Court File No. CV-12-9930-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

[COMMERCIAL LIST]

IN THE MATTER OF THE RECEIVERSHIP OF First Leaside Wealth Management Inc. and the Applicants Listed on Schedule "A" (collectively, "**First Leaside**")

MOTION RECORD

(Returnable February 27, 2018)

February 16, 2018

BLAKE, CASSELS & GRAYDON LLP
199 Bay Street, Suite 4000
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Lawyers for Grant Thorton Limited in its capacity as Court-Appointed Receiver

Schedule A – List of Additional Receivership Applicants

First Leaside Finance Inc.
First Leaside Securities Inc.
FL Securities Inc.
Mill Street Limited Partnership
Harmony Townhomes Limited Partnership
First Leaside Management Inc.
Development Notes Limited Partnership
Special Notes Limited Partnership
First Leaside Accounting and Tax Services Inc.
First Leaside Realty Inc.
First Leaside Realty Limited Partnership
First Leaside Realty II Inc.
First Leaside Investors Limited Partnership
First Leaside Premier Limited Partnership
First Leaside Progressive Limited Partnership
First Leaside Realty II Limited Partnership
First Leaside Ultimate Limited Partnership
First Leaside Universal Limited Partnership
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First Leaside Retirement Residences Limited Partnership
First Leaside Venture Limited Partnership
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1024919 Ontario Inc.
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1056971 Ontario Inc.
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1376095 Ontario Inc.
F.L. Spring Valley Limited Partnership
1437290 Ontario Ltd.
First Leaside Partners Limited Partnership
First Leaside Opportunities Limited Partnership
1244428 Ontario Ltd.
Preston Racquet Club Real Estate Limited Partnership Series 910PA
Preston Racquet Club Real Estate Limited Partnership Series 910PB
Preston Racquet Club Real Estate Limited Partnership Series 910PC
Preston Racquet Club Real Estate Limited Partnership Series 910PD
PrestonOne Development (Canada) Inc.
PrestonTwo Development (Canada) Inc.
PrestonThree Development (Canada) Inc.
PrestonFour Development (Canada) Inc.
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First Leaside Acquisitions Limited Partnership

Queenston Manor General Partner Inc.
Queenston Manor Limited Partnership
2107738 Ontario Inc.
First Leaside Advantage Limited Partnership
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Cherry Park Retirement Residences Limited Partnership
First Leaside Retirement Residences (Okanagan) Limited Partnership
Orchard Valley Retirement Residences Limited Partnership
The Shores Retirement Residences Limited Partnership
F.L. PrimeTime Living Limited Partnership

TO: THE SERVICE LIST ATTACHED HERETO

FIRST LEASIDE SERVICE LIST
As at February 16, 2017

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AND TO:	**John Wilson** 18 Ringwood Drive, Suite 5-225 Stouffville, ON L4A 0N2 Tel: 647-385-6543 Email: jwilsoncanada@gmail.com	**AND TO:**	**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE (INCOME TAX, PST)** 33 King Street West, 6th Floor PO Box 620 Oshawa, ON L1H 8E9 **Kevin J. O'Hara** Email: kevin.ohara@ontario.ca
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AND TO:	**PITNEY BOWES** 5500 Explorer Drive Mississauga, ON L4W 5C7 Tel: 905-219-3000 Fax: 905-219-3826 Email: pbdiagnostics@pb.com	**AND TO:**	**Margaret Davis** 430 Durham Road 8 Uxbridge, ON L9P 1R1 Email: mjddavis56@gmail.com

AND TO:	**BORDEN LADNER GERVAIS LLP** 40 King Street West Scotia Plaza, 44th Floor Toronto, ON M5H 3Y4 **James Douglas** Tel: 416-367-6029 Fax: 416-367-6749 Email: jdouglas@blg.com **Lawyers for the Canadian Investor Protection Fund**	**AND TO:**	**BLANEY MCMURTRY LLP** 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5 **John Papadakis** Tel: 416-593-1221 Fax: 416-593-5437 Email: jpapadakis@blaney.com **Ontario Lawyers for the Toronto-Dominion Bank**
AND TO:	**MCMILLAN LLP** 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 **Brett G. Harrison** Tel: 416-865-7932 Fax: 416-865-7048 Email: brett.harrison@mcmillan.ca **Lawyers for the trustee in Bankruptcy of Mr. Phillips and of Mr. Wilson**		**FARBER GROUP** 150 York Street, Suite 1600 Toronto, ON M5H 3S5 **Rob Stelzer** Tel: 416-496-3500 Fax: 416-627-8358 Email: rstelzer@farbergroup.com **Trustee in Bankruptcy of Mr. Phillips and of Mr. Wilson**

PARTIES WITHOUT EMAIL ADDRESSES

AND TO:	**TOYOTA CREDIT CANADA INC.** 80 Micro Court Markham, ON L3R 9Z5 Tel: 905-513-8200 Fax: 905-513-9776	**AND TO:**	**THE TORONTO-DOMINION BANK** 55 King Street West, 3rd Floor Toronto, ON M5K 1A2

INDEX

Court File No. CV-12-9930-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

[COMMERCIAL LIST]

IN THE MATTER OF THE RECEIVERSHIP OF First Leaside Wealth Management Inc. and the Applicants Listed on Schedule "A" (collectively, "**First Leaside**")

MOTION RECORD

(Returnable February 27, 2018)

I N D E X

TAB 1

Court File No. CV-12-9930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

IN THE MATTER OF THE RECEIVERSHIP OF First Leaside Wealth Management Inc. and the Applicants Listed on Schedule "A" (collectively, "**First Leaside**")

NOTICE OF MOTION
(Returnable 27, 2018)

Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of First Leaside, will make a motion to a judge presiding over the Commercial List on February 27, 2018, at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

[ ] in writing under subrule 37.12.1(1);

[ ] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally.

THE MOTION IS FOR AN ORDER:

(a) approving the Phillips Settlement (as defined below); and

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(b) authorizing the Receiver to pay the Wilson Unit Distribution (as defined below) to the Wilson Trustee (as defined below); and

(c) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

A. Procedural Context

(a) On February 23, 2012, Mr. Justice Brown issued an order in the CCAA Proceedings (as amended, the "**Initial Order**"), granting FLWM and the entities listed on Schedule "A" to the Initial Order (collectively, the "**CCAA Applicants**") the protection of a stay of proceedings and, *inter alia*, appointing GTL as Monitor, confirming the appointment of G.S. MacLeod & Associates Inc. as the CCAA Applicants' Chief Restructuring Officer ("**CRO**") and appointing Fraser Milner Casgrain LLP (now Dentons Canada LLP) as Representative Counsel in the CCAA Proceedings to approximately 1,200 investors (the "**Investors**") who are clients of First Leaside Securities Inc. ("**FLSI**");

(b) Under the direction of the CRO, between the date of the Initial Order and December 2012, the majority of the assets and undertakings of the CCAA Applicants were wound up in an effort to maximize recoveries for affected stakeholders;

(c) On December 7, 2012, Mr. Justice Wilton-Siegel issued an order (the "**Receivership Order**"), appointing GTL as Receiver, without security, over all of the assets, undertakings and properties of First Leaside;

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(d) On December 7, 2012, the Receiver was authorized and directed to administer a claims process (the "**Claims Process**") for claims of all the known creditors (the "**Creditors**") of First Leaside, and acknowledging the claims of Investors;

(e) On July 24, 2013, the Court issued an order (the "**Interim Distribution Order**") authorizing the Receiver to make an interim distribution to creditors on the terms set out in the Interim Distribution Order (the "**Interim Distribution**"), including a holdback of certain funds in respect of, among other things: i) the future administration costs of the receivership; and ii) certain disputed and unresolved claims;

(f) In accordance with the Interim Distribution Order, the Receiver made the Interim Distribution between July 2013 and August 2013;

B. Proceedings involving Mr. Phillips and Mr. Wilson

(g) On October 28, 2015, the Ontario Securities Commission (the "**OSC**") issued an order requiring, among other things, that Mr. David Phillips, the former CEO of First Leaside ("**Mr. Phillips**") and Mr. John Wilson, a director and officer of certain First Leaside entities ("**Mr. Wilson**") jointly and severally disgorge to the OSC $7,817,739, that Mr. Phillips, in addition, disgorge to the OSC $8,779,515, and that Mr. Phillips and Mr. Wilson, in addition, pay $340,867 in costs (the "**Sanction Order**");

(h) First Leaside, under the direction of the CRO, has brought proceedings against Mr. Philips, Ms. Davis and 970877 Ontario Inc. ("**970**"), a wholly owned holdings

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company of Mr. Philips (the “**Civil Action**”), seeking an aggregate of approximately $6.5 million from Mr. Phillips and 970, and approximately $2.7 million from Ms. Davis, on account of unpaid loans and improper payments of funds out of First Leaside entities. The Receiver continued the Civil Action commenced by First Leaside;

(i) On or about February 28, 2013, Mr. Phillips filed a proof of claim with the Receiver in the Claims Process, claiming an aggregate unsecured amount of $3,384,425 (the “**Phillips Claims**”);

(j) On or about June 25, 2013, the Receiver issued a notice of disallowance to Mr. Phillips, disallowing the Phillips Claims in full;

(k) Following the issuance of the Sanction Order, the Receiver held back distributions payable to Mr. Phillips and Mr. Wilson, pending the resolution of appeals related to the Sanction Order or other claims involving them, and confirmed to the OSC that no amounts would be distributed to Mr. Phillips or Mr. Wilson without an order of the Court, to be sought on notice to the OSC;

(l) The amount of distribution which would otherwise be owing to Mr. Phillips in respect of the Phillips Claims totals $890,198, which amount was held back in its entirety from the Interim Distribution, in accordance with the Initial Distribution Order. In addition, the Receiver held back the further sum of $77,534 in respect of distributions Mr. Phillips would otherwise be entitled to on account of his units held in various First Leaside products (the “**Phillips Unit Distribution**”);

C. Bankruptcies of Mr. Phillips and Mr. Wilson

(m) On June 5, 2017, Mr. Phillips and Mr. Wilson each filed a notice of intention to make a proposal under subsection 50.4(1) of the *Bankruptcy and Insolvency Act*. Each proposal was rejected by a majority of Mr. Phillips' and Mr. Wilson's creditors, and both Mr. Phillips and Mr. Wilson were deemed to have made an assignment in bankruptcy;

(n) A. Farber & Partners was appointed as bankruptcy trustee in both Mr. Phillips' (in such capacity, the "**Phillips Trustee**") and Mr. Wilson's (in such capacity, the "**Wilson Trustee**") bankruptcies;

(o) The Receiver has submitted a claim in the bankruptcy of Mr. Phillips in respect of the Civil Action (the "**Receiver's Claim**");

D. Approval of the Phillips Settlement

(p) The Receiver and the Phillips Trustee have negotiated a settlement in respect of the Receiver's Claim and the Phillips Claims (the "**Phillips Settlement**") which is fair, reasonable and in the best interest of creditors generally;

(q) The material terms of the Phillips Settlement include the following: (i) the Phillips Trustee Trustee withdraws the Phillips Claims and related disputes filed in respect of the Receiver's disallowance of the Phillips Claims; (ii) the Receiver and the Phillips Trustee agree that the Receiver's Claim in respect of the Civil Action shall be accepted as a provable claim in Mr. Phillips' bankruptcy estate and valued at $4,847,132.67; (iii) the Receiver shall pay to the Phillips Trustee the Phillips Unit

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Distribution, being $77,534 (iv) the Receiver and the Phillips Trustee provide a mutual release in respect of any claims related to the Civil Action, the Phillips Claims and the Phillips Unit Distribution; (v) the Receiver reserves its rights to pursue any of its claims which are not released pursuant to section 178 of the BIA; and (vi) the Phillips Settlement is subject to the approval of this Court;

(r) The Receiver is recommending approval of the Phillips Settlement for the following reasons : (i) it avoids the Receiver and the Phillips Trustee from having to litigate the Phillips claim and the Receiver's claim matter; (ii) it is uncertain whether the Receiver would be able to recover any proceeds from Mr. Phillips' estate, given his bankruptcy; (iii) it does not affect the Receiver's ability to continue the Civil Action against Ms. Davis; and (iv) it brings certainty and finality to this matter;

E. Authorization for the Wilson Unit Distribution

(s) The Receiver held back distributions of $79,758, payable to Mr. Wilson, (the "**Wilson Unit Distribution**"), pending the results of OSC proceedings for breaches of the *Securities Act*, (Ontario);

(t) The Receiver now seeks this Court's authorization to pay the Wilson Unit Distribution to the Wilson Trustee, for the general benefit of Mr. Wilson's creditors;

(u) The payment of the Wilson Unit Distribution is in the best interest of stakeholders generally, given that it will fund any investigations deemed by the Wilson Trustee or Mr. Wilson's bankruptcy inspectors, and otherwise be available to Mr. Wilson's creditors, including the OSC;

I. Other Grounds

(v) The Appointment Order;

(w) The Receivership Order;

(x) The Interim Distribution Order;

(y) The Sanction Order;

(z) Rules 1.04, 2.01, 2.03, 3.02, 5.03, 16 and 37 of the *Rules of Civil Procedure,* R.R.O. 1990, reg. 194, as amended;

(aa) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended; and

(bb) Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

(a) the Motion Record;

(b) the Fifth Report, together with the Appendices thereto, filed;

(c) the pleadings and proceedings herein; and

(d) such further and other evidence as counsel may advise and this Honourable Court may permit.

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February 16, 2018

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Lawyers for the Receiver

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The Shores Retirement Residences Limited Partnership
F.L. PrimeTime Living Limited Partnership

Court File No: CV-12-9930-00CL

IN THE MATTER OF THE RECEIVERSHIP OF FIRST LEASIDE WEALTH MANAGEMENT AND THE APPLICANTS LISTED ON SCHEDULE "A"

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

NOTICE OF MOTION
(RETURNABLE FEBRUARY 27, 2018)

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TAB 2

Court File No. CV-12-9930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 101 OF THE
***COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED**

IN THE MATTER OF THE RECEIVERSHIP OF
FIRST LEASIDE WEALTH MANAGEMENT INC. AND
THE APPLICANTS LISTED ON SCHEDULE "A" (collectively "FIRST LEASIDE")

FIFTH REPORT TO COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER OF FIRST LEASIDE

FEBRUARY 15, 2018

GrantThornton

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 101 OF THE
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IN THE MATTER OF THE RECEIVERSHIP OF
FIRST LEASIDE WEALTH MANAGEMENT INC. AND
THE APPLICANTS LISTED ON SCHEDULE "A" (collectively "FIRST LEASIDE")

FIFTH REPORT TO COURT OF GRANT THORNTON LIMITED
IN ITS CAPACITY AS RECEIVER OF FIRST LEASIDE

FEBRUARY 15, 2018

INTRODUCTION

1. On February 23, 2012, an application was made to the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), by First Leaside Wealth Management Inc. and certain related parties (the "**CCAA Applicants**") to commence proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). On that date, the Court issued an order (as amended by the Court from time to time, the "**Initial Order**"), *inter alia*, granting the CCAA Applicants the protection of a stay of proceedings and appointing Grant Thornton Limited ("**GTL**") as monitor (the "**Monitor**"), G.S. MacLeod & Associates Inc. as the chief restructuring officer (the "**CRO**") and Dentons Canada LLP (formerly Fraser Milner Casgrain LLP) as representative counsel ("**Representative Counsel**") to approximately 1,200

investors (the “**Investors**”) who are clients of First Leaside Securities Inc. (“**FLSI**”).

2. The Initial Order also provided for a general stay of all proceedings against the CCAA Applicants and against any former, current or future director or officer of the CCAA Applicants with respect to any claim against any director or officer that arose before the date of the Initial Order relating to any obligation in which such director or officer was alleged to be liable in their capacity as director or officer, or the payment or performance of such obligations. Such stay of proceedings in respect of the directors and officers was terminated on February 19, 2013.

