

IN THE MATTER OF THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

AND IN THE MATTER OF

**GEORGE WAYNE MALLET (a.k.a. "Wayne Mallett"),
VILLABAR REAL ESTATE INC.,
ST. CLAIR RESEARCH ASSOCIATES INC.,
RONALD A. MEDOFF and MAYER HOFFER**

(Respondents)

SETTLEMENT AGREEMENT

(with respect to the respondents Villabar Real Estate Inc., St. Clair Research Associates Inc.,
Ronald A. Medoff and Mayer Hoffer)

Part I

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the New Brunswick Securities Commission ("Staff") agree to recommend approval of settlement of this matter with respect to the respondents Villabar Real Estate Inc. ("Villabar"), St. Clair Research Associates Inc. ("St. Clair"), Ronald A. Medoff ("Medoff") and Mayer Hoffer ("Hoffer") (together the "Respondents") to a panel of the New Brunswick Securities Commission pursuant to section 191(1)(a) of the *Securities Act*, 2004 S.N.B., c. s-5.5 (the "*Securities Act*") in accordance with the following terms and conditions:

- a. The Respondents agree to the Statement of Facts set out in Part II hereof, and consent to the making of an order, on the basis of those facts, substantially similar to that set out in Schedule "A"; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Commission.

2. RESPONDENT'S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Respondents undertake and/or agree as follows:

- a. Not to make any statement, either directly or indirectly, which is inconsistent with the Agreed Statement of Facts herein. Any such statement shall constitute a breach of this Settlement Agreement;
- b. In accordance with an order substantially similar to that set out in Schedule "A", that:
 - i. Pursuant to section 186(1) of the *Securities Act*, the Respondent Villabar

shall pay an administrative penalty in the amount of twenty thousand dollars (\$20,000.00);

- ii. Pursuant to section 186(1) of the *Securities Act*, the Respondent Medoff shall pay an administrative penalty in the amount of fifteen thousand dollars (\$15,000.00);
- iii. Pursuant to section 186(1) of the *Securities Act*, the Respondent St. Clair shall pay an administrative penalty in the amount of ten thousand dollars (\$10,000.00);
- iv. Pursuant to section 186(1) of the *Securities Act*, the Respondent Hoffer shall pay an administrative penalty in the amount of five thousand dollars (\$5,000.00); and
- v. Pursuant to sections 185(1) and 185(2) of the *Securities Act*, the Respondent shall pay costs in the amount of five thousand dollars (\$5,000.00).

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the Respondents, Staff will apply to the Commission for an order approving the Settlement Agreement.
- b. Prior to the granting of any order, the Respondents shall deposit \$55,000.00 in trust with their legal counsel, and shall instruct counsel to deliver such funds to Staff upon an order approving the Settlement Agreement. Counsel shall advise Staff in this regard.
- c. If the Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence submitted respecting the Respondents in this matter.
- d. If the Settlement Agreement is approved by the Commission, the Respondents agree to waive any right to a hearing and/or appeal with respect to this matter.
- e. If, for any reason whatsoever, this settlement is not approved by the Commission and the order set forth in Schedule "A" is not made by the Commission:
 - i. Staff and the Respondents will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or any of the settlement negotiations;
 - ii. The terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both Staff and the Respondents or as may be required by law; and
 - iii. The Respondents further agree that they will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Commission.

DATED at the City of Toronto this 22nd day of June 2011.

"original signed by"
Ronald A. Medoff

Witness:

DATED at the City of Toronto this 22nd day of June 2011.

"original signed by"
Mayer Hoffer

Witness:

Part II

STATEMENT OF FACTS

1. Villabar Real Estate Inc. ("Villabar") is an Ontario corporation with its head office in Toronto. Villabar is in the business of acquiring income producing properties, which Villabar offers to investors as limited partnership investments.
2. Ronald A. Medoff ("Medoff") is the Senior Officer, a director of Villabar.
3. St. Clair Research Associates Inc. ("St. Clair") is an affiliate of Villabar.
4. Dr. Mayer Hoffer was the Vice-President and a director of the general partner for the limited partnerships distributed by Villabar in 2004, 2005 and 2008. Dr. Hoffer was not involved in the day-to-day management of the general partner.

