PSTC credits within Arc Productions LTD
	6	482,388	28-Sep-16	29-Dec-16	29-Mar-17	2013 OCASE credits within APL
	7	2,335,659	28-Oct-16	28-Jan-17	28-Apr-17	2014 OCASE credits within all companies
	8	8,404,060	30-Dec-16	31-Mar-17	30-Jun-17	2015 OPSTC, PSTC credits within all companies
	9	4,042,205	28-Sep-17	29-Dec-17	29-Mar-18	2015 OCASE credits within all companies
	<b>Total</b>	<b>25,007,625</b>				
Hedged Jan 2016	1	282,091	30-Dec-16	31-Mar-17	30-Jun-17	2015 OPSTC, PSTC credits within all companies
	2	2,062,335	29-Dec-17	31-Mar-18	29-Jun-18	2016 OPSTC, PSTC credits within all companies <b>(Partial)</b>
	3	789,250	28-Sep-18	29-Dec-18	29-Mar-19	2016 OCASE credits within all companies <b>(Partial)</b>
	<b>Total</b>	<b>3,133,676</b>				
Hedged Mar 2016	1	74,174	30-Dec-16	31-Mar-17	30-Jun-17	2015 OPSTC, PSTC credits within all companies
	2	1,602,140	29-Dec-17	31-Mar-18	29-Jun-18	2016 OPSTC, PSTC credits within all companies <b>(Partial)</b>
	3	656,293	28-Sep-18	29-Dec-18	29-Mar-19	2016 OCASE credits within all companies <b>(Partial)</b>
	<b>Total</b>	<b>2,332,607</b>				
Hedged 3/31/16	1	1,910,128	1-Apr-16		2-Aug-16	2012, 2013 OCASE credits within TFI - now to be used for OCASE BLII as of 4/29/16
	<b>Total</b>	<b>1,910,128</b>				
Hedged 4/29/16	1	221,621	2-May-16		2-Aug-16	2012, 2013 OCASE credits within BLII
Hedged 5/4/16	1	(0)	30-Dec-16	31-Mar-17	30-Jun-17	2015 OPSTC, PSTC credits within all companies
	2	700,000	29-Dec-17	31-Mar-18	29-Jun-18	2016 OPSTC, PSTC credits within all companies <b>(Partial)</b>
	3	300,000	28-Sep-18	29-Dec-18	29-Mar-19	2016 OCASE credits within all companies <b>(Partial)</b>
	<b>Total</b>	<b>1,000,000</b>				
Hedged 5/20/16	1	0	30-Dec-16	31-Mar-17	30-Jun-17	2015 OPSTC, PSTC credits within all companies
	2	1,175,000	29-Dec-17	31-Mar-18	29-Jun-18	2016 OPSTC, PSTC credits within all companies <b>(Partial)</b>
	3	500,000	28-Sep-18	29-Dec-18	29-Mar-19	2016 OCASE credits within all companies <b>(Partial)</b>
	<b>Total</b>	<b>1,675,000</b>				

Hedged 5/20/16	1	0	30-Dec-16	31-Mar-17	30-Jun-17 2015 OPSTC, PSTC credits within all companies
	2	600,000	29-Dec-17	31-Mar-18	29-Jun-18 2016 OPSTC, PSTC credits within all companies <i>(Partial)</i>
	3	250,000	28-Sep-18	29-Dec-18	29-Mar-19 2016 OCASE credits within all companies <i>(Partial)</i>
	<b>Total</b>	<b>850,000</b>			
Less Settled Amts		<b>(3,424,898)</b>			
	<b>Total Hedged</b>	<b>32,705,760</b>			
		<b>(51,151)</b>	28-Sep-17	29-Dec-17	29-Mar-18 Excess hedge in 2015 OCASE based on Mar 2016 revised estimated
		<b>(593,984)</b>	31-Dec-15	28-Feb-16	28-May-16 Excess hedge 2012 OCASE APL credits
Amount Remaining to F	1	0	30-Dec-16	31-Mar-17	30-Jun-17 2015 OPSTC, PSTC credits within all companies
	2	610	29-Dec-17	31-Mar-18	29-Jun-18 2016 OPSTC, PSTC credits within all companies <i>(Partial)</i>
	3	12,516	28-Sep-18	29-Dec-18	29-Mar-19 2016 OCASE credits within all companies <i>(Partial)</i>
	<b>Total</b>	<b>13,126</b>			





ICE AGE	OCASE	(25,593)	
Elena	OCASE	(826,521)	
DRAGONS	OCASE	(291,190)	
TARZAN	OCASE	(423,365)	
BARBIE FALL 2016	OCASE	(113,797)	
BARBIE FLOATING	OCASE	(335,882)	
MAS STEEL	OCASE	(60,489)	
ARCADIA	OCASE	(34,077)	
THOMAS 20	OCASE	(685,603)	
THOMAS 21	OCASE	(690,497)	
BARBIE FALL 2016	OCASE	(66,746)	
KICK	OCASE	(1,044,252)	(4,598,014)
ICE AGE	OPSTC	(121,163)	
Elena	OPSTC	(1,465,401)	
DRAGONS	OPSTC	(528,782)	
TARZAN	OPSTC	(745,674)	
BARBIE FALL 2016	OPSTC	(236,339)	
BARBIE FLOATING	OPSTC	(605,343)	
MAS STEEL	OPSTC	(210,687)	
ARCADIA	OPSTC	(44,982)	
THOMAS 20	OPSTC	(1,277,538)	
THOMAS 21	OPSTC	(1,426,916)	
BARBIE FALL 2016	OPSTC	(119,098)	
KICK	OPSTC	(1,747,164)	(8,529,087)
ICE AGE	PSTC	(6,664)	
Elena	PSTC	(475,794)	
DRAGONS	PSTC	(170,849)	
TARZAN	PSTC	(235,422)	
BARBIE FALL 2016	PSTC	(59,717)	
BARBIE FLOATING	PSTC	(189,249)	
MAS STEEL	PSTC	(59,191)	
ARCADIA	PSTC	(17,509)	
THOMAS 20	PSTC	(418,450)	
THOMAS 21	PSTC	(648,802)	
BARBIE FALL 2016	PSTC	(55,398)	
KICK	PSTC	(640,634)	(2,977,679)

**TAB 6.**

Court File No. 16-CV-11472-00CL

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

THE HONOURABLE MR. )

TUESDAY, THE 2ND

JUSTICE PENNY )

DAY OF AUGUST, 2016



**GROSVENOR PARK MEDIA FUND L.P.**

Plaintiff

- and -

**ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD.,  
ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE  
JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS  
INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS  
INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS  
LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS  
MURRAY, KALLEN KAGAN and PETER KOZIK**

Defendants

**FRESH AS AMENDED  
INTERIM RECEIVERSHIP ORDER  
(August 2, 2016)**

**THIS MOTION** made by the Plaintiff for an Order pursuant to section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") appointing Deloitte Restructuring Inc. as Interim Receiver (in such capacities, the "Interim Receiver") without security, of all of the assets, undertakings and properties of the corporate defendants (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, and certain shares of the individual defendants (the "Directors") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Donald Starr sworn July 28, 2016, and the Exhibits thereto and on hearing the submissions of counsel for the Plaintiff, the Debtors and Directors, and on reading the consent of Deloitte Restructuring Inc. to act as the Interim Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that, Deloitte Restructuring Inc. is hereby appointed Interim Receiver pursuant to section 47 of the BIA, without security, of:

- (a) all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof; and
- (b) the shares of Arc Investments Ltd. held by each of the Directors

(collectively, the "Property") until the earlier of (i) August 29, 2016, and (ii) the appointment of a receiver or a trustee in bankruptcy in respect of the Property.

### **INTERIM RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (g) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (h) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the Interim Receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (j) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (k) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtors; and
- (l) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall

grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

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

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

7. THIS COURT ORDERS that the Interim Receiver shall provide each of the relevant landlords with notice of the Interim Receiver'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 Interim Receiver'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 Interim Receiver, or by further Order of this Court upon application by the Interim Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

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

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

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors from compliance with statutory or regulatory



provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE INTERIM RECEIVER**

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

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

#### **INTERIM RECEIVER TO HOLD FUNDS**

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

net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that, notwithstanding paragraph 33 herein, the employment of the employees of Arc and the Corporate Guarantors shall be deemed to have been terminated as of August 1, 2016.

15. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Interim Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Interim Receiver shall not be obligated to continue the employment of any employees of the Debtor. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

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

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

18. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

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

19. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim Receiver's Charge") on the Property, as security for such fees and disbursements,

both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

21. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

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

22. THIS COURT ORDERS that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Interim Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

#### **SERVICE AND NOTICE**

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.insolvencies.deloitte.ca/en.ca/arcproductions](http://www.insolvencies.deloitte.ca/en.ca/arcproductions).

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute 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 facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile 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.

### **GENERAL**

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

29. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a receiver or a trustee in bankruptcy of the Debtors.

30. 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 Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

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

32. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtors' estate and the Property with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other

party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that this Order shall take effect and be deemed to have taken as of 12:01 a.m. on July 29, 2016.



A handwritten signature in black ink, appearing to be "R. J.", is written above a horizontal line.

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

AUG 02 2016

PER / PAR:



A small, stylized handwritten signature or mark.

**SCHEDULE "A"**

**INTERIM RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that DELOITTE INC., the Interim Receiver (the "Interim Receiver") of the assets, undertakings and properties ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD., ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 29th day of July, 2016 (the "Order") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

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

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



Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

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

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DELOITTE INC., solely in its capacity  
as Interim Receiver of the Property, and not in  
its personal capacity

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

Name:

Title:

GROSVENOR PARK MEDIA FUND L.P.

**Plaintiff**

and

ARC PRODUCTIONS LTD., et al. Court File No. 16-CV-11472-00CL

**Defendants**

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

Proceeding commenced at Toronto

**FRESH AS AMENDED INTERIM  
RECEIVERSHIP ORDER**

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

L. Joseph Latham LSUC#: 32326A  
Jason Wadden LSUC#: 467575M  
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Tel: 416.979.2211  
Fax: 416.979.1234

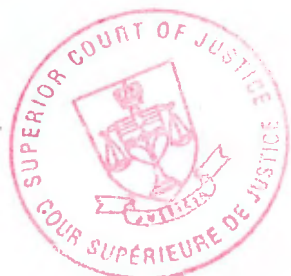
Lawyers for the Plaintiff

**TAB 7.**

Court File No. CV-16-11472-00CL

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

THE HONOURABLE MR.	)	WEDNESDAY, THE 10TH
	)	
JUSTICE PENNY	)	DAY OF AUGUST, 2016



**GROSVENOR PARK MEDIA FUND L.P.**

Plaintiff

- and -

**ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD.,  
 ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE  
 JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS  
 INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS  
 INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS  
 LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS  
 MURRAY, KALLAN KAGAN and PETER KOZIK**

Defendants

**RECEIVERSHIP ORDER**  
 (August 10, 2016)

**THIS MOTION** made by the Plaintiff for an Order pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte Restructuring Inc. as Receiver (in such capacities, the "Receiver") without security, of, among other things, all of the assets, undertakings and properties of the corporate defendants (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, and certain shares of the individual defendants (the "Directors") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavits of Donald Starr sworn July 29, 2016, Jason Wadden sworn July 29, 2016, and Jesse Mighton sworn August 2, 2016, and the exhibits thereto, and the First Report of the Interim Receiver, and on hearing the submissions of counsel for the Plaintiff and the Interim Receiver, on reading the consent of Deloitte Restructuring Inc. to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that, Deloitte Restructuring Inc. is hereby appointed Receiver pursuant to section 243 of the BIA and section 101 of the CJA, without security, of:

- (a) all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof; and
- (b) the shares of Arc Investments Ltd. held by each of the Directors

(collectively, the "Property").

### **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

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

instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the Receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

#### **TRANSITION TO RECEIVER**

4. THIS COURT ORDERS that the Interim Receiver is hereby authorized and directed, without further approval or direction from this Court, to take all steps that the Receiver considers necessarily or desirable to effect a transition of the Property and its affairs from the Interim Receiver to the Receiver, including, but not limited to, transferring all monies, funds, accounts, contracts, held by or in the name of the Interim Receiver to the Receiver as the Receiver may direct.

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

5. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons



acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

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

providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver'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 Receiver'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 Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

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

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

11. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the

environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors 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 Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

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

herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

15. THIS COURT ORDERS that the Receiver shall not be obligated to hire any of the former employees of the Debtor. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

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

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

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

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

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

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

#### SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.insolvencies.deloitte.ca/en.ca/arcproductions](http://www.insolvencies.deloitte.ca/en.ca/arcproductions).

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute 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 facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile 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.

#### GENERAL

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

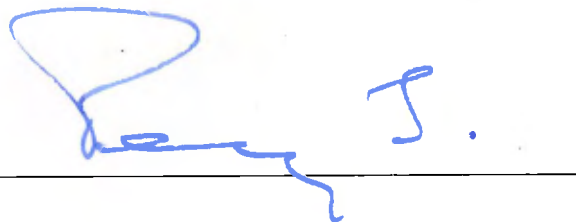
29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a receiver or a trustee in bankruptcy of the Debtors.

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

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

32. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate and the Property with such priority and at such time as this Court may determine.

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



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

AUG 10 2016

PER / PAR: 



**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that DELOITTE INC., the Receiver (the "Receiver") of the assets, undertakings and properties ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD., ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 29th day of July, 2016 (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DELOITTE INC., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

GROSVENOR PARK MEDIA FUND L.P.

Plaintiff

and

ARC PRODUCTIONS LTD., et al.

Defendants

Court File No. 16-CV-11472-00CL

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

Proceeding commenced at Toronto

**RECEIVERSHIP ORDER  
(Motion Returnable August 10, 2016)**

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

L. Joseph Latham LSUC#: 32326A  
Jason Wadden LSUC#: 467575M

Tel: 416.979.2211  
Fax: 416.979.1234  
Lawyers for the Plaintiff

**TAB 8.**

Court File No.: 16-CV-11472-00CL

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

THE HONOURABLE MR. )

FRIDAY, THE

JUSTICE NEWBOULD )

27<sup>TH</sup> DAY OF JANUARY, 2017

 BETWEEN:

**GROSVENOR PARK MEDIA FUND L.P.**

**Plaintiff**

-and-

**ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD., ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS MURRAY, KALLAN KAGAN and PETER KOZIK**

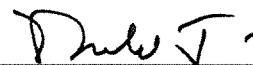
**Defendants**

**ORDER**

**THIS MOTION** is made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Arc Productions Ltd. and its subsidiaries and affiliates, which consist of the other corporate defendants described in the title of proceedings (collectively, “**Arc**”) for an order amending the Orders of the Honourable Mr. Justice Newbould dated December 20, 2016 and December 22, 2016 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the supplement to the Fourth Report of the Receiver, the Orders granted by Justice Newbould on December 20, 2016 and December 22, 2016 authorizing and directing the Receiver to assign the Debtors into bankruptcy, and on hearing the submissions of counsel for the Receiver, and upon being advised that the Plaintiff consents to the proposed amendment,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to forthwith assign Arc Productions Ltd. into bankruptcy and if deemed necessary or advisable in the future to do so, to assign the remaining corporate defendants into bankruptcy.
3. **THIS COURT ORDERS** that except as amended by this order nothing in this Order affects the Orders granted by this Court on December 20, 2016 and December 22, 2016, in this matter.



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JAN 27 2017

PER / PAR: 

GROSVENOR PARK MEDIA FUND L.P.

Plaintiff

ARC PRODUCTIONS LTD. ET AL

Defendants

Court File No: 16-CV-11472-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced TORONTO

**ORDER**  
(Returnable to Amend Order)

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto ON M5G 1V2  
Fax: 416-597-3370

**Mario Forte (LSUC #: 27293F)**  
Tel: 416-597-6477  
Email: forte@gsnh.com

Lawyers for Deloitte Restructuring Inc. in its  
capacity as the Court appointed Receiver of Arc  
Productions Ltd. et al.