3. As set out in the CRO’s affidavit sworn December 3, 2012, the CRO brought a motion to terminate the CCAA proceedings and sought the appointment of a receiver and manager in an effort to, among other things, realize on remaining assets, reduce administration costs and ultimately facilitate distributions to stakeholders under the supervision of this Court.

4. On December 7, 2012, Mr. Justice Wilton-Siegel issued an order appointing GTL as receiver (the "**Receiver**”) without security, of all of the assets, undertakings and properties of First Leaside.

5. During the course of its CCAA proceedings, First Leaside, under the direction of the CRO, undertook to liquidate its assets for the benefit of its stakeholders, including mortgagees, Investors, and other Creditors.

6. On December 7, 2012, pursuant to another order of the Court, the Receiver was authorized and directed to administer a claims process (the "**Claims Process**") for claims of all the known creditors (the "**Creditors**") of First Leaside and acknowledging the claims of Investors.

7. On December 7, 2012, pursuant to a further order, the Court authorized and approved, among other things, the activities of the CRO and the Monitor, the fees and disbursements of the Monitor and its counsel for the period up to and including November 30, 2012, the release and discharge of the Monitor and the CRO, as well as the transitioning of certain orders that were made in the CCAA proceedings, including the continued appointment of Representative Counsel, into the receivership proceedings. The fees and disbursements of Representative Counsel were approved by an order of the Court on December 17, 2012.

8. On December 27, 2012, Mr. Justice Morawetz issued an order (the "**Joint Administration Order**") authorizing the Receiver to, *inter alia*, administer the receivership estates of the various First Leaside entities as if such receivership estates were a single receivership estate for the purpose of carrying out certain of the Receiver's administrative duties and responsibilities. The Joint Administration Order explicitly provided that nothing therein should be construed as substantively consolidating any of the receivership estates.

9. On February 19, 2013, Mr. Justice Wilton-Siegel issued an order, *inter alia*, amending the title of these proceedings, terminating the stay of proceedings against First Leaside's directors and officers and approving the activities of the

Receiver up to February 8, 2013, the date of the Receiver's Second Report to the Court (the "**Second Report**").

10. On July 24, 2013, the Court issued an order (the "**Interim Distribution Order**") authorizing the Receiver to make an interim distribution to creditors on the terms set out in the Interim Distribution Order (the "**Interim Distribution**"), including a holdback of certain funds in respect of, among other things: i) the future administration costs of the receivership; and ii) certain disputed and unresolved claims. In accordance with the Interim Distribution Order, the Receiver made the Interim Distribution between July 2013 and August 2013.

11. Also on July 24, 2013, the Court issued an order approving the transfer by the Receiver of its interest in the following entities to certain purchasers:

    a) Wimberly Fund;
    b) First Leaside Fund;
    c) First Leaside Properties Fund; and
    d) First Leaside Mortgage Fund ("**Mortgage Fund**").

12. On June 6, 2017, the Court issued an order (the "**June Order**"), among other things, approving a settlement of claim by First Leaside Mortgage Fund, finally determining certain claims of the Receiver against investors who owed the First Leaside estate pursuant to promissory notes, and certain other ancillary relief.

13. On June 6, 2017 the Court also issued an order approving and implementing the comprehensive wind-up of securities accounts held in favour of former clients of FLSI by Fidelity Clearing Canada ULC.

14. In support of the relief sought on June 6, 2017, the Receiver filed its fourth report to Court dated May 25, 2017 (the "**Fourth Report**"), a copy of which attached hereto, without appendices, as **Appendix "A"**.

15. Several other orders and endorsements have been issued in these proceedings, all of which are available on the Receiver's website at www.grantthornton.ca/firstleaside (the "**Receiver's Website**").

PURPOSE OF FIFTH REPORT

16. The purpose of this Fifth Report is to provide the Court and stakeholders with information to support:

    a) the Receiver's request for an order approving the Phillips Settlement (as defined herein); and

    b) an order authorizing payment of the Wilson Unit Distribution (as defined herein) to the Bankruptcy Trustee (as defined herein).

RESTRICTIONS AND TERMS OF REFERENCE

17. In preparing this Fifth Report, the Receiver has relied upon unaudited financial information, First Leaside's books and records, financial information provided by First Leaside, First Leaside's former management and certain of First Leaside's former employees. While the Receiver reviewed various documents provided by First Leaside and its former management/employees and believes that such information therein provides a fair summary of the transactions as reflected in the documents, the Receiver has not performed an audit or verification of such

information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards.

18. In the course of its mandate, the Receiver has assumed the integrity and truthfulness of the financial information in the records of First Leaside and certain of its former management, within the context in which such information was presented.

19. This Fifth Report has been prepared solely for the use of this Court and First Leaside's stakeholders in and for this proceeding. Accordingly, the reader is cautioned that this Fifth Report may not be appropriate for any other purpose.

20. All references to dollars are in Canadian currency unless otherwise noted. Balances denominated in U.S. currency have been converted to Canadian currency at par.

BACKGROUND EVENTS LEADING TO THE PHILLIPS SETTLEMENT

21. The Fourth Report summarized, in paragraphs 32 to 39, the Receiver's interactions with the OSC in respect of an order issued on October 28, 2015 (the "**Sanction Order**") requiring, among other things, that i) David Phillips ("**Mr. Phillips**") and John Wilson ("**Mr. Wilson**") jointly and severally disgorge to the OSC $7,817,739, ii) that Mr. Phillips, in addition, disgorge to the OSC $8,779,515, and that iii) Mr. Phillips and Mr. Wilson, in addition, pay $340,867 in costs.

22. The Receiver held back distributions payable to Mr. Phillips and Mr. Wilson, pending the resolution of the appeals related to the Sanction Order or other claims involving them and confirmed to the OSC than no amounts would be distributed to Mr. Phillips or Mr. Wilson without an order of the Court, which would be sought on notice to the OSC.

23. The Fourth Report also summarized, in paragraphs 55 to 57, the status of the proceedings commenced by First Leaside against Mr. Philips, Margaret Davis ("**Ms. Davis**") (Mr. Phillips' spouse) and 970877 Ontario Inc. ("**970**"), a wholly owned holdings company of Mr. Philips (the "**Civil Action**"), and subsequently continued by the Receiver, seeking an aggregate of approximately $6.5 million from Mr. Phillips and 970, and approximately $2.7 million from Ms. Davis, on account of unpaid loans and improper payments of funds out of First Leaside entities.

24. The Fourth Report also summarized, in paragraphs 48 to 54, the Receiver's decision to withhold $79,758 in respect of distributions Mr. Wilson would otherwise be entitled to on account of his units held in various First Leaside products (the "**Wilson Unit Distribution**"). In the Receiver's notice of motion for the motion returnable on June 6, 2017 the Receiver sought the Court's authority to pay the Wilson Unit Distribution directly to the OSC in partial satisfaction of Mr. Wilson's obligations under the Sanction Order. In light of Mr. Wilson's subsequent filing of a notion of intention to make a proposal (described below), the Receiver retracted this request and continues to hold the Wilson Unit Distribution.

25. The Fourth Report also summarized, in paragraphs 59 to 64:

a) the proof of claim filed by Mr. Phillips with the Receiver in the Claims Process (as defined in the Fourth Report), claiming an aggregate unsecured amount of $3,384,425 (the "**Phillips Claims**"), the Receiver's notice of disallowance issued in respect of the Phillips Claims (including the Receiver's justification for same) and Mr. Phillips' notice filed disputing the Receiver's disallowance; and

b) the amount of distribution which would otherwise be owing to Mr. Phillips in respect of the Phillips Claims, was $967,732, which amount was held back in its entirety by the Receiver (the "**Phillips Claim Distribution**"). The Phillips Claim Distribution was broken into two components - $890,198 related to his claim related largely to his employment with First Leaside, with the balance of $77,534 in respect of distributions Mr. Phillips would otherwise be entitled to on account of his units held in various First Leaside products (the "**Phillips Unit Distribution**").

26. On June 5, 2017, and subsequent to the issuance of the Fourth Report, Mr. Phillips and Mr. Wilson each filed a notice of intention to make a proposal with Zeifman Partners Inc. ("**Zeifman**") under subsection 50.4(1) of the *Bankruptcy and Insolvency Act*. Proposals for each of Mr. Phillips and Mr. Wilson were subsequently filed on July 4, 2017.

27. The first meeting of creditors in the proposals were held on July 24, 2017 wherein:

   a) each proposal was rejected by a majority of Mr. Phillips' and Mr. Wilson's creditors and accordingly, both Mr. Phillips and Mr. Wilson were deemed to have made an assignment in bankruptcy; and

   b) at the ensuing meeting of creditors in each of Mr. Phillips and Mr. Wilson's bankruptcies, a resolution was passed to replace Zeifman with A. Farber & Partners ("**Farbers**"), as bankruptcy trustee in both Mr. Phillips' (in such capacity, the "**Phillips Trustee**") and Mr. Wilson's (in such capacity, the "**Wilson Trustee**") bankruptcies.

THE PHILLIPS SETTLEMENT

28. Prior to the first meeting of creditors, the Receiver submitted a claim with Zeifman in respect of Phillips proposal, which included claims in respect of the Civil Action (the "**Receiver's Claim**") .

29. The Phillips Trustee has reviewed the Receiver's Claim, and has accepted certain of the items therein. The Receiver and the Bankruptcy Trustee have reached a settlement in respect of the Receiver's Claim and the Phillips Claims, the material terms of which are as follows (the "**Phillips Settlement**").

   a) The Phillips Trustee withdraws the Phillips Claims and related disputes filed in respect of the Receiver's disallowance of the Phillips Claims;

b) The Receiver and the Phillips Trustee agree that the Receiver's Claim in respect of the Civil Action shall be accepted as a provable claim in Mr. Phillips' bankruptcy estate and valued at $4,847,132.67;

c) The Receiver shall pay to the Phillips Trustee the Phillips Unit Distribution, being $77,534;

d) The Receiver and the Phillips Trustee provide a mutual release in respect of any claims related to the Civil Action, the Phillips Claims and the Phillips Unit Distribution;

e) The Receiver reserves its rights to pursue any of its claims which are not released pursuant to section 178 of the BIA; and

f) The Phillips Settlement is subject to this Court's approval.

30. The Receiver believes the Phillips Settlement is fair and in the best interest of First Leaside Stakeholders because:

a) It avoids the Receiver and the Phillips Trustee from having to litigate the Phillips claim and the Receiver's claim matter, which could result in significant costs to both estates;

b) Given Mr. Phillips' bankruptcy, it is uncertain whether the Receiver would be able to recover any proceeds from Mr. Phillips' estate, as he has disclosed minimal assets on his statement of affairs;

c) It does not affect the Receiver's ability to continue the Civil Action against Ms. Davis; and

d) It brings certainty and finality to this matter.

31. Accordingly, the Receiver respectfully requests this Court approve the Phillips Settlement and the distribution to the Phillips Trustee contemplated thereunder.

THE WILSON UNIT DISTRIBUTION

32. The Receiver is seeking this Court's authorization to pay the Wilson Unit Distribution to the Wilson Trustee for the general benefit of Mr. Wilson's creditors. The Receiver has no claim against Mr. Wilson and thus there is no offset to preserve, however, as aforementioned, in light of the OSC's notice to the Receiver, distributions of the Wilson Unit Distribution may only be made on notice to affected parties and with Court approval.

33. In the Receiver's view, paying the Wilson Unit Distribution to the Wilson Trustee is in the best interest of stakeholders generally, because it will go to fund any investigations deemed necessary by the Wilson Trustee or Mr. Wilson's bankruptcy inspectors, and otherwise be available to Mr. Wilson's creditors generally (of whom the Receiver understands the OSC is the most significant).

RECEIVER'S REQUESTED RELIEF

34. The Receiver respectfully recommends that this Court grant the relief requested herein.

All of which is respectfully submitted,

GRANT THORNTON LIMITED,
In its capacity as Court-appointed Receiver of First Leaside and not in its personal capacity

Per:

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

Appendix "A"

Fourth Report of the Receiver

Court File No. CV-12-9930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

IN THE MATTER OF THE RECEIVERSHIP OF FIRST LEASIDE WEALTH MANAGEMENT INC. AND THE APPLICANTS LISTED ON SCHEDULE "A" (collectively "FIRST LEASIDE")

FOURTH REPORT TO COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER OF FIRST LEASIDE

MAY 25, 2017

Grant Thornton

Grant Thornton Limited
Royal Bank Plaza
200 King Street West, 11th Floor
Toronto, Ontario M5H 3T4

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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FOURTH REPORT TO COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER OF FIRST LEASIDE

MAY 25, 2017

INTRODUCTION

1. On February 23, 2012, an application was made to the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), by First Leaside Wealth Management Inc. and certain related parties (the "**CCAA Applicants**") to commence proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). On that date, the Court issued an order (as amended by the Court from time to time, the "**Initial Order**"), *inter alia*, granting the CCAA Applicants the protection of a stay of proceedings and appointing Grant Thornton Limited ("**GTL**") as monitor (the "**Monitor**"), G.S. MacLeod & Associates Inc. as the chief restructuring officer (the "**CRO**") and Dentons Canada LLP ("**Dentons**") (formerly Fraser Milner Casgrain LLP) as representative counsel ("**Representative Counsel**") to

approximately 1,200 investors (the "**Investors**") who are clients of First Leaside Securities Inc. ("**FLSI**").

2. The Initial Order also provided for a general stay of all proceedings against the CCAA Applicants and against any former, current or future director or officer of the CCAA Applicants with respect to any claim against any director or officer that arose before the date of the Initial Order relating to any obligation in which such director or officer was alleged to be liable in their capacity as director or officer, or the payment or performance of such obligations. Such stay of proceedings in respect of the directors and officers was terminated on February 19, 2013.

3. As set out in the CRO's affidavit sworn December 3, 2012, the CRO brought a motion to terminate the CCAA proceedings and sought the appointment of a receiver and manager in an effort to, among other things, realize on remaining assets, reduce administration costs and ultimately facilitate distributions to stakeholders under the supervision of this Court.

4. On December 7, 2012, Mr. Justice Wilton-Siegel issued an order (the "**Receivership Order**") appointing GTL as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of First Leaside.

5. During the course of its CCAA proceedings, First Leaside, under the direction of the CRO, undertook to liquidate its assets for the benefit of its stakeholders, including mortgagees, Investors, and other Creditors.

6. On December 7, 2012, pursuant to another order of the Court, the Receiver was authorized and directed to administer a claims process (the "**Claims Process**") for claims of all the known creditors (the "**Creditors**") of First Leaside and acknowledging the claims of Investors.

7. On December 7, 2012, pursuant to a further order, the Court authorized and approved, among other things, the activities of the CRO and the Monitor, the fees and disbursements of the Monitor and its counsel for the period up to and including November 30, 2012, the release and discharge of the Monitor and the CRO, as well as the transitioning of certain orders that were made in the CCAA proceedings, including the continued appointment of Representative Counsel, into the receivership proceedings. The fees and disbursements of Representative Counsel were approved by an order of the Court on December 17, 2012.

8. On December 27, 2012, Mr. Justice Morawetz issued an order (the "**Joint Administration Order**") authorizing the Receiver to, *inter alia*, administer the receivership estates of the various First Leaside entities as if such receivership estates were a single receivership estate for the purpose of carrying out certain of the Receiver's administrative duties and responsibilities. The Joint Administration Order explicitly provided that nothing therein should be construed as substantively consolidating any of the receivership estates.

9. On February 19, 2013, Mr. Justice Wilton-Siegel issued an order, *inter alia*, amending the title of these proceedings, terminating the stay of proceedings

against First Leaside's directors and officers and approving the activities of the Receiver up to February 8, 2013, the date of the Receiver's Second Report to the Court (the "**Second Report**").

