

## Jeffcoat-Sacco, Illona

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**Sent:** Thursday, April 23, 2015 4:39 PM  
**To:** Jeffcoat-Sacco, Illona  
**Subject:** Notification of Service for Case No. 18-2015-CV-00240 ( Public Service Commission, et al. vs. Grand Forks Bean Company, Inc. )

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Date Submitted: 4/23/2015 4:32:45 PM  
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Filing Desc: Exhibit J to Claim of Bremer Bank  
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89 GE-15-36 Filed: 4/23/2015 Pages: 15  
Notification of Service – Exhibit J to Claim of Bremer Bank

Bremer Bank, National Association  
John Schroeder, Zimney Foster P.C.



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**LOAN WORKOUT AGREEMENT**

- A. Parties to this Loan Workout Agreement (“Agreement”) are as follows:**
- **Grand Forks Bean Company, Inc.**, 2120 N. Washington Street, Grand Forks, ND 58203 (“Borrower”);
  - **Bremer Bank, National Association**, 3100 South Columbia Road, Grand Forks, ND 58201, and any and all Participants of the Loan described in this Agreement (“Bank”);
  - **Tad McGurk, as Personal Representative of the Estate of Todd McGurk, deceased**, Grand Forks, ND, (“Guarantor”).
- B. Effective date of this Agreement** is the 7th day of January, 2015.
- C. Purpose and Background of this Agreement.** The Borrower is indebted to the Bank on the Loans described in this Loan Workout Agreement below, which are secured by various categories of chattel and personalty, and guaranteed by Todd McGurk (deceased). The parties have negotiated this Agreement in an effort to avoid the hardship, expense, and time consumption of collection and litigation, and desire to set forth their understanding here.
- D. The Borrower’s Loans and indebtedness which are the subject of this Agreement are summarized as follows:**
- Bank Loan # 997-3 (“**Loan**”) evidenced by a Promissory Note (“**Note**”) dated October 14, 2013 in the principal face amount of \$1,000,000, executed and made by Borrower as Borrower in favor of Bank as Lender. The Loan is documented by a Business Loan Agreement dated October 13, 2014, is secured by a Security Agreement dated October 14, 2013, and guaranteed by Todd McGurk by a Commercial Guaranty dated October 14, 2013; as part of entering into this Agreement Borrower is executing a Mortgage on certain real property described further in said mortgage (collectively the above with the Note the “**Loan Documents**”). The balance due as of January 5, 2015 is \$878,708.94 principal, \$3,805.50 accrued interest, for a total of \$882,514.44 and \$103.74 interest per diem thereafter.
- E. Loan Security.** The Loan is currently secured by a security interest granted in a Security Agreement by Borrower in favor of Bank in all of Borrower’s Inventory, Equipment, and Accounts, now existing or hereafter acquired and all products and proceeds of the foregoing. This security interest is perfected by virtue of the filing in the public record by appropriate filing of UCC Financing Statements.
- F. Guarantor.** The Loan was also Guaranteed by Todd McGurk, now deceased. The guaranty document executed by Todd McGurk is binding on his heirs and assigns. Further Todd McGurk waived all defenses against the enforcement of the guaranty except for the payment in

full of the debt. Therefore, Guarantor, as the representative of the Estate of Todd McGurk, deceased, is fully liable for the payment of the Loan and has no defenses to the enforceability of the guaranty except for payment in full of the Loan.

**NOW, THEREFORE, FOR VALUABLE CONSIDERATION ACKNOWLEDGED AS HAVING BEEN EXCHANGED BY THE PARTIES, THE PARTIES AGREE AS FOLLOWS:**