**TAB 9.**



Court File No. 16-CV-11472-00CL

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

THE HONOURABLE

)

TUESDAY, THE

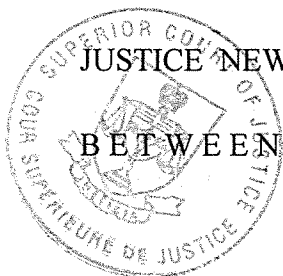
JUSTICE NEWBOULD

)

18<sup>TH</sup> DAY OF APRIL, 2017

)

BETWEEN:



**GROSVENOR PARK MEDIA FUND L.P.**

**Plaintiff**

- and -

**ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD., ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS MURRAY, KALLAN KAGAN and PETER KOZIK**

**Defendants**

**DISTRIBUTION ORDER**

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed Receiver (in such capacity, the “Receiver”), without security, of all the assets, undertakings and properties (collectively, the “Property”) of Arc Productions Ltd. and its subsidiaries and affiliates, which consist of the other corporate defendants described in the title of proceedings (collectively, “Arc”) for an Order approving the activities of the Receiver since December 5, 2016 as set out in the Fifth Report of the Receiver dated March 27, 2017 (the “Fifth Report”), approving the fees of the Receiver for the period from November 1, 2016 to February 28, 2017 and the fees of the Receiver’s legal counsel for the same period, and authorizing the Receiver to make distributions to Grosvenor Park Media Fund, from time to time, subject to the

terms and conditions set out in the herein Order, was heard this day at at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and the affidavits of the Receiver and its counsel as to fees, and on hearing the submissions of counsel for the Receiver and of the Plaintiff, no one else appearing although properly served as appears from the affidavit of Mario Forte, sworn March 23, 2017, filed:

### **SERVICE**

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

### **APPROVAL OF FEES AND ACTIVITIES**

2. **THIS COURT ORDERS** that the activities of the Receiver and its counsel since December 5, 2016, as set out in the Fifth Report, are hereby approved.

3. **THIS COURT ORDERS** that the fees of the Receiver and its counsel for the period from November 1, 2016 to February 28, 2017, as set out in the Fifth Report, are hereby approved.

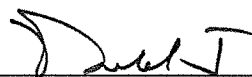
### **DISTRIBUTIONS**

4. **THIS COURT ORDERS** that, subject to paragraph 5 of this Order, the Receiver be and is hereby authorized to distribute to Grosvenor Park Media Fund L.P. ("GP") from time to time all funds coming into its hands, subject to such reserves as the Receiver may deem prudent in the circumstances, up to the amount of \$43,953,400, without further Order of this Court.

5. **THIS COURT ORDERS** that, notwithstanding paragraph 4 hereof, any distributions by the Receiver hereunder of proceeds of the realization or collection of tax credits of Arc, where the Receiver has notice of the interests of parties other than GP claiming ownership, security

- 3 -


interests, or both in such tax credits or their proceeds, shall only be made upon further Order of the Court on notice to GP and to such other parties.



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APR 18 2017

PER / PAR: 

**GROSVENOR PARK MEDIA FUNDS L.P.**  
**Plaintiff**

v

**ARC PRODUCTIONS LTD. et al.**  
**Defendants**  
Commercial List File No. CV-16-11472-00CL

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

**DISTRIBUTION ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
TORONTO, ON M5G 1V2

**Mario Forte** (LSUC #: 27293F)  
**Lori Goldberg** (LSUC #58581V)  
Tel: 416-597-6477  
Fax: 416-597-3370  
Email: [forte@gsnh.com](mailto:forte@gsnh.com)

Lawyers for Deloitte Restructuring Inc.

**TAB 10.**

to liquidation requires partially lifting the CCAA stay to commence proceedings under the BIA. This necessary partial lifting of the stay should not trigger a race to the courthouse in an effort to obtain priority unavailable under the BIA.

[81] I therefore conclude that Brenner C.J.S.C. had the authority under the CCAA to lift the stay to allow entry into liquidation.

### 3.4 *Express Trust*

[82] The last issue in this case is whether Brenner C.J.S.C. created an express trust in favour of the Crown when he ordered on April 29, 2008, that proceeds from the sale of LeRoy Trucking's assets equal to the amount of unremitted GST be held back in the Monitor's trust account until the results of the reorganization were known. Tysoe J.A. in the Court of Appeal concluded as an alternative ground for allowing the Crown's appeal that it was the beneficiary of an express trust. I disagree.

[83] Creation of an express trust requires the presence of three certainties: intention, subject matter, and object. Express or "true trusts" arise from the acts and intentions of the settlor and are distinguishable from other trusts arising by operation of law (see D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (3rd ed. 2005), at pp. 28-29, especially fn. 42).

[84] Here, there is no certainty to the object (i.e. the beneficiary) inferrable from the court's order of April 29, 2008 sufficient to support an express trust.

de la LFI. Ce faisant, le tribunal doit veiller à ne pas perturber le plan de répartition établi par la LFI. La transition au régime de liquidation nécessite la levée partielle de la suspension des procédures ordonnée en vertu de la LACC, afin de permettre l'introduction de procédures en vertu de la LFI. Il ne faudrait pas que cette indispensable levée partielle de la suspension des procédures provoque une ruée des créanciers vers le palais de justice pour l'obtention d'une priorité inexistante sous le régime de la LFI.

[81] Je conclus donc que le juge en chef Brenner avait, en vertu de la LACC, le pouvoir de lever la suspension des procédures afin de permettre la transition au régime de liquidation.

### 3.4 *Fiducie expresse*

[82] La dernière question à trancher en l'espèce est celle de savoir si le juge en chef Brenner a créé une fiducie expresse en faveur de la Couronne quand il a ordonné, le 29 avril 2008, que le produit de la vente des biens de LeRoy Trucking — jusqu'à concurrence des sommes de TPS non remises — soit détenu dans le compte en fiducie du contrôleur jusqu'à ce que l'issue de la réorganisation soit connue. Un autre motif invoqué par le juge Tysoe de la Cour d'appel pour accueillir l'appel interjeté par la Couronne était que, selon lui, celle-ci était effectivement la bénéficiaire d'une fiducie expresse. Je ne peux souscrire à cette conclusion.

[83] La création d'une fiducie expresse exige la présence de trois certitudes : certitude d'intention, certitude de matière et certitude d'objet. Les fiducies expresses ou « fiducies au sens strict » découlent des actes et des intentions du constituant et se distinguent des autres fiducies découlant de l'effet de la loi (voir D. W. M. Waters, M. R. Gillen et L. D. Smith, dir., *Waters' Law of Trusts in Canada* (3<sup>e</sup> éd. 2005), p. 28-29, particulièrement la note en bas de page 42).

[84] En l'espèce, il n'existe aucune certitude d'objet (c.-à-d. relative au bénéficiaire) pouvant être inférée de l'ordonnance prononcée le 29 avril 2008 par le tribunal et suffisante pour donner naissance à une fiducie expresse.

**TAB 11.**

## Court of Appeal of Alberta

Bank of Nova Scotia v. Societe General (Canada)

Date: 1988 04 21

Docket: 19119

The judgment of the court was delivered by

STRATTON J.A.: – The basic issue in this appeal concerns the nature of the relationship between the respondent Sorrel Resources Ltd. ("Sorrel"), the operator of certain oil and gas properties, and nine respondents ("non-operators"), each of whom has a specifically defined participating interest in those properties. The non-operators claim that, at all material times, Sorrel stood in a fiduciary relation to them and held in trust for their benefit certain funds on deposit in Sorrel's general account at the Bank of Nova Scotia. The appellant, Société General (Canada), contends that the relationship between Sorrel and the non-operators is one of debtor-creditor and claims the disputed funds as a major secured creditor of Sorrel.

Sorrel is indebted to the appellant for an amount in excess of \$4,000,000. The appellant holds as security a general assignment of book debts and has attempted to realize on that security by purporting to attach Sorrel's account at the Bank of Nova Scotia. That attempt was challenged by one or more non-operators and the bank commenced interpleader proceedings. Ultimately an issue was directed which was heard by Lutz J.

For the purposes of this appeal, the disputed funds fall into two categories:

1. The excess of the funds advanced by the various non-operators for expenses of operating the said oil and gas properties over the funds actually paid by Sorrel to cover those expenses ("excess A.F.E. funds"); and
2. The excess of the revenue recovered from those properties and still remaining in Sorrel's account over any expenses of operations paid by Sorrel under the governing agreement ("pro rata revenue").

Although the learned trial judge's decision covered additional matters, the only part of that decision under appeal is his conclusion that the two funds identified above are held in trust by Sorrel for the non-operators. We agree with his decision and therefore at the close of argument, we dismissed the appeal and advised that our reasons for so doing would follow.

It is common ground that the relationship between Sorrel and the non-operators is governed by the provisions of the 1981 Canadian Association of Petroleum Landmen Operating Procedure ("1981 C.A.P.L. agreement" or the "agreement"). The document constituted the



basic working arrangement between Sorrel and the non-operators covering the operations on the said oil and gas properties.

The parts of the agreement reproduced below cover the whole of the sections indicated except for s. 301, where only the first two paragraphs have been quoted:

101 (i) "for the joint account" means for the benefit, interest, ownership, risk, cost, expense and obligation of the parties hereto in proportion to each party's participating interest ("to the joint account" and "joint account" shall have corresponding meanings.)

(k) "Joint-Operator" means a party to the Agreement having a participating interest in the joint lands (including the Operator if it has a participating interest in the joint lands.)

(m) "Operator" means the party appointed by the Joint-Operators to carry out operations hereunder for the joint account.

301 CONTROL AND MANAGEMENT OF OPERATIONS - The Operator is hereby delegated the control and management of the exploration, development and operation of the joint lands for the joint account, provided it shall consult with the Joint-Operators from time to time with respect to decisions to be made for the exploration, development and operation of the joint lands, and keep the Joint-Operators informed with respect to operations planned or conducted for the joint account.

Subject to Clause 304, the Operator shall be entitled to make or commit to such operating expenditures for the joint account as it shall consider necessary and prudent in order to carry on a good and workmanlike operation for the joint account, provided the Operator shall not make or commit to an expenditure for the joint account for any single operation, the total estimated cost of which is in excess of twenty-five thousand (\$25,000) dollars without a written Authority for Expenditure from Joint-Operators, unless the expenditure is considered by Operator to be necessary by reason of an event endangering life or property. Particulars of each such event shall be reported promptly to the Joint-Operators.

503 ADVANCE OF COSTS AND EXPENSES - The Operator may, at its election, require each Joint-Operator to advance its proportionate share of all costs and expenses to be incurred for the joint account. If the Operator so elects, it may not earlier than thirty (30) days prior to the first (1st) day of a calendar month, submit to each Joint-Operator an itemized estimate of the costs and expenses proposed to be a charge for the joint account in that calendar month, with a request for payment by each Joint-Operator of its proportionate share thereof. Each Joint-Operator shall pay the Operator its proportionate share of the costs and expenses so estimated or secure the payment thereof in a manner satisfactory to the Operator on or before the fifteenth (15th) day after receipt by it of such estimate or by the fifteenth (15th) day of the calendar month to which the estimate relates, whichever is the later. If any Joint-Operator fails so to make or secure such payment, the unpaid amount may, at the Operator's option, bear interest (payable by that Joint-Operator for the account of the Operator) at the rate provided for in Clause 502, from the day such payment is due until it is paid. Amounts advanced by a Joint-Operator hereunder shall be recorded as a credit to the account of that Joint-Operator and the Operator shall adjust the monthly billing in accordance with the Accounting Procedure to reflect such advances received by it from a Joint-Operator. Any amounts

advanced by a Joint-Operator hereunder and then not required by Operator for charges to the Joint Account within the time and in the manner proposed, shall be refunded to that Joint-Operator in a prompt and timely manner but in any event prior to the end of the calendar month following the month to which such advance applied, following which any amounts not so refunded may, at that Joint-Operator's option bear interest (payable by the Operator for the account of that Joint-Operator) at the rate provided for in Clause 502, from the day such refund is due until it is paid.

507 COMMINGLING OF FUNDS - The Operator may commingle with its own funds the moneys which it receives from or for the account of the Joint-Operators pursuant to this Operating Procedure.

601 EACH PARTY To OWN AND TAKE ITS SHARE - Each of the parties shall own its proportionate share of the petroleum substances produced from wells operated for the joint account and shall have the right, at its own expense, to take in kind and separately dispose of its proportionate share of production exclusive of the production which may be used by the Operator in developing and producing operations and of production unavoidably lost.

602 FAILURE To TAKE IN KIND - When and so often as a Joint-Operator shall fail or refuse to take in kind and separately dispose of its proportionate share of any production, the Operator shall have the authority, revocable by that Joint-Operator at will (subject to existing sales contracts), to sell for the account and at the expense of that Joint-Operator its proportionate share of production to others at the same price which the Operator receives for its own share of the production or to purchase the same for its own account at the field price prevailing in the area. All sales made by the Operator of a Joint-Operator's share of production as aforesaid shall be for such periods of time only as are consistent with the minimum needs of the industry under the circumstances but in no event shall any contract for the sale of the Joint-Operator's share of production be made for a period in excess of one (1) year.

605 DISTRIBUTION OF PROCEEDS - Subject to the foregoing provisions of this Article, any party that receives income or proceeds from the sale of another party's share of production, shall forthwith distribute such income or proceeds to the party or parties entitled thereto. If a party fails to distribute such income or proceeds within ten (10) days following its receipt, the undistributed amount may, at the option of the party entitled thereto, bear interest (payable by the party holding such income or proceeds for the account of the party entitled thereto) at the rate provided for in Clause 502, from and after the aforesaid ten (10) days until it is paid.

701 PRE-COMMENCEMENT INFORMATION - Prior to commencing any well for the joint account, the Operator shall submit to each Joint-Operator:

- (a) an Authority for Expenditure which shall contain the location and intended total depth of the well and summarize the anticipated drilling costs and completion costs of the well. If the Authority for Expenditure does not contain the expected time of commencement of the well, a Joint-Operator may make its approval conditional upon the well being commenced within a specified time and upon approval of such condition by all parties to the Authority for Expenditure, such condition shall become an essential part of the approved Authority for Expenditure. If the Authority for Expenditure is not subject to a time specification as above provided, any party to the approved Authority for Expenditure may at any time prior to the time the well is commenced, serve notice on the other parties thereto requiring that the well be

commenced within sixty (60) days of such notice, failing which the Joint-Operator's approval of the Authority of Expenditure shall be void. (In the absence of other specified and agreed designation, a well shall be deemed commenced when actually spudded, that is, when a drill rig of adequate capacity to drill that well to proposed total depth is rigged-up on location and a drilling bit has penetrated the surface.) Submission or approval of the Authority for Expenditure shall not preclude any party from giving an operation notice under Clause 1002 with respect to the well, provided that approval of the Authority for Expenditure by all parties before expiration of the period provided in Clause 1002 for notice by the receiving parties in response to the operation notice shall nullify the said operation notice;

(b) the Operator's proposed program of drilling, coring, logging and testing the well; and

(c) the Operator's proposed completion program, provided that participation in any completion operation by a Joint-Operator shall at all times be subject to Article IX.

1501 PARTIES TENANT IN COMMON - The rights, duties, obligations and liabilities of the parties hereto shall be several and not joint or collective, it being the express purpose and intention of the parties that their interest in the joint lands and in the wells, equipment and property thereon held by the joint account shall be as tenants in common. Nothing herein contained shall be construed as creating a partnership, joint venture or association of any kind or as imposing upon any party hereto any partnership duty, obligation or liability to any other party hereto.

