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Settlement Agreement

George Melvin Grafton, Grafton Global Management Ltd. and Valley Mortgage and Investment Company Ltd.

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between George Melvin Grafton (Grafton), Grafton Global Management Ltd. (Grafton Global) and Valley Mortgage and Investment Company Ltd. (Valley) and the Executive Director.

Agreed statement of facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Grafton, Grafton Global and Valley acknowledge the following facts as correct:

1. Grafton, a British Columbia resident, was registered in various capacities under the Securities Act, RSBC 1996, c.418 (the Act) and its predecessor legislation from January 1982 to July 7, 1997.
2. From November 30, 1994 to March 10, 1997 Grafton was registered as a trading partner/director/officer with Grafton Global (formerly Grafton Asset Management Group Ltd.).
3. Grafton Global, a British Columbia company, had a seat on the Vancouver Stock Exchange from October 17, 1994 until March 11, 1997.
4. Grafton is now 62 years old and is no longer registered under the Act in any capacity.
5. Valley, a British Columbia company incorporated in September 1994, is not a reporting issuer and has never been registered to trade in securities. At all material times Grafton was the directing mind of Valley.

The securities

6. In or about March 1996, approximately 90 Grafton Global clients invested a total of \$4.11 million in Valley (the 1996 Investments). Of the \$4.11 million, \$2 million came from “roll-overs” of investments previously made in Valley, and \$2.11 million came from new investments.
7. In November 1996, approximately 13 Grafton Global clients invested \$550,000 in Valley (the November 1996 Investments).
8. Between March and May 1997, seven clients of Grafton invested \$450,000 in Valley (the 1997 Investments).

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9. The money raised from the 1996 Investments, the November 1996 Investments and the 1997 Investments (together, the Valley Investments) was lent to developers who were developing property in the Kelowna area.

Misrepresentation

10. In some cases, in order to effect a trade in the Valley Investments, Grafton stated that the Valley Investments were a lower risk investment than stock exchange listed securities. Grafton knew or ought reasonably to have known this statement was confusing and misrepresented the risk of the Valley Investments to investors, contrary to section 35(1)(d) of the *Securities Act*, SBC 1985, c. 83 as amended (the Former Act) and section 50(1)(d) of the Act.

Undisclosed conflict of interest

11. Grafton Global, Grafton and Valley were connected parties within the meaning of section 75 of the *Securities Rules*, BC Reg. 479/95 and BC Reg. 194/97 (the Rules). A registrant and a person that has a relationship with the registrant are connected parties if the relationship would lead a reasonable prospective purchaser of securities to question whether the registrant and the person were independent of each other. In this case, Grafton was the directing mind of Valley during the period when the Valley Investments were sold to investors and Grafton should have disclosed this.
12. Grafton and Grafton Global advised their clients with respect to the Valley Investments without first advising their clients of their relationship to Valley, contrary to section 81(1)(a) of the Rules.
13. Grafton and Grafton Global traded in the Valley Investments in the course of an initial distribution of securities, without:
 - (a) filing a conflict of interest rules statement in the required form;
 - (b) providing to clients a copy of the current conflict of interest rules statement; or
 - (c) sending written confirmation to clients after their purchase of Valley Investments that Grafton, Grafton Global and Valley were connected parties,all contrary to sections 77 and 79 of the Rules.

Failure to ensure suitability

14. The Valley Investments were higher risk than explained by Grafton at the time, and were illiquid and speculative. The Valley Investments were therefore not suitable for many of the clients, contrary to section 48 of the Rules.

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15. In particular:

- (a) neither Grafton nor Grafton Global made reasonable inquiries to determine and understand their clients' essential and current financial and personal circumstances;
- (b) many clients had either a low risk tolerance or a need for short-term income for which the Valley Investments were unsuitable;
- (c) other clients had an unsuitably high percentage of Valley Investments in their portfolios; and
- (d) Grafton recommended that clients transfer funds from or redeem lower risk investments in order to complete purchases of the Valley Investments, when this was not appropriate for the client.

Discretionary trading

16. In some cases, Grafton directed trades in the Valley Investments on behalf of clients although he was not registered as a portfolio manager or investment counsel, contrary to section 20(1)(c) of the Former Act and section 34(1)(c) of the Act.