1. **Acknowledgment of Accuracy of Recitals.** The Borrower and Guarantor acknowledge the above recitals are true and correct, and are incorporated into this Agreement by reference.
2. **Acknowledgment of Default.** The Borrower and Guarantor herein acknowledge that the Loan and Security Agreement are in default for reason of subjecting collateral to a charge or encumbrance, default in favor of Third Parties including "defaults under any...purchase or sales agreement", and a default exists because of an "Insolvency" which includes the "termination of Grantor's existence as a going business". Lastly, Creditor or Forfeiture Proceedings is a default, events affecting Grantor is a default as well Adverse Change of the Grantor's financial condition and Insecurity.
3. **Acknowledgement of Validity and Enforceability of Loans and Security.** The Borrower herein acknowledges that the Loans and security documents described in this Agreement are all valid, binding, perfected and enforceable, and subject to no defenses to payment or enforceability.
4. **Acknowledgment of Amount Owed.** The Borrower herein acknowledges that the outstanding indebtedness owed to Bank as of January 5, 2015 on the Loan is as follows:
  - a. Bank Loan # 997-3 dated October 14, 2013, balance due is \$878,708.94 principal, \$3,805.80 accrued interest, and \$103.74 interest per diem.
5. **Borrower Acknowledgment of Liability.** Borrower acknowledges that it is unconditionally liable for the amounts due under the Loan, as stated above, and that it has no defense, offset, counterclaim or recoupment to the collection of the indebtedness or the enforcement of the Notes, security documents involved herein, this Agreement, or the documents executed in conjunction with this Agreement. The Borrower acknowledges that the Bank, in entering into this Agreement, is relying on the truthfulness of the statements, warranties, representations, and agreements of the Borrower. The Borrower represents and warrants that this Agreement and the existing Loan documents were freely negotiated in good faith between the parties and entered into without duress, misapprehension, or undue influence.
6. **Guarantor Acknowledgment of Liability.** Guarantor acknowledges that in his representative capacity the Guarantor is unconditionally liable for the amounts due under

the Loans, as stated above, and that the Guarantor has no defense, offset, counterclaim or recoupment to the collection of the indebtedness or the enforcement of the Notes, security documents involved herein, this Agreement, or the documents executed in conjunction with this Agreement. The Guarantor acknowledges that the Bank, in entering into this Agreement, is relying on the truthfulness of the statements, warranties, representations, and agreements of the Guarantor. The Guarantor represents and warrants that this Agreement and the existing Loan documents were freely negotiated in good faith between the parties and entered into without duress, misapprehension, or undue influence.

7. **Acknowledgment of Acceleration Clause.** The Borrower and Guarantor acknowledge the validity of the acceleration clauses contained in the Loan documents and security documents referenced herein. The Borrower and Guarantor further acknowledge the Bank's right to have accelerated the Loan referenced herein upon the Borrower's failure to timely cure its default, except as limited by North Dakota law.
8. **Balance of Note to be timely paid according to the following terms as a condition of forbearance.** As a condition upon which Bank forbears taking further legal default and collection remedies under law and contract for the Note not being paid in full due to the default of Borrower, Borrower herein covenants to pay the balance otherwise due in full April 1, 2015 at which time Note # 997-3 shall mature and will be due in full.

Time is of the essence for the payments described above. Interest shall continue to accrue on the principal remaining balance of the Note during the period of forbearance described in this Agreement at the same rate as it was accruing prior to the date of this Agreement. Bank will apply the payments on the balance of the Note made by Borrower as stated above to accrued interest first and principal last.

9. **Agreement to surrender collateral.** Borrower agrees not to object to the Bank's right of repossession of all of the personal property and chattels securing the Loan to the Bank, including but not limited to all dry edible bean inventory, and the Bank may store the collateral in place until disposition can take place. The Bank may, without any objection of Borrower, dispose of the collateral in a reasonable manner, with application of the proceeds of disposition as a credit to the loan balance. Contemporaneously with this Agreement Borrower shall grant Bank a Mortgage on real property specifically described below and commonly known as 2120 N. Washington Street, Grand Forks, ND. Bank herein agrees to first look to the proceeds, if any, of any sale of the dry edible bean inventory, then to any other collateral (including real estate collateral), and finally to the guaranty of the Guarantor.
  - a. Surrender of collateral and reservation of deficiency rights. Pursuant to Section 9-609 of the Uniform Commercial Code as enacted in North Dakota, Borrower hereby agrees to commit not breach of peace and consents to the Bank keeping the collateral on site and to keep it secure and safe from theft, damage from the elements or otherwise, and from deterioration in value, and Borrower hereby

without opposition and peacefully surrenders to the Bank all of the collateral described in said Section E of this Agreement, so that the Bank can make commercially reasonable arrangements to dispose of the collateral. Borrower consents to any and all actions Bank may take in furtherance of disposing of the collateral, including the disclosure of information that would otherwise be confidential under law.