Under the terms of the agreement, Sorrel was constituted the operator of the oil and gas properties by the non-operators. Sorrel was given wide powers to act for them in the control and management of the exploration, development and operation of the joint lands for the joint account. The term "joint account" is often referred to in the agreement and is expressly defined as embodying the concept of being for the benefit of the non-operators. In brief, the agreement reflects confidence of the non-operators in Sorrel as operator and expressly provides that Sorrel keep them informed, account to them and in general act for their benefit.

In *Great Nor. Petroleum & Mines Ltd. v. Merland Explor. Ltd.* (1983), 25 Alta. L.R. (2d) 67, 43 A.R. 128 (Q.B.), affirmed 36 Alta. L.R. (2d) 97 (C.A.), the court acknowledged the existence of a fiduciary relationship under contractual circumstances not dissimilar to the case at bar.

The existence of a trust is predicated on the presence of what have come to be known as the "three certainties": i) certainty of intention, ii) certainty of subject-matter and iii) certainty of object: see D. Waters, *Law of Trusts in Canada*, 2nd ed. (1984), at p. 107 et seq. The two last-mentioned certainties have been established by the terms of the agreement as both the moneys claimed (excess A.F.E. funds) and the beneficiaries (non-operators) are clearly

identified therein. The central issue before us is therefore whether the agreement evinces an intention to create a fiduciary relationship.

Waters in *Law of Trusts in Canada*, 2nd ed., at p. 31, points out that "The whole purpose of a trustee's existence is to administer property on behalf of another, to hold it exclusively for the other's enjoyment." The intention that Sorrel acts for the benefit of others (in this case the non-operators) pervades the entire agreement. Specific examples may be seen in ss. 503, 601, 602 and 605. We agree with the learned trial judge that the creation of a trust does not require express words to that effect and one may be inferred from the examination of the entire agreement.

The appellant's principal argument against inferring a trust relationship was based on s. 507, which expressly allows the commingling of the non-operator's funds with other funds in Sorrel's account. It must be noted that counsel for the appellant was unable to produce any authority for the proposition that the mere agreement of the parties to commingle the trust funds with other funds is fatal to the trust concept. Certainly such an agreement to commingle is one feature which a court must consider in determining the true relationship created by the agreement between the parties. In the case at bar, the commingling clause is, in our view, an administrative aid to the smooth implementation of the agreement. When it is viewed in the context of the entire agreement, it does not negative a trust relationship.

It is important to note that the agreement does not permit Sorrel to use the funds in question for its own use. In *M.A. Hanna Co. v. Pro). Bank of Can.*, [1935] S.C.R. 144, [1935] 1 D.L.R. 545 [N.B.], this point was critical to the court's conclusion that a debtor-creditor relationship existed between a factor and his principal with respect to the proceeds of the sale of coal shipped to the factor under a consignment agreement. In that case the factor was allowed to use the disputed funds as his own. At p. 555 Rinfret J. stated:

I, therefore, come to the conclusion that the agreement of November 11 allowed the Docks Co. to deposit the proceeds of the sale of the appellant's coal in the Docks Co.'s general account and to use the proceeds thereof between the settlement dates, subject only to the obligation of remitting to the appellant a sum of money equivalent to the collections at the end of the remittance period agreed upon between the parties.

As a consequence, the relation of the Docks Co. towards the appellant in respect of the funds collected was not that of agent or trustee, but the relation between them was that of debtor and creditor (*Henry y. Hammond*, [1913] 2 KB. 515). *The Docks Co. had the use of the funds and could dispose of them as its own ...* [the emphasis is mine]

Counsel for the appellant also contends that s. 1501 precludes the existence of a fiduciary relationship. Section 1501 defines the duties, obligations and liabilities of the parties to the agreement to be several rather than joint or collective. It goes on to define their interests in the lands, wells, equipment and property to be those of tenants-in-common. In my opinion, the presence of this section does not negative the existence of a fiduciary duty on the part of the operator toward the non-operators. The section defines the relationship of all participants in the venture inter se; it does not override the fiduciary obligation imposed on the operator when one considers the whole of the agreement. Sorrel operated the interests of the non-operators on their behalf. It was in a fiduciary position with respect to the management, administration and marketing of the product and ultimately the distribution of the revenues therefrom. The fact that the properties were held by the parties holding a participating interest in the properties on the terms specified in s. 1501 does not obviate the operator's duties.

Finally, counsel for the appellant contended that the requirement for payment of interest by Sorrel as contained in s. 605 of the agreement indicated a debtor-creditor relationship. We agree that under certain circumstances this may be so; however, the present case is not such a situation. The main thrust of s. 605 is to require that a party receiving funds properly belonging to another must forthwith pay out those funds to the party entitled. It is only if the operator fails to pay out the moneys within the time provided by the clause that interest becomes payable. The thrust of s. 605 is that payment out of the funds held for the benefit of non-operators should be made forthwith, at the risk of a possible penalty by way of an interest charge for failure to do so. This is not consistent with a debtor-creditor relationship which has been designed as an opportunity for the creditor to earn interest.

The appellant has cited the decision of the Alberta Court of Queen's Bench in *Re Petroleum Royalties Ltd.* (1986), 45 Alta. L.R. (2d) 273, 60 C.B.R. (N.S.) 224, 73 A.R. 76, as authority against a finding of a trust relationship from the terms of the 1981 C.A.P.L. agreement. That case is distinguishable on its facts from the case at bar in two respects. First, the C.A.P.L. agreement under consideration there was an earlier form of operating agreement which did not include s. 605. Section 605, as we have already noted, provides that the operators be paid their share of the revenues forthwith. Second, the court was not attempting to establish the ownership of a fund resulting from production; rather the issue before it was whether the operator was to be deemed to have extracted only its own physical Bank of N.S. v. Soc. Gen.

(Can.) Stratton J.A. 201 ;hare of production from the ground as a consequence of its failure to pay the revenues to the non-operating parties.

Aside however from these factual distinctions, the *Petroleum Royalties* case is open to question. In that case, the learned trial judge relied on the decision in the English case *Henry v. Hammond*, [1913] 2 K.B. 515, to support his conclusion that a debtor-creditor relationship was established under the applicable agreement. At p. 278 of his decision, he set out his conclusions as follows:

Under these particular circumstances, where PetRoy was not only not bound to keep the money received for the account of another separate from its own, but was in fact entitled to mix it with its own and deal with it in accordance with the terms of the agreement and when called upon after sale to hand over an equivalent sum of money, then no trustee relationship in my judgment was established but merely that of creditor/debtor: see *Henry v. Hammond*, [1913] 2 K.B. 515, and *HE.P.C. (Ont.) v. Brown*, [1960] O.R. 91, 21 D.L.R. (2d) 551 (C.A.).

In *Hammond*, the court dealt with a situation where the alleged trustee was entitled under the implied agreement governing the business of a shipping agent to not only mix the funds in dispute with his own money, but also to deal with those funds as he pleased. At p. 521, Channell J. stated:

It is clear that if the terms upon which the person receives the money are that he is bound to keep it separate, either in a bank or elsewhere, and to hand that money so kept as a separate fund to the person entitled to it, then he is a trustee of that money and must hand it over to the person who is his cestui que trust. If on the other hand he is not bound to keep the money separate, but is entitled to mix it with his own money *and deal with it as he pleases*, and when called upon to hand over an equivalent sum of money, then, in my opinion, he is not a trustee of the money, but merely a debtor. All the authorities seem to me to be consistent with that statement of the law. [the emphasis is mine]

The case of *HE.P.C. (Ont.) v. Brown*, [1960] O.R. 91, 21 D.L.R. (2d) 551 (C.A.), which was also relied on in the *Petroleum Royalties* decision, dealt with the situation wherein the agent who was appointed to collect accounts could under the terms of the appointment mix the funds collected with his own. He had the duty ultimately to transmit those funds, less his commissions, to those entitled to them. In reaching his decision in the *H.E.P.C. case*, Morden J.A. relied on the statement quoted above from *Hammond*.

Unlike the situation in each of the *Hammond* and *H.E.P.C.* cases, Sorrel was not permitted to use the funds as its own; its authority over the funds was restricted to the purposes of the

agreement and those purposes, in general terms, were to act for the benefit of the non-operators.

As we concluded earlier, the commingling allowed under the 1981 C.A.P.L. agreement was an administrative aid and, although clearly a factor to be considered in determining the relationship of Sorrel with the non-operators, it is not of itself determinative of the issue. For that determination the entire agreement must be considered and on that basis I conclude:

1. Sorrel was at all material times in a fiduciary relationship with the non-operators; and
2. The excess A.F.E. funds and the pro rata revenue held by Sorrel were held in trust for the non-operators in the specific proportions detailed in the decision of Lutz *J.* and the non-operators are entitled accordingly.

However, this does not dispose of the matter as the appellants go on to argue that, even where there is a fiduciary relationship, tracing is not available as a remedy if there is a right to commingle moneys. They cite H.E.P.C., *supra*, as authority for their argument. However, in that case the basis for the court's refusal to permit tracing was that on the facts no fiduciary obligation was found. On the facts before us, I have concluded that there was a fiduciary obligation. *Re Hallett's Estate* (1880), 13 Ch. D. 696 (C.A.), established that whatever the nature of the fiduciary obligation underlying a trust, the beneficial owner has a right to follow the trust funds. The moneys deposited with the Bank of Nova Scotia are impressed with a trust on behalf of the non-operators; they are not beneficially owned by Sorrel and, therefore, Sorrel's creditors have no claim over them. Where the moneys in Sorrel's account have been attached under the general assignment of book debts, the cestuis que trust, the non-operators, can trace their respective shares of A.F.E. funds and pro rata revenue into that account. The appellant has no claim on those moneys.

As indicated at the conclusion of the appeal proceedings, this appeal is dismissed with costs.

*Appeal dismissed.*

[ScanLII Collection]

**TAB 12.**



in absence of a Court order vesting such assets in another party, MNPF is entitled to such value subject only to settlement of its obligations to RBC under the Forward Contract (i.e. delivery of the Canadian Basket). The proprietary rights of the MNPF Investors in the MNPF Assets flow from their ownership of the units of MNPF trust.

[66] I am satisfied that the trust certainties are met on the facts of this case and that the MNPF Assets are traceable back to the MNPF Investors, they are in an account in the name of MNPF and are appropriately and beneficially the entitlement of MNPF Investors

[67] I am satisfied that the entire MNPF Structure (i.e. the MNPF Trust Agreement, the Forward Contract, the MNB Trust Agreement, and the pledge of the Canadian Basket) on the evidence evokes the intention of the parties that the ultimate beneficiaries of the value of the assets held by the MNB Trust are the MNPF Investors. It is the MNPF Investors who are to ultimately receive the benefit or accept the risk associated with the increase or decrease in value of the assets held in the MNB Trust. Therefore, they are in fact the parties for whose benefit the MNPF Assets are being held.

[68] Thus, the certainty of intention is to be inferred from the contractual documents and all the circumstances surrounding the transactions. I agree with Cameron J., who said in *Eu v. Rosedale Realty Corp. (Trustee of)* (1997), 33 O.R. (3d) 666:

The existence of a trust does not depend on the existence of the contract but on the intent of the settlor which must be determined from the surrounding circumstances. The use of the word “trust” or placing the money in a “trust account” is neither conclusive nor indispensable to determine the settlor’s intent: *Re Kayford Ltd.*, [1975] 1 All E.R. 604 (Ch. D.); *Re Chelsea Cloisters Ltd.* (1980), 41 P. & C.R. 98 (C.A.) at p. 116; *Bullock v. Key Property Management Inc.* (1992), 46 E.T.R. 275 (Ont. Gen. Div.); *McEachren v. Royal Bank of Canada* (1990), 78 Alta. L.R. (2d) 158, [1991] 2 W.W.R. 702 (Q.B.).

[69] Certainty of subject matter has in this case taken some considerable time and effort on the part both of the Receiver and other parties and counsel to ascertain. Certainty of subject matter requires that the subject matter of the trust be described with sufficient exactness to permit such matter to be ascertained at the time the trust was created. Further, certainty of subject matter may be found where the trust document creates “a formula or method for identifying” the subject matter of the trust. (See *Edmonton Pipe Industry Pension Plan Trust Fund (Trustees of) v. 350915 Alberta Ltd.* (2000), 187 D.L.R. (4th) 23 (Alta. C.A.) at para. 21)

[70] The MNPF Trust Agreement, the Forward Contract and the MNB Trust Agreement, when read together, permit the assets held by the MNB Trust to be identified as those assets that are being held for the benefit of the MNPF Investors. There does not appear to be any dispute that it is both the SGP Call Options and the Ontario Bond Proceeds that would be the subject matter of the trust in these circumstances.

[71] I am satisfied that the third test, namely certainty of objects, namely to benefit the holders of unit of the MNPF Trust, is met and those individuals are capable of identification. They can trace the funds they invested both to the account held on their behalf and to the assets of the MNB Trust.

**TAB 13.**

Consignment Agreements, were not impressed with a trust in favour of Silverman. I am further of the view that he erred in finding that prior to February 14, 1995, there was no basis for concluding that the Bank had constructive knowledge as to the true nature of the funds deposited into the 1994 SES accounts. As will become apparent, I am satisfied that the funds in question were impressed with a trust in favour of Silverman and that the Bank had constructive knowledge of this prior to February 14, 1995.

#### Analysis

Issue one: Were the funds "trust funds?"

[36] In concluding that the funds in the 1994 SES accounts were not trust funds because "they were never intended to be", I am of the view that Pitt J. failed to give sufficient weight to the express provisions in the 1994 Consignment Agreements and that he over-emphasized the significance of certain evidence and failed to take other relevant evidence into account.

[37] Commencing with the 1994 Consignment Agreements, there can be no doubt that the language used is clear and precise and it attests to the unequivocal intention of the parties to create a trust in favour of Silverman. In such circumstances, to alter the plain meaning of the language, extremely strong indications must be found to exist. (See *Stephens Travel Service International Pty. Ltd. v. Qantas Airways Ltd.* (1988), 13 N.S.W.L.R. 331 (C.A.) per Hope J.A. at p. 348; cited with apparent approval in *Air Canada v. M. & L. Travel Ltd.*, [1993] 3 S.C.R. 787 at p. 805, 108 D.L.R. (4th) 592.)

[38] One of the indicators relied upon by Pitt J. to alter the plain meaning of the express language was the evidence of commingling. Although he was clearly entitled to take this into account, in my view, Pitt J. over-emphasized its significance and failed to weigh it against the specific term in the Agreements requiring the consignees to establish separate trust accounts at their bank. He further failed to consider the fact that W.G. Young and Heinrichs did establish separate accounts

**TAB 14.**

**19** As mentioned at the outset, there are two main issues raised in this case. First, was the relationship between M & L and the respondent one of trust, or one of debtor and creditor? Second, if the relationship was one of trust, then under what circumstances can the directors of a corporation be held personally liable for breach of trust by the corporation, and are those circumstances present in this case?

#### IV. Analysis

##### 1. The Nature of the Relationship between M & L and Air Canada

**20** In this Court, the appellant initially argued that the relationship between M & L and the respondent airline was one of debtor and creditor, rather than one of trust. However, at the hearing, the appellant properly conceded that the relationship was one of trust. Given this concession, I will consider this question only briefly.

**21** The appellant relied on the fact that the agreement between the airline and M & L did not require it to keep the proceeds of Air Canada tickets in a separate account or trust fund, or to remit the funds forthwith. Rather, M & L was permitted to keep such funds for a period of up to 15 days, and then for a further 7-day grace period. Furthermore, M & L was liable for the total sale price of all tickets sold, less its commission, regardless of whether it had actually collected the full amount from its customers. That is, M & L was free to sell Air Canada tickets on credit to its customers. Prior to his concession on this point, the appellant submitted that, in these circumstances, M & L was not a trustee of the sale proceeds of the Air Canada tickets.