10. On July 24, 2013, the Court issued an order (the "**Interim Distribution Order**") authorizing the Receiver to make an interim distribution to creditors on the terms set out in the Interim Distribution Order (the "**Interim Distribution**"), including a holdback of certain funds in respect of, among other things: i) the future administration costs of the receivership; and ii) certain disputed and unresolved claims. In accordance with the Interim Distribution Order, the Receiver made the Interim Distribution between July 2013 and August 2013.

11. Also on July 24, 2013, the Court issued an order (the "**US Funds Approval and Vesting Order**") approving the transfer by the Receiver of its interest in the following entities (referred to as the "**US Funds**") to certain purchasers:

    a) Wimberly Fund;

    b) First Leaside Fund;

    c) First Leaside Properties Fund; and

    d) First Leaside Mortgage Fund ("**Mortgage Fund**").

12. Also on July 24, 2013, the Court issued an order (the "**Mill St. Approval and Vesting Order**"), approving the sale of property on Mill Street in Uxbridge, Ontario and vesting in the purchaser the right, title and interest of Mill Street Limited Partnership and FL Securities Inc. in and to such property.

13. On July 30, 2015, the Receiver sought and obtained an order amending the Receivership Order to remove the requirement for Court approval for the sale of an undeveloped lot located in Wheatley, Ontario (the "**Wheatley Property**"). Court approval was replaced with a requirement for Representative Counsel approval, such Representative Counsel approval was obtained, and the Wheatley Property was sold by the Receiver at the end of July, 2015.

14. Several other orders and endorsements have been issued in these proceedings, all of which are available on the Receiver's website at www.grantthornton.ca/firstleaside (the "**Receiver's Website**").

15. Since the beginning of the CCAA proceedings, First Leaside and the Receiver have realized on gross proceeds of approximately $125 million which, after repayment of the secured creditors and the costs of these proceedings, resulted in net proceeds of approximately $17 million available for distribution to First Leaside investors. In accordance with the Interim Distribution Order, the Receiver made distributions of approximately $13 million and held back approximately $4 million.

16. In order to minimize administration costs, the Receiver has not attended Court for some time. The Receiver has, however, maintained regular communication with Representative Counsel, and has engaged in several discussions with the Chair of a committee of investors of First Leaside established during the CCAA proceedings (the "**Steering Committee**") to update on the status of the receivership administration.

17. As described in detail in this Fourth Report, all but a few discrete matters in this receivership have now been resolved, but those that have not been resolved are not expected to conclude quickly. In the Receiver's view, it is prudent at this time for the Receiver to update the Court on the status of the proceedings and to seek the relief requested herein.

BACKGROUND TO CCAA AND RECEIVERSHIP ADMINISTRATION

18. As disclosed in previous Court filings, First Leaside was a group of companies that promoted and sold investments in various proprietary investment products. A large proportion of its business related to investments in real estate projects. A subsidiary of First Leaside was an investment dealer under Ontario securities law.

19. In March, 2011, in connection with an investigation by the Ontario Securities Commission ("**OSC**") into the affairs of First Leaside, GTL was retained as a consultant by legal counsel to First Leaside to review, report and make recommendations regarding First Leaside's business, assets, affairs and operations. GTL released a detailed report in August, 2011.

20. First Leaside subsequently consented to a voluntary cease trade order in October, 2011. The CRO was retained by the independent committee of the board of directors in December, 2011. The CRO subsequently determined that the best course of action was for First Leaside to undertake an orderly wind-down of operations. Given the complexity of the structure and holdings, the CRO

determined that a court supervised process pursuant to the CCAA was the most appropriate forum for this wind-down.

21. As of the time of its filing for CCAA protection on February 23, 2012, First Leaside had approximately 1,200 individual Investors, who had invested approximately $370 million in various First Leaside investment products.

PURPOSE OF FOURTH REPORT

22. The purpose of this Fourth Report is to provide the Court and stakeholders with information on the Receiver's activities and to support the Receiver's request for two orders. The first order sought is an order:

a) approving this Fourth Report and the conduct and activities of the Receiver as described herein;

b) authorizing the Receiver to make the distributions on account of Loans A,B,C,D and E (as defined in Appendix "A") to parties having net receivable positions with respect to Loans made by First Leaside Wealth Management Inc. ("**FLWM**");

c) authorizing the Receiver to set off the amount owing to Debtors L,M,N and O (as defined below) on account of the Interim Distribution against the amount owed by Debtors L,M,N and O pursuant to Loans L,M,N and O, respectively;

d) approving the Mortgage Fund Settlement (as defined herein);

e) authorizing the Receiver to pay any and all distributions properly owing to John Wilson ("**Mr. Wilson**") to the OSC, or such other party as the OSC may direct in writing.

f) amending the Interim Distribution Order (as defined herein) to correct a typographical error;

g) approving the Receiver's Interim Statement of Receipts and Disbursements;

h) approving the fees and disbursements of the Receiver for the period of June 1, 2013 to March 31, 2017 and of the Receiver's legal counsel, Blake Cassels & Graydon LLP ("**Blakes**"), in its capacity or general counsel to the Receiver, for the period of June 1, 2013 to March 31, 2017, Lax O'Sullivan Lisus Gottlieb ("**Lax O'Sullivan**"), in its capacity as special litigation counsel to the Receiver, for the period of June 1, 2013 to February 28, 2017, and Cassels Brock and Blackwell LLP ("**Cassels Brock**"), in its capacity as real estate counsel to the Receiver, for the period June 1, 2013 to August 12, 2013; and,

i) approving the fees and disbursements of Dentons for the period June 5, 2013 to February 25, 2014 and Cassels Brock for the period March 14, 2014 to March 31, 2017, in their capacities as Representative Counsel;

The second order sought is an order approving and implementing the comprehensive wind-up of securities accounts held in favour of former clients of

FLSI by Fidelity Clearing Canada ULC ("**Fidelity**") pursuant to the Custodial Agreement (as defined herein), as described in detail in paragraph 87.

RESTRICTIONS AND TERMS OF REFERENCE

23. In preparing this Fourth Report, the Receiver has relied upon unaudited financial information, First Leaside's books and records, financial information provided by First Leaside, First Leaside's former management and certain of First Leaside's former employees. While the Receiver reviewed various documents provided by First Leaside and its former management/employees and believes that such information therein provides a fair summary of the transactions as reflected in the documents, the Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards.

24. In the course of its mandate, the Receiver has assumed the integrity and truthfulness of the financial information in the records of First Leaside and certain of its former management, within the context in which such information was presented.

25. This Fourth Report has been prepared solely for the use of this Court and First Leaside's stakeholders in and for this proceeding. Accordingly, the reader is cautioned that this Fourth Report may not be appropriate for any other purpose.

26. All references to dollars are in Canadian currency unless otherwise noted. Balances denominated in U.S. currency have been converted to Canadian currency at par.

THE RECEIVER'S ACTIVITIES

Summary of Activities

27. Since the date of the Third Report, the Receiver's activities have included, amongst other things:

a) meeting and corresponding with Lax O'Sullivan, the Receiver's counsel in respect of the proceedings commenced by First Leaside against David Phillips ("**Mr. Philips**"), the former CEO of First Leaside, and his wife Margaret Davis ("**Ms. Davis**"), both of whom were former directors and officers of certain First Leaside entities. A further update on this litigation is discussed below, beginning at paragraph 55;

b) meeting with Mr. Phillips and his counsel to engage in settlement discussions;

c) reviewing First Leaside books and records in order for the Receiver to prepare for discoveries in the above referenced litigation;

d) engaging in extensive correspondence and discussions with Fidelity in respect of matters related to investors' accounts;

e) attending a meeting with Representative Counsel on October 13, 2015 to provide an update on the receivership proceedings to the Steering Committee;

f) meeting and corresponding with Representative Counsel and the Chair of the Steering Committee on a periodic basis to discuss, among other things, developments in the receivership proceedings;

g) in accordance with the Interim Distribution Order, completing the Interim Distribution;

h) pursuing the recovery of amounts owing to First Leaside from various parties or negotiating settlements as deemed appropriate;

i) marketing for sale and completing the sale of the Wheatley Property, with approval from the Steering Committee;

j) corresponding with the OSC or their counsel in connection with allegations brought by the OSC against Mr. Phillips and Mr. Wilson for breaches of the *Securities Act* (Ontario), and for conduct contrary to the public interest;

k) corresponding from time to time with counsel to the Investment Industry Regulatory Organization of Canada ("**IIROC**") in respect of the receivership proceedings;

l) corresponding from time to time with representatives of the Canadian Investor Protection Fund ("**CIPF**") in respect of claims that have been made by First Leaside investors;

m) corresponding with Torkin Manes LLP ("**Torkin Manes**"), counsel to the trustees of the US Funds in respect of the Mortgage Fund Settlement, including the negotiation of the Mortgage Fund Settlement, and other matters, as discussed in further detail below beginning at paragraph 70;

n) extensively corresponding by telephone and email with Investors, Creditors and other stakeholders in respect of the receivership proceedings in general and documentation received from First Leaside in respect of their taxes;

o) consulting and corresponding with an information technology specialist to preserve First Leaside's electronic records and ensure the Receiver's continued access to such electronic records;

p) maintaining the Receiver's Website and updating same on a regular basis;

q) engaging and working with an accountant to prepare necessary tax filings and documents for First Leaside investors;

r) maintaining and reconciling the bank accounts of First Leaside;

s) meeting and corresponding regularly with the Receiver's independent counsel, Blakes;

t) corresponding with the Office of the Superintendent of Bankruptcy regarding statutory filings;

u) prepared requisite tax filings for First Leaside;

v) preparing statutory notices under Section 246(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**") pursuant to the Joint Administration Order; and

w) preparing this Fourth Report and related materials.

90 KING STREET DISTRIBUTION

28. As explained in the Third Report, the sale of 90 King Street East, Thornbury, Ontario was authorized by this Court on May 3, 2012 during the CCAA proceedings. The syndicated mortgage in respect of this property was assumed by the purchaser.

29. The CRO and the Receiver continued to collect interest payments, and made distributions to the participating investors in respect of this syndicated mortgage pursuant to paragraph 7(a) of the Receivership Order in June 2013, July 2014 and August 2015.

30. The purchaser repaid the mortgage to the Receiver on its maturity on April 1, 2016 including interest up to the date of maturity.

31. The Receiver made a final distribution to the participating investors in respect of this syndicated mortgage pursuant to paragraph 7(a) of the Receivership Order on July 27, 2016.

OSC SANCTIONS

32. Following the investigation referred to in paragraph 19, the staff of the Ontario Securities Commission (the "**Staff**") formally alleged, pursuant to an amended

statement of allegations dated April 25, 2013, that during the period between August 22 and October 28, 2011, Mr. Phillips and Mr. Wilson: (a) directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which each knew, or ought to have known, would perpetrate a fraud on investors, (b) made statements which were untrue or omitted information necessary to prevent such statements from being false or misleading, which statements an investor would consider relevant in deciding on whether or trade, (c) failed to deal fairly, honestly and in good faith with their clients, and (d) engaged in conduct contrary to the public interest and harmful to the integrity of the capital markets (collectively, the "**Staff Allegations**").

33. The Staff Allegations were adjudicated by the OSC on various dates in June and September, 2013, culminating in reasons and decision of the OSC being issued on January 14, 2015 (the "**Merits Decision**"). The Merits Decision concludes that both Mr. Phillips and Mr. Wilson breached the *Securities Act* (Ontario) and Commission Rule 31-505, and acted contrary to the public interest, as alleged in the Staff Allegations.

34. On October 28, 2015, the OSC issued its reasons and decision on sanctions and costs, and issued an order of the same date (the "**Sanction Order**") requiring, among other things, that Mr. Phillips and Mr. Wilson jointly and severally disgorge to the OSC $7,817,739, that Mr. Phillips, in addition, disgorge to the OSC $8,779,515, and that Mr. Phillips and Mr. Wilson, in addition, pay $340,867 in costs.

35. In the course of the Staff's investigation of Mr. Phillips and Mr. Wilson, the Receiver was called upon to cooperate with Staff, which cooperation was provided in accordance with legal requirements.

36. Following the issuance of the Sanction Order, the Receiver's counsel was provided with a letter from the OSC's counsel, dated January 5, 2016, which instructed that no amounts should be paid by the Receiver to Mr. Phillips or Mr. Wilson, but rather should be paid to the OSC (the "**OSC Letter**").

37. The Receiver understands that Mr. Phillips and Mr. Wilson appealed the Merits Decision and Sanction Order to the Divisional Court, which dismissed their appeal on December 16, 2016. On April 21, 2017, Mr. Phillips and Mr. Wilson's motion for leave to appeal was dismissed by the Court of Appeal for Ontario. The Receiver understands that all appeal routes in respect of the Merits Decision and Sanction Order have now been exhausted.

38. As discussed elsewhere in this Fourth Report, the Receiver has held back distributions payable to Mr. Phillips, Mr. Wilson and Ms. Davis (Mr. Phillips' spouse), pending the resolution of the appeals related to the Merits Decision and Sanction Order or other claims involving them (including the Civil Action, defined below).

39. The Receiver has confirmed to the OSC in response to the OSC Letter than no amounts will be distributed to Mr. Phillips or Mr. Wilson without an order of the Court, which would be sought on notice to the OSC. Counsel to the OSC has furthermore advised the Receiver that garnishments in respect of the Sanction

Order will be forthcoming in the short term, which the Receiver understands will obligate the Receiver to pay any amounts owing to Mr. Phillips or Mr. Wilson to the Sheriff.

FIRST LEASIDE WEALTH MANAGEMENT INC. LOANS

40. As explained in the Third Report, FLWM made approximately $4 million of loans to 42 investors, directors and former employees (each, a "**FLWM Debtor**"), evidenced by promissory notes. The Receiver has sent demand letters to those FLWM Debtors who have not paid the amounts outstanding under their promissory notes (net of any Interim Distribution owing to such FLWM Debtor), and in the case of 12 FLWM Debtors, has issued and served statements of claim seeking repayment.

41. Since the date of the Third Report, the Receiver has negotiated, either directly or through counsel, with the majority of FLWM Debtors subject to litigation, and has entered into a number of settlements. The status of FLWM Debtors with whom settlements have not been reached is summarized in the chart summary attached hereto as Appendix "A".

42. There are a number of categories of FLWM Debtors in respect of which the Receiver is seeking specific relief from the Court. To protect the privacy of the FLWM Debtors, each Loan shall be referred to only by the letter designation in Appendix A.

Net Amount Owing to Borrower

43. The Interim Distribution Order approved a specific distribution matrix that was included in the Third Report (the "**Distribution Matrix**"), which Distribution Matrix set out specific amounts owing to specific investors, based on the information available to the Receiver at the time.

44. Following the issuance of the Interim Distribution Order, the Receiver learned that there were errors in the books and records of First Leaside, which resulted in the Distribution Matrix providing for insufficient amounts being payable to certain recipients, including in the case of Loan A, B, C, D and E. Accordingly, in respect of Loan A,B,C,D and E, an insufficient distribution was made. The details of the insufficiencies are specified in Appendix A.

45. Upon discovering the error in First Leaside's books and records, the Receiver made the appropriate distributions on account of Loans A, B and C. Because the Distribution Matrix did not explicitly include these distributions (although it would have were it not for the error in First Leaside's records), the Receiver is seeking retroactive approval of these distributions.

46. Corrective distributions in respect of Loan D and E are also outstanding, but have not yet been made. The Receiver is seeking approval of these distributions now.