Borrower hereby agrees Bank may store the dry edible bean inventory in its current location without charge or any type of storage or handling fee. Borrower further grants Bank the right to access Borrower's storage facilities at any reasonable time, and without notice, for the purpose of monitoring and removing the dry edible bean inventory.

Borrower herein covenants it will make itself available and will execute any transfer documents or instruments required to complete transfer and surrender of all of Borrower's rights to the Bank in the event the within instrument is insufficient to do so.

This peaceable surrender of collateral by Borrower to the Bank herein operates to satisfy the indebtedness owed by the Borrower to the Bank only to the extent of the net recovery to the Bank from resale or other disposition of the collateral. The phrase "net recovery to the Bank" means the sale or other disposition proceeds remaining after deduction from the gross proceeds of the reasonable expenses of preparing the collateral for sale or other disposition, advertising the sale or other disposition, and paying commissions and other reasonable expenses of selling or otherwise disposing of the collateral, and paying superior liens, if any.

After applying the net recovery to the Bank to the total indebtedness owed by the Borrower to the Bank, the Borrower shall remain liable to the Bank for any deficiency, plus interest.

b. Disposition of collateral and rights to notice, surplus and redemption rights. The parties herein agree that the Bank may dispose of the collateral by sale, lease or otherwise, in any manner it deems fit as long as the sale or other disposition is conducted in a reasonable manner. Borrower (as well as inferior lienholders) are entitled to receive in writing from the Bank notice of the method, time and place of sale or other disposition of the collateral by the Bank.

Should there be a surplus of proceeds after application of the net recovery to the indebtedness, the surplus shall be remitted to the Borrower (and as stated above,

should there be any deficiency, the Borrower shall remain obligated to the Bank for such deficiency until it is paid or compromised).

The Borrower has the right to redeem the collateral prior to sale or prior to the Bank entering into a contract for sale, in cash for the amount of all loan debt owed, as permitted by the Uniform Commercial Code as enacted in North Dakota.

Nothing herein prevents the Borrower from being a cash buyer at any public sale of the collateral (such as an auction sale) as long as the Borrower is present and pays, on the day of the sale, the highest cash bid for any item of collateral sold at the public sale.

The Bank reserves the right to set in good faith and in a commercially reasonable manner "floor" or "minimum" prices for which it will permit collateral to be sold.

c. This transaction is not a bulk sale. The parties to this Agreement herein acknowledge and understand that this transaction is not a bulk sale or bulk transfer under the Uniform Commercial Code, in such jurisdictions where bulk sales law are in force. Rather, the parties acknowledge and understand this transaction is one of the exceptions to the bulk sale and bulk transfer law because this transfer is in settlement or realization of liens and security interests held by the Bank as secured party.

10. **Setoff of accounts.** The Bank has the right to setoff all Borrower's accounts with Bank (whether by checking, savings, or some other account). This right of setoff includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future, except as limited by the terms of the prior loans and by law. The Bank is not obligated to honor any debit transactions from Borrowers accounts, whether automatic debits, checks, or otherwise. If an item is returned to a payee due to lack of funds, all of Borrower's accounts with Lender will become subject to be setoff against the loans described above. The Bank is not obligated to cover any debits to any of Borrower's accounts without funds available.
11. **Grant of Mortgage.** Borrower shall grant to Bank a mortgage on the following described property: Lot Two (2), Block One (1), State Mill Addition to the City of Grand Forks, North Dakota. This Mortgage is given to Bank by Borrower contemporaneously with the execution of this Agreement. Bank may record this mortgage in the real estate records without any prior notice to Borrower and charge any recording fee to the Loan.