**22** In concluding that the relationship between M & L and the airline was one of trust, the Court of Appeal relied on *Canadian Pacific Air Lines, Ltd. v. Canadian Imperial Bank of Commerce* (1987), 61 O.R. (2d) 233. Although the Court of Appeal's decision in that case (1990), 71 O.R. (2d) 63 (note), was brief, the reasons of the trial judge, at p. 237, went into greater depth:

In order to constitute a trust, an arrangement must have three characteristics, known as the three certainties: certainty of intent, of subject-matter and of object. The agreement ... is certain in its intent to create a trust. The subject-matter is to be the funds collected for ticket sales. The object, or beneficiary, of the trust is also clear; it is to be the airline. The necessary elements for the creation of a trust relationship are all present. I find that such a relationship did exist between CP and the two travel agencies.

**23** This analysis is clearly applicable to the facts of the present case. That the intent of the agreement is to create a trust is evident from the following wording: "All monies, less applicable commissions to which the Agent is entitled hereunder, collected by the Agent for air passenger transportation (and for which the Agent has issued tickets or exchange orders) shall be the property of the Airline, and shall be held in trust by the Agent until satisfactorily accounted for to the airline." The object of the trust is the respondent airline, and its subject-matter is the funds collected for ticket sales.

**24** While the presence or absence of a prohibition on the commingling of funds is a factor to be considered in favour of a debt relationship, it is not necessarily determinative. See *R. v. Lowden* (1981), 27 A.R. 91 (C.A.), at pp. 101-2; *Bank of N.S. v. Soc. Gen. (Can.)*, [1984] 4 W.W.R. 232 (Alta. C.A.), at p. 238; *McEachren v. Royal Bank* (1990), 78 Alta. L.R. (2d) 158 (Q.B.), at p. 183; *Stephens Travel Service International Pty. Ltd. v. Qantas Airways Ltd.* (1988), 13 N.S.W.L.R. 331 (C.A.), at p. 341. In *R. v. Lowden*, supra, McGillivray C.J.A. stated as follows at pp. 101-2:

Undoubtedly a direction that moneys are to be kept separate and apart is a strong indication of a trust relationship being created. It does not appear to me, however, that the converse is necessarily so. In the case of a travel agent, how he handled the funds handed to him for the purchase of a ticket would, as far as the public is concerned, be something that they would not have reason to think about. It would be a matter of internal management. The fact that there is no specific discussion about moneys being kept separate

**TAB 15.**

[8] There is a priority dispute between:

- (1) Royal Bank of Canada, (“RBC”), as a secured creditor of A-1 pursuant to a general security agreement;
- (2) Guarantee Company of North America (“GCNA”), a bond company and secured creditor of A-1 that had paid out twenty *CLA* lien claims (totalling \$1,851,852.39) to certain suppliers and subcontractors of A-1 and is subrogated to those claims; and
- (3) certain employees that worked on the Four Projects, as represented by LIUNA Local 183 and IUOE Local 793 (together, the “Unions”) (claiming a total of \$511,949.14).

[9] RBC takes the position that the Funds form part of A-1’s estate available to creditors. GCNA and the Unions take the position that the Funds were s. 8(1) *CLA* trust funds that must be excluded from A-1’s property on bankruptcy, pursuant to s. 67(1)(a) of the *BIA*. That section provides:

67 (1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person;

...

[10] The Receiver brought a motion for advice and directions to resolve the priority dispute and served a Notice of Constitutional Question identifying the

the following reasons, I conclude that the motion judge erred by finding that the requirement of certainty of subject matter was not met in this case.

[80] Gillese explains the requirement for certainty of subject matter as follows, at p. 43:

It must be possible to determine precisely what property the trust is meant to encompass. The subject matter is ascertained when it is a fixed amount or a specified piece of property; it is ascertainable when a method by which the subject matter can be identified is available from the terms of the trust or otherwise.

To a similar effect is this court's decision in *Angus v. Port Hope (Municipality)*, 2017 ONCA 566, 28 E.T.R. (4th) 169, at para. 112, leave to appeal refused, [2017] S.C.C.A. No. 382.

[81] The motion judge ruled that because the funds the City and the Town owed to A-1 “do not come from any particular fund or account and were simply payable by the City/Town from its own revenues or other sources”, the requisite certainty of subject matter to establish a trust at common law was absent.

[82] The amounts owed by the City and the Town on account of the paving projects were debts. It is well-established that a debt is a chose in action which can properly be the subject matter of a trust. In *Citadel General Assurance Co. v. Lloyds Bank Canada*, [1997] 3 S.C.R. 805, at para. 29, the court stated: “A debt obligation is a chose in action and, therefore, property over which one can impose a trust”. This proposition is supported by the decision of the House of



Lords in *Lipkin Gorman v. Karpnale Ltd.*, [1991] 3 W.L.R. 10. See also Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith, *Waters' Law of Trusts in Canada*, 4th ed. (Toronto: Carswell, 2012), at p. 161.

[83] It follows that it does not matter that neither the City nor the Town had created segregated accounts or specifically earmarked the source of the funds they would use to pay the debts they owed for the paving projects. The statutory trust attaches to the property of the contractor or subcontractor, namely the debt, not to the funds the debtor will use to pay that debt.

[84] Section 8(1) embraces “all amounts, owing to a contractor or subcontractor, whether or not due or payable”. That language designated precisely what property the trust is meant to encompass. A-1 owned those debts. They constituted choses in action which are a form of property over which a trust may be imposed. It follows that at the moment of A-1’s bankruptcy, the trust created by s. 8(1) was imposed on the debts owed by the City and the Town to A-1.

**(3) *Did commingling of the Funds mean that the required certainty of subject matter was not present?***

[85] In my respectful view, the motion judge erred by ruling that because the money paid to satisfy the individual debts owing to A-1 on account of the paving projects had been commingled with the money paid to satisfy other paving

project debts in the Paving Projects Account, the requisite certainty of subject matter was not made out.

[86] The evidence clearly establishes that the funds paid for each paving project were readily ascertainable and identifiable. They were commingled only to the extent they had all been paid into the same account but they had not been converted to other uses and they did not cease to be traceable to the specific project for which they had been paid.

[87] Commingling of this kind does not deprive trust property of the required element of certainty of subject matter. Commingling of trust money with other money can destroy the element of certainty of subject matter, but only where commingling makes it impossible to identify or trace the trust property.

[88] McLachlin J. explained this in *Henfrey* when she stated in relation to the deemed statutory trust imposed on money collected by a merchant under British Columbia's *Social Service Tax Act* that the trust attached the moment the tax is collected. Accordingly, "[i]f the money collected for tax is identifiable or traceable, then the true state of affairs conforms with the ordinary meaning of 'trust' and the money is exempt from distribution to creditors" in the merchant's bankruptcy: pp. 34-35. McLachlin J. went on to explain that the problem with deemed statutory trusts is that very often, the trust property "ceases to be identifiable": p. 34. She

owed to the contractor, not just after they are received. Accordingly, the fact that ss. 8(1) and (2) did not require the segregation of amounts received is not determinative because the statute itself, not the act of complying with a statutory obligation to segregate funds, created the trust.

[97] Second, the statement that once the purported trust funds are commingled with other funds they cease to be trust funds must be read in the light of the fact that when making it, the court was explicitly following *Henfrey*. In *Henfrey*, as I have explained, McLachlin J. made it clear that it was only when commingling is accompanied by conversion and tracing becomes impossible that the required element of certainty of subject matter is lost.

[98] In my view, *GMAC* should not be read as standing for the proposition that all deemed statutory trusts cease to exist if there is any commingling of the trust funds.

[99] I am fortified in that conclusion by a considerable body of authority in addition to *Henfrey* that stands for the proposition that commingling alone will not destroy the element of certainty of subject matter under the general principles of trust law. I have already mentioned *Graphicshoppe* where this court clearly rejected that proposition. A.H. Oosterhoff, Robert Chambers & Mitchell McInnes, *Oosterhoff on Trusts: Text, Commentary and Materials*, 8th ed. (Toronto: Carswell, 2014), at pp. 207-208, states that when trust property is deposited into

a mixed account, “the trust is not necessarily defeated. The rules of tracing allow the beneficiary to assert a proprietary interest in the account.” In *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15, [2009] 1 S.C.R. 504, the Supreme Court held that mixing of the funds does not necessarily bar recovery and that it is possible to trace money into bank accounts as long as it is possible to identify the funds: at para. 85. The funds are identifiable if it can be established that the money deposited in the account was the product of, or substitute for, the original thing: at para. 86. As the Alberta Court of Queen’s Bench recently held, in *Imor Capital Corp. v. Horizon Commercial Development Corp.*, 2018 ABQB 39, 56 C.B.R. (6th) 323, at para. 58:

...[the bankrupt’s] co-mingling of trust funds with its own is not fatal to the trust. It must be determined whether, despite the co-mingling, the trust funds can be identified or traced.

The following cases are to the same effect: *In re Hallett’s Estate* (1880), 13 Ch.D. 696 (C.A.); *In re Kayford Ltd.*, [1975] 1 W.L.R. 279 (Ch.); *Kel-Greg Homes Inc. (Re)*, 2015 NSSC 274, 365 N.S.R. (2d) 274, at paras. 51-59; *0409725 B.C. Ltd.*, at paras. 24-34; *Kerr Interior Systems Ltd. v. Kenroc Building Materials Co. Ltd.*, 2009 ABCA 240, 54 C.B.R. (5th) 173, at para. 18.

**(4) Does RBC's security interest have priority even if the trust created by s. 8(1) of the CLA survives in bankruptcy?**

[100] On appeal, RBC submits that its security interest takes priority over the deemed statutory trust in s. 8(1) of the *CLA* even if this court finds that the *CLA* trust is valid under s. 67(1)(a) of the *BIA*. RBC relies on the Supreme Court's decision in *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411 in support of this argument. In that case, the majority found that a bank's security interest under the *Bank Act*, S.C. 1991, c. 46 and the *Personal Property Security Act*, S.A. 1988, c. P-4.05 took priority over a deemed statutory trust in favour of the federal Crown established by ss. 227(4) and (5) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[101] RBC did not advance this argument before the motion judge. Nor did RBC introduce its general security agreement with A-1 into the record.

[102] Accordingly, I would decline to consider this argument. A respondent on appeal cannot seek to sustain an order on a basis that is both an entirely new argument and in relation to which it might have been necessary to adduce evidence before the lower court: see *R. v. Perka*, [1984] 2 S.C.R. 232, at p. 240; *Fanshawe College of Applied Arts and Technology v. AU Optronics Corp.*, 2016 ONCA 131, 129 O.R. (3d) 391 (in Chambers), at para. 9. RBC's proposed argument is both new and requires evidence that RBC has not adduced. In both

**TAB 16.**

## V. Analysis

My analysis will proceed as follows. First, I will assess the appellant's claim in unjust enrichment. Second, I will determine whether the respondent can avail itself of any defences to the appellant's claim. Finally, I will address the other orders sought by the appellant.

### A. *Unjust Enrichment*

As a general matter, the test for unjust enrichment is well established in Canada. The cause of action has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment (*Pettkus v. Becker*, [1980] 2 S.C.R. 834, at p. 848; *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, at p. 784). In this case, the parties are agreed that the second prong of the test has been satisfied. I will thus address the first and third prongs of the test in turn.

#### (a) Enrichment of the Defendant

In *Peel, supra*, at p. 790, McLachlin J. (as she then was) noted that the word “enrichment” connotes a tangible benefit which has been conferred on the defendant. This benefit, she writes, can be either a positive benefit, such as the payment of money, or a negative benefit, for example, sparing the defendant an expense which he or she would otherwise have incurred. In general, moral and policy arguments have not been considered under this head of the test. Rather, as McLachlin J. wrote in *Peter, supra*, at p. 990, “[t]his Court has consistently taken a straightforward economic approach to the first two elements of the test for unjust enrichment”. Other considerations, she held, belong more appropriately under the third element — absence of juristic reason.

In this case, the transactions at issue are payments of money by late payers to the respondent. It seems to me that, as such, under the “straightforward

## V. Analyse

J'effectuerai mon analyse de la façon suivante. Premièrement, j'examinerai l'action pour enrichissement sans cause intentée par l'appellant. Deuxièmement, je déciderai si l'intimée peut opposer quelque moyen de défense à l'action de l'appellant. Enfin, j'aborderai la question des autres ordonnances sollicitées par l'appellant.

### A. *Enrichissement sans cause*

En général, le critère applicable en matière d'enrichissement sans cause est bien établi au Canada. La cause d'action comporte trois éléments : (1) l'enrichissement du défendeur, (2) l'appauvrissement correspondant du demandeur et (3) l'absence de motif juridique justifiant l'enrichissement (*Pettkus c. Becker*, [1980] 2 R.C.S. 834, p. 848; *Peel (Municipalité régionale) c. Canada*, [1992] 3 R.C.S. 762, p. 784). En l'espèce, les parties conviennent que le deuxième volet du critère est respecté. J'examinerai donc successivement les premier et troisième volets du critère.

#### a) Enrichissement du défendeur

Dans l'arrêt *Peel*, précité, p. 790, la juge McLachlin (maintenant Juge en chef) a souligné que le mot « enrichissement » connote un avantage tangible conféré au défendeur. Cet avantage, écrit-elle, peut être soit positif, tel le versement d'une somme d'argent, soit négatif en ce sens, par exemple, qu'il épargne au défendeur une dépense à laquelle il aurait par ailleurs été tenu. Habituellement, les arguments d'ordre moral et de politique générale ne sont pas pris en considération relativement à cet élément du critère. Au contraire, comme l'écrit la juge McLachlin dans l'arrêt *Peter*, précité, p. 990, « [n]otre Cour a toujours utilisé une analyse économique simple relativement aux deux premiers éléments du critère » de l'enrichissement sans cause. Elle conclut que c'est dans le cadre du troisième élément, à savoir l'absence de motif juridique, que les autres facteurs peuvent le mieux être examinés.

En l'espèce, les opérations en cause sont les paiements que les clients dont le compte était en souffrance ont fait à l'intimée. À cet égard, il me

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**TAB 17.**



## ANALYSIS

[52] With respect to the AG Loans and the Quality Contract Loan, the Receiver acknowledged that these are the property of Maplebrook and that RIC was acting as Maplebrook's agent in administering the Loans and even recommended terminating the agency relationship in order to allow Maplebrook to enforce its security. In my view, there is no material difference between the structure, documentation, and administration of the AG Loans and the Quality Contract Loans and the CFT Property Loans and the Chiu Chow Loan. These loans were also the subject of absolute equitable assignments to Maplebrook.

[53] The documentation establishes RIC's intention to convey the debts to Maplebrook, thereby transferring all credit risks to Maplebrook, retaining only the administrative role of Maplebrook's agent for collection purposes. The evidence also establishes that the parties conducted themselves in a manner consistent with the assignment documentation.

[54] Counsel to Maplebrook submits that where there has been an assignment of a debt, and the assignor becomes bankrupt or otherwise seeks protection from its creditors, the debt will no longer form part of the bankrupt's estate. Insofar as the assignor receives repayments of interest or principal of such an assigned debt, these receipts are held in trust for the assignee and are not available for distribution among the assignors' creditors (see *Pythe Navis Adjusters Corp. v. Columbus Hotel Co.* (1991), 2014 BCCA 262).

[55] In this case, prior to RIC and RMS seeking protection in the CCAA Proceedings on March 28, 2014, agreed upon amounts were forwarded by RIC to Maplebrook in accordance with the terms of the Assigned Loans.

[56] Upon the commencement of CCAA Proceedings, the Court issued a stay order. RIC remained a debtor-in-possession (under the supervision of the Court and GTL as Monitor, carrying on RIC's business). As a consequence of the stay order, Maplebrook was precluded from terminating its agency arrangements with RIC, revoking RIC's authority as agent and retaking its property (that is, the Assigned Loans).