Outstanding Borrower Issues

47. Part B of Appendix A lists 10 outstanding Loans that have not yet been settled. Summaries of these Loans and any offsetting distributions are included in

Appendix A. The Receiver is seeking specific relief in respect of three of these Part B loans, and wishes to advise the Court of its intentions with respect to the other seven.

a) Loan F & G: The Receiver has filed statements of claim against the FLWM Debtors under Loans F and G. However, both debtors reside in the United States, which presents significant procedural and economic barriers to prosecuting the claim and enforcing any judgment that may result. Accordingly, with the consent of the Steering Committee, the Receiver has elected to take no further steps in connection with Loan F and Loan G.

b) Loan H: The Receiver has filed a statement of claim in respect of Loan H, and the debtor ("**Debtor H**") has filed a statement of defence. Loan H is in the amount of $907,031 and is offset by a distribution owing to Debtor H in the amount of $134,725 (which was held back from the Interim Distribution), for a net amount owing by Debtor H of $772,306. The Receiver considers this amount to be material.

Despite protracted negotiations and a mediation with Debtor H and its counsel, no acceptable terms of settlement have been reached as of the date of this Fourth Report, but the Receiver is optimistic that a settlement is attainable. However, if no acceptable settlement terms are reached in the near term, the Receiver intends to proceed with its action against Debtor H.

c) Loan I: Unlike the other loans evidenced by promissory notes, Loan I was not made in order to finance the acquisition of First Leaside securities. Rather, the debtor under Loan I, ("**Debtor I**") appears to have been an employee of First Leaside Insurance Inc. ("**FLI**") when FLI was first incorporated. The Receiver understands that FLI did not have sufficient revenue to pay Debtor I's agreed upon compensation, and so 14 demand notes were issued in favour of FLWM over the course of a 13 month period. Debtor I executed the 14 notes, but it appears to the Receiver that the arrangement was, in intention if not in fact, FLI borrowing from FLWM to pay Debtor I's salary.

In the Receiver's view, Debtor I appears to have provided value in the form of services to FLI in exchange for any money transferred, and thus the Loan I indebtedness is properly characterized as an intercompany debt owing by FLI to FLWM. There is furthermore no offsetting distribution owing to Debtor I, and thus the Receiver is not seeking any relief in respect of Loan I and does not intend to pursue it any further.

d) Loan J: Loan J was made to its debtor ("**Debtor J**") to finance the acquisition of shares of FLWM by Debtor J, as was the case with all of the other loans except for Loan I. The Receiver has filed a statement of claim against Debtor J for the repayment of Loan J in the amount of $160,000 plus interest.

The Receiver intends to continue its efforts to settle or prosecute the claim against Loan J, including by seeking a statutory declaration regarding his assets or, failing that, undertaking an asset search against Debtor J to determine the viability of enforcement were a judgment to be obtained.

e) Loan K: The FLWM Debtors under Loan K (collectively, "**Debtor K**") filed a proposal under section 66.13 of the BIA on October 7, 2015, which proposal was accepted by the required majority of creditors on November 23, 2015. The Receiver has filed a proof of claim in the proceedings for the aggregate amount of $125,783.81. No distributions have been made under the proposal as of the date of this Fourth Report.

f) Loan L & M: FLWM Debtor under Loan L ("**Debtor L**") has advised the Receiver, through counsel, that she is retired and living on a limited fixed pension income, such that she would not be able to pay the $151,172 owing under Loan L. FLWM Debtor under Loan M ("**Debtor M**") has advised the Receiver, through counsel, that he is 77 years-old and unable to retire as a result of losing his life's savings when First Leaside collapsed, and is similarly unable to pay the $90,304 owing under Loan M.

The Receiver has requested statutory declarations from Debtor L and Debtor M, with full financial disclosure. Debtors L and M have agreed to provide the statutory declarations, but as of the date of this Fourth Report they have not been delivered.

Debtor L has a distribution owing in the amount of $21,321, and Debtor M has a distribution owing of $31,201, both of which were held back from the Interim Distribution. The Receiver is accordingly seeking the Court's authorization to off-set the corresponding distributions against Loan L and Loan M. If such relief is granted, and provided that the statutory declarations demonstrate sufficient impecuniosity, the Receiver does not intend to pursue Loans L or M any further.

g) Loan N: The FLWM Debtor in respect of Loan N ("**Debtor N**") is the only FLWM Debtor that the Receiver and its agents have not been able to locate. After unsuccessful attempts to locate Debtor N based on First Leaside records, the Receiver retained collection agency Allied International Credit ("**AIC**") on or around March of 2015. AIC attempted to pull a credit bureau, but was unable to as there was no address or date of birth available for Debtor N in First Leaside's records. AIC's trace department followed up with a search of similar names in the last known geographical area of the PO Box on file for Debtor N, and searched social media and other sites, but was similarly unable to located Debtor N.

In the Receiver's view, all reasonable and efficient measures have been taken to locate Debtor N, without success. The Receiver is accordingly seeking the Court's authorization to off-set the $5,110 distribution owing to Debtor N against the $28,388 owing pursuant to Loan N. If such relief is granted, the Receiver does not intend to pursue Loan N any further.

h) Loan O: The Receiver has been unable to come to a settlement the with the FLWM Debtor in respect of Loan O ("**Debtor O**"), who is owed a $5,998 distribution and owes FLWM $17,131 pursuant to Loan O.

In the Receiver's view, it is not economically efficient or justified to pursue formal litigation in respect of the net $11,133 claim against Debtor O, and is accordingly seeking the Court's authorization to off-set the $5,998 distribution owing to Debtor O against the $17,131 owing pursuant to Loan O. If such relief is granted, the Receiver does not intend to pursue Loan O any further.

JOHN WILSON CLAIM

48. As set out above, the Receiver held back distributions payable to Mr. Wilson, pending the results of the OSC's proceedings. Mr. Wilson, a former sales agent of First Leaside, filed three claims in the Claims Process as follows: (a) $600,000, in respect of unpaid commissions on the sale of securities of First Leaside ("**Wilson Claim 1**"), (b) $42,574, on account of severance and termination pay ("**Wilson Claims 2**"), and (c) $304, on account of alleged unpaid insurance premiums ("**Wilson Claims 3**" together with Wilson Claim 1 and Wilson Claim 2, the "**Wilson Claims**").

49. The Receiver disallowed Wilson Claim 1 on March 15, 2013, which was not appealed. At the time of submission of the claims in the Claims Process, the Receiver neither reject nor accepted Wilson Claim 2 or Wilson Claim 3, as it was of the view that the findings of the OSC in their *Securities Act* proceedings would impact the Receiver's determination of the legitimacy of the claims. Specifically, if the OSC found wrong-doing on the part of Mr. Wilson, the Receiver believed it would be appropriate to disallow Wilson Claim 2 and Wilson Claim 3, given the nature of the claims. Accordingly, the Receiver held back the amount that would otherwise be payable to Mr. Wilson on account of Wilson Claim 2 and Wilson Claim 3, totaling $18,659.

50. In addition to the holdback in respect of the Wilson Claims, the Receiver held back a further $79,758 in accordance with the Initial Distribution Order, representing the distribution that Mr. Wilson would be entitled to on account of his investments in four different First Leaside products (the "**Wilson Unit Distribution**"). Mr. Wilson did not challenge the Receiver's holdback.

51. The Receiver's justification for deferring assessment of Wilson Claim 2 and Wilson Claim 3, and for holding back the distributions were ultimately supported by the OSC in the Merits Decision and the recent dismissal of Mr. Phillips and Mr. Wilson's leave to Appeal to the Court of Appeal for Ontario.

52. In light of the fact that the Merits Decision and Sanction Order are now final, and in light of the advice of the OSC's counsel that garnishments are forthcoming, the Receiver is seeking the Court's authorization to pay the Wilson Unit Distribution

directly to the OSC, or to such other party as the OSC may direct (such as the Sheriff), in partial satisfaction of Mr. Wilson's obligations under the Sanction Order.

53. On May 24, 2017, the Receiver formally disallowed Wilson Claim 2 and Wilson Claim 3. Should Mr. Wilson seek to appeal the Receiver's disallowance, the Receiver may seek this Court's assistance to adjudicate it. In any event, based on the position taken in the OSC Letter and OSC's counsel's advice that garnishments are forthcoming, it appears to the Receiver that were Mr. Wilson to successfully dispute all or any part of the Receiver's disallowance, the OSC would intervene and take receipt of any distribution to be made by the Receiver to Mr. Wilson.

54. The Receiver is seeking the Court's authorization to pay the Wilson Unit Distribution directly to the OSC, in partial satisfaction of Mr. Wilson's obligations under the Sanction Order.

LITIGATION

55. As noted above and in the Third Report, First Leaside, under the direction of the CRO, retained Lax O'Sullivan to bring proceedings against Mr. Philips, Ms. Davis and 970877 Ontario Inc. ("**970**"), a wholly owned holdings company of Mr. Philips (the "**Civil Action**"), seeking an aggregate of approximately $6.5 million from Mr. Phillips and 970, and approximately $2.7 million from Ms. Davis, on account of unpaid loans and improper payments of funds out of First Leaside entities. The Receiver continued the Civil Action commenced by First Leaside.

56. The statement of claim in the Civil Action was issued on August 28, 2012, and served shortly thereafter. The defendants have provided their statement of defence, and the parties are working through the discovery process, which has been protracted.

57. The Receiver has determined, in consultation with Lax O'Sullivan, that based on the positions taken by parties to date, the amount of the Receiver's claim, the status of discovery and the complexity of the claims in the Civil Action, the Civil Action is unlikely to be resolved in the foreseeable future. As discussed in this Fourth Report, other than the Civil Action, the Receiver has substantially completed its mandate. However, the Civil Action represents a substantial asset of the First Leaside companies that, in the Receiver's view, ought to be prosecuted to its conclusion.

PHILIPS AND DAVIS CLAIMS

58. As discussed earlier in this Fourth Report, the Receiver held back distributions in respect of claims filed by Mr. Phillips and Ms. Davis in the Claims Process. In the Receiver's view, the resolution of these claims is interrelated with the resolution of the Civil Action (in respect of both Mr. Phillips and Ms. Davis) and the Merits Decision and Sanction Order (in the case of Mr. Phillips), because of the numerous relevant facts in common.

David Phillips Claims

59. On or about February 28, 2013, Mr. Phillips filed a proof of claim with the Receiver, claiming an aggregate unsecured amount of $3,384,425 (the "**Phillips Claims**"). The basis for the. Phillips Claims was alleged:

a) unpaid salary for the years 2010 and 2011 (totalling approximately $1.3 million of the aggregate claim);

b) damages for termination of employment with FLWM and First Leaside Securities Inc. (totaling approximately $1.8 million of the aggregate claim);

c) indemnification claims for legal fees incurred by Mr. Phillips in connection with the OSC investigation, an IIROC investigation and Civil Action (totalling approximately $240,000 of the aggregate claim) and;

d) indebtedness owing by FLWM to Mr. Phillips in respect of certain artwork (totalling approximately $18,000 of the aggregate claim).

60. On or about June 25, 2013, the Receiver issued a notice of disallowance to Mr. Phillips, disallowing the Phillips Claims in full. The Receiver's justification for the disallowance was stated in the notice of disallowance as follows:

a) In respect of the unpaid salary claimed, the board of directors of the applicable First Leaside entities did not approve the compensation claimed for the years 2010 and 2011, and therefore it was not properly owing;

b) In respect of the damages for termination of employment, the applicable First Leaside entities had just cause to terminate Mr. Phillip's employment, and therefore no damages are owing;

c) In respect of the indemnity claims, Mr. Phillips did not act honestly and in good faith, nor did he have reasonable grounds to believe his conduct was lawful, and therefore the indemnity agreement relied upon to base the claim does not apply on its terms; and

d) Regarding the artwork, there was no evidence of any indebtedness owing to Mr. Phillips on account of artwork, and therefore no basis for the claim.

61. On or about July 9, 2013, Mr. Phillips filed with the Receiver a notice of dispute, disputing the disallowance of the Phillips Claims and the Receiver's justification for doing so. No further steps have been taken in respect of the Philips Claims.

62. The Receiver's justification for disallowing Mr. Phillips' claim in respect of (b) and (c) were materially supported by the Merits Decision, and in respect of (a), (b) and (c), above, are each based on facts to be determined in the Civil Action, and accordingly in the Receiver's view the veracity of those justifications will be demonstrated when the Civil Action is resolved. The resolution of the outstanding claims by Mr. Phillips (other than the relatively *de minimis* and undocumented claim in respect of the art work) will accordingly be materially assisted by the resolution of the Civil Action.

63. The amount of distribution which would otherwise be owing to Mr. Phillips in respect of the Phillips Claims totals $890,198, which amount was held back in its

entirety from the Interim Distribution, in accordance with the Initial Distribution Order. In addition, the Receiver held back the further sum of $77,534 in respect of distributions Mr. Phillips would otherwise be entitled to on account of his units held in various First Leaside products. Both holdbacks are pending the resolution of the Civil Action.

64. In any event, based on the position taken in the OSC Letter referred to above, it appears to the Receiver that even if the Philips Claims were proven or he was entitled to any distribution, the OSC would seek to take receipt of any distribution.

Margaret Davis Claim

65. On or about February 28, 2013, Ms. Davis filed a proof of claim with the Receiver, claiming an aggregate unsecured amount of $442,967 (the "**Davis Claims**"). The basis for the Davis Claims was primarily related to alleged:

a) damages for termination of employment with FLWM (totalling $240,000 of the aggregate claim);

b) indemnification claims for legal fees incurred by Ms. Davis in connection with the Civil Action (totalling approximately $156,000 of the aggregate claim) and;

c) unpaid rent and property damage in respect of real property formerly occupied by First Leaside companies (totalling approximately $46,000 of the aggregate claim).

66. On or about June 25, 2013, the Receiver issued a notice of disallowance to Ms. Davis, disallowing the Davis Claims in full. The Receiver's justification for the disallowance was stated as follows in the notice of disallowance:

a) In respect of the damages for termination of employment, FLWM had just cause to terminate Ms. Davis' employment, and therefore no damages are owing;

b) In respect of the indemnity claims, Ms. Davis did not act honestly and in good faith, nor did she have reasonable grounds to believe her conduct was lawful, and therefore the indemnity agreement relied upon to base the claim does not apply on its terms; and

c) In respect of the rent and property claims, the rental arrangements between FLSI and Ms. Davis were improper, and the damages claimed were unsubstantiated, and therefore no rent or remediation costs are payable.

67. On or about July 9, 2013, Ms. Davis filed with the Receiver a notice of dispute, disputing the disallowance of her claim and the Receiver's justification for doing so. No further steps have been taken in respect of the Davis Claims.

68. As is the case with Mr. Phillip's claim, the Receiver's justification for disallowing the Davis Claims in respect of (a), (b) and part of (c), above, are each based on facts to be determined in the Civil Action. The resolution of the outstanding Davis Claims (other than the relatively *de minimis* and undocumented claim in respect

of property damage) will accordingly be materially assisted by the resolution of the Civil Action.

69. The amount of distribution which would otherwise be owing to Ms. Davis in respect of the Davis Claims totals $35,832, which amount was held back in its entirety from the Interim Distribution. The Receiver also held back a further sum of $54,587 in respect of the distribution otherwise payable to Ms. Davis on account of her units in various First Leaside products, pending resolution of the Civil Action.

MORTGAGE FUND SETTLEMENT

70. The Interim Distribution Order authorized the Receiver to hold back from the Interim Distribution amounts in respect of disputed and unresolved claims. One such claim was filed by Mortgage Fund as a secured claim for $640,086 against First Leaside Venture Limited Partnership ("**Ventures**"), related to a loan made by Mortgage Fund to Ventures.

71. The Receiver accepted Mortgage Fund's claim as an unsecured claim in the amount of $515,000, and set out the reasons for the partial disallowance and rejection of claim as secured in a notice of revision or disallowance. Mortgage Fund submitted a Notice of Dispute, in respect of the Receiver's Notice of Revision or Disallowance.

72. The Receiver and Mortgage Fund, through counsel, have negotiated a settlement for payment by the Receiver to Mortgage Fund of $570,000 (the

"**Mortgage Fund Settlement**"). A copy of the Mortgage Fund Settlement is attached hereto as **Appendix "B"**.