12. **Fees, costs, expenses and attorney's fees.** All of the Bank's costs and attorney's fees, including the drafting of this Agreement, shall be paid by Borrower and shall be added to the balance of indebtedness of the Borrower.
13. **Default.** Default under this Agreement shall consist of failure of the Borrower to perform any of the covenants they have herein made, or of the Borrower's failure to meet the deadlines prescribed in this Agreement. Default shall also occur in the event of any misrepresentation made by the Borrower or upon the filing of bankruptcy by the Borrower or the commencement of any insolvency proceedings against Borrower (including but not limited to any proceeding under N.D.C.C. ch. 60-04). If there is any change or deterioration in the condition of the Borrower, financial or otherwise, which causes the Bank in good faith to deem itself insecure or to be at risk of non-collection of all or any part of the indebtedness, the Bank may declare default under this workout agreement.
14. **Remedies.** In the event of default of this Agreement, the Bank may exercise such additional rights and remedies as are available to an aggrieved creditor pursuant to the Loan documents and the laws of the State of North Dakota, including but not limited to immediate possession of all chattels and personalty and foreclosure of the Mortgage given herein.
15. **In the event of foreclosure and disposition of the real estate.** In the event the sale of Borrower's dry edible bean inventory is insufficient to fully repay the Loan indebtedness, Borrower shall immediately upon demand of the Bank execute a deed in lieu of foreclosure which shall be delivered in escrow with Bank's attorney, Tracy A. Kennedy at Zimney Foster P.C. Said deed in lieu of foreclosure shall contain anti-merger language, which preserves the Mortgage liens held by the Bank, notwithstanding the Bank taking title, so that the Bank can protect itself against inferior liens and encumbrances on the real estate. The Borrower herein acknowledges that if the Bank, in its sole discretion, takes transfer of title and records the deed (which Borrower specifically authorizes Bank to so do without notice), if there are inferior liens and encumbrances on the real estate, the Bank must initiate a foreclosure action to cleanse the title of such inferior liens and encumbrances. Accordingly, and notwithstanding the surrender by the deed in lieu of foreclosure of their right, title, interest and redemption rights, the Borrower consents to be named as a party in the foreclosure action for purposes of properly cleansing the title of any inferior liens and encumbrances. Borrower covenants and agrees that it will not object to, interfere with, defend, or otherwise impair or impede the Bank's efforts to prosecute the foreclosure to cleanse the title. The Bank may dispose of the real estate collateral in any manner it deems fit, as long as the sale, lease or other disposition is conducted in a commercially reasonable manner, subject to the following:
  - a. Borrower will aid the Bank to target potential buyers. Upon request of the Bank, the Borrower will make itself available to aid the Bank in targeting perspective purchasers or lessees of the real estate and providing such

information as will assist the Bank in making the real estate attractive and valuable to potential buyers.

- b. Borrower will execute curative documents. In the event the Bank discovers any loan documentation concerning the real estate mortgage collateral to be insufficient, in the Bank's opinion, to protect the Bank's perfection as against other creditors, Borrower agrees to execute such reasonable curative documents as the Bank requests to aid the Bank in protecting its interests in such collateral.
16. **Bank will credit collateral proceeds recovery to the Loan.** After deducting reasonable expenses of retaking, advertising, readying the collateral for sale or other disposition, and other out-of-pocket costs directly associated with disposing of the collateral, the Bank will apply the remaining net proceeds as a credit to the Loan owed by the Borrower.
17. **Procedure in the event of a Loan and indebtedness balance shortfall.** If disposition of the collateral is insufficient to pay the Loans and other indebtedness of Borrower in full, principal and interest inclusive, the parties agree to negotiate in good faith on a plan for retirement of any such deficiency, and to refinance such deficiency with any existing collateral remaining under this Agreement or any such additional collateral as may be reasonably required to support refinancing of the deficiency. Should there be a default on the refinanced deficiency, the Bank reserves the right to realize upon any of the collateral granted to the Bank under this Agreement or pursuant to the refinancing. In the event the Borrower seeks relief under the United States Bankruptcy Code, the Bank shall be permitted to file a Proof of Claim for the full amount of any Loan balance shortfalls, principal, interest and collection costs inclusive, and the Bank reserves the right and ability to protect its interests in any such bankruptcy proceeding. Similarly, if any insolvency proceeding is initiated against Borrower under N.D.C.C. ch. 60-04 or any similar state law the Bank shall be permitted to file a Proof of Claim for the full amount of any Loan balance then outstanding, principal, interest and collection costs inclusive, and the Bank reserves the right and ability to protect its interests in any such proceeding.
18. **Borrower consents to be named in a foreclosure action by the bank against itself.** In the event the Bank commences a foreclosure lawsuit, the Borrower consents to be named as a technical defendant. The Borrower covenants not to resist, interfere with, or defend against any such suit.
19. **Satisfaction of Real Estate Mortgages.** Upon full performance by Borrower under this Agreement and the passage of 91 days without a bankruptcy filed by or involuntarily against Borrower, the Bank will satisfy the Real Estate Mortgage referenced herein.