[57] The purpose of a CCAA stay order is to maintain the status quo amongst creditors and prevent their maneuvering for position. While the stay order prevents secured creditors and other parties from exercising and confirming their security for proprietary rights, it should not be used to prejudice those rights or to reorder the priorities as they existed on the date that the stay is granted (see: *Re Sharpe-Rite Technologies Ltd.*, 2000 BCSC 414 and *Re Windsor Machine & Stamping Limited*, 2009 CanLII 39771 (ON. S.C.)).

[58] The stay order effectively prevented Maplebrook from terminating RIC's agency agreement so as to take over the administration of the loans and ensure that it receive the post-CCAA collections directly from the debtors, CFT Properties, Chiu Chow and AG Properties. Counsel to Maplebrook submitted that RIC was not at liberty – during the status quo period – to negate these proprietary rights by receiving the post-CCAA collections and depositing them in its general account. I agree

[68] The test for finding a constructive trust based on wrongful conduct was set out by the Supreme Court of Canada in *Soulos v. Korkontzilas*, [1997] 2 SCR 217. The following criteria is to be considered in determining the availability of the remedial constructive trust:

1. The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
2. The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
3. The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
4. There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.

[69] Counsel to Maplebrook submits that these criteria are satisfied in the present case.

- a) Under the Assignment Agreements, RIC acted as Maplebrook's agent in enforcing the CFT Properties Loan, Chiu Chow Loan and AG Investments Loan. As such, and as the assignor under the Equitable Assignments, RIC owed equitable obligations to Maplebrook to remit all sums paid. This is how the parties operated prior to the CCAA Proceedings and it was by virtue of this agency relationship that the post-CCAA collections came to be in RIC's hands.
- b) The post-CCAA collections came to be in RIC's possession by virtue of this agency relationship. While it may not have been a breach of RIC's fiduciary obligations to receive that money, it constitutes a breach of RIC's equitable obligations to retain that money and not to remit it to Maplebrook.
- c) There is nothing "illegitimate" about Maplebrook's claim for a proprietary remedy. Failing to grant this remedy would result in an unjust enrichment of RIC's creditors. As in *Soulos*, "no less is required ... to return the parties to the position that they would have been in had the breach not occurred".
- d) There is nothing that would render the imposition of a constructive trust unjust in these circumstances. On the contrary, it would be unjust if RIC's creditors received a windfall by virtue of the stay order, which effectively prevented Maplebrook from revoking the agency and retaking its property. The creditors that would benefit are not "intervening creditors"; rather, they are creditors who, before the stay order, had interests that were subordinate to

not close). I am in agreement with counsel to Maplebrook that nothing in the evidence supports the view that the Pro-Hairlines Advance was advanced to RIC to use in any way that it saw fit, with a mere obligation to make repayment to Maplebrook if and when RIC elected to do so. At the time that the funds were returned to RIC, with RIC operating under court supervision and under the supervision of a Monitor, the obligations in favour of Maplebrook are even more definite. The position of Maplebrook should not be prejudiced during the CCAA proceedings.

[80] Counsel to Maplebrook also submitted that another line of cases that supports the existence of a trust in the present case is that applying the principle developed by the English House of Lords in *Barklays Bank Ltd. v. Quistclose Investments Ltd.* (1968), UKHL 4. The Alberta Court of Appeal summarized that principle in the following terms:

This type of trust, commonly called a *Quistclose* trust, arises when funds are advanced for a specific purpose, but cannot be or are not used for that purpose.

[81] The Ontario Court of Appeal has commented that the *Quistclose* trust has not yet been adopted in Ontario, and has warned against the potential negative impact such trust may have on creditors who have no notice that a debtor's funds are not available to general creditors, as follows:

“As I have concluded that the requirements for a *Quistclose* trust have not been met in this case, I do not need to decide to what extent that expansion should be adopted in Ontario. However, when that decision does have to be made, the Court will have to consider a number of commercial consequences, one of the most significant of which is the potential effect on the creditors of the borrower (or grantee) of the subject funds. For example, as in this case, where funds are advanced to a business with no registration under the *Personal Property Security Act*, RSO 1990, cP-10, creditors will have no notice, and in many cases no knowledge, that they are dealing with a debtor whose money is subject to a trust and not available to general creditors.” *Ontario (Minister of Training, Colleges and Universities v. Two Feathers Forest Products LP*, 2013 ONCA 598 (“*Two Feathers*”).

[82] In the circumstances of this case, with the Pro-Hairlines Advance being provided to RIC and forwarded on to RIC's counsel expressly for the purpose of being held by counsel pending the completion of the transaction, and then being returned to RIC subsequent to the filing of the CCAA Proceedings, there does not appear to be any opportunity for any creditor of RIC to have been misled or in any way detrimentally affected by having the knowledge that the funds were subject to a trust and not available to general creditors.

[83] The principle of *Quistclose* as summarized by the Alberta Court of Appeal in *Carevest Capital Inc. v. Leduc (County)*, 2012 ABCA 161 is as follows:

This type of trust, commonly called a *Quistclose* trust, arises when funds are advanced for a specific purpose, but cannot be or are not used for that purpose.

[84] I am mindful of the comments of the Ontario Court of Appeal in *Two Feathers* to the effect that *Quistclose* has not yet been adopted in Ontario. In my view, it is not necessary to determine this issue as I have determined that the Pro-Hairlines Advance is being held in a trust obligation in favor of Maplebrook. However, if I am in error in reaching that conclusion, I am also of the view that this is a situation where the requirements for a *Quistclose* trust have been met. In reaching this conclusion, I have taken into account that:

1. The funds were advanced by Maplebrook for a specific purpose;
2. The funds were returned to RIC at a time when RIC was operating under court supervised creditors' protection and under the supervision of the Monitor; and
3. If the funds are returned to Maplebrook, there is no effect on the other creditors of RIC. The funds were never the property of RIC and the creditors of RIC have no entitlement to the funds in question.

### **DISPOSITION**

[85] In the result, Maplebrook's motion is granted. The Receiver is to pay the following amounts to Maplebrook's legal counsel, Fasken, in trust:

- i) The sum of \$750,000, less 37.5% of legal fees (\$13,189.12) incurred by RIC in respect of the Pro-Hairlines Transaction;
- ii) The sum of \$150,000 and any interest payments collected after March 28, 2014 in respect of the CFT Properties Loan;
- iii) The sum of \$311,400 representing the outstanding principal and interest collected after March 28, 2014 in respect of the Chiu Chow Loan; and
- iv) The sum of \$28,494 representing interest collected after March 28, 2014 in respect of the AG Loans.

[86] However, prior to making payment to Maplebrook, the Receiver, in consultation with Maplebrook, is to establish the amount owing by Maplebrook to RMS. This amount is to be held back from the amount due to Maplebrook. The Receiver can apply for directions, if necessary, as to how the amount held back is to be allocated as between the Redstone estates. If the parties are unable to come to agreement on the amount to be held back, a 9:30 a.m. appointment can be scheduled.

[87] Maplebrook has been the successful party and is entitled to its costs on a partial indemnity basis. I would ask counsel to confer in an effort to settle on an appropriate amount of costs, taking into account the submissions made on this subject at the conclusion of oral argument. If not agreement can be reached, brief submissions to a maximum of 3 pages can be submitted, within thirty days.

**TAB 18.**

specific and limited purpose, being the payment of employee wages and governmental and other remittances on behalf of the Customer.

[13] In these circumstances, it would appear to be inequitable to permit the general creditors of Peopledge other than the Customers who provided the funds to now be paid their claims from those funds. It was never intended that Peopledge or its creditors would have any beneficial interest in these funds. The issue is whether there is a basis in law to achieve this result. In my view there is.

[14] Mr. Hall submits that the proper legal framework for this case is that of a *Quistclose* trust. Funds were advanced to Peopledge for a specific purpose and a trust should be imposed in equity impressed to ensure that the funds are used solely for that purpose or returned to the parties who advanced the funds. This principle is based on the case of *Barclays Bank Ltd. v Quistclose Investments Ltd.*, [1970] AC 567 (HL).

[15] In *Quistclose*, a lender lent money to a company on the condition that the loan was to be used to pay a dividend. The lender's cheque was paid into a separate bank account at Barclays who knew the money was borrowed and who agreed the account would be used only to pay a dividend and for no other purpose. Before the dividend was paid, the company went into liquidation. It was held by Lord Wilberforce that the arrangements gave rise to a relationship of a fiduciary character or trust in favour of the lender who on the advancement of the loan had acquired an equitable right to see that it was applied for the designated purpose. Lord Wilberforce relied on authority that held that money advanced for a specific purpose did not become part of the bankrupt's estate. What was important was that it was the mutual intention of the parties that the payments to the company, as here, were not intended to be included in the company's assets. Lord Wilberforce stated:

These cases have the support of longevity, authority, consistency and, I would add, good sense.

[16] If any particular Customer of Peopledge had a trust agreement with Peopledge, this *Quistclose* type of trust would not be necessary to impress the payroll funds advanced to

Peopledge with a trust. For any Customer of Peopledge without an express trust agreement, I accept that a trust as in *Quistclose* should be recognized.

[17] This result is consistent with modern Canadian authority such as *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217. In *Soulos*, McLachlin J. (as she then was) stated at para. 34 that a constructive trust may be imposed where good conscience so requires. She stated:

34. It thus emerges that a constructive trust may be imposed where good conscience so requires. The inquiry into good conscience is informed by the situations where constructive trusts have been recognized in the past. It is also informed by the dual reasons for which constructive trusts have traditionally been imposed: to do justice between the parties and to maintain the integrity of institutions dependent on trust-like relationships. Finally, it is informed by the absence of an indication that a constructive trust would have an unfair or unjust effect on the defendant or third parties, matters which equity has always taken into account. Equitable remedies are flexible; their award is based on what is just in all the circumstances of the case.

[18] Under the umbrella of good conscience, constructive trusts are recognized to remedy unjust enrichment and corresponding deprivation. See McLachlin J. in *Soulos* at para. 20 and 43. In this case, Peopledge and its general creditors would be enriched by having the ability to access the payroll funds advanced by Customers to Peopledge. The Customers, and their employees, would be deprived by not having the funds paid to them and there would be no juristic reason for this to occur. It was never intended that Peopledge, or its creditors, would have any beneficial interest in the payroll funds advanced by Customers.

[19] Accordingly, I conclude that the Canadian Consolidated Account should be treated as a trust account for the Canadian Customers who advanced payroll deposits to Peopledge and the US Consolidated Account should be treated as a trust account for the US Customers who advanced payroll deposits to Peopledge. It is clear that Peopledge purposely used separate accounts for its Canadian and US Customers.

**(b) Appropriate distribution method**

**TAB 19.**



useful while avoiding the necessity of formal regulation that may tend to hamper its social utility.

The constructive trust imposed for breach of fiduciary relationship thus serves not only to do the justice between the parties that good conscience requires, but to hold fiduciaries and people in positions of trust to the high standards of trust and probity that commercial and other social institutions require if they are to function effectively.

34 It thus emerges that a constructive trust may be imposed where good conscience so requires. The inquiry into good conscience is informed by the situations where constructive trusts have been recognized in the past. It is also informed by the dual reasons for which constructive trusts have traditionally been imposed: to do justice between the parties and to maintain the integrity of institutions dependent on trust-like relationships. Finally, it is informed by the absence of an indication that a constructive trust would have an unfair or unjust effect on the defendant or third parties, matters which equity has always taken into account. Equitable remedies are flexible; their award is based on what is just in all the circumstances of the case.

35 Good conscience as a common concept unifying the various instances in which a constructive trust may be found has the disadvantage of being very general. But any concept capable of embracing the diverse circumstances in which a constructive trust may be imposed must, of necessity, be general. Particularity is found in the situations in which judges in the past have found constructive trusts. A judge faced with a claim for a constructive trust will have regard not merely to what might seem “fair” in a general sense, but to other situations where courts have found a constructive trust. The

société considère comme utile, tout en écartant la nécessité d’une réglementation officielle qui risquerait d’en réduire l’utilité sociale.

La fiducie par interprétation imposée pour manquement à une obligation fiduciaire permet non seulement de rendre justice aux parties comme l’exige la conscience, mais aussi d’obliger les fiduciaires et autres personnes occupant des postes de confiance à se conformer aux normes élevées en matière de confiance et de probité nécessaires pour assurer l’efficacité des institutions commerciales et autres institutions sociales.

Il ressort qu’une fiducie par interprétation peut être imposée lorsque la conscience l’exige. L’examen portant sur les exigences de la conscience doit tenir compte des situations où des fiducies par interprétation ont été reconnues dans le passé. Il est guidé aussi par les deux raisons pour lesquelles les fiducies par interprétation ont été traditionnellement imposées: rendre justice aux parties et préserver l’intégrité d’institutions fondées sur des rapports assimilables à ceux qui existent dans le cadre des fiducies. Enfin, l’examen se fait en fonction de l’absence d’indication qu’une fiducie par interprétation aurait un effet inéquitable ou injuste sur le défendeur ou sur des tiers, ce dont l’*equity* a toujours tenu compte. Les réparations reconnues en *equity* sont souples; elles sont accordées en fonction de ce qui est juste compte tenu de toutes les circonstances de l’espèce.

La conscience comme élément unificateur dans les différents cas où il est possible de conclure à une fiducie par interprétation a l’inconvénient d’être très générale. Mais tout concept capable d’englober les diverses circonstances dans lesquelles une fiducie par interprétation peut être imposée doit obligatoirement l’être. Ce sont les circonstances particulières des cas où les juges ont conclu dans le passé à l’existence d’une fiducie par interprétation qui viennent préciser le concept général. Le juge à qui l’on demande d’imposer une fiducie par interprétation tiendra compte non seulement de ce qui pourrait sembler «équitable» dans un sens général, mais aussi des autres cas où les tribunaux ont conclu à l’existence d’une fiducie par interprétation. L’objectif consiste simplement à

**TAB 20.**

the (incorrect) premise that all “non-absolute” assignments are therefore “conditional” ones.

[31] Fortunately, it is not necessary for us to determine the fine points of terminology arising from the differences between the text-writers and the Supreme Court, by which we are of course bound. We are concerned only with whether the trial judge was correct in holding that the Agreement transferred the ‘property’ in the insurance proceeds to the plaintiff, such that CHC retained no interest in the assigned portion. In resolving this question, the trial judge correctly enunciated the principles of contractual interpretation and carefully applied them to the Agreement. He referred to *Alberta (Treasury Branches)* and to the fact that the absence of an equity of redemption was not determinative. He considered that whether an agreement is an “unconditional” assignment or an agreement to pay a contingency fee was not an “either/or” proposition, (para. 42) and in the end, concluded that the document effected an irrevocable assignment and was not a security instrument.

[32] Counsel for Abakhan cites no authority for the proposition that an agreement to pay a fee cannot also be, or contain, an assignment; nor for the proposition that where an assignment contains a promise to pay, it necessarily creates a security interest meant to secure the required payment. In my respectful view, the Agreement in this case completely and irrevocably assigned to Pythe Navis 6% of all proceeds received from the insurer in respect of the loss. No suggestion of a lien, charge or security interest arises either on the face of the document or otherwise. In the absence of any persuasive argument to the contrary, I see no error in the trial judge’s conclusion that the Agreement effected a ‘complete’ (to use a neutral term) assignment of part of the insurance proceeds to Pythe Navis and did not create a security interest for purposes of the *BIA* or otherwise. It follows that in seeking to enforce the assignment, Pythe Navis was not asserting a claim against the bankrupt or its property and that leave under s. 69.4 of the *BIA* was not required.