73. The Receiver believes the Mortgage Fund Settlement is fair and in the best interest of First Leaside stakeholders because:

    a) It avoids the Receiver and Mortgage Fund from having to litigate this matter, which could result in significant costs to both parties;

    b) It avoids interest on the claim which would otherwise be payable if the Receiver was unsuccessful in litigation; and

    c) It brings certainty and finality to this matter.

74. Accordingly, the Receiver respectfully requests this Court approve the Mortgage Fund Settlement and the distribution to Mortgage Fund contemplated thereunder.

FIDELITY CLEARING AND ACCOUNT MAINTENANCE

75. On December 7, 2012, the Court issued an Order authorizing the CRO to execute on behalf of FLSI a Custodial and Services Agreement (the "**Custodial Agreement**") with Fidelity, as successor custodian to Penson Financial Services Canada Inc. ("**Penson**"). A copy of the Custodial Agreement was attached as Appendix 2 to the Combined Seventh Report of the Monitor and Pre-filing Report of the Proposed Receiver, dated December 5, 2012, and is reattached here as **Appendix "C"**.

76. Pursuant to the terms of the Custodial Agreement, Fidelity agreed to hold securities of clients of FLSI including, without limitation, securities held in

registered accounts. Accounts held by Fidelity are held in the name of FLSI's customers, not FLSI. Trades on behalf of FLSI clients of cash and securities in the applicable accounts would be cleared by Fidelity, subject to the CRO instructing Fidelity to refuse to clear a trade.

77. The Custodial Agreement was put in place with the participation of IIROC, following the announcement by Penson on September 28, 2012 that it would be ceasing operations in Canada. Fidelity was selected and the Custodial Arrangement negotiated against the background of concerns that the combination of the FLSI insolvency and Penson's decision to cease operations in Canada on short notice would be prejudicial to investors.

78. Under these circumstances, and in order to incentivize Fidelity to agree to the services provided under the Custodial Agreement, FLSI (by its CRO) agreed to make a $300,000 deposit, to be increased as agreed to meet margin and risk requirements, to secure Fidelity's costs (the "**Comfort Deposit**").

79. The Custodial Agreement furthermore provides for a monthly charge of $5,000 to be paid by FLSI (the "**Monthly Fidelity Fee**"), which amount has been paid monthly by the Receiver since its appointment on December 7, 2012.

80. Section 4(d) of the Custodial Agreement provides that Fidelity will not generally accept instructions directly from FLSI clients, and contemplates that trade instructions would come from the CRO only. This arrangement was interrupted when, on July 24, 2013, the Receiver transferred its interests in the US Funds pursuant to the US Funds Approval and Vesting Order.

81. Pursuant to the Custodial Agreement, Fidelity continues to hold securities of the US Funds on behalf of clients of FLSI following the transfer of the US Funds authorized by the US Funds Approval and Vesting Order. Because the Receiver transferred all of its interests in the US Funds, the Receiver has no mandate or jurisdiction with respect to the securities of the US Funds, and cannot give or approve instructions with respect to the distribution of any proceeds thereof to clients of FLSI.

82. To date, there have been distributions made by the US Funds to Fidelity on behalf of investors in the US Funds. Fidelity has advised the Receiver that it will not take direction regarding its duties under the Custodial Agreement as custodian from any party other than the Receiver. However, the Receiver is not the CRO and cannot give such instructions. This has created some delay and uncertainty regarding instructions received by Fidelity in respect of clients of FLSI, including those for whom Fidelity holds securities related to the US Funds.

83. The Receiver communicated to Fidelity its position that it does not have the mandate or jurisdiction to speak for or act on behalf of any clients of FLSI in a letter dated December 4, 2015, a copy of which is attached hereto as **Appendix "D"**.

84. Notwithstanding its formal inability to act on behalf of FLSI investors, the Receiver has facilitated discussions between Fidelity and the trustees of the US Funds (the "**Trustees**") in order to encourage the parties to correspond directly,

without the Receiver's involvement. Despite good faith efforts by all parties, to date the Receiver has been unable to extricate itself.

85. As stated above, the Receiver does not have the mandate or jurisdiction to speak for or act on behalf of any clients of FLSI and, the Receiver has determined that at this stage it is not necessary or appropriate for the Receiver to continue to pay the Monthly Fidelity Fee.

86. There are presently approximately 1200 accounts subject to the Custodial Agreement.

87. The Receiver has worked extensively with Fidelity and with the Trustees in order to coordinate an orderly wind-down of the Custodial Agreement structure, with the goal to achieve maximum efficiencies for the Receiver and the First Leaside estate, minimal exposure to Fidelity and minimal prejudice to former FLSI investors. The Receiver and Fidelity have determined that the following terms of wind-down will provide for an optimal result under the circumstances:

   a) Fidelity will continue to hold the remaining portion of the Comfort Deposit until the last First Leaside account has been closed, at which time the remainder of the Comfort Deposit (if any) will be transferred to the Receiver;

   b) Fidelity will apply the following charges (collectively, the "**Charges**") against any cash in the applicable account (whether existent or resulting from the liquidation of securities):

      (i) Deregistration Fees of $50 per deregistration;

(ii) Account Transfer Out Fees of $125 per transfer;

(iii) Cheque Issuance Fees of $8 per cheque;

(iv) Client validation charge of $125 per client inquiry;

(v) Payment processing fees of $75 per employee hour to process payments from issuers to client accounts.

These Charges are the same as the charges provided for under the existing Custodial Agreement, at Schedule A.

c) If there is insufficient cash in any account (following the liquidation of any marketable securities), Fidelity shall deduct the applicable Charges for that account from the Comfort Deposit.

d) Any Charges associated with the transfer of securities out of accounts that do not have cash in them shall be paid by the account holder, and Fidelity shall not apply any such charges against the Comfort Deposit;

e) Representative Counsel shall notify all holders of First Leaside accounts maintained by Fidelity of these wind-down terms within 14 calendar days (the "**Notice**") of the issuance of the order sought from this Court approving and enabling the wind-down terms, substantially in the form attached to the Receiver's motion record filed herewith as Tab 4 (the "**Fidelity Wind-up Order**");

f) For all First Leaside accounts containing assets that have not been transferred within 120 calendar days of the Notice being given, Fidelity shall be entitled to: (i) liquidate any marketable non-cash assets held in such accounts, or (ii) treat any non-marketable non-cash assets as defunct securities;

g) Fidelity will charge an account dormancy fee of $25 per month (the "**Account Dormancy Fee**") if no action is taken by any account holder to transfer his or her account within 90 calendar days of the liquidation of the last security holding in the account;

h) All reasonable legal fees incurred by Fidelity in connection with the First Leaside insolvency proceedings and related administrative matters shall be paid from the Comfort Deposit;

i) Fidelity shall provide an accounting of fees and expenses, including the application of funds from the Comfort Deposit and monthly fees paid by the Receiver, in form and substance acceptable to the Receiver (the "**Initial Report**"), within 14 calendar days from the issuance of the Fidelity Wind-up Order;

j) Fidelity shall provide the Receiver with reports, including an accounting of fees and expenses, on a bi-monthly basis, in form and substance acceptable to the Receiver, beginning two weeks after the delivery of the Initial Report;

k) The Custodial Agreement shall terminate, effective upon the issuance of the Fidelity Wind-up Order;

l) The Receiver shall cease paying the Fidelity Monthly Fee, effective September 30, 2017; and

m) Any affected party shall be entitled, on notice to the Receiver and Fidelity, to seek the Court's advice, direction or intervention regarding the implementation of any of the foregoing terms.

88. In the Receiver's view, the forgoing terms permit the Receiver to formally and finally extricate itself from the Custodial Agreement arrangements, while providing for an orderly transition for investors and ensuring that Fidelity is reasonably secured for its costs of administration.

89. The Receiver has discussed the proposed wind-down with representatives of CIPF and IIROC. The Receiver furthermore intends to work with Fidelity and Representative Counsel to provide a letter to all known account holders, which letter will advise of the Receiver's motion for the Fidelity Wind-up Order, and direct readers to the Receiver's website, where this Fourth Report and the Receiver's motion record will be available to download.

INTERIM DISTRIBUTION ORDER CORRECTION

90. The Receiver filed a motion record dated July 17, 2013, on notice to the service list, in which it sought, among other things, approval of the fees and disbursements of the Receiver for the period from December 8, 2012 to May 31, 2013.

91. As a result of administrative inadvertence, the draft Interim Distribution Order submitted to, and ultimately issued by, the Court provided at paragraph 12 that the fees and disbursements of the Receiver for the period from December 8,

2012 to May 31, 2011 were approved. A copy of the Interim Distribution Order is attached hereto as **Appendix "E"**.

92. The Receiver is accordingly seeking an order amending the Interim Distribution Order to correct the administrative error. The relief requested would provide, *nunc pro tunc*, that the applicable fee approval period in the Interim Distribution Order December 8, 2012 to May 31, 2013, as originally requested in the Receiver's July 17, 2013 notice of motion.

RECEIVER'S INTERIM RECEIPTS AND DISBURSEMENTS

93. Attached as **Appendix "F"**, is the Receiver's interim statement of receipts and disbursements dated March 31, 2017 (the "**March 2017 Interim R&D**"). The March 2017 Interim R&D reflects the Interim Distribution, various settlement amounts paid or received, and the professional fees paid to March 31, 2017. The Receiver respectfully seeks the Court's approval of the March 2017 Interim R&D. The March 2017 Interim R&D also reflects the various holdbacks which have been discussed in this Fourth Report.

FEES OF THE RECEIVER, ITS COUNSEL AND REPRESENTATIVE COUNSEL

94. The Receiver, the Receiver's legal counsel, and Representative Counsel have maintained detailed records of their professional time and costs since the Initial Order (as amended) and the Receivership Order were granted, and have continued to do so in these receivership proceedings.

95. The Receiver is working with three law firms as its counsel. Lax O'Sullivan has been specifically engaged in respect of the Civil Litigation. Cassels Brock formerly acted for the Receiver in respect of certain real property transactions and the WALP Transfer Agreement (discussed in paragraphs 124 through 130 of the Third Report), given their particular background and knowledge of the First Leaside entities. Blakes is acting as independent counsel in respect of all other matters.

96. Pursuant to paragraphs 30 - 32 of the Receivership Order, the Receiver and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court. The Receiver and its counsel have expended significant effort and time to carry out the administration of these receivership proceedings.

97. The total fees and disbursements of the Receiver during the period beginning June 1, 2013 and ending March 31, 2017 amount to $921,697.60 (the "**Receiver Fees and Disbursements**"), excluding applicable taxes. The time spent by the Receiver's personnel in the period is more particularly described in the affidavit of Mr. Jonathan Krieger of the Receiver, sworn May 2, 2017, in support of the Receiver's motion.

98. The total fees and disbursements of Blakes, in its capacity as counsel to the Receiver during the period beginning June 1, 2013 and ending March 31, 2017 amount to $530,363.53 (the "**General Counsel Fees and Disbursements**"), excluding applicable taxes. The time spent by the personnel of Blakes in the

period is more particularly described in the affidavit of Ms. Pamela Huff of Blakes, sworn May 25, 2017 in support of the motion.

99. The total fees and disbursements of Cassels Brock, in its capacity as real estate counsel to the Receiver during the period beginning June 1, 2013 and ending August 12, 2013 amount to $8,770.10 (the "**Real Estate Counsel Fees and Disbursements**"), excluding applicable taxes. The time spent by the personnel of Cassels Brock in the period is more particularly described in the affidavit of Mr. David Ward of Cassels Brock, sworn May 16, 2017 in support of the motion.

100. The total fees and disbursements of Lax O'Sullivan, in its capacity as litigation counsel to First Leaside and the Receiver during the period beginning June 1, 2013 and ending February 28, 2017 amount to $315,412.00 (the "**Litigation Counsel Fees and Disbursements**"), excluding applicable taxes. The time spent by the personnel of Lax O'Sullivan in the period is more particularly described in the affidavit of Ms. Jessica Zhi of Lax O'Sullivan, sworn April 24, 2017 in support of the motion.

101. The total fees and disbursements of Dentons for the period of June 5, 2013 to February 25, 2014 and Cassels Brock for the period of March 14, 2014 to March 31, 2014, in their capacity as representative counsel amount in the aggregate to $387,725.60 (the "**Representative Counsel Fees and Disbursements**"), excluding applicable taxes. The time spent by the personnel of Dentons and Cassels Brock in the period is more particularly described in the affidavit of Mr. Shayne Kukulowicz of Cassels Brock (formerly of Dentons), sworn April 21, 2017

in support of the motion. For clarity, Cassels Brock's mandate as real estate counsel and its mandate as Representative Counsel were not contemporaneous.

102. A summary of the Receiver Fees and Disbursements, General Counsel Fees and Disbursements, Real Estate Fees and Disbursements, Litigation Counsel Fees and Disbursements and Representative Counsel Fees and Disbursements, in each case based on the summaries set out in the applicable fee affidavit, are set out in **Appendix "G"**, broken down by calendar year. Appendix G illustrates that the fees and disbursements were primarily incurred in the early half of the applicable period when the final asset liquidations were taking place and the debt enforcement litigation was being commenced; 40% of the total fees and disbursements were incurred in the latter half of 2013 alone.

103. The Receiver respectfully submits that the Receiver Fees and Disbursements, General Counsel Fees and Disbursements, Real Estate Fees and Disbursements, Litigation Counsel Fees and Disbursements and Representative Counsel Fees and Disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in the Receivership. Accordingly, the Receiver respectfully seeks the approval of the Receiver Fees and Disbursements, General Counsel Fees and Disbursements, Real Estate Fees and Disbursements, Litigation Counsel Fees and Disbursements and Representative Counsel Fees and Disbursements.

104. Copies of each of the affidavits sworn in support of the various fees and disbursements, redacted to protect privileged or confidential information, will be posted on the Receiver's Website.

RECEIVER'S REQUESTED RELIEF

105. The Receiver respectfully recommends that this Court grant the relief requested as set out in the Receiver's Notice of Motion, returnable June 6, 2017.

All of which is respectfully submitted,

GRANT THORNTON LIMITED,
In its capacity as Court-appointed Receiver of First Leaside and not in its personal capacity

Per:

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

Appendix “B”

Settlement Agreement among the Receiver and the Phillips Trustee

SETTLEMENT AGREEMENT

BETWEEN:

A. FARBER & PARTNERS INC., IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY OF DAVID CHARLES PHILLIPS

(the "Trustee")

- and -

GRANT THORNTON LIMITED, IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF FIRST LEASIDE WEALTH MANAGEMENT INC., FIRST LEASIDE SECURITIES INC. AND THE AFFILIATES THEREOF SET OUT IN SCHEDULE "A" AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

(the "Receiver")

WHEREAS:

A. On February 23, 2012, an application was made to the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), by First Leaside Wealth Management Inc., First Leaside Securities Inc. and certain related parties (collectively, "**First Leaside**") to commence proceedings under the *Companies' Creditors Arrangement Act*, and the Court issued an order, *inter alia*, appointing Grant Thornton Limited ("**GTL**") as monitor (the "**Monitor**"), and G.S. MacLeod & Associates Inc. as the chief restructuring officer (the "**CRO**").

B. On December 7, 2012, the Court issued an order appointing GTL as Receiver, and, pursuant to another order of the Court (the "**Claims Procedure Order**"), the Receiver was authorized and directed to administer a claims process (the "**Claims Process**") for claims of all the known creditors of First Leaside and acknowledging the claims of investors.

C. On or about February 28, 2013, David Charles Phillips ("**Mr. Phillips**") filed a proof of claim with the Receiver in the Claims Process, claiming the aggregate unsecured amount of $3,384,425 (the "**Phillips Claims**").