20. **Borrower does not contemplate filing for bankruptcy.** The Borrower represents and warrants that it is not now planning to file for bankruptcy and that it has not been threatened with an involuntary bankruptcy. In the event the Borrower files bankruptcy, Borrower agrees it will not resist, object to or interfere with any motion the Bank may make to seek relief from the automatic stay so that the Bank may obtain and dispose of its collateral.
21. **Borrower shall not resist any actions taken by Bank in any insolvency proceeding.** The Borrower represents and warrants that it is not now a party to or subject of any insolvency proceeding, under N.D.C.C. ch. 60-04 or other similar law. In the event the Borrower becomes subject to such proceeding, Borrower agrees it will not resist, object to or interfere with any motion, petition, claim, or other legal action or theory the Bank may make or assert to preserve to the Bank the highest possible priority position in all of the collateral and for fullest possible recovery of the loan.
22. **Bank does not give tax advice, legal advice or management advice.** The Borrower and Guarantor herein covenant and agree they are not relying on the Bank for any tax advice, legal advice or management advice, and any such advice they desire or need has been or will be obtained from professionals or other sources of their own choosing.
23. **Opportunity to consult with counsel.** The Borrower and Guarantor agree that they have had the opportunity to consult with their own legal counsel and other counsel regarding this Agreement, and all legal, accounting, financial, tax, and bankruptcy and other advice related to this Agreement as they deemed appropriate before entering into this Agreement, and they have independently determined to enter into this Agreement.
24. **Borrower will cure any document deficiencies upon request.** The Borrower and Guarantor agree to promptly execute any documents identified by the Bank as having a deficiency.
25. **Confidentiality.** The Bank will not disclose this Loan Workout Agreement or its contents outside the Bank except to its attorneys and any Participant of the Loan, except in the event of default this Agreement may need to become a public record in any court proceeding. The Borrower and Guarantor will not disclose this Loan Workout Agreement or its contents with the exception that the Borrower and/or Guarantor may disclose this Agreement to their attorneys and to prospective lenders and refinanciers. The recording by Bank of the Mortgage to be granted by Borrower is not a violation of this provision. Any disclosure of any information either permitted or required under N.D.C.C. § 6-08.1-02 by either the Bank or any Participant of the Loan is not a violation of this provision.
26. **Modifications in writing only.** Any modification of this Agreement, to be valid, must be in writing and signed by all parties hereto.
27. **No renewal or future financing promises.** Nothing in this Agreement shall be construed as a promise by the Bank to renew or provide future financing for the Borrower or Guarantor.