**TAB 21.**

**User Name:** Rob Barbiero

**Date and Time:** July 15, 2020 2:18:00 PM EDT

**Job Number:** 121219105

## Document (1)

1. [Centennial Plymouth Chrysler \(1973\) Ltd. \(c.o.b. Klean Auto Leasing\) v. Conlin, \[2000\] O.J. No. 709](#)

**Client/Matter:** 37886.0001


**[2000] O.J. No. 709:**

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

**Narrowed by**  
-None-

 **Centennial Plymouth Chrysler (1973) Ltd. (c.o.b. Klean Auto Leasing) v. Conlin, [2000] O.J. No. 709**

Ontario Judgments

Ontario Superior Court of Justice

Marchand J.

Heard: February 17, 2000.

Judgment: February 24, 2000.

Court File No. G22613-98

**[2000] O.J. No. 709** | [\[2000\] O.T.C. 138](#) | [15 P.P.S.A.C. \(2d\) 206](#) | [95 A.C.W.S. \(3d\) 570](#)

Between Centennial Plymouth Chrysler (1973) Ltd. c.o.b. Klean Auto Leasing, applicant, and David Conlin and Carrie Conlin and J.C. Perrier & Assoc. Inc., trustees, respondent

(22 paras.)

## Case Summary

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**Personal property — Rental agreements — Security interests — Registration — Requirement of registration.**

Application by Centennial Plymouth Chrysler for an order that the respondents, David and Carrie Conlin and JC Perrier & Assoc had no interest in a 1996 Plymouth Voyageur van and for a further order directing the respondent Trustee in Bankruptcy to deliver up van to Centennial. The Conlins leased the van from Centennial. Conlin made an assignment in bankruptcy. JC was appointed as trustee. It disallowed Centennial's claim of ownership, and refused to deliver up the van to Centennial. The lease was not registered under the Personal Property Security Registration Act. The lease provided that, at the end of the lease, the lessee had to return the motor vehicle to the lessor, and that, upon its return, the lessor had possession and ownership and a legal right to sell the motor vehicle. At issue was whether this was a lease that secured payment or performance of an obligation so as to fall within the Act.

HELD: Application allowed, order issued that the respondents had no interest in the van, and directing the trustee to deliver the van to Centennial.

The lease was not registered under the Personal Property Security Act. In addition, it was not in essence a lease that secured payment or performance of an obligation.

## Statutes, Regulations and Rules Cited:

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Personal Property Security Act, R.S.O. 1990, c. P-10.

## Counsel

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William J. Leslie, Q.C., for the applicant. Robert J. De Toni, for the respondent, J.C. Perrier & Assoc. Inc.

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### MARCHAND J.

1 This matter comes before me pursuant to Section 67(1) of the Personal Property Security Act, [R.S.O. 1990, Chapter P.10](#).

2 Basically, the application is for an order that the respondents have no interest whatsoever in the 1996 Plymouth Voyager van, serial number 2P4FP2533TR735794, and for a further order directing the respondent, Trustee in Bankruptcy to deliver up the said automobile to the applicant forthwith.

#### BACKGROUND

3 On July 11, 1996, the respondents David Conlin and Carrie Conlin (Conlin) leased the aforementioned motor vehicle from the applicant.

4 On May 12, 1998, Conlin made an assignment and bankruptcy, and J.C. Perrier & Associates Inc. (Trustee) was appointed as Trustee of the estate of the bankrupt.

5 The Trustee disallowed the applicant's claim of ownership of the vehicle and refused to deliver up the said vehicle to the applicant.

6 The lease was not registered under the Personal Property Security Registration Act (the Act). This Act was assented to on June 15, 1967, and was referred to in the title as "an Act respecting bills of sales", but the last provision noted that the Act could be referred to as the P.P.S.A. As it was passed, the Bills of Sales and Chattel Mortgages Act was simultaneously repealed. The Act respecting bills of sales was itself repealed as part of Bill 151 in 1989, which inter alia amended Section 2(a)(ii) along with many other provisions of the previous Act. The ministerial statement sheds some light on the purpose of the Bill and the amendments. The Bill was sent in committee after second reading on March 1, 1989, and some helpful debate also occurred at this point. The third reading occurred with no debate on March 2, 1989, and the Bill received royal ascent on that date.

7 The ministerial statement is clear that the 1989 amendments were designed to improve the system in which secured lenders could protect themselves by recording notice of their security interest, and also to enhance consumer protection by providing solutions to common problems faced by buyers and debtors. The revised P.P.S.A. was intended to benefit creditors and other commercial users by streamlining the legislation, and was intended to benefit consumers with new measures to facilitate loan registration. The theme of the amendments was consumer protection. The amendments sought to enhance consumer protection and provide greater security to those people who have purchased products. It was also designed to protect prospective lenders and purchasers by allowing them to carry out searches in the system. By repealing the Bills of Sales Act, the proposed legislation also aimed to prevent a situation where bankruptcy would leave buyers "high and dry". The P.P.S.A. was viewed as an important part of modern economy, where people purchased goods and items on instalment plans, and there is a concern about the security of the goods and the payment for the goods.

8 The applicant owns other companies which are dealers in Chrysler and Suzuki products. In addition, it carries on a leasing business under the name of Klean Auto Leasing, which at the relevant time, had over two thousand motor vehicles under different leases. It had no inventory of motor vehicles, but when a motor vehicle was needed for

leasing, would buy same from its subsidiary dealerships, and by a somewhat complicated process of calculations which would take into consideration the purchase price, the interest calculations, the administrative costs, the depreciations, the term of the lease, and the end value of the motor vehicle, would arrive at the monthly payments thereof. It resembles in essence "net net real estate lease". Most of its leases were then subsequently assigned to Chrysler Credit. Practically none of its leases on new motor vehicles were considered finance leases. It considered a finance lease as one over a used motor vehicle where the customer guarantees to purchase that vehicle at the end of the lease at the price set up in the lease. In respect to new motor vehicles, as is the case at bar, the applicant would lease the motor vehicle as a "closed-end lease", which meant that the lessee had no options to purchase the vehicle at the end of the lease, but had an obligation to return same to the lessor at a "guaranteed value" as well as in a condition that passed the standard safety check and inter alia, with a limited amount of mileage, failing which a per kilometer penalty would be paid in respect to the over amount of mileage.

## THE ISSUE

**9** The main, if not sole issue, for me to determine is whether this lease falls within the provisions of Section 2(a)(ii) of the Personal Property Security Act namely, whether it is a "lease that secures payment or performance of an obligation". It might be noteworthy to mention that prior to the 1989 amendments, the Act read a "lease intended as a security", while the amendment replaced it as a "lease that secures payment or performance of an obligation".

**10** It seems to me that Blair, J. in *Adelaide Corp. v. Integrated Transportation Finance Inc. et al* ([1994](#), [16 O.R. \(3d\) 414](#)), has made a very learned and concise analysis of the issue which is before me. At page 421 the learned Justice stated as follows:

The cases have held that a lease which is a simple lease of property, not by way of security, may not be registered under the P.P.S.A. in order to protect the lessor against subsequent claimants to the goods which are the subject matter of the lease. If the lease is a "financing" lease, however, in the language of the P.P.S.A. one intended to "secure payments or performance of an obligation", that provisions of the P.P.S.A. apply.

**11** I find that his analysis of the distinction between a "a simple lease" and a "financing" lease needs to be reproduced hereunder. He stated:

What is it, then, that makes a lease agreement, in substance a "financing" lease, as opposed to a lease which does not require registration under the P.P.S.A.? The traditional approach has been to distinguish between a "true" lease (i.e., one presumes, a "real" lease), and a document which is merely intended to operate as a financing vehicle - a "lease intended as security". This is, of course, a valid distinction, but in my view the two concepts are not necessarily mutually exclusive in the context of registration under the P.P.S.A.

The P.P.S.A. itself makes no such distinction. It simply provides that its provisions are applicable to "every transaction ... that in substance creates a security interest, including ... [a] lease ... that secures payment or performance of an obligation". There is no reference to a "true" lease. What is encompassed by the sweep of the P.P.S.A. is a "lease", but a "lease" which has as well the characteristics of "[securing] payment or performance of an obligation". In the end, the true test, as s. 2 of the Act makes clear, is whether the transaction as a whole "in substance creates a security interest".

Thus, a lease agreement between parties may have all the appearances of being a "true" lease, and may, indeed, be such an arrangement, but still be caught by the registration requirements of the P.P.S.A. if it also serves, in the overall transaction, to secure payment or performance of an obligation.

**12** The learned Justice later on found instructive, the following comments of Mr. Justice Henry in *Re Speedrack Ltd.* (1980) 11 B.L.R., 220, which read as follows:



Centennial Plymouth Chrysler (1973) Ltd. (c.o.b. Klean Auto Leasing) v. Conlin, [2000] O.J. No. 709

The nature of the transaction may be apparent on the face of the instruments, but if it is not, the court must determine its nature for purposes of s. 2 of the Personal Property Security Act from the surrounding circumstances. It is not merely a question of construing the agreement between the parties, which may be quite clear. It is a question of determining the intentions of the parties, notwithstanding the form used in setting up the transaction. For this, extrinsic evidence may be relevant and admissible, and it is so in this case. The court's task is to determine the essence of the transaction in spite of its form, as prescribed in s. 2. It must determine, on the balance of probabilities, and on a practical common-sense view of the evidence, whether the parties negotiated a loan or advance on security, or a standard lease of property, not by way of security, from the lessor to the bankrupt.

**13** Blair, J. then, at page 423, went on to say:

Much emphasis is placed by counsel -- on the purchase options contained in the Greyvest leases, and on whether or not the option prices resemble fair market value or are merely nominal, and on whether title ultimately passes to the lessee. These are important and relevant considerations, to be sure. However, in my view, too much focus can be placed on them, and too much energy expended in finely honed exercises designed to determine whether property ultimately passes or whether the option price is sufficiently substantial. The test is not whether the document in question is a lease or a conditional sale agreement. The test is whether the transaction, as a whole, in substance creates a security interest, and, in the context of a lease instrument, whether the lease is one "that secures payment or performance of an obligation".

**14** The learned Justice later on proceeded to reach his conclusion based on certain particular terms of the lease.

**15** It seems as if Blair, J. did not have before him the learned analysis of Spence, J. in the case of Finchside International Ltd. v. Roy Foss Motors Ltd. [\[1994\] O.J. No. 3266](#). The reason was likely that Spence, J.'s decision might not have been released by then.

**16** I find Spence J.'s endorsement in the Finchside case equally noteworthy as at page 2 thereof, he sets out certain factors which, in his case, were consistent with the lease being an "ordinary lease" and not a security lease, which he enumerated as follows:

- (i) The respondent is in the business of leasing motor vehicles;
- (ii) The respondent maintains its own inventory for leasing motor vehicles;
- (iii) The parties negotiated the form of the lease; and
- (iv) The lease is for a single motor vehicle; and
- (v) The lease is for a fixed term.

**17** He then went on to consider the "option price" as being a material factor that must also be considered. I construed that his decision was largely, if not mainly, based on that issue.

**18** Counsel have submitted the decision of the British Columbia Supreme Court in Re Bankruptcy of Douglas Gordon Bronson [\(1995\), 34 C.B.R. \(3d\) 255](#) for my consideration. Counsel for the Trustee has asked me to seriously consider this decision as it was quoted as being on "all four" with the decision at bar. I find it noteworthy that the lease contained an option clause which is not found in the case at bar, namely, the following:

You will have the option to purchase the vehicle at the scheduled termination of this lease for \$6,400.00 being a genuine pre-estimate of the fair market value of the vehicle at the time.

**19** In his decision, the learned Registrar, at paragraph 55 stated as follows:

Centennial Plymouth Chrysler (1973) Ltd. (c.o.b. Klean Auto Leasing) v. Conlin, [2000] O.J. No. 709

It strikes me that the essence of this agreement is one which allowed the bankrupt to obtain this vehicle and ultimately become the owner.

The lease granted by G.M.A.C. simply finances that arrangement. I am satisfied that this lease is a lease which secures payment or performance of an obligation and therefore, is subject to all the provisions of the P.P.S.A.

**20** Coming back to the relevant points from the ministerial statement which indicated that it was a clear intention of the legislature that the 1989 amendments were designed to improve the system in which secured lenders protect themselves by recording notices of their security interests, and to enhance consumer protection by providing solutions to common problems faced by buyers and debtors. The revised P.P.S.A. is intended to benefit creditors and other commercial users by streamlining the legislation and is intended to benefit consumers with new measures to facilitate loan registration. The theme of the amendments is consumer protection. The amendments seek to enhance consumer protection and provide greater security to those people who have purchased products.

**21** In the case at bar, it seems to me that it is clear that the lease in question was not to secure a "lender" necessitating the recording of a notice of its security interests in order to protect itself, nor was it intended to enhance the "consumer" i.e. the "lessee" by providing a solution to the common problems faced by buyers and debtors. At the end of the lease, the lessee had to return the motor vehicle to the lessor. Upon its return, the lessor had possession and ownership (as he had never dispossessed himself of such) and a legal right to sell the motor vehicle to satisfy any deficiency arising out of the non-performance of certain obligations of the lessee. I find nothing in the lease which obligated the lessor to account to the lessee for any excess which the lessor might otherwise obtain upon the disposition of the motor vehicle in question at the termination of the lease. Even if such an obligation did exist, then, in the event the lessee wished to protect itself in the event of the eventual bankruptcy of the lessor, the lessee could at any time have elected to register its lease if it deemed it appropriate.

**22** I therefore find that this lease was not in essence, a "lease that secures payment or performance of an obligation" and judgment shall issue accordingly. An order shall therefore issue that the respondents have no interest whatsoever in the 1996 Plymouth Voyager van, serial number 2P4FP2533TR735794, and an order shall also issue directing the respondent Trustee to deliver up the said automobile to the applicant forthwith at their premises, namely, 425 Dunlop Street West, Barrie, Ontario L4N 1C3. The applicant shall have costs of this application on a party and party basis, payable forthwith by the respondents upon the assessment thereof.

MARCHAND J.

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End of Document

**TAB 22.**

with possession and the Dealer may  
exercise all rights to possession;

.....

7. Subject to paragraph 3 of this Agreement, if the Purchaser defaults in the payment of any amount due hereby or defaults in the performance or observance of any other matter or thing required to be observed or performed by the Purchaser or if any proceeding is commenced by or against the Purchaser under any bankruptcy or insolvency laws, then

- (a) the entire amount due by the Purchaser to the Dealer shall become immediately due and payable at the option of the Dealer.

[26] The difficulty with this argument is that it is premised on a concluded contract which is absent here. Hallmark's right to recover the truck does not arise, and could not arise, on the conditions quoted above; Hallmark's remedy lies outside the document and is found in the power of the court to provide a restitutionary remedy.

[27] The Trustee submits, in the alternative, that any equitable interest supporting a trust in the circumstances amounts to a security interest for the purposes of the **PPSA**, in the sense that that interest only existed as a method for securing payment of the truck.

[28] I think this argument goes to the kind of trust, implied or resulting, for which Hallmark argued below and which formed part of Hallmark's alternative submissions before us. As I apprehend the position, an implied or resulting trust arises

from an understanding that Ellingsen would hold the truck in trust for Hallmark until financing was completed. But I am not concerned with these other trusts having been persuaded that the appropriate remedy is the constructive trust. I do not know how it could be said that a constructive trust secures a payment or the performance of an obligation; rather its purpose is to prevent an unjust outcome. The chambers judge inquired whether the behaviour of the parties "was consistent with a trust relationship". That can only refer to an implied or a resulting trust and is not relevant to the question whether a constructive trust should be imposed.

[29] The final point raised by the Trustee in relation to the **PPSA** is that s. 20(b)(i) provides a "juristic reason" for the deprivation of Hallmark and the corresponding enrichment of the general creditors of the estate. This refers to the classic three-part formula for determining unjust enrichment. McLachlin J. (now C.J.C.) put it this way in **Peter v. Beblow**, [1993] 1 S.C.R. 980 at 987:

The basic notions are simple enough. An action for unjust enrichment arises when three elements are satisfied: (1) an enrichment; (2) a corresponding deprivation; and (3) the absence of a juristic reason for the enrichment. These proven, the action is established and the right to claim relief made out.