Background

5. Villabar has offered limited partnership investments to investors in New Brunswick since 1991. Staff takes no issue with the merits of these investments, which appear to have performed as intended.
6. Prior to July 2004, when the Commission adopted Emergency Rule 45-501, which changed the regulatory requirements for the distribution of the limited partnerships, Villabar relied on the "minimum investment" exemption from the prospectus requirements, which required each investor to invest a minimum of \$97,000.
7. Prior to July 2004, there was no requirement for sales agents of the issuer to be registered. Villabar distributed its limited partnership investments through financial planning advisors in New Brunswick, including the respondent Wayne Mallett (the "NB Group").

Change in New Brunswick Securities Law

8. Following the adoption in New Brunswick of Emergency Rule 45-501 in July 2004, Villabar was required to change the manner in which it distributed its limited partnership offerings. Specifically, Villabar relied on the exemption from the prospectus requirements in section 2.7 of Emergency Rule 45-501, which provided an exemption for an issuer who filed an offering memorandum in the required form.

9. Pursuant to section 2.7 of Emergency Rule 45-501, an issuer is prohibited from paying a commission or finder's fee, in connection with a trade, to any person other than a registered dealer. At that time, the agents who had distributed Villabar's limited partnership investments in New Brunswick for the previous 13 years were not registered with the Commission.

10. Emergency Rule 45-501 was replaced by National Instrument 45-106 on 14 September 2005. Section 2.9(6) of National Instrument also prohibited the payment of commissions to persons other than registered dealers on trades exempted under the Offering Memorandum exemption,

11. Villabar sought to market its limited partnerships directly to investors in New Brunswick in 2004, 2005 and 2008. Villabar issued offering memorandums and filed reports of exempt distribution for each of the distributions in 2004, 2005 and 2008. As particularized below, Villabar continued to receive administrative support from the NB Group for which payments were made.

Payments to NB Group

12. Although Villabar sold its limited partnerships directly to investors in New Brunswick after July 2004, Villabar continued to make payments to the NB Group, as particularized below.

13. Villabar paid the NB Group a proportionate share of the administration fees collected by Villabar for previously sold limited partnerships, in consideration for the NB Group continuing to

provide administrative services in relation to those projects. The administration fees, which were disclosed in the Offering Memoranda, were paid in the following years and amounts: \$182,000 in 2004; \$207,000 in 2005; \$214,000 in 2006; \$210,000 in 2007; \$256,000 in 2008, \$120,000 in 2009, \$120,000 in 2010 and \$47,500 to date in 2011.

14. Villabar also paid the NB Group a one-time "goodwill payment" of \$750,000 in consideration for directly accessing the client lists of the NB Group to facilitate the direct sales of its new limited partnerships. This payment was negotiated in 2004, prior to the marketing of the Villabar Properties (2004) Limited Partnership, the Villabar Properties (2005) Limited Partnership, or the Brant Park Partnership in 2008.

15. Further, in each of 2004, 2005 and 2008, Villabar paid the NB Group a \$20,000 fee in respect of the distribution of the partnerships for assisting with the sales. Villabar did not disclose these payments as "compensation in respect of a distribution" in the respective offering memoranda provided to investors and in the reports of exempt distribution filed with the NBSC. Villabar admits that the non-disclosure in respect of the 2004 distribution was contrary to sections 2.7(3) and 6.3(1) of Emergency Rule 45-501, and that the non-disclosure in respect of the 2005 and 2008 distributions was contrary to sections 6.3(1) and 6.4(1) of National Instrument 45-106.

16. In January of 2006, Staff asked Villabar whether it had paid any compensation pursuant to 2005 distribution. In its response to this question, Villabar did not disclose the \$20,000 payment, based on the rationale that it was for administrative services.

17. Although the payments made by Villabar to the NB Group were not directly tied to the sales of limited partnership units, the payments were of a similar magnitude to the amount the NB Group would have received under the prior commission-based compensation structure.

18. Villabar acknowledges that while the payments were not intended as commissions, the result could be reasonably perceived as an attempt to circumvent the restrictions in section

2.7(3) of Emergency Rule 45-501, and section 2.9 of National Instrument 45-106, which prohibited the payment of commissions except to registered dealers. Consequently, Villabar admits that, given the totality of circumstances, its conduct in paying compensation to the NB Group was contrary to the public interest.

19. Medoff and to a lesser extent, Hoffer, authorized permitted or acquiesced in the actions of Villabar set out above. Certain of these payments were made by St. Clair.

20. Villabar has cooperated in providing information to Staff during the course of the investigation.

21. None of Villabar, Medoff or Hoffer has previously been the subject of any regulatory proceedings by the Commission in New Brunswick.