D. On or about June 25, 2013, the Receiver issued a notice of disallowance to Mr. Phillips, disallowing the Phillips Claims in full. On or about July 9, 2013, Mr. Phillips filed with the Receiver a Notice of Dispute (as defined in the Claims Procedure Order), disputing the disallowance of the Phillips Claims and the Receiver's justification for doing so. No further steps have been taken in respect of adjudicating the Phillips Claims.

E. First Leaside, under the direction of the CRO, commenced proceedings against Mr. Phillips, his wife ("**Ms. Davis**") and 970877 Ontario Inc. ("**970**"), a wholly owned holding company of Mr. Phillips (the "**Civil Action**"), seeking an aggregate of approximately \$6.5 million from Mr. Phillips and 970, and approximately \$2.7 million from Ms. Davis, on account of unpaid loans and improper payments of funds out of First Leaside. The Receiver continued the Civil Action following its appointment.

F. The statement of claim in the Civil Action was issued on August 28, 2012 (the "**Statement of Claim**") and is attached hereto as Schedule "B", the defendants have provided their statement of defence, and the parties are working through the discovery process, which has been protracted.

G. The Receiver has determined that Mr. Phillips is entitled to \$77,534 in respect of distributions Mr. Phillips on account of his units held in various First Leaside products (the "**Phillips Distribution**"), however the Phillips Distribution has been held-back by the Receiver pending the resolution of the Phillips Claims and the Phillips Litigation on the basis of legal and equitable set-off.

H. On or about June 5, 2017, Mr. Phillips filed a notice of intention to make a proposal under subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (the "***BIA***"), which proposal was rejected by a majority of Mr. Phillips' creditors in number and two thirds in value at a meeting of creditors on July 24, 2017, and Mr. Phillips was deemed to have made an assignment in bankruptcy.

I. On July 24, 2017, the Trustee was appointed by ordinary resolution of Mr. Phillips' creditors as Mr. Phillips' trustee in bankruptcy, and thereupon, pursuant to Section 71 of the *BIA*, all of Mr. Phillips property, including any interest in the Phillips Claims, the Civil Action and the Phillips Distribution, passed to and vested in the Trustee.

J. Also on July 24, 2017, the Ontario Securities Commission was appointed as sole inspector in Mr. Phillips' bankruptcy (the "**Inspector**"), and the Inspector remains the sole inspector in Mr. Phillips' bankruptcy as of the date of this Settlement Agreement.

K. The Receiver and the Trustee have agreed to fully and finally resolve all claims of the Receiver against the Trustee and all claims of the Trustee against the Receiver in respect of the Phillips Claims, the Civil Action and the Phillips Distribution, on the terms of this Settlement Agreement.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. *The Phillips Claims*: The Trustee hereby withdraws, releases and discharges the Phillips Claims and retracts the Notice of Dispute (as defined in the Claims Procedure Order) filed in respect of the Phillips Claims. The Trustee and the Receiver hereby irrevocably agree that Mr. Phillips has no further claims against First Leaside, pursuant to the Claims Process.

2. *The Civil Action*: The Trustee hereby agrees that:

a. pursuant to Section 135 of the *BIA*, that the Receiver's claims against Mr. Phillips as set out in the Statement of Claim are accepted as a provable claim, and values such claim at $4,847,132.67; and

b. the Trustee shall forthwith provide to the Receiver the notice prescribed by Section 135(3) of the *BIA*.

3. *The Phillips Distribution*: The Receiver shall pay to the Trustee the full amount of the Phillips Distribution within 7 business days of Court Approval (as defined below).

4. *Court and Inspector Approval*: This Settlement Agreement is subject in all respects to the approval of the Inspector, and the approval of the Court. The Trustee shall provide written evidence satisfactory to the Receiver that it has obtained Inspector approval prior to the execution of this Settlement Agreement. Forthwith following the execution of this Settlement Agreement, the Receiver shall bring a motion to seek the Court's approval of this Settlement Agreement, on notice to the service list in the First Leaside receivership proceedings and any other party that the Trustee reasonably requests the Receiver to provide notice to.

5. *Phillips Release*: In consideration for the settlements and payments set out herein, the Trustee, for and on behalf of itself, Mr. Phillips, his heirs, executors, successors, and assigns, and not in its personal capacity, hereby irrevocably and forever releases and discharges the Receiver and First Leaside from any and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, proceedings, liabilities, penalties, sums of money, obligations, interests, damages, claims and demands, recourses or remedies, whatsoever in law or in equity, whether expressed or implied, known or unknown, to which Mr. Phillips or the Trustee ever had, now has or may hereafter have against each other, arising from and with respect to the Phillips Claims, the Civil Action, the Phillips Distribution, or any other matter or thing related to First Leaside (a "**Claim**").

The Trustee agrees not to (i) directly or indirectly, join, assist, or act in concert with any other person in making any Claim against the Receiver or First Leaside, and (ii) other than any Claim against Ms. Davis, make any Claim against any person who might claim, pursuant to the provisions of applicable law or otherwise, contribution or indemnity from the Receiver or First Leaside, in each case arising out of or in relation to any Claim released by the Trustee under this Settlement Agreement. The Trustee represents and warrants to the Receiver and First Leaside that it has not assigned any Claim released by it hereunder to any person.

6. *First Leaside Release*: In consideration for the settlements and payments set out herein, the Receiver, for and on behalf of itself, First Leaside, and First Leaside's successors and assigns, and not in the Receiver's personal capacity, hereby irrevocably and forever releases and discharges the Trustee from any and all Claims. The Receiver agrees not to (i) directly or indirectly, join, assist, or act in concert with any other person in making any Claim against the Trustee, and (ii) other than any Claim against Ms. Davis, make any Claim against any person who might claim, pursuant to the provisions of applicable law or otherwise, contribution or indemnity from the Trustee, in each case arising out of or in relation to any Claim released by the Receiver under this Settlement Agreement. The Receiver also hereby irrevocably and forever releases Mr. Phillips from any Claim which would otherwise be discharged under the BIA. For

greater certainty, this Release does not apply to any portion of the Civil Action which would survive bankruptcy pursuant to section 178 of the *BIA*. Nothing in this Settlement Agreement shall be used or construed so as to preclude the Receiver from pursuing the unrecovered amount of the Civil Claim against Mr. Phillips. The Receiver represents and warrants to the Trustee that it has not assigned any Claim released by it hereunder to any person.

7. *Amendments*: No amendment to this Settlement Agreement shall be effective unless made in writing and signed by all parties.

8. *Successors and Assigns*: This Settlement Agreement shall be binding upon and shall enure to the benefit of the Trustee, the Receiver and their respective executors, administrators, successors and assigns.

9. *Entire Agreement*: This Settlement Agreement embodies the entire agreement and understanding of the Trustee and the Receiver with respect to the Phillips Claims, the Civil Action, the Phillips Distribution and supersedes all prior written or oral commitments, arrangements or understandings with respect thereto.

10. *Governing Law*: This Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

11. *Counterparts*: This Settlement Agreement may be executed in any number of counterparts and by the undersigned in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page by any of the undersigned by facsimile, "pdf" or e-mail transmission shall be effective as delivery of a manually executed copy by such undersigned.

IN WITNESS WHEREOF the Parties have executed this Settlement Agreement as of December 21, 2017.

A. FARBER & PARTNERS INC., solely in its capacity as trustee in bankruptcy of David Charles Phillips, and not in its personal or corporate capacity.

Rob Stelzer
Managing Director

GRANT THORNTON LIMITED, solely in its capacity as Court-appointed Receiver of First Leaside Wealth Management Inc., and not in its personal or corporate capacity.

____

SCHEDULE A

First Leaside Finance Inc.
First Leaside Securities Inc.
F.L. Securities Inc.
Mill Street Limited Partnership
Harmony Townhomes Limited Partnership
First Leaside Management Inc.
Development Notes Limited Partnership
Special Notes Limited Partnership
First Leaside Accounting and Tax Services Inc.
2086056 Ontario Inc.
First Leaside Properties Limited Partnership
First Leaside Realty Inc.
First Leaside Realty Limited Partnership
First Leaside Realty II Inc.
First Leaside Investors Limited Partnership
First Leaside Premier Limited Partnership
First Leaside Progressive Limited Partnership
First Leaside Realty II Limited Partnership
First Leaside Ultimate Limited Partnership
First Leaside Universal Limited Partnership
Uxbridge Development Limited Partnership
First Leaside Retirement Residences Limited Partnership
First Leaside Venture Limited Partnership
965010 Ontario Inc.
Wimberly Apartments Limited Partnership
1045517 Ontario Inc.
The Shores Limited Partnership
1024919 Ontario Inc.
Old Mill Pond Apartments Limited Partnership
1031628 Ontario Inc.
1056971 Ontario Inc.
The Bluffs of Lakewood Limited Partnership
1376095 Ontario Inc.
F.L. Spring Valley Limited Partnership
1437290 Ontario Ltd.
First Leaside Partners Limited Partnership
First Leaside Opportunities Limited Partnership
1244428 Ontario Ltd.
Preston Racquet Club Real Estate Limited Partnership Series 910PA
Preston Racquet Club Real Estate Limited Partnership Series 910PB
Preston Racquet Club Real Estate Limited Partnership Series 910PC
Preston Racquet Club Real Estate Limited Partnership Series 910PD
PrestonOne Development (Canada) Inc.
PrestonTwo Development (Canada) Inc.

PrestonThree Development (Canada) Inc.
PrestonFour Development (Canada) Inc.
2088543 Ontario Inc.
2088544 Ontario Inc.
F.L.W. Pond Master Ltd.
2088545 Ontario Inc.
F.L.W. Shores Master Ltd.
1331607 Ontario Inc.
First Leaside Acquisitions Limited Partnership
Queenston Manor General Partner Inc.
Queenston Manor Limited Partnership
2107738 Ontario Inc.
First Leaside Advantage Limited Partnership
2128054 Ontario Inc.
First Leaside Elite Limited Partnership
1132413 Ontario Inc.
First Leaside Entities Limited Partnership
2067171 Ontario Inc.
First Leaside Expansion Limited Partnership
2085306 Ontario Inc.
First Leaside Growth Limited Partnership
2086218 Ontario Inc.
First Leaside Unity Limited Partnership
First Leaside Visions Management Inc.
2007804 Ontario Inc.
First Leaside Wealth Management Limited Partnership
First Leaside Fund Management Inc.
F.L. Beverages Group Limited Partnership
First Leaside Global Limited Partnership
Special U.S. Notes Limited Partnership
FLWM Holdings Limited Partnership
First Leaside Select Limited Partnership
Cherry Park Retirement Residences Limited Partnership
First Leaside Retirement Residences (Okanagan) Limited Partnership
Orchard Valley Retirement Residences Limited Partnership
The Shores Retirement Residences Limited Partnership
F.L. PrimeTime Living Limited Partnership

SCHEDULE B

STATEMENT OF CLAIM

CV-12-9821-00CL
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

BETWEEN:

FIRST LEASIDE WEALTH MANAGEMENT INC., FIRST LEASIDE FINANCE INC., FIRST LEASIDE SECURITIES INC. and FL SECURITIES INC.

Plaintiffs

- and -

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
JUSTITIA

DAVID PHILLIPS, MARGARET DAVIS and 970877 ONTARIO INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $750 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400 for costs and have the costs assessed by the Court.

Date August 28, 2012 Issued by ____________

Local Registrar A. Anissimova Registrar

Address of court office: 39~~3 University Avenue, 10th F~~loor To~~ronto ON M5G 1E6~~

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
BANKRUPTCY / COMMERCIAL COURTS
330 UNIVERSITY AVENUE
7TH FLOOR
TORONTO, ONTARIO M5G 1R7

TO: David Phillips
430 Regional Road #8
RR1 Uxbridge, ON L9P 1R1

AND TO: Margaret Davis
430 Regional Road #8
RR1 Uxbridge, ON L9P 1R1

AND TO: 970877 Ontario Inc.
430 Durham Road
Suite #8
Uxbridge, ON L9P 1R1

CLAIM

1. The plaintiffs, a group of affiliated companies (collectively, the "FL Plaintiffs"), claim, as set out herein:

(a) As against the defendant, David Phillips ("Phillips"). and, as set out below, 970877 Ontario Inc. ("970877"), damages in an amount to be determined before trial, for misrepresentation, fraudulent misrepresentation, breach of contract, breach of fiduciary duty, breach of duty of loyalty, oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt, including:

(i) An Order for payment of the sum of $202,420.00 representing loans made by First Leaside Wealth Management ("FLWM") to Phillips, as evidenced by two promissory notes dated December 31, 2009 and December 24, 2010 in the amounts $50,000.00 USD (converted at the time to $52,420.00 CAD) and $150,000.00 respectively, signed by Phillips in favour of FLWM;

(ii) An Order for recovery of $3,843,549.92 of funds improperly diverted from the FL Plaintiffs by the defendant, Phillips, to himself and to his wife, the defendant, Margaret Davis ("Davis"), directly, or to benefit Phillips and Davis, including:

(1) $44,800.38 in improper payments caused by Phillips to be made from FL Securities Inc. ("FL Securities") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;

(2) $459,418.86 in improper payments caused by Phillips to be made from FLWM to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;

(3) $49,384.14 in improper payments caused by Phillips to be made from First Leaside Securities Inc. ("FLSI") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year; and

(4) $657,696.54 in improper lump sum payments caused by Phillips to be made from several of the FL Plaintiffs to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year, comprising:

(A) improper payments amounting to $131,093.74 caused by Phillips to be made to 970877, a company owned by Phillips, from FLWM; and

(B) improper payments amounting to $526,602.80 caused by Phillips to be made to 970877 from First Leaside Finance Inc. ("First Leaside Finance");

(5) $2,632,250.00 of funds improperly diverted from FLWM by Phillips by way of improper and unauthorized dividends caused by Phillips to be declared by FLWM and received by 970877, which dividends Phillips subsequently caused to be paid from 970877 to himself personally, dating from 2004 to 2010;

(iii) An Order for recovery of $2,541,419.50 of funds improperly diverted from FL Securities and FLSI by the defendant, Phillips, to Davis directly, or to benefit and improve the property located at 430 Regional Road #8 in Uxbridge, Ontario (the "Uxbridge Property"), which property is in the name of Davis and is the personal residence of Phillips and Davis, as evidenced by:

(1) $1,687,564.00 in improper leasehold improvements to the Uxbridge Property caused by Phillips to be paid by FL Securities;

(2) $267,855.50 in improper payments towards a windmill on the Uxbridge Property caused by Phillips to be paid by FL Securities; and

(3) $586,000.00 in improper "rent" payments caused by Phillips to be paid by FLSI to Davis directly;

(b) As against the defendant, Davis, damages in an amount to be determined before trial, for misrepresentation, fraudulent misrepresentation, breach of contract, breach of fiduciary duty, breach of duty of loyalty, oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt, including:

(i) An Order for payment of the sum of $160,000.00 representing loans made by FLWM to Davis, as evidenced by two promissory notes dated December 24, 2010 in the amounts of $150,000.00 and $10,000.00 respectively, signed by Davis in favour of FLWM;

(ii) An Order for recovery of $2,541,419.50 of funds improperly diverted from FL Securities and FLSI and paid to Davis directly, or to benefit and improve the Uxbridge Property, as described above;

(iii) An interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets;

(iv) An Order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property (as further described in Schedule "A" hereto); and

(v) A declaration that Davis holds the Uxbridge Property in trust and on behalf of FL Securities;

(c) An Order, injunctive or otherwise, interim and permanent to preserve, trace and locate all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;

(d) An Order for an accounting of all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;

(e) Pre-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(f) Post-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) The costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and

(h) Such further and other relief as to this Honourable Court may deem just.