[30] If Hallmark's interest is a security interest the consequences of not registering the interest are prescribed by s. 20(b)(i) of the **PPSA**. The collateral goes into the general estate by operation of statute and hence a juristic reason exists for the enrichment. It is necessary to repeat, in order to deal with this point, that in my opinion Hallmark's interest was not a security interest within the meaning of the **Act**. There was nothing to register. The truck was not collateral to any enforceable contract. The substance of the transaction, not its form, must determine whether a security interest was created: see **Skybridge Holdings Inc. (Trustee of) v. British Columbia (Registrar of Travel Services)** (1999), 173 D.L.R. (4th) 333, 68 B.C.L.R. (3d) 209 (C.A.). It follows that s. 20(b)(i) does not provide a juristic reason in answer to a claim of unjust enrichment.

[31] Is this an appropriate case for a remedial constructive trust? Two issues arise for discussion. First, why should equity intervene in a commercial transaction where Hallmark could have protected itself contractually? Second, is it appropriate to use a constructive trust to alter the priorities amongst creditors in a bankruptcy?

[32] On the first question, it is useful to refer to an article by D.M. Paciocco: "The Remedial Constructive Trust: A

Principled Basis for Priorities Over Creditors" (1989) 68 Canadian Bar Review 315. Professor Paciocco distinguishes between the application of the constructive trust in family and commercial settings, arguing that the courts should be cautious in ordering specific relief in commercial cases. The constructive trust was adopted in the matrimonial context as a means of explaining the specific relief that courts were already awarding under the awkward resulting trust analysis. There is no parallel in the commercial context. Unlike in the spousal context, in commercial contexts parties are expected to protect their interests contractually. In addition, there are the further considerations of security of title as tied to efficiency of commerce and the protection of third parties from undisclosed charges. He concludes at 351:

In commercial cases proprietary relief will not be warranted where the plaintiff parted with the property or money which represents the defendant's enrichment, while accepting the role of a general creditor. This will occur where there is a valid contract between the parties which accounts for the defendant's enrichment, or a contract which has been avoided where the condition which rendered the contract ineffective does not vitiate the voluntariness of the plaintiff's decision to assume the role of a general creditor...

[33] In her majority reasons in **Peter v. Beblow**, McLachlin J. refused to distinguish between family and commercial cases. She said at 996-97:

I doubt the wisdom of dividing unjust enrichment cases into two categories - commercial and family - for the purpose of determining whether a constructive trust lies. ... In short, the concern for clarity and doctrinal integrity with which this court has long been preoccupied in this area mandates that the basic principles governing the rights and remedies for unjust enrichment remain the same for all cases.

[34] The more specific answer to the learned commentator's proposition as quoted above is that in the present case Hallmark never intended to grant credit to Ellingsen and so there is no justification for placing Hallmark in a class of general creditors.

[35] As I have said, Hallmark was imprudent in allowing the truck to leave the lot as it did, but it accepted the risk in the interest of good customer relations that it may have to take back a used truck if financing fell through, and in that event it would not be able to recover the depreciation. Ellingsen induced Hallmark to believe that he would be able to meet the Bank's cash requirements for the loan and so Hallmark waited the three months before bankruptcy occurred. Ellingsen knew he had no right to keep the truck and said as much to Jenks, the business manager of Hallmark, when he suggested during the telephone conversation of 15 March 1997 that Hallmark would have to pick up the truck.



[36] On the second question, that dealing with the priority of creditors, I wish to refer to the Ontario Court of Appeal decision in **Barnabe v. Touhey** (1995), 26 O.R. (3d) 477, which reversed a ruling that a court may impose a constructive trust for the very purpose of securing priority for some claimants over other creditors. At 479 the Court said:

While a constructive trust, if appropriately established, could have the *effect* of the beneficiary of the trust receiving payment out of funds which would otherwise become part of the estate of a bankrupt divisible among his creditors, a constructive trust, otherwise unavailable, cannot be imposed for that *purpose*. This would amount to imposing what may be a fair result as between the constructive trustee and beneficiary, to the unfair detriment of all other creditors of the bankrupt.

[37] The Court of Appeal went on to determine that there was no unjust enrichment on the facts of the case so the above remarks are probably *obiter dicta*. Nevertheless, the case serves as a useful caution that in weighing the equities other creditors may have to be considered. In my judgment, for the reasons I have given, Hallmark does not stand on the same footing as the general creditors and as a result I do not think the remedy I would impose unfairly deprives other creditors of an asset to which they have any reasonable entitlement.

**TAB 23.**

**Saskatchewan Court of Queen's Bench  
In Bankruptcy  
Judicial Centre of Regina**

Citation: Bitz (Bankrupt), Re  
Date: 1991-12-16  
Docket: 1617 A.D. 1991

Between:  
Howard Graff (applicant)  
and  
Deloitte & Touche, as Trustee in Bankruptcy for the Estate of Trevor Richard Bitz  
(respondent)

Hunter, J.

Counsel:  
A.K. Bayda, for the applicant  
R.M. Sandbeck, for the respondent

[1] Hunter, J.: The applicant, Howard Graff, claims he is the owner of a black 1985 ½ Porsche 944 and that the bankrupt, Trevor Richard Bitz, held this vehicle in trust for him. Pursuant to s. 81 of the *Bankruptcy Act*, R.S.C. 1985, c. C-8, Mr. Graff applies for an order directing that this Porsche, currently in the possession of Mr. Bitz's trustee in bankruptcy, Deloitte & Touche Inc., shall not form part of the property of the bankrupt divisible among creditors and further, an order directing that this Porsche be returned to him.

[2] As a preliminary matter, pursuant to s. 187(11) of the *Bankruptcy Act*, Mr. Graff applied for an order extending the time for appealing from the Notice of Dispute of the trustee in bankruptcy made under s. 81 of the *Act*. This was not seriously opposed by the trustee and in order to deal with the merits of the application, I order that the time for bringing this application is extended and the matter is properly before me.

[3] The application is pursuant to s. 81 of the *Bankruptcy Act*, which reads as follows:

"81(1) Where a person claims any property, or interest therein, in the possession of a bankrupt at the time of the bankruptcy, he shall file with the trustee a proof of claim verified by affidavit giving the grounds on which the claim is based and sufficient particulars to enable the property to be identified.

"(2) The trustee with whom a proof of claim is filed under subsection (1) shall within fifteen days thereafter or within fifteen days after the first meeting of creditors, whichever is the later, either admit the claim and deliver possession of the property to the claimant or give notice in writing to the claimant that the claim is disputed with his reasons therefor, and, unless the claimant appeals therefrom to

the court within fifteen days after the mailing of the notice of dispute, he shall be deemed to have abandoned or relinquished all his right to or interest in the property to the trustee who thereupon may sell or dispose of the property free of any lien, right, title or interest of the claimant.

"(3) The onus of establishing a claim to or in property under this section is on the claimant.

"(4) The trustee may give notice in writing to any person to prove his claim to or in property under this section, and, unless that person files with the trustee a proof of claim in the prescribed form within fifteen days after the mailing of the notice, the trustee may thereupon with the leave of the court sell or dispose of the property free of any lien, right, title or interest of that person.

"(5) No proceedings shall be instituted to establish a claim to, or to recover any right or interest in, any property in the possession of a bankrupt at the time of the bankruptcy, except as provided in this section.

"(6) Nothing in this section shall be construed as extending the rights of any person other than the trustee."

[4] Howard Graff filed a proof of claim dated September 26, 1991, wherein he indicates his claim in the property or interest therein by virtue of the documents he attached, namely,

(i) a description of the property being "Black 1985 ½ Porsche 944";

(ii) copy of Canada Trust document dated May 17, 1991, evidencing a loan to Trevor Bitz in the sum of \$2,800 in U.S. funds for the purchase of the Black 1985 ½ Porsche;

(iii) copy of Canada Trust document dated June 25, 1991, evidencing the sum of \$3,500 in U.S. funds having been paid to Trevor Bitz;

(iv) copy of a receipt dated June 25, 1991, signed by Trevor Bitz and Howard Graff, witnessed by Sharon Graff, acknowledging receipt of the sum of \$6,300 in U.S. funds and a further sum of \$500 cash for the purpose of purchasing a 1985 ½ Porsche 944 from the MPLS Auto Auction.

[5] Mr. Graff and Mr. Bitz executed a brief handwritten agreement which stated the following:

"June 25, 1991

Received from Howard A. Graff of 712 – 18th Ave. East Regina Saskatchewan the sum of \$6,300 U.S. Plus \$500 cash &C to purchase a 1985 ½ Porsche 944 from the MPLS Auto Auction. Upon sale of this vehicle Trevor Bitz to receive 40% of net

profit as selling agent  
Witness:  
'Sharon Graff'

'Trevor Bitz'  
'Howard Graff'

- [6] Trevor Bitz operated a business "Auto Toy Store Ltd.", which specialized in locating specialty vehicles and bringing them to Canada. Mr. Bitz did purchase a black 1985 ½ Porsche in the United States and brought it back to Saskatchewan. On July 11, 1991, Mr. Bitz registered the vehicle in his own name and transferred the plates from another vehicle which he had owned. When Mr. Bitz filed the assignment in bankruptcy on August 19, 1991, this Porsche was still registered in his name but he did not list it as an asset on his Statement of Affairs.
- [7] Correspondence filed by the trustee in bankruptcy indicates that two vehicles were seized by the sheriff's office on behalf of Saskatchewan Finance, a creditor of the bankrupt, which were then released into possession of the trustee on September 18, 1991. One of the seized vehicles was the Porsche in question. Mr. Graff indicates he did not know Mr. Bitz had registered the vehicle in his own name until Mr. Bitz telephoned to advise him that it had been seized by the sheriff. He was again contacted by Mr. Bitz by telephone to advise him that the Porsche had then been seized by the trustee in bankruptcy.
- [8] The issue is whether Mr. Bitz held the black 1985 ½ Porsche 944 in trust for Mr. Graff. If so, it comes within s. 67(a) which reads as follows:

"67. The property of a bankrupt divisible among his creditors shall not comprise  
  
(a) property held by the bankrupt in trust for any other person, ..."

- [9] The applicant argues that a valid trust was in existence on the date of bankruptcy and says that the arrangement between he and Bitz meets the three certainties required to establish a valid trust, i.e. certainty of intent, certainty of subject matter and certainty of object. The applicant refers to *Re Allan Realty of Guelph Limited* (1979), 29 C.B.R.(N.S.) 229, wherein Anderson, J., quoting from Underbill's *Law of Trusts and Trustees* (12th Ed. 1970), p. 3, at pp. 241-242 states the following:

"For a trust to come into existence, it must have three essential characteristics. As Lord Langdale, M.R., remarked in *Knight v. Knight* (1840), 3 Beav. 148; 49 E.R. 58, affirmed (sub nom. *Knight v. Boughton*) 11 Cl. & Fin. 513; 8 E.R. 1195 (H.L.), in words adopted by Barker, J., in *Rehnan v. Malone* (1897), 1 N.B. Eq. 506, and considered fundamental in common law Canada, first, the language of the alleged settlor must be imperative; secondly, the subject matter or trust property must be certain; thirdly, the objects of the trust must be certain. This means that the alleged settlor, whether he is giving the property on the terms of a trust or is transferring property on trust in exchange for consideration, must employ language which clearly shows his intention that the recipient should hold on trust. No trust exists if the recipient is to take absolutely, but he is merely put under a moral obligation as to what is to be done with the property. If such imperative language exists, it must

secondly be shown that the settlor has so clearly described the property which is to be subject to the trust that it can be definitively ascertained. Thirdly, the objects of the trust must be equally clearly delineated. There must be no uncertainty as to whether a person is, in fact, a beneficiary. If any one of these three certainties does not exist, the trust fails to come into existence or, to put it differently, is void.

"The principle of the three certainties has been fundamental at least since the days of Lord Eldon, and no one today could seek to challenge the principle; the problems that exist concern the issue of what constitutes certainty."

[10] At p. 100 we find this:

"The words employed to set up a trust, therefore, must show that the transferee is to take the property not beneficially, but for objects which the transferor describes. The words which nearly always reveal the intention are 'in trust', or 'as trustee for', but it is well-established in common law courts, including those of Canada, that these words are neither conclusive nor indispensable. In the context of all the language of a bequest, Garrow, J.A., came to the conclusion in *Re Rispin* (1912), 25 O.L.R. 633 ..., that the words 'in trust' though used, did not have controlling importance, and that no trust had been created. On the other hand, in a series of Canadian cases courts have made the point that there is no magic in the word 'trust' and that other words may convey the same intention."

[11] In *Re Ontario Worldair Limited* (1983), 45 C.B.R.(N.S.) 116, Saunders, J., held that the simple device of designating a bank account as a "special trust account" does not in itself constitute a trust and one must look at all the documentation to determine if there was an intention to create a trust.

[12] Further, the applicant argues that if there was not an express trust, there was a resulting trust. The following remarks in *Re 389179 Ontario Limited; Re Peat Marwick Ltd.* (1980), 34 C.B.R.(N.S.) 46, are noted, with respect to a resulting trust, at p. 52:

"... The only relevant fact to be established is that the person who seeks to establish the trust supplied the funds to purchase the property said to be held on resulting trust, which property was put into the name of another. That has been demonstrated here.

"Counsel for the trustee argued that the trust was void for uncertainty and he cited the three certainties commonly mentioned as necessary factors to constitute a trust, namely, imperative words, certainty of subject matter and certainty of objects. That argument has no validity at all. Those elements in the determination of whether an express trust has been established can have no application in the determination of whether the facts indicate a resulting trust.

"Finally, and more substantially, it was submitted that 389178 Ontario Limited in fact loaned the funds to 389179 Ontario Limited, which then purchased the assets

to which I have referred. If this were proved then there would be no question of a resulting trust for there would be simply a debtor-creditor relationship set up between the companies. It is not a defence of rebuttal at all but a defence based on an allegation that 389178 Ontario Limited did not supply the money for the purchase of the assets but that the money belonged to the actual purchaser, albeit borrowed from 389178 Ontario Limited."

- [13] The trustee argues that the Porsche is not property held in trust but that the applicant's interest is that of an unsecured creditor. As such, his interest is subordinate to the interest of the trustee in bankruptcy pursuant to s. 20(1)(d) of the *Personal Property Security Act*, S.S. 1979-80, c. P-6.1. Further, while the trustee does not rely on it for purposes of this argument, he notes that in many ways the arrangement between the applicant and the bankrupt appears to be that of a silent partner which would mean that the applicant would rank as a postponed creditor within the meaning of s. 139 of the *Bankruptcy Act* which provides:

"139 Where a lender advances money to a borrower engaged or about to engage in trade or business under a contract with the borrower that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the trade or business, and the borrower subsequently becomes bankrupt, the lender of the money is not entitled to recover anything in respect of the loan until the claims of all other creditors of the borrower have been satisfied."

- [14] The trustee does not insist that the applicant's claim be postponed but is prepared to have the applicant admitted to rank as an unsecured creditor.
- [15] The trustee argues there is no express trust as there is no document evidencing that Bitz would hold the property in trust. Therefore, the only question is whether there was a constructive or resulting trust. In respect of the document evidencing the \$6,300 transfer of funds from Graff to Bitz, the trustee argues that this is evidence of a loan between the parties that upon future sale of the property, Bitz was to receive 40% as selling agent.
- [16] Whether in a given situation a trust relationship or a debtor-creditor relationship exists can be difficult to determine. In *Waters, Law of Trusts in Canada* (2nd Ed. 1984), The Carswell Company Limited, at page 68 he states:

"This preference of trust beneficiaries over creditors makes it important to distinguish the trustee-beneficiary relationship from the creditor-debtor relationship. The distinction is clear enough when the trust arises from the intention, express or implied, of the settlor, but when does the law deem a person a constructive trustee of the funds or assets which he holds for another?"