17. In some cases, Grafton did not inform his clients of their purchase of Valley Investments until after the fact, contrary to section 14 of the Rules.

Breaches of the Act and conduct contrary to the public interest

18. Grafton and Grafton Global breached:

- (a) sections 77, 79 and 81 of the Rules by failing to comply with the conflict of interest requirements; and
- (b) sections 14 and 48 of the Rules by selling or recommending the Valley Investments to clients for whom the investment was unsuitable, without the client's knowledge, or without disclosing the conflict of interest.

19. Grafton also breached:

- (a) section 35(1)(d) of the Former Act and section 50(1)(d) of the Act by misrepresenting the Valley Investments as lower risk; and
- (b) section 20(1)(c) of the Former Act and section 34(1)(c) of the Act by acting as a portfolio manager or investment counsel without registration to do so.

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20. The conduct of Grafton, Grafton Global and Valley was contrary to the public interest.

Mitigating factors

- ¶ 3 Although Grafton agrees that it would otherwise be appropriate in the circumstances that he undertake to pay \$100,000 to the Commission, the Executive Director has taken into account the following facts as mitigating the sanctions which would otherwise apply in the public interest:
1. Grafton, an investment dealer, and others entered into a confidential settlement with investors in the Valley Investments, as a result of which all or a significant portion of their investments will be repaid (the Investor Settlement); and
 2. Grafton, because of his obligations under the Investor Settlement, his age, limited financial resources, and lack of employment or realistic prospects of obtaining employment, has no ability to pay any significant monetary amount and no prospect of being able to do so in the foreseeable future.

Undertaking

- ¶ 4 Grafton undertakes not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 5 Grafton consents to an order by the Executive Director (the Order) that:
1. under section 161(1)(b) of the Act, Grafton permanently cease trading in or purchasing any securities except that Grafton may trade:
 - (a) in the securities of Grafton Global and Valley solely for the purposes of effecting the Investor Settlement;
 - (b) the securities held by him at the time the Order through two registered retirement savings plan (RSP) accounts in his own name through a registered dealer, if Grafton provides the registered dealer with a copy of the Order before any trades take place; and
 - (c) one non-RSP account in his own name through a registered dealer, if Grafton provides the registered dealer with a copy of the Order before any trades take place;

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2. under section 161(1)(d) of the Act, Grafton resign any position he may hold as a director or officer of any issuer and be permanently prohibited from becoming or acting as a director or officer of any issuer, except that he may continue to act as a director or officer of:
 - (a) Grafton Global and Valley solely for the purposes of effecting the Investor Settlement; and
 - (b) an issuer in which all of the securities are owned directly, indirectly or beneficially by Grafton; and
3. under section 161(1)(d) of the Act, Grafton be permanently prohibited from engaging in investor relations activities.

¶ 6 Grafton Global and Valley consent to an order by the Executive Director that under section 161(1)(b) of the Act Grafton Global and Valley each be permanently prohibited from trading in or purchasing securities, and all persons be permanently prohibited from trading in the securities of Grafton Global and Valley, except to the extent necessary to facilitate the Investor Settlement.

Waiver

¶ 7 Grafton, Grafton Global and Valley waive any right they may each have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

¶ 8 December 2, 2004

¶ 9 “George Grafton”
George Melvin Grafton

“J. Graham”)
Witness Signature)
James R.N. Graham)
Witness Name (please print))
9-539 Cruice Lane, Box 1724)
Gibsons, BC V0N 1V0)
Address)
Lawyer, Notary, Comm. of Oaths)
Occupation)

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¶ 10 December 2, 2004

¶ 11 “George Grafton”
Grafton Global Management Ltd.
(Signing Authority)

“J. Graham”)
Witness Signature)
James R.N. Graham)
Witness Name (please print))
9-539 Cruice Lane, Box 1724)
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¶ 12 December 2, 2004

¶ 13 “George Grafton”
Valley Mortgage and Investment
Company Ltd.
(Signing Authority)

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Gibsons, BC V0N 1V0)
Address)
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Occupation)

¶ 14 December 31, 2004

¶ 15 Brenda M. Leong
Executive Director