The Parties

The Plaintiffs

2. The plaintiffs, First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc. and FL Securities (as above, the "FL Plaintiffs"), are a group of affiliated companies. The four FL Plaintiffs form part of a greater enterprise that comprises a large number of affiliated companies and limited partnerships (collectively, "First Leaside"). First Leaside is currently under *Companies' Creditors Arrangement Act* ("CCAA") proceedings and is managed and controlled by a Chief Restructuring Officer, discussed in detail below at paragraphs 20 to 28.

3. At the relevant times, First Leaside ran numerous businesses, including the operation and development of commercial and multi-residential properties and retirement residences. It provided investment and wealth management services to investors who had invested with First Leaside. Specifically, First Leaside raised debt and equity, and sought investments with the objective of providing investors with consistent monthly distributions, potential capital appreciation, and, in the case of equity investments, potential tax deductions.

4. There are significant interrelationships between the various entities in First Leaside which results in a complex corporate structure. Primarily, First Leaside's operations were centred on two principal companies:

(a) First Leaside Wealth Management Inc. (as above, "FLWM"), a holding and operating company and the ultimate parent of the First Leaside group of companies; and

(b) First Leaside Securities Inc. (as above, "FLSI"), a wholly-owned subsidiary of FLWM, and an investment dealer under Ontario securities law and is regulated by the Ontario Securities Commission ("OSC") and the Investment Industry Regulatory Organization of Canada ("IIROC").

5. At the relevant times, FLWM was owned and controlled by Phillips and Davis. Phillips made all business decisions related to First Leaside including what investments First Leaside would make.

6. FLSI is the company through which First Leaside clients invested their money. Clients used FLSI to manage a portfolio of non-proprietary investment products, typically consisting of more conservative investments such as bonds, treasury bills, and marketable securities as well as proprietary equity (such as limited partnership units) and debt securities issued by First Leaside.

7. In addition to FLSI, FLWM has five other wholly-owned subsidiary companies, including the plaintiffs First Leaside Finance Inc. (as above, "First Leaside Finance") and FL Securities Inc. (as above, "FL Securities").

8. First Leaside Finance is a conduit through which First Leaside facilitated intercompany financial arrangements. In addition to its capacity as a 'central bank' for First Leaside, from time to time First Leaside Finance also acted as a buyer of client positions in investment products through FLSI.

9. FL Securities is an exempt market dealer that is registered with the OSC. It acted as an asset manager and promoter of real estate assets and charged fees for these services.

10. Until recently, First Leaside's head office was located at 430 Regional Road #8 in Uxbridge, Ontario (as above, the "Uxbridge Property"). Approximately 90% of the business of First Leaside was operated out of an apportioned 3,200 square feet of the Uxbridge Property. The Uxbridge Property is also Phillips and Davis' personal residence.

The Defendants

11. The defendant, David Phillips, is an investment advisor and trader.

12. Phillips founded First Leaside in 1989. From that time until November 2011, Phillips controlled the operations of First Leaside and was its primary directing mind. Phillips and Davis had signing authority in respect of all payments made from various First Leaside entities. Among other titles, Phillips was the President, CEO and Secretary of FLSI and the President and a director of FLWM. Phillips and Davis owned 100% of the common shares of FLWM.

13. 970877 Ontario Inc. (as above, "970877") is a holding company wholly owned by Phillips.

14. The defendant, Margaret Davis, is Phillips' wife. She is also a Director and Officer of a number of First Leaside entities. At the relevant times, her day-to-day duties included acting as

supervisor of all banking operations for all First Leaside entities. Since 1999, Davis has been the sole owner of the Uxbridge Property.

The Uxbridge Property

15. Davis purchased the Uxbridge Property from FL Securities in 1999 for $400,000.00. At the time of the purchase, the Uxbridge Property was a modest bungalow on approximately eighteen acres of land. Since that time, it has served as Phillips and Davis' personal residence.

16. On January 1, 2004, Davis entered into a lease agreement with FL Securities (the "Office Lease Agreement") setting out the financial terms of an agreement to run and operate First Leaside from the Uxbridge Property. (Prior to the events leading to the CCAA filing, discussed below, 90% of First Leaside's business was operated out of the Uxbridge Property under Phillips' direction.)

17. Pursuant to the Office Lease Agreement, the term of the lease is seven years, running until January 1, 2011. The Office Lease Agreement further provides, *inter alia*:

(a) "The said Lessee shall pay to the Lessor seventy-five percent (75%) of all electricity costs and forty-four percent (44%) of all other expenses, including, but not limited to: maintenance, utilities (excluding electricity), insurance, property tax, security and capital improvements (the "Rent")"; and

(b) "The Lessee hereby covenants with the Lessor that the Lessee will pay the Rent herein reserved at the times and in the manner aforesaid."

18. In 2008, Toronto-Dominion Bank ("TD") was granted a mortgage on the Uxbridge Property for $900,000.00.

19. On June 20, 2012, the Uxbridge Property was listed for sale at a listed selling price of $2,290,000.00. It was sold on August 7, 2012 for $2,235,000.00 with a closing date of October 1, 2012.

Events Leading to First Leaside CCAA Filing

20. In the fall of 2009, the OSC commenced an audit of First Leaside. In or about March 2010, the OSC escalated the audit to an investigation of First Leaside.

21. On March 5, 2011, and in connection with the OSC investigation, First Leaside, through its counsel ("Counsel"), engaged an independent consultant, Grant Thornton Limited ("GTL") to review its business operations, assess its overall viability, and report and make recommendations about First Leaside's business, assets and operations.

22. GTL released a report on August 19, 2011 (the "August 19 Report"). The August 19 Report advised, *inter alia*, that First Leaside was facing serious cash flow and operational challenges, had weak financial reporting protocols, and proposed several recommendations.

23. On November 3, 2011, the Board of Directors of FLWM appointed an independent committee (the "Independent Committee") to assume all decision-making authority in respect of First Leaside and to oversee its operations. The decision to appoint the Independent Committee was made in consultation with Counsel and with the OSC.

24. On November 4, 2011, First Leaside retained GTL as an independent monitor to, in part, satisfy the OSC that First Leaside was implementing a restructuring plan.

25. In late October 2011, the OSC advised First Leaside that it intended to bring proceedings against it. First Leaside then negotiated and implemented a voluntary cease-trade order over all of its entities on November 7, 2011.

26. In early December 2011, the Independent Committee appointed G.S. MacLeod & Associates Inc. as Chief Restructuring Officer of First Leaside ("CRO"). The Independent Committee asked the CRO to develop a workout plan for First Leaside.

27. In late January 2012, the CRO concluded that it was too risky and uncertain for First Leaside to pursue a resumption of previous operations. The CRO's recommendation to the Independent Committee was that First Leaside should undertake an orderly wind-down of operations. The Independent Committee approved the proposed wind-down and the resultant *Companies' Creditors Arrangement Act* ("CCAA") filing.

28. On February 23, 2012, a number of First Leaside affiliated companies and limited partnerships (the "Applicants") made an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") to commence proceedings under the CCAA (the "CCAA Proceedings"). On February 23, 2012, the Court issued an initial Order pursuant to the CCAA (the "Initial Order"). Among other things, the Initial Order affirmed the appointment of the CRO and gave the CRO the power and authority to manage the affairs of First Leaside, including the commencement of legal proceedings.

The Defendants' Unlawful Conduct is Revealed

29. Since the Initial Order was granted, First Leaside has discovered that Phillips and Davis had for some time been improperly diverting and converting the assets of the FL Plaintiffs to their own use and for their own use.

Accounts Receivable

30. Phillips exercised his powers over the FL Plaintiffs in order to improperly divert $3,843,549.92 of the FL Plaintiffs' funds away from the FL Plaintiffs and to Phillips and to Davis directly, or to benefit Phillips and Davis directly.

31. Specifically, Phillips and Davis lived an extravagant personal lifestyle, which was funded, directly or indirectly, by each of the FL Plaintiffs. For example, with further details to be provided prior to trial, Phillips and Davis caused the FL Plaintiffs:

(a) to pay for landscaping, renovation, repair, utilities, telephone and other household expenses relating to the Uxbridge Property, with title taken in Davis' name to shield the Uxbridge Property from Phillips' creditors;

(b) to pay the salaries of household staff, including a housekeeper, a dogsitter and a gardener;

(c) to fund the purchase of luxury goods, including rare wines and expensive art for Phillips and Davis' own benefit;

(d) to pay Phillips' life insurance policy;

(e) to purchase Phillips' vehicles, and pay for vehicle costs, including gas, repairs and other expenses;

(f) to pay personal credit card debts and other personal obligations;

(g) to pay Phillips' and Davis' personal taxes; and

(h) to pay for Phillips' and Davis' personal travel, hotel and meal expenses.

32. The improper payments listed above were not approved by either the FLWM Board of Directors or the Independent Committee.

33. Further, First Leaside has discovered that Phillips caused a further $2,632,250.00 of funds to be diverted from FLWM by way of improper and unauthorized dividends caused by Phillips to be declared by FLWM and received by 970877, a company owned by Phillips, and subsequently caused by Phillips to be paid by 970877 to himself personally. The $2,632,250.00 in improper dividend payments were made between 2004 and 2010.

34. Phillips made no requests of the FLWM Board of Directors to declare the dividends, nor were any resolutions passed by the FLWM Board of Directors with respect to the payment of dividends to 970877. Rather, the dividend payments were unauthorized and made unilaterally by Phillips for Phillips's personal gain.

35. Together, the costs, payments, expenses and improper dividend declarations listed above, and others, were made entirely for the personal benefit of Phillips and Davis and in no way benefitted First Leaside. These funds were diverted from the FL Plaintiffs exclusively for Phillips and Davis' personal gain.

36. Accordingly, the FL Plaintiffs seek an order requiring that Davis, Phillips and 970877 reimburse the FL Plaintiffs for the full $3,843,549.92 in personal costs and expenditures improperly charged to the FL Plaintiffs, and unauthorized dividends improperly paid by the FL Plaintiffs, as set out above, plus additional amounts, the details of which will be provided prior to trial.

Loans Receivable

37. Phillips and Davis have also received improper and unauthorized loans from FLWM.

38. Phillips has received loans from FLWM in the amount of $202,420.00 which have not been repaid, as evidenced by two promissory notes. The first is dated December 31, 2009 in the amount of $50,000.00 USD (converted at the time to $52,420.00 CAD) with an interest rate of 4% per annum. The second is dated December 24, 2010 in the amount of $150,000.00 with an interest rate of 6% per annum. Both promissory notes are signed by Phillips in favour of FLWM.

39. Similarly, Davis has received loans from FLWM in the amount of $160,000.00 which have not been repaid, as evidenced by two promissory notes. The first is dated December 24, 2010 in the amount of $150,000.00 with an interest rate of 6% per annum. The second is also dated December 24, 2010 in the amount of $10,000.00 with an interest rate of 7.5% per annum. Both promissory notes are signed by Davis in favour of FLWM.

40. The loans to Phillips and Davis set out above were not approved by the FLWM Board of Directors.

41. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips pay FLWM for the full $362,420.00 representing the funds loaned to them, plus interest in accordance with the amounts prescribed in the promissory notes, and as evidenced by the promissory notes referred to above.

Improvements to the Uxbridge Property Funded by the FL Plaintiffs

42. In addition to the $3,843,549.92 of funds caused by Phillips to be improperly diverted from the FL Plaintiffs to fund Phillips and Davis' personal lifestyle, Phillips also caused a total of

$2,541,419.50 of improper payments to be made by FL Securities and FLSI to Davis directly, or to benefit and improve the Uxbridge Property, and thus to ultimately benefit Davis directly, as evidenced by:

(a) $1,687,564.00 in leasehold improvements to the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Leasehold Improvement Payments");

(b) $267,855.50 in payments towards the purchase and maintenance of a windmill on the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Windmill Payments"); and

(c) $586,000.00 in improper rent payments caused by Phillips to be paid from FLSI (the "Rent Payments") to Davis.

Leasehold Improvement Payments

43. As set out above, the Office Lease Agreement pertaining to the Uxbridge Property provides that the lessee, FL Securities, shall pay 44% of all expenses (the "FL Securities Allocation"), including, but not limited to: maintenance, utilities (excluding electricity), insurance, property tax, security and capital improvements.

44. The Office Lease Agreement was entered into for the sole purpose of improperly enriching and benefitting Phillips and Davis and was not in the best interests of FL Securities. Simply, the Office Lease Agreement was a vehicle pursuant to which Phillips and Davis diverted money from FL Securities to themselves to fund their lifestyle and increase the value of the Uxbridge Property.

45. The Office Lease Agreement is oppressive and was entered into in breach of the defendants' duties owed to the FL Plaintiffs. The Office Lease Agreement is void and/or should be set aside.

46. Since 2004, Phillips and Davis have directed the following leasehold improvements to be made to the Uxbridge Property using money of FL Securities:

(a) extensive renovations and upgrades to the bungalow, including additions, renovations and improvements to the living quarters, the establishment of a fitness room and a rooftop deck;

(b) significant landscaping development, including the development of a pond and well on the property;

(c) development of a stone pathway entrance to the home and wrought-iron fencing;

(d) development of a spa, swimming pool and waterfall on the property; and

(e) the addition of a large garage with a fully finished loft therein on the property, which garage also housed an atrium and a greenhouse.

47. Further in spite of the FL Securities Allocation, Phillips has, since 2004, directed FL Securities to pay 100% of all expenses in respect of all leasehold improvements to the Uxbridge Property, and FL Securities has done so at Phillips' direction. Although 56% of leasehold improvements were notionally allocated back to Davis (the "Davis Allocation") in accordance with the Office Lease Agreement, the Davis Allocation was charged to a loan receivable account due from David Phillips on the books of FL Securities. As a result, FL Securities has effectively

paid for 100% of the leasehold improvements to the Uxbridge Property. Neither Phillips nor Davis has paid for any portion of the leasehold improvements personally.

48. In any event, none of the leasehold improvements giving rise to the $1,687,564.00 of leasehold improvement payments paid by FL Securities are in any way linked to the business, affairs or operations of First Leaside and, as a result, can not be deemed to be contemplated by the Office Lease Agreement. Rather, each and every one of the leasehold improvements was made to personally benefit Phillips and Davis.

49. As a result, the leasehold improvement payments caused by Phillips to be made from FL Securities to benefit the Uxbridge Property were made in breach of Phillips and Davis' fiduciary duties and duties of loyalty, and constitute oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt.

50. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips repay FL Securities the sum of $1,687,564.00 representing the total amount of leasehold improvement payments caused by them to be paid by FL Securities to benefit the Uxbridge Property.

51. As a result of the leasehold improvement payments, the value of the Uxbridge Property has been greatly increased at the expense of the FL Plaintiffs and for the sole benefit of Davis and Phillips.

52. The Uxbridge Property, purchased by Davis for $400,000.00 in 1999, was listed for sale on June 20, 2012 at a listed price of $2,290,000.00. It was sold on August 7, 2012 for $2,235,000.00 with a closing date of October 1, 2012.

53. As a result of the above, the FL Plaintiffs seek an interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets, as well as an Order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property

Windmill Payments

54. In addition to the $1,687,564.00 in improper leasehold improvement payments benefitting the Uxbridge Property and the defendants paid for by FL Securities as set out above, Phillips and Davis also caused FL Securities to make $267,855.50 in improper payments towards the purchase and maintenance of a windmill on the Uxbridge Property.

55. The windmill is owned by F.L. Research Management, a company that is owned by Phillips and Davis. The windmill in no way connected to the business, affairs or operations of First Leaside and, as a result, can not be deemed to be contemplated by the Office Lease Agreement. Rather, each of the improper windmill payments was made for the personal benefit and enjoyment of Phillips and Davis.

56. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips repay FL Securities the sum of $267,855.50.

Rent Payments

57. In addition to the Leasehold Improvement Payments and Windmill Payments detailed above, all of which served to benefit and improve the Uxbridge Property and thus benefit Davis

and Phillips directly, since January 2005, Phillips and Davis caused an additional $586,000.00 of "rent" payments to be paid by FLSI directly to Davis.