. . . . .

"The question which provides the most difficulty is whether the particular holder of

title to assets who acknowledges another's interest is trustee or debtor. A trustee must keep the assets of the trust distinct, but in the normal commercial transaction, nothing specific is said about this. The duty to keep the assets distinct, if it exists, must be spelled out of the nature of the transaction the environment in which the parties agree, the type of persons who are the holder of title and the transferor, and whether or not interest payments are to be made by the holder of the assets. If interest is to be paid, the relationship is nearly always that of creditor and debtor."

[17] At pp. 70-71 Waters comments as follows where monies have been advanced to another:

"The trust and debt are often to be found in the company of each other. If an investor transfers his monies to an investment agency, for instance, the monies may be received by way of a trust if that is what the parties intend. In this case the recipient as trustee holds the resultant investment of the monies on trust for the investor. However, it is more likely in practice that the investor will merely hand over his moneys by way of a loan, and he will seek security from the borrower in addition to his investment. Security is usually provided by way of a mortgage or charge; the creditor will obtain the transfer of title over the security asset, or the imposition upon the asset of a right in his favour to call for the asset, ahead of other claimants, to meet the loan, if it is not repaid.

"In a loan situation, security may also be provided by the creation of a trust. The debtor declares himself a trustee of the security asset for the creditor, or he transfers the security to another on trust for the creditor. It is of course essential that the trust shall have been validly created, and this cannot take place if the security (that is, the trust property) does not exist when the trust is purportedly created. Nevertheless, even if the security does so exist, and is effectively made the subject matter of a trust, it is clear that in these circumstances the debt and the trust are distinct. First, there, is a debt, and secondly a trust is created to provide security for the debtor. A lends \$100 to B, and B supplies his car as security for the loan repayment.

"Security may also be given by way of trust when the security is the very money lent. A lends \$150 to B for expenditure in an agreed manner, and B is to hold that \$150 separately and on trust for A until that money is expended 'as agreed. The trust terminates when B carries out the expenditure; A is thereafter a creditor without security."

[18] Accordingly, the trustee argues that the receipt of June 25, 1991, is consistent with a loan and Bitz was to receive 40% of the net profit as a selling agent. This makes the arrangement contractual in nature but does not mean that a trust relationship was created. At best, the trustee claims the monies were impressed with a trust but the trust was terminated when the expenditure occurred. The Porsche as trust property did not exist in the hands of the parties at the time trust was purportedly created. This, the trustee argues, makes the applicant a creditor without



security on purchase of the Porsche.

[19] Alternatively, the trustee argues that if I am satisfied that there is an element of trust, albeit not an express trust, then one must look at this in the context of the *Personal Property Security Act*, S.S. 1979-80, c. P-6.1. The trustee argues that a security interest was created within the meaning of s. 2(nn) of the *Act* and that the security interest may be a "purchase-money security interest" within the meaning of s. 2(gg)(ii) of the *Act*, as the applicant gave value for the purpose of enabling the bankrupt to acquire the rights in the personal property. This security interest was not perfected within the meaning of s. 19 of the *Act* and accordingly, an "unperfected security interest" is subordinate to the interest of the trustee in bankruptcy. The trustee seems to suggest that if I find a resulting trust or constructive trust, then it is a security interest under the *Personal Property Security Act*.

[20] The trustee referred to the decision in *Royal Bank v. 216200 Alberta Ltd.* (1987), 51 Sask.R. 146 (C.A.), which involved a priority dispute between purchasers of furniture and the holder of a perfected security interest. There\* a group of individuals had paid full or part of the purchase price of property which was not in possession of the defendant. They argued that the money had been paid and was impressed with a trust. Vancise, J.A., stated as follows at p. 153:

"The scheme of the *Act* is to register the security interest as to both goods and proceeds. Any scheme which permits trust classes or devices outside the *Act* will cause commercial uncertainty and produce disruption in commercial transactions. Here, such facts as are contained in the material are relatively straightforward. The buyers paid all or a portion of the purchase price for furniture which 216200 Alberta Ltd. was to order for them. After the money was paid but before the goods were appropriated to the sale, 216200 Alberta Ltd. was placed in receivership by the appellant. The appellant claims to be entitled to all the personal property of 216200 Alberta Ltd. in priority to the persons who paid all or a portion of the purchase price of goods to be ordered ...

"The money was paid to 216200 Alberta Ltd. in the ordinary course of business and it became the property of the vendor. In order to determine whether it is impressed with a trust, one must examine the intention of the parties advancing the money. Here there was no evidence that they intended the money to be held in trust. It was not impressed with an express trust and it was not to be kept separate and apart from other funds of 216200 Alberta Ltd. It is possible for the funds to be categorized as a trust in some other way, as for example a constructive trust where the money, the title to which is in 216200 Alberta Ltd., in reality is the property of the purchasers. The constructive trust has been utilized as a remedy for injured parties when there has been an unjust enrichment. There is no evidence that that was the situation here. The sale was one made in the ordinary course of business, utilizing an accepted commercial mode of sale."

[21] In this case, there was no remedy for those purchasers who had paid money to the defendant for furniture which was not in possession of the defendant. They

ranked as unsecured creditors;

[22] The trustee argues that in the instant case, Mr. Graff could have protected himself by registering a security interest under the *Personal Property Security Act*. He did not do so and he, therefore, ranks as an unsecured creditor.

[23] I do not agree with the trustee that the receipt for the \$6,300 U.S. executed by Mr.'s Graff and Bitz evidences a loan. It is very clear from the receipt that the funds were to be used by Mr. Bitz for the purchase of a specific article, namely, a "1985 ½ Porsche 944". Furthermore, it was specified that this vehicle was to be purchased from "MPLS Auto Auction". In this respect, there is a clear description of the article to be purchased, absent only the serial number of the vehicle. Further, it is clear that Mr. Graff supplied the funds for the specific purpose of purchasing the Porsche and that Mr. Graff was the "owner" of the vehicle. It is true that once Mr. Bitz had completed the purchase on behalf of Mr. Graff, he did not register ownership in the vehicle to Mr. Graff. The evidence of a contractual relationship between Mr.'s Bitz and Graff was not in the purchase of the vehicle, it was the agreement to share any net profit that in the event the Porsche was sold and Mr. Bitz would then receive 40% as the selling agent.

[24] So far as the requirements necessary to establish an express trust, it is clear that the elements of certainty of subject and certainty of object are satisfied. The issue is whether there is certainty of intent. There is no question but that the parties did not use "trust" language. However, as noted by Registrar Ferron in *Re 389179 Ontario Limited*, supra, all three elements need only be satisfied for the purpose of an express trust but not for a resulting trust. I am satisfied that the elements have been established to find that the Porsche belonged to Mr. Graff and that Mr. Bitz had possession and registered ownership of the vehicle (as to the later, not with the express permission of Mr. Graff) and that the Porsche was held by Mr. Bitz on a resulting trust for Mr. Graff.

[25] Because the elements of a resulting trust have been satisfied, this case is clearly distinguishable from the situation of an inventory financier and I find that the arrangement between Mr. Bitz and Mr. Graff did not constitute a security interest (purchase-money or otherwise) within the meaning of the *Personal Property Security Act*, supra, as suggested by the trustee in bankruptcy. There is no evidence before me that Mr. Graff was in the business of buying cars and reselling them for a profit. Mr. Graff knew Mr. Bitz as a friend of his son. There was no history of business transactions between them.

[26] There will be an order that Mr. Graff has established his claim to the black 1985 ½ Porsche 944 and that the bankrupt, Mr. Bitz, held the aforesaid Porsche in trust for Mr. Graff. There will be a further order that the trustee release the aforesaid Porsche to Mr. Graff. Counsel have leave to speak to the matter of costs, if necessary.

Application allowed.

**TAB 24.**

[43] The reason the Sophia Estate is seeking proprietary remedy is to satisfy the liability that remains subject to the Estate despite the intent of the testator. Imposing a proprietary remedy also helps to ensure that executors like Jeff will remain faithful to their duties.

(4) There must be no facts which would render the imposition of a constructive trust unjust in all the circumstances of the case.

[44] The Bankruptcy Trustee submits that the interests of intervening creditors must be protected. It is the interests of the intervening creditors, it argues, that renders the imposition of a constructive trust unjust. I disagree.

[45] Regarding the fourth requirement of the *Soulos* test, the courts have considered the interests of intervening creditors and the public interest in having certainty about the operation of priority schemes: *Hollinger Inc. (Re)*, 2013 ONSC 5431, 3 C.B.R. (6th) 73 at paras. 40-43. However, that interest will not always carry the day. Maintaining commercial morality is also an important consideration. In finding a constructive trust where the bankrupt Ascent had ignored an order to hold an amount of money in trust for the claimant Cafo, Deputy Registrar Nettie stated:

It also important to consider that imposition of a remedial constructive trust will take out of the hands of the Estate and the creditors the sum in dispute, and turn it over, in its entirety, to Cafo. This will clearly be a disruption of the scheme laid out in the BIA. This was the position of the Trustee at the hearing. I have considered this, but I have also considered *Brown* and the cases cited therein. I am satisfied that it is, in certain cases, appropriate to do injustice to the BIA in order to do justice to commercial morality. After all, the cases are too numerous to cite wherein commercial morality is considered in insolvency settings. It is the clear role of the Bankruptcy Court to act as the arbiter of commercial morality, and I find no offence in equity intervening, even at the expense of the formulaic aspects of the BIA scheme of distribution. It is simply not right for Ascent and its creditors to benefit from Ascent's failure to obey the Hoy Order, and then come to this Court to seek to retain such an unjust enrichment.

*Ascent Ltd. (Re)* (2006), 18 C.B.R. (5th) 269 (Ont S.C.J.) at para. 17.

[46] With reference to *Ascent*, the Court of Appeal in *Credifinance Securities Ltd. (Re)*, 2011 ONCA 160, 74 C.B.R. (5th) 161 stated:

Thus, a constructive trust in bankruptcy proceedings can be ordered to remedy an injustice; for example, where permitting the creditors access to the bankrupt's property would result in them being unjustly enriched. The prerequisite is that the bankrupt obtained the property through misconduct. The added necessary feature is that it would be unjust to permit the bankrupt and creditors to benefit from the misconduct.

[47] In my view, considering all of the circumstances, this is one of the rare and exceptional cases wherein it is appropriate for equity to intervene to impose a remedial constructive trust despite the reality that to do so would deplete the bankruptcy assets and defy the formal process of the BIA. Jeff breached his fiduciary duties as executor of the Sophia Estate. The net sale proceeds of the Real Property only form part of Jeff's bankrupt estate because of his wrongdoing. Had Jeff not engaged in such misconduct, his creditors, whether formed before or after the transfer, would not have had access to the net sale proceeds of the Real Property. Jeff's estate and by extension his creditors therefore would be unjustly enriched by his neglect of duties. The Tax Liability that Jeff was obligated to pay prior to transferring the Real Property to himself remains a debt of the Estate. The Liability cannot otherwise be satisfied from the assets of the Estate without the intervention of equity. A constructive trust is ordered to remedy the described injustice. To do otherwise would be to ignore that Jeff's estate has been enriched to the detriment of Sophia's Estate as a direct result of Jeff's culpability.

[48] I have found that the Sophia Estate enjoys a beneficial interest in the Real Property. It can therefore trace that interest in the Real Property to the sale proceeds. As opposed to a constructive trust analysis, in the tracing analysis, the interests of Jeff's creditors are not relevant. They cannot stand in any better position than Jeff with regard to trust property. The Supreme Court in *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15 at para. 85 confirmed that it is possible at common law and equity to trace funds into bank accounts if it is possible to identify the funds. Citing *Banque Belge pour l'Etranger v. Hambrouck*, [1921] 1 K.B. 321 (C.A.) at 331, per Atkin L.J., Deschamps J. stated that "the question to be asked is whether the money deposited in those accounts was "the product of, or substitute for, the original thing." In this case, the sale proceeds are easily identifiable, as they are still held by Bankruptcy Trustee in trust and have not been intermingled with other assets or dispersed in any way.

[49] I have concluded therefore that the Sophia Estate had a proprietary interest in the two pieces of property: 1142 North Burnt Island Rd., Muskoka, Ontario (the "Cottage property") and 27 Edgar Avenue, Toronto, Ontario (the "Family home") (together, the "Real Property"), which it can trace into their net proceeds of sale. The Appeal is allowed. I will remain seized should there be any issues with respect to the proper amount of the Property Claim.

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V.R. Chiappetta J.

**Date:** February 25, 2019

**TAB 25.**

remained a clear period of time prior to its deemed assignment wherein Ascent failed to obey Her Honour's Order and set aside funds in trust for Cafo. This failure is the source of the unjust enrichment, not the PIC. As stated above, the result is that the Estate of Ascent has been augmented by the said sum. While I recognize that the debtor pool is also increased by like amount, mathematically the creditors are better off by the augmentation of the asset pool even though the debtor pool increases. This is not, as was argued at the hearing, a wash. Consider if there were unsecured claims totaling \$100,000.00, and assets of \$50,000.00 available to satisfy them. Clearly the creditors would be better off if there were \$75,000.00 in assets to satisfy \$125,000.00 in claims, as each creditor of the previous class will receive a slightly larger dividend when the extra \$25,000.00 in assets is added to the Estate – obviously at the expense of the new \$25,000.00 claimant also added to the debtor class. This is the case herein. The creditors are being enriched by the additional availability to them of the \$24,374.00 that Ascent failed to set aside under the Hoy Order, and Cafo, which would otherwise receive all of those funds as trust funds, must now share with the other creditors – clearly to its detriment. The only reason for this situation is the failure of Ascent to obey a Court Order, notwithstanding its own resort to this Court first by way of a proposal and secondly by way of a deemed assignment. I can find no juristic reason in this to support the enrichment. It is surely not a juristic reason if the enrichment is the result of failure to obey the Court's own Order, and I so find.

[16] Having found that unjust enrichment has occurred herein, should the Court use the tool of a remedial constructive trust to remedy this? In considering this, it is important to remember that unjust enrichment is a concept which may quite properly be used in commercial cases. Winkler J., as he then was, in *Re Brown & Collett Ltd.* (1996), 11 E.T.R. (2d) 164 (O.C.J. G.D.) at 179 found this to be the case, and that it is appropriate for promoting “honest dealing and sound commercial conscience.”

[17] It also important to consider that imposition of a remedial constructive trust will take out of the hands of the Estate and the creditors the sum in dispute, and turn it over, in its entirety, to Cafo. This will clearly be a disruption of the scheme laid out in the BIA. This was the position of the Trustee at the hearing. I have considered this, but I have also considered *Brown* and the cases cited therein. I am satisfied that it is, in certain cases, appropriate to do injustice to the BIA in order to do justice to commercial morality. After all, the cases are too numerous to cite wherein commercial morality is considered in insolvency settings. It is the clear role of the Bankruptcy Court to act as the arbiter of commercial morality, and I find no offence in equity intervening, even at the expense of the formulaic aspects of the BIA scheme of distribution. It is simply not right for Ascent and its creditors to benefit from Ascent's failure to obey the Hoy Order, and then come to this Court to seek to retain such an unjust enrichment.

[18] Similarly, I am not moved by the Trustee's arguments that the funds which have been set aside are GST refunds. The right to receive those refunds must have existed at the time of the deemed assignment in order for them to have crystallized and fallen into the Estate. It must be remembered that the point here is that if the Court does not impose a remedial constructive trust on sufficient of Ascent's assets to return to Cafo the sum of

**GROSVENOR PARK MEDIA FUND L.P.**  
Plaintiff

-and- **ARC PRODUCTIONS LTD., et al.**  
Defendants

Court File No. CV-16-11472-00CL

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

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