28. **Workout agreement serves multiple purposes.** The Borrower and Guarantor acknowledge and agree that in the event the Borrower files bankruptcy or is involuntarily filed into bankruptcy, the provisions of this Agreement will remain in full force and effect as an "adequate protection agreement", and any plan of reorganization or rehabilitation shall include the workout provisions as to how the Bank will be repaid under a bankruptcy plan.
29. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
30. **North Dakota Law Governs.** This Agreement shall be governed, interpreted and enforced under North Dakota law.
31. **No Waiver.** No delay or failure by the Bank in the exercise of any right or remedy under this Agreement or under law shall constitute a waiver thereof, and no single or partial exercise by the Bank of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.
32. **All prior agreements and contracts of parties remain in effect.** Unless specified in this Agreement, all covenants, terms, and conditions of the parties original loan documents, including all promissory notes, security agreements, mortgages, and guaranty contracts, and modifications thereto shall remain in full force and effect.
33. **Release of Claims.** Borrower and Guarantor hereby release and discharge Bank (including any Loan Participant) its officers, directors, employees, and agents, including but not limited to David Gronlie of Immediate Financial Solutions, Inc., of and from any and all claims, causes of action, or liabilities of any kind or nature, now known or hereafter discovered, from whatever cause arising (collectively, "*Claims*"), all of which Claims are expressly hereby waived. This waiver and release of Claims is unconditional, immediate, and binding upon Borrower and Guarantor, and their successors in interest, for all purposes in all proceedings hereafter, including without limitation any proceedings under the United States Bankruptcy Code. This waiver and release of Claims is a material and expressly bargained-for consideration of this Agreement, severable, and independently enforceable notwithstanding a finding that any other provision hereof is unenforceable. Borrower and Guarantor irrevocably covenant and agree forever to refrain from initiating, filing, instituting, maintaining, or proceeding upon, or encouraging, advising or voluntarily assisting any other person or entity to initiate, institute, maintain or proceed upon any Claims of any nature whatsoever released in this release.

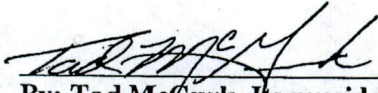
- 34. This Agreement may be signed in counterparts. This Agreement may be executed in counterparts, all of which gathered and taken together shall constitute one binding Agreement.**

**IN WITNESS WHEREOF, the parties have set their hands effective the day and year first above written.**

**[COUNTERPART SIGNATURES ON THE FOLLOWING THREE PAGES]**

**COUNTERPART SIGNATURE PAGE  
LOAN FORBEARANCE AND EXTENSION AGREEMENT  
Effective the 7th day of January, 2015**

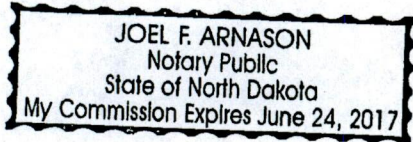
**GRAND FORKS BEAN COMPANY, INC.**

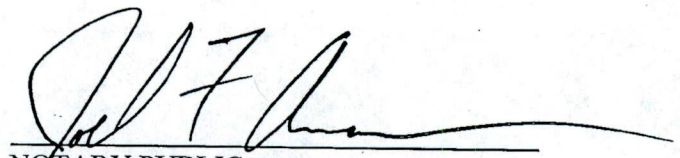
  
\_\_\_\_\_  
By: Tad McGurk, Its president

STATE OF NORTH DAKOTA )  
  )ss  
COUNTY OF GRAND FORKS )

On this 14 day of January, 2015, before me personally appeared **Tad McGurk**, known to me to be the **President of Grand Forks Bean Company, Inc.**, the corporation which executed the above and foregoing instrument and acknowledged to me that on behalf of said corporation same was executed as the corporate free act and deed.

(NOTARY SEAL)



  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



COUNTERPART SIGNATURE PAGE  
LOAN FORBEARANCE AND EXTENSION AGREEMENT  
Effective 7th day of January, 2015

BREMER BANK, NATIONAL ASSOCIATION



By: Angie Baumann, Its VP

STATE OF North Dakota,  
COUNTY OF Grand Forks)<sup>ss.</sup>

On this 15<sup>th</sup> day of January, 2015 before me personally appeared Angie Baumann known to me to be the Vice-President of Bremer Bank, National Association, the banking corporation which executed the above and foregoing instrument and acknowledged to me that on behalf of said corporation same was executed as the corporate free act and deed.

(NOTARY SEAL) \_\_\_\_\_

Shirley Bakken  
NOTARY PUBLIC  
My Commission Expires:

SHIRLEY BAKKEN  
Notary Public  
State of North Dakota  
My Commission Expires June 24, 2017