58. Specifically, Phillips directed FLSI to improperly pay Davis $6,000.00 in January and February 2005, and for every month thereafter until November 2011, Phillips directed FLSI to improperly pay Davis $7,000.00 per month.

59. These lump sum payments are not authorized by the Office Lease Agreement or by any other agreement and are entirely improper. The payments were made directly to Davis for her personal benefit and at Phillips' direction. Accordingly, the FL Plaintiffs seek an order requiring that Davis repay FLSI the sum of $586,000.00 representing the total amount of "rent" payments she received from FLSI.

60. As the primary directing mind of First Leaside and as President, CEO and Secretary of FLSI, Phillips is jointly liable by causing the monthly "rent" payments to be made by FLSI to Davis.

Damages Suffered by the FL Plaintiffs as a Result of the Defendants' Wrongful Acts

61. The FL Plaintiffs plead that they have suffered enormous pecuniary losses as a result of the defendants' extensive wrongful conduct as pleaded in this Statement of Claim.

62. The defendants' wrongful conduct has been ongoing for years. As a result, the FL Plaintiffs have suffered exponential losses for which the defendants are liable. The gains that the defendants have received from their wrongful conduct have funded the defendants' extravagant personal lifestyle. The gains from the defendants' wrongful conduct have also funded extensive renovations to the defendants' real estate, including the Uxbridge Property, and expenditures on

assets related to the Uxbridge Property, which have drastically increased the value of the Uxbridge Property at the expense and to the detriment of the FL Plaintiffs.

The FL Plaintiffs are Entitled to the Relief Claimed

63. The FL Plaintiffs are entitled to all of the relief requested herein, including the interim remedies, interim and interlocutory orders which they seek as a result of the defendants' actions as set out above.

Misrepresentation and Fraudulent Misrepresentation

64. As the sole directing mind of First Leaside and as President, CEO and Secretary of FLSI and President and director of FLWM, Phillips owed a duty of care to First Leaside, including all of its entities.

65. However, Phillips has made inaccurate and misleading statements to the FL Plaintiffs with respect to his use of the FL Plaintiffs' funds. He falsely represented that the FL Plaintiffs' moneys were being used exclusively for proper purposes, when they were in fact being used for improper personal purposes; specifically, to benefit and enrich himself and Davis personally, and to benefit and improve the Uxbridge Property.

66. Phillips made these false representations with the knowledge and intent that the FL Plaintiffs would rely on them. Phillips' representations were false and, as a result, the FL Plaintiffs have suffered the damages pleaded herein.

Breach of Contract, Fiduciary Duty and Duty of Loyalty

67. As the sole directing mind of First Leaside, and as President, CEO and Secretary of FLSI and President and a director of FLWM, Phillips was in a fiduciary relationship with First Leaside and owed all of First Leaside, including all of the FL Plaintiffs, the commensurate duties and

obligations. He had a duty to act in the best interests of the FL Plaintiffs, to conduct himself honestly and in good faith, and to avoid conflicts of duty and self interest in accordance with the duty of loyalty.

68. Phillips did none of the above. Instead, he misappropriated, diverted and converted the FL Plaintiffs' funds to himself and to Davis and for his and Davis' personal use and benefit. In flagrant breach of his fiduciary duties to the FL Plaintiffs, including his good faith obligations and duty to avoid conflicts of duty and self interest, Phillips took advantage of his position at First Leaside, benefitting personally for years by wilfully and entirely disregarding the FL Plaintiffs' interests.

69. Similarly, Davis was in a fiduciary relationship with First Leaside, including the FL Plaintiffs, due to her position as a Director and Officer of a number of First Leaside entities and her role as supervisor of all banking operations for all First Leaside entities. Like Phillips, Davis also misappropriated, diverted and converted the FL Plaintiffs' funds to herself and to Phillips for her and Phillips' personal use and benefit. In flagrant breach of her fiduciary duties to the FL Plaintiffs, Davis took advantage of her position at First Leaside, benefitting personally for years by wilfully and entirely disregarding the FL Plaintiffs' interests.

70. The FL Plaintiffs seek an accounting from Phillips and Davis and the entities related to Phillips and Davis for all funds improperly taken and profits earned therefrom as pleaded herein. Further, the FL Plaintiffs seek disgorgement of all funds improperly taken and profits earned therefrom as pleaded herein and/or equitable and common law damages, in amounts to be determined prior to trial.

Oppression

71. At the relevant times, Phillips had the *de jure* control of both FL Securities and FLSI.

72. As sole shareholder of FL Securities and FLSI, FLWM has standing as a "complainant", as that term is defined in section 238 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ("*CBCA*"), to seek a declaration pursuant to section 241 of the *CBCA* that Phillips and Davis have exercised their powers over FL Securities and FLSI in a manner that is oppressive or unfairly prejudicial to and that unfairly disregards the interests of FLWM.

73. As pleaded herein, Phillips improperly diverted funds from FL Securities and FLSI to himself and Davis directly, or to benefit himself and Davis, and to benefit and improve the Uxbridge Property. Davis, with the knowledge and support of Phillips, also diverted funds from FL Securities and FLSI to herself and Phillips or to benefit herself and Phillips, and to benefit and improve the Uxbridge Property.

74. These acts were committed by Phillips and Davis for the wrongful purpose of enriching themselves at the expense of FL Securities and FLSI. These actions violated FLWM's interests and expectations as sole shareholder of FL Securities and FLSI and were not in the best interests of the companies.

75. FLWM reasonably expected that FL Securities and FLSI would continue to operate as profitable ventures for many years to come. FLWM also reasonably expected that the companies would be operated and managed responsibly by Phillips and that FLWM would enjoy a long-term interest in the increasing value of these businesses. However, Phillips pursued a course of conduct designed to deprive FL Securities and FLSI of many of their assets in order to fund Phillips and Davis' personal lifestyle and to benefit and improve the Uxbridge Property. These wrongful

actions unfairly disregarded the interests and expectations of FLWM and were not in the best interests of the companies.

76. As a result of Phillips and Davis' wrongful acts, the plaintiff FLWM seeks a declaration pursuant to section 241 of the *CBCA* that the defendants have exercised their powers in a manner that is oppressive or unfairly prejudicial to and that unfairly disregards the interests of FLWM, and damages caused by their actions.

Conversion

77. The defendants, Phillips and Davis, by their misconduct, wrongfully converted the FL Plaintiffs' funds for their own use, as pleaded herein.

78. The wrongful conversion of Phillips and Davis stems from their misappropriation of the FL Plaintiffs' funds and their transfer of the FL Plaintiffs' funds to their own personal use. In doing so, Phillips and Davis intentionally exercised control over the funds of the FL Plaintiffs in a manner that impeded the possessory rights of their rightful owners – FLWM, FLSI, FL Securities, and First Leaside Finance.

79. In taking the FL Plaintiffs' funds for their own personal use, Phillips and Davis knowingly and wrongfully converted the funds by treating them as if they were their own and exercising unauthorized control over their use; for instance, to pay extravagant personal living costs, personal debts, obligations and other expenditures, and to pay for leasehold improvements and additions to the Uxbridge Property, as set out in detail above.

80. Further particulars of the conduct of the defendants are within their knowledge.

81. As a result of the conduct of the defendants, the FL Plaintiffs have suffered significant financial damages and losses as pleaded herein.

Conspiracy

82. Together, Phillips and Davis agreed upon and coordinated a deceitful scheme, the predominant purposes of which were to commit a series of unlawful acts, namely the wrongful acts of enriching themselves and injuring the FL Plaintiffs by misappropriating, diverting and converting the FL Plaintiffs' funds for the purpose of achieving personal gain, and to ensure that the FL Plaintiffs remained unaware of their unlawful behaviour.

83. Further, the conspiracy between Phillips and Davis was planned and conducted in such a way that Phillips and Davis knew or ought to have known that injury to the FL Plaintiffs would be likely to result from their wrongful actions. As a result of the defendants' actions, the FL Plaintiffs have suffered damages as pleaded herein.

Unjust Enrichment

84. The defendants, Phillips and Davis, have been unjustly enriched by their misconduct. As described above, the defendants have benefited from their wrongful misappropriation and misuse of the FL Plaintiffs' funds, despite having no juristic reason for this enrichment. The FL Plaintiffs have correspondingly been deprived of the benefits of ownership over their own funds, as described above. The defendants should not benefit from their misconduct. The enrichment they have enjoyed from the misuse of Company money should be accounted for and disgorged to the FL Plaintiffs.

Knowing Assistance and Knowing Receipt

85. The defendants, Phillips and Davis, knowingly assisted one another in breaches of their obligations to the FL Plaintiffs, specifically, in breaches of their fiduciary duties and their duties of trust and loyalty, in order to misappropriate, divert and convert the FL Plaintiffs' funds for their own use and benefit.

86. Phillips and Davis had actual knowledge of, or were reckless or wilfully blind to, one another's wrongful misappropriation and misuse of the FL Plaintiffs' funds, and assisted one another in breaching their obligations to the FL Plaintiffs.

87. Davis has also knowingly and willingly accepted the fruits of Phillips' wrongful misappropriation and misuse of the FL Plaintiffs' funds. As described above, both Phillips and Davis have been greatly enriched by Phillips' breaches of his obligations owed to the FL Plaintiffs and his wrongful misuse and misappropriation of the FL Plaintiffs' funds to benefit and improve the Uxbridge Property.

Place of Trial

88. The plaintiffs propose that this action be heard in Toronto.

August 28, 2012

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Lawyers for the Plaintiffs

SCHEDULE "A"

Part of West half of Lot 31 Concession 4, Uxbridge, Part 1, 40R1921, PIN 26856-0058 (LT), Township of Uxbridge, Regional Municipality of Durham

FIRST LEASIDE WEALTH MANAGEMENT INC. ET AL.
Plaintiffs

and

DAVE PHILLIPS ET AL.
Defendants

CV12-9821-00CL
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

We hearby accept service of a true copy

of the within________________

on this____**day of**________**,20**____

Per:________________
Lawyers For

We hearby accept service of a true copy

of the within________________

on this____**day of**________**,20**____

Per:________________
Lawyers For

TAB 3

Court File No. CV-12-9930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ________	)	TUESDAY, THE 27th
	)	
JUSTICE _________________	)	DAY OF FEBRUARY, 2017

IN THE MATTER OF THE RECEIVERSHIP OF First Leaside Wealth Management Inc. and the Applicants Listed on Schedule "A" (collectively, "**First Leaside**")

ORDER

(SETTLEMENT APPROVAL)

THIS MOTION, made by Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of First Leaside, for an order:

(a) approving the Receiver entering into and completing the settlement (the "**Phillips Settlement**") with A. Farber & Partners ("**Farbers**"), as bankruptcy trustee in the estate of Mr. David Phillips (the "**Phillips Trustee**"), as described in the Receiver's Fifth Report to Court dated February 15, 2018 (the "**Fifth Report**");

(b) authorizing the Receiver to pay any and all distributions properly owing to John Wilson ("**Mr. Wilson**") to Farbers, as bankruptcy trustee in the estate of Mr. John Wilson (the "**Wilson Trustee**"), as described in the Fifth Report;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report; and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of Chris Burr sworn February 16, 2018, filed:

DEFINITIONS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Fifth Report.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fifth Report is hereby abridged and the manner thereof validated so that this Motion is properly returnable today and hereby dispenses with any further or other service thereof.

APPROVAL OF PHILLIPS SETTLEMENT

3. **THIS COURT ORDERS AND DECLARES** that the settlement agreement between the Phillips Trustee and the Receiver, dated December 21, 2018 is hereby approved, and the Receiver is hereby authorized and directed to take such steps and execute such additional documents as may be necessary or desirable for the performance thereof.

PAYMENT OF WILSON UNIT DISTRIBUTION

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to distribute to the Wilson Trustee the amount of $79,758, representing the distribution owing to Mr. Wilson pursuant to the Interim Distribution Order, in full and final satisfaction of Mr. Wilson's entitlement to any distribution in these proceedings in accordance with the Claims Process**.**

Schedule A – List of Additional Receivership Applicants

First Leaside Finance Inc.
First Leaside Securities Inc.
F.L. Securities Inc.
Mill Street Limited Partnership
Harmony Townhomes Limited Partnership
First Leaside Management Inc.
Development Notes Limited Partnership
Special Notes Limited Partnership
First Leaside Accounting and Tax Services Inc.
2086056 Ontario Inc.
First Leaside Properties Limited Partnership
First Leaside Realty Inc.
First Leaside Realty Limited Partnership
First Leaside Realty II Inc.
First Leaside Investors Limited Partnership
First Leaside Premier Limited Partnership
First Leaside Progressive Limited Partnership
First Leaside Realty II Limited Partnership
First Leaside Ultimate Limited Partnership
First Leaside Universal Limited Partnership
Uxbridge Development Limited Partnership
First Leaside Retirement Residences Limited Partnership
First Leaside Venture Limited Partnership
965010 Ontario Inc.
Wimberly Apartments Limited Partnership
1045517 Ontario Inc.
The Shores Limited Partnership
1024919 Ontario Inc.
Old Mill Pond Apartments Limited Partnership
1031628 Ontario Inc.
1056971 Ontario Inc.
The Bluffs of Lakewood Limited Partnership
1376095 Ontario Inc.
F.L. Spring Valley Limited Partnership
1437290 Ontario Ltd.
First Leaside Partners Limited Partnership
First Leaside Opportunities Limited Partnership
1244428 Ontario Ltd.
Preston Racquet Club Real Estate Limited Partnership Series 910PA
Preston Racquet Club Real Estate Limited Partnership Series 910PB
Preston Racquet Club Real Estate Limited Partnership Series 910PC
Preston Racquet Club Real Estate Limited Partnership Series 910PD
PrestonOne Development (Canada) Inc.
PrestonTwo Development (Canada) Inc.

PrestonThree Development (Canada) Inc.
PrestonFour Development (Canada) Inc.
2088543 Ontario Inc.
2088544 Ontario Inc.
F.L.W. Pond Master Ltd.
2088545 Ontario Inc.
F.L.W. Shores Master Ltd.
1331607 Ontario Inc.
First Leaside Acquisitions Limited Partnership
Queenston Manor General Partner Inc.
Queenston Manor Limited Partnership
2107738 Ontario Inc.
First Leaside Advantage Limited Partnership
2128054 Ontario Inc.
First Leaside Elite Limited Partnership
1132413 Ontario Inc.
First Leaside Entities Limited Partnership
2067171 Ontario Inc.
First Leaside Expansion Limited Partnership
2085306 Ontario Inc.
First Leaside Growth Limited Partnership
2086218 Ontario Inc.
First Leaside Unity Limited Partnership
First Leaside Visions Management Inc.
2007804 Ontario Inc.
First Leaside Wealth Management Limited Partnership
First Leaside Fund Management Inc.
F.L. Beverages Group Limited Partnership
First Leaside Global Limited Partnership
Special U.S. Notes Limited Partnership
FLWM Holdings Limited Partnership
First Leaside Select Limited Partnership
Cherry Park Retirement Residences Limited Partnership
First Leaside Retirement Residences (Okanagan) Limited Partnership
Orchard Valley Retirement Residences Limited Partnership
The Shores Retirement Residences Limited Partnership
F.L. PrimeTime Living Limited Partnership

IN THE MATTER OF THE RECEIVERSHIP OF FIRST LEASIDE WEALTH MANAGEMENT INC. AND THE APPLICANTS LISTED ON SCHEDULE “A”.

Court File No: CV-12-9930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

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Lawyers for the Receiver

Court File No: CV-12-9930-00CL

IN THE MATTER OF THE RECEIVERSHIP OF FIRST LEASIDE WEALTH MANAGEMENT INC. *ET AL*.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

MOTION RECORD
(Returnable February 27, 2018)

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Lawyers for Grant Thornton Limited in its capacity as Court-Appointed